

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

threatened, legal proceedings under another law which it had previously enacted, and which it could repeal or amend as it saw fit.”

In coming to that conclusion the High Court distinguished between powers that are exclusively judicial (such as the determination of criminal guilt) and powers that take their character from the body upon which they are conferred (such as powers under town planning legislation which may be conferred by parliament on either judicial or non-judicial bodies).

A further argument by the plaintiff, challenging the validity of the special legislation, was on the basis that it was legislation *ad hominem*, ie legislation directed solely at the rights of a person who is in conflict with the State. The High Court decided that that was not the case, concluding that the manifest purpose of the special legislation was “to establish a legal regime affecting the Morayfield shopping centre land, binding the developer, the Council, and all other persons including the plaintiff”.

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South Australia

The National Parks and Wildlife (Bookmark Biosphere Trust) Amendment Act 1998 (SA)

The *National Parks and Wildlife (Bookmark Biosphere Trust) Amendment Act 1998* was passed by the South Australian Parliament on 27 August, and came in to operation on 3 September.

The Act, which amends the South Australian *National Parks and Wildlife Act 1972*, represents an Australian

‘first’ in terms of explicit legislative recognition of the role that biosphere reserves, recognised through the United Nations Man and the Biosphere (MAB) Program, play in the conservation of biodiversity.

What are the Bookmark Biosphere Reserve and the Bookmark Biosphere Trust?

The Bookmark Biosphere Reserve comprises approximately 6,060 square kilometres of the Riverland area of South Australia, including 21 areas of reserves under the *National Parks and Wildlife Act 1972* (“the Act”), various pastoral leases, National Trust land, local government reserves and private land.

Much of the land is owned by private citizens and public organisations including the Commonwealth (Calperum Station), local councils, and philanthropic organisations such as the Chicago Zoological Society, Australian Landscape Trust and Birds Australia.

The Bookmark Biosphere Reserve was recognised by UNESCO as a participant in the MAB program in 1996, when the Bookmark Biosphere Trust and the South Australian Department of Environment and Natural Resources entered into a memorandum of understanding with the Australian Nature Conservation Agency, the body responsible for coordinating the MAB Program in Australia on behalf of the Australian National Commission for UNESCO.

The Bookmark Biosphere Trust itself is a statutory corporation (“development trust”) established by the Governor under the Act. The Trust was originally named the “Murraylands Conservation Trust”. It was renamed in 1996, and at the same time given a