

# CONSERVATION AND LAND MANAGEMENT AMENDMENT BILL 2015

## EXPLANATORY MEMORANDUM

### Overview of Bill

The purpose of the *Conservation and Land Management Amendment Bill 2015* is to amend the *Conservation and Land Management Act 1984* (CALM Act)<sup>1</sup> to implement Government policy commitments including improving the efficiency and effectiveness of the CALM Act. The specific amendments to the CALM Act will provide for:

- a. combining the Conservation Commission with the Marine Parks and Reserves Authority (Marine Authority) into a single Conservation and Parks Commission;
- b. enabling joint vesting of national parks, nature reserves and conservation parks between the Conservation and Parks Commission and native title parties;
- c. zoning schemes in marine parks including special purpose and recreation zones that allow some forms of fishing to operate while imposing restrictions on other forms, as intended in approved marine park management plans;
- d. the roles of regional park coordination, management planning and management, to be legislated functions of the CALM Act Chief Executive Officer (CEO);
- e. legislated recognition that fire management, including prescribed burns, is an integral part of the land management functions of the CALM Act CEO;
- f. extending the maximum term of CALM Act leases for recreation, tourism and other purposes from the current 21 years, with a 21 year extension, to a maximum of 99 years, consistent with the periods available under the *Land Administration Act 1997*; and,
- g. miscellaneous amendments to address minor anomalies and omissions including: streamlining the operation of minor infringement notices such as unlawful parking in reserves; protection of joint management body members and parties from personal liability in appropriate circumstances; providing for some lands to be vested in the Conservation and Land Management Executive Body rather than the CEO; provision of a regulation head power to specifically cover regulating commercial operations on CALM Act lands; specifying the access rights held by enforcement staff to CALM Act lands that are leased or subject to tenements for mining and petroleum; simplifying the process for minor excisions from marine reserves and State forests; and providing that joint management agreements may continue to operate through updates of area management plans.

The Bill will provide for minor consequential amendments to the *Fish Resources Management Act 1994* and *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* in relation to the marine park zoning provision changes outlined above.

The Bill will also provide for minor consequential amendments to the Acts detailed below in relation to the proposed replacement of the Conservation Commission and the Marine Authority with a Conservation and Parks Commission;

- *Constitution Acts Amendment Act 1899, Forest Products Act 2000, Land Administration Act 1997, Mining Act 1978* and, *Swan and Canning Rivers Management Act 2006*.

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<sup>1</sup> Note that references to the 'CALM Act' are to the principal Act, being the *Conservation and Land Management Act 1984* and references to 'the Amendment Act' are references to the proposed *Conservation and Land Management Amendment Act 2015*.

The Bill is arranged in three parts:

- Part 1 – Preliminary;
- Part 2 – *Conservation and Land Management Act 1984* amended; and
- Part 3 – Other Acts amended.

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

## CLAUSE NOTES

### PART 1 — Preliminary

#### Clause 1. Short title

Clause 1 will provide that the title of the proposed Act is the *Conservation and Land Management Amendment Act 2015*.

#### 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 fixed by proclamation and that different days may be fixed for different provisions.

### PART 2 — *Conservation and Land Management Act 1984* amended

#### Clause 3. Act amended

Clause 3 provides that Part 2 of the Bill will amend the *Conservation and Land Management Act 1984*.

#### Clause 4. Long title amended

Clause 4 will amend the long title of the principal Act (the CALM Act) to reflect that a single Conservation and Parks Commission will replace the current two authorities, being the Conservation Commission and the Marine Authority.

#### Clause 5. Section 3: 'Terms used'; amended

Clause 5 will amend section 3, which provides definitions for certain terms used in the CALM Act. The amendments involve deleting or amending some definitions which will become redundant through the Amendment Act and adding some new definitions for new terms that arise from the Amendment Act.

Clause 5(1) will delete the section 3(1) definitions of ***associated body, Conservation Commission, Marine Authority, Marine Committee*** and ***member*** which will become redundant to the CALM Act.

Clause 5(2) will insert definitions for the following new terms:

**Aboriginal body corporate** – this definition is based on a definition in the Commonwealth’s *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The definition under the CATSI Act (at 16-5) is “**An Aboriginal and Torres Strait Islander Corporation** is a corporation registered under the Act.” The reference to Torres Strait Islander corporations is not relevant to the Western Australian situation and has thus been excluded from the proposed CALM Act definition.

The *Native Title Act 1993* also refers to registered native title bodies corporate, which must be registered under the CATSI Act.

**Commission** – this definition establishes that the term Commission means the Conservation and Parks Commission to be established under this Amendment Act.

**joint responsible body** – this definition covers the new term that will apply to each person or body who, jointly with the Commission, is either vested with land, or land and waters or, who jointly has with the Commission the care, control and management of land, or land and waters, that are to be managed under the CALM Act. This new term also replaces the currently defined term “associated body” which will become redundant and is being deleted.

**member** – a member is to be a person who is a member of the Conservation and Parks Commission, replacing the previous term “member” which applied to both the Conservation Commission and Marine Authority.

**public road** – the definition to be used in the amended CALM Act is to be the relevant definition of “road” in operation under the *Road Traffic Act 1974* (section 5(1)), or, otherwise, the *Road Traffic (Administration) Act 2008* (section 4).

When amendment of the Road Traffic Act section 5 is made by the *Road Traffic Legislation Amendment Act 2012*, the meaning given to **road** under the Road (Administration) Act section 4 will apply.

The two definitions of **road** cited are nearly identical.

The *Road Traffic Act 1974* section 5(1) provides that **road** means any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation, median strip and traffic island thereon.

The *Road Traffic (Administration) Act 2008* section 4 provides that **road** means any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation, median strip and traffic island on it.

**public utility works** – describes works that are to be considered to be ‘public works’ for the purposes of the CALM Act. The descriptions are each self-explanatory.

The proposed Amendment Act will provide a streamlined process for minor excisions from CALM Act lands/waters for the purpose of public utility works in clauses 12, 13 and 15, which amend sections 9, 10 and 13 of the CALM Act, respectively.

**regional park** – this definition is self-explanatory; it applies to the regional park category of land proposed to be recognised under the CALM Act through this

Amendment Act. Regional parks currently exist as entities under policy administered through the planning portfolio and can include both Crown land and 'other land' with the agreement of the owner or manager of the 'other land', as is relevant in each particular instance.

**vessel** – the proposed definition of the term to be used in the amended CALM Act is to be that already included in the *Western Australian Marine Act 1982* (WA) (section 3(1)), which is:

'**vessel**' means any kind of vessel used or capable of being used in navigation by water, however propelled or moved, and includes —

- (a) a barge, lighter, floating restaurant, or other floating vessel; and
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water,

but does not include pontoons or floating jetties used only for the purposes of walkways or storage and similar platforms situated adjacent to river banks or any other shore in circumstances in which they are not being towed or moored away from the shore.

**Clause 6. Section 4: 'Relationship of this Act to other Acts'; amended**

Clause 6 introduces a reference to proposed new section 121, dealing with entry powers of enforcement staff in relation to occupied land to which the CALM Act applies, as proposed in clause 56 of this Amendment Act.

Including the reference to section 121 in section 4 identifies that section 121 would be one of the sections mentioned in relation to the CALM Act not derogating from the operation of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, any other Act relating to minerals or petroleum, or any Government agreement within the meaning of the *Government Agreements Act 1979*.

**Clause 7. Section 5: 'Land to which this Act applies, meaning of'; amended**

Clause 7 will amend section 5 which specifies the land and/or waters to which the CALM Act applies by replacing references to the Conservation Commission, and the Marine Authority, with references to the new Commission. It will also add a reference to the Conservation and Land Management Executive Body, recognising that the Executive Body can be given the care, control and management of Crown land.

Clause 7(a) will amend section 5(1)(g) to replace the references to the Conservation Commission and Marine Authority with a reference to the new Commission.

Clause 7(b) will amend section 5(1)(h) to include reserved land placed by management order with the Executive Body, either solely or jointly with another person or persons, as land to which the CALM Act applies.

**Clause 8. Section 6: 'Categories of land, defined'; amended**

Clause 8 will amend sections 6(3), 6(4) and 6(5), which define national parks, conservation parks and nature reserves as categories of lands for the purposes of the CALM Act. The intention of the amendments is to recognise lands within these categories that become jointly vested between the Commission and an Aboriginal body corporate, pursuant to proposed new section 8AA, to be lands to which the CALM Act applies.

Clause 8(1)(a) will insert new paragraph (ba) in section 6(3) to extend the definition of national parks in section 6(3)(a) to include national park lands that become vested in the Commission jointly with an Aboriginal body corporate under proposed section 8AA(4).

Clause 8(1)(b) will amend section 6(3)(b) to include reference to national parks that are vested either with the Commission under section 7(2) or proposed section 8AA(8), or jointly in the Commission and an Aboriginal body corporate under proposed sections 8AA(4) or (5).

Clause 8(1)(c) will amend section 6(3)(c) by providing that national parks reserved under any other Act may be vested jointly in the Commission and an Aboriginal body corporate, replacing current provision for vesting in the Conservation Commission.

Clause 8(2) will amend existing section 6(4) to provide that conservation parks that are vested in the Commission under section 7(2)(a) or 8AA(8) are lands to which the CALM Act applies, whether these are vested solely in the Commission or jointly in the Commission and an Aboriginal body corporate. The proposed new paragraph (4)(b) provides that, in the event that a conservation park may be reserved under some other Act, it would also be land subject to the CALM Act whether it is vested solely in the Commission or jointly in the Commission and an Aboriginal body corporate.

Clause 8(3)(a) will amend existing section 6(5)(a) relating to nature reserves by replacing reference to the Conservation Commission with reference to the proposed replacement Commission.

Clause 8(3)(b) will amend existing section 6(5)(b) relating to nature reserves by replacing reference to the Conservation Commission with reference to the proposed replacement Commission. The clause will also provide for nature reserves that are vested jointly with the Commission and an Aboriginal body corporate.

Clause 8(3)(c) will amend section 6(5)(c) relating to nature reserves by replacing reference to the Conservation Commission with reference to the proposed replacement Commission. The clause will also provide for nature reserves that are vested jointly with the Commission and an Aboriginal body corporate.

## **Clause 9. Section 7: 'Categories of land, vesting of'; amended**

Clause 9 will amend section 7 which provides for the vesting of lands subject to the CALM Act by land category. The purpose of the amendments is to provide for the vesting of each category of reserved land or waters in the proposed new Commission, which will replace the Conservation Commission and Marine Authority.

Clause 9(1) will delete section 7(1) and insert new sections 7(1A), 7(1B) and 7(1).

Section 7(1A) will provide that the term **vested** when used in this section, is to be read as having the limitations identified for the term 'vesting' as assigned by section 19(3), relating to the functions of the new Commission.

Section 7(1B) specifies that section 7 does not apply to land that is vested under section 8AA(4) or (5), being land that is jointly vested with the new Commission and an Aboriginal body corporate, or to section 8A land, being private or other land that is managed by the CEO.

Section 7(1) will provide for State forest, timber reserves, marine management areas, marine nature reserves and marine parks to be vested in the new Commission.

Clause 9(2) will delete sections 7(5) and (6), which will be redundant as they refer to vesting of marine reserves in the Marine Authority, which is to be replaced with the new

Commission, as marine reserve vesting will already be covered under proposed new section 7(1B).

**Clause 10. Section 8AA: ‘Land may be vested jointly in Commission and Aboriginal body corporate’; inserted**

Clause 10 will insert a new section 8AA into CALM Act Part II. This new section will provide for reserved lands to be vested jointly in the proposed new Commission and an Aboriginal body corporate. The clause sets out the procedures by which such joint vesting may occur, including the facility that the CALM Act Minister may approve or not approve a proposed joint vesting and that joint vesting may not occur unless the Aboriginal body corporate consents to the proposed joint vesting.

Section 8AA(1) will provide that the term **vested** when used in this section, is to be read as having the limitations identified for the term ‘vesting’ as assigned by section 19(3), relating to the functions of the proposed new Commission.

Section 8AA(2) will allow for the Minister, following consultation with the proposed new Commission, to make a written determination approving joint vesting of an entire national park, nature reserve or conservation park, or part thereof, with the Commission and an Aboriginal body corporate.

Subsection 8AA(2)(a) will provide for land that is proposed to be a national park, nature reserve or conservation park, or part thereof, to become jointly vested when it is reserved under Part 4 of the LAA.

Subsection 8AA(2)(b) will provide for land that is already a national park, nature reserve or conservation park, or part thereof, and vested in the new Commission, to become jointly vested.

Section 8AA(3) will establish the requirement that the specific Aboriginal body corporate must consent to the proposed joint vesting before the Minister may make a determination approving joint vesting pursuant to 8AA(2).

Section 8AA(4) will formally establish the joint vesting of the reserve at the time of reservation by giving effect to the joint vesting determination made under subsection (2)(a).

Section 8AA(5) will formally establish the joint vesting of the reserve by giving effect to the determination made under subsection (2)(b), with the date of effect to be either the date of the determination or a later date specified in the determination.

Section 8AA(6) will provide that the Minister’s determination that a reserve, or part of a reserve, is jointly vested under a section 8AA(5) declaration of joint vesting of a national park, nature reserve, or conservation park, does not change the purpose for which the land is already reserved under the LAA, or the category of the land under that Act.

Section 8AA(7) will establish that the specific functions of an Aboriginal body corporate which has been determined by the Minister to have joint vesting of a reserve under the CALM Act, in relation to that joint vesting, are those provided to a ‘joint responsible body’ under the CALM Act. These functions include responsibilities in management planning and advising the Minister on possible categorisation and boundary changes for the land under section 17(2).

Section 8AA(8) will provide for reserved land that has been jointly vested in an Aboriginal body corporate and the new Commission to be solely vested in the Commission if, for any reason, the Aboriginal body corporate that has been a joint responsible body for the reserve becomes deregistered under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006*. This will provide certainty regarding vesting and continued management of the reserve, if such a situation should arise.

Section 8AA(9) will provide for a Ministerial determination under 8AA(2) to jointly vest a reserve to be revoked by the Minister at any time before the vesting is made under 8AA(4) or 8AA(5). Such a precautionary measure will provide a safeguard should the Minister be not satisfied that the proposed joint vesting should proceed.

#### **Clause 11. Part II Division 2A – Regional parks, inserted**

Clause 11 will introduce a new division (**Division 2A – Regional Parks**) into CALM Act Part II – Land subject to this Act. The effect of this new Division will be to provide recognition for the role of the CEO in relation to regional parks which are already established through agreement and policy under the Planning portfolio, normally as part of regional planning. The initial identification and recognition of regional parks will remain a Planning portfolio responsibility with the CALM Act recognition providing a formal means of creating CALM Act coverage of management planning and management coordination relating to regional parks.

Regional parks have a mix of uses including recreation and conservation and can include Crown reserve land as well as private and leasehold land where the land is managed cooperatively for shared goals and purposes. The new Division includes three new sections.

These new sections are:

- section 8D, to explain terms relevant to the Division;
- section 8E; to give the Minister the power to designate, by order, an area to be a CALM Act covered regional park, provided that written consent from the relevant land managers has been provided; and,
- section 8F, to give the CEO the power to coordinate the management of a CALM Act covered regional park.

Section 8D will define the terms used in this Division:

**alienated land** derives its meaning from section 3(1) of the LAA, being freehold land.

**Crown land** also derives its meaning from section 3(1) of the LAA. Land in this section is generally all other land that is not ‘alienated’ land.

**eligible land**, means land that is eligible to be designated ‘regional park’. This land will include all land, waters, or land and waters, that are above the low water mark and are either alienated land or Crown land or CALM Act section 8A land.

**Minister for Planning** – self-explanatory, the Minister responsible for State planning under the *Planning and Development Act 2006*.

**person responsible** will define those persons who are responsible for the management of ‘eligible land’. Where land is freehold land, this includes the owner, any person who has a registered interest in the land (under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*), or the lessee. Where the land is Crown land, the definition includes: the Land Administration Act Minister; the management body (as defined in the LAA); any person in whom

the land is vested under the LAA; any person who has the responsibility for care, control or management of the land under another written law (other than under the LAA); the lessee; or the registered native title body corporate (if exclusive native title has been determined).

Section 8E will provide for the Minister to designate land to be a 'regional park' for the purposes of the CALM Act, with the subsections 8E(1) through (3) specifying the requirements for such a designation.

Section 8E(1) will require the Minister to consult with, and receive the concurrence of, the Minister for Planning before making an order to designate land as a regional park for the purposes of the CALM Act. Such an order would be published in the Gazette. This section will also establish that, before making such an order, the Minister must consider that the candidate land has regionally significant conservation, landscape protection, or recreation values.

Section 8E(2) will provide that the Minister may designate only land that is 'eligible land', CALM Act land or CALM Act section 8A (management agreement) land, or any combination of these, to be a regional park.

Section 8E(3) will require the Minister to have received the written consent of the person, or persons, responsible for the land before the land may be designated to be a regional park.

Section 8F will provide for the coordination of management and planning of management of a regional park.

Section 8F(1) will provide that the CEO may coordinate the management of the land designated to be a regional park (with this coordination function to be added by Clause 42(1)). This may occur in situations where the person(s) responsible for the land in the regional park has consented to such coordination.

Section 8F(2) will provide that the proposed new Commission may prepare a plan of management for the regional park through the agency of the CEO, as is the case for current CALM Act reserves.

**Clause 12. Section 9: 'State forest, restriction on abolition of': replaced by sections 9 and 10A**

Clause 12 will delete the former section 9 dealing with restrictions on changes to State Forest and replace this with the proposed new sections 9 and 10A.

The intent of the changes is to simplify and streamline provisions as they relate to very minor changes to State forest that currently require approval of the Governor and both Houses of Parliament. The proposed process is similar to that currently provided for minor amendments to class A reserves under the *Land Administration Act 1997*.

The proposed provisions cover proposals to excise very minor areas of State forest (less than 5 hectares) for public utility purposes or roading, to amalgamate two or more similar purpose State forests, to redescribe the internal boundaries of a State forest, or to correct unsurveyed boundaries (provided the area changes by no more than 5%). In these circumstances Ministerial approval will be sufficient to make the proposed changes following public advertising of the proposals. In all other cases, a more detailed process will apply that is essentially the same as the current requirements. This process will be established under proposed section 10A and will involve approval by the Governor, and both Houses of Parliament.

Section 9(1) will provide that proposals to make changes to State forest may only be made following the procedures specified in proposed section 9(3) (minor changes), or section 10A (all other changes).

Section 9(2) is similar to current section 9(1a) and will retain the requirement that the purpose or purposes that have been notified for a State forest may not be amended except with an Act or in the manner provided for in proposed section 10A, involving an opportunity for Parliamentary disallowance.

Section 9(3) will provide for the Minister to make minor amendments to State forest after consulting both the proposed new Commission and the Minister for Forest Products. The following subsections establish the circumstances in which such changes may occur and the details of how these are to be achieved. The making of the minor changes will be undertaken by the Minister through Ministerial order.

Subsection 9(3)(a) will provide that the boundary of a State forest may be corrected by the Ministerial order process if the boundary has previously been unsurveyed or incorrectly surveyed and provided that the overall change to the area of a State forest is not reduced by more than 5%. If the area is to be reduced by more than 5% the section 10A process must be followed.

Subsection 9(3)(b) will provide for minor excisions from State forests for public utility works or roads to be made by Ministerial order provided that the area of excision is no more than five hectares or 5% of the State forest area. If the excision is larger than this limit, the section 10A process must be followed.

Subsection 9(3)(c) will provide for locations or lots within State forests to be redescribed or adjusted by Ministerial order provided that the external boundaries of the State forest do not change. If the boundaries are to change the section 10A process must be followed.

Subsection 9(3)(d) will provide for two or more State forest areas which have similar purposes to be amalgamated by Ministerial order.

Section 9(4) will provide that the Minister must advertise the intention to act to amend a State forest under either subsection (3) or section 10A in a newspaper circulating throughout the State or on the Department's website at least 30 days before so acting. This public notification will provide an opportunity for any concerns to be brought to the Minister's attention before the proposed changes to a State forest are made.

Section 9(5) will provide for the land that is excised from a State forest by order under proposed subsection (3)(a) (resurveyed boundaries) or (b) (minor excisions for public utility works or public roads) to become Crown land subject to the LAA. This will provide for the land to be vested in the authority relevant to the public utility works or public road management.

Section 10A will replace existing section 9 in relation to changes to State forests that are not minor and covered by proposed new section 9. This section will continue the current requirements that provide for Governor and Parliamentary scrutiny of the proposed State forest changes. Proposed section 10A will provide that a proposal to amend an area of, or abolish a State forest, or amend its purpose, may be implemented unless either House resolves to disallow it. This is a simplification of the current process which provides that both Houses must resolve to allow a proposed change before it may be carried out.

Section 10A(1) will provide for the Governor to lay before each House of Parliament proposals for non-minor amendments to State forests as is currently the case.

Subsection 10A(1)(a) will provide that such proposals may allow for the whole or part of a State forest to cease being State forest.

Subsection 10A(1)(b) will provide that the proposed change may be to amend the purpose or combination of purposes of State forests as provided for under forest management plans pursuant to current sections 60(3)(a) or 60A.

Section 10A(2) will streamline the current provision in existing section 9(2) by providing that proposed changes to State forests may proceed unless the notice of resolution is disallowed in either House. Under the current requirement, Parliament must resolve to allow the proposed change. This section will provide that unless a notice of resolution disallowing the proposal is given within 14 sitting days in either House of Parliament, and that resolution is passed, the change to a State forest may proceed under subsection (4).

Section 10A(3) will provide that if a proposal is disallowed under subsection (2), the proposal will lapse and the proposed change to a State forest will not occur.

Section 10A(4) will require that if a notice of resolution disallowing the proposal is not made within 14 sitting days in either House the proposal may be implemented by order of the Governor published in the *Gazette*;

Section 10A(5) will provide that the term of 14 sitting days referred to in subsection 10A(2) may be continuous within a single session or extend over two sessions of the same Parliament.

Section 10A(6) will provide that if Parliament is prorogued, or the House where the notice of a resolution to disallow the proposal was made is dissolved or expires before the 14 sitting days period referred to above has concluded, the proposal may not be implemented. In these circumstances the proposal may be laid again before that House in the next Parliament. If this occurs and a notice of resolution is again made to disallow the proposal, the period for the House to consider this new proposal is reduced to the remaining period of the original 14 sitting days since the notice was made in that House in the previous Parliament that did not pass before the House was dissolved or expired, or Parliament was prorogued. If the motion to disallow is passed the proposal lapses under section 10A(3) and if such a motion is not made or not passed, the proposal may proceed as provided for under section 10A(4).

Section 10(7) will provide for the status of the land that ceases to be State forest after the above process. There is no change proposed in relation to the current provisions under existing section 9(3) of the CALM Act.

Subsection 10(7)(a) This is the same as current Section 9(3)(a) and will provide for land that was acquired under section 15 (land may be acquired compulsorily or exchanged) to be State forest that will, after it ceases to be State forest, be vested in the Executive Body. Under section 131, this land will then be held by the Executive Body until the Governor determines whether it should be disposed of, or otherwise dealt with.

Subsection 10(7)(b) This is the same as current Section 9(3)(b) and will provide for land that was not acquired under section 15 to become Crown land within the meaning of the *Land Administration Act 1997*.

**Clause 13. Section 10: ‘Timber reserves, reservation of’; replaced**

Clause 13 will delete the former section 10 which dealt with the Governor reserving land as timber reserves and replace it with a new expanded section 10 which will provide for the Governor to reserve land as timber reserves and also for minor changes to be applied to timber reserves, similar to the proposals under proposed new section 9 for State forest. The proposed process is similar to that currently provided for minor amendments to class A reserves under the *Land Administration Act 1997*.

Section 10(1) is the same as existing section 10 and will provide for the Governor to publish an order in the *Gazette* which reserves any Crown land as a timber reserve.

Section 10(2) will provide for the boundaries of timber reserves made by order under Section 10(1) to be altered in accordance with subsection (3) by Ministerial order or following the process under section 17.

Section 10(3) will require the Minister to consult with the new Commission and the Minister for Forest Products before making an order to amend a timber reserve.

Subsection 10(3)(a) will allow for the boundary of a timber reserve to be amended by the Minister to correct unsurveyed or incorrectly surveyed boundaries, provided that the overall change to the reserve’s total area is not more than 5%.

Subsection 10(3)(b) will allow for minor excisions from timber reserves to be made by the Minister for public utility works or roads provided that it is no more than 5% or one hectare, whichever is the least, of the reserve’s total area.

Subsection 10(3)(c) will allow for locations or lots within a timber reserve to be redescribed or adjusted by the Minister provided that the external boundaries of the timber reserve do not change.

Subsection 10(3)(d) will allow for two or more timber reserve areas to be amalgamated by the Minister.

Section 10(4) will require the Minister to advertise the intention to act to change timber reserve boundaries or internal lots as provided for under subsection (3) in a newspaper circulating throughout the State or on the Department’s website, at least 30 days before acting. This will provide public notification and a period for any concerns regarding the proposal from the public to be brought to the Minister’s attention.

**Clause 14. Section 13: ‘Marine Reserves, reservation of’; amended**

Clause 14 will amend section 13 to specify the amendments that can be made to marine nature reserves, marine parks or marine management areas. Current sections 13(1), (3a) and (4) are to be deleted and replaced with new sections 13(1), (2), (3), (4) and (4AA). The intention of the amendment is to provide new procedures which provide for a more streamlined and timely process for minor amendments to such reserves. The proposed process is similar to that currently provided for minor amendments to class A reserves under the *Land Administration Act 1997*.

Section 13(1) will provide for the Governor to make an order published in the *Gazette*, for reservation of a marine nature reserve a marine park or a marine management area, as well as to add an area to an existing marine reserve. Such proposals are subject to section 14, which provides for public notification and approval of the proposal from the Ministers for Fisheries and Mines.

Section 13(2) will provide for the Minister to amalgamate two or more existing marine nature reserves, marine parks or marine management areas by making an order published in the *Gazette*.

Section 13(3) will continue the requirement that the Minister must consult the Swan River Trust in relation to any waters within the development control area or Riverpark (as defined by the *Swan and Canning Rivers Management Act 2006*) before the Governor may make an order under subsection (1) to establish or expand a marine reserve over relevant waters.

Section 13(4) will allow the Governor to classify as Class A, a marine nature reserve, marine park or marine management area specified in the order under subsection (1).

Section 13(4AA) introduces a new section which provides that the purpose for, or boundaries of, Class A reserves cannot be changed or altered, except as provided for under section 13(1)(b) or (2), 13AA or 13B or by another Act. This will bring marine reserves into line with terrestrial reserves.

**Clause 15. Section 13AA: ‘Minister’s powers to change Class A marine reserve’; inserted**

Clause 15 will insert a new section 13AA to provide a Ministerial process to make minor administrative amendments to Class A marine reserves along similar lines to the minor amendment proposals relating to State forest and timber reserves. The proposed process is similar to that currently provided for minor amendments to class A reserves under the *Land Administration Act 1997*.

Section 13AA(1) will define the term ***Class A marine reserve*** as it relates to its use in this section. It includes those categories of land classified under proposed section 13(4) as of Class A, and may include marine nature reserves, marine parks or marine management areas.

Section 13AA(2) will allow the Minister to make an order published in the *Gazette* to make minor amendments to the area of a class A marine reserve within specific limits and circumstances, provided the Minister has consulted the new Commission.

Subsection 13AA(2)(a) will provide for the Minister to make minor boundary amendments to correct unsurveyed or re-surveyed boundaries of the marine area. Such an amendment may be necessary to correct boundaries that are subject to fluctuation as a result of natural processes, as well as to correct technical errors in mapping.

Subsection 13AA(2)(b) will provide for the Minister to authorise a minor excision of up to one hectare or 5%, whichever is the lesser area, for the purpose of public utility works. Public utility works are defined earlier under section 3 to include the creation of jetties and boat launching facilities.

Section 13AA(3) will require the Minister to advertise the intention to act under subsection (2) in a newspaper circulating throughout the State or on the Department’s website at least 30 days before acting to provide an opportunity for the public to raise any concerns they have with the proposal with the Minister.

**Clause 16. Section 13B: ‘Marine parks, purpose of and prohibited acts in’; amended**

Clause 16 will delete sections 13B(6), (7) and (10) and insert new subsections (1A), (3A), (3B), (6A), (6), (7A), and (7) which provide for the possible prohibition of certain fishing activities in marine parks. The amendments will provide lawful authority for zoning schemes in special purpose and recreation zones within marine parks, where these zones are intended to allow some forms of fishing under the categories of commercial or recreational fishing to operate while imposing restrictions on other forms of such fishing.

The lack of this differential zoning ability has been a deficiency that has prevented full operation of zoning schemes proposed in approved marine park management plans. This clause will also amend subsections (8) and (9) by removing unnecessary words and delete subsection (10) which is also not required.

Section 13B(1A) will provide definitions of terminology used in section 13B. The definitions are self-explanatory.

Section 13B(3A) will provide the power for the Minister to, in a section 62 classification notice classifying areas of a marine park as a recreation area, declare that area or any part of that area to be an area where (a) recreational fishing, or, (b) a specific type of recreational fishing would be incompatible with another recreation purpose for that classified area. This will update the current provision under section 13B(7) to restrict all recreational fishing in such an area.

Section 13B(3B) will provide similar powers to the above for restrictions on activities within special purpose areas for the listed activities, or specific subsets of the listed activities (a) through (g).

Section 13B(5) relating to aquaculture is to be amended to clarify that aquaculture *must not* be carried out in the listed areas (a) a sanctuary area, (b) a recreation area, or (c) a special purpose area or part of which, where aquaculture would be incompatible with a conservation purpose specified in the classification notice.

Section 13B(6A) will update existing section 13B(6) which provides that commercial fishing may not take place in any area of a marine park which is classified as a recreation area, or certain special purpose areas, by adding that a type of commercial fishing may not occur where that type of commercial fishing is incompatible with a conservation purpose specified in the classification notice for a specific area or part of such an area. It retains the requirement that recreational fishing must not take place in areas classified as a sanctuary area.

Section 13B(6) will carry forward the current provision in section 13B(6) that in those areas of a marine park where commercial fishing, or specific types of commercial fishing, are not excluded under the above provision, the allowed types may take place under authorisations pursuant to the *Fish Resources Management Act 1994*.

Section 13B(7A) will carry forward and clarify the current provision under section 13B(7) involving restrictions on recreational fishing by clarifying that such restrictions may also apply to types of recreational fishing and in parts of recreation and special purpose areas (zones). It retains the requirement that recreational fishing must not take place in areas classified as a sanctuary area.

Section 13B(7) will take forward the existing provision that, in those areas of a marine park where recreational fishing, or specific types of recreational fishing, are not excluded under the above provision, the allowed types may take place under authorisations pursuant to the *Fish Resources Management Act 1994*.

Clause 16(5) will amend section 13B(8) by removing the unnecessary reference to “any area of a marine park which is classified under section 62 as” in relation to the identified areas (sanctuary, recreation, or special purpose) as it is already clear the detail relates to areas so classified (see section 13B(10)).

Clause 16(6) repeats the change above relating in this case to section 13B(9).

Clause 16(7) deletes section 13B(10) because a definition for a **classification notice** is to be included in clause 13B(1A).

**Clause 17. Section 14: ‘Proposal for marine reserve, public notice of and submissions on’; amended**

Clause 17 will amend section 14 which provides for the making of public notices and for public submissions to be made for marine reserve proposals by replacing references to the Marine Authority with reference to the proposed replacement Commission.

Clause 17(1) will amend section 14(1a)(a) to replace reference to the Marine Authority with reference to the proposed new Commission.

Clause 17(2) will amend section 14(6)(a) in the same manner as clause 17(1).

Clause 17(3) will delete section 14(8) and replace it with a new subsection (8) and subsection (9A). Proposed new subsection (8) will update the reference in the existing section 14(8) to the ‘controlling body’ with reference to the “relevant responsible body”, which is the term that is actually used in section 60(2a). Proposed new subsection (9A) will replace the reference in the existing subsection (8) to the ‘Marine Authority’ with reference to the “Commission”.

**Clause 18. Section 17: ‘Purpose of certain land, cancelling or amending; area of certain land, changing’; amended**

Clause 18 will amend section 17 which provides for the purposes of certain land to be amended or cancelled and also for changing the boundaries of specified categories of land. Section 17 does not apply to State forest, conservation parks, national parks referred to in section 6(3)(b), and class A reserves.

Clause 18(1) will replace section 17(2) so that any proposals to cancel or amend the purpose, or make a boundary amendment to land in this section, apart from the minor amendments to timber reserves covered by proposed section 10(3) in clause 13, is referred to the Commission and any joint responsible body. This updates the current provision that provides for changes to be referred to the body in which the land is vested, or which has the care, control and management of the land, and any associated body.

Clauses 18(2), (3) and (4) amend reference in sections 17(3), (4) and (4a) to the Conservation Commission and Marine Authority and replace them with references to the replacement Commission. In addition, reference to ‘any associated body’ is replaced with reference to ‘any joint responsible body’.

**Clause 19. Heading to Part III: ‘Controlling bodies established’; replaced**

Clause 19 will delete the heading ‘Part III — Controlling bodies established’ and insert a new heading, namely: ‘Part III — Conservation and Parks Commission’. This will be necessary as a consequence of the proposed replacement of the Marine Authority and Conservation Commission with the replacement Commission, and that the (defunct) Marine Parks and Reserves Scientific Advisory Committee is to be abolished (clause 38).

**Clause 20. Heading to Part III Division 1: ‘Conservation Commission of Western Australia’; replaced**

Clause 20 will delete the above heading as a consequence of the proposed creation of the new Commission and insert the new heading:

**Division 1 – Conservation and Parks Commission established**

**Clause 21. Heading to Part III Division 1 Subdivision 1: ‘Establishment and functions and powers of Conservation Commission’; deleted**

Clause 21 will delete the heading to Part III Division 1 Subdivision 1 as this will be redundant with the creation of the new Commission.

**Clause 22. Section 18: ‘Commission established and nature of’: amended**

Clause 22 will amend section 18 to establish the proposed Conservation and Parks Commission as ‘the Commission’.

**Clause 23. Section 19: ‘Functions’; amended**

Clause 23 will amend section 19 which established the functions of the previous Conservation Commission and replace it with the functions of the proposed replacement Commission (Conservation and Parks Commission)

Clause 23(1)(a) will amend existing paragraph (a) to vest State forest and timber reserves in the new Commission as it replaces the Conservation Commission, while also vesting marine reserves in the new Commission, replacing the Marine Authority in proposed paragraph (a)(i).

Paragraph (a)(ii) is necessary to recognise that land managed under a section 8A agreement does not vest in the Commission, and also that Crown land national parks, nature reserves and conservation parks may be solely vested in the Commission, or jointly with an Aboriginal body corporate.

Paragraph (a)(iii) carries forward the existing provision applying to the Conservation Commission for the new Commission to have vested relevant CALM Act section 5(1)(g) land.

Paragraph (ba) carries forward the existing provision relevant to the role of the Commission in relation to already jointly vested nature reserves, as provided for in current section 19(1)(a).

Clause 23(1)(b) will update existing 19(1)(b) relating to joint vesting so that it applies to another person or body, rather than just ‘another person’. This is a technical update which, similar to the proposed amendments to section 6(5), is necessary for consistency with the LAA and proposed vesting with Aboriginal body corporates.

Clause 23(1)(c) will delete and replace current paragraph (c) with the change being that the new Commission will advise the Minister on relevant policies, rather than have the ability to establish its own policies. This recognises modern governance conventions.

Clause 23(1)(d) will insert a new paragraph (fa) to include the function for the Commission to advise the Minister on proposals to establish new marine reserves (section 14) in keeping with the roles the proposed new Commission will be taking over from the current Marine Authority.

Clause 23(1)(e) will expand the application of current paragraphs (f), (g) and (k) to include waters, to further provide for the proposed new Commission to have roles and responsibilities in relation to marine parks, reserves and management areas.

Clause 23(2) will amend section 19(3) to include reference to marine reserves and to specify that the proposed new Commission will also have a role in relation to proposed new subsection 19(1)(fa), dealing with advising the Minister in relation to proposals for reservations as outlined above.

Clause 23(3) will amend section 19(6)(a) to include reference to “waters” so that the Commission will be required to inform local government agencies responsible for land or waters that are the subject of possible new reserves, or section 8A agreements, before advising the Minister in this regard.

Clause 23(4) will delete the redundant section 19(9) which relates to the Conservation Commission consulting the Marine Authority, and will also insert a new subsection (9). The proposed new subsection (9) will take forward the current restriction applying to the Marine Authority for the new Commission, requiring the Commission to inform the Western Australian Museum of the general nature of any advice it intends to provide to the Minister relating to marine archaeology and to give the Museum a reasonable opportunity to make a submission, before the Commission advises the Minister. This carries forward existing section 26B(6).

**Clause 24. Section 20: ‘Powers’; amended**

Clause 24 will amend section 20 which establishes the powers of the Commission.

Clause 24(1) will delete sections 20(2), (3), (4) and (5), which do not reflect the current situation for the Conservation Commission or the proposed situation for the replacement Commission. The proposed new Commission will have staff supplied by the Department of Parks and Wildlife, as is currently the case for the Conservation Commission. Therefore staff management matters covered by subsections (2), (3), (4) and (5) are no longer relevant.

Clause 24(2) will delete section 20(7)(b) as the proposed new Commission will not engage staff. Staff will be provided by the Department of Parks and Wildlife, as is currently the case.

**Clause 25. Heading to Part III Division 1 Subdivision 2: — ‘Membership and meetings of Conservation Commission’; deleted**

Clause 25 reorganises the format of Part III of the CALM Act. It removes the former heading to Subdivision 2, cited above.

**Clause 26. Part III Division 2; heading inserted.**

Clause 26 will insert the following heading.

**Division 2 – Membership and meetings of Commission**

**Clause 27. Section 21: ‘Membership’; amended**

Clause 26 will amend section 21 which provides for the appointment of members to the Commission.

Clause 27(1) will amend section 21(1) so that the Minister may appoint 7 members to the proposed new Commission, rather than the 9 members provided for with the current Conservation Commission (replicating the 7 Members provided for the current Marine Authority).

Clause 27(2) will delete sections 21(3) and (4) and insert new sections which provide the criteria for selecting members of the new Commission.

Section 21(3) will provide the Minister with latitude to appoint Members who have knowledge, experience or a particular function or vocational interest relevant to the specified functions of the Commission. This will replace the current requirement for

the Conservation Commission which identifies specific areas of knowledge and expertise of proposed members.

Section 21(4) retains the current requirement that one member must have experience in Aboriginal cultural or heritage matters relevant to the functions of the Commission, while removing the self-evident requirement that the selected person must be able to contribute to the functions of the Commission.

**Clause 28. Section 22: ‘Persons not eligible to be members’; amended**

Clause 28 will amend section 22 which sets out the criteria establishing ineligibility for membership of the Commission.

Clause 22(1)(a) will amend section 22(1) to remove two references to the former Conservation Commission and insert updated references to the new Commission.

Clause 22(1)(b) will replace current section 22(1)(a) with a new subsection (a) that deletes a reference to staff of the Commission being ineligible due to the changes proposed above relating to staffing of the Commission being provided by the Department.

**Clause 29. Section 23: ‘Meetings of Commission, CEO of Department etc. entitled to attend’; amended**

Clause 29 will delete and replace section 23 which provides for other people to attend meetings of the Commission. This updates the current arrangements in place for the Conservation Commission. The above section heading will be replaced with:

- **Other persons entitled to attend meetings of Commission**

Section 23(1) will provide self-explanatory definitions for the terms used in section 23, being ‘*agency*’, ‘*chief executive officer*’ and ‘*Director*’.

Section 23(2) will insert a new section 23(2) which essentially carries forward the current requirement in section 23(1) that the chairman of the Commission is to provide reasonable notice to the CEO of upcoming Commission meetings and also to departmental Directors who have responsibilities covering matters included on the meeting agenda.

Subsection 23(2)(c) also carries forward the provision from section 26E(5)(b) applying to the Marine Authority that the chairman is to also provide notice of a meeting to a CEO of another agency if the chairman considers that the meeting will consider a matter that relates to the functions of that other agency.

Section 23(3) will retain the provisions of current section 23(2) for the CEO to advise the chairman of the Commission of the functions of the Directors so that the chairman may fulfil the obligations to invite the relevant Director.

Section 23(4) covers attendance of non-members at Commission meetings

Subsection 23(4)(a) will retain the current provision in section 23(3) that the CEO or his representative may attend any Commission meeting and take part in discussion, but cannot vote.

Subsection 23(4)(b) will retain the current provision in section 23(4) that an invited Director, or their representative, may attend a meeting and discuss any matter relevant to the Director’s functions, but may not vote at the meeting.

Subsection 23(4)(c) will retain the current provision relevant to the Marine Authority in section 26E(5)(b) that an invited CEO from another agency, or their

representative, may attend a meeting and discuss any matter relevant to that other agencies functions, but may not vote at the meeting.

Section 23(5) will provide for the Commission to specify that visitors may be excluded from meetings of the Commission when it is discussing matters relating to the functions or actions of the agency they represent, or in relation to that agency's functions or actions in relation to management plans. This carries forward the current provisions under sections 23(5) and 26E(6) relating to the Conservation Commission and Marine Authority, respectively.

**Clause 30. Heading to Part III Division 1 Subdivision 3: 'Subdivision 3 — Relationship with the Minister'; deleted**

Clause 30 will delete the heading to Part III Division 1 Subdivision 3 copied above

**Clause 31. Heading to Part III Division 1 Subdivision 3; inserted**

Clause 31 will insert the following heading to Part III Division 3

**Division 3 – Relationship with Minister**

**Clause 32. Section 25: 'Minister to have access to information'; amended**

Clause 32 will amend section 25(4) by removing reference to staff of the Conservation Commission, while retaining reference to staff provided to the Conservation Commission by the CEO.

**Clause 33 Heading to Part III Division 1 Subdivision 4: 'Subdivision 4 — General'; deleted**

Clause 31 will remove the former heading to subdivision 4.

**Clause 34 Heading to Part III Division 1 Subdivision 4; inserted**

Clause 34 will insert the following new heading before section 26.

**Division 4 — General provisions**

**Clause 35. Section 26: 'Consultants, Commission may engage'; amended**

Clause 35 will delete and replace section 26 which provides for the Commission to engage contractors to assist with the performance of its functions.

Section 26(1) will amend current section 26 to provide that the Minister's approval is required before the Commission may engage contractors. The functions for which such contractors may be engaged will not change, i.e. a person may be engaged under a contract to provide any professional, technical or other relevant assistance to the Commission.

Section 26(2) will provide that the new requirement for Ministerial approval of proposals by the Commission to engage consultants may be given in relation to a specific proposal, or in more general terms.

**Clause 36. Section 26AA: 'Delegation by Commission'; amended**

Clause 36 will amend section 26AA which provides for the Commission to delegate its functions. It will amend section 26AA(2), by updating reference to the new Commission and deleting reference to staff of the Commission as a consequence of the above proposed changes.

**Clause 37. Section 26AC: 'Review of operations etc. of Commission'; deleted**

Clause 37 will amend the reference in section 26AC(1) to a review of the Conservation Commission being undertaken after 5 years from the commencement of the former *Conservation and Land Management Amendment Act 2000* by providing that a review of the new Commission will be undertaken after 5 years operation of the new Amendment Act.

**Clause 38. Part III Divisions 3A: 'Marine Parks and Reserves Authority', and 3B: 'Marine Parks and Reserves Scientific Advisory Committee'; deleted**

Clause 38 will delete all of Divisions 3A and 3B which established the Marine Authority and the Marine Parks and Reserves Scientific Advisory Committee. The Marine Authority and its functions are to be replaced by the proposed new Commission. The Marine Parks and Reserves Scientific Advisory Committee is no longer operational and is not intended to be continued or replaced.

**Clause 39. Part III Division 4: 'Provisions applicable to the Conservation Commission, the Marine Authority and the Marine Committee'; heading deleted**

Clause 39 will delete the heading of Division 4, which will no longer be relevant.

**Clause 40. Section 27: 'Terms used: controlling body' and Section 28: 'Relationship to Public Service'; deleted**

Clause 40 will delete section 27 which provides that the above bodies can be referred to as controlling bodies in this Division. The term 'controlling bodies' as a generic term will no longer be required and the two marine bodies are not proposed to continue.

Clause 40 will also delete section 28 relating to appointments to a controlling body, which will no longer be required following the above changes.

**Clause 41. Section 29: 'Constitution and proceedings (Sch)'; replaced**

Clause 41 will delete and replace section 29 which provides that Schedule 1 sets out the provisions for the constitution and proceedings of a controlling body and replace this with reference to the constitution and proceedings for the new Commission. A new section heading is also proposed:

- **Constitution and proceedings of Commission**

**Clause 42. Section 33: 'CEO, functions of'; amended**

Clause 42 will amend section 33 which provides for the functions of the CEO.

Clause 42(1)(a) will amend section 33(1) to insert a new paragraph (aa) which will provide that the CEO has an explicit function to take any measures that the CEO considers necessary to prevent, manage or control fire on land to which the CALM Act applies, or to other land for which the CEO has responsibility for management. It will also insert a new paragraph (ab) which gives the CEO the power to coordinate the management of land in regional parks, in keeping with the proposed recognition of regional parks for the purposes of the CALM Act (pursuant to proposed new section 8F(1)).

Clause 42(1)(b) will delete and replace subsections 33(1)(b) and (ba) so that current references to the Conservation Commission, Marine Authority and Marine Committee are replaced with references to the proposed new Commission.

Clause 42(2) will delete and replace section 33(5) so that references to the Conservation Commission and Marine Authority are replaced with a references to the proposed new Commission.

Clause 42(3) will correct a grammatical error in the wording of section 33(6) by replacing “to conferring” with “of conferring”.

**Clause 43. Section 53: ‘Terms used’; amended**

Clause 43 will amend section 53 which provides definitions of the terms used in the preparation of management plans for land managed under the CALM Act.

Clause 43(1) will delete reference to a **controlling body**, which will no longer be relevant, with the proposed replacement of the Marine Authority and Conservation Commission with the new Commission.

Clause 43(2) will amend the definition of the term **responsible body** by removing references in paragraphs (a) and (b) to ‘controlling body’ and replacing these with references to the Commission or Executive Body as the relevant bodies under the amended CALM Act.

**Clause 44. Section 54: ‘Plans, when required and who has to prepare’; amended**

Clause 44 will amend section 54 which provides for the preparation of management plans following the proposed establishment of the new Commission. The redundant term ‘controlling body’ will be deleted and the term ‘associated body’ will be replaced with ‘joint responsible body’.

**Clause 45. Section 56A: ‘Plan may require CEO to manage land jointly’: amended**

Clause 45 will amend section 56A which provides for management plans that require the CEO to manage land jointly with other persons.

Clause 45(1) will amend section 56A(3) to include reference to proposed new section 56B, which is to be inserted.

Clause 45(2) will delete and replace section 56A(5) to remove references to ‘controlling body’ and ‘associated body’ and replace them with references to the new Commission and ‘joint responsible body’, respectively.

Clause 45(3) will, through paragraph (a) amend section 56A(7) by adding a reference to the proposed new section 56B. Under paragraph (b) it will replace reference to ‘a controlling body which has land vested in it or has the care, control and management of the land’ with a reference to the proposed new Commission.

**Clause 46. New Section 56B: ‘Section 56A agreement may be continued for new management plan’: inserted**

Clause 46 will insert a new section, 56B which allows for section 56A management agreements to continue to apply over several iterations of management plans with the agreement of all parties. This will avoid the need for a new management agreement to be made ahead of each new iteration of a management plan.

Section 56B(1) will allow for an existing section 56A agreement to be attached to a new management plan prepared for the land provided that the land will be jointly managed by the same persons.

Section 56B(2) will require that the Commission and any joint responsible body provide written approval before an existing agreement may be attached to the updated management plan.

**Clause 47. Section 60: ‘Approval of proposed plan by Minister’; amended**

Clause 47 will amend section 60(2b) which provides for the approval of management plans by deleting reference to the Marine Authority which will be replaced by the proposed new Commission.

**Clause 48. Section 62: ‘Land may be classified’; amended**

Clause 48 will amend section 62 which provides for land to be classified as special management areas such as wilderness areas and prohibited areas.

Clause 48(1) will amend section 62(1aaa)(g) to update reference to the Conservation Commission having the care, control and management of land, with reference to the proposed new Commission or the Executive Body, as appropriate for the specific area of land.

Clause 48(2) will amend section 62(1a) to delete reference to the Marine Authority and replace it with the proposed new Commission.

Clause 48(3) will amend section 62(1ba) to include reference to subsections (1aa), (1a) and (1b) providing that the new Commission will normally be consulted before the Minister makes a notice classifying relevant waters or land.

Clause 48(4) will delete sections 62(1c) and (1d) which are similar to the above consultation requirements but relate to the Marine Authority which is proposed to be replaced by the new Commission and so these sections will become redundant.

**Clause 49. Section 64: ‘Certain moneys to be credited to Department’; amended**

Clause 49 will delete and replace section 64 which allows for money to be credited to the Department. The new section is updated to provide for the replacement of references to the Conservation Commission and Marine Authority with the proposed new Commission.

**Clause 50. Section 97: ‘Forest leases, grant of etc.’; amended**

Clause 50 will amend section 97 which provides for the CEO to grant forest leases by extending the maximum period from the current 21 years, with a possibility of extension for a further 21 years, to a maximum of 99 years.

Clause 50(1) will amend the maximum term of a lease within State forest or a timber reserve so that it may be granted for a term not exceeding 99 years.

Clause 50(2) will delete section 97(2) to remove the option for a 21 year lease to be extended for a further 21 years. This provision will be redundant once the maximum 99 year term is established.

**Clause 51. Section 99: ‘Restriction on CEO exercising powers under this Division’; amended**

Clause 51 will amend section 99 by replacing references to the Conservation Commission and Marine Authority, with reference to the new Commission, as well as by replacing reference to an ‘associated body’ with reference to a ‘joint responsible body’.

**Clause 52. Section 100: 'Leases of land, grant of by CEO'; amended**

Clause 52 will amend section 100 which provides for the CEO to grant leases on land.

Clause 52(1) will amend section 100(1) so that the term of a lease may be extended from the current maximum of 21 years, with a possibility of extension for a further 21 years, to a maximum of 99 years.

Clause 52(2) will delete section 100(2) to remove the option for a 21 year lease to be extended for a further 21 years. This provision will be redundant once the maximum 99 year term is established.

**Clause 53. Section 101: 'Licences etc. for use etc. of land'; amended**

Clause 53 will amend section 101 which provides for the CEO to grant licences for entry and use of land. It will amend reference to the Conservation Commission and Marine Authority and replace these with a reference to the proposed new Commission.

**Clause 54. Section 104: 'Lighting fires'; amended**

Clause 54 will increase the maximum reward that may be offered for information leading to a conviction for arson on CALM land from the current \$250 to \$1000, to make the amount more in keeping with current values.

**Clause 55. Part IX Division 4A: new heading inserted**

Clause 55 will insert a new heading after section 114:

- **Division 4A – Infringement notices.**

**Clause 56. Section 114AA inserted**

Clause 56 will insert a new section 114AA: 'Terms used', before section 114A.

Section 114AA defines terms used in this Division in relation to the issuing of infringement notices.

Section 114AA(1) will provide definitions for the terms **alleged offender**, **owner** and **vessel offence**, which are self-explanatory.

Section 114AA(2) will provide that words and definitions in section 11 of the *Criminal Procedure Act 2004* have the same meaning in this Division unless the contrary intention appears.

**Clause 57. Section 114A: 'Infringement notices'; amended**

Clause 57 will amend section 114A which provides for the issuing of infringement notices. The changes will bring the current procedures into line with current procedures specified under the *Criminal Procedure Act 2004*.

Clause 57(1) will amend section 114A(1) to remove the requirement to give the infringement notice to the offender and replace this with a more generalised requirement relating to issuing infringement notices.

Clause 57(2) will delete and insert new sections 114A(2) and 114A(3A).

Section 114A(2) will provide requirements for the issuing of infringement notices that are consistent with section 9(1) of the *Criminal Procedure Act 2004*. This will update and replace the current provisions which are not consistent with the Criminal Procedure Act. The section will include requirements for the details that are to be provided in an

infringement notice, including that it must advise the recipient that they have 28 days to either pay the identified penalty or elect to have the matter dealt with by prosecution.

Section 114A(3A) will provide that an infringement notice must be served within 45 days of the offence being committed. This period is similar to that allowed for in the *Fish Resources Management Act 1994* and will provide a practical timeframe for dealing with minor offences that occur in remote areas.

Clause 57(3) will delete and replace section 114A(4), which requires the infringement notice to be handed to the offender, with provisions that are consistent with the requirements for infringement notices in the *Criminal Procedure Act 2004*.

Clause 57(4) replaces the reference to 'person' in section 114A(5) and replaces it with 'alleged offender' as it is the alleged offender that an infringement notice would be handed to, if it is handed to a person.

Clause 57(5) will amend section 114A(6) to remove the currently set timeframe of 28 days within which the CEO may withdraw an infringement notice. This will provide greater flexibility to the CEO to withdraw a notice before it is finally dealt with.

Clause 57(6) will remove the reference to 'person' in section 114A(8) and replace it with 'alleged offender' as is the case proposed in clause 54(4), above.

#### **Clause 58. New Sections 114B to 114E inserted**

Clause 58 will insert new sections 114B to 114E. These will provide more flexible requirements regarding infringement notices for vehicle and vessel offences, such as unlawful parking or mooring within CALM Act managed lands or waters. The changes will provide for infringement notices to be issued to the owner of a vehicle or vessel by placing the notice on the vehicle or vessel. This will greatly streamline the issuing of such notices which must currently, unlike the situation applying to local governments, be issued in person to the actual offender. In many instances, the offender may not be present at the time the infringement notice is issued (for example, where a vehicle has been illegally parked). Currently the enforcement officer must stay with an unlawfully parked vehicle until the driver returns, making dealing with relatively minor infringements impractical.

Section 114B(1) will provide for infringement notices to be placed on a vehicle even though the identity of the offender may not be known. This is similar to the current situation with local government parking infringements.

Section 114B(2) will require that the infringement notice must include a statement explaining that the person responsible for complying with the infringement notice is the person in charge of the vehicle at the time of the offence.

Section 114B(3) explains that if there is more than one person responsible for the offence, and the notice has been served on only one person, then the responsible person is either the person who responds to the notice or a person chosen by the CEO. The person would normally be the person identified as the driver.

Section 114B(4) will provide a penalty of \$1,000 for a person interfering with an infringement notice to discourage people removing infringement notices from other vehicles. This is designed to help ensure that the responsible person is made aware of the infringement and the means of dealing with it.

Section 114C will set out the criteria for determining the onus of responsibility for vehicle offences. This section is directly modelled on section 13 of the *Criminal Procedure Act 2004*.

Section 114C(1) will establish that the person responsible for dealing with the infringement is the person who was the driver or in charge of the vehicle at the time of the offence. This provision provides for the person who received the notice to pay a modified penalty or to, if the person who received the notice was not the responsible person, provide the CEO within 28 days after the date of the infringement notice with the name and address of the person who was responsible for the vehicle, or for the person to provide information that the vehicle was stolen or being used unlawfully when the infringement occurred.

Section 114C(2) will provide that the CEO may withdraw the infringement notice if the person referred to above advises that another person was in charge of the vehicle when the offence was committed as specified in proposed 114C(1)(b).

Section 114C(3) will allow the CEO to decline to withdraw the infringement notice if the responsible person provides an alternative person's identity for the offence or advises that the vehicle was stolen or being unlawfully used when the infringement was committed. If the CEO declines to withdraw the infringement notice, the CEO must advise the responsible person of that decision.

Section 114C(4) will provide for the infringement notice to be issued to the responsible person even if that person is not an individual, meaning that the notice may be given to the registered owner if that owner is a corporation or the like and not an individual.

Section 114C(5) will allow for the infringement notice to be enforced on the person who is presumed responsible for the vehicle in the absence of evidence that another person committed the offence.

Section 114C(6) will provide that only the responsible person or the actual offender may pay the modified penalty or be sentenced for the offence and not both.

Clause 58 will insert new section 114D which provides for infringement notices to be issued for vessel offences. The provisions are generally the same as those provided for in section 114B for vehicle offences except that they apply in 114D to vessel offences. As in proposed section 114B(4) a penalty of \$1000 will also apply for persons interfering with an infringement notice attached to a vessel under proposed section 114D(4).

Clause 58 will insert new section 114E which sets out the criteria for determining the onus of responsibility for vessel offences. This section is also directly modelled on section 13 of the *Criminal Procedure Act 2004* and proposed section 114C dealing with vehicles.

#### **Clause 59. New Section 121 inserted**

Clause 59 will insert a new section 121 which provides for entry powers in relation to occupied CALM Act land, i.e. CALM Act land that is subject to a CALM Act permit, licence, agreement or forest lease, or a mining tenement. These powers are intended to be specific to enforcement officers of the Department who require in the event of a fire or other emergency situation, to conduct lawful inspections, management actions or other departmental enforcement functions. These powers are required to help ensure safe operations of fire management and efficient management of CALM Act land.

Section 121(1) will provide for specific definitions to apply to terms used in this section. These definitions are self-explanatory. Occupied land is defined to include CALM Act land, private land that the CEO has agreed to manage under a section 8A agreement, and other Crown land that the CEO has been assigned management responsibility under section 8C. Land in these categories is occupied land if it is subject to a permit, licence, agreement, forest lease, a mining tenement under section 8(1) of the *Mining Act 1978*, or under a petroleum authorisation or licence pursuant to CALM Act subsections 13E(1), (3)(b) and (4).

Section 121(2) will provide for a CALM Act enforcement officer to enter the above specified occupied land at any time, for the authorised purposes identified above.

Section 121(3) will require that enforcement officers must give occupiers reasonable notice of their intention to enter the land if it is practicable to do so. It is envisaged that it may be impractical to do so in an emergency fire management situation, particularly if the occupier is not present on the land at the time.

Section 121(4) will provide for enforcement officers to use vehicles, machinery or other equipment to effect an entry or to use on the land for the purpose of the entry. This will cover the use of specialised vehicles for fire management.

Section 121(5) will limit the power of the enforcement officer to enter a residence or other private premises on the occupied land unless the occupier of the premises has consented to that entry. This is to safeguard the privacy of the occupier.

Section 121(6) will provide that the powers provided in this section do not limit those powers conferred on CALM Act enforcement officers elsewhere in the CALM Act, as specified, or the *Bush Fires Act 1954* which are subject to authorisation under CALM Act section 45(3a).

**Clause 60. Section 126: ‘Regulations, general provisions as to’; amended**

Clause 57 will amend section 126 which provides for the making of regulations. It will insert a new section 126(3) which specifically provides that regulations made under this section or section 130 may prohibit or regulate commercial operations on the land to which they apply. It is unclear in the absence of this provision that current regulations regulating commercial operations on CALM Act lands are fully lawful.

**Clause 61. Section 130: ‘Regulations as to national parks etc.’; amended**

Clause 58 is technical amendment required to address a current inconsistency. It will amend section 130(3) to remove reference to the now defunct section 16B(3) (which was deleted by the *Conservation and Land Management Amendment Bill 2011*) and replace this with reference to the correct section, section 8B(2).

**Clause 62. Section 131: ‘Land in name of Conservator of Forests at 22 Mar 1985 vested in CEO’; amended**

Clause 62 will amend section 131 with technical and consequential amendments arising from other changes to the CALM Act.

Clause 62(1) will amend section 131(1) so that the incorrect reference to the CEO is corrected to the ‘Executive Body.’ This reference to the CEO was established inadvertently when section 209 of the *Machinery of Government (Miscellaneous Amendments) Act 2006* made blanket amendments which deleted references to the “Executive Director” and replaced them with “CEO”. Previously, section 38 of the CALM Act set out that the Executive Director was a body corporate, whereas now under section 36 the CEO governs the Executive Body. It is appropriate that land held

in the name of the Conservator of Forests at 22 March 1985 (when the CALM Act came into force), should be vested in the Executive Body rather than the CEO.

Clause 62(2) will amend section 131(2) so that the reference to section 9(3), which is to be amended through this Bill is deleted and replaced with a reference to the replacement section, section 10A(7)(a), dealing with land that ceases to be State forest.

**Clause 63. Section 131A: ‘Ministerial directions, tabling of’; amended**

Clause 63 will amend section 131A(1), (which provides for the Minister to table directions), to remove reference to directions given to the Marine Authority (under section 26C(1), as the Marine Authority and Conservation Commission are to be replaced by the proposed new Commission. The requirement under section 24(1) that directions given by the Minister to the Commission be tabled is to be retained.

**Clause 64. Section 132: ‘Protection from personal liability’; replaced**

Clause 64 will delete and replace section 132 so that the protection from liability that it provides is consistent with provisions in other modern statutes such as: section 8A of the *Ports Legislation Amendment Act 2014*; section 581 of the *Mental Health Bill 2013*; and section 122 of the *Medicines, Poisons and Therapeutic Goods Bill 2013*. The new proposed section 132 introduces specific protection for the State in relation to civil liability in relation to managing or controlling fire on CALM Act land, section 8A (management agreement) land and section 8C (other Crown land being managed by the CEO).

Section 132(1) will update the current personal liability protection with personal protection for civil liability for anything done by persons in good faith during the performance of their functions under the CALM Act or *Wildlife Conservation Act 1950*. This applies to persons operating under the CALM Act, or *Wildlife Conservation Act 1950*.

Section 132(2) will extend the protection from civil liability to the State in relation to preventing, managing or controlling fire on land to which the CALM Act applies, and to section 8A or 8C land.

Section 132(3) will provide that the protection from civil liability also applies to the specified persons. These include: parties to section 8A management agreements; members of joint management bodies established under section 8A; parties to a section 56A joint management agreement; and members of a section 56A joint management body.

Section 132(4) will clarify that the protection afforded by this section applies regardless of whether the thing being done could have been done in the absence of the CALM Act and Wildlife Conservation Act. This is a standard provision in civil liability references in State legislation.

Section 132(5) will clarify that the protection afforded by this section applies to persons not doing something that they may have otherwise done as well as to persons doing something. This is also a standard provision.

**Clause 65. Heading to Part XII: ‘Repeal, savings, transitional and validation’; replaced**

Clause 65 will delete the title of Part XII and replace it with the more complete title:

- **Part XII – Conservation and Land Management Act 1984, repeal, savings, transitional and validation**

**Clause 66. Part XIII inserted**

Clause 66 will insert a new heading for a newly specified Part XIII and new sections 157-170. The new heading will be:

**Part XIII – *Conservation and Land Management Amendment Act 2015 saving and transitional provisions***

Section 157 will provide definitions for terms used in this Part. These are self-explanatory.

Section 158 will carry forward the vesting of rights, obligation, liability and real and personal property vested in the CEO and applies these to the more appropriate holder, being the CALM Act Executive Body.

Section 159 will carry forward the current vesting of lands and waters under the Conservation Commission or Marine Authority and transfer these to the proposed new Commission.

Section 160 will provide for things done by the Conservation Commission or Marine Authority before the commencement day to be carried over to the new Commission, provided that these relate to a function of the new Commission.

Section 161 will carry forward the responsibilities of the Conservation Commission or Marine Authority in relation to things that should have, or should not have, been done, to the new Commission.

Section 162 will carry forward the effect of reports and decisions of the Marine Authority through to the new Commission.

Section 163 will carry forward responsibility for management plans prepared by the Marine Authority or Conservation Commission to the new Commission.

Section 164 will provide that any exemptions given to the Conservation Commission or Marine Authority under section 57A of the former CALM Act carry forward to the new Commission.

Section 165 will provide the transitional provisions for members of the Conservation Commission and Marine Authority. Those members will cease to hold office on the commencement day of the Amendment Act, but are eligible to be appointed as members of the Commission.

Section 166 will provide for relevant property from the Conservation Commission and Marine Authority to be transferred to the new Commission.

Section 167 will provide for the records and data of the Conservation Commission and the Marine Authority to be transferred to the Commission.

Section 168 will provide for transitional regulations to be made if necessary to effect the transition from the current CALM Act to the amended Act.

Section 169 is a saving provision safeguarding the transition from the current CALM Act to the amended Act in terms of contracts, instruments or transfers of property applying at that time under the CALM Act.

Section 170 will provide that this Part of the Amendment Act does not limit the operation of the *Interpretation Act 1984*.

**Clause 67. Schedule heading: ‘Provisions as to constitution and proceedings of the Conservation Commission, the Marine Authority and the Marine Committee’; replaced**

Clause 67 will delete the above heading to the schedule and replace it with:

**Schedule 1 – Provisions as to constitution and proceedings of the Commission**

This amendment removes reference to the former Conservation Commission, Marine Authority and Marine Committee.

**Clause 68. Schedule amended**

Clause 68 will amend the Schedule clauses 4(1) and 5(A) which provide for meetings of the Commission and appointment of committees by the Commission. It removes references to the ‘controlling body’ as a generic term for the Conservation Commission and Marine Authority and replaces them with references to the Commission.

**Clause 69. Various references to “Conservation Commission” amended**

Clause 69 provides in a table format, the remaining provisions in the CALM Act within which there is a reference to the ‘Conservation Commission’ that are to be replaced with reference to the new Commission.

**Clause 70. Various references to “controlling body” amended**

Clause 70 provides in a table format, the remaining provisions in the CALM Act within which there is a reference to the ‘controlling body’ which are to be replaced with a reference to the Commission.

**Clause 71. Various references to “associated body” amended**

Clause 71 provides in a table format, the remaining provisions in the CALM Act within which there is a reference to ‘associated body’ which are to be replaced with a reference to ‘joint responsible body’.

**PART 3 — Other Acts amended**

**Clause 72. Constitution Acts Amendment Act 1899 amended**

Clause 72 will provide for the *Constitution Acts Amendment Act 1899* to be amended so that Schedule V Part 3 of that Act refers to the new Commission, replacing reference to the Conservation Commission.

**Clause 73. Fish Resources Management Act 1994 amended**

Clause 73 will provide the consequential amendments to the *Fish Resources Management Act 1994* (FRMA) to give effect to the provisions changing section 13B of the CALM Act to clarify that restrictions on recreational and commercial fishing in specified areas of marine parks specified in the section 62 classification notice may apply to types of recreational and commercial fishing and also to parts of such areas. This will remove the requirement in special purpose areas (and recreation areas for recreational fishing) that any such restriction applies to all forms of recreational and commercial fishing and over entire areas.

The proposal involves replacing sections 136A(1) and (2) of the FRMA, with new sections 136A(1) and (2), amending section 136A(4) and introducing new sections 136A(5) and (6).

Section 136A(1) will carry forward the restrictions on commercial fishing in marine reserves to clarify the authorisations that may be made under the FRMA in keeping with the changes made in the CALM Act; in particular allowing the ability for restrictions to apply in parts of special purpose areas, as well as entire areas and to types and classes of commercial fishing in special purpose areas, rather than all commercial fishing.

Section 136A(2) will carry forward the restrictions on recreational fishing in marine reserves to clarify the authorisations that may be made under the FRMA in keeping with the changes made in the CALM Act; in particular allowing for restrictions to apply in parts of special purpose and recreation areas, as well as entire areas and to types and classes of recreational fishing in these areas, rather than to all recreational fishing.

Section 136A(4) will be amended to clarify that an existing commercial authorisation for an area that becomes part of a marine reserve where such fishing is restricted, or for which certain types of fishing are restricted, may be continued in other areas where there is no such restriction. The amendment to paragraph (b) is grammatical as the provision may now apply to a type or class of commercial fishing.

Section 136A(5) will clarify that authorisations that apply to areas that become incorporated in marine reserves may still be given to recreational fishing, or types or classes of recreational fishing, in those areas of marine parks classified as recreation or special purpose areas, or parts of these areas, as is consistent with the CALM Act classification notice.

Section 136A(6) provides for renewal of FRMA authorisations for commercial or recreational fishing in locations that become marine parks where the authorised activity is not excluded by a marine park area classification notice applying to that location.

**Clause 74. *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* amended**

Clause 74 will clarify that an entitlement for compensation may arise where commercial fishing of a type or class is restricted from continuing under a CALM Act classification notice applying to a marine park where those types or classes of commercial fishing are excluded and other types or classes of commercial fishing continue. This situation may arise due to the clarification under proposed section 13B that marine park special purpose areas may be classified to restrict types or classes of commercial fishing, as an alternative to restricting all commercial fishing.

**Clause 75. *Forest Products Act 2000* amended**

Clause 75 will provide for the *Forest Products Act 2000* to be amended so that sections 3 and 6(3)(b) of that Act refer to the new Commission instead of the Conservation Commission.

**Clause 76. *Land Administration Act 1997* amended**

Clause 76 will provide for the *Land Administration Act 1997* to be amended so that section 46(10)(b)(ii) is deleted. This removes reference to the Marine Parks and Reserves Authority as a body which may have the care, control and management of reserves vested with it.

**Clause 77. *Mining Act 1978* amended**

Clause 77 will provide for the *Mining Act 1978* to be amended so that section 40B(1)(b) of that Act refers to the new Commission instead of the Conservation Commission.

**Clause 78. *Swan and Canning Rivers Management Act 2006* amended**

Clause 78 will provide for the *Swan and Canning Rivers Management Act 2006* to be amended so that Schedule 5 item 3 of that Act refers to the new Commission instead of the Conservation Commission. The deletion of item 4 will delete reference to the Marine Authority.

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