



Western Australia

# **Swan and Canning Rivers Management Act 2006**

Compare between:

[07 Aug 2013, 02-e0-02] and [18 Nov 2013, 02-f0-03]



Western Australia

## **Swan and Canning Rivers Management Act 2006**

**An Act to make provision for —**

- **the protection of the Swan and Canning Rivers and associated land to ensure maintenance of ecological and community benefits and amenity;**
- **the establishment of a Trust with planning, protection and management functions in respect of the Swan and Canning Rivers and associated land;**
- **the management policies to be followed by the Trust and other persons in relation to the Swan and Canning Rivers and associated land;**
- **the establishment of a Foundation with fund-raising and other functions,**

**and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Swan and Canning Rivers Management Act 2006*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day to be fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Terms used**

- (1) In this Act, unless the contrary intention appears —
  - Account* means the Swan River Trust Account referred to in section 42;
  - board* means the board of management referred to in section 18;
  - catchment area* means the land and waters referred to in section 8;
  - chairman* means chairman of the board;
  - committee* means a committee established under section 36;
  - Crown land* has the meaning given to that term in the *Land Administration Act 1997*;
  - 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; and
    - (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 the regulations to constitute development,but does not include any work, act or activity declared by the regulations not to constitute development;

**development control area** means the land and waters referred to in section 10, and includes any land the subject of an agreement under section 28 for management as if the land were part of the development control area;

**Foundation** means the Swan and Canning Rivers Foundation established under section 127;

**Foundation Account** means the Swan and Canning Rivers Foundation Account referred to in section 131;

**General Manager** means the person appointed as such for the purposes of section 37;

**high water mark** —

- (a) in relation to tidal waters — means the ordinary high water mark at spring tides; and
- (b) in relation to non-tidal waters — means the ordinary high water mark at winter level;

**inspector** means —

- (a) a person designated as such under section 39; or
- (b) a police officer;

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

**lot** has the meaning given to that term in the *Planning and Development Act 2005*;

**management programme** means a management programme referred to in section 53 and approved and in force under Part 4;

**member** means a member of the board;

**Metropolitan Redevelopment Authority** means the body established by the *Metropolitan Redevelopment Authority Act 2011* section 4;

**Metropolitan Region Scheme** has the meaning given to that term in the *Planning and Development Act 2005*;

**Minister for Planning** means the Minister to whom the administration of the *Planning and Development Act 2005* is committed;

**officer of the Trust** means —

- (a) the General Manager; or
- (b) a person whose services are provided under section 37(2) or used under section 38(1); or
- (c) a person engaged under section 24(2)(a)(i);

**owner** means —

- (a) in relation to freehold land —
  - (i) a holder of the freehold; or
  - (ii) a mortgagee in possession;and
- (b) in relation to Crown land —
  - (i) the care, control and management of which has been placed in a management body as defined in the *Land Administration Act 1997* — that management body; and
  - (ii) which is reserved, set apart or vested for, or dedicated to, the purposes of another written law — the person who is responsible for the administration of that Crown land while it is so reserved, set apart, vested or dedicated; and
  - (iii) other than land referred to in subparagraph (i) or (ii) — the Minister for Lands, as referred to in the *Land Administration Act 1997* section 7;

**prescribed** means prescribed by regulations made under this Act;

**public authority** means —

- (a) a Government department, State trading concern, State instrumentality or State public utility; or
- (b) a local government or regional local government; or

- (c) any other person, whether corporate or not, who or which, under the authority of a written law, administers or carries on for the benefit of the State a social service or public utility;

***river protection notice*** means a notice referred to in section 91;

***river protection strategy*** means the river protection strategy approved and in force under Part 4;

***River reserve*** means the land and waters referred to in section 11(2);

***River reserve lessee*** means the holder of a lease granted under section 29;

***Riverpark*** means the land and waters referred to in section 9, and includes any land the subject of an agreement under section 28 for management as if the land were part of the Riverpark;

***Riverpark shoreline*** has the meaning given to that term in section 12;

***Schedule 5 authority*** means a person listed in Schedule 5;

***strategic document*** means —

- (a) the river protection strategy; or  
(b) a management programme; or  
(c) a document approved under section 55;

***Trust*** means the Swan River Trust established by section 16;

***Trust website*** means an internet website established by the Trust and maintained for the purposes of this Act and other purposes of the Trust;

***unallocated Crown land*** has the meaning given to that term in the *Land Administration Act 1997*;

***waters*** includes the riverbed and subsoil normally covered by waters when at the high water mark;

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**Western Australian Planning Commission** means the body established by the *Planning and Development Act 2005* section 7.

- (2) Deposited plans referred to in this Act are those held by the department of the Public Service that principally assists in the administration of the *Transfer of Land Act 1893*.

*[Section 3 amended by No. 45 of 2011 s. 144(2)-(4).]*

**4. Crown bound**

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

**5. Objectives of Act and principles to be regarded**

- (1) The objectives of this Act are —
- (a) to provide for the restoration and protection of the development control area and the Riverpark;
  - (b) to provide for the management of activities that affect the ecological and community benefits and amenity of the development control area and the Riverpark;
  - (c) to provide for the needs of future generations in relation to the ecological and community benefits and amenity of the development control area and the Riverpark;
  - (d) to recognise the interests of the Nyungah community and other people in the community with an association with the development control area or the Riverpark and to provide for their participation in the management of those areas and the management of activities affecting the ecological and community benefits and amenity of those areas;
  - (e) to promote and facilitate the good management of the catchment area to meet the objectives referred to in paragraphs (a) to (d).



- (2) In pursuing the objectives of this Act regard should be had to the following principles —

**Table**

**1. Sustainability principles**

- (1) Sound environmental practices and procedures should be adopted as a basis for sustainability for the benefit of all human beings and the environment today, while considering the environmental, social and economic needs of future generations.
- (2) Environmental, social and economic factors should be considered in decision-making, with the objective of improving community well-being and the benefit to future generations.
- (3) Environmental practices and procedures should be cost-effective and in proportion to the significance of the environmental risks and consequences being addressed.

**2. Precautionary principle**

- (1) Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (2) In the application of the precautionary principle, decision-making should be guided by —
  - (a) a careful evaluation to avoid serious or irreversible damage to the environment wherever possible; and
  - (b) an assessment of the risk-weighted consequences of the options.

**3. Intergenerational equity**

The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

**4. Biodiversity and ecological integrity**

Biodiversity and ecological integrity should be maintained or enhanced as part of the irreplaceable life support systems upon which the earth depends.

**5. Shared responsibility**

Protection of the environment is a responsibility shared by Government, industry, business, the community and the people of the State.

**6. Best practice**

When designing policies, systems, procedures or technologies, the best practicable measures available at the time should be used.

**7. Continuous improvement**

Implementation of natural resource management should aim for continuous improvement and extend beyond compliance with relevant laws and requirements.

**8. Accountability and transparency**

- (1) Members of the community should be given —
  - (a) access to reliable and relevant information; and
  - (b) opportunities to participate in policy and programme development.
- (2) Decisions should be made in a transparent manner and be made public.

**6. Application of s. 5; relationship of this Act to other Acts; disputes etc. between Trust and Sch. 5 authority**

- (1) Persons involved in the administration of this Act, and Schedule 5 authorities, should perform their functions with due regard to the objectives and principles of this Act.

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- (2) The provisions of any other written law must be construed and applied —
- (a) with due regard to the objectives and principles of this Act; and
  - (b) so that those objectives and principles are paramount, unless that construction or application would —
  - (c) be inconsistent with the objects and intentions of that written law; or
  - (d) substantially interfere with the operation of the provisions of that written law.
- (3) Except where the contrary intention is expressed in this Act, the vesting in the Trust of functions in respect of the development control area and the Riverpark does not limit the functions vested by any written law in any other person in respect of those areas.
- (4) If a provision of this Act, other than a provision of Part 5, is in conflict with a power conferred on a Schedule 5 authority by a written law, the Schedule 5 authority and the Trust must endeavour to reach agreement as to which provision will prevail.
- (5) If a question, difference or dispute arises, or may arise, between a Schedule 5 authority and the Trust as to the rights, powers or authority of, or the discharge of any duty by, a Schedule 5 authority, or as to their respective functions or interests, on a matter referred to in subsection (4), then —
- (a) if the matter relates to the functions of a government department — the Minister charged with the administration of that government department (the ***Schedule 5 Minister***) may consult with the Minister;
  - (b) if the matter relates to the functions of a statutory authority — the Minister to whom the Governor has committed the Act under which the statutory authority is

established or continued (the *Schedule 5 Minister*) may consult with the Minister.

- (6) If the Ministers agree after consultation under subsection (5), the Schedule 5 Minister must give the Schedule 5 authority, and the Minister must give the Trust, such directions as result from the consultation and agreement.
- (7) If no consultation under subsection (5) is concluded or the Ministers cannot agree as to the matter, the matter may be finally and conclusively determined by the Governor, and effect must be given to the determination.
- (8) The Governor may finally and conclusively determine any question, difference or dispute arising or about to arise between a Schedule 5 authority and the Trust as to the rights, powers or authority of, or the discharge of any duty by, a Schedule 5 authority, or as to their respective functions or interests, on a matter referred to in subsection (4) whether or not referred to the Governor under subsection (7) and whether or not the Ministers had purported to agree under subsection (6), and effect must be given to the determination.
- (9) Without limiting subsection (4), the regulations may make provision as to the manner and circumstances in which a conflict referred to in subsection (4) must be brought to the notice of the Trust.
- (10) The performance of a function by the Trust or a Schedule 5 authority cannot be appealed against, reviewed, quashed, challenged, or called in question, before or by any person acting judicially or a court or tribunal on any account or by any means on the ground that the performance of the function does not comply with subsection (1) or (2).

**7. Native title rights and interests, how affected by this Act**

- (1) In this section —

*affect* has the meaning given to that term in the NTA section 227;

*native title rights and interests* has the meaning given to that term in the NTA section 223;

*NTA* means the *Native Title Act 1993* of the Commonwealth.

- (2) Nothing done by or under this Act operates to affect any native title rights and interests.
- (3) Subsection (2) does not apply to the extent that the effect on those rights and interests is valid by the operation of, or by anything done under, the NTA or another law of this State.

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

### **8. Catchment area defined (Sch. 1)**

A reference in this Act to the catchment area is a reference to the land and waters within the area for the time being described in Schedule 1.

### **9. Riverpark defined (Sch. 1 and 2)**

A reference in this Act to the Riverpark is a reference to the land and waters that are —

- (a) within the catchment area; and
- (b) within the area for the time being described in Schedule 2.

### **10. Development control area defined (Sch. 1 and 3)**

- (1) A reference in this Act to the development control area is a reference to the land and waters that are —
  - (a) within the catchment area; and
  - (b) within the area for the time being described in Schedule 3.
- (2) Land and waters that are within the development control area may overlap, or be the same as, land and waters that are within the Riverpark.

### **11. River reserve defined (Sch. 1 and 4), reserved and vested in Trust**

- (1) In this section —

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

**Marine Authority** has the meaning given to that term in the CALM Act;

*marine reserve* has the meaning given to that term in the CALM Act.

- (2) Subject to subsection (9), a reference in this Act to the River reserve is a reference to the land and waters that are —
  - (a) within the catchment area; and
  - (b) within the area for the time being described in Schedule 4.
- (3) Subject to subsection (9), the land and waters described in Schedule 4 are reserved under the *Land Administration Act 1997* Part 4 for the purpose of protection and enhancement of the ecological and community benefits and amenity of the Swan and Canning Rivers.
- (4) The purpose of the River reserve must not be amended or cancelled, and the boundary of the River reserve must not be altered, except by an Act or under section 13 or 15.
- (5) Subject to subsection (9), any other reservation or vesting of the land and waters described in Schedule 4 under —
  - (a) the *Land Administration Act 1997* Part 4; or
  - (b) the *Marine and Harbours Act 1981* section 9; or
  - (c) any other written law,is, by this section, cancelled.
- (6) The cancellation under subsection (5) of a reserve as defined in the *Land Administration Act 1997* has effect as if it were made under Part 4 of that Act.
- (7) Subject to subsection (9), the land and waters described in Schedule 4 are placed under the care, control and management of the Trust and cease to be vested in any other person or under the care, control and management of any other person.
- (8) The Registrar of Titles must take any necessary measures to register the reservation and placement of land and waters effected by subsections (3) and (7), and the necessary

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consequential changes, and for those purposes this section is to be treated as if it were an order under the *Land Administration Act 1997* Part 4.

- (9) Nothing in this section applies to —
- (a) land which is not Crown land; or
  - (b) any part of a marine reserve which —
    - (i) immediately before the commencement of this section, is vested in the Marine Authority under the CALM Act; and
    - (ii) is in the land or waters described in Schedule 4;
  - or
  - (c) any part of a nature reserve which —
    - (i) immediately before the commencement of this section, is vested in the Conservation Commission under the CALM Act; and
    - (ii) is in the land or waters described in Schedule 4.

**12. Riverpark shoreline, responsibility for**

- (1) In this section —
- Minister for Lands*** means the Minister as defined in the *Land Administration Act 1997*;
- Riverpark shoreline*** means the area of Crown land in the Riverpark extending from 2 m below the high water mark to 2 m above the high water mark, measured horizontally above the surface of the land and including the surface of any structure built to retain the land;
- unmanaged reserve*** has the meaning given to that term in the *Land Administration Act 1997*.
- (2) Despite any written or other law to the contrary, the Minister for Lands is jointly responsible with the Trust for the care, control and management of any part of the Riverpark shoreline that is unallocated Crown land or an unmanaged reserve and for the



maintenance of any wall or other structure on the Riverpark shoreline.

- (3) Despite any written or other law to the contrary, a person who has the care, control and management of Crown land in the Riverpark shoreline is jointly responsible with the Trust for the care, control and management of that part of the Riverpark shoreline and for the maintenance of any wall or other structure on that part of the Riverpark shoreline.
- (4) The Trust and a person referred to in subsection (2) or (3) may agree to vary the area or structures for which they are jointly responsible under this section so as to include an area or structure that is not in the Riverpark shoreline.
- (5) The Trust must not enter into an agreement under subsection (4) except with the prior approval of the Minister.
- (6) Nothing in this section affects any covenant, contract or agreement relating to the care, control and management of land on the Riverpark shoreline made between —
  - (a) the Trust and a person who has the care, control and management of land on the Riverpark shoreline; or
  - (b) the Trust and another person; or
  - (c) a person who has the care, control and management of land on the Riverpark shoreline and another person; or
  - (d) any other persons.
- (7) Nothing in this section limits the powers of the Trust under Part 3 Division 2.

**13. Sch. 1-4, amending by regulations**

- (1) The regulations may amend Schedule 1, 2, 3 or 4 —
  - (a) by adding any area to the catchment area, development control area, Riverpark or River reserve;
  - (b) by excising any area from the catchment area, development control area, Riverpark or River reserve;

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- (c) by deleting the catchment area, development control area, Riverpark or River reserve and substituting another area for it.
- (2) Before regulations are made for the purposes of subsection (1) the Minister must consult with —
- (a) the Minister for Planning; and
  - (b) any other Minister of the Crown that the Minister considers has a relevant interest in the regulations; and
  - (c) 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;
- and
- (d) any other public authority that has the care, control or management of land likely to be added to, excised from, or substituted for, land in the catchment area, development control area, Riverpark or River reserve.
- (3) Land added to, or substituted for land in, the Riverpark or the River reserve must be Crown land.
- (4) The addition of an area to, excision of an area from, or substitution of an area for, the River reserve under this section has effect as if the area were added to, excised from, or substituted for, the River reserve under the *Land Administration Act 1997* Part 4.
- (5) The Registrar of Titles must take any necessary measures to register any change to the reservation and placement of waters in the River reserve effected by a regulation under this section, and the necessary consequential changes, and for those purposes the regulation is to be treated as if it were an order under the *Land Administration Act 1997* Part 4.

- (6) Regulations referred to in subsection (1) may provide for the substitution of a plan for a plan referred to in Schedule 1, 2, 3 or 4, or for the amendment of an area by reference to a further plan.
- (7) Despite any increase in the development control area effected by regulations referred to in subsection (1), any act or thing lawfully undertaken, and not discontinued or abandoned, before the commencement of those regulations in an area that was not in the development control area before that commencement but which is in the development control area after that commencement may be lawfully continued and completed as if those regulations had not come into operation.
- (8) Without limiting subsection (7), regulations referred to in subsection (1) may make further provisions of a transitional nature that are expedient to be made in respect of an amendment to Schedule 1, 2, 3 or 4 under subsection (1).

**14. Boundaries of catchment area etc., proving**

- (1) In any proceedings —
  - (a) a plan purporting to be a copy of a plan referred to in Schedule 1, 2, 3 or 4 or section 13(6) showing the boundaries or any boundary of the catchment area, development control area, Riverpark or River reserve; or
  - (b) a notice published under section 15(3) of the location of a boundary of the catchment area, development control area, Riverpark or River reserve,is evidence of those boundaries or that boundary.
- (2) A person may not assert the invalidity of a plan referred to in Schedule 1, 2, 3 or 4 or section 13(6) on the ground of error, misdescription, irregularity or uncertainty if the error, misdescription, irregularity or uncertainty did not in fact mislead the person in a material way.

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**15. Boundaries of catchment area etc., resolving questions as to**

- (1) If any question arises as to the boundary of the catchment area, development control area, Riverpark, River reserve, or Riverpark shoreline, the Trust, after giving the persons interested in the resolution of the question the opportunity to make submissions to it, must refer the question to the Minister with its opinion.
- (2) The Minister must 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 catchment area, development control area, Riverpark, River reserve, or Riverpark shoreline, and the Governor's decision is final.
- (3) If any part of the boundary of the catchment area, development control area, Riverpark, River reserve or Riverpark shoreline is determined by the Governor under subsection (2) —
  - (a) the boundary of the catchment area, development control area, Riverpark, River reserve, or Riverpark shoreline is to be taken to be the boundary determined by the Governor; and
  - (b) the Minister must cause —
    - (i) the location of that boundary to be notified in the *Gazette*; and
    - (ii) a copy of the notice to be kept with the plans referred to in Schedule 1, 2, 3 or 4, whichever is relevant.
- (4) If, as a result of a determination by the Governor under subsection (2), the boundary of the River reserve is changed, the Registrar of Titles must take any necessary measures to register any change to the reservation and placement of waters in the River reserve, and the necessary consequential changes, and for those purposes the determination is to be treated as if it were an order under the *Land Administration Act 1997* Part 4.

## Part 3 — Swan River Trust

### Division 1 — Establishment and management

#### 16. Trust established and nature of

- (1) A body called the Swan River Trust is established.
- (2) The Trust is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Trust in its corporate name.

#### 17. Trust is agent of Crown etc.

The Trust is an agent of the Crown and has the status, immunities and privileges of the Crown.

#### 18. Board of management of Trust

- (1) The Trust is to have a board of management.
- (2) The board is the governing body of the Trust.
- (3) The board, in the name of the Trust, is to perform the functions of the Trust under this Act or any other written law.

#### 19. Board, membership of

- (1) The members of the board are —
  - (a) 6 members appointed by the Minister, none of whom is an elected member of the council of a local government; and
  - (b) the person holding or acting in the office of chief executive officer of the department principally assisting in the administration of the *Planning and Development Act 2005*, or a nominee of the chief executive officer approved by the Minister; and
  - (c) 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.

- (2) As far as is practicable, the membership of the board must comprise persons who between them have knowledge of, and experience in, the fields of conservation, natural resource management, recreation, tourism, planning, development, matters of interest to the rural community and matters of interest to the Nyungah community.
- (3) The Minister must designate one of the members appointed under subsection (1)(a) as chairman of the board.
- (4) Before appointing a member under subsection (1)(a) the Minister must publish in a newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the board.
- (5) The Minister must consider expressions of interest lodged in accordance with the notice but may appoint a person as a member of the board whether or not the person has lodged an expression of interest.
- (6) Where the submission of a panel of names is required for the purposes of subsection (1)(c), the submission must be made to the Minister, in writing signed on behalf of the Western Australian Local Government Association, 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.
- (7) If the submission has not been made in accordance with subsection (6) 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 board in place of the person provided for by subsection (1)(c).

**20. Board, constitution and proceedings of (Sch. 6)**

Schedule 6 has effect.

**21. Remuneration and allowances of members**

- (1) In subsection (2) —

*member* means a member appointed under section 19(1)(a) or (c) and a member of a committee.

- (2) A member is to be paid such remuneration and travelling and other allowances as are determined, in the case of that member, by the Minister on the recommendation of the Public Sector Commissioner.

*[Section 21 amended by No. 39 of 2010 s. 89.]*

**22. Local governments and Metropolitan Redevelopment Authority, attendance of nominees of at board meetings**

- (1) Subject to subsections (4) and (5), the chairman must by notice specifying the time and place of a meeting of the board, request a local government referred to in Schedule 7 or the Metropolitan Redevelopment Authority, to nominate a person to attend or participate in that meeting if a matter to be considered at that meeting is a relevant matter for that local government or the Metropolitan Redevelopment Authority.

- (2) A relevant matter for a local government is one that —
- (a) 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; or
  - (b) is in the opinion of the chairman a matter that affects or is likely to affect the interest 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 7 are affected.

- (3) A relevant matter for the Metropolitan Redevelopment Authority is one that relates to a development or proposed development that is in a redevelopment area as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3.

- (4) If the Metropolitan Redevelopment Authority is requested to nominate a person under subsection (1) in respect of a relevant matter, the chairman is not required to request a local government to nominate a person under that subsection in respect of that matter.
- (5) If a local government is requested to nominate a person under subsection (1) in respect of a relevant matter, the chairman is not required to request the Metropolitan Redevelopment Authority to nominate a person under that subsection in respect of that matter.
- (6) A notice under subsection (1) must be given —
  - (a) in writing to the local government or Metropolitan Redevelopment Authority not less than 14 clear days before the meeting; or
  - (b) in writing or by facsimile or electronic communication to the local government or Metropolitan Redevelopment Authority within such lesser period as the local government or Metropolitan Redevelopment Authority may, by notice in writing or by facsimile or electronic communication, agree.
- (7) A nomination under subsection (1) must be made —
  - (a) if not less than 14 clear days notice of the meeting has been given, in writing delivered to the board not later than 3 clear days before the meeting; or
  - (b) if the local government or redevelopment authority has agreed to a lesser period of notice, in writing or by facsimile or electronic communication before the meeting commences.
- (8) A person nominated under subsection (1) is entitled to attend or participate in a meeting for the purpose of determining any relevant matter in relation to which the person is nominated, and to attend or participate in any subsequent meeting that the chairman may request the person 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 22 amended by No. 45 of 2011 s. 144(5)-(9); No. 47 of 2011 s. 27.]*

## **Division 2 — Functions and powers**

### **23. Functions of Trust**

The functions of the Trust are —

- (a) to protect and enhance the ecological and community benefits and amenity of the development control area and to control activities and development in that area; and
- (b) to protect and enhance the ecological and community benefits and amenity of the Riverpark; and
- (c) to carry out works and provide facilities for the purposes of protecting and enhancing the ecological and community benefits and amenity of the Riverpark; and
- (d) to establish targets for ecological and community benefits and amenity of the Riverpark, and mechanisms for evaluating achievement of those targets; and
- (e) to coordinate and promote the development and implementation of strategic documents under this Act; and
- (f) to coordinate and promote the activities of other bodies that have functions in relation to the catchment area, insofar as those functions may affect the Riverpark, including the implementation of any strategic documents applicable to the catchment area; and
- (g) to monitor and report to the Minister on —
  - (i) the state of the development control area; and
  - (ii) development on and adjoining the development control area;

and

- (h) to provide advice and 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;
- and
- (i) 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 its functions; and
  - (j) to provide advice and promote public education on any matter within its functions; and
  - (k) to perform such functions as are delegated to it under any other written law; and
  - (l) to otherwise undertake the administration and enforcement of this Act; and
  - (m) to perform any other function vested in it by this Act or any other written law.

**24. Powers of Trust**

- (1) The Trust has all the powers it needs to perform its functions under this Act or any other written law.
- (2) Subject to any limitation imposed by this Act or another written law, the Trust may, for the purpose of performing any of its functions under this Act or any other written law —
  - (a) enter into any contract or arrangement, including a contract or arrangement with a person for —

- (i) the performance of the function by that person on behalf of the Trust; or
    - (ii) the supply of equipment or services;
  - and
  - (b) act as an agent or provide consultancy, professional, or technical services or other assistance under a contract for services or other arrangement; and
  - (c) carry out any investigation, survey, exploration, feasibility study, evaluation, or review; and
  - (d) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
  - (e) produce and publish information on matters related to its functions.
- (3) Subsection (2) does not limit subsection (1) or any of the Trust's other powers.

**25. Consultation and matters to be considered by Trust**

- (1) The Trust 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 its functions; and
  - (b) have regard, in the performance of its 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.

- (2) The Trust must consult and collaborate with any body that appears to the Trust to have a role in regional natural resource management in the catchment area to ensure that, to the extent that is practicable, there is consistency between the strategies and programmes of the Trust and the functions of that body, to the extent to which those functions may affect the Riverpark.

**26. Local governments and Metropolitan Redevelopment Authority, consultation by Trust with**

- (1) If it appears to the Trust that a measure proposed to be taken by the Trust, 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 Trust must refer the proposal to the local government or the Metropolitan Redevelopment Authority.
- (2) If a proposal is referred to it, the Metropolitan Redevelopment Authority or a local government may make submissions to the Trust on the proposal.
- (3) The Trust must have regard to those submissions —
- (a) in any report, advice or recommendation that it intends to submit to the Minister on the proposal; and
  - (b) if it undertakes the proposal.
- (4) The local government or 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 Trust, in the case of a decision by the Trust.

*[Section 26 amended by No. 45 of 2011 s. 144(10)-(12).]*

**27. Collaborative arrangements, Trust may enter etc.**

- (1) Subject to this section, the Trust 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 Trust 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 Trust 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 Trust 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 Trust; and
  - (d) requiring a party to report to the Trust in relation to the party's obligations under the agreement; and
  - (e) as to the monitoring functions of the Trust; and
  - (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 Trust 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.

**28. Private land, Trust may agree to manage etc.**

- (1) In this section —  
*private land* means any land that —
  - (a) is alienated from the Crown for any estate of freehold; or
  - (b) is the subject of a conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple in that land.
- (2) The Trust may enter into and give effect to an agreement with the owner, lessee or licensee of any private land within the catchment area —
  - (a) for the management of the land by the Trust as if it were part of the development control area or the Riverpark, or for some other public purpose, under this Act; and
  - (b) for the purpose of obtaining rights of access and other rights necessary for the protection and enhancement of the ecological and community benefits and amenity of the development control area or the Riverpark.
- (3) No agreement is to 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.

**29. River reserve, Trust may grant leases of etc.**

- (1) In this section —  
*lease* includes sublease.
- (2) The Trust may grant a lease of land that is part of the River reserve —
  - (a) if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph; or
  - (b) with the prior approval of the Minister.
- (3) A lease may be granted for the term, and on the terms and conditions, including a right of renewal, the Trust considers appropriate.
- (4) If a development to which the proposed lease relates is required to be approved under section 70, a lease —
  - (a) must not be granted under this section unless that approval has been granted; or
  - (b) must not be granted on any term or condition that is contrary to or inconsistent with that approval.
- (5) A person must not, without the prior approval of the Trust —
  - (a) mortgage a lease granted under subsection (2); or
  - (b) sell, transfer or otherwise dispose of the lease in whole or in part.
- (6) An act done in contravention of subsection (5) is void.
- (7) If land is leased under a power conferred under this section, the lessee may, unless the terms of the lease otherwise provide, restrict public access to the area leased.
- (8) If the Minister and the Minister to whom the administration of the *Marine and Harbours Act 1981* is committed so approve, in respect of a lease granted under this section or referred to in the

*Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006* section 13 —

- (a) the department responsible for administering the *Marine and Harbours Act 1981* may manage the lease as an agent of the Trust; and
- (b) with the approval of the Treasurer, revenue derived from the lease may be credited to an agency special purpose account of the department established and maintained under the *Financial Management Act 2006* section 16.

*[Section 29 amended by No. 77 of 2006 Sch. 1 cl. 165(1); No. 47 of 2011 s. 27.]*

**30. River reserve lease, consequences of contravening**

- (1) If a River reserve lessee fails to comply with any term or condition of the lease the Trust may give the lessee a default notice in accordance with this section.
- (2) A default notice given under subsection (1) must —
  - (a) specify the term or condition with which the lessee has failed to comply; and
  - (b) if the notice relates to a failure to comply with a term or condition of the lease which specifies that anything must be done, or must be done to the satisfaction of the Trust —
    - (i) specify the actions which the Trust requires the lessee to take, or to take in order to satisfy it; and
    - (ii) the time (being a reasonable period after the default notice is given) within which the action must be taken;and
  - (c) require the lessee to comply with the term or condition; and



- (d) inform the lessee that a failure to comply with the default notice could result in a fine, the forfeiture of the lessee's interest in the lease under section 31, or both.
- (3) A River reserve lessee who fails to comply with a default notice given to the lessee under subsection (1) commits an offence.
- Penalty:
- (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.
- (4) The liability of a person to be prosecuted for an offence under subsection (3) is not affected by the forfeiture of a lease to which the offence related.
- (5) The liability of a person to the forfeiture of a lease is not affected by the imposition of a penalty for an offence in relation to a matter to which the liability to forfeiture related.

**31. River reserve lease, procedure for forfeiting**

- (1) If the Trust is satisfied that a River reserve lessee has failed to comply with a provision of the lease, the Trust may give the lessee notice of the nature of the failure to comply and of the intention to cause the forfeiture of the lease.
- (2) A River reserve lessee may apply to the State Administrative Tribunal for a review of the decision to give the notice.
- (3) If —
- (a) no application for review is made under subsection (2);  
or
- (b) an application for review is made under subsection (2) but the applicant discontinues the application; or
- (c) an application for review is made under subsection (2) and the State Administrative Tribunal —

- (i) dismisses the application for want of prosecution; or
    - (ii) affirms the decision to give the notice,
- the Trust may by order cause the lease to be forfeited.
- (4) The Trust must, when it makes an order under subsection (3), lodge the order with the Registrar of Titles for registration.
  - (5) On the registration of an order made under subsection (3) —
    - (a) the lease is forfeited to the Crown; and
    - (b) any moneys paid to the Trust in respect of that lease cannot be recovered by the River reserve lessee; and
    - (c) any improvements made by the River reserve lessee on the land to which the lease relates become the property of the Crown.
  - (6) The *Land Administration Act 1997* section 35(5), (6), (7), (8), (9) and (12) apply for the purposes of this section as if —
    - (a) a reference in those provisions to the Minister were a reference to the Trust; and
    - (b) a reference in those provisions to the forfeiture of an interest under that section were a reference to the forfeiture of a lease under this section; and
    - (c) a reference to the respondent were a reference to the River reserve lessee.

**32. River reserve, Trust may grant licences over etc.**

- (1) The Trust may grant a licence in writing to any person in respect of the River reserve.
- (2) The Trust may renew the period of operation of a licence under this section, transfer the authority it confers from one person to another, or transfer the operation of the licence to another place.
- (3) A licence under this section may be granted, renewed or transferred subject to such conditions as the Trust thinks fit.

- (4) The conditions —
- (a) must be endorsed upon the licence when granted, renewed or transferred; and
  - (b) may be added to, cancelled, suspended or otherwise varied by the Trust during the operation of the licence.
- (5) The holder of a licence under this section must not contravene or fail to comply with a condition endorsed upon or attached to the licence.
- Penalty:
- (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.
- (6) If the holder of a licence under this section contravenes a condition endorsed upon or attached to the licence, the Trust may, by notice in writing given to the holder, cancel the licence or suspend it for such time as the Trust thinks fit.
- (7) The holder of a licence under this section may apply to the State Administrative Tribunal for a review of a decision under subsection (6) to cancel or suspend the licence.
- (8) If a licence granted under subsection (1) in respect of the River reserve is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of *licence* paragraph (d), the licence is declared not to be personal property for the purposes of that Act.
- [Section 32 amended by No. 42 of 2011 s. 70.]

**33. Delegation by Trust etc.**

- (1) In subsection (2) —
- eligible person* means —
- (a) a member;

- (b) a committee or a member of the committee;
  - (c) an officer of the Trust;
  - (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 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) The Trust —
  - (a) must not delegate a function vested in it by section 75, 77, 81, 85, 89, 91 or 99; and
  - (b) must not delegate any other function vested in it under Part 5 except to the General Manager.
- (4) A resolution under subsection (2) takes effect when notice of the resolution is published in the *Gazette*.
- (5) The Trust 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 Trust to perform a function through an officer or agent.
- (9) 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 46.

**34. 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 submitted by the accountable authority of the Trust under the *Financial Management Act 2006* Part 5.

*[Section 34 amended by No. 77 of 2006 Sch. 1 cl. 165(2).]*

**35. Minister to have access to information**

- (1) In this section —  
*document* includes any tape, disc 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.
- (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 the officers of the Trust to obtain the information and provide it to the Minister.
- (4) The Trust must comply with a request under subsection (3) and make its officers and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

**36. Committees, Trust may appoint etc.**

- (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 33, a committee may determine its own procedures.

**Division 3 — Staff and facilities**

**37. General Manager and staff**

- (1) In this section —  
*chief executive officer* means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Environmental Protection Act 1986*.
- (2) The chief executive officer must provide the Trust with the services of such public service officers, including a General Manager, and other professional, technical and administrative staff as the Trust may reasonably require to perform its functions.
- (3) Subject to the control of the board, the General Manager is to administer the day to day operations of the Trust.

- (4) The General Manager 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.
- (5) The General Manager and other officers of the Trust are not, in the performance of their functions under this Act, subject to the direction of the chief executive officer.

**38. Government staff and facilities, use of by Trust**

- (1) The Trust may by arrangement with the relevant employer make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the State.
- (2) The Trust may by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) The Trust must not enter into an arrangement under subsection (1) or (2) without the prior approval of the Minister.
- (4) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.
- (5) An officer or employee provided under this section is not, in the performance of his or her functions under this Act, subject to the direction of his or her employer.

### **Division 4 — Inspectors**

**39. Inspectors, designating etc.**

- (1) The Trust may, by instrument in writing, designate an officer of the Trust or other officer of a public authority as an inspector.
- (2) An inspector may perform such of the functions of an inspector as may be specified in his or her instrument of designation.
- (3) The Trust may revoke a designation under subsection (1) at any time.
- (4) A police officer is ex officio an inspector.

**40. Identity cards for inspectors**

- (1) The General Manager must issue to an inspector an identity card stating that he or she has been designated as an inspector.
- (2) An inspector must produce the identity card whenever requested to do so by any person in respect of whom the inspector has exercised, or is about to exercise, a power under Part 7 Division 2.
- (3) Production of an identity card is evidence in any court of the designation of the inspector to whom the identity card relates.
- (4) A person who ceases to be an inspector must, as soon as practicable, return his or her identity card to the General Manager or other person authorised to receive it.  
Penalty: a fine of \$10 000.
- (5) This section does not apply to an inspector who is a police officer.



## Division 5 — Financial provisions

### 41. Trust's funds

- (1) Subject to this Act, the Trust is responsible for managing its own finances.
- (2) The funds available to the Trust to enable it to perform its functions under this Act or any other written law are —
  - (a) moneys borrowed under section 45; and
  - (b) any other moneys lawfully received by, made available to, or payable to, the Trust under this Act or any other written law.
- (3) Where any moneys or property, including moneys or property representing a gift by will, have been accepted by the Trust upon lawful conditions, it must apply the moneys or property in accordance with those conditions.

### 42. Swan River Trust Account

- (1) An account called the Swan River Trust Account is to be established —
  - (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in section 41 must be credited.

- (2) 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 45, is to be charged to the Account and moneys standing to the credit of that Account must be applied only for the purposes of this Act.

*[Section 42 amended by No. 77 of 2006 Sch. 1 cl. 165(3).]*

**43. Temporary investment of moneys**

If section 42(1)(b) applies, moneys standing to the credit of the Account may, until required by the Trust for the purposes of this Act, be temporarily invested by the Trust in such manner as the Treasurer approves.

**44. *Financial Management Act 2006 and Auditor General Act 2006, application of***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Trust and its operations.

*[Section 44 amended by No. 77 of 2006 Sch. 1 cl. 165(4).]*

**45. Power to borrow from Treasurer**

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.

**Division 6 — Miscellaneous**

**46. 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
  - (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 an officer of the Trust 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 an officer or officers of the Trust 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.

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

### **Division 1 — Ecological and community benefit and amenity targets**

#### **47. Regulations may prescribe targets**

- (1) The regulations may prescribe —
  - (a) ecological and community benefit and amenity targets for the Riverpark; and
  - (b) targets for the catchment area that relate to the achievement of the targets prescribed under paragraph (a).
- (2) Without limiting subsection (1) the regulations may —
  - (a) prescribe targets for levels of phosphorus, nitrogen or other pollutants in waters;
  - (b) make provision for —
    - (i) monitoring protocols; and
    - (ii) sampling procedures; and
    - (iii) standards, criteria and benchmarks; and
    - (iv) statistical treatments; and
    - (v) reporting procedures,in relation to measuring the targets prescribed under subsection (1) or paragraph (a) of this subsection.
- (3) A failure to meet a target or a contravention of a regulation prescribing a target is not an offence.

#### **48. Consultation with public authorities etc. about proposed s. 47 regulations**

Before regulations are made in relation to a matter referred to in section 47 the Trust must endeavour to consult with any public authority or person which or who appears to the Minister to be likely to be affected in a material way by the regulations.

**49. Draft s. 47 regulations to be published etc.**

- (1) The Trust must —
  - (a) deposit copies of draft regulations proposed to be made in relation to a matter referred to in section 47 for public inspection during ordinary business hours free of charge at the office of the Trust; and
  - (b) publish the draft regulations on the Trust website.
- (2) As soon as practicable after the deposit of the copies of the draft regulations under subsection (1)(a) the Trust must publish —
  - (a) in the *Gazette*; and
  - (b) in 2 issues of a daily newspaper circulating throughout the State,  
a notice —
    - (c) specifying the places at which copies of the draft regulations may be inspected and obtained; and
    - (d) stating the effect of section 50 and specifying the period referred to in that section.
- (3) The Trust may fix and charge a fee for supplying a copy of draft regulations.

**50. Public submissions about draft s. 47 regulations**

Submissions on draft regulations proposed to be made in relation to a matter referred to in section 47 may be made, in the form, if any, approved by the Trust, by any person —

- (a) within a period determined by the Trust that is not less than 60 days after the day on which the notice is published in the *Gazette* under section 49(2)(a); and
- (b) by delivering or posting them so that they are received within that period at the offices of the Trust.

## **Division 2 — Strategic documents**

### **51. River protection strategy, content of**

- (1) The river protection strategy must —
  - (a) establish coordinated management arrangements necessary for the protection and enhancement of the ecological and community benefits and amenity of the development control area and the Riverpark, and the meeting of the targets referred to in section 47; and
  - (b) specify —
    - (i) the persons who, in addition to the Trust, are responsible for those management arrangements; and
    - (ii) their responsibilities under those management arrangements.
- (2) Without limiting subsection (1), the river protection strategy may —
  - (a) establish objectives and performance standards for the coordinated management of the catchment area; and
  - (b) provide for the development of key strategies and broad programmes to achieve the objectives of this Act; and
  - (c) specify reporting and compliance requirements of Schedule 5 authorities; and
  - (d) set out requirements for the assessment of the state of the development control area and the Riverpark and their ecological and community benefits and amenity, and for reporting on the effectiveness of the river protection strategy; and
  - (e) set out protocols for the acquisition, assessment and storage of information relating to requirements under paragraph (d).

- (3) The river protection strategy may specify the period within which any action recommended in the strategy must be implemented.

**52. Comprehensive Management Plan and Implementation Strategy (2004), temporary effect of**

The Comprehensive Management Plan and Implementation Strategy for the *Environmental Protection (Swan and Canning Rivers) Policy 1997* prepared under clause 10 of that policy and published in August 2004 have effect as guidelines for management arrangements for the protection and enhancement of the ecological and community benefits and amenity of the development control area and the Riverpark until a river protection strategy is approved under this Part.

**53. Management programmes, content of**

- (1) A management programme may —
- (a) specify the objectives of the management programme in relation to the protection and enhancement of the ecological and community benefits and amenity of the development control area and the Riverpark; and
  - (b) identify the areas or activities to which the management programme applies, including areas that require priority protection and areas requiring priority remediation; and
  - (c) specify the management arrangements to be implemented.
- (2) A management programme in relation to the development control area must include policies and guidelines proposed to be followed by the Trust in relation to development in the development control area.
- (3) A management programme may specify the period within which any action recommended in the management programme must be implemented.

- (4) A management programme must be consistent with the river protection strategy.
- (5) A management programme must 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.

**54. Codes and subsidiary legislation, river protection strategy and management programme may adopt**

- (1) In this section —  
*code* means a code, standard, rule, specification or other document, made in or outside Australia, that does not by itself have legislative effect in this State.
- (2) The river protection strategy or a management programme may adopt, either wholly or in part or with modifications —
  - (a) any code; or
  - (b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) If the river protection strategy or a management programme adopts a code or subsidiary legislation, it is adopted as in force from time to time unless the river protection strategy or management programme specifies that a particular text is adopted.

**55. Documents not prepared by Trust, approval of as strategic documents**

- (1) The Minister may, on the recommendation of the Trust, approve as a strategic document a document prepared by a public authority, person or body other than the Trust.
- (2) The Minister must not approve a document under subsection (1) unless the Minister is satisfied that —



- (a) the document is consistent with the river protection strategy or a management programme; and
  - (b) there has been sufficient community consultation, and consultation with public authorities, persons and bodies likely to be affected in a material way by the document, in the preparation of the document; and
  - (c) each relevant Minister has agreed to the terms of the document.
- (3) In subsection (2)(c) —  
*relevant Minister*, in relation to a document referred to in this section, means a Minister for the time being responsible for the administration of a written law under which functions are vested in a person in respect of a matter that is likely to be affected in a material way by the document.

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

#### **56. Trust to prepare draft documents**

- (1) As soon as is practicable after the commencement of this section the Trust must prepare or cause to be prepared —
- (a) a draft river protection strategy; and
  - (b) a draft management programme for the Riverpark; and
  - (c) a draft management programme for the development control area; and
  - (d) such other draft management programmes as the Trust considers necessary to give effect to the river protection strategy.
- (2) If the draft river protection strategy or a management programme adopts a code or subsidiary legislation, any reference in this Division to the draft river protection strategy or management programme includes a reference to the code or subsidiary legislation so adopted.

**57. Consultation with local governments etc. about proposed documents**

In the preparation of the river protection strategy or a management programme the Trust must consult —

- (a) a local government to the extent that the interests of the local government appear to the Minister to be likely to be affected in a material way by the document; and
- (b) the Western Australian Local Government Association; and
- (c) any other public authority, person or body who or which appears to the Minister to be likely to be affected in a material way by the document.

**58. Draft document to be published etc.**

(1) The Trust must —

- (a) deposit copies of the draft river protection strategy or management programme for public inspection during ordinary business hours free of charge at the office of the Trust; and
- (b) publish the draft river protection strategy or management programme on the Trust website.

(2) As soon as practicable after the deposit of the copies of the draft river protection strategy or management programme under subsection (1)(a) the Trust must publish —

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

a notice —

- (c) specifying the places at which copies of the draft document may be inspected and obtained, and the Trust website address; and

- (d) stating the effect of section 59 and specifying the period referred to in that section.
- (3) The Trust may fix and charge a fee for supplying a copy of a draft document.

**59. Public submissions about draft document**

Submissions on the draft river protection strategy or management programme may be made, in the form, if any, approved by the Trust, by any person —

- (a) within a period determined by the Trust that is not less than 60 days after the day on which the notice is published in the *Gazette* under section 58(2)(a); and
- (b) by delivering or posting them so that they are received within that period at the offices of the Trust.

**60. Draft document to be referred to certain bodies**

- (1) The draft river protection strategy or management programme, modified if the Trust thinks fit after considering submissions made under section 59, must be referred by the Trust to each public authority, person and body consulted under section 57 together with a summary of those submissions, and may be referred by it to any other public authority, person or body.
- (2) If a public authority, person or body to which the draft river protection strategy or management programme is referred under subsection (1) considers that the Trust should vary the document, it may within 28 days after receipt of the draft document under subsection (1), in writing, request the Trust to make the variation.

**61. Consultation with relevant Minister about draft document**

- (1) In this section —

*relevant Minister*, in relation to a draft river protection strategy or management programme, means a Minister for the time being

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responsible for the administration of a written law under which functions are vested in any person in respect of a matter that is likely to be affected in a material way by the draft river protection strategy or management programme.

- (2) Subject to this Part, the Trust must submit the draft river protection strategy or management programme, modified as it thinks fit to give effect to submissions made under section 59 and any request made under section 60(2), to the Minister.
- (3) The Minister may direct that, before consultation is carried out under subsection (4), the draft river protection strategy or management programme must be modified as directed by the Minister.
- (4) The Minister must —
  - (a) consult each Minister who, in the opinion of the Minister, is a relevant Minister; and
  - (b) if possible, agree with each relevant Minister on the terms of the draft river protection strategy or management programme submitted under subsection (2).
- (5) For the purposes of subsection (4) the draft river protection strategy or management programme must be modified as directed by the Minister and agreed by the relevant Minister.
- (6) If the Minister and a relevant Minister cannot agree on the terms of the draft river protection strategy or management programme —
  - (a) the Minister may refuse to approve the draft document and give directions to the Trust as to the preparation of a further draft document to be submitted under subsection (2); or
  - (b) if the Minister determines that action is not to be taken under paragraph (a), the Minister may refer the matter in dispute to the Governor and the decision of the Governor on that matter is final.

- (7) The Trust must comply with any direction of the Minister under subsection (3), (5) or (6)(a) and give effect to any decision of the Governor under subsection (6)(b).

**62. Approval of draft document by Minister**

The Minister may approve the draft river protection strategy or management programme if —

- (a) each relevant Minister has agreed under section 61(4) to the terms of the draft river protection strategy or management programme or a decision approving the document has been made by the Governor under section 61(6)(b); and
- (b) in the case of a draft management programme, the Minister is satisfied that it is consistent with the river protection strategy.

**63. Approval of strategic document to be published; when strategic document operates**

- (1) Notice that a strategic document has been approved by the Minister under section 55 or 62 must be published by the Minister in the *Gazette*, together with a note showing —
  - (a) whether any modifications were made under section 61; and
  - (b) where a copy of the document may be inspected or obtained.
- (2) The strategic document comes into operation on the day of publication in the *Gazette* of a notice under subsection (1) or on a later day that is specified in the strategic document.
- (3) The Trust may fix and charge a fee for supplying a copy of the strategic document.

**64. Certain strategic documents, periodic review of**

- (1) The Trust must review each river protection strategy or management programme approved by the Minister under section 62 as soon as practicable after —
  - (a) the fifth anniversary of the day on which it came into operation; and
  - (b) the expiry of each 5 yearly interval after that anniversary,and, if it considers that the circumstances so require, prepare amendments to that strategic document or a revised river protection strategy or management programme.
- (2) If, on a review under this section, the Trust considers that the river protection strategy or management programme does not require amendment or revision it may determine that the existing strategic document is to continue in force without amendment.
- (3) The following provisions, as to consultation about, and approval of, strategic documents apply for the purposes of this section, with all necessary changes —
  - (a) section 57, as if the reference in that section to the preparation of the river protection strategy or a management programme were a reference to a review of the river protection strategy or a management programme;
  - (b) sections 58, 59, 60, 61 and 62, as if the references in those sections to the draft river protection strategy or management programme were references to the proposed amendments to the river protection strategy or management programme or a proposal that the existing river protection strategy or management programme be continued in force without amendment;
  - (c) section 63 as if references in that section to a strategic document were references to the amendment of the river

protection strategy or management programme or the continuation of the strategic document.

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

**65. Who has to comply with strategic documents; documents etc. to be publicly available**

- (1) The Trust must perform its functions in accordance with the strategic documents.
- (2) Subject to sections 6 and 70, the Schedule 5 authorities must perform their functions that affect the development control area or the Riverpark in accordance with the strategic documents.
- (3) A copy of each strategic document, and any code or subsidiary legislation adopted by the strategic document, must be —
  - (a) kept in the offices of the Trust and be available for inspection by the public during office hours free of charge; and
  - (b) published on the Trust website.

**66. Trust to report etc. on targets, compliance etc.**

- (1) It is a function of the Trust —
  - (a) to monitor and report to the Minister at least biennially on —
    - (i) the extent to which ecological and community benefit and amenity targets are being met; and
    - (ii) the extent of compliance with prescribed ecological and community benefit and amenity targets and strategic documents; and
    - (iii) the operation and effectiveness of the strategic documents;and

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- (b) to make recommendations to the Minister as to changes to the prescribed ecological and community benefits and amenity targets and strategic documents.
- (2) The Trust may, by notice in writing, require a public authority to provide, within such reasonable time as is specified in the notice, such information as the Trust may reasonably require to assist it in carrying out its functions under subsection (1).
- (3) A public authority must comply with a request under subsection (2).
- (4) Any report under subsection (1) must be included in the annual report submitted by the accountable authority of the Trust under the *Financial Management Act 2006* Part 5.

*[Section 66 amended by No. 77 of 2006 Sch. 1 cl. 165(5).]*



## Part 5 — Development in development control area

### 67. Terms used

In this Part, unless the contrary intention appears —

*applicant* means a person who applies for approval under section 72;

*approval* means approval for the purposes of section 70;

*development* means a development to which this Part applies by operation of section 69;

*development application* means an application for approval —

- (a) made to the Trust under section 72(4); or
- (b) sent to the Trust by a local government or redevelopment authority under section 72(6);

*Swan Valley* and *Swan Valley Planning Committee* have the meanings given to those terms in the *Swan Valley Planning Act 1995*.

### 68. Land etc. owned by etc. public authority, use and development of

Land and waters in the development control area that are owned by or vested in a public authority may be used, but not developed, without approval under section 70 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.

### 69. Developments to which this Part applies

- (1) This Part applies to a development if —
  - (a) it is proposed to be undertaken in the development control area; and

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- (b) no part of the development is proposed to be undertaken on land comprised in a lot that is, in whole or in part, or waters that are, outside that area.
- (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 development control area immediately before the commencement of this section.
- (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 section, may be lawfully carried out as if this Part had not been enacted.

**70. Development to be approved**

- (1) Subject to section 71, a person must not undertake or cause to be undertaken any development to which this Part applies without the approval of the Minister or, in the case of development of a class that the Trust is authorised to approve under section 85, the Trust.

Penalty:

- (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.
- (2) A person must not undertake or cause to be undertaken any development to which this Part applies in contravention of a condition or restriction attached to an approval of the Minister or the Trust.

Penalty:

- (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) The requirements of subsections (1) and (2) extend to the Trust.

**71. Certain reclamations to be authorised by Parliament**

- (1) Despite any other written law, no person is to fill in or reclaim any part of the development control area that is normally covered by water if the area to be filled in or reclaimed —
  - (a) exceeds one hectare; or
  - (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 filled in or reclaimed at any time within the preceding 5 years, would exceed one hectare,

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

Penalty:

- (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.
- (2) Reference in subsection (1) to a part of the development control 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.

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**72. Approval, applying for**

(1) If a development is proposed to be carried out on land that is within the district of a local government, an application for approval must be made in the prescribed form to that local government unless the application is made under subsection (2).

(2) If —

- (a) a development is proposed to be carried out on land that is within a redevelopment area as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3; and
- (b) a redevelopment scheme that is in operation under that Act applies to the land,

an application for development approval must be made to the Metropolitan Redevelopment Authority.

*[(3) deleted]*

(4) If an application for approval is not required to be made in accordance with subsection (1) or (2), an application for approval must be made in the prescribed form to the Trust.

(5) An application must be —

- (a) signed by the owner of the land on which it is proposed to carry out the development; and
- (b) accompanied by plans and specifications of the proposed development.

(6) An application to which subsection (1) or (2) applies must be sent to the Trust by the local government or redevelopment authority, as the case requires, within 7 days of being made to the local government or redevelopment authority.

(7) An applicant must furnish such information and documents relating to the proposed development as the Trust may reasonably require for proper consideration of the application.

*[Section 72 amended by No. 45 of 2011 s. 144(13)-(16).]*

**73. Consultation with local governments etc. about development application**

- (1) The Trust must by notice in writing refer a development application and information and documents relating to the proposed development to —
  - (a) each local government for which the development appears to the Trust to be a relevant matter as defined in section 22(2)(a); and
  - (b) each other public authority that appears to the Trust to have functions that are relevant to the proposed development; and
  - (c) if the development is proposed to be carried out on land in the Swan Valley, the Swan Valley Planning Committee.
- (2) A local government or other public authority 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 must not be made by the Trust under section 75 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.

**74. Development applications to be publicised**

- (1) The Trust must publish on the Trust website notice of each development application it receives.
- (2) The applicant must give notice of the proposed development, in a form approved by the Trust, in —
  - (a) a newspaper circulating in the district where the development is proposed to be undertaken; and
  - (b) a newspaper circulating throughout the State,if —
  - (c) the chairman advises the applicant that the chairman considers that the proposed development is a matter of significant public interest; or
  - (d) the Trust advises the applicant that it considers that the proposed development is a matter of significant public interest; or
  - (e) the Minister so directs.
- (3) A notice under subsection (1) or (2) —
  - (a) must specify the place at which particulars of the proposed development may be inspected; and
  - (b) must state the effect of subsection (5) and specify the period of at least 14 days after publication of the notice within which a submission may be made; and
  - (c) may specify the form or manner, or both, in which a submission may be made.
- (4) The Trust must send a copy of a notice referred to in subsection (2) to each local government and redevelopment authority for which the proposed development appears to the Trust to be a relevant matter as that term is defined in section 22, and that local government or redevelopment authority must display a copy of the notice at its public office until the expiry of the period for making submissions under subsection (5).

- (5) Where notice is given under subsection (1) or (2), any person may make a submission —
- (a) in the form and manner specified (if any) in the notice; and
  - (b) within the period specified in the notice.

*[Section 74 amended by No. 46 of 2009 s. 17.]*

**75. Draft report by Trust on proposed development**

- (1) After complying with sections 73 and 74, the Trust must prepare a draft report on the proposed development and in that draft report make recommendations on the development application.
- (2) The Trust, in preparing its report under this section, must consider all submissions received by it under sections 73 and 74.
- (3) The Trust must —
- (a) give a copy of the draft report, with an invitation to make submissions to the Trust on the draft report, to —
    - (i) the applicant; and
    - (ii) 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 Trust website and in any other way the Trust considers appropriate, with an invitation to the public to make submissions to the Trust on the draft report.

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- (4) An invitation to make submissions to the Trust on the draft report —
  - (a) must specify a period of at least 14 days within which a submission may be made; and
  - (b) may specify the form or manner, or both, in which a submission may be made.
- (5) Any person may make a submission to the Trust on the draft report —
  - (a) in the form and manner specified (if any) in the invitation; and
  - (b) within the period specified in the invitation.

**76. Report by Trust to Minister about proposed development**

- (1) The Trust, after considering any submissions made under section 75 and making such changes to the report as it considers appropriate, must —
  - (a) give a copy of the report to —
    - (i) the Minister; and
    - (ii) the applicant; and
    - (iii) each local government and other 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; and
    - (iv) each person who made a submission under section 75;
  - and
  - (b) publish the report on the Trust website and in any other way the Trust considers appropriate.



- (2) A report to the Minister under subsection (1)(a)(i) on an application must be accompanied by —
  - (a) a copy of each submission made under section 73(1), 74 or 75 in relation to the application or draft report; and
  - (b) the Trust's comments on those submissions.

**77. Minister's options after considering s. 76 report**

- (1) The Minister after considering the report on a proposed development and any other matter that the Minister considers relevant must —
  - (a) deal with the application in accordance with section 80; or
  - (b) instead of so doing —
    - (i) return 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 the Minister on them within such period as the Minister may specify,and subsequently deal with the application in accordance with section 80.
- (2) If the Minister gives a direction to the Trust under subsection (1)(b)(i) the Minister may also direct the Trust to consult with the applicant and any other person the Minister directs in an endeavour to resolve any question in issue.
- (3) The Trust must comply with any direction given to it under this section.

**78. Review committee under s. 77(1)(b)(ii), membership of etc.**

- (1) A review committee appointed under section 77(1)(b)(ii) is to consist of one person who has, or 2 or more persons at least one

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of whom has, appropriate expertise in river management and planning.

- (2) A member of a review committee is to be paid such remuneration and travelling and other allowances as are determined in the case of the member by the Minister on the recommendation of the Public Sector Commissioner.

*[Section 78 amended by No. 39 of 2010 s. 89.]*

**79. Review committee's functions as to Trust's recommendations**

- (1) A review committee appointed under section 77(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 must report to the Minister as required by section 77(1)(b)(ii).

**80. Minister's decision**

- (1) Subject to this Part, the Minister may, for the purposes of section 70 —
- (a) approve the development; or
  - (b) approve the development in a modified form; or
  - (c) give approval in terms of paragraph (a) or (b) but subject to any conditions or restrictions; or
  - (d) refuse to give approval.
- (2) Nothing in this Part authorises the Minister to approve a development in a manner that is inconsistent with —
- (a) a strategic document; or

- (b) an approved environmental protection policy under the *Environmental Protection Act 1986* Part III; or
  - (c) any condition or procedure required to be complied with under Part IV of that Act; or
  - (d) if 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 for or towards the cost of any study of, or protective or remedial work in respect of, land or waters in the development control area that is occasioned by that development.
- (5) The Minister or, in the case of a decision by the Trust, the Trust must cause notice in writing of the decision to be —
- (a) given to —
    - (i) the applicant; and
    - (ii) each local government and other public authority to which notice was given under section 73(1); and
    - (iii) where notice was given to the Swan Valley Planning Committee, to that Committee; and
    - (iv) each person who made a submission under section 75;

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and

(b) published on the Trust website.

**81. Financial assurance condition may be imposed on approval**

(1) In this section —

*approving authority* means —

- (a) in relation to an approval under section 85 — the Trust;  
and
- (b) in relation to any other approval under this Part — the Minister.

(2) Without limiting section 80(1)(c), an approving authority may, as a condition of an approval, require the applicant to provide to the Trust before the commencement of the development a financial assurance of the kind specified in the condition.

(3) A financial assurance may be required to be given in one or more of the following forms —

- (a) a bank guarantee;
- (b) a bond;
- (c) an insurance policy;
- (d) another form of security that the approving authority specifies.

(4) The condition may provide for the procedures under which the financial assurance may be called on or used under section 118.

(5) The amount of the financial assurance —

- (a) must be specified in the condition; and
- (b) must not exceed an amount that, in the opinion of the approving authority, represents a reasonable estimate of the total likely costs that might be incurred by the Trust if it were necessary to take action under section 116(5) or 117 in relation to that development.

- (6) A condition requiring the provision of a financial assurance lapses and no longer binds the person to whom it applies if the Trust is satisfied that the reason for which the financial assurance was required no longer exists and has given the person on whom the condition was imposed written notice of the lapsing of that condition.

**82. Condition etc. on approval, request for reconsideration of**

- (1) If the Minister gives an approval subject to a condition or restriction, the applicant may request the Minister to reconsider that condition or restriction.
- (2) A request under subsection (1) must be made —
- (a) in writing; and
  - (b) within 28 days of the applicant receiving notice of the Minister's decision.
- (3) The Minister may deal with a request under this section by confirming the decision to impose the condition or restriction, by varying or revoking the condition or restriction or by revoking it and substituting another condition or restriction for it.
- (4) Where the Minister amends a decision to impose a condition or restriction following a request under this section, the Minister must cause notice of the amendment to be —
- (a) given to 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, to that Committee; and
  - (b) published on the Trust website.

**83. Correction of approval**

- (1) The Minister may —
- (a) correct in an approval —

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- (i) a clerical mistake; or
  - (ii) an error arising from an accidental slip or omission; or
  - (iii) a figure which has been miscalculated; or
  - (iv) the misdescription of any person, thing or property;
- or
- (b) make an administrative change to the format of an approval which does not alter the obligations of the person to whom the approval is given.
- (2) Notice of any such correction must be —
- (a) given to the person to whom the approval was given; and
  - (b) published on the Trust website.

**84. Variation or extension of approval**

- (1) The Minister may, on the application of a person to whom an approval was given —
  - (a) authorise a minor variation to the approval; or
  - (b) extend the time for which the approval remains in force under section 80(3) by a further period of not more than 12 months.
- (2) An extension of time under subsection (1) must not be given more than once in respect of any approval.
- (3) The Minister must give notice of the proposal to authorise a variation or extend the time for which an approval of a development remains in force to each local government and other public authority consulted in respect of the development under section 73 and invite them to comment on the proposal.
- (4) An invitation to make comments on the proposal —

- (a) must specify a period of at least 14 days within which comments may be made; and
  - (b) may specify the form or manner, or both, in which comments may be made.
- (5) Any local government or other public authority invited to make comments may do so —
- (a) in the form and manner specified (if any) in the invitation; and
  - (b) within the period specified in the invitation.
- (6) The Minister must consider all submissions received under subsection (5) before making a decision for the purposes of subsection (1).

**85. Approvals by Trust**

- (1) The regulations 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 —
- (a) sections 73 and 74 apply in relation to the development application; and
  - (b) section 75 applies as if references in that section to the Trust were references to the General Manager; and
  - (c) section 76 applies as if references in that section —
    - (i) to the Trust were references to the General Manager; and
    - (ii) to the Minister were references to the Trust;and
  - (d) sections 77 to 79 do not apply in relation to the development application; and
  - (e) the Trust may, subject to section 80(2), exercise any power described in section 80(1), (3) or (4).

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- (3) Before exercising a power described in section 80(1) the Trust must consider the report received by it under section 76 as applied by this section and any other matter that the Trust considers relevant.
- (4) An approval by the Trust under this section comes into effect, if it is not revoked under section 87, on the day after the period in which it may be revoked under section 87(1) has elapsed.
- (5) For the purposes of this Part an approval by the Trust under this section is to be taken to be the approval of the Minister.
- (6) Sections 82, 83 and 84 apply to an approval given under this section as if references to the Minister were references to the Trust.

**86. Trust must give s. 85 decisions etc. to Minister**

- (1) The Trust must give to the Minister a copy of each decision it makes under section 85 in relation to an application.
- (2) The report must be accompanied by the report received by the Trust under section 76 in relation to the application.

**87. Minister may revoke Trust's decision etc.**

- (1) The Minister may, within 14 days of receiving a copy of a decision under section 86(1), revoke the decision.
- (2) Written notice of the revocation must be —
  - (a) given to —
    - (i) the Trust; and
    - (ii) the applicant; and
    - (iii) each local government and other public authority to which notice was given under section 75 and where notice was given to the Swan Valley Planning Committee, that Committee; and
    - (iv) each person who made a submission under section 75;



and

- (b) published on the Trust website and in any other way the Trust considers appropriate.
- (3) If the Minister revokes a decision under this section —
  - (a) the Trust must give to the Minister the report, submissions and comments given to the Trust in respect of the application under section 76 as applied by section 85(2)(c); and
  - (b) the Minister must deal with the application under section 77; and
  - (c) sections 78 to 84 apply accordingly as if the Trust had not been authorised to approve the application.

**88. False statements in applications**

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

Penalty: a fine of \$10 000.

**89. Refusal etc. of development, compensation for injurious affection for etc.**

- (1) In this section —

*owner* means a person registered as a proprietor of freehold land.
- (2) If 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; or
  - (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.

- (3) If a claim for compensation may be brought under subsection (2), no claim lies under the *Planning and Development Act 2005* section 177(1)(b).
- (4) A claim under subsection (2) must 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.
- (5) Compensation is not payable under this section if payment has been made for the same, or substantially the same, injurious affection under the *Planning and Development Act 2005* section 177(1)(a).
- (6) The amount of compensation under subsection (2) must 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.
- (7) 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 is to be determined by arbitration under and in accordance with the *Commercial Arbitration Act 2012*, unless the parties agree on some other method of determination.
- (8) Instead of paying compensation, the Trust may purchase the land affected by the Minister's decision.
- (9) The *Planning and Development Act 2005* sections 180, 187 and 188 apply for the purposes of this section, with all necessary changes, as if references in that section to the Commission were references to the Trust.

- (10) This section applies to a decision of the Trust under section 85 as if references in this section to the Minister were references to the Trust.

*[Section 89 amended by No. 23 of 2012 s. 45.]*

## **Part 6 — River protection notices**

### **90. Issue of notice, General Manager may recommend**

- (1) If the General Manager believes on reasonable grounds that, to protect or enhance the ecological and community benefits and 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 General Manager may recommend to the Trust that a river protection notice be issued in relation to that action.

- (2) The recommendation must be accompanied by a report setting out —
- (a) the reasons for the recommendation; and
  - (b) the action proposed to be required or restrained under the river protection notice; and
  - (c) the person or persons to whom it is proposed to give the notice.
- (3) Before making a recommendation to the Trust the General Manager must give each person to whom it is proposed to give the river protection notice —
- (a) a draft of the report referred to in subsection (2); and
  - (b) a reasonable opportunity to show cause in writing why the recommendation should not be made.
- (4) An opportunity is not a reasonable opportunity for the purposes of subsection (3) unless the person is informed in writing of the right to show cause under that subsection not less than 42 days before the day on which the General Manager makes the recommendation.

**91. Notice, issue of by Trust and content of**

- (1) The Trust may issue a river protection notice if, after considering the report and recommendation made 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, it is satisfied that the notice should be issued.
- (2) An opportunity is not a reasonable opportunity for the purposes of subsection (1) unless the person is informed in writing of the right to show cause under that subsection not less than 42 days before the day on which the Trust issues the river protection notice.
- (3) A river protection notice —
  - (a) must be in writing;
  - (b) must specify —
    - (i) the name and address of each person to whom it is given; and
    - (ii) the purpose for which it is given;
  - (c) may impose any requirement reasonably required for the purpose for which the notice is given including —
    - (i) a requirement that each or any one or more of the persons on whom the notice is binding discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Trust;
    - (ii) a requirement that each or any one or more of the persons on whom the notice is binding not carry on a specified activity except at specified times or subject to specified conditions;
    - (iii) a requirement that each or any one or more of the persons on whom the notice is binding take specified action in a specified way, and within a specified period;

**s. 92**

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- (iv) a requirement that each or any one or more of the persons on whom the notice is binding prepare, in accordance with specified requirements and to the satisfaction of the Trust, a plan of action to protect and enhance the ecological and community benefits and amenity of the Riverpark, or part of the Riverpark;
- (v) a requirement that each or any one or more of the persons on whom the notice is binding comply with such a plan of action to the satisfaction of the Trust;
- (vi) a requirement that each or any one or more of the persons on whom the notice is binding undertake specified tests or monitoring of the land;
- (vii) a requirement that each or any one or more of the persons on whom the notice is binding furnish to the Trust specified results or reports;
- (viii) a requirement that each or any one or more of the persons on whom the notice is binding appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the notice.

**92. Service of notice**

A river protection notice must be given to —

- (a) each owner of the land in respect of which it is issued;  
and
- (b) each occupier of the land in respect of which it is issued  
who —
  - (i) is not the owner of the land; and
  - (ii) is required to take, or refrain from taking, action under the river protection notice.

**93. Who a notice binds**

Subject to sections 99 and 100 and the outcome of any application for review, a river protection notice is binding on each person —

- (a) to whom it is given; and
- (b) on whom it is binding in accordance with section 97.

**94. Memorial on land title of notice**

- (1) In this section —

**register** means to register under the *Registration of Deeds Act 1856* or *Transfer of Land Act 1893*, as the case requires;

**Registrar** means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires;

**responsible authority** has the meaning given to that term in the *Environmental Protection Act 1986*;

**scheme** has the meaning given to that term in the *Environmental Protection Act 1986*.

- (2) If a river protection notice is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land, the General Manager may lodge with the Registrar a memorial of the river protection notice in respect of the land.
- (3) The Registrar, on payment of any relevant fee, must register the memorial against the relevant land.
- (4) If the river protection notice is revoked under section 99 the General Manager must give notice to the Registrar that the memorial is to be withdrawn and the Registrar, on payment of any relevant fee, must register the withdrawal of the memorial in the appropriate manner.

**s. 95**

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- (5) A memorial, and notice that a memorial is to be withdrawn, are each to be in a form approved by the Registrar.
- (6) If a memorial is registered under this section then —
  - (a) the Western Australian Planning Commission must not approve under the *Planning and Development Act 2005* section 135 the subdivision of that land, or the amalgamation of that land with any other land; and
  - (b) a responsible authority must not grant approval under a scheme for any proposed development of that land, without seeking, and taking into account, the advice of the Trust as to the suitability of the land for the development.
- (7) A memorial registered under this section has effect until it is withdrawn.

**95. Owner etc. of land subject to s. 94 memorial, duties of if land changes ownership etc.**

While a memorial of a river protection notice remains registered under section 94, each owner or occupier of the land bound by the river protection notice must, when that person ceases to be an owner or occupier of the land, notify in writing —

- (a) the Trust of the fact that the person has ceased to be the owner or occupier of the land, and of the name and address of each person who succeeds that person in the ownership or occupation or both, as the case requires, of that land; and
- (b) each person who succeeds that person in the ownership or occupation or both, as the case requires, of that land of the content of the river protection notice and of the fact that the river protection notice is binding on that person.

Penalty: a fine of \$5 000.



**96. Memorial under s. 94, General Manager's duties to give notice of etc.**

- (1) In this section —  
*responsible authority* and *scheme* have the meanings given to those terms in section 94(1).
- (2) As soon as is practicable after the memorial is registered or withdrawn under section 94 written notice that the memorial is registered or withdrawn, with a copy of the memorial or notice to withdraw the memorial attached, as is relevant, must be given by the General Manager to —
- (a) each owner of the relevant land; and
  - (b) the Western Australian Planning Commission; and
  - (c) each local government which has located within its district all, or part, of the relevant land; and
  - (d) each responsible authority the scheme of which applies to all, or part, of the relevant land.

**97. Notice subject of s. 94 memorial binds new owners of land**

- (1) Subject to subsection (2) a river protection notice —
- (a) in respect of which a memorial under section 94 is registered; and
  - (b) which is binding on the owner of the land,
- becomes binding on each person who becomes an owner of the land at the time that the person becomes such an owner.
- (2) A river protection notice in respect of which a memorial under section 94 is registered does not become binding on a person who becomes an owner of the land because the person is a mortgagee in possession until 45 days after the day on which the person became an owner of the land.

**98. Financial assurance requirement, inclusion of in notice**

**s. 99**

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- (1) The Trust may in a river protection notice require each or any one or more of the persons on whom the river protection notice is binding to provide a financial assurance of the kind specified in the notice within a time specified in the notice.
- (2) A financial assurance may be required to be given in one or more of the following forms —
  - (a) a bank guarantee;
  - (b) a bond;
  - (c) an insurance policy;
  - (d) another form of security that the Trust specifies.
- (3) The river protection notice may provide for the procedures under which the financial assurance may be called on or used under section 118.
- (4) The amount of the financial assurance —
  - (a) must be specified in the river protection notice; and
  - (b) must not exceed an amount that, in the opinion of the Trust, represents a reasonable estimate of the total likely costs that might be incurred by the Trust in taking action under section 102 in relation to that river protection notice.
- (5) A requirement to provide a financial assurance lapses and no longer binds the person to whom it applies if the Trust is satisfied that the reason for which the financial assurance was required no longer exists and has given the person on whom the condition was imposed written notice of the lapsing of that condition.

**99. Amending or cancelling notice**

- (1) The Trust may, by written notice, cancel a river protection notice or, subject to subsections (2) and (3), amend it —
  - (a) by extending the period within which a requirement contained in the river protection notice must be

complied with if the Trust is satisfied that the circumstances of the case justify such an extension; or

- (b) by revoking or amending any requirement contained in the river protection notice.
- (2) The Trust, before exercising the power of amendment conferred by subsection (1), must give the person on whom the river protection notice is binding a reasonable opportunity to show cause in writing why that power should not be exercised.
- (3) An opportunity is not a reasonable opportunity for the purposes of subsection (2) unless the person is informed in writing of the right to show cause under that subsection not less than 21 days before the day on which the Trust exercises the power in question.

**100. Review by SAT of requirement in notice etc.**

- (1) A person on whom a river protection notice is binding who is aggrieved by —
  - (a) a requirement contained in the notice; or
  - (b) an amendment contained in a notice given to that person under section 99(1),

may apply to the State Administrative Tribunal for a review of the requirement or amendment.

- (2) The commencement of a proceeding for the review of a requirement or amendment stays the operation of the requirement or amendment until the application is determined.

**101. Contravening notice, offence**

A person required to take, or refrain from taking, action under a river protection notice must ensure that the requirements of the notice are complied with within such time as is specified in the notice.

Penalty:

**s. 102**

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- (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.

**102. Contravention of notice, Trust's powers in case of**

- (1) If a person —
  - (a) is convicted of an offence under section 101 in respect of a river protection notice; or
  - (b) in the opinion of the Trust, has not complied with a requirement of a river protection notice within such time as is specified in the notice, then, subject to subsection (2),

the Trust may take such action as is necessary under section 103 to ensure that the requirements of the notice are complied with.

- (2) Before taking action under section 103 in the circumstances referred to in subsection (1)(b), the Trust must give to the person written notice —
  - (a) stating that in the opinion of the Trust the person has not complied with the requirement, or requirements, of the river protection notice which is, or are, specified in the notice under this subsection; and
  - (b) giving details of the proposed action.

**103. Entry to land etc. to ensure compliance with notice, powers as to**

- (1) A person taking action on behalf of the Trust under this section, may enter on any land in respect of which the Trust is authorised to take action under section 102(1) and on that land may take such action as the Trust considers necessary to ensure that the requirements of the relevant river protection notice are complied with.

- (2) Before exercising a power of entry under subsection (1) in respect of any land which is occupied by a person or persons the Trust must give not less than 14 days written notice to the occupier specifying —
  - (a) that a requirement of a river protection notice, described in or attached to the notice referred to in this subsection, has not been complied with and the Trust must take action to ensure that the requirements of the notice are complied with; and
  - (b) the part of the land on which entry is to be made; and
  - (c) the actions proposed to be taken on that part of that land to comply with the requirements of the notice.
- (3) An inspector may assist the Trust to take any action under this section if the Trust so requests.
- (4) If action is taken under subsection (1), the Trust may recover the reasonable costs incurred in taking the action, and interest at the prescribed rate, from a person on whom the river protection notice is binding, by action in a court of competent jurisdiction as a debt due to the Trust.

## **Part 7 — Investigation and enforcement**

### **Division 1 — Preliminary**

#### **104. Terms used**

In this Part, unless the contrary intention appears —

***dwelling*** means —

- (a) a building, structure or tent, or part of a building, structure or tent, that is ordinarily used for human habitation; or
- (b) a mobile home,

and it does not matter that it is uninhabited from time to time;

***entry warrant*** means a warrant issued under Division 3;

***investigative purposes*** means the purposes set out in section 105;

***mobile home*** means a vehicle —

- (a) that is ordinarily used for human habitation; and
- (b) that is permanently or semi-permanently stationary in a single location;

***place*** means any land, premises, vehicle, or a part of any land, premises or vehicle;

***vehicle*** means any thing capable of transporting people or things by road, rail or water, including a hovercraft, and it does not matter how the thing is moved or propelled.

### **Division 2 — Investigative powers**

#### **105. Purposes for which investigation may be carried out**

An investigation may be carried out for any or all of the following purposes —

- (a) to ascertain whether the provisions of the Act, the regulations or provisions listed in Schedule 8 have been or are being complied with; or

- (b) to ascertain whether any requirement contained in a river protection notice has been or is being complied with; or
- (c) to ascertain whether there are reasonable grounds to recommend under section 90 that a river protection notice be issued, and to obtain evidence for the preparation of a report under that section.

**106. Personal details of suspect, powers to obtain**

- (1) In this section —

*personal details*, in relation to a person, means —

- (a) the person's full name;
  - (b) the person's date of birth;
  - (c) the address of where the person is living;
  - (d) the address of where the person usually lives.
- (2) If an inspector reasonably suspects that a person whose personal details are unknown to the inspector has committed or is committing or is about to commit an offence against a provision of the Act, the regulations or a provision listed in Schedule 8 the inspector may request the person to give the inspector any or all of the person's personal details.
- (3) An inspector must not exercise a power under subsection (2) in relation to a provision listed in Schedule 8 unless the inspector reasonably suspects that the offence has been committed, is being committed or is about to be committed in the Riverpark.
- (4) If an inspector reasonably suspects that a personal detail given by a person in response to a request is false, the inspector may request the person to produce evidence of the correctness of the detail.
- (5) A person who, without reasonable excuse, does not comply with a request made under subsection (2) or (4) commits an offence.  
Penalty: a fine of \$10 000.

- (6) For the purposes of subsection (5), the fact that an inspector did not comply with section 40(2) as soon as practicable is a reasonable excuse.
- (7) A person who, in response to a request made under subsection (2) or (4), gives any false personal details commits an offence.  
Penalty: a fine of \$10 000.

**107. Entry etc. powers**

- (1) For investigative purposes an inspector may do all or any of the following —
  - (a) at any time stop, detain, board or enter a vehicle (except a vehicle that is a mobile home);
  - (b) at any time enter a place that is not a dwelling;
  - (c) at any time enter a dwelling with the consent of the person apparently in charge of the dwelling;
  - (d) at any time enter a place in accordance with an entry warrant;
  - (e) take onto or into the place any assistants, contractors, vehicles, instruments, equipment or materials that are needed to carry out the investigation;
  - (f) remain on or in the place, with the assistants, contractors, vehicles, instruments, equipment or materials, for as long as is necessary to complete the investigation;
  - (g) take samples or specimens of water, soil, rocks and plants;
  - (h) survey and mark out land for any purpose relevant to carrying out the investigation;
  - (i) photograph or film a place, vehicle and anything in or on the place or vehicle.



- (2) An inspector must not exercise a power under this section in relation to a provision listed in Schedule 8 unless the place or vehicle is in the Riverpark.
- (3) An inspector may direct a person who is or appears to be in charge of a place or vehicle to give the inspector any assistance that the inspector reasonably needs to carry out the inspector's functions in relation to that place or vehicle.
- (4) An inspector must not exercise a power under subsection (1)(b) for a purpose set out in section 105(b) or (c) without the authority of the General Manager in the particular case.

**108. Records, powers to obtain**

- (1) In this section —  
*relevant record* means a record that —
  - (a) is required to be kept under this Act; or
  - (b) contains information that is relevant to a contravention of this Act.
- (2) For investigative purposes an inspector may do all or any of the following —
  - (a) direct a person who has the custody or control of a record to give the inspector the record or a copy of it;
  - (b) direct a person who has the custody or control of a record, computer or thing to make or print out a copy of the record or to operate the computer or thing;
  - (c) operate a computer or other thing on which a record is or may be stored;
  - (d) direct a person who is or appears to be in charge of a record that the inspector suspects on reasonable grounds is a relevant record to give the inspector a translation, code, password or other information necessary to gain access to or interpret and understand the record;

- (e) take extracts from or make copies of, or download or print out, or photograph or film, a record that the inspector suspects on reasonable grounds is a relevant record;
  - (f) seize and remove, for no more than 7 days, a computer or other thing on which a record is or may be stored;
  - (g) take away a record that the inspector suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;
  - (h) take reasonable measures to secure or protect a record, or computer or other thing on which a record is or may be stored, against damage or unauthorised removal or interference.
- (3) If an inspector seizes or is given a record, the inspector must if practicable allow a person who otherwise has custody or control of it to have reasonable access to it.

**109. Exercise of power may be recorded**

An inspector may record the exercise of a power under this Division, including by making an audiovisual recording.

**110. Force and assistance, use of**

- (1) An inspector may use assistance and force that is reasonably necessary in the circumstances when carrying out a function under this Act.
- (2) However, if the use of reasonable force is likely to cause significant damage to property, the inspector is not entitled to use force without the authority of the General Manager in the particular case.

### Division 3 — Entry warrants

#### 111. Entry warrant, who may apply for

- (1) Subject to subsection (3), an inspector may apply to a justice for an entry warrant authorising the entry of a place for investigative purposes.
- (2) An inspector may apply for an entry warrant for a place even if, under Division 2, the inspector may enter the place without an entry warrant.
- (3) An inspector must not, without the authority of the General Manager in the particular case, apply for an entry warrant authorising the entry of a place for a purpose set out in section 105(b) or (c).
- (4) The application must be made in accordance with section 112 and must include the information prescribed (if any).

*[Section 111 amended by No. 47 of 2011 s. 27.]*

#### 112. Applications for entry warrant, how to be made

- (1) In this section —  
**application** means an application for an entry warrant;  
**remote communication** means any way of communicating at a distance including by telephone, fax, email and radio.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) An application must be made in person before a justice unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably suspects that a justice is not available within a reasonable distance of the applicant,in which case —

- (c) it may be made to the justice by remote communication; and
  - (d) the justice must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (4) An application must be made in writing unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable to send the justice written material,in which case —
  - (c) it may be made orally; and
  - (d) the justice must make a written record of the application and any information given in support of it.
- (5) An application must be made on oath unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable for the justice to administer an oath to the applicant,in which case —
  - (c) it may be made in an unsworn form; and
  - (d) if the justice issues an entry warrant, the applicant must as soon as is practicable send the justice an affidavit verifying the application and any information given in support of it.
- (6) If on an application made by remote communication a justice issues an entry warrant, the justice must if practicable send a copy of the original warrant to the applicant by remote communication, but otherwise —
  - (a) the justice must send the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of warrant with the information received and give the justice a copy of the form as soon as is practicable after doing so; and

- (c) the justice must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (7) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (6) has the same force and effect as the original warrant.
- (8) If an applicant contravenes subsection (5)(d) or (6)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court.

**113. Entry warrant, issue of**

- (1) A justice may issue an entry warrant if satisfied that it is necessary for an inspector to enter a place for investigative purposes.
- (2) An entry warrant must set out —
  - (a) a reasonably particular description of the place to which it relates; and
  - (b) a reasonably particular description of the investigative purpose for which entry to the place is required; and
  - (c) the period in which it may be executed; and
  - (d) the date and time when it was issued; and
  - (e) any other matter prescribed.

*[Section 113 amended by No. 47 of 2011 s. 27.]*

**114. Entry warrant, effect of**

- (1) An entry warrant has effect according to its content.
- (2) An entry warrant may be executed by any inspector.

**Division 4 — Enforcement provisions**

**115. Obstructing or impersonating inspector, offence**

A person commits an offence if the person —

- (a) without lawful excuse, wilfully obstructs, hinders or resists an inspector who is carrying out a function under this Act;
- (b) without lawful excuse, wilfully obstructs, hinders or resists a person assisting an inspector who is carrying out a function under this Act;
- (c) without lawful excuse, does not comply with a direction under section 107(3) or 108;
- (d) wilfully makes a false statement to, or misleads, an inspector who is carrying out a function under this Act;
- (e) impersonates an inspector.

Penalty: a fine of \$10 000.

**116. Illegal development etc., Trust's powers as to**

(1) The Trust may —

- (a) by notice in writing served on a person who is —
  - (i) undertaking any development in contravention of section 70; or
  - (ii) reclaiming or filling an area in contravention of section 71,direct that person to stop doing so; or
- (b) by notice in writing served on a person who has —
  - (i) undertaken any development in contravention of section 70; or
  - (ii) reclaimed or filled an area in contravention of section 71,

direct the person 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, reclamation or filling undertaken in contravention of that section and restore the land as nearly as practicable to its condition immediately before the development started, to the satisfaction of the Trust,

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, 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 review.
- (4) A person must comply with a notice given to the person under this section.

Penalty:

- (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.
- (5) If a person fails to comply with a notice given to the person 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.

**117. Abandoned etc. property, powers as to**

- (1) Subject to this section, the Trust may take possession of any property that is on land or waters in the Riverpark if —
  - (a) the Trust has reasonable grounds to believe that the property has been abandoned, is derelict or constitutes a danger to persons, property or the environment; 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) in relation to property that does not constitute a danger to persons, property or the environment, the Trust must —
  - (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 that person to remove the property within the time specified in the notice.
- (3) A person to whom a notice is given under subsection (2)(b) must comply with the notice.  
Penalty: a fine of \$10 000.
- (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 must 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) 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 that person is entitled to them or



any part of them, in which case the Trust must pay the proceeds or part of the proceeds in accordance with that entitlement.

- (8) Despite subsections (5), (6) and (7), the Trust must give possession of the property to any person who, before the Trust exercises a power under subsection (5) or (6), proves that that person is entitled to the same and who pays to the Trust all costs incurred by it under this section.

**118. Trust's costs under s. 102, 116(5) or 117, recovering in case of financial assurance condition etc.**

- (1) In this section —

*financial assurance* means a financial assurance provided pursuant to a condition imposed under section 81 or a requirement under section 98.

- (2) This section applies if the Trust incurs costs in taking action under section 102, 116(5) or 117 and the person from whom those costs are or would be recoverable under this Act (the *responsible person*) is a person who has provided a financial assurance.
- (3) The Trust may recover the reasonable costs of taking the action by making a claim on or realising the financial assurance or part of it.
- (4) Before making the claim on or realising the financial assurance or part of it, the Trust must make reasonable endeavours to give the responsible person a written notice under this section.
- (5) The written notice must —
- (a) state details of the action taken; and
  - (b) state the amount of the financial assurance to be claimed or realised; and
  - (c) invite the responsible person to make representations in writing to the Trust to show why the financial assurance should not be claimed or realised as proposed; and

- (d) state the period (at least 30 days after the notice is given to the responsible person) within which representations may be made.
- (6) After the end of the period stated in the notice, the Trust must consider any representations in writing made by the responsible person.
- (7) If the Trust decides to make a claim on or realise the financial assurance or part of it, the Trust must make reasonable endeavours to give written notice to the responsible person of the decision and the reasons for the decision.
- (8) Any costs recovered under this section become part of the funds of the Trust.
- (9) Subject to subsection (11), a financial assurance may be called on and used, despite and without affecting —
  - (a) any liability of the responsible person to any penalty for an offence for a contravention to which the financial assurance relates; and
  - (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the financial assurance relates.
- (10) If the amount of the financial assurance claimed or realised does not cover all the costs concerned, the Trust may recover the excess from the responsible person under section 102, 116(5) or 117, as the case requires.
- (11) The Trust is not entitled —
  - (a) to recover costs under section 102, 116(5) or 117 if a financial assurance has been called on and used in respect of those costs (except to the extent that the financial assurance does not cover all the costs); or
  - (b) to call on or use a financial assurance in respect of costs which have been recovered under section 102, 116(5) or 117.

## Part 8 — Legal proceedings

### Division 1 — General matters

#### 119. Prosecutions, commencing etc. and averments in

- (1) A prosecution for an offence against this Act may be commenced and conducted by —
  - (a) a police officer; or
  - (b) a 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 is to be presumed unless the contrary is proved.
- (3) If in a charge of an offence against this Act there is an averment that an act occurred within the catchment area, the development control area or the Riverpark, the court, on the act being proved, is to presume in the absence of proof to the contrary that the act occurred within that area.

#### 120. Time limit for prosecuting

- (1) A prosecution for an offence under this Act must be commenced within 24 months after the date on which the offence is alleged to have been committed.
- (2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which the evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 119(1) —
  - (a) the prosecution may be made within 24 months after that day; and
  - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

- (3) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 119(1) is, in the absence of evidence to the contrary, the day specified in the prosecution notice.

**121. Offence by body corporate, liability of directors etc. in case of and proof of**

- (1) If a body corporate commits an offence under this Act or the regulations, each person who is a director or who is concerned in the management of the body corporate is taken to have also committed the same offence unless the person proves that —
- (a) the person did not know, and could not reasonably be expected to have known, that the offence was being committed; or
  - (b) the person —
    - (i) was not in a position to influence the conduct of the body corporate in relation to the commission of the offence; or
    - (ii) being in such a position, used all due diligence and reasonable precautions to prevent the commission of the offence;
- or
- (c) had it been prosecuted, the body corporate would not have been found guilty of the offence by reason of being able to establish a defence available to it under this Act.
- (2) Under this section a person may be proceeded against and convicted of an offence whether or not the body corporate has been proceeded against or convicted in respect of the commission of the offence.
- (3) Nothing in this section prejudices or affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a body corporate (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the body corporate had that state of mind.

### Division 2 — Infringement notices

#### 122. Terms used

In this Division —

*alleged offender* means a person suspected of having committed a prescribed offence;

*prescribed offence* means an offence under this Act, or under any regulations made under this Act, prescribed by the regulations to be an offence for which an infringement notice may be issued.

#### 123. Infringement notices

- (1) In this section —

*authorised person* means a person appointed under subsection (10) to be an authorised person for the purposes of the subsection in which the term is used.

- (2) An inspector who has reason to believe that a person has committed a prescribed offence may, within 35 days after the offence is alleged to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice must —
- (a) be in the form prescribed; and
  - (b) contain a description of the alleged offence; and
  - (c) advise that if the alleged offender does not wish to be prosecuted for the alleged offence, the amount of money specified in the notice as being the modified penalty for

the offence may be paid to the Trust within a period of 28 days after the date of the notice; and

- (d) inform the alleged offender as to how and where the money may be paid.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the modified penalty prescribed at the time the alleged offence is believed to have been committed.
- (5) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (6) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) If an infringement notice is withdrawn after the modified penalty has been paid, the amount of the modified penalty must be refunded.
- (9) Payment of an amount as a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (10) The Trust may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsection (5) or (7), but an inspector who gives an infringement notice is not

eligible to be an authorised person for the purposes of either of those subsections in relation to that notice.

*[Section 123 amended by No. 46 of 2009 s. 17.]*

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

#### **124. Offences under other Acts (Sch. 8), enforcing under this Act**

- (1) A regulation listed in Schedule 8 may be enforced under this Act as if it were a regulation made under this Act.
- (2) For the purposes of subsection (1), a regulation listed in Schedule 8 is to be read and construed according to the Act under which it is made, subject to any regulations made under this Act setting out how it is to be read and construed.
- (3) Without limiting subsection (2), the maximum penalty in respect of a regulation listed in Schedule 8 and enforced under this Act is to be determined by reference to the regulations of which the regulation is a part.
- (4) Nothing in this Division affects the operation under the Act under which it is made of a regulation listed in Schedule 8.

#### **125. Offences under other Acts (Sch. 8), prosecuting**

A prosecution for an offence committed in the Riverpark against a regulation listed in Schedule 8 may be commenced and conducted under section 119.

#### **126. Alleged offences under other Acts (Sch. 8), infringement notices for**

- (1) Without limiting section 124(1) a regulation listed in Schedule 8 may be prescribed for the purposes of Division 2 as if it were a regulation made under this Act.
- (2) If an offence against a regulation listed in Schedule 8 is prescribed for the purposes of Division 2, an infringement notice may be issued under section 123 in respect of the offence

if the offence is alleged to have been committed in the Riverpark.

- (3) An offence against a regulation listed in Schedule 8 must not be prescribed for the purposes of section 123 unless an infringement notice can be issued in respect of the offence under the Act under which the regulation is made.
- (4) If a person is issued under another Act with an infringement notice in respect of an offence against a regulation listed in Schedule 8, any infringement notice issued to that person under this Act in respect of the same offence is to be taken to have been withdrawn under section 123(7).



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

### **127. Foundation established**

- (1) The Minister may, by order, establish a body called the Swan and Canning Rivers Foundation.
- (2) The Foundation is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Foundation in its corporate name.

### **128. Council to govern Foundation**

The Foundation is to have a council which, subject to this Act, is to be the governing body of the Foundation.

### **129. Functions of Foundation**

The functions of the Foundation are —

- (a) to attract and retain continuing public interest and financial support for the Trust in the performance of its functions; and
- (b) to encourage donations to facilitate the performance by the Trust of its functions.

### **130. Powers of Foundation**

The Foundation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### **131. Swan and Canning Rivers Foundation Account**

- (1) An account called the Swan and Canning Rivers Foundation Account is to be established —
  - (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or

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- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,  
to which the funds received by the Foundation must be credited.
- (2) The Foundation Account is to be charged with all expenditure lawfully incurred by the Foundation in the performance of its functions.
- (3) Moneys standing to the credit of the Foundation Account —
  - (a) are subject to the direction and control of the Trust; and
  - (b) may be transferred to the Trust for the purposes of carrying this Act into effect or otherwise applied for the purposes of the Trust or the Foundation.
- (4) The operation of the Foundation Account is to be regarded as —
  - (a) a service under the control of the Trust for the purposes of the *Financial Management Act 2006* section 52; and
  - (b) part of the operations of the Trust for the purposes of Part 5 of that Act.

*[Section 131 amended by No. 77 of 2006 Sch. 1 cl. 165(6)-(8).]*

**132. Rules for this Part**

- (1) The Minister may, on the recommendation of the Trust, make rules that are necessary or convenient for giving effect to this Part.
- (2) Without limiting subsection (1), the rules may —
  - (a) provide for the appointment, constitution, functions and proceedings of the council, including power to employ persons, appoint agents, obtain professional or other services and do all things necessary or convenient to be done for or in connection with the performance by the Foundation of its functions; and

- (b) provide for membership of the Foundation, including membership of different categories having different privileges; and
- (c) provide for meetings and other proceedings of members of the Foundation; and
- (d) provide for the appointment of one or more patrons of the Foundation; and
- (e) provide for Friends of the Foundation and for the establishment of a register of such persons; and
- (f) provide for the manner of execution of documents authorised to be executed by resolution of the council; and
- (g) empower the council, with the approval of the Trust, to make by-laws with respect to the operations and proceedings of the Foundation, the council, committees of the council and persons employed by the Foundation.

## **Part 10 — General**

### **133. Delegation by Minister**

- (1) Subject to subsection (4), the Minister may delegate to a person any function of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) The delegation takes effect when notice of the delegation is published in the *Gazette*.
- (4) The Minister must not delegate a function vested in the Minister under section 19, 55, 61 or 62, Part 5, section 127 or 132 or Schedule 6.
- (5) 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.
- (6) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

### **134. Duties and liabilities of members etc. performing functions under this Act**

- (1) In this section —  
*member* means —
  - (a) a member of the Trust or of a committee and a person who attends a meeting under section 22;
  - (b) any person to whom a function is delegated or subdelegated under section 33.
- (2) A member must at all times act honestly in the performance of a function under this Act.  
Penalty: a fine of \$10 000.

- (3) A member must 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 a legal duty; or
  - (b) as required or allowed by this Act or under another written law; or
  - (c) in the case of a person who attends a meeting under section 22 —
    - (i) in connection with the performance of his or her functions for the local government or redevelopment authority; and
    - (ii) to a closed meeting, or a closed committee meeting, of the council of the local government or redevelopment authority;
- or
- (d) with the written consent of the person to whom the information relates; or
  - (e) in prescribed circumstances.

Penalty: a fine of \$10 000.

- (4) A member must not make improper use of information acquired by virtue of the performance of any function under this Act to gain, directly or indirectly, an improper advantage for himself or herself or to cause detriment to the Trust.

Penalty: a fine of \$10 000.

- (5) A member who commits a breach of any provision of this section is liable for any profit made by the member or for any damage suffered by the Trust as a result of the breach of that provision.

- (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.

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**135.     Protection from personal liability**

- (1) In this section —  
*member* means —
- (a) a member of the Trust; and
  - (b) a person who attends or participates in a meeting under section 22; and
  - (c) a member of a committee.
- (2) An action in tort does not lie against a member, an officer of the Trust or an inspector, for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or any other written law.
- (3) The protection given by subsection (2) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act or any other written law had been enacted.
- (4) Despite subsection (2), neither the Trust nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (5) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

**136.     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) amend Schedules 1, 2, 3, 4, 5, 7 or 8;
  - (b) regulate, control or prohibit the doing of any thing in or in relation to the development control area or the

Riverpark, not being a development as defined in Part 5, for the purpose of —

- (i) protecting or enhancing the ecological and community benefits and amenity or good management of the land and waters in those areas or any part of those areas; or
  - (ii) without limiting subparagraph (i), protecting or enhancing the ecological and community benefits and amenity of any area that has been identified under a management programme as being an area that requires priority protection or priority remediation;
- (c) for the purposes of paragraph (b), regulate or control an activity by prohibiting it from being carried out by a person except under a licence or permit issued by the Trust to the person;
  - (d) regulate, control or prohibit the exhibition of advertisements or signs in the development control area and the Riverpark 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;
  - (e) provide for the imposition of fees and charges;
  - (f) provide that contravention of a regulation constitutes an offence and for penalties not exceeding a fine of \$5 000 and for each separate and further offence committed by the person under the *Interpretation Act 1984* section 71, a fine of \$100.
- (3) A regulation amending Schedule 8 by inserting a regulation must not be made except with the concurrence of the Minister to whom the administration of the Act under which the regulation is made is committed by the Governor.

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**137.     Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister must consider and have regard to —
  - (a) the effectiveness of the operations of the Trust; and
  - (b) the need for the continuation of the functions of the Trust; and
  - (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister must prepare a report based on the review made under subsection (1) and must, as soon as is practicable after the preparation of the report, cause the report to be laid before each House of Parliament.



**Schedule 1 — Catchment area**

[s. 8]

All of the land and waters shown on Deposited Plan 47464.

**Schedule 2 — Swan Canning Riverpark**

[s. 9]

All of the land and waters shown hatched in blue on Deposited Plan 47465 version 3.

*[Schedule 2 amended in Gazette 25 Sep 2007 p. 4818.]*

**Schedule 3 — Development control area**

[s. 10]

All of the land and waters shown bordered in red on Deposited Plan 47465 version 3.

*[Schedule 3 amended in Gazette 25 Sep 2007 p. 4818.]*

### **Schedule 4 — River reserve**

[s. 11]

**Reserve 48325**, being the land in Lot 300 on Deposited Plan 47450, Lot 301 on Deposited Plan 47451, Lots 302 & 303 on Deposited Plan 47452, Lots 304 – 306 (inclusive) on Deposited Plan 47453, Lot 4893 on Deposited Plan 157903, Lot 11523 on Deposited Plan 189858, Lots 13598 & 13599 on Deposited Plan 220695, Lot 13017 on Deposited Plan 193785, Lot 351 on Deposited Plan 59844, Lot 13949 on Deposited Plan 27474 and Lot 14082 on Deposited Plan 26651 comprising a total area of about 3002 ha.

**Reserve 48326**, being the land in Lot 320 on Deposited Plan 47467 and Lot 321 on Deposited Plan 47468 comprising a total area of about 36 ha.

**Reserve 48327**, being the land in Lots 310 & 311 on Deposited Plan 47439, Lots 312 & 313 on Deposited Plan 47440, Lots 314 – 316 (inclusive) on Deposited Plan 47441, Lot 4162 on Deposited Plan 93607, Lots 4367 & 4368 on Deposited Plan 194473, Lot 4369 on Deposited Plan 194474, Lot 4280 on Deposited Plan 215572 and Lot 4840 on Deposited Plan 32737 comprising a total area of about 558 ha.

*[Schedule 4 amended by No. 47 of 2011 s. 27.]*

## Schedule 5 — Authorities

[s. 3, 6(1), 136(2)(a)]

1. The chief executive officers of the departments principally assisting in the administration of the following Acts, and any other person carrying out functions under the following Acts, to the extent that their functions relate to matters affected by this Act —

- [(a) *deleted*]
- (b) the *Bush Fires Act 1954*;
- (c) the *Conservation and Land Management Act 1984*;
- [(d) *deleted*]
- (e) the *Environmental Protection Act 1986*;
- (f) the *Fire and Emergency Services Act 1998*;
- (g) the *Fish Resources Management Act 1994*;
- (h) the *Forest Products Act 2000*;
- (i) the *Health Act 1911*;
- (j) the *Hope Valley-Wattleup Redevelopment Act 2000*;
- (k) the *Jetties Act 1926*;
- (l) the *Land Administration Act 1997*;
- ~~[(m) *the Land Drainage Act 1925*; *deleted*]~~
- (n) the *Local Government Act 1995*;
- (o) the *Main Roads Act 1930*;
- (p) the *Marine and Harbours Act 1981*;
- (q) the *Metropolitan Redevelopment Authority Act 2011*;
- (r) the *Mining Act 1978*;
- (s) the *Planning and Development Act 2005*;
- (t) the *Port Authorities Act 1999*;
- (u) the *Public Transport Authority Act 2003*;
- (v) the *Rights in Water and Irrigation Act 1914*;
- (w) the *Shipping and Pilotage Act 1967*;
- (x) the *Soil and Land Conservation Act 1945*;
- (y) the *Stock (Identification and Movement) Act 1970*;

- (z) the *Strata Titles Act 1985*;
  - [(aa) *deleted*]
  - (bb) the *Transport Co-ordination Act 1966*;
  - (cc) the *Water ~~and Rivers Commission~~ Agencies (Powers) Act ~~1995~~<sup>2</sup>1984*;
  - (dd) the *Water ~~Corporation~~ Corporations Act 1995*;
  - (eea) the *Water Services Act 2012*;
  - (ee) the *Waterways Conservation Act 1976*;
  - (ff) the *Western Australian Land Authority Act 1992*;
  - (gg) the *Western Australian Planning Commission Act 1985*<sup>3</sup>.
- [2. *deleted*]
3. The Conservation Commission established under the *Conservation and Land Management Act 1984*.
4. The Marine Parks and Reserves Authority established under the *Conservation and Land Management Act 1984*.
- [5, 6. *deleted*]
7. The Forest Products Commission established under the *Forest Products Act 2000*.
8. A local government or commissioner appointed under the *Local Government Act 1995* to administer that local government.
9. The Commissioner of Main Roads appointed under the *Main Roads Act 1930*.
- [10. *deleted*]
11. The Public Transport Authority of Western Australia established under the *Public Transport Authority Act 2003*.
12. The Commissioner for Soil Conservation appointed under the *Soil and Land Conservation Act 1945*.
- [13. *deleted*]
14. The Western Australian Land Authority established under the *Western Australian Land Authority Act 1992*.
15. The Western Australian Planning Commission established under the *Planning and Development Act 2005*.

16. A licensee as defined in the *Water Services ~~Licensing Act 1995~~ [2012 section 3\(1\)](#)*.
17. The holder of a licence under the *Electricity Industry Act 2004*.
18. The holder of a distribution licence under the *Energy Coordination Act 1994*.
19. Any decision-making authority as defined in the *Environmental Protection Act 1986* section 3.  
*[Schedule 5 amended by No. 45 of 2011 s. 144(17) and (18); No. 22 of 2012 s. 143; [No. 25 of 2012 s. 233](#).]*

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

[s. 20]

### **Division 1 — General provisions**

**1. Term used: appointed member**

In this Division —

*appointed member* means a person appointed under section 19(1)(a) or (c).

**2. Term of office**

- (1) An appointed member holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment, and is eligible for reappointment.
- (2) Despite subclause (1), if the period of office of an appointed member expires by effluxion of time without a person having been appointed to fill the vacancy, the appointed member continues in office until a person is appointed to fill the vacancy.

**3. Members to be part-time, except chairman**

- (1) The chairman may be appointed on terms that require the duties of that office to be performed on a full-time basis.
- (2) Except as provided in subclause (1), appointment as a member must be on a part-time basis.

**4. Resignation and removal**

- (1) The office of an appointed member becomes vacant if —
  - (a) the member resigns the office by written notice addressed to the Minister;
  - (b) the member is an insolvent under administration as defined in the *Corporations Act 2001* (Commonwealth);
  - (c) the member is absent, without leave of the Minister, from 3 consecutive meetings of which the member has had notice;



- (d) the member is removed from office by the Minister under subclause (2).
- (2) The Minister may remove an appointed member from office if the Minister is satisfied that the member —
  - (a) is incompetent, has misbehaved or has neglected his or her duties as a member; or
  - (b) is suffering from mental or physical incapacity impairing the performance of his or her functions.

**5. Leave of absence**

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

**6. Deputy chairman**

The Minister must designate one of the members appointed under section 19(1)(a) as the deputy chairman of the board and that person has, during any period when the chairman is absent or otherwise unable to perform the functions of chairman, all of the functions and entitlements of the chairman.

**7. 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, as far as is practicable, has similar knowledge and experience 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 subclause (1) may be revoked by the Minister at any time.
- (3) If the deputy chairman is performing the functions of the chairman at a meeting, subclause (1) applies as though the deputy chairman were absent from the meeting.
- (4) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**8. Meetings, times and places of, quorum at etc.**

- (1) Subject to subclause (2), meetings must be held at the times and places determined by the board.
- (2) The chairman or any 4 members may, on reasonable notice to all members, call a meeting at any time.
- (3) At a meeting of the board, 5 members constitute a quorum.
- (4) The chairman must preside at all meetings of the board at which he or she is present, or in which he or she is participating under clause 10.
- (5) If both the chairman and the deputy chairman are not present or participating, the members present or participating must appoint a member to preside.
- (6) Questions arising at a meeting of the board must be decided, in open voting, by a majority of the votes of members present.
- (7) If the votes of members present or participating at a meeting and voting on a question are equally divided, the person presiding has a casting vote in addition to a deliberative vote.
- (8) In this clause —  
*member* includes a person who attends a meeting under section 22.

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

- (1) If —
  - (a) a document containing a statement to the effect that a resolution has been passed is sent or given to all members;
  - (b) the document is assented to by not less than 5 members,that resolution is to be taken as having been passed by a meeting of the board.
- (2) Subclause (1) does not apply to a resolution that relates to a relevant matter for a local government as defined in section 22(2) unless the local government has consented in writing to the passing of the resolution.

- (3) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
    - (i) if the members assented to the document on the same day — on the day on which the document was assented to and at the time at which the document was last assented to by a member; or
    - (ii) if the members assented to the document on different days — on the day on which, and at the time at which, the document was last assented to by a member;
- and
- (b) 2 or more separate documents in identical terms each of which is assented to by one or more members are to be taken to constitute one document; and
  - (c) a member may signify assent to a document —
    - (i) by signing the document; or
    - (ii) by notifying the Trust of the member's assent in person or by post, facsimile transmission, telephone, email or other method of written, electronic, audio or audiovisual communication.
- (4) Where a member signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the board attended by the member, but failure to do so does not invalidate the resolution to which the document relates.
- (5) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.
- (6) The chairman must report the passing of a resolution under subclause (1) to the next meeting of the board.

**10. Meetings by telephone etc.**

- (1) In this clause —  
*member* includes a person who participates in a meeting under section 22.

- (2) A communication between a majority of members by telephone, audiovisual or other electronic means is a valid meeting of the board if —
- (a) each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings; and
  - (b) all members were advised that the communication would be taking place and were given the opportunity to participate.

**11. Minutes of meetings**

The board must cause accurate records to be kept of the proceedings at its meetings.

**12. Procedures**

Subject to this Act, the board is to determine its own procedures.

**Division 2 — Disclosure of interests**

**13. Term used: member**

In this Division —

*member* includes a person who attends a meeting under section 22.

**14. Material personal interests to be disclosed**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.

Penalty: a fine of \$10 000.

- (2) A disclosure under subclause (1) must be recorded in the minutes of the meeting.

**15. Member with material personal interest not to vote etc.**

A member who has a material personal interest in a matter that is being considered by the Board —

- (a) must not vote whether at a meeting or otherwise —
  - (i) on the matter; or
  - (ii) on a proposed resolution under clause 16 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

**16. Clause 15 may be declared inapplicable**

Clause 15 does not apply if the board has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**17. Quorum if cl. 15 applies**

- (1) Despite clause 8(3), if a member of the board is disqualified under clause 15 in relation to a matter, a quorum is present during the consideration of the matter if at least 4 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter to the extent that the board cannot deal with it because of subclause (1).

**18. Minister may declare cl. 15 and 17 inapplicable**

- (1) The Minister may, in writing, declare that clause 15 or 17 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

- (2) The Minister must cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament or dealt with under clause 19 within 14 days after the declaration is made.

**19. Supplementary provision about laying documents before Parliament**

- (1) If—
- (a) at the commencement of a period referred to in clause 18(2) in respect of a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be —
- (a) taken to have been laid before that House; and
  - (b) taken to be a document published by order or under the authority of that House.
- (3) The laying of a copy of a document that is taken to have occurred under subclause (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

## **Schedule 7 — Local governments**

[s. 22, 26]

*[Heading amended by No. 45 of 2011 s. 144(19).]*

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 Perth  
City of South Perth  
City of Subiaco  
City of Swan  
Town of Victoria Park  
Town of Vincent<sup>4</sup>

*[Schedule 7 amended by No. 45 of 2011 s. 144(19).]*

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**Schedule 8 — Prescribed regulations**

[s. 125]

<b>Item</b>	<b>Regulation</b>	<b>Description of offence</b>
1	<i>Litter Regulations 1981</i> regulation 4	Damage to litter receptacle
2	<i>Litter Regulations 1981</i> regulation 5	Interference with litter receptacle
3	<i>Litter Regulations 1981</i> regulation 6	Depositing domestic or commercial waste in litter receptacle
4	<i>Environmental Protection (Unauthorised Discharges) Regulations 2004</i> regulation 3	Discharging certain materials into the environment
5	<i>Environmental Protection Regulations 1987</i> regulation 16	Applying or selling organotin anti-fouling paint
6	<i>Environmental Protection (Controlled Waste) Regulations 2004</i> regulation 39	Disposing of controlled waste other than in accordance with regulation
7	<i>Environmental Protection (Controlled Waste) Regulations 2004</i> regulation 43	Disposing of material containing asbestos other than in accordance with regulation



### Notes

<sup>1</sup> This is a compilation of the *Swan and Canning Rivers Management Act 2006* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Swan and Canning Rivers Management Act 2006</i>	51 of 2006	6 Oct 2006	s. 1 and 2: 6 Oct 2006; Act other than s. 1 and 2: 25 Sep 2007 (see s. 2 and <i>Gazette</i> 25 Sep 2007 p. 4835)
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 165	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Swan and Canning Rivers Management Regulations 2007</i> r. 45 published in <i>Gazette</i> 25 Sep 2007 p. 4787-831			25 Sep 2007 (see note under r. 1 and <i>Gazette</i> 25 Sep 2007 p. 4835)
<b>Reprint 1: The <i>Swan and Canning Rivers Management Act 2006</i> as at 6 Mar 2009</b> (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2009</i> s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> Pt. 6 Div. 2	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
<i>Metropolitan Redevelopment Authority Act 2011</i> s. 144	45 of 2011	12 Oct 2011	31 Dec 2011 (see s. 2(b) and <i>Gazette</i> 30 Dec 2011 p. 5573)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 27	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<b>Reprint 2: The <i>Swan and Canning Rivers Management Act 2006</i> as at 15 Jun 2012</b> (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Fire and Emergency Services Legislation Amendment Act 2012 Pt. 7 Div. 15</i>	22 of 2012	29 Aug 2012	1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)
<i>Commercial Arbitration Act 2012 s. 45 it. 20</i>	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and <i>Gazette</i> 6 Aug 2013 p. 3677)

~~<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Water Services Legislation Amendment and Repeal Act 2012 s. 233<sup>7</sup></i>	25 of 2012	3 Sep 2012	<del>To be proclaimed</del> <a href="#">18 Nov 2013</a> (see s. <del>2(b)</del> ) and <i>Gazette</i> <a href="#">14 Nov 2013 p. 5028</a> )

- <sup>2</sup> Repealed by the *Water Resources Legislation Amendment Act 2007*.
- <sup>3</sup> Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.
- <sup>4</sup> Now a city.

~~<sup>5,6</sup> Footnote no longer applicable.~~

~~<sup>7</sup> On the date as at which this compilation was prepared, the *Water Services Legislation Amendment and Repeal Act 2012 s. 233* had not come into operation. It reads as follows:~~

~~**233. Swan and Canning Rivers Management Act 2006 amended**~~

- ~~— (1) This section amends the *Swan and Canning Rivers Management Act 2006*.~~
- ~~— (2) In Schedule 5 item 1:~~
  - ~~— (a) delete subitem (m);~~
  - ~~— (b) in subitem (cc) delete “*Water and Rivers Commission Act 1995*,” and insert:~~

~~Water Agencies (Powers) Act 1984;~~

~~(c) in subitem (dd) delete “Water Corporation Act 1995;”  
and insert:~~

~~Water Corporations Act 1995;~~

~~(d) after subitem (dd) insert:~~

~~(eea) the Water Services Act 2012;~~

~~(3) In Schedule 5 item 16 delete “Water Services Licensing Act 1995.”  
and insert:~~

~~Water Services Act 2012 section 3(1).~~