

## Threshold issues

### Jurisdiction

1. The legislation is in the **Commonwealth** jurisdiction.
  - Therefore in a challenge of the decision made under the act and the regulation, the matter may be heard in the following jurisdictions:

2. **Common law:**

1. High Court	s75 Commonwealth Constitution, s39B Judiciary Act 1903
2. Federal Court	s39B Judiciary Act 1903

3. **ADJR:**

3. Federal Court	S 8 Administrative Decisions (Judicial Review) Act 1977 (ADJR), s19 Federal Court Act 1976
4. Federal Circuit Court	S10 Federal Circuit Court Act 1999

- **Note:** To challenge validity of regulation/guidelines, action can only be brought under Common Law 39B Judiciary Act (*Griffith Uni v Tang*). This will be dealt with later.

4. **Privative Clause:**

- There is a privative clause in s .. that says no judicial review unless if it is found that there is an error of law, then the privative clause can be set aside, we will deal with this later in grounds

### Justiciability

1. **Common law:**

- a. Justiciability is invoked because there is **matter in which a writ [or an injunction] is sought against an officer[s] of the Commonwealth** (Judiciary Act 1903 (Cth) s 39B(1), s75(v) Commonwealth Constitution)
- b. This is a matter that the court can make a decision about as it is not controversial or highly political (*Hicks v Ruddock and Others* [2007])

2. **ADJR:**

- a. The ADJR act confers a power of 'hear and determine applications' (s 8) in relation to decisions (s 5,6,7)
- b. The 'decision' (*Australian Broadcasting Tribunal v Bond* (1990) ) must be of an 'administrative character' (*Federal Airports Corporation v Aerolinas Argentinas* (1997)) and made 'under an enactment' (*Griffith University v Tang* (2005)) (ADJR Act, s 3)
- c. Looking at the facts in question, there is nothing controversial, it complies with ADJR act and therefore the matter is justiciable.

### Standing

1. **Common Law**

- a. Applicants requires to satisfy '**special interest** in the subject matter of the action':
  - i. A private or financial interest
  - ii. Not 'a mere intellectual or emotional concern'

Australian Conservation Foundation v Commonwealth (1980):

- iii. FACTS: ACF challenged decision to put tourist resort in Qld. AFC tried to claim standing on the ground that it was an environmental authority/defender. HC said in this circumstance ACF did not have sufficient standing. ACF had a mere intellectual or emotional concern. This position has moved since 1980- it is likely today environmental & public interest groups would have standing.
- b. Northcoast (1994):
  - i. To show a special interest, courts have emphasised factors:
    1. prior involvement in the particular matter?
    2. group recognized or funded by government?
    3. whether group represents a significant strand of public opinion?
    4. expertise of the organization?
  - c. Case examples
    - i. Shop Distributive: Decision to permit Sunday trading, impacted the Union's members, therefore had standing.
    - ii. Onus v Alcoa (1981): Members of Indigenous group in preventing construction on land which contained relics of which they were custodians, had standing
    - iii. Batemans Bay (1998): Private company that conducted a funeral benefit fund interest in preventing a statutory authority from setting up a similar and competitive fund, had standing
    - iv. Right to Life Association: interest of Right to Life Association in Government decision to refuse to cease trials of abortion drug. Lacked better status than public just because they were incorporated. Trial was about a drug trial, not the right to life; the interests are not within the 'zone' of the legislation. Standing denied.
  - d. There is a degree of judicial discretion (Onus v Alcoa)
2. **Equity**
  - a. Only if seeking a declaration or injunction
  - b. Special interest test (same as common law)
3. **ADJR**
  - a. section 5 ADJR states that applications for review of 'decisions' and 'conduct' must be made by '**person who is aggrieved**'
  - b. Section 3(4) says '**person aggrieved**' includes 'person whose interests are (or would be) adversely affected by the decision etc'
  - c. only if you are going to rely on the conduct of the decision maker - Section 6 ADJR
  - d. Same special interest test as CL, just different terminology. See, eg: Bateman's Bay; Northcoast; Right to Life.
4. Therefore ... would get standing because she satisfies special interest test and is a person aggrieved

## Delegated Legislation

1. Regulation/guidelines can only be reviewed under Common Law 39B Judiciary Act (Griffith Uni v Tang).
2. **Procedural**