



ANNO QUADRAGESIMO PRIMO

**ELIZABETHAE II REGINAE**

**A.D. 1992**

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**No. 59 of 1992**

**An Act to amend the Botanic Gardens Act 1978.**

*[Assented to 12 November 1992]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Botanic Gardens (Miscellaneous) Amendment Act 1992*.
- (2) The *Botanic Gardens Act 1978* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Substitution of long title**

3. The long title to the principal Act is repealed and the following long title is substituted:

**An Act to provide for the establishment and management of public botanic gardens and herbaria; and for other purposes.**

**Short title**

4. Section 1 of the principal Act is repealed and the following section is substituted:

**Short title**

1. This Act may be cited as the *Botanic Gardens and State Herbarium Act 1978*.

**Interpretation**

5. Section 5 of the principal Act is amended—

(a) by striking out the definition of "the Board" and substituting the following definition:

"the Board" means the Board of the Botanic Gardens and State Herbarium established under Part II;

and

(b) by striking out from the definition of "the Director" "Director of the Botanic Gardens" and substituting "Director of the Botanic Gardens and State Herbarium".

**Board of Botanic Gardens and State Herbarium**

6. Section 6 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The *Board of the Botanic Gardens and State Herbarium* is established.

**Functions of the Board**

7. Section 13 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

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

- (a) to establish and maintain botanic and other gardens for the use and enjoyment of members of the public 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 interest in the fields of botany, horticulture, biology, conservation of the natural environment or history;
  - (c) to establish and maintain a herbarium and, subject to this Act, to retain original specimens included in the herbarium;
  - (d) to accumulate and care for specimens (whether living or preserved), objects and things of interest in the fields of botany, horticulture, biology, conservation of the natural environment or history;
  - (e) to accumulate and classify data in regard to any such matters;
  - (f) to manage all lands and premises vested in, or placed under the control of, the Board;
  - (g) 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 funds;
  - (h) to carry out, or promote, research into matters of interest in the fields of botany, horticulture, biology, conservation of the natural environment or history;
  - (i) to disseminate information of interest in the fields of botany, horticulture, biology, conservation of the natural environment or history;
  - (j) to undertake the commercial exploitation of knowledge acquired by the Board in the course of conducting research;
  - (k) to sell or propagate and sell (whether alone or in partnership or joint venture with a nursery business) hybrids or cultivated varieties of plants that—
    - (i) have occurred spontaneously in the Board's gardens or been developed in the course of its research activities;
 and
    - (ii) are not widely commercially available in the State;
  - (l) to provide consultant services;
- and

(m) to perform any other functions of scientific, educational or historical significance that may be assigned to the Board by regulation.

(1a) The Board is not required to accept, accumulate or retain material that does not, in the opinion of the Board, justify collection and classification or retention under this Act;

(b) by striking out from subsection (2) (f) “any of the specimens,”;

and

(c) by inserting in subsection (2) (f) “, or lease out,” after “manage”.

#### **Substitution of s. 20**

8. Section 20 of the principal Act is repealed and the following section is substituted:

##### **Director and other staff**

20. (1) There will be a Director of the Botanic Gardens and State Herbarium and such other staff as may be reasonably required for the administration of this Act.

(2) The Director will be a person employed in the Public Service of the State.

(3) The other staff may comprise the following persons:

(a) persons employed in the Public Service of the State and assigned to assist in the administration of the Act;

(b) persons appointed by the Minister to assist in the administration of the Act;

(c) persons appointed by the Board with the approval of the Minister on terms and conditions from time to time approved by the Commissioner for Public Employment.

#### **Disclosure of interest**

9. Section 21 of the principal Act is amended—

(a) by striking out the penalty provision at the foot of subsection (1) and substituting the following penalty provision:

Penalty: Division 7 fine.

and

(b) by striking out subsection (3) and substituting the following subsection:

(3) A member of the Board who is a member of the staff appointed or assigned to assist in the administration of this Act will not, for the purposes of this section, be taken to have any direct or indirect interest in any matter relating to the staff by reason of the fact that he or she is a member of the staff.

#### **Substitution of s. 23**

10. Section 23 of the principal Act is repealed and the following section is substituted:

##### **Annual report**

23. (1) The Board must, on or before 30 September in each year, present a report to the Minister on the operations of the Board during the preceding financial year.

(2) A report under this section must incorporate the audited statement of accounts of the Board for the financial year to which the report relates.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before both Houses of Parliament.

**Damage to property of the Board**

11. Section 24 of the principal Act is amended—

(a) by striking out from subsection (1) “, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, or imprisonment for six months” and substituting “is guilty of an offence”;

and

(b) by inserting at the foot of subsection (1) the following penalty provision:

Penalty: Division 6 fine or division 6 imprisonment.

**Regulations**

12. Section 27 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (2) the following paragraph:

(ba) confer such powers on the Director or other members of the staff appointed or assigned to assist in the administration of this Act as may be necessary or expedient for the purposes of the enforcement of the regulations;;

(b) by inserting after paragraph (d) of subsection (2) the following paragraph:

(da) provide for the waiving or reduction by the Board or the Director of charges referred to in paragraphs (c) or (d);;

(c) by striking out paragraph (g) of subsection (2) and substituting the following paragraphs:

(g) regulate, restrict or prohibit, or provide that the Board may regulate, restrict or prohibit, the driving, parking or standing of vehicles on land vested in, or under the control of, the Board;

(ga) provide for the payment and recovery of fees determined by the Board in respect of the driving, parking or standing of vehicles on land vested in, or under the control of, the Board;

(gb) provide for the temporary control by the Director of the driving, parking or standing of vehicles on land vested in, or under the control of, the Board;

(gc) provide that the owner and driver of a vehicle driven, parked or left standing in contravention of the regulations are each guilty of an offence and provide or exclude defences in relation to any such offence;

(gd) provide for any matter in respect of procedure in relation to alleged offences against the provisions of the regulations dealing with the driving, parking or standing of vehicles;

(ge) provide for expiation of offences against the provisions of the regulations dealing with the driving, parking or standing of vehicles;

(gf) provide for any matter in respect of evidence or burden of proof in proceedings for offences against the provisions of the regulations relating to the driving, parking or standing of vehicles;;

(d) by inserting after paragraph (i) of subsection (2) the following paragraph:

(ia) confer powers on the Board or the Director to approve (on payment of a fee, if any, determined by the Board) any act, or activity, that would be otherwise prohibited under the regulations;;

(e) by striking out paragraph (j) of subsection (2) and substituting the following paragraph:

(j) prescribe penalties not exceeding a division 7 fine for contravention of any regulation.;

and

(f) by striking out subsections (3) and (4) and substituting the following subsection:

(3) No regulation under this Act may impose, or authorize the imposition of, a fee (other than an expiation fee) in respect of the parking or standing of a vehicle on a Sunday or other public holiday.

**Transitional provision**

13. (1) The *Board of the Botanic Gardens and State Herbarium* is the same body corporate as the *Board of the Botanic Gardens* continued in existence under the principal Act.

(2) The members of the Board in office immediately before the commencement of this Act continue in office under the principal Act as amended by this Act.

SCHEDULE

Further Amendments to Principal Act

Provision Amended	How Amended
Section 2	Strike out this section.
Section 3	Strike out this section.
Section 4	Strike out this section.
Section 5 definition of "the repealed Act"	Strike out this definition.
Section 6 (2)	Strike out this subsection and substitute: (2) The Board is a body corporate with full juristic capacity.
Section 6 (3)	Strike out "shall" and substitute "will".
Section 6 (4)	Strike out this subsection.
Section 7 (1)	Redesignate to read as section 7; Strike out "shall consist" and substitute "consists".
Section 7 (2)	Strike out this subsection.
Section 8 (1)	Strike out "shall" (first occurring) and substitute "will"; Strike out "upon" (twice occurring) and substitute, in each case, "on"; Strike out "his" and substitute "a"; Strike out "shall be" (second occurring) and substitute "is".
Section 8 (2)	Strike out "shall be deemed" and substitute "will be taken"; Strike out "shall have" and substitute "has"; After "he" insert "or she".
Section 8 (4)	Strike out "shall become vacant if" and substitute "becomes vacant if the member".
Section 8 (4) (a), (c) and (d)	Strike out "he" (wherever occurring).
Section 8 (4) (b)	Strike out this paragraph and substitute: (b) completes a term of office;
Section 8 (4) (d)	Strike out "of this section".
Section 8 (5)	Strike out "Upon" and substitute "On"; Strike out "shall" (first occurring) and substitute "will"; Strike out "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" and substitute "a term of appointment, the successor may be appointed only for the balance of the term".
Section 9 (1)	Strike out "shall not be" and substitute "is not".
Section 9 (2)	Strike out "shall attach" and substitute "attaches"; Strike out "him" and substitute "the member"; Strike out "his or its" (twice occurring).
Section 10	Strike out this section and substitute: <b>Presiding member</b> 10. (1) The members of the Board must, in July each year, elect one of their number to be the presiding member of the Board for a term of one year. (2) A member is, on the expiration of a term of office as presiding member, eligible for re-election. (3) If the presiding member ceases to be a member of the Board before the expiration of a term of office, the members of the Board must elect one of their number to be the presiding member for the balance of the term.
Section 11 (1)	Strike out "shall".
Section 11 (2)	Strike out "shall be" and substitute "is".

Section 11 (3)	Strike out this subsection and substitute: (3) The presiding member must preside at meetings of the Board at which he or she is present and, in the absence of the presiding member from a meeting, the members present must choose one of their number to preside.
Section 11 (4)	Strike out "shall" and substitute "may".
Section 12	Strike out "shall" and substitute "must".
Section 14 (1)	Strike out "shall" (twice occurring) and substitute, in each case, "may".
Section 14 (2)	Strike out "of this section".
Section 15	Strike out "shall" and substitute "is"; Strike out "be".
Section 16 (2)	Strike out "shall be" and substitute "is"; Strike out "shall" (second occurring) and substitute "does".
Section 17 (2)	Strike out "of this section is hereby" and substitute "is".
Section 17 (3)	Strike out "of this section shall be satisfied out of the General Revenue of the State which is hereby" and substitute "must be satisfied out of the Consolidated Account which is".
Section 18	Strike out "moneys that are" and substitute "money that is".
Section 19 (2)	Strike out "shall" and substitute "must".
Section 21 (1) (a)	Strike out "shall as soon as he" and substitute "must as soon as he or she"; Strike out "his" and substitute "the".
Section 21 (1) (b)	Strike out "shall" and substitute "must".
Section 21 (2)	Strike out "of this section shall" and substitute "must".
Section 22 (1)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
Section 22 (2)	Strike out "shall" and substitute "must".
Section 22 (3)	Strike out this subsection.
Section 24 (2)	Strike out "of this section".
Section 25	Strike out this section and substitute: <b>Summary offences</b> 25. Offences against this Act are summary offences.
Section 26	Strike out "moneys" (twice occurring) and substitute, in each case "money"; Strike out "shall" and substitute "must".
Section 27 (1)	Strike out "upon" and substitute "on".
Section 27 (2)	Strike out "the foregoing, those" and substitute "subsection (1), the".
Section 27 (2) (a)	Strike out "thereof" and substitute "of those gardens or that land or property".
Section 27 (2) (b)	Strike out "thereof" and substitute "of those gardens or that land or property".
Section 27 (2) (c)	Strike out "thereof" and substitute "of those gardens or that land".

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

ROMA MITCHELL Governor