

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
<b>Matter</b>	<ul style="list-style-type: none"> <li>• Matter = existence of a controversy about some immediate right, duty or liability to be established by the determination of the court (<i>Hayne J McBain</i>)</li> <li>• ASK: Is there a legal issue, rather than a hypothetical issue, OTF which P believes invalidates DM' decision?</li> </ul>	<p>For a Court to have jurisdiction there must be a justiciable 'matter', which is a 'controversy about rights, duties or liabilities' that is capable of judicial determination (ss 39B, 44).</p> <p>Here, the [decision] directly affects [applicant]'s statutory rights to [act] and has resulted in a loss of [loss] (<i>McBain</i>). Thus, there is a dispute concerning the validity of action taken under the statute.</p>
<b>Justiciability</b>	<ul style="list-style-type: none"> <li>• ASK: Can and should the courts resolve the matter?</li> </ul>	<p>Next, the matter must be justiciable in that it is both appropriate and possible for the court to resolve the matter. The matter OTF is clearly justiciable. It is obvious that a court can resolve the matter, as [DM] 's revocation is either legally binding or invalid (<i>McBain</i>). It does not appear that [DM] 's use of power raises any overt political questions, and is rather uncontroversial in nature compared to case law (<i>Peko; Hicks</i>). Further, the court should hear the matter because [DM] is a lower-level administrative official rather than the Cabinet making high-level policy decision</p>
<b>Available Remedy</b>	<p><b>Prohibition:</b></p> <ul style="list-style-type: none"> <li>• Preventing a cause of action</li> </ul> <p><b>Certiorari:</b></p> <ul style="list-style-type: none"> <li>• Quashes a defective decision</li> <li>• Ancillary available remedy provided there is an entitlement to another writ (<i>Aala; Plaintiff S157; CFMEU</i>)</li> <li>• Typically sought with Mandamus</li> </ul>	<p>It is uncontroversial that the [DM] is an officer of the Commonwealth for the purposes of s 75(v) and s 39B and accordingly, a writ of relief is available.</p> <p>[Applicant] would seek prerogative writs to remedy [DM]'s conduct (s 75(v) Constitution). The remedy [applicant] would seek would be a [writ] in order to [stop/quash/remit/restrain DM].</p>

	<p><b>Mandamus:</b></p> <ul style="list-style-type: none"> <li>• Decision remitted and remade</li> </ul> <p><b>Injunction:</b></p> <ul style="list-style-type: none"> <li>• Restrain or compel particular act</li> </ul>	
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## STANDING

### RULES:

- ADJR and Common Law standing are essentially identical

**SCRIPT:** To have standing under the ADJR Act, there must be a ‘person aggrieved’ by a decision or conduct to which their interests are ‘adversely affected’, and standing should not be construed restrictively (*s 3(4); Argos*). Similarly at common law, an applicant must demonstrate a ‘special interest’ in the matter (*s 75(v) Constitution; Boyce*). In practice, both tests are in essence identical and therefore, this advice will proceed on that basis (*Argos; North Coast*). As [P] has standing under ADJR Act, will have standing to seek JR for *s 75(v)/s 39B* purposes.

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<p><b>Private interest model</b></p>	<ul style="list-style-type: none"> <li>• The gravity and exact amount is unnecessary when assessing grievances (<i>Loiello; ACF</i>).</li> <li>• Standing is not often an issue where private interests are involved</li> <li>• <b>Examples:</b> <ul style="list-style-type: none"> <li>○ the personal interest in not being deported;</li> <li>○ the commercial interest in having a licence to carry on business as an insurer renewed;</li> <li>○ the personal interest in not having one’s house demolished.</li> <li>○ Economic Detriment (<i>Argos; Giles</i>)</li> <li>○ <b>Unions and Organizations:</b> An organization can have standing under this model if the <u>bulk of its</u></li> </ul> </li> </ul>	<p>As [applicant] has a direct interest in [X], they will be assessed under the private standing model. For [P] to have a special interest, it must be shown that ‘in comparison with the public at large, [he/she] has been affected to a substantially greater degree or in a significantly different manner by the decision’ (<i>Alcoa</i>) and have more than a ‘mere intellectual or emotional concern’ (<i>Alcoa; ACF</i>). Whether standing is granted is a matter of fact and degree (<i>Argos</i>). Given the [decision] prohibited [applicant’s] ability to [X], resulting in [loss], [applicant] was clearly adversely</p>

<b>SCRIPT:</b> Under common law, there is no general duty to provide access to documents regarding a decision's reasons ( <i>Osmond; ACF</i> ).		
<b>RULE</b>	<b>NOTES</b>	<b>SCRIPT</b>
<b>Under ADJR</b>	<p><b>Sch 2</b> lists <b>exclusions</b>:</p> <ul style="list-style-type: none"> <li>Does not need to include personal/business related/confidential/statutorily required information (<b>s 13A</b>)</li> </ul> <p><b>Content:</b></p> <ul style="list-style-type: none"> <li>Can use templates as long no errors (<i>Wu Shan</i>)</li> <li>Not able to simply recite evidence and conclude (<i>Allen</i>)</li> <li>Courts will not be overzealous in determining breach (<i>Wu Shan</i>)</li> <li>Must be the actual reasons (<i>Taveli</i>)</li> <li>If not happy with reasons, better ones can be sought (<i>Lloyd; s13(7)</i>)</li> </ul>	<p>However, the ADJR Act provides a statutory entitlement to reasons. If [applicant] has standing to seek review of [decision], and if the court has jurisdiction, then, pursuant to <b>s 13(1)-(2)</b> of the ADJR Act, [DM] will be under an obligation to provide [applicant] with reasons for its decision, including the material facts, material and evidence on which [DM] made their decision, within 28 days.</p> <p>The disclosure should set out in writing, the material facts and upon which the decision was made and any inadequate reasons provided confer the right to seek further reasons (<b>s 25D Acts Interpretation Act; <i>Sherlock v Lloyd</i></b>).</p>
<b>FOI</b>	<p><i>If no standing OTF</i></p> <p><b>Objects (s 3):</b></p> <ul style="list-style-type: none"> <li>Give access to information held by government</li> <li>Increase representative democracy through public participation</li> <li>Recognise government documents are an accessible national resource</li> </ul> <p><b>Exemptions</b></p> <ul style="list-style-type: none"> <li>Cabinet documents are exempt (<b>s 34</b>)</li> <li>Other exemptions exist (<b>Part IV (s 13A-47J)</b>)</li> </ul>	<p>As [applicant] is unlikely to have standing, they will be unable to rely on <b>s 13(1)</b>. Nevertheless, the <i>Freedom of Information Act 1982 (Cth)</i> ('FOI') grants a general right to any person seeking access to documentary information in the possession of Ministers, government departments and public authorities regarding decision making.</p> <p>Should [applicant] seek to obtain reasons for [decision made] through the FOI, it must be requested in accordance with <b>s 15(2)</b>, noting that any request can be denied on practical grounds (<b>ADJR s 11</b>).</p>