



ANNO VICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1978

No. 19 of 1978

An Act to provide for the establishment and management of public botanic gardens; to repeal the Botanic Garden Act, 1935-1961; and for other purposes.

[Assented to 23rd March, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

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|--|--------------------------|
| 1. This Act may be cited as the "Botanic Gardens Act, 1978". | Short title. |
| 2. This Act shall come into operation on a day to be fixed by proclamation. | Commencement. |
| 3. This Act is arranged as follows:—
PART I—PRELIMINARY
PART II—ADMINISTRATION
PART III—MISCELLANEOUS. | Arrangement of this Act. |
| 4. The following Acts are repealed:—
the Botanic Garden Act, 1935
the Botanic Garden Act Amendment Act, 1940
the Botanic Garden Act Amendment Act, 1960
the Botanic Garden Act Amendment Act, 1961. | Repeal. |
| 5. In this Act, unless the contrary intention appears—
"the Board" means the board established under the repealed Act under the name "The Governors of the Botanic Garden" and continued in existence under this Act under the name the "Board of the Botanic Gardens": | Interpretation. |

PART I

“the Director” means the person for the time being holding, or acting in, the office of Director of the Botanic Gardens:

“the repealed Act” means the Botanic Garden Act, 1935-1961, repealed by this Act.

PART II

PART II

ADMINISTRATION

The Board of the Botanic Gardens.

6. (1) The board established under the repealed Act under the name “The Governors of the Botanic Garden” shall continue in existence under the name of the “Board of the Botanic Gardens”.

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other legal rights or liabilities and of suing and being sued;

and

(d) shall have the powers, authorities, duties and obligations prescribed by or under this Act.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

(4) The rights and obligations vested in, or enforceable against, the Governors of the Botanic Garden under the repealed Act shall be vested in, or enforceable against, the Board under this Act.

Constitution of Board.

7. (1) The Board shall consist of eight members appointed by the Governor.

(2) A member of the Board holding office immediately before the commencement of this Act may continue in office for the balance of his term of office in all respects as if this Act had been in force when he was appointed or last re-appointed a member of the Board and he had then been appointed in pursuance of this Act.

Terms and conditions upon which members of the Board hold office.

8. (1) A member of the Board shall be appointed for such term of office, not exceeding four years, and upon such terms and conditions, as the Governor may determine and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board, and such a person, while acting in the absence of that member shall be deemed to be a member of the Board, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- or
- (c) dishonourable conduct.

(4) The office of a member of the Board shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Governor;
- or
- (d) he is removed by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

9. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy, or vacancies, in its membership.

Validity of
acts of the
Board.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge, or purported discharge, of his or its duties under this Act.

10. (1) The members of the Board shall in the month of July in each year elect one of their number to be the Chairman of the Board for a term of one year and any person so elected shall, upon the expiration of his term as Chairman, be eligible for re-election.

The Chairman.

(2) If the Chairman of the Board ceases to be a member of the Board before the expiration of his term as Chairman, the members of the Board shall elect one of their number to be the Chairman of the Board for the balance of that term.

(3) A person holding office as Chairman of the Board immediately before the commencement of this Act shall be deemed to have been elected Chairman of the Board under this Act and shall continue in that office until the expiration of the term for which he was elected Chairman.

11. (1) Five members of the Board shall constitute a quorum of the Board.

Conduct of
business by
the Board.

(2) A decision carried by a majority of the votes of the members present at a meeting of the Board shall be a decision of the Board.

(3) The Chairman, or if he is not present, a person elected by the members present at a meeting of the Board, shall preside at that meeting.

(4) Subject to this Act, the business of the Board shall be conducted in such manner as the Board may determine.

Director to attend meetings of Board.

12. The Director shall, unless excused from attendance by the Board, attend at every meeting of the Board.

Functions of the Board.

13. (1) The functions of the Board are as follows:—

- (a) to establish and manage public botanic gardens on land vested in, or placed under the control of, the Board;
 - (b) to establish and manage in or in connection with its gardens exhibitions of botanic, horticultural, zoological, biological or historical interest;
 - (c) to manage all lands and premises vested in, or placed under the control of, the Board;
 - (d) to manage all funds vested in, or under the control of, the Board and to apply those funds in accordance with the terms and conditions of any instrument of trust or other instrument affecting the disposition of those moneys;
 - (e) to carry out, or promote, research into matters of botanic, horticultural, zoological, biological or historical interest;
 - (f) to accumulate and care for specimens, objects and things of botanic, horticultural, zoological, biological or historical interest;
 - (g) to accumulate and classify data in regard to any such matters;
 - (h) to disseminate information of botanic, horticultural, zoological, biological or historical interest;
- and
- (i) to perform any other functions of scientific, educational or historical significance that may be assigned to the Board by regulation.

(2) The Board may, for the purpose of performing its functions under this Act—

- (a) acquire any interest in land or buildings;
- (b) carry out any works for the purpose of establishing, maintaining or developing its gardens, lands, facilities and amenities;
- (c) acquire plants, seeds, roots, animals, books, ornaments or any specimen, object or thing of scientific or historical interest;
- (d) acquire any interest in machinery, vehicles or other fixed or movable plant or equipment;
- (e) acquire any interest in any other personal property;
- (f) dispose of any interest in real or personal property including any of the specimens, objects or things of scientific or historical interest accumulated by it;
- (g) establish and manage refreshment and eating amenities in or in connection with its gardens;

(h) enter into any contract with any person or body of persons with respect to the performance or exercise of any part of its functions or powers under this Act;

(i) exercise such other powers as may be conferred on it by or under this Act;

and

(j) exercise such powers as may be necessary for, or in connection with, or incidental to, the effective performance, exercise and discharge of its functions, powers and duties under this Act.

14. (1) The Board shall not dispose of any interest in land vested in it, nor shall it be divested of the control of any land placed under its control, except in pursuance of a resolution passed by both Houses of Parliament.

Board not to divest or be divested of interest in lands except in pursuance of resolution of Houses of Parliament.

(2) Notice of a motion for a resolution referred to in subsection (1) of this section must be given not less than fourteen sitting days before the motion is passed.

(3) A resolution referred to in this section is not required in respect of the grant of a lease or licence in respect of any land vested in, or placed under the control of, the Board, where the lease or licence is granted for a purpose connected with or incidental to the management of the gardens.

15. The Board shall, in the performance, exercise or discharge of its functions, powers or duties under this Act, except where it makes, or is required to make, a recommendation to the Minister, be subject to the general control and direction of the Minister.

Board subject to general control and direction of Minister.

16. (1) The Board may delegate to any member of the Board, or to the Director or any other officer appointed for the purposes of this Act, any of its powers or functions under this Act.

Delegation by Board.

(2) Any delegation by the Board shall be revocable at will and shall not derogate from the power of the Board to act itself in any matter.

17. (1) The Board may borrow money from the Treasurer, or, with the consent of the Treasurer, from any other person, for the purpose of performing its functions under this Act.

Borrowing by Board.

(2) Any liability incurred with the consent of the Treasurer under subsection (1) of this section is hereby guaranteed by the Treasurer.

(3) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) of this section shall be satisfied out of the General Revenue of the State which is hereby, to the necessary extent, appropriated accordingly.

18. The Board may, with the consent of the Treasurer, invest any of its moneys that are not immediately required for the purpose of performing its functions under this Act in such manner as the Treasurer may approve.

Investment by the Board.

19. (1) The Board may establish accounts at any bank for the purpose of performing its functions under this Act.

Banking accounts.

(2) An account established under this section shall be operated by cheque signed and countersigned by such persons as the Board may appoint for that purpose.

Director and other officers.

20. (1) There shall be a Director of the Botanic Gardens and such other officers as the Governor may think fit to appoint for the administration of this Act.

(2) The Director and other officers shall be appointed and hold office subject to, and in accordance with, the Public Service Act, 1967-1977.

Disclosure of interest.

21. (1) A member of the Board who is in any way directly or indirectly interested in a contract, or proposed contract, made by or in the contemplation of, the Board—

(a) shall as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Board;

and

(b) shall not take part in any deliberations or decision of the Board with respect to that contract.

Penalty: Five hundred dollars.

(2) Any disclosure made in compliance with subsection (1) of this section shall be recorded in the minutes of the Board.

(3) A member of the Board who is an employee of the Board shall be deemed not to have any direct or indirect interest in any matter relating to employment by the Board by reason of the fact that he is an employee of the Board.

Accounts.

22. (1) The Board shall cause proper accounts to be kept of all its financial affairs and shall in respect of each financial year prepare a statement of accounts in such form as the Treasurer may approve.

(2) The Auditor-General may at any time, and shall at least once in each year, audit the accounts of the Board.

(3) The Auditor-General shall have and may exercise in respect of the moneys and accounts of the Board and the persons dealing therewith the powers that are vested in the Auditor-General by the Audit Act, 1921-1975, in respect of public accounts and accounting officers.

Annual report.

23. (1) The Board shall, as soon as practicable after the expiration of each financial year, deliver to the Minister a report in writing upon the conduct of the affairs of the Board during that financial year together with the audited statement of accounts for that financial year.

(2) The Minister shall cause a copy of the report and audited statement of accounts to be laid before each House of Parliament as soon as practicable after his receipt thereof.

PART III

MISCELLANEOUS

24. (1) Any person who, without the authority of the Board, damages, mutilates, destroys or removes from the possession of the Board any property vested in, or under the control of, the Board, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, or imprisonment for six months. Damage in property of the Board.

(2) The Court before which any person is convicted of an offence under subsection (1) of this section may order that person to pay to the Board compensation for the damage or destruction of any property of the Board.

(3) This section does not derogate from any criminal liability to which a person may otherwise be subject.

25. Proceedings for an offence against this Act shall be disposed of summarily. Proceedings.

26. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes. Financial provision.

27. (1) The Governor may, upon the recommendation of the Board, make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act. Regulations.

(2) Without limiting the generality of the foregoing, those regulations may—

- (a) make provision in relation to any aspect of the administration of the gardens, or other land or property vested in, or under the control of, the Board, or any part thereof;
- (b) prescribe conditions upon which the public or any person may have access to, or use, the gardens or other land or property vested in, or under the control of, the Board, or any part thereof;
- (c) prescribe and provide for the recovery of charges for admission to the gardens or other land vested in, or under the control of, the Board, or any part thereof;
- (d) prescribe and provide for the recovery of charges for any services provided by the Board;
- (e) provide for the care and custody of any property of the Board;
- (f) provide for the payment of rewards for information leading to the conviction of any person for an offence against this Act;
- (g) regulate, restrict or prohibit the driving or parking of motor vehicles on land vested in, or under the control of, the Board;
- (h) regulate, restrict or prohibit the bringing onto land vested in, or under the control of, the Board of any animal or thing specified in the regulations;

(i) regulate, restrict or prohibit the lighting of fires on land vested in, or under the control of, the Board;

and

(j) prescribe penalties not exceeding five hundred dollars for breach of, or non-compliance with, the provisions of any regulation.

(3) In any proceedings in respect of an offence against a regulation—

(a) an allegation in a complaint that a person named therein was the owner of a vehicle referred to therein on a specified day shall be deemed to be proved in the absence of proof to the contrary;

and

(b) where it is proved that a vehicle was parked on land vested in, or under the control of, the Board in contravention of a regulation, it shall be presumed, in the absence of proof to the contrary, that the vehicle was so parked by the owner of the vehicle.

(4) Where it is alleged that a person has committed an offence against a regulation relating to vehicular traffic or the parking of motor vehicles, the Board may cause to be served personally or by post upon that person a notice to the effect that he may expiate the offence by payment to the Board of an amount specified in the notice, being an amount fixed by regulation, within a time fixed by the notice, and if the offence is so expiated no proceedings shall be commenced in any court with respect to the alleged offence.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. SEAMAN, Governor