TOPIC 3: STANDING

- It is not enough for an application of judicial review to be successful that the court have jurisdiction, the applicant must also have standing (sufficiently close connection with the person wishing to challenge and the decision).

❖ The Attorney-General's Fiat
- Attorney-General's have traditionally had standing to seek judicial review of decisions that affect what the court refers to as public rights.
- The Attorney General can seek review of such decisions on their own motion (themselves) or they can permit a person to bring the action on their behalf (attorney-general's fiat).
  - » Fiat=command
- But in practice, Attorneys-General rarely bring such actions, or permit actions to be brought by way of their fiat.
- *Gouriet v Union Post Office Workers*: The decision of the AG to decline to grant their fiat is of itself subject to judicial review
  - » Because people challenge the decision of the government, and the AG is a member of the governing part and member of the cabinet

❖ Two regimes, one approach
- Although the language used in the two regimes is different, in substance there is no real difference between the standing rules at common law and the 'person aggrieved' requirement in s3(4) of the ADJR ACT (*ACF 2*).
- *S 75(v)* – necessary the applicant have a "special interest" in the decision of which review is sought
- AD(JR) Act – a person will have standing if they are "aggrieved" by a decision (s 5). They will be so aggrieved if, amongst other things, their "interests" will be "adversely affected by the decision" (s 3(4)).

❖ Models of standing

Private interest model	Relevant to parties other than public interest groups or union-based organsiation's
Public interest model	Relevant to public interest groups
Union-based model	Relevant to union-based organsiation's

Private interest model

❖ Private interests
- Private interest model: Someone can seek judicial review of a decision if the decision affects their interests in some concrete or material way
- "A mere intellectual or emotional concern" in a matter will be insufficient to give someone a special interest in that matter (*Australian Conservation Foundation Incorporated v the Commonwealth*, Gibbs J)
- But a person will have a special interest in a matter where, were he permitted to seek review, he would "be likely to gain some advantage, other than the satisfaction of

righting a wrong…were his action to succeed or to suffer some disadvantage, other than a sense of grievance, or a debt for costs, were his action to fail". Eg financial interest

Australian Conservation Foundation Incorporated v The Commonwealth - Case where standing wasn't granted
Facts: ◆ Involved a proposed tourist development in Queensland. ◆ Under the relevant legislation government permission was required if the development was to proceed. ◆ The government granted permission to the developer and the Australian Conservation Foundation sought to challenge by way of judicial review.
Issue: ◆ Did the Australian Conservation Foundation have standing to challenge the decision?
Held: ◆ The Australian Conservation Function had merely an intellectual or emotional concern in the preservation of the environment, the decision didn't affect or threaten to affect the interest of the foundation in any material way. ◆ Denied standing.

❖ The range of private interests
- In order for a potential plaintiff to have a special interest, it is necessary for them to show that in comparison with the public at large they will be affected to a *substantially greater degree* or in a *significantly different manner* by the decision (*Onus v Alcoa* per Brennan J)
- Each matter would involve an assessment of the *importance of the concern* which a plaintiff has with particular subject matter and the *closeness of the plaintiff's relationship* to that subject matter *(Onus v Alcoa* per Stephen J).

Onus v Alcoa - A persons cultural or even spiritual interests in the subject matter of a decision would qualify a person to have standing
Facts: ◆ A piece of Victorian legislation (Archaeological and Aboriginal Relics Preservation Act 1972) made it illegal to damage or endanger any Aboriginal relic. ◆ Two members of an Aboriginal tribe (Gouernditch-Jmara people) were concerned that Aboriginal relics would be destroyed by the construction of an aluminium smelter by Alcoa. ◆ Accordingly, they sought an injunction to stop it's construction.
Issue: ◆ Did the tribe have standing?
Held: ◆ The Supreme Court of Victoria held the applicants didn't have standing because they merely had an emotional, intellectual concern with the matter. ◆ The HC disagreed, holding the applicants did have a special interest in the requisite sense therefore having standing. ◆ The relics had a special cultural and spiritual significance for members of the tribe who were according to the tribes laws and customs, custodians of the relics. Moreover, members of the tribe used the relics to teach their children the culture of their people. ◆ Accordingly, the applicants didn't have merely an intellectual or emotional interest in the

matter.

- ❖ Must the applicant be affected directly?
  - It is a matter of degree and in some cases it will be sufficient if they are affected indirectly
  - *Argos v Corbell*
    - » If an applicant for review can show that it is likely the decision will affect their interests in a not insignificant way, they will have standing to seek judicial review of the decision under the private interest model.

Argos v Corbell

Facts:

- Concerned the decision made by a planning minister under statute to permit the redevelopment of a shopping centre at Giralua.
- As part of the redevelopment a new Woolworths would be included in the shopping centre.
- Judicial review was granted of the decision to permit the redevelopment and there were a number of applicants.
  - IGA operators from nearby suburbs who argued they would suffer about a 10% decline in profits as a result of the redevelopment (would lose some customers to Woolworths).
  - A landlord of one of the IGA operators who argued the decline in IGAs profits might result in the IGA going out of business in which case he, as a landlord would suffer financial loss.
- None of these applicants were the people most directly affected by the decision (the owners of the shops in the shopping centre or those who used to operate in the centre but no longer have a place and the owner/developer of the shopping centre- but in a good way).

Issue:

- Did the applicants have standing?

Held:

- The fact that the applicants for review weren't the people most immediately/directly affected by the decision in question didn't automatically preclude them from having standing. A decision which affects the interests of one person directly may affect the interests of others indirectly. Across the pool of interests the ripples of affectation may widely extend. The problem is the determination of the point beyond which the affectation of interests by the decision should be regarded as too remote (ie. where to draw the line- beyond what degree of removed from the decision will the applicant not have standing).
- Judges said a somewhat expansive model of standing should be adopted. The availability of judicial review serves to promote the rule of law and to improve the quality of administrative decision making, as well as vindicating the interests of people affected in a practical way by administrative decision making. Accordingly, the standing requirement of judicial review shouldn't be construed too narrowly.
- Court held the IGA operators should have standing because they were able to show their financial interests were likely to be affected in a not insignificant way. Here 10% was considered not insignificant.
- By contrast the landlord didn't have standing because he couldn't show he was likely to suffer financially from the development, not because of how far removed he was (couldn't show the development would cause IGA to shut nor could he show he wouldn't be able to obtain another lease)