

Swan and Canning Rivers Management Amendment Bill 2014

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Western Australia

LEGISLATIVE ASSEMBLY

**Swan and Canning Rivers Management
Amendment Bill 2014**

A Bill for

An Act to amend the *Swan and Canning Rivers Management Act 2006*, to make consequential amendments to other Acts, and for related purposes.

The Parliament of Western Australia enacts as follows:

1
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Part 1 — Preliminary

1. Short title

This is the *Swan and Canning Rivers Management Amendment Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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1 ***Department's website*** means a website maintained by
2 the Department;

3 ***Executive Body*** means the Conservation and Land
4 Management Executive Body established by the
5 CALM Act section 36;

6

7 **6. Section 11 amended**

8 (1) Delete section 11(1).

9 (2) Delete section 11(2)(a) and insert:

10

11 (a) a part of the catchment area and a part of the
12 Riverpark; and

13

14 (3) After section 11(7) insert:

15

16 (8A) Despite the *Land Administration Act 1997*, the placing
17 of the care, control and management of the River
18 reserve with the Trust is only for the purposes of
19 section 23 and does not otherwise limit the functions of
20 the CEO under section 33.

21

22 (4) In section 11(9):

23 (a) in paragraph (b)(i) delete “Marine Authority” and insert:

24

25 Marine Parks and Reserves Authority

26

27 (b) in paragraph (c)(i) after “Commission” insert:

28

29 of Western Australia

30

1 **7. Section 12 amended**

2 (1) In section 12(2) after “other structure on” insert:

3

4 that part of

5

6 (2) In section 12(7) delete “Division 2.” and insert:

7

8 Division 2 or the powers of the CEO under Part 4B Division 1.

9

10 **8. Section 22A inserted**

11 After section 21 insert:

12

13 **22A. CEO entitled to attend board meeting**

14 The CEO, or a nominee of the CEO, is entitled to
15 attend any meeting of the board and to take part in the
16 consideration and discussion of any matter before a
17 meeting, but cannot vote on any matter.

18

19 **9. Section 23 amended**

20 In section 23:

21 (a) delete paragraphs (a), (b) and (c) and insert:

22

23 (a) subject to sections 11(8A) and 33, to have
24 placed with it the care, control and management
25 of the River reserve;

26 (ab) to develop policies —

27 (i) for the protection and enhancement of
28 the ecological and community benefits
29 and amenity of the development control
30 area and for the control of activities and
31 development in that area; and

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- 1 (ii) for the protection and enhancement of
2 the ecological and community benefits
3 and amenity of the Riverpark and the
4 Riverpark shoreline;
- 5 and
- 6
- 7 (b) delete paragraphs (e) and (f) and insert:
- 8
- 9 (e) in accordance with Part 4, to prepare and deal
10 with proposed strategic documents under this
11 Act; and
- 12 (fa) to promote the implementation of strategic
13 documents and establish mechanisms for
14 monitoring compliance for the purpose of
15 reporting and making recommendations under
16 section 66; and
- 17 (fb) in accordance with Part 5, to advise the CEO on
18 matters relating to development in the
19 development control area; and
- 20 (f) to advise the CEO on and promote the activities
21 of other bodies that have functions in relation to
22 the catchment area, insofar as those functions
23 may affect the Riverpark; and
- 24
- 25 (c) in paragraph (g) delete “monitor and”;
- 26 (d) in paragraph (h) delete “and assistance”;
- 27 (e) delete paragraph (i);
- 28 (f) in paragraph (k) after “under” insert:
- 29
- 30 this Act or
- 31
- 32 (g) delete paragraph (l).

1 **10. Section 24 amended**

2 Delete section 24(2) and (3) and insert:

3

4 (2) The Trust may, with the approval of the Minister,
5 engage persons under contracts for services to provide
6 any professional, technical or other assistance that the
7 Trust considers necessary for the performance of its
8 functions under this Act.

9 (3) An approval of the Minister under subsection (2) may
10 be specific or may be given in general terms.

11

12 **11. Sections 26 and 27 replaced**

13 Delete sections 26 and 27 and insert:

14

15 **28A. Assistance, staff and facilities to be provided**

16 The CEO must provide the Trust —

17 (a) with any assistance it may reasonably require to
18 perform its functions; and

19 (b) without limiting paragraph (a), with any staff
20 and facilities of the Department as the Trust
21 may reasonably require to perform its
22 functions.

23 **28B. Delegation by Trust**

24 (1) In subsection (2) —

25 *eligible person* means —

26 (a) a member;

27 (b) a committee or a member of the committee;

28 (c) the CEO;

29 (d) a member of staff provided under section 28A.

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- 1 (2) The Trust may, by resolution, delegate to an eligible
2 person any function of the Trust under another
3 provision of this Act or any other written law.
- 4 (3) A delegate must not further delegate any function.
- 5 (4) A person exercising or performing a function that has
6 been delegated to the person under this section is to be
7 taken to do so in accordance with the terms of the
8 delegation unless the contrary is shown.
- 9 (5) Nothing in this section limits the ability of the Trust to
10 perform a function through an officer or agent.
- 11 (6) This section does not apply to the execution of
12 documents but the authority to execute documents on
13 behalf of the Trust can be given under section 28F.

14 **28C. Minister may give Trust directions**

- 15 (1) The Minister may give written directions to the Trust
16 with respect to the exercise or performance of its
17 functions, either generally or in relation to a particular
18 matter, and the Trust must give effect to any such
19 direction.
- 20 (2) The text of a direction under subsection (1) must be
21 included in the annual report of the Trust under
22 section 28G.

23 **28D. Minister to have access to information**

- 24 (1) In this section —
25 *document* includes any tape, disk or other device or
26 medium on which information is recorded or stored;
27 *information* means information specified, or of a
28 description specified, by the Minister that relates to the
29 functions of the Trust;
30 *staff* means staff provided under section 28A.

- 1 (2) The Minister is entitled to have information in the
2 possession of the Trust and, if the information is in or
3 on a document, to have, and make and retain copies of,
4 that document.
- 5 (3) For the purposes of subsection (2) the Minister may —
6 (a) request the Trust to provide information to the
7 Minister; and
8 (b) request the Trust to give the Minister access to
9 information; and
10 (c) for the purposes of paragraph (b) make use of
11 staff to obtain the information and provide it to
12 the Minister.
- 13 (4) The Trust must comply with a request under
14 subsection (3) and make staff and facilities available to
15 the Minister for the purposes of paragraph (c) of that
16 subsection.

17 **28E. Trust may appoint committees**

- 18 (1) The Trust may appoint committees to assist it in the
19 performance of its functions, and may discharge or
20 alter any committee so appointed.
- 21 (2) A committee may include persons who are not
22 members of the board.
- 23 (3) Subject to the directions of the Trust and to the terms
24 of any delegation under section 28B, a committee may
25 determine its own procedures.

26 **28F. Execution of documents**

- 27 (1) The Trust is to have a common seal.
- 28 (2) A document is duly executed by the Trust if —
29 (a) the common seal of the Trust is affixed to it in
30 accordance with subsections (3) and (4); or

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- 1 (b) it is signed on behalf of the Trust by a person or
2 persons authorised to do so under
3 subsection (5).
- 4 (3) The common seal of the Trust must not be affixed to
5 any document except as authorised by the Trust.
- 6 (4) The common seal of the Trust must be affixed to a
7 document in the presence of the chairman and another
8 member, or the chairman and a person employed in the
9 Department authorised by the Trust either generally or
10 in any particular case to be so present, and each of
11 them must sign the document to attest that the common
12 seal was so affixed.
- 13 (5) The Trust may, by writing under its common seal,
14 authorise a member or members or a person or persons
15 employed in the Department to sign documents on
16 behalf of the Trust, either generally or subject to such
17 conditions or restrictions as are specified in the
18 authorisation.
- 19 (6) A document purporting to be executed in accordance
20 with this section is to be presumed to be duly executed
21 until the contrary is shown.
- 22 (7) A document executed by a person under this section
23 without the common seal of the Trust is not to be
24 regarded as a deed unless the person executes it as a
25 deed and is authorised under subsection (5) to do so.
- 26 (8) When a document is produced bearing a seal
27 purporting to be the common seal of the Trust, it is to
28 be presumed that the seal is the common seal of the
29 Trust until the contrary is shown.

30 **28G. Annual report**

- 31 (1) Despite the *Financial Management Act 2006*, the Trust
32 must, not later than 30 November in each year, prepare

1 and give to the Minister a report on its proceedings for
2 the year ending on the preceding 30 June.

3 (2) The Minister must cause the report to be laid before
4 each House of Parliament as soon as is practicable after
5 receipt by the Minister.
6

7 **12. Part 4A heading inserted**

8 Before section 28 insert:
9

10 **Part 4A — Management of land and waters**
11

12 **13. Part 4B heading and Part 4B Division 1 heading inserted**

13 After section 32 insert:
14

15 **Part 4B — Administration**

16 **Division 1 — Functions and powers of CEO**
17

18 **14. Sections 33 to 36 replaced**

19 Delete sections 33, 34, 35 and 36 and insert:
20

21 **33. Functions of CEO**

22 (1) The functions of the CEO under this Act are as
23 follows —

24 (a) to manage —

25 (i) the River reserve; and

26 (ii) the Riverpark shoreline, either solely or
27 jointly with another person;

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- 1 (b) to protect and enhance the ecological and
2 community benefits and amenity of the
3 development control area and control activities
4 and development in that area;
- 5 (c) to protect and enhance the ecological and
6 community benefits and amenity of the
7 Riverpark;
- 8 (d) to carry out works and provide facilities for the
9 purposes of protecting and enhancing the
10 ecological and community benefits and amenity
11 of the Riverpark;
- 12 (e) to coordinate the development and
13 implementation of strategic documents under
14 this Act, including the strategic documents
15 applicable to the catchment area;
- 16 (f) to monitor —
17 (i) the state of the development control
18 area; and
19 (ii) development on and adjoining the
20 development control area;
- 21 (g) to provide assistance to planning authorities so
22 that, in relation to the Riverpark, proper
23 provision is made in planning schemes for —
24 (i) the reservation of land for protection,
25 and future acquisition, of river
26 foreshores; and
27 (ii) protection and public use of land and
28 waters; and
29 (iii) protection of wildlife habitat;
- 30 (h) to provide advice to the Western Australian
31 Planning Commission on State planning
32 policies and planning scheme provisions
33 relating to any matter within its functions, and

- 1 to publish other statements of policy relating to
2 any matter within the CEO's functions;
- 3 (i) to provide the Trust with assistance, staff and
4 facilities under section 28A;
- 5 (j) to otherwise undertake the administration and
6 enforcement of this Act and perform other
7 functions vested in the CEO by this Act.
- 8 (2) Nothing in subsection (1) is to be read as limiting the
9 functions of the Trust under section 23.

10 **34. Consultation and matters to be considered by CEO**

11 The CEO must, so far as is practicable and consistent
12 with this Act —

- 13 (a) consult and collaborate with persons that are
14 affected in a material way by the performance
15 of the CEO's functions under this Act; and
- 16 (b) have regard, in the performance of his or her
17 functions, to —
- 18 (i) protection and enhancement of the
19 ecological and community benefits and
20 amenity of the development control area
21 and the Riverpark; and
- 22 (ii) the significance of the waters in the
23 Riverpark to the Nyungah community;
24 and
- 25 (iii) the requirements of public recreation;
26 and
- 27 (iv) the need to preserve right of access for
28 the public to waters in the Riverpark;
29 and
- 30 (v) the interests of navigation, fisheries,
31 agriculture and water supply.

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- 1 **35. Consultation with local governments and**
2 **Metropolitan Redevelopment Authority**
- 3 (1) If it appears to the CEO that a measure proposed to be
4 taken by the CEO, not being a matter to which Part 4
5 applies or a development to which Part 5 applies, is one
6 that affects or is likely to affect the interests of a local
7 government referred to in Schedule 7 or the
8 Metropolitan Redevelopment Authority, in a material
9 way, the CEO must refer the proposal to the local
10 government or the Metropolitan Redevelopment
11 Authority.
- 12 (2) If a proposal is referred to it, a local government or the
13 Metropolitan Redevelopment Authority may make
14 submissions to the CEO on the proposal.
- 15 (3) The CEO must have regard to those submissions —
16 (a) in any report, advice or recommendation that
17 the CEO intends to submit to the Minister on
18 the proposal; and
19 (b) if the CEO undertakes the proposal.
- 20 (4) The local government or the Metropolitan
21 Redevelopment Authority must be notified of any
22 decision in respect of the proposal —
23 (a) by the Minister, in the case of a decision by the
24 Minister; and
25 (b) by the CEO, in the case of a decision by the
26 CEO.
- 27 **36. Payment for advice and other matters**
- 28 Any arrangement made by the CEO for the provision
29 of advice, performance or work or supply of services or
30 facilities by the CEO may, with the approval of the
31 Minister, provide for an agreed amount by way of

1 payment to the CEO for the advice, work or services or
2 the use of the facilities.

3 **37. Collaborative arrangements**

- 4 (1) Subject to this section, the CEO may enter into a
5 collaborative arrangement with any other person —
- 6 (a) binding that person to undertake programmes
7 of a kind specified in the arrangement and
8 directed towards protection and enhancement of
9 the ecological and community benefits and
10 amenity of the Riverpark or any part of the
11 Riverpark; or
- 12 (b) providing for measures to be taken jointly with
13 that person relating to any matter that is within
14 the functions of the CEO and that other person.
- 15 (2) The term of a collaborative arrangement must not
16 exceed 5 years but on its expiry a further collaborative
17 arrangement may be made.
- 18 (3) A collaborative arrangement under this section may
19 contain terms providing for any matter that the CEO
20 considers appropriate for securing the objectives of this
21 Act, including terms —
- 22 (a) providing for measures to be taken jointly by
23 the parties to the arrangement; and
- 24 (b) binding the CEO to provide financial or other
25 assistance of any kind to the other party or
26 parties or any of them; and
- 27 (c) relating to the objectives and performance
28 standards to be met by a party other than the
29 CEO; and
- 30 (d) requiring a party to report to the CEO in
31 relation to the party's obligations under the
32 agreement; and
- 33 (e) as to the monitoring functions of the CEO; and

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- 1 (f) as to the means by which disputes under the
2 arrangement may be dealt with; and
- 3 (g) as to procedures for varying and enforcing the
4 arrangement.
- 5 (4) The CEO must not enter into a collaborative
6 arrangement under this section except with the prior
7 approval of the Minister.
- 8 (5) For the purposes of subsection (4) the Minister may
9 approve a specific collaborative arrangement or class
10 of collaborative arrangement.
- 11 (6) A collaborative arrangement does not have effect to
12 relieve a party to the arrangement from any duty under
13 this or any other Act, and any obligations imposed
14 under such an arrangement have effect in addition to
15 and not in derogation of the requirements imposed by
16 or under this or any other Act.

17 **38. Delegation by CEO**

- 18 (1) In subsection (2) —
19 *eligible person* means —
- 20 (a) a member;
21 (b) a committee or a member of the committee;
22 (c) a person employed in the Department;
23 (d) an inspector;
24 (e) a public authority or a member or officer of a
25 public authority or a member of the council of,
26 or an employee of, a local government.
- 27 (2) Subject to subsection (3), the CEO may delegate to an
28 eligible person any function of the CEO under another
29 provision of this Act.
- 30 (3) The delegation must be in writing signed by the CEO.

- 1 (4) The delegation of a function conferred on the CEO
2 under Part 5 does not take effect unless notice of the
3 delegation is published in the *Gazette*.
- 4 (5) The CEO may in a delegation under subsection (2)
5 empower a public authority to subdelegate a function
6 delegated to it under this section to —
- 7 (a) in the case of a public authority that is not a
8 local government — a committee of, a member
9 of, or an officer of, the authority; or
- 10 (b) in the case of a local government — the council
11 of, a committee of, or an employee of, the local
12 government, or a member of the council of the
13 local government.
- 14 (6) Except as provided in subsection (5), a delegate or
15 subdelegate must not further delegate any function.
- 16 (7) A person exercising or performing a function that has
17 been delegated to the person under this section is to be
18 taken to do so in accordance with the terms of the
19 delegation unless the contrary is shown.
- 20 (8) Nothing in this section limits the ability of the CEO to
21 perform a function through an officer or agent.
- 22 (9) Without limiting the things that may be delegated
23 under subsection (2), they may include things that are
24 to be done in the course of governing the affairs of the
25 Executive Body under the CALM Act section 36(4).
26

27 **15. Part 3 Division 3 deleted**

28 Delete Part 3 Division 3.

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1 **16. Part 3 Division 4 heading replaced**

2 Delete the heading to Part 3 Division 4 and insert:

3

4 **Division 2 — Inspectors**

5

6 **17. Section 39 amended**

7 Delete section 39(1) and insert:

8

- 9 (1) The CEO may, by instrument in writing, designate any
10 person employed in the Department or any officer of a
11 public authority as an inspector.

12

13 **18. Part 3 Divisions 5 and 6 deleted**

14 Delete Part 3 Divisions 5 and 6.

15 **19. Section 49 replaced**

16 Delete section 49 and insert:

17

18 **49. Draft s. 47 regulations to be publicly notified**

19 (1) Public notification that draft regulations in relation to a
20 matter referred to in section 47 have been prepared
21 must be given in accordance with subsection (2).

22 (2) The draft regulations must be publicly notified by the
23 publication of a notice —

24 (a) in the *Gazette*; and

25 (b) in 2 issues of a daily newspaper circulating
26 throughout the State.

- 1 (3) The notice must —
2 (a) specify the places at which copies of the draft
3 regulations may be inspected and obtained and
4 the Department’s website address; and
5 (b) state the effect of section 50 and specify the
6 period referred to in that section.
7 (4) The CEO may fix and charge a fee for supplying a
8 copy of the draft regulations.
9

10 **20. Section 55 amended**

11 In section 55(2):

- 12 (a) in paragraph (c) delete “document.” and insert:
13
14 document; and
15
16 (b) after paragraph (c) insert:
17
18 (d) the CEO has been consulted as to whether the
19 document should be approved as a strategic
20 document.
21

22 **21. Section 56 amended**

23 In section 56(1) delete “prepared —” and insert:

24
25 prepared through the agency of the CEO —
26

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1 **22. Section 57 amended**

2 In section 57 delete “must consult —” and insert:

3

4 through the agency of the CEO must consult —

5

6 **23. Section 58 replaced**

7 Delete section 58 and insert:

8

9 **58. Draft document to be publicly notified**

10 (1) Public notification that a draft river protection strategy
11 or management programme has been prepared must be
12 given in accordance with subsection (2).

13 (2) The draft river protection strategy or management
14 programme must be publicly notified by the
15 publication of a notice —

16 (a) in the *Gazette*; and

17 (b) in 2 issues of a daily newspaper circulating
18 throughout the State.

19 (3) The notice must —

20 (a) specify the places at which copies of the draft
21 document may be inspected and obtained and
22 the Department’s website address; and

23 (b) state the effect of section 59 and specify the
24 period referred to in that section.

25 (4) The CEO may fix and charge a fee for supplying a
26 copy of the draft documents.

27

1 **24. Section 60 amended**

2 In section 60(1):

3 (a) delete “by the Trust”;

4 (b) delete “referred by it to any other public authority,
5 person or body.” and insert:

6

7 referred to any other public authority, person or body the
8 Trust thinks fit.

9

10 **25. Section 64 amended**

11 (1) In section 64(1) after “prepare” insert:

12

13 through the agency of the CEO

14

15 (2) In section 64(2) delete “it may” and insert:

16

17 it may, with the approval of the Minister,

18

19 (3) After section 64(2) insert:

20

21 (3A) If the Minister refuses to approve the continuation in
22 force of the river protection strategy or management
23 programme without amendment, the river protection
24 strategy or management programme ceases to be of
25 effect.

26 (3B) The Trust must notify the CEO of any determination
27 made under subsection (2).

28

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- 1 (4) In section 64(3):
2 (a) in paragraph (b) after “amendments to” insert:
3
4 or revision of
5
6 (b) in paragraph (c) after “the amendment” insert:
7
8 to or revision
9
10 (5) After section 64(3) insert:
11
12 (4) Subject to compliance with this section, a river
13 protection strategy or a management programme may
14 be revoked and a revised river protection strategy or a
15 revised management programme substituted for it.
16
17 **26. Section 65 amended**
18 Delete section 65(1) and insert:
19
20 (1) The CEO must perform his or her functions under this
21 Act in accordance with the strategic documents.
22
23 **27. Section 66 amended**
24 Delete section 66(4) and insert:
25
26 (4) Any report under subsection (1) must be included in
27 the annual report of the Trust under section 28G.
28

1 **28. Section 73 amended**

2 Delete section 73(1) and (2) and insert:

3

4 (1) The CEO must by notice in writing refer a
5 development application and information and
6 documents relating to the proposed development to the
7 following —

- 8 (a) each local government for which the
9 development appears to the CEO to be a
10 relevant matter;
- 11 (b) the Metropolitan Redevelopment Authority if
12 the development appears to the CEO to be a
13 relevant matter;
- 14 (c) each other public authority that appears to the
15 CEO to have functions that are relevant to the
16 proposed development;
- 17 (d) if the development is proposed to be carried out
18 on land in the Swan Valley, the Swan Valley
19 Planning Committee.

20 (2A) A relevant matter for a local government is one that
21 relates to a development or proposed development in a
22 part of the development control area that is in or
23 adjoins the district of that local government.

24 (2B) A relevant matter for the Metropolitan Redevelopment
25 Authority is one that relates to a development or
26 proposed development in a redevelopment area as
27 defined in the *Metropolitan Redevelopment Authority*
28 *Act 2011* section 3.

29 (2) Each of the entities to which particulars are referred
30 under subsection (1) and, where particulars are referred
31 to the Swan Valley Planning Committee, that
32 committee, may make submissions on the proposed
33 development to the CEO.

34

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1 **29. Section 74 amended**

2 (1) Delete section 74(1) and insert:

3

4 (1) The CEO must publish on the Department's website
5 notice of each development application the CEO
6 receives.

7

8 (2) In section 74(2):

9 (a) delete "approved by the Trust," and insert:

10

11 approved by the CEO,

12

13 (b) in paragraph (c) delete "chairman" (each occurrence)
14 and insert:

15

16 CEO

17

18 (c) delete paragraph (d).

19 **30. Section 75 amended**

20 Delete section 75(2) and (3) and insert:

21

22 (2) The CEO, in preparing a report under this section, must
23 consider all submissions received by the CEO under
24 sections 73 and 74.

25 (3A) The CEO must give a copy of the draft report to the
26 Trust and the Trust must, not later than 28 days after
27 being given the report, provide its comments and
28 recommendations to the CEO.

- 1 (3) After receiving the comments and recommendations of
2 the Trust and making such changes to the draft report
3 as the CEO thinks appropriate, the CEO must —
- 4 (a) give a copy of the draft report, with an
5 invitation to make submissions to the CEO on
6 the draft report, to —
- 7 (i) the applicant; and
8 (ii) the Trust and each local government and
9 other public authority to which notice
10 was given under section 73(1) and
11 where notice was given to the Swan
12 Valley Planning Committee, that
13 committee; and
14 (iii) each person who made a submission
15 under section 74(5);
- 16 and
- 17 (b) publish the draft report on the Department's
18 website and in any other way the CEO
19 considers appropriate, with an invitation to the
20 public to make submissions to the CEO on the
21 draft report.
22

23 **31. Section 76 replaced**

24 Delete section 76 and insert:
25

26 **76. Report by CEO to Minister on proposed**
27 **development**

- 28 (1) The CEO, after considering any submissions made
29 under section 75 and making such changes to the report
30 as the CEO considers appropriate, may give a copy of
31 the report to the Trust and in that case the Trust must,
32 not later than 28 days after being given the report,
33 provide its final comments to the CEO.

s. 31

- 1 (2) The CEO, after considering any submissions made
2 under section 75 and comments made under
3 subsection (1) and making such changes to the report
4 as the CEO considers appropriate, must —
- 5 (a) give a copy of the report to the following —
- 6 (i) the Minister;
- 7 (ii) the Trust;
- 8 (iii) each public authority to which the draft
9 report was given under section 75 and
10 where notice was given to the Swan
11 Valley Planning Committee, that
12 committee;
- 13 (iv) each person who made a submission
14 under section 75;
- 15 and
- 16 (b) publish the report on the Department’s website
17 and in any other way the CEO considers
18 appropriate.
- 19 (3) A report to the Minister under subsection (2)(a)(i) must
20 be accompanied by the following —
- 21 (a) a copy of each submission made under
22 section 73(1), 74 or 75 in relation to the
23 application or draft report;
- 24 (b) a copy of any comments or recommendations
25 made by the Trust under section 75(3A) or
26 subsection (1) of this section in relation to the
27 application or draft report;
- 28 (c) the CEO’s comments on the submissions.
29

1 **32. Section 77 amended**

2 (1) Delete section 77(1)(b)(i) and insert:

3

4 (i) return the application to the CEO and
5 direct the CEO to reconsider the CEO's
6 recommendations within such period as
7 the Minister may specify; or

8

9 (2) Delete section 77(2) and (3) and insert:

10

11 (2) If the Minister gives a direction to the CEO under
12 subsection (1)(b)(i) —

13 (a) the CEO must consult with the Trust in an
14 endeavour to resolve any question in issue; and

15 (b) the Minister may also direct the CEO to consult
16 with the applicant and any other person the
17 Minister directs in an endeavour to resolve any
18 question in issue.

19 (3) The CEO must comply with any direction given under
20 this section.

21

22 **33. Section 79 amended**

23 Delete section 79(2) and insert:

24

25 (2) The CEO, after consultation with the Trust, may make
26 submissions to a review committee.

27

28 Note: The heading to amended section 79 is to read:

29 **Review committee's functions as to CEO's recommendations**

s. 34

1 **34. Section 85 amended**

2 Delete section 85(2) and insert:

3

4 (2) If the CEO is authorised under subsection (1) to
5 approve a development, the CEO may decide to do so
6 and in that case —

7 (a) sections 73, 74, 75 and 76(1) and (2) apply in
8 relation to the development application; and

9 (b) sections 76(3), 77, 78 and 79 do not apply in
10 relation to the development application; and

11 (c) the CEO may, subject to section 80(2), exercise
12 any power described in section 80(1), (3) or (4).

13

14 **35. Section 86 replaced**

15 Delete section 86 and insert:

16

17 **86. CEO must give section 85 decision to Minister**

18 (1) The CEO must give to the Minister a copy of each
19 decision the CEO makes under section 85 in relation to
20 an application.

21 (2) The report must be accompanied by the report made by
22 the CEO under section 75 in relation to the application.

23

24 **36. Section 87 amended**

25 (1) In section 87(2):

26 (a) before paragraph (a)(i) insert:

27

28 (ia) the CEO; and

29

1 (b) delete paragraph (b) and insert:

2

3 (b) published on the Department's website and in
4 any other way the CEO considers appropriate.

5

6 (2) Delete section 87(3)(a) and insert:

7

8 (a) the CEO must give to the Minister the
9 submissions and comments given to the CEO in
10 respect of the application under sections 75 and
11 76 as applied by section 85(2)(a); and
12

13 **37. Section 90 amended**

14 Delete section 90(1) and insert:

15

16 (1) If the CEO believes on reasonable grounds that, to
17 protect or enhance the ecological and community
18 benefits or amenity of the Riverpark —

19 (a) action by an owner, or both an owner and an
20 occupier, of land in the catchment area is
21 required; or

22 (b) an owner, or both an owner and an occupier, of
23 land in the catchment area should refrain from
24 action on that land,

25 the CEO may request advice from the Trust as to
26 whether a river protection notice should be issued in
27 relation to that action.

28 (2A) The Trust must provide the advice not later than
29 28 days after the request is made.
30

31 Note: The heading to amended section 90 is to read:

32 **CEO may request advice from Trust on issue of river protection**
33 **notice**

s. 38

1 **38. Section 91 amended**

2 Delete section 91(1) and insert:

3

- 4 (1) The CEO may issue a river protection notice if, after
5 considering the advice of the Trust given under
6 section 90 and giving each person to whom it is
7 proposed to give the river protection notice a
8 reasonable opportunity to show cause in writing why
9 the river protection notice should not be issued, the
10 CEO is satisfied that the notice should be issued.

11

12 Note: The heading to amended section 91 is to read:

13 **Issue of notice by CEO**

14 **39. Section 98 amended**

15 Delete section 98(4)(b) and insert:

16

- 17 (b) must not exceed an amount that, in the opinion
18 of the CEO, represents a reasonable estimate of
19 the total likely costs that might be incurred in
20 taking action under sections 102 and 103 in
21 relation to that river protection notice.

22

23 **40. Section 116 amended**

24 Delete section 116(5) and insert:

25

- 26 (5) If a person fails to comply with a notice given to the
27 person under subsection (1)(b), the CEO may cause the
28 development to be removed, pulled down, taken up or
29 altered.

- 30 (6) The CEO may recover in a court of competent
31 jurisdiction from the person who failed to comply with

1 the notice the costs incurred under subsection (5) in
2 removing, pulling down, taking up or altering a
3 development.
4

5 **41. Section 117 amended**

6 Delete section 117(7) and insert:
7

8 (7) The proceeds of sale referred to in subsection (6) must
9 be paid into the Consolidated Account at the expiration
10 of 12 months from the date of the sale unless within
11 that time a person proves to the satisfaction of the CEO
12 that that person is entitled to them or any part of them,
13 in which case the CEO must pay the proceeds or part of
14 the proceeds in accordance with that entitlement.
15

16 **42. Section 118 amended**

17 Delete section 118(8) and insert:
18

19 (8) Any costs recovered under this section must be paid
20 into the Consolidated Account.
21

22 **43. Section 123 amended**

23 (1) In section 123(3)(c) delete “the Trust” and insert:
24

25 an authorised person
26

27 (2) Delete section 123(10) and insert:
28

29 (10) The CEO may, in writing, appoint persons or classes of
30 persons to be authorised persons for the purposes of

s. 44

1 subsection (3)(c), (5) or (7), but an inspector who gives
2 an infringement notice is not eligible to be appointed as
3 an authorised person for the purposes of any of those
4 subsections in relation to that notice.
5

6 **44. Section 129 replaced**

7 Delete section 129 and insert:
8

9 **129. Functions of Foundation**

10 The functions of the Foundation are —

- 11 (a) to attract and retain continuing public interest
12 and financial support for the objectives of the
13 Act; and
14 (b) to encourage donations to facilitate the
15 achievement of the objectives of the Act.
16

17 **45. Section 131 amended**

18 Delete section 131(3)(b) and insert:
19

- 20 (b) may be transferred to an operating account of
21 the Department for the purposes of carrying this
22 Act into effect or otherwise applied for the
23 purposes of the Act or the Foundation.
24

25 **46. Section 132 amended**

26 After section 132(1) insert:
27

- 28 (2A) The CEO must consult the Trust before making a
29 recommendation under subsection (1).
30

1 **47. Section 135 amended**

2 (1) Delete section 135(1) and (2) and insert:

3

4 (1) An action in tort does not lie against a person for
5 anything that the person has done, in good faith in the
6 performance or purported performance of a function
7 under this Act.

8

9 (2) In section 135(3) delete “subsection (2)” and insert:

10

11 subsection (1)

12

13 (3) In section 135(4) delete “subsection (2),” and insert:

14

15 subsection (1),

16

17 **48. Part 11 inserted**

18 After Part 10 insert:

19

20 **Part 11 — Transitional provisions for *Swan and***
21 ***Canning Rivers Management Amendment***
22 ***Act 2014***

23 **138. Terms used**

24 In this Part —

25 *amended Act* means this Act as amended by the *Swan*
26 *and Canning Rivers Management Amendment Act 2014*
27 Part 2;

s. 48

- 1 **assets** —
- 2 (a) means any legal or equitable estate or interests
- 3 (whether present or future, whether vested or
- 4 contingent and whether personal or assignable)
- 5 in real or personal property of any description;
- 6 and
- 7 (b) includes money, securities, choses in action and
- 8 documents;
- 9 **commencement day** means the day on which the *Swan*
- 10 *and Canning Rivers Management Amendment Act 2014*
- 11 section 9 comes into operation;
- 12 **former Act** means this Act as in force immediately
- 13 before the commencement day;
- 14 **liability** means any liability, duty or obligation whether
- 15 actual, contingent or prospective, liquidated or
- 16 unliquidated, or whether owed alone or jointly or
- 17 jointly and severally with any other person;
- 18 **right** means any right, power, privilege or immunity
- 19 whether actual, prospective or contingent;
- 20 **this Part** includes regulations made under
- 21 section 148(2).

22 **139. Completion of things commenced**

23 Anything commenced to be done by the Trust or the

24 General Manager before the commencement day may

25 be continued by the CEO so far as the doing of that

26 thing is within the functions of the CEO.

27 **140. Continuing effect of things done**

- 28 (1) Anything done or omitted to be done before the
- 29 commencement day by, to or in respect of the Trust or
- 30 the General Manager, to the extent that it —
- 31 (a) has any force or significance; and

1 (b) is a thing that could be done or omitted to be
2 done by the CEO under the amended Act,
3 is to be taken to have been done or omitted by, to or in
4 respect of the CEO.

5 (2) Without limiting subsection (1), a licence granted or
6 permit issued by the Trust that has effect immediately
7 before the commencement day continues to have
8 effect, on and after that day, as if it had been granted or
9 issued by the CEO.

10 **141. Contracts, agreements and other instruments**

11 (1) Any contract, agreement or other instrument subsisting
12 immediately before the commencement day —

- 13 (a) to which the Trust was a party; or
14 (b) which contains a reference to the Trust,

15 has effect on and after the commencement day, to the
16 extent to which the contract, agreement or other
17 instrument relates to the functions of the CEO under
18 the amended Act, as if —

- 19 (c) the CEO were substituted for the Trust as a
20 party to the agreement or instrument; and
21 (d) any reference in the contract, agreement or
22 instrument were, unless the context otherwise
23 requires, amended to be or include a reference
24 to the CEO.

25 (2) Nothing in this section affects the operation of
26 sections 11 or 23(a).

27 **142. Assignment to State or CEO**

28 (1) On the commencement day —
29 (a) the assets of the Trust are, by operation of this
30 section, assigned to and become assets of the
31 State to be administered in the Department; and

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- 1 (b) the liabilities of the Trust are, by operation of
2 this section, assigned to and become liabilities
3 of the CEO acting on behalf of, and in the name
4 of, the State; and
- 5 (c) the CEO acting on behalf of, and in the name
6 of, the State is substituted for the Trust as a
7 party to all proceedings in which the Trust was
8 a party immediately before the commencement
9 day; and
- 10 (d) any proceeding or remedy that might have been
11 commenced by, or available against or to, the
12 Trust in relation to the assets and liabilities
13 assigned by paragraphs (a) and (b) may be
14 commenced by, or are available against or to
15 the CEO acting on behalf of, and in the name
16 of, the State; and
- 17 (e) anything done or omitted to be done in relation
18 to the assets and liabilities assigned by
19 paragraphs (a) and (b) before the assignment,
20 by, to or in respect of the Trust (to the extent
21 that that thing has any effect) is to be taken to
22 have been done or omitted by, to or in respect
23 of the CEO acting on behalf of, and in the name
24 of, the State.
- 25 (2) As soon as is practicable after the commencement day,
26 all records and data of the Trust are to be delivered to
27 the CEO.
- 28 (3) Nothing in this section affects the operation of
29 sections 11 or 23(a).

30 **143. Swan River Trust Account**

- 31 (1) In this section —
32 *former account* means the Swan River Trust Account
33 referred to in section 42 of the former Act.

- 1 (2) On the commencement day, any moneys standing to
2 the credit of the former account must be credited to an
3 operating account of the Department, and the former
4 account must then be closed.
- 5 (3) Moneys referred to in subsection (2) may be applied —
6 (a) in the payment of any liabilities of the former
7 account arising before the commencement day;
8 and
9 (b) for the purposes of this Act.
- 10 (4) The operating account referred to in subsection (2)
11 must be credited with any moneys payable to the
12 former account before the commencement day that is
13 paid on or after that day.
- 14 (5) If in an agreement, instrument or other document there
15 is a reference to the former account, that reference is,
16 unless the context otherwise requires, to be read or to
17 have effect from the commencement day as if it were a
18 reference to the operating account referred to in
19 subsection (2).

20 **144. Registration of documents**

- 21 (1) In this section —
22 *relevant official* means —
23 (a) the Registrar of Titles; or
24 (b) the Registrar of Deeds and Titles; or
25 (c) any other person authorised by a written law to
26 record and give effect to the registration of
27 documents relating to property transactions,
28 according to which, if any, of them has responsibility
29 for a register relating to the relevant property;
30 *relevant property* means property of a kind affected by
31 this Part, whether it is an estate or interest in land or
32 other property.

- 1 (2) The relevant officials are to take notice of this Part and
2 are to record and register in the appropriate manner the
3 documents necessary to show the effect of this Part.

4 **145. Exemption from State taxation**

- 5 (1) In this section —
6 *State tax* includes —
7 (a) duty chargeable under the *Duties Act 2008*; and
8 (b) any other tax, duty, fee, levy or charge, under a
9 law of the State.
- 10 (2) State tax is not payable in relation to —
11 (a) anything that occurs by operation of this Part;
12 or
13 (b) anything done (including a transaction entered
14 into or an instrument or document of any kind
15 made, executed, lodged or given) under this
16 Part, or to give effect to this Part, or for a
17 purpose connected with or arising out of giving
18 effect to this Part.
- 19 (3) The Minister may certify in writing that —
20 (a) a specified thing occurred by operation of this
21 Part; or
22 (b) a specified thing was done under this Part, or to
23 give effect to this Part, or for a purpose
24 connected with or arising out of giving effect to
25 this Part.
- 26 (4) For all purposes and in all proceedings, a certificate
27 under subsection (3) is sufficient evidence of the
28 matters it certifies, except so far as the contrary is
29 shown.

1 **146. Development applications**

2 If, on the commencement day, a development
3 application made under Part 5 of the former Act has
4 not been decided, the CEO must perform the functions
5 that the Trust would have performed under the former
6 Act in relation to the application.

7 **147. River protection notices**

8 (1) If procedures for issuing a river protection notice have
9 commenced under section 90 before the
10 commencement day but the notice has not been issued
11 under section 91 before that day, the CEO may act
12 under section 91 of the amended Act as if—

13 (a) any action taken by the General Manager under
14 section 90(3) of the former Act was action
15 taken by the CEO under section 90(3) of the
16 amended Act; and

17 (b) the report and recommendation given by the
18 General Manager was the advice of the Trust;
19 and

20 (c) any information given under section 91 to a
21 person to whom it is proposed to give the notice
22 was given by the CEO.

23 (2) On and after the commencement day, any reference in
24 a river protection notice to the Trust has effect as if it
25 were a reference to the CEO.

26 **148. Transitional regulations**

27 (1) In this section—

28 *publication day*, for regulations made under
29 subsection (2), means the day on which those
30 regulations are published in the *Gazette*;

31 *specified* means specified or described in regulations
32 made under subsection (2);

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- 1 *transitional matter* means a matter that needs to be
2 dealt with for the purpose of effecting the transition
3 from the provisions of the former Act to the provisions
4 of the amended Act.
- 5 (2) If there is no sufficient provision in this Part for
6 dealing with a transitional matter, the Governor may
7 make regulations prescribing matters —
- 8 (a) required to be prescribed for the purpose of
9 dealing with a transitional matter; or
- 10 (b) necessary or convenient to be prescribed for the
11 purpose of dealing with a transitional matter.
- 12 (3) Regulations made under subsection (2) may provide
13 that specific provisions of the amended Act —
- 14 (a) do not apply to or in relation to a matter; or
- 15 (b) apply with specified modifications to or in
16 relation to a specified matter.
- 17 (4) If regulations made under subsection (2) provide that a
18 specified state of affairs is taken to have existed, or not
19 to have existed, on and from a day that is earlier than
20 the publication day for those regulations but not earlier
21 than the commencement day, the regulations have
22 effect according to their terms.
- 23 (5) If regulations made under subsection (2) contain a
24 provision referred to in subsection (4), the provision
25 does not operate so as —
- 26 (a) to affect in a manner prejudicial to a person
27 other than the State the rights of that person
28 existing before the publication day for those
29 regulations; or
- 30 (b) to impose liabilities on a person other than the
31 State or an authority of the State in respect of
32 an act done or omission made before the
33 publication day for those regulations.

- 1 (6) Regulations can only be made under subsection (2)
2 within 12 months after commencement day.

3 **149. Interpretation Act 1984 not affected**

4 Except to the extent this Part expressly provides
5 differently, the *Interpretation Act 1984* applies in
6 relation to the amendments effected by the *Swan and*
7 *Canning Rivers Management Amendment Act 2014*
8 Part 2.
9

10 **49. Schedule 5 amended**

11 In Schedule 5:

- 12 (a) delete item 1(c) and (y);
13 (b) in item 1(ff) delete “*Act 1992*,” and insert:
14
15 *Act 1992*.
16
17 (c) delete item 1(gg).

18 **50. Schedule 6 amended**

19 Delete Schedule 6 clause 3.

20 **51. Various references to “Trust” amended**

21 In the provisions listed in the Table delete “Trust” (each
22 occurrence) and insert:

23
24 CEO
25

s. 51

1

Table

s. 6(4), (5), (6), (8) and (9)	s. 12(2), (3), (4), (5) and (6)
s. 28(2)	s. 29(2), (3), (5) and (8)(a)
s. 30(1) and (2)(b)	s. 31(1), (3), (4), (5)(b) and (6)(a)
s. 32(1), (2), (3), (4)(b) and (6)	s. 39(3)
s. 48	s. 51(1)(b)
s. 53(2)	s. 63(3)
s. 67 def. of <i>development application</i>	s. 70(1), (2) and (3)
s. 71(3)	s. 72(4), (6) and (7)
s. 73(3)	s. 74(4)
s. 75(1), (4) and (5)	s. 81(1) def. of <i>approving authority</i> par. (a), (2), (5)(b) and (6)
s. 85(1), (3), (4), (5) and (6)	s. 87(3)(c)
s. 89(4) and (10)	s. 91(2) and (3)(c)(i), (iv), (v) and (vii)
s. 94(6)(b)	s. 95(a)
s. 98(1), (2)(d) and (5)	s. 99(1), (2) and (3)
s. 102(1) and (2)	s. 103(1), (2) and (3)
s. 116(1)	s. 117(1) and (8)

s. 118(2), (3), (4), (5)(c), (6), (7), (10) and (11)	s. 119(1)(b)
s. 131(3)(a)	s. 132(1)
s. 136(2)(c) and (d)	

- 1 Notes:
- 2 1. The heading to amended section 6 is to read:
- 3 **Objectives and principles paramount; disputes between CEO and**
- 4 **Schedule 5 authority**
- 5 2. The heading to amended section 28 is to read:
- 6 **CEO may agree to manage private land**
- 7 3. The heading to amended section 29 is to read:
- 8 **CEO may grant leases of River reserve**
- 9 4. The heading to amended section 32 is to read:
- 10 **CEO may grant licences over River reserve**
- 11 5. The heading to amended section 75 is to read:
- 12 **Draft report by CEO on proposed development**
- 13 6. The heading to amended section 85 is to read:
- 14 **Approvals by CEO**
- 15 7. The heading to amended section 87 is to read:
- 16 **Minister may revoke CEO's decision**
- 17 8. The heading to amended section 102 is to read:
- 18 **CEO's powers in case of contravention of notice**
- 19 9. The heading to amended section 116 is to read:
- 20 **CEO's powers in respect of illegal development**
- 21 10. The heading to amended section 118 is to read:
- 22 **Recovery of costs in case of financial assurance**

s. 52

1 **52. Various references to “General Manager” amended**

2 In the provisions listed in the Table delete “General Manager”
 3 (each occurrence) and insert:

4
 5 CEO

6
 7 **Table**

s. 40(1) and (4)	s. 90(3) and (4)
s. 94(2) and (4)	s. 96(2)
s. 107(4)	s. 110(2)
s. 111(3)	

8 Note: The heading to amended section 96 is to read:

9 **CEO must give notice of memorial or withdrawal**

10 **53. Other provisions amended**

11 Amend the provisions listed in the Table as set out in the Table.

12 **Table**

Provision	Delete	Insert
s. 3(1) def. of <i>committee</i>	36	28E
s. 3(2)	department	agency
s. 6(3)	Trust	CEO or Trust
s. 6(10)	Trust	CEO, the Trust
s. 9(a)	within	a part of

Provision	Delete	Insert
s. 10(1)(a)	within	a part of
s. 22(7)(b)	redevelopment authority	Metropolitan Redevelopment Authority
s. 22(8)	determining	considering
s. 25(2)	programmes of	programmes developed by
s. 31(4)	it makes	the CEO makes
s. 50	approved by the Trust	approved by the CEO
s. 50(a)	by the Trust	by the CEO
s. 50(b)	the offices of the Trust	an address designated by the CEO
s. 59	approved by the Trust	approved by the CEO
s. 59(a)	by the Trust	by the CEO
s. 59(b)	the offices of the Trust	an address designated by the CEO
s. 65(3)(a)	offices of the Trust	head office of the Department
s. 65(3)(b)	Trust	Department's

s. 53

Provision	Delete	Insert
s. 73(3)(b)	authorities	local governments and other public authorities
s. 74(4)	22	73
s. 80(5)	the Trust, the Trust	the CEO, the CEO
s. 80(5)(b)	Trust	Department's
s. 82(4)(b)	Trust	Department's
s. 83(2)(b)	Trust	Department's
s. 85(3)	by it	by the CEO
s. 89(2), (8) and (9)	Trust	Executive Body
s. 90(2) and (3)	recommendation (each occurrence)	request
s. 90(4)	recommendation	request
s. 103(4)	the Trust may	the CEO may
s. 103(4)	due to the Trust	due to the State
s. 117(2)	it exercises	the CEO exercises
s. 117(2)	the Trust must	the CEO must
s. 117(2)(b)	known to it	known to the CEO
s. 117(4)	incurred by the Trust	incurred by the CEO
s. 117(4)	due to the Trust	due to the State

Provision	Delete	Insert
s. 117(5)	of the Trust	of the State
s. 117(5)	as it thinks	as the CEO thinks
s. 117(6)	Trust's	CEO's
s. 117(6)	the Trust	the CEO
s. 117(6)	its costs	the costs
s. 117(8)	by it	by the CEO
s. 118(2) and (10)	102, 116(5)	102, 103, 116(5)
s. 118(11)	102, 116(5) (each occurrence)	102, 103, 116(5)
s. 131(4)(a) and (b)	Trust	Department
s. 132(2)(g)	Trust	Minister
s. 134(1) def. of <i>member</i> par. (b)	or subdelegated under section 33	under section 28B
s. 134(3)(c)	redevelopment authority (each occurrence)	the Metropolitan Redevelopment Authority
Sch. 2	version 3	
Sch. 3	version 3	
Sch. 6 cl. 15	Board	board
Sch. 7	Town of Vincent	City of Vincent

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Part 3 — Other Acts amended

54. Conservation and Land Management Act 1984 amended

- (1) This section amends the *Conservation and Land Management Act 1984*.
- (2) Delete section 37 and insert:

37. Purpose

The Executive Body is established to provide a body corporate through which the CEO can perform any of the CEO’s functions under the following Acts that can more conveniently be performed by a body corporate than an individual —

- (a) this Act;
- (b) the *Swan and Canning Rivers Management Act 2006*;
- (c) the *Wildlife Conservation Act 1950*.

- (3) Delete section 99(1)(ac).

55. Financial Management Act 2006 amended

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete “Swan River Trust”.

