

T3 - Does [client] have standing?

In order to challenge the administrative decision/conduct, [client] must demonstrate that he/she is personally affected to a sufficient extent by it.

Step 1: The statute does [not] say anything about standing, hence, the fallback position will either be the ADJR Act or common law.

Step 2: ADJR Act

- i. Plaintiff is a “person aggrieved” per s 5/6, i.e. person whose “interests are adversely affected” per s 3(4). “person aggrieved” is now understood to mean a **special interest** that is **more than a mere intellectual or emotional concern** (ACF).
- ii. Is plaintiff an **Individual/Public interest groups/Trade Union/Competitors**.

Individual	Public interest groups	Trade Union	Competitors
<p>Does the decision impact upon an individual’s private right? If yes, the individual has standing</p> <p>If <u>not</u>, the individual will need to show a special interest</p> <ul style="list-style-type: none"> A special interest is an interest that is different from ordinary members of the public. Must show greater interest than other members of the public. It’s ok if the individual is part of a group (even a large group) with a specific, identifiable interest: <i>Croome</i> <ul style="list-style-type: none"> If decision is not specifically about P, consider “Ripples of affection”: <i>Argos</i> P will be disadvantaged by the action, even if the action has not yet occurred - <i>Evans</i> 	<p>Special interest that is more than a mere intellectual or emotional concern – <i>ACF</i></p> <p>Then see factors</p>	<p>Trade Unions will have standing if:</p> <ol style="list-style-type: none"> substantial portion of its members are affected & Those member’s employment interests are affected - <i>Marine Engineers, Shop Distributive</i>). 	<p>Must show that their economic interests are likely to be affected. It’s not sufficient to show that they might be. Or that their relative market position will suffer.</p>

- iii. Then, see table below for factors.

After listing the factors: say: with this multifactorial approach (*NCEC*) – each factor does not by itself establishes standing. However, when they are examined altogether that they add weight.

Step 3: Common Law

ADJR standing test is “at least as broad” as common law test (*Marine and Power Engineers*, per Gummow J). Thus, for CL standing test, see analysis for ADJR standing test. i.e. →

- Plaintiff** must demonstrate a **private right**; **OR** (if there is no private right) If the decision involves a public interest, [plaintiff] has a **special interest** that is **more than a mere intellectual or emotional concern** (ACF)

Locus standi: Factors that show more than a mere intellectual/emotional concern	No Locus standi: Factors that does not show more than a mere intellectual/emotional concern
[Plaintiff] has been ‘specifically affected. Indeed, in comparison with the public at large he has been affected	[plaintiff] being an incorporated association does not mean that it has a ‘special interest’ in the matter - <i>ACF</i>

to a substantially greater degree or in a significantly different matter - <i>Alcoa</i>	
cultural and spiritual significance to [plaintiff] & teaching culture to the [plaintiff's] community	the fact that [plaintiff] had made a submission regarding the draft does not give the latter a 'special interest' - <i>ACF</i>
Religion (Ministers of religions/priests in <i>Ogle</i>): plaintiff's position made them more particularly affected than ordinary members of the public	For environment case: To show a special interest in the subject matter of the litigation, [plaintiff] <u>cannot</u> rely solely on its objects or any complaint made by it about the project - <i>North Coast</i>
Unfair competition (cf. mere competition) and profitability: P's business will suffer a loss in profitability as a result of the decision - <i>Argos</i>	If P has <u>only</u> an intellectual, philosophical & religious concern - <i>Right to life</i>
It's a peak environmental organisation - <i>North Coast</i>	use the ADJR Act to vindicate a purely commercial interest - <i>Alphafarm</i>
The importance of its concern with the subject matter & closeness of the applicant's relationship to that subject matter - <i>North Coast</i>	
Recognised by govt. as a significant and responsible [environmental] org. - <i>North Coast</i>	
received recurrent financial grants (although modest) for projects - <i>North Coast</i>	
Group is consulted on [issues] by the [Department] – <i>AA</i>	
Group's reports are published & submitted to govt. - <i>AA</i>	
Group devoted financial resources to cause - <i>AA</i>	
Its objects intersected with the purposes of the Act - <i>AA</i> (though following <i>Argos</i> , the Court wasn't sure this was necessary)	
If decision creates a "danger and peril to the interests of plaintiff that is clear and imminent rather than remote, indirect or fanciful " - <i>Australian Institute of Marine</i>	
P must show on the balance of probabilities that their interests were likely (not might) to be affected to a significant degree . - <i>Argos</i>	

Notes:

- Location: As per *Animals Angels*, it doesn't matter that [group] is based overseas and has no [Australian] members. However, the case suggests that there must be a 'sufficient presence' in *AUS*. E.g. having an Australian representative conducting investigations means they had a 'sufficient presence' in *Australia*; also, being active in *AUS* for 8 years.
- Key term: [Facts] shows that plaintiff has sufficient nexus with the subject matter

Step 4: Conclusion: [client] has the right to institute legal proceedings to challenge the conduct/decision under ADJR Act/CL.

Step 5: If you don't have standing – think of AG's fiat, Joinder or Amicus.

- **AG:** AG has automatic standing to seek an injunction to protect 'public rights'. AG can undertake this litigation either:
 - (a) Personally; or
 - (b) by granting an individual an AG's fiat (in the name of the AG).
- **Joinder:** Usually if x doesn't have standing, you'll find someone else who does and use this person as joinder.
 - S 12(1) ADJR allows for joinder applications where "interested" in decisions, and the court has discretion to grant or refuse it
- **Amicus:** Australian courts have set out broad criteria for this: *US Tobacco*: 'if it considers it in the interests of justice to do so, the court may hear an amicus curiae'

T4 - Reasons

If ~~no reason was given~~: On the facts, no reasons for the DM's decision have been provided to applicant. Applicant should seek for Reasons in order to understand the motives behind the DM's decision and to decide whether to challenge that decision or not.

ADJR Act

- i. As per the facts, the Act is **not** exempted under Schedule 2 and the information of the decision is not listed under s 13A exceptions. Thus, P can use s 13.
- ii. **Section 13**: Assuming that the aforementioned analysis is right that the plaintiff has jurisdiction under s 5, and that he has **standing**, then he can make a request for a statement of reasons under s 13. Further, the DM has to prepare the statement and give it to plaintiff within 28 days.
- iii. **Content**:
 - Although the Act does not stipulate what should be in the content of reasons, (s 25D of *Acts Interpretation*), the reasons should be rational and reasonable. The content of a reasons statement should make the applicant understand why the decision went against him (*Wraith*).
- iv. **(optional)** If defendant is govt: Applicant can also obtain documents/information from government about its actions through the *FOI* Act.

Common Law

Under Common law, there is **no** general duty to give reasons (*Osmond*, in obiter in *Wingfoot*)