



## Editorial

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### ***The Rise and Rise of Environmental Markets in Australia: Biodiversity Banking in New South Wales***

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### ***Introduction***

Prescriptive (or “command-and-control”) regulation has been central to the development of environmental law in Australia. It has been used to address the full spectrum of environmental challenges, including urban and regional planning, the control of air and water pollution, sustainable natural resource management and the conservation of biodiversity. While this model of regulation remains important, Australian governments at state and federal levels have shown an increasing enthusiasm for market-based instruments to achieve policies of ecologically sustainable development. In this regard Australian policy-makers have taken much inspiration from the United States, where “the superiority of market-based instruments has developed into a virtual orthodoxy.”<sup>1</sup>

An environmental market is a system under which regulatory outcomes are achieved through instruments that impose costs and create incentives for certain patterns of behaviour. There exist a variety of market-based instruments in the environmental policy arena, including taxes, cap and trade systems, and banking and offsets. One of the best-known and purest examples of an environmental market is the trading of greenhouse gas (GHG) emissions permits.<sup>2</sup> Government is

1 J. Freeman and C. D. Kolstad, “Prescriptive Environmental Regulations Versus Market-Based Incentives” in J. Freeman and C. D. Kolstad, *Moving to Markets in Environmental Regulation: Lessons From Twenty Years of Experience* (Oxford University Press, Oxford: 2007) 3–16, 4.

2 See N. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, Cambridge: 2007) 351–367.

responsible for setting the overall target (the total emissions allowable), while establishing a trading system by which firms, which can cut their emissions relatively inexpensively, sell excess emissions permits to firms where reductions are most costly. In so doing the regulatory objective can be achieved efficiently, and at the lowest cost. With both the Australian government<sup>3</sup> and the federal opposition now supporting emissions trading, it is certain that a national emissions trading system will be adopted before 2012.

Whereas the Australian federal government has been somewhat hesitant in embracing the market for environmental regulation, the states and territories have shown more willingness to consider this approach. In 2003 New South Wales (NSW), Australia's most populous state, established one of the world's first carbon trading schemes with its Greenhouse Gas Abatement Scheme.<sup>4</sup> This mandatory baseline-and-credit scheme sets a benchmark for emissions by electricity retailers and larger electricity users, and requires the surrender of abatement certificates to meet their liability not their allocation.<sup>5</sup> NSW has also been a leader in establishing other environmental markets, including the controversial biodiversity banking and offsets scheme.

The NSW BioBanking Scheme, which was ushered into law in late 2006,<sup>6</sup> allows landowners to generate biodiversity credits through enhancing and protecting biodiversity values on their land which can then be on-sold to developers, to counterbalance impacts upon biological diversity. While biodiversity offsetting has been possible in NSW for some time through voluntary conservation agreements, the BioBanking Scheme seeks to combine the offsetting concept with a market system to encourage greater private investment in maintaining biodiversity values.

3 Australian Government, *Report of the Prime Ministerial Task Group on Emissions Trading* (Commonwealth of Australia, Canberra: 2007) and Australian Government, *Australia's Climate Change Policy: Our Economy, Our Environment, Our Future* (Commonwealth of Australia, Canberra: 2007). See also R. Lyster, "Chasing Down the Climate Change Footprint of the Private and Public Sectors: Forces Converge" (2007) 24 *Environmental and Planning Law Journal* 281, 288–289.

4 *Electricity Supply Act 1995* (NSW), Pt 8A.

5 For a description of the scheme see R. Lyster, Z. Lipman, N. Franklin, G. Wiffen, L. Pearson, *Environmental and Planning Law in New South Wales* (Federation Press, Annandale: 2007) 228–229.

6 The *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006* (NSW) achieves this by inserting a new Part 7A in the *Threatened Species Conservation Act 1995* (NSW).

## ***Economics and the Environment***

The conceptual origins of the BioBanking Scheme, and indeed all market-based systems of environmental regulation, are found in free market economic theory. In essence, the theory posits that the “invisible hand” of a properly established market is more effective and efficient in distributing public environmental goods than command-and-control strategies. Reliance on the market also relieves the state of much of its responsibility for environmental management and shifts decision-making to participants in the market. It is no accident, therefore, that this economic philosophy is coupled with a political agenda that questions the nature and proper role of the state, favouring a minimal or residual government. As Barnett explains, a free market approach promotes “rationality, individuality, equality, liberty from interference from others or the State unless justified, the availability of legal rights, and the protection of the private sphere of life which is conventionally deemed to be ‘not the State’s interest’”.<sup>7</sup>

For environmental economists the central challenge in harnessing the market for environmental protection objectives is to internalise the costs of environmentally-damaging activities. Global climate change, for instance, can be defined in this way as a market failure rather than a regulatory problem. Indeed on releasing his review of the economics of climate change for the British Treasury, Sir Nicholas Stern labelled climate change as the “greatest market failure the world has seen.”<sup>8</sup> To respond to this failure requires placing a cost on carbon through direct regulation, by taxation arrangements, or through a trading scheme. Once the environmental cost of pollution is thereby identified and internalised, there is by definition no externality for government to deal with. Through this process the widely-accepted “polluter pays” principle therefore becomes part of a broader “market pays” principle.<sup>9</sup>

This adoption of market-based approaches in environmental management is part of a much broader trend to incorporate economic measures in environmental policy-making. In this way the environment is conceptualised not in terms of intrinsic value separate from human valuation, but rather is understood in terms of ecosystem services provided to human societies. Such ecosystem services may be defined broadly as “the conditions and processors through which natural ecosystems, and

7 H. Barnett, *Introduction to Feminist Jurisprudence* (Cavendish Publishing Limited, London and Sydney: 1998) 121.

8 See <[http://www.hm-treasury.gov.uk/newsroom\\_and\\_speeches/press/2006/press\\_stern\\_06.cfm](http://www.hm-treasury.gov.uk/newsroom_and_speeches/press/2006/press_stern_06.cfm)> (27 July 2007).

9 R. Eckersley, “Rationalising the Environment: How Much Am I Bid?” in S. Rees, G. Rodley and F. Stilwell (eds) *Beyond the Market: Alternatives to Economic Rationalism* (Pluto Press Australia Limited, Leichhardt:1993) 237, 239.

species that make them up, sustain and fulfill human life.”<sup>10</sup> They include the capacity of biological systems to store and process wastes, purify air and water, pollinate crops, supply pasture, and maintain healthy and productive soils for agriculture. For environmental economists these and other ecosystem services may come under threat because they have not been adequately valued.<sup>11</sup> Without an economic value, there is no efficient price mechanism to signal scarcity or degradation of the services, and thereby to prevent the drawing-down of natural capital.

It is not only adherents of free-market economics who have subscribed to this approach to environmental regulation. Many in the environmental movement have also adopted an economic frame of reference as a pragmatic strategy to mainstream environmental concerns in the policy-making process, dominated as it is by economic concerns. However, as Sagoff has observed, there are significant dangers inherent in this strategy:

[in embracing economics] [e]nvironmentalists may eventually lose in credibility what they initially may gain in persuasiveness. They appear to an instrumental ethic antithetical to their legitimate, indeed, laudable moral and religious beliefs. Environmentalists who embrace an instrumental logic are likely to defeat the intrinsic values that actually ground their convictions and make their goals praiseworthy and legitimate.<sup>12</sup>

One area where issues of intrinsic value are particularly prominent is in relation to biodiversity protection. It is certainly the case that preserving biodiversity can help to ensure the continued functioning of ecosystems that provide valuable services. Accordingly a price can be placed on biodiversity as an economically valuable ecosystem service. However, it must be questioned whether all aspects of biodiversity can (or should be) understood in such reductionist and instrumentalist terms. For instance, a particular species of plant or animal may not be central to the effective functioning of an ecosystem, but may nonetheless be considered worthy of protection for reasons such as aesthetic value, or as a representative sample of the earth’s evolutionary history.

10 G. Heal, G. C. Daily, P. R. Ehrlich, J. Salzman, C. Boggs, J. Hellmann, J. Hughes, C. Kremen, T. Ricketts, “Protecting Natural Capital Through Ecosystem Service Districts” (2001) 30 *Stanford Environmental Law Journal* 333 at 336.

11 Ibid at 340–341.

12 M. Sagoff, *Price, Principle and the Environment* (Cambridge University Press, Cambridge: 2004) 153.

## Creating Markets to Preserve Biodiversity

Such concerns about the reach of economic discourse in environmental management have not prevented the emergence of habitat and biodiversity trading schemes, which have been presented as a practical way in which to overcome the failures encountered in the use of prescriptive regulation. The United States has been the vanguard in developing such schemes, which have grown in number and sophistication over the last two decades.<sup>13</sup> Key examples are the wetland mitigation banking scheme established by the *Clean Water Act 1972* (US), and the similar conservation banking scheme operating under the *Endangered Species Act 1973* (US), both of which permit offsets to be created through habitat protection, and then on-sold to developers.

The NSW BioBanking Scheme draws on this experience and involves a more far-reaching system. The scheme emerged after several years of consultation with stakeholders, and the publication of working<sup>14</sup> and background<sup>15</sup> papers. The legislative basis for the scheme is the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006* (NSW) passed by the NSW Parliament in November 2006, which inserted a new Part 7A in the *Threatened Species Conservation Act 1995* (NSW) (the TSCA). A guide to the legislation has now been published by the New South Wales Department of Environment and Climate Change (DECC),<sup>16</sup> and work is progressing on the biobanking assessment methodology<sup>17</sup> which is required before the scheme can move from its current pilot stage to full-scale implementation.

As a conservation tool, biodiversity offsetting is itself not new. The DECC has for some time adopted the practice of negotiating biodiversity offsets on a case-by-case basis with developers, where the proposed development would have a significant and unavoidable impact upon biodiversity. Ad hoc offsetting arrangements are also available in relation to the clearing of native vegetation under the Native Vegetation Regulations 2005 and the *Native Vegetation Act 2003* (NSW). Where the BioBanking

13 See P. Curnow and L. Fitz-Gerald, "Biobanking in New South Wales: Legal Issues in the Design and Implementation of a Biodiversity Offsets and Banking Scheme" (2006) 23 *Environmental and Planning Law Journal* 298, 300–302.

14 NSW Department of Environment and Conservation, *BioBanking – A Biodiversity Offsets and Banking Scheme Conserving and Restoring Biodiversity in NSW* (NSW Government, Sydney: 2005).

15 NSW Department of Environment and Conservation, *BioBanking – An Investigation of Market-Based Instruments to Secure Long Term Biodiversity Objectives* (NSW Government, Sydney: 2006).

16 NSW Department of Environment and Conservation, *Guide to the Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006* (NSW Government, Sydney: 2006).

17 Under the *Threatened Species Conservation Act 1995* (NSW) s 127B the Minister may, by order published in the Gazette, establish rules with respect to biobanking assessment methodology including the actions in respect of which biodiversity credits may be created.

Scheme is novel is in the way in which it creates a generalised system for pooling biodiversity offsets that can be traded on the market. Rather than relying upon individual landowners and government to enter into agreements on an individualised basis, the BioBanking Scheme seeks to create financial incentives for landowners to protect biodiversity values. In so doing it is conceived as a way of augmenting rather than replacing the main methods of biodiversity conservation in NSW, namely direct legislative regulation, expansion in public reserves, and voluntary conservation agreements.

The BioBanking Scheme comprises four main components. First, it provides for biobank sites to be established by agreement between the Minister for the Environment and landholders.<sup>18</sup> Second, biodiversity credits may be created by carrying out management actions that maintain or improve biodiversity values on these biobank sites.<sup>19</sup> Third, once created and inscribed on an official register, these credits may be traded.<sup>20</sup> Fourth, the credits can be used by developers to offset the impact of a development on biodiversity values.<sup>21</sup>

In order to create a biodiversity credit it is necessary under the legislation for biodiversity values on a particular property to be safeguarded. The Act seeks to achieve this by establishing biobank sites through biobanking agreements entered into between the Minister for the Environment and landowners. Biobanking agreements are required to be registered by the Director General of the DECC,<sup>22</sup> have effect in perpetuity (subject to limited exceptions),<sup>23</sup> and run with the land such that successors in title will also be bound.<sup>24</sup> The agreements may incorporate a wide range of provisions relating to management actions on the land,<sup>25</sup> affording the Minister and landowners flexibility in specifying the management actions that will allow credits to be created. Such management actions may include controls of grazing, pest and weed control, and revegetation.<sup>26</sup> Such actions are exempt from the requirement for development consent or environmental assessment under the *Environmental Planning and Assessment Act 1979* (NSW).<sup>27</sup> In relation to the enforcement of agreements, the legislation grants a general right of standing to any person to bring proceedings in the NSW Land and Environment Court to remedy

18 Ibid, Part 7A, Div 2.

19 Ibid, Part 7A, Div 3.

20 Ibid, Part 7A, Div 4 and 5.

21 Ibid, Part 7A, Div 6.

22 Ibid, s 127X.

23 Ibid, s 127G.

24 Ibid, s 127J.

25 Ibid, s 127E.

26 NSW Department of Environment and Conservation, note 16 at 3.

27 *Threatened Species Conservation Act 1995* (NSW), s 127P.

or restrain a breach of the agreement, regardless of whether any right of the person has been infringed.<sup>28</sup> The Minister also has the power to direct a landowner of a biobank site to carry out such work as is necessary to rectify any breach of a biobanking agreement.<sup>29</sup> Where a person has contravened a biobanking agreement the Minister may apply to the Land and Environment Court for an order that the land be transferred to the Minister.<sup>30</sup>

The entry into a biobanking agreement will lead to an automatic entitlement to registration of a biobank site for the purposes of generating a biodiversity credit (however this may be cancelled if the agreement is not honoured). Biodiversity credits may be created by the Director-General in respect of management actions carried out on a biobank site. The number and class of credits that can be created on a site will be determined in accordance with the Biobanking Assessment Methodology, when it is released. Once they are created, biodiversity credits must be inscribed on a register by the Director General. The register will contain information on the ownership and status of credits, thereby facilitating trade in this new commodity. Anyone is entitled to purchase credits. While it is envisaged that the most likely purchaser will be a developer wishing to offset impacts on biodiversity, government or philanthropic organisations may wish to utilise the scheme in order to give permanent protection to certain sites.<sup>31</sup> The price for credits will be determined by the market. However, on the initial sale of credits the Regulations may require a prescribed amount to be placed in the BioBanking Trust Fund to assist landowners meet the costs of managing biobank sites.

The mechanism by which biodiversity credit trading can allow development proponents to offset the impacts of their development on biodiversity values is the biobanking statement. A biobanking statement can be obtained by a developer from the Director General, which will confirm the number and class of credits and any onsite measures required for the development to improve or maintain biodiversity values. In obtaining a statement the developer can avoid having to meet the normal threatened species assessment processes contained in Parts 4 and 5 of the *Environmental Planning and Assessment Act 1997* (NSW) Act. Biobanking statements can deal with a range of matters, including the measures to be taken onsite to protect biodiversity, and the number and type of credits to maintain biodiversity values.

At present the BioBanking Scheme is voluntary, and allows developers, if they wish, to avoid the normal threatened species assessment process. It therefore

<sup>28</sup> Ibid, s 127L.

<sup>29</sup> Ibid, s 127N.

<sup>30</sup> Ibid, s 127O.

<sup>31</sup> NSW Department of Environment and Conservation, note 16 at 4.

currently offers a parallel track for dealing with biodiversity issues in development applications. However, once the scheme has begun to operate, the Minister for Planning has the power under the TSCA to declare the scheme compulsory for certain classes of development.

## ***A Critical Appraisal of the BioBanking Scheme***

Thanks to the demands that humanity places upon the natural environment the earth is now confronting a mass extinction event rivaling the disappearance of the dinosaurs over 65 million years ago.<sup>32</sup> Australia is no exception to this pattern of rapid biodiversity decline. Over 80 species of plant and animals have become extinct since European settlement, and currently around 1,000 species, populations and communities are classified as either endangered or vulnerable.<sup>33</sup> With only limited resources available for conservation, this scenario demands targeted efforts to protect those threatened areas retaining high biodiversity values.

The BioBanking Scheme is presented in this way, as a cost-effective way of identifying and consolidating high value conservation areas and ensuring their long-term protection. By establishing new conservation areas enjoying a high degree of legal protection it avoids the major challenge of prescriptive regulation, which is to ensure that conditions imposed to protect biodiversity on site are robust and remain effective over time. One of the scheme's major virtues is that it operates on private landholdings, where most biodiversity continues to be found, notwithstanding the progressive expansion of protected areas in NSW and elsewhere. Whereas public reserves are often selected for reasons other than biodiversity conservation, a market-driven biodiversity scheme should result in the highest value land being protected.<sup>34</sup>

Weighed against these potential advantages are residual questions that surround biodiversity offsetting schemes. The primary concern is that all offset arrangements, whether market-based or otherwise, encounter challenges in ensuring the commensurability of biodiversity values between developed and offset sites. Unlike other environmental goods, such as water, renewable energy, or reductions in carbon emissions, biodiversity is not a fungible commodity. This non-fungibility of biodiversity has three dimensions.<sup>35</sup> There is spatial non-fungibility because the site

32 Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 2* (CBD Secretariat, Montreal: 2006) 10.

33 NSW Department of Conservation, note 15 at 1.

34 R. Nelson and B. Sharman, "More Than Tilting at Windmills: A Bird's Eye View of a Bio-offsets Scheme Under the EPBC Act" (2007) 24 *Environmental and Planning Law Journal* 17, 19.

35 J. Salzman and J. B. Ruhl, "Currencies and the Commodification of Environmental Law" (2000) 53 *Stanford Law Review* 607.



to be protected is necessarily in a different location from the development site. Second, type non-fungibility relates to the biological impossibility of matching species, communities, and ecosystems between separate sites. Finally, temporal non-fungibility identifies the possible delay between adversely affecting biodiversity on a development site, and the successful protection of an offset site.

Because of these non-fungibilities there can be no ironclad guarantee that biodiversity credits for protecting biodiversity in one location will constitute an adequate and commensurate offset for biodiversity loss in another. This has been a perennial challenge for biodiversity offset schemes wherever established. As Boyd *et al*<sup>36</sup> note in relation to the United States experience:

[t]he exchange of complex environmental assets creates significant challenges for implementation, however. In particular, ecosystem exchanges, such as wetland mitigation trades, require more than good ecological analysis. They require the conscientious application of economic analysis in order to guarantee that trades preserve what is valuable about ecosystems. In most cases, regulators are not adequately equipped, financially or technically, to judge the relative value of environmental assets to be exchange in such markets. Until these challenges are met, badly regulated ecosystem trades may undermine, rather than advance, the achievement of environmental and social welfare objectives.<sup>37</sup>

Damage to land, a watershed or species is difficult to compare and rank since they are all highly idiosyncratic. This is because the social value of habitat or a species depends on location in the landscape, relationship to human activities and changes over time.<sup>38</sup> Boyd *et al* conclude that, “[w]ithout these environmental asset valuation methods, confidence in ecosystem exchange is impossible. In short, a ton of sulphur dioxide (SO<sub>2</sub>) may be a ton of SO<sub>2</sub> anywhere, but an acre here may not be worth an acre elsewhere.”<sup>39</sup>

The extent to which these problems will beset the NSW BioBanking Offset Scheme remains to be seen because the NSW Government has yet to release details of the biometric tool that will be used to determine when credits may be created and when they will be retired. In other words the value has not been set. In establishing such value, the methodology will need to confront a major tension between biological integrity and market liquidity.<sup>40</sup> The biological integrity of the scheme will

36 J. Boyd, D. King and L. A. Wainger “Compensation for Lost Ecosystem Services: The Need for Benefit-Based Transfer Ratios and Restoration Criteria” (2001) 20 *Stanford Environmental Law Journal* 393.

37 *Ibid*, at 394.

38 *Ibid*, at 395.

39 *Ibid*.

depend on the highest possible interchangeability between onsite biodiversity loss and offsite biodiversity gain. However, the more restrictive the requirements are upon the currency that can be traded, the more difficulties will be faced in establishing sufficient credits to be traded. This tension is essentially one between market demands for an economically effective system and community expectations that the scheme will be environmentally effective. The pressure points here are on both the procedures for bio-credit creation and their retirement.

In relation to bio-credit creation, the methodology will be important, but it cannot overcome the fundamental limitations found in the TSCA for biobank sites to be verified as effective in protecting biodiversity values before a credit can be issued.<sup>41</sup> Under the Act, credits may be created before there is confirmation that biodiversity is in fact being protected as envisaged in the application for a biodiversity credit by the landholder of the biobank site.<sup>42</sup> However, the difficulty in establishing a more rigorous system is that it would involve significant upfront investment by the landholder, substantially before any financial benefits flow through the sale of biodiversity credits. Ongoing regulation of biobank sites also involves difficulties because, as Curnow and Fitz-Gerald have observed, “[i]f the legal requirements for permanence are too onerous, the scheme will fail to stimulate the investment of private sector capital; if they are too light, there is no guarantee that the objective of biodiversity conservation will be achieved.”<sup>43</sup> This raises the critical question of long-term responsibility for maintaining biodiversity values in the face of potential risks (such as natural disasters, or climate change). The BioBanking Scheme seeks to respond to this problem to some extent through the BioBanking Trust Fund which is available for current and future title holders of biobank sites to maintain their ecological systems.

In relation to bio-credit retirement, it is in the interests of the market not only for there to be sufficient currency but also that it can be used by development proponents to counterbalance biodiversity impacts on development sites. This also puts pressure on the currency to be truly equivalent at the points of creation and retirement. Ideally the methodology for credit surrender will be very rigorous, ensuring that biodiversity loss is compensated as far as is possible by equivalent biodiversity gains elsewhere. However if too strict, then the currency will not be able to be exchanged readily, and this will affect its value. On the one hand bio-credit providers will want to ensure the broadest possible opportunities for credit creation, and the maximisation of bio-credit value, while on the other hand bio-credit

40 Curnow and Fitz-Gerald, note 13 at 303.

41 *Threatened Species Conservation Act 1995* (NSW), s 127W.

42 Curnow and Fitz-Gerald, note 15 at 306.

43 *Ibid*, at 306.

purchasers will wish to be able to use the currency to purchase exemption from threatened species regulation as much as possible. Both of these market pressures could ultimately drive a substantial mismatch between the biodiversity gain on a biobank site and the biodiversity loss on the development site, thus leading to a substantial shortfall in biodiversity protection over time.

The foregoing concerns alert us to the constant need when assessing environmental markets to separate the evaluation of *economic* effectiveness from *environmental* effectiveness. Eckersley notes in this regard that a market in natural resources is ultimately concerned not with the optimal environmental outcome. Instead, she says “this is not the point: rather, the concern is to simply achieve an optimal allocation of environmental resources.”<sup>44</sup>

## **Conclusion**

Our critical views concerning the New South Wales BioBanking Scheme should not be taken as a wholesale repudiation of environmental markets. Indeed, some environmental challenges, including the most serious of all – climate change – are well-suited to resolution via market-based schemes.<sup>45</sup> Similarly we do not wish to suggest that biodiversity offsetting as a concept should be abandoned. Offsetting arrangements can be valuable, not least because they hold out the promise that seemingly impossible trade-offs between economic development and ecological protection can be entirely avoided. In the words of the NSW Minister for the Environment, offsetting allows “biodiversity conservation beyond the unproductive and frequently caricatured battles between an endangered snail or between a shopping centre and an orchard.”<sup>46</sup> The range of ad hoc offsetting systems around the world attest to their attractiveness to policy-makers as one tool among many for achieving biodiversity conservation goals.

Moreover, there are many indications in the amended TSCA that the “heavy hand” of regulation has not been dropped entirely in favour of the “invisible hand” of the market. The Act includes a range of checks and balances to ensure that the market will produce the environmental outcomes that are desired. The BioBanking

<sup>44</sup> Eckersley, note 9 at 242.

<sup>45</sup> Sagoff, note 12 at 198 (“We cannot be too grateful for the contribution of institutional and other social economists who suggest frameworks that allow individuals to participate in determining the outcomes that affect them, for example, by buying and selling grazing, emission, and other rights.”)

<sup>46</sup> The Hon Bob Debus, MLA, Minister for the Environment and Conservation, Second Reading Speech, Legislative Assembly, Parliament of New South Wales, 8 June 2006.

Scheme when implemented will be very far from a laissez faire system of biodiversity trading. It will be a heavily regulated market. However, it is in the precise terms of this regulation and its results that the effectiveness of the system will need to be judged. In promulgating methodologies and regulations, and in making decisions on matters such as biobank sites, and biobank statements, there is considerable latitude for the system to be influenced over time by market pressures, and for government to abdicate responsibility for the ecologically sustainable management of biological diversity.