Royal Botanic Gardens and Domain Trust Act 1980 No 19

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Schedule 3

Schedule 3 Transitional and other provisions

1 Definitions

In this Schedule:

*commencement* means the commencement of this Schedule.

*former trustees* means the trustees appointed pursuant to section 37O of the *Crown Lands Consolidation Act 1913* who were, immediately prior to the commencement, trustees of the Trust lands described in Schedule 2, or part thereof.

2 Construction of other instruments etc

(1) A reference to the former trustees in any instrument in relation to any gift inter vivos, devise or bequest, which gift inter vivos, devise or bequest would, but for the enactment of this Act, have vested in the former trustees in their capacity as trustees of the Trust lands or part thereof, shall be construed as a reference to the Trust.

(2) A reference in any other Act, or in any by-law, regulation, ordinance or any other instrument or document whatever made before the commencement:

(a) to the Botanic Gardens, the Botanic Gardens and Garden Palace Grounds or the Royal Botanic Gardens, or any part thereof, shall be construed as a reference to the land described in Part 1 of Schedule 2, or the corresponding part thereof,

(b) to the Government Domains, the Outer Domains or the Government Domain, or any part thereof, shall be construed as a reference to the land described in Part 2 of Schedule 2, or the corresponding part thereof, and

(c) to the Mt. Tomah Annexe to the Royal Botanic Gardens, shall be construed as a reference to the land described in items 1 and 2 of Part 3 of Schedule 2.

(3) A reference in any other Act, or in any by-law, regulation, ordinance or any other instrument or document whatever, to the former trustees in their capacity as trustees of the Trust lands or any part thereof shall be construed (except for the purposes of any proceedings arising out of a breach of the provisions of the *Crown Lands Consolidation Act 1913* alleged to have occurred before the commencement) as a reference to the Trust.

3 Vesting of assets etc

(1) For the purposes of subclause (2) of this clause, a reference to the former trustees is a reference to those trustees in their capacity as trustees of the Trust lands described in Schedule 2, or part thereof.
(2) On and from the commencement:

(a) all property, whether real or personal, including any herbarium and any display cases and equipment used in connection therewith, all rights and interests therein and all control and management thereof that, immediately before the commencement, belonged to or was or were vested in the former trustees shall vest in the Trust,

(b) all money and liquidated and unliquidated claims that, immediately before the commencement, was or were payable to or recoverable by the former trustees shall be money and liquidated and unliquidated claims payable to or recoverable by the Trust,

(c) all money and liquidated and unliquidated claims for which the former trustees would, but for the enactment of this Act, have been liable shall be money and liquidated and unliquidated claims for which the Trust shall be liable,

(d) all proceedings commenced by the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by the Trust and all proceedings so commenced by any person against the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by that person against the Trust,

(e) all deeds, contracts, agreements, arrangements, and undertakings entered into with the trustees of the Trust lands described in Schedule 2 and in force immediately before the commencement shall be deemed to be deeds, contracts, agreements, arrangements and undertakings entered into with the Trust,

(f) the Trust may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of proceedings so referred to, as the former trustees might have done but for the enactment of this Act, and

(g) subject to subclause (3) of this clause, all acts, matters and things done or omitted by, or done or suffered in relation to, the former trustees, being acts, matters or things not referred to in the foregoing provisions of this subclause, shall have the same force and effect as if they had been done or omitted by, or done or suffered in relation to, the Trust.

(3) Subclause (2) (g) of this clause does not affect any obligation imposed on the former trustees by or under section 37T of the Crown Lands Consolidation Act 1913.

(4) In subclause (2) (e) of this clause, a reference to deeds entered into with the former trustees includes a reference to deeds of lease:

(a) dated 18 October 1979 and entered into by Michael Avenell Pty. Limited in relation to part of the land described in Part 1 of Schedule 2,

(b) dated 15 May 1976 and entered into by the Council of the City of Sydney in relation to part of the land described in Part 2 of Schedule 2, and

(c) dated 16 October 1979 and entered into by Delle Productions Pty. Limited in relation to part of the land described in Part 2 of Schedule 2.
4 Agreement to certain conditions

Where any property, right or interest referred to in clause 3 (2) (a):

(a) was acquired by the former trustees before the commencement in their capacity as trustees of the Trust lands or any part thereof, by gift inter vivos, devise or bequest, subject to a condition agreed to by the former trustees, and

(b) was held by the former trustees in such a capacity immediately before the commencement,

the Trust shall, on the commencement, be deemed to have agreed, under section 8 (3), to the condition subject to which the property, right or interest, as the case may be, was acquired.

5 Savings

(1) The by-laws:

(a) relating to the Royal Botanic Gardens, and

(b) relating to the Government Domain,

made under Part 3B of the Crown Lands Consolidation Act 1913, being by-laws in force immediately before the commencement, shall be deemed to be regulations made under this Act.

(2) A reference in any of the by-laws referred to in subclause (1) of this clause, and in any written permission or authorisation issued thereunder, to the Curator of the Royal Botanic Gardens, the Minister for Agriculture or the Department of Agriculture shall be construed as a reference to the Director, the Premier or the Premier’s Department, respectively.

(3) Any person who:

(a) was employed as Director of the Royal Botanic Gardens under the Public Service Act 1979 immediately before the commencement, shall, on the commencement, be deemed to be employed as the Director of the Royal Botanic Gardens and Domain pursuant to section 12 (1),

(b) was employed as secretary of the Royal Botanic Gardens under the Public Service Act 1979 immediately before the commencement, shall, on the commencement, be deemed to be employed as the secretary to the Trust pursuant to section 12 (1), or

(c) was employed under the Public Service Act 1979 and was engaged in or in connection with the administration or management of the Trust lands described in Schedule 2, or part thereof, immediately before the commencement, shall, on the commencement, be deemed to be employed pursuant to section 12 (1).

(4) Section 19 (1) does not operate so as to vest in the Trust any pipeline or cable, or any apparatus used in connection therewith, that:

(a) immediately before the commencement, was situated on or in any part of the Trust lands described in Schedule 2, and

(b) was laid or constructed by or on behalf of The Australian Gas Light Company, The Electricity Commission of New South Wales, The Metropolitan Water Sewerage and Drainage Board or The Sydney County Council.
6 Accounts and report

The former trustees shall:

(a) prepare:

(i) statements of all accounts in respect of the Trust lands made up to the commencement in a form approved by the Auditor-General exhibiting a true and complete view of the financial position and transactions in respect of the Trust lands for the period from 1st July immediately preceding the commencement, and

(ii) a report of work and activities in relation to the Trust lands from 1st July immediately preceding the commencement and up to the commencement, and

(b) transmit the statements and report to the Trust as soon after the commencement as may be practicable.

7 Former trustees to cease to hold office

The former trustees shall, on the commencement, cease to hold office as trustees of the Trust lands described in Schedule 2 or any part thereof.

8 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

Royal Botanic Gardens and Domain Trust Amendment Act 1996

Royal Botanic Gardens and Domain Trust Amendment Act 1999

(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.

(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:

(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

The repeal and re-enactment, by the Royal Botanic Gardens and Domain Trust Amendment Act 1996, 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.

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 1996 is validated, even if
it is not a licence of a kind referred to in section 20 (2) (c).

(2) Such a licence, unless sooner revoked in accordance with its terms:

(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.

(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.

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 1996.

12 (Repealed)

13 Royal Botanic Gardens and Domain Trust Amendment Act 1999 not to affect certain existing agreements

(1) Section 20, as in force before the amendments made to that section by the Royal Botanic Gardens and Domain Trust Amendment Act 1999, applies to a lease, licence or easement granted by the Trust and in force immediately before the commencement of those amendments.

(2) Section 20A, as inserted by the Royal Botanic Gardens and Domain Trust Amendment Act 1999, does not apply to a lease granted by the Trust and in force immediately before the commencement of that section.

14 References to Director

On and from the commencement of Schedule 1.33 to the Statute Law (Miscellaneous Provisions) Act (No 2) 2003, a reference in any document (other than this Act) to the Director of the Royal Botanic Gardens and Domain is taken to be a reference to the Executive Director.