

Version No. 015
Royal Botanic Gardens Act 1991

Act No. 87/1991

Version incorporating amendments as at 5 April 2005

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to establish the Royal Botanic Gardens Board and define its functions;
- (b) to establish a position of Director, Royal Botanic Gardens;
- (c) to provide for the management of the Royal Botanic Gardens, Melbourne and the National Herbarium of Victoria;
- (d) to make consequential amendments to **Drugs, Poisons and Controlled Substances Act 1981**.

2. Commencement

This Act comes into operation on a day to be proclaimed.

3. Definitions

(1) In this Act—

"authorised officer" means a person appointed as an authorised officer under the **Conservation, Forests and Lands Act 1987** for the purposes of this Act;

S. 3(1) def. of "authorised officer" inserted by No. 86/2003 s. 3(1)(b).

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S. 3(1) def. of
"botanic
gardens"
amended by
No. 86/2003
s. 3(1)(a).

"Board" means the Royal Botanic Gardens
Board established under Part 2;

"botanic gardens" means Crown lands for the
time being described in Schedule 1, as added
to, removed or altered under sub-section (2);

"chief botanist" means the person designated as
chief botanist under Division 2 of Part 3;

S. 3(1) def. of
"Director"
amended by
No. 38/1995
s. 4.

"Director" means the Director, Royal Botanic
Gardens appointed under Division 1 of Part 3
and includes a person acting as Director
under section 41A;

S. 3(1) def. of
"Director-
General"
repealed by
No. 76/1998
s. 32(a)(i).

* * * * *

"managed land" means land, other than the
botanic gardens, managed by the board,
whether or not the Board is owner;

"National Herbarium" means—

- (a) the building on the land shown hatched
on the plan in Part 1 of Schedule 1
known as the National Herbarium of
Victoria; and
- (b) any other place under the management
of the Board that the Board designates
as part of the National Herbarium;

S. 3(1) def. of
"Royal
Botanic
Gardens,
Cranbourne"
inserted by
No. 86/2003
s. 3(1)(b).

"Royal Botanic Gardens, Cranbourne" means
the lands for the time being described in
Part 2 of Schedule 1, as added to, removed or
altered under sub-section (2);

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"Secretary" means the body corporate established by Part 2 of the **Conservation, Forests and Lands Act 1987**;

S. 3(1) def. of "Secretary" inserted by No. 76/1998 s. 32(a)(ii).

"State botanical collection" means the collection of—

- (a) botanical specimens;
- (b) paintings, photographs and drawings and other artistic material;
- (c) documents of all kinds—

for the time being located at the National Herbarium;

"transferred assets and liabilities" means—

- (a) assets which are, or the management of which is, transferred to the Board under Division 2 of Part 5; or
- (b) liabilities transferred to the Board under that Division.

- (2) The Governor in Council, by Order published in the Government Gazette, may add an area of Crown land to or remove an area of Crown land from the Crown land shown in Part 2 of Schedule 1 or alter an area of Crown land shown in Part 2 of Schedule 1.

S. 3(2) substituted by No. 86/2003 s. 3(2).

* * * * *

S. 3(3) inserted by No. 46/1998 s. 7(Sch. 1), repealed by No. 76/1998 s. 32(b).

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s. 4

4. Act binds the Crown

This Act binds the Crown not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. Objectives

The following are the objectives of this Act—

- (a) to conserve, protect and improve the botanic gardens and managed land and their collections of living plants;
- (b) to conserve and enhance the State botanical collection and National Herbarium;
- (c) to provide for the use of the State botanical collection or plants or plant specimens at the botanic gardens or managed land for scientific or reference purposes, consistent with accepted international practice;
- (d) to increase public knowledge and awareness of plants and plant communities;
- (e) to provide for the use of the botanic gardens for education, public enjoyment and tourism;
- (f) to provide for—
 - (i) the carrying out of and contribution to research into biodiversity; and
 - (ii) the conservation of biodiversity.

S. 5(e)
amended by
No. 86/2003
s. 4(a).

S. 5(f)
inserted by
No. 86/2003
s. 4(b).

PART 2—THE ROYAL BOTANIC GARDENS BOARD

Division 1—Establishment and Membership

6. Establishment

- (1) There is established by this Act a body corporate to be called the "Royal Botanic Gardens Board".
- (2) The Board—
 - (a) has perpetual succession; and
 - (b) shall have a common seal; and
 - (c) subject to this Act, is capable of acquiring, holding or disposing of real or personal properties; and
 - (d) may sue and be sued in its corporate name; and
 - (e) may do or suffer anything that bodies corporate may by law do or suffer.
- (3) The common seal of the Board must be kept in the custody that the Board may direct and must not be used except as authorised by the Board.
- (4) All courts must take judicial notice of the seal of the Board affixed to a document and must presume that it was properly affixed.

7. Board represents Crown

The Board, in carrying out its functions and powers, acts on behalf of the Crown.

8. Board member's immunity

- (1) A member of the Board is not personally liable for anything done or omitted to be done in good faith—
 - (a) in carrying out a function or power under this Act; or

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s. 9

- (b) in the reasonable belief that the act or omission was in the carrying out of a function or power under this Act.
- (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Board, attaches instead to the Board.

9. Board's accountability

In carrying out its functions and powers, the Board is subject to the general direction and control of the Minister.

10. Membership and procedure

- (1) Schedule 2 contains provisions about the membership of the Board.
- (2) Schedule 3 contains provisions about the procedure of the Board.

Division 2—Functions and General Powers

11. Functions

The following are the functions of the Board—

- (a) to conserve, protect, manage and improve the botanic gardens and managed land and their collections of living plants;
- (b) to maintain, conserve and improve the State botanical collection and the National Herbarium;
- (c) to conserve qualities of cultural or historical significance associated with the botanic gardens or managed land;
- (d) to carry out and contribute to botanical and horticultural research and research into biodiversity;

S. 11(d)
substituted by
No. 86/2003
s. 5(a).

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- (e) to carry out or encourage the carrying out of surveys of vegetation;
 - (f) to increase public knowledge and awareness of the botanic gardens and the State botanical collection and of plants and plant communities, through—
 - (i) publications;
 - (ii) providing educational information and advisory services;
 - (g) to promote and increase public enjoyment of the botanic gardens and managed land and of plants and plant communities;
 - (h) to conserve biodiversity and increase the public awareness of the need for the conservation of biodiversity and the threat to biodiversity;
 - (i) to provide advice and assistance to managers of other botanical gardens and public gardens in Victoria;
 - (ia) to provide specialist advice and services on horticulture, arboriculture and landscaping and the maintenance of gardens to public bodies and, subject to the approval of the Minister, to corporations;
 - (j) to advise the Minister on—
 - (i) any matter relating to the Board's functions or powers; or
 - (ii) any matter referred to it by the Minister;
 - (k) to carry out any other functions conferred by or under this or any other Act.

S. 11(h)
substituted by
No. 86/2003
s. 5(b).

S. 11(ia)
inserted by
No. 38/1995
s. 5.

12. General powers

- (1) The Board may do anything necessary or convenient to enable it to carry out its functions.
- (2) The Board's specific powers do not limit the general powers conferred by this section.

13. Delegation

- (1) The Board may, by instrument under seal, delegate any of its functions or powers (except this power of delegation) to—
 - (a) a committee of the Board; or
 - (b) the Director; or
 - (c) any of its members; or
 - (d) any member of its staff.
- (2) A delegation under sub-section (1) may be made to a specified person or class of persons referred to in that sub-section.

Division 3—Miscellaneous specific powers

14. Specific powers

For the purpose of carrying out its functions, the Board has, subject to this Act, the following powers—

- (a) to give or to take botanical specimens by way of loan or exchange with scientific or educational institutions;
- (b) to enter into contracts, agreements or arrangements and carry them out;
- (c) to publish information;
- (d) to apply for, obtain and hold (whether alone or jointly with any other person) any intellectual property rights;

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- (e) to assign or grant licences in respect of those intellectual property rights, with or without consideration;
 - (f) to enter into agreements or arrangements concerning the commercial exploitation of those intellectual property rights;
 - (g) to provide consultancy or advisory services to any Minister, government department, public statutory authority or other person whatever;
 - (h) to become a member or affiliate of any body, corporate or unincorporate, having similar functions to those of the Board;
 - (i) subject to this Act, to acquire, hold or dispose of any interest in real or personal property, with or without consideration;
 - (j) to accept or refuse grants or donations of money or other property (whether by deed, will or otherwise);
 - (k) to fix and collect reasonable fees for anything it does under this Act, except entry fees mentioned in paragraph (l);
 - (l) to collect—
 - (i) any prescribed fees for entry to the botanic gardens, managed land or any part of those lands; and
 - (ii) any money owing in respect of leases, licences or permits under this Act;
 - (m) to sell or dispose of plants but, subject to section 24A, not to carry on a business of selling plants;

S. 14(m)
amended by
Nos 38/1995
s. 6, 86/2003
s. 6.

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s. 15

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- (n) to designate any place under its management as part of the National Herbarium;
 - (o) to spend money received by it in carrying out its functions and powers.

15. Services

- (1) The Board may provide or arrange for the provision of restaurant or refreshment services or services of any other kind at the botanic gardens or on managed land despite anything in the **Crown Land (Reserves) Act 1978** or any Order in Council reserving the land.
- (2) Those services must be consistent with the objectives of this Act and the functions of the Board.

Division 4—Powers over land

16. Botanic gardens

The Board is responsible for the management of the botanic gardens but does not own them.

17. Managed Crown land

- (1) The Governor in Council, on the recommendation of the Minister, may, by Order published in the Government Gazette, place under the Board's management any Crown land specified in the Order that is not part of the botanic gardens.
- (2) The Minister must not recommend that land is to be placed under the Board's management if to do so would be inconsistent with any Act or reservation relating to the land.
- (3) The Order—
 - (a) may state which of the Board's functions and powers are exercisable in relation to the managed land;

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- (b) may impose any other restrictions or conditions on the management of the land that the Governor in Council thinks fit;
 - (c) may revoke the appointment of any committee of management to the extent that it applies to the managed land.
- (4) On the revocation of an Order under this section, the land to which the Order applied ceases to be under the Board's management and its management reverts to the Crown.

18. Managed freehold land

- (1) The Board may enter into an agreement with the owner or registered proprietor of an estate in fee simple in land other than Crown land under which the land is placed under the Board's management.
- (2) The agreement—
 - (a) may state which of the Board's functions or powers are exercisable in relation to the managed land;
 - (b) may impose any other restriction or condition on the management of the land;
 - (c) may authorise the Board on behalf of the owner to do anything necessary to carry out the agreement;
 - (d) may contain any other provision concerning the management of the land.
- (3) The agreement—
 - (a) may be ended or varied by agreement between the parties;
 - (b) unless registered under a provision applied by sub-section (5), ends when there is a change in the ownership of the land.

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- (4) An agreement must include the written consent of any person having an interest, mortgage, charge or other encumbrance over the land affected by it.
- (5) Division 2 of Part 9 of the **Planning and Environment Act 1987** applies to the agreement as if—
- (a) it were an agreement under that Division;
 - (b) that Division referred to the Board instead of the responsible authority;
 - (c) sections 174 to 180 and 184 were omitted.

19. Notice of managed land

The Board must publish in the Government Gazette a notice that land (other than Crown land) has become managed land as soon as possible after—

- (a) the land is acquired by the Board; or
- (b) the Board enters into an agreement to manage the land under this Division.

20. Land acquired by gift

If the Board acquires land by gift (whether by deed, will or otherwise) it may, despite anything to the contrary in this Act, do anything necessary to comply with the terms of the gift.

21. When is acquired land not managed land?

- (1) Land acquired by the Board does not become managed land to the extent to which—
- (a) the Board considers it unsuitable to be included in the botanic gardens or to be managed by the Board; and
 - (b) the Minister approves.

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s. 22

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- (2) The Board may in relation to land to which subsection (1) applies—
- (a) maintain its existing state or use; and
 - (b) exercise any other management powers that it thinks fit and the Minister approves.

22. Notice where land ceases to be managed land

- (1) The Board may surrender to the Crown any land which it owns, whether it is managed land or not.
- (2) As soon as possible after land owned by the Board ceases to be managed land, the Board must publish notice of the fact in the Government Gazette.

23. Disposal of land

The Board may dispose of any interest in land which it owns.

24. Leases, licences and permits

- (1) This section applies despite anything in the **Crown Land (Reserves) Act 1978**.
- (2) The Board may, in relation to the botanic gardens or managed land, on any consideration, rental, fees or other terms it thinks fit—
 - (a) with the approval of the Governor in Council, grant leases, each of which is for a term not exceeding 21 years;
 - (b) with the approval of the Governor in Council grant licences, each of which is for a term of more than 12 months but not more than 10 years;
 - (c) grant permits, each of which is for a term of 12 months or less.
- (3) A lease, licence or permit under this section must be for a purpose that will promote the objectives of this Act and the Board's functions.

S. 24(2)(a)
amended by
No. 38/1995
s. 7(1).

S. 24(2)(b)
amended by
No. 86/2003
s. 7.

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s. 24A

S. 24(3A)
inserted by
No. 38/1995
s. 7(2).

- (3A) Despite sub-section (3), the Board may grant a lease for residential purposes of any residence situated in the botanic gardens.
- (4) Without limiting the purposes for which a lease, licence or permit may be granted under this section, a lease, licence or permit may be granted to provide access through or within the botanic gardens or managed land.

S. 24A
inserted by
No. 86/2003
s. 8.

24A. Further power to lease land at Royal Botanic Gardens, Cranbourne

- (1) The Board may, with the approval of the Governor in Council, lease any part of the Royal Botanic Gardens, Cranbourne for the purpose of the carrying on of the business of a plant nursery.
- (2) A lease under sub-section (1)—
 - (a) may be for any consideration, rental, fees or other terms that the Board thinks fit; and
 - (b) must not be for a term of more than 21 years.
- (3) The total area of land leased under this section must not, at any particular time, be greater than 10 hectares.
- (4) This section has effect despite anything to the contrary in the **Crown Land (Reserves) Act 1978**.

Division 5—Powers over the State botanical collection

25. Additions to the collection

- (1) As soon as possible after the chief botanist receives from the Board botanical specimens or other property acquired by the Board for inclusion in the State botanical collection, the chief botanist must determine in writing whether or not to add them to the collection.

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- (2) The Board may sell or dispose of any botanical specimens or other property which the chief botanist determines should not be included in the State botanical collection.

26. Maintaining the collection

The Board must not remove any part of the State botanical collection from the National Herbarium, except in carrying out its functions and powers under this Act.

27. Disposal of the collection

- (1) The Board must not sell, lease or otherwise dispose of anything in the State botanical collection unless it considers, after consulting the chief botanist, that the material is worthless or no longer suitable for inclusion in the collection.
- (2) Before selling anything in the State botanical collection the Board must—
- (a) publish notice of its intention in a newspaper circulating generally throughout Victoria; and
 - (b) get the approval of the Governor in Council.
- (3) If this section, section 26 or another provision of this Act concerning the State Botanical collection is inconsistent with the **Public Records Act 1973**, the provision of this Act prevails.

Division 6—Works

28. Board may carry out works

- (1) For the purpose of carrying out its functions and powers, the Board may, in relation to the botanic gardens or managed land, carry out any works it thinks fit.

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s. 29

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- (2) In sub-section (1) "**works**" includes works for the construction, alteration, extension or demolition of improvements on land.
 - (3) The Governor in Council, by Order published in the Government Gazette, may direct that the Board must get the approval of the Minister before carrying out works—
 - (a) of a type specified in the Order; or
 - (b) with a value greater than that specified in the Order.
 - (4) The Board must comply with an Order under sub-section (3).

* * * * *

S. 28(5)
repealed by
No. 101/1994
s. 69.

Division 7—Finance and Reporting

29. General fund

- (1) The Board must keep a fund called the General Fund.
- (2) The Board must ensure that there is paid into the General Fund—
 - (a) all fees and penalties received or recovered under this Act; and
 - (b) all other money received by it or on its behalf.
- (3) The Board may pay money out of the General Fund—
 - (a) to meet any expenses incurred in carrying out its functions or powers;

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- (b) in paying or repaying money borrowed by it under this Act, together with any charges or interest on that money;
 - (c) in paying remuneration allowances or expenses to which its members, staff or any members of its committees are entitled;
 - (d) for any other purpose authorised by this Act.
- (4) The Board must ensure that all money in the General Fund that is not immediately required for its purposes must be kept in an account or accounts at a financial institution or institutions approved by the Treasurer for the purpose.

30. Borrowing and investment powers

- (1) With the approval of the Treasurer, the Board may borrow money on any terms and conditions that the Treasurer approves.
- (2) With the approval of the Treasurer, the Board may invest money in the General Fund in any manner the Treasurer approves.

31. Treasurer's guarantees

- (1) The Treasurer may on behalf of the Government of Victoria guarantee the repayment of any loan (and any associated costs, charges and interest) taken out by the Board.
 - (2) The Treasurer may impose conditions on any guarantee given under this section.
 - (3) Any sum required by the Treasurer to fulfil a guarantee given under this section must be paid out of the Consolidated Fund (which is, by this sub-section, appropriated to the necessary extent).
 - (4) Any sum received by the Treasurer in respect of any sum paid by the Treasurer under sub-section (3) must be paid into the Consolidated Fund.
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s. 32

32. Agreements with Secretary

S. 32(1)
amended by
No. 76/1998
s. 32(c).

- (1) With the Minister's approval, the Board and the Secretary may enter into an agreement—
- (a) for the provision of services to or for each other; or
 - (b) for the use of each other's staff.

S. 32(2)
amended by
No. 76/1998
s. 32(c).

- (2) The Board and the Secretary may do anything necessary to carry out an agreement under subsection (1).

33. Secretary's access to financial information

S. 33(1)
amended by
No. 76/1998
s. 32(c).

- (1) The Secretary and each person authorised by the Secretary has a right of access at all times to the accounts and financial records of the Board.

S. 33(2)
amended by
No. 76/1998
s. 32(c).

- (2) The Board must give to the Secretary any financial information or assistance that it is able to give and the Secretary requires.

S. 34
repealed by
No. 31/1994
s. 4(Sch. 2
item 73).

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35. Corporate plan and budget

- (1) The Board, in consultation with the Minister, must prepare a corporate plan—
- (a) outlining the strategies the Board intends to adopt to achieve the objectives of this Act; and
 - (b) outlining the priorities and targets of the Board.
- (2) The corporate plan must relate to a period of not less than 3 years and not more than 5 years.

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s. 35

- (3) The first corporate plan must be prepared as soon as practicable after the commencement of this section, and a new corporate plan must be prepared when the previous corporate plan ends or is about to end.
- (4) The Board in consultation with the Minister, must review the corporate plan not later than 1 September in each year and may make any appropriate changes to the plan.
- (5) If a corporate plan is prepared or changed in any financial year, details of the plan or the changes must be included in the Board's annual report for that year.
- (6) In its proposed budget of income and expenditure for a financial year the Board must insure that its anticipated expenditure for that financial year does not exceed its anticipated income for that financial year.
- (7) Each year on or before 1 September, the Board must advise the Minister of its proposed budget for that financial year.
- (8) The Board must also advise the Minister if it departs or intends to depart significantly from its budget during the financial year as soon as possible after it becomes aware of the departure or it decides to depart from the budget.

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**Ss 36, 37
repealed by
No. 31/1994
s. 4(Sch. 2
item 73).**

PART 3—THE DIRECTOR AND STAFF

Division 1—The Director

38. Appointment

- (1) The Governor in Council may appoint a Director, Royal Botanic Gardens.
- (2) The Director must be appointed on the recommendation of the Minister made after consultation with the Board.

39. Terms of office

- (1) The Director holds office for a term, which must not exceed 5 years, specified in the instrument of his or her appointment.
- (2) The Director may be reappointed.
- (3) The instrument of appointment of the Director may specify other terms and conditions of appointment.
- (4) The Director is entitled to receive the remuneration and allowances from time to time fixed by the Governor in Council.

40. Resignation

The Director may resign his or her office by letter addressed and delivered to the Governor in Council.

41. Removal from office

The Governor in Council may at any time remove the Director from office for misconduct or if the Director is incompetent or is for any other reason unfit or unable to perform the duties of that office.

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Part 3—The Director and Staff

s. 41A

41A. Appointment of acting Director

S. 41A
inserted by
No. 38/1995
s. 8.

- (1) The Board may, by instrument in writing, appoint a person to act as the Director during—
 - (a) any period when the Director is absent from duty or for any other reason unable to perform his or her duties; or
 - (b) a vacancy in the office of the Director.
- (2) An appointment of a person as acting Director has effect during the absence, inability or vacancy but the person must not continue to act in the office for more than 6 months.
- (3) An appointment as acting Director is on such other terms and conditions, including conditions as to the payment of allowances and expenses, as are determined by the Board.
- (4) A person appointed as acting Director, while so acting, has all the powers and may perform all the duties of the Director.
- (5) The Board may at any time terminate the appointment of a person as acting Director.

42. Reappointment to public service and superannuation

- (1) If immediately before his or her appointment the Director was an employee in the public service he or she—
 - (a) is eligible to be employed in the public service at the termination of his or her appointment as Director with a classification and emolument corresponding with or higher than that which he or she held or received in the public service immediately before being appointed Director as if service as Director had been service in the public service;

S. 42(1)
substituted by
No. 46/1998
s. 7(Sch. 1).

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 3—The Director and Staff

s. 43

(b) for the purposes of long service leave, is to be taken to continue to be an employee in the public service for the period of that appointment.

(2) If the Director was, immediately before appointment, an officer within the meaning of the **State Superannuation Act 1988** or a corresponding previous enactment, he or she continues, subject to that Act, to be an officer within the meaning of that Act while appointed as Director.

43. Director's role

The Director—

- (a) is the Board's chief executive officer; and
- (b) is subject to the direction of the Board; and
- (c) has the day to day control and management of the botanic gardens, managed lands, the State botanical collection and the other property for which the Board is responsible.

44. Director must give Secretary financial information

The Director must give to the Secretary any information about the financial operations and financial affairs of the Board that the Secretary requires.

S. 44
amended by
No. 76/1998
s. 32(c).

Division 2—Chief botanist and other staff

45. Nomination of chief botanist

(1) The Board may appoint an appropriately qualified person to be the chief botanist, may determine that person's terms and conditions of appointment (including remuneration), and may, subject to those terms and conditions of appointment, remove that person from office.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 3—The Director and Staff

s. 46

- (2) The chief botanist is to be appointed as soon as practicable after the commencement of this Act.

46. Role of the chief botanist

The chief botanist—

- (a) is responsible to the Director for the management of the State botanical collection and of research programs relating to it;
- (b) is responsible for advising the Board on botanical matters;
- (c) has the other functions conferred on the chief botanist by or under this or any other Act.

47. Delegation by chief botanist

The chief botanist may by instrument delegate any of his or her functions or powers as chief botanist under this Act or any other Act (except this power of delegation) to any person whom he or she considers appropriately qualified to carry them out.

48. Other staff

The Board may employ as many other staff as it considers necessary to assist it in carrying out its functions and powers, may determine their terms and conditions of employment (including remuneration), and may, subject to those terms and conditions, dismiss them.

Division 3—General

49. Staff not subject to Public Administration Act 2004

A person appointed or employed under this Part is not, in respect of that appointment or employment, subject to the **Public Administration Act 2004**.

S. 49
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 177.1).

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 4—Enforcement and Regulations

s. 50

PART 4—ENFORCEMENT AND REGULATIONS

50. Who may take proceedings?

Proceedings under this Act or the regulations may be taken by—

- (a) the Board; or
- (b) the Director; or
- (c) any person authorised by the Board or the Director either generally or in a particular case; or
- (d) an authorised officer.

S. 50(c)
amended by
No. 38/1995
s. 9.

S. 50(d)
inserted by
No. 38/1995
s. 9,
amended by
No. 86/2003
s. 9.

50A. Offences

A person must not—

- (a) take, destroy or damage any item in the State botanical collection; or
- (b) take, destroy or damage any flora in the botanic gardens; or
- (c) take, destroy or injure any fauna in the botanic gardens.

Penalty: 50 penalty units.

S. 50A
inserted by
No. 38/1995
s. 10.

50B. Requirement to give name and address

- (1) If an authorised officer believes, on reasonable grounds, that a person has committed an offence against this Act or the regulations, the officer may ask the person to state his or her name and ordinary place of residence or business.

S. 50B
inserted by
No. 86/2003
s. 10.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 4—Enforcement and Regulations

s. 50B

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- (2) In making a request under sub-section (1), the officer must inform the person of the grounds for his or her belief that the person has committed the offence.
- (3) A person must not, in response to a request under sub-section (1)—
- (a) refuse or fail to comply with the request without a reasonable excuse for doing so; or
 - (b) state a name that is false in a material detail; or
 - (c) state an address that is not the full and correct address of his or her ordinary place of residence or business.

Penalty: 5 penalty units.

- (4) If a person states a name and address in response to a request under sub-section (1) and the officer suspects on reasonable grounds that the stated name and address may be false, the officer may request the person to produce evidence of the correctness of the name and address.
- (5) A person to whom a request under sub-section (4) is made must comply with the request, unless he or she has a reasonable excuse for not doing so.

Penalty: 5 penalty units.

- (6) It is not an offence for a person to fail to comply with a request under sub-section (1) or (4)—
- (a) if the authorised officer did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request; or
 - (b) if the authorised officer did not identify himself or herself in accordance with section 50C before making the request.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 4—Enforcement and Regulations

s. 50C

S. 50C
inserted by
No. 86/2003
s. 10.

50C. Authorised officers must identify themselves

An authorised officer must produce proof of his or her identity and official status—

- (a) before exercising a power under section 50B; and
- (b) at any time during the exercise of a power under section 50B, if asked to do so.

51. Regulations

(1) The Governor in Council on the recommendation of the Board may make regulations for or with respect to—

- (a) the botanic gardens and managed land, including but not limited to—
 - (i) the preservation of good order and decency;
 - (ii) the safety of the public;
 - (iii) prohibiting or regulating traffic and parking;
 - (iv) the care, protection, management and improvement;
 - (v) the care, protection and management of the State botanical collection;
 - (vi) prohibiting or regulating the lighting of fires;
 - (vii) prohibiting or regulating the holding of meetings and other activities;
 - (viii) entry fees;
 - (ix) prohibiting or regulating entry by persons, animals or vehicles;
 - (x) prohibiting or regulating the carrying on of trade or businesses;

S. 51(1)(a)(iv)
amended by
No. 38/1995
s. 11(1).

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 4—Enforcement and Regulations

s. 51

- (xi) the protection of flora and fauna;
- (b) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstances; and
- (c) may confer discretions or powers or impose duties on any persons; and
- (d) may impose specific, minimum or maximum fees; and
- (e) may provide for the reduction, waiver or refund of fees, in whole or in part; and
- (f) may empower the Minister to grant exemptions from the regulations, to impose conditions on those exemptions and to revoke those exemptions;
- (g) may impose penalties not exceeding 20 penalty units for contravention of the regulations.
- * * * * *
- (3) Regulations made or having effect under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**, and that disallowance is deemed to be disallowance by the Parliament for the purposes of that Act.

S. 51(2)(g)
substituted by
No. 38/1995
s. 11(2).

S. 51(2)(h)
repealed by
No. 38/1995
s. 11(2).

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 5—Amendments and Transitional Provisions

s. 52

PART 5—AMENDMENTS AND TRANSITIONAL PROVISIONS

Division 1—Amendment of Act

52. Amendment of Drugs, Poisons and Controlled Substances Act 1981

In section 120(6) of the **Drugs, Poisons and Controlled Substances Act 1981** for the definition of "Botanist" substitute—

' **"Botanist"** means the chief botanist or his or her delegate under the **Royal Botanic Gardens Act 1991**.'

Division 2—Transitional Provisions

53. Assets and liabilities to vest in Board

- (1) On the commencement of this section—
- (a) the following vest in the Board—
 - (i) the State botanical collection;
 - (ii) all assets of the Crown or the Director-General located at or used solely in connection with the botanic gardens that are not part of the land, or treated as being part of the land, in the botanic gardens;
 - (b) all liabilities or obligations of the Crown or the Director-General in relation to the assets vested in the Board under paragraph (a) become liabilities and obligations of the Board.
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Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 5—Amendments and Transitional Provisions

s. 54

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- (2) In relation to the transferred assets and liabilities—
- (a) the Board is the successor in law of the Crown and the Director-General;
 - (b) a reference in an agreement or a document of any kind to the Crown or the Director-General must, on and from the commencement of this section, be taken to be a reference to the Board;
 - (c) all proceedings of any kind pending or existing by, against or in relation to the Crown or the Director-General have effect as if they were proceedings by, against or in relation to the Board and may be continued and completed accordingly.

54. Reservations and tenures to continue

- (1) Subject to this section, the transfer of any property, or the transfer of the management of any property, to the Board under this Division does not affect any reservation, lease, licence, permit or other authority existing over the property or over the land on which the property is located immediately before the transfer.
- (2) A lease, licence, permit or other authority granted by or on behalf of the Crown, a Minister or the Director-General and existing over—
 - (a) any land in the botanic gardens; or
 - (b) any other property which is, or the management of which is, transferred to the Board under this Division—

has effect on and from the commencement of this section as if granted by the Board and if any reference in it to the Crown, a Minister or the Director-General were a reference to the Board.

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Act No. 87/1991

Part 5—Amendments and Transitional Provisions

s. 55

55. Gifts, trusts etc.

A gift, disposition, trust or trust fund made, declared or created in favour of the Crown or the Director-General for the purposes of the botanic gardens or any property which is, or the management of which is, transferred to the Board under this Division takes effect on and from the commencement of this section (to the extent that it is capable of doing so) in favour of the Board.

56. Continued regulations

- (1) Any regulations in force under the **Crown Land (Reserves) Act 1978** and applying to the botanic gardens at the date of commencement of this section have effect as if made under this Act until 18 months after the date of commencement of this section or until sooner revoked, and those regulations may be amended or revoked accordingly.
- (2) This section has effect despite anything in section 3A of the **Subordinate Legislation Act 1962**.

57. Transferred staff

- (1) On the date of commencement of this section all officers or employees now under the **Public Service Act 1974** employed at the botanic gardens or the National Herbarium become employees of the Board.
- (2) The terms and conditions (including remuneration and leave entitlements) of employment of people transferred under this section must not be less favourable than those applying to them immediately before their transfer.
- (3) For the purpose of long service leave entitlements as employees of the Board of those transferred under this section, their service with the public service must be taken to be service with the Board.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Part 5—Amendments and Transitional Provisions

s. 58

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- (4) There must be paid out of the Consolidated Fund (which is, by this sub-section, appropriated to the necessary extent) any amount determined from time to time by the Treasurer after consultation with the Minister to be the component of any entitlement to paid sick leave or pay in lieu of long service leave attributable to the service with the public service of a person transferred under this section.

58. Superannuation and reappointment to the public service

- (1) A person who becomes an employee of the Board under this Division may apply for promotion or transfer to an office in the public service or appeal against the promotion or transfer of another person to an office in the public service as if he or she were an officer in the public service.

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S. 58(2)
repealed by
No. 46/1998
s. 7(Sch. 1).

- (3) A person who becomes an employee of the Board under this Division is eligible to be appointed to a position in the public service with a classification and emolument corresponding with or higher than that which he or she held in the public service immediately before transfer to the Board, as if service with the Board were service in the public service.

S. 58(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) A person appointed to the public service under sub-section (3) must be taken, while serving with the Board, to have continued to be an officer in the public service for the purposes of long service leave entitlements, but leave or pay in lieu of leave taken while serving with the Board must be taken into account in determining those entitlements.

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Act No. 87/1991

Part 5—Amendments and Transitional Provisions

s. 59

- (5) If a person who becomes an employee of the Board under this Division was, immediately before the transfer, an officer within the meaning of the **State Superannuation Act 1988** or a corresponding previous enactment he or she continues, subject to that Act, to be an officer within the meaning of that Act while serving with the Board.

59. References to government botanist

On the commencement of this section a reference in any document to the government botanist must be taken to be a reference to the chief botanist.

S. 60
repealed by
No. 86/2003
s. 11.

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S. 61
inserted by
No. 86/2003
s. 12.

61. Savings provision for Chairperson and Deputy Chairperson

Despite the commencement of section 13 of the **Royal Botanic Gardens (Amendment) Act 2003**, clause 3(3) of Schedule 2 to this Act, as in force immediately before that commencement, continues to apply, on and from that commencement, to the persons holding the office of Chairperson and Deputy Chairperson immediately before that commencement, until the expiry of the term of appointment of those persons as Chairperson and Deputy Chairperson.

SCHEDULES

SCHEDULE 1

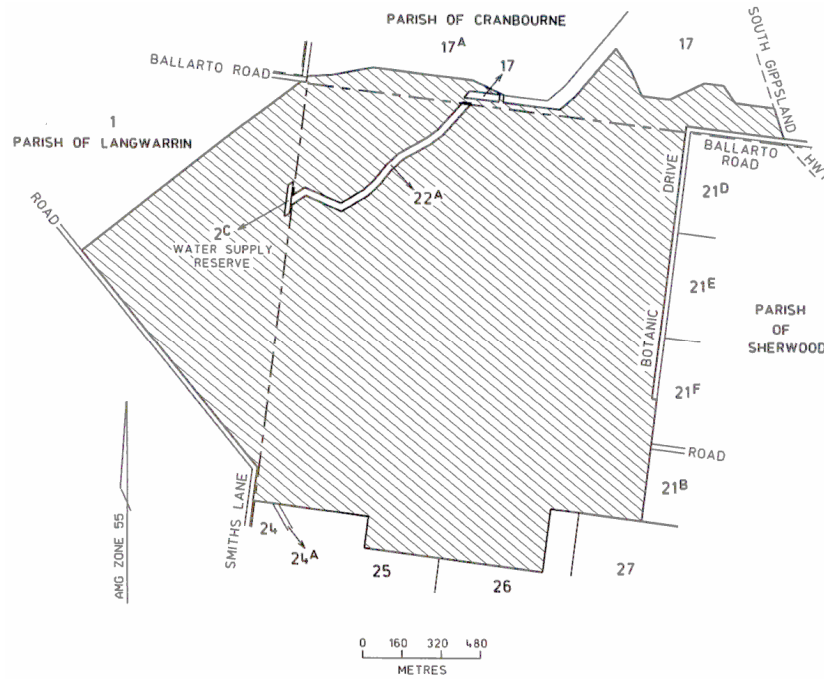
BOTANIC GARDENS

PART 1—ROYAL BOTANIC GARDENS, MELBOURNE

The area shown bordered red on the plan bearing the identifying reference
LEGL/91-46 and lodged in the Central Plan Office.

PART 2—ROYAL BOTANIC GARDENS, CRANBOURNE

Sch. 1 Pt 2
substituted by
No. 86/2003
s. 15(Sch.).



Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 2

SCHEDULE 2

MEMBERSHIP OF THE BOARD

1. Members

- (1) The Board consists of 7 members appointed by the Governor in Council on the recommendation of the Minister.
- (2) Of the members of the Board—
 - (a) 1 must be the Department Head of the Department of Natural Resources and Environment or his or her nominee; and
 - (b) 6 must be people who, in the Minister's opinion, have knowledge or expertise in one or more of the following fields—
 - (i) botany or horticulture;
 - (ii) business management, financial management or public administration;
 - (iii) recreation provision, education or tourism;
 - (iv) nature conservation;
- (3) A person cannot be appointed a member of the Board if he or she—
 - (a) is the Director;

Sch. 2
cl. 1(2)(a)
amended by
No. 76/1998
s. 32(d).

Sch. 2
item 1(3)(a)
amended by
No. 42/1995
s. 224(Sch. 2
item 33(a)).

Sch. 2
item 1(3)(b)
repealed by
No. 42/1995
s. 224(Sch. 2
item 33(b)).

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Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 2

2. Term of office

- (1) A member of the Board holds office for a term, which must not exceed 4 years, specified in the instrument of his or her appointment.
- (2) A member of the Board is eligible for re-appointment.

3. Chairperson and Deputy Chairperson

- (1) From among the members of the Board appointed under clause 1(2)(b), there must be appointed a Chairperson and Deputy Chairperson.
- (2) The Chairperson and Deputy Chairperson must be appointed by the Governor in Council on the recommendation of the Minister.
- (3) A person appointed as Chairperson or Deputy Chairperson holds office for the period that is specified in the instrument of his or her appointment to that office (which must not be longer than the remaining period of his or her appointment as a member).
- (3A) A person appointed as Chairperson or Deputy Chairperson is eligible for re-appointment to that office.
- (4) A person appointed as Chairperson or Deputy Chairperson ceases to hold that office on ceasing to be a member of the Board.

**Sch. 2 cl. 3(3)
substituted by
No. 86/2003
s. 13.**

**Sch. 2
cl. 3(3A)
inserted by
No. 86/2003
s. 13.**

4. Terms and conditions of office

In the instrument of appointment of the Chairperson, the Deputy Chairperson or a member of the Board, the Governor in Council may specify terms and conditions of appointment not inconsistent with this Schedule.

5. Resignation

The Chairperson, Deputy Chairperson or a member of the Board may resign that office by letter addressed and delivered to the Minister.

6. Removal from office

The Governor in Council may at any time remove from office the Chairperson, the Deputy Chairperson or a member of the Board.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 2

7. Vacancies

The office of a member of the Board becomes vacant if the member—

* * * * *

Sch. 2
item 7(a)
repealed by
No. 42/1995
s. 224(Sch. 2
item 33(c)).

- (b) is absent from 3 consecutive meetings of the Board without the permission of—
 - (i) the Minister, in the case of the Chairperson; or
 - (ii) the chairperson, in the case of any other member; or
- (c) is appointed as Director.

Sch. 2 cl. 8
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 177.2).

8. Member not subject to Public Administration Act 2004

The Chairperson, the Deputy Chairperson or a member of the Board is not, in respect of that office, subject to the **Public Administration Act 2004** (other than Part 5 of that Act).

9. Remuneration and allowances

- (1) The Chairperson, the Deputy Chairperson or a member of the Board is entitled to receive—
 - (a) the remuneration from time to time fixed by the Governor in Council in respect of that office; and
 - (b) the travelling or other allowances and expenses from time to time fixed by the Governor in Council in respect of that office
- (2) Remuneration, allowances and expenses may be fixed by reference to any award applying to officers or employees in the public service.

10. Committees

- (1) The Board may—
 - (a) establish any committees it considers necessary and define the constitution and functions of each committee so established;
 - (b) determine the procedure of each committee;

Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 2

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- (c) change the constitution or functions of a committee;
 - (d) dissolve a committee.
- (2) A person may be a member of a committee established by the Board even though he or she is not a member of the Board.
- (3) The Director is an ex-officio member of each committee established by the Board.
- (4) A member of a committee established by the Board is entitled to receive any travelling or other expenses determined by the Board.
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SCHEDULE 3

PROCEDURE OF THE BOARD

1. Quorum

- (1) A quorum of the Board is four members.
- (2) At a meeting at which a quorum of the Board is present, the decision of the majority of the members present and voting at the meeting is the decision of the Board.

2. Who presides?

- (1) The person who is to preside at a meeting of the Board is—
 - (a) the Chairperson, if he or she is present;
 - (b) the Deputy Chairperson, if the Chairperson is absent;
 - (c) a member elected by the members present at the meeting, if the Chairperson and Deputy Chairperson are absent.
- (2) The person presiding at a meeting of the Board has a casting as well as a deliberative vote.

3. General procedure

Subject to this Schedule the procedure of the Board is in its discretion.

4. Validity of decisions

A decision of the Board is not invalid only because of—

- (a) a vacancy in its membership; or
- (b) a defect or irregularity in the appointment of the Chairperson, the Deputy Chairperson or a member.

5. Declaration of interest

- (1) A member of the Board who has a direct or pecuniary interest in a contract or other matter being dealt with by the Board must declare the nature of the interest at a meeting of the Board, as soon as possible after becoming aware of the interest.

Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 3

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- (2) A member of the Board who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with the member's duties as member must declare that fact at a meeting of the Board as soon as possible after becoming aware of the potential conflict.
 - (3) The person presiding at a meeting at which a declaration under this clause is made must cause it to be recorded in the minutes of the meeting.
 - (4) A person who has made a declaration under this clause must not take any further part in the discussion of or vote on, the contract or matter to which the declaration relates.
-

Royal Botanic Gardens Act 1991
Act No. 87/1991

Sch. 4

Sch. 4
repealed by
No. 86/2003
s. 14.

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Royal Botanic Gardens Act 1991
Act No. 87/1991

Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 October 1991

Legislative Council: 20 November 1991

The long title for the Bill for this Act was "A Bill to establish the Royal Botanic Gardens Board and define its functions, to provide for the management of the Royal Botanic Gardens, Melbourne, and the National Herbarium of Victoria, to make consequential amendments to the **Drugs, Poisons and Controlled Substances Act 1981** and for other purposes."

The **Royal Botanic Gardens Act 1991** was assented to on 10 December 1991 and came into operation on 1 July 1992: Government Gazette 1 July 1992 page 1629.

Royal Botanic Gardens Act 1991
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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Royal Botanic Gardens Act 1991** by Acts and subordinate instruments.

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 73) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Project Development and Construction Management Act 1994, No. 101/1994

Assent Date: 13.12.94
Commencement Date: S. 69 on 22.5.95: Government Gazette 18.5.95 p. 1180
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Royal Botanic Gardens and Victorian Conservation Trust (Amendment) Act 1995, No. 38/1995

Assent Date: 6.6.95
Commencement Date: 6.6.95
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 items 33(a)–(c) on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998, No. 76/1998

Assent Date: 10.11.98
Commencement Date: S. 32 on 15.12.98: s. 2(5)
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Royal Botanic Gardens (Amendment) Act 2003, No. 86/2003

Assent Date: 11.11.03
Commencement Date: 12.11.03: s. 2
Current State: All of Act in operation

Royal Botanic Gardens Act 1991
Act No. 87/1991

Endnotes

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 177) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Royal Botanic Gardens Act 1991**

Royal Botanic Gardens Act 1991
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Endnotes

3. Explanatory Details

No entries at date of publication.