

(Reprint No. 3)

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SOUTH AUSTRALIA

BOTANIC GARDENS AND STATE HERBARIUM ACT 1978

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 July 1999.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 August 1993.

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BOTANIC GARDENS AND STATE HERBARIUM ACT 1978

being

Botanic Gardens Act 1978 No. 19 of 1978
[Assented to 23 March 1978]¹

as amended by

Botanic Gardens (Miscellaneous) Amendment Act 1992 No. 59 of 1992 [Assented to 12 November 1992]²
Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]³
Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]⁴

¹ Came into operation 5 October 1978: *Gaz.* 5 October 1978, p. 1106.

² Came into operation 1 August 1993: *Gaz.* 24 June 1993, p. 2047.

³ Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

⁴ **Schedule (item 8) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

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

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

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

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Interpretation

5. In this Act, unless the contrary intention appears—

"**the Board**" means the *Board of the Botanic Gardens and State Herbarium* established under Part 2;

"**the Director**" means the person for the time being holding, or acting in, the office of Director of the Botanic Gardens and State Herbarium.

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Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

PART 2
ADMINISTRATION

Board of Botanic Gardens and State Herbarium

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

(2) The Board is a body corporate with full juristic capacity.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it will 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.

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Constitution of Board

7. The Board consists of eight members appointed by the Governor.

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Terms and conditions on which members of the Board hold office

8. (1) A member of the Board will be appointed for such term of office, not exceeding four years, and on such terms and conditions, as the Governor may determine and, on the expiration of a term of office, is eligible for reappointment.

(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 will be taken to be a member of the Board, and has all the powers, authorities, duties and obligations of the member of whom he or she has been appointed a deputy.

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

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

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

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

(5) On the office of a member of the Board becoming vacant, a person will 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 a term of appointment, the successor may be appointed only for the balance of the term.

Validity of acts of Board

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

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

Presiding member

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.

Conduct of business by Board

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

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

(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.

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

Director to attend meetings of Board

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

Functions of Board

13. (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; and
- (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; and
- (c) to establish and maintain a herbarium and, subject to this Act, to retain original specimens included in the herbarium; and
- (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; and
- (e) to accumulate and classify data in regard to any such matters; and
- (f) to manage all lands and premises vested in, or placed under the control of, the Board; and

- (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; and
 - (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; and
 - (i) to disseminate information of interest in the fields of botany, horticulture, biology, conservation of the natural environment or history; and
 - (j) to undertake the commercial exploitation of knowledge acquired by the Board in the course of conducting research; and
 - (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; and
 - (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.
- (2) The Board may, for the purpose of performing its functions under this Act—
- (a) acquire any interest in land or buildings; and
 - (b) carry out any works for the purpose of establishing, maintaining or developing its gardens, lands, facilities and amenities; and
 - (c) acquire plants, seeds, roots, animals, books, ornaments or any specimen, object or thing of scientific or historical interest; and
 - (d) acquire any interest in machinery, vehicles or other fixed or movable plant or equipment; and
 - (e) acquire any interest in any other personal property; and
 - (f) dispose of any interest in real or personal property including objects or things of scientific or historical interest accumulated by it; and
 - (g) establish and manage, or lease out, refreshment and eating amenities in or in connection with its gardens; and
 - (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; and
 - (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.

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

14. (1) The Board may not dispose of any interest in land vested in it, nor may 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.

(2) Notice of a motion for a resolution referred to in subsection (1) 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.

Board subject to general control and direction of Minister

15. The Board is, 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, subject to the general control and direction of the Minister.

Delegation by Board

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.

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

Borrowing by Board

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.

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

(3) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) must be satisfied out of the Consolidated Account which is, to the necessary extent, appropriated accordingly.

Investment by Board

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

ADI accounts

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

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

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

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) must as soon as he or she becomes aware of the contract or proposed contract, disclose the nature of the interest to the Board; and
- (b) must not take part in any deliberations or decision of the Board with respect to that contract.

Penalty: Division 7 fine.

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

(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.

Accounts

22. (1) The Board must cause proper accounts to be kept of all its financial affairs and must 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 must at least once in each year, audit the accounts of the Board.

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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.

PART 3
MISCELLANEOUS

Damage to property of Board

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 is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

(2) The Court before which any person is convicted of an offence under subsection (1) 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.

Summary offences

25. Offences against this Act are summary offences.

Financial provision

26. The money required for the purposes of this Act must be paid out of money provided by Parliament for those purposes.

Regulations

27. (1) The Governor may, on 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.

(2) Without limiting the generality of subsection (1), the 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 of those gardens or that land or property; and

(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 of those gardens or that land or property; and

(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; and

(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 of those gardens or that land; and

(d) prescribe and provide for the recovery of charges for any services provided by the Board; and

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

(e) provide for the care and custody of any property of the Board; and

- (f) provide for the payment of rewards for information leading to the conviction of any person for an offence against this Act; and
- (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; and
 - (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; and
 - (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; and
 - (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; and
 - (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; and
 - (ge) fix expiation fees for alleged offences against the regulations; and
 - (gf) provide for any matter in respect of evidence or burden or proof in proceedings for offences against the provisions of the regulations relating to the driving, parking or standing of vehicles; and
- (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; and
 - (i) regulate, restrict or prohibit the lighting of fires on land vested in, or under the control of, the Board; and
 - (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; and
 - (j) prescribe penalties not exceeding a division 7 fine for contravention of any regulation.
- (3) No regulation under this Act may impose, or authorise 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.

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APPENDIX 1**LEGISLATIVE HISTORY****Repeals**

The *Botanic Gardens Act 1978* repealed the following Acts:

Botanic Garden Act 1935
Botanic Garden Act Amendment Act 1940
Botanic Garden Act Amendment Act 1960
Botanic Garden Act Amendment Act 1961

Transitional Provisions

(*Transitional provision from Botanic Gardens (Miscellaneous) Amendment Act 1992, s. 13*)

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.

(*Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5*)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	substituted by 59, 1992, s. 3
Section 1:	substituted by 59, 1992, s. 4
Sections 2 - 4:	repealed by 59, 1992, Sched.
Section 5:	definition of "the Board" substituted by 59, 1992, s. 5(a) definition of "the Director" amended by 59, 1992, s. 5(b) definition of "the repealed Act" repealed by 59, 1992, Sched.
Section 6(1):	substituted by 59, 1992, s. 6
Section 6(2):	substituted by 59, 1992, Sched.
Section 6(3):	amended by 59, 1992, Sched.
Section 6(4):	repealed by 59, 1992, Sched.
Section 7(1):	amended and redesignated as s. 7 by 59, 1992, Sched.
Section 7(2):	repealed by 59, 1992, Sched.
Section 8(1), (2), (4) and (5):	amended by 59, 1992, Sched.
Section 9:	amended by 59, 1992, Sched.
Section 10:	substituted by 59, 1992, Sched.
Section 11(1) and (2):	amended by 59, 1992, Sched.
Section 11(3):	substituted by 59, 1992, Sched.
Section 11(4):	amended by 59, 1992, Sched.
Section 12:	amended by 59, 1992, Sched.
Section 13(1):	substituted by 59, 1992, s. 7(a)
Section 13(1a):	inserted by 59, 1992, s. 7(a)
Section 13(2):	amended by 59, 1992, s. 7(b), (c)
Section 14(1) and (2):	amended by 59, 1992, Sched.
Section 15:	amended by 59, 1992, Sched.
Section 16(2):	amended by 59, 1992, Sched.
Section 17(2) and (3):	amended by 59, 1992, Sched.
Section 18:	amended by 59, 1992, Sched.
Section 19(1):	amended by 33, 1999, Sched. (item 8)
Section 19(2):	amended by 59, 1992, Sched.
Section 20:	substituted by 59, 1992, s. 8
Section 21(1):	amended by 59, 1992, s. 9(a), Sched.
Section 21(2):	amended by 59, 1992, Sched.
Section 21(3):	substituted by 59, 1992, s. 9(b)
Section 22(1) and (2):	amended by 59, 1992, Sched.

Section 22(3):	repealed by 59, 1992, Sched.
Section 23:	substituted by 59, 1992, s. 10
Section 24(1):	amended by 59, 1992, s. 11
Section 24(2):	amended by 59, 1992, Sched.
Section 25:	substituted by 59, 1992, Sched.
Section 26:	amended by 59, 1992, Sched.
Section 27(1):	amended by 59, 1992, Sched.
Section 27(2):	amended by 59, 1992, s. 12(a)-(e), Sched.; 34, 1996, s. 4 (Sched. cl. 6)
Section 27(3):	substituted by 59, 1992, s. 12(f)
Section 27(4):	repealed by 59, 1992, s. 12(f)

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.