
Access to Environmental Justice

Lee McIntosh

Environmental Defender's Office WA
(Inc)

International obligation

- › *Rio Declaration on Environment and Development - Principles on General Rights and Obligations Principle 10:*

“Environmental issues are best handled with the participation of all concerned citizens.... Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Opportunities – environmental impact assessment

- › Any person can refer a proposal to the EPA
 - › Any person can make a submission to the EPA
 - › Any person can lodge an appeal with the Minister for the Environment against the EPA's decisions
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Opportunities – mining projects

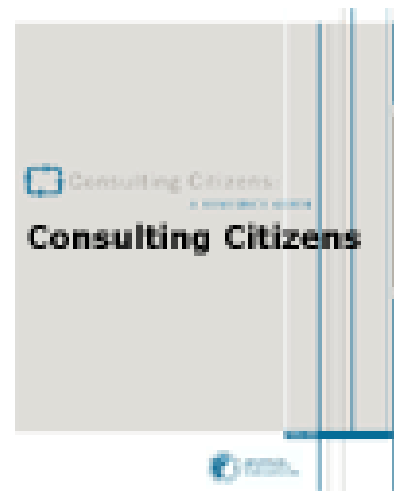
- › Any person can lodge an objection on environmental grounds
 - › Mining Warden's Court
 - › Formal hearing
 - › No costs jurisdiction
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Opportunities – other development approvals

- › Planning approval from local government
 - › Water licences
 - › Polluting industry licences
 - › Land clearing
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Opportunities – public consultation

- › Law reform
- › Consulting Citizens: A Resource Guide



Constraints –

process v outcomes; law v facts

- › Courts are concerned with legal process, not environmental outcomes

 - › Need to identify an error of law
 - £ Failure to consider a relevant matter
 - £ Considering an irrelevant matter
 - £ Manifestly unreasonable decision

 - › Difficulties associated with scientific evidence
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Constraints – going to court

- › Costs
 - › Time
 - › Undertaking as to damages
 - › Need to obtain injunction to prevent damage before it occurs
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Constraints - standing

- › Need to have a special interest:
“more than a mere intellectual or emotional concern”
 - › Relaxed standing in NSW and under Commonwealth law
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Constraints – criminal enforcement

- › Preventing anticipated illegal conduct
 - › Restriction of people who can bring proceedings
- “The utility of the enforcement threat is enhanced by having third parties able to bring prosecutions.”*
(Briody and Prenzler “The Enforcement of Environmental Protection Laws in Queensland: A Case of Regulatory Capture?” *Environmental Planning and Law Journal* (1998) Vol 15 No 1
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Constraints – need to identify a cause of action



- › Negligence, nuisance and trespass
- › Need for statutory causes of action

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