HIGH COURT OF AUSTRALIA

GLEESON CJ,
McHUGH, GUMMOW, KIRBY AND HAYNE JJ

OTTO PFEIFFER APPELLANT

AND

PAUL ERNEST STEVENS RESPONDENT

Pfeiffer v Stevens
[2001] HCA 71
13 December 2001
B40/2001

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of Queensland

Representation:

R A Ingham-Myers with A C Harding for the appellant (instructed by Gall Standfield and Smith)

G J Gibson QC with S M Ure for the respondent (instructed by King & Company)

CATCHWORDS

Pfeiffer v Stevens

Statutes – Construction – By-laws and Regulations – Validity – Procedure for making interim local laws – Whether Minister's power to extend interim local law limited so as to preclude multiple extensions – Whether power to extend interim local law contrary to requirements of sunset provision – Where statute conferred power on Minister to extend interim local law for "longer period" – Whether interim local law had ceased to have effect at relevant time.

Local Government – By-laws and Regulations – Validity – Power of extension of interim local law.

Constitutional law (Cth) – "law of a State" – Constitutional presumptions and penal laws – Contextual implications of limited delegation – Whether multiple extensions of an interim local law that imposes penal sanctions results in uncertain validity.

Words and phrases – "sunset provision", "a longer period", "interim local law".

Acts Interpretation Act 1954 (Q), s 23(1).
Local Government Act 1993 (Q), ss 850, 851, 859, 860, 861, 862, 863.

1 GLEESON CJ AND HAYNE J. The appellant was prosecuted by the respondent, an officer of the Gold Coast City Council, for damaging protected vegetation contrary to s 5(1) of Interim Local Law No 6 (Vegetation Management). The complaint was dismissed by a magistrate (Magistrate Webber) on the ground that, at the time of the alleged offence, the interim local law had ceased to have effect. An appeal to a District Court judge succeeded, the judge (Hanger DCJ) deciding that the interim local law remained in force at the relevant time. The Court of Appeal of Queensland (McPherson JA, Moynihan SJA, and Atkinson J) dismissed an application for leave to appeal, concluding that the decision of the District Court judge was correct.

2 The issue as to whether the interim local law was still in force at the time of the alleged offence turns upon the power of the Minister to extend a period the subject of a sunset provision in the interim local law. It is accepted that the Minister had the power to extend the period once. But the Minister purported to extend it twice, and it was during the period of the second extension that the alleged destruction of vegetation occurred. There is no challenge to the Minister's action on any ground other than that the power to make a second extension did not exist. There is, in particular, no suggestion that there was an abuse of power. The appellant's argument is that, as a matter of statutory construction, the power of extension conferred upon the Minister was capable of being exercised once only. In order to explain how the question arises, it is necessary to refer to the scheme under which interim local laws may be made.

3 Chapter 12 of the *Local Government Act* 1993 (Q) ("the Act"), which begins by noting that a local government's jurisdiction to make laws is stated in Ch 2, provides a law-making process for all laws made by local governments (s 848). A law made by a local government is called a "local law" (s 850). The legislation contemplates model local laws, which are laws proposed by the Minister as suitable for adoption by local governments as a local law (s 851). We are not here concerned with model local laws. The legislation provides for interim local laws, which are local laws that the local government and the Minister agree may be made by using the process in Pt 2 Div 2 of Ch 12 because of the nature of the law (s 852). It also provides for local laws other than model local laws and interim local laws.

4 Part 2 of Ch 12 includes Div 1, which sets out the process for making model local laws, Div 2, which sets out the process for making interim local laws, and Div 3, which sets out the process for making other local laws. Section 865, which is in Div 3, provides that the process stated in Div 3 must be used to make a local law other than a model local law or interim local law. It is convenient to begin with that process.

5 The first step in the Div 3 process is a resolution by the local government proposing to make a law (s 866). The second step is to advise the Minister of the

proposed local law. At that stage the Minister considers State interests, and, depending on the outcome of such consideration, gives certain advice to the local government. Such advice may include advice that the local government may proceed further in making the law, or may impose conditions on the local government (s 867). Thus, the Minister, acting in the light of State interests, exercises a substantial measure of control over the law-making proposal. The next step, assuming advice that permits the local government to proceed, is for the local government to consult with the public about the proposed local law. The consultation procedure, including the period of consultation, is prescribed (s 868). The Minister may have a say in the fixing of the consultation period (s 868(2)). The public may make submissions (s 870). After considering all submissions, the local government must decide, by resolution, whether to proceed with the proposed local law (s 871). If a positive decision is made, the matter is referred again to the Minister to consider State interests once more (s 872). If the Minister considers that State interests are satisfactorily dealt with, then the Minister advises the local council it may proceed to the final step (s 872). The final step is a resolution by the local government to make the proposed local law.

6 That process for making local laws forms the background against which the process for making interim local laws operates. The process for making local laws involves consideration of local interests by the local government, consideration of State interests by the Minister, protection of State interests by the degree of control over the process given to the Minister, public consultation, and a requirement to consider submissions from the public.

7 It is Div 2, which concerns the process for making interim local laws, that is of direct relevance to this case.

8 The first step in Div 2 concerns the proposal for an interim local law. The Act provides:

> "860 (1) The local government must, by resolution, propose to –
>
> (a) make a law; and
>
> (b) get the Minister's agreement to make the law as an interim local law.
>
> (2) The proposed local law must include a sunset provision stating the law will expire –
>
> (a) 6 months after its commencement; or
>
> (b) at the end of a longer period gazetted by the Minister."

9 As was noted above, s 852 provides that, for a law to be proposed as an interim local law, the local government and the Minister must agree that, because of the nature of the law, it may be made using the Div 2 process. The second step in the process is for the local government to advise the Minister of the proposed law and state why it is necessary or desirable for it to be made on an interim basis (s 861). It is only if the Minister agrees, either unconditionally or conditionally, that the local government may proceed to step 3. And even then, before proceeding to step 3, the local government must agree to immediately begin the process stated in Div 3 to make the proposed interim local law as a local law under Div 3 (s 861(4)). Before taking step 3 of the Div 2 process, the local government must begin the Div 3 process (s 861(5)). Thus, the continuation of the Div 2 process is linked with the initiation of the Div 3 process. This is critical to an understanding of the legislative scheme.

10 Step 3 of the Div 2 process is for the local government, by resolution, to make the proposed interim local law (s 862). Step 4 is to give public notice of the law by publication in the Gazette (s 863). The notice must contain certain information (s 863(1)). Section 863(2) provides:

> "The notice also may state the following –
>
> (a) that the local law is an interim local law;
>
> (b) the purposes and general effect of the local law;
>
> (c) the date the local law will expire and that the Minister may extend this date by gazette notice;
>
> (d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
>
> (e) that a copy of the certified copy of the local law may be purchased at the local government's public office."

11 Section 863(2)(c) reflects the provisions of s 860(2), and makes plain, in some respects, what the legislature meant by s 860(2).

12 In the present case, the procedures required by Div 2 were followed. Interim Local Law No 6 (Vegetation Management) was made on 7 March 1997. A notice in the Gazette of 14 March 1997 stated that the interim local law expired on 14 September unless extended by the Minister by Gazette notice. This complied with s 863(2)(c).

13 On 22 August 1997, the Minister extended the interim local law until 14 March 1998. Notice of the extension was published in the Gazette. There is no dispute as to the validity of that extension.

14 On 25 February 1998, the Minister purported to extend the interim local law for a further period ending on 14 September 1998. Notice of the purported extension was published in the Gazette. It was during the period of that purported extension that the appellant allegedly contravened the interim local law. It is the validity of that extension that is in issue.

15 Interim Local Law No 6 (Vegetation Management) contained the following provision, under the heading "Expiry":

> "22. This local law expires six (6) months after it commences or at the end of a longer period gazetted by the Minister."

16 The terms of the provision follow the language of s 860(2) of the Act. The drafting technique adopted is familiar. Instead of the Act providing directly the period for which the proposed interim local law will operate, the Act requires the law itself to include a certain provision as to its expiry. A right or power is conferred, but the manner of its exercise imports a requirement that has the effect of circumscribing the extent of the right or power. A similar technique is common, for example, in corporate regulation[1]. The meaning of cl 22 of the interim local law is the same as that of s 860(2). The question is whether the reference to "a longer period gazetted by the Minister", read in the light of any relevant interpretative provision, is confined to one longer period gazetted by the Minister, or whether the Minister, having once extended the period, may do so again.

17 The expression "gazetted by the Minister" is elliptical, but its meaning is clear. The use of "gazette" as a transitive verb, as in "to gazette a (longer) period", involves two concepts: a power in the Minister to extend the period beyond the six months specified in s 860(1)(a); and a requirement that the power be exercised by the publication of a notice in the Gazette. It is the first concept that is in issue. The existence of the power is expressly recognised in the language of s 863(2)(c). Can the power be exercised once only?

18 Paragraphs (a) and (b) of s 860(2) are not strictly disjunctive. If that were in doubt, the doubt is removed by s 863(2)(c). The two provisions must be read together. Section 863(2)(c) does not deal with the problem of present concern, which is whether, having extended the expiry date once by Gazette notice, the

---

1 eg *Companies Act* 1961 (NSW), s 184 and Tenth Schedule; The Corporations Law, ss 638, 643, 750.

Minister may extend it again. However, as well as showing that pars (a) and (b) of s 860(2) are not disjunctive, it also demonstrates (if demonstration be needed) that what is conferred upon the Minister by s 860(2)(b) is a power to "extend [the expiry] date by gazette notice".

19 Section 23(1) of the *Acts Interpretation Act* 1954 (Q) provides:

> "If an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, as occasion requires."

20 Such an interpretative provision yields to a contrary intention in the legislation in question[2] but, unless such a contrary intention is found in the Act, the provision is directly relevant. That is the basis upon which the Court of Appeal of Queensland decided the case.

21 It was argued for the appellant that there was a manifestation of a contrary intention both in the language of s 860(2)(b) ("a longer period") and in the subject matter (a sunset provision). It was also argued that, if s 23(1) applies, then there is nothing to prevent an indefinite number of extensions; a result said to be incongruous.

22 It was because of these arguments that attention was earlier drawn to the relationship between Div 2 and Div 3, and, in particular, to the requirement that, before proceeding to step 3 in the making of an interim local law, the local government must begin the Div 3 process, involving, as it does, amongst other things, public consultation. The Div 3 process is, by hypothesis, in train at the time the proposed interim local law is made. That is an important aspect of the context in which the Minister comes to exercise the power to extend the expiry date of the interim local law. The statute contemplates that the interim local law will operate against a background of progress towards the making of a local law under Div 3. That is why it is an "interim" law. It is to have force pending the completion of the Div 3 process, which, by virtue of s 861(5), must have begun before the interim local law is made. The Act does not contemplate that an interim local law will operate in the absence of a current Div 3 process. This consideration appears to have been overlooked in some of the arguments which envisaged an indefinite period of regulation of citizens' rights and obligations by Ministerial law-making. The prospect is chimerical. Furthermore, if the local government were to decide that it wanted to bring an end to the Div 3 process, or that the particular local law should not continue to operate on an interim basis,

---

2 *Acts Interpretation Act* 1954 (Q), s 4.

for some reason, it could repeal the law[3]. The Minister cannot force continuation of an interim local law upon an unwilling local government.

23 Because there was no suggestion in the present case that the purported second extension involved an abuse of power by the Minister, we do not know why it was regarded as necessary for there to be such a further extension. But it is not difficult to imagine reasons why a further extension might, in some cases, be desired. The most likely reason would be that the procedures required by Div 3, including public consultation, and consideration, and re-consideration, of State interests by the Minister, were taking longer than anticipated at the time of the original extension. That would be a good practical reason, involving no infringement of anybody's constitutional or other rights, and no infringement of democratic principles, for wishing to have a further extension. It would be surprising if the legislature had overlooked such an obvious possibility, and had not intended to make provision for it. If the argument for the appellant is correct, the way to guard against such an eventuality would be to make, on the first (and only) occasion, an extension of time for such a lengthy period that it would cover all possible contingencies. But that would seem to carry the very kind of consequence which, according to the appellant, we should be astute to avoid. The alternative would be to start the Div 2 process again. Why would that have been intended?

24 One of the purposes of a sunset provision is to require consideration of whether an existing situation should continue, and the taking of a positive step to cause it to continue. The construction preferred by the Court of Appeal is consistent with that objective. And it avoids the surprising result, which flows from the appellant's argument, that the Minister has power to extend the expiry period once for one year, but has no power to extend it twice for six months. Such a result is no easier to reconcile with the purpose of a sunset provision than the alternative; it is more difficult.

25 The words "a longer period" are neutral in relation to the application of s 23(1) of the *Acts Interpretation Act*. The purpose of such an interpretative provision is to permit economy of language. Like an interpretative provision to the effect that the singular includes the plural, it means that to employ the language of singularity does not indicate an intention to deny plurality. If such an intention exists, it must be found elsewhere. Section 860 of the Act was enacted in the light of s 23(1) of the *Acts Interpretation Act*, and should be understood accordingly. For the reasons already given, we do not accept that the Act manifests an intention that s 23(1) should not apply.

---

3 *Acts Interpretation Act*, s 24AA.

26 We agree with the conclusion reached by the Court of Appeal. The appeal should be dismissed with costs.

27 McHUGH J. Section 860(2), which is found in Div 2 of Pt 2 of Ch 12 of the *Local Government Act* 1993 (Q) ("the Act"), provides that an "interim local law":

> "must include a sunset provision stating the law will expire –
>
> (a) 6 months after its commencement; or
>
> (b) at the end of a longer period gazetted by the Minister."

28 Section 23(1) of the *Acts Interpretation Act* 1954 (Q) declares:

> "If an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, as occasion requires."

29 The issue in this appeal, brought against an order of the Court of Appeal of the Supreme Court of Queensland[4], is whether the Minister may extend the sunset period of an interim local law only once. The Court of Appeal held that the Minister could do so more than once. In my opinion, it was correct in so holding. Section 23 of the *Acts Interpretation Act* authorises the Minister to extend the sunset period of an interim local law beyond six months whenever the circumstances of the case require it to be done provided the Minister does so for the purpose of carrying out the objects of Div 3.

Background

30 In March 1997, Gold Coast City Council ("the Council"), which is a "local government" within the meaning of the Act[5], enacted Interim Local Law No 6 (Vegetation Management) ("the Interim Vegetation Law"). Section 22 of the Interim Vegetation Law, headed "Expiry", declared:

> "This local law expires six (6) months after it commences or at the end of a longer period gazetted by the Minister."

31 The Minister extended the period for which the Interim Vegetation Law operated on two separate occasions: the first extension was to 14 March 1998, the second extension was to 14 September 1998.

32 Towards the end of the second extension period, the respondent, who is the chief executive officer of the Council, filed a complaint against the appellant

---

4 *Pfeiffer v Stevens* (2000) 106 LGERA 461.

5 Section 3 of the Act states that "'local government' means a local government established under this Act".

under s 5(1) of the Interim Vegetation Law. That section made it an offence to damage protected vegetation.

33 Subsequently, a stipendiary magistrate dismissed the complaint on the ground that the interim local law was no longer in force. The District Court upheld an appeal by the respondent, holding that the Act permits the Minister to make more than one extension of the sunset period. The Court of Appeal dismissed an appeal against the judgment of the District Court.

The legislative scheme

34 In 1993, the Queensland legislature overhauled its local government laws by replacing them with a new and innovative *Local Government Act*. The Act contains some unique provisions including those in issue in this appeal.

35 Section 2 declares that the objects of the Act include:

> "(a) providing a legal framework for an effective, efficient and accountable system of local government; and
>
> ...
>
> (c) providing for community participation in the local government system;
>
> ..."

36 Chapter 12 of the Act deals with "Local Laws and Local Law Policies". It provides for local governments to make three types of laws: local laws, model local laws and interim local laws. It also provides for the making of local law policies. A "local law" is defined as "a law made by a local government"[6]. An "interim local law" is defined as "a local law that the local government and Minister agree may be made using the process stated in part 2 … division 2 ... because of the nature of the law"[7].

37 Division 3 of Pt 2 of Ch 12 sets up a process which "must be used to make a local law (other than a model local law or interim local law)."[8] The process involves nine mandatory steps:

---

6 Section 850.

7 Section 852.

8 Section 865(1).

- Step 1 – propose a law
- Step 2 – ensure proposed law satisfactorily deals with any State interest
- Step 3 – consult with public about proposed law
- Step 4 – give public access to proposed law
- Step 5 – accept and consider all submissions
- Step 6 – decide whether to proceed with making proposed law
- Step 7 – again ensure proposed law satisfactorily deals with any State interest
- Step 8 – make proposed law
- Step 9 – give public notice of law.

38 In addition to complying with those nine steps, the local law must also comply with Div 5, which concerns "anti-competitive provisions".

39 In contrast to the procedure for making a local law, an interim local law can be implemented in four steps and without community participation. All four steps "must be used to make an interim local law"[9]. If the four-step process is not used, a purported interim local law has no effect[10]. The four steps are as follows:

> **"Step 1 – propose a law**
>
> **860 (1)** The local government must, by resolution, propose to –
>
> (a) make a law; and
>
> (b) get the Minister's agreement to make the law as an interim local law.
>
> **(2)** The proposed local law must include a sunset provision stating the law will expire –

---

9 Section 859(1).

10 Section 859(2).

(a) 6 months after its commencement; or

(b) at the end of a longer period gazetted by the Minister.

Step 2 – get Minister's agreement to use interim local law process

861 (1) The local government must –

(a) advise the Minister of the proposed local law and state why it is necessary or desirable for the local law to be made on an interim basis; and

(b) give the Minister information about the proposed local law required by the Minister or by regulation.

(2) If the Minister agrees the local law should be made on an interim basis, the Minister must advise the local government of this.

(3) The Minister's agreement may be subject to conditions the Minister considers appropriate.

(4) Before proceeding to step 3, the local government must –

(a) get an advice under subsection (2); and

(b) agree to satisfy any condition imposed by the Minister; and

(c) agree to *immediately begin the process stated in division 3 (Making other local laws) to make the proposed interim local law as a local law under that division*.

(5) The local government must satisfy any agreed conditions and *begin the process stated in division 3 to make the proposed interim local law as a local law under that division*.

Step 3 – make proposed law

862 (1) The local government must, by resolution, make the proposed interim local law.

…

Step 4 – give public notice of law

863 **(1)** A notice of the making of the interim local law *must* be published in the gazette stating the following –

(a) the name of the local government making the local law;

(b) the name of the local law;

(c) the date of the local government's resolution making the local law;

(d) the name of any existing local law amended or repealed by the new local law.

(2) The notice also *may* state the following –

(a) that the local law is an interim local law;

(b) the purposes and general effect of the local law;

(c) *the date the local law will expire and that the Minister may extend this date by gazette notice;*

(d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;

(e) that a copy of the certified copy of the local law may be purchased at the local government's public office.

… " (emphasis added)

40 These four steps contain two surprising omissions. First, although s 860(2) contemplates that the Minister may extend the period for the operation of the interim local law, Div 2 contains no express power to do so. However, the power must arise by necessary implication from the injunction in s 860(2) that the proposed law must contain a statement that it will expire "at the end of a longer period gazetted by the Minister." Without this implication, a central feature of Div 2 is unworkable. Second, although s 860(2) requires the proposed interim local law to contain a sunset provision, neither s 860(1) nor any other provision expressly requires the resolution, referred to in s 860(1), to contain a reference to a sunset provision. Nor do the provisions of ss 860 and 861 clearly indicate that it is a requirement of the four-step process that the resolution set out or incorporate the text of the proposed law or that the failure to do so will result

in the law having "no effect"[11]. Indeed, the language of ss 860(1) and 861 is consistent with a local government doing no more than informing the Minister of its intention to enact an interim local law which, when and if enacted, must contain a clause to the effect of s 860(2). Nothing in either section specifically requires the Council to forward a draft of the proposed law to the Minister. Section 861(1)(a) merely requires the local government to advise the Minister "of" the proposed local law and why it is necessary or desirable for the law to be made on an interim basis. The terms of s 861(1)(b) also support the view that the Council is not obliged to forward a draft to the Minister or for the resolution to refer to the sunset clause. Under s 861(1)(b), the Minister may require the Council to give him or her "information *about* the proposed local law" (emphasis added). The third step also gives some support for concluding that it is not an essential requirement that the proposed law be actually drafted before the completion of the first and second steps. The third step requires the local government "to make the proposed law" by resolution after the Minister has agreed that it should be made on an interim basis.

41 Despite these indications that a local government need not have a draft law in existence before the Minister approves it, I think that the preferable view of the legislation is that the resolution passed as the first step in the process must refer to or incorporate a draft of the proposed law which contains a statement to the effect of s 860(2). The requirement that the proposed law contain "a sunset provision" is contained in the first step of the process. Because that is so, it seems natural to read s 860 as requiring the resolution proposing the law to refer to or incorporate a text that contains the sunset provision. Furthermore, it seems unlikely that the legislature would have intended that the Minister might extend the sunset provision without having examined the content of the proposed interim local law.

42 What is more important for present purposes, however, is the requirement in s 861(4)(c) that, upon obtaining the Minister's approval, the local government must begin the process of turning the proposed interim local law into a local law before it enacts the interim local law. This requirement of s 861(4)(c), together with the need for the Minister's approval of an interim local law, throws much light on the purpose and duration of an interim local law, the speed with which the consequential local law is to be made and the power of the Minister to extend the period of the sunset provision in the interim local law.

---

11 Section 859(2).

Interpretation

43 As revealed in the stated objects of the Act[12] and in the Second Reading Speech[13], the Act aims to increase accountability and community participation in the local government system. As a matter of ordinary statutory interpretation[14] and as provided by s 14A(1) of the *Acts Interpretation Act*, "the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation". Accordingly, Ch 12, and in particular ss 860 and 861, should be interpreted, so far as possible, in a way that promotes the accountability of local governments to their constituents.

44 Sub-sections (2) and (4) of s 861, when read with Div 3 concerning the making of local laws, indicate that the making of an interim local law is an exceptional event, that it requires Ministerial approval, that ordinarily it should have a life of no more than six months and that, in any event, its life is not to extend beyond the period that it takes to enact the local law that replaces it. Furthermore, the need to commence making the local law immediately after Ministerial approval and before making the interim local law indicates that the process of making the local law must be carried out as soon as is reasonably practicable having regard to all the circumstances of the case. It is not to be supposed that the legislature, having directed the local government to begin the local law making process immediately, intended that that body could take as long as it wished to complete the process.

45 The making and enactment of an interim local law is contrary to one of the objects of the Act – "providing for community participation in the local government system"[15]. Understandably, therefore, the legislature has insisted that an interim law have Ministerial approval, that it should expire six months after its commencement unless the Minister extends the period of its operation and that the corresponding and consequential local law should be made as soon as is reasonably practicable to do so.

---

12 Sections 2(a) and 2(c).

13 Local Government Bill, Second Reading Speech, Queensland, Legislative Assembly, *Parliamentary Debates* (Hansard), 18 November 1993 at 5986-5987, 5990, 5993-5994.

14 *Bropho v Western Australia* (1990) 171 CLR 1 at 20; *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 421-424.

15 Section 2(c).

46 Although the Act makes no reference to the matters that the Minister must consider in determining whether to extend the period of the sunset clause, the Minister does not have an unfettered discretion. It is true that the merits of a Ministerial decision to extend the period of operation of the interim law are not subject to judicial review or examination. However, as I have indicated, the power to extend the period arises by necessary implication. Because that is so, "the implication, arising as it does from necessity, must be limited by the extent of the need"[16]. And the need for the power of extension is inextricably involved with the local law making process. An interim local law, as its title suggests, is a temporary law that is to operate only until a local law is made expeditiously with community consultation and submissions. In contrast to a local law, the interim local law is made without community consultation. The sunset clause should be extended, therefore, only when it is reasonably impracticable or undesirable for good reason to enact the local law within the six month period.

47 In determining whether to extend the period of a sunset provision, the Minister cannot act on grounds outside the purposes and objects of the Act[17]. It irresistibly follows from s 861(4)(c) and the nine-step local law process that the interim local law ceases to exist as an interim law once the local law is made and published in the Gazette[18]. It also seems an irresistible conclusion that the interim local law must expire at the end of the sunset period if the local government decides not to proceed with the making of the local law. It is impossible to see how the Minister could validly extend the sunset period if the local government does not intend to proceed with the interim local law as a local law. At all events, if the local government decides not to proceed with the consequential local law, I cannot think of any ground for extending the period of the interim local law that would not be contrary to the purposes and objects of the Act.

48 The purposes and objects of the Act include those that arise by implication from the terms of the Act as well as those that are expressly stated to be objects of the Act, as in s 2. To extend the period of the operation of an interim local law when the nine-step process of making the local law does not require it to be done is to exercise the extending power contrary to the objects of the Act. Accordingly, the exercise of the power to extend must be confined to cases where an extension of the sunset period is required because the local law making

---

16 *Board of Fire Commissioners (NSW) v Ardouin* (1961) 109 CLR 105 at 118 per Kitto J.

17 *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 at 504-505 per Dixon J.

18 Section 874.

process – with its democratic involvement – cannot reasonably be completed within the ordinary six-month period.

49 Ordinarily, the need to exercise the power of extension will arise only when it has not been reasonably practicable for the local government to convert the interim local law into a local law within the six-month sunset period. The Act appears to assume and with good reason that in most cases the interim local law will expire or will become (with or without amendments) a local law within that period. First, the local government must commence the process of making the local law even before it promulgates the interim local law. Second, the usual period for public consultation on the local law is 21 days although the Minister and the local government may agree on a longer period[19]. Third, after the consultation period has ended, the local government is required to "consider every submission properly made to it"[20]. Fourth, after considering every such submission, the local government must by resolution decide to follow one of three options[21]. It must either proceed with the making of the proposed local law as advertised, or proceed with the making of that law with amendments, or decide not to proceed with the making of the proposed law. Thus, in most cases, all the steps necessary to reach this point should be able to be completed within the six-month period.

50 Speaking generally, if the local government has carried out its obligations efficiently, only occasionally should the Minister need to gazette a period longer than six months for the operation of an interim law. An extension of the six-month sunset period would seem to be the exception rather than the rule. An extension might be needed when the proposed local law is very complex or controversial. It might be needed when prudence suggests that the local law should not be made until the interim local law has had an extensive trial period. And it might be necessary in (hopefully rare) cases where the local government has been guilty of undue delay in making the local law but there is a pressing need for a law with the content of the interim local law. No doubt there may be other legitimate reasons for gazetting an extension of the six-month sunset period. But they are likely to be few and far between if local governments carry out their obligations with due diligence and responsibility.

51 Accepting, however, that the occasions for exercising the extension power are likely to be few in number, why should the Minister be able to exercise the extension power once only in respect of each interim local law, as the appellant

---

19 Section 868.

20 Section 870(1).

21 Section 871.

contends? Independently of s 23 of the *Acts Interpretation Act*, the implication which gives rise to the power of extension would seem to extend to any case where, consistently with the Act, there was a need to extend the period. But s 23 puts the matter beyond controversy. It entitles the Minister to exercise any function or power conferred on him or her "as occasion requires". If, consistently with the objects and purposes of the Act, the Minister forms the view that an extension of the sunset period is required, what is there in the Act that denies him the power to do what s 23 otherwise authorises him to do? What is there that prevents him from giving two or more extensions? The appellant points to the terms of s 860(2) (b) of the Act. The obvious answer to that contention is that s 860(2) – although giving rise by necessary implication to the Minister's power – says nothing as to how often the Minister may exercise the supplementary power conferred by s 23 of the *Acts Interpretation Act*. To exercise the power of extension more than once does not contradict the command in s 860(2) that the interim local law "must include a sunset provision stating the law will expire … at the end of a longer period gazetted by the Minister."

52 If the rationale for making an interim local law requires an extension beyond the six-month period, both parties agree that the Minister may extend the period. If that rationale also requires a second extension, why should s 860(2) be read as implying that it cannot be done? In determining whether an implication exists in the language of an enactment or is necessarily required to achieve some object of that enactment, the consequences of making or drawing the implication are weighty factors to be considered. To hold that s 860(2) contains an implication denying the exercise of the power conferred by s 23 would have the effect of causing considerable inconvenience in the administration of the Act without any perceivable gain. It would deny the Minister the right to make two three-month extensions when he or she could make one six-month extension. It would encourage the Minister to grant a period of extension long enough to cover every conceivable contingency that might arise in the course of making the local law. And a lengthy extension being granted, it might well result in a slowing down of the nine-step local law making process. Furthermore, where the Minister and the local government have misjudged the period required to complete that process, denying the right to make more than one extension would require them to commence the interim local law process over again. These inconveniences – not to say absurdities – should be avoided unless the terms of the Act compel them. And in my opinion they do not do so.

53 The appellant also sought to rely on the use of the singular number – "a longer period" – in s 860(2)(b). But this confuses the statement in the interim local law with the implied power of the Minister to extend the period. They are not the same. The statement in the interim local law that the law will expire at the end of six months or a longer period gazetted by the Minister remains true whether the Minister has gazetted one date or further dates. At all events, it remains true if each subsequent gazettal is made before the expiration of the previous date of expiration.

54 The respondent made another answer to the argument of the appellant. The respondent pointed to s 23, to which I have already referred, and to s 32C of the *Acts Interpretation Act*. Section 32C relevantly provides:

"In an Act – (a) words in the singular include the plural."

55 The respondent contended that the Minister may exercise the power to extend the interim local law "as occasion requires" and that "a longer period" must therefore be read as including "longer periods". To this contention, the appellant replied that the application of the *Acts Interpretation Act* is "displaced … by a contrary intention appearing in any Act"[22] and that the Act – in particular s 860(2)(b) – revealed such a contrary intention.

56 An intention contrary to the *Acts Interpretation Act* may appear not only from the express terms or necessary implication of a legislative provision but from the general character of the legislation itself. It was so held in *Blue Metal Industries Ltd v Dilley*[23], a case involving the takeover provisions in the *Companies Act* 1961-1964 (NSW). The issue in *Dilley* was whether a section dealing with the transfer of shares in "a company" to "another company" attracted the presumption in the *Interpretation Act* 1899 (NSW) that a reference to the singular includes the plural. The Judicial Committee of the Privy Council held that the *Companies Act* showed an intention to apply to a transfer to only one company. Consequently, the *Interpretation Act* was inapplicable. The Privy Council said[24]:

> "Words in the singular will include the plural unless the contrary intention appears. But in considering whether a contrary intention appears there need be no confinement of attention to any one particular section of an Act. It must be appropriate to consider the section in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole."

57 In support of that proposition, the Privy Council referred to *Sin Poh Amalgamated (HK) Ltd v Attorney-General of Hong Kong*[25], where the Board held that interpretation Acts are:

---

22 *Acts Interpretation Act* 1954 (Q), s 4.

23 (1969) 117 CLR 651; [1970] AC 827.

24 (1969) 117 CLR 651 at 656; [1970] AC 827 at 846.

25 [1965] 1 WLR 62 at 67; [1965] 1 All ER 225 at 228.

> "intended to avoid multiplicity of verbiage and to make the plural cover the singular except in such cases as one finds in the context of the legislation reason to suppose that the legislature, if offered such amendment to the bill, would have rejected it".

58 The appellant relied on the following passage in the *Blue Metal Industries* case[26]:

> "The *Interpretation Act* is a drafting convenience. It is not to be expected that it would be used so as to change the character of legislation. Acquisition of shares by two or more companies is not merely the plural of acquisition by one. It is quite a different kind of acquisition with different consequences. It would presuppose a different legislative policy."

59 For reasons that I have already given, however, to read the Act as giving the Minister power to extend the sunset period more than once does not change the character of the legislation. Any extension must be made in accordance with and for the purposes of the Act. In fact, giving the Minister power to make two or more extensions promotes the rationale of the implied power of extension. It enables the Minister to extend the period of the sunset clause when it is necessary to have an interim local law in place pending the enactment of the local law.

The Interim Vegetation Law

60 The Council complied with the above procedures when it made the Interim Vegetation Law on 7 March 1997 and placed a notice of it in the Gazette on 14 March 1997. That notice stated[27]:

> "This interim local law expires on 14 September, 1997, unless extended by the Minister by notice in the Government Gazette."

61 On 22 August 1997, the Minister extended the Interim Vegetation Law for a longer period. Notice of the extension was published in the Gazette on 5 September 1997 in the following terms[28]:

---

26 (1969) 117 CLR 651 at 658.

27 *Queensland Government Gazette*, 14 March 1997 at 1060, Gold Coast City Council (Making of Interim Local Law) Notice (No 1) 1997.

28 *Queensland Government Gazette*, 5 September 1997 at 22, Gold Coast City Council (Extension of Interim Local Law) Notice (No 2) 1997.

> "Pursuant to *section 469*[29] of the *Local Government Act 1993* the 'Interim Local Law No. 06 - (Vegetation Management)' which was made by the Gold Coast City Council by resolution on 7 March 1997 and notified in the Gazette on 14 March 1997 at page 1060 is extended and now expires on 14 March 1998."

62 Towards the expiration of the above period, the Minister once again purported to extend the application of the Interim Vegetation Law for yet another longer period. This extension was made on 25 February 1998 and published in the Gazette on 13 March 1998 in the following terms[30]:

> "Pursuant to *section 469* of the *Local Government Act 1993* 'Interim Local Law No. 6 (Vegetation Management)' which was made by the Gold Coast City Council by resolution on 7 March 1997 and notified in the Gazette on 14 March 1997 at page 1060 is extended and now expires on 14 September 1998."

63 Eventually the Council conducted the nine-step process required under the Act to make the Interim Vegetation Law a local law under Div 3. But this did not occur until December 1998, that is, more than two months after the appellant was charged with a penal offence under the Interim Vegetation Law.

64 Surprisingly, the local law was not enacted for more than two years after the Council first passed it as an interim law. It makes me wonder whether the local law making process was carried out with the expedition that the Act requires and whether the Minister always exercised his power of extension upon grounds that were consistent with the objects and purposes of the Act. But the parties have not litigated these issues. There is no evidence before this Court as to the reasons for the delay and the extensions. The issue that the parties have litigated is whether the Minister had power to extend the period of the sunset clause more than once. In my opinion, he had that power.

Conclusion

65 The Act impliedly confers power on the Minister to extend the sunset period for those hopefully rare cases where the six-month period is insufficient to carry out the making of the local law process. Section 23 of the *Acts Interpretation Act* authorises the exercise of such a power "as occasion requires". In combination, the Act and s 23 authorise the Minister to extend the period of

---

29 The sections have been renumbered, but in substance have not changed. Section 469 is now s 860.

30 *Queensland Government Gazette*, 13 March 1998 at 1069, Gold Coast City Council (Extension of Interim Local Law) Notice (No 1) 1998.

the sunset clause when the occasion requires that it be exercised. The arguments of the appellant must be rejected.

66 The appeal must be dismissed.

67 GUMMOW J. The respondent, Mr Stevens, is Chief Executive Officer to the Gold Coast City Council ("the Council"). This litigation concerns the law-making powers conferred by statute upon the Council. Chapter 2 (ss 15-60) of the *Local Government Act* 1993 (Q) ("the Local Government Act") is headed "THE LOCAL GOVERNMENT SYSTEM". The Council is "a local government" and a body corporate as provided in s 35 of the Act. Section 20 states that in exercising its jurisdiction of local government such a body has "a law-making role for local laws". Chapter 12 (ss 848-899) is headed "LOCAL LAWS AND LOCAL LAW POLICIES". Section 848 declares that Ch 12 "provides a common law-making process for all laws made by local governments", as well as providing for "local law policies to assist the detailed implementation of a local law's objects".

68 Section 896 of the Act states:

> "On commencement, a local law made by a local government has the force of law."

A local law or other statutory instrument made by a local government is placed by s 9(2) of the *Statutory Instruments Act* 1992 (Q) ("the Statutory Instruments Act") outside the definition in s 9(1) of "subordinate legislation". The result is that, whilst s 49 of the Statutory Instruments Act requires the tabling in the Queensland Legislative Assembly of subordinate legislation within 14 sitting days after it has been notified in the *Gazette*, there is no such requirement for a local law.

69 However, a local law, given force by s 896 of the Local Government Act, may create offences for contravention of its provisions. The respondent made a complaint under the *Justices Act* 1886 (Q) ("the Justices Act") that the appellant, Mr Pfeiffer, damaged protected vegetation contrary to s 5(1) of Interim Local Law No 6 (Vegetation Management) ("Interim Local Law No 6"). That law had been made by the Council in reliance upon the process set out in Div 2 of Pt 2 of Ch 12 of the Local Government Act. Section 5(1) provides:

> "A person must not damage protected vegetation."

70 Part 2 of Ch 12 of the Local Government Act comprises five divisions. Division 2 (ss 859-863) is headed "*Making interim local laws*". Section 859 states:

> "(1) The process stated in this division must be used to make an interim local law.
>
> (2) If a local government purports to make an interim local law in contravention of subsection (1), the purported law is of no effect."

There follows what the legislation identifies as four steps in the process of interim local law making. Step 1 is detailed in s 860. This states:

> "(1) The local government must, by resolution, propose to –
>
> (a) make a law; and
>
> (b) get the Minister's agreement to make the law as an interim local law.
>
> (2) The proposed local law must include a sunset provision stating the law will expire –
>
> (a) 6 months after its commencement; or
>
> (b) at the end of a longer period gazetted by the Minister."

Section 22 of Interim Local Law No 6 provides:

> "This local law expires six (6) months after it commences or at the end of a longer period gazetted by the Minister."

71 Before the magistrate exercising jurisdiction in respect of the complaint under s 19 of the Justices Act, Mr Pfeiffer successfully contended that at the date of the alleged offence Interim Local Law No 6 was no longer in operation. It was spent by reason of the operation of the "sunset provision" in s 22. Accordingly, the complaint was dismissed.

72 An appeal by the respondent to a District Court judge under s 222 of the Justices Act was successful. J M Hanger DCJ ordered that the appeal be allowed and that the District Court proceed to hear and determine the matter. An application by Mr Pfeiffer for leave to appeal to the Queensland Court of Appeal (McPherson JA, Moynihan SJA, Atkinson J)[31] on the ground that the District Court had erred in law was dismissed. The dismissal was on the footing that the decision of the District Court was correct so that there was no basis for a grant of leave to appeal.

73 In order to appreciate the argument which the appellant seeks to mount in this Court, it is necessary to look more closely to the history of Interim Local Law No 6. The final step, Step 4, in the making of interim local laws is the requirement in s 863 that a notice of the making of the interim local law must be published in the *Gazette*. Sub-section (1) requires that the notice *must* state

---

31 (2000) 106 LGERA 461.

various matters and sub-s (2) goes on to provide that the notice also *may* state other matters. One of these (s 863(2)(c)) is:

> "the date the local law will expire and that the Minister may extend this date by gazette notice".

The notice under s 863 in respect of the making of Interim Local Law No 6 was published in the *Gazette* on 14 March 1997. Clause 4 thereof stated:

> "This interim local law expires on 14 September 1997 unless extended by the Minister by notice in the Government Gazette."

The period between 14 March 1997 and 14 September 1997 represented the six months identified in s 860(2)(a) of the Local Government Act.

74 The next relevant event was the publication in the *Gazette* on 5 September 1997 of a notice headed "Gold Coast City Council (Extension of Interim Local Law) Notice (No 2) 1997". Clause 3 of this notice ("the first extension notice") stated that Interim Local Law No 6 "is extended and now expires on 14 March 1998". It will be observed that the first extension notice was published during the currency of the initial period of six months.

75 It is now accepted between the parties that the publication of the first extension notice was an exercise of power conferred upon the Minister by s 860(2). That provision is to be construed as impliedly conferring upon the Minister a statutory power to determine the "longer period" referred to therein and to gazette that determination[32]. This power may be exercised by the person for the time being occupying or acting in the office of the Minister. Section 23(2) of the *Acts Interpretation Act* 1954 (Q) ("the Interpretation Act") produces that result.

76 However, the appellant submits that the publication of the first extension notice exhausted that authority and represented the outer limit of the "sunset provision" spoken of in s 860(2). He submits that the section did not permit the sun to rise again by publication of a second or subsequent extension notice. That, however, is what occurred.

77 On 13 March 1998, that is to say the day prior to the expiry of the extended period fixed by the first extension notice, there was published in the *Gazette* a notice ("the second extension notice") stating that Interim Local Law No 6 "is extended and now expires on 14 September 1998". The complaint by the respondent against the appellant alleged commission of the offence on

---

32 See *Attorney-General (Cth) v Oates* (1999) 198 CLR 162 at 171-172 [16].

4 September 1998. That date fell within the period of extension by the second extension notice.

78 In reaching its decision, the Court of Appeal placed particular emphasis upon s 23(1) of the Interpretation Act. This provides:

> "If an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised, as occasion requires."

However their Honours added:

> "Conceivably a point in time may be reached at which it is no longer possible to describe a local law as interim; but, in the case of Interim Local Law No 6, that stage had not been reached by 5 September 1997, nor by 14 September 1998."

In argument in this Court, the respondent was unable to indicate with any precision when the dividing line indicated by the Court of Appeal would be crossed and s 23(1) of the Interpretation Act would no longer apply.

79 To determine the applicability of s 23(1), it is necessary first to identify the content of the power in question. The provision by which the power is conferred may be so drawn as to contain its own temporal dimension which limits the occasions for the exercise of the power. Section 23(1) of the Interpretation Act can have no operation with respect to a power, the exercise of which is thus constrained. In particular, s 23(1) is not to be understood as authorising the exercise of a power outside of its own temporal limitation. Section 860(2) of the Local Government Act contains such a limitation. The sub-section gives a particular reach to the expression "sunset provision". The proposed local law must state that it will expire "(a) 6 months after its commencement; or (b) at the end of a longer period gazetted by the Minister".

80 Despite their separation by the word "or", pars (a) and (b) are disjunctive only in a particular sense. The sunset provision may do no more than state that it will expire six months after its commencement. If so, no occasion arises for the inclusion in the notice published under s 863 of a statement of the date that the law will expire and that the Minister may extend that date by gazette notice (s 863(2)(c)). Alternatively, the sunset provision may state that the law will expire six months after its commencement unless before the expiry of that period the Minister has gazetted a longer period. If so, then the sunset provision will expire at the end of that longer period. The occasion then arises for the notice to include the matter in par (c) of s 863(2).

81 Paragraph (b) of s 860(2) uses the expression "a longer period". That indicates singularity, not indifference to matters temporal. If the provision be so

construed, there can be no occasion requiring the creation of successive periods and s 23(1) of the Interpretation Act is not engaged. Why should there be given another meaning, which permits multiple extensions?

82 An interpretation is to be given to s 860(2) which will best achieve the purpose of the Act[33]. The subject, scope and purpose of the Local Government Act point in several respects against any displacement of the ordinary meaning of the phrase "a longer period" in par (b) of s 860(2).

83 First, the proposed local law, as in this case, may, in conjunction with the force of law provision in s 896, create an offence without any occasion for scrutiny by the Legislative Assembly before it is brought into operation. It is a step not lightly to be taken to construe the Local Government Act as empowering the Minister from time to time to extend the temporal reach of that offence where on its ordinary meaning the Local Government Act does not do so.

84 Secondly, the structure of Ch 12 of the Local Government Act attaches particular importance in law-making by local government bodies to the observance of the provisions of Div 5 (ss 884-893) of Pt 2. Division 5 is headed "*Anti-competitive provisions of proposed local laws and proposed local law policies*". Section 886 states:

> "A local government must not make a local law or a local law policy unless the local government complies with this division."

Other provisions in the Division use the expression "anti-competitive provision". This is defined in s 885 as follows:

> "'**anti-competitive provision**', of a proposed local law or proposed local law policy, means a provision that, under a regulation, is treated as creating barriers to entry to a market or barriers to competition within a market."

A local government must review a proposed local law or proposed local law policy and identify any provisions thereof which it considers may be an anti-competitive provision (s 887). The local government must also ensure that a "public interest test" is carried out and a "public interest test report" is prepared for each of the possible anti-competitive provisions (s 888(1)). The public interest test report must be presented to a meeting of the local government (s 890) and must be open to inspection (s 892).

---

33 Interpretation Act, s 14A(1).

85 Whilst these requirements of Div 5 apply to the making under Div 1 of model local laws (s 855), and under Div 3 of other local laws (s 864), and to the making under Div 4 of local law policies (s 875), they do not apply to interim local laws made under Div 2. This is because s 884(4) in terms states that Div 5 does not apply to such laws. The scope for the avoidance of the evident object of Div 5 by the successive extensions of interim local laws will be readily apparent. A construction of Div 2 which allows no more than one gazettal of a longer period for the duration of an interim local law supports the effectiveness of the regime established by Div 5.

86 The third matter to which reference should be made also concerns the interrelation between the provisions for the making of interim local laws and other law-making processes provided for in Ch 12. Section 861 specifies as Step 2 in the interim local law process the obtaining of the agreement of the Minister to use that process. If the Minister agrees that a proposed local law is to be made on an interim basis, the Minister must advise the local government of that decision (s 861(2)). That agreement may be subject to conditions (s 861(3)). Before proceeding to make the proposed law, the local government must, amongst other things, agree immediately to begin the process stated in Div 3 with respect to the making of other local laws and to make the proposed interim local law a local law under Div 3 (s 861(4)(c)).

87 Division 3 differs from Div 2 in that it contains (in s 868) detailed provisions for consultation with the public about the proposed law. The local government then must begin the process stated in Div 3 (s 861(5)). This process comprises what in Div 3 are identified as nine steps, beginning with a resolution by the local government to propose to make a local law (s 866) and ending with notification in the *Gazette* of the making of the local law (s 874(1)), and the giving at that time to the Minister of advice of any anti-competitive provisions (as identified in Div 5) included in the local law and the reasons for including them (s 874(4)). It is this linking between the making of interim local laws under Div 2 and the process contained in Div 3 which highlights the provisional nature of the regime established under Div 2.

88 The evident purpose of the sunset provision in Div 2 is to encourage the local government to pursue with proper despatch its obligation under s 861 to undertake the process stated in Div 3 but to provide for cases where six months prove inadequate. It may be accepted that the Minister could not validly extend the interim local law by notification in the *Gazette* without there being in train a corresponding Div 3 process. However, this does not indicate that s 860(2) is to be read as authorising the Minister to make multiple extensions. The requirement in s 861(5) that the local government must begin the Div 3 process requires only that the first step of the Div 3 process be initiated – the local government must, by resolution, propose to make a local law (s 866). The subsequent completion of Steps 2 to 8 is not the subject of any temporal constraint. The scope for deferral by undue delay of the obligations contained in

Div 3 may readily be perceived. Section 860(2) should not be construed so as to facilitate, by allowing multiple extensions of an interim local law, delay on the part of either the Minister or the local government in respect of the steps contemplated by Div 3.

89 The fact that the final step in the Div 3 process, notification of the local law in the *Gazette* (s 874), contains its own temporal constraint requires no different conclusion. Section 874(3) states:

> "If the local law is not notified within 1 year of the date of the local government's resolution making the local law (or a longer period decided by the Minister), the process stated in this division must be used again before the local law is notified in the gazette."

It may be observed that a construction of s 860(2) which allowed multiple extensions, provided that a corresponding Div 3 process was current, would permit an interim local law to be extended from time to time until the required notification was published, thereby reducing any incentive for prompt notification. Further, a failure to publish the required notification within the period imposed by s 874(3) would provide a further occasion where, if multiple extensions be permitted, an interim local law could be extended so as to remain in force at the expense of the making of a local law.

90 Section 860(2) is not to be construed so as to allow the procedures contained in Div 3 to be defeated, or at least deferred, in this fashion. Section 860(2), on its proper construction, empowers the Minister to gazette, before the expiration of the six months period, a longer period.

91 The appeal should be allowed with costs. In place of the orders made by the Court of Appeal, it should be ordered that (i) leave to appeal to the Court of Appeal be granted; (ii) the appeal be allowed with costs; (iii) the orders made by the District Court be set aside and in place thereof the appeal to that Court be dismissed with costs.

92 KIRBY J. This appeal[34] presents a contested problem of statutory construction. In the past, such a problem would have been resolved by invocations of the fiction of parliamentary intention and reasoning that focussed on the literal meaning of the words in question. Nowadays, such problems are ordinarily solved by attempting to give effect to the identified purposes of the legislation[35], assisted by any extrinsic materials that may be relevant and elicited in a context of basic principles and presumptions that are attributed to the lawmaker. Yet, whatever approaches and tools are used, puzzles often remain. Courts can generally do no more than to provide the meaning that appears preferable[36]. That meaning becomes the correct construction.

The facts and applicable legislation

93 Mr Paul Stevens ("the respondent") is the chief executive officer of the Gold Coast City Council. That body is a "local government" within the meaning of the *Local Government Act* 1993 (Q) ("the Act"). On 11 September 1998, acting in purported reliance upon the Gold Coast City Council Interim Local Law No 6 (Vegetation Management) ("the Interim Local Law"), the respondent filed a complaint in, and caused a summons to be issued by, the Magistrate's Court of the District of Southport, Queensland. This process named Mr Otto Pfeiffer ("the appellant") as defendant. It charged him with having, on 4 September 1998, damaged "protected vegetation (namely, in excess of 500 trees having a girth in excess of 40 centimetres …)" contrary to s 5(1) of the Interim Local Law.

94 In July 1999 the summons was heard by a magistrate. He dismissed it on the basis, in effect, that the Interim Local Law had expired and had not been validly extended. The respondent appealed to the District Court of Queensland. The judge of that Court upheld the appeal and held that the Interim Local Law was in force at the time of the alleged offence. The appellant sought leave to appeal to the Court of Appeal of Queensland. In March 2000, that Court

---

34 From the Supreme Court of Queensland (Court of Appeal): *Pfeiffer v Stevens* (2000) 106 LGERA 461.

35 *Bropho v Western Australia* (1990) 171 CLR 1 at 20 applying *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 421-424 per McHugh JA. See also *Acts Interpretation Act* 1954 (Q), s 14A(1).

36 cf *Sheahan v Carrier Air Conditioning Pty Ltd* (1997) 189 CLR 407 at 441; *FCT v Scully* (2000) 201 CLR 148 at 175-176 [54]; *Allan v Transurban City Link Ltd* (2001) 75 ALJR 1551 at 1559 [40]; 183 ALR 380 at 389.

dismissed the application. Now, by special leave, the appellant appeals to this Court. [37]

95 The ultimate issue in the appeal is whether, at the time of the alleged offence in September 1998, the Interim Local Law had the force of law. If it did not, the appellant should not be further vexed by the respondent's summons and this Court should so order.

96 To understand the arguments of the parties, it is necessary to notice the provisions of the Act under which the Interim Local Law was made and purportedly extended and the provisions of the *Acts Interpretation Act* 1954 (Q) upon which the respondent additionally relied to establish the validity of the challenged extension[38]. As these provisions have been set out and repeated in the reasons of other members of the Court,[39] I will spare the reader further repetition. This will allow one to come straight to my point of departure from the conclusion of the majority.

97 The respondent disclaimed any argument that s 860(2)(b) of the Act would permit the Minister to extend the expiry of an interim local law indefinitely. But he submitted that the two ministerial extensions, proved by the published notifications in the Gazette, were within the Minister's powers under the Act. If necessary, such powers could be supplemented by the provisions of the *Acts Interpretation Act*. As the relevant sub-section of that Act has also been set out repeatedly[40] I will simply refer to its terms and not include it yet again.

Three possible meanings

98 Three possible constructions of the Act concerning the duration of an interim local law were propounded.

99 The first construction was that s 860(2) of the Act requires an election at the time an interim local law is first made. Upon this view, the local government concerned must either provide for its expiry six months after the commencement of the law or, prior to its making, must secure the agreement of the Minister to a

---

37 *Pfeiffer v Stevens* (2000) 106 LGERA 461.

38 Esp s 23(1).

39 Reasons of Gleeson CJ and Hayne J at [3]-[11]; reasons of McHugh J at [34]-[39]; reasons of Gummow J at [70]-[73].

40 Reasons of Gleeson CJ and Hayne J at [19]-[21]; reasons of McHugh J at [43]-[59]; reasons of Gummow J at [75], [78]-[79].

longer duration to be specified in the Gazette before or at the time notice of the law in question is proposed[41]. In support of this first construction is the obligation[42], provided in the Act, to include a statement as to the expiry of the law and the duty to publish a notice in the Gazette informing the public, including about how long the interim local law will last[43].

100 The flaw in this construction is the clear contemplation of the Act that the notice in the Gazette "may state" "the date the local law will expire and that the Minister may extend this date by gazette notice"[44]. It is impossible to reconcile that provision with a view of s 860(2) that would require a threshold election between pars (a) and (b) of that sub-section. Reading the provisions of Ch 12, Pt 2, Div 2 of the Act together, therefore, it is clear that s 860(2) does not oblige such an election but only requires notice to the public, in the sunset provision envisaged, of the expiry of the interim local law six months after its commencement and that the Minister has the power, by gazettal, to extend that time for "a longer period".

101 The second construction, (urged by the appellant), accepted the latter view of s 860 but suggested that only one extension by the Minister was permitted. This, it was submitted, was the literal meaning of s 860(2)(b). In that paragraph the indefinite article "a" is used to signify one, and only one, longer period. If it had meant repeated extensions, Parliament would have used a different expression such as "at the end of such further periods".

102 The third construction was urged by the respondent. He argued that it was possible for the Minister to extend the operation of an interim local law on more than one occasion. True, this could not be done indefinitely. So much was clear from the description of the law as "interim". A limitation on the duration was also implied by the obligation of the local government concerned to begin (and by inference to continue) the process in Div 3 "to make the proposed interim local law as a local law under that division"[45]. But the respondent would not otherwise be pinned down as to how the "interim" duration could be limited or when precisely the end of the permissible period would be reached. The respondent argued that, had Parliament meant that only one extension could be

---

41 The Act, s 860(1).

42 The Act, s 861 uses the word "must".

43 In accordance with s 863 of the Act.

44 Under s 863(2)(c) of the Act.

45 Under s 861(4)(c) of the Act.

made, it would have made its purpose clear by including a proviso to that effect in s 860(2)(b). Ordinarily, if a power is conferred by an Act on a Minister for a purpose it can be exercised repeatedly, so long as the purpose remains applicable and the occasion authorises it[46].

The decision of the Court of Appeal

103 The Court of Appeal[47] adopted the third construction. The first part of its reasons are taken up in explaining why the first construction must be rejected. This is not now part of the appellant's case. It can be accepted that the Court of Appeal was correct in that part of its analysis.

104 In preferring the third construction, the Court invoked the *Acts Interpretation Act* and said[48]:

> "For that provision to apply here, there must first be a statutory power in a person to extend the expiry date of the interim local law. Such a power is conferred, or is capable of being conferred, under s 863(2)(c) of the Act. Section 863(1) provides that a notice of the making of the interim local law must be published in the *Government Gazette* stating the matters specified in pars (a) to (d) of that subsection … As we have seen, the original interim local law stated that it operated until 14 September 1997 unless extended by the minister by further notice in the gazette. That was a sufficient compliance with s 863(2)(c). Once the power to extend the expiry date was so conferred, s 23(1) of the *Acts Interpretation Act* … operated to ensure that it was exercisable as occasion required."

105 With respect, this analysis is incorrect. Section 863(2)(c) does not confer a power or function on the Minister to make a law. It is concerned only with steps taken to give the public notice of a law that has already been made. Moreover, as the opening words of s 863(2) make clear, what is there provided is a list of matters that "may", not "must"[49], be published in the Gazette. In short, s 863(2) of the Act deals with the contents of the notice and not with any power or function of the Minister. In his submissions, the respondent did not support reliance on s 863(2)(c). His use of that paragraph is the one above, namely in demolishing the first construction.

---

46 *Acts Interpretation Act*, s 23(1).

47 per McPherson JA, Moynihan SJA and Atkinson J.

48 (2000) 106 LGERA 461 at 463-464 [9].

49 As in the Act, s 863(1).

106 The respondent supported the approach to the Act adopted by the judge of the District Court[50]. He submitted that the power of the Minister to extend an interim local law was provided by s 860(2)(b). Such a power had to be included in the local law. Once included, it enlivened the entitlement of the Minister to prevent the automatic expiry of such a law by effluxion of time, six months after its commencement. It permitted the Minister to decide that it should expire "at the end of a longer period". Any such longer period had to be "gazetted by the Minister". Once gazetted, it had the effect of changing the expiry date so long as the other preconditions of the Act were fulfilled. Repeated extensions could be upheld by reliance on the *Acts Interpretation Act*[51]. The respondent also accepted as correct that part of the reasoning of the Court of Appeal that said[52]:

> "Conceivably a point in time may be reached at which it is no longer possible to describe a local law as interim; but, in the case of Interim Local Law No 6, that stage had not been reached by 5 September 1997, nor by 14 September 1998."

This passage acknowledges the problem at the heart of the respondent's construction while brushing away its implications for that construction's correctness.

Arguments for multiple extensions of an interim local law

107 I accept that a number of arguments support the construction urged by the respondent.

108 First, the overall purpose of providing for interim local laws in Ch 12, Pt 2, Div 2 of the Act is to introduce flexibility into the process of making this form of subordinate legislation. That what is involved is a "process" is recognised in the Act itself. That word is used in the heading to Step 2[53]. It is implicit in the requirement in s 861(4)(c) that the local government in question, as a precondition to making an interim local law, must "agree to immediately begin the process" stated in Div 3. Were that purpose to be abandoned, a prerequisite to the interim local law process would be lost. The respondent

---

50 *Stevens v Pfeiffer*, unreported, District Court of Queensland, 17 December 1999 (Hanger DCJ).

51 s 23(1).

52 (2000) 106 LGERA 461 at 464 [10].

53 The Act, s 861.

submitted that the compliance of the local government with that prerequisite of the "process" was demonstrated in this case by what happened soon after the second ministerial extension expired. A local law (non-interim) was made, presumably after completion of the procedures ("steps") of public consultation and following the consideration of interests laid down. If that was the overall purpose of the legislation, the respondent's construction of the ministerial power, as stated in s 860(2)(b), helped achieve it.

109 Secondly, the respondent suggested that this view of the purpose of Div 2 was reinforced when regard was had to the scheme of the Division and to the emphasis it places on ministerial supervision of interim local laws. Whereas in Div 3 the ministerial role (whilst substantial) is more circumscribed[54], under Div 2 the Minister's agreement to the use of the interim local law "process" is a precondition to the process getting off the ground[55]. In such a context, it was suggested, the propounded provision in the Act of a facility for the Minister to renew an extension of the expiry date was consonant with ministerial control of the interim local law process. The Minister was answerable to Parliament. This fact contributed an adequate check against the possibility of undue delay in, or abandonment of, the steps necessary to replace an interim local law under Div 2 with a local law made under Div 3[56].

110 Thirdly, whilst acknowledging that Div 2 contains repeated indications that the interim local law is one of temporary operation (most especially by the use of the description "interim"[57] and by the requirement that such a law "must include a sunset provision"[58]) the respondent suggested that these were

---

54 The Act, s 867 (Step 2 of Div 3).

55 The Act, ss 860(1)(b) and 861.

56 The Act, s 861(4)(c).

57 cf *Algar v Middlesex County Council* [1945] 2 All ER 243 at 246, 250; *Mayne Nickless Ltd v Pegler* [1974] 1 NSWLR 228.

58 The inclusion of "sunset clauses" and like provisions to encourage systematic review of delegated legislation has become a common feature of Australian subordinate legislation: *Subordinate Legislation Act* 1989 (NSW), ss 10-12; *Subordinate Legislation Act* 1994 (Vic), s 5; *Subordinate Legislation Act* 1992 (Tas), s 11(2); *Subordinate Legislation Act* 1978 (SA), Pt 3A. In other Australian jurisdictions, committees of the legislature have relevant functions of review: Hogg, "Regulatory Impact Statements and the Staged Repeal of Regulations", (1995) 3 *Australian Law Librarian* 65. The expression "sunset" legislation is borrowed from the United States: Davis, "Review Procedures and Public Accountability in Sunset Legislation: An Analysis and Proposal for Reform",

(Footnote continues on next page)

nonetheless words of flexible content. Whilst gazettal of an excessive duration or repeated extensions by gazettal might leave such ministerial actions open to attack as invalid exercises of the ministerial power, lying beyond the scope of the power for the purposes nominated in s 860(2), there were, it was said, adequate safeguards against that form of abuse. The Minister could be questioned in Parliament. Parliament could, by statute, override any interim local law of which it disapproved[59]. And, in an extreme case, as implied by the Court of Appeal, a court could strike down the purported ministerial extension of the expiry date of an interim local law, as being outside the power conferred by s 860(2)(b) of the Act. Because such other remedies were available, it was not necessary to introduce an artificial limitation on what would otherwise be a power susceptible to use "as occasion requires", if necessary repeatedly.

111 Fourthly, the respondent pointed out that s 860(2)(b) of the Act speaks simply of a "longer period". There is no express limitation on the length of such period. Indeed, the only stated limitation is that requiring gazettal of any longer period determined by the Minister. An implied limitation was conceded because of the use of the words "interim" and "sunset" and because of the primary limitation in s 860(2)(b) of a six months duration of an interim local law. On this footing, it would have been possible, and proper (if it seemed likely that the processes of consultation to make a local law, ie non-interim, would take two years) for the Minister to have gazetted a period of that duration. Had that been done, on the appellant's argument, no complaint could have been made, although the effect would have been the same. Such a law would, in this case, then have been in operation at the time of the appellant's alleged offence. The respondent argued that there was no rational reason why the Minister should be permitted to gazette a single period of two years but forbidden to gazette two successive periods each of one year. Indeed, such repeated shorter extensions were more in keeping with the "interim" character of the law and more likely to maintain appropriate ministerial pressure on the local government concerned to conclude the steps, including public consultation and to respond to such consultation, as required in the making of a local law under Div 3.

112 Obviously, these arguments, and in particular the last, are persuasive. I record them to illustrate, once again, that questions of statutory construction that

---

(1981) 33 *Administrative Law Review* 393. It originated in Colorado in 1976: Kearney, "Sunset: A Survey and Analysis of the State Experience", (1990) 50 *Public Administration Review* 49.

59 No provision for tabling interim local laws in the Queensland Parliament where they might be disallowed was provided by the Act or, according to the parties, in any other Act.

reach this Court rarely involve a choice between clearly right and wrong meanings. I have decided against the respondent's submissions. I must therefore explain the considerations that bring me to the opposite conclusion.

A single extension of an interim local law is permitted

113 *Constitutional presumptions and penal laws*: It is important to approach the problem in the context of the relevant constitutional norms. In Australia, the legitimacy and authority of all law must ultimately be traced to, or be consistent with, the federal Constitution. That document envisages the Constitutions of the States[60] and the power of the Parliaments of the States[61] to make laws that will bind the people of the Commonwealth, and others, in and in relation to those States. Uniquely, the Parliament of the State of Queensland is mentioned by name in the Constitution[62]. Also uniquely, it is now constituted of one House, despite the fact that the Constitution refers to "the Houses of Parliament of the State"[63]. Nothing turns on this[64].

114 A "law of a State" has constitutional significance. Among other things, it enlivens the paramountcy rule expressed in the Constitution[65]. There is a constitutional postulate that a "law of a State", binding on the people of the Commonwealth, will be reasonably ascertainable. In Australia, a legislature may delegate the process of lawmaking. Legislatures regularly do so to Ministers, officers in the Executive Government, judges and local government bodies. However, an assumption of the Constitution is that those who are bound by such delegated laws must be able to know, or readily to discover, the extent of their obligations. This requirement is specially relevant when a law imposes penal sanctions.

115 Interim local laws, contemplated by Ch 12, Pt 2, Div 2 of the Act, become, when validly made, a "law of a State" for the purposes of the Constitution. The need for notice to those bound by such laws is recognised by the provisions of the Act. This explains the provisions of "Step 4" in the

---

60 Constitution, s 106.

61 Constitution, s 107.

62 Constitution, s 7.

63 Constitution, s 15.

64 *Taylor v Attorney-General of Queensland* (1917) 23 CLR 457.

65 Constitution, s 109.

"process" of making interim local laws, namely that described in shorthand as "give public notice of law"[66]. Few members of the public read the statute book and fewer still the State Government Gazette. This fact is not necessarily a reason for excusing those ignorant about such law-making of their obligations under a duly made law of a State. But it is a reason to reinforce the common law presumption, that laws imposing penal sanctions must do so in terms that are both readily ascertainable by, and unmistakably clear to, those who are subject to them.

116 There is no doubt that the Act envisages that a local law (including an interim local law) may create offences and fix penalties. So much is expressly provided for[67]. Courts will impute the stated presupposition to parliaments. In the event of any ambiguity in the law of a State, courts will resolve such ambiguity in favour of a construction that limits the exposure of those affected to penal sanctions that are not clearly applicable to them.

117 *Presumptions about ministerial law-making*: It is a further constitutional postulate that a "law of a State" is made by, or under the authority of, a law having democratic legitimacy. In the Australian Commonwealth, laws are made by or under the authority of parliaments, not by Ministers as such. For Ministers to make laws, they must have the authority of law to do so. Similarly, for a Minister to extend the life of a law, the Minister must have clear power from Parliament to do so.

118 In our system of government, Ministers are not entitled to ignore, or waive compliance with, the law[68]. For similar reasons, they cannot impose legal obligations, still less penal sanctions, upon other persons without demonstrable authority to do so. These are further reasons, of a constitutional character, to reinforce a strict approach to the construction of an Act authorising delegated lawmaking that may contain (as an interim local law may do) offences involving penal sanctions (such as that under which the appellant was charged).

119 Subject to the federal Constitution, the State Constitution and any other applicable law, a State Parliament may permit a law of a State to be made, or its life extended, by delegation. But such are the presuppositions of the Constitution

---

66 The Act, s 863.

67 The Act, s 26(2).

68 *A v Hayden* (1984) 156 CLR 532 at 540, 550, 562, 580-581 and 593; *Yip Chiu-Cheung v The Queen* [1995] 1 AC 111 at 118; *Ridgeway v The Queen* (1995) 184 CLR 19 at 27, 42, 87; *Nicholas v The Queen* (1998) 193 CLR 173 at 258-259.

that the courts are vigilant for any democratic deficit. Where one construction of an Act would permit repeated extensions by a Minister of a law imposing penal sanctions, even without necessary public consultation, and another would confine such a law in duration and application, a court will ordinarily prefer the former construction to the latter. A court does this on the presupposition that Parliament retains control over the actions of a Minister extending the life of a law rather than delegating such extensions repeatedly to others, to whom Parliament has not given clear and unmistakable authority for that purpose.

120 *Contextual indications of limited delegation*: When the Act is approached from the foregoing starting points of constitutional principle, it can be observed that the conferral of power on the Minister to extend the life of an interim local law is expressed no more than indirectly. It is implied (although not explicitly stated) in the requirement that the local law must include a provision stating that it will expire (relevantly) "at the end of a longer period gazetted by the Minister". Unless that paragraph afforded the authority to the Minister to make the requisite determination, it and other provisions of the Act would be deprived of effective content. Such a view should not be imputed to Parliament. Courts do not normally conclude that Parliament's purpose is to be capricious, irrational or ineffectual[69].

121 Nevertheless, this is not a case where Parliament has itself expressly conferred the power and regulated, in detail, the conditions of its exercise. Whilst Parliament has clearly contemplated the possibility of an extension of the life of an interim local law beyond the six months period after its commencement (which is its primary specified duration), it has not spelt out the circumstances in which the Minister may exercise such power. Save for the procedural requirement of the gazettal of any such extension, the other preconditions are left to inference.

122 Yet certain indications in the Act are clear. The power must be exercised in a context of lawmaking that is strictly temporary. So much is plain from the use of the label "interim"; from the requirement that each interim local law must contain "a sunset provision"; from the primary maximum duration of such a law of six months after its commencement[70]; and from the precondition requiring the immediate commencement of the process to make a local law under Div 3[71]. If

---

69 cf *Minister for Immigration and Ethnic Affairs v Mayer* (1985) 157 CLR 290 at 302, 307.

70 The Act, s 860(2).

71 The Act, s 861(4)(c).

to these *indicia* suggesting a purpose of Parliament to limit the duration of an interim local law are added the considerations already mentioned that suggest that such a law, where it imposes penal sanctions, must be clear and unambiguous, it is not difficult to reach a conclusion that the preferable construction of the ministerial power in s 860(2)(b) is one limited to a single such extension. That conclusion has the merit of assuring certainty virtually from the outset, either in the law as made or as extended by the Minister on one occasion only. It removes the possibility that a person might be subjected to a penal sanction by a ministerial notice in the Gazette at uncertain future times such as the respondent's argument and the Court of Appeal's reasons were obliged to contemplate as a possibility.

123 *The unacceptability of uncertain validity*: This construction gains still further support from the language in which the power is conferred on the Minister. The provision talks of "a" longer period. The indefinite article is used. The noun is expressed in the singular. If clarity and the absence of ambiguity in a law conferring power to impose penal sanctions is required, a construction of s 860(2)(b) that limits the power of extension to one period is more likely to achieve those ends. Inherent in the suggestion of the Court of Appeal that a "point in time may be reached at which it is no longer possible to describe a local law as interim"[72] is a pre-supposition of irremediable uncertainty in a "law of a State" that imposes penal sanctions. I regard that construction as incompatible with the assumptions of the Constitution and of the common law.

124 *Contrary meaning expels the Acts Interpretation Act*: Once this conclusion is reached about the meaning of the power (or "function") conferred on the Minister by or pursuant to s 860(2)(b), nothing in the *Acts Interpretation Act*, s 23(1) alters that conclusion. The rule of construction stated in that provision applies only if the Act in question evinces no contrary purpose. It cannot change the purport or character of the legislation[73]. Here there is a contrary policy and purpose in s 860(2). That sub-section is meant to be a provision for lawmaking that is limited, temporary and terminable. It is meant to include a power, exercised, as in this case, to impose penal sanctions. It is therefore meant to have a clearly ascertainable termination date such that it expires either six months after its commencement or at the end of a single longer period gazetted by the Minister.

125 It is true that, in the present case, the Minister might have gazetted a two year longer period if that had been a proper exercise of the power under

---

72 (2000) 106 LGERA 461 at 464 [10].

73 *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651 at 658.

s 860(2)(b). Whilst that would have obviated the problem that has now arisen, it would have had to run the gauntlet of any challenge to the lawfulness of such an exercise of "interim" power. It would at least have provided a date certain and incontestable for the final expiry of the Interim Local Law. That is what I take to be implicit in Parliament's contemplation of a "sunset provision" with a primary termination of six months after commencement. In the context that such laws are "interim" and clearly envisaged as steps on the way to a local law, made in accordance with Div 3, the bias of construction must be towards limiting the number of extensions.

126 Under Div 3, the democratic deficit of this law-making process is addressed by the duty, laid down by Parliament in s 868 of the Act, to consult the public about the proposed law. That provision also reinforces the conclusion that Parliament did not envisage repeated extensions of the life of interim local laws by the decision of a Minister that might bypass such consultation. It is true that the Minister could be questioned in Parliament about such repeated extensions and that cooperation between the Minister and the local government authority is necessary to keep the interim law alive. But those possibilities would be small comfort to a person subject to the uncertainties inherent in an interim local law capable of being repeatedly extended and subject to being prosecuted under that law.

Conclusion: upholding the "interim" character of the law

127 It follows that, in the context of the Act, "interim" means what it says. Repeated extensions by the Minister, as they could apply in practice, would be incompatible with the purpose of Parliament as derived from the language and scheme of the Act read in the context of the relevant constitutional norms. If Parliament had contemplated a power for such repeated extensions it could have said so. Its omission to do so supports a construction of the ministerial power that it may be used on a single occasion. After the expiry of such extension the local government could, if it still wished, recommence the procedures for a new interim local law. However, there could be political or practical inhibitions upon the Minister's agreeing to that course. This fact might, in turn, direct the local government concerned to the more extensive consultative procedures ordinarily involved in the making of a local law under Div 3. And that, in turn, would have the advantage of requiring consultation with the public and removing uncertainty in the operation of the law, including in any penal sanctions provided. It would also have an appropriate tendency to reserve interim local laws to the strictly temporary purposes that Ch 12, Pt 2, Div 2 of the Act contemplates.

128 It is true that the construction that I favour does not fully answer the respondent's argument concerning the permissibility of a single initial extension of one year yet the impermissibility of two interim periods each of six months. But in every challenged argument of statutory construction there are such

apparent difficulties. In practical terms there is a ready explanation for this seeming weakness in the appellant's argument. A single extension has the advantage, whatever its duration, of fixing the period of operation of the interim local law with greater clarity than would be the position if two, three or ten or more extensions were held to be lawful. With a single extension there is a chance that the affected individuals could ascertain the existence of legal requirements, including penal sanctions, that are applicable. With the possibility of multiple extensions that chance evaporates. The "interim" character of the law will be lost at some unascertained, uncertain time when a court so holds. To say the least, this is scarcely a satisfactory outcome for a law imposing obligations supported by penal sanctions.

129 Once it is conceded that "interim" in the Act has meaning and operation so as to fix the outer limit of what would otherwise be the indefinite or uncertain duration and operation of Ministerial extensions, it is necessary to search for a clear *discrimen* for the validity of the resulting interim local law. The alternative is that, in a matter where penal sanctions are imposed on individuals, courts are reduced to expressions of aspiration ("hopefully rare"[74]) or expressions of surprise and wonder.[75] In our system of constitutional government the validity of laws and the certainty of their operation are usually treated as more important than this. Upon such questions, courts do not normally accept that surprise and wonder triumph over the clear existence, or absence, of power.

130 The construction that I prefer would mean that the appellant, who is alleged to have cleared substantial vegetation, would walk away without determination of whether he thereby committed a penal offence. But that would follow from the insistence of our law that laws imposing penal sanctions, and laws permitting such sanctions to be imposed, must be clear and unmistakably applicable to those who are bound by them. Any ambiguity about their operation and application is construed in favour of the person accused. So it should be here.

Orders

131 The appeal should be allowed with costs and consequential orders should be made.

---

74 Reasons of McHugh J at [50].

75 Reasons of McHugh J at [64].