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# **EXPLANATORY MEMORANDUM**

## **SWAN AND CANNING RIVERS MANAGEMENT BILL 2005**

**OCTOBER 2005**



# Swan and Canning Rivers Management Bill 2005

## OVERVIEW OF THE BILL

The purpose of this Bill is to make provision for the protection and enhancement of the ecological and community benefits and amenity of the Swan and Canning Rivers and associated lands.

The new legislation improves the State's ability to coordinate management of activities that may affect the Swan and Canning Rivers.

The legislation will replace the *Swan River Trust Act 1988* and the *Environmental Protection (Swan and Canning Rivers) Policy 1997*.

The *Swan River Trust Act 1988* is principally focussed on the control of development in the Swan and Canning rivers and adjacent reserves. It does not deal with the roles and responsibilities of other State agencies and local governments in protecting the rivers. While the *Environmental Protection (Swan and Canning Rivers) Policy 1997* deals broadly with these issues, it is not specific regarding coordination, responsibilities, implementation and reporting arrangements.

The new legislation consolidates these two statutes as the basis for effective protection of the health of the Swan and Canning Rivers.

This will be achieved through:

- establishing the Swan Canning Riverpark;
- enabling ecological and community benefits and amenity targets to be set for the protection of the Riverpark, and establishing the role of State agencies and local governments in working to achieve these objectives;
- enabling development of a river protection strategy and the associated management plans necessary for achievement of the targets;
- providing arrangements for collaborative agreements between the Swan River Trust and others to achieve the objectives of the legislation;
- providing opportunities for community involvement in establishing targets and management arrangements;
- establishing arrangements for assessing and reporting on the implementation of management arrangements and the achievement of targets;
- reconstituting membership of the Swan River Trust;
- streamlining and providing more transparent processes for assessment of development proposals affecting the rivers; and
- establishing more effective enforcement arrangements.

An examination of the Bill on a clause by clause basis is outlined below.

## **Part 1 - Preliminary**

This Part contains the short title, commencement provisions, definitions of the terms used in the Bill, provisions for binding the Crown, objectives and principles of the Bill, the relationship to other Acts and native title rights and interests provisions.

- Clause 1:** A formal clause titling the Bill.
- Clause 2:** Provides for the commencement of the proposed Act on a day fixed by proclamation. Different days may be fixed for different provisions to commence.
- Clause 3:** Defines words and expressions used in the Bill. These terms are generally consistent with the same definitions in other legislation.
- Clause 4:** States that the Act binds the Crown.
- Clause 5:** Recognises the environmental, social and economic values of the rivers – encompassed in the term ‘ecological and community benefits and amenity’, the needs of current and future generations and the interests of the community, including the Nyungah community, in management of the rivers. Provides a table of principles for guidance in developing management arrangements to meet multiple objectives.
- Clause 6:** Ensures that consideration of the objectives and principles is integrated into the functions of State agencies and local governments listed in Schedule 5, but does not override or compromise their ability to undertake those functions.

This clause also provides that other legislation continues to apply, except where the contrary intention is expressed. A process for dispute resolution is provided where there is uncertainty about whether the provisions of this legislation or those of another written law apply.

Under this legislation application of the principles set out in clause 5 will need to be balanced in a wide variety of circumstances, without substantially interfering with the operations of other written laws. This will involve considering different perceptions of what the environmental, social and economic values are and their relative importance. The appropriate processes for this is consultation and negotiation. It would be unduly onerous and frustrate the administration of the legislation to subject the application of the principles to judicial review. Therefore, this clause provides that the principles do not provide the basis for administrative law actions.

- Clause 7:** Provides that the legislation does not affect any native title rights or interests.

## **Part 2 – Land and waters to which this Act applies**

**Clause 8:** Refers to the land and waters described in Schedule 1. The catchment area is the catchments of the Swan and Canning rivers and their tributaries, and the catchment of the Avon River and its tributaries.

**Clause 9:** Refers to the land and waters, within the catchment area, described in Schedule 2. The Swan Canning Riverpark does not include any private land.

**Clause 10:** Refers to the land and waters within the catchment area and the area described in Schedule 3. The development control area is the same as the area designated as the management area under the *Swan River Trust Act 1988*. The only private land within this area is that already included in the Metropolitan Region Scheme Parks and Recreation Area.

**Clause 11:** Reserves the waters and riverbed of parts of the Swan, Canning, Helena and Wungong rivers in the care, control and management of the Swan River Trust. Excludes the parts of the riverbed that are within the Swan Estuary Marine Park and its associated nature reserves, or are part of Walyunga National Park. Refers to the extent of the River reserve as described in Schedule 4.

This clause also cancels the vesting in the Minister for Planning and Infrastructure of the riverbed within the Port of Perth. However, the administrative boundary proclaimed under Section 10 of the *Shipping and Pilotage Act 1967* that defines the Port of Perth, will remain in place. This ensures that management of maritime issues and associated infrastructure, such as navigational aids and facilities, will continue to be the responsibility of the Department for Planning and Infrastructure under that Act and other maritime legislation will continue to apply.

**Clause 12:** Provides that control of erosion and maintenance of river walls is a joint responsibility of the Swan River Trust and the local government or State agency responsible for the adjacent land. The area to which this applies extends 2 metres, measured horizontally, either side of high water mark, and can be varied by agreement. High water mark is defined as the spring high tide level, or, in non-tidal waters, the water level in winter.

This clause resolves the uncertainty about responsibility for controlling erosion and providing and maintaining river walls, particularly where the shoreline forms a boundary between land managed by local government and the river bed that is a State responsibility.

**Clause 13:** Allows for regulations to amend Schedule 1, 2, 3 or 4 in relation to boundaries.

**Clause 14:** Sets out the requirements for proof of boundaries referred to in Schedule 1, 2, 3, or 4.

**Clause 15:** Provides for questions arising as to the boundary of the catchment area, development control area, Riverpark, River reserve or Riverpark shoreline to be determined by the Governor.

## Part 3 – Swan River Trust

### Division 1 – Establishment and management

This Part, and Schedule 6, sets out the establishment of the Swan River Trust, the membership and constitution and proceedings of the board.

- Clause 16:** Establishes the Swan River Trust as a statutory authority. Under clause 12 of the Swan and Canning Rivers (Consequential and Transitional Provisions) Bill 2005, the Trust is a continuation of the Trust established under the *Swan River Trust Act 1988*.
- Clause 17:** Provides that the Trust is an agent of the Crown.
- Clause 18:** Sets out the management structure for the Trust.
- Clause 19:** Provides for a board of eight members, seven of whom are appointed by the Minister. Retains the existing requirement for the Minister to appoint one of the seven from nominees provided by the Western Australian Local Government Association.

It also provides for the eighth member to be the chief executive officer of the Department for Planning and Infrastructure, or, with the approval of the Minister responsible for the Trust, his/her nominee. This differs from the current arrangement in the *Swan River Trust Act 1988* where one member of the board is “the holder of such office in the Western Australian Planning Commission established by the *Western Australian Planning Commission Act 1985* as the Minister to whom the administration of that Act is committed may from time to time nominate”. The change is required as a result of the separation of the Department for Planning and Infrastructure from the Western Australian Planning Commission (WAPC).

The chief executive officer of the Department for Planning and Infrastructure (DPI) is a member of the WAPC appointed under Section 5(c)(i) of the *Western Australian Planning Commission Act 1985*. The appointment of the chief executive officer of DPI to the board of the Swan River Trust also reflects the more strategic role of the Trust under this legislation, and ensures maintenance of the connection between the planning functions of the WAPC and the Trust.

This clause also defines the knowledge and experience that, between them, members of the board are to have. It acknowledges the particular significance of the Swan and Canning rivers to the Nyungah community, and the interest of the rural community in management of external influences on the rivers.

- Clause 20:** Provides that the constitution and proceedings of the board are set out in Schedule 6.
- Clause 21:** Provides for the Minister to set remuneration and travelling allowances for members of the board on the recommendation of the Minister for Public Sector Management.

**Clause 22:** Sets out the arrangements for local government or redevelopment authority nominees to participate in meetings of the board that affect their interests. The nominee has all of the functions of a member, including the right to vote, on matters affecting the interests of the local government or redevelopment authority.

## **Division 2 – Functions and powers**

**Clause 23:** Sets out the functions of the Trust in relation to the protection and enhancement of ecological and community benefits and amenity of Riverpark. It also sets out other functions of the Trust in relation to planning and development affecting the rivers, carrying out works, providing public information and assessing the state of the rivers and reporting to the Minister.

**Clause 24:** Sets out the powers of the Trust.

**Clause 25:** Sets out the requirements for the Trust to consult and collaborate with those who may be affected by the performance of the Trust's functions. It also requires the Trust to have regard for a variety of matters in the performance of its functions.

To ensure there is appropriate integration of the functions of this legislation and the broader activities in natural resource management carried out by community groups in the catchment area, this clause also requires the Trust to work closely with these groups. This is of particular importance to ensure consistency with the regional strategies of the Swan and Avon Catchment Councils.

**Clause 26:** Sets out the requirements for the Trust to consult with local governments and redevelopment authorities referred to in Schedule 7 in matters that affect their interests.

**Clause 27:** Provides for the Trust to enter into binding arrangements with a person or an organisation concerning activities that are within the functions of both parties to be taken jointly. Such arrangements require the approval of the Minister, and do not relieve either party of any other obligations under this or other legislation.

**Clause 28:** Enables the Trust to enter into an agreement with the owner, lessee or licensee of private land to allow the Trust to manage the land as if it were part of the development control area or Riverpark, or to provide access to part of the development control area or Riverpark.

**Clause 29:** Sets out the arrangements for the Trust to be able to lease parts of the River reserve. This is a common provision that enables public authorities to lease Crown land they are responsible for.

Clause 14 of the Swan and Canning Rivers (Consequential and Transitional Provisions) Bill 2005 provides for the continuation of existing leases made under the *Marine and Harbours Act 1981* as though they were leases made with the Swan River Trust.

Clause 29 also sets out the arrangements to enable the Department for Planning and Infrastructure to manage leases as an agent of the Trust, and retain the revenue.

- Clause 30:** Provides that the Trust may issue a default notice to a lessee who fails to comply with any term or condition of a lease. This clause also provides a penalty for failure to comply with a default notice. This provides the capacity to deal with a lessee's failure to comply with conditions of a lease that do not warrant cancellation of the lease.
- Clause 31:** Enables the Trust, where it is satisfied that a lessee has failed to comply with a condition of the lease, to notify the lessee of its intention to cancel the lease. This clause provides for the lessee to apply to the State Administrative Tribunal for review of the decision. The lease cannot be forfeited where the application for review is upheld.
- Clause 32:** Sets out the arrangements for the Trust to be able to grant a licence in respect of the River reserve. Provides that it is an offence to contravene the conditions of a licence. This provides the capacity to deal with a licence holder's failure to comply with conditions of a licence that do not warrant cancellation or suspension of the licence. This clause also enables the Trust to cancel or suspend the licence. The licence holder may apply to the State Administrative Tribunal for review of the decision.
- Clause 33:** Enables the Trust to delegate some of its functions.
- Clause 34:** Allows the Minister to direct the Trust in the exercise or performance of its functions, either generally or specifically, and requires the directions to be included in the Trust's annual report.
- Clause 35:** Empowers the Minister to have access to information from the Trust.
- Clause 36:** Enables the Trust to appoint committees to assist it in the performance of its functions.

### **Division 3 – Staff and facilities**

- Clause 37:** Provides for the appointment of a General Manager and staff, and for these officers to be subject to the control of the board. This clause requires the chief executive officer responsible for administering the *Environmental Protection Act 1986* to provide the necessary officers.
- Clause 38:** Enables the Trust, with the agreement of the Minister, to make arrangements to use other public sector officers with the agreement of the relevant State agency.

## **Division 4 – Inspectors**

This Division, together with Division 3 of Part 8, provides for more efficient enforcement arrangements by enabling officers from other public authorities to enforce regulations under this and other legislation.

**Clause 39:** Enables the appointment of any public officer as an inspector. This clause enables any officer of a State agency or local government to be appointed as an inspector and for the scope of the inspector’s functions to be specified in the appointment. This provides the potential for a larger pool of officers with enforcement powers, consistent with their level of training.

Collaborative arrangements will provide the mechanism for the Trust and other agencies to negotiate training, funding and enforcement protocols in relation to the appointment and operation of inspectors.

This clause also provides that police officers are ex-officio inspectors.

**Clause 40:** Requires the General Manager to provide an inspector with an identity card and for an inspector to produce the card when requested to do so by a person who is the subject of an investigation.

## **Division 5 – Financial provisions**

**Clause 41:** Provides for the Trust to manage its own finances.

**Clause 42:** Requires that funds received by the Trust must be credited to the Swan River Trust Account.

**Clause 43:** Enables the Trust, with the approval of the Treasurer, to invest moneys in its account until they are required by the Trust.

**Clause 44:** Provides for the *Financial Administration and Audit Act 1985* to apply to the Trust and its operations.

**Clause 45:** Enables the Trust to borrow from the Treasurer.

## **Division 6 – Miscellaneous**

**Clause 46:** Enables the Trust to have and use a common seal in the execution of documents.



## **Part 4 – Targets and strategic documents**

This Part enables State agencies, local governments and the community to collaborate effectively to maintain the ecological and community benefits and amenity of the Riverpark.

It provides for setting targets, developing management arrangements necessary to achieve the targets and implementing those arrangements. It also provides for monitoring and reporting on their effectiveness, and for the revision of targets and management arrangements.

While this is undertaken by consultation between public authorities and others, the ministerial processes for approving the management arrangements preserve the accountability of public authorities to their Ministers. This provides the basis for requiring public authorities to comply with these management arrangements.

### **Division 1 – Ecological and community benefit targets**

**Clause 47:** Enables targets for the Riverpark and the catchment area, where they relate to the Riverpark targets, as well as monitoring and reporting arrangements to be prescribed in regulations. This will ensure there is parliamentary scrutiny of the targets. The targets provide guidance in the development of management arrangements that are required. This clause specifies that failing to meet a target is not an offence.

**Clause 48:** Provides that the Trust must endeavour to consult with public authorities and persons likely to be affected by the setting of targets before they are included in regulations.

**Clause 49:** Requires the Trust to publish the draft regulations relating to targets on its web-site and advertise the draft regulations for public comment.

**Clause 50:** Requires the Trust to provide at least 60 days for public comment on the draft regulations.

### **Division 2 – Strategic documents**

Strategic documents are:

- the river protection strategy;
- management programmes prepared by the Trust; and
- documents prepared by others and approved by the Minister.

**Clause 51:** Makes provision for a river protection strategy. The river protection strategy will establish the issues that need to be managed, priorities, roles and strategies for achieving the targets set under clause 47. The strategy will also guide development of management programmes – these could include programmes to deal with issues such as nutrient management, protection of foreshores, biodiversity protection, control of development and provision of commercial and recreational facilities and services.

**Clause 52:** Makes provision for the *Environmental Protection (Swan and Canning Rivers) Policy 1997* (EPP) Comprehensive Management Plan to remain in effect as management guidelines, following revocation of the EPP until a river protection strategy is approved.

This ensures that revocation of the *Environmental Protection (Swan and Canning Rivers) Policy 1997* does not result in a gap between the current management arrangements and those developed under the legislation. However, the requirement for State agencies and local governments to comply with the River Protection Strategy do not apply to Riverplan because it has not been approved in accordance with the processes set out in clause 62.

**Clause 53:** Sets out the content requirements for management programmes, including for the development control area, and requires management programmes to be consistent with the river protection strategy.

**Clause 54:** Enables codes, standards and similar documents to be included in a river protection strategy or management programme.

**Clause 55:** Enables the Minister, on the advice of the Trust, to approve management documents prepared by others where they are consistent with the river protection strategy or a management programme, and there has been appropriate consultation in their preparation.

This approach avoids duplication by enabling existing programmes, and those developed by others, to be approved for the purposes of this legislation. Duplication is also avoided by enabling management programmes to incorporate established codes and standards. This is particularly useful in providing recognition to industry codes of practice.

### **Division 3 – Preparation, approval and revision of river protection strategy and management programmes**

**Clause 56:** Requires the Trust to prepare drafts of a river protection strategy, management programme for Riverpark, management programme for the development control area and drafts of other management programmes necessary to give effect to the river protection strategy as soon as practicable following proclamation.

**Clause 57:** Requires the Trust to consult State agencies, local governments, the Western Australian Local Government Association and others in preparation of the river protection strategy.

**Clause 58:** Sets out the requirements for the Trust to advertise the draft strategy or management programme for comment by publication of a notice in the *Gazette* and newspapers, and to make them available at the Trust's office and on its website.

**Clause 59:** Provides for the setting of a timeframe for submissions on the draft strategy or management programme and the form they must take.

- Clause 60:** Requires the Trust to consider submissions on the draft strategy or management programme, amend it if necessary and refer it to those consulted under clause 57. This clause also provides for a period of **one month** for those consulted to request variations to the draft strategy or management programme.
- Clause 61:** Requires the Trust to submit the draft strategy or management programme to the Minister and for the Minister to consult and seek the agreement of other Ministers whose responsibilities are affected. The clause also enables the Minister to instruct the Trust to make changes to the draft strategy. It also allows the Governor to resolve disputes between the Ministers and for the Trust to make any changes necessary to the draft strategy.
- Clause 62:** Enables the Minister to approve the draft river protection strategy and draft management programmes that are consistent with the river protection strategy, if the Ministers consulted under clause 61 have agreed.
- Clause 63:** Requires that a notice that a strategic document has been approved is to be published in the *Gazette*, and provides that a strategic document comes into effect on the day the notice is published, or on a date specified in the strategic document.
- Clause 64:** Requires the river protection strategy and management programmes to be reviewed as soon as practicable after they have been in effect for 5 years. The clause also sets out the process for reviewing and revising the documents.

#### **Division 4 – Compliance with strategic documents**

- Clause 65:** Requires the Trust and authorities listed in Schedule 5 to perform their functions that affect the development control area and Riverpark in accordance with the strategic documents except where the provisions of clause 6 apply and in accordance with the requirements of clause 72.
- Clause 66:** Requires the Trust to monitor and report to the Minister on the effectiveness of strategic documents and targets and on the achievement of targets and compliance with strategic documents. The clause also enables the Trust to obtain information from public authorities that is necessary to perform its functions and advise the Minister of changes needed to targets or strategic documents.

#### **Part 5 – Development in development control area**

This Part sets out arrangements for considering applications for development in the development control area. Its provisions are consistent with those of the *Swan River Trust Act 1988*, but include provisions for wider consultation. This is in accordance with the recommendations of the review of the Swan River Trust carried out by Dr Geoffrey Syme in 2002 that there should be more open community based decision making.

Under this legislation, the community will be able to make submissions at several stages in the assessment process.

- Clause 67:** This clause defines the terms used in Part 5.
- Clause 68:** Enables land and waters owned or vested in a public authority, and used for the purpose for which they were reserved, to continue to be used for those purposes.
- Clause 69:** Specifies that this Part only applies to developments that are wholly within the development control area. It does not apply to developments lawfully carried out prior to proclamation.
- Clause 70:** Provides that it is an offence to undertake a development without the approval of the Minister or the Trust.
- Clause 71:** Requires parliamentary approval to fill or reclaim any part of the development control area normally covered by water in excess of one hectare. This clause also makes it an offence to do so without such approval.

Under the *Swan River Trust Act 1988*, the equivalent provision referred to reclamation undertaken within a period of 12 months. Clause 71 will require referral to Parliament of reclamation proposals that would result in the filling of one hectare over a period of five years. This deals with concerns over the long term cumulative impact of reclamation.

- Clause 72:** Sets out the way in which development applications are to be made. This clause also requires an application to be signed by the owner of the land on which the development is to occur.
- Clause 73:** Requires the Trust to refer applications to relevant local governments and other public authorities, which may, within 42 days, make submissions to the Trust on the proposed development. The Trust cannot make a report on the proposed development until this period has expired.
- Clause 74:** Sets out the requirements for public notification of development applications received by the Trust. These requirements include publication of a notice on the Trust web-site and, where considered appropriate, publication of a notice in newspapers. Provides also for submissions on the proposed development to be made to the Trust.
- Clause 75:** Provides for the Trust to prepare a draft report and make recommendations on the proposed development after it receives and considers any submissions. This clause requires the Trust to publish the draft report on its web-site and give a copy to the applicant, those who the application was referred to, and anyone making a submission. It also provides 14 days for submissions on the draft report to be made.
- Clause 76:** Provides for the Trust to make any changes to the draft report it considers necessary, publish it on the Trust web-site and give a copy to the Minister, the applicant, relevant local governments and public authorities and those who made a submission.

- Clause 77:** Requires the Minister, after considering the report, to approve or refuse the development, return it to the Trust for reconsideration or appoint a review committee.
- Clause 78:** Requires that a review committee must include a person with appropriate expertise in river management and planning. This clause also provides for the remuneration of its members.
- Clause 79:** Enables a review committee to consult with the applicant and any other person in preparing its report to the Minister.
- Clause 80:** Provides for the Minister to approve the development in its original or modified form, include conditions or restrictions on the approval, or refuse the application. The clause also requires the Minister to give notice in writing of the decision to the relevant parties.
- Clause 81:** Enables a financial assurance to be provided as a condition of approval.
- Clause 82:** Provides for the applicant to request within 28 days reconsideration of a condition by the Minister.
- Clause 83:** Enables the Minister to make corrections to an approval which do not alter the obligations under the approval. This clause also provides that a notice of such corrections be given to the applicant and published on the Trust web-site.
- Clause 84:** Makes provision for the Minister to authorise minor variations or extend the period of the approval. However, the Minister must consult before making such changes.
- Clause 85:** Enables the Trust to make decisions on the types of developments prescribed in regulations and sets out the process for consideration.
- Clause 86:** Requires the Trust to provide the Minister with a copy of each report and decision it makes on development applications.
- Clause 87:** Enables the Minister to revoke a decision of the Trust within 14 days of receiving a copy of the Trust decision. This clause also requires the Minister to advise relevant parties of the revocation and to deal with the application under clause 77.
- Clause 88:** Provides that it is an offence to make a false statement in connection with an application for development approval.
- Clause 89:** Makes provision for an owner of land to seek compensation where they are affected by a decision of the Trust or the Minister to refuse a development application.

## Part 6 – River protection notices

This Part allows river protection notices to be used when there is a critical need to protect the health of the rivers, generally in situations where cooperative approaches to dealing with the issue had not worked. They provide the flexibility to establish, on a case-by-case basis, the action required to resolve complex environmental problems. Such problems are not effectively dealt with by traditional ‘one size fits all’ regulatory approaches, which provide no guidance on dealing with the problems and are punitive.

For a river protection notice to be issued, reasonable grounds must be established. To do so, it would be necessary to establish a causative link between the subject of the notice and the ecological and community benefits and amenity of the Riverpark. It would also be necessary to establish that the information on which the notice is based is adequate. This ensures that the circumstances under which a river protection notice may be applied are appropriate, particularly in relation to the catchment area.

Before a river protection notice can be issued, the potential recipient must be consulted and may object to the Swan River Trust concerning the issuing of the notice. If a river protection notice is issued, the recipient can appeal under Section 100 to the State Administrative Tribunal, in which case the notice does not come into effect until the appeal is determined.

Environmental protection notices, under the *Environmental Protection Act 1986*, are designed to deal with point source pollution where urgent action is required and consequently do not include requirements for consultation or review.

- Clause 90:** Requires that reasonable grounds are established before a recommendation to issue a river protection notice can be made to the Trust. This clause also provides for a person to object to the recommendation to issue a notice.
- Clause 91:** Sets out the arrangements for issuing a river protection notice, including the right for a person to object.
- Clause 92:** Requires the river protection notice to be given to each owner or occupier of the land to which it applies.
- Clause 93:** Provides that a notice is binding on each person to whom it is given in accordance with clause 97.
- Clause 94:** Enables a memorial to be lodged against the land title to which it applies. The clause also sets out the process for lodging a memorial and the effect of the memorial.
- Clause 95:** Requires an owner or occupier of land that is the subject of a river protection notice to notify the Trust when they cease to be the owner or occupier. It also requires the new owner or occupier to be advised by the outgoing owner or occupier of the content and effect of the river protection notice. Failure to do so is an offence.
- Clause 96:** Requires that when a memorial is registered or withdrawn, a notice is given to each owner, the Western Australian Planning Commission, relevant local governments and responsible authorities.

- Clause 97:** Provides that a river protection notice is binding on new owners, but allows a mortgagee in possession 45 days before the notice becomes binding.
- Clause 98:** Enables a financial assurance to be required, and for the river protection notice to set out the procedures under which it may be called on or used.
- Clause 99:** Enables the Trust to amend or cancel river protection notices. It provides that before a notice can be amended, the recipient has 21 days in which to object to the amendment.
- Clause 100:** Provides for a person to request the State Administrative Tribunal to review a requirement contained in the river protection notice, or an amendment. The time within which an application for review can be made is 28 days as set out in Rule 9 of the *State Administrative Tribunal Rules 2004*.
- This clause also provides that a notice does not come into effect until any application for review has been determined by the State Administrative Tribunal.
- Clause 101:** Provides that it is an offence to fail to comply with a river protection notice.
- Clause 102:** Makes provision for the Trust to take action to implement the requirements of a river protection notice where a person has been convicted of an offence under clause 101, or has not complied with a requirement of the notice. This clause requires the Trust to give notice before taking action.
- Clause 103:** Enables a person taking action on behalf of the Trust to enter land and take any necessary action to implement the river protection notice. This clause also requires also the Trust to give notice before this occurs and may recover the costs of taking such action.

## **Part 7 – Investigation and enforcement**

The *Swan River Trust Act 1988* provides for the appointment of inspectors and enforcement arrangements. The provisions of Part 7 update these arrangements in accordance with current enforcement practices.

### **Division 1 – Preliminary**

- Clause 104:** Defines the terms used in this Part.

### **Division 2 – Investigative powers**

- Clause 105:** Sets out the purposes for which investigations can be undertaken.
- Clause 106:** Authorises an inspector to request personal details of a person who is committing or may have committed an offence. It also provides that failure to give these details, or give false details, is an offence.

- Clause 107:** Sets out the entry, access and investigative powers of an inspector.
- Clause 108:** Sets out the powers of an inspector to obtain information in relation to an investigation.
- Clause 109:** Enables an inspector to record the exercise of a power, including by audiovisual means.
- Clause 110:** Enables an inspector to use assistance and reasonable force in carrying out a function. However, the inspector must be authorised to do so where it is likely to cause significant damage to property.

### **Division 3 – Entry warrants**

- Clause 111:** Enables an inspector to apply, with authorisation where necessary, for an entry warrant.
- Clause 112:** Sets out the means by which an application for an entry warrant can be made and the processes for doing so.
- Clause 113:** Enables a justice to issue a warrant and sets out the contents of an entry warrant.
- Clause 114:** Provides that an entry warrant can be executed by any inspector and has effect according to its content.

### **Division 4 – Enforcement provisions**

- Clause 115:** Provides that it is an offence to obstruct or impersonate an inspector.
- Clause 116:** Provides that the Trust may by written notice direct cessation or removal etc. of an unauthorised development or reclamation or filling of an area normally covered by water. This clause makes provision for review by the State Administrative Tribunal, in which case the notice is suspended until determination of the application for review. It also provides that failure to comply with a notice is an offence and enables the Trust to undertake work required and recover costs.
- Clause 117:** Provides for the Trust to remove from the Riverpark property that is abandoned, derelict or constitutes a danger to people or the environment. The clause sets out the process for removal of such property and for recovery of costs incurred by the Trust.
- Clause 118:** Enables the Trust to recover its costs, where it has incurred costs taking action in circumstances covered by a financial assurance.



## **Part 8 – Legal proceedings**

### **Division 1 – General matters**

- Clause 119:** Enables prosecution to be instituted by a police officer or person authorised by the Trust. It also provides that an alleged offence occurred in the development control area or the Riverpark in the absence of proof to the contrary.
- Clause 120:** Requires prosecution for an offence to be commenced within 24 months after the date on which the offence is alleged to have been committed.
- Clause 121:** Sets out the circumstances under which a body corporate and its directors and managers are liable for offences against the Act.

### **Division 2 – Infringement notices**

- Clause 122:** Defines the terms used in this Division.
- Clause 123:** Enables an inspector to issue infringement notices. It also enables an extension of the time to pay the penalty or for the notice to be withdrawn.

### **Division 3 – Offences under other Acts**

Within Riverpark, inspectors need to be able to deal with a range of offences that are minor and do not require specialised skills, ongoing investigation or depend on the exercise of substantial powers. These are essentially matters that can be dealt with by an inspector on the spot, often by issuing an infringement notice. This is analogous to the general situation in parks or in local government where the enforcement powers of rangers relate to a variety of matters.

In the case of Riverpark, most of the offences appropriate for an inspector to deal with exist in a variety of regulations under other legislation. Providing similar offences in regulations under this legislation would create problems of duplication and potential inconsistency in provisions, compliance requirements and penalties. It would also be confusing to the public.

The provisions of this Division enable regulations under other legislation to be enforced in the Riverpark as though they were regulations made under this legislation.

These provisions, together with the provisions of clause 39 for appointment of inspectors and collaborative arrangements under clause 27 to coordinate enforcement activities, will enable more effective enforcement within Riverpark.

- Clause 124:** Enables regulations listed in Schedule 8 to be enforced as if they were regulations made under this Act. **The penalty provisions are those contained in the regulation.**
- Clause 125:** Provides for the power to prosecute offences committed in the Riverpark against regulations listed in Schedule 8.

**Clause 126:** Enables infringement notices to be issued for offences committed in the Riverpark against regulations listed in Schedule 8.

### **Part 9 – Swan and Canning Rivers Foundation**

**Clause 127:** Provides for the Minister to establish the Foundation as a body corporate.

**Clause 128:** Requires the Foundation to have a governing council.

**Clause 129:** Sets out the functions of the Foundation.

**Clause 130:** Provides the Foundation with the powers necessary to perform its functions.

**Clause 131:** Sets out how funds received by the Foundation are to be handled and the purposes for which they may be used.

**Clause 132:** Enables the Minister to make rules concerning the operation of the Foundation.

### **Part 10 – General**

**Clause 133:** Sets out the powers of the Minister that may be delegated and provides that the delegation takes effect when a notice is published in the *Gazette*.

**Clause 134:** Sets out the requirements for members of the Trust, committees and others to act honestly and not disclose or improperly use information. Failure to do so is an offence.

**Clause 135:** Protects members of the Trust, committees and others, who act in good faith, from a civil action.

**Clause 136:** Enables regulations to be prescribed for a variety of matters.

**Clause 137:** Requires the Minister to review the operation and effectiveness of the Act as soon as practicable after five years from its commencement. This clause also requires the report to be tabled in Parliament.

### **Schedule 1 – Catchment area**

The catchment area consists of the land and waters within the catchments of the Swan, Canning and Avon rivers, and their associated waterways.

### **Schedule 2 – Swan Canning Riverpark**

The Swan Canning Riverpark consists generally of the waterways and adjacent Crown land within the management area established under the *Swan River Trust Act 1988*. It does not include any private land.

### **Schedule 3 – Development control area**

The management area established under Schedule 1 of the *Swan River Trust Act 1988* has been renamed as the development control area.

### **Schedule 4 – River reserve**

The River reserve consists of the waterways within the management area established under Schedule 1 of the *Swan River Trust Act 1988*, except for areas vested under the *Conservation and Land Management Act 1984*, and where the waterways are an integral part of reserves vested in other public authorities.

### **Schedule 5 - Authorities**

This schedule lists the public authorities that should perform their functions with due regard to the principles and objectives of this Act.

### **Schedule 6 – Constitution and proceedings of the board**

#### **Division 1 – General provisions**

- Clause 1:** Defines the terms used in this Division.
- Clause 2:** Defines the term of office for members of the board.
- Clause 3:** Enables the Chairman to be appointed on a full-time basis, but limits the appointment of other members to part-time.
- Clause 4:** Provides for the circumstances under which the office of an appointed member becomes vacant and a member can be removed by the Minister.
- Clause 5:** Enables the Minister to grant leave of absence to a member.
- Clause 6:** Provides for the appointment of a deputy chairman by the Minister and for the deputy chairman to act as the chairman where necessary.
- Clause 7:** Provides for the appointment of temporary members by the Minister.
- Clause 8:** Sets out the provisions for meetings of the board.
- Clause 9:** Makes provision for resolutions to be made without a meeting.
- Clause 10:** Enables meetings to be held by electronic means.
- Clause 11:** Requires the board to keep accurate records of its meetings.
- Clause 12:** Enables the board to determine its own procedures.

## **Division 2 – Disclosure of interests**

- Clause 13:** Defines terms used in this Division.
- Clause 14:** Requires members of the board to disclose interests and provides for the disclosure to be recorded in the minutes.
- Clause 15:** Disqualifies members with a material personal interest from participating in deliberations of the board relating to that interest.
- Clause 16:** Provides for the Trust to determine that the interest of a member should not disqualify the member from participating in deliberations of the board.
- Clause 17:** Defines the quorum for meetings where a member of the board is disqualified from participating.
- Clause 18:** Enables the Minister to declare clauses 15 and 17 inapplicable, and requires the Minister to table the declaration in Parliament.
- Clause 19:** Provides for the tabling of the declaration in the event that Parliament is not sitting.

## **Schedule 7 – Local government authorities and redevelopment authorities**

This Schedule lists those local government and redevelopment authorities that may be entitled to provide a nominee to a meeting of the board.

## **Schedule 8 – Prescribed regulations**

This Schedule lists the regulations that can be administered as if they were regulations made under the Act.