



New South Wales

# Royal Botanic Gardens and Domain Trust Regulation 2002

under the

Royal Botanic Gardens and Domain Trust Act 1980

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Royal Botanic Gardens and Domain Trust Act 1980*.

BOB DEBUS, M.P.,

Minister for the Environment

## Explanatory note

The object of this Regulation is to replace the *Royal Botanic Gardens and Domain Trust Regulation 1997 (the old Regulation)*. The old Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation contains the provisions of the old Regulation without substantial alteration, except for the omission of Part 3 of that Regulation. That Part deals with parking on **Trust lands** (as defined in the *Royal Botanic Gardens and Domain Trust Act 1980 (the Act)*). It is proposed that the Royal Botanic Gardens and Domain Trust (**the Trust**) become a **declared organisation** under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* (as are a number of similar bodies). The Trust will then be empowered under that Regulation generally to engage in the activities authorised by Part 3 of the old Regulation (for example, to set up metered parking schemes for its lands).

This Regulation deals with the following matters:

- (a) the use of the Trust lands generally (Part 2),
- (b) the use of the Royal Botanic Gardens, the Mount Annan Botanic Garden, the Mount Tomah Botanic Garden and the Mount Tomah Conservation Area (Part 3),

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- (c) the use of the Domain (Part 4),
- (d) penalty notices (“on-the-spot” fines) (clause 23 in Part 5 and Schedule 1),
- (e) ancillary and formal matters (Part 1 and the remainder of Part 5).

This Regulation is made under the *Royal Botanic Gardens and Domain Trust Act 1980* and, in particular, under section 22 (the general regulation-making power).

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## Royal Botanic Gardens and Domain Trust Regulation 2002

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Royal Botanic Gardens and Domain Trust Regulation 2002*.

#### 2 Commencement

This Regulation commences on 1 September 2002.

**Note.** This Regulation replaces the *Royal Botanic Gardens and Domain Trust Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

In this Regulation:

***animal*** means any non-human mammal or any bird, fish, reptile, amphibian, crustacean, arthropod or mollusc.

***assistance animal*** means an animal referred to in section 9 (Disability discrimination—guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth.

***ranger*** means a person appointed by the Trust to be a ranger for the purposes of this Regulation, and includes any trustee and the Director.

***reserved land*** means such part of the Trust lands as is for the time being reserved for an organised activity under clause 5.

***sea wall*** means the part of the stone wall bordering Farm Cove (and separating Sydney Harbour from the Royal Botanic Gardens and part of the Domain) that runs from the Queen Elizabeth II Gate entrance to the Royal Botanic Gardens to the rocks on Mrs Macquarie's Point.

***sign*** includes a board, post, banner, notice or painted marking.

***the Act*** means the *Royal Botanic Gardens and Domain Trust Act 1980*.

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Part 1              Preliminary

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*the Domain* means that part of the Trust lands known as the Domain.

*the Gardens* means that part of the Trust lands known as the Royal Botanic Gardens, the Mount Annan Botanic Garden, the Mount Tomah Botanic Garden or the Mount Tomah Conservation Area.

*the Mount Tomah Conservation Area* means that part of the Trust lands being Lot 35 in DP 232476 and being approximately 189 hectares located north of the Bells Line of Road opposite the Mount Tomah Botanic Gardens.

*vehicle* includes the following:

- (a) a motor vehicle,
- (b) a trailer or caravan, whether or not it is in the course of being towed,
- (c) an apparatus (other than a wheelchair, pram or stroller) that is propelled by human, animal or mechanical power, or by the wind, and is used wholly or partly for the conveyance of persons or things,
- (d) a boat, raft, canoe, ski, barge or other vessel.

#### 4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Regulation of use of Trust lands generally

### 5 Reserved land

The Trust may from time to time reserve any part of the Trust lands for any one or more of the following:

- (a) organised sporting activities,
- (b) organised entertainment,
- (c) organised ceremonies,
- (d) any other organised activity.

### 6 Fees and charges

- (1) The Trust may from time to time determine the fees and charges payable for the use of any reserved land or (subject to the *Road Transport (Safety and Traffic Management) Regulation 1999*) for the parking of vehicles on any part of the Trust lands.
- (2) Fees and charges may differ according to such factors as the Trust may determine.
- (3) The Trust may exempt any person from paying any fee or charge.

### 7 Entry to Trust lands

- (1) The Trust may give any one or more of the following directions:
  - (a) a direction limiting the number of persons who may enter any part of the Trust lands,
  - (b) a direction closing to the public any part of the Trust lands (including any reserved land and any road, path or building),
  - (c) a direction charging admission to any part of the Trust lands,
  - (d) a direction imposing conditions (such as conditions prohibiting the possession or consumption of alcohol) subject to which the public may enter any part of the Trust lands.
- (2) A direction under this clause may be given:
  - (a) in any case—by means of a sign displayed on or adjacent to the part of the Trust lands concerned, or
  - (b) in the case of a direction referred to in subclause (1) (a) or (b)—by means of an instruction given orally by a ranger or by a police officer.

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Clause 7 Royal Botanic Gardens and Domain Trust Regulation 2002

Part 2 Regulation of use of Trust lands generally

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- (3) A person must not enter any part of the Trust lands in contravention of a direction under this clause.

Maximum penalty: 5 penalty units.

### 8 Camping, erection or occupation of tents and similar activities on Trust lands

- (1) A person must not:

- (a) camp or reside, or
- (b) erect or use, or cause to be erected or used, a building, tent, screen, awning, enclosure or other structure or thing,

on the Trust lands.

Maximum penalty: 5 penalty units.

- (2) A person who has erected or occupied, or caused to be erected or occupied, a building, tent, screen, awning, enclosure or other structure or thing contrary to subclause (1) (b) must, when required to do so by a ranger or a police officer, remove the building, tent, screen, awning, enclosure, structure or thing.
- (3) If a person fails to comply with a direction given under subclause (2), a ranger or a police officer:
- (a) may remove, or cause to be removed, the building, tent, screen, awning, enclosure, structure or thing to the care of the person to whom the direction was given, or
  - (b) may impound the building, tent, screen, awning, enclosure, structure or thing.
- (4) Property that is impounded under this clause is taken to be impounded under the *Impounding Act 1993*, and is to be dealt with accordingly.

### 9 Disposal of waste

- (1) A person must not do any of the following:

- (a) bring any waste onto the Trust lands,
- (b) abandon a vehicle on the Trust lands,
- (c) leave any litter otherwise than in a receptacle provided and designated for the receipt of litter of that kind,
- (d) deposit any oil or similar product, or any hot liquid, or allow such a product or liquid to escape, on the Trust lands,



- (e) deposit any ice on the Trust lands,
- (f) empty any coals or embers from any cooking apparatus onto the Trust land.

Maximum penalty: 5 penalty units.

- (2) In this clause:

*litter* includes bottles, broken glass, china, pottery, plastic, foam, paper and cardboard.

*waste* includes refuse, rubbish and industrial waste.

## 10 Protection of Trust lands

- (1) A person must not do any of the following on the Trust lands:
- (a) damage any lawn, playing field or green, otherwise than in the course of, and as a normal incident of, an organised recreational or sporting activity on reserved land,
  - (b) remove, uproot, climb on or cause damage to, or remove any part from, any tree or other vegetation,
  - (c) remove any dead timber, log or stump, whether standing or fallen,
  - (d) deface any rock or dig up any soil, sand, stone or similar substance,
  - (e) damage, deface or interfere with:
    - (i) any part of the Trust lands (including any road, path, fence, barrier, gate, fence post, railing, step, stair, wall or building), or
    - (ii) any thing situated on any part of the Trust lands (including any seat, furniture, play equipment, fountain, statue, ornament, vase, monument, sign, notice, descriptive plate, label, machinery or equipment),
  - (f) destroy, capture, injure or interfere with any animal,
  - (g) destroy or interfere with the habitat of any animal.

Maximum penalty: 5 penalty units.

- (2) A person does not commit an offence under subclause (1) (f) or (g) merely because the person fishes in the waters of Sydney Harbour from any part of the Domain where fishing is permitted.

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Clause 11 Royal Botanic Gardens and Domain Trust Regulation 2002

Part 2 Regulation of use of Trust lands generally

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### 11 Recreational activities

A person must not do any of the following on the Trust lands:

- (a) operate any mechanically-propelled model aircraft, boat or similar thing,
- (b) land any aircraft, hang-glider, hot air balloon or parachute,
- (c) ride on or use any skateboard, roller skates, inline skates or similar apparatus,
- (d) fly any kite,
- (e) operate any radio, cassette player, record player, compact disc player or any instrument at a volume likely to cause a nuisance or annoyance to any person,
- (f) operate or use a loudspeaker or public address system or apparatus,
- (g) play or practise golf,
- (h) practise or demonstrate (using a fishing rod or line) the casting of a fishing line,
- (i) bathe, wade, wash or swim in any lake, pond, stream or ornamental water,
- (j) use any drinking fountain otherwise than for drinking,
- (k) light any fire otherwise than in fixed cooking apparatus provided by the Trust,
- (l) discharge any fireworks.

Maximum penalty: 5 penalty units.

### 12 Commercial activities

A person must not do any of the following on the Trust lands:

- (a) collect or attempt to collect money,
- (b) sell or attempt to sell or hire, expose for sale or hire or solicit for sale or hire papers, printed matter, food, or other goods or services,
- (c) conduct, or cause or assist the operation of, an amusement, entertainment, instruction or performance for money or other consideration,
- (d) use television, video, cinematographic or photographic equipment for commercial purposes,

- (e) display or distribute any advertising matter, sign, bill, poster or other printed matter.

Maximum penalty: 5 penalty units.

### **13 Driving vehicles**

A person must not drive or ride any vehicle on the Trust lands:

- (a) otherwise than on a road laid out for the purpose, or
- (b) contrary to a sign erected by or on behalf of the Trust.

Maximum penalty: 5 penalty units.

### **14 Prohibited non-meter parking**

A person must not cause or permit any vehicle to stand or be parked on the Trust lands:

- (a) on any lawn, grass, parkland, garden or path, or
- (b) contrary to a sign erected by or on behalf of the Trust.

Maximum penalty: 5 penalty units.

### **15 Obstruction**

A person must not do any of the following on the Trust lands:

- (a) obstruct another person in the performance of the person's work or duties,
- (b) fail to comply with any reasonable direction given for the purpose of securing good order and management and enjoyment of the Trust lands by a ranger, a member of staff of the Trust or a police officer.

Maximum penalty: 5 penalty units.

### **16 Persons to leave on request**

(1) A person who:

- (a) enters the Trust lands unlawfully, or
- (b) causes any annoyance or inconvenience to other persons on the Trust lands,

must leave the Trust lands if directed to do so by a ranger or by a police officer.

Maximum penalty: 5 penalty units.

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Part 2                Regulation of use of Trust lands generally

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- (2) A person who fails to comply with such a direction may be removed from the Trust lands by a ranger or by a police officer.

### **17 Requirement to state name and address**

- (1) A ranger or a police officer who suspects on reasonable grounds that a person on the Trust lands has committed an offence against the Act or this Regulation may require the person to state his or her full name and residential address.
- (2) A person must not:
- (a) fail without reasonable cause to comply with a requirement under this clause, or
  - (b) in purported compliance with such a requirement, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 2 penalty units.

- (3) A person is not guilty of an offence under this clause unless it is established that the ranger or police officer:
- (a) identified himself or herself as a ranger or police officer (as appropriate), and
  - (b) warned the person that failure to comply with the requirement is an offence.

## Part 3 Regulation of use of the Gardens

### 18 Entry to the Gardens

- (1) The Gardens are open to the public daily at times specified by the Trust and indicated on signs displayed adjacent to the entrances to the Gardens.
- (2) A person must not:
  - (a) without the consent of the Trust, enter or remain in the Gardens at any time when they are not open to the public, or
  - (b) enter or leave the Royal Botanic Gardens by means of the sea wall.

Maximum penalty: 5 penalty units.

### 19 Offences relating to the Gardens

- (1) A person must not do any of the following:
  - (a) bring into the Gardens any animal or permit any animal under the person's control to remain in the Gardens,
  - (b) address a public function, public meeting, public demonstration or public gathering in the Gardens,
  - (c) fish in the ponds of the Gardens,
  - (d) fish in the waters of Sydney Harbour from the Royal Botanic Gardens,
  - (e) moor a boat to the sea wall,
  - (f) ride a bicycle or tricycle in the Royal Botanic Gardens, Mount Tomah Botanic Garden or the Mount Tomah Conservation Area otherwise than in an area designated for that purpose,
  - (g) jog or run in the Gardens otherwise than on a road, path or specially designated circuit,
  - (h) throw, kick or hit any object in the Gardens.

Maximum penalty: 5 penalty units.

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Clause 19            Royal Botanic Gardens and Domain Trust Regulation 2002

Part 3                Regulation of use of the Gardens

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- (2) Subclause (1) (a) does not prohibit a person from bringing into the Gardens or from permitting to remain in the Gardens:
- (a) an assistance animal that is in harness, or
  - (b) a dog or horse that is being used in connection with police duty.

## Part 4 Regulation of use of the Domain

### 20 Offences relating to the Domain

- (1) A person must not do any of the following:
- (a) bring any animal into the Domain, or permit any animal under the person's control to remain in the Domain,
  - (b) address a public function, public meeting, public demonstration or public gathering in the Domain after sunset or before sunrise on any day,
  - (c) throw, kick or hit any object in the Domain, otherwise than in the course of, and as a normal incident of, an organised activity on reserved land,
  - (d) fish in the waters of Sydney Harbour from any part of the Domain in or adjacent to which there is erected a sign indicating that fishing from that area is prohibited.

Maximum penalty: 5 penalty units.

- (2) Subclause (1) (a) does not prohibit a person from bringing into the Domain or from permitting to remain in the Domain:
- (a) an assistance animal that is in harness, or
  - (b) a dog or horse that is being used in connection with police duty, or
  - (c) a dog that is held on a leash.
- (3) Subclause (1) (c) does not prohibit a person from throwing or kicking a ball or other object in the Domain in the course of an informal game or sporting activity that is not likely to endanger the safety of other persons.

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Clause 21            Royal Botanic Gardens and Domain Trust Regulation 2002

Part 5                General

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### **Part 5 General**

#### **21 No offence in certain circumstances**

- (1) An act or omission does not constitute an offence against this Regulation if it is authorised expressly or impliedly by the terms or conditions of a lease, licence or occupancy granted by the Trust.
- (2) A person is not guilty of an offence against this Regulation if the person establishes that the act giving rise to the offence was done with the written consent of the Trust.
- (3) Nothing in this Regulation prevents members of staff of the Trust from doing any act or thing in the course of their employment.

#### **22 Prescribed officer: section 22A (2)**

For the purposes of section 22A (2) (a) of the Act, the Director is a prescribed officer to whom a statutory declaration referred to in that paragraph may be supplied.

#### **23 Penalty notice offences: section 22B**

For the purposes of section 22B of the Act:

- (a) the Director, police officers and rangers are prescribed as officers who may serve notices under that section, and
- (b) the prescribed penalty for an offence created by a provision specified in Column 1 of Schedule 1 is the amount specified in Column 2 of that Schedule.

#### **24 Saving**

Any act, matter or thing that, immediately before the repeal of the *Royal Botanic Gardens and Domain Trust Regulation 1997*, had effect under (or was done for the purposes of) that Regulation continues to have effect under (or is taken to have been done for the purposes of) this Regulation.



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**Schedule 1 Penalty notice offences**

(Clause 23)

<b>Column 1</b>	<b>Column 2</b>
Clause 7 (3)	\$55
Clause 8 (1) (a)	\$82
Clause 8 (1) (b)	\$110
Clause 9 (1) (a)	\$220
Clause 9 (1) (b)	\$220
Clause 9 (1) (c)	\$220
Clause 9 (1) (d)	\$220
Clause 9 (1) (e)	\$220
Clause 9 (1) (f)	\$220
Clause 10 (1) (a)	\$82
Clause 10 (1) (b)	\$82
Clause 10 (1) (c)	\$82
Clause 10 (1) (d)	\$82
Clause 10 (1) (e) (i)	\$82
Clause 10 (1) (e) (ii)	\$82
Clause 10 (1) (f)	\$82
Clause 10 (1) (g)	\$82
Clause 11 (a)	\$55
Clause 11 (b)	\$110
Clause 11 (c)	\$55

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Schedule 1      Penalty notice offences

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<b>Column 1</b>	<b>Column 2</b>
Clause 11 (d)	\$55
Clause 11 (e)	\$55
Clause 11 (f)	\$82
Clause 11 (g)	\$55
Clause 11 (h)	\$55
Clause 11 (i)	\$55
Clause 11 (j)	\$55
Clause 11 (k)	\$55
Clause 11 (l)	\$82
Clause 12 (a)	\$82
Clause 12 (b)	\$82
Clause 12 (c)	\$82
Clause 12 (d)	\$110
Clause 12 (e)	\$55
Clause 13 (a)	\$110
Clause 13 (b)	\$110
Clause 14 (a)	\$82
Clause 14 (b)	\$82
Clause 15 (a)	\$110
Clause 15 (b)	\$110
Clause 16 (1)	\$82
Clause 17 (2) (a)	\$110
Clause 17 (2) (b)	\$110
Clause 18 (2)	\$55

Royal Botanic Gardens and Domain Trust Regulation 2002

Penalty notice offences

Schedule 1

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<b>Column 1</b>	<b>Column 2</b>
Clause 19 (1) (a)	\$110
Clause 19 (1) (b)	\$82
Clause 19 (1) (c)	\$55
Clause 19 (1) (d)	\$55
Clause 19 (1) (e)	\$55
Clause 19 (1) (f)	\$82
Clause 19 (1) (g)	\$55
Clause 19 (1) (h)	\$55
Clause 20 (1) (a)	\$110
Clause 20 (1) (b)	\$82
Clause 20 (1) (c)	\$55
Clause 20(1) (d)	\$55

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BY AUTHORITY