

[In substitution for Bill previously circulated]

# **Royal Botanic Gardens and Victorian Conservation Trust (Amendment) Bill**

No.

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[In substitution for Bill previously circulated]

LEGISLATIVE ASSEMBLY

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Read 1° 26 April 1995

*(Brought in by Mr Coleman and Mr Gude)*

A BILL

to amend the **Royal Botanic Gardens Act 1991**, to amend the **Victorian Conservation Trust Act 1972**, to make various amendments to other Acts and for other purposes.

**Royal Botanic Gardens and Victorian  
Conservation Trust (Amendment)  
Act 1995**

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. *Purposes***

The purposes of this Act are—

- 5           (a) to confer additional powers and functions on the  
            Royal Botanic Gardens Board and make various

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

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other amendments to the **Royal Botanic Gardens Act 1991**;

(b) to amend the **Conservation, Forests and Lands Act 1987** to enable the issuing of infringement notices for contravention of regulations under the **Royal Botanic Gardens Act 1991**; 5

(c) to amend the **Victorian Conservation Trust Act 1972** to change the name of the Trust to the Trust for Nature (Victoria) and to make amendments to the powers and functions of the Trust. 10

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

**PART 2— ROYAL BOTANIC GARDENS ACT 1991** 15

**Division 1—Amendments to Royal Botanic Gardens Act 1991**

N . 87/1991  
as amended  
by Nos  
31/1994 and  
101/1994.

**3. Principal Act**

In this Part, the **Royal Botanic Gardens Act 1991** is called the Principal Act. 20

**4. Amendment of definitions**

In section 3 (1) of the Principal Act, in the definition of “Director”, after “Part 3” insert “and includes a person acting as Director under section 41A”.

**5. Widening of Board’s functions** 25

In section 11 of the Principal Act, after paragraph (i) insert—

“(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;” 30

**6. Amendment of Board's powers**

In section 14 (*m*) of the Principal Act, after “plants”  
**insert** “but not to carry on a business of selling  
plants”.

5 **7. Amendment of section 24**

(1) In section 24 (2) (*a*) of the Principal Act, for “15”  
**substitute** “21”.

(2) In section 24 of the Principal Act, after sub-section  
(3) **insert**—

10 “(3A) Despite sub-section (3), the Board may grant  
a lease for residential purposes of any  
residence situated in the botanic gardens.”.

**8. New section 41A inserted**

After section 41 of the Principal Act, **insert**—

15 **“41A. Appointment of acting Director**

(1) The Board may, by instrument in writing,  
appoint a person to act as the Director  
during—

20 (*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.

25 (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.

30 (3) An appointment as acting Director is on  
such other terms and conditions, including  
conditions as to the payment of

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Trust (Amendment)*

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
- (5) The Board may at any time terminate the  
appointment of a person as acting  
Director.”.

**9. *Authorised officers able to take proceedings***

In section 50 of the Principal Act, after paragraph (c) 10  
**insert—**

“; or

- (d) an authorised officer within the meaning of  
section 3 (1) of the **Conservation, Forests and  
Lands Act 1987.”.** 15

**10. *Section 50A inserted***

After section 50 of the Principal Act **insert—**

**“50A. *Offences***

A person must not—

- (a) take, destroy or damage any item in 20  
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. 25

Penalty: 50 penalty units.”.

**11. *Amendment of regulation making powers***

- (1) In section 51 (1) (a) (iv) of the Principal Act, for  
“improvements” **substitute** “improvement”.

- (2) In section 51 (2) of the Principal Act, for paragraphs (g) and (h) substitute—

“(g) may impose penalties not exceeding 20 penalty units for contravention of the regulations.”.

5 **Division 2—Amendment of Conservation, Forests and  
Lands Act 1987**

12. **Amendment of the Conservation, Forests and Lands Act  
1987**

No. 41/1987.  
Reprinted to  
Act No.  
82/1990 and  
subsequently  
amended by  
No 36/1992,  
48/1993,  
31/1994,  
52/1994,  
87/1994,  
96/1994 and  
101/1994.

10 In the **Conservation, Forests and Lands Act  
1987**—

- (a) in section 3 (1), for the definition of “relevant law” substitute—

“**“relevant law”** means, in relation to any provision of this Act—

- 15 (a) this Act;  
(b) the regulations;  
(c) an Act specified in Schedule 1;  
(d) regulations under an Act specified in Schedule 1—

20 and, in Part 9 (except sections 89, 97 and 98), includes an Act specified in Schedule 1A and regulations under any such Act.’;

- (b) in section 83 (1), after paragraph (aa) insert—

25 “(ab) for the purposes of this Part, a specified member of staff or specified class of members of staff of the Royal Botanic Gardens Board; or”;

- (c) in section 96 (3), after “1975” insert “or section 50 of the **Royal Botanic Gardens Act 1991**”;

- 30 (d) after Schedule 1 insert—

“**SCHEDULE 1A**

**Royal Botanic Gardens Act 1991**”.

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**PART 3—VICTORIAN CONSERVATION TRUST ACT 1972**

**Division 1—Amendments to the Victorian Conservation  
Trust Act 1972**

No. 8350.  
R printed to  
No. 31/1994.

**13. *Principal Act***

In this Part, the **Victorian Conservation Trust Act 1972** is called the **Principal Act**. 5

**14. *Amendment of name of Trust***

In section 2 of the **Principal Act**, for “**Victorian Conservation Trust**” **substitute** “**Trust for Nature (Victoria)**”. 10

**15. *Amendments of objects and functions of the Trust***

- (1) In section 3 (1) of the **Principal Act**—
- (a) in paragraph (b), for “**preservation of wild life**” **substitute** “**conservation of wildlife**”;
- (b) in paragraph (c), for “**preservation**” **substitute** “**conservation**”. 15
- (2) In section 3 (1A) of the **Principal Act**, for “**preservation**” **substitute** “**conservation**”.
- (3) In section 3 (2) of the **Principal Act**—
- (a) for “**in particular**” **substitute** “, without limiting those general powers,”; 20
- (b) in paragraph (e), for “**members**” **substitute** “**trustees**”;
- (c) after paragraph (e) **insert**—
- “; and 25
- (f) to pay such remuneration to the chairman, deputy chairman or a trustee as the **Trust** may determine from time to time.”.



**16. Amendment of provisions relating to covenants**

(1) In section 3A of the Principal Act—

(a) in sub-section (1), for “preservation” (where twice occurring), **substitute** “conservation”;

5 (b) in sub-section (2), for “servants” **substitute** “officers”.

(2) In section 3A (5) of the Principal Act, paragraph (b) is **repealed**.

(3) In section 3A (8) of the Principal Act—

10 (a) **omit** “within one month of the publication of the notice in the Government Gazette or in the case of a submission received”;

(b) **omit** “or of such publication (whichever is the later)”.

15 **17. Number and terms of appointment of trustees**

(1) In section 4 of the Principal Act, for “nine members” **substitute** “10 trustees”.

20 (2) In section 5 (1) of the Principal Act, for “of five” **substitute** “, specified in the instrument of appointment, not exceeding 4”.

**18. New section 5A inserted**

After section 5 of the Principal Act **insert**—

**“5A. Immunity of trustees**

25 (1) A trustee 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

30 (b) in the reasonable belief that the act or omission was in the carrying out of a function or power under this Act.

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s. 19

- (2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a trustee attaches instead to the Trust.”.

**19. Miscellaneous amendments** 5

In the Principal Act—

- (a) in section 7 (2), for “five” **substitute** “6”;  
(b) in section 8 (1), for “secretary” **substitute** “director”.

**Division 2—Consequential amendments to other Acts and  
transitional provisions** 10

**20. Amendment of Conservation, Forests and Lands Act  
1987**

In the Conservation, Forests and Lands Act  
1987— 15

- (a) in section 69 (3), for “Victorian Conservation Trust” **substitute** “Trust for Nature (Victoria)”;  
(b) in section 70 (1) (*ma*), for “Victorian Conservation Trust” **substitute** “Trust for Nature (Victoria)”;  
(c) in section 70 (2), for “Victorian Conservation Trust” **substitute** “Trust for Nature (Victoria)”.

**21. Amendment of the National Parks Act 1975**

In the National Parks Act 1975—

- (a) in section 12 (1) (c), for “Victoria” **substitute** “Victorian”; 25  
(b) in section 19A (1), for “Victorian Conservation Trust” **substitute** “Trust for Nature (Victoria)”;  
(c) in section 21A (b), for “Victorian Conservation Trust” **substitute** “Trust for Nature (Victoria)”.

N . 8702.  
R printed to  
No. 61/1993  
and G.G.  
1.4.1993 and  
subsequently  
am nded by  
N s 130/1993,  
31/1994,  
53/1994,  
89/1994,  
110/1994 and  
112/1994.

**22. Transitional provisions**

- 5 (1) The Trust for Nature (Victoria) is deemed to be the same body as the Victorian Conservation Trust despite the changes to the name and structure of the Trust by this Act, and no matter or thing is to be affected because of those changes of name and structure.
- 10 (2) On and after the commencement of this section, a reference to the Victorian Conservation Trust in any Act, subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** or any document whatever, unless inconsistent with the context or subject-matter, is deemed to be a reference to the Trust for Nature (Victoria).
- 15 (3) The trustees of the Victorian Conservation Trust holding office immediately before the commencement of this section continue to hold office after the commencement of this section as trustees of the Trust for Nature (Victoria) on the same terms and
- 20 conditions upon which they held office as trustees of the Victorian Conservation Trust.

