HIGH COURT OF AUSTRALIA

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Details of Filing

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Form 27D – Respondent's submissions

Note: see rule 44.03.3.

IN THE HIGH COURT OF AUSTRALIA

SYDNEY REGISTRY

BETWEEN: **FORESTRY CORPORATION OF NEW SOUTH WALES**

APPELLANT

and

SOUTH EAST FOREST RESCUE INCORPORATED INC 9894030

RESPONDENT

RESPONDENT'S AMENDED SUBMISSIONS

Amended pursuant to the order of 10 December 2024

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Part I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

Part II: STATEMENT OF ISSUES

The respondent contends the appeal presents the following issues:

1. Do s 69SB(1) and/or s69ZA of the ***Forestry Act** 2012* (NSW) and/or s 13.14A(1) of the *Biodiversity Conservation Act 2016* (NSW) (***Biodiversity Act***), on their proper construction, prevent persons in the respondent's position from instituting proceedings for declaratory or injunctive relief to enforce any duty not to breach an integrated forestry operations approval (**IFOA**)?

2. Is common law[1] standing to institute proceedings for declaratory or injunctive relief abrogated when the relevant statutory scheme designates a person or a body that may enforce the scheme?

3. Does the "principle of legality" apply in respect of the right the subject of issue 2, such that irresistible clarity is required before a statute abrogates that right?

Part III: SECTION 78B CERTIFICATION

1. Notice under section 78B of the *Judiciary Act 1903* (Cth) is not required.

Part IV: FACTUAL BACKGROUND

1. The respondent does not contest paragraphs 1 to 4 of the appellant's factual background.

2. The appellant's paragraph 5 extends beyond a factual account. The argument presented there is rejected. The Court of Appeal made no presumptions about who can bring civil enforcement proceedings. It simply determined the notice of contention and found that s 69ZA of the *Forestry Act* did not disapply common law standing. Then, in considering ground 3 of the appeal below, the Full Bench found that the respondent had the requisite 'special interest' and therefore had standing.

3. Although Griffiths AJA held that the principle of legality was attracted, this was not (as the appellant suggests) a logical consequence of any method of his Honour's reasoning. It was merely one of five reasons underpinning his Honour's dismissal of the notice of contention: CA [111]–[119].

[1] The term "common law" is used in these submissions in the sense of the general law, or judge-made law (which includes equity): *Western Australia v Commonwealth* (1995) 183 CLR 373, 485 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ).

Part V: SUMMARY OF ARGUMENT

1. The appellant urges this Court to find that:

   a. statutory text that expressly disapplies only statutory open standing provisions should be read as also disapplying common law standing;[2]

   b. the scope of common law standing should be curtailed, applying only when the relevant statute makes no provision for its enforcement of the law;[3] and

   c. common law standing does not protect any fundamental principle and should not attract the principle of legality, or alternatively merits only "low tensity" protection.[4]

2. The respondent's argument first addresses the construction of the statutory scheme. The respondent's analysis shows that the relevant provisions operate according to their terms: s 69ZA of the *Forestry Act* disapplies only statutory open-standing provisions, and ss 69SB of the *Forestry Act* and 13.14A of the *Biodiversity Act* confer enforcement power on the EPA without impacting common law standing.

3. The respondent then challenges the appellant's proposed modification to the principles governing common law standing and shows that the appellant's reasoning and cited authorities provide no basis for restricting the scope of common law standing.

4. Lastly, the respondent demonstrates that common law standing protects fundamental common law principles, so that irresistible clarity is required to construe a statute as abrogating standing to challenge unlawful government action.

<u>Issue One</u>: Does the statutory scheme of the *Forestry Act* and *Biodiversity Act* on its proper construction, prevent persons in the respondent's position from instituting proceedings for declaratory or injunctive relief to enforce any duty not to breach an integrated forestry operations approval?

5. The appellant argues that s 69ZA(2) of the *Forestry Act* ousts common law standing to enforce compliance with IFOAs, while s 69SB of that Act and s 13.14A of the *Biodiversity Act* confer exclusive jurisdiction on the EPA for such enforcement.

6. The analysis that follows reviews matters relevant to the construction of all three provisions, the correct construction of s 69ZA, and finally the correct construction of ss 69SB(1) and s 13.14A.

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[2] Appellant's submissions (**AS**) [45]–[51]. Common law standing: *Australian Conservation Foundation v The Commonwealth* (1980) 146 CLR 493 (***ACF***), 527, 530–31 (Gibbs J).
[3] AS [42]–[44].
[4] AS [34]–[41].

Matters Common to All Three Provisions

Expressly stated statutory purpose

7. Part 5B of the *Forestry Act* and the *Biodiversity Act* include sections that expressly state the purposes of the former Part and latter statute.[5]

8. These stated purposes support a construction of the legislation that preserves common law standing to enforce IFOAs. Specifically, Part 5B of the *Forestry Act* identifies the purpose of promoting accountability and transparency in conduct of forestry operations,[6] and objectives common to Part 5B and the *Biodiversity Act* include boosting biodiversity conservation[7] (which will be enhanced by more effective enforcement of IFOAs) and public participation in conservation efforts.[8]

Those with common law standing are well placed to enforce the public trust

9. Part 5B of the *Forestry Act* permits forestry operations to be carried out by the appellant pursuant to IFOAs in State forests, which are public assets vested in the Crown.[9] The appellant is required to manage those forests to facilitate public access, promote recreational use, and conserve fauna (other than feral animals) living there.[10]

10. One of the appellant's objectives (where its activities affect the environment),[11] and the purpose of Part 5B,[12] is that forestry operations should be carried out in accordance with the principles of ecologically sustainable forest management. Those principles include maintaining forest values for future and present generations.[13]

11. In ***Stannards*** *Marine Pty Ltd v North Sydney Council*,[14] Preston CJ discussed the concept of the public trust,[15] which derives from the Roman property law concept of *res communis:* things that by their nature are part of the commons that the public has a right in common to access and use. The State holds communal assets – including State forests – in trust for present and future generations.[16] The *Forestry Act* recognises that the appellant has effectively been delegated a role as trustee of the state's native forests for present and future

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[5] *Forestry Act* Part 5B, s 69L; *Biodiversity Act* s 1.3.
[6] *Forestry Act* ss 69L(1)(a), 69L(1)(b).
[7] *Forestry Act* ss 69L(2)(a)(l), 69L(2)(e); *Biodiversity Act* ss 1.3(a), (b), (d), (h), (k).
[8] *Forestry Act* s 69L(2)(b); *Biodiversity Act* s 1.3(n).
[9] *Forestry Act* ss 3(1) (Definition of State forest), 13, 14.
[10] *Forestry Act* s 59(a).
[11] *Forestry Act* s 10(1)(c).
[12] *Forestry Act* s 69L(1).
[13] See *Protection of the Environment Administration Act 1991* (NSW) s 6(2); *Forestry Act* s 69L(2)(a).
[14] [2022] NSWLEC 99, [187] (Preston CJ).
[15] *Stannards* [164]–[189] (Preston CJ).
[16] For a general discussion of the development of the concept of public trust see Jennifer Stuckey-Clarke, *Environmental Protection and the Public Trust: Upper Mooki Landcare Inc v Shenhua Watermark Coal Pty Ltd* (2016) 6 *Property Law Review* 59.

generations, by statutory recognition of the primacy of principles of ecologically sustainable forestry management and intergenerational equity. S120/2024

11A Plaintiffs with a special interest in the maintenance of the corpus of a public trust are the appropriate persons to enforce its governing instrument, the relevant statutory scheme, on behalf of the beneficiaries (the public) as a whole.

Words cannot be lightly read into a statute

12. The appellant's proposed construction requires implication of the underlined additional words into the affected statutory provisions, as follows:

Division 4	**Application of *the common law and* other legislation**[17]
S 69ZA(1):	This section applies *to the common law* and to the following statutory provisions -
S 69ZA(2):	Proceedings may not be brought under *the common law or* a statutory provision to which this section applies …
S 69SB(1):	*Only* the Environment Protection Authority has the function of ….
S 13.14A:	*Only* the Environment Protection Authority may bring proceedings …

13. As Basten AJA observed below in relation to s69ZA of the *Forestry Act*,[18] insertion of words on the scale proposed by the appellant is difficult to justify.[19]

14. The appellant's proposed amendments go beyond expounding the statutory text, they seek to remedy purported gaps in it. But construction does not involve speculation as to unexpressed legislative intention, nor repair of perceived legislative inattention.[20]

Construction of *Forestry Act* s 69ZA

Legislative history demonstrates the primary objective of reforms was to streamline licensing process, not to displace common law standing

15. Comparison of the pre-IFOA regime under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (***EP&A Act***) and the scheme introduced by Part 4 of the *Forestry and National Park Estate Act 1998* (NSW) (***FNPE Act***) reveals the principal impetus of the legislative overhaul was to streamline and integrate the approval process,

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[17] Division headings, but not section headings, are deemed to be part of NSW Acts: *Interpretation Act 1987* (NSW) ss 35(1)(a), 35(2).
[18] CA [26] (Basten AJA).
[19] ***Taylor*** *v Owners – Strata Plan No 11564* (2014) 253 CLR 531, [38] (French CJ, Crennan and Bell JJ).
[20] *Taylor* [65] (Gageler and Keane JJ); *HFMO43 v Republic of Nauru* (2018) 359 ALR 176, [24] (Kiefel CJ, Gageler and Nettle JJ).

which at the time required a "plethora of regulations, approvals and licences".[21] The stated purpose of the new system was to provide a framework for forestry operations that identified the requisite preliminary agreements, assessments and environmental studies and integrated the various regulatory regimes.[22] S120/2024

16. The previous licensing system required the proponent to assess the environmental impacts of an activity and decide whether its proposed activity would "significantly affect the environment".[23] If so, an environmental impact statement (**EIS**) was mandatory before the activity could be approved or carried out. Many of the early cases challenged failure to prepare a valid EIS.[24] The *FNPE Act* sought to streamline the assessment and approval process by disapplying Part 5 of the *EP&A Act*.[25]

Second Reading Speech

17. It is against this background that the second reading speech states that "certainty cannot be increased if we continue to allow challenges to the licensing system".[26] The new legislation increased certainty by streamlining the procedural requirements that had previously given rise to challenges and removing statutory open standing.

18. The second reading speech does not support the proposition that s 69ZA of the *Forestry Act* was intended to abrogate common law standing. The Minister's statement that clause 40 of the *FNPE Act*[27] "removes the rights of third parties to bring proceedings relating to the integrated approval"[28] was made in the context of the Explanatory Note to the Bill, which relevantly provides:

> Clause 38 [clause 40 in the Act] excludes *certain* civil and criminal enforcement proceedings by third parties under environment protection and other legislation for breaches of the proposed Act or related to the proposed Act. (emphasis added)

19. The second reading speech thus addresses third parties whose standing arises under open standing provisions within "environment protection and other legislation".[29]

20. If it is nevertheless argued that the Minister should be understood to have stated that the Bill would eliminate common law third party standing, such a statement would simply be

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[21] New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 1998, 9923 (Yeadon).
[22] *FNPE Act* (as made) s 25.
[23] *EP&A Act* s 112.
[24] *Kivi v Forestry Commission of NSW* (1982) 47 LGRA 38; *Prineas v Forestry Commission of NSW* (1983) 49 LGRA 402; *Jarasius v Forestry Commission of NSW (No 1)* (1988) 71 LGRA 79; *Bailey v Forestry Commission of NSW* (1989) 67 LGRA 200; *Corkill v Forestry Commission of NSW* (1990) 71 LGRA 116.
[25] *FNPE Act* ss 36–39.
[26] New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 1998, 9924 (Yeadon).
[27] Similar in terms to s 69ZA of the *Forestry Act.*
[28] New South Wales, *Parliamentary Debates*, Legislative Assembly, 12 November 1998, 9924 (Yeadon).
[29] CA [29] (Basten AJA), [115] (Griffiths AJA).

wrong and could not influence interpretation of the statute. It is the text of the legislation that must be the starting and ending point of the construction process.[30]

A construction that permits unlawful conduct to continue unabated should not be adopted

21. The appellant argues that s 69ZA reflects parliament's intent to permit unlawful logging, enhancing "certainty" by allowing IFOA breaches to continue unremedied to promote the "overall public interest".[31] The discretionary remedies of injunction and declaration offer sufficient judicial flexibility to withhold or adjust relief in the public interest.

22. In any event, the appellant cannot justify re-writing the legislation to accord with it interpretation of the second reading speech and prior versions of the present statute. Legislative history and extrinsic materials do not displace the meaning of the statutory text.[32]

Construction of *Forestry Act* s 69SB and *Biodiversity Act* s 13.14A

Conferral of standing on the EPA was necessary and facultative

23. The EPA is a creature of statute, constituted by section 5 the *Protection of the Environment Administration Act 1991* (NSW) (**POEA Act**). Section 7 of that Act provides:

> The Authority has such environment protection and other functions as are conferred or imposed on it by or under the environment protection legislation or any other legislation.

24. Absent express conferral of regulatory function by s 69SB, the EPA would lack power to monitor and enforce IFOA compliance. Similarly, s 13.14A's authorisation of the EPA to bring proceedings for breach of Part 5B of the *Forestry Act* ensures the EPA is acting within power and need not prove standing at trial.

25. Sections 69SB and 13.14A are thus enabling rather than limiting provisions.[33]

26. The express conferral of standing on the EPA also reflects the legislative history of regulatory oversight of the appellant's activities. Section 32(2) of the *FNPE Act* allowed "a relevant Minister"[34] to enforce IFOA compliance. Part 4 of the *FNPE Act* later became Part 5B of the *Forestry Act* and s 32 of the *FNPE Act* became s 69SB of the *Forestry Act.* The *Forestry Legislation Amendment Act 2018* (NSW) deprived the "relevant Minister" of responsibility for enforcing Part 5B – but not the balance of the *Forestry Act* – and assigned

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[30] *Re Bolton; Ex parte Beane* (1987) 162 CLR 514, 518 (Mason CJ, Wilson and Dawson JJ); *Saeed v Minister for Immigration and Citizenship* (2010) CLR 252, [31] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ); see CA [115] (Griffiths AJA).
[31] AS [50].
[32] *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, [39].
[33] See CA [25] (Basten AJA).
[34] Defined in s 32(1) in relation to an IFOA, as a Minister who is a party to the approval (other than the Minister administering the *Forestry Act 1916*).

that responsibility to the EPA. The new s 69SB was necessary to divorce the arrangements for regulation of Part 5B from those pertaining to regulation of other parts of the *Forestry Act*. S120/2024

Conferral of standing on the EPA was not exclusive

27. The appellant's claim that ss 69SB and 13.14A provide an "exhaustive measure of standing at the instance of the EPA"[35] is inconsistent with s 69ZA(3) of the *Forestry Act* which preserves open standing for enforcement of IFOA's for other entities – a "Minister", and, in some cases, other government agencies or officials.[36]

28. Exclusionary language is conspicuously absent from ss 69SB(1) and 13.14A(1), which respectively provide that the EPA "has … *the function* of enforcing compliance…" and "*may* bring proceedings…".[37]

29. This language contrasts with s 13.3(1) of the *Biodiversity Act* which evinces a parliamentary intention to confer exclusive standing on identified persons:

> *Any legal proceedings for an offence against this Act or the regulations, or for a native vegetation offence, may <u>only</u> be taken by a police officer, by the Environment Agency Head or by a person duly authorised by the Environment Agency Head in that behalf, either generally or in a particular case.*

30. Section 69SB also confers on the EPA the undeniably non-exclusive function of monitoring conduct of forestry operations. Like terms within the same provision are generally given cognate meanings and ascribed the same work to do,[38] so "function" in s 69SB(1) should be consistently construed not to imply exclusivity.

31. Mere identification of a nominated regulatory agency does not imply exclusive standing.[39] It is common for statutes to identify which agency is the regulator,[40] and many (including the *Biodiversity Act*)[41] do so while expressly preserving open standing provisions.[42] This Court accepted in *Onus* that common law standing can co-exist with an identified regulator in the statutory scheme.[43]

32. Furthermore, the appellant argues that if parliament intended to recognise common law standing alongside that of the EPA, it would have expressly conferred standing on "any

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[35] AS [45].
[36] See CA [25] (Basten AJA).
[37] See CA [113] (Griffiths AJA).
[38] *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611, 618 (Mason J, with whom Barwick CJ and Jacobs J agreed).
[39] AS [46].
[40] As observed at CA [25] (Basten AJA).
[41] *Biodiversity Act* ss 13.14, 13.15, 13.16 in conjunction with s 13.17.
[42] See, eg, *Australian Consumer Law* ss 232(2); *Contaminated Land Management Act 1997* (NSW) ss 94, 96; *Protection of the Environment Operations Act 1997* (NSW) ss 252, 253; *Local Land Services Act 2013* (NSW) s 60ZZB (in relation to Part 5B) in conjunction with *Biodiversity Act* s 13.14(1)(b).
[43] See Respondent's Submissions (**RS**) [~~6~~38] <u>below</u> ~~above~~.

person aggrieved".[44] This kind of reasoning is often inconclusive.[45] Here, it is equally if not more significant that parliament chose not to use the words the appellant urges this Court to read into the statute.[46] S120/2024

Common law standing was never "displaced"

33. Finally, the appellant contends open standing provisions in place until IFOAs were introduced effectively extinguished common law standing. It argues that as a result of s 30(1)(a) of the ***Interpretation Act*** *1987* (NSW) repeal of an Act which has abolished a common law rule does not revive that rule,[47] so that repeal of the former open standing provisions does not reinstate common law standing.

34. This argument is misconceived. At one level, it is plain that the relevant open standing provision[48] merely removes the need to rely upon common law standing,[49] but evinces no intention to abolish any aspect of the judge-made law.

35. Secondly, the assertion that "common law standing has never been a feature of the LEC civil enforcement jurisdiction because at all times it has been superseded by open standing"[50] is incorrect. While some statutes falling with the LEC's jurisdiction provide open standing civil enforcement, [51] many do not.[52] The LEC Act makes no provision for open standing. The fact that some statutes provide for open standing does not indicate any intention to displace or supersede common law standing across the LEC's entire civil enforcement jurisdiction.

36. Finally, a fundamental difficulty for the appellant is that the open standing provisions of former s 123 of the *EP&A Act* (now s 9.45(1)) have in fact never been repealed. The provisions remain in force. Part 4 of the *FNPE Act*, which introduced the IFOA regime, provided that the new regime would not be subject to existing statutory open standing

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[44] AS [46].
[45] *Australian Competition and Consumer Commission v Channel Seven Brisbane Pty Ltd* (2009) 239 CLR 235, [117] (Hayne J).
[46] See RS [~~58~~ 12]~~, [75]~~ above; *Cf* parliament did choose to deploy the word "only" in s 13.3(1) of the *Biodiversity Act* RS [29] above.
[47] See authorities cited at AS n85.
[48] *EP&A Act s 9.45(1), formerly s 123.*
[49] *F Hannan v Electricity Commission of NSW (No 3)* (1985) 66 LGRA 306, 313 (Street CJ).
[50] AS [48].
[51] See, eg, *EP&A Act*, s 9.45; *Protection of the Environment Operations Act 1997* (NSW) s 252.
[52] *Biological Control Act 1985; Biosecurity Act 2015; Building and Development Certifiers Act 2018; Coal Mine Subsidence Compensation Act 2017; Coastal Management Act 2016; Crown Land Management Act 2016; Dangerous Goods (Road and Rail Transport) Act 2008; Design and Building Practitioners Act 2020; Environmental Trust Act 1998; Fire and Emergency Services Levy Act 2017; Local Land Services Act 2013* (Except Parts 5A and 5B); *Pipelines Act 1967; Plantations and Reafforestation Act 1999; Plastic Reduction and Circular Economy Act 2021; Plumbing and Drainage Act 2011; Recreation Vehicles Act 1983; Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020; Restricted Premises Act 1943; Swimming Pools Act 1992; Waste Avoidance and Resource Recovery Act 2001.*

provisions. Open standing provisions, of course, continued and continue to apply to a range of other statutory schemes. Neither the *FNPE Act*, nor the *Forestry Act*, have ever "displaced" common law standing, so that s 30(1)(a) of the *Interpretation Act* has no role to play. S120/2024

Issue Two: Is the standing of persons with a special interest in the subject matter of an action abrogated when the relevant statutory scheme designates a person or body that may enforce the scheme?

A far-reaching change to the common law

37. The appellant seeks to restrict the principle established in *ACF*,[53] that a plaintiff with a special interest in the subject matter of an action has standing to challenge unlawful conduct that interferes with that special interest. It contends the principle applies only where a statute is silent as to standing.[54] In all other cases, the appellant argues, only persons nominated by the statute have standing to enforce it.

38. Neither *ACF* nor any subsequent case where this court has considered the application of common law standing has restricted the principle this way. On the contrary, in ***Onus*** *v Alcoa Australia Ltd*,[55] Gibbs CJ noted that enforcement of the *Archeological and Aboriginal Relics Preservation Act 1972* (Vic) was "entrusted to the ordinary agencies of government, assisted by inspectors and wardens".[56]

39. The appellant is not suggesting some new canon of construction, whereby any statute that identifies a party with standing should be construed as evincing a parliamentary intent to oust common law standing. Such a canon would have little to recommend it.

40. Rather, the appellant is asking this Court to declare that common law standing should henceforth be subject to a new and far-reaching restriction. This court should reject the proposed erosion of common law standing because:

    a. the proposed change would be inimical to the principled development of Australia's common law;

    b. common law standing ought not be weakened because it protects values fundamental to the Australian polity; and

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[53] AS [34]–[41].
[54] AS [43]–[44].
[55] (1981) 149 CLR 27.
[56] *Onus*, 34 (Gibbs CJ).

c. none of the arguments or authorities relied upon by the appellant support the proposed restriction of common law standing. S120/2024

Common law standing protects fundamental values

41. Common law standing guarantees access to the courts to vindicate and restrain an invasion of public rights and ensures that those who unlawfully invade the public's rights can be held accountable to the court for their conduct. Both of these outcomes protect a fundamental underlying value: upholding of the rule of law.

Vindication of public rights

42. It is uncontroversial that access to the courts to redress an invasion of private rights is a fundamental common law right.[57] It is, or should be, similarly uncontroversial that access to the courts to redress an invasion of public rights is a fundamental common law right.[58]

43. Public rights[59] are not rendered less worthy of protection merely because, for policy reasons, the courts have developed rules limiting the class of plaintiffs granted access to the courts to vindicate those rights.[60]

44. Nor are they less worthy of protection because it is only in modern times that, consistent with the evolution of social attitudes and values, courts have recognised that non-proprietary public rights are justiciable.[61]

45. Common law standing ensures that the public – whose interest is represented by plaintiffs with the requisite special interest – is assured of access to the court's processes to restrain contraventions of the public law.

Accountability

46. Those who owe statutory duties to the public should be responsible to the courts for any contravention of the statutory scheme that binds them: this is an expression of the requirement of accountability to the rule of law.[62]

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[57] *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corporation Ltd* [1981] AC 909, 977 (Lord Diplock); ***Plaintiff S157/2002*** *v The Commonwealth* (2003) 211 CLR 476, [32] (Gleeson CJ); *Momcilovic v The Queen* (2011) 245 CLR 1, [444] (Heydon J).
[58] ***Bateman's Bay*** *Local Aboriginal Land Council v The Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247, [50] (Gaudron, Gummow and Kirby JJ).
[59] See discussion of the distinction between public and private rights in ***Hobart*** *International Airport Ltd v Clarence City Council* (2022) 276 CLR 519, [86]–[88] (Edelman J).
[60] See RS [~~23~~53]–[~~25~~55] below ~~above~~.
[61] ***Cooney*** *v Ku-ring-gai Municipal Council* (1963) 114 CLR 582, 603–05 (Menzies J). The suggestion that public law injunctions can issue to protect non-proprietary rights had earlier been advocated by Starke J in dissent in *Ramsay v Aberfoyle Manufacturing Co (Aust) Pty Ltd* (1935) 54 CLR 230, 249 (Starke J).
[62] *Corporation of the* ***City of Enfield*** *v Development Assessment Commission* (2000) 199 CLR 135, [55]–[56] (Gaudron J).

47. The strict interpretation of privative clauses exemplifies application of the principle of legality to the presumption of the rule of law. Judicial review has been described as "the enforcement of the rule of law over executive action",[63] or "a principal engine of the rule of law".[64] S120/2024

48. However, many breaches of public duties and obligations fall outside the scope of judicial review. Equitable remedies are available in public law because of the inadequacies of the prerogative writs.[65] For this reason, the right to enforce statutes that protect public rights by the equitable remedies of injunction and declaration is no less fundamental than the right to curb unlawful exercise of public power by seeking prerogative writs.

The Rule of Law

49. The cardinal, "irreducible" principle of the rule of law is that the law applies to all who are given power in the community, just as it applies to the ordinary citizen.[66] Public power is not to be exercised contrary to law.[67] And if it is so exercised, those entrusted with public power by the government, must be accountable to the courts.[68]

50. Common law standing protects the rule of law. The limitations of the law as it presently stands[69] constitute a strong argument against any further dilution.

The Present Case

51. The facts of the present case illustrate the issues at stake. The respondent alleges the appellant has unlawfully logged State forests and is continuing to do so. The appellant does not challenge the Court of Appeal's finding that the respondent has the requisite special interest to bring an action to challenge the appellant's unlawful conduct.[70]

52. To date, the EPA has not sought to restrain ~~the respondent's activities in State forests~~ the conduct alleged in these proceedings. If the respondent is denied access to the courts, the appellant will not be held accountable for the legality of its actions. If indeed the law is being breached, the appellant ~~may~~ might be free to continue the breach with impunity. Thus, there may be no vindication of the public's right to have ~~that its State forests not be logged~~

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[63] *Plaintiff S157* [30]–[32] (Gleeson CJ), citing at [31] *Church of Scientology Inc v Woodward* (1982) 154 CLR 25, 70 (Brennan J).
[64] ***MZAPC*** *v Minister for Immigration and Border Protection* (2021) 273 CLR 506, [93] (Gordon and Steward JJ).
[65] *City of Enfield* [57]–[58] (Gaudron J); ***Truth About Motorways*** *Pty Ltd v Macquarie Infrastructure Investment Management Limited* (2000) 200 CLR 591, [98] (Gummow J); *Smethurst* [95] (Kiefel CJ, Bell and Keane JJ); [171] (Gordon J).
[66] ***Davis*** *v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 97 ALJR 214, [87] (Gordon J); *MZAPC* [91] (Gordon and Steward JJ).
[67] *Davis* [87].
[68] *Davis* [86]; *MZAPC* [98] (Gordon and Steward JJ).
[69] *Bateman's Bay* [34] (Gaudron, Gummow and Kirby JJ).
[70] CA [46] (Basten AJA), [148]–[176] (Griffiths AJA).

~~unless~~ laws designed to protect threatened species from logging ~~are~~ observed. Neither will the appellant be held accountable for contravening the laws that govern its operations. In this case, common law standing is the only means practically available to uphold the rule of law.[71] S120/2024

The proposed change is inimical to the principled development of the common law

53. The modern law of standing to enforce public rights and duties has developed in a principled and incremental way since at least the nineteenth century, when the Court of Chancery often restrained the ultra vires activities of public bodies such as Councils,[72] and issued injunctions against public officers and authorities where justice so required.[73]

54. Many, but not all, of these cases were brought by the Attorney-General. ***Boyce*** *v Paddington Borough Council*[74] recognised that a person suffering "special damage peculiar to himself" from interference with a public right could seek relief without the Attorney-General's fiat. This was developed further in *Anderson v Commonwealth.*[75]

55. In *Cooney,* this Court extended the right to injunctive relief in public interest cases to non-proprietary injury. *ACF*[76] re-formulated the second limb of *Boyce* to apply to plaintiffs "having a special interest in the subject matter of the action". ***Wentworth*** *v Woollahra Municipal Council*[77] clarified that equitable relief available to eligible plaintiffs does not include Lord Cairns Act (equitable) damages. The law has continued to evolve, extending common law standing beyond the immediate scope of *ACF*,[78] and relaxing application of the 'special interest' rule to increase access to the courts.[79]

56. Changes to the common law must begin from a baseline of accepted principle and proceed by conventional methods of legal reasoning.[80] The appellant does not identify any accepted rule or principle justifying restricting common law standing in the way it proposes.[81]

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[71] See also CA [45] (Basten AJA).
[72] *Bateman's Bay* [93] (McHugh J).
[73] *Smethurst* [113] (Gageler J).
[74] [1903] 1 Ch 109, 114 (Buckley J).
[75] (1932) 47 CLR 50, 52 (Gavan Duffy CJ, Starke and Evatt JJ).
[76] *ACF*, 527 (Gibbs J).
[77] (1981) 149 CLR 672, 681–83 (Gibbs GJ, Mason, Murphy and Brennan JJ).
[78] *Onus, Shop Distributive and Allied Employees Association v Minister for Industrial Affairs (SA)* (1995) 183 CLR 552; *Bateman's Bay*; see *North Coast Environment Council Inc v Minister for Resources* (1994) 55 FCR 492, 502 (Sackville J) observing there had been a progressive widening in the law of standing over the 20th century; see also *Re McBain; Ex parte Catholic Bishops Conference* (2002) 209 CLR 372, [206] (Kirby J).
[79] *Truth About Motorways*, [135] (Kirby J) and cases cited at n225; the special interest test should be construed "as an enabling, not a restrictive, procedural stipulation": *Bateman's Bay* [50] (Gaudron, Gummow and Kirby JJ).
[80] *Breen v Williams* (1996) 186 CLR 71, 115; see also *Dietrich v The Queen* (1992) 177 CLR 292, 320–21
[81] *Bird v DP* [2024] HCA 41, [67].

57. Kirby J set out some factors considered by this court when contemplating changes to the common law in ***Brodie*** *v Singleton Shire Council.*[82] Application of those factors does not support the appellant's proposed change. There has been no relevant shift in contemporary social values – on the contrary, the public expects those granted the power to impact the public's interests to follow the law and be held to account if they do not. S120/2024

58. Further, the proposed change would complicate rather than simplify the common law of standing, it is not incremental, and (as will be shown below) none of the authorities relied upon by the appellant offer analogous reasoning that might support the proposed change. The appellant offers no reason to conclude the proposed change will make the common law "more principled and just", so that the "natural and proper judicial inclination … towards restraint" militates against the proposed change to the common law.[83]

The Appellant offers no plausible justification for restricting common law standing

59. There is no principled reason why the perpetrator of a public wrong ought not be held accountable for breaching the law, if a Minister, regulator, or other identified person empowered to enforce the law takes no action to do so.[84]

60. The following discussion demonstrates that none of the authorities and arguments relied upon by the appellant support the case for restricting the scope of common law standing.

Hobart *International Airport Pty Ltd v Clarence City Council*

61. The appellant argues[85] that *Hobart* [55]–[56] supports its claim that unless a statute is silent about common law standing, the only persons with standing to enforce that statute are those nominated by it. The appellant's position appears to be that common law standing is an "exogenous and antecedent fact", and Gageler and Gleeson JJ held at *Hobart* [55] that such a fact cannot constitute a precondition to jurisdiction.

62. A central issue in *Hobart* concerned whether the respondents had standing to seek declarations regarding the operation of certain contracts, despite having no legal or equitable claims under those contracts.

63. In the passage from *Hobart* cited by the appellant,[86] Gageler and Gleeson JJ contrast the differing approaches mandated by the US and Australian constitutional frameworks. Their Honours refer to an "injury in fact" – a concrete, particularised, and actual or imminent invasion of a legally protected interest - which several US Supreme Court decisions held as

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[82] (2001) 206 CLR 512, [203]–[219] (Kirby J).
[83] *Brodie* [219] (Kirby J).
[84] *Bateman's Bay* [50] (Gaudron, Gummow and Kirby JJ); *Cf* AS [50].
[85] AS [6] (reference to 'exogenous and antecedent fact'), [42]–[43], [51].
[86] AS [42]; the passage was *Hobart* [55]–[56].

the "irreducible" requirement for standing under the US constitution.[87] They explain that those decisions reflect Article III of the US Constitution, concerned with "Cases" and "Controversies". By contrast, Chapter III of the Australian Constitution adopts a deliberately broader approach,[88] selecting "matters" as the subject of federal jurisdiction.[89] S120/2024

64. Gageler and Gleeson JJ explain that, in Australia, a plaintiff may possess a 'material interest' sufficient to justify a court entertaining the proceeding despite absence of an "injury in fact" – that is, despite the absence of an "exogenous and antecedent fact".[90]

65. The appellant's reading of *Hobart* [55]–[56] is divorced from its context. Gageler and Gleeson JJ's use of the phrase "exogenous and antecedent fact" was not a reference to standing under the common law. On the contrary, their Honours accepted that common law standing may constitute a factor that gives rise to jurisdiction.[91]

The Reasoning in Hobart Misapplied

66. In the final sentence of *Hobart* [56], Gageler and Gleeson JJ explain that to determine standing, one must examine the law that vests jurisdiction in the court and ascertain what the law expressly or implicitly requires the plaintiff to establish to secure standing to seek the order in question.[92] Basten AJA made a similar observation below.[93]

67. The appellant contends this sentence supports its claim that the "starting point" for determining standing is the statutory scheme, if it "addresses the topic of standing".[94]

68. This argument fails at the outset, because the appellant has mistakenly identified the relevant law conferring jurisdiction on the Land and Environment Court (**LEC**) in this case as the *Forestry Act* and *Biodiversity Act.* From this incorrect premise, the appellant concludes that standing should not be based on a "special interest", but rather derived from an analysis of the provisions of the statute to be enforced.[95]

69. In fact, the LEC derives its jurisdiction from the *Land and Environment Court Act 1979* (NSW) (***LEC Act***). Relevantly for the proceeding the subject of this appeal (see CA [78]), that jurisdiction is conferred by ss 20(1)(e) of the *LEC Act*, read with s 20(2), and extends

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[87] Gageler and Gleeson JJ referred at [55] to *Lujan v Defenders of Wildlife* (1992) 504 US 555, 560 and *Spokeo Inc v Robins* (2016) 136 S Ct 1540, 1547–1548.
[88] *Truth About Motorways* [156] (Kirby J).
[89] See the extensive discussion in *Truth About Motorways* [32]–[33], [42] (Gaudron J), [108]–[119] (Gummow J), [166]–[175] (Kirby J).
[90] *Hobart* [55] (Gageler and Gleeson JJ).
[91] *Hobart* [63]–[66] (Gageler and Gleeson JJ).
[92] *Hobart* [56].
[93] ~~CS~~ CA [4].
[94] AS [43].
[95] AS [43].

to granting injunctive and equitable relief.[96] Implicit in the court's jurisdiction to grant these forms of relief, is the need to satisfy any common law eligibility requirements.[97] Here, the respondent's 'equity', or entitlement to equitable relief, is its "special interest" affected by the interference with the public right.[98] Entitlement to declaratory relief requires a "real interest" in pursuing that remedy,[99] or the same "special interest" that grounds entitlement to an injunction restraining interference with a public right.[100] S120/2024

70. A subsidiary enquiry, which was not the subject of the discussion in *Hobart* at [56] is whether statute has modified the class of plaintiffs that might seek relief which the court has jurisdiction to grant. Nothing in Gageler and Gleeson JJ's judgment suggests that statutes recognising a regulator's standing necessarily oust common law standing.

71. ~~A core error of the appellant is that they~~ The appellant incorrectly focuses on statutory provisions relating to proceedings under Div 2 of Pt 13 of the *Biodiversity Act*. Section 13.14A is concerned with standing to bring proceedings under that Division. But the jurisdiction of the LEC in relation to such proceedings is the subject of a separate and distinct conferral of jurisdiction by s 20(1)(cga) of the *LEC Act* (which the appellant fails to mention). The respondent relies on the much broader jurisdiction conferred by s 20(1)(e), and none of the provisions relied upon by the appellant are directed to that jurisdiction.

***Wentworth** v Woollahra Municipal Council*

72. The appellant contends[101] this Court said in *Wentworth*[102] that the question (of whether a plaintiff has standing) is whether "statute … enables an individual who satisfies the 'special interest' requirement to seek injunctive or declaratory relief".

73. This appellant has misread or misinterpreted the relevant passage, which explained that the law of standing in Australia (applying the two limbs of *Boyce*) distinguished between the statute that gives rise to a civil cause of action, creating personal rights, and "the statute

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[96] Relevantly, "to enforce any right, obligation or duty conferred or imposed by a planning or environmental law"; "to review, or command, the exercise of a function conferred or imposed by a planning or environmental law" and "to make declarations of right in relation to any such right, obligation or duty or the exercise of any such function": sub-s (2)(a)–(c). A "planning or environmental law" includes the BC Act and Pt 5B of the Forestry Act (or any provisions thereof); see also ss 22, 23 which empowers the LEC "to make orders of such kinds … as the Court thinks appropriate".
[97] *Hobart* [57], [58], [61].
[98] *Hobart* [58]; *Bateman's Bay* [25] (Gaudron, Gummow and Kirby JJ); *Truth About Motorways* [96] (Gummow J); *The Commonwealth v Verwayen* (1990) 170 CLR 394, 434–35 (Deane J); see *MAPA Pearls Pty Ltd v Haliotis Fisheries Pty Ltd* (2023) 71 VR 581, [216]–[218] (Kyrou, McLeish and Niall JJA) for a comparison between public law 'equity' and the 'equity' in that case that gave rise to *in personam* rights.
[99] *Hobart* [62]; see also *Unions NSW v New South Wales* (2023) 277 CLR 627, [16] (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ).
[100] *Hobart* [63]; *City of Enfield* [18]–[19] (Gleeson CJ, Gummow, Kirby and Hayne JJ).
[101] AS [43].
[102] *Wentworth*, 681 (Gibbs CJ, Mason, Murphy and Brennan JJ).

which stops short of creating personal rights, but enables an individual who satisfies the 'special interest' requirement to seek injunctive or declaratory relief."[103] S120/2024

***Allan** v Transurban City Link Limited*[104]

74. The appellant cites *Allan* to support the proposition that when a statutory scheme expressly addresses standing, the "starting point" is construction of that scheme.[105]

75. However, in the cited passage,[106] the plurality was solely interpreting two provisions of the *Development Allowance Authority Act 1992* (Cth). Their Honours expressly limited their analysis to the subject, scope and purpose of that Act[107] and were not applying concepts from the common law of standing.

76. *Allan* does not address the standing of a plaintiff with a special interest in the subject matter of the action under common law.

No Inference that Statute is Subordinate to Common Law

77. Of course, the fact that a statutory scheme "speaks directly" to who may enforce its norms is no occasion for drawing "standardised inferences",[108] but it may signal the need to construe that scheme to determine if the grant of standing is exclusive.

78. Basten AJA and Griffiths AJA undertook that task (at CA [4]–[30] and [105]–[118]), and concluded that the standing conferred on the EPA was non-exclusive.

79. It is trite that where there is an "interaction" (if that term is taken to mean a conflict) between common law and statute, common law gives way to the extent of any inconsistency.[109] But conferral of standing on the EPA by s 69SB(1) of the *Forestry Act* and retention of common law standing do not constitute an "interaction" (or conflict). They operate independently without inconsistency.

No basis to interpret grant of standing to an enforcement agency as exclusive

80. As discussed above, common law standing to enforce public laws enhances the rule of law and accountability to the courts for unlawful conduct.[110]

81. A construction that has common law standing coexisting with a grant of standing to a "facially suitable class of persons" does not imply any inadequacy in the law requiring

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[103] Ibid.
[104] (2001) 208 CLR 167.
[105] AS [43].
[106] *Allan* [16] (Gleeson CJ, Gaudron, Gummow, Hayne and Callinan JJ).
[107] Ibid.
[108] AS [44].
[109] Ibid.
[110] See RS above [~~46~~41]–[~~48~~50].

equity's intervention,[111] nor is it an attempt by the common law to "improve on a regulatory scheme by supplementing the statutory consequences for its breach".[112] Rather, it reflects the public interest in restraining agencies with public power from breaking laws not enforced by the designated regulator.[113]

82. The aphorism that equity has no general duty to enforce the law[114] refers to the presently irrelevant principle that courts do not grant injunctions exclusively to restrain commission of a criminal act.

No "proper inference" of intention to establish an exhaustive regulatory scheme

83. Finally, none of the three authorities cited by the appellant supports the claim that there are "many cases" (or, for that matter, any cases) where the proper inference from the fact that Parliament has expressly identified persons who *may* enforce a statute is that the identified classes of persons is exhaustive.

84. In *Bateman's Bay,* Gaudron, Gummow and Kirby JJ merely observed that a particular statute "*may* establish a regulatory scheme which gives an exhaustive measure of judicial review at the instance of competitors or other third parties".[115] *Argos Pty Ltd v Corbell*[116] simply references this statement in *Bateman's Bay.* Latham CJ's observations in *Ramsay* at 240–241 concerned the presently irrelevant question of whether an injunction should issue to restrain breach of the criminal law. In any case, since *Cooney,* Starke J's dissenting views in *Ramsay*[117] have supplanted those expressed by Latham CJ.

Issue Three: Does common law standing attract the "principle of legality"?

85. The principle of legality, or "clear statement rule,"[118] was originally cast as an empirically grounded rule. Since legislative intent to infringe common law rights or deviate from the general system of law was deemed "in the last degree improbable",[119] a construction that imputed such intention unless expressed "with irresistible clearness" was likely inconsistent with true legislative intent.

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[111] AS [44].
[112] Ibid.
[113] See observations of Basten AJA, CA [45], [32].
[114] AS [44], citing ***Ramsay*** *v Aberfoyle Manufacturing Co (Australia) Pty Ltd* (1935) 54 CLR 230, 239 (Latham CJ); another variant is that "equity is not the handmaid of the criminal law": *Ramsay*, 260 (McTiernan J).
[115] *Bateman's Bay* [48] (Gaudron, Gummow and Kirby JJ).
[116] *Argos Pty Ltd v Corbell* (2014) 254 CLR 394, [33] (French CJ and Keane J).
[117] *Ramsay*, 246–50 (Starke J).
[118] As it is known in the USA: *Australian Communications and Media Authority v* ***Today FM*** *(Sydney) Pty Ltd* (2015) 255 CLR 352, [67] (Gageler J).
[119] *Potter v Minahan* (1908) 7 CLR 277, 304 (O'Connor J).

86. This rationale persisted to the late 20th century.[120] But in ***Coco*** *v The Queen*[121] a parallel imperative was recognised: to "enhance the parliamentary process by securing a greater measure of attention to the impact of legislative proposals on fundamental rights".[122] S120/2024

87. As the appellant correctly observes,[123] the contemporary rationale for the principle of legality is no longer predictive (of parliamentary intent), but rather normative.[124] Nowadays, the principle is justified as a means to "protect from inadvertent and collateral alteration rights, freedoms, immunities, principles and values that are important within our system of representative and responsible government under the rule of law"[125] The principle "favours a construction, if one be available, which avoids or ~~minimizes~~ minimises a statute's encroachment upon fundamental principles, rights and freedoms of common law".[126]

88. No modern decisions of this court have understood the principle of legality to require irresistible clarity before a statute could be construed as abrogating any principle of the common law or 'ordinary' common law right.[127]

89. The appellant's error lies in imputing to the Court of Appeal the view that the principle of legality applies because a principle of the common law or an 'ordinary' common law right would be abrogated if common law standing were abolished.[128] It is clear that Griffiths AJA considered "well established common law standing" to be a fundamental right, privilege or liberty to which, for that reason, the principal of legality applies.[129]

The principle of legality is attracted

90. The appellant argues that the principles of common law standing do not constitute "fundamental rights or freedoms" which attract the principle of legality. Framing the discourse by reference to the plaintiff's "rights" confuses the issue. As explained,[130] in public interest cases, a plaintiff with the requisite special interest vindicates invasion of

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[120] ***Bropho*** *v Western Australia* (1990) 171 CLR 1, 17–18 (Mason CJ; Deane, Dawson, Toohey, Gaudron and McHugh JJ).
[121] (1994) 179 CLR 427.
[122] *Coco* 437–38 (Mason CJ, Brennan, Gaudron and McHugh JJ); see also *R v Home Secretary; Ex parte Simms* [2000] 2 AC 115, 131 (Lord Hoffman).
[123] AS [35].
[124] See discussion in Brendan Lim, "The Rationales for the Principles of Legality" in Dan Meagher and Matthew Groves (eds), *The Principle of Legality in Australia and New Zealand* (Federation Press, 2017), Chapter 1.
[125] ***Lee*** *v New South Wales Crime Commission* (2013) 251 CLR 196, [313] (Gageler and Keane JJ); *Today FM* [67] (Gageler J).
[126] *North Australian Aboriginal Justice Agency Limited v Northern Territory of Australia* (2015) 256 CLR 569, [11] (French CJ, Kiefel and Bell JJ).
[127] See AS [36]–[40]
[128] AS [40].
[129] CA ~~[1116]~~[116].
[130] RS above [~~11~~42]–[~~15~~45].

public rights. No freestanding right or cause of action or entitlement is required to seek public law injunctive relief: injunctions go, and have always gone, to undo the wrong that was done.[131] A public interest injunction compels the defendant to act within the law. S120/2024

91. Thus, it is not the plaintiff's loss of a "right" to bring a particular proceeding that necessarily attracts the principle. It is attracted by the need to protect an important, and in many cases the only, means of upholding the rule of law by ensuring both that the courts are available as a forum for restraining invasion of public rights and that the those with power to impact public interest are held accountable to the courts for any unlawful conduct.[132] Gageler and Keane JJ, referring to the principle of legality, said in *Lee:*

> Application of the principle of construction is not confined to the protection of rights, freedoms or immunities that are hard-edged, of long standing or recognised and enforceable or otherwise protected at common law. The principle extends to the protection of fundamental principles and systemic values.[133]

92. As discussed above,[134] common law standing protects fundamental principles and systemic values that attract the operation of the principle of legality.

No dilution of the need for "irresistible clearness"

93. The principle of legality varies with the context in which it is applied. The required clarity increases as the rights become more "fundamental or "important".[135] The extent to which a common law principle is embedded in the fabric of the legal system within which Parliament operates will affect the force with which the principle applies.[136]

94. The preceding discussion establishes that the right to challenge unlawful action by governments and those whose actions affect the public protects particularly "fundamental" and "important" values. Each of the appellant's three contrary arguments to the effect that common law standing deserves only "low tensity protection"[137] fail.

95. The assertion that the right to bring proceedings to challenge unlawful conduct in the public sphere is of "relatively recent origin" is factually incorrect. The common law as declared in *ACF*[138] and subsequent cases represents the current point of the evolution of the Court of Chancery's intervention in public law matters dating back at least to the nineteenth century.[139] In any event, a common law right can protect a fundamental principle or value

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[131] *Smethurst* [179], [183] (Gordon J).
[132] *Lee* [313] (Gageler and Keane JJ).
[133] Ibid.
[134] RS [~~10~~41]–[~~22~~50] above.
[135] *Hurt v the King* (2024) 98 ALJR 485, [106] (Edelman, Steward and Gleeson JJ).
[136] *Commissioner of Taxation v Tomaras* (2018) 265 CLR 434, [101] (Edelman J).
[137] AS [41].
[138] *ACF*, 527, 530–31 (Gibbs J).
[139] See brief summary of the development of the law of standing RS above [~~17~~53]–[~~19~~55].

without itself being ancient.[140] And the fundamental principal protected in this case, the rule of law, is indeed ancient: it has its roots in the Magna Carta, which itself confirmed earlier principles of the common law.[141] S120/2024

96. The appellant argues that less protection is required because the right exists for the public good rather than private interests. No basis is offered for this submission.

97. Finally, common law standing is not a "gap-filler, recognised where the statutory scheme provides inadequate remedies".[142] The appellant misinterprets observations of Gummow J in *Truth About Motorways*,[143] Gaudron J in *City of Enfield*,[144] and Gaudron, Gummow and Kirby JJ in *Bateman's Bay*.[145] The "inadequate remedies" to which their Honours refer are the prerogative writs, not the remedies provided by any particular statutory scheme.

Part VI: STATEMENT OF ARGUMENT ON NOTICE OF CONTENTION

1. This section is not applicable.

Part VII: ORAL ARGUMENT

1. The Respondent estimates that it will need 1.5 hours for oral argument.

Dated ~~21 November 2024~~ 24 November 2024



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[140] *Lee* [310], [313] (Gageler and Keane JJ).
[141] See *Antunovic v Dawson* (2010) 30 VR 355, [38]–[45] (Bell J).
[142] AS [41] (apparently a reference to AS [25]).
[143] *Truth About Motorways* [98] (Gummow J).
[144] *City of Enfield* [58] (Gaudron J).
[145] *Bateman's Bay* [25] (Gaudron, Gummow and Kirby JJ).

ANNEXURE TO RESPONDENT'S SUBMISSIONS

Pursuant to Practice Direction No. 1 of 2019, the respondent sets out below a list of the constitutional provisions, statutes and statutory instruments referred to in these submissions.

Description	Provision(s)	Version
A. Statutes		
Australian Consumer Law, at Schedule 2, *Competition and Consumer Act 2010* (Cth)	s 232(2)	Current
Biodiversity Conservation Act 2016 (NSW)	s 1.3, ss 13.3, 13.14, 13.14A, 13.15, 13.16, 13.17, Pt 13	Version for 15 December 2023 to 4 April 2024
Biological Control Act 1985 (NSW)	All	Current
Biosecurity Act 2015 (NSW)	All	Current
Building and Development Certifiers Act 2018 (NSW)	All	Current
Coal Mine Subsidence Compensation Act 2017 (NSW)	All	Current
Coastal Management Act 2016 (NSW)	All	Current
Contaminated Land Management Act 1997 (NSW)	ss 94, 96	Current
Crown Land Management Act 2016 (NSW)	All	Current
Dangerous Goods (Road and Rail Transport) Act 2008	All	Current

Design and Building Practitioners Act 2020 (NSW)	All	Current
Environmental Planning and Assessment Act 1979 (NSW)	Pts 5, 6	As made (No 203 of 1979)
Environmental Planning and Assessment Act 1979 (NSW)	ss 111, 112, 123, Part 5	Version for 26 November 1998 to 31 December 1998
Environmental Planning and Assessment Act 1979 (NSW)	s 9.45	Version for 1 January 2024 to 30 June 2024
Environmental Trust Act 1998 (NSW)	All	Current
Fire and Emergency Services Levy Act 2017 (NSW)	All	Current
Forestry Act 2012 (NSW)	s 69SB, Sch 4.11, Item 16	As made (No 96 of 2012)
Forestry Act 2012 (NSW)	ss 3, 10, 13, 14, 59, 69L, 69P, 69SA, 69ZA, Part 5B	Version for 30 October 2023 to date
Forestry and National Park Estate Act (NSW)	ss 25, 32, 36, 37, 38, 39, 40, Pt 4	As made (No 163 of 1998)
Forestry Legislation Amendment Act 2018 (NSW)	Sch 2, 3	As made (No 40 of 2018)
Interpretation Act 1987 (NSW)	s 30, 35	Version for 9 August 2024 to date
Land and Environment Court Act 1979 (NSW)	ss 20, s 20(1)(cga), 22, 23	Version for 30 October 2023 to 29 February 2024
Local Land Services Act 2013 (NSW)	s 60ZZB; otherwise All except Parts 5A and 5B	Current
Pipelines Act 1967 (NSW)	All	Current
Plantations and Reafforestation Act 1999 (NSW)	All	Current

Plastic Reduction and Circular Economy Act 2021	All	Current
Plumbing and Drainage Act 2011 (NSW)	All	Current
Protection of the Environment Administration Act 1991 (NSW)	s 5, 6, 7, 15, 16, 17,	Version for 24 October 2023 to 24 March 2024
Protection of the Environment Operations Act 1997 (NSW)	s 252	Version for 24 October 2023 to 24 March 2024
Recreation Vehicles Act 1983 (NSW)	All	Current
Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW)	All	Current
Restricted Premises Act 1943 (NSW)	All	Current
Swimming Pools Act 1992 (NSW)	All	Current
Waste Avoidance and Resource Recovery Act 2001 (NSW)	All	Current