

# ADMINISTRATIVE LAW - ANSWER GUIDES

## T1 2020

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## JURISDICTION

*For non-statutory judicial review to succeed you must persuade a court to issue a remedy...*

**PRELIMINARY STEP:** The Federal Court holds jurisdiction in any matter. (quote s39B)

The High Court possesses jurisdiction where a privative clause exists, as a non-statutory judicial review may be utilised to argue that the clause is invalid on the basis that it seeks to limit the jurisdiction of the High Court in s75(v) Constitution.

**\*\*Matter are most likely to go to the Federal Court rather than the High Court initially as per s39B Judiciary Act\*\***

### For Non-Statutory Judicial Review

#### **STEP 1: CHOOSE BETWEEN COMMON LAW OR CONSTITUTIONAL JURISDICTION**

##### **- WHEN PRIVATIVE CLAUSE**

##### **Step A – Common Law Jurisdiction**

“can you get writs?” is there a public body which you can get a writ for?

OR

*To use CL as entrenched by the constitution...*

##### **Step B – Constitutional Jurisdiction**

“who is an officer of the Cth?”

*In the case of the High Court and the Federal Court, one way to establish jurisdiction is to establish that your proceeding is a matter in which a writ of mandamus or prohibition, or an injunction, is sought against an officer of the Commonwealth*

e.g. (Cth) Ministers; (Cth) Tribunal members; (Cth) public servants, (Cth) superior court justices (!).. independent contract not considered an ‘officer of Cth’ (*Plaintiff M61/2010E*)

*Choose which section of the constitution based upon which remedy you seek (High Court)*

**S75(iii)** – ‘in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;’ - *not limited to jurisdictional error* (*Plaintiff S157*)

**S75(v)** - ‘in which a writ of **Mandamus or prohibition or an injunction** is sought against an officer of the Commonwealth; the High Court shall have original jurisdiction.’

**NOTE:** *High Court has recognised that its jurisdiction to issue the writ of certiorari is implied by s 75(v).*

#### **Most preferred option when available (quote Oscar) – WHEN NO PRIVATIVE CLAUSE**

**S39B JUDICIARY ACT 1903** – the original jurisdiction of the Federal Court of Australia includes “any matter in which writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth”, also includes any matter (1A(a)) “in which the Commonwealth is seeking an injunction or a declaration”

**Note:** a privative clause **can potentially exclude judicial review in the Federal Court** – so use either s75(iii) or s75(v) if necessary (*see Plaintiff S157*).

**Note:** an action must be a ‘matter’ and must seek remedies against an ‘officer of the Commonwealth’ under s39B Judiciary Act 1903 (p. 297 of the textbook).

**ASK YOURSELF:** Is the decision-maker an officer of the Commonwealth? Should I seek certiorari as ancillary to prohibition, mandamus or an injunction? Can I establish jurisdictional error? (S39B(1)) and for s39B(2) Do I have a matter which arises under a Commonwealth law?

## STANDING

**PRELIMINARY STEP:** Standing considers the right of an individual to commence judicial review proceedings

**STEP 1:** The test to establish standing is dependent upon the remedy sought. Standing may be established by the special interest or person aggrieved tests.

- For an injunction, declaration or mandamus, '**special interest**' is required.
- For certiorari and prohibition, '**person aggrieved**' is required.

### TEST: SPECIAL INTEREST

Leading Case - ACF v Bond

**STEP 2:** To establish the special interest test, a special damage peculiar to the applicant is required, beyond that of 'righting a wrong' or upholding a principle (ACF).

**Step 3: CHOOSE ONE OF THE FOLLOWING SENTENCES WHICH FITS BEST TO THE FACTS:**

- A mere belief, intellectual or emotional concern is not sufficient to establish this requirement (ACF).
- Need to have an advantage (other than righting a wrong) or suffer disadvantage (other than grief (ACF)).
- The special interest need not be unique to the applicant but must not be shared with the public at large (ACF).

**Facts Example: where a licence exists, there are no issues in satisfying a special interest as it is a legal interest**

Direct legal interest affect?

### TEST: PERSON AGGRIEVED

**STEP 4:** If the person satisfies the 'special interest' test derived from ACF it is likely to satisfy the 'person aggrieved' test under the *ADJR Act* (Ogle v Strickland).

**STEP 5:** Here, standing is established, as under the Act [namely the 'Transport Safety Investigation Act 2003' or another relevant act] .... and the [applicant] .... (outline connection to the Act eg. decision making power) ... so it suffers a direct and immediate pecuniary loss because of the decision.