



Western Australia

Swan and Canning Rivers Management Act 2006

As at 05 Mar 2016

Version 02-k0-01

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

Swan and Canning Rivers Management Act 2006

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Crown bound	6
5.	Objectives of Act and principles to be regarded	6
6.	Objectives and principles paramount; disputes between CEO and Schedule 5 authority	8
7.	Native title rights and interests, how affected by this Act	10

Part 2 — Land and waters to which this Act applies

8.	Catchment area defined (Sch. 1)	11
9.	Riverpark defined (Sch. 1 and 2)	11
10.	Development control area defined (Sch. 1 and 3)	11
11.	River reserve defined (Sch. 1 and 4), reserved and vested in Trust	11
12.	Riverpark shoreline, responsibility for	13
13.	Sch. 1-4, amending by regulations	15
14.	Boundaries of catchment area etc., proving	16
15.	Boundaries of catchment area etc., resolving questions as to	17

Part 3 — Swan River Trust

Division 1 — Establishment and management

16.	Trust established and nature of	19
17.	Trust is agent of Crown etc.	19
18.	Board of management of Trust	19
19.	Board, membership of	19
20.	Board, constitution and proceedings of (Sch. 6)	20
21.	Remuneration and allowances of members	21
22A.	CEO entitled to attend board meeting	21
22.	Local governments and Metropolitan Redevelopment Authority, attendance of nominees of at board meetings	21

Division 2 — Functions and powers

23.	Functions of Trust	23
24.	Powers of Trust	25
25.	Consultation and matters to be considered by Trust	25
28A.	Assistance, staff and facilities to be provided	26
28B.	Delegation by Trust	26
28C.	Minister may give Trust directions	27
28D.	Minister to have access to information	27
28E.	Trust may appoint committees	28
28F.	Execution of documents	28
28G.	Annual report	29

**Part 4A — Management of land and
waters**

28.	CEO may agree to manage private land	30
29.	CEO may grant leases of River reserve	30
30.	River reserve lease, consequences of contravening	32
31.	River reserve lease, procedure for forfeiting	33
32.	CEO may grant licences over River reserve	34

Part 4B — Administration

Division 1 — Functions and powers of CEO

33.	Functions of CEO	36
34.	Consultation and matters to be considered by CEO	37
35.	Consultation with local governments and Metropolitan Redevelopment Authority	38
36.	Payment for advice and other matters	38

37.	Collaborative arrangements	39
38.	Delegation by CEO	40
	Division 2 — Inspectors	
39.	Inspectors, designating etc.	42
40.	Identity cards for inspectors	42
	Part 4 — Targets and strategic documents	
	Division 1 — Ecological and community benefit and amenity targets	
47.	Regulations may prescribe targets	43
48.	Consultation with public authorities etc. about proposed s. 47 regulations	43
49.	Draft s. 47 regulations to be publicly notified	44
50.	Public submissions about draft s. 47 regulations	44
	Division 2 — Strategic documents	
51.	River protection strategy, content of	45
52.	Comprehensive Management Plan and Implementation Strategy (2004), temporary effect of	46
53.	Management programmes, content of	46
54.	Codes and subsidiary legislation, river protection strategy and management programme may adopt	47
55.	Documents not prepared by Trust, approval of as strategic documents	47
	Division 3 — Preparation, approval and revision of river protection strategy and management programmes	
56.	Trust to prepare draft documents	48
57.	Consultation with local governments etc. about proposed documents	49
58.	Draft document to be publicly notified	49
59.	Public submissions about draft document	50
60.	Draft document to be referred to certain bodies	50
61.	Consultation with relevant Minister about draft document	51
62.	Approval of draft document by Minister	52
63.	Approval of strategic document to be published; when strategic document operates	52

Contents

64.	Certain strategic documents, periodic review of	53
	Division 4 — Compliance with strategic documents	
65.	Who has to comply with strategic documents; documents etc. to be publicly available	54
66.	Trust to report etc. on targets, compliance etc.	55
	Part 5 — Development in development control area	
67.	Terms used	56
68.	Land etc. owned by etc. public authority, use and development of	56
69.	Developments to which this Part applies	56
70.	Development to be approved	57
71.	Certain reclamations to be authorised by Parliament	58
72.	Approval, applying for	59
73.	Consultation with local governments etc. about development application	60
74.	Development applications to be publicised	61
75.	Draft report by CEO on proposed development	62
76.	Report by CEO to Minister on proposed development	63
77.	Minister's options after considering s. 76 report	64
78.	Review committee under s. 77(1)(b)(ii), membership of etc.	65
79.	Review committee's functions as to CEO's recommendations	66
80.	Minister's decision	66
81.	Financial assurance condition may be imposed on approval	67
82.	Condition etc. on approval, request for reconsideration of	69
83.	Correction of approval	69
84.	Variation or extension of approval	70
85.	Approvals by CEO	71
86.	CEO must give section 85 decision to Minister	72
87.	Minister may revoke CEO's decision	72
88.	False statements in applications	73

89.	Refusal etc. of development, compensation for injurious affection for etc.	73
-----	--	----

Part 6 — River protection notices

90.	CEO may request advice from Trust on issue of river protection notice	75
91.	Issue of notice by CEO	76
92.	Service of notice	77
93.	Who a notice binds	78
94.	Memorial on land title of notice	78
95.	Owner etc. of land subject to s. 94 memorial, duties of if land changes ownership etc.	79
96.	CEO must give notice of memorial or withdrawal	80
97.	Notice subject of s. 94 memorial binds new owners of land	80
98.	Financial assurance requirement, inclusion of in notice	80
99.	Amending or cancelling notice	81
100.	Review by SAT of requirement in notice etc.	82
101.	Contravening notice, offence	82
102.	CEO's powers in case of contravention of notice	83
103.	Entry to land etc. to ensure compliance with notice, powers as to	83

Part 7 — Investigation and enforcement

Division 1 — Preliminary

104.	Terms used	85
------	------------	----

Division 2 — Investigative powers

105.	Purposes for which investigation may be carried out	85
106.	Personal details of suspect, powers to obtain	86
107.	Entry etc. powers	87
108.	Records, powers to obtain	88
109.	Exercise of power may be recorded	89
110.	Force and assistance, use of	89

Division 3 — Entry warrants

111.	Entry warrant, who may apply for	90
112.	Applications for entry warrant, how to be made	90

Contents

113.	Entry warrant, issue of	92
114.	Entry warrant, effect of	92
	Division 4 — Enforcement provisions	
115.	Obstructing or impersonating inspector, offence	93
116.	CEO's powers in respect of illegal development	93
117.	Abandoned etc. property, powers as to	94
118.	Recovery of costs in case of financial assurance	96
	Part 8 — Legal proceedings	
	Division 1 — General matters	
119.	Prosecutions, commencing etc. and averments in	99
120.	Time limit for prosecuting	99
121.	Offence by body corporate, liability of directors etc. in case of and proof of	100
	Division 2 — Infringement notices	
122.	Terms used	101
123.	Infringement notices	101
	Division 3 — Offences under other Acts	
124.	Offences under other Acts (Sch. 8), enforcing under this Act	103
125.	Offences under other Acts (Sch. 8), prosecuting	103
126.	Alleged offences under other Acts (Sch. 8), infringement notices for	103
	Part 9 — Swan and Canning Rivers Foundation	
127.	Foundation established	105
128.	Council to govern Foundation	105
129.	Functions of Foundation	105
130.	Powers of Foundation	105
131.	Swan and Canning Rivers Foundation Account	105
132.	Rules for this Part	106
	Part 10 — General	
133.	Delegation by Minister	108
134.	Duties and liabilities of members etc. performing functions under this Act	108
135.	Protection from personal liability	110
136.	Regulations	110

137.	Review of Act	111
Part 11 — Transitional provisions for Swan and Canning Rivers Management Amendment Act 2015		
138.	Terms used	113
139.	Completion of things commenced	113
140.	Continuing effect of things done	114
141.	Contracts, agreements and other instruments	114
142.	Assignment to State or CEO	115
143.	Swan River Trust Account	116
144.	Registration of documents	116
145.	Exemption from State taxation	117
146.	Development applications	118
147.	River protection notices	118
148.	Transitional regulations	118
149.	<i>Interpretation Act 1984</i> not affected	120
Schedule 1 — Catchment area		
Schedule 2 — Swan Canning Riverpark		
Schedule 3 — Development control area		
Schedule 4 — River reserve		
Schedule 5 — Authorities		
Schedule 6 — Constitution and proceedings of the board		
Division 1 — General provisions		
1.	Term used: appointed member	128
2.	Term of office	128
4.	Resignation and removal	128
5.	Leave of absence	129
6.	Deputy chairman	129
7.	Temporary members	129

Contents

8.	Meetings, times and places of, quorum at etc.	129
9.	Resolution may be passed without meeting	130
10.	Meetings by telephone etc.	131
11.	Minutes of meetings	132
12.	Procedures	132
	Division 2 — Disclosure of interests	
13.	Term used: member	132
14.	Material personal interests to be disclosed	132
15.	Member with material personal interest not to vote etc.	132
16.	Clause 15 may be declared inapplicable	133
17.	Quorum if cl. 15 applies	133
18.	Minister may declare cl. 15 and 17 inapplicable	133
19.	Supplementary provision about laying documents before Parliament	133
	Schedule 7 — Local governments	
	Schedule 8 — Prescribed regulations	
	Notes	
	Compilation table	137
	Provisions that have not come into operation	138
	Defined terms	

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 to provide advice and perform other functions in respect of the Swan and Canning Rivers and associated land;**
- **the management policies to be followed 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.

[Long title amended by No. 6 of 2015 s. 4.]

Part 1 — Preliminary

1. Short title

This is the *Swan and Canning Rivers Management Act 2006*¹.

2. Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —
 - board** means the board of management referred to in section 18;
 - CALM Act** means the *Conservation and Land Management Act 1984*;
 - catchment area** means the land and waters referred to in section 8;
 - CEO** means the chief executive officer of the Department;
 - chairman** means chairman of the board;
 - committee** means a committee established under section 28E;
 - Crown land** has the meaning given to that term in the *Land Administration Act 1997*;
 - Department** means the department of the Public Service principally assisting in the administration of the CALM Act;
 - Department's website** means a website maintained by the Department;
 - 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;

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

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;

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;

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;

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;

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 agency 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); No. 6 of 2015 s. 5 and 53.]

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. Objectives and principles paramount; disputes between CEO and Schedule 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.
- (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 CEO or 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 CEO 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 CEO 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 CEO, 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 CEO 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 CEO.
- (10) The performance of a function by the CEO, 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).

[Section 6 amended by No. 6 of 2015 s. 51 and 53.]

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

[Section 9 amended by No. 6 of 2015 s. 53.]

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) a part of 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.

[Section 10 amended by No. 6 of 2015 s. 53.]

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

[(1) deleted]

- (2) Subject to subsection (9), a reference in this Act to the River reserve is a reference to the land and waters that are —

s. 11

- (a) a part of the catchment area and a part of the Riverpark;
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.
- (8A) Despite the *Land Administration Act 1997*, the placing of the
care, control and management of the River reserve with the
Trust is only for the purposes of section 23 and does not
otherwise limit the functions of the CEO under section 33.
- (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 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 Parks and Reserves 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 of Western Australia under the CALM Act; and
 - (ii) is in the land or waters described in Schedule 4.

[Section 11 amended by No. 6 of 2015 s. 6.]

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*.

s. 13

- (2) Despite any written or other law to the contrary, the Minister for Lands is jointly responsible with the CEO 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 that part of 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 CEO 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 CEO 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 CEO 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 CEO and a person who has the care, control and management of land on the Riverpark shoreline; or
 - (b) the CEO 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 or the powers of the CEO under Part 4B Division 1.

[Section 12 amended by No. 6 of 2015 s. 7 and 51.]

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;
 - (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.

s. 14

- (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.

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

s. 15

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.]

22A. CEO entitled to attend board meeting

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

[Section 22A inserted by No. 6 of 2015 s. 8.]

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 Metropolitan 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 considering 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; No. 6 of 2015 s. 53.]

Division 2 — Functions and powers

23. Functions of Trust

The functions of the Trust are —

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

[(b), (c) deleted]

- (d) to establish targets for ecological and community benefits and amenity of the Riverpark, and mechanisms for evaluating achievement of those targets; and
- (e) in accordance with Part 4, to prepare and deal with proposed strategic documents under this Act; and

- (fa) to promote the implementation of strategic documents and establish mechanisms for monitoring compliance for the purpose of reporting and making recommendations under section 66; and
- (fb) in accordance with Part 5, to advise the CEO on matters relating to development in the development control area; and
- (f) to advise the CEO on and promote the activities of other bodies that have functions in relation to the catchment area, insofar as those functions may affect the Riverpark; and
- (g) to 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 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) deleted]*
- (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 this Act or any other written law; and
- [(l) deleted]*
- (m) to perform any other function vested in it by this Act or any other written law.

[Section 23 amended by No. 6 of 2015 s. 9.]

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

[Section 24 amended by No. 6 of 2015 s. 10.]

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 developed by the Trust and the functions of that body, to the extent to which those functions may affect the Riverpark.

[Section 25 amended by No. 6 of 2015 s. 53.]

[26, 27. Deleted by No. 6 of 2015 s. 11.]

28A. Assistance, staff and facilities to be provided

The CEO must provide the Trust —

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

[Section 28A inserted by No. 6 of 2015 s. 11.]

28B. Delegation by Trust

(1) In subsection (2) —

eligible person means —

- (a) a member;
 - (b) a committee or a member of the committee;
 - (c) the CEO;
 - (d) a member of staff provided under section 28A.
- (2) The Trust may, by resolution, delegate to an eligible person any function of the Trust under another provision of this Act or any other written law.
- (3) A delegate must not further delegate any function.
- (4) A person exercising or performing a function that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the Trust to perform a function through an officer or agent.
- (6) This section does not apply to the execution of documents but the authority to execute documents on behalf of the Trust can be given under section 28F.

[Section 28B inserted by No. 6 of 2015 s. 11.]

28C. Minister may give Trust directions

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

[Section 28C inserted by No. 6 of 2015 s. 11.]

28D. Minister to have access to information

- (1) In this section —
document includes any tape, disk or other device or medium on which information is recorded or stored;
information means information specified, or of a description specified, by the Minister that relates to the functions of the Trust;
staff means staff provided under section 28A.
- (2) The Minister is entitled to have information in the possession of the Trust and, if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Trust to provide information to the Minister;
and
 - (b) request the Trust to give the Minister access to information; and

- (c) for the purposes of paragraph (b) make use of staff to obtain the information and provide it to the Minister.
- (4) The Trust must comply with a request under subsection (3) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

[Section 28D inserted by No. 6 of 2015 s. 11.]

28E. Trust may appoint committees

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

[Section 28E inserted by No. 6 of 2015 s. 11.]

28F. Execution of documents

- (1) The Trust is to have a common seal.
- (2) A document is duly executed by the Trust if —
 - (a) the common seal of the Trust is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Trust by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Trust must not be affixed to any document except as authorised by the Trust.
- (4) The common seal of the Trust must be affixed to a document in the presence of the chairman and another member, or the chairman and a person employed in the Department authorised by the Trust either generally or in any particular case to be so

present, and each of them must sign the document to attest that the common seal was so affixed.

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

[Section 28F inserted by No. 6 of 2015 s. 11.]

28G. Annual report

- (1) Despite the *Financial Management Act 2006*, the Trust must, not later than 30 November in each year, prepare and give to the Minister a report on its proceedings for the year ending on the preceding 30 June.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as is practicable after receipt by the Minister.

[Section 28G inserted by No. 6 of 2015 s. 11.]

[Pt. 3 (Div. 3) deleted by No. 6 of 2015 s. 15.]

Part 4A — Management of land and waters

[Heading inserted by No. 6 of 2015 s. 12.]

28. CEO may agree to manage private land

(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 CEO 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 CEO 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.

[Section 28 amended by No. 6 of 2015 s. 51.]

29. CEO may grant leases of River reserve

(1) In this section —

lease includes sublease.

- (2) The CEO 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 CEO 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 CEO —
 - (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 CEO; 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; No. 6 of 2015 s. 51.]

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 CEO 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 CEO —
 - (i) specify the actions which the CEO 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.

[Section 30 amended by No. 6 of 2015 s. 51.]

31. River reserve lease, procedure for forfeiting

- (1) If the CEO is satisfied that a River reserve lessee has failed to comply with a provision of the lease, the CEO 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 CEO may by order cause the lease to be forfeited.

s. 32

- (4) The CEO must, when the CEO 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 CEO 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 CEO; 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.

[Section 31 amended by No. 6 of 2015 s. 51 and 53.]

32. CEO may grant licences over River reserve

- (1) The CEO may grant a licence in writing to any person in respect of the River reserve.
- (2) The CEO 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 CEO 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 CEO 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 CEO may, by notice in writing given to the holder, cancel the licence or suspend it for such time as the CEO 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; No. 6 of 2015 s. 51.]*

Part 4B — Administration

[Heading inserted by No. 6 of 2015 s. 13.]

Division 1 — Functions and powers of CEO

[Heading inserted by No. 6 of 2015 s. 13.]

33. Functions of CEO

- (1) The functions of the CEO under this Act are as follows —
- (a) to manage —
 - (i) the River reserve; and
 - (ii) the Riverpark shoreline, either solely or jointly with another person;
 - (b) to protect and enhance the ecological and community benefits and amenity of the development control area and control activities and development in that area;
 - (c) to protect and enhance the ecological and community benefits and amenity of the Riverpark;
 - (d) to carry out works and provide facilities for the purposes of protecting and enhancing the ecological and community benefits and amenity of the Riverpark;
 - (e) to coordinate the development and implementation of strategic documents under this Act, including the strategic documents applicable to the catchment area;
 - (f) to monitor —
 - (i) the state of the development control area; and
 - (ii) development on and adjoining the development control area;
 - (g) to provide assistance to planning authorities so that, in relation to the Riverpark, proper provision is made in planning schemes for —
 - (i) the reservation of land for protection, and future acquisition, of river foreshores; and

- (ii) protection and public use of land and waters; and
 - (iii) protection of wildlife habitat;
 - (h) to provide advice to the Western Australian Planning Commission on State planning policies and planning scheme provisions relating to any matter within its functions, and to publish other statements of policy relating to any matter within the CEO's functions;
 - (i) to provide the Trust with assistance, staff and facilities under section 28A;
 - (j) to otherwise undertake the administration and enforcement of this Act and perform other functions vested in the CEO by this Act.
- (2) Nothing in subsection (1) is to be read as limiting the functions of the Trust under section 23.

[Section 33 inserted by No. 6 of 2015 s. 14.]

34. Consultation and matters to be considered by CEO

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

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

- (v) the interests of navigation, fisheries, agriculture and water supply.

[Section 34 inserted by No. 6 of 2015 s. 14.]

35. Consultation with local governments and Metropolitan Redevelopment Authority

- (1) If it appears to the CEO that a measure proposed to be taken by the CEO, not being a matter to which Part 4 applies or a development to which Part 5 applies, is one that affects or is likely to affect the interests of a local government referred to in Schedule 7 or the Metropolitan Redevelopment Authority, in a material way, the CEO must refer the proposal to the local government or the Metropolitan Redevelopment Authority.
- (2) If a proposal is referred to it, a local government or the Metropolitan Redevelopment Authority may make submissions to the CEO on the proposal.
- (3) The CEO must have regard to those submissions —
 - (a) in any report, advice or recommendation that the CEO intends to submit to the Minister on the proposal; and
 - (b) if the CEO undertakes the proposal.
- (4) The local government or the Metropolitan Redevelopment Authority must be notified of any decision in respect of the proposal —
 - (a) by the Minister, in the case of a decision by the Minister; and
 - (b) by the CEO, in the case of a decision by the CEO.

[Section 35 inserted by No. 6 of 2015 s. 14.]

36. Payment for advice and other matters

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

agreed amount by way of payment to the CEO for the advice, work or services or the use of the facilities.

[Section 36 inserted by No. 6 of 2015 s. 14.]

37. Collaborative arrangements

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

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

[Section 37 inserted by No. 6 of 2015 s. 14.]

38. Delegation by CEO

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

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

[Section 38 inserted by No. 6 of 2015 s. 14.]

Division 2 — Inspectors

[Heading inserted by No. 6 of 2015 s. 16.]

[Formerly Pt. 3 Div. 4, heading inserted by No. 6 of 2015 s. 16.]

39. Inspectors, designating etc.

- (1) The CEO may, by instrument in writing, designate any person employed in the Department or any officer of a public authority as an inspector.
- (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 CEO may revoke a designation under subsection (1) at any time.
- (4) A police officer is ex officio an inspector.

[Section 39 amended by No. 6 of 2015 s. 17 and 51.]

40. Identity cards for inspectors

- (1) The CEO 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 CEO 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.

[Section 40 amended by No. 6 of 2015 s. 52.]

[Pt. 3 Div. 5 and 6 (s. 41-46) deleted by No. 6 of 2015 s. 18.]

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 CEO 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.

[Section 48 amended by No. 6 of 2015 s. 51.]

49. Draft s. 47 regulations to be publicly notified

- (1) Public notification that draft regulations in relation to a matter referred to in section 47 have been prepared must be given in accordance with subsection (2).
- (2) The draft regulations must be publicly notified by the publication of a notice —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —
 - (a) specify the places at which copies of the draft regulations may be inspected and obtained and the Department's website address; and
 - (b) state the effect of section 50 and specify the period referred to in that section.
- (4) The CEO may fix and charge a fee for supplying a copy of the draft regulations.

[Section 49 inserted by No. 6 of 2015 s. 19.]

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 CEO, by any person —

- (a) within a period determined by the CEO 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 an address designated by the CEO.

[Section 50 amended by No. 6 of 2015 s. 53.]

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 CEO, 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.

[Section 51 amended by No. 6 of 2015 s. 51.]

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 CEO 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.

[Section 53 amended by No. 6 of 2015 s. 51.]

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 —

Swan and Canning Rivers Management Act 2006

Part 4 Targets and strategic documents

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

s. 56

- (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; and
 - (d) the CEO has been consulted as to whether the document should be approved as a strategic 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.

[Section 55 amended by No. 6 of 2015 s. 20.]

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 through the agency of the CEO —
- (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.

[Section 56 amended by No. 6 of 2015 s. 21.]

57. Consultation with local governments etc. about proposed documents

In the preparation of the river protection strategy or a management programme the Trust through the agency of the CEO 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.

[Section 57 amended by No. 6 of 2015 s. 22.]

58. Draft document to be publicly notified

- (1) Public notification that a draft river protection strategy or management programme has been prepared must be given in accordance with subsection (2).
- (2) The draft river protection strategy or management programme must be publicly notified by the publication of a notice —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State.
- (3) The notice must —

- (a) specify the places at which copies of the draft document may be inspected and obtained and the Department's website address; and
 - (b) state the effect of section 59 and specify the period referred to in that section.
- (4) The CEO may fix and charge a fee for supplying a copy of the draft documents.

[Section 58 inserted by No. 6 of 2015 s. 23.]

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 CEO, by any person —

- (a) within a period determined by the CEO 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 an address designated by the CEO.

[Section 59 amended by No. 6 of 2015 s. 53.]

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 to each public authority, person and body consulted under section 57 together with a summary of those submissions, and may be referred to any other public authority, person or body the Trust thinks fit.
- (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.

[Section 60 amended by No. 6 of 2015 s. 24.]

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 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 CEO may fix and charge a fee for supplying a copy of the strategic document.

[Section 63 amended by No. 6 of 2015 s. 51.]

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 through the agency of the CEO 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, with the approval of the Minister, determine that the existing strategic document is to continue in force without amendment.
- (3A) If the Minister refuses to approve the continuation in force of the river protection strategy or management programme without amendment, the river protection strategy or management programme ceases to be of effect.
- (3B) The Trust must notify the CEO of any determination made under subsection (2).
- (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 or revision of 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 to or revision of the river protection strategy or management programme or the continuation of the strategic document.
- (4) Subject to compliance with this section, a river protection strategy or a management programme may be revoked and a revised river protection strategy or a revised management programme substituted for it.

[Section 64 amended by No. 6 of 2015 s. 25.]

Division 4 — Compliance with strategic documents

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

- (1) The CEO must perform his or her functions under this Act 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 head office of the Department and be available for inspection by the public during office hours free of charge; and
- (b) published on the Department's website.

[Section 65 amended by No. 6 of 2015 s. 26 and 53.]

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
 - (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 of the Trust under section 28G.

[Section 66 amended by No. 77 of 2006 Sch. 1 cl. 165(5); No. 6 of 2015 s. 27.]

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 CEO under section 72(4); or
- (b) sent to the CEO 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*.

[Section 67 amended by No. 6 of 2015 s. 51.]

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

- (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 CEO is authorised to approve under section 85, the CEO.

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 CEO.

Penalty:

- (a) a fine of \$50 000;

s. 71

- (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 CEO.
[Section 70 amended by No. 6 of 2015 s. 51.]

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 CEO.

[Section 71 amended by No. 6 of 2015 s. 51.]

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 CEO.

(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 CEO 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 CEO may reasonably require for proper consideration of the application.

[Section 72 amended by No. 45 of 2011 s. 144(13)-(16); No. 6 of 2015 s. 51.]

73. Consultation with local governments etc. about development application

- (1) The CEO must by notice in writing refer a development application and information and documents relating to the proposed development to the following —
 - (a) each local government for which the development appears to the CEO to be a relevant matter;
 - (b) the Metropolitan Redevelopment Authority if the development appears to the CEO to be a relevant matter;
 - (c) each other public authority that appears to the CEO to have functions that are relevant to the proposed development;
 - (d) if the development is proposed to be carried out on land in the Swan Valley, the Swan Valley Planning Committee.
- (2A) A relevant matter for a local government is one that relates to a development or proposed development in a part of the development control area that is in or adjoins the district of that local government.
- (2B) A relevant matter for the Metropolitan Redevelopment Authority is one that relates to a development or proposed development in a redevelopment area as defined in the *Metropolitan Redevelopment Authority Act 2011* section 3.
- (2) Each of the entities to which particulars are referred under subsection (1) and, where particulars are referred to the Swan Valley Planning Committee, that committee, may make submissions on the proposed development to the CEO.
- (3) A report must not be made by the CEO 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 local governments and other public authorities to which particulars were referred under that subsection and, where particulars were referred to the Swan Valley Planning Committee, by that Committee,

whichever is the sooner.

[Section 73 amended by No. 6 of 2015 s. 28, 51 and 53.]

74. Development applications to be publicised

- (1) The CEO must publish on the Department's website notice of each development application the CEO receives.
- (2) The applicant must give notice of the proposed development, in a form approved by the CEO, 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 CEO advises the applicant that the CEO considers that the proposed development is a matter of significant public interest; or
 - [(d) deleted]*
 - (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.

s. 75

- (4) The CEO 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 CEO to be a relevant matter as that term is defined in section 73, 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; No. 6 of 2015 s. 29, 51 and 53.]

75. Draft report by CEO on proposed development

- (1) After complying with sections 73 and 74, the CEO must prepare a draft report on the proposed development and in that draft report make recommendations on the development application.
- (2) The CEO, in preparing a report under this section, must consider all submissions received by the CEO under sections 73 and 74.
- (3A) The CEO must give a copy of the draft report to the Trust and the Trust must, not later than 28 days after being given the report, provide its comments and recommendations to the CEO.
- (3) After receiving the comments and recommendations of the Trust and making such changes to the draft report as the CEO thinks appropriate, the CEO must —
 - (a) give a copy of the draft report, with an invitation to make submissions to the CEO on the draft report, to —
 - (i) the applicant; and
 - (ii) the Trust and each local government and other public authority to which notice was given under section 73(1) and where notice was given to the

Swan Valley Planning Committee, that committee; and

(iii) each person who made a submission under section 74(5);

and

(b) publish the draft report on the Department's website and in any other way the CEO considers appropriate, with an invitation to the public to make submissions to the CEO on the draft report.

(4) An invitation to make submissions to the CEO 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 CEO 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.

[Section 75 amended by No. 6 of 2015 s. 30 and 51.]

76. Report by CEO to Minister on proposed development

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

(2) The CEO, after considering any submissions made under section 75 and comments made under subsection (1) and making such changes to the report as the CEO considers appropriate, must —

s. 77

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

[Section 76 inserted by No. 6 of 2015 s. 31.]

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

[Section 77 amended by No. 6 of 2015 s. 32.]

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 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 CEO'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 CEO, after consultation with 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).

[Section 79 amended by No. 6 of 2015 s. 33.]

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 CEO, the CEO 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;and
 - (b) published on the Department's website.

[Section 80 amended by No. 6 of 2015 s. 53.]

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 CEO;
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 CEO 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 CEO 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 CEO 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.

[Section 81 amended by No. 6 of 2015 s. 51.]

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 Department's website.

[Section 82 amended by No. 6 of 2015 s. 53.]

83. Correction of approval

- (1) The Minister may —
 - (a) correct in an approval —
 - (i) a clerical mistake; or
 - (ii) an error arising from an accidental slip or omission; or
 - (iii) a figure which has been miscalculated; or

s. 84

- (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 Department’s website.

[Section 83 amended by No. 6 of 2015 s. 53.]

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 CEO

- (1) The regulations may prescribe classes of developments that the CEO is authorised to approve under this section.
- (2) If the CEO is authorised under subsection (1) to approve a development, the CEO may decide to do so and in that case —
 - (a) sections 73, 74, 75 and 76(1) and (2) apply in relation to the development application; and
 - (b) sections 76(3), 77, 78 and 79 do not apply in relation to the development application; and
 - (c) the CEO may, subject to section 80(2), exercise any power described in section 80(1), (3) or (4).
- (3) Before exercising a power described in section 80(1) the CEO must consider the report received by the CEO under section 76 as applied by this section and any other matter that the CEO considers relevant.
- (4) An approval by the CEO 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 CEO 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 CEO.

[Section 85 amended by No. 6 of 2015 s. 34, 51 and 53.]

86. CEO must give section 85 decision to Minister

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

[Section 86 inserted by No. 6 of 2015 s. 35.]

87. Minister may revoke CEO's decision

- (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 —
 - (ia) the CEO; and
 - (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 Department's website and in any other way the CEO considers appropriate.
- (3) If the Minister revokes a decision under this section —
 - (a) the CEO must give to the Minister the submissions and comments given to the CEO in respect of the application under sections 75 and 76 as applied by section 85(2)(a); and

- (b) the Minister must deal with the application under section 77; and
- (c) sections 78 to 84 apply accordingly as if the CEO had not been authorised to approve the application.

[Section 87 amended by No. 6 of 2015 s. 36 and 51.]

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 Executive Body.

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

[Section 89 amended by No. 23 of 2012 s. 45; No. 6 of 2015 s. 51 and 53.]

Part 6 — River protection notices

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

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

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

- (2A) The Trust must provide the advice not later than 28 days after the request is made.
- (2) The request must be accompanied by a report setting out —
 - (a) the reasons for the request; 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 request to the Trust the CEO 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 request 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 CEO makes the request.

[Section 90 amended by No. 6 of 2015 s. 37, 52 and 53.]

91. Issue of notice by CEO

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

[Section 91 amended by No. 6 of 2015 s. 38 and 51.]

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 CEO 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 CEO 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.

- (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 CEO as to the suitability of the land for the development.
- (7) A memorial registered under this section has effect until it is withdrawn.

[Section 94 amended by No. 6 of 2015 s. 51 and 52.]

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 CEO 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.

[Section 95 amended by No. 6 of 2015 s. 51.]

96. CEO must give notice of memorial or withdrawal

- (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 CEO 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.

[Section 96 amended by No. 6 of 2015 s. 52.]

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

- (1) The CEO 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 CEO 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 CEO, represents a reasonable estimate of the total likely costs that might be incurred in taking action under sections 102 and 103 in relation to that river protection notice.
- (5) A requirement to provide a financial assurance lapses and no longer binds the person to whom it applies if the CEO 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.

[Section 98 amended by No. 6 of 2015 s. 39 and 51.]

99. Amending or cancelling notice

- (1) The CEO may, by written notice, cancel a river protection notice or, subject to subsections (2) and (3), amend it —

s. 100

- (a) by extending the period within which a requirement contained in the river protection notice must be complied with if the CEO 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 CEO, 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 CEO exercises the power in question.

[Section 99 amended by No. 6 of 2015 s. 51.]

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:

- (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. CEO's powers in case of contravention of notice

- (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 CEO, 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 CEO 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 CEO must give to the person written notice —
 - (a) stating that in the opinion of the CEO 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.

[Section 102 amended by No. 6 of 2015 s. 51.]

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

- (1) A person taking action on behalf of the CEO under this section, may enter on any land in respect of which the CEO is authorised to take action under section 102(1) and on that land may take

s. 103

such action as the CEO 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 CEO 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 CEO 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 CEO to take any action under this section if the CEO so requests.
- (4) If action is taken under subsection (1), the CEO 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 State.

[Section 103 amended by No. 6 of 2015 s. 51 and 53.]

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 CEO in the particular case.

[Section 107 amended by No. 6 of 2015 s. 52.]

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 CEO in the particular case.

[Section 110 amended by No. 6 of 2015 s. 52.]

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 CEO 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; No. 6 of 2015 s. 52.]

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. CEO's powers in respect of illegal development

(1) The CEO 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 CEO,

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 CEO may cause the development to be removed, pulled down, taken up or altered.
 - (6) The CEO may recover in a court of competent jurisdiction from the person who failed to comply with the notice the costs incurred under subsection (5) in removing, pulling down, taking up or altering a development.

[Section 116 amended by No. 6 of 2015 s. 40 and 51.]

117. Abandoned etc. property, powers as to

- (1) Subject to this section, the CEO may take possession of any property that is on land or waters in the Riverpark if —

- (a) the CEO 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 the CEO exercises the power in subsection (1)(a) in relation to property that does not constitute a danger to persons, property or the environment, the CEO 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 the CEO 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 CEO under this section is a debt due to the State 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 State and may be disposed of as the CEO thinks fit.
- (6) If the CEO'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 CEO must sell the property, and after payment of all of the costs, hold the proceeds in accordance with subsection (7).
- (7) The proceeds of sale referred to in subsection (6) must be paid into the Consolidated Account at the expiration of 12 months

from the date of the sale unless within that time a person proves to the satisfaction of the CEO that that person is entitled to them or any part of them, in which case the CEO must pay the proceeds or part of the proceeds in accordance with that entitlement.

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

[Section 117 amended by No. 6 of 2015 s. 41, 51 and 53.]

118. Recovery of costs in case of financial assurance

- (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 CEO incurs costs in taking action under section 102, 103, 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 CEO 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 CEO 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 CEO 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 CEO must consider any representations in writing made by the responsible person.
- (7) If the CEO decides to make a claim on or realise the financial assurance or part of it, the CEO 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 must be paid into the Consolidated Account.
- (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 CEO may recover the excess from the responsible person under section 102, 103, 116(5) or 117, as the case requires.
- (11) The CEO is not entitled —
 - (a) to recover costs under section 102, 103, 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

Swan and Canning Rivers Management Act 2006

Part 7 Investigation and enforcement

Division 4 Enforcement provisions

s. 118

- (b) to call on or use a financial assurance in respect of costs which have been recovered under section 102, 103, 116(5) or 117.

[Section 118 amended by No. 6 of 2015 s. 42, 51 and 53.]

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 CEO 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.

[Section 119 amended by No. 6 of 2015 s. 51.]

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

[Section 123 amended by No. 46 of 2009 s. 17; No. 6 of 2015 s. 43.]

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.

Swan and Canning Rivers Management Act 2006

Part 8 Legal proceedings

Division 3 Offences under other Acts

s. 126

- (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 objectives of this Act; and
- (b) to encourage donations to facilitate the achievement of the objectives of this Act.

[Section 129 inserted by No. 6 of 2015 s. 44.]

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

s. 132

- (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 CEO; and
 - (b) may be transferred to an operating account of the Department for the purposes of carrying this Act into effect or otherwise applied for the purposes of this Act or the Foundation.
- (4) The operation of the Foundation Account is to be regarded as —
- (a) a service under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
 - (b) part of the operations of the Department for the purposes of Part 5 of that Act.

[Section 131 amended by No. 77 of 2006 Sch. 1 cl. 165(6)-(8); No. 6 of 2015 s. 45, 51 and 53.]

132. Rules for this Part

- (1) The Minister may, on the recommendation of the CEO, make rules that are necessary or convenient for giving effect to this Part.
- (2A) The CEO must consult the Trust before making a recommendation under subsection (1).
- (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 Minister, 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.

[Section 132 amended by No. 6 of 2015 s. 46, 51 and 53.]

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 under section 28B.
- (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 the Metropolitan Redevelopment Authority; and
 - (ii) to a closed meeting, or a closed committee meeting, of the council of the local government or the Metropolitan 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.

s. 135

[Section 134 amended by No. 6 of 2015 s. 53.]

135. Protection from personal liability

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

[(2) deleted]

- (3) The protection given by subsection (1) 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 (1), 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.

[Section 135 amended by No. 6 of 2015 s. 47.]

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 CEO 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 CEO 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.

[Section 136 amended by No. 6 of 2015 s. 51.]

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

s. 137

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.

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

[Heading inserted by No. 6 of 2015 s. 48.]

138. Terms used

In this Part —

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

assets —

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

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

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

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

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

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

[Section 138 inserted by No. 6 of 2015 s. 48.]

139. Completion of things commenced

Anything commenced to be done by the Trust or the General Manager before the commencement day may be continued by

s. 140

the CEO so far as the doing of that thing is within the functions of the CEO.

[Section 139 inserted by No. 6 of 2015 s. 48.]

140. Continuing effect of things done

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

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

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

[Section 140 inserted by No. 6 of 2015 s. 48.]

141. Contracts, agreements and other instruments

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

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

- (c) the CEO were substituted for the Trust as a party to the agreement or instrument; and
- (d) any reference in the contract, agreement or instrument were, unless the context otherwise requires, amended to be or include a reference to the CEO.

- (2) Nothing in this section affects the operation of sections 11 or 23(a).

[Section 141 inserted by No. 6 of 2015 s. 48.]

142. Assignment to State or CEO

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

[Section 142 inserted by No. 6 of 2015 s. 48.]

s. 143

143. Swan River Trust Account

- (1) In this section —
former account means the Swan River Trust Account referred to in section 42 of the former Act.
- (2) On the commencement day, any moneys standing to the credit of the former account must be credited to an operating account of the Department, and the former account must then be closed.
- (3) Moneys referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former account arising before the commencement day; and
 - (b) for the purposes of this Act.
- (4) The operating account referred to in subsection (2) must be credited with any moneys payable to the former account before the commencement day that are paid on or after that day.
- (5) If in an agreement, instrument or other document there is a reference to the former account, that reference is, unless the context otherwise requires, to be read or to have effect from the commencement day as if it were a reference to the operating account referred to in subsection (2).

[Section 143 inserted by No. 6 of 2015 s. 48.]

144. Registration of documents

- (1) In this section —
relevant official means —
 - (a) the Registrar of Titles; or
 - (b) the Registrar of Deeds and Titles; or
 - (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,according to which, if any, of them has responsibility for a register relating to the relevant property;

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

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

[Section 144 inserted by No. 6 of 2015 s. 48.]

145. Exemption from State taxation

- (1) In this section —

State tax includes —

- (a) duty chargeable under the *Duties Act 2008*; and
- (b) any other tax, duty, fee, levy or charge, under a law of the State.

- (2) State tax is not payable in relation to —

- (a) anything that occurs by operation of this Part; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

- (3) The Minister may certify in writing that —

- (a) a specified thing occurred by operation of this Part; or
- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.

- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

[Section 145 inserted by No. 6 of 2015 s. 48.]

s. 146

146. Development applications

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

[Section 146 inserted by No. 6 of 2015 s. 48.]

147. River protection notices

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

[Section 147 inserted by No. 6 of 2015 s. 48.]

148. Transitional regulations

- (1) In this section —

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

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

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

- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with a transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with a transitional matter.
- (3) Regulations made under subsection (2) may provide that specific provisions of the amended Act —
 - (a) do not apply to or in relation to a matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the publication day for those regulations but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person other than the State the rights of that person existing before the publication day for those regulations; or
 - (b) to impose liabilities on a person other than the State or an authority of the State in respect of an act done or omission made before the publication day for those regulations.
- (6) Regulations can only be made under subsection (2) within 12 months after the commencement day.

s. 149

[Section 148 inserted by No. 6 of 2015 s. 48.]

149. Interpretation Act 1984 not affected

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

[Section 149 inserted by No. 6 of 2015 s. 48.]

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 6.

*[Schedule 2 amended by No. 6 of 2015 s. 53; amended in Gazette
25 Sep 2007 p. 4818 (as amended in Gazette 27 Jun 2014 p. 2328;
4 Mar 2016 p. 625).]*

Schedule 3 — Development control area

[s. 10]

All of the land and waters shown bordered in red on Deposited Plan 47465
Version 6

*[Schedule 3 amended by No. 6 of 2015 s. 53; amended in Gazette
25 Sep 2007 p. 4818 (as amended in Gazette 27 Jun 2014 p. 2328;
4 Mar 2016 p. 626).]*

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 504 on Deposited Plan 408106, 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; (as amended in Gazette 4 Mar 2016 p. 626).]

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), (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) *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) *deleted*]
- (z) the *Strata Titles Act 1985*;

- [(aa) deleted]*
- (bb) the *Transport Co-ordination Act 1966*;
- (cc) the *Water Agencies (Powers) Act 1984*;
- (dd) the *Water Corporations Act 1995*;
- (eea) the *Water Services Act 2012*;
- (ee) the *Waterways Conservation Act 1976*;
- (ff) the *Western Australian Land Authority Act 1992*.
- [(gg) deleted]*
- [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 Act 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; No. 6 of 2015 s. 49.]

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. Deleted by No. 6 of 2015 s. 50.]

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.

[Clause 15 amended by No. 6 of 2015 s. 53.]

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

Swan and Canning Rivers Management Act 2006

Schedule 6 Constitution and proceedings of the board

Division 2 Disclosure of interests

cl. 19

- (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
City of Vincent

[Schedule 7 amended by No. 45 of 2011 s. 144(19); No. 6 of 2015 s. 53.]

Schedule 8 — Prescribed regulations

[s. 125]

Item	Regulation	Description of offence
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

¹ 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^{1a}. 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>			25 Sep 2007 (see note under r. 45 published in <i>Gazette</i> 25 Sep 2007 p. 4787-831 (as amended in <i>Gazette</i> 27 Jun 2014 p. 2328; 4 Mar 2016 p. 625-6)
Reprint 1: The Swan and Canning Rivers Management Act 2006 as at 6 Mar 2009 (includes amendments listed above except those in <i>Gazette</i> 27 Jun 2014 p. 2328)			
<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))

Reprint 2: The Swan and Canning Rivers Management Act 2006 as at 15 Jun 2012
(includes amendments listed above except those in *Gazette* 27 Jun 2014 p. 2328)

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)
<i>Water Services Legislation Amendment and Repeal Act 2012 s. 233</i>	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028)
<i>Swan and Canning Rivers Management Amendment Act 2015 Pt. 2</i>	6 of 2015	9 Mar 2015	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 19 Jun 2015 p. 2095)

^{1a} 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>Conservation and Land Management Amendment Act 2015 s. 78³</i>	28 of 2015	19 Oct 2015	To be proclaimed (see s. 2(b))

² Repealed by the *Water Resources Legislation Amendment Act 2007*.

³ On the date as at which this compilation was prepared, the *Conservation and Land Management Amendment Act 2015 s. 78* had not come into operation. It reads as follows:

78. Swan and Canning Rivers Management Act 2006 amended

- (1) This section amends the *Swan and Canning Rivers Management Act 2006*.
- (2) In Schedule 5:
 - (a) in item 3 delete “Conservation Commission” and insert:

Conservation and Parks Commission

- (b) delete item 4.

Defined terms

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

Defined term	Provision(s)
account	143(1)
affect	7(1)
alleged offender	122
amended Act	138
applicant	67
application	112(1)
appointed member	Sch. 6 cl. 1
approval	67
approving authority	81(1)
assets	138
authorised person	123(1)
board	3(1)
CALM Act	3(1)
catchment area	3(1)
CEO	3(1)
chairman	3(1)
code	54(1)
commencement day	138
committee	3(1)
Crown land	3(1)
Department	3(1)
Department's website	3(1)
development	3(1), 67
development application	67
development control area	3(1)
document	28D(1)
dwelling	104
eligible person	28B(1), 38(1)
entry warrant	104
Executive Body	3(1)
financial assurance	118(1)
former	143(1)
former Act	138
Foundation	3(1)
Foundation Account	3(1)
high water mark	3(1)
information	28D(1)
inspector	3(1)
investigative purposes	104
land	3(1)

lease	29(1)
liability	138
lot	3(1)
management programme	3(1)
member	3(1), 21(1), 134(1), Sch. 6 cl. 8(8), Sch. 6 cl. 10(1), Sch. 6 cl. 13
Metropolitan Redevelopment Authority	3(1)
Metropolitan Region Scheme	3(1)
Minister for Lands	12(1)
Minister for Planning	3(1)
mobile home	104
native title rights and interests	7(1)
NTA	7(1)
owner	3(1), 89(1)
personal details	106(1)
place	104
prescribed	3(1)
prescribed offence	122
private land	28(1)
public authority	3(1)
publication day	148(1)
register	94(1)
Registrar	94(1)
relevant Minister	55(3), 61(1)
relevant official	144(1)
relevant property	144(1)
relevant record	108(1)
remote communication	112(1)
responsible authority	94(1), 96(1)
responsible person	118(2)
right	138
river protection notice	3(1)
river protection strategy	3(1)
River reserve	3(1)
River reserve lessee	3(1)
Riverpark	3(1)
Riverpark shoreline	3(1), 12(1)
Schedule 5 authority	3(1)
Schedule 5 Minister	6(5), 6(5)
scheme	94(1), 96(1)
specified	148(1)
staff	28D(1)
State tax	145(1)
strategic document	3(1)
Swan Valley	67
Swan Valley Planning Committee	67

Defined terms

this Part	138
transitional matter	148(1)
Trust	3(1)
unallocated Crown land	3(1)
unmanaged reserve	12(1)
vehicle	104
waters	3(1)
Western Australian Planning Commission	3(1)