

**SUBMISSION ON THE QLD ATTORNEY-
GENERAL'S DISCUSSION PAPER**

**ESTABLISHMENT OF THE LAND
AND ENVIRONMENT COURT**

**ENVIRONMENTAL DEFENDERS OFFICE
QUEENSLAND INC.**

**ENVIRONMENTAL DEFENDERS OFFICE
NORTHERN QUEENSLAND INC.**

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Summary of Submission

Jurisdiction

The EDO-Qld and the EDO-NQ ("the EDOs") are of the view that if the proposed Land and Environment Court ("LEC") is established, then that Court, rather than the District Court, ought to enjoy jurisdiction for Water Act allocation and management matters. The EDOs note that the EDO-Qld submission in 1999, that the Planning and Environment Court be given jurisdiction for hearing matters under the Water Act 2000, was not taken up. The express reason given was that the possible future amalgamation of the Land Court, the Land and Resources Tribunal would create a more suitable jurisdiction for the hearing of Water Act related disputes.

The EDOs are of the view that the jurisdiction of the new LEC should be expanded to include a criminal jurisdiction. For example prosecutions under the Integrated Planning Act 1997, the Environmental Protection Act 1994 and the Nature Conservation Act 1992 could perhaps be brought before the LEC rather than the Magistrates Court.

The EDOs propose that the LEC jurisdiction only include the jurisdiction of the Aboriginal and Torres Strait Islander Land Tribunals if upon appropriately broad consultation it appears that the Indigenous Australians likely to be affected by such a decision are in favour of the amalgamation. The EDOs note that currently there is a review of the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991 and suggest that consultation undertaken as part of that review should address the issue.

Evidence

The EDOs consider the rules of evidence to be a very valuable tool to ensuring only reliable relevant material is considered by decision-makers. Our general approach is that such rules should not be lightly departed from.

Community Groups and Experts' Fees

The EDOs see strong advantages to the appointment of Court experts but do have concerns in relation to possible costs consequences for community groups and environment groups. The costs associated with running a planning appeal already pose a major impediment to real community participation in environmental decision making. There is no legal aid for public interest environmental cases in Queensland. Thus while the EDOs are able to provide free legal representation or legal representation at a vastly reduced cost for a small number of environmental groups as solicitors, these groups still need to find funds to pay for barristers and in many cases, for experts. The reality is that those groups can only afford to pay, and with great difficulty

even at discounted rates, one or two expert witnesses, even though they often need three or four¹.

If Court appointed experts are used, a reliable mechanism will be needed to ensure that public interest environmental groups and community groups are charged only a low agreed capped amount of the relevant fees. Otherwise the suggested system of court appointed experts will price the community out of the proposed Land and Environment Court.

The EDOs do note one strong advantage of the Court engaging expert witnesses, namely increased independence of the witness' testimony from the views of the party that engaged him or her. Where developers, especially professional developers with a string of projects, engage experts, those experts have a strong financial incentive to adopt the view preferred by the developer to gain fees in the Court case and for later projects. These experts have also often been involved with the development project for many years and in that way also may lose their objectivity.

Rules

In the Planning and Environment Court, the special Planning and Environment Rules apply, with the UCPR applying in the absence of an appropriate P&E Rule. There are many self-represented litigants in the Planning and Environment Court who need to access simple rules and forms, preferably found in one document, to have a reasonable chance to represent themselves in the Court. The current Planning and Environment Court rules serve this purpose quite well but could be expanded upon to be more comprehensive. It will be important for community participation in the new Court that some form of special Planning and Environment Court Rules apply, so that appellants do not have to rely upon the complex Uniform Civil Procedure Rules.

The EDOs would suggest including provisions in the rules to prevent obstructive behaviour, intimidation and misrepresentation of the legal reality (in particular with respect to costs) by solicitors engaged by developers. Some of these solicitors conduct litigation against self-represented litigants in an intimidating style and in a way designed to waste resources, for example by threatening with costs when the self-represented litigant is not at risk of costs or placing unreasonable barriers to conduct of a site inspection. Such solicitors also often conduct litigation so as to increase expenditure of the very limited resources of community groups. It is useful to consider including provisions in the rules or the legislation to minimise or provide penalties for such intimidation.

¹ For example in *Friends of Springbrook Alliance Inc. and Ors v Gold Coast City Council and Stone* P&E Appeal number 6-8 of 2003, Southport the appellant group could not afford a water quality expert, even though this was one of three relevant areas of expertise.

For example in one case the appellant architect gave evidence himself on cultural matters associated with a controversial tourist development proposed close to the site of Cook's landing however there were no funds available to engage a town planner or other experts.

Costs rules, IPA provisions superior to discretion

In the EDOs' experience, in order for community groups or environmental groups to decide to undertake Court action in the community interest, they need to know in clear terms the costs implications of an unsuccessful appeal. The current IPA provisions limit the power of the Court to award costs only in clearly specified circumstances (eg frivolous or vexatious action, late application for adjournment etc). This means that a group can have certainty that with diligence an adverse costs order will be avoided. This certainty is very important when a community group is weighing the risks of going to Court.

By contrast if the Court is given a general discretion to order costs "when it is fair and reasonable" groups have less certainty as to possible costs orders and there is a increased risk of inappropriate costs orders. Prior to passage of the Local Government (Planning and Environment) Act 1990 the general discretion approach to costs was rejected for this reason².

In short the EDOs strongly advocate the IPA 4.1.23 provisions on costs be carried over to the LEC.

As an example of the implications of less certain costs rules is that groups are often nervous of appealing a loss or defending a win in the P&E court to a higher Court and therefore decide not to appeal, even where there may be relatively good prospects. If the LEC is to be a Court that really is "user friendly" to public interest litigants costs rules should retain certainty in relation to costs associated with preliminary appeals to the new LEC and the possibility of applying those costs rules to proposed appellate jurisdictions should also be considered.

Legal Aid

EDOs strongly suggest that Legal Aid for planning and environmental cases is reinstated in Queensland, due to extreme difficulties facing community groups and self-represented litigants in its absence.

² In the Parliamentary debate that preceded the passage of the *Local Government (Planning and Environment) Act 1990* (Qld) this issue was addressed by Matt Foley, later Attorney-General, who did not favour the general discretion as to costs which was not included in that Act or in the *Integrated Planning Act 1997* (Qld) which replaced and repealed that Act.

JURISDICTION

QUESTIONS FOR DISCUSSION

- 1) *Should the Land and Environment Court only have the existing jurisdiction of the Planning and Environment Court, Land Court and the Land and Resources Tribunal? Should any additional jurisdictions be conferred on the Land and Environment Court?*

The EDOs are of the view that the jurisdiction of the new LEC should be expanded to include a criminal jurisdiction. For example prosecutions under the Integrated Planning Act 1997, the Environmental Protection Act 1994 and the Nature Conservation Act 1992 could perhaps be brought before the LEC rather than the Magistrates Court. While these matters do involve criminal offences, it is difficult to understand the consequences of breaches of these laws without having expertise in environmental law. Therefore it may be that LEC Judges are better suited to hearing these matters³.

Further, the jurisdiction of the LEC should include jurisdiction to hear matters under the Water Act. Section 784 of the Water Act 2000 (Qld) provides jurisdiction to the District Court to hear proceedings for orders to remedy or restrain commission of offences against the Water Act 2000. Open legal standing provisions for certain offences against the Water Act⁴ were included in that Act at the submission of the EDO Qld. However our submission in 1999 that that jurisdiction be given to the P & E Court which had greater experience in environmental matters than the general District Court was not taken up with the express reason given that there would later be a possible amalgamation of the LRT and the Land Court and that that new body might be more suitable.

We suggest that the LEC not the District Court be given jurisdiction for Water Act allocation and management matters.

There are some other environmental laws that have given jurisdiction to the Magistrates Court to review permits and the like, instead of the Planning and Environment Court. For example, under Marine Parks Bill 2004 that has just been passed by parliament and not yet commenced, appeals are to be made to the Magistrates Court for review of decisions.⁵ This jurisdiction should likewise be transferred to the Land and Environment Court.

³ In NSW, criminal offences are dealt with by the Land and Environment Court- Land and Environment Court Act 1979, s.21, s.21A and 21B.

⁴ Examples of Chapter 2 Water Act 2000 (Qld) offences to which open legal standing rights apply and where environmental issues will need to be canvassed include s810 WA, using water contrary to approved land and water management plan, s812 WA, Contravening condition of water allocation, and s814 WA Destroying Vegetation, excavating or placing fill without a permit.

⁵ Marine Parks Bill 2004 s.121

2) Is it appropriate for the Land and Environment Court jurisdiction to include the jurisdiction of the Aboriginal or Torres Strait Islander Land Tribunals?

The EDOs propose that the LEC jurisdiction only include the jurisdiction of the Aboriginal and Torres Strait Islander Land Tribunals if upon appropriately broad consultation it appears that the Indigenous Australians likely to be affected by such a decision are in favour of the amalgamation. The EDOs note that currently there is a review of the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991 and suggest that consultation undertaken as part of that review should address the issue. Any Judge or Member dealing with Indigenous land issues should have significant and recognised experience in Indigenous issues and in particular an understanding of cultural heritage issues.

APPOINTMENT OF MEMBERS

QUESTIONS FOR DISCUSSION

3) Do other areas of expertise exist which should be identified as disciplines for which Members may be appointed?

It will be important that any Members appointed come from a wide cross section of backgrounds and sit on matters relevant to their areas of expertise. The range of areas proposed appears comprehensive however, if the new LEC is to have the jurisdiction to hear matters under the Water Act then members familiar with water allocation issues should be included. Further, if the LEC is to have the jurisdiction of the Aboriginal and Torres Strait Islander Land Tribunals then there should be Members with expertise in anthropology.

4) Should Members be able to be appointed temporarily to the LEC, for example, on a daily basis for the duration of the hearing of a matter?

The EDOs do not support temporary appointments to the LEC. In the interests of judicial independence and accountability, members and judges should be appointment permanently, as occurs in all other Courts.

5) Is it appropriate for Members to be able to be appointed on a sessional basis?

For the reasons set out in relation to question 4, the EDOs would only support Members being appointed on a sessional basis if arrangements were made to ensure the independence of those members. The EDOs do note that in regional areas there will be need for flexibility in appointments, for example where there is insufficient volume of work to justify a full time local appointment. The EDOs would support an arrangement where members from Brisbane with particular areas of expertise are flown to the regions on a rotational basis but only if sufficient safeguards were put in place to ensure that members from Brisbane allocated to sit in a regional area for a short

period are selected in an impartial manner. For example members allocated to sit in the regions could be listed, with members selected as their name reaches the top of the list.

ORGANISATION OF MATTERS/CASE MANAGEMENT

QUESTIONS FOR DISCUSSION

6) What options exist for identification of matters that are appropriately to be allocated to Judges and/or Members?

Whilst it will be important to ensure Members and Judges are allocated to areas within which they have expertise, it will also be important for maintaining a perception of impartiality, that is, that there is no discretion in the appointment of Judges and Members to particular cases. Many Courts have lists of judges who have the experience and expertise to hear particular specialised matters and matters are allocated to the next person on the list each time a new matter relating to the area in question comes before the Court, The EDOs would suggest adopting this kind of allocation procedure.

7) What kinds of matters should Members be able to deal with in the planning jurisdiction?

Members should only be able to deal with merits appeals, specifically within the area of their expertise. Members should only be able to deal with straight forward planning and environment matters and only where the issues in dispute are merits based. All matters involving interpretation of law, such as proceedings for declaratory relief, should be heard by a judge. If a point of law arises in a predominately merits based appeal being heard by a Member, that point of law should be referred to a Judge for his/her decision before the appeal continues.

8) Should Members be able to deal with any other more general planning matters?

9) What method of case management should be used to ensure the objectives of the new Land and Environment Court?

MEDIATION

A primary objective of the Land and Environment Court will be to encourage parties to resolve as many issues as possible, if not the entire matter, without the matter having to come to the court for determination.

It is proposed that the Court will have powers of referral to alternate dispute resolution similar to those established in the Uniform Civil Procedure Rules 1999.

QUESTIONS FOR DISCUSSION

10) In what circumstances should the court direct mediation?

It is the view of the EDOs that in most cases, mediation will be unlikely to be successful and therefore inappropriate in most cases. None of the planning appeals that EDO has worked on have used mediation. The routine P&E Court order that parties attempt to settle an appeal prior to hearing has not been fruitful in our experience as clients do not wish to allow proposed developments which will destroy conservation values and developers are unwilling to compromise. Where settlement has occurred, conservationists have often only unwillingly accepted settlement due to lack of fulsome resources to run the case⁶.

The EDOs would recommend mediation only in limited circumstances and would strongly recommend that mediation never be imposed upon a party. The Court should suggest mediation only in limited planning appeals where the parties agree that the proposal does not conflict with the strategic plan and where there are no major environmental impacts from the development being appealed. For example, if residents are concerned about a particular development only in relation to its impact on open space, public amenity and increased landscaping and set back of buildings could deal with these issues, then mediation could be useful.

11) Should mediation be compulsory in any circumstances?

Mediation should never be compulsory for the reasons set out above.

12) Are there any matters which must not be mediated?

See comments in relation to questions 11 and 13. Further, if any environmental offences including criminal offences are included in the jurisdiction is to be given to the LEC then such matters should never be mediated.

13) What additional dispute resolution options should be available?

One possible dispute resolution option could be the use of preliminary conferences to assess whether a dispute is able to be mediated or whether the dispute should proceed to case management. Preliminary conferences are used in the Administrative Appeals Tribunal (which is set up to be user friendly) to bring the parties together in an attempt to ascertain the major issues in dispute and what the parties agree upon and to then investigate whether there are any options to resolve the dispute.

Any such use of preliminary conferences should be carefully implemented to ensure appellant groups are not disadvantaged by overly strict time frames.

⁶ *Gold Coast Environment Council. and Ors v Gold Coast City Council and Lyrebird Ridge Café and Gallery* P&E Appeal number 376 &377 of 2003, Southport

Often large projects with major potential consequences for the environment have been proposed and developed over many years. As a consequence developers and experts retained by them have an immediate familiarity with the issues that it will take community groups and the experts engaged by them some time to develop. Any preliminary conferencing should not be imposed prior to community groups being able to adequately brief experts and counsel and organise any necessary site inspections.

While the P&E Court has made excellent efforts to more actively manage cases, it may also be useful if matters were more actively managed from the start to ensure there are clear timetables for not only discovery and filing of expert evidence, but also for evidence of lay persons and preparation of tender bundles.

APPLICATION OF THE RULES OF EVIDENCE

QUESTIONS FOR DISCUSSION

- 14) *To what extent and in what circumstances, should the rules of evidence apply to matters in the LEC?*
- 15) *Should the court have the discretion not to apply the rules of evidence?*
- 16) *In what circumstances should the court exercise discretion not to apply the rules of evidence?*

The EDOs' general approach is that the rules of evidence are a very valuable tool to ensuring reliable relevant material is considered by the decision-makers and departures should not be taken lightly. Our experience in the Planning and Environment Court is that irrelevant economic evidence is sometimes inappropriately allowed in during planning appeals. For example, that an applicant for a development approval seeks the development approval "to obtain a modest income during retirement"⁷ is not appropriate to a public interest debate about the change of use. This is so particularly given the grounds set out in the Integrated Planning Act 1997 for consideration by IDAS decision makers and on appeal the Court when deciding development applications.

The only circumstances in which the EDOs would support relaxing the rules of evidence would be where litigants in person would be prevented from bringing evidence before the Court on a legal technicality. The exact range of circumstances in which a relaxation of the rules of evidence could occur could be worked out in the future after broader consultation has occurred.

⁷ Statement by applicant in *Friends of Springbrook Alliance Inc. and Ors v Gold Coast City Council and Stone* P&E Appeal number 6-8 of 2003, Southport

EXPERT EVIDENCE

QUESTIONS FOR DISCUSSION

- 17) *What rules should be implemented in relation to the appointment of expert witnesses in the LEC?*
- 18) *Should the court have the power to appoint expert witnesses? In what circumstances should the court have the power to appoint an expert?*
- 19) *Should parties be able to call their own expert witnesses? Should this be as of right or should this be only with the leave of the court?*

The EDOs would support increased independence of witnesses, via Court appointed experts as opposed to experts engaged by the parties. One strong advantage of the Court engaging expert witnesses is increased independence of the witness' testimony from the views of the party that engaged him or her. Where developers, especially professional developers with a string of projects, engage experts, those experts have a strong financial incentive to adopt the view preferred by the developer to gain fees in the Court case and for later projects.

As a general matter of principle, the EDOs would support Court appointed as opposed to party appointed experts in all circumstances where there are planning and/or environment issues in dispute that require expert opinion in order to be resolved. The EDOs would propose that a number of panels of experts be established for different areas of expertise and that experts be appointed to these panels in consultation with key stake holders. Experts could then be selected from the relevant panel as their name comes up on the list.

The EDOs do have concerns however in relation to possible costs consequences for community groups and environment groups of Court appointed experts. The costs associated with running a planning appeal already pose a major impediment to real community participation in environmental decision making. A major issue for community groups and environmental groups is that there is no legal aid for public interest environmental cases in Queensland. Thus while the EDO is able to provide legal representation for a small number of environmental groups as solicitors, groups still need to find funds to pay barristers and experts. The reality is that those groups can only afford to pay, and with great difficulty even at discounted rates, one or two expert witnesses even when they often need three or four⁸. Often groups cannot afford experts at all and therefore do not appeal development approvals despite there being grounds for such appeal.

⁸ For example in *Friends of Springbrook Alliance Inc. and Ors v Gold Coast City Council and Stone P&E* Appeal number 6-8 of 2003, Southport the appellant group could not afford a water quality expert, even though this was one of three relevant areas of expertise.

In all of the small number of cases where environmental groups run cases with expert evidence, experts act at vastly reduced fees for community groups (eg \$2,500 instead of \$15,000) or more rarely, completely for free. Thus if Court appointed experts are used, a reliable mechanism is needed so that public interest environmental groups and community groups are charged only a low agreed capped amount of the relevant fees. Otherwise the suggested system of court appointed experts will price the community out of the proposed Land and Environment Court.

In relation to question 19, if fees can be appropriately capped, the EDOs propose that the Court, rather than the parties appoint experts. In some cases, when there is a wide range of issues in dispute, it may be more efficient for individual parties to call the witnesses themselves. The EDO would like an opportunity to discuss this point further in future submissions. It is very important that a party is able to present its own case and arguments. Many areas of science in particular are inconclusive and open to interpretation and it is important that parties are able to obtain and bring evidence in relation to their particular interpretation, even where this makes the Court's role in deciding the dispute more difficult.⁹

RULES OF COURT

It is proposed that the rules of court for the LEC will be developed under power within the establishing legislation. The rules of Court will be different from the Uniform Civil Procedure Rules 1999, in recognition of the objectives to be provided in the establishing legislation and the current procedures of the three jurisdictions.

QUESTIONS FOR DISCUSSION

- 20) *What specific rule making powers should the LEC be provided with?*
- 21) *Should the rules of the LEC be uniform with the UCPR?*
- 22) *What variations to the UCPR should be considered?*
- 23) *Should the LEC be able to decide matters or issues "on the papers"?*
- 24) *Are there specific provisions in legislation (other than the primary legislation setting up the particular body) that provide for procedures that need to be accommodated into any rules of Court? Are any of these*

For example in *Sinnamon v X* the appellant architect gave evidence himself on cultural matters associated with a controversial tourist development proposed close to the site of Cook's landing however there were no funds available to engage a town planner or other experts.

⁹ For a discussion of how the appointment of expert witnesses operates to favour mainstream orthodox views and silence minority or alternative news, see G. Edmond (2003) 'After Objectivity: Expert Evidence and procedural Reform' *Sydney Law Review*, 25, p132.

provisions conflicting?

In the Planning and Environment Court the special P&E Rules apply with the UCPR applying in the absence of an appropriate P&E Rule. There are many self-represented litigants in the Planning and Environment Court who need to access simple rules and forms, found in one document, to have a reasonable chance to represent themselves in the Court. The current Planning and Environment Court Rules provide this to some extent, and could be expanded on so they are more comprehensive. The Court should also be able to make its own rules to enable it to manage the particular types of cases that come before it. The rule making power should be exercised in consultation with Court users however.

In some cases it will be necessary for the LEC rules to depart from the UCPRs, particularly in light of the public interest nature of much of the litigation that might occur in the LEC. For example, rules are and should remain varied in relation to costs.

In relation to the Land and Environment Court deciding matters on the "papers" this should only be by consent of both of the parties. Parties should be able to make oral submissions as of right, and be able to call evidence and cross examine witnesses. Therefore parties should be the only persons who can waive this requirement in circumstances where there are discrete legal issues that can be dealt with by way of written submissions only.

Also, some solicitors conduct litigation against self-represented litigants in an intimidating style eg threatening with costs when the self-represented litigant is not at risk of costs or in a way designed to waste resources, such as placing unreasonable barriers to conduct of a site inspection, requiring more experts than necessary or refusing to negotiate in relation to photocopying costs. It is useful to consider including provisions in the rules or the legislation to minimise or provide penalties for such intimidation.

COSTS

The power of the Land and Environment Court to order costs must be considered.

A possible approach is that each party must bear its own costs, unless the court considers it fair and reasonable to make an order for costs.

Alternatively, the Court could have the power now possessed by the Planning and Environment Court to order costs for the proceedings based on the discretion now conferred by s.4.1.23 of the Integrated Planning Act.

QUESTIONS FOR DISCUSSION

25) *Should the LEC have power to award costs? If so, in what specific circumstances?*

Community groups and environmental groups find it extremely difficult to raise funds to pay their own legal costs, expenses and experts' fees (even if discounted). This is especially so where the groups are in areas undergoing extreme development pressures like the Sunshine Coast and Gold Coast and coastal North Queensland areas, where relevant environmental groups may have to battle a score of major developments every year.

In EDO's experience, in order for community groups or environmental groups to decide to undertake Court action in the community interest, they need to know in clear terms the costs consequences of an unsuccessful appeal. The current IPA provisions limit the power of the Court to clearly specified circumstances (eg frivolous or vexatious action, late application for adjournment etc) in which to award costs which means that a group can have certainty that with diligence an adverse costs order will be avoided. This certainty is very important when a community group is weighing the risks of going to Court and should be retained.

By contrast if the Court is given a general discretion to order costs "when it is fair and reasonable" groups would have less certainty as to possible costs orders and there would also be a increased risk of inappropriate costs orders. Prior to passage of the Local Government (Planning and Environment) Act 1990 the general discretion approach to costs was rejected for this reason¹⁰.

In short EDO strongly advocates the IPA 4.1.23 provisions on costs for the LEC.

Legal Aid

EDOs strongly suggest that Legal Aid for planning and environmental cases is reinstated in Queensland, due to extreme difficulties facing community groups and self-represented litigants in its absence.

APPEALS

A new appeal regime will be required for the LEC. Consultation will resolve the most appropriate format of appeal when considering the objective of maintaining a practical, yet fast and efficient, process.

Options that could be considered include:

¹⁰ In the Parliamentary debate that preceded the passage of the *Local Government (Planning and Environment) Act 1990* (Qld) this issue was addressed by Matt Foley, later Attorney-General, who did not favour the general discretion as to costs which was not included in that Act or in the *Integrated Planning Act 1997* (Qld) which replaced and repealed that Act.

- a) an appeal to the Court of Appeal by leave in cases in which the constitution of the LEC includes a judge. In other cases, that is, in cases in which one or more Members sit without a judge, the appeal could be as of right to a judge of the LEC and then by leave to the Court of Appeal;
- b) an appeal to the Court of Appeal only; and
- c) an appeal to a judge of the LEC by leave and then by leave to the Court of Appeal.

QUESTIONS FOR DISCUSSION

26) Should appeals from decisions of Members in the LEC be to a Judge of the LEC, a Judge sitting with another Member, or to another body?

Currently, the Integrated Planning Act only allows appeals (to the Court of Appeal) with leave on errors of law. Such appeals should always go to a full bench of judges on the Court of Appeal as the grounds are not merits based. If the appellate jurisdiction was to be expanded then perhaps if the appeal related purely to a factual matter, it would be appropriate to have a LEC judge sitting with one or two other members to hear the appeal.

If merit appeals included hearings by members, a mechanism is needed so that if a question of law arises during proceedings it may be speedily referred to a judicial member for determination, eg immediately after lunch or first thing the next morning.

27) Should appeals from Judges of the LEC be to the Supreme Court or the Court of Appeal?

28) Should appeals only be by way of leave of the appeal court?

Currently appeals are by way of leave of the appeal court. The rules should alter this to make appeals as of right. The requirement that leave be given merely complicates and prolongs matters, often wasting the Court's and the parties' resources as two hearings are required, when the appeal itself might often only take half to one day in any event.

29) If other jurisdictions are to be included within the jurisdiction of the LEC, such as the Aboriginal Land Tribunal, should the same appeal mechanisms apply to those jurisdictions?

The EDOs are of the view that for the sake of consistency, appeal mechanisms should apply uniformly to all jurisdictions within the LEC. If merits based appeals are allowed and Members are included on the bench then those members should have expertise and experience in Indigenous land issues.

COSTS ISSUES WRT APPEALS

It is the view of the EDOs that costs rules applicable in the Planning and Environment Court should not only be transferred to the LEC but also to the Court that hears appeals from the LEC. One important costs issues associated with appeals is that groups are nervous of appealing a loss or defending a win in the Planning and Environment court to a higher Court due to the less favourable costs rules. This often prevents groups running appeals, even where there are good prospects. This is not in the interests of good environmental decision making.