



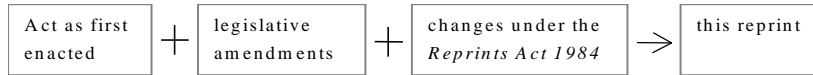
Western Australia

# **Swan River Trust Act 1988**

**Reprint 3: The Act as at 7 October 2005**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Swan River Trust Act 1988

---

### CONTENTS

---

#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Area within which this Act applies	3
5.	Relationship to other Acts	5

#### **Part 2 — Swan River Trust**

##### **Division 1 — Establishment, functions, and powers**

6.	Trust established	7
7.	Functions and powers of Trust	7
8.	Consultation and matters to be considered	8
9.	Consultation with local government	9
10.	Agreements for joint action	9
11.	Agreements as to private land	10

##### **Division 2 — Membership, constitution, proceedings, etc.**

12.	Membership of Trust	10
13.	Term of office	11
14.	Extent of duties of office	12

Contents

---

15.	Relationship to Public Service	12
16.	Extraordinary vacancies	12
17.	Remuneration and allowances of members	13
18.	Deputy chairman	13
19.	Temporary members	13
20.	Business of Trust	14
21.	Meetings of the Trust	14
22.	Proceedings of the Trust	14
23.	Local government representation	15
24.	Resolution may be passed without meeting	16
25.	Committees	16
26.	Delegation	16
27.	Protection of members	17
28.	Duties and liability of persons performing functions under this Act	18
30.	Execution of documents by Trust	19
	<b>Division 3 — Staff</b>	
31.	Staff	20
	<b>Part 3 — Management programmes</b>	
32.	Management programme	22
33.	Management programme to be prepared	22
34.	Review and revision of management programme	22
35.	Consultation	23
36.	Contents of management programme	23
37.	Programme to be publicly notified	23
38.	Public submissions	24
39.	Programmes to be referred to certain bodies	25
40.	Approval by Minister	25
41.	Notice of approval	26
	<b>Part 4 — Financial provisions</b>	
42.	Resources of Trust	27
43.	Temporary investment of moneys	28
44.	Application of <i>Financial Administration and Audit Act 1985</i>	28
45.	Application of gifts	28
46.	Power to borrow from Treasurer	28

---

<b>Part 5 — Development control</b>		
47.	Definitions	29
48.	Position of Crown	29
49.	Developments to which this Part applies	29
50.	Development to be approved	30
51.	Certain reclamations etc. to be authorised by Parliament	30
52.	Applications for approval	31
53.	Consultation with other authorities	32
54.	Public notice	33
55.	Report by Trust	33
56.	Steps to be taken by Minister	34
57.	Review committee	35
58.	Consideration and report by committee	35
59.	Minister's decision	35
60.	Request for reconsideration of condition	37
61.	Power of approval may be conferred on Trust	37
62.	False statements	38
63.	Compensation	38
<b>Part 6 — Enforcement</b>		
64.	Inspectors and honorary inspectors	40
65.	Proceedings	41
66.	Liability of directors etc. where offence committed by corporation	41
67.	Infringement notices	42
68.	Power to direct cessation or removal of development contrary to this Act	43
69.	Removal of property that is abandoned etc.	44
<b>Part 7 — General</b>		
70.	Regulations	46
<b>Schedule 1 — Area in respect of which this Act applies</b>		
<b>Schedule 2 — Local governments</b>		

Contents

---

**Notes**

Compilation table

49

**Defined Terms**



Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 7 October 2005

## Swan River Trust Act 1988

**An Act to establish a body with planning, protection and management functions in respect of the Swan and Canning Rivers and certain adjoining lands, and for connected purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Swan River Trust Act 1988*<sup>1</sup>.

### 2. Commencement

This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Interpretation

In this Act, unless the contrary intention appears —

“**appointed member**” means a person appointed under section 12(1)(a), (f) or (g);

“**chairman**” means the chairman of the Trust;

“**committee**” means a committee of the Trust established under section 25;

“**development**” means —

- (a) the erection, construction, demolition, alteration or carrying out of any building, excavation, or other works in, on, over, or under land or waters;
- (b) a material change in the use of land or waters; and
- (c) any other act or activity in relation to land or waters declared by regulation to constitute development,

but does not include any work, act, or activity declared by regulation not to constitute development;

“**honorary inspector**” means an honorary inspector appointed under section 64;

“**inspector**” means an inspector appointed under section 64;

“**land**” includes tidal land and land covered by water, whether continuously or discontinuously;



**“management area”** means the land and waters to which this Act applies by operation of section 4, and includes any land the subject of an agreement under section 11(1)(a);

**“member”** means a member of the Trust;

**“Metropolitan Region Scheme”** has the meaning assigned to it by the Metropolitan Scheme Act;

**“Metropolitan Scheme Act”** means the *Metropolitan Region Town Planning Scheme Act 1959*;

**“Minister for Planning”** means the Minister to whom the administration of the Metropolitan Scheme Act is committed;

**“public authority”** means a Minister of the Crown in right of the State, Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any written law, administers or carries on for the benefit of the State a social service or public utility;

**“Trust”** means the Swan River Trust established by section 6;

**“Water and Rivers Commission”** means the body established by section 4 of the *Water and Rivers Commission Act 1995*;

**“waters”** includes the riverbed and subsoil beneath such waters;

**“Western Australian Planning Commission”** means the body established by section 4(1) of the *Western Australian Planning Commission Act 1985*.

[Section 3 amended by No. 84 of 1994 s. 46; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4.]

#### **4. Area within which this Act applies**

- (1) This Act applies in respect of the land and waters within the area for the time being described in Schedule 1.

**s. 4**

---

- (2) Regulations may be made under section 70 amending Schedule 1 —
- (a) by adding any area to the management area or by subtracting any area from the management area; or
  - (b) by deleting the management area and substituting another area for it,
- but before any such regulations are made the Minister shall consult with —
- (c) the Minister for Planning; and
  - (d) the local government —
    - (i) of the district in which any proposed new boundary is located; and
    - (ii) of the district in which the existing boundary that would be amended is located.
- (3) Notwithstanding any increase in the area to which this Act applies effected by regulations referred to in subsection (2), any act or thing lawfully undertaken, and not discontinued or abandoned, before the commencement of those regulations in an area to which this Act did not apply before that commencement but to which this Act applies after that commencement may be lawfully continued and completed as if those regulations had not come into operation.
- (4) Without limiting subsection (3), regulations referred to in subsection (2) may make further provisions of a transitional nature that are expedient to be made in respect of an amendment of Schedule 1 under that subsection.
- (5) In any proceedings a copy of a plan showing any boundary of the management area purporting to be a copy of a plan referred to in Schedule 1 is evidence of that boundary.
- (6) A person may not assert the invalidity of a plan referred to in Schedule 1 on the ground of error, misdescription, irregularity or uncertainty if the error, misdescription, irregularity or uncertainty did not in fact mislead him in a material way.

- (7) If any question arises as to the boundary of the management area, the Trust shall, after giving the persons and bodies interested in the resolution of the question the opportunity to make submissions to it, refer the question to the Minister with its opinion.
- (8) The Minister shall submit the matter, together with the Trust's opinion, to the Governor for decision as to what is or is to be treated as the boundary of the management area, and his decision is final.
- (9) Where any part of the boundary of the management area is determined by the Governor under subsection (8), the Minister shall cause —
  - (a) the location of that boundary to be notified in the *Gazette*; and
  - (b) a copy of any such notice to be kept with the plans referred to in Schedule 1.

*[Section 4 amended by No. 14 of 1996 s. 4.]*

**5. Relationship to other Acts**

- (1) A function vested in the Trust by this Act shall not be performed in such a manner as to limit or restrict the performance of a function conferred by —
  - (a) the *Health Act 1911*;
  - (b) the *Environmental Protection Act 1986*; or
  - (c) a written law relating to —
    - (i) the conservation of wildlife or indigenous flora;  
or
    - (ii) navigation or the regulation of shipping and boating in the Port of Perth,

except so far as a written law referred to in paragraph (a), (b) or (c) otherwise provides.

**s. 5**

---

- (2) Subject to this Act, the vesting in the Trust of management functions in respect of the management area by section 7(1)(a) does not limit the functions vested by any written law in any other person or body in respect of that area.
- (3) In so far as a provision of this Act, other than a provision of Part 5, is in conflict with a power conferred on a local government by the *Local Government Act 1995* or any other Act —
- (a) where the matter in question is a matter which in the opinion of the Trust relates entirely to the waters comprised in the management area, the provision of this Act shall prevail;
  - (b) where the matter in question relates to land in the management area (not including land covered by water), and the Trust agrees with the local government that it is not likely to affect such waters, the provision of this Act shall be deemed not to apply; and
  - (c) where the matter in question is a matter which in the opinion of the Trust may indirectly affect such waters, the local government shall consult with the Trust and in the event of any dispute thereon the matter shall be determined by the Governor.
- (4) Regulations made under section 70 may make provision as to the types of matter that are to be taken as falling within the categories referred to in subsection (3) and as to the manner and circumstances in which such matters shall be brought to the notice of the Trust.

*[Section 5 amended by No. 14 of 1996 s. 4.]*

## **Part 2 — Swan River Trust**

### **Division 1 — Establishment, functions, and powers**

#### **6. Trust established**

- (1) There is hereby established a body to be known as the Swan River Trust.
- (2) The Trust is a body corporate with perpetual succession and a common seal and is capable of —
  - (a) acquiring, holding and disposing of real and personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Trust is an agent of the Crown in right of the State.

#### **7. Functions and powers of Trust**

- (1) The functions of the Trust are —
  - (a) to manage and protect the management area and to undertake such works and the provision of such facilities as may be required for that purpose;
  - (b) to perform the functions vested in it by Part 5;
  - (c) to perform such functions under Part V of the *Environmental Protection Act 1986* (which relates to the control of pollution and environmental harm) as are delegated to it under section 20 of that Act;
  - (d) to coordinate and promote the activities of other bodies that have functions in relation to the management area, including the implementation of any general management strategy applicable to that area;
  - (e) to provide advice and assistance to planning authorities so that, in relation to the management area, proper provision is made in planning schemes for —
    - (i) the reservation of river foreshores; and

- (ii) protection and public use of land and waters;
  - (iii) protection of wildlife habitat;
  - (f) to provide advice to the Western Australian Planning Commission on statements of planning policy and model planning scheme provisions relating to any matter within its functions; and to publish other statements of policy relating to any matter within its functions;
  - (g) to undertake, promote and advise persons and bodies on, measures to control or prevent soil erosion so far as the erosion affects or may affect the management area;
  - (h) to provide advice and promote public education on any matter within its functions;
  - (i) to join with any other person or body in doing any thing that is within its functions;
  - (j) to perform any other function vested in it by this Act or any other written law.
- (2) The Trust may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) The Minister may give directions to the Trust with respect to the performance of its functions, either generally or with respect to a particular matter, and the Trust shall give effect to those directions.

*[Section 7 amended by No. 84 of 1994 s. 46; No. 54 of 2003 s. 68(8).]*

**8. Consultation and matters to be considered**

The Trust shall, so far as is practicable and consistent with this Act —

- (a) consult and cooperate with persons and bodies that are affected in a material way by the performance of its functions; and
- (b) have regard, in the performance of its functions, to —
  - (i) the interests of navigation, fisheries, agriculture, and water supply;

- (ii) the need to protect the natural beauty and amenity and the wildlife habitat of the management area;
- (iii) the requirements of public recreation; and
- (iv) the need to preserve right of access for the public to waters in the management area.

**9. Consultation with local government**

- (1) Where in the opinion of the Trust a measure proposed to be taken by the Trust, not being a development to which Part 5 applies, is one that affects or is likely to affect the interests of a local government referred to in Schedule 2 in a material way, the Trust shall refer the proposal to the local government.
- (2) A local government to which a proposal is so referred may make submissions to the Trust on the proposal.
- (3) The Trust shall have regard to those submissions in any report, advice or recommendation that it intends to submit to the Minister on the proposal.
- (4) The Minister shall notify the local government of his decision on the proposal.

*[Section 9 amended by No. 14 of 1996 s. 4.]*

**10. Agreements for joint action**

- (1) The Trust may, with the approval of the Minister, enter into and give effect to any agreement providing for measures to be taken jointly with any other person or body relating to any matter that is within the functions of the Trust and that other person or body.

*[(2) repealed]*

*[Section 10 amended by No. 14 of 1996 s. 4.]*

**11. Agreements as to private land**

- (1) The Trust may, with the approval of the Minister, enter into and give effect to an agreement with the owner, lessee or licensee of any land —
  - (a) for the control or management of that land as if it were part of the management area; and
  - (b) for the purpose of obtaining rights of access and other rights necessary for the protection and public use of land and waters in the management area.
- (2) No agreement shall be entered into under this section unless the owner and any person occupying the land with the consent of the owner have given approval in writing to the agreement.

**Division 2 — Membership, constitution, proceedings, etc.**

**12. Membership of Trust**

- (1) The members of the Trust are —
  - (a) a chairman appointed by the Minister;
  - (b) an appointed member of the board of the Water and Rivers Commission established by the *Water and Rivers Commission Act 1995* nominated from time to time by that Commission;
  - (c) 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;
  - (d) the holder of such office in the department of the Public Service principally assisting the Minister in the administration of the *Marine and Harbours Act 1981* as that Minister may from time to time nominate;
  - [(e) *deleted*]



- (f) a person appointed by the Minister whose name is included in a panel of 3 names submitted to the Minister by the Western Australian Local Government Association; and
  - (g) 3 persons appointed by the Minister neither of whom is an elected member of the council of a local government.
- (2) Where the submission of a panel of names is required for the purposes of paragraph (f) of subsection (1), the submission shall be made to the Minister, in writing signed on behalf of the Association referred to in that paragraph, within such reasonable time after the receipt by it of a notice from the Minister that such submission is required as is specified in the notice.
- (3) If a submission has not been made in accordance with subsection (2) within the time specified under that subsection the Minister may nominate an elected member of the council of a local government to be a member of the Trust in place of the person provided for by subsection (1)(f).

*[Section 12 amended by No. 47 of 1993 s. 30; No. 84 of 1994 s. 46; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 67 of 2003 s. 62; No. 49 of 2004 s. 13.]*

### **13. Term of office**

- (1) An appointed member shall hold office for such term, not exceeding 3 years, as is specified in his instrument of appointment, and is eligible for reappointment.
- (2) An appointed member, unless he sooner resigns, is removed from office or his office otherwise becomes vacant under section 16, shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

**14. Extent of duties of office**

- (1) The chairman may be appointed on terms that require him to devote his full time to the performance of the duties of his office.
- (2) Except as provided under subsection (1), appointment as a member shall be on a part-time basis.
- (3) The Minister may grant leave of absence to a member.

**15. Relationship to Public Service**

The fact that a person is a member, or member of a committee does not —

- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
- (b) affect or prejudice the application to him of those provisions if they applied to him at the time when he became a member or a member of a committee.

*[Section 15 amended by No. 32 of 1994 s. 19.]*

**16. Extraordinary vacancies**

The office of a member becomes vacant if —

- (a) in the case of an appointed member —
  - (i) he resigns his office by written notice addressed to the Minister; or
  - (ii) he is removed from office by the Governor on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties and proved to the satisfaction of the Governor;

and

- (b) in the case of any member, he is —
- (i) an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
  - (ii) absent, without leave of the Minister, from 3 consecutive meetings of which he has had notice.

**17. Remuneration and allowances of members**

- (1) A member shall be paid such remuneration and travelling and other allowances as are determined, in his case, by the Minister on the recommendation of the Public Service Commissioner<sup>2</sup>.
- (2) In subsection (1) “**member**” means an appointed member, a member of a committee and a person who attends a meeting under section 23.

**18. Deputy chairman**

The person referred to in section 12(1)(b) is the deputy chairman of the Trust and has, during any period when the chairman is absent or otherwise unable to perform his functions, all of the functions and entitlements of the chairman.

*[Section 18 amended by No. 73 of 1995 s. 188.]*

**19. Temporary members**

- (1) Where a member, other than the chairman, is unable to act by reason of sickness, absence or other cause, the Minister may appoint a person who is a representative of the same interests as that member to act in place of that member, and while so acting the appointee has all the functions and entitlements of a member.
- (2) An appointment under subsection (1) may be revoked by the Minister at any time.

- (3) Where the person referred to in section 12(1)(b) is performing the functions of the chairman at a meeting, subsection (1) applies as though he were absent from the meeting.
- (4) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for his acting had not arisen or had ceased.

*[Section 19 amended by No. 73 of 1995 s. 188.]*

**20. Business of Trust**

Subject to this Act, the business of the Trust shall be conducted in such manner as the Trust determines.

**21. Meetings of the Trust**

The first meeting of the Trust shall be convened by the chairman and thereafter meetings shall be held at the times and places determined by the Trust but the chairman or any 4 members may, on reasonable notice to all members, call a meeting at any time.

**22. Proceedings of the Trust**

- (1) At a meeting of the Trust, 5 members constitute a quorum.
- (2) The chairman shall preside at every meeting of the Trust at which he is present and in his absence the deputy chairman shall preside; but if neither the chairman nor the deputy chairman is present at a meeting the other members present shall select one of their number to act as chairman.
- (3) Questions arising at a meeting of the Trust shall be decided, in open voting, by a majority of the votes of members present.
- (4) If the votes of members present at a meeting and voting on a question are equally divided the chairman, deputy chairman or other person presiding shall have a casting vote in addition to his deliberative vote.
- (5) The Trust shall keep a record of its proceedings.

- (6) In this section “**member**” includes a person who attends a meeting under section 23.

**23. Local government representation**

- (1) The chairman shall by notice in writing specifying the time and place of a meeting of the Trust, request a local government referred to in Schedule 2 to nominate a person to attend that meeting if a matter to be considered at that meeting is a relevant matter for that local government.
- (2) A relevant matter for a local government is one that —
- (a) relates to a development or proposed development in a part of the management area that is in or adjoins the district of that local government; or
  - (b) is in the opinion of the chairman a matter that affects or is likely to affect the interests of that local government in a material way and to an extent that is greater than the extent to which other local governments referred to in Schedule 2 are affected.
- (3) A notice under subsection (1) shall be given to the local government not less than 14 clear days before the meeting and a nomination under that subsection shall be made in writing delivered to the Trust not later than 3 clear days before the meeting.
- (4) A person nominated under subsection (1) is entitled to attend a meeting for the purpose of determining any relevant matter in relation to which he is nominated, and to attend any subsequent meeting that the chairman may request him to attend in connection with that matter, and has all of the functions of a member in relation to the consideration of that matter at any such meeting.

*[Section 23 amended by No. 14 of 1996 s. 4.]*

**24. Resolution may be passed without meeting**

- (1) A resolution in writing signed or assented to by each member by letter, telegram, telex or facsimile transmission shall be as valid and effectual as if it had been passed at a meeting of the Trust.
- (2) Subsection (1) does not apply to a resolution that relates to a relevant matter for a local government, within the meaning in section 23(2).
- (3) The chairman shall report the passing of a resolution under subsection (1) to the next meeting of the Trust.

*[Section 24 amended by No. 14 of 1996 s. 4.]*

**25. Committees**

- (1) The Trust may from time to time with the approval of the Minister —
  - (a) establish any committee and —
    - (i) prescribe the functions, membership, constitution and procedures of any committee; and
    - (ii) appoint such members of the Trust and other persons as it thinks fit to be members thereof;
  - (b) discharge, alter, or reconstitute any such committee; and
  - (c) give directions to a committee with respect to the performance of its functions.
- (2) A committee shall comply with any direction of the Trust.
- (3) Subject to this Act, a committee may determine its own procedure.

**26. Delegation**

- (1) The Trust may, by resolution of which notice is published in the *Gazette*, either generally or as otherwise provided by the resolution, delegate to an eligible person or body any of its functions under this Act, other than a function vested in it by Part 5.

- (2) The Trust may in a resolution under subsection (1) empower a public authority or a local government to subdelegate a function delegated to it under this section to —
- (a) in the case of a public authority, a committee of, a member of, or an officer of, the authority; or
  - (b) in the case of a local government, the council of, a committee of, or an employee of, the local government, or a member of the council of the local government.
- (3) Except as provided in subsection (2), a delegate or subdelegate shall not further delegate any function.
- (4) The performance of a function by a delegate or subdelegate under this section shall be deemed to be the performance of the function by the Trust.
- (5) In subsection (1) “**eligible person or body**” means —
- (a) a member or officer of the Trust;
  - (b) a committee of the Trust or a member of a committee;
  - (c) a public authority or a member or officer of a public authority; or
  - (d) a local government or a member of the council of, or an employee of, a local government.

*[Section 26 amended by No. 14 of 1996 s. 4.]*

**27. Protection of members**

- (1) A member is not personally liable for any act done or omitted to be done in good faith by the Trust, or by him, in the performance of any function under this Act.
- (2) In subsection (1) —
- “**member**” includes a member of a committee and a person who attends a meeting under section 23; and
- “**Trust**” includes a committee of the Trust.

**28. Duties and liability of persons performing functions under this Act**

- (1) A member shall at all times act honestly in performing his functions under this Act.
- (2) Where a matter is before a meeting for consideration and a member present at the meeting has a direct or indirect pecuniary interest in the matter, he shall as soon as possible after the relevant facts have come to his knowledge, disclose that he has an interest to the other members so present, and —
  - (a) the disclosure shall be recorded in the minutes of the meeting; and
  - (b) the member shall not thereafter be present during any consideration or discussion of, and shall not vote on any determination of, the matter.
- (3) A member shall not disclose any information acquired by virtue of the performance of any function unless the disclosure is made —
  - (a) in connection with the carrying out of this Act or under any legal duty; or
  - (b) for the purposes of any proceedings arising out of this Act or any report of such proceedings.
- (4) A member shall not make use of any information acquired by virtue of the performance of his functions to gain directly or indirectly an improper advantage to himself or to cause detriment to the Trust.
- (5) A member who commits a breach of any provision of this section —
  - (a) is liable to the Trust for any profit made by him or for any damage suffered by the Trust as a result of the breach of that provision; and
  - (b) commits an offence against this Act and is liable to a fine of \$5 000.



- (6) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.
- (7) In this section “**member**” means —
- (a) a member of the Trust or of a committee and a person who attends a meeting under section 23; and
  - (b) any person to whom a function is delegated or subdelegated under section 26.

[29. *Repealed by No. 14 of 1996 s. 4.*]

**30. Execution of documents by Trust**

- (1) A document is duly executed by the Trust, if —
- (a) the common seal of the Trust is affixed to it in accordance with subsections (2) and (3); or
  - (b) it is signed on behalf of the Trust by the member or members or officer or officers of the Trust authorised by the Trust to do so.
- (2) The common seal of the Trust shall not be affixed to any document except by resolution of the Trust.
- (3) The common seal of the Trust shall be affixed to a document in the presence of the chairman and another member, or the chairman and an officer of the Trust authorised by the Trust either generally or in any particular case to do so, and each of them shall sign the document to attest that that common seal was so affixed.
- (4) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Trust, it shall be presumed that that seal is the common seal of the Trust until the contrary is shown.

- (6) All courts and persons acting judicially shall take notice of the common seal of the Trust.

### **Division 3 — Staff**

#### **31. Staff**

- (1) The Water and Rivers Commission shall, so far as is practicable, provide the Trust with the services of such officers as the Trust may reasonably require to perform its functions, including the services of administrative, professional and technical staff.
- (2) The Trust may, with the approval of the Minister, engage under a contract for services or other arrangement any consultant or person to provide administrative, professional, technical or other assistance as it considers necessary to enable the Trust to perform its functions.
- (3) The Trust may, by arrangement made between it and the Minister concerned, and on such terms and conditions as may be mutually arranged by it with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —
- (a) the services of any officer or employee employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
  - (b) any facilities of a department of the Public Service of the State or of a State agency or instrumentality.
- (4) The engagement of a person under subsection (2) does not —
- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or

- (b) affect or prejudice the application to him of those provisions if they applied to him at the time of his engagement.

*[Section 31 amended by No. 32 of 1994 s. 19; No. 73 of 1995 s. 188.]*

### **Part 3 — Management programmes**

**32. Management programme**

- (1) The Trust shall perform its functions in accordance with any management programme for the time being applicable to the management area.
- (2) A copy of a management programme referred to in subsection (1) shall be kept in the offices of the Trust and shall be available for inspection by the public during office hours free of charge.

**33. Management programme to be prepared**

The Trust shall prepare a management programme for the management area within such period after the commencement of this Act as it is reasonably practicable to do so having regard to the resources available to it.

**34. Review and revision of management programme**

- (1) The Trust shall not later than 5 years after the commencement of a management programme review that programme and, if it considers that the circumstances so require, prepare amendments to that programme or a revised management programme.
- (2) If, on a review under this section, the Trust considers that a management programme does not require amendment or revision it may determine that the existing programme shall continue in force without amendment.
- (3) In subsection (1) reference to the commencement of a management programme is a reference to the day on which the Minister, under section 40, approved that programme or amendments to it or its continuation in force without amendment.

**35. Consultation**

In the preparation and review of a management programme under sections 33 and 34, the Trust shall consult —

- (a) the public authorities that are, in the opinion of the Trust, likely to be affected in a material way by the programme;
- (b) a local government referred to in Schedule 2 to the extent that the interests of such local government are, in the opinion of the Trust, likely to be affected in a material way by the programme; and
- (c) the Western Australian Local Government Association.

*[Section 35 amended by No. 14 of 1996 s. 4; No. 49 of 2004 s. 13.]*

**36. Contents of management programme**

- (1) Any management programme prepared under this Part shall contain —
  - (a) a statement of the policies or guidelines proposed to be followed; and
  - (b) a summary of the operations proposed to be undertaken,

by the Trust during the period of 5 years from the time when it is approved.

- (2) A management programme shall not disclose any information or matter communicated in confidence for the purposes of this Act or which would or might reasonably be expected to cause damage to the interests of the person from whom the information was received.

**37. Programme to be publicly notified**

- (1) Public notification —
  - (a) that a proposed management programme or amendments to the existing management programme have been prepared; or

**s. 38**

---

- (b) that the existing management programme is proposed to be continued in force without amendment,

shall be given in accordance with subsection (2).

- (2) The proposed programme or amendments, or the proposal to continue the existing programme in force without amendment, shall be publicly notified by the Trust by the publication —

- (a) in the *Gazette*;
- (b) in 2 issues of a daily newspaper circulating throughout the State; and
- (c) at the offices of the Trust,

of a notice —

- (d) specifying the places at which —
  - (i) a copy of the programme or the amendments may be inspected; and
  - (ii) copies of the programme or the amendments may be obtained;

and

- (e) stating the effect of section 38 and specifying the period referred to in that action.

**38. Public submissions**

Written submissions on the proposed management programme or amendments or the proposal to continue the existing management programme in force without amendment may be made by any person —

- (a) within a period determined by the Trust, which period shall be not less than 2 months after the day on which the notice is published in the *Gazette*; and
- (b) by delivering or posting them, so that they are received within that period at the offices of the Trust.

**39. Programmes to be referred to certain bodies**

- (1) The proposed management programme, modified if the Trust thinks fit after considering submissions under section 38, shall be submitted by the Trust to each relevant Minister, to each relevant local government, and to the Western Australian Local Government Association together with a summary of those submissions, and may be submitted by it to any other body or organisation.
- (2) If a Minister or an organisation or body to which the proposed programme is referred under subsection (1) considers that the Trust should vary the programme or make any addition to or delete any provision from the programme, it may within one month after receipt of the proposed programme under subsection (1), in writing, request the Trust to make the variation, addition or deletion.
- (3) In subsection (1) —  
**“relevant local government”** means a local government referred to in Schedule 2 which was consulted under section 35;  
**“relevant Minister”** means the Minister for the time being responsible for the administration of a written law under which it appears to the Trust that functions are vested in any person in respect of the management area.

*[Section 39 amended by No. 14 of 1996 s. 4; No. 49 of 2004 s. 13.]*

**40. Approval by Minister**

- (1) Subject to this Part, the Trust shall submit —
  - (a) the proposed programme or amendments, modified as it thinks fit to give effect to submissions made under section 38 and any request made under section 39(2); or
  - (b) the proposal to continue the existing management programme in force without amendment,to the Minister for approval.

**s. 41**

---

- (2) The Trust may, in order to give effect to submissions under section 38 or any request made under section 39(2), submit to the Minister for approval proposed amendments to the existing management programme instead of the proposal that that programme be continued in force without amendment.
- (3) The Minister may —
  - (a) approve the proposed programme or the proposed amendments or approve the same with such modifications as the Minister thinks fit; or
  - (b) approve the proposal to continue the existing management programme in force without amendment or instead make amendments to that programme.

**41. Notice of approval**

- (1) Notice that —
  - (a) a revised management programme has been approved;
  - (b) amendments to the existing management programme have been approved or made; or
  - (c) the continuation in force of the existing management programme without amendment has been approved,by the Minister shall be published by the Minister in the *Gazette*, together with a note showing —
  - (d) whether any modifications or amendments were made by the Minister under section 40; and
  - (e) where a copy of the programme or the amendments may be inspected or obtained.
- (2) A management programme or amendments to the existing management programme shall come into operation on the day of publication in the *Gazette* of a notice under subsection (1) or on such later day as is specified in the programme or in the amendments.



## Part 4 — Financial provisions

### 42. Resources of Trust

- (1) Subject to this Act, the Trust shall be responsible for managing its own finances.
- (2) The funds and property available to the Trust for the purposes of this Act are —
  - (a) moneys from time to time appropriated by Parliament for those purposes;
  - (b) moneys received by the Trust by way of fees and charges;
  - (c) moneys or property accepted by the Trust for application towards any purpose that is included in the functions of the Trust;
  - (d) such moneys as may be advanced by the Treasurer in any case in which the moneys standing to the credit of the account referred to in subsection (3) would be insufficient;
  - (e) any moneys derived from investment under section 43; and
  - (f) any other moneys or property that may lawfully be received by the Trust for the purposes of this Act.
- (3) The moneys referred to in subsection (2) shall be —
  - (a) credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
  - (b) paid into and placed to the credit of an account at a bank approved by the Treasurer,and the account is to be called the Account of the Swan River Trust.
- (4) All expenditure incurred by the Trust for the purposes of performing its functions under this Act, including the repayment

of moneys borrowed by the Trust under section 46, shall be charged to the Account referred to in subsection (3) and moneys standing to the credit of that Account shall be applied only for the purposes of this Act.

*[Section 42 amended by No. 49 of 1996 s. 62 and 64.]*

**43. Temporary investment of moneys**

Moneys standing to the credit of the Account referred to in section 42(3) may, until required by the Trust for the purposes of this Act, be temporarily invested or dealt with by the Trust in such manner as the Treasurer approves.

**44. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Trust and its operations.

**45. Application of gifts**

Where any moneys or property, including moneys or property representing a gift by will, have been accepted by the Trust upon lawful conditions, it shall apply the moneys or property in accordance with those conditions.

**46. Power to borrow from Treasurer**

For the purposes of section 42(2)(d), the Trust may borrow from the Treasurer such amounts as the Treasurer approves on such conditions relating to repayment, payment of interest or any other matter as the Treasurer imposes.

## **Part 5 — Development control**

### **47. Definitions**

In this Part, unless the contrary intention appears —

**“applicant”** means a person who applies for an approval under section 52;

**“approval”** means the approval of the Minister for the purposes of section 50;

**“development”** means a development to which this Part applies by operation of section 49;

**“Minister for Planning”** means the Minister to whom the administration of the *Town Planning and Development Act 1928* is committed;

**“Swan Valley”** and **“Swan Valley Planning Committee”** have the same meanings as they have in the *Swan Valley Planning Act 1995*.

*[Section 47 amended by No. 31 of 1995 s. 27.]*

### **48. Position of Crown**

- (1) Subject to subsection (2), this Part binds the Crown.
- (2) Land and waters in the management area that are owned by or vested in a public authority may be used, but not developed, without the approval of the Minister under section 50 if the land and waters are used —
  - (a) for the purpose for which they are reserved under the Metropolitan Region Scheme; or
  - (b) for any purpose for which they were lawfully used before the coming into force of that Scheme.

### **49. Developments to which this Part applies**

- (1) This Part applies to a development if it is proposed to be undertaken in the management area and no part of it is proposed to be undertaken on land or waters that are outside that area.

**s. 50**

---

- (2) It is immaterial for the purposes of this Part that a development is undertaken in the performance of a function vested in a person by a written law.
- (3) This Part does not apply to a development that was lawfully being carried out in the management area immediately before the commencement of this Act.
- (4) A development referred to in subsection (3), or in respect of which all necessary approvals under any written law were in force immediately before the commencement of this Act, may be lawfully carried out as if this Part had not been passed.
- (5) This Part does not apply to a development that is proposed to be undertaken in respect of land that is wholly in the redevelopment area within the meaning in the *East Perth Redevelopment Act 1991* so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of that Act or wholly in the redevelopment area within the meaning in the *Midland Redevelopment Act 1999* so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of that Act.

*[Section 49 amended by No. 62 of 1991 s. 59; No. 73 of 1994 s. 4; No. 38 of 1999 s. 77.]*

**50.        Development to be approved**

- (1) Subject to section 51, no person shall undertake or cause to be undertaken any development to which this Part applies without the approval of the Minister or in contravention of a condition or restriction attached to an approval.  
Penalty: \$20 000, and a daily penalty of \$2 000.
- (2) The requirements of subsection (1) extend to the Trust.

**51.        Certain reclamations etc. to be authorised by Parliament**

- (1) Notwithstanding any other written law, no person shall resume, fill in or reclaim any part of the management area that is

normally covered by water if the area so to be resumed, filled in or reclaimed —

- (a) exceeds one hectare;
- (b) is required as part of one scheme involving an area of more than one hectare of the area so covered; or
- (c) together with a contiguous area or areas that was or were so covered and has or have been resumed, filled in or reclaimed at any time within the preceding 12 months would exceed one hectare,

except under and in accordance with the authority of a resolution of each House of Parliament approving the resumption, filling or reclamation of that area.

Penalty: \$20 000, and a daily penalty of \$2 000.

- (2) Reference in subsection (1) to a part of the management area normally covered by water is a reference to an area so covered when the water level measured at the Barrack Street Jetty in Perth is 80 centimetres above low water mark measured at Fremantle Inner Harbour as defined in the description of the Port of Fremantle under the *Port Authorities Act 1999*.
- (3) The requirements of subsection (1) extend to the Trust.  
*[Section 51 amended by No. 5 of 1999 s. 21.]*

## **52. Applications for approval**

- (1) If a development is proposed to be carried out —
  - (a) on land that is within the district of a local government, an application for approval shall be made in the prescribed form to that local government;
  - (b) on land that is not within the district of a local government, an application for approval shall be made in the prescribed form to the Trust.
- (2) An application shall be accompanied by plans and specifications of the proposed development, and an applicant shall also furnish

**s. 53**

---

such information or documents relating to the proposed development as the Trust may reasonably require.

- (3) An application to which subsection (1)(a) applies shall be sent to the Trust by the local government together with its opinion on the manner in which the application should be determined.

*[Section 52 amended by No. 14 of 1996 s. 4.]*

**53. Consultation with other authorities**

- (1) The Trust shall by notice in writing refer full particulars of the proposed development to —
- (a) each public authority that appears to it to have functions that are relevant to the proposed development; and
  - (b) to each local government for which the development appears to the Trust to be a relevant matter within the meaning in section 23(2)(a); and
  - (c) if the development is proposed to be carried out on land in the Swan Valley, the Swan Valley Planning Committee.
- (2) A public authority or local government to which particulars are referred under subsection (1) and, where particulars are referred to the Swan Valley Planning Committee, that Committee, may make submissions on the proposed development to the Trust.
- (3) A report shall not be made by the Trust under section 55 until —
- (a) the expiration of 42 days after all notices have been given as required by subsection (1); or
  - (b) final submissions have been made to it by all authorities to which particulars were referred under that subsection and, where particulars were referred to the Swan Valley Planning Committee, by that Committee,

whichever is the sooner.

*[Section 53 amended by No. 31 of 1995 s. 27; No. 14 of 1996 s. 4.]*

**54. Public notice**

- (1) The Trust shall also give public notice of the proposed development if —
  - (a) it considers that the proposed development is a matter of significant public interest; or
  - (b) it is directed by the Minister to do so.
- (2) Such notice shall be given by the publication in 2 issues of a daily newspaper circulating throughout the State of a notice —
  - (a) specifying the place at which particulars of the proposed development may be inspected; and
  - (b) stating the effect of subsection (4) and specifying the period referred to in that subsection.
- (3) The Trust shall send a copy of a notice referred to in subsection (2) to each local government for which the proposed development appears to the Trust to be a relevant matter within the meaning in section 23(2)(a), and that local government shall display a copy of such notice at its public office until the expiry of the period for making submissions under subsection (4).
- (4) Where notice is given under subsection (2), written submissions on the proposed development may be made by any person by delivering or posting them so that they are received by the Trust within a period determined by the Trust, which period shall be not less than 21 days after the second publication referred to in that subsection.
- (5) The Trust shall in preparing its report under section 55(1) consider all submissions received by it under subsection (4).

*[Section 54 amended by No. 14 of 1996 s. 4.]*

**55. Report by Trust**

- (1) Subject to sections 53 and 54, the Trust shall prepare a report for the Minister on the proposed development and shall in that report make recommendations on the application.

**s. 56**

---

- (1a) Where particulars of a proposed development have been referred to the Swan Valley Planning Committee under section 53(1) and the Committee has made a submission on the proposed development to the Trust, the Trust shall provide the Minister with a copy of that submission with its report under subsection (1).
- (2) The Minister shall give a copy of the report of the Trust to —
  - (a) the applicant;
  - (b) each public authority or local government to which notice was given under section 53(1) and where notice was given to the Swan Valley Planning Committee, that Committee; and
  - (c) each person who made a submission under section 54(4).
- (3) The Minister may cause a report of the Trust to be published.  
*[Section 55 amended by No. 31 of 1995 s. 27; No. 14 of 1996 s. 4.]*

**56. Steps to be taken by Minister**

- (1) The Minister after considering the report on a proposed development and any other matter that he considers relevant shall —
  - (a) deal with the application in accordance with section 59;  
or
  - (b) instead of so doing —
    - (i) remit the application to the Trust and direct it to reconsider its recommendations within such period as the Minister may specify; or
    - (ii) appoint a review committee to consider those recommendations and report to him on them within such period as the Minister may specify,and subsequently deal with the application in accordance with section 59.



- (2) Where the Minister gives a direction to the Trust under subsection (1)(b)(i) he may also direct it to consult with the applicant and any other person it considers appropriate in an endeavour to resolve any question in issue.
- (3) The Trust shall comply with any direction given to it under this section.

**57. Review committee**

- (1) A review committee appointed under section 56(1)(b)(ii) shall consist of one person who has, or 2 or more persons at least one of whom has, appropriate expertise in river management and planning.
- (2) A member of such a committee shall be paid such remuneration and travelling and other allowances as are determined in his case by the Minister on the recommendation of the Public Service Commissioner<sup>2</sup>.

**58. Consideration and report by committee**

- (1) A review committee appointed under section 56(1)(b)(ii) may —
  - (a) consult with the applicant and any other person it considers appropriate; and
  - (b) inform itself in any manner that it considers appropriate.
- (2) The Trust may make submissions to a review committee.
- (3) A review committee shall report to the Minister as required by section 56(1)(b)(ii).

**59. Minister's decision**

- (1) Subject to this Part, the Minister shall for the purposes of section 50 —
  - (a) approve the development;
  - (b) approve the development in a modified form;

**s. 59**

---

- (c) give approval in terms of paragraph (a) or (b) but subject to any conditions or restrictions; or
  - (d) refuse his approval.
- (2) Nothing in this Part authorises the Minister to approve a development in a manner that is inconsistent with —
  - (a) a management programme under Part 3;
  - (b) an approved environmental protection policy under Part III of the *Environmental Protection Act 1986*; or
  - (c) any condition or procedure required to be complied with under Part IV of that Act; and
  - (d) where a development is proposed to be carried out in the Swan Valley, any recommendation of the Swan Valley Planning Committee in relation to that development, unless —
    - (i) the approval is given with the concurrence of the Minister for Planning; or
    - (ii) if the Minister and the Minister for Planning do not agree, the approval is agreed to by the Governor.
- (3) The Minister may limit the time for which an approval remains in force.
- (4) Without limiting subsection (1)(c) the Minister may, as a condition of an approval of a development, require an applicant to pay a reasonable sum in or towards the cost of any study of, or protective or remedial work in respect of, land or waters in the management area that is occasioned by that development.
- (5) The Minister shall cause notice in writing of his decision to be given to the applicant and each public authority or local government to which notice was given under section 53(1) and, where notice was given to the Swan Valley Planning Committee, to that Committee.

*[Section 59 amended by No. 31 of 1995 s. 27; No. 14 of 1996 s. 4.]*

**60. Request for reconsideration of condition**

- (1) Where the Minister gives an approval subject to a condition or restriction, the applicant may within 28 days of receiving notice of the Minister's decision, in writing, request the Minister to reconsider that condition or restriction.
- (2) The Minister may deal with a request under this section by confirming his decision, by varying or revoking the condition or restriction or by revoking it and substituting another condition or restriction for it.
- (3) Where the Minister amends his decision following a request under this section, he shall cause notice in writing of the amendment to be given to each public authority or local government to which notice was given under section 53(1) and, where notice was given to the Swan Valley Planning Committee, to that Committee.

*[Section 60 amended by No. 31 of 1995 s. 27; No. 14 of 1996 s. 4.]*

**61. Power of approval may be conferred on Trust**

- (1) Regulations made under section 70 may prescribe classes of developments that the Trust is authorised to approve under this section.
- (2) Where the Trust is authorised under subsection (1) to approve a development, it may resolve to do so and in that case sections 54 to 58 do not apply but the Trust may, subject to subsection (2) of section 59, exercise any power described in subsection (1) or (3) of that section.
- (3) For the purposes of this Part an approval of a development by the Trust under this section shall be deemed to be the approval of the Minister.
- (4) Section 60 applies to an approval given under this section as if references to the Minister were references to the Trust.

*[Section 61 amended by No. 74 of 2003 s. 115.]*

**62.        False statements**

A person shall not, in connection with an application under this Part, make a statement or give any information which he knows is false in a material particular.

Penalty: \$1 000.

**63.        Compensation**

- (1) Where an application for approval is made under this Part by the owner of land, other than a public authority, and the Minister —
- (a) refuses approval of a development;
  - (b) approves a development in a modified form; or
  - (c) approves a development (including an approval referred to in paragraph (b)) subject to any condition or restriction that is unacceptable to the applicant,

the owner may obtain compensation for injurious affection from the Trust.

- (2) Where a claim for compensation may be brought under subsection (1), no claim lies under section 36(3)(b) of the Metropolitan Scheme Act.
- (3) A claim under subsection (1) shall be made to the Trust in the prescribed form not later than 6 months after the day on which the Minister's decision is notified to the applicant.
- (4) Compensation is not payable under this section if payment has been made for the same injurious affection under section 36(3)(a) of the Metropolitan Scheme Act.
- (5) The amount of compensation under subsection (1) shall not exceed the difference between —
- (a) the value of the land as affected by the Minister's decision; and
  - (b) the value of the land as not so affected,
- as at the time when the Minister's decision is made.

- (6) Any question as to whether any land is injuriously affected and as to the amount and manner of payment of the sum which is to be paid as compensation under this section shall be determined by arbitration under and in accordance with the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.
- (7) Instead of paying compensation, the Trust may purchase the land affected by the Minister's decision.
- (8) Section 36(2)(b), (2a), (2b), (7) and (8) of the Metropolitan Scheme Act apply for the purposes of this section, with all necessary changes, as if references therein to the Commission were references to the Trust.
- (9) This section applies to a decision of the Trust under section 61 as if references in this section to the Minister were references to the Trust.

## **Part 6 — Enforcement**

### **64. Inspectors and honorary inspectors**

- (1) The Trust may appoint —
  - (a) any person on its staff, including an officer or employee of the Water and Rivers Commission, to be an inspector; or
  - (b) any person to be an honorary inspector,for the purposes of enforcing Part 5 and the regulations.
- (2) An honorary inspector —
  - (a) may be appointed for the whole or a specified part of the management area;
  - (b) may perform, in respect of the area of his jurisdiction, such of the functions of an inspector as may be specified in his instrument of appointment.
- (3) Every inspector or honorary inspector shall be furnished with a certificate of his appointment which in any proceedings shall be prima facie evidence of his appointment, and, on entering any premises in the course of duty, he shall, if required by the person in charge of the premises, produce the certificate to him.
- (4) An inspector may at a reasonable hour enter any premises or stop and detain any vessel or conveyance, and make such inspection and inquiry as he thinks necessary to ascertain whether or not the provisions of Part 5 and the regulations have been or are being complied with.
- (5) An inspector shall not under subsection (4) enter any premises, or part of any premises, used for residential purposes unless —
  - (a) the consent of the occupier or a person present at the premises has been obtained; or
  - (b) such entry is authorised by a warrant issued by a Justice of the Peace on an application supported by evidence on oath, the Justice being satisfied that there are reasonable

grounds for believing that the entry is required for the purposes referred to in subsection (4).

- (6) A person shall not resist, delay or in any way obstruct an inspector or honorary inspector in the performance of his functions.

Penalty: \$1 000.

*[Section 64 amended by No. 73 of 1995 s. 188; No. 50 of 2003 s. 98(2); No. 84 of 2004 s. 80.]*

**65. Proceedings**

- (1) A prosecution for an offence against this Act may be commenced and conducted by —
- (a) an inspector;
  - (b) a police officer; or
  - (c) any other person authorised in writing by the Trust for the purpose of the proposed proceedings.
- (2) In any proceedings the authority of any person to prosecute for an offence shall be presumed unless the contrary is proved.
- (3) Where in a charge of an offence against this Act there is an averment that an act occurred within the management area, the court shall, on the act being proved, presume in the absence of proof to the contrary that the act occurred within that area.

*[Section 65 amended by No. 84 of 2004 s. 80.]*

**66. Liability of directors etc. where offence committed by corporation**

- (1) Where a body corporate is guilty of an offence against this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence.

**s. 67**

---

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**67. Infringement notices**

- (1) An inspector who has reasonable grounds to believe that a person has committed an offence against regulations made under section 70 may give to that person an infringement notice in the prescribed form.
- (2) The infringement notice shall inform the person that if he does not wish to be prosecuted for the alleged offence in a court he may, within a period of 21 days after the giving of the notice, pay to the Trust the amount of money specified in the notice as being the modified penalty for that offence.
- (3) In an infringement notice for an alleged offence, the amount of money specified as being the modified penalty for the offence shall be the amount that is, when the offence is committed, for the time being prescribed to apply to the offence if it is dealt with under this section.
- (4) An infringement notice shall be given to an alleged offender personally at or about the time the alleged offence is believed to have been committed.
- (5) A person to whom an infringement notice is given may decline to be dealt with under this section and if the modified penalty is not paid within the period specified in the notice or within such further period as may, whether before or after the expiry of the specified period, be allowed by the Trust is deemed to have declined to be so dealt with.
- (6) The Trust may, whether or not the modified penalty has been paid, withdraw an infringement notice at any time within a period of 28 days after it was given by sending to the alleged offender a notice of withdrawal in the prescribed form.



- (7) Any amount paid under an infringement notice that has been withdrawn shall be refunded.
- (8) Where the modified penalty has been paid in accordance with an infringement notice within the period specified therein or within such further period as is allowed and the infringement notice has not been withdrawn under subsection (6), proceedings shall not be brought or penalty imposed that could not be brought or imposed if the person to whom the infringement notice was given had been convicted by a court of, and punished for, the alleged offence.
- (9) Payment of a modified penalty pursuant to an infringement notice shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal, arising out of the occurrence by reason of which the infringement notice was issued.

*[Section 67 amended by No. 84 of 2004 s. 80.]*

**68. Power to direct cessation or removal of development contrary to this Act**

- (1) The Trust may —
  - (a) by notice in writing served on a person who is undertaking any development in contravention of section 50 or 51 direct him to forthwith stop doing so; or
  - (b) by notice in writing served on a person who has undertaken any development in contravention of that section, direct him within such period, being not less than 21 days after the service of the notice, as is specified in the notice, to remove, pull down, take up, or alter any development undertaken in contravention of that section,or may by one notice give both of such directions to a person.
- (2) A person on whom a notice is served containing a direction under subsection (1)(b) may, within the period specified in the notice

**s. 69**

---

apply to the State Administrative Tribunal for a review of the direction.

- (3) A notice containing a direction under subsection (1)(b) is suspended as to that direction pending the determination of the application for a review.

*[(4) repealed]*

- (5) A person shall comply with a notice given to him under this section.

Penalty: \$20 000 and a daily penalty of \$2 000.

- (6) If a person fails to comply with a notice given to him under subsection (1)(b), the Trust may itself remove, pull down, take up or alter the development and may recover from the person in any court of competent jurisdiction the costs incurred by it in so doing.

*[Section 68 amended by No. 55 of 2004 s. 1163.]*

**69. Removal of property that is abandoned etc.**

- (1) Subject to this section, the Trust may take possession of any property that is on land or waters in the management area if —
- (a) the Trust has reasonable grounds to believe that the property has been abandoned, is derelict or constitutes a danger to persons or property; or
  - (b) a notice under subsection (2)(b) relating to that property has not been complied with.
- (2) Before it exercises the power in subsection (1)(a) the Trust shall unless the property constitutes a danger to persons or property —
- (a) make reasonable inquiry as to the identity and whereabouts of the person who is or has been the owner of the property; and
  - (b) if the identity and whereabouts of that person become known to it give notice to that person requiring him to remove the property within the time specified in the notice.

- (3) A person to whom a notice is given under subsection (2)(b) shall comply with the notice.  
Penalty: \$2 000.
- (4) Any cost incurred by the Trust under this section is a debt due to the Trust by a person who is shown to have been the owner, or in the case of abandoned property the former owner, at the time of removal and is recoverable in a court of competent jurisdiction.
- (5) Subject to subsections (6), (7) and (8) any property removed under this section becomes the property of the Trust and may be disposed of as it thinks fit.
- (6) If the Trust's estimate of the value of the property exceeds the costs referred to in subsection (4) together with the costs associated with the sale of the same, the Trust shall sell the property, and after payment of all of its costs, hold the proceeds in accordance with subsection (7).
- (7) The proceeds of sale referred to in subsection (6) shall become part of the funds of the Trust at the expiration of 12 months from the date of the sale unless within that time a person proves to the satisfaction of the Trust that he is entitled to them or any part of them, in which case the Trust shall pay the proceeds or part thereof in accordance with that entitlement.
- (8) Notwithstanding subsections (5), (6) and (7), the Trust shall give possession of the property to any person who proves that he is entitled to the same and who pays to the Trust all costs incurred by it under this section.

## **Part 7 — General**

### **70. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may —
  - (a) regulate, control or prohibit the doing of any thing in relation to the management area, not being a development within the meaning of Part 5, that may adversely affect the amenity or good management of the land and waters in that area;
  - (b) regulate, control or prohibit the exhibition of advertisements or signs in the management area and confer power on the Trust to remove or require the removal of advertisements or signs that are exhibited or maintained in contravention of the regulations;
  - (c) provide for the imposition and payment of fees and charges; and
  - (d) provide that contravention of a regulation constitutes an offence and for penalties not exceeding a fine of \$5 000 and a daily penalty of \$100.

[71. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

[72. *Omitted under the Reprints Act 1984 s. 7(4)(g).*]

## **Schedule 1**

[Section 4]

### **Area in respect of which this Act applies**

All of the land and waters shown edged in red on the Swan River Trust Management Area Plans Nos. 1 to 26 (both inclusive) held at the offices of the Swan River Trust each such plan being certified by the Minister as being a plan prepared for the purpose of defining the Swan River Trust Management Area.

For guidance, the area so delineated may be described in a general way as comprising —

- (a) the waters —
  - (i) of the Swan River upstream of the Fremantle Port Authority boundary;
  - (ii) of the Avon River to its confluence with Moondyne Brook;
  - (iii) of the Helena River to the lower diversion dam on that river;
  - (iv) of the Southern River to Allen Road crossing; and
  - (v) of the Canning River to its confluence with Stinton Creek,  
that are reserved under clause 12 of the Metropolitan Region Scheme for “waterways”; and
- (b) lands adjoining those waters that are reserved as parks and recreation areas under clause 12 of the Metropolitan Region Scheme.

*[Schedule 1 amended in Gazette 14 Nov 2000 p. 6254.]*

## **Schedule 2**

[Sections 9, 10(2), 23 and 35]

### **Local governments**

City of Armadale  
Town of Bassendean  
City of Bayswater  
City of Belmont  
City of Canning  
Town of Claremont  
Town of East Fremantle  
City of Fremantle  
City of Gosnells  
Shire of Kalamunda  
City of Melville  
Town of Mosman Park  
Shire of Mundaring  
City of Nedlands  
Shire of Peppermint Grove  
City of South Perth  
City of Stirling  
City of Subiaco  
Shire of Swan  
Town of Victoria Park  
Town of Vincent

*[Schedule 2 amended by No. 38 of 1993 s. 34(1); No. 14 of 1996 s. 4;  
No. 57 of 1997 s. 119.]*

*[Schedule 3 omitted under the Reprints Act 1984 s. 7(4)(g).]*

---

---

**Notes**

<sup>1</sup> This reprint is a compilation as at 7 October 2005 of the *Swan River Trust Act 1988* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Swan River Trust Act 1988</i>	23 of 1988	20 Oct 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<i>East Perth Redevelopment Act 1991</i> s. 59	62 of 1991	30 Dec 1991	1 Jul 1992 (see s. 2 and <i>Gazette</i> 1 Jul 1992 p. 2945)
<i>City of Perth Restructuring Act 1993</i> s. 34	38 of 1993	20 Dec 1993	1 Jul 1994 (see s. 3 and 34(2))
<i>Acts Amendment (Department of Transport) Act 1993</i> Pt. 13	47 of 1993	20 Dec 1993	1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Planning Legislation Amendment Act (No. 2) 1994</i> s. 46(1) and (2)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Swan Valley Planning Act 1995</i> s. 27 <sup>3</sup>	31 of 1995	18 Sep 1995	25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5389)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2(1))

**Swan River Trust Act 1988**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Financial Legislation Amendment Act 1996</i> s. 62 and 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 119	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Port Authorities (Consequential Provisions) Act 1999</i> s. 21	5 of 1999	13 Apr 1999	14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823)
<b>Reprint of the Swan River Trust Act 1988 as at 10 Sep 1999</b> (includes amendments listed above)			
<i>Midland Redevelopment Act 1999</i> s. 77	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and <i>Gazette</i> 31 Dec 1999 p. 7059)
<i>Swan River Trust Act Amendment Regulations 2000</i> published in <i>Gazette</i> 14 Nov 2000 p. 6254			14 Nov 2000
<b>Reprint of the Swan River Trust Act 1988 as at 1 Dec 2000</b> (includes amendments listed above)			
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 98	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Environmental Protection Amendment Act 2003</i> s. 68(8)	54 of 2003	20 Oct 2003	19 Nov 2003 (see s. 2 and <i>Gazette</i> 18 Nov 2003 p. 4723)
<i>Economic Regulation Authority Act 2003</i> s. 62	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 115	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Local Government Amendment Act 2004</i> s. 13	49 of 2004	12 Nov 2004	1 Apr 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 123 <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)



---

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 3: The Swan River Trust Act 1988 as at 7 Oct 2005</b> (includes amendments listed above)			

---

<sup>2</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management.

<sup>3</sup> The *Swan Valley Planning Act 1995* Sch. 2 cl. 15(2) reads as follows:

“

- (2) The amendment made by subclause (1)(b) does not apply to any application for approval of development under the principal Act made before the commencement of section 27 of this Act.

”

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

Defined Terms

---

**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
applicant.....	47
appointed member.....	3
approval .....	47
chairman .....	3
commencement .....	Sch. 3 cl. 1
committee .....	3
development.....	3, 47
eligible person or body.....	26(5)
honorary inspector .....	3
inspector.....	3
land .....	3
management area .....	3
member .....	3, 17(2), 22(6), 27(2), 28(7)
Metropolitan Region Scheme.....	3
Metropolitan Scheme Act .....	3
Minister for Planning .....	3, 47
public authority .....	3
relevant local government.....	39(3)
relevant Minister .....	39(3)
Swan Valley .....	47
Swan Valley Planning Committee .....	47
the Authority .....	Sch. 3 cl. 1
Trust.....	3, 27(2)
Water and Rivers Commission .....	3
waters.....	3
Western Australian Planning Commission .....	3