



Western Australia

## **Botanic Gardens and Parks Authority Act 1998**

Compare between:

[01 Oct 2010, 02-b0-03] and [05 Nov 2010, 02-c0-03]



Western Australia

## **Botanic Gardens and Parks Authority Act 1998**

**An Act to make provision for —**

- **the establishment of an Authority to control and manage King's Park and other land;**
  - **the management policies to be followed by the Authority in relation to that land;**
  - **the establishment of a Foundation with fund-raising and other functions; and**
  - **the dissolution of the King's Park Board,**
- to consequentially amend certain Acts<sup>2</sup>, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Botanic Gardens and Parks Authority Act 1998*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

### **3. Terms used**

In this Act, unless the contrary intention appears —

***Account*** means the account referred to in section 32(1);

***Authority*** means the Botanic Gardens and Parks Authority established by section 4(1);

***board*** means the board of management provided for by section 6 and in Division 2 of Schedule 1 includes a committee;

***chairperson*** means the chairperson of the board;

***chief executive officer*** means the person appointed as such for the purposes of section 23;

***committee*** means a committee established under clause 14 of Schedule 1;

***council*** means the council provided for in section 39;

***designated land*** means —

- (a) King's Park;
- (b) land reserved under the *Land Administration Act 1997* the care, control and management of which is placed with the Authority under that Act; and
- (c) land prescribed by the regulations for the purposes of this definition;

***Foundation*** means the Botanic Gardens and Parks Foundation established under section 38;

**Foundation Account** means the account referred to in section 42(1);

**function**, except in sections 9, 10, 40 and 41, includes power, duty and authority;

**King's Park** means all of the land from time to time within Reserve No. 1720 (known as King's Park) classified as of Class A;

**member** means a member of the board and includes a person appointed under clause 5 of Schedule 1 and a member of a committee;

**member of staff** means the chief executive officer or a person referred to in section 24(1) or 25;

**owner**, in relation to a vehicle, means —

- (a) the person who holds the licence for the vehicle that is required under the *Road Traffic Act 1974*; or
- (b) if the vehicle is not licensed under the *Road Traffic Act 1974*, the person who owns the vehicle or is entitled to its possession;

**park management officer** means —

- (a) a person designated as such under section 26; or
- (b) a police officer;

**regulations** means regulations made under section 53;

**rules** means rules made under section 43;

**vehicle** has the same meaning as in the *Road Traffic Act 1974*.

## **Part 2 — Botanic Gardens and Parks Authority**

### **4. Authority established**

- (1) There is established a body called the Botanic Gardens and Parks Authority.
- (2) The Authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Authority in its corporate name.

### **5. Agent of Crown**

The Authority is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

### **6. Board of management**

- (1) The Authority is to have a board of management comprising —
  - (a) a chairperson;
  - (b) a deputy chairperson; and
  - (c) not less than 3 and not more than 6 other persons.
- (2) The board is the governing body of the Authority and, in the name of the Authority, is to perform the functions of the Authority under this Act.
- (3) The members of the board are to be appointed by the Minister.
- (4) The Minister is to ensure that each person appointed to the board has expertise that, in the Minister's opinion, is relevant to the functions of the Authority under this Act.

### **7. Constitution and proceedings of board**

Schedule 1 has effect with respect to the board and its members.

**8. Remuneration of members**

A member is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

## **Part 3 — Functions and powers**

### **9. Functions**

- (1) The Authority has the care, control and management of the designated land for the purposes set out in subsection (2).
- (2) The care, control and management of the designated land is placed with the Authority for the purpose of enabling it —
  - (a) to provide, improve and promote recreational and tourism services and facilities on the designated land;
  - (b) to conserve and enhance any native biological diversity of the designated land;
  - (c) to conserve and enhance the natural environment, landscape features and amenity of the designated land;
  - (d) to conserve, develop, manage, display, and undertake research into, collections of Western Australian and other flora;
  - (e) to enhance and promote the understanding and conservation of the biological diversity of the designated land and of biological diversity generally;
  - (f) to conserve, enhance and promote the Aboriginal, colonial and contemporary cultural heritage of the designated land;
  - (g) to promote the use of flora for the purposes of horticulture, conservation and education; and
  - (h) to undertake and promote research and investigation into matters related to or connected with its functions under this subsection.

### **10. Powers**

- (1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.



- (2) Without limiting subsection (1), the Authority may —
- (a) subject to section 11, acquire land and dispose of land (other than designated land);
  - (b) subject to section 11, grant a lease or licence that is consistent with its functions, on such terms and conditions as it thinks fit;
  - (c) subject to section 11, erect permanent or temporary structures on designated land;
  - (d) subject to section 11, undertake road works and other works on designated land necessary for the management of that land;
  - (e) give or take botanical specimens by way of loan or exchange with scientific or educational institutions;
  - (f) produce and publish information on matters related to its functions;
  - (g) in connection with its function under section 9(2)(g), sell or dispose of plants, parts of plants, seeds and fungi or similar organisms;
  - (h) apply for, obtain and hold (whether alone or jointly with any other person) any patent, patent rights, design rights, copyright or similar rights;
  - (i) require payment of rent, fees or other charges for the use of any of its facilities (whether permanent or temporary) or for the use of any part of designated land;
  - (j) require payment of fees —
    - (i) for entry to designated land (other than King's Park or designated land that is prescribed for the purposes of this subparagraph); and
    - (ii) for admission to a particular display or event being conducted on any part of designated land for purposes consistent with its functions, or to any land or facility being used in connection with such a display or event;

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- (k) fix the amount of rent, fees or charges referred to in paragraphs (i) and (j) with power to waive, reduce or refund the amount payable in particular cases;
  - (l) enter into a contract or arrangement with a person or body (including a local government or a department of the Public Service, or other agency or instrumentality, of the State or the Commonwealth) —
    - (i) for the performance by that person or body of any work or the supply of equipment or services;
    - (ii) to provide consultancy or advisory services to that person or body; or
    - (iii) for the commercial exploitation of the rights referred to in paragraph (h), whether by assignment, licensing or otherwise;
  - (m) on terms and conditions approved by the Minister and the Treasurer, participate in any business arrangement that is consistent with its functions; and
  - (n) act in conjunction with a person, a firm, a local government or a department of the Public Service, or other agency or instrumentality, of the State or the Commonwealth.
- (3) For the purposes of subsection (2)(m) the Minister and the Treasurer may approve terms and conditions in respect of a specific business arrangement or class of business arrangement or in respect of business arrangements generally.
- (4) In this section —
- business arrangement*** means a proprietary limited company, partnership, trust, joint venture, arrangement for sharing profits or arrangement for sponsorship;
- participate*** includes form, promote, establish, enter into, manage, dissolve, wind up, and do anything incidental to the doing of any of those things.

**11. Requirements for Ministerial approval**

- (1) The Authority must obtain the approval of the Minister before exercising —
  - (a) the power conferred by section 10(2)(a);
  - (b) the power conferred by section 10(2)(b), if the proposed lease or licence is to be granted for a term exceeding a period of 5 years;
  - (c) the power conferred by section 10(2)(c) to erect a permanent structure, if the cost of the proposed structure exceeds, or is likely to exceed, the relevant amount; or
  - (d) the power conferred by section 10(2)(d), if the cost of the proposed works exceeds, or is likely to exceed, the relevant amount.
- (2) The Minister is not to give approval for the purposes of subsection (1)(b), (c) or (d) unless the proposed exercise of power conforms to the relevant management plan applicable under Part 4.
- (3) For the purposes of subsection (1)(b), any additional term obtainable at the option of the lessee or licensee is to be included when calculating the length of the term of a proposed lease or licence.
- (4) In subsection (1) —  
*relevant amount* means \$100 000 or such other amount as is prescribed.

**12. Delegation**

- (1) The Authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made —
  - (a) to a member or members of the board;

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- (b) to a member or members of staff; or
  - (c) with the approval of the Minister, to a committee or any other person.
- (3) A function performed by a delegate is to be taken to be performed by the Authority.
- (4) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section is to be read as limiting the ability of the Authority to act through its staff and agents in the normal course of business.

**13. Minister may give directions**

- (1) The Minister may give directions in writing to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.
- (2) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Authority under Part 5 of the *Financial Management Act 2006*.

*[Section 13 amended by No. 77 of 2006 Sch. 1 cl. 16(1).]*

**14. Minister to have access to information**

- (1) The Minister is entitled —
- (a) to have information in the possession of the Authority; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —

- (a) request the Authority to furnish information to the Minister;
  - (b) request the Authority to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the Authority to obtain the information and furnish it to the Minister.
- (3) The Authority is to comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Authority.

## **Part 4 — Management plans**

### **15. Authority to comply with management plans**

- (1) The Authority must control and manage the designated land in accordance with the management plans for the time being applicable to that land.
- (2) A copy of each of the management plans applicable to the designated land is to be kept at the office of the Authority and is to be made available for inspection by the public during office hours free of charge.

### **16. First management plans**

- (1) On the commencement of this Act the plans known as the King's Park Bushland Management Plan 1995-2005 and the King's Park and Botanic Garden Framework Plan for the Developed Areas 1996-2006 are together to be regarded as the management plan applicable to King's Park.
- (2) The Authority must, within 2 years after land becomes designated land by operation of paragraph (b) or (c) of the definition of *designated land* in section 3, prepare and submit to the Minister, for his or her consideration, a management plan for the land.
- (3) A management plan referred to in subsection (1) or (2) (the *first management plan*) has effect, subject to this section, until a revised management plan is approved under this Part in respect of the designated land to which the first management plan applies.
- (4) The Minister may, by notice in writing given to the Authority, modify or add to any provision in a management plan referred to in subsection (1) or (2), and may vary or revoke a notice so given.
- (5) Section 15(1) has effect subject to any notice given by the Minister under subsection (4) for the time being in force.

- (6) A copy of a notice given by the Minister under subsection (4) is to be attached to the copy of the relevant management plan kept by the Authority under section 15(2).

**17. Review and revision of management plans**

- (1) The Authority must —
- (a) in the case of the management plan referred to in section 16(1), not later than 5 years after the commencement of this Act; and
  - (b) in the case of a management plan referred to in section 16(2), not later than 5 years after the preparation of the plan,

review the plan and, if it considers that the circumstances so require, prepare amendments to the plan or a revised management plan for the designated land to which the plan applied.

- (2) The Authority must take action under subsection (1) in respect of every management plan for the time being in force not later than 5 years after the Minister has, under section 21, approved the plan or amendments to it or its continuation in force without amendment.
- (3) If, on a review under this section, the Authority considers that a management plan does not require amendment or revision it may determine that the existing management plan is to continue in force without amendment.
- (4) In performing its functions under this section, the Authority is to have the objective of promoting its functions under section 9(2).

**18. Content of management plans**

- (1) A management plan prepared under this Part must contain —
- (a) a statement of the policies or guidelines proposed to be followed; and
  - (b) a summary of the operations proposed to be undertaken,

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in respect of the designated land to which the management plan applies during the period of 5 years from the time when it is approved or, in the case of a management plan referred to in section 16(2), prepared.

- (2) A management plan must state the date on which it will expire but despite anything in this section or in the plan, a plan that would otherwise expire remains in force until a further plan is approved.
- (3) A management plan must not disclose any information or matter communicated in confidence for the purposes of this Act or which would or might reasonably be expected to cause damage to the interests of the person from whom the information was received.

**19. Plans to be publicly notified**

- (1) Public notification that —
  - (a) a revised management plan or amendments to the existing management plan have been prepared; or
  - (b) the existing management plan is proposed to be continued in force without amendment,must be given in accordance with subsection (2).
- (2) The revised management plan or amendments, or the proposal to continue the existing management plan in force without amendment, must be publicly notified by the Authority by the publication —
  - (a) in the *Gazette*;
  - (b) in 2 issues of a daily newspaper circulating throughout the State; and
  - (c) at the office of the Authority,of a notice —
  - (d) specifying the places at which —



- (i) a copy of the revised management plan or the amendments may be inspected; and
- (ii) copies of the revised management plan or the amendments may be obtained; and
- (e) stating the effect of section 20 and specifying the period referred to in that section.

**20. Public submissions**

Written submissions on the revised management plan or amendments or the proposal to continue the existing management plan in force without amendment may be made by any person —

- (a) within a period determined by the Authority, being a period not less than 2 months after the day on which the notice is published in the *Gazette*; and
- (b) by delivering or posting them, so that they are received within that period at the offices of the Authority.

**21. Approval by Minister**

- (1) Subject to this Part, the Authority must submit to the Minister for approval —
  - (a) the revised management plan or amendments, modified as it thinks fit to give effect to submissions made under section 20; or
  - (b) the proposal to continue the existing management plan in force without amendment.
- (2) The Authority may, in order to give effect to submissions under section 20, submit to the Minister for approval proposed amendments to the existing management plan instead of the proposal that the plan be continued in force without amendment.
- (3) The Minister may —

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- (a) approve the proposed plan or the proposed amendments or approve the same with such modifications as the Minister thinks fit; or
- (b) approve the proposal to continue the existing management plan in force without amendment or instead make amendments to that plan.

**22. Notice of approval**

- (1) Notice that the Minister has —
  - (a) approved a revised management plan;
  - (b) approved or made amendments to the existing management plan; or
  - (c) approved the continuation in force of the existing management plan without amendment,

must be published by the Minister in the *Gazette*, together with a note showing —

- (d) whether any modifications or amendments were made by the Minister under section 21; and
  - (e) where a copy of the management plan or the amendments may be inspected or obtained.
- (2) A revised management plan or amendments to the existing management plan comes into operation on the day of publication in the *Gazette* of a notice under subsection (1) or on such later day as is specified in the management plan or in the amendments.

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## Part 5 — Staff

### 23. Chief executive officer

- (1) A chief executive officer of the Authority is to be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) Subject to the control of the board, the chief executive officer is to administer the day to day operations of the Authority and engage its staff.

### 24. Other staff

- (1) The chief executive officer may engage persons as staff of the Authority.
- (2) Persons referred to in subsection (1) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the chief executive officer determines.
- (3) Nothing in subsection (2) affects the operation of Part VID of the *Industrial Relations Act 1979*.
- (4) Part 3, Division 3 of the *Public Sector Management Act 1994* does not apply to the Authority but this section does not affect the power of the chief executive officer to engage a person under a contract for services or appoint a person on a casual employment basis under section 100 of that Act.

*[Section 24 amended by No. 20 of 2002 s. 27; amended in Gazette 15 Aug 2003 p. 3692.]*

### 25. Use of other government staff etc.

- (1) The Authority may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service;
  - (b) in a State agency or instrumentality; or

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- (c) otherwise in the service of the Crown in right of the State.
- (2) The Authority may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

**26. Park management officers**

- (1) The Authority may, by instrument in writing, designate a member of staff or other person to be a park management officer.
- (2) The Authority may revoke a designation under subsection (1) at any time.
- (3) A police officer is *ex officio* a park management officer.

**27. Identity cards**

- (1) The Authority is to issue to a park management officer an identity card stating that he or she has been designated as a park management officer.
- (2) An identity card is to be in a form approved by the Authority.
- (3) A park management officer must produce the identity card whenever requested to do so by any person in respect of whom the officer has exercised, or is about to exercise, a power under section 28 or 51.
- (4) Production of an identity card is evidence in any court of the designation of the park management officer to whom the identity card relates.

- (5) A person who ceases to be a park management officer must, as soon as practicable, return his or her identity card to the chief executive officer or other person authorised to receive it.

Penalty: \$1 000.

- (6) This section does not apply to a park management officer who is a police officer.

**28. Enforcement powers of park management officers**

- (1) This section applies to an offence against section 30 or the regulations.
- (2) A park management officer who finds a person committing an offence to which this section applies or who on reasonable grounds suspects that such an offence has been committed or is about to be committed by a person may —
- (a) require the person to give to the officer the person's name and address;
  - (b) stop, detain and search any vehicle if a person in or on the vehicle is, or is suspected by the officer on reasonable grounds of being, the offender;
  - (c) remove any vehicle, animal or other thing from designated land; and
  - (d) enter and search any hut, tent or other structure that is not a permanent residence.
- (3) A person must, when required to do so under subsection (2)(a), give the person's full and correct name and address.
- (4) If a person does not under subsection (3) give the person's full and correct name and address to a park management officer —
- (a) the person obstructs the park management officer in the performance of the officer's functions and section 30 applies accordingly; and

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- (b) the park management officer may detain the person until the person can be delivered to a police officer to be dealt with according to law.
- (5) Before exercising a power conferred by subsection (2)(b), (c) or (d) a park management officer must take all reasonable steps to inform the person, or the owner or person in charge of the vehicle, animal, hut, tent, structure or thing, as the case requires, of —
  - (a) his or her intention to exercise the power; and
  - (b) his or her reasons for believing that the proposed exercise of the power is justified.
- (6) Nothing in this section derogates from the powers of a park management officer who is a police officer.

**29. Requirement to leave designated land**

- (1) A park management officer may require a person to leave designated land if the park management officer —
  - (a) finds the person committing an offence against the regulations; or
  - (b) believes on reasonable grounds that an emergency situation exists on the land.
- (2) A person must not remain on designated land after being required to leave the land under subsection (1).  
Penalty: \$2 000.
- (3) If a person contravenes subsection (2), a police officer may remove, or make arrangements for the removal of, the person from designated land and if necessary detain the person for the purpose of effecting his or her removal.
- (4) A park management officer who is not a police officer may detain a person who has contravened subsection (2) until the person can be delivered to a police officer for removal under subsection (3).

(5) In this section —

*emergency situation* means a fire or other occurrence that endangers, or is likely to endanger, public safety.

**30. Obstruction of park management officers**

A person must not resist, delay or in any way obstruct a park management officer in the performance of his or her functions.

Penalty: \$5 000.

*[Section 30 amended by No. 50 of 2003 s. 39(2).]*

## **Part 6 — Financial provisions**

### **31. Funds of Authority**

- (1) The funds available for the purpose of enabling the Authority to perform its functions consist of —
  - (a) moneys from time to time appropriated by Parliament;
  - (b) moneys received by the Authority in the performance of its functions;
  - (c) moneys received by the Authority by way of gift, including a gift by will;
  - (d) moneys borrowed by the Authority under section 33 or 34;
  - (e) moneys transferred to the Authority under section 42(3);
  - (f) modified penalties paid under section 51; and
  - (g) other moneys lawfully received by, made available to or payable to the Authority.
- (2) Where any gift, including a gift by will, has been made to the Authority upon lawful conditions that are accepted by the Authority, it is to apply the gift in accordance with those conditions.

### **32. Botanic Gardens and Parks Authority Account**

- (1) An account called the Botanic Gardens and Parks Authority Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,to which the funds referred to in section 31 are to be credited.



- (2) The Account is to be charged with —
- (a) interest on and repayment of moneys borrowed by the Authority under section 33 or 34; and
  - (b) all other expenditure lawfully incurred by the Authority in the performance of its functions.

*[Section 32 amended by No. 77 of 2006 Sch. 1 cl. 16(2).]*

**33. Borrowing from Treasurer**

- (1) The Authority may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.
- (2) By virtue of this subsection the Account and the assets of the Authority are charged with the due performance by the Authority of its obligations in respect of a loan under subsection (1).

**34. Other borrowing**

- (1) In addition to its powers under section 33, the Authority may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.
- (2) Any moneys borrowed by the Authority under subsection (1) may be raised —
- (a) as one loan or as several loans; and
  - (b) in such manner as the Treasurer approves.
- (3) The total amount of the moneys so borrowed in any one financial year is not to exceed such amount as the Treasurer approves.

**35. Guarantee by Treasurer**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable

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by the Authority in respect of moneys borrowed by it under section 34.

- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given, the Authority is to —
  - (a) give to the Treasurer such security as the Treasurer requires; and
  - (b) execute all instruments that are necessary for the purpose.

**36. Effect of guarantee**

- (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 35 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Account any amounts received or recovered from the Authority or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 35.

*[Section 36 amended by No. 77 of 2006 s. 4 and 5(1).]*

**37. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

*[Section 37 amended by No. 77 of 2006 Sch. 1 cl. 16(3).]*

## **Part 7 — Botanic Gardens and Parks Foundation**

### **38. Botanic Gardens and Parks Foundation established**

- (1) There is established a body called the Botanic Gardens and Parks Foundation.
- (2) The Foundation is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Foundation in its corporate name.

### **39. Governing council**

The Foundation is to have a council which, subject to this Act, is to be the governing body of the Foundation.

### **40. Functions**

The functions of the Foundation are —

- (a) to attract and retain continuing public interest and financial support for the Authority in the performance of its functions under section 9(2); and
- (b) to encourage donations to facilitate the performance by the Authority of its functions under section 9(2).

### **41. Powers**

The Foundation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **42. Financial arrangements**

- (1) An account called the Botanic Gardens and Parks Foundation Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

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- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,  
  
to which the funds received by the Foundation are to be credited.
- (2) The Foundation Account is to be charged with all expenditure lawfully incurred by the Foundation in the performance of its functions.
- (3) Moneys standing to the credit of the Foundation Account —
  - (a) are subject to the direction and control of the Authority; and
  - (b) may be transferred to the Authority for the purposes of carrying this Act into effect or otherwise applied for the purposes of the Authority or the Foundation.
- (4) The operation of the Foundation Account is to be regarded as —
  - (a) a service under the control of the Authority for the purposes of section 52 of the *Financial Management Act 2006*; and
  - (b) part of the operations of the Authority for the purposes of Part 5 of that Act.

*[Section 42 amended by No. 77 of 2006 Sch. 1 cl. 16(4)-(6).]*

**43. Rules**

- (1) The Minister may, on the recommendation of the Authority, make rules that are necessary or convenient for giving effect to this Part.
- (2) Without limiting subsection (1), the rules may —
  - (a) provide for the appointment, constitution, functions and proceedings of the council, including power to employ persons, appoint agents, obtain professional or other services and do all things necessary or convenient to be done for or in connection with the performance by the Foundation of its functions;

- (b) provide for membership of the Foundation, including membership of different categories having different privileges;
- (c) provide for meetings and other proceedings of members of the Foundation;
- (d) provide for the appointment of one or more patrons of the Foundation;
- (e) provide for Friends of the Foundation and for the establishment of a register of such persons;
- (f) provide for the manner of execution of documents authorised to be executed by resolution of the council;  
and
- (g) empower the council, with the approval of the Authority, to make by-laws with respect to the operations and proceedings of the Foundation, the council, committees of the council and persons employed by the Foundation.

## **Part 8 — General**

### **44. Authority to be consulted**

Before a person or a body acting under a written law carries out any work affecting designated land, that person or body must consult with the Authority on the proposal and have regard to any views that the Authority may express.

### **45. Protection from liability**

- (1) An action in tort does not lie against a person, other than the Authority, for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Authority or the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

### **46. Execution of documents by Authority**

- (1) The Authority is to have a common seal.
- (2) A document is duly executed by the Authority, if —
  - (a) the common seal of the Authority is affixed to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Authority by a person or persons authorised to do so under subsection (5).

- (3) The common seal of the Authority is not to be affixed to any document except as authorised by the board.
- (4) The common seal of the Authority is to be affixed to a document in the presence of 2 members of the board, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Authority may, by writing under its seal, authorise a member or members of the board or a member or members of staff to sign documents on behalf of the Authority, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Authority, it is to be presumed that the seal is the common seal of the Authority until the contrary is shown.

**47. Confidentiality**

A person who is or has been a member of the board or of a committee or a member of staff must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another written law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

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**48.      Liability for acts of children**

- (1) Where loss is suffered by the Authority as a result of any damage to, or destruction of, any property owned by or under the control and management of the Authority by the intentional or negligent act or omission of a child, the Authority may recover the amount of that loss from a responsible adult by action in a court of competent jurisdiction unless the responsible adult shows that he or she did not contribute to the act or omission of the child by neglecting to exercise due care and control of the child.
- (2) Subsection (1) is in addition to section 58 of the *Young Offenders Act 1994*.
- (3) In subsection (1) —  
*child* means a person who has not reached the age of 18 years;  
*responsible adult*, in relation to a child, has the same meaning as it has in section 58 of the *Young Offenders Act 1994* in relation to a young person within the meaning of that Act.

**49.      Onus of proof in vehicle offences may be shifted**

- (1) In this section —  
*vehicle offence* means an offence against the regulations of which the use, driving, parking, standing or leaving of a vehicle is an element.
- (2) Where a vehicle offence is alleged to have been committed and the identity of the person committing the alleged offence is not known and cannot immediately be ascertained a park management officer may give the owner of the vehicle a notice under this section.
- (3) The notice is to be in the prescribed form and is to contain particulars of the alleged offence and require the owner to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.



- (4) The notice may be addressed to the owner of the vehicle without naming, or stating the address of, the owner and may be given by —
- (a) attaching it to the vehicle or leaving it in or on the vehicle at or about the time that the alleged offence is believed to have been committed; or
  - (b) giving it to the owner within 21 days after the alleged offence is believed to have been committed.
- (5) The notice is to include a short statement of the effect of subsection (6).
- (6) Unless, within 28 days after being served with the notice, the owner of the vehicle —
- (a) informs the Authority or a member of staff authorised for the purposes of this paragraph as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or
  - (b) satisfies the Authority that the vehicle had been stolen or unlawfully taken, or was being unlawfully used, at the time the offence is alleged to have been committed,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

**50. Evidentiary provision — speed measuring equipment**

- (1) In this section —
- speed measuring equipment* means apparatus of a type approved under section 98A(2) of the *Road Traffic Act 1974*.
- (2) In proceedings for an offence against the regulations, evidence may be given of the use of speed measuring equipment by a park management officer in relation to a vehicle and of the speed at which that vehicle was moving as ascertained by the use of that equipment.

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- (3) Evidence given under subsection (2) is, in the absence of evidence to the contrary, proof of the speed at which the vehicle was moving at the time of the use of the speed measuring equipment in relation to that vehicle.
- (4) In proceedings for an offence against the regulations, evidence by a park management officer that apparatus used by the officer was speed measuring equipment within the meaning of this section is, in the absence of evidence to the contrary, proof of that fact.
- (5) Nothing in this section prevents or restricts the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person is or is not guilty of an offence against the regulations.

**51.        Infringement notices**

- (1) In this section —  
*authorised person* means a person appointed under subsection (10) to be an authorised person for the purposes of the subsection in which the term is used.
- (2) A park management officer who has reason to believe that a person has committed a prescribed offence against the regulations may give an infringement notice to the alleged offender within 21 days after the alleged offence is believed to have been committed.
- (3) An infringement notice is to be in the prescribed form and is to —
  - (a) contain a description of the alleged offence;
  - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised

person within a period of 28 days after the giving of the notice; and

- (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the modified penalty prescribed by regulation at the time the alleged offence is believed to have been committed.
- (5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount of the modified penalty is to be refunded.
- (9) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (10) The Authority may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of

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subsection (3), (5) or (7), but a park management officer who gives an infringement notice is not eligible to be an authorised person for the purposes of any of those subsections in relation to that notice.

*[Section 51 amended by No. 84 of 2004 s. 80.]*

**52. Notice placing onus on vehicle owner**

- (1) If an alleged offence is one for which a notice under section 49 can be given to the owner of a vehicle involved in the commission of the offence, that notice can be included in the same document as an infringement notice given to the owner for the alleged offence.
- (2) For the purpose of giving the vehicle owner an infringement notice that is with a notice under section 49 —
  - (a) it is a sufficient ground for believing the owner to have committed the alleged offence that the person is the owner; and
  - (b) the infringement notice may be addressed and given as specified in section 49(4).
- (3) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, section 49(6) does not have effect to deem the owner to have committed the offence.
- (4) The statement required by section 49(5) is to include a description of the effect of subsection (3) if an infringement notice is given with a notice under section 49.

**53. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may —

- (a) provide for the care, control and management of the designated land;
- (b) provide for the conservation of the natural environment, landscape features, amenity and biological diversity of the designated land;
- (c) for the purpose of conserving the natural environment, landscape features, amenity and biological diversity of the designated land, prohibit, restrict or regulate the access of persons or animals to any part of the land;
- (d) prohibit, restrict or regulate the use, driving, parking, standing or leaving of vehicles on any part of the designated land;
- (e) without limiting section 10(2)(i), (j) and (k), provide for the imposition and payment of fees and charges; and
- (f) provide that contravention of a regulation constitutes an offence and provide for a penalty not exceeding \$2 000 in respect of any such offence.

**54. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.
- (2) In the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Authority;
  - (b) the need for the continuation of the functions of the Authority; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

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**55.        Savings and transitional provisions**

Schedule 2 has effect with respect to savings and transitional provisions.

*[56.        Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Schedule 1 — Constitution and proceedings of board

[Section 7]

### Division 1 — General provisions

**1. Term of office**

A member holds office for such term, not exceeding 3 years, as is specified in the instrument of his or her appointment, but may from time to time be re-appointed.

**2. Resignation, removal etc.**

- (1) The office of a member becomes vacant if he or she —
- (a) resigns the office by written notice addressed to the Minister;
  - (b) is an insolvent under administration as that expression is defined in the *Corporations Act 2001* of the Commonwealth; or
  - (c) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member from office if the Minister is satisfied that the member —
- (a) has neglected his or her duty;
  - (b) has misbehaved;
  - (c) is incompetent;
  - (d) is suffering from mental or physical incapacity impairing the performance of his or her functions; or
  - (e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of the board of which the member has had notice.

*[Clause 2 amended by No. 10 of 2001 s. 220.]*

**3. Leave of absence**

The board may grant leave of absence to a member on such terms and conditions as it thinks fit.

**4. Chairperson unable to act**

If the chairperson is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairperson is to perform the functions of the chairperson.

**5. Member unable to act**

- (1) If a member, other than the chairperson, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the board.
- (2) If the member who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subclause (1), appoint another person to act in his or her place as a member.
- (3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

**6. Saving**

No act or omission of a person acting in place of another under clause 4 or 5 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

**7. Calling of meetings**

- (1) Subject to subclause (2), meetings are to be held at the times and places that the board determines.
- (2) A special meeting of the board may at any time be convened by the chairperson.
- (3) The first meeting of the board is to be convened by the chairperson.

**8. Presiding officer**

- (1) The chairperson is to preside at all meetings of the board at which he or she is present.



- (2) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

**9. Quorum**

A quorum for a meeting of the board is at least one half of the number of members.

**10. Voting**

- (1) At any meeting of the board each member present has a deliberative vote.
- (2) If the votes cast on a question are equally divided, the chairperson, deputy chairperson or other person presiding has a casting vote on the question.

**11. Minutes**

The board is to cause accurate minutes to be kept of the proceedings at its meetings.

**12. Resolution without meeting**

A resolution in writing signed by each member or assented to by each member by letter, telegram or facsimile is as effectual as if it had been passed at a meeting of the board.

**13. Telephone or video meetings**

A communication between a majority of the members by telephone, audio-visual or other electronic means is a valid meeting of the board if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

**14. Committees**

- (1) The board may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the board.

- (3) Subject to the directions of the board and to the terms of any delegation under section 12, a committee may determine its own procedures.

**15. Board to determine own procedures**

Subject to this Act, the board is to determine its own procedures.

**Division 2 — Disclosure of interests etc.**

**16. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: \$10 000.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**17. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the board —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
- (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

**18. Clause 17 may be declared inapplicable**

Clause 17 does not apply if the board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**19. Quorum where clause 17 applies**

- (1) Despite clause 9, if a member of the board is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the board cannot deal with it because of subclause (1).

**20. Minister may declare clauses 17 and 19 inapplicable**

- (1) The Minister may by writing declare that clause 17 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.

## **Schedule 2 — Savings and transitional provisions**

[Section 55]

### **1. Terms used**

In this Schedule —

**assets** means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**Board** means the King's Park Board appointed by the Governor under subsection (1) of section 3 of the *Parks and Reserves Act 1895* and constituted a body corporate under subsection (4) of that section;

**commencement** means the commencement of this Act;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

**right** means any right, power, privilege or immunity whether actual, contingent or prospective.

### **2. Dissolution of Board**

- (1) The Board is dissolved.
- (2) Sections 36, 37 and 38 of the *Interpretation Act 1984* apply, in relation to the dissolution of the Board, as if this Act were an Act repealing the *Parks and Reserves Act 1895*.

**3. Devolution of assets, liabilities etc.**

On the commencement —

- (a) the assets and rights of the Board that were immediately before the commencement vested in the Board vest in the Authority by force of this clause;
- (b) the liabilities of the Board immediately before the commencement become, by force of this clause, the liabilities of the Authority;
- (c) any proceedings or remedy that immediately before the commencement might have been brought or continued by or available against or to the Board, may be brought or continued and are available, by or against or to the Authority;
- (d) any act, matter or thing done or omitted to be done before the commencement by, to or in respect of the Board (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the Authority;
- (e) anything lawfully commenced by the Board may, so far as it is not contrary to this Act, be carried on and completed by the Authority; and
- (f) the Authority is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the Board.

**4. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement —

- (a) to which the Board was a party; or
- (b) which contains a reference to the Board,

has effect after the commencement as if —

- (c) the Authority were substituted for the Board as a party to the agreement or instrument; and

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- (d) any reference in the agreement or instrument to the Board were (unless the context otherwise requires) amended to be or include a reference to the Authority.

**5. References to Board in written law**

A reference to the Board in an enactment in force immediately before the commencement is to be read (unless the context otherwise requires) as if it had been amended to be a reference to the Authority.

**6. Chief executive officer**

- (1) The person who immediately before the commencement occupied the office of chief executive officer of the Board is, after the commencement, the chief executive officer of the Authority until the expiry of the term of his or her appointment.
- (2) Subject to the *Public Sector Management Act 1994*, the employment of the chief executive officer continues to be governed by the terms and conditions of service that applied before the commencement.

**7. Staff**

- (1) A person who immediately before the commencement was appointed by the Board under section 7 of the *Parks and Reserves Act 1895* is to be taken after the commencement to be engaged by the chief executive officer under section 24(1).
- (2) Except as otherwise agreed by a person referred to in subclause (1), the operation of that subclause does not —
  - (a) affect the person's pay, as that term is defined in regulation 3(1) of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*;
  - (b) prejudice the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or parental leave;
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt continuity of service.

**8. Rangers**

A person who immediately before the commencement was a ranger appointed by the Board under section 7 of the *Parks and Reserves*

*Act 1895* is to be taken after the commencement to be designated as a park management officer under section 26.

**9. Annual reports for part of a year**

- (1) The Board is to report as required by section 66 of the *Financial Administration and Audit Act 1985*<sup>3</sup>, but limited to the period from 1 July preceding the commencement to the commencement, and Division 14 of Part II of that Act applies as if that period were a financial year of the Board.
- (2) Despite clause 2, the Board continues in existence for the purposes of subclause (1) and is entitled to receive from the Authority and its staff such assistance as it may require for that purpose.
- (3) For the purposes of Division 14 of Part II of the *Financial Administration and Audit Act 1985*<sup>3</sup>, the period from the commencement to the succeeding 30 June is to be regarded as a full financial year of the Authority.

**10. Existing leases not affected**

Nothing in this Act is to be taken to affect —

- (a) the length of the term of a lease in force on the commencement that was granted by the Board under a power conferred by section 5 of the *Parks and Reserves Act 1895* or section 13(1) of the *Reserves Act 1955*; or
- (b) the other terms and conditions of any such lease, including any provision as to renewal.

[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(e).]

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### Notes

<sup>1</sup> This is a compilation of the *Botanic Gardens and Parks Authority Act 1998* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Botanic Gardens and Parks Authority Act 1998</i>	53 of 1998	7 Dec 1998	s. 1 and 2: 7 Dec 1998; Act other than s. 1 and 2: 1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2879)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<b>Reprint 1: The <i>Botanic Gardens and Parks Authority Act 1998</i> as at 13 Jun 2003</b> (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 39	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 21 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and Sch. 1 cl. 16	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 2: The <i>Botanic Gardens and Parks Authority Act 1998</i> as at 6 Aug 2010</b> (includes amendments listed above)			



<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 89 <sup>4</sup>	39 of 2010	1 Oct 2010	<del>To be proclaimed</del> <a href="#">1 Dec 2010</a> (see s. 2(b)) and <a href="#">Gazette 5 Nov 2010 p. 5563</a>

<sup>2</sup> The provision in this Act consequentially amending other Acts has been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> Under the *Financial Management (Transitional Provisions) Act 2006* s. 19 a reference in a written law or other document or instrument to the *Financial Administration and Audit Act 1985* may, where the context so requires, be read as if it had been amended to be a reference to the *Financial Management Act 2006* or to the *Auditor General Act 2006*, or to both those Acts, as the case requires.

<sup>4</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Botanic Gardens and Parks Authority Act 1998</i>	s. 8
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