

**ACCESS TO ENVIRONMENTAL
JUSTICE
EDO CONFERENCE
20 February 2004**



Environmental
Defender's
Office
Western Australia (Inc)

**Standing, errors of law on the face of the
record, remedies and costs**

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Standing

- **What is standing?**
 - Procedural machinery that allows a private individual to assert a right to challenge a decision of a public official either by the prerogative writs or by statutory review
 - *Australian Conservation Foundation Inc v Commonwealth*
 - *Bateman's Bay LALC v ACBF (November, 1998)*
 - Sufficient interest, means something to gain or lose, other than righting a wrong, e.g.; neighbours, business interests,
 - Emotional or intellectual concern inadequate as a basis for standing
 - A-G relator action – public interest rights e.g. public nuisance where no-one has a special interest
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Statutory standing

- Administrative Decisions (Judicial Review) Act 1977
 - Aggrieved person s 5(1)
 - Others interested s 12
 - All existing heads of errors of law are included and expanded upon in ss 5 and 6
 - Administrative Appeals Tribunal Act 1975
 - Interests must be affected: s 27(1) AAT Act
 - An organization shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organization: s 27(2) AAT Act
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Statutory standing

- Environmental Protection and Biodiversity Conservation Act 1999 (Cth)
 - *Booth v Bosworth* [2000] FAC 1878
 - No standing threshold for some statutory rights to be exercised e.g.
 - Environmental Protection Act 1986 (WA)
 - Mining Act 1978 (WA) *Re Heaney ex p. Serpentine Jarrahdale* (No.2)
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Error of law on the face of the record

- Certiorari for non-jurisdictional error

- Craig v South Australia

- The “record” for the purposes of certiorari is confined to the documents initiating and defining the matter in the inferior court and the impugned order or determination. In the absence of some statutory provision to the contrary, the record of an inferior court for the purposes of certiorari does not ordinarily include the transcript, the exhibits or the reasons for decision.
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Remedies

- Prerogative remedies
 - Certiorari – setting aside the legal consequences of the unlawful decision
 - Prohibition – preventing a public decision-maker from a wrongful decision, or wrongful conduct
 - Mandamus – requiring a public official to make a decision

 - Equitable remedies
 - Injunction and Declaration
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Costs

- Prerogative and equitable remedies: generally, costs follow the event, which means the loser pays the winners costs, as well its own costs, each likely to be in excess of \$20,000, but Court does have a discretion not to so order in the case of environmental groups
 - ADJR: Federal court legislation provides a discretion as to award of costs and security for costs
 - The AAT has no power to award costs
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EDO (WA) Inc.

- Advice to those unable to afford private legal advice on:
 - Environmental legal issues
 - Must be an issue of a public interest nature
 - Publications on law reform and for legal education purposes at
 - www.edo.org.au/edowa
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