

# Royal Botanic Gardens and Domain Trust Act 1980 No 19

[1980-19]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2004](#)

### Authorisation

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# Royal Botanic Gardens and Domain Trust Act 1980 No 19



New South Wales

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*.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Royal Botanic Gardens and Domain Trust Act 1980*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (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### 3 (Repealed)

### 4 Definitions

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

**Executive Director** means the person employed as Executive Director of the Royal Botanic Gardens and Domain pursuant to section 12 (1) or a person acting as Executive 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, any land for the time being included in Part 5 of that Schedule 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 or any land for the time being included in Part 5 of that Schedule, and
  - (b) a reference to a Deposited Plan is a reference to a plan filed in the Land Titles Office as a deposited plan.

## **Part 2 The Royal Botanic Gardens and Domain Trust**

### **5 Constitution of Trust**

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

### **6 Appointment and procedure**

- (1) The Trust shall consist of 7 trustees, who shall be appointed by the Governor on the recommendation of the Minister.
- (2) Schedule 1 has effect.

### **7 Principal objects of Trust**

- (1) The principal objects of the Trust are:
  - (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, and to plant conservation.

## 8 Powers of Trust

- (1) The Trust may:
  - (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,
  - (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).
- (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 the person 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 4.

## **9 Disposal of certain land prohibited**

The Trust must not sell, mortgage or otherwise dispose of any part of the Trust lands described in Schedule 2, but may deal with any part of them in accordance with section 20.

## **10 Dealings with certain property**

- (1) In this section, **condition** means a condition to which the Trust has agreed under section 8 (3).
- (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.
- (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.

## **11 Disposal of certain property**

- (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 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 the Governor thinks fit upon the grant of consent.

## **Part 3 Administration**

### **12 Officers and employees**

- (1) For the purposes of this Act:
  - (a) an Executive Director of the Royal Botanic Gardens and Domain,
  - (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 the [Public Sector Management Act 1988](#).
- (2) The persons so employed shall be subject to the [Public Sector Management Act 1988](#) during their terms of employment.

### **13 Executive Director**

- (1) The Executive Director is responsible for the administration and management of the Trust lands and any services provided in conjunction therewith.
- (2) The Executive Director is, in the exercise and performance of the Executive Director's powers, authorities, duties and functions under this Act, subject to the control and direction of the Trust.

### **14 Delegation by Trust**

- (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.

- (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.
- (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 4 Finance**

### **15 Endowment**

- (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.

**16 (Repealed)**

**17 Financial year**

(1)-(7) (Repealed)

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

**18 (Repealed)**

**Part 5 Miscellaneous**

**19 Vesting of certain land in Trust**

(1) The land described in Parts 1, 2 and 3 of Schedule 2 shall vest in the Trust for an estate in fee simple.

(1A) Land described in Part 1, 2 or 3 of Schedule 2 is freed and discharged from any trusts, obligations, estates, interests, charges and rates which existed in respect of the land immediately before a description of the land was first inserted in that Schedule.

(1B) The Governor may, by proclamation published in the Gazette, amend Schedule 2 for the purpose of adding:

(a) Crown lands, within the meaning of the *Crown Lands Consolidation Act 1913*, or other land of the Crown, or

(b) Trust lands which are not described in Part 1, 2 or 3 of that Schedule,

to the land for the time being described in Part 1, 2 or 3 of that Schedule.

(1C) A proclamation that adds any of the land described in Part 5 of Schedule 2 to Part 1 or 2 of that Schedule also has the effect of excluding the land from Part 5 of that Schedule.

(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 this section 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 (1A), the land described in items 1 and 2 of 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 25 February 1836.

- (5) Notwithstanding subsection (1A), land (in this subsection referred to as **proclaimed land**) added to the land described in Part 1, 2 or 3 of Schedule 2 by a proclamation published under subsection (1B) shall vest in the Trust subject to such trusts, obligations, estates, interests, charges and rates, if any, as are declared in the proclamation to be applicable to or in respect of the proclaimed land.
- (6) Subsection (1A) does not affect any condition agreed to by the Trust under section 8 (3) in relation to any land to which subsection (1A) applies.

## 20 Grant of leases, licences and easements

- (1) In this section, **easement** includes an easement without a dominant tenement referred to in section 88A of the *Conveyancing Act 1919*.
- (2) The Trust may, from time to time and upon such terms and conditions as are approved by the Minister, grant:
  - (a) a lease of any part of the Trust lands for a commercial purpose (such as a restaurant), or any other purpose, that would directly or indirectly assist in attaining the objects of the Trust, and
  - (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 dwelling situated on or within those lands or to other places situated within or adjacent to 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, or for any other purpose that would directly or indirectly assist in the attainment of its objects.
- (3) A lease granted pursuant to subsection (2) (a) 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).

## **20A Power to grant certain longer-term leases**

- (1) A lease granted under section 20 (2) for the purpose of a restaurant or café may be for any term that, together with the term of any further lease that may be granted on the exercise of an option contained in the lease, does not exceed 10 years.
- (2) A lease in respect of any of the following parts of the Trust lands may be granted under section 20 (2) for any term that, together with the term of any further lease that may be granted on the exercise of an option contained in the lease, does not exceed 50 years:
  - (a) such part of the Trust lands described in Part 2 of Schedule 2 as was, immediately before the commencement of this section, used for the purposes of, or for purposes connected with, the operation and maintenance of the car parking station known as the Domain Parking Station (including the moving footway leading to that car parking station),
  - (b) such part of the Trust lands described in Part 2 of Schedule 2 as, immediately before the commencement of this section, contained the fuel oil installations constructed by or on behalf of the Commonwealth, together with such other part of those lands as may be necessary for the purposes of, or for purposes connected with, the use of that land,
  - (c) such parts of the Trust lands described in Part 2 of Schedule 2 as were, immediately before the commencement of this section, used to support the land bridge erected, near the Art Gallery of New South Wales, over part of the road link (or the proposed road link) between the Cahill Expressway and Mill Pond Road, Botany, known as the Eastern Distributor,
  - (d) such parts of the Trust lands described in Part 2 of Schedule 2 as were, immediately before the commencement of this section, used for the purposes of, or for purposes connected with, the operation and maintenance of the swimming pool known as the Andrew "Boy" Charlton Pool, together with such other part of those lands as may be necessary for the purposes of, or for purposes connected with, the operation and maintenance of that pool as redeveloped as a result of the competition known as the *Andrew "Boy" Charlton Pool Architectural Competition* conducted by the Council of the City of Sydney in 1998,
  - (e) such parts of the Trust lands described in Part 2 of Schedule 2 as are the subject of the development consent granted by the Council of the City of Sydney in relation to Development Application No D97-00511 made by City Projects Division of The City of Sydney and dated 1 August 1997 (concerning the redevelopment of the lands known as Cook and Phillip Parks).
- (3) The Minister is to consult the Treasurer in relation to:
  - (a) the use to which the land referred to in subsection (2) (a) and (b) is to be put

under a future lease or licence, and

(b) the terms and conditions of any proposed lease, or licence for the use, of that land.

(4) The Trust must not, after the commencement of this section:

(a) call for expressions of interest in the use, under a future lease or licence, of the land referred to in subsection 2 (a) or (b), or

(b) grant a lease, or a licence for the use, of that land,

unless the Minister has consulted the Treasurer (as required by subsection (3)) in relation to the proposed use of the land, or the proposed lease or licence, concerned.

(5) Further, the Trust must not, after the commencement of this section, grant a lease of any Trust lands unless:

(a) it has given public notice of the proposed lease in accordance with subsections (6) and (7), and

(b) it has considered any submissions duly made to it under subsection (8), and

(c) it has given to the Minister, when seeking the Minister's approval of the terms and conditions of the proposed lease, copies of any submissions objecting to the proposed lease.

(6) The Trust must:

(a) give public notice of a proposed lease by means of a notice published in a newspaper circulating generally in New South Wales, and

(b) exhibit notice of the proposed lease on the Trust lands concerned.

(7) A notice of a proposed lease must include the following:

(a) information sufficient to identify the Trust lands concerned,

(b) the purpose for which the Trust lands will be used under the proposed lease,

(c) the term of the proposed lease (including particulars of any options for renewal),

(d) the name of the person to whom it is proposed to grant the proposed lease (if known),

(e) a statement that submissions in writing concerning the proposed lease may be made to the Trust during the period (which must be at least 28 days) specified in the notice.

(8) Any person may make a submission in writing to the Trust during the period specified

for the purpose in the notice.

(9) It is sufficient compliance with subsection (3) if the Minister:

(a) notifies the Treasurer in writing of:

- (i) any proposed use of the land concerned under a future lease or licence, and
- (ii) the terms and conditions of any proposed lease, or licence for the use, of that land, and
- (iii) if copies of any submissions relating to a proposed lease of that land have been given to the Minister under subsection (5) (c)—the substance of those submissions, and

(b) takes into consideration any comments received from the Treasurer within 28 days after the notification is given.

#### **20B Power to accept lease or licence relating to certain land**

The Trust may, with the consent of the Minister, from time to time enter into an agreement as lessee, sub-lessee or licensee in respect of the upper surface, and the airspace above the upper surface, of the land bridge erected, near the Art Gallery of New South Wales, over part of the road link (or the proposed road link) between the Cahill Expressway and Mill Pond Road, Botany, known as the Eastern Distributor.

#### **20C Requirements relating to grant of licence or easement**

(1) No later than 3 months after the commencement of this section, the Trust must publish on the Internet site maintained by the Trust a statement that:

- (a) outlines the criteria by which the Trust assesses proposals or requests for grants of licences for the use of, or easements through, on or in, Trust lands, and
- (b) states that any person may, at any time, make a submission in writing to the Trust in relation to those criteria, and
- (c) specifies the number of licences and easements granted by the Trust during the immediately preceding financial year, categorised according to their purpose and impact on Trust lands and (additionally, in the case of licences) their duration.

(2) The statement must be permanently available on the Internet and a written copy of the statement must be permanently available for inspection by the public at the offices of the Trust during ordinary business hours.

(3) The Trust may update the statement as it sees fit, and must update it at least once in every financial year.

(4) In updating the statement, the Trust must take into consideration any submissions

received.

## **21 Facilitation of redevelopment of Conservatorium of Music**

- (1) Nothing in this Act prohibits or restricts:
  - (a) the carrying out, on any land for the time being included in Part 5 of Schedule 2, of development (within the meaning of the *Environmental Planning and Assessment Act 1979*) that may be carried out on that land in accordance with that Act with or without development consent, or
  - (b) the granting by the Trust of a lease, easement or licence of any of that land for any term, or any other approval, to allow any such development to be carried out, or
  - (c) the sale or other disposal by the Trust, or the acquisition from the Trust, of any part of that land that is not included in Part 1 or 2 of that Schedule by a proclamation under section 19.
- (2) While land is included in Part 5 of Schedule 2, it vests in the Trust for an estate in fee simple freed and discharged from any trusts, obligations, estates, interests, charges and rates that existed in respect of the land before 1 July 1980 (the date of commencement of this Act).
- (3) Subsection (2) does not affect any estate or interest in land created by section 12B of the *Government Railways Act 1912*.

## **22 Regulations**

- (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,
  - (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, or any similar commercial purpose, 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
- (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 5 penalty units for any breach of a regulation.

## **22A Liability of vehicle owner for parking offences**

- (1) If a parking offence occurs in relation to any vehicle, the person who at the time of the commission of the offence was the owner of the vehicle is, by virtue of this section, guilty of an offence against the regulation concerned as if the person were the actual offender guilty of the parking offence, unless:
  - (a) in any case where the offence is dealt with under section 22B, the person satisfies an officer described in the notice served under that section that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
  - (b) in any case where the offence is dealt with by a court, the court is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
  - (c) the person is exonerated under subsection (2) or (3).
- (2) An owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any case where the offence is dealt with under section 22B, the person:
  - (a) within 21 days after service on the person of a notice under that section alleging that the person is guilty of the offence, supplies by statutory declaration to a prescribed officer described in the notice the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
  - (b) satisfies that prescribed officer that the person did not know and could not with reasonable diligence have ascertained that name and address.
- (3) An owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any case where the offence is dealt with otherwise than under section 22B, the person:
  - (a) within 21 days after service on the person of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or

(b) satisfies the court that the person did not know and could not with reasonable diligence have ascertained that name and address.

- (4) A statutory declaration under subsection (2) or (3), if produced in any proceedings against the person named in it and in relation to the offence in respect of which the statutory declaration was supplied, is evidence that that person was in charge of the vehicle at all relevant times relating to that offence.
- (5) A statutory declaration that relates to more than one offence is not a statutory declaration under, or for the purposes of, subsection (2) or (3).
- (6) Nothing in this section affects the liability of the actual offender, but where a penalty has been imposed on or recovered from any person in relation to a parking offence, no further penalty may be imposed on or recovered from any other person in relation to that offence.
- (7) In this section:

**owner** of a vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport (General) Act 1999*.

**parking offence** means any offence of causing or allowing a vehicle to stand in contravention of the regulations.

## **22B Penalty notices for offences against regulations**

- (1) If it appears to an officer prescribed by the regulations that any person has committed, or by virtue of section 22A is guilty of, any offence against a regulation, the officer may serve a notice on that person to the effect that, if that person does not desire to have the matter determined by a court, that person may pay to the Trust, within a time specified in the notice, an amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (2) Any such notice:
- (a) may be served personally or by post, or
- (b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 22A, may be addressed to the owner without naming the owner or stating the address of the owner and may be served by leaving it on or attaching it to the vehicle.
- (3) If the amount of any penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment of a penalty in accordance with this section is not an admission of liability for the purposes of any civil claim, action or proceeding arising out of the same occurrence, nor does it in any way affect or prejudice any such claim, action or

proceeding.

- (5) Nothing in this section limits the operation of any provision made by or under this or any other Act in relation to proceedings that may be taken in respect of offences.

## **22C Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Trust, or
- (b) any resolution of the Trust, or
- (c) the appointment of, or the holding of office by, any trustee, or
- (d) the presence of a quorum at any meeting of the Trust.

## **23 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be disposed of summarily before a Local Court constituted by a 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.

## **24 Transitional and other provisions**

Schedule 3 has effect.

## **25 Repeal of Act No 57, 1961**

The *Domain Leasing Act 1961* is hereby repealed.

# **Schedule 1 Provisions relating to trustees and procedure of the Trust**

(Section 6 (2))

## **1 Certain persons ineligible for appointment**

A person:

- (a) (Repealed)
- (b) who becomes a mentally incapacitated person, or
- (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 or her creditors or whose remuneration would, upon his or her appointment, be subject to an assignment for their benefit,

is not eligible to be appointed a trustee.

## **2 Appointment of deputy**

- (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 the trustee's illness or absence.
- (2) A deputy appointed under this clause shall, while 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 the deputy.
- (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 Term of office**

- (1) The term of office of a trustee shall be, and, unless the trustee vacates the office during his or her term, a trustee shall hold office for, such period not exceeding 4 years as may be specified in the instrument of appointment.
- (2) A trustee whose term of office expires may, subject to clause 1, be re-appointed as a trustee.

## **4 Certain enactments not to apply in respect of trustee**

The [Public Sector Management Act 1988](#) does not apply to or in respect of the appointment of a trustee and a trustee is not, in his or her capacity as a trustee, subject to that Act during his or her term of office.

## **5 Allowances for trustees**

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.

## **6 Removal from office**

The Governor may, for any cause which to the Governor seems sufficient, remove a trustee from office.

## **7 Vacation of office**

The office of a trustee becomes vacant if the trustee:

- (a) dies,
- (b) resigns the office by an instrument in writing 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 or her creditors or makes an assignment of his or her remuneration or estate for their benefit,
- (d) becomes a mentally incapacitated person, or
- (e) is absent from 3 consecutive ordinary meetings of the Trust of which notice has been given to the trustee 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 the absence from the meetings, or
- (f) is removed from office by the Governor.
- (g) (Repealed)

## **8 Chairperson**

- (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 or her term of office as a trustee having expired if the trustee is re-appointed by the Governor as a trustee for a term commencing immediately after the date on which his or her term of office expires.
- (2) The Chairperson of the Trust shall be such trustee as the Minister nominates as Chairperson.
- (3) A Chairperson holds office until the nomination of a successor under this clause or until the Chairperson ceases to be a trustee, whichever first occurs.
- (4) At a meeting of the Trust:
  - (a) the Chairperson, or
  - (b) in the absence of the Chairperson or if it is a meeting held when no person holds the office of Chairperson—a chairperson elected by trustees present at the meeting from among their number,shall preside.

## **9 Procedure, quorum etc**

- (1) The procedure for the calling of meetings of the Trust and the conduct of business at those meetings shall, subject to this Schedule and 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 the Minister thinks fit.

- (3) Four 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 Minutes of meetings**

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

## **11 The Executive Director**

The Executive 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.

## **12 Common seal**

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

# **Schedule 2 Land vested in the Trust**

(Section 19 (1))

## **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, 32, 33, 34 and 35 in Deposited Plan 39586, Lot 51 in Deposited Plan 47732, Lot 101 in Deposited Plan 854472, and Lot 1824 in Deposited Plan 841390, situated in the Parish of St James, County of Cumberland, 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.

- 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 in Deposited Plan 259028, situated in the Parish of St James, County of Cumberland, City of Sydney.
- 2 Easements for railway transit and easements for drainage shown in Deposited Plan 605125, situated in the Parish of St James, County of Cumberland, City of Sydney.
- 3 Lot 102 in Deposited Plan 854472, situated in the Parish of St James, County of Cumberland, City of Sydney.

#### **Part 5 Land affected by redevelopment of the Conservatorium of Music**

Part of Lots 25 and 33, and Lot 27, in Deposited Plan 39586 situated in the Parish of St James and County of Cumberland and within the City of Sydney, as shown hatched and within heavy black edging on the map titled "Land Affected by Conservatorium Redevelopment", identified by Catalogue No 53305 and lodged in the Head Office of the Department of Public Works and Services at Sydney.

#### **Schedule 3 Transitional and other provisions**

(Section 24)

##### **1 Definitions**

In this Schedule:

**commencement** means the commencement of this Schedule.

**former trustees** means the trustees appointed pursuant to section 370 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.

##### **2 Construction of other instruments etc**

- (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 Domains 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 items 1 and 2 of 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.

### **3 Vesting of assets etc**

- (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,
  - (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*.
- (4) In subclause (2) (e) of this clause, a reference to deeds entered into with the former trustees includes a reference to deeds of lease:
- (a) dated 18 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 15 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 16 October 1979 and entered into by Delle Productions Pty. Limited in relation to part of the land described in Part 2 of Schedule 2.

#### **4 Agreement to certain conditions**

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.

## 5 Savings

(1) The by-laws:

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

made under Part 3B 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.

(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 Accounts and report

The former trustees shall:

- (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
  - (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.

## **7 Former trustees to cease to hold office**

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.

## **8 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

*Royal Botanic Gardens and Domain Trust Amendment Act 1996*

*Royal Botanic Gardens and Domain Trust Amendment Act 1999*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

## **9 Existing leases not affected by amendment**

The repeal and re-enactment, by the *Royal Botanic Gardens and Domain Trust Amendment Act 1996*, of section 9, and the amendments made by that Act to section 20, do not affect any lease granted by the Trust and in force immediately before that repeal or those amendments took effect.

## 10 Validity of certain licences

- (1) To avoid any doubt, a licence purporting to have been granted by the Trust over any of the lands described in Schedule 2 and to be in force immediately before the commencement of Schedule 1 [10] to the *Royal Botanic Gardens and Domain Trust Amendment Act 1996* is validated, even if it is not a licence of a kind referred to in section 20 (2) (c).
- (2) Such a licence, unless sooner revoked in accordance with its terms:
  - (a) if granted for a fixed term, remains in force until the expiry of the term, but may not be renewed, and
  - (b) if granted otherwise than for a fixed term, expires at midnight on 30 June 1996.
- (3) No compensation is payable on account of the termination of a licence by the operation of this section.
- (4) Nothing in this clause precludes the grant by the Trust of a lease to a former licensee.

## 11 Transitional operation of certain presumptions

Section 22C does not apply to proceedings commenced before the commencement of Schedule 1 [7] to the *Royal Botanic Gardens and Domain Trust Amendment Act 1996*.

## 12 (Repealed)

## 13 *Royal Botanic Gardens and Domain Trust Amendment Act 1999* not to affect certain existing agreements

- (1) Section 20, as in force before the amendments made to that section by the *Royal Botanic Gardens and Domain Trust Amendment Act 1999*, applies to a lease, licence or easement granted by the Trust and in force immediately before the commencement of those amendments.
- (2) Section 20A, as inserted by the *Royal Botanic Gardens and Domain Trust Amendment Act 1999*, does not apply to a lease granted by the Trust and in force immediately before the commencement of that section.

## 14 References to Director

On and from the commencement of Schedule 1.33 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*, a reference in any document (other than this Act) to the Director of the Royal Botanic Gardens and Domain is taken to be a reference to the Executive Director.