



Western Australia

# **Swan and Canning Rivers Management Amendment Act 2023**

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No. 2 of 2023

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# Swan and Canning Rivers Management Amendment Act 2023

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Western Australia

# Swan and Canning Rivers Management Amendment Act 2023

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No. 2 of 2023

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*An Act to amend the Swan and Canning Rivers Management  
Act 2006.*

*[Assented to 1 March 2023]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Swan and Canning Rivers Management Amendment Act 2023*.

**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.

**3. Act amended**

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

**4. Section 3 amended**

In section 3(1) insert in alphabetical order:

*licence agreement* has the meaning given in section 32;

**5. Section 13 amended**

After section 13(2) insert:

- (2A) Subsection (2) does not apply to regulations amending Schedule 2 or 3 if —
  - (a) an amendment to the Metropolitan Region Scheme (the *MRS amendment*) has been approved under the *Planning and Development Act 2005* Part 4; and

- (b) either —
  - (i) the MRS amendment is made by an Act;  
or
  - (ii) public submissions were sought on the MRS amendment before it was approved;

and

- (c) the Minister considers that the amendments to Schedule 2 or 3 to be made by the regulations are connected with the MRS amendment.

Note: The heading to amended section 13 is to read:

**Amending Schedules 1 to 4 by regulations**

**6. Section 30 amended**

In section 30(2)(b)(ii) before “the time” insert:

specify

Note: The heading to amended section 30 is to read:

**Consequences of contravening River reserve licence**

**7. Section 32 replaced**

Delete section 32 and insert:

**32. CEO may enter into licence agreements in relation to River reserve**

- (1) The CEO may enter into an agreement (a *licence agreement*) with a person (a *licensee*) under which the CEO grants the licensee a licence authorising the non-exclusive occupancy and use of land and waters

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that are part of the River reserve, on the terms and conditions of the licence agreement.

- (2) A licence agreement must relate to land and waters in the River reserve on which development has been or is to be undertaken.
- (3) If the development is required to be approved under section 70 —
  - (a) the CEO must not enter into the licence agreement unless approval has been granted; and
  - (b) the terms and conditions of the licence agreement must not be contrary to, or inconsistent with, the approval.
- (4) A licence agreement has effect for the period referred to in section 32A(3)(a) and may be renewed in accordance with any terms of the agreement that provide for renewal.
- (5) Subject to section 32B, a licence agreement may be enforced in the same way as any other contract.
- (6) A licensee must not, without the prior approval of the CEO, sell, transfer or otherwise dispose of, in whole or in part, the licence agreement or any interest in it.
- (7) An act done in contravention of subsection (6) is void.
- (8) In accordance with paragraph (d) of the definition of *licence* in the *Personal Property Securities Act 2009* (Commonwealth) section 10, a licence agreement is declared not to be personal property for the purposes of that Act.



**32A. Terms and conditions of licence agreements**

- (1) The terms and conditions of a licence agreement are —
  - (a) the terms agreed between the CEO and the licensee and set out in the agreement; and
  - (b) any conditions determined by the CEO under subsection (2) and set out in the agreement.
- (2) Before entering into a licence agreement, the CEO may determine conditions of the agreement that make provision for or in relation to any or all of the following —
  - (a) the regulation, control or prohibition, for the purposes of protecting or enhancing the ecological and community benefits and amenity or good management of the River reserve, of any activity undertaken by or on behalf of the licensee in connection with the licence agreement (a *relevant activity*);
  - (b) the indemnification by the licensee of the CEO, the Trust and the State for any loss or damage arising from the occupation or use of the land and waters to which the licence agreement relates or a relevant activity;
  - (c) the waiver by the licensee of any liability in tort that may be incurred by the CEO, the Trust and the State in connection with the occupation or use of the land and waters to which the licence agreement relates or a relevant activity;
  - (d) a requirement for the licensee to take out and maintain insurance in connection with the occupation or use of the land and waters to which the licence agreement relates or a relevant activity.

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- (3) The terms agreed between the CEO and the licensee referred to in subsection (1)(a) —
  - (a) must include the period for which the agreement has effect; and
  - (b) may make provision for or in relation to matters referred to in subsection (2), but must not be contrary to, or inconsistent with, conditions determined under that subsection; and
  - (c) may include a requirement for the licensee to pay rent or other charges.

**32B. Consequences of contravening conditions of licence agreement determined by CEO under s. 32A(2)(a)**

- (1) If a licensee fails to comply with a condition of a licence agreement determined by the CEO under section 32A(2)(a), the CEO may give the licensee a notice (a *default notice*) that —
  - (a) specifies the condition with which the licensee has failed to comply; and
  - (b) if the notice relates to a failure to comply with a condition that specifies that anything must be done, or must be done to the satisfaction of the CEO —
    - (i) specifies the action that the CEO requires the licensee to take in order to comply with the condition; and
    - (ii) specifies the time (being a reasonable period after the default notice is given) within which the action must be taken;and
  - (c) requires the licensee to comply with the condition; and

- (d) informs the licensee —
  - (i) that it is an offence to fail to comply with the default notice; and
  - (ii) that failure to comply with the default notice may result in the termination of, or suspension of the licensee's rights under, the licence agreement.
- (2) A licensee who fails to comply with a default notice given to the licensee commits an offence.  
Penalty for this subsection:
  - (a) a fine of \$50 000;
  - (b) for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$5 000.
- (3) If the licensee fails to comply with a default notice, the CEO may, by notice in writing given to the licensee —
  - (a) terminate the licence agreement; or
  - (b) suspend the rights of the licensee under the licence agreement for a specified period that the CEO thinks fit.
- (4) A licensee may apply to the State Administrative Tribunal for a review of a decision under subsection (3) to terminate, or suspend a licensee's rights under, a licence agreement.
- (5) The liability of a person to be prosecuted for an offence under subsection (2) in relation to a failure to comply with a default notice is not affected by any termination or suspension of rights under subsection (3) in relation to that failure to comply.

- (6) The CEO's powers under subsection (3) in relation to a failure to comply with a default notice are not affected by the imposition of a penalty for an offence in relation to that failure to comply.
- (7) This section does not limit the terms that may be agreed under section 32A(1)(a) in relation to the consequences of contravening any term or condition of the licence agreement other than a condition determined under section 32A(2)(a).
- (8) A termination or suspension of rights under subsection (3) does not affect any term or condition of the licence agreement that —
  - (a) relates to a matter referred to in section 32A(2)(b) or (c); or
  - (b) is expressed to continue despite a termination or suspension under this section.

**8. Section 38 amended**

Delete section 38(4).

**9. Section 133 amended**

Delete section 133(3).

**10. Section 136 amended**

In section 136(2):

- (a) in paragraph (b) delete “area or the Riverpark,” and insert:

area, Riverpark or River reserve,

- (b) in paragraph (c) delete “licence or”;

- (c) after paragraph (c) insert:
  - (ca) make provision for and in relation to permits referred to in paragraph (c), including by —
    - (i) providing for the imposition of conditions on permits by the CEO or regulations; and
    - (ii) without limiting subparagraph (i), providing for requirements for holders of permits to take out and maintain insurance in connection with the activity to which the permit relates;
- (d) in paragraph (d) delete “area and the Riverpark” and insert:

area, Riverpark or River reserve

**11. Part 11 heading replaced**

Delete the heading to Part 11 and insert:

**Part 11 — Transitional provisions**

**12. Part 11 Division 1 heading inserted**

Before section 138 insert:

**Division 1 — Provisions for *Swan and Canning Rivers Management Amendment Act 2015***

**13. Section 138 amended**

- (1) In section 138 delete “In this Part — ” and insert:

In this Division —

- (2) In section 138 delete the definition of *this Part*.  
(3) In section 138 insert in alphabetical order:

*this Division* includes regulations made under section 148(2).

**14. Part 11 Division 2 inserted**

At the end of Part 11 insert:

**Division 2 — Provisions for *Swan and Canning Rivers Management Amendment Act 2023***

**150. Certain licences granted under s. 32 before commencement of *Swan and Canning Rivers Management Amendment Act 2023***

- (1) In this section —  
*combined licence and permit* means a document issued by the CEO before commencement day that includes both a licence granted under former section 32 and a permit granted under the regulations;  
*commencement day* means the day on which the *Swan and Canning Rivers Management Amendment Act 2023* section 7 comes into operation;  
*former section 32* means section 32 as in force before commencement day;

*relevant licence* means the following licences granted under former section 32 —

- (a) the licence entitled “Deed of licence — Seaplanes — Portion of Swan River” granted to Swan River Seaplanes Pty Ltd and dated 11 May 2021; and
  - (b) the licence entitled “Deed of licence — Zipline — Portion of Swan River” granted to the Commissioner of Main Roads and dated 8 February 2021.
- (2) If a relevant licence is in effect immediately before commencement day, then on and from commencement day —
- (a) the relevant licence continues in effect and is taken to be a licence agreement entered into under section 32 as in force on and after commencement day; and
  - (b) all of the conditions of the relevant licence are taken to be terms of the licence agreement agreed between the CEO and the licensee under section 32A(1)(a).
- (3) A licence agreement continued under subsection (2) expires, and may be terminated or renewed, in accordance with its terms.
- (4) If a combined licence and permit is in effect immediately before commencement day, then on and from commencement day —
- (a) the permit continues in effect; and
  - (b) the licence granted under former section 32 ceases to have effect, but the conditions of the licence are taken to be conditions validly imposed on the permit in accordance with the regulations.

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- (5) A permit continued under subsection (4) expires, and may be revoked, suspended or amended, in accordance with the regulations.

**15. Various references to “this Part” amended**

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

this Division

**Table**

s. 144(1) def. of <i>relevant property</i>	s. 144(2)
s. 145(2) and (3)	s. 148(2)
s. 149	

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