

Jurisdiction:

- Look for
 - State or federal level?
 - Officer of Cwth
 - Administrative in character or legislative?

1. Does the ADJR (s.3) apply?
 - i. ADJR – s 3,
 - Decision – final and operative + substantive not procedural (bond)
 - Administrative character (**ANU v Burns**) – neither legislative or judicial in character
 - Under enactment (Griffith Uni /NEAT) – expressly authorised and required unde legislation, + affects legal rights and obligations.
 - Note AWBI – consent was a precondition
 - Check:
 - o Cwth level?
 - o Note ADJR does not distinguish between JE and error of law.
 - Note:
 - o All remedies available (at the courts discretion – no JE required). (PBS may not required)
 - Standing: ‘aggrieved by a decision’ (5(1)).
2. Does 39B(1) Judiciary act (federal court) or 75(v) HCA apply?
 - (1) matter (2) writ of mandamus, prohibition or injunction (3) against officer of Cwth
 - Check:
 - o Need jurisdictional error.
 - o Cwth officer – corporate entity (not officer) (**Post Office Agents**)
3. Does 75(iii) apply?
 - (1) Cwth is a party being sued
 - Check:
 - o Legal error?
 - o Note includes: ANU. (statutory body)
4. Does 39B(1A)(c) Judiciary act (federal court) apply?
 - (1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter: (c) arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter.
 - Note: the test is somewhat unclear
 - (1) matter? – lega; rights being affected? (Tang)
 - (2) need to show jurisdictional error to get a remedy
- 5.
6. State level
 - Common law, state supreme court has jurisdiction for all state legislation ‘things’.
7. Other options:
 - Tribunal (AAT), Ombdsman,
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Relevance	Case name	Facts/law	Distinguish
decision	AVT v Bond	Questioned applicants ‘good character – factor for consideration and was not ‘final’	Decision = final, operant and substantive
‘administrative character’	ANU v Burns		neither legislative or judicial in character
administrative character	Griffith Uni v Tang	PHD program – no legal rights	Affect legal rights.
under enactment	Griffith Uni v Tang	Griffith University (a public university established under Qld legislation)	Power to make a decision from statue (public body)
Under enactment	NEAT	WEA (statutory body), AWB (non-statutory body), AWB’s consent was a precondition for WEA.	Power to make decision from corporate law. (private body)
Under enactment	Datafin	No statutory scheme ... Private company board performed government role – overseeing company merges.	Commentary suggests HCA may be open to a functionalist approach.
CL	AVT v Bond		‘matter’ = not theoretical, affects rights

Standing

ADJR – aggrieved	S 5(1) ADJR	‘aggrieved’ by a decision.	
Special interest test	ACF v Cwth	More than a mere ‘ideological, intellectual or emotional concern’	Applies to injunctions and declaration
Impacted by decision	Bateman’s Bay	ACF test essentially the same as the ‘person aggrieved’ under ADJR.	
Specially affected	Right to life	<p>Antiabortion Christian group.</p> <p>A core element of the group is to increase awareness of the ‘sanctity of human life’ which begins at conception.</p> <p>R: "Plainly the applicant need not have a legal, financial or proprietary interest in the subject matter of the proceeding. The applicant must establish that he is a person who has a complaint or grievance which he will suffer as a consequence of the decision beyond that of an ordinary member of the public."</p>	<p>‘beyond that of an ordinary member of the public’</p> <p>Religious basis</p> <p>May have had a mere ‘intellectual interest’?</p>
Representative body	North Coast	A representative body will have standing on the matter in question – member specially affected.	
Financial impact (substantial interest)	Argos	<p>Council plans to improve the life of the community – building shopping strip near existing shops – impacting profitability of existing shops. ... present shop owners will be specially affected</p> <p>R: Gageler J - no need for interest to be within the scope, object or purpose of the legislation.</p>	Interest not considered by decision.
Specially affected	Onus v Alcoa of Australia Ltd	<p>Proposal for a coal mine would likely damage local aboriginal relics (unlawful) – local indigenous community opposed.</p> <p>R: very long association, great cultural and spiritual significance, intimate relationship w/ the relics ... very different from conservationists.</p>	<p>Spiritual/cultural basis</p> <p>Distinguishes from conservationists</p>
Standing	Ogle v Strickland	<p>Anglican priest – deems a film to be ‘blasphemous’ – in breach of a requirement...</p> <p>R: ‘great cultural and spiritual significance’ to the appellants ... to repel blasphemy is a necessary incident of their vocation.’</p>	<p>Spiritual/cultural basis</p> <p>Similarity to ‘Onus case’</p> <p>Distinct from ‘meddlers or busy bodies’</p> <p>Distinct from ‘mere intellectual or emotional concern.</p>

GOR: Procedural fairness

Arises when a 'substantial interest' is affected.	<i>Ainsworth</i>	poker machine owner, deemed not to be of proper character. Reputation is a significant interest to give rise to procedural fairness.	Test is 'substantial interests' not legal interests.
	Aala	Second tribunal, overseeing a decision, never looked at the previous submissions/paper. The tribunal then stated the applicant was not believed as they 'never raised this part of the story' before (this part was in fact in the earlier submissions).	DM fails to review earlier decisions.
fair hearing: When will it arise?	Kioa v West	Two valid Visa holders that expired – they were then deported – Q: should they get a hearing?	Test unclear: Mason J: direct and immediate effect on rights. Brennan J: affected 'substantially different' from the public at large.
Fair Hearing: Opportunity to respond to new material. + Presumption of Natural justice	Miah	Tribunal was informed that a gay asylum seeker went back home for sister's wedding. Application rejected. R: 'the delegate (the Minister) breached the rules of natural justice by failing to offer him an opportunity to respond to new material critical to adverse findings against his application.' R: 'It is now settled that when a statute confers on a public official the power to do something which affects a person's rights, interests or expectations, the rules of natural justice regulate the exercise of that power "unless they are excluded by plain words of necessary intentment".'	Opportunity to respond to new information is a critical element of procedural justice PJ will apply when rights, interests or expectations are affected – but for expressed exclusion.
Fair Hearing: All credible, relevant and significant information.	Veal	Tribunal given an anonymous confidential letter, which they claim to have 'given no weight'. The letter alleged Veal was working for the gov. in his home country. – unverifiable. R: procedural fairness requires the decision maker to 'identify to the person affected any issue critical to the decision which is not apparent from its nature of the terms of the statute under which it is made'.	applicant should be given all credible, relevant and significant information. Contrast to SZISS where information the tribunal was given by the applicant was given no weight – allowed.
Procedural justice: Legitimate expectation.	Teoh	Teo– international obligations obliged Australia to have the protection of children to be a 'primary consideration'. R: The representation of the government to enter into a treaty with another government (which Tio knew nothing about) was still enough to give rise to a 'legitimate expectation'.	Contrast to Lam – where the expectation must impact the information put forward by the applicant.
Procedural fairness Breach requires an impact on something (information put forward).	Lam	extensive criminal history, deported, applicant had two children in Australia- was told the children's carer would be contacted, they were not – legitimate expectation? Lam put forward information from the child's carer already and did not refrain from putting any evidence forward because of the 'legitimate expectation'. No breach of procedural fairness.	Here the representation did not impact the information the applicant gave.