

***Re Environmental Protection Authority; Ex Parte Environmental Protection Authority [2003] WASCA 248 - "State Instrumentalities" and "Decision Making Authorities" under the Environmental Protection Act 1986***

In *Re Environmental Protection Authority; Ex Parte Environmental Protection Authority* [2003] WASCA 248, a recent decision of 14 October 2003, the Full Court of the Supreme Court of Western Australia considered whether the Western Australian Town Planning Appeal Tribunal, an independent statutory body, was a "State instrumentality" and therefore a "decision-making authority" for the purposes of the *Environmental Protection Act 1986* (WA) (EP Act).

The Shire of Northam had refused to grant planning approval to BGC for a proposal to extend the boundaries of its quarry. BGC appealed to the Tribunal, which purported to make a decision allowing the proposal to go ahead.

BGC's proposal had been referred to the Environmental Protection Authority (EPA) under the EP Act. The EPA had decided to assess the proposal, thereby precluding any decision-making authority from making any decision which would have the effect of causing or allowing the proposal to be implemented until the Minister for Environment had served an authority to do so on the decision-making authority.

The Full Court held that the Tribunal was a State instrumentality and therefore a decision-making authority within the meaning of the EP Act. The Tribunal was therefore bound not to make any decision which would cause or allow the BGC proposal to be implemented, until the Tribunal was served with an authority to do so by the Minister.

The Court considered that to find otherwise would defeat the purpose of the EP Act, by preventing a local council from causing or allowing a decision to be implemented, but not imposing a similar constraint on any appellate tribunal standing in the shoes of the local authority. The Court considered this restraint to be the only safeguard in the EP Act against a proposal being implemented before the environmental impact assessment process had been completed. Given the importance of the section's function as a safeguard, it would frustrate the objects of the EP Act if the term "decision-making authority" were construed narrowly to exclude such appellate bodies.

The Court also raised, but did not answer, the question whether a court is likely to be considered a "State instrumentality" for the purpose of the EP Act, and therefore bound in the same manner as the Tribunal.