

Authorised Version

Royal Botanic Gardens Regulations 2024

S.R. No. 110/2024

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Authorised Version

STATUTORY RULES 2024

S.R. No. 110/2024

Royal Botanic Gardens Act 1991

Royal Botanic Gardens Regulations 2024

The Governor in Council makes the following Regulations:

Dated: 15 October 2024

Responsible Minister:

STEVE DIMOPOULOS
Minister for Environment

ANGELA SMITH
Clerk of the Executive Council

Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

- (a) to make provision for the care, protection, management and use of the botanic gardens and of other land managed by the Board; and
- (b) to provide for any other matters required to be prescribed under the **Royal Botanic Gardens Act 1991**.

2 Authorising provision

These Regulations are made under section 51 of the **Royal Botanic Gardens Act 1991**.

3 Commencement

These Regulations come into operation on 18 October 2024.

4 Revocation

The Royal Botanic Gardens Regulations 2014¹ are **revoked**.

5 Definitions

In these Regulations—

animal means any mammal (other than a human being), bird, reptile, amphibian, fish or invertebrate in any stage of biological development and whether alive or dead but does not include food for human consumption;

authorised officer has the same meaning as in section 3 of the **Conservation, Forests and Lands Act 1987**;

Gardens means—

- (a) the botanic gardens; and
- (b) any managed land;

model aircraft has the same meaning as in the Civil Aviation Safety Regulations 1998 of the Commonwealth;

plant means any algae, fungi, non-vascular or vascular plant, including any tree, bush, shrub or herb in any stage of biological development and whether alive or dead, but does not include any of the following—

- (a) food for human or animal consumption;
- (b) plant-based manufactured objects;

prohibited item means any of the following—

- (a) a firework;
- (b) a laser pointer;
- (c) a poison;

- (d) a fishing rod, trap, snare, net or similar equipment;
- (e) a remote-controlled device or toy, including—
 - (i) a model aircraft; or
 - (ii) a radio-controlled vehicle or vessel; or
 - (iii) a remotely piloted aircraft;
- (f) a tool, implement or machine that may be used—
 - (i) to take, destroy or damage any plant; or
 - (ii) to dig or remove any gravel, shell, grit, mulch, sand, soil, stone or other similar material; or
 - (iii) to damage, deface, remove or displace any structure, fence, gate, facility, equipment or natural feature;
- (g) a dangerous article within the meaning of section 3(1) of the **Control of Weapons Act 1990**;
- (h) a prohibited weapon within the meaning of section 3(1) of the **Control of Weapons Act 1990**;
- (i) a controlled weapon within the meaning of section 3(1) of the **Control of Weapons Act 1990**;
- (j) a firearm within the meaning of section 3(1) of the **Firearms Act 1996**;

remotely piloted aircraft means an RPA within the meaning of the Civil Aviation Safety Regulations 1998 of the Commonwealth;

the Act means the **Royal Botanic Gardens Act 1991**;

vehicle means a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes a bicycle or other pedal-powered vehicle, trailer, tram-car and air-cushion vehicle but does not include any of the following—

- (a) a railway locomotive or railway rolling stock;
- (b) an aircraft;
- (c) a wheelchair or other non-motorised device designed solely for the conveyance of a person with mobility difficulties;
- (d) a motorised wheelchair;
- (e) a pram or stroller or other non-motorised device designed or used for the conveyance of children.

6 Application of offences under these Regulations to servants or agents of the Crown and other officers

These Regulations do not apply to a person who—

- (a) is acting as a servant or agent of the Crown;
or
- (b) is acting under and in accordance with a contract with—
 - (i) the Crown; or
 - (ii) a person acting as a servant or agent of the Crown; or

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- (c) is acting under the direction of a person acting as a servant or agent of the Crown; or
- (d) is acting with the permission of a person acting as a servant or agent of the Crown; or
- (e) is an authorised officer acting in the course of the authorised officer's duties.

Part 2—Determinations, directions and authorisations

7 Determinations

- (1) A determination must be in writing and must specify the date on which it is made.
- (2) A determination is subject to any conditions specified in the determination.
- (3) If a determination is made under regulation 8(1), 11(1), 13(1), 19(1), 27(1) or 38(1), the Board must cause a sign or notice to be erected or displayed at or near the entrance to the Gardens indicating—
 - (a) the content of the determination; and
 - (b) the reason for the determination; and
 - (c) any conditions specified in the determination.
- (4) If a determination is made under regulation 8(3), 17(1), 39(1) or 40(1), the Board must cause a sign or notice to be erected or displayed at or near the entrance to the area indicating—
 - (a) the area that has been set aside under the determination; and
 - (b) the reason why the area has been set aside; and
 - (c) any conditions specified in the determination.
- (5) As soon as practicable after a determination is made, the Board must cause the determination to be published on its Internet site.
- (6) As soon as practicable after the Board revokes or amends a determination, the Board must cause the revocation or amendment of the determination to be published on its Internet site.

- (7) In this regulation, *determination* means a determination made under the following—
- (a) regulation 8(1) or (3);
 - (b) regulation 11(1);
 - (c) regulation 13(1);
 - (d) regulation 17(1);
 - (e) regulation 19(1);
 - (f) regulation 27(1);
 - (g) regulation 38(1);
 - (h) regulation 39(1);
 - (i) regulation 40(1).

8 Entering the Gardens when closed

- (1) The Board may make a determination specifying the times at which the Gardens are open and closed to the public.
- (2) A person must not enter or remain in the Gardens at a time specified in a determination under subregulation (1) when the Gardens are closed to the public.

Penalty: 10 penalty units.

- (3) The Board may make a determination setting aside an area of the Gardens as an area that is closed to the public.
- (4) A person must not enter or remain in an area of the Gardens set aside in a determination under subregulation (3) as an area that is closed to the public unless—
- (a) the person is entering or remaining in an area of the Gardens where a function or activity approved by the Board or the Director is taking place and for the purposes of

organising or taking part in that function or activity; or

- (b) the person is entering or remaining in an area of the Gardens that is subject to a lease, licence or permit granted under section 24 of the Act in accordance with that lease, licence or permit.

Penalty: 5 penalty units.

9 Direction to leave the Gardens

- (1) An authorised officer or a person authorised under regulation 10 (an *authorised person*) may direct a person to leave the Gardens, or an area of the Gardens, if the authorised officer or authorised person believes on reasonable grounds that it is necessary to do so for—
 - (a) the preservation of good order; or
 - (b) the safety of the public; or
 - (c) the care, protection, management and improvement of the Gardens; or
 - (d) the care, protection and management of the State botanical collection; or
 - (e) the protection of a plant or animal in the Gardens.
- (2) Before directing a person to leave the Gardens, or any area of the Gardens, the authorised officer or authorised person must—
 - (a) present—
 - (i) in the case of an authorised officer, the authorised officer's identification card; or
 - (ii) in the case of an authorised person, the written authorisation under regulation 10; and

- (b) inform the person of the reason for making the direction under subregulation (1); and
 - (c) inform the person that it is an offence to fail to comply with a direction under subregulation (1).
- (3) A person must comply with a direction under subregulation (1).

Penalty: 5 penalty units.

10 Authorisation to give directions

- (1) The Board may authorise a person employed or appointed under the Act to give directions under regulation 9(1), if satisfied that the person has the adequate skill and experience to do so.
- (2) An authorisation under subregulation (1) must be in writing.

Part 3—Protection of plants and garden beds

11 Protection of plants

- (1) The Board may make a determination specifying that a plant, or any class of plant in the Gardens, may be climbed upon.
- (2) A person must not climb upon a plant in the Gardens unless that person is acting in accordance with determination made under subregulation (1).

Penalty: 20 penalty units.

12 Protection of garden beds

A person must not enter into or walk on any garden bed, display or collection of plants in the Gardens.

Penalty: 20 penalty units.

13 Introduction of plants and other material

- (1) The Board may make a determination specifying that a pathogen, plant or a part of a plant may be brought into or introduced to the Gardens.
- (2) A person must not knowingly bring or introduce into the Gardens any pathogen or plant, or any part of a plant, unless that person—
 - (a) does so for the purposes of plant identification, where that service is provided by the Board; or
 - (b) does so in connection with any display, function or other activity approved by the Board; or
 - (c) is acting in accordance with a determination made under subregulation (1).

Penalty: 20 penalty units.

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Part 3—Protection of plants and garden beds

- (3) A person must not deposit or leave cremated human or animal remains within the Gardens.

Penalty: 10 penalty units.

Part 4—Protection and management of animals

14 Protection of animals

A person must not interfere with an animal in the Gardens unless that person has brought the animal into the Gardens, or has allowed that animal to enter the Gardens, in accordance with regulation 17.

Penalty: 20 penalty units.

15 Protection of animal habitats

A person must not damage, destroy, remove or otherwise interfere with the habitat of an animal, including a nest, bower, display mound, lair or burrow of an animal in the Gardens.

Penalty: 20 penalty units.

16 Offering food to animals

A person must not feed, offer food or offer any object as food to an animal in the Gardens, unless that animal has been brought into the Gardens in accordance with regulation 17.

Penalty: 10 penalty units.

17 Bringing animals into the Gardens

- (1) The Board may make a determination setting aside an area of the Gardens as an area into which a class of animals may be brought and may be allowed to remain.
- (2) Unless a person is acting in accordance with a determination made under subregulation (1), the person must not—
 - (a) bring an animal into the Gardens; or
 - (b) allow an animal under that person's control to enter into the Gardens; or

(c) allow an animal under that person's control to remain in the Gardens.

Penalty: 10 penalty units.

(3) Subregulation (2) does not apply if the animal is an assistance animal or an assistance dog.

(4) In this regulation—

assistance animal has the same meaning as in section 9(2) of the Disability Discrimination Act 1992 of the Commonwealth;

assistance dog has the same meaning as in section 4(1) of the **Equal Opportunity Act 2010**.

18 Removal of animal faeces from the Gardens

A person must not leave any faeces deposited by an animal under the person's control in the Gardens, unless that person deposits the faeces in a bin provided for that purpose.

Penalty: 10 penalty units.

Part 5—Care, protection and management of the Gardens

19 Bringing prohibited items into the Gardens

- (1) The Board may make a determination specifying that a prohibited item may be brought into, possessed, carried or used in the Gardens.
- (2) A person must not bring into, possess, carry or use a prohibited item in the Gardens, unless that person—
 - (a) does so in accordance with a determination made under subregulation (1); or
 - (b) does so in connection with any function or other activity approved by the Board or the Director.

Penalty: 20 penalty units.

20 Removal of items from the Gardens

- (1) The Board or Director may cause a prohibited item to be removed from the Gardens.
- (2) In addition to the power under subregulation (1), the Board or Director may cause any item, matter or thing to be removed from the Gardens if the Board or the Director considers that the item, matter or thing may represent a threat—
 - (a) to an animal, person or plant in the Gardens;
or
 - (b) to the State botanical collection.

21 Protection of structures, facilities, equipment and natural features

In the Gardens, a person must not damage, deface, remove or displace any sign, structure, fence, gate, facility, equipment or natural feature.

Penalty: 20 penalty units.

22 Digging or removal of material

In the Gardens, a person must not dig or remove any gravel, shell, grit, mulch, sand, soil, stone or other similar material.

Penalty: 20 penalty units.

23 Introduction of material

A person must not knowingly bring into or deposit in the Gardens any gravel, shell, grit, mulch, sand, soil, stone or other similar material.

Penalty: 20 penalty units.

24 Disposal of human waste

A person must not deposit or leave behind human waste in the Gardens, unless that person does so in the toilet facilities provided, if any.

Penalty: 10 penalty units.

25 Climbing over gates, fences, barriers or hedges

A person must not climb over, pass under or break through a gate, fence, barrier or hedge in the Gardens.

Penalty: 10 penalty units.

26 Lighting of fires

A person must not light a fire or use a flame in the Gardens except in a fireplace or barbeque provided for that purpose by the Board.

Penalty: 20 penalty units.

27 Recreational, sporting and other activities

(1) The Board may make a determination setting aside an area of the Gardens as an area where a recreational or sporting activity is—

- (a) prohibited; or
- (b) restricted.

- (2) A person must not engage in a recreational or sporting activity in the Gardens in an area set aside by a determination made under subregulation (1)(a) as an area where that sport or recreational activity is prohibited.

Penalty: 10 penalty units.

- (3) A person must not engage in a recreational or sporting activity in the Gardens in an area set aside by a determination made under subregulation (1)(b) as an area where that sport or recreational activity is restricted unless the person is acting in accordance with that determination.

Penalty: 10 penalty units.

- (4) A person must not throw any object, play any game or engage in any other activity in the Gardens that is likely to cause danger to a person or animal.

Penalty: 20 penalty units.

- (5) Subject to regulation 28, a person must not engage in any activity in the Garden that is likely to cause nuisance to a person.

Penalty: 10 penalty units.

28 Operating a sound producing device

- (1) A person must not play or operate a sound producing device in the Gardens at a volume that is likely—

- (a) to cause inconvenience or nuisance to another person; or
(b) to disturb an animal in the Gardens.

Penalty: 10 penalty units.

- (2) The Director may cause a sound producing device to be removed from the Gardens if the Director considers that the sound producing device is—
- (a) causing inconvenience or nuisance to a person; or
 - (b) disturbing an animal in the Gardens.
- (3) In this regulation—

sound producing device means a device, the main function of which is to make, reproduce or amplify sound.

29 Obstructing an employee or agent of the Board

In the Gardens, a person must not obstruct or interfere with an employee or agent of the Board acting in the course of the employee's or agent's employment or duties.

Penalty: 20 penalty units.

Part 6—Camping and occupation of structures

30 Camping

(1) A person must not camp or reside in the Gardens.

Penalty: 10 penalty units.

(2) In this regulation—

camp means to do any of the following, for accommodation purposes, whether occupied or not—

- (a) erect, occupy or use any equipment in the Gardens, including a tent, tarpaulin or any form of accommodation, shelter or temporary or permanent structure;
- (b) use a swag or sleeping bag;
- (c) use or leave in the Gardens a vehicle or other moveable form of accommodation, whether or not it is in a condition that enables it to be moved.

31 Occupying a structure

A person must not occupy a structure in the Gardens unless that structure has been provided for that purpose by the Board.

Penalty: 10 penalty units.

32 Erecting a structure

A person must not erect a structure or cause a structure to be erected in the Gardens.

Penalty: 10 penalty units.

33 Removing a structure

(1) The Board may direct a person who erects or causes a structure to be erected in the Gardens to remove that structure.

- (2) A direction under subregulation (1) must—
- (a) be in writing; and
 - (b) specify the number of days, being not less than 7 days, in which the direction must be complied with.
- (3) A person must comply with a direction under subregulation (1) within the time specified in the direction under subregulation (2).
- Penalty: 10 penalty units.
- (4) The Board may remove a structure if the person who erected the structure, or caused the structure to be erected—
- (a) fails to comply with a direction given under subregulation (1) to remove that structure within the time specified in the direction under subregulation (2); or
 - (b) is not known.
- (5) As soon as practicable after removing a structure under subregulation (4)(a), the Board must take all reasonable steps to notify the person who erected the structure, or caused the structure to be erected.
- (6) A notice under subregulation (5) must specify—
- (a) that the structure was removed in accordance with subregulation (4)(a); and
 - (b) that the structure will be disposed of within 28 days of the removal of the structure if not claimed by the person who erected the structure, or caused the structure to be erected; and
 - (c) the contact details of the Board.

- (7) In the case of a structure where the person who erected the structure or caused the structure to be erected is not known, if after a period of 28 days from the removal of the structure in accordance with subregulation (4)(b) no person has claimed the structure, the Board may dispose of the structure.
- (8) If, after a period of 28 days from the date of a notice under subregulation (5), the person who erected the structure or caused the structure to be erected has not claimed that structure, the Board may dispose of the structure.

Part 7—Organised events and commercial activities

34 Organised events

- (1) A person must not, in the Gardens, conduct any organised event.

Penalty: 10 penalty units.

- (2) In this regulation—

organised event includes any of the following—

- (a) an organised entertainment or a show;
- (b) a festival, tour, fete or public meeting;
- (c) a demonstration, training class or similar event;
- (d) a wedding or similar ceremony;
- (e) an organised motor vehicle event;
- (f) a fishing competition or other competitive sporting or recreational event.

35 Carrying on of trade or business

A person must not, in the Gardens, carry on a trade or business, including a trade or business that is authorised, permitted or licensed under any other Act or law.

Penalty: 20 penalty units.

36 Commercial filming and photography

A person must not, in the Gardens, do any of the following for commercial purposes—

- (a) take a still photograph;

(b) record images by film, video, digital or other technology;

(c) create an image, drawing or painting.

Penalty: 20 penalty units.

37 Advertising and soliciting

(1) A person must not, in the Gardens, solicit or collect money.

Penalty: 20 penalty units.

(2) A person must not, in the Gardens, display a placard, sign or notice for the purposes of advertising.

Penalty: 20 penalty units.

(3) A person must not, in the Gardens, hand out or disseminate advertising or promotional material, including pamphlets or handbills.

Penalty: 20 penalty units.

Part 8—Vehicles

38 Speed and direction of travel

- (1) The Board may make a determination specifying any of the following—
 - (a) the maximum speed at which a vehicle in the Gardens may be operated;
 - (b) the direction of travel of a vehicle being operated in the Gardens.
- (2) A person must not operate a vehicle in the Gardens above the maximum speed specified in a determination made under subregulation (1)(a).

Penalty: 5 penalty units.

- (3) A person must not operate a vehicle in the Gardens unless the person operates the vehicle in the direction of travel specified in a determination made under subregulation (1)(b).

Penalty: 5 penalty units.

39 Parking of vehicles

- (1) The Board may make a determination setting aside an area of the Gardens as any of the following—
 - (a) an area where parking of all vehicles or vehicles of a particular class is restricted;
 - (b) an area where parking of all vehicles or vehicles of a particular class is prohibited.
- (2) A person must not park a vehicle in the Gardens in an area set aside by a determination made under subregulation (1)(a) unless that person parks the vehicle in accordance with that determination.

Penalty: 5 penalty units.

- (3) A person must not park a vehicle to which a determination under subregulation (1)(b) applies in the Gardens in an area set aside by that determination.

Penalty: 10 penalty units.

40 Use or operation of vehicles

- (1) The Board may make a determination setting aside an area of the Gardens as any of the following—
- (a) an area where the use or operation of all vehicles or vehicles of a particular class is restricted;
 - (b) an area where the use or operation of all vehicles or vehicles of a particular class is prohibited.
- (2) A person must not use or operate a vehicle in the Gardens in an area to which a determination under subregulation (1)(a) applies unless that person is acting in accordance with that determination.

Penalty: 5 penalty units.

- (3) A person must not use or operate a vehicle to which a determination under subregulation (1)(b) applies in the Gardens in an area set aside by that determination.

Penalty: 10 penalty units.

Endnotes

¹ Reg. 4: S.R. No. 170/2014.

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2024 is \$197.59. The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.