

TASMANIA

**ROYAL TASMANIAN BOTANICAL GARDENS
BILL 2002**

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ROYAL TASMANIAN BOTANICAL GARDENS BILL 2002

*(Brought in by the Minister for Tourism, Parks and
Heritage, the Honourable James Alexander Bacon)*

A BILL FOR

**An Act to make provision for the management,
conservation and enhancement of the Royal
Tasmanian Botanical Gardens, to repeal the
Botanical Gardens Act 1950 and to make
consequential amendments**

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Royal Tasmanian
Botanical Gardens Act 2002*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. In this Act –

“appointed member” means a member of the Board appointed under section 4(2)(a) or (b);

“authorised officer” means any of the following:

- (a) a member;
- (b) a person authorised by the Board;
- (c) the Director;
- (d) a police officer;

“Board” means the Botanical Gardens Board established under section 4(1);

“Botanical Gardens” means the Royal Tasmanian Botanical Gardens formerly managed by the board of trustees under the *Botanical Gardens Act 1950*;

“business plan” means a business plan referred to in section 15;

“Director” means the Director of the Botanical Gardens appointed under section 18;

“draft strategic master plan” means a draft strategic master plan referred to in section 9;

“financial year” means the 12 month period ending on 30 June in any year;

“member” means a member of the Board under section 4(2);

“motor vehicle” means a motor vehicle as defined in the *Vehicle and Traffic Act 1999*;

“public notice” means a notice published in any newspaper circulating generally in the State;

“Secretary” means the Secretary of the Department;

“strategic master plan” means a strategic master plan approved by the Minister under section 12;

“structure” includes any building, tent, screen, awning or enclosure;

“vehicle” includes a bicycle, tricycle, scooter, skateboard, rollerskates and rollerblades.

PART 2 – BOTANICAL GARDENS BOARD***Division 1 – Establishment of Botanical Gardens Board*****Establishment of Botanical Gardens Board**

4. (1) The Botanical Gardens Board is established.

(2) The Board consists of 7 members –

- (a) one of whom is appointed by the Minister as the chairperson of the Board; and
- (b) 5 of whom are persons appointed by the Minister with expertise relevant to the functions of the Board; and
- (c) one of whom is the Secretary of the Department or his or her delegate.

(3) Subject to subsection (4), an appointed member holds office for a period of 3 years.

(4) The Minister may extend the period for which an appointed member holds office by one further period not exceeding 3 years.

(5) The Board is a body corporate with perpetual succession and a common seal.

(6) The Board may –

- (a) subject to subsection (7), acquire, hold, dispose of and otherwise deal with real or personal property; and
- (b) sue and be sued in its corporate name.

(7) The Board must not dispose of any real property unless the disposal is approved by resolution of both Houses of Parliament.

(8) Schedule 1 has effect with respect to the membership of the Board.

(9) Schedule 2 has effect with respect to meetings of the Board.

Approval by Parliament

5. For the purposes of this Act, a House of Parliament is to be taken to have approved a resolution if a draft of the resolution has been laid on the table of that House and –

- (a) the draft is approved by that House; or
- (b) at the expiration of 5 sitting days after the draft was laid on the table of that House, no notice has been given of a motion to disapprove the draft or, if such a notice has been given, it has been withdrawn or the motion has been negatived; or
- (c) any notice of a motion to disapprove the draft given during the period of 5 sitting days after the draft was laid on the table of that House is, subsequent to those 5 sitting days, withdrawn or the motion is negatived.

Functions and powers of Board

6. (1) The Board has the following functions:

- (a) to manage the Botanical Gardens in accordance with the strategic master plan and the business plan;

- (b) to provide and promote recreational, educational and tourism services and facilities within the Botanical Gardens;
- (c) to conserve and enhance the Botanical Gardens;
- (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 affecting the disposition of those moneys;
- (e) to carry out and promote research into natural and cultural heritage relating to the Botanical Gardens;
- (f) to accumulate, acquire and care for specimens, objects and things of botanical, horticultural, biological or historical interest;
- (g) to accumulate and classify data in regard to those specimens, objects and things;
- (h) to disseminate information of botanical, horticultural, biological or cultural interest relating to the Botanical Gardens;
- (i) to perform any other function determined by the Minister.

(2) The Board, for the purpose of performing its functions, may –

- (a) acquire any interest in land or buildings; and
- (b) carry out any works for the purpose of establishing, maintaining or developing the Botanical Gardens and its facilities and amenities; and

- (c) do anything necessary or convenient to perform its functions.

Protection from liability

7. A member does not incur any personal liability for an act done, or purported or omitted to be done, by the member in good faith for the purpose of administering this Act.

Delegation

8. The Board may delegate any of its functions or powers, other than its power to acquire, hold, dispose of and otherwise deal with real or personal property and this power of delegation, to a member or to any other person the Board considers appropriate.

Division 2 – Strategic master plan and business plan

Draft strategic master plan

9. (1) The Board is to prepare a draft strategic master plan for the Botanical Gardens.

(2) A draft strategic master plan is to include the following:

- (a) a statement of the intended long-term use, planning, management, conservation and enhancement of the Botanical Gardens;
- (b) a statement of the objectives of the Board in relation to the management of the Botanical Gardens;

- (c) a description of the measures to be used to monitor the progress of the Board towards the achievement of those objectives;
- (d) detailed information on how the Board intends to meet its objectives;
- (e) any additional matters the Board considers appropriate.

Public consultation

10. After preparing a draft strategic master plan, the Board, by public notice, is to notify –

- (a) that a draft strategic master plan has been prepared; and
- (b) that a person may lodge written submissions relating to the draft strategic master plan; and
- (c) the period during which submissions may be made; and
- (d) the address to which submissions may be sent; and
- (e) the place at which a copy of the draft strategic master plan may be obtained; and
- (f) the cost, if any, of obtaining a copy of the draft strategic master plan; and
- (g) the place at which the draft strategic master plan is exhibited; and
- (h) the period during which the draft strategic master plan is to be exhibited.

Consideration of public submissions

11. After considering any submissions received under section 10, the Board –

- (a) may amend the draft strategic master plan to take account of the submissions; and
- (b) is to submit the draft strategic master plan to the Minister; and
- (c) is to make a recommendation to the Minister in relation to the draft strategic master plan.

Consideration of draft strategic master plan

12. (1) The Minister, after receipt of a draft strategic master plan, may –

- (a) approve the draft strategic master plan; or
- (b) require the Board to make any changes to the draft strategic master plan the Minister considers appropriate.

(2) If the Minister approves a draft strategic master plan, that draft strategic master plan becomes the strategic master plan.

Amendment to strategic master plan

13. (1) The Board may prepare a draft amendment to a strategic master plan.

(2) Sections 10, 11 and 12 apply to a draft amendment to a strategic master plan as if it were a draft strategic master plan.

(3) If the Minister approves a draft amendment to a strategic master plan, the draft amendment is incorporated into the strategic master plan.

(4) The Board may make a minor or insignificant amendment to a strategic master plan that does not substantially affect the objectives of the strategic master plan without complying with this section.

(5) If the Board makes an amendment referred to in subsection (4), the Board is to notify the Minister in writing of the amendment.

Review of strategic master plan

14. (1) The Board is to review its strategic master plan at least once every 5 years.

(2) In performing a review of its strategic master plan, the Board, by public notice, is to notify –

- (a) that it is performing the review; and
- (b) that a person may lodge with the Board written submissions relating to the review.

(3) If, as a result of the review, the strategic master plan is revised, the revised plan is to be submitted to the Minister for approval under section 12 as if it were a draft strategic master plan.

Business plan

15. (1) The Board, on or before 31 March in each financial year, is to prepare in respect of the next financial year a business plan for the Botanical Gardens.

(2) A business plan is to –

- (a) be consistent with the strategic master plan; and
- (b) include a statement of the manner in which the Board is to meet the objectives of the strategic master plan.

(3) The chairperson of the Board, within 30 days after a business plan has been prepared or within any further period the Minister approves, is to provide the Minister with a copy of the business plan.

Division 3 – Accounts and annual report

Statement of accounts

16. (1) The Board is to keep accounts and records of its financial affairs.

(2) Not later than 31 October after the end of each financial year, the Board is to prepare a statement of accounts in a form approved by the Auditor-General exhibiting a correct view of the financial position and transactions of the Board for that financial year.

Annual report

17. (1) The Board, not later than 31 October after the end of each financial year, is to give the Minister a report on its operations for the financial year.

(2) The report is to –

- (a) be in a form approved by the Minister; and
- (b) incorporate the statement of accounts prepared for the relevant financial year under section 16.

(3) The Minister is to table a copy of the report in each House of Parliament as soon as is practicable.

Division 4 – Administration

Appointment of Director of Botanical Gardens

18. (1) Subject to and in accordance with the *State Service Act 2000*, a person is to be appointed as Director of the Botanical Gardens.

(2) The Board may give directions to the Director relating to the Director's functions and the Director is to comply with those directions.

Functions and powers of Director

19. (1) The functions of the Director are –

- (a) to administer and manage the Botanical Gardens as directed by the Board; and
- (b) to carry out any other function for the purpose of this Act the Minister or the Board determines.

(2) The Director may do anything necessary or convenient to perform any function under this Act.

Employees

20. Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of this Act.

PART 3 – CARE, CONTROL AND MANAGEMENT**Directions by authorised officer**

21. (1) An authorised officer may give any reasonable direction to persons in the Botanical Gardens.

(2) An authorised officer may give a direction for the purpose of –

- (a) limiting the number of persons who may enter any part of the Botanical Gardens; or
- (b) closing to the public all, or any part, of the Botanical Gardens or any road, path or building in the Botanical Gardens; or
- (c) ensuring compliance with this Act.

(3) An authorised officer may direct a person to leave the Botanical Gardens, or any part of the Botanical Gardens, if that person –

- (a) enters the Botanical Gardens, or part of the Botanical Gardens, unlawfully; or
- (b) causes any annoyance or inconvenience to other persons in the Botanical Gardens; or
- (c) commits an offence under this Act.

Camping

22. (1) A person, except with the written consent of the Board, must not, in the Botanical Gardens –

- (a) camp or reside; or

- (b) erect or occupy, or cause to be erected or occupied, any structure.

Penalty: Fine not exceeding 10 penalty units.

(2) An authorised officer may direct a person who, without the written consent of the Board, has erected or occupied, or caused to be erected or occupied, any structure to remove the structure.

(3) A person must comply with any direction given under subsection (2).

Penalty: Fine not exceeding 10 penalty units.

(4) If a person fails to comply with a direction under subsection (2), the authorised officer may remove the structure.

(5) The Board and any authorised officer are not responsible for the safekeeping of, or for damage to, any structure removed under subsection (4).

Vehicles

23. (1) A person, except with the written consent of the Board, must not, in the Botanical Gardens –

- (a) cause or permit any vehicle, other than a perambulator, stroller or wheelchair, to stand or be parked on any lawn, grass, parkland, garden or path; or
- (b) drive, ride or use any vehicle, other than a perambulator, stroller or wheelchair otherwise than on a road or path; or
- (c) park a motor vehicle other than in an area of the Botanical Gardens that has been set aside for the parking of motor vehicles; or

- (d) abandon a motor vehicle.

Penalty: Fine not exceeding 10 penalty units.

(2) An authorised officer may take charge of, and remove or tow away, or cause to be removed or towed away, from the Botanical Gardens any motor vehicle that –

- (a) is parked in contravention of subsection (1)(c);
or
- (b) the authorised officer believes on reasonable grounds to have been abandoned.

Disposal of rubbish

24. A person must not –

- (a) bring any rubbish into, or deposit it for disposal in, the Botanical Gardens; or
- (b) leave any rubbish in the Botanical Gardens except in a place or receptacle provided for that purpose; or
- (c) deposit, or allow to escape, in the Botanical Gardens any pollutant within the meaning of the *Environmental Management and Pollution Control Act 1994*.

Penalty: Fine not exceeding 10 penalty units.

Protection of Botanical Gardens

25. A person, except with the written consent of the Board, must not, in the Botanical Gardens –

- (a) damage any lawn or green, otherwise than in the course of, and as a normal incident to, an organised recreational or sporting activity; or
- (b) remove, uproot, climb upon or cause damage to any tree or other vegetation or part of any tree or other vegetation; or
- (c) remove any dead timber, log or stump, whether standing or fallen; or
- (d) deface any rock or dig up any soil, sand, stone or similar substance; or
- (e) damage, deface, interfere with or remove any part of, or anything that forms part of, the Botanical Gardens; or
- (f) destroy, capture, injure or interfere with any animal; or
- (g) destroy or interfere with the habitat of any animal; or
- (h) bring into, or allow to remain in, the Botanical Gardens any animal other than a guide dog, as defined in the *Guide Dogs and Hearing Dogs Act 1967*, that is in harness.

Penalty: Fine not exceeding 10 penalty units.

Recreational activities

26. A person, except with the written consent of the Board, must not, in the Botanical Gardens –

- (a) operate any mechanically propelled model aircraft, boat or similar thing; or

- (b) operate any motorised equipment, other than a wheelchair, for recreational or other purposes; or
- (c) land any aircraft, hang-glider, hot air balloon or parachute; or
- (d) fly a kite or similar item or release balloons; or
- (e) play or listen to any music at a volume likely to cause a nuisance or annoyance to any person; or
- (f) operate or use a loudspeaker or public address system or apparatus; or
- (g) address a function, public meeting, demonstration or gathering; or
- (h) jog otherwise than on a road, path or specially designated circuit; or
- (i) play or practise golf; or
- (j) throw, kick or hit any object other than on designated land; or
- (k) fish or swim in any pond, lake, stream or ornamental water; or
- (l) use any drinking fountain otherwise than for drinking; or
- (m) light any fire; or
- (n) discharge any fireworks or a firearm; or
- (o) participate in an organised recreational or sporting activity; or
- (p) climb on, or attach items to, any structure.

Penalty: Fine not exceeding 10 penalty units.

Commercial activities

27. A person, except with the written consent of the Board, must not, in the Botanical Gardens –

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

Penalty: Fine not exceeding 10 penalty units.

Obstruction

28. A person must not obstruct an authorised officer in the performance of his or her functions.

Penalty: Fine not exceeding 10 penalty units.

PART 4 – MISCELLANEOUS

Regulations

29. (1) The Governor may make regulations for the purpose of this Act.

(2) The regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.

(3) The regulations may –

- (a) authorise any matter to be determined, applied or regulated by a specific person or body; and
- (b) impose fees or charges in relation to any service provided by the Board or any matter under this Act.

(4) The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(5) The Governor may make regulations of a savings and transitional nature consequent on the enactment of this Act.

(6) A provision referred to in subsection (5) may, if the regulations so provide, take effect from the commencement of this Act or a later date.

Administration of Act

30. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Tourism, Parks and Heritage; and
- (b) the department responsible to the Minister for Tourism, Parks and Heritage in relation to the administration of this Act is the Department of Tourism, Parks, Heritage and the Arts.

Savings and transitional

31. The savings and transitional provisions set out in Schedule 3 have effect.

Repeals and rescissions

32. (1) The *Botanical Gardens Act 1950* is repealed.

(2) The *Botanical Gardens By-laws 1997* and the *Botanical Gardens Amendment By-laws 2000* are rescinded.

Consequential amendments

33. The legislation specified in Schedule 4 is amended as specified in that Schedule.

SCHEDULE 1 – MEMBERSHIP OF BOARD

Section 4(8)

Holding other office

1. The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of an appointed member; or
- (b) accepting any remuneration payable to an appointed member.

Remuneration of members

2. An appointed member is entitled to be paid such remuneration, including travelling and subsistence allowances, as the Minister determines.

Vacation of office

3. (1) An appointed member may resign from office by written notice addressed to the Minister.

(2) An appointed member vacates office when the member –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (3) or (4).

(3) The Minister may remove an appointed member from office if the member –

- (a) is absent from 2 consecutive meetings of the Board without the permission of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
- (c) has been convicted in Tasmania of any crime or offence punishable by imprisonment for 12 months or longer, or elsewhere of any crime or offence which, if committed in Tasmania, would be punishable by imprisonment for 12 months or longer; or
- (d) is convicted of an offence against this Act.

(4) The Minister may remove an appointed member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

Filling of vacancies

4. (1) If the office of an appointed member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

(2) The Minister may appoint a suitable person to act as a substitute for an appointed member while that member –

- (a) is unable for any reason to perform the functions of such a member; or
- (b) is absent for any reason.

Validity of proceedings

5. (1) An act or proceeding of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.

(2) An act or proceeding of the Board is valid even if –

- (a) the appointment of an appointed member of the Board was defective; or
- (b) a person appointed as an appointed member of the Board was disqualified from acting as, or incapable of being, such a member.

SCHEDULE 2 – MEETINGS OF BOARD

Section 4(9)

Convening of meetings

1. A meeting of the Board may be convened by the chairperson or by any 2 members.

Procedure at meetings

2. (1) The quorum at any meeting of the Board is 4 members.

(2) A meeting of the Board may only transact business if there is a quorum present.

(3) A question arising at a meeting of the Board is determined by a majority of votes of the members present and voting.

Chairperson

3. (1) The chairperson of the Board is to preside at all meetings of the Board.

(2) If the chairperson of the Board is not present at a meeting of the Board, the members present are to elect one of their number to preside at that meeting.

(3) The person presiding at a meeting of the Board has a deliberative vote.

Minutes

4. The Board is to keep accurate minutes of its meetings.

Disclosure of interest

5. (1) A member is to disclose at a meeting of the Board any financial interest in a matter being considered by the Board.

(2) A disclosure of interest is to be recorded in the minutes of the meeting of the Board.

(3) Subject to subclause (4), the member who made the disclosure must –

- (a) not take part in any debate or vote in respect of the matter; and
- (b) leave the meeting.

(4) The Board may allow a member to remain at a meeting if –

- (a) the member is required to be present to make up a quorum; or
- (b) the Board considers that the interest disclosed by the member is too remote to influence the debate or vote.

General procedures

6. (1) Subject to this Schedule, the procedure for calling meetings of the Board and for the conduct of business at meetings of the Board is as determined by the Board.

(2) The Board may permit members to participate in a particular meeting by telephone or other means of communication.

(3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

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(4) The Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

SCHEDULE 3 – SAVINGS AND TRANSITIONAL PROVISIONS

Section 31

Interpretation

1. In this Schedule –

“commencement day” means the day on which this Act commences;

“repealed Act” means the *Botanical Gardens Act 1950*.

Trustees

2. A person who, immediately before the commencement day, was a trustee of the board of trustees under the repealed Act is, on that day, a member until 6 months after the commencement day.

Employees

3. Any person whose appointment or employment under the repealed Act was in force immediately before the commencement day is, on that day, a person taken to be appointed or employed under this Act.

Accounts and funds

4. Any account maintained by the board of trustees under the repealed Act immediately before the commencement day is, on that day, taken to be an account maintained by the Board and any funds in that account are taken to be the funds of the Board.

Property

5. Any property vested in the board of trustees under the repealed Act is, on the commencement day, vested in the Board.

Proceedings

6. Any proceedings instituted but not determined under the repealed Act before the commencement day may, on and after that day, be determined under that Act.

Contracts

7. Any contract entered into by the board of trustees under the repealed Act and in force immediately before the commencement day continues, on that day, to be in force as if it were a contract entered into by the Board.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Section 33

Government House Land Act 1964

1. Schedule 1 is amended by omitting “Trustees of the Botanical Gardens” and substituting “Botanical Gardens Board within the meaning of the *Royal Tasmanian Botanical Gardens Act 2002*”.

Ombudsman Act 1978

1. Schedule 1 is amended by omitting item 74 and substituting the following item:

74. Botanical Gardens Board within the meaning of the *Royal Tasmanian Botanical Gardens Act 2002*.

Proclamation under the Duties Act 2001

1. The proclamation notified in the *Gazette* as Statutory Rules 2001, No. 76 is amended by omitting subparagraph (ix) from paragraph (a) and substituting the following subparagraph:

(ix) Botanical Gardens Board;

Retirement Benefits Regulations 1994

1. Regulation 4(1)(g) is amended by omitting subparagraph (i) and substituting the following subparagraph:

- (i) appointed under the *Royal Tasmanian Botanical Gardens Act 2002*; or