

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



THE PEOPLE OF THE SMALL TOWN OF HAWKESDALE INCORPORATED v MINISTER FOR PLANNING [2021] VSC 510

Supreme Court of Victoria, Richards J, 20 August 2021

Standing of an incorporated association to bring proceedings in relation to a wind farm permit.

Key words: Incorporated Association, Victoria, Standing, Special Interest, Wind Farm

1. Hawkesdale is a town of about 250 people surrounded by farmland in south-western Victoria. An incorporated association, The People of the Small Town of Hawkesdale Incorporated (the Association), was formed in January 2021 under the [Associations Incorporation Reform Act 2012](#) (Vic).
2. In 2008 the Victorian Minister for Planning issued a planning permit for a wind farm with up to 31 wind turbines on land near Hawkesdale. The permit was amended and extended on several occasions, but no wind turbines have been built.
3. The Association sought judicial review remedies in respect of the extension decision of the Minister on several grounds. The proceeding was defended on various bases, but issue was taken with the Association's standing to bring the proceeding. This case deals only with the Court's decision in relation to the standing issue.
4. The Association was incorporated with the following purposes (at [28]):
 - a) To oppose the construction of the Hawkesdale wind farm including but not limited to initiate correspondences or meetings with the operators, mediation or do all things and acts necessary to achieve this purpose.
 - b) To prevent the construction of the wind farm being built near the town of Hawkesdale including but not limited to appointing a legal representative to initiate legal proceedings against the operator.
 - c) To represent the voices of the people of Hawkesdale as the Association deems fit from time to time.
5. The Association had twelve members who all lived and worked in the area. There was no suggestion that it had a previous existence as an unincorporated association, or that it had undertaken any activities before or after its incorporation, other than commencement of proceedings.
6. For the Association to establish its standing it had to demonstrate a 'special interest' in the subject matter of the proceeding. The general law test for standing is set out by the High Court in [Australian Conservation Foundation Inc v Commonwealth](#) [1980] HCA 53. The standing of a private person to seek relief in respect of an administrative decision requires consideration of both the statutory context and the practical or legal effect of the decision. The

‘special interest’ test does not involve rigid criteria. Rather, its application requires an assessment of the relationship between the plaintiff and the subject matter of the litigation.

7. The Association argued that its members would suffer detriments if the wind farm proceeded. The Association cited the case of [Ex parte Helena Valley/Boya Association \(Inc\)](#) [1990] WASC 55 where an association was held by the Full Court of the Supreme Court of Western Australia to have standing to challenge a rezoning decision, even though it was incorporated after the decision was made.
8. The Minister argued that the Association, being a separate entity, was required to establish a special interest of its own, separate and apart from its members. Further, the Association had no status as a representative association, or any history in relation to the windfarm. Case authorities cited by the Association were distinguished, as in this instance there was no predecessor entity and no previous history of activity.
9. The Court found that the Association did not have standing to seek judicial review. The objects of the Association, and the interests of at least some of its members in opposing the construction of the wind farm, did not amount to a special interest on the part of the Association in the subject matter of the proceeding. There was no evidence that the Association had ever actively represented its members or anyone else.
10. The Court relied on a summary of legal principles in [VicForests v Kinglake Friends of the Forest Inc](#) [2021] VSCA 195 at [57]:
 - a) The special interest test is flexible, and its content in a given case depends on the nature and subject matter of the litigation. There is no precise formula as to what amounts to a special interest in the subject matter of a particular proceeding; the application of the test is fact and context specific.
 - b) A ‘special interest’ sufficient to invoke the Court’s jurisdiction to supervise the exercise of public power is not limited to the legal, proprietary or financial interests that are protected by the private law.
 - c) The requirements of standing serve to keep the exercise of judicial power within proper bounds, namely the resolution of legal controversies between parties who are affected by the outcome.
 - d) The special interest test requires an intersection between the interest identified by the plaintiff and the subject matter of the proceeding. It is necessary to assess how the plaintiff’s interest may be affected by the matter in respect of which it seeks relief.
11. Although it was not necessary for the Court to consider the other aspects of the case, it did so for completeness. This consideration made no difference to the outcome. The proceeding was dismissed.

IMPLICATIONS



As the Court noted (at [67]):

The plain fact is that the members of the Association came together ‘as a group to invoke the court’s protection to challenge the Minister’s Decision and share legal costs’. In other words, the Association was formed in order to be a vehicle for this litigation.

Unless specifically permitted under the statute, such arrangements will not usually satisfy the requirement of standing to object to an administrative decision.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC//2021/510.html>

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