

SWAN AND CANNING RIVERS MANAGEMENT AMENDMENT BILL 2022

EXPLANATORY MEMORANDUM

Overview of Bill

The purpose of the *Swan and Canning Rivers Management Amendment Bill 2022* (the Amendment Bill) is to amend the *Swan and Canning Rivers Management Act 2006* (SCRM Act)¹ to implement Government policy commitments identified through the Streamline WA initiative. These are intended to:

- a. change the consultation process to amend the Development Control Area;
- b. clarify licence provisions to address duplicate approval processes for licences and permits;
- c. make transitional arrangements for existing combined licences and permits as well as other specific licences;
- d. insert a new regulation-making headpower in relation to requiring insurance as a condition of a permit; and
- e. remove the requirement for delegations to be published in the *Government Gazette*.

Outlined below is an explanation of the contents of the Amendment Bill on a clause by clause basis (Clause Notes).

CLAUSE NOTES

Clause 1. Short title

Clause 1 will provide that the title of the Amendment Act is the *Swan and Canning Rivers Management Amendment Act 2022*.

Clause 2. Commencement

Clause 2 sets out the commencement provisions.

Clause 2(a) provides that sections 1 and 2 of the Amendment Act come into operation on the day on which it receives Royal Assent.

Clause 2(b) provides that the remainder of the Amendment Act will come into operation on a day to be fixed by proclamation.

Clause 3. Act amended

Clause 3 provides that the Amendment Act will amend the *Swan and Canning Rivers Management Act 2006*.

Clause 4. Section 3: 'Terms used'; amended

Clause 4 will amend section 3, which provides definitions for certain terms used in the SCRM Act. The amendment is to insert the defined term **licence agreement** which is defined to have

¹ Note that references to the 'SCRM Act' are to the principal Act, being the *Swan and Canning Rivers Management Act 2006* and references to 'the Amendment Act' are references to the proposed *Swan and Canning Rivers Management Amendment Act 2022*.

the meaning given in section 32. Section 32 is to be repealed by clause 7 of the Amendment Bill.

Clause 5. Section 13: Sch. 1-4, amending by regulations; amended

Clause 5 will amend section 13 by inserting a new subsection (2A) after subsection (2). The new subsection (2A) will provide that subsection (2) does not apply to regulations amending Schedule 2 or 3 in the circumstances that (a) an amendment to the Metropolitan Region Scheme (MRS) has been approved under the *Planning and Development Act 2005* Part 4; and (b) either (i) the MRS amendment is made by an Act; or (ii) public submissions were sought on the MRS amendment before it was approved; and (c) the Minister for Environment considers that the amendments to Schedule 2 or 3 to be made by the regulations are connected with the MRS amendment.

Clause 6. Section 30: River reserve lease, consequences of contravening; amended

Clause 6 will amend section 30(2)(b)(ii) to insert the word 'specify' before the words 'the time'. This amendment is made for consistency with paragraph (i).

Clause 7. Section 32: CEO may grant licences over River reserve; amended

Clause 7 will repeal section 32 and replace it with a new section 32, and insert new sections 32A and 32B.

New section 32 subsection (1) provides that the CEO may enter into an agreement (a **licence agreement**) with a person (a **licensee**) under which the CEO will grant the licensee a licence authorising the non-exclusive occupancy and use of land and waters that are part of the River reserve, on the terms and conditions of the licence agreement.

New section 32 subsection (2) provides that a licence agreement must relate to land and waters in the River reserve on which development has been or is to be undertaken.

New section 32 subsection (3) provides that if the development is required to be approved under section 70, (a) the CEO must not enter into the licence agreement unless approval has been granted; and (b) the terms and conditions of the licence agreement must not be contrary to, or inconsistent with, the approval.

New section 32 subsection (4) provides that a licence agreement will have effect for the period referred to in section 32A(3)(a) and may be renewed in accordance with any terms of the agreement that provide for renewal.

New section 32 subsection (5) provides that, subject to section 32B, a licence agreement may be enforced in the same way as any other contract.

New section 32 subsection (6) provides that licensee must not, without the prior approval of the CEO, sell, transfer or otherwise dispose of, in whole or in part, the licence agreement or any interest in it.

New section 32 subsection (7) provides that an act that is done in contravention of subsection (6) is void.

New section 32 subsection (8) provides that a licence agreement is a licence that is in accordance with paragraph (d) of the definition of **licence** in the *Personal Property Securities Act 2009* (Commonwealth) and is declared not to be personal property for the purposes of that Act.

New section 32A subsection (1) provides that the terms and conditions of a licence agreement are (a) the terms agreed between the CEO and the licensee and set out in the agreement; and (b) any conditions determined by the CEO under subsection (2) and set out in the agreement.

New section 32A subsection (2) provides that before entering a licence agreement, the CEO may determine conditions of the agreement including:

- (a) the regulation, control or prohibition, for the purposes of protecting or enhancing the ecological and community benefits and amenity or good management of the River reserve, of any activity undertaken by or on behalf of the licensee in connection with the licence agreement (a **relevant activity**);
- (b) the indemnification by the licensee of the CEO, the Swan River Trust and the State for any loss or damage arising from the occupation or use of the land and waters to which the licence agreement relates or a relevant activity;
- (c) the waiver by the licensee of any liability in tort that may be incurred by the CEO, the Swan River Trust and the State in connection with the occupation or use of the land and waters to which the licence agreement relates or a relevant activity;
- (d) a requirement for the licensee to take out and maintain insurance in connection with the occupation or use of the land and waters to which the licence agreement relates or a relevant activity.

New section 32A subsection (3) provides that the terms agreed between the CEO and the licensee referred to in subsection (1)(a):

- (a) must include the period for which the agreement has effect; and
- (b) may make provision for or in relation to matters referred to in subsection (2), but must not be contrary to, or inconsistent with, conditions determined under that subsection; and
- (c) may include a requirement for the licensee to pay rent or other charges.

New section 32B subsection (1) provides that if a licensee fails to comply with a condition of a licence agreement determined by the CEO under section 32A(2)(a), the CEO may give the licensee a notice (a **default notice**) that:

- (a) specifies the condition with which the licensee has failed to comply; and
- (b) if the notice relates to a failure to comply with a condition that specifies that anything must be done, or must be done to the satisfaction of the CEO, it (i) specifies the action that the CEO requires the licensee to take in order to comply with the condition; and (ii) specifies the time (being a reasonable period after the default notice is given) within which the action must be taken; and
- (c) requires the licensee to comply with the condition; and
- (d) informs the licensee (i) that it is an offence to fail to comply with the default notice; and (ii) that failure to comply with the default notice may result in the termination of, or suspension of the licensee's rights under, the licence agreement.

New section 32B subsection (2) provides that a licensee who fails to comply with a default notice commits an offence for which the penalty is (a) a fine of \$50,000 and (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$5000.

New section 32B subsection (3) provides that if the licensee fails to comply with a default notice, the CEO may, by notice in writing given to the licensee, (a) terminate the licence agreement; or (b) suspend the rights of the licensee under the licence agreement for a specified period that the CEO thinks fit.

New section 32B subsection (4) provides that a licensee may apply to the State Administrative Tribunal for a review of a decision under subsection (3) to terminate, or suspend a licensee's rights under a licence agreement.

New section 32B subsection (5) provides that the liability of a person to be prosecuted for an offence under subsection (2) in relation to a failure to comply with a default notice is not affected by any termination or suspension of rights under subsection (3) in relation to that failure to comply.

New section 32B subsection (6) provides that the CEO's powers under subsection (3) in relation to a failure to comply with a default notice are not affected by the imposition of a penalty for an offence in relation to that failure to comply.

New section 32B subsection (7) provides that section 32B does not limit the terms that may be agreed under section 32A(1)(a) in relation to the consequences of contravening any term or condition of the licence agreement other than a condition determined under section 32A(2)(a).

New subsection 32B subsection (8) provides that a termination or suspension of rights under subsection (3) does not affect any term or condition of the licence agreement that: (a) relates to a matter referred to in section 32A(2)(b) or (c); or (b) is expressed to continue despite a termination or suspension under section 32B.

Clause 8. Section 38: Delegation by CEO; amended

Clause 8 will amend section 38 by repealing subsection (4) so that the delegation of a function conferred under Part 5 can take effect without publication in the *Government Gazette*.

Clause 9. Section 133: Delegation by Minister; amended

Clause 9 will amend section 133 by repealing subsection (3) so that the delegation of a function conferred by the Minister administering the SCRM Act can take effect without publication in the *Government Gazette*.

Clause 10. Section 136: Regulations; amended

Clause 10 will amend section 136(2) in the following ways:

Paragraph (a) will delete from paragraph (b) the phrase 'area or the Riverpark' and replace it with the phrase 'area, Riverpark or River reserve'. This will clarify that regulations can be made with respect to the development control area, Riverpark and River reserve.

Paragraph (b) will delete reference to 'licence' in paragraph (c).

Paragraph (c) will insert a new provision (ca) after paragraph (c) that will make provision for, and in relation to, permits referred to in paragraph (c), including by (i) providing for the imposition of conditions on permits by the CEO or regulations; and (ii) without limiting subparagraph (i), provide for requirements for holders of permits to take out and maintain insurance in connection with the activity to which the permit relates.

Paragraph (d) will delete the phrase 'area and the Riverpark' and replace it with 'area, Riverpark and River reserve'. This will clarify that regulations can be made with respect to the development control area, Riverpark and River reserve.

Clause 11. Part 11 Transitional provisions for Swan and Canning Rivers Management Amendment Act 2015; amended

Clause 11 will repeal the heading to Part 11 and replace it with the new heading 'Transitional provisions'. This reflects the new structural arrangements to be made by clauses 12, 13, 14 and 15.

Clause 12. Part 11 Division 1 heading; inserted

Clause 12 inserts a new division heading: 'Provisions for *Swan and Canning Rivers Management Amendment Act 2015*'. This will be the first of two division headings. The first division heading replicates Part 11 while the second division heading (to be inserted by clause 14) provides for transitional arrangements required as a consequence of the amendments to be made by the Amendment Bill.

Clause 13. Section 138 Terms used; amended

Clause 13 subsection (1) repeals the phrase 'In this Part' and replaces it with 'In this Division' to reflect the new structural arrangements.

Clause 13 subsection (2) deletes the definition for **this Part** which is no longer required.

Clause 13 subsection (3) inserts a new definition for **this Division** which is defined to include regulations made under section 148(2).

Clause 14. Part 11 Division 2; inserted

Clause 14 inserts a new Division 2 – Provisions for *Swan and Canning Rivers Management Amendment Act 2022* and section 150. This Division provides the transitional arrangements required as a consequence of the amendments to be made by this Amendment Bill. These are to be inserted in a new section 150 which applies to licences that were granted before the commencement of the Amendment Act.

New section 150 subsection (1) provides that the following defined terms apply in section 150:

combined licence and permit means a document issued by the CEO before commencement day that includes both a licence granted under former section 32 and a permit granted under the regulations;

commencement day means the day on which the Amendment Act section 7 comes into operation;

former section 32 means section 32 as in force before commencement day;

relevant licence means the following licences granted under former section 32:

- (a) the licence entitled "Deed of licence – Seaplanes – Portion of Swan River" granted to Swan River Seaplanes Pty Ltd and dated 11 May 2021; and

- (b) the licence entitled "Deed of licence – Zipline – Portion of Swan River" granted to the Commissioner of Main Roads and dated 8 February 2021.

New section 150 subsection (2) provides that if the relevant licence is in effect immediately before commencement day, then on and from commencement day:

- (a) the relevant licence continues in effect and is taken to be a licence agreement entered into under section 32 as in force on and after commencement day; and
- (b) all of the conditions of the relevant licence are taken to be terms of the licence agreement agreed between the CEO and the licensee under section 32A(1)(a).

New section 150 subsection (3) provides that a licence agreement continued under subsection (2) may expire, be terminated or renewed in accordance with its terms:

New section 150 subsection (4) provides that if a combined licence or permit is in effect immediately before commencement day, then on and from commencement day:

- (a) the permit continues in effect; and
- (b) the licence granted under former section 32 ceases to have effect, but the conditions of the licence are taken to be conditions validly imposed on the permit in accordance with the regulations.

New section 150 subsection (5) provides that a permit expires, and may be revoked, suspended or amended, in accordance with the regulations.

Clause 15. Various references to "this Part"; amended

Clause 15 amends each reference to "this Part" in the sections referred to in the Table and replaces them with 'this Division' to reflect the new structure of Part 11.
