

SWAN AND CANNING RIVERS MANAGEMENT ACT AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

INTRODUCTION

The purpose of this Bill is to make miscellaneous amendments to the *Swan and Canning Rivers Management Act 2006* to support the amalgamation of the roles and functions of the Swan River Trust with the Department of Parks and Wildlife.

These proposed amendments allow the management of the iconic Swan Canning Riverpark to be integrated with the conservation, protection, and promotion of Western Australia's unique national parks, marine parks, and reserves already managed by the Department of Parks and Wildlife.

All existing functions of the Swan River Trust have been retained with decision-making responsibility and operational management to be transferred to the Chief Executive Officer (CEO) of the Department of Parks and Wildlife. The Swan River Trust will remain as an advisory body to the Minister for Environment and will continue to provide high level, independent advice on the protection of the river and related developments as well as reporting on the state of the development control area.

OVERVIEW

The Bill has three (3) parts.

Part 1 – Preliminary

Part 1 sets out the title of the Act and provides for the commencement date to be set by proclamation.

Part 2 – Swan and Canning Rivers Management Act 2006 amended

Part 2 details the various changes to transfer operational and management functions from the Trust to the CEO, to align the functions of the Trust with other similar vesting and advisory bodies, and to make the necessary changes to transfer staff and financial management functions to the CEO.

Part 3 – Other Acts amended

Part 3 introduces amendments to other Acts that currently reference the *Swan and Canning Rivers Management Act 2006* to ensure their consistency with the new provisions. The Acts amended are the *Conservation and Land Management Act 1984* and the *Financial Management Act 2006*.

CLAUSE NOTES

Part 1 – Preliminary

This part includes the title and the relevant commencement provisions

Clause 1 – Short Title

Clause 1 of the Bill sets out the short title of the Act – *Swan and Canning Rivers Management Amendment Act 2014*.

Clause 2 – Commencement

Clause 2 cites the commencement of the Act. Sections 1 and 2 will commence on the day on which the Act receives Royal Assent. The commencement of the rest of the Act will be fixed by proclamation and different days may be fixed for different provisions to commence.

Part 2 - Swan and Canning Rivers Management Act 2006 amended

This Part contains the amendments to the *Swan and Canning Rivers Management Act 2006*.

Clause 3 - Act amended

Clause 3 provides that the Bill amends the *Swan and Canning Rivers Management Act 2006*.

Clause 4 – Long Title amended

This clause amends the long title of the Act and sets out that the future role of the Swan River Trust is to provide advice and perform other functions rather than having a direct planning and management role.

Clause 5 - Section 3 - Definitions amended

A number of definitions have been deleted and several new definitions have been inserted to reflect the way in which the Act is to be administered in future and its relationship to the *Conservation and Land Management Act 1984*.

Clause 6 – Section 11 role of the Trust in relation to vesting of the River Reserve

This clause amends section 11 and provides that the role of the Swan River Trust in relation to the care, control, and management of the River reserve aligns with the role of the Conservation Commission and its role in the management of land based reserves. The Trust will not have operational or day to day functions in relation to the management of the River reserve. These functions will transfer to the CEO. The Trust functions will be limited to those set out in amended section 23.

Clause 7 – Section 12

Section 12 of the *Swan and Canning Rivers Management Act 2006* sets out the joint responsibilities for the care, control and management of the Riverpark shoreline. These responsibilities are shared between the Swan River Trust and the adjoining land manager. This clause transfers the share of the responsibility from the Trust to the CEO.

Clause 8 – Section 22A inserted

Section 22A entitles the CEO to attend a meeting of the Swan River Trust board and to take part in any consideration or discussion of a matter but not to vote on any matter.

Clause 9 – Section 23 functions of the Trust amended

This clause more closely aligns the functions of the Trust with those of the Conservation Commission under the CALM Act. Some of the current functions of the Trust, particularly those of an operational nature, transfer to the CEO. The changed role of the Trust includes the development of policies, preparing and dealing with strategic documents through the agency of the CEO, providing advice to the CEO on development and strategic advice to planning authorities, promoting public education, and reporting to the Minister on the state of the development control area.

The following subclauses and amendments reflect the changed role of the Trust:

- Subclause 9(a) deletes subsections 23(a), (b) and (c) that relate to the operational role of the Trust in carrying out works for the protection and enhancement of the Riverpark. New subsections 23(a) and 23(ab) are inserted. Subsection 23(a) confirms that for the purposes set out section 23 the Trust is to have placed in it, the care, control and management of the River Reserve. Subsection 23(ab), provides for the Trust to develop policies for the protection and enhancement of the ecological and community benefits and amenity of the development control area and Riverpark, including the shoreline, and for the control of activities and development in the development control area;
- Subclause 9(b) deletes subsections (e) and (f) that relate to the role of the Trust in coordinating, promoting, and implementing strategic documents and the responsibility of the Trust in coordinating and promoting the activities of other bodies in respect of those strategic documents. The role of coordinating and implementing strategic documents is transferred to the CEO in a later section.
- Subclause 9(b) inserts subsections (e) and (fa) that establish the Trust's role respectively in preparing and dealing with strategic documents; and promoting

the implementation, monitoring compliance, and reporting on strategic documents proposed under the Act. Subclause 9(b) also inserts subsections (fb) and (f) that prescribe the role of the Trust in advising the CEO on matters relating to development in the development control area and the promotion of activities of bodies that function in the catchment insofar as those activities affect the Riverpark.

- Subclause 9(c) removes the role of the Trust in monitoring the state of the development control area development adjoining it. Those functions transfer to the CEO. The Trust retains the responsibility of reporting to the Minister on those matters (on the basis of information supplied by the CEO).
- Subclause 9(d) removes the role of the Trust in providing assistance to planning authorities in relation to planning schemes and provisions in those schemes for the reservation of land for the protection and acquisition of river foreshores; protection of public use of land and waters and protection of wildlife habitat. That function transfers to the CEO however the Trust will continue its role in providing advice to planning authorities in relation to those matters.
- Subclause 9(e) removes the role of the Trust in providing advice to the Western Australian Planning Commission on State planning policies and planning scheme provisions relating to its functions, and to publish policy statements relating to other matters within its functions. Those functions transfer to the CEO.
- Subclause 9(f) clarifies that it is a role of the Trust to perform any such functions delegated to it under the Act.
- Subclause 9(g) removes the role of the Trust in undertaking the administration and enforcement of the Act. That role transfers to the CEO.

Clause 10 - Section 24 powers of the Trust amended

This clause removes the power of the Trust under section 24(2) and (3) to contract or engage a person for the purpose of performing any of its functions, by supplying services or equipment, acting as an agent or providing a range of consultancy, investigation or reporting services without reference to the Minister. However a new section is inserted that allows the Trust, with the approval of the Minister to exercise similar powers to engage persons under contract to provide a range of professional and technical services.

Clause 11 - Section 26 and 27 replaced, several new sections inserted

This clause removes the requirement for the Trust to consult with local governments and the Metropolitan Redevelopment Authority in relation to matters that the Trust may be dealing with and which may affect the interests of those entities (section 26). That requirement is transferred to the CEO.

Clause 11 also removes the power of the Trust to enter into collaborative arrangements with other persons or entities for the purpose of securing the objectives of the Act. That power is transferred to the CEO.

Clause 11 inserts a number of sections relating to the administration of the Act.

- Section 28A requires the CEO to provide the Trust with the necessary assistance including the provision of staff to perform its functions
- Section 28B allows the Trust to delegate its functions and powers and sets out the parameters around that process
- Section 28C confirms that the Minister may give the Trust directions
- Section 28D confirms that the Minister is to have access to information from the Trust
- Section 28E allows the Trust to appoint committees to assist it in the performance of its functions
- Section 28F sets out the process for the execution of documents by the Trust
- Section 28G requires the Trust to prepare and provide the Minister with an annual report on its proceedings

Clause 12 - Heading inserted

This clause inserts a heading – “Part 4A - Management of land and waters”

Clause 13 - Headings inserted

This clause inserts headings –

“Part 4B – Administration

Division 1 – Functions and powers of the CEO”

Clause 14 - Sections 33 to 36 replaced

This clause deletes existing sections 33 to 36 and inserts new sections that set out the powers and functions of the CEO. The following sections are inserted:

- **Section 33 - Functions of the CEO**

Section 33 describes the functions of the CEO in relation to the management of the River reserve and Riverpark shoreline; the protection of the ecological and community benefits and amenity of the Riverpark and development control area; carrying out works and providing facilities for the protection of the Riverpark; coordinating the development and implementation of strategic documents;

monitoring the state of the development control area; providing assistance to planning authorities; providing advice to the Western Australian Planning Commission; providing the Trust with assistance, staff, and facilities; and administration and enforcement of the Act.

- **Section 34 - Consultation and matters to be considered by CEO**

Section 34 sets out the requirements for the CEO to consult and collaborate with those who may be affected by the performance of the CEO's functions. It also requires the CEO to have regard for a variety of matters in the performance of those functions. This requirement has been transferred from the Trust.

- **Section 35 – Consultation with local governments and Metropolitan Redevelopment Authority**

This section sets out the requirements for the CEO to consult with local governments referred to in Schedule 7 and the Metropolitan Redevelopment Authority in relation to matters that affect their interests. This requirement has been transferred from the Trust.

- **Section 36 – Remuneration of CEO for advice and other matters**

This new section provides for the CEO, with the Minister's concurrence, to charge for services or advice. It reflects a similar provision (section 35) in the *Conservation and Land Management Act 1984*.

- **Section 37 – Collaborative arrangements**

This section provides for the CEO to enter into binding arrangements with a person or an organisation concerning activities that are within the functions of both parties to be taken jointly. Such arrangements require the approval of the Minister, and do not relieve either party of any obligations under this or other legislation.

It enables the CEO to enter into an agreement with the owner, lessee or licensee of private land to allow the CEO to manage the land as if it were part of the development control area or Riverpark, or to provide access to part of the development control area or Riverpark. This power was previously held by the Trust.

- **Section 38 – Delegation by CEO**

This section enables the CEO to delegate a range of powers to eligible persons. This power was previously held by the Trust.

Clause 15 - Part 3 Division 3 deleted

This clause deletes Division 3 of the Act, which sets out the arrangements for the provision of staff and other arrangements for the administration of the operations of

the Trust. This Part is no longer required given the changes to the functions of the Trust and the CEO set out in this Bill.

Clause 16 - Part 3 Division 4 heading replaced

This clause deletes the heading to Part 3 Division 4 and replaces it with –
“Division 2 Inspectors”

Clause 17 - Section 39 – Inspectors amended

This section transfers the power of the Trust to the CEO to appoint a member of the Department or any officer of a public authority as an inspector.

Clause 18 - Part 3 Divisions 5 and 6 deleted

This clause deletes divisions 5 and 6 that provide for the Trust to manage its own finances, to borrow from the Treasurer and to execute documents. The majority of these provisions will become functions of the CEO or will not be necessary for the Trust to carry out given the changes to its functions and powers. All financial accountability and reporting for the Trust and the operation of this Act will be the responsibility of the CEO of the Department of Parks and Wildlife.

Clause 19 – Replace Section 49-Draft regulations to be publicly notified

This clause replaces Section 49 that sets out the Trust’s obligations in relation to notification of draft regulations. The obligations are transferred to the CEO.

Clause 20 – Section 55 amended - Documents not prepared by the Trust, approval of as strategic documents

This clause adds a provision to section 55 to require the Trust to consult with the CEO before it makes a recommendation to the Minister concerning whether a document not prepared by the Trust should be approved as a strategic document. This requirement is in addition to other wider consultation with public authorities, bodies and persons.

Clause 21 – Section 56 amended - Trust to prepare draft documents

This clause amends section 56 and provides for the preparation of a draft river protection strategy or draft management programmes through the agency of the CEO.

Clause 22 - Section 57 amended - Consultation

The amended section requires that consultation in relation to a draft river protection strategy is to be carried out through the agency of the CEO.

Clause 23 – Section 58 replaced – Documents to be publicly notified

This clause replaces section 58 with amended requirements relating to placing copies of draft documents on the Department's website not the Trust's, and allows the CEO to charge a fee for supplying draft copies. .

Clause 24 – Section 60 amended – Document to be referred to certain bodies

This clause amends section and clarifies and widens the scope for consultation with bodies concerning the draft river protection strategy or management programme.

Clause 25 – Section 64 amended - Review and revision of documents

The amended section 64 clarifies that if the Minister, as a result of a review of a river protection strategy or management programme, refuses to approve its continuation in force then that strategy or programme ceases to be of effect. This clause also provides for the revocation of river protection strategies and management programmes and for their substitution with revised versions.

Clause 26 – Section 65 amended – Compliance with strategic documents

The amended section 65 confirms that in the performance of his or her functions the CEO must accord with the strategic documents approved by the Minister.

Clause 27 – Section 66 amended – Trust to monitor and report on compliance

The amended section 66 confirms that biennial reports to the Minister by the Trust concerning the monitoring and compliance with strategic targets and operations, and the effectiveness of strategic documents must be included in the amended annual report requirements of the Trust as specified in section 28G.

Clause 28 – Section 73 amended – Consultation with other authorities

This clause inserts new sections concerning the requirements of the CEO to consult with local governments and the Metropolitan Redevelopment Authority in relation to development applications. The new sections define what is a relevant matter for these bodies and hence the requirement for the CEO to consult with them. These requirements were previously binding on the Trust.

Clause 29 – Section 74 amended – Development applications to be publicised

This clause amends section 74 by requiring development applications to be published on the Department of Parks and Wildlife website rather than the Trust website and transfers those requirements to the CEO.

Clause 30 – Section 75 amended – Draft report by CEO on proposed development

This clause transfers the responsibility of preparing draft reports on development from the Trust to the CEO. The clause inserts new sections requiring that the CEO must provide a draft copy of the report to the Trust and invite the Trust to make comments and recommendations on the report. Having made changes in response to the Trust's comments that the CEO thinks appropriate, the CEO must then provide copies of the draft report with an invitation to make submissions to relevant persons and bodies as well as publishing the report and an invitation to the public to make submissions, on the Department's website.

Clause 31 – Section 76 replaced – Report by CEO to Minister on proposed development

This clause replaces section 76 and reflects the role of the CEO in making recommendations and reporting to the Minister on proposed developments. Having finalised a draft report and made any changes to it as a result of submissions received, the CEO may give it to the Trust and provide a 28-day period for the Trust to make further final comments.

After finalising the report the CEO is to provide copies to the Minister, the Trust, public authorities that were consulted and each person who made a submission during the public notice period. The final report is also published on the Department's website.

The report to the Minister is to be accompanied by copies of all submissions made including the comments of the Trust on the reports and the CEO's comments on the submissions.

Clause 32 – Section 77 amended - Steps to be taken by the Minister

This clause amends section 77 and provides for the Minister to direct the CEO to reconsider his or her recommendations in relation to a report on a proposed development. Under this circumstance, the CEO must consult with the Trust in an effort to resolve questions at issue. The Minister may also direct the CEO to consult with the applicant or any other person to resolve any question at issue.

Clause 33 – Section 79 amended – Review committee's functions as to CEO's recommendations

This clause provides for the CEO to make submissions to a review committee appointed by the Minister, however requires the CEO to consult with the Trust before doing so.

Clause 34 – Section 85 amended – Approvals by the CEO

This clause amends section 85 and provides for regulations to prescribe classes of development to be approved by the CEO rather than the Trust.

Clause 35 – Section 86 replaced – CEO must give s.85 decisions to the Minister

This clause obliges the CEO to provide the Minister with decisions made under section 85 and reports in relation to such decisions. This requirement is transferred from the Trust to the CEO.

Clause 36 – Section 87 amended – Minister may revoke CEO's decision

Section 87 provides for and sets out the process whereby the Minister may revoke a decision by the CEO made under section 85.

Clause 37 – Section 90 amended - CEO may request advice from Trust on issue of river protection notice

This clause provides for the CEO, in considering whether to issue a river protection notice, may request advice from the Trust. Formerly this section allowed for the General Manager to make a recommendation to the Trust on the issuing of a river protection notice.

Clause 38 – Section 91 amended – Issue of Notice by CEO

This clause amends section 91 by transferring the power to issue a river protection notice from the Trust to the CEO. The CEO does so after considering any advice provided by the Trust in accordance with section 90.

Clause 39 – Section 98 amended – Financial assurance requirement, inclusion of in notice

This clause provides for the CEO to require that a financial assurance be provided in relation to a river protection notice and to determine the amount of that assurance. This power is transferred from the Trust to the CEO. The amount is not to exceed a reasonable estimate of the costs that might be incurred in taking action necessary to ensure that the requirements of the notice are complied with.

Clause 40 – Section 116 amended – CEO's powers in respect of illegal development

This clause transfers powers from the Trust to the CEO in regard to stopping illegal development and requiring restoration. It also inserts a new subsection allowing for the recovery, from a person who has failed to comply with a notice issued under this section, of costs incurred in removing or altering a development that has taken place in contravention of sections 70 or 71.

Clause 41 – Section – 117 amended – Abandoned etc. property, powers as to

This clause transfers powers from the Trust to the CEO. Amendments are made to subsection(7) to clarify that the proceeds from any sale of abandoned property is to be paid into consolidated revenue unless within 12 months a person proves to the satisfaction of the CEO that he or she is entitled to the proceeds or part of them. Previously these funds were paid into the funds of the Trust.

Clause 42 – Section 118 – Costs under s.102, 103, 116(5) or 117 recovering in case of financial assurance condition

This clause transfers powers from the Trust to the CEO and amends section 118 to clarify that costs recovered in relation to the CEO making a claim on financial assurances are paid into Consolidated Revenue rather than into the funds of the Trust.

Clause 43 – Section 123 - Infringement Notices

This clause amends section 123 and clarifies that an inspector who has issued an infringement notice is not eligible to be an authorised person to receive money paid as penalty for that offence; nor is the inspector authorised to extend the time within which the penalty may be paid for that offence; nor is that inspector authorised to withdraw an infringement notice for that offence. Those actions may be taken by other persons authorised by the CEO under this section.

Clause 44 – Section 129 – Functions of Foundation

This clause replaces section 129 and aligns the functions of the Foundation with the objectives of the Act rather than with the functions of the Trust.

Clause 45 – Section 131 – Swan and Canning Rivers Foundation Account

This clause amends section 131 to the effect that moneys credited to the Foundation account will be subject to the direction and control of the CEO.

Clause 46 – Section 132 amended – Rules for the Foundation

This clause amends section 132 to the effect that the CEO may make recommendations to the Minister concerning rules for the operation of the Foundation however must consult the Trust prior to making such recommendations.

Clause 47 - Section 135 amended - Protection from Personal Liability

This clause amends section 135 by removing reference to the Trust and providing protection to persons more generally acting in good faith in the performance or purported performance of functions under the Act.

Clause 48 – Transitional provisions for *Swan and Canning Rivers Management Amendment Act 2014*

This clause inserts provisions to allow the transition of matters from the current act to the amended act. It provides for the completion of things commenced and the continuance of things done. It also allows for the transfer of contracts, agreements and other instruments as well as the transfer of assets and liabilities from the Trust to the CEO, or the State, as appropriate.

Clause 49 – Schedule 5 amended – Authorities

This clause updates the authorities listed in Schedule 5 of the Act and reflects legislative changes since the commencement of the Act.

Clause 50 – Schedule 6 amended – Constitution and proceedings of the board

This clause removes reference to the appointment of the Chairman on a full-time basis.

Clause 51 – Various references to “Trust” amended

This clause provides for the deletion of a number of references to the “Trust” throughout the Act and inserts “CEO”. It also provides for corresponding amendments to section headings where references are made to the Trust and are to be replaced with the CEO.

Clause 52 – Various references to the “General Manager” amended

This clause provides for the deletion of a number of references to the “General Manager” throughout the Act and inserts “CEO”.

Clause 53 - Other provisions amended

This clause sets out a number of minor amendments in a table to be made throughout the Act. The amendments are largely changes of syntax, grammatical or deal with anomalies and matters that have become outdated since the commencement of the Act.

Part 3 – Other Acts amended

Clause 56

This clause amends the *Conservation and Land Management Act 1984* by inserting a reference to the *Swan and Canning Rivers Management Act 2006* into section 37 regarding the purpose of the Executive Body.

Clause 57

This clause amends the *Financial Management Act 2006* by deleting the Swan River Trust from Schedule 1 in recognition of the fact that all financial management formerly undertaken by the Trust will now be done through the Department of Parks and Wildlife.