Private law usually considers a cause of action, and a standing requirement is generally 'baked in' to the articulation of a cause of action. Thus, issues of standing are less common and controversial in private law matters as opposed to public law matters. However, even in public law, standing does not often present courts with problems.

There is no single criterion or test for the standing requirement (c.f. *Bateman's Bay*). Justice Gummow noted in *Truth About* Motorways that at the time of the adoption of the Federal Constitution, there were multiple tests for standing depending on which remedies were being relied upon. Thus, the tests were not necessarily the same which is problematic as some tests are less easy to establish than others. If a person picks the wrong remedy, they fail on standing, but they may have succeeded if they chose another remedy.

## THE TESTS FOR STANDING FOR DECLARATIONS AND INJUNCTIONS

### Role of the Attorney General

Actions to vindicate private rights initiated by private party holding relevant right, whereas actions to vindicate public rights are properly commenced by Attorney General (private citizens generally lack standing requirement to bring such an action).

The AG may initiate proceedings to advance public interest in either two ways:

1. Attorney General may commence proceedings ex officio – act on his or her own motion
2. Attorney General may grant his/her fiat (assent to 'relator action') → individual or organisation asks for Attorney General's permission for an action to be brought in Attorney General's name (piggybacking on Attorney General's unquestioned standing)
    - Where Attorney General approves of request (therefore granting 'fiat') individual/group granted fiat becomes liable for costs. Attorney-General remains ultimately in control of litigation, and retains right to decide to bring it to end
    - Where Attorney General declines request, such decisions not reviewable. In Qld, Attorney-General Act 1999 (Qld) provides that where fiat refused, Attorney General must submit report, to be tabled in parliament, explaining reasons

The Attorney General's decision to deny a relator action is not reviewable. In Queensland, under s10 of the Attorney General Act, if a fiat is refused, the Attorney General must submit a report to Parliament outlining the reasons for refusal.

There are two exceptions to rule that Attorney General commences proceedings through granting declarations/injunctions outlined in *Boyce v Paddington Borough Council*. A plaintiff can sue without turning to an AG:

1. Where the interference with the public right is such that a private right is at the same time interfered with
2. Where no private right is interfered with, but where plaintiff suffers 'special damage' as a result of the interference with a public right → replaced with 'special interest' exception by Gibbs J in ACF v Commonwealth

***ACF v Commonwealth* – leading case relating to standing for declarations/injunctions in public law**
Proposal by private company (Iwasaki) to develop land near Yeppoon in order to create tourist resort. ACF claimed that in considering Iwasaki's proposal, Commonwealth failed to comply with certain provisions of Environment Protection (Impact of Proposals) Act 1974 (Cth) (EPIP). ACF sought:

- Declarations and injunctions to force the Commonwealth to comply with the EPIP Act.

- An injunction to stop the development until compliance was ensured.

The issue was whether ACF had a standing to bring the claim before the HCA and specifically, whether ACF had a special interest in the environment, sufficient to satisfy the standing requirements in public law disputes.

HCA found that ACF lacked standing they only had intellectual concern:

- Gibbs J recast the special damage test established in Boyce and rephrased it to mean having a special interest in the subject matter of the action
    - Gibbs J maintained language of Boyce referring to "special damage" "peculiar to oneself" is 'misleading'
- Special interest test
    - A plaintiff must have an interest greater than that of an ordinary person to have standing.
        - 'a private citizen who has no special interest is incapable of bringing proceedings [to prevent a public wrong] unless … he is permitted by statute to do so'
    - Mere intellectual or emotional concern does not suffice → thus, standing must be more than a mere intellectual or emotional concern
    - The applicant must stand to gain some advantage or suffer some disadvantage beyond mere ideological commitment if the action succeeds or fails.

Application to ACF:

- The case solidified the special interest requirement as the test for standing in public interest cases.
- The decision has been criticised for its restrictive interpretation, seen as limiting public interest groups' ability to challenge government actions.
- It remains the benchmark for assessing standing in environmental and public interest litigation in Australia.

Murphy J dissented on the basis that the Australian Conservation Foundation had standing due to its genuine environmental interest and the Act's intent to promote public participation, rejecting the need for a special personal injury.

***Onus v Alcoa***

Alcoa of Australia Ltd (private company) intended to construct an aluminium smelter near Portland, Victoria. Members of the Gournditch-jmara Aboriginal (private party) people alleged the development would damage or endanger Aboriginal relics, contrary to the Archaeological and Aboriginal Relics Preservation Act 1972 (Vic). The plaintiffs sought declaratory and injunctive relief to prevent the alleged harm.

The issue was whether the plaintiff's had a standing to bring the action against Alcoa, specifically, whether they had a special interest in the Aboriginal relics sufficient to meet the standing requirements established in ACF v Commonwealth.

HCA held that they did have a standing under the special interest test.

Distinguishment from ACF (Gibbs CJ):

- In ACF, the plaintiffs merely held general concerns about environmental preservation.
- In Onus, the plaintiffs were custodians of the relics, using them for cultural and educational purposes within their community.
    - This gave them a direct, cultural, and spiritual connection to the relics, which went beyond mere ideological interest.
    - the plaintiffs' connection to the land and relics was tangible and traditional, not just a policy-driven or ideological stance

Key principles:

- Special Interest
    - The special interest must involve more than intellectual or emotional concern (ACF standard).
    - It requires a substantial, practical, and personal connection to the subject matter.
    - Onus demonstrated that cultural and spiritual connections can satisfy the test.
- Curial Assessment and Community values
    - Standing is not determined by a fixed rule, but through a case-specific assessment.
    - Courts must evaluate the importance of the concern and the proximity of the relationship to the subject matter (Onus at 42).
    - Community values are relevant; certain subject matters, like Aboriginal cultural heritage, may warrant greater judicial recognition of interest.
- Not necessarily a unique interest

- A plaintiff need not show their interest is unique but must demonstrate they are specially affected compared to the general public (Onus at 74).
- This aligns with broader judicial recognition that sufficient interest does not require exclusive impact (Animals' Angels v Secretary, Department of Agriculture; Dyson v Attorney General).

Thus, *Onus* broadened the interpretation of special interest, especially in matters of cultural and community significance. It set a precedent that Aboriginal custodianship over cultural sites could establish standing in a way that general environmental concerns could not. The decision highlights the flexibility of the special interest test, accommodating community values and traditional custodianship.

## Standing under the ADJR Act and JR Act

Under s5(1) ADJR Act, "a person who is aggrieved by a decision to which this Act applies … may apply to the Federal Court or the Federal Circuit and Family Court of Australia for an order of review in respect of the decision …". This language is replicated in s6(1) relating to 'conduct' and also s7(1) in respect to failure to decide. (equivalent sections in JRA is s20, 21 and 22).

A person 'aggrieved" includes a person whose interests are adversely affected by the decision.

*AD(JR)A Requirements*

**Section 5(1) *AD(JR)A*** lays out that: 'a person who is aggrieved by a decision to which this Act applies … may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the decisions. Same 'person aggrieved' element replicated in respect of conduct (**s 6(1) *AD(JR)A***) and in respect of a failure to decide (**s 7(1) *AD(JR)A***)

Per **s 3(4)(a) *AD(JR)A***: 'a reference to a person aggrieved by a decision includes a reference: (i) to a person whose interests are adversely affected by the decision'. **s 4(b)**

***AD(JR)A*** provides essentially same definition of 'person aggrieved' in respect of 'conduct' or failure.

*JRA Requirements*

**Section 20-22 *JRA*** provides (replicating *AD(JR)A* standing formula) that a person who is aggrieved by, respectively, a decision, conduct, or failure to make a decision to which the Act applies, is entitled to apply to the court for review (under **Part 3 *JRA***).

Per **s7 *JRA***: 'person aggrieved' references 'a person whose interests are adversely affected' by the decision, conduct, or failure to decide'. **s44 *JRA*** provides that a person is entitled to apply for an order in the nature of the prerogative writs (under **Part 5 *JRA***) if 'the person's interests are, or would be, adversely affected in or by the matter to which the application relates'.

s7 coheres with the special interest requirement found in *ACF* and *Onus* and there is convergence between the statutory requirements and the common law cases.

In *Toohey's*, Elliot J found that the ADJR Act standing test should not be given a restrictive interpretation because the Act is intended to provide broad access to judicial review as a simpler alternative to prerogative writs. Standing should extend beyond strict legal rights to include grievances affecting business interests or third-party rights, reflecting the wider impact administrative decisions can have. A narrow interpretation would undermine the Act's purpose of enhancing public accountability.

Gummow J in *Australian Institute of Marine and Power Engineers v Secretary, Department of Transport* emphasised that the standing test under the ADJR Act should not be narrowly interpreted, as it would undermine the Act's broad remedial purpose. He noted that the ADJR

Act covers a wide range of decision-making processes, and restricting standing would limit its effectiveness. Furthermore, he explained that the meaning of "a person aggrieved" should be understood in light of the scope and purpose of each statute, as its interpretation may vary depending on the context (*Health World Ltd v Shin-Sun*).

***Argos v Corbell***
The case concerned Argos Pty Ltd challenging a decision made by the Minister for the Environment and Sustainable Development under the ADJR Act for the approval of a development application for a shopping precinct. Argos argued that the Minister's decision adversely affected its business operations, and therefore it sought judicial review under the "person aggrieved" standard of the ADJR Act.

Legal issue was whether Argos had standing under the ADJR Act as a 'person aggrieved' by the administrative decisions, specifically, whether the "person aggrieved" standard under the ADJR Act aligned with the "special interest" test for standing in equitable remedies such as declarations and injunctions.

The HCA held that:

- the ADJR Act should be interpreted broadly to facilitate judicial review of administrative decisions.
- French CJ and Keane J emphasised that the Act is intended to promote the rule of law, improve administrative decision-making, and vindicate the interests of those practically affected.
- They rejected a narrow interpretation of "person aggrieved," recognising that the statute's purpose is to enhance access to review.

Key legal principles:

- Broad Interpretation of "Person Aggrieved":
  - The definition of "person aggrieved" in the ADJR Act should not be artificially narrowed.
  - It extends to those practically affected by a decision, even if they do not have a direct legal right.
- Convergence with "Special Interest" Test:
  - French CJ and Keane J noted that while the ADJR Act's standing test is statutory, common law principles are relevant in understanding kinds of interests that qualify.
  - This judgment effectively aligned the "person aggrieved" test with the "special interest" test used for equitable remedies (e.g., declarations and injunctions).
  - Post-Argos, it is widely accepted that the two standing tests are effectively the same in practice.
- Clarification of Judicial Review Standards:
  - Prior to Argos, there was uncertainty about the distinction between standing for declarations and injunctions and standing under the ADJR Act.
  - Argos confirmed that the special interest test informs the interpretation of person aggrieved, consolidating the legal position.

## A liberalising trend

Below cases indicative of general trend of increasing liberalisation of test for standing for both equitable and statutory remedies. Remains questionable whether courts will move towards adopting approach in obiter of Bateman's Bay.

***Australian Conservation Foundation v Minister for Resources***
The second ACF case saw the Federal Court granting standing to the ACF to challenge a decision on environmental grounds.
This was a shift from the restrictive approach in ACF v Commonwealth.

Community values Stephen J spoke of in judgment in Onus have changed over 10+ years since ACF v Commonwealth →larger Australian community, more greatly valued having organisation such as ACF actively working to ensure the conservation of the environment: 'the community at the present time expect that there will be a body such as the ACF to concern itself with this particular issue [i.e. forest conversation] and expects the ACF to act in the public interest to put forward a conservation viewpoint as a counter to the viewpoint of economic exploitation' (at [18], per Davies J)

- Public perception had shifted
- AFC was seen as crucial advocates for environmental conservation

- expectation that groups like the ACF would act in the public interest to represent environmental concerns and provide a counterbalance to commercial and economic interests

Look at Murphy J's multifactorial approach (below)

***Bateman's Bay***
Applicants (who operated a funeral fund) sought an injunction to stop a statutory body from setting up a rival funeral fund. They claimed this would breach the Funeral Funds Act 1979 (NSW). The NSW Attorney General refused to grant a fiat for a relator action, so the court had to decide if the applicants had standing in their own right.

The HCA found that the applicants had standing as the likely financial harm to their existing fund satisfied the special interest test.

- Special Interest Test is Enabling, Not Restrictive - The test should be liberally construed to facilitate access to equitable remedies like injunctions or declarations.
- Where no fiat is granted, courts should ask
    - Is there a justiciable controversy?
    - Is the claim oppressive, vexatious or an abuse of process?
    - If not, the action can proceed, and any relief can still be refused on discretionary grounds.
- Even with a more liberal test, the risk of an adverse costs order acts as a natural filter against weak or frivolous claims.
- Australian Attorneys General are typically politically aligned Cabinet members, not independent officers. - Therefore, it's unrealistic to rely on them to bring actions protecting the public interest, especially against ministerial colleagues

Significance:
- Bateman's Bay supports a liberalised approach to standing, especially for equitable remedies.
- Reinforces that justiciability and non-abuse of process may be sufficient for standing, even without a fiat.
- Shows growing judicial concern that reliance on Attorneys General as gatekeepers to public interest litigation may be misplaced.

There have been some cases that counter this general trend. More restrictive approaches were taken in *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* where the applicant anti-abortion association was denied standing to challenge the decision of the Secretary of the Department of Human Services and Health not to stop the clinical trial of an abortion drug. *Friends of Castle Hill* involved a local environmental body of 367 members, whose prime object was the protection of Castle Hill in Townsville. Dowsett J held that the association lacked standing to challenge Heritage Council decisions which allowed the development of a site on Castle Hill to proceed.

Types of interests that may constitute a special interest
Issues of standing arising where applicant cannot point to private right at stake typically satisfied by applicant possessing personal interest directly imperilled by impugned decision.

By contrast, for 'special interest' courts seek out in public interest cases, Brennan J in *Onus* said that special interest can arise from modern legislation enacted to protect or enhance non-material interests (e.g. environmental, cultural, heritage protection).

> *"a special interest in the subject matter of an action being neither a legal nor equitable right, nor a proprietary or pecuniary interest, will ordinarily be found to arise from modern legislation enacted to protect or enhance non-material interests – interests in the environment, in historical heritage, in culture"*