

Administrative Law 1: Judicial Review [Statutory Interpretation] Exam Notes

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STANDING

How many parties involved? If there is a 3P involved it is very likely a standing issue!!

3P is a private person wishing to get involved. For 3P to have standing, they must either:

1. Ask the A-G to lend them standing (relator status). This is a discretionary decision and the decision to refuse to give relator status cannot be reviewed (*Gouriet*).

CASE	FACTS	HELD	REASONS
<i>McBain</i>	Bishops + AG challenged decision to allow a single woman IVF	No standing	1. Bishops not party at 1 st instance 2. AG had been invited to participate at first instance but refused 3. No justiciable matter between AG/Bishops + McBain – a private matter between dr + pt; AG only has standing to protect public interests.

2. Prove that the interference with the public right by the decision also interferes with their private rights. Here, the public right is

/There is no public right, thus there is no standing (*Sumner v UK*).

Furthermore 3P must show the interference has resulted in special damage to them/has a special interest different to the public in general that is recognised by the statute.

3P does/not have a special interest different to the public in general that is recognised by statute;

Standing is determined at the time of the hearing, not the time of the application, if circumstances have changed over time, and the interest in the decision must not be too remote (*Allan v Transurban*).

CASE	FACTS	HELD	REASONS
<i>Onus v Alcoa</i>	2 Aboriginal pp from VIC sought to challenge the building of a smelter in their area	had standing	specific interest in specific region – close connection to piece of land + obligation to protect cultural relics, which was also an interest given under the Relics Act
<i>Right to Life</i>	Group unhappy with distribution of new abortion drug	No standing	Moral/emotional objections not enough; must have an interest that lines up with the statutory grounds – here stat interest was re drug safety
<i>Argos v Corbel</i>	Supermarket challenged decision to allow another one to open close by	Had standing	There would be unfair competition + A was likely to suffer serious loss, thus they had a special interest

RE BODIES/UNIONS/GROUPS

<i>Northcoast Environmental</i>	NE challenged decision to issue a woodchip license	Had standing	Peak group representing 40 other groups in the area; had state + fed gov. recognition + funding
<i>ACF v Cth</i>	Environmental minister did not follow mandatory procedure	No standing	1. not enforcing a private right 2. seeking to enforce a private wrong 3. ordinary members of the public w/ no special interest cannot enforce the law 4. special damage is not limited to actual pecuniary loss and doesn't have to be unique – others may suffer the same loss 5. mere intellectual/emotional concern is not a special interest
<i>Shop Distributive</i>	SD applied to challenge decision of Sunday trading in the SCB	Had standing	There were members of SD in the shops that were affected/had a special interest!
<i>ECAJ v Sully</i>	Anti-Semite leaflets distributed in TAS, ECAJ complained (in NSW)	had standing	was a peak body for Jewish ppl, Racial Discrimination Act allowed complaints re forms of racial discrimination. ALSO NOTE unincorporated bodies can be given standing!!

VOCATIONAL INTEREST

JURISDICTIONAL ERROR

Is there a privative clause? Then JE can be used to get around it!

A decision can be overturned if there is a jurisdictional error (Administrative Decisions (Judicial Review) Act 1977(Cth) (ADJR) s 5(1)(c).

Categories of JE (*FCT v Futuris Corp*) – only mention the ones that apply!

1. Mistaken assertion or denial of jurisdiction (*FCT v Futuris Corp*; *PSA*)

Aka where court thinks it does has jurisdiction + hears the case or thinks it doesn't have jurisdiction + refuses to hear the case AND IS WRONG (ie *PSA* – Commission refused to hear the case)

2. Disregard for nature and limits of the functions or powers of the court (*FCT v Futuris Corp*; *Kirk*)

3. Acting wholly outside jurisdiction (*FCT v Futuris Corp*)

ie civil court hearing a criminal case
(*Kirk*)

Any state legislation taking away jurisdiction away from the SC (ie via state based privative clause) would violate the constitutional status of the court in a federal legal system unless it is an 'error within jurisdiction'

Where matter is discretionary (ie whether to allow a lawyer at a hearing), mistake is within jurisdiction = privative clause applies, no JE

Where matter is mandatory (ie a right to a lawyer at a hearing and this is refused), mistake is jurisdictional error = privative clause is ineffective

ie *Kirk* – determining the act/omission on which the charges were based was mandatory to do before proceeding, but was not done!

4. Acting on the basis of a mistaken event or fact (*FCT v Futuris Corp*)

5. Taking into account an irrelevant consideration or failing to consider a relevant consideration that is a precondition to the validity of the decision (*FCT v Futuris Corp*)

Aka direct breach of mandatory statutory requirement (ie *Kirk* – cannot waive a legislative requirement by consent of parties)

'Jurisdictional facts' = facts that are essential preliminaries to the decision-making process (*Timburra*)

<i>Timburra</i>	Mining lease granted to T, they sought an extension of their gold mine lease; council required under legislation to consider whether there was likely to be a significant effect on threatened species + if yes to make a species impact statement. No statement made + court refused to hear evidence on the matter, stated the impact was for the council to consider + not a JF	JE found	<p>What is a JF?</p> <ol style="list-style-type: none"> turns on proper construction of statute – any fact can be jurisdiction but it must be objective and essential (ie without it the action under the act will be invalid) usually if act uses words referring to the d-maker's mental state (ie opinion, belief) = not a JF fact arising during decision-making process = not JF. Fact that is preliminary to decision-making process = may be JF purpose of the legislation = key variable ie here purpose was to protect endangered species, thus impact statement provided key info + thus was essential to the act If the act indicates that a fact was an essential condition = JF
<i>Corp of Enfield</i>	Waste management co wanted permission to enlarge a waste treatment plan, SA act distinguished between 2 categories of industry: 1. special – depended on whether emitted noxious/offensive odours higher level of scrutiny	JE found	Mandatory statutory criteria re special industry (aka noxious smells) = JF and was failed to apply; thus JE was made by failing to find that JF, thus no jurisdiction to find that the plant was a general industry.

STATUTORY INTERPRETATION

AIA 1915 (SA); AIA 1901 (CTH) – MAKE SURE YOU REFERENCE THE RIGHT ONE!

Is the statute even in operation?

Statutes commence at midnight of the day preceding the date of commencement (s 14D AIA 1915; 3(2) AIA 1905) (date of assent (s 7(1) AIA 1915)/ date specified by proclamation in Gov Gazette (AIA s 7(2) 1915)/date specified in the act (watch out for different parts starting at different dates).

Statutes can be terminated by repeal (whole act) or amendment (particular sections); by a sunset clause; NOT by non-use ('desuetude') (although look out for acts passed for specific one-time events ie Olympics Act)

1. What is the dispute?

The statutory point on the problem that is in dispute is

2. What are the opposing views on the interpretation?

_____ believes the provision should be interpreted to mean

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The underlying purpose of the act must be taken into consideration in the interpretation of the term/expression (AIA s 15AA). Furthermore, *Essendon* states 'The modern approach to statutory interpretation requires that the context be considered in the first instance, not merely at some later stage, uses "context" to include such things as the existing state of the law and the mischief which, by legitimate means the court may discern the statute was intended to remedy.'

3. What does the statutory material itself say?

a. Is there a purposive/object clause in the act?

b. Does the statutory language give the purpose of the act?

The language used in preambles/schedules/dictionaries within the act/appendices/chapters/parts/division headings can be used for interpretive purposes (s 19(1) AIA 1915). The language used within section headings/notes (eg footnotes)/contents list cannot be used for interpretive purposes (s 19(2) AIA 1915). The term/expression is used in the statute; (check definition section if any)

The title and/or surrounding provisions do/not provide guidance to 'the purpose or object underlying the Act' (AIA s 15AA); they state

It does/not appear that any words consistent with the terms and structure are missing from the statute in order to give it its purpose (namely

For the courts to imply words into the statute, it must fulfil the following (*Bermingham*):

court must know the mischief with which the Act was dealing	
court must be satisfied that by inadvertence Parliament has overlooked an eventuality which must be dealt with if the purpose of the Act is to be achieved	
court must be able to state with certainty what words Parliament would have used to overcome the omission if its attention had been drawn to the defect	

However it must be noted that the court is very reluctant to imply words into statute as it is seen as a crossing of the separation of powers (*Taylor v Owners-Strata*).

Where the language is clear, the court must give effect to it, even if the result is unreasonable (*Al-Kateb v Goodwin*).