



Western Australia

Swan and Canning Rivers Management Amendment Act 2015

As at 09 Mar 2015

No. 6 of 2015

Extract from www.slp.wa.gov.au, see that website for further information

Swan and Canning Rivers Management Amendment Act 2015

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Swan and Canning Rivers Management Act 2006</i> amended		
3.	Act amended	3
4.	Long title amended	3
5.	Section 3 amended	3
6.	Section 11 amended	4
7.	Section 12 amended	5
8.	Section 22A inserted	5
	22A. CEO entitled to attend board meeting	5
9.	Section 23 amended	5
10.	Section 24 amended	7
11.	Sections 26 and 27 replaced	7
	28A. Assistance, staff and facilities to be provided	7
	28B. Delegation by Trust	7
	28C. Minister may give Trust directions	8
	28D. Minister to have access to information	8
	28E. Trust may appoint committees	9
	28F. Execution of documents	9
	28G. Annual report	10
12.	Part 4A heading inserted	11

	Part 4A — Management of land and waters	
13.	Part 4B heading and Part 4B Division 1 heading inserted	11
	Part 4B — Administration	
	Division 1 — Functions and powers of CEO	
14.	Sections 33 to 36 replaced	11
	33. Functions of CEO	11
	34. Consultation and matters to be considered by CEO	13
	35. Consultation with local governments and Metropolitan Redevelopment Authority	14
	36. Payment for advice and other matters	14
	37. Collaborative arrangements	15
	38. Delegation by CEO	16
15.	Part 3 Division 3 deleted	17
16.	Part 3 Division 4 heading replaced	18
	Division 2 — Inspectors	
17.	Section 39 amended	18
18.	Part 3 Divisions 5 and 6 deleted	18
19.	Section 49 replaced	18
	49. Draft s. 47 regulations to be publicly notified	18
20.	Section 55 amended	19
21.	Section 56 amended	19
22.	Section 57 amended	20
23.	Section 58 replaced	20
	58. Draft document to be publicly notified	20
24.	Section 60 amended	21
25.	Section 64 amended	21
26.	Section 65 amended	22
27.	Section 66 amended	22
28.	Section 73 amended	23
29.	Section 74 amended	24
30.	Section 75 amended	24
31.	Section 76 replaced	25
	76. Report by CEO to Minister on proposed development	25
32.	Section 77 amended	27
33.	Section 79 amended	27
34.	Section 85 amended	28
35.	Section 86 replaced	28

	86.	CEO must give section 85 decision to Minister	28
36.		Section 87 amended	28
37.		Section 90 amended	29
38.		Section 91 amended	30
39.		Section 98 amended	30
40.		Section 116 amended	30
41.		Section 117 amended	31
42.		Section 118 amended	31
43.		Section 123 amended	31
44.		Section 129 replaced	32
	129.	Functions of Foundation	32
45.		Section 131 amended	32
46.		Section 132 amended	32
47.		Section 135 amended	33
48.		Part 11 inserted	33
Part 11 — Transitional provisions for <i>Swan and Canning Rivers Management Amendment Act 2015</i>			
	138.	Terms used	33
	139.	Completion of things commenced	34
	140.	Continuing effect of things done	34
	141.	Contracts, agreements and other instruments	35
	142.	Assignment to State or CEO	35
	143.	Swan River Trust Account	36
	144.	Registration of documents	37
	145.	Exemption from State taxation	38
	146.	Development applications	39
	147.	River protection notices	39
	148.	Transitional regulations	39
	149.	<i>Interpretation Act 1984</i> not affected	41
49.		Schedule 5 amended	41
50.		Schedule 6 amended	41
51.		Various references to “Trust” amended	41
52.		Various references to “General Manager” amended	44
53.		Other provisions amended	44
Part 3 — Other Acts amended			
54.		<i>Conservation and Land Management Act 1984</i> amended	48
	37.	Purpose	48

Contents

55.	<i>Financial Management Act 2006</i> amended	48
-----	--	----



Western Australia

Swan and Canning Rivers Management Amendment Act 2015

No. 6 of 2015

An Act to amend the *Swan and Canning Rivers Management Act 2006*, to make consequential amendments to other Acts, and for related purposes.

[Assented to 9 March 2015]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Swan and Canning Rivers Management Amendment Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Swan and Canning Rivers Management Act 2006* amended

3. Act amended

This Part amends the *Swan and Canning Rivers Management Act 2006*.

4. Long title amended

In the long title:

- (a) delete “**with planning, protection and management functions**” and insert:

to provide advice and perform other functions

- (b) delete “**by the Trust and other persons**”.

5. Section 3 amended

- (1) In section 3(1) delete the definitions of:

Account

General Manager

officer of the Trust

Trust website

- (2) In section 3(1) insert in alphabetical order:

CALM Act means the *Conservation and Land Management Act 1984*;

CEO means the chief executive officer of the Department;

Department means the department of the Public Service principally assisting in the administration of the CALM Act;

Department's website means a website maintained by the Department;

Executive Body means the Conservation and Land Management Executive Body established by the CALM Act section 36;

6. Section 11 amended

(1) Delete section 11(1).

(2) Delete section 11(2)(a) and insert:

(a) a part of the catchment area and a part of the Riverpark; and

(3) After section 11(7) insert:

(8A) Despite the *Land Administration Act 1997*, the placing of the care, control and management of the River reserve with the Trust is only for the purposes of section 23 and does not otherwise limit the functions of the CEO under section 33.

(4) In section 11(9):

(a) in paragraph (b)(i) delete "Marine Authority" and insert:

Marine Parks and Reserves Authority

(b) in paragraph (c)(i) after "Commission" insert:

of Western Australia

7. Section 12 amended

- (1) In section 12(2) after “other structure on” insert:

that part of

- (2) In section 12(7) delete “Division 2.” and insert:

Division 2 or the powers of the CEO under Part 4B Division 1.

8. Section 22A inserted

After section 21 insert:

22A. CEO entitled to attend board meeting

The CEO, or a nominee of the CEO, is entitled to attend any meeting of the board and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.

9. Section 23 amended

In section 23:

- (a) delete paragraphs (a), (b) and (c) and insert:
 - (a) subject to sections 11(8A) and 33, to have placed with it the care, control and management of the River reserve;
 - (ab) to develop policies —
 - (i) for the protection and enhancement of the ecological and community benefits and amenity of the development control area and for the control of activities and development in that area; and

- (ii) for the protection and enhancement of the ecological and community benefits and amenity of the Riverpark and the Riverpark shoreline;

and

- (b) delete paragraphs (e) and (f) and insert:

- (e) in accordance with Part 4, to prepare and deal with proposed strategic documents under this Act; and

- (fa) to promote the implementation of strategic documents and establish mechanisms for monitoring compliance for the purpose of reporting and making recommendations under section 66; and

- (fb) in accordance with Part 5, to advise the CEO on matters relating to development in the development control area; and

- (f) to advise the CEO on and promote the activities of other bodies that have functions in relation to the catchment area, insofar as those functions may affect the Riverpark; and

- (c) in paragraph (g) delete “monitor and”;

- (d) in paragraph (h) delete “and assistance”;

- (e) delete paragraph (i);

- (f) in paragraph (k) after “under” insert:

this Act or

- (g) delete paragraph (l).

10. Section 24 amended

Delete section 24(2) and (3) and insert:

- (2) The Trust may, with the approval of the Minister, engage persons under contracts for services to provide any professional, technical or other assistance that the Trust considers necessary for the performance of its functions under this Act.
- (3) An approval of the Minister under subsection (2) may be specific or may be given in general terms.

11. Sections 26 and 27 replaced

Delete sections 26 and 27 and insert:

28A. Assistance, staff and facilities to be provided

The CEO must provide the Trust —

- (a) with any assistance it may reasonably require to perform its functions; and
- (b) without limiting paragraph (a), with any staff and facilities of the Department as the Trust may reasonably require to perform its functions.

28B. Delegation by Trust

- (1) In subsection (2) —

eligible person means —

- (a) a member;
- (b) a committee or a member of the committee;
- (c) the CEO;
- (d) a member of staff provided under section 28A.

s. 11

- (2) The Trust may, by resolution, delegate to an eligible person any function of the Trust under another provision of this Act or any other written law.
- (3) A delegate must not further delegate any function.
- (4) A person exercising or performing a function that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Trust to perform a function through an officer or agent.
- (6) This section does not apply to the execution of documents but the authority to execute documents on behalf of the Trust can be given under section 28F.

28C. Minister may give Trust directions

- (1) The Minister may give written directions to the Trust with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Trust must give effect to any such direction.
- (2) The text of a direction under subsection (1) must be included in the annual report of the Trust under section 28G.

28D. Minister to have access to information

- (1) In this section —
document includes any tape, disk or other device or medium on which information is recorded or stored;
information means information specified, or of a description specified, by the Minister that relates to the functions of the Trust;
staff means staff provided under section 28A.

- (2) The Minister is entitled to have information in the possession of the Trust and, if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Trust to provide information to the Minister; and
 - (b) request the Trust to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of staff to obtain the information and provide it to the Minister.
- (4) The Trust must comply with a request under subsection (3) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

28E. Trust may appoint committees

- (1) The Trust may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.
- (2) A committee may include persons who are not members of the board.
- (3) Subject to the directions of the Trust and to the terms of any delegation under section 28B, a committee may determine its own procedures.

28F. Execution of documents

- (1) The Trust is to have a common seal.
- (2) A document is duly executed by the Trust if —
 - (a) the common seal of the Trust is affixed to it in accordance with subsections (3) and (4); or

s. 11

- (b) it is signed on behalf of the Trust by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Trust must not be affixed to any document except as authorised by the Trust.
- (4) The common seal of the Trust must be affixed to a document in the presence of the chairman and another member, or the chairman and a person employed in the Department authorised by the Trust either generally or in any particular case to be so present, and each of them must sign the document to attest that the common seal was so affixed.
- (5) The Trust may, by writing under its common seal, authorise a member or members or a person or persons employed in the Department to sign documents on behalf of the Trust, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by a person under this section without the common seal of the Trust is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.
- (8) When a document is produced bearing a seal purporting to be the common seal of the Trust, it is to be presumed that the seal is the common seal of the Trust until the contrary is shown.

28G. Annual report

- (1) Despite the *Financial Management Act 2006*, the Trust must, not later than 30 November in each year, prepare

and give to the Minister a report on its proceedings for the year ending on the preceding 30 June.

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as is practicable after receipt by the Minister.

12. Part 4A heading inserted

Before section 28 insert:

Part 4A — Management of land and waters

13. Part 4B heading and Part 4B Division 1 heading inserted

After section 32 insert:

Part 4B — Administration

Division 1 — Functions and powers of CEO

14. Sections 33 to 36 replaced

Delete sections 33, 34, 35 and 36 and insert:

33. Functions of CEO

- (1) The functions of the CEO under this Act are as follows —
- (a) to manage —
- (i) the River reserve; and
 - (ii) the Riverpark shoreline, either solely or jointly with another person;

s. 14

- (b) to protect and enhance the ecological and community benefits and amenity of the development control area and control activities and development in that area;
- (c) to protect and enhance the ecological and community benefits and amenity of the Riverpark;
- (d) to carry out works and provide facilities for the purposes of protecting and enhancing the ecological and community benefits and amenity of the Riverpark;
- (e) to coordinate the development and implementation of strategic documents under this Act, including the strategic documents applicable to the catchment area;
- (f) to monitor —
 - (i) the state of the development control area; and
 - (ii) development on and adjoining the development control area;
- (g) to provide assistance to planning authorities so that, in relation to the Riverpark, proper provision is made in planning schemes for —
 - (i) the reservation of land for protection, and future acquisition, of river foreshores; and
 - (ii) protection and public use of land and waters; and
 - (iii) protection of wildlife habitat;
- (h) to provide advice to the Western Australian Planning Commission on State planning policies and planning scheme provisions relating to any matter within its functions, and

- to publish other statements of policy relating to any matter within the CEO's functions;
 - (i) to provide the Trust with assistance, staff and facilities under section 28A;
 - (j) to otherwise undertake the administration and enforcement of this Act and perform other functions vested in the CEO by this Act.
- (2) Nothing in subsection (1) is to be read as limiting the functions of the Trust under section 23.

34. Consultation and matters to be considered by CEO

The CEO must, so far as is practicable and consistent with this Act —

- (a) consult and collaborate with persons that are affected in a material way by the performance of the CEO's functions under this Act; and
- (b) have regard, in the performance of his or her functions, to —
 - (i) protection and enhancement of the ecological and community benefits and amenity of the development control area and the Riverpark; and
 - (ii) the significance of the waters in the Riverpark to the Nyungah community; and
 - (iii) the requirements of public recreation; and
 - (iv) the need to preserve right of access for the public to waters in the Riverpark; and
 - (v) the interests of navigation, fisheries, agriculture and water supply.

35. Consultation with local governments and Metropolitan Redevelopment Authority

- (1) If it appears to the CEO that a measure proposed to be taken by the CEO, not being a matter to which Part 4 applies or 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 7 or the Metropolitan Redevelopment Authority, in a material way, the CEO must refer the proposal to the local government or the Metropolitan Redevelopment Authority.
- (2) If a proposal is referred to it, a local government or the Metropolitan Redevelopment Authority may make submissions to the CEO on the proposal.
- (3) The CEO must have regard to those submissions —
 - (a) in any report, advice or recommendation that the CEO intends to submit to the Minister on the proposal; and
 - (b) if the CEO undertakes the proposal.
- (4) The local government or the Metropolitan Redevelopment Authority must be notified of any decision in respect of the proposal —
 - (a) by the Minister, in the case of a decision by the Minister; and
 - (b) by the CEO, in the case of a decision by the CEO.

36. Payment for advice and other matters

Any arrangement made by the CEO for the provision of advice, performance or work or supply of services or facilities by the CEO may, with the approval of the Minister, provide for an agreed amount by way of

payment to the CEO for the advice, work or services or the use of the facilities.

37. Collaborative arrangements

- (1) Subject to this section, the CEO may enter into a collaborative arrangement with any other person —
 - (a) binding that person to undertake programmes of a kind specified in the arrangement and directed towards protection and enhancement of the ecological and community benefits and amenity of the Riverpark or any part of the Riverpark; or
 - (b) providing for measures to be taken jointly with that person relating to any matter that is within the functions of the CEO and that other person.
- (2) The term of a collaborative arrangement must not exceed 5 years but on its expiry a further collaborative arrangement may be made.
- (3) A collaborative arrangement under this section may contain terms providing for any matter that the CEO considers appropriate for securing the objectives of this Act, including terms —
 - (a) providing for measures to be taken jointly by the parties to the arrangement; and
 - (b) binding the CEO to provide financial or other assistance of any kind to the other party or parties or any of them; and
 - (c) relating to the objectives and performance standards to be met by a party other than the CEO; and
 - (d) requiring a party to report to the CEO in relation to the party's obligations under the arrangement; and
 - (e) as to the monitoring functions of the CEO; and

s. 14

- (f) as to the means by which disputes under the arrangement may be dealt with; and
 - (g) as to procedures for varying and enforcing the arrangement.
- (4) The CEO must not enter into a collaborative arrangement under this section except with the prior approval of the Minister.
 - (5) For the purposes of subsection (4) the Minister may approve a specific collaborative arrangement or class of collaborative arrangement.
 - (6) A collaborative arrangement does not have effect to relieve a party to the arrangement from any duty under this or any other Act, and any obligations imposed under such an arrangement have effect in addition to and not in derogation of the requirements imposed by or under this or any other Act.

38. Delegation by CEO

- (1) In subsection (2) —
eligible person means —
 - (a) a member;
 - (b) a committee or a member of the committee;
 - (c) a person employed in the Department;
 - (d) an inspector;
 - (e) a public authority or a member or officer of a public authority or a member of the council of, or an employee of, a local government.
- (2) Subject to subsection (3), the CEO may delegate to an eligible person any function of the CEO under another provision of this Act.
- (3) The delegation must be in writing signed by the CEO.

- (4) The delegation of a function conferred on the CEO under Part 5 does not take effect unless notice of the delegation is published in the *Gazette*.
- (5) The CEO may in a delegation under subsection (2) empower a public authority to subdelegate a function delegated to it under this section to —
 - (a) in the case of a public authority that is not a local government — 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.
- (6) Except as provided in subsection (5), a delegate or subdelegate must not further delegate any function.
- (7) A person exercising or performing a function that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of the CEO to perform a function through an officer or agent.
- (9) Without limiting the things that may be delegated under subsection (2), they may include things that are to be done in the course of governing the affairs of the Executive Body under the CALM Act section 36(4).

15. Part 3 Division 3 deleted

Delete Part 3 Division 3.

16. Part 3 Division 4 heading replaced

Delete the heading to Part 3 Division 4 and insert:

Division 2 — Inspectors

17. Section 39 amended

Delete section 39(1) and insert:

- (1) The CEO may, by instrument in writing, designate any person employed in the Department or any officer of a public authority as an inspector.

18. Part 3 Divisions 5 and 6 deleted

Delete Part 3 Divisions 5 and 6.

19. Section 49 replaced

Delete section 49 and insert:

49. Draft s. 47 regulations to be publicly notified

- (1) Public notification that draft regulations in relation to a matter referred to in section 47 have been prepared must be given in accordance with subsection (2).
- (2) The draft regulations must be publicly notified by the publication of a notice —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.

- (3) The notice must —
 - (a) specify the places at which copies of the draft regulations may be inspected and obtained and the Department’s website address; and
 - (b) state the effect of section 50 and specify the period referred to in that section.
- (4) The CEO may fix and charge a fee for supplying a copy of the draft regulations.

20. Section 55 amended

In section 55(2):

- (a) in paragraph (c) delete “document.” and insert:

document; and
- (b) after paragraph (c) insert:
 - (d) the CEO has been consulted as to whether the document should be approved as a strategic document.

21. Section 56 amended

In section 56(1) delete “prepared —” and insert:

prepared through the agency of the CEO —

s. 22

22. Section 57 amended

In section 57 delete “must consult —” and insert:

through the agency of the CEO must consult —

23. Section 58 replaced

Delete section 58 and insert:

58. Draft document to be publicly notified

- (1) Public notification that a draft river protection strategy or management programme has been prepared must be given in accordance with subsection (2).
- (2) The draft river protection strategy or management programme must be publicly notified by the publication of a notice —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —
 - (a) specify the places at which copies of the draft document may be inspected and obtained and the Department’s website address; and
 - (b) state the effect of section 59 and specify the period referred to in that section.
- (4) The CEO may fix and charge a fee for supplying a copy of the draft documents.

24. Section 60 amended

In section 60(1):

- (a) delete “by the Trust”;
- (b) delete “referred by it to any other public authority, person or body.” and insert:

referred to any other public authority, person or body the Trust thinks fit.

25. Section 64 amended

- (1) In section 64(1) after “prepare” insert:

through the agency of the CEO

- (2) In section 64(2) delete “it may” and insert:

it may, with the approval of the Minister,

- (3) After section 64(2) insert:

- (3A) If the Minister refuses to approve the continuation in force of the river protection strategy or management programme without amendment, the river protection strategy or management programme ceases to be of effect.
- (3B) The Trust must notify the CEO of any determination made under subsection (2).

s. 26

- (4) In section 64(3):
 - (a) in paragraph (b) after “amendments to” insert:

or revision of
 - (b) in paragraph (c) after “the amendment” insert:

to or revision

- (5) After section 64(3) insert:
 - (4) Subject to compliance with this section, a river protection strategy or a management programme may be revoked and a revised river protection strategy or a revised management programme substituted for it.

26. Section 65 amended

Delete section 65(1) and insert:

- (1) The CEO must perform his or her functions under this Act in accordance with the strategic documents.

27. Section 66 amended

Delete section 66(4) and insert:

- (4) Any report under subsection (1) must be included in the annual report of the Trust under section 28G.

28. Section 73 amended

Delete section 73(1) and (2) and insert:

- (1) The CEO must by notice in writing refer a development application and information and documents relating to the proposed development to the following —
 - (a) each local government for which the development appears to the CEO to be a relevant matter;
 - (b) the Metropolitan Redevelopment Authority if the development appears to the CEO to be a relevant matter;
 - (c) each other public authority that appears to the CEO to have functions that are relevant to the proposed development;
 - (d) if the development is proposed to be carried out on land in the Swan Valley, the Swan Valley Planning Committee.
- (2A) A relevant matter for a local government is one that relates to a development or proposed development in a part of the development control area that is in or adjoins the district of that local government.
- (2B) A relevant matter for the Metropolitan Redevelopment Authority is one that relates to a development or proposed development in a redevelopment area as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3.
- (2) Each of the entities 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 CEO.

29. Section 74 amended

(1) Delete section 74(1) and insert:

(1) The CEO must publish on the Department's website notice of each development application the CEO receives.

(2) In section 74(2):

(a) delete "approved by the Trust," and insert:

approved by the CEO,

(b) in paragraph (c) delete "chairman" (each occurrence) and insert:

CEO

(c) delete paragraph (d).

30. Section 75 amended

Delete section 75(2) and (3) and insert:

(2) The CEO, in preparing a report under this section, must consider all submissions received by the CEO under sections 73 and 74.

(3A) The CEO must give a copy of the draft report to the Trust and the Trust must, not later than 28 days after being given the report, provide its comments and recommendations to the CEO.

- (3) After receiving the comments and recommendations of the Trust and making such changes to the draft report as the CEO thinks appropriate, the CEO must —
- (a) give a copy of the draft report, with an invitation to make submissions to the CEO on the draft report, to —
 - (i) the applicant; and
 - (ii) the Trust and each local government and other public authority to which notice was given under section 73(1) and where notice was given to the Swan Valley Planning Committee, that committee; and
 - (iii) each person who made a submission under section 74(5);
- and
- (b) publish the draft report on the Department's website and in any other way the CEO considers appropriate, with an invitation to the public to make submissions to the CEO on the draft report.

31. Section 76 replaced

Delete section 76 and insert:

76. Report by CEO to Minister on proposed development

- (1) The CEO, after considering any submissions made under section 75 and making such changes to the report as the CEO considers appropriate, may give a copy of the report to the Trust and in that case the Trust must, not later than 28 days after being given the report, provide its final comments to the CEO.

s. 31

- (2) The CEO, after considering any submissions made under section 75 and comments made under subsection (1) and making such changes to the report as the CEO considers appropriate, must —
- (a) give a copy of the report to the following —
 - (i) the Minister;
 - (ii) the Trust;
 - (iii) each public authority to which the draft report was given under section 75 and where notice was given to the Swan Valley Planning Committee, that committee;
 - (iv) each person who made a submission under section 75;
- and
- (b) publish the report on the Department's website and in any other way the CEO considers appropriate.
- (3) A report to the Minister under subsection (2)(a)(i) must be accompanied by the following —
- (a) a copy of each submission made under section 73(1), 74 or 75 in relation to the application or draft report;
 - (b) a copy of any comments or recommendations made by the Trust under section 75(3A) or subsection (1) of this section in relation to the application or draft report;
 - (c) the CEO's comments on the submissions.

32. Section 77 amended

(1) Delete section 77(1)(b)(i) and insert:

- (i) return the application to the CEO and direct the CEO to reconsider the CEO's recommendations within such period as the Minister may specify; or

(2) Delete section 77(2) and (3) and insert:

- (2) If the Minister gives a direction to the CEO under subsection (1)(b)(i) —
 - (a) the CEO must consult with the Trust in an endeavour to resolve any question in issue; and
 - (b) the Minister may also direct the CEO to consult with the applicant and any other person the Minister directs in an endeavour to resolve any question in issue.
- (3) The CEO must comply with any direction given under this section.

33. Section 79 amended

Delete section 79(2) and insert:

- (2) The CEO, after consultation with the Trust, may make submissions to a review committee.

Note: The heading to amended section 79 is to read:

Review committee's functions as to CEO's recommendations

s. 34

34. Section 85 amended

Delete section 85(2) and insert:

- (2) If the CEO is authorised under subsection (1) to approve a development, the CEO may decide to do so and in that case —
- (a) sections 73, 74, 75 and 76(1) and (2) apply in relation to the development application; and
 - (b) sections 76(3), 77, 78 and 79 do not apply in relation to the development application; and
 - (c) the CEO may, subject to section 80(2), exercise any power described in section 80(1), (3) or (4).

35. Section 86 replaced

Delete section 86 and insert:

86. CEO must give section 85 decision to Minister

- (1) The CEO must give to the Minister a copy of each decision the CEO makes under section 85 in relation to an application.
- (2) The report must be accompanied by the report made by the CEO under section 75 in relation to the application.

36. Section 87 amended

- (1) In section 87(2):
- (a) before paragraph (a)(i) insert:
 - (ia) the CEO; and

(b) delete paragraph (b) and insert:

(b) published on the Department's website and in any other way the CEO considers appropriate.

(2) Delete section 87(3)(a) and insert:

(a) the CEO must give to the Minister the submissions and comments given to the CEO in respect of the application under sections 75 and 76 as applied by section 85(2)(a); and

37. Section 90 amended

Delete section 90(1) and insert:

- (1) If the CEO believes on reasonable grounds that, to protect or enhance the ecological and community benefits or amenity of the Riverpark —
- (a) action by an owner, or both an owner and an occupier, of land in the catchment area is required; or
 - (b) an owner, or both an owner and an occupier, of land in the catchment area should refrain from action on that land,

the CEO may request advice from the Trust as to whether a river protection notice should be issued in relation to that action.

- (2A) The Trust must provide the advice not later than 28 days after the request is made.

Note: The heading to amended section 90 is to read:

CEO may request advice from Trust on issue of river protection notice

s. 38

38. Section 91 amended

Delete section 91(1) and insert:

- (1) The CEO may issue a river protection notice if, after considering the advice of the Trust given under section 90 and giving each person to whom it is proposed to give the river protection notice a reasonable opportunity to show cause in writing why the river protection notice should not be issued, the CEO is satisfied that the notice should be issued.

Note: The heading to amended section 91 is to read:

Issue of notice by CEO

39. Section 98 amended

Delete section 98(4)(b) and insert:

- (b) must not exceed an amount that, in the opinion of the CEO, represents a reasonable estimate of the total likely costs that might be incurred in taking action under sections 102 and 103 in relation to that river protection notice.

40. Section 116 amended

Delete section 116(5) and insert:

- (5) If a person fails to comply with a notice given to the person under subsection (1)(b), the CEO may cause the development to be removed, pulled down, taken up or altered.
- (6) The CEO may recover in a court of competent jurisdiction from the person who failed to comply with

the notice the costs incurred under subsection (5) in removing, pulling down, taking up or altering a development.

41. Section 117 amended

Delete section 117(7) and insert:

- (7) The proceeds of sale referred to in subsection (6) must be paid into the Consolidated Account at the expiration of 12 months from the date of the sale unless within that time a person proves to the satisfaction of the CEO that that person is entitled to them or any part of them, in which case the CEO must pay the proceeds or part of the proceeds in accordance with that entitlement.

42. Section 118 amended

Delete section 118(8) and insert:

- (8) Any costs recovered under this section must be paid into the Consolidated Account.

43. Section 123 amended

- (1) In section 123(3)(c) delete “the Trust” and insert:

an authorised person

- (2) Delete section 123(10) and insert:

- (10) The CEO may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of

subsection (3)(c), (5) or (7), but an inspector who gives an infringement notice is not eligible to be appointed as an authorised person for the purposes of any of those subsections in relation to that notice.

44. Section 129 replaced

Delete section 129 and insert:

129. Functions of Foundation

The functions of the Foundation are —

- (a) to attract and retain continuing public interest and financial support for the objectives of this Act; and
- (b) to encourage donations to facilitate the achievement of the objectives of this Act.

45. Section 131 amended

Delete section 131(3)(b) and insert:

- (b) may be transferred to an operating account of the Department for the purposes of carrying this Act into effect or otherwise applied for the purposes of this Act or the Foundation.

46. Section 132 amended

After section 132(1) insert:

- (2A) The CEO must consult the Trust before making a recommendation under subsection (1).

47. Section 135 amended

(1) Delete section 135(1) and (2) and insert:

(1) An action in tort does not lie against a person for anything that the person has done, in good faith in the performance or purported performance of a function under this Act.

(2) In section 135(3) delete “subsection (2)” and insert:

subsection (1)

(3) In section 135(4) delete “subsection (2),” and insert:

subsection (1),

48. Part 11 inserted

After Part 10 insert:

Part 11 — Transitional provisions for *Swan and Canning Rivers Management Amendment Act 2015*

138. Terms used

In this Part —

amended Act means this Act as amended by the *Swan and Canning Rivers Management Amendment Act 2015* Part 2;

assets —

- (a) means any legal or equitable estate or interests (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description; and
- (b) includes money, securities, choses in action and documents;

commencement day means the day on which the *Swan and Canning Rivers Management Amendment Act 2015* section 9 comes into operation;

former Act means this Act as in force immediately before the commencement day;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, prospective or contingent;

this Part includes regulations made under section 148(2).

139. Completion of things commenced

Anything commenced to be done by the Trust or the General Manager before the commencement day may be continued by the CEO so far as the doing of that thing is within the functions of the CEO.

140. Continuing effect of things done

- (1) Anything done or omitted to be done before the commencement day by, to or in respect of the Trust or the General Manager, to the extent that it —
 - (a) has any force or significance; and

- (b) is a thing that could be done or omitted to be done by the CEO under the amended Act,

is to be taken to have been done or omitted by, to or in respect of the CEO.

- (2) Without limiting subsection (1), a licence granted or permit issued by the Trust that has effect immediately before the commencement day continues to have effect, on and after that day, as if it had been granted or issued by the CEO.

141. Contracts, agreements and other instruments

- (1) Any contract, agreement or other instrument subsisting immediately before the commencement day —
 - (a) to which the Trust was a party; or
 - (b) which contains a reference to the Trust,

has effect on and after the commencement day, to the extent to which the contract, agreement or other instrument relates to the functions of the CEO under the amended Act, as if —

- (c) the CEO were substituted for the Trust as a party to the agreement or instrument; and
 - (d) any reference in the contract, agreement or instrument were, unless the context otherwise requires, amended to be or include a reference to the CEO.
- (2) Nothing in this section affects the operation of sections 11 or 23(a).

142. Assignment to State or CEO

- (1) On the commencement day —
 - (a) the assets of the Trust are, by operation of this section, assigned to and become assets of the State to be administered in the Department; and

- (b) the liabilities of the Trust are, by operation of this section, assigned to and become liabilities of the CEO acting on behalf of, and in the name of, the State; and
 - (c) the CEO acting on behalf of, and in the name of, the State is substituted for the Trust as a party to all proceedings in which the Trust was a party immediately before the commencement day; and
 - (d) any proceeding or remedy that might have been commenced by, or available against or to, the Trust in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to, the CEO acting on behalf of, and in the name of, the State; and
 - (e) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment, by, to or in respect of the Trust (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of the CEO acting on behalf of, and in the name of, the State.
- (2) As soon as is practicable after the commencement day, all records and data of the Trust are to be delivered to the CEO.
 - (3) Nothing in this section affects the operation of sections 11 or 23(a).

143. Swan River Trust Account

- (1) In this section —
former account means the Swan River Trust Account referred to in section 42 of the former Act.

- (2) On the commencement day, any moneys standing to the credit of the former account must be credited to an operating account of the Department, and the former account must then be closed.
- (3) Moneys referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former account arising before the commencement day; and
 - (b) for the purposes of this Act.
- (4) The operating account referred to in subsection (2) must be credited with any moneys payable to the former account before the commencement day that are paid on or after that day.
- (5) If in an agreement, instrument or other document there is a reference to the former account, that reference is, unless the context otherwise requires, to be read or to have effect from the commencement day as if it were a reference to the operating account referred to in subsection (2).

144. Registration of documents

- (1) In this section —

relevant official means —

 - (a) the Registrar of Titles; or
 - (b) the Registrar of Deeds and Titles; or
 - (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,

according to which, if any, of them has responsibility for a register relating to the relevant property;

relevant property means property of a kind affected by this Part, whether it is an estate or interest in land or other property.

- (2) The relevant officials are to take notice of this Part and are to record and register in the appropriate manner the documents necessary to show the effect of this Part.

145. Exemption from State taxation

- (1) In this section —
State tax includes —
 - (a) duty chargeable under the *Duties Act 2008*; and
 - (b) any other tax, duty, fee, levy or charge, under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by operation of this Part;
or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Minister may certify in writing that —
 - (a) a specified thing occurred by operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

146. Development applications

If, on the commencement day, a development application made under Part 5 of the former Act has not been decided, the CEO must perform the functions that the Trust would have performed under the former Act in relation to the application.

147. River protection notices

- (1) If procedures for issuing a river protection notice have commenced under section 90 before the commencement day but the notice has not been issued under section 91 before that day, the CEO may act under section 91 of the amended Act as if—
 - (a) any action taken by the General Manager under section 90(3) of the former Act was action taken by the CEO under section 90(3) of the amended Act; and
 - (b) the report and recommendation given by the General Manager was the advice of the Trust; and
 - (c) any information given under section 91 to a person to whom it is proposed to give the notice was given by the CEO.
- (2) On and after the commencement day, any reference in a river protection notice to the Trust has effect as if it were a reference to the CEO.

148. Transitional regulations

- (1) In this section—

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the former Act to the provisions of the amended Act.

- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with a transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with a transitional matter.
- (3) Regulations made under subsection (2) may provide that specific provisions of the amended Act —
 - (a) do not apply to or in relation to a matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the publication day for those regulations but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person other than the State the rights of that person existing before the publication day for those regulations; or
 - (b) to impose liabilities on a person other than the State or an authority of the State in respect of an act done or omission made before the publication day for those regulations.

- (6) Regulations can only be made under subsection (2) within 12 months after the commencement day.

149. Interpretation Act 1984 not affected

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the amendments effected by the *Swan and Canning Rivers Management Amendment Act 2015* Part 2.

49. Schedule 5 amended

In Schedule 5:

- (a) delete item 1(c) and (y);
- (b) in item 1(ff) delete “*Act 1992*,” and insert:

Act 1992.

- (c) delete item 1(gg).

50. Schedule 6 amended

Delete Schedule 6 clause 3.

51. Various references to “Trust” amended

In the provisions listed in the Table delete “Trust” (each occurrence) and insert:

CEO

s. 51

Table

s. 6(4), (5), (6), (8) and (9)	s. 12(2), (3), (4), (5) and (6)
s. 28(2)	s. 29(2), (3), (5) and (8)(a)
s. 30(1) and (2)(b)	s. 31(1), (3), (4), (5)(b) and (6)(a)
s. 32(1), (2), (3), (4)(b) and (6)	s. 39(3)
s. 48	s. 51(1)(b)
s. 53(2)	s. 63(3)
s. 67 def. of <i>development application</i>	s. 70(1), (2) and (3)
s. 71(3)	s. 72(4), (6) and (7)
s. 73(3)	s. 74(4)
s. 75(1), (4) and (5)	s. 81(1) def. of <i>approving authority</i> par. (a), (2), (5)(b) and (6)
s. 85(1), (3), (4), (5) and (6)	s. 87(3)(c)
s. 89(4) and (10)	s. 91(2) and (3)(c)(i), (iv), (v) and (vii)
s. 94(6)(b)	s. 95(a)
s. 98(1), (2)(d) and (5)	s. 99(1), (2) and (3)
s. 102(1) and (2)	s. 103(1), (2) and (3)
s. 116(1)	s. 117(1) and (8)

s. 118(2), (3), (4), (5)(c), (6), (7), (10) and (11)	s. 119(1)(b)
s. 131(3)(a)	s. 132(1)
s. 136(2)(c) and (d)	

Notes:

1. The heading to amended section 6 is to read:
Objectives and principles paramount; disputes between CEO and Schedule 5 authority
2. The heading to amended section 28 is to read:
CEO may agree to manage private land
3. The heading to amended section 29 is to read:
CEO may grant leases of River reserve
4. The heading to amended section 32 is to read:
CEO may grant licences over River reserve
5. The heading to amended section 75 is to read:
Draft report by CEO on proposed development
6. The heading to amended section 85 is to read:
Approvals by CEO
7. The heading to amended section 87 is to read:
Minister may revoke CEO's decision
8. The heading to amended section 102 is to read:
CEO's powers in case of contravention of notice
9. The heading to amended section 116 is to read:
CEO's powers in respect of illegal development
10. The heading to amended section 118 is to read:
Recovery of costs in case of financial assurance

s. 52

52. Various references to “General Manager” amended

In the provisions listed in the Table delete “General Manager” (each occurrence) and insert:

CEO

Table

s. 40(1) and (4)	s. 90(3) and (4)
s. 94(2) and (4)	s. 96(2)
s. 107(4)	s. 110(2)
s. 111(3)	

Note: The heading to amended section 96 is to read:

CEO must give notice of memorial or withdrawal

53. Other provisions amended

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 3(1) def. of <i>committee</i>	36	28E
s. 3(2)	department	agency
s. 6(3)	Trust	CEO or Trust
s. 6(10)	Trust	CEO, the Trust
s. 9(a)	within	a part of

Provision	Delete	Insert
s. 10(1)(a)	within	a part of
s. 22(7)(b)	redevelopment authority	Metropolitan Redevelopment Authority
s. 22(8)	determining	considering
s. 25(2)	programmes of	programmes developed by
s. 31(4)	it makes	the CEO makes
s. 50	approved by the Trust	approved by the CEO
s. 50(a)	by the Trust	by the CEO
s. 50(b)	the offices of the Trust	an address designated by the CEO
s. 59	approved by the Trust	approved by the CEO
s. 59(a)	by the Trust	by the CEO
s. 59(b)	the offices of the Trust	an address designated by the CEO
s. 65(3)(a)	offices of the Trust	head office of the Department
s. 65(3)(b)	Trust	Department's

s. 53

Provision	Delete	Insert
s. 73(3)(b)	authorities	local governments and other public authorities
s. 74(4)	22	73
s. 80(5)	the Trust, the Trust	the CEO, the CEO
s. 80(5)(b)	Trust	Department's
s. 82(4)(b)	Trust	Department's
s. 83(2)(b)	Trust	Department's
s. 85(3)	by it	by the CEO
s. 89(2), (8) and (9)	Trust	Executive Body
s. 90(2) and (3)	recommendation (each occurrence)	request
s. 90(4)	recommendation	request
s. 103(4)	the Trust may	the CEO may
s. 103(4)	due to the Trust	due to the State
s. 117(2)	it exercises	the CEO exercises
s. 117(2)	the Trust must	the CEO must
s. 117(2)(b)	known to it	known to the CEO
s. 117(4)	incurred by the Trust	incurred by the CEO
s. 117(4)	due to the Trust	due to the State

Provision	Delete	Insert
s. 117(5)	of the Trust	of the State
s. 117(5)	as it thinks	as the CEO thinks
s. 117(6)	Trust's	CEO's
s. 117(6)	the Trust	the CEO
s. 117(6)	its costs	the costs
s. 117(8)	by it	by the CEO
s. 118(2) and (10)	102, 116(5)	102, 103, 116(5)
s. 118(11)	102, 116(5) (each occurrence)	102, 103, 116(5)
s. 131(4)(a) and (b)	Trust	Department
s. 132(2)(g)	Trust	Minister
s. 134(1) def. of <i>member</i> par. (b)	or subdelegated under section 33	under section 28B
s. 134(3)(c)	redevelopment authority (each occurrence)	the Metropolitan Redevelopment Authority
Sch. 2	version 5	
Sch. 3	version 5	
Sch. 6 cl. 15	Board	board
Sch. 7	Town of Vincent	City of Vincent

Part 3 — Other Acts amended

54. Conservation and Land Management Act 1984 amended

- (1) This section amends the *Conservation and Land Management Act 1984*.
- (2) Delete section 37 and insert:

37. Purpose

The Executive Body is established to provide a body corporate through which the CEO can perform any of the CEO's functions under the following Acts that can more conveniently be performed by a body corporate than an individual —

- (a) this Act;
 - (b) the *Swan and Canning Rivers Management Act 2006*;
 - (c) the *Wildlife Conservation Act 1950*.
- (3) Delete section 99(1)(ac).

55. Financial Management Act 2006 amended

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete "Swan River Trust".

=====