

water resources through mechanisms such as climatic change or recognition that environmental flows are not adequate. Such reductions are permanent. Licences to take water will also be reduced by the amount of water by which an allocation has been reduced. The Minister can also restrict the right to take water during shortages caused by drought or other temporary conditions.

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Contaminated Land Management Act 1997

This Act, which has been discussed in previous issues, with the exceptions of parts 1, 4, 8 and 10 and other sections which commenced on 1 June, commenced operation on 1 September 1998.

Two key features of the Act are the concept of "significant risk of harm" from contaminated land and the duty to report such sites to the EPA. The EPA has released draft guidelines which readers can obtain directly from the EPA.

Also the EPA has published a list of site auditors accredited under the Act, which is available via the EPA's home page

(www.epa.gov.au/clm/auditors.html).

Contaminated Land Management Regulations 1998

These regulations also commenced operation on 1 September 1998. The regulations prescribe certain matters necessary for the proper functioning of the Act, such as the levels of fees, the matters to be included in auditor's annual returns, and they detail the usual transitional provisions.

State Environmental Planning Policy No 55-

SEPP 55 is a crucial component of the new regime relating to contaminated land. It seeks to facilitate the remediation of contaminated sites and provide appropriate mechanisms to reduce risks of harm to the environment and the community. Having commenced on 1 September 1998, SEPP 55 should bring some overdue certainty to the issue of what type of remediation requires development consent. Previously, provisions in SEPP 4 arguably allowed some remediation, but this was resisted by many consent authorities and there was always the uncertainty of how these provisions applied where the remediation was otherwise designated development.

Despite what other environmental planning instruments say, SEPP 55 allows a person to carry out remediation work. For category 1 remediation works, development consent is required. If the site is a "remediation site" under the Contaminated Land Management Act, the development is State Significant Development and the Minister is the consent authority. Category 2 remediation works do not require consent, but the consent authority must be notified of certain matters prior to it commencing.

Planning authorities and consent authorities must consider contamination issues in rezoning matters and in assessing and determining development applications. For certain risky sites, a preliminary investigation (or a more detailed investigation) will be required before consent can be granted.

Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land

These guidelines have replaced the 1995 planning guidelines. These guidelines are those that consent authorities must follow if they are to secure the protection in section 145C of the Environmental Planning and Assessment Act 1979.

Environmental Trust Act 1998

This Act commenced operation on 9 November 1998. It is an Act to fund environmental restoration, rehabilitation, research and education and to fund land acquisition for the national parks estate; to constitute the Environmental Trust to administer the funding arrangements; to repeal the Environmental Restoration and Rehabilitation Trust Act 1990, the Environmental Research Trust Act 1990 and the Environmental Education Trust Act 1990; to amend the Forestry Restructuring and Nature Conservation Act 1995 and other Acts; and for other purposes.

Queensland

What Parliament Gives Parliament Can Take Away

State governments have often facilitated developments by special legislation removing particular land from the general statutory town planning framework. On 2 September 1998 the High Court in *H A Bachrach Pty Ltd -v- The State of Queensland* [1998] HCA 54 held that such special legislation is lawful, and in doing so provided a reminder that rights given under general legislation may be taken away by special legislation.

The plaintiff is the owner of the Caboolture Park Shopping Centre. The third defendant, Keylim Pty Ltd ("Keylim") is the owner of a nearby competing centre, the Morayfield

Village Shopping Centre. Since 1990 a series of applications had been made for approval to rezone adjacent lands to allow for major redevelopment of the Morayfield Village Shopping Centre. For several years the plaintiff had delayed that redevelopment through a series of protracted appeals.

Keylim made a further application and in 1995 successfully obtained the necessary rezoning approval for the development of a major shopping centre. The plaintiff having been unsuccessful in an appeal in the Planning & Environment Court, instituted a further appeal to the Court of Appeal. However, before it could pursue that appeal, the Queensland Government passed the *Local Government (Morayfield Shopping Centre) Act 1996 (Qld)* which permitted the development.

The plaintiff argued that the special legislation was invalid, constituting an interference with the exercise of judicial power incompatible with Chapter III of the Constitution. With the support of South Australia, Victoria and New South Wales, Keylim and The State of Queensland successfully argued that the legislation was within the law-making power of the Queensland Parliament and did not constitute an interference with the exercise of judicial power.

In allowing the demurrers of Keylim and the State of Queensland and giving judgment for the defendants, the High Court decided in a joint judgment that while the Queensland Parliament had the power to enact a law for the orderly development of land generally, it also had the power to pass a special law relating to the use of a particular parcel of land. The High Court concluded that the Queensland Parliament "was not deprived of that power by pending, or