

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 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. Subection 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

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;

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 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 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 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.