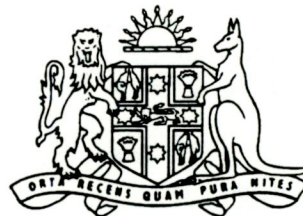


First print



New South Wales

Royal Botanic Gardens and Domain Trust Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Royal Botanic Gardens and Domain Trust Act 1980*, so as:

- (a) to enable the Trust, on terms and conditions approved by the Minister, to grant leases of the Trust lands for purposes consistent with its objects.
 - (b) to cede certain areas of the Domain to the Art Gallery of New South Wales.
 - (c) to enable the issue of penalty notices for littering, parking offences and other minor offences committed on Trust land.
 - (d) to increase from 2 penalty units to 5 penalty units the maximum penalty for offences against regulations made under the Act.
-

Explanatory note

- (e) to allow certain subsurface land of the Trust previously used as a Commonwealth fuel oil installation to be used for some other purpose approved by the Governor-in-Council on the recommendation of the Trust.
- (f) to amend the schedule of Trust lands as a consequence of consolidation of deposited plans.

The Bill proposes other amendments of a minor character. These are explained in detail later in this note.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *Royal Botanic Gardens and Domain Trust Act 1980* set out in Schedules 1 and 2.

Clause 4 amends the *Justices Act 1902* to facilitate enforcement of penalty notices to be issued under proposed section 22B of the principal Act (inserted by Schedule 1 [7]).

Clause 5 vests in the Art Gallery of New South Wales Trust a part of the Trust lands now occupied by extensions to the Gallery.

Schedule 1 Amendments relating to land management and other business of the Trust

Principal objects of the Trust

Schedule 1 [1] amends section 7 of the principal Act in order to specify plant conservation as one of the principal objects of the Trust.

Grant of leases and licences over scheduled lands

Schedule 1 [3] repeals and replaces section 20 (2) (a) of the principal Act, which currently contains a list of the only permissible leases of Trust lands that are specified in Schedule 2 to the Act. This list is replaced by a provision conferring a general power on the Trust to lease any of these lands for purposes consistent with its objects. The repeal and replacement of section 9 of the principal Act by **Schedule 1 [2]**, and the amendment made by **Schedule 1 [4]**, are consequential.

Regulations

Schedule 1 [5] amends the regulation-making power of the principal Act to make it clear that the Trust may charge a fee for use of the Trust lands for other forms of commercial filming or photography besides cinema and television (such as the making of a commercial videotape).

Schedule 1 [6] raises from 2 penalty units to 5 penalty units the maximum penalty that may be imposed for a contravention of the regulations.

Parking and other minor offences

Schedule 1 [7] enacts a new section 22A which makes the owner of a vehicle liable for parking offences committed under the principal Act by means of the vehicle to the same extent as with parking offences under the *Traffic Act 1909*. It also enacts a new section 22B which allows penalty notices to be served for offences under the regulations.

Legal presumptions

Schedule 1 [7] enacts a new section 22C which, in any legal proceedings, would give the Trust the benefit of certain presumptions in relation to its constitution, the regularity of its meetings and conduct and the holding of office by its members.

Description of lands constituting the Domain

Schedule 1 [8] amends Schedule 2 to the principal Act so as to replace the land description of the Domain contained in Part 2 of that Schedule. This reflects the consolidation of certain allotments.

Divestment of lands for the benefit of the Art Gallery

Schedule 1 [9] repeals and replaces Part 4 of Schedule 2 to the principal Act, so as to exclude from the Trust lands the portion of land vested in the Art Gallery of New South Wales Trust by proposed section 5.

Transitional and other provisions

Schedule 1 [10] enacts certain transitional provisions in consequence of the enactment of the proposed Act, and enables regulations to be made for further savings and transitional provisions if required. It also contains a

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validation of certain licences granted by the Trust over portions of its land and provides for their termination, and makes provision with respect to the future use of subsurface Trust land previously used by the Commonwealth as a fuel oil installation.

Schedule 2 Amendments by way of statute law revision

Schedule 2 amends the principal Act by way of statute law revision.



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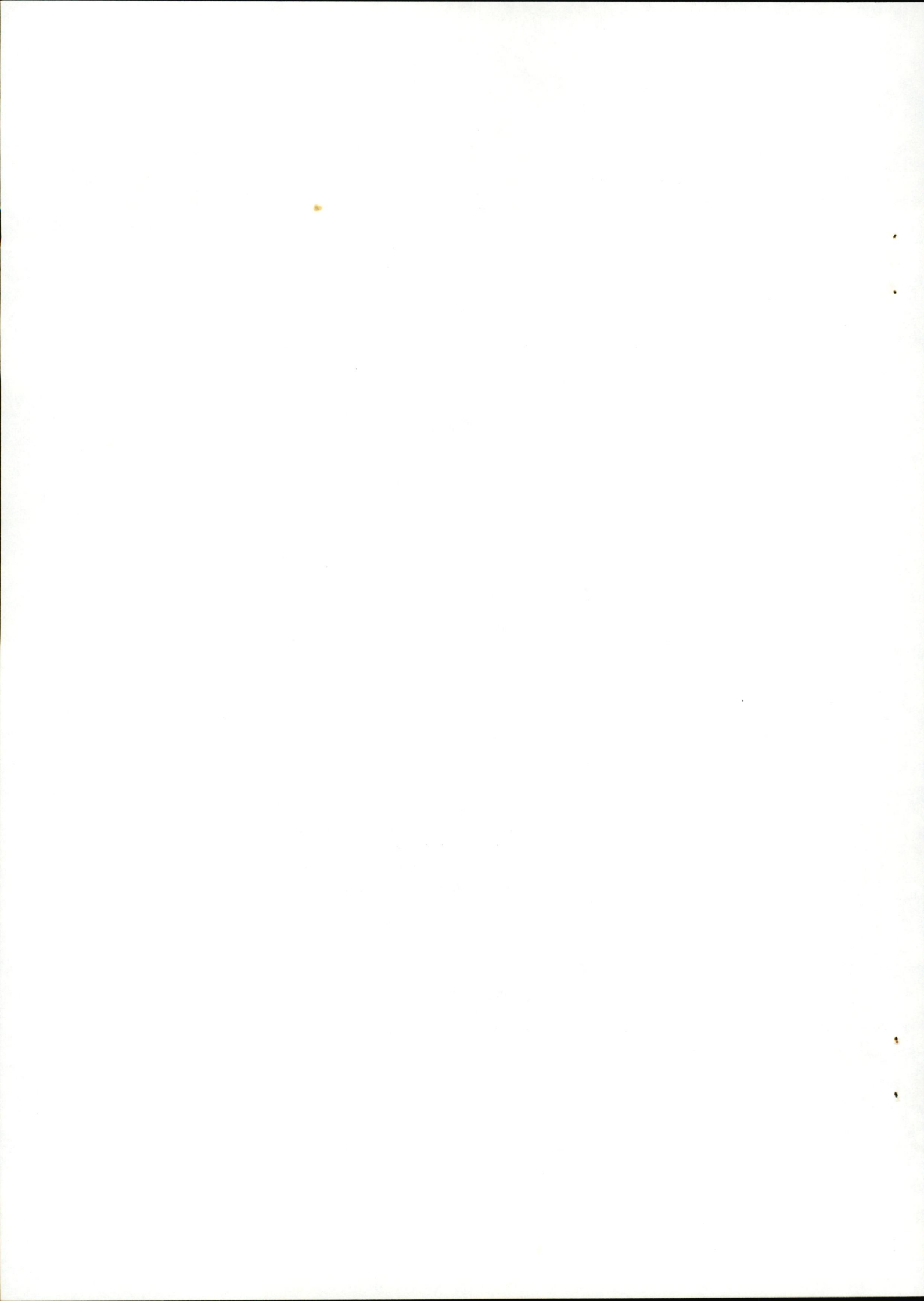
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New South Wales

Royal Botanic Gardens and Domain Trust Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Royal Botanic Gardens and Domain Trust Act 1980* with respect to the use and management of lands vested in the Royal Botanic Gardens and Domain Trust; to divest the Trust of certain lands; to amend the *Justices Act 1902* consequentially; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Royal Botanic Gardens and Domain Trust Amendment Act 1995*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Royal Botanic Gardens and Domain Trust Act 1980 No 19

The *Royal Botanic Gardens and Domain Trust Act 1980* is amended as set out in Schedules 1 and 2. 10

4 Amendment of Justices Act 1902 No 27

The *Justices Act 1902* is amended by inserting in alphabetical order in the statutory provisions listed in paragraph (a) of the definition of *penalty notice* in section 100I (1) the following matter: 15

Royal Botanic Gardens and Domain Trust Act 1980, section 22B,

5 Vesting of certain land in the Art Gallery of New South Wales Trust

The land comprised in Lot 102 in Deposited Plan 854472, situated in the Parish of St James, County of Cumberland, City of Sydney, is vested in the Art Gallery of New South Wales Trust for an estate in fee simple. 20

Schedule 1 Amendments relating to land management and other business of the Trust

(Section 3)

- [1] **Section 7 Principal objects of Trust** 5
Insert “, and to plant conservation” after “botany” in section 7 (2).
- [2] **Section 9**
Omit the section. Insert instead:
- 9 Disposal of certain land prohibited**
- The Trust must not sell, mortgage or otherwise dispose of any part of the Trust lands described in Schedule 2, but may deal with any part of them in accordance with section 20. 10
- [3] **Section 20 Grant of leases, easements and licences**
Omit section 20 (2) (a). Insert instead: 15
- (a) a lease of any part of the Trust lands for a commercial purpose (such as a restaurant), or any other purpose, not prejudicial to the objects of the Trust, and
- [4] **Section 20 (3)** 20
Omit “(i), (ii), (iii) or (iv)”.
- [5] **Section 22 Regulations**
Insert “, or any similar commercial purpose,” after “television” in section 22 (2) (p) (ii).

[6] Section 22 (4)

Omit "2 penalty units". Insert instead "5 penalty units".

[7] Sections 22A–22C

Insert after section 22:

22A Liability of vehicle owner for parking offences

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- (1) If a parking offence occurs in relation to any vehicle, the person who at the time of the commission of the offence was the owner of the vehicle is, by virtue of this section, guilty of an offence against the regulation concerned as if the person were the actual offender guilty of the parking offence, unless:
- 10
- (a) in any case where the offence is dealt with under section 22B, the person satisfies an officer described in the notice served under that section that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
- 15
- (b) in any case where the offence is dealt with by a court, the court is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used, or
- 20
- (c) the person is exonerated under subsection (2) or (3).
- (2) An owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any case where the offence is dealt with under section 22B, the person:
- 25
- (a) within 21 days after service on the person of a notice under that section alleging that the person is guilty of the offence, supplies by statutory declaration to a prescribed officer described in the notice the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
- 30
- (b) satisfies that prescribed officer that the person did not know and could not with reasonable diligence have ascertained that name and address.
- 35

- (3) An owner of a vehicle is not, by virtue of this section, guilty of an offence if, in any case where the offence is dealt with otherwise than under section 22B, the person:
- (a) within 21 days after service on the person of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or 5
 - (b) satisfies the court that the person did not know and could not with reasonable diligence have ascertained that name and address. 10
- (4) A statutory declaration under subsection (2) or (3), if produced in any proceedings against the person named in it and in relation to the offence in respect of which the statutory declaration was supplied, is evidence that that person was in charge of the vehicle at all relevant times relating to that offence. 15
- (5) A statutory declaration that relates to more than one offence is not a statutory declaration under, or for the purposes of, subsection (2) or (3). 20
- (6) Nothing in this section affects the liability of the actual offender, but where a penalty has been imposed on or recovered from any person in relation to a parking offence, no further penalty may be imposed on or recovered from any other person in relation to that offence. 25
- (7) In this section:
- owner*, in relation to a vehicle that is registered, includes:
- (a) every person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement (but not the lessor under any such agreement), and 30

- (b) the person in whose name the vehicle is registered, unless that person has sold or otherwise disposed of the vehicle and has complied with the provisions of the regulations under the *Traffic Act 1909* applicable to the person in regard to that sale or disposal, and 5
- (c) in the case of a vehicle to which a trader's plate is affixed, the person to whom that trader's plate is on issue, and
- (d) a person who, pursuant to the regulations under the *Traffic Act 1909*, is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle. 10

parking offence means any offence of causing or allowing a vehicle to stand in contravention of the regulations. 15

registered means registered under the *Traffic Act 1909*.

trader's plate means a trader's plate issued under the *Traffic Act 1909* for use as prescribed by the regulations under that Act. 20

22B Penalty notices for offences against regulations

- (1) If it appears to an officer prescribed by the regulations that any person has committed, or by virtue of section 22A is guilty of, any offence against a regulation, the officer may serve a notice on that person to the effect that, if that person does not desire to have the matter determined by a court, that person may pay to the Trust, within a time specified in the notice, an amount of penalty prescribed by the regulations for the offence if dealt with under this section. 25
30
- (2) Any such notice:
 - (a) may be served personally or by post, or
 - (b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 22A, may be addressed to the owner without naming the owner 35

or stating the address of the owner and may be served by leaving it on or attaching it to the vehicle.

- (3) If the amount of any penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence. 5
- (4) Payment of a penalty in accordance with this section is not an admission of liability for the purposes of any civil claim, action or proceeding arising out of the same occurrence, nor does it in any way affect or prejudice any such claim, action or proceeding. 10
- (5) Nothing in this section limits the operation of any provision made by or under this or any other Act in relation to proceedings that may be taken in respect of offences. 15

22C Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Trust, or 20
- (b) any resolution of the Trust, or
- (c) the appointment of, or the holding of office by, any trustee, or
- (d) the presence of a quorum at any meeting of the Trust. 25

[8] Schedule 2 Land vested in the Trust

Omit Part 2 of the Schedule. Insert instead:

Part 2 The Domain

Lots 26, 27, 30, 32, 33, 34 and 35 in Deposited Plan 39586, Lot 51 in Deposited Plan 47732 and Lot 101 in Deposited Plan 854472, situated in the Parish of St James, County of Cumberland, City of Sydney. 30

[9] Schedule 2, Part 4

Omit the Part. Insert instead:

Part 4 Excluded land

1. Lots 17–31 in Deposited Plan 259028, situated in the Parish of St James, County of Cumberland, City of Sydney. 5
2. Easements for railway transit and easements for drainage shown in Deposited Plan 605125, situated in the Parish of St James, County of Cumberland, City of Sydney.
3. Lot 102 in Deposited Plan 854472, situated in the Parish of St James, County of Cumberland, City of Sydney. 10

[10] Schedule 3 Transitional and other provisions

Insert after clause 7:

8 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts: 15
Royal Botanic Gardens and Domain Trust Amendment Act 1995.
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 20
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 25
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

9 Existing leases not affected by amendment

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The repeal and re-enactment, by the *Royal Botanic Gardens and Domain Trust Amendment Act 1995*, of section 9, and the amendments made by that Act to section 20, do not affect any lease granted by the Trust and in force immediately before that repeal or those amendments took effect.

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10 Validity of certain licences

- (1) To avoid any doubt, a licence purporting to have been granted by the Trust over any of the lands described in Schedule 2 and to be in force immediately before the commencement of Schedule 1 [10] to the *Royal Botanic Gardens and Domain Trust Amendment Act 1995* is validated, even if it is not a licence of a kind referred to in section 20 (2) (c). 15
- (2) Such a licence, unless sooner revoked in accordance with its terms: 20
 - (a) if granted for a fixed term, remains in force until the expiry of the term, but may not be renewed, and
 - (b) if granted otherwise than for a fixed term, expires at midnight on 30 June 1996. 25
- (3) No compensation is payable on account of the termination of a licence by the operation of this section.
- (4) Nothing in this clause precludes the grant by the Trust of a lease to a former licensee. 30

11 Transitional operation of certain presumptions

Section 22C does not apply to proceedings commenced before the commencement of Schedule 1 [7] to the *Royal Botanic Gardens and Domain Trust Amendment Act 1995*.

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12 Use of former site of Commonwealth fuel depot

Subsurface land of the Trust previously used as a Commonwealth fuel oil installation may only be used for a purpose not prejudicial to the objects of the Trust, being a purpose approved by the Governor on the recommendation of the Trust.

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Schedule 2 Amendments by way of statute law revision

(Section 3)

- [1] Section 4 Definitions**
- Omit "Office of the Registrar-General" from section 4 (2) (b). 5
Insert instead "Land Titles Office".
- [2] Section 12 Officers and employees**
- Omit "Part 4 of the *Public Service Act 1979*" from section 12 (1).
Insert instead "the *Public Sector Management Act 1988*".
- [3] Section 12 (2)** 10
- Omit "*Public Service Act 1979*".
Insert instead "*Public Sector Management Act 1988*".
- [4] Section 21 Annual Report**
- Omit the section.
- [5] Schedule 1 Provisions relating to trustees and procedure of the Trust** 15
- Omit clause 1 (b). Insert instead:
- (b) who becomes a mentally incapacitated person, or
- [6] Schedule 1, clause 4**
- Omit "*Public Service Act 1979*". 20
Insert instead "*Public Sector Management Act 1988*".

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Schedule 2 Amendments by way of statute law revision

[7] Schedule 1, clause 7 (d)

Omit the paragraph. Insert instead:

(d) becomes a mentally incapacitated person, or