

2. Standing

1. Is there standing under the ADJR
 - a. 'person aggrieved'
 - b. see **below** analogous special interest test
2. Is there standing at Common Law
 - a. private rights affected?
 - b. special interest over the public?
3. Is there a statutory reform: of extended standing to challenge decisions? (look at the PQ's legislation)
 - a. Environmental Planning and Assessment Act 1979 (NSW) s 9.45
 - b. Environmental Protection and Biodiversity Conservation Act 1999 (Cth) s 487

1. Does the applicant have standing?

NB generally broader standing (see statute) under Merits review which concerns correct and preferable decisions

1. Standing under the ADJR

- To have standing under the ADJR Act, the person must be “**personally aggrieved**” by a decision whose **interests are adversely affected by the decision** (ss 3(4) and 5 of the ADJR Act)
- The test for standing under the ADJR Act is broadly the same as the “**special interest**” test under s 39B of the [Judiciary Act](#) (ACF) per Gummow J in *Power Engineers (1986)*
 - o Nb theoretical differences depending on relief sought:
 - Prohibition/certiorari: person aggrieved (beyond rest of public)
 - Equitable injunction/declaration: special interest over and above public
 - Habeas corpus: you know person is wrongfully imprisoned, right to apply for writ

2. Under the Common Law (Judiciary Act (s 39B))

- An applicant will have standing if their private rights are directly affected by the decision (*ACF*).
 - o E.g. applicant singled out (*Power Engineers*: P needs ‘some particular grievance of their own’)
- **Otherwise, the test for standing** under common law (or Judiciary Act) is that the applicant has a special interest in the matter, more than mere intellectual or emotional concern (*ACF*)
- To determine whether there is special interest, the court will weigh several factors (see *North Coast*)
- **Factors that support special interest**
 - o **Cultural and spiritual significant** is distinguished from mere intellectual or emotional concerns and can constitute special interest (*Onus v Alcoa*)
 - Emphasis is placed on the level of **weight (importance) and proximity** between the applicant and the subject matter

- o **Commercial interests** are within scope if severe detrimental impact to business can be demonstrated (*Bateman's Bay*)
 - For example, if the business would suffer an immediate and direct loss of profitability that was greater than the effect on an ordinary member of the public (*Argos*)
- o **Peak representative body** (recognised by Cth) representatives regularly sat in advisory meetings, **aims** indicated a special interest in environmental conservation, **substantial research** and submissions made, **long history** of conservation projects (*North Coast*)
 - Even though no private rights affected
 - Sufficient presence in Australia (*Animal Angels*)
 - Decision directly impacts body's objects and purposes (*Animal Angels*)
 - NB status relative to other bodies not weighted significantly (*Animal Angels*)
- o Received **grants or funding** from the Government (*North Coast*)

● **Factors against special interest**

- o **Intellectual or emotional** concerns do not constitute a special interest irrespective of how genuine or strong the concern (*ACF*)
 - No greater interest than any other concerned person (*Right to Life*)
- o Complaining about **non-compliance** with statutory proceedings (*North Coast*)
- o Made comments in open-ended **public consultation** process (*ACF*)
 - NB. Participation/Admission in a conference which the group was invited to by Minister may be **sufficient** (*US Tobacco*) – *permission to participate + could assist in making recommendations = special interest*
 - History of participation in past consultation processes re decisions of similar subject matter may be **relevant** (*North Coast*)

● **Unclear: Proximity**

- o Unclear whether **consistency between the plaintiff's interests and objectives of the primary Act** under which a decision was made is relevant (zone of interest) (*Argos*)
 - NB compatibility of purpose is **controversial** (Gageler J in *Argos*): **Compatibility between the purpose** of the legislation and the purpose of the applicant supports a special interest (*Right to Life*) – may be merely a step in reasoning process to ascertaining nature of concern (i.e. intellection, emotional etc)
 - E.g. *Right of Life*: Purpose of Act (quality, safety, efficacy of therapeutic goods) vs P's interests (legality of abortion & wider social issues)
 - E.g. *Argos*: Purpose of Act (planning law) vs Applicant interest (financial i.e. profit) → Gageler = purpose of Act is step in reasoning process

2. Consider statutory standing reform and modification

- Consider presence of an open standing provision or extended standing provision (“*An organisation or association is taken to be a person aggrieved by a decision if ...*”) → **LOOK AT THE PQ’s LEGISLATION**
 - *Example of extended standing via statutory reforms:*
 - Open standing provision: [Environmental Planning and Assessment Act 1979 \(NSW\), 9.45](#) (previously 123).
 - **Any person** may bring proceedings to remedy or restrain a breach of this Act whether or not any right of that person has been infringed
 - Extending standing for JR: [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\), s 487](#):
 - An organisation or association is taken to be a person aggrieved by a decision if
 - The organisation was otherwise established in Australia or an external Territory
 - The organisation has engaged in activities for protection or conservation of, or research into, the environment in the previous two years
 - The organisation’s objects include environment protection