

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”.

James Ireland
Minter Ellison

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

“notice of assigned duties” under the Act which required the Trust to assume the role, “with the agreement of landholder participants in the Bookmark Biosphere”, of “coordinating and developing the Bookmark Biosphere program”.⁴ The Trust was to be responsible for “the strategic planning of the Biosphere Reserve including coordinating any public consultation programs or public education programs the Trust thinks fit in relation to Biosphere Reserve management issues.”⁵

Legal implications of the amendments

In a legal sense the amendments are of a minor nature only.

The need for the amendments was identified after some doubt was cast on the scope of the Trust’s ability to operate outside of the various reserves for which it is directly responsible under the Act. As the Bookmark Biosphere Program clearly extends beyond those reserves, legislative certainty was required to put the broader activities of the Trust beyond argument.

The amendments recognise the existence of the MAB program, and the participation of the Bookmark Biosphere Trust in that program.

The amendments insert a definition of “the Man and the Biosphere Program”, and make subsequent reference to it in a new subsection (section 45F(1a)). This new subsection provides that the duties that may be assigned to the Bookmark Biosphere Trust may include duties that, in the opinion of the

Minister (who is responsible for the assignment of duties), “relate to participation by the Trust in the Man and the Biosphere Program”.

Policy implications of the amendments

In achieving a fairly narrow legal aim, the amendments nevertheless bear significant implications for the ‘coming of age’ of the concept of biosphere reserves in South Australia, and put South Australia ahead of other States and the Commonwealth in giving formal recognition, for the first time in Australia, to the biosphere reserve program and the role that biospheres have to play in any comprehensive ‘reserve’ system for biodiversity conservation.

The significance of the amendments was well understood by both Houses of the South Australian Parliament. No fewer than twelve Members of both Houses, from both sides of politics, spoke in support of the amendment Bill.

The Bookmark Biosphere Reserve was praised as a model for achieving sustainable development, through its “focus on community partnerships and education in ecologically sustainable development”.⁶ Biospheres reserves in general were acknowledged as an important mechanism “to protect major ecological systems and to balance the conflicting goals of conserving biodiversity, promoting economic and social development and maintaining cultural values”.⁷

⁴ Notice of assigned duties, 10 December 1996, paragraph 2(a)(iii).

⁵ *Ibid*, paragraph 2(b).

⁶ Second Reading Speech, Hon Dorothy Kotz MP, Minister for Environment and Heritage, Hansard of 5 August 1998.

⁷ Committee debate in the Legislative Council, Hon Mike Elliott, Hansard of 25 August 1998.

Victoria ***New Acid Sulfate Soils Policy***

On 25 August, the EPA announced a new *Industrial Waste Management Policy* covering the management, re-use and disposal of waste acid sulfate soils.

Acid sulfate soils are naturally occurring sediments which can generate sulfuric acid when exposed to oxygen, resulting in pollution of local groundwater and surface waterways through direct acidification and by leaching toxic metals and salts from the soils. The sediments are found in marine and estuarine areas, close to or below the groundwater table.

The policy sets out the management regime required for the disposal and re-use of acid sulfate soils, based on the premise that the best environmental outcome is not to send the soils to prescribed waste landfills but to return them to an environment where oxidation cannot occur.

Major developments in Victoria involving acid sulfate soils include the City Link and Docklands projects.

COURT!

Contamination

A Shepparton orchard company and its two directors were convicted and fined a total of \$25,000 on 14 July following contamination of an irrigation water channel with fungicide in May 1997.

Nethersole Orchards Pty Ltd was fined \$15,000 and its directors \$5000 each. The company was also ordered to pay EPA costs of \$10,000. The three parties each pleaded guilty to illegally dumping industrial waste and another

charge of water pollution relating to human health.

Illegal Landfill

On 6 August, the former site manager of the Chilean Club of Victoria was convicted and ordered to pay nearly \$95,000 in costs over his management of an illegal landfill. The charges, under the *Environment Protection Act 1970*, included operating an illegal landfill, dumping industrial waste and non-payment of a clean up notice fee. The Club was convicted and fined \$500, and ordered to remove all solid inert waste, including building rubble, plastics, tyres, bitumen and car batteries within four months. It was also ordered to pay EPA costs of \$2,500.

EPA investigations revealed that the Club was accepting solid inert waste to build up a section of the land for a soccer stadium and viewing mounds planned for the site.

Oil Spill

The master and owner of the ship, *MV Capitaine Fearn*, were convicted and each fined \$20,000 under section 8(1) of the *Pollution of Waters by Oil and Noxious Substances Act 1986* in the Melbourne Magistrates Court on 13 August.

The charges related to an oil spill on 29 July 1997 when approximately 350-500 litres of diesel oil was discharged from the ship into Port Phillip Bay at the completion of delivery of the diesel from a road tanker. The quantity of oil spilled was significant and had the potential to cause damage to marine life. Melbourne Port Services supervised the clean up, which cost \$6463.