

**ROYAL BOTANIC GARDENS AND DOMAIN
TRUST ACT, 1980, No. 19**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 19, 1980.

An Act to constitute the Royal Botanic Gardens and Domain Trust and define its powers, authorities, duties and functions; to vest certain land and other property in that Trust; and to repeal the Domain Leasing Act, 1961. [Assented to, 15th April, 1980.]

Royal Botanic Gardens and Domain Trust.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Royal Botanic Gardens and Domain Trust Act, 1980". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :— Arrangement.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—THE ROYAL BOTANIC GARDENS AND DOMAIN TRUST—*ss.* 5–11.

PART III.—ADMINISTRATION—*ss.* 12–14.

PART IV.—FINANCE—*ss.* 15–18.

PART V.—MISCELLANEOUS—*ss.* 19–25.

SCHEDULE 1.—PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST.

SCHEDULE 2.—LAND VESTED IN THE TRUST.

SCHEDULE 3.—TRANSITIONAL AND OTHER PROVISIONS.

Royal Botanic Gardens and Domain Trust.

Interpre-
tation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Director” means the person employed as Director of the Royal Botanic Gardens and Domain pursuant to section 12 (1) or a person acting as Director of the Royal Botanic Gardens and Domain;

“regulation” means a regulation made under this Act;

“Trust” means the Royal Botanic Gardens and Domain Trust constituted by section 5;

“Trust lands” means the land described in Parts 1, 2 and 3 of Schedule 2 and any other land acquired by the Trust;

“trustee” means a trustee referred to in section 6.

(2) In this Act—

(a) a reference to the land described in Part 1 or 2 of Schedule 2 does not include a reference to so much of that land as is described in Part 4 of that Schedule; and

(b) a reference to a Deposited Plan is a reference to a plan filed in the Office of the Registrar-General as a deposited plan.

PART II.

THE ROYAL BOTANIC GARDENS AND DOMAIN TRUST

Consti-
tution of
Trust.

5. (1) There is hereby constituted a corporation with the corporate name “Royal Botanic Gardens and Domain Trust”.

(2) The Trust shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on it by or under this or any other Act.

(3) In the exercise and performance of its powers, authorities, duties and functions the Trust shall be subject to the control and direction of the Minister.

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(4) The Trust shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

6. (1) The Trust shall consist of 5 trustees, who shall be appointed by the Governor on the recommendation of the Minister. Appointment and procedure.

(2) Schedule 1 has effect.

7. (1) The principal objects of the Trust are— Principal objects of Trust.

- (a) to maintain and improve the Trust lands, the National Herbarium and the collections of living and preserved plant life owned by the Trust;
- (b) to increase and disseminate knowledge with respect to the plant life of Australia, and of New South Wales in particular; and
- (c) to encourage the use and enjoyment of the Trust lands by the public by promoting and increasing the educational, historical, cultural and recreational value of those lands.

(2) When acting in pursuance of its objects, the Trust shall give particular emphasis to encouraging and advancing the study of systematic botany.

8. (1) The Trust may— Powers of Trust.

- (a) permit the use of the whole or any part of the Trust lands for activities of a scientific, educational, historical, cultural or recreational nature;
- (b) in or in connection with the Trust lands provide, or permit the provision of, food or other refreshments and apply for, hold or dispose of any licence, permit or other authority in connection therewith;
- (c) in pursuance of its objects, procure specimens and obtain scientific data from within or outside the State;

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- (d) maintain, or make arrangements for the maintenance of, the property of the Trust;
- (e) in pursuance of its objects, carry out surveys, assemble collections and engage in scientific research, including research outside the State, with respect to botany and ornamental horticulture;
- (f) disseminate scientific information to the public and educational and scientific institutions, whether within or outside the State;
- (g) promote and provide exhibits, lectures, films, publications and other types of educational instruction relating to botany and ornamental horticulture;
- (h) subject to the regulations, charge and receive fees or other amounts for, or in connection with, any service provided, article sold or permission given by the Trust in its exercise of any of the powers granted to it by this section, which fees or other amounts shall be the property of the Trust; and
- (i) enter into any contract or arrangement with any person for the purpose of promoting the objects of the Trust.

(2) Subject to this Act and the regulations, the Trust shall have the control and management of all property vested in the Trust.

(3) The Trust may agree to any condition that is not inconsistent with its objects being imposed on its acquisition of any property.

(4) Where, by gift *inter vivos*, devise or bequest, the Trust acquires property, it may retain the property in the form in which it is acquired, subject to any condition agreed to by the Trust under subsection (3) in relation to the property.

(5) The rule of law against remoteness of vesting does not apply to a condition to which the Trust has agreed under subsection (3).

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(6) The Stamp Duties Act, 1920, does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the Trust.

(7) The Trust may establish such committees as it thinks fit for the purpose of assisting it to exercise and perform its powers, authorities, duties and functions.

(8) A person may be appointed to a committee whether or not he is a trustee.

(9) The Trust may establish, control and manage branches or departments with respect to the Trust lands, or any part thereof.

(10) The Trust shall have, and may exercise and perform, such powers, authorities, duties and functions, in addition to those specified in this section, as are reasonably necessary for the attainment of its objects, but may borrow money only in accordance with Part IV.

9. Subject to section 20 (2), the Trust shall not sell, mortgage, demise or otherwise dispose of any part of the Trust lands described in Schedule 2. Disposal of certain land prohibited.

10. (1) In this section, "condition" means a condition to which the Trust has agreed under section 8 (3). Dealings with certain property.

(2) Subsection (3) does not apply to the Trust lands described in Schedule 2.

(3) Subject to subsection (4), the Trust shall not sell, mortgage, demise or otherwise dispose of any property acquired by gift inter vivos, devise or bequest, or any real property otherwise acquired, except—

- (a) where the property was acquired without any condition—
—with the approval of the Governor (which may be given in respect of any case or class of cases); or
- (b) where the property was acquired subject to a condition—
—in accordance with the condition or section 11.

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(4) Subject to section 8 (4), and except to the extent that it would be in breach of a condition, the Trust shall invest any of its funds not immediately required for the purposes of the Trust in any manner authorised by law for the investment of trust funds.

Disposal
of certain
property.

11. (1) Subject to subsection (2), where the Trust resolves that any property that has been acquired by the Trust subject to a condition to which the Trust has agreed under section 8 (3) is not required for the purposes of the Trust, the Trust may—

- (a) sell the property and retain the proceeds of the sale as property of the Trust;
- (b) exchange the property for other property;
- (c) give the property to an educational or scientific institution; or
- (d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration,

notwithstanding the condition subject to which the property was acquired.

(2) The Trust shall not sell, exchange, give or dispose of any property under subsection (1) except with the consent of the Governor and in accordance with any condition the Governor may impose upon the grant of his consent.

(3) The Governor may consent to the sale, exchange, gift or disposal of property for the purposes of this section and may impose any condition he thinks fit upon the grant of his consent.

PART III.

ADMINISTRATION.

Officers
and
employees.

12. (1) For the purposes of this Act—

- (a) a Director of the Royal Botanic Gardens and Domain;

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- (b) a secretary to the Trust; and
- (c) such other persons as may be necessary for the administration of this Act,

may be employed under Part IV of the Public Service Act, 1979.

(2) The persons so employed shall be subject to the Public Service Act, 1979, during their terms of employment.

13. (1) The Director is responsible for the administration and management of the Trust lands and any services provided in conjunction therewith. Director.

(2) The Director is, in the exercise and performance of his powers, authorities, duties and functions under this Act, subject to the control and direction of the Trust.

14. (1) The Trust may, by instrument in writing, delegate to a trustee or to a person employed pursuant to section 12 (1) the exercise or performance of such of its powers (other than this power of delegation), authorities, duties or functions as are specified in the instrument of delegation and may, by a like instrument, revoke wholly or partly any such delegation. Delegation by Trust.

(2) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances, as are specified in the instrument of delegation.

(3) A power, authority, duty or function the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(4) Notwithstanding any delegation under this section, the Trust may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

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(5) Any act or thing done or suffered by a delegate under this section has the same force and effect as if the act or thing had been done or suffered by the Trust and shall be deemed to have been done or suffered by the Trust.

PART IV.

FINANCE.

Endowment. **15.** (1) For the purpose of providing a statutory fund to be applied by the Trust towards—

- (a) the purchase and acquisition of specimens;
- (b) the remuneration, if any, to be paid under clause 5 of Schedule 1 to trustees and members of committees established under section 8 who are not trustees; and
- (c) subject to subsection (2), other expenditure incurred by the Trust,

there shall be paid by the Treasurer to the Trust an annual endowment of such amount as Parliament approves.

(2) The statutory fund referred to in subsection (1) may not be applied towards—

- (a) the remuneration of persons employed pursuant to section 12 (1); or
- (b) general operating expenses, including those related to the maintenance of the Trust lands or other property of the Trust.

(3) The annual endowment referred to in subsection (1) shall be paid by such instalments as the Treasurer thinks fit.

(4) Any money payable by the Treasurer under this section shall be paid out of money provided by Parliament.

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16. (1) For the temporary accommodation of the Trust it may obtain advances by overdraft of current account in any bank or banks to such extent as may be approved by the Governor on the recommendation of the Treasurer. ^{Temporary accommodation.}

(2) The Treasurer may lend money to the Trust upon such terms as to repayment and interest as may be agreed upon.

17. (1) The Trust shall cause to be kept proper accounts and records in relation to all of its operations. **Accounts.**

(2) The Trust shall, as soon as practicable, but within 6 months, after the end of each financial year of the Trust, prepare and submit to the Minister for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, shall include such information as is requested by him and shall exhibit a true and fair view of the financial position and transactions of the Trust.

(4) The Trust shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Trust relating to the relevant financial year, shall indicate whether the statement of accounts complies with subsection (3) and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

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(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the statement.

(8) The financial year of the Trust shall be the year commencing on 1st July.

Audit. **18.** (1) The accounts and records of financial transactions of the Trust, and the records relating to assets of or in the custody of the Trust, shall be inspected and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the Trust and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by him may require a person, being a trustee or an officer or employee of the Trust, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty : \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(5) The Auditor-General shall report to the Trust and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice or as are prescribed.

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(6) Towards defraying the costs and expenses of any such inspection and audit, the Trust shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides.

PART V.

MISCELLANEOUS.

19. (1) Upon the commencement of this section, the land described in Parts 1, 2 and 3 of Schedule 2 shall vest in the Trust for an estate in fee simple freed and discharged from any trusts, obligations, estates, interests, charges and rates existing immediately before that commencement in respect of that land. ^{Vesting of certain land in Trust.}

(2) Notwithstanding anything contained in any other Act, the land described in Parts 1, 2 and 3 of Schedule 2 shall not be appropriated or resumed except by an Act of Parliament.

(3) Nothing in subsection (1) affects the operation of—

- (a) section 12B of the Government Railways Act, 1912, with respect to the land described in Part 1 or 2 of Schedule 2; or
- (b) clause 3 (2) (e) of Schedule 3, with respect to a deed of lease in force immediately before the commencement of this section that relates to any part of that land.

(4) Notwithstanding subsection (1), the land described in Part 3 of Schedule 2 shall vest in the Trust subject to the same reservations and conditions as those contained in the Crown Grant of Portion 68 of the Parish of Irvine in the County of Cook dated 25th February, 1836.

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Grant of
leases,
easements
and
licences.

20. (1) In this section, "easement" includes an easement in favour of—

- (a) the Crown in right of the State or the Commonwealth; or
- (b) any public or local authority constituted by an Act of Parliament,

without a dominant tenement.

(2) The Trust may, from time to time and upon such terms and conditions as are approved by the Minister, grant—

- (a) subject to subsection (3), a lease—
 - (i) of such part of the land described in Part 1 of Schedule 2 as may be necessary for the purposes of, or for purposes connected with, the operation of the premises constructed before the commencement of this section on part of that land and known as the "Gardens' Restaurant" as a restaurant and kiosk and as a place for the sale of publications approved by the Trust;
 - (ii) of parts of the land described in Part 1 of Schedule 2 on which dwellings constructed before the commencement of this section are situated;
 - (iii) of such part of the land described in Part 2 of Schedule 2 as may be necessary for the purposes of, or for purposes connected with, the operation of the premises constructed before the commencement of this section on part of that land and known as the "Pavilion on the Park" as a restaurant and kiosk;
 - (iv) of such part of the land described in Part 2 of Schedule 2 to the Commonwealth as may be necessary for the purposes of, or for purposes connected with, the operation and maintenance by the Commonwealth of the fuel oil installations constructed on part of that land before the commencement of the Domain Leasing Act, 1961, by or on behalf of the Commonwealth; and

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(v) of such part of the land described in Part 2 of Schedule 2 as may be necessary for the purposes of, or for purposes connected with, the operation and maintenance of the car parking station and moving footway leading thereto, constructed on part of that land before the commencement of that Act by or on behalf of the Council of the City of Sydney;

(b) easements through, upon or in the Trust lands described in Schedule 2—

(i) for the construction of pipelines, the laying or re-laying of cables or the construction of any apparatus to be used in connection with those pipelines or cables;

(ii) for the purpose of providing access to the dwellings situated on or within those lands; or

(iii) for any other purpose it considers necessary and that would directly or indirectly assist in the attainment of its objects; and

(c) licences authorising entry upon the Trust lands described in Schedule 2 for the purpose of the maintenance, re-laying or repair of any pipelines or cables or the maintenance or repair of any apparatus used in connection therewith, being pipelines, cables or apparatus situated on or in those lands at the commencement of this section.

(3) A lease granted pursuant to subsection (2) (a) (i), (ii), (iii) or (iv) may not have a term that, together with the term of any further lease which may be granted pursuant to an option contained in the lease, exceeds 8 years.

(4) Sections 88A and 181A of the Conveyancing Act, 1919, apply to and in respect of an instrument purporting to grant an easement under subsection (2) (b).

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Annual
report.

21. The Trust shall, not later than 30th September in each year and as soon as practicable after the preceding 30th June, prepare and transmit to the Minister for presentation to Parliament a report of its work and activities during the year that ended on that 30th June.

Regulations.

22. (1) In this section, a reference to the Trust lands includes a reference to any part of the Trust lands.

(2) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the use and enjoyment of the Trust lands;
- (b) the care, control and management of the Trust lands;
- (c) the securing of decency and order upon the Trust lands;
- (d) the removal of trespassers and persons causing annoyance or inconvenience upon the Trust lands;
- (e) the regulation or prohibition of the taking of intoxicants onto, and the consumption thereof upon, the Trust lands;
- (f) the taking of animals on to the Trust lands or the permitting or suffering of animals to be on the Trust lands;
- (g) the regulation or prohibition of parking, camping or residing on the Trust lands;
- (h) the regulation or prohibition of the use of formed roads or paths within the Trust lands;
- (i) the regulation or prohibition of private trading upon or in connection with the Trust lands;
- (j) the reservation of the Trust lands for such separate or exclusive uses as the regulations may prescribe;
- (k) the use of property or services provided by the Trust;

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- (l) the preservation or protection of, or prevention of damage to, living or preserved plant life on the Trust lands;
 - (m) the protection or removal of all dead timber, logs and stumps on the Trust lands, whether standing or fallen;
 - (n) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of the Trust lands;
 - (o) the preservation or protection of any animals, birds and other fauna of any nature whatever and whether natural to or introduced into the Trust lands;
 - (p) the determination and payment of fees for—
 - (i) using or entering upon the Trust lands or improvements thereon, or any specified part of the Trust lands or improvements;
 - (ii) filming or photographing for cinema or television within the Trust lands;
 - (iii) using or purchasing any written material that is the property of the Trust;
 - (iv) parking, camping or residing on the Trust lands; and
 - (v) such other matters as the Trust may, from time to time, determine;
 - (q) the meetings of the Trust;
 - (r) the committees of the Trust; and
 - (s) the use of the common seal of the Trust.
- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or

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- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

(4) A regulation may impose a penalty not exceeding \$200 for any breach of a regulation.

Proceedings
for
offences.

23. (1) Proceedings for an offence against this Act or the regulations may be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(2) Any such proceedings may only be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

Transi-
tional and
other
provisions.

24. Schedule 3 has effect.

Repeal
of Act
No. 57,
1961.

25. The Domain Leasing Act, 1961, is hereby repealed.

Sec. 6(2).

SCHEDULE 1.

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST.

Certain
persons
ineligible
for appoint-
ment.

1. A person—

- (a) who is of or above the age of 70 years;
- (b) who is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE
TRUST—*continued.*

- (c) who is a bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his creditors or whose remuneration would, upon his appointment, be subject to an assignment for their benefit,

is not eligible to be appointed a trustee.

2. (1) In the case of the illness or absence of any trustee, the Minister may appoint a person as a deputy to act in the place of the trustee during his illness or absence. **Appoint-
ment of
deputy.**

(2) A deputy appointed under this clause shall, while he is acting as a deputy, have all the powers, authorities, duties and functions of a trustee.

(3) A deputy appointed under this clause shall, if the Minister thinks fit, be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of a trustee, or as to the necessity or propriety of any appointment of a deputy, and all acts and things done or omitted by a deputy when so acting shall be as valid and shall have the same consequences as if they had been done or omitted by the trustee for whom the deputy is acting.

3. (1) The term of office of a trustee shall be, and, unless he vacates his office during his term, a trustee shall hold office for, such period not exceeding 4 years as may be specified in the instrument appointing him. **Term of
office.**

(2) A trustee whose term of office expires may, subject to clause 1, be re-appointed as a trustee.

4. The Public Service Act, 1979, does not apply to or in respect of the appointment of a trustee and a trustee is not, in his capacity as a trustee, subject to that Act during his term of office. **Certain
enactments
not to apply
in respect
of trustee.**

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST—*continued.*

- Allowances for trustees. 5. A trustee and a member of a committee established under section 8 who is not a trustee shall, if the Minister thinks fit, be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of them.
- Removal from office. 6. The Governor may, for any cause which to him seems sufficient, remove a trustee from office.
- Vacation of office. 7. A trustee shall be deemed to have vacated his office if he—
- (a) dies;
 - (b) resigns his office by writing under his hand addressed to the Minister;
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or estate for their benefit;
 - (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
 - (e) is absent from 3 consecutive ordinary meetings of the Trust of which notice has been given to him personally or in the ordinary course of post and is not before the expiration of 6 weeks after the latest of those meetings excused by the Trust for his absence from the meetings;
 - (f) is removed from office by the Governor; or
 - (g) attains the age of 70 years.
- Chairman. 8. (1) For the purposes of this clause, a trustee shall not be considered to have ceased to be a trustee by reason only of his term of office as a trustee having expired if he is re-appointed by the Governor as a trustee for a term commencing immediately after the date on which his term of office expires.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE TRUSTEES AND PROCEDURE OF THE TRUST—*continued.*

(2) The Chairman of the Trust shall be such trustee as the Minister nominates as Chairman.

(3) A Chairman holds office until the nomination of his successor under this clause or until he ceases to be a trustee, whichever first occurs.

(4) At a meeting of the Trust—

(a) the Chairman; or

(b) in the absence of the Chairman or if it is a meeting held when no person holds the office of Chairman—a chairman elected by trustees present at the meeting from among their number,

shall preside.

9. (1) The procedure for the calling of meetings of the Trust and the Procedure, conduct of business at those meetings shall, subject to this Schedule and quorum, etc. any regulation, be as determined by the Trust.

(2) The Minister shall call the first meeting of the Trust by giving notice to the trustees in such way as he thinks fit.

(3) Three trustees shall form a quorum and any duly convened meeting of the Trust at which a quorum is present shall be competent to transact any business of the Trust and shall have and may exercise and perform all the powers, authorities, duties and functions of the Trust.

(4) The person presiding at a meeting of the Trust shall, in the event of an equality of votes, have, in addition to a deliberative vote, a second or casting vote.

(5) A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present shall be the decision of the Trust.

10. The secretary to the Trust shall cause minutes of each meeting of the Trust to be recorded and preserved. **Minutes of meeting.**

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE
TRUST—*continued.*

The
Director.

11. The Director—

- (a) is entitled to be heard by the Trust on any matter considered by the Trust and, unless the Trust otherwise directs, is entitled to be present at each meeting of the Trust; and
- (b) is an ex officio member of each committee of the Trust.

Common
seal.

12. The common seal of the Trust shall be kept by the secretary to the Trust.

Sec. 19 (1).

SCHEDULE 2.

LAND VESTED IN THE TRUST.

PART 1.—*The Royal Botanic Gardens.*

Lot 25 in Deposited Plan 39586 situated in the Parish of St. James and County of Cumberland and within the City of Sydney.

PART 2.—*The Domain.*

Lots 26, 27, 28, 29, 32, 33 and 34 in Deposited Plan 39586 and lot 23 in Deposited Plan 39534 situated in the Parish of St. James and County of Cumberland and within the City of Sydney.

PART 3.—*The Mt. Tomah Annexe to the Royal Botanic Gardens.*

1. Lot 2 in Deposited Plan 536667 situated in the Parish of Irvine and County of Cook and within the City of Blue Mountains.

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SCHEDULE 2—*continued.*

LAND VESTED IN THE TRUST—*continued.*

2. So much of the land fully delineated in Deposited Plan 328055 situated in the Parish of Irvine and County of Cook and within the City of Blue Mountains as is not the subject of Notice of Resumption G 63787 or J 664852 lodged in the office of the Registrar-General.

PART 4.—*Excluded Land.*

1. Lots 17-31 (inclusive) in Deposited Plan 259028 situated in the Parish of St. James and County of Cumberland and within the City of Sydney.

2. So much of the land described—

- (a) in Sheet 1 of Deposited Plan 605125 as is identified in that Sheet as “PROPOSED EASEMENT FOR RAILWAY TRANSIT”; and
- (b) in Sheet 2 of Deposited Plan 605125 as is identified in that Sheet as “PROPOSED EASEMENT FOR RAILWAY TRANSIT VAR. WIDTH”, “PROPOSED EASEMENT FOR RAILWAY TRANSIT 13.0 WIDE”, “PROPOSED EASEMENT FOR RAILWAY TRANSIT 3.0 WIDE”, “PROPOSED EASEMENT FOR DRAINAGE 1m WIDE” and “PROPOSED EASEMENT FOR DRAINAGE VARIABLE WIDTH”.

SCHEDULE 3.

Sec. 24.

TRANSITIONAL AND OTHER PROVISIONS.

1. In this Schedule—

“commencement” means the commencement of this Schedule;

“former trustees” means the trustees appointed pursuant to section 37o of the Crown Lands Consolidation Act, 1913, who were, immediately prior to the commencement, trustees of the Trust lands described in Schedule 2, or part thereof.

Interpre-
tation.

Royal Botanic Gardens and Domain Trust.

SCHEDULE 3—*continued.*

TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Construc-
tion of
other in-
struments,
etc.

2. (1) A reference to the former trustees in any instrument in relation to any gift inter vivos, devise or bequest, which gift inter vivos, devise or bequest would, but for the enactment of this Act, have vested in the former trustees in their capacity as trustees of the Trust lands or part thereof, shall be construed as a reference to the Trust.

(2) A reference in any other Act, or in any by-law, regulation, ordinance or any other instrument or document whatever, made before the commencement—

- (a) to the Botanic Gardens, the Botanic Gardens and Garden Palace Grounds or the Royal Botanic Gardens, or any part thereof, shall be construed as a reference to the land described in Part 1 of Schedule 2, or the corresponding part thereof;
- (b) to the Government Domains, the Outer Domain or the Government Domain, or any part thereof, shall be construed as a reference to the land described in Part 2 of Schedule 2, or the corresponding part thereof; and
- (c) to the Mt. Tomah Annexe to the Royal Botanic Gardens, shall be construed as a reference to the land described in Part 3 of Schedule 2.

(3) A reference in any other Act, or in any by-law, regulation, ordinance or any other instrument or document whatever, to the former trustees in their capacity as trustees of the Trust lands or any part thereof shall be construed (except for the purposes of any proceedings arising out of a breach of the provisions of the Crown Lands Consolidation Act, 1913, alleged to have occurred before the commencement) as a reference to the Trust.

Vesting
of assets,
etc.

3. (1) For the purposes of subclause (2) of this clause, a reference to the former trustees is a reference to those trustees in their capacity as trustees of the Trust lands described in Schedule 2, or part thereof.

(2) On and from the commencement—

- (a) all property, whether real or personal, including any herbarium and any display cases and equipment used in connection therewith, all rights and interests therein and all control and management thereof that, immediately before the commencement, belonged to or was or were vested in the former trustees shall vest in the Trust;

Royal Botanic Gardens and Domain Trust.

SCHEDULE 3—*continued.*

TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (b) all money and liquidated and unliquidated claims that, immediately before the commencement, was or were payable to or recoverable by the former trustees shall be money and liquidated and unliquidated claims payable to or recoverable by the Trust;
- (c) all money and liquidated and unliquidated claims for which the former trustees would, but for the enactment of this Act, have been liable shall be money and liquidated and unliquidated claims for which the Trust shall be liable;
- (d) all proceedings commenced by the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by the Trust and all proceedings so commenced by any person against the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by that person against the Trust;
- (e) all deeds, contracts, agreements, arrangements and undertakings entered into with the trustees of the Trust lands described in Schedule 2 and in force immediately before the commencement shall be deemed to be deeds, contracts, agreements, arrangements and undertakings entered into with the Trust;
- (f) the Trust may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of proceedings so referred to, as the former trustees might have done but for the enactment of this Act; and
- (g) subject to subclause (3) of this clause, all acts, matters and things done or omitted by, or done or suffered in relation to, the former trustees, being acts, matters or things not referred to in the foregoing provisions of this subclause, shall have the same force and effect as if they had been done or omitted by, or done or suffered in relation to, the Trust.

(3) Subclause (2) (g) of this clause does not affect any obligation imposed on the former trustees by or under section 37T of the Crown Lands Consolidation Act, 1913.

Royal Botanic Gardens and Domain Trust.

SCHEDULE 3—*continued.*

TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) In subclause (2) (e) of this clause, a reference to deeds entered into with the former trustees includes a reference to the deeds of lease—

- (a) dated 18th October, 1979, and entered into by Michael Avenell Pty. Limited in relation to part of the land described in Part 1 of Schedule 2;
- (b) dated 15th May, 1976, and entered into by the Council of the City of Sydney in relation to part of the land described in Part 2 of Schedule 2; and
- (c) dated 16th October, 1979, and entered into by Delle Productions Pty. Limited in relation to part of the land described in Part 2 of Schedule 2.

Agreement
to certain
conditions.

4. Where any property, right or interest referred to in clause 3 (2) (a)—

- (a) was acquired by the former trustees before the commencement in their capacity as trustees of the Trust lands or any part thereof, by gift inter vivos, devise or bequest, subject to a condition agreed to by the former trustees; and
- (b) was held by the former trustees in such a capacity immediately before the commencement,

the Trust shall, on the commencement, be deemed to have agreed, under section 8 (3), to the condition subject to which the property, right or interest, as the case may be, was acquired.

Savings.

5. (1) The by-laws—

- (a) relating to the Royal Botanic Gardens; and
- (b) relating to the Government Domain,

made under Part IIIb of the Crown Lands Consolidation Act, 1913, being by-laws in force immediately before the commencement, shall be deemed to be regulations made under this Act.

(2) A reference in any of the by-laws referred to in subclause (1) of this clause, and in any written permission or authorisation issued thereunder, to the Curator of the Royal Botanic Gardens, the Minister for Agriculture or the Department of Agriculture shall be construed as a reference to the Director, the Premier or the Premier's Department, respectively.

Royal Botanic Gardens and Domain Trust.

SCHEDULE 3—*continued.*

TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(3) Any person who—

- (a) was employed as Director of the Royal Botanic Gardens under the Public Service Act, 1979, immediately before the commencement, shall, on the commencement, be deemed to be employed as the Director of the Royal Botanic Gardens and Domain pursuant to section 12 (1);
- (b) was employed as secretary of the Royal Botanic Gardens under the Public Service Act, 1979, immediately before the commencement, shall, on the commencement, be deemed to be employed as the secretary to the Trust pursuant to section 12 (1); or
- (c) was employed under the Public Service Act, 1979, and was engaged in or in connection with the administration or management of the Trust lands described in Schedule 2, or part thereof, immediately before the commencement, shall, on the commencement, be deemed to be employed pursuant to section 12 (1).

(4) Section 19 (1) does not operate so as to vest in the Trust any pipeline or cable, or any apparatus used in connection therewith, that—

- (a) immediately before the commencement, was situated on or in any part of the Trust lands described in Schedule 2; and
- (b) was laid or constructed by or on behalf of The Australian Gas Light Company, The Electricity Commission of New South Wales, The Metropolitan Water Sewerage and Drainage Board or The Sydney County Council.

6. The former trustees shall—

Accounts
and report.

(a) prepare—

- (i) statements of all accounts in respect of the Trust lands made up to the commencement in a form approved by the Auditor-General exhibiting a true and complete view of the financial position and transactions in respect of the Trust lands for the period from 1st July immediately preceding the commencement; and

Royal Botanic Gardens and Domain Trust.

SCHEDULE 3—*continued.*TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (ii) a report of work and activities in relation to the Trust lands from 1st July immediately preceding the commencement and up to the commencement; and
- (b) transmit the statements and report to the Trust as soon after the commencement as may be practicable.

Former
trustees to
cease to
hold
office.

7. The former trustees shall, on the commencement, cease to hold office as trustees of the Trust lands described in Schedule 2 or any part thereof.
