



Tribunals and Courts

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Sometimes legal action is the most appropriate first step to prevent environmental harm. In other situations, it might be a necessary last resort.

Taking legal action can be an intimidating experience, but it doesn't need to be. This factsheet outlines how the legal system works, including information about:

- court procedures
- costs that may be incurred
- when and how to get legal assistance

Judicial Review

In a judicial review, the court does not consider the merits of the decision (unlike planning appeals). Instead, the court considers whether the process followed in reaching the decision was lawful.

If the court finds that the decision was not a lawful decision, it may set aside that decision. Normally, the court will then remit the decision back to the original decision-maker to be made again.

Tasmanian decisions

Under the [Judicial Review Act 2000](#), a “person whose interests are adversely affected” by a decision made by a government agency under Tasmanian laws can apply to the [Supreme Court](#) for judicial review of that decision.

“Person whose interests are affected” means a person for whom the impacts of a decision will be greater than the impacts on the general public. A general interest in protecting the environment will not generally be sufficient to show that your ‘interests’ are affected by a decision, but a specific interest in a particular area may be sufficient.

Commonwealth decisions

For decisions made by the Federal Environment Minister under the [Environment Protection and Biodiversity Conservation Act 1999](#), there are some limited opportunities for judicial review. Judicial review applications are heard by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Standing is generally limited to “persons whose interests are affected”, but has been explicitly broadened by the EPBC Act – in addition to persons with direct financial or property interests, individuals or organisations who have been engaged in activities to protect the environment during the previous two years and (for organisations) whose objects and purposes relate to environmental protection will be eligible to apply for judicial review.

Grounds of review

There are a number of typical areas where decision-makers can fall into error. These grounds of review are set out in the relevant legislation, and can be summarised as

- breach of the rules of natural justice (sometimes called ‘procedural fairness’) – for example, where all parties involved in a case have not been given a chance to present their arguments
- procedures that were required to be followed were not followed
- the person who made the decision didn’t have power to make the decision – for example, if a decision was made by a delegate, but went beyond the scope of powers that had been delegated
- the making of the decision was an improper exercise of the power – for example, the decision maker took into account an irrelevant consideration, failed to take a relevant consideration into account, was biased or acted in bad faith
- the decision was induced or affected by fraud
- there was no evidence to justify the making of the decision
- the decision was otherwise contrary to law – for example, it was so unreasonable that no reasonable decision-maker could possibly have made the decision.

Statement of reasons

An important first step when considering commencing a judicial review proceeding is to obtain a statement of reasons. The statement sets out the reasons why the decision-maker made the decision, the evidence that was relied upon, and the weight that was given to various considerations. A statement of reasons can help to assess whether there is a reasonable basis to challenge the decision.

A statement giving reasons for the decision may be provided with the initial notification of the decision. If a statement of reasons is not provided, a person whose interests are affected can make a written application for a statement as soon as practicable after the decision is made.

Judicial review actions must be commenced within 28 days of:

- if reasons are provided with the decision, the decision being made
- if reasons are not provided with the decision, the date on which a statement of reasons is provided (or the date on which the agency refuses to provide reasons).

The Supreme Court may accept a judicial review application outside the statutory timeframe in some circumstances.

Review proceedings

Judicial review actions are often very complex, technical and expensive. You should seek legal advice before you decide whether to commence proceedings.

Costs

Judicial review applications are subject to the 'usual' legal position that an unsuccessful party will be required to pay all or part of the other party's costs. There may be opportunities to minimise these risks by seeking protective cost orders where the matter is in the public interest.