

ADMIN LAW EXAM NOTES

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Standing

Introduction

The doctrine of standing is a 'house of many rooms' (*Bateman's Bay per McHugh J*).

The test for standing is **remedy-driven**. And there is no rule of thumb (*Onus per Stephen J*), what is required will depend upon the jurisdiction, the relevant statute, the circumstances of the case and the relief sought.

In most cases, standing to initiate juridical review would be unproblematic (*PT 228*).

General law avenues (jurisdiction under the Constitution ss 75(v) and 75(iii); the

Judiciary Act ss 39B(1) and 39B(1A)(c))

Remedy	Test	Notes
CL: Certiorari and prohibition	<p><u>“persons aggrieved” test:</u></p> <ul style="list-style-type: none"> The “test” for standing is that the applicant be “a person aggrieved” in that, his or her legal rights would be ‘adversely affected’ by the decision. The court has wide discretion and may grant standing to a “stranger” (<i>McBain</i>). 	<ul style="list-style-type: none"> the standing rules are converging and there is a trend towards using the <u>“special interest” test</u> set out by the High Court in <i>ACF</i>. It can also be said that the special interest test is gradually merging with the “person aggrieved” test under section <i>3(4) of the ADJR Act</i>.
CL: Mandamus	<p><u>“specific legal right” test:</u></p> <ul style="list-style-type: none"> Persons to whom the unperformed duty is owed. Essentially applicants have standing to seek mandamus if the duty to exercise administrative power is directly related to them and performance of the duty is for their benefit. Stricter. Unlikely to be granted to a complete stranger (<i>Re McBain</i>). 	
Equitable: Injunction and declaration	<p><u>“Special interest” test:</u></p> <ul style="list-style-type: none"> Requires a person be adversely affected in some way to <u>a greater extent</u> than the public generally (<i>ACF</i>). It is an <u>enabling</u> not a restrictive test (<i>Bateman's Bay 267</i>). There is <u>no requirement</u> that the effect be to their legal interest or financial or proprietary interests (<i>ACF</i>). BUT has to be more than a “mere intellectual or emotional concern” (<i>ACF</i>). 	<p><i>ACF: no standing</i> -Australian Conservation Foundation does not have special interest in creation of tourist resort.</p> <ul style="list-style-type: none"> Purpose of the Act: ensure administrative authorities take into account matters affecting environment Does not imply that private citizens have the right to enforce those administrative purposes or procedures

	<ul style="list-style-type: none"> • 'likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or debts for costs, if his action fails' (<i>Gibbs CJ ACF 530</i>). • The rules are context-specific: assess the 'importance of the concern which a plaintiff has with particular subject matter and the closeness of that plaintiff's relationship to that subject matter' (<i>Stephen J in Onus</i>). 	<p><i>Onus v Alcoa</i>: standing granted - Indigenous community does have special interest in decision concerning relics that are of <u>special cultural and spiritual significance</u> to them.</p> <p><i>Bateman's Bay</i>: standing granted- while normally a commercial competitive interest may not be sufficient, here the <u>economic detriment</u> to the funds business was sufficient to establish the special interest, and there was a nexus between their interest in the relief sought sufficient for them to have standing (because the parties were operating in <u>substantially the same limited market</u>).</p>
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Statutory avenues (jurisdiction under ADJR Act s8)

Remedy	Test	Notes
ADJR Act: S 5 allows <u>a person aggrieved</u> by a <u>decision</u> to apply for review	<u>"persons aggrieved" test:</u> <ul style="list-style-type: none"> • Defined in <i>s 3(4)</i>: A person aggrieved means a person "whose interest are adversely affected". 	It can also be said that the special interest test is gradually merging with the "person aggrieved" test under section <i>3(4) of the ADJR Act</i> .
S 6 aggrieved by conduct S 7 aggrieved by failure to make a decision	<ul style="list-style-type: none"> • If the consequence for the applicant 'risers above that of an ordinary member of the public' (Lockhart J, Right to Life) • The test is of a 'very wide import' (Lockhart J, Right to Life) • It is expressed 'very generally' and is an 'enabling' stipulation (Hayne and Bell JJ, Argos) • Need not have a legal, financial or proprietary interest in the subject matter of the proceeding (<i>Right to Life</i>) 	<p><i>Right to life: No standing.</i></p> <ul style="list-style-type: none"> • the Act was concerned about quality, safety and availability of therapeutic goods, and RtL was concerned about abortion. • Right to Life has no greater interest than any other person • They are not affected more greatly than the public • They have only an emotional or ideological concern • The fact that Right to Life is incorporated, and has long-existed, does not itself confer standing. <p><i>Argos: supermarket operators have standing, the landlord does not</i> (French CJ and Keane J, Gageler J in dissent)</p>

	<ul style="list-style-type: none"> • But it has to be more than a mere intellectual, philosophical or emotional concern (Right to Life). • Reference to the enabling Act will aid in determining whether there is a ‘relevant and sufficient connection’ between the applicant’s interests and the decision (Hayne and Bell JJ, Argos): <ul style="list-style-type: none"> ○ Lockhart J placed weight on the lack of coincidence between the objects of the association and the objects of the TG Act (Gageler J in Argos, citing RtL). ○ <i>Cf Animals’ Angels</i>: the nature of the decision sought to be reviewed directly impacts on animal welfare, which is at the centre of the appellant’s objects or purposes = special interest found. 	<ul style="list-style-type: none"> • The supermarket operators <ul style="list-style-type: none"> ○ The owner of a business who is likely to suffer an insignificant loss of profitability from exposure to commercial competition is a ‘person aggrieved’ ○ If successful, the supermarkets would gain something. <ul style="list-style-type: none"> ▪ Would enjoy the profitability otherwise taken from them. • The landlord <ul style="list-style-type: none"> ○ It was not shown that the supermarkets would <i>fail</i> if the development was approved. <ul style="list-style-type: none"> ▪ So, the landlord would still receive their rent. ○ It was not shown that the <u>lettable value</u> of the land would be reduced even if the businesses did fail.
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Analysing with case law (ONLY if relevant)

<p><i>Indicia of “special interest”</i></p> <ul style="list-style-type: none"> • legal interest or financial or proprietary interests (<i>ACF</i>). • Legal interest: Effect on legal ‘rights, privileges, permissions or interests’ (<i>Hayne and Bell JJ, Argos</i>) • Economic/financial interests: The suffering of a ‘not insignificant loss of profitability’ (<i>French CJ and Keane J, Argos</i>) • Cultural interest: Having a special cultural and spiritual significance (<i>Stephen J, Alcoa</i>) • Reputational interests.
<p><i>Indicia of NO “special interest”</i></p> <ul style="list-style-type: none"> • Mere intellectual, philosophical or emotional concern (<i>ACF; Right to Life</i>) • Mere increased commercial competition that <i>might</i> affect profitability (<i>see obiter in Bateman’s Bay; Argos</i>). • If the interest is remote or fanciful (<i>Right to Life</i>) or the effects are not “immediate and direct” (<i>Argos</i>).

Grounds of Review

Procedural fairness

Introduction

- Denial of procedural fairness is both a common law ground (*Saeed; Kioa; Nathanson*) AND a ground under *ss 5(1)(a) and 6(1)(a) of the ADJR Act*:
 - s5(1)(a) - “that a breach of the rules of natural justice occurred in connection with the making of the decision”.
- By ‘fair’ we expect the repository of power to be impartial; to be perceived to be impartial (rule against actual and perceived bias); and the procedures supporting the exercise of power/decision making to be fair (the hearing rule).
- Procedural fairness is not owed to the public at large (*Kioa*). Thus the threshold question whether there is a duty to accord PF must be dealt with first.

The hearing rule

Threshold question: existence of the duty

<ul style="list-style-type: none">• Whether a DM is bound to accord PF to someone depends on whether that person’s rights or interests are affected by the exercise of that power (as a matter of fact (<i>Kioa; WZARH</i>)), and whether the presumption has been rebutted (as a matter of statutory interpretation (<i>Saeed</i>)).
Are the person’s rights or interests affected?
<ul style="list-style-type: none">• A presumption arises whenever a decision affects individual rights or interests (<i>Kioa</i>).<ul style="list-style-type: none">○ Rights: liberty, status, preservation of livelihood, reputation, proprietary rights etc.• The decision must affect those rights or interests in a "direct and immediate" way (<i>Kioa per Mason J</i>) or "in a manner which is substantially different from the manner in which its exercise is apt to affect the interests of the public" (<i>Kioa per Brennan J</i>).
Has the presumption been rebutted by statutory provision to the contrary?
<ul style="list-style-type: none">• the HCA reiterated that the principle of natural justice could be excluded only by “plain words of necessary intentment” (<i>Saeed [14] citing Annetts</i>).• The contrary intention cannot be implied from “indirect inferences, uncertain inferences or equivocal considerations” (<i>Saeed [14] citing Tanos</i>).• And the mere presence in the statute of some rights consistent with natural justice principles CANNOT evince such an intention (<i>Saeed [14] citing Annetts</i>).• The rule derives from the fundamental principle of legality (<i>Saeed [22]</i>) which the court guard cautiously because the hypothesis is a “common sense guide”, a “working hypothesis” and “an aspect of the rule of law” (<i>Saeed [23]</i>).• In statutory interpretation, it is critical to focus on the actual words of the statute. Extrinsic materials, however clear and emphatic, cannot override the words of the statute (<i>Saeed; see also s 15AB(1) of Acts Interpretation Act 1901 (Cth)</i>).