

Western Australia

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

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No. 52 of 2006

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Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006

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Western Australia

Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006

No. 52 of 2006

An Act —

- **to repeal the *Swan River Trust Act 1988*;**
- **to amend the Metropolitan Region Scheme;**
- **to amend certain other written laws; and**
- **for purposes relating to that repeal and those amendments and to the enactment of the *Swan and Canning Rivers Management Act 2006*.**

[Assented to 6 October 2006]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006*.

2. Commencement

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

3. Interpretation

In this Act —

“**commencement day**” means the day on which section 4 comes into operation;

“**Metropolitan Region Scheme**” has the same meaning as it has in the *Planning and Development Act 2005*.

**Part 2 — *Swan River Trust Act 1988* repealed and
consequential amendments**

4. *Swan River Trust Act 1988* repealed

The *Swan River Trust Act 1988* is repealed.

**5. *Environmental Protection (Swan and Canning Rivers)
Policy 1997* approval revoked**

On the commencement day —

- (a) the approval given under the *Environmental Protection Act 1986* section 31(d) to the draft *Environmental Protection (Swan and Canning Rivers) Policy 1997* is revoked; and
- (b) despite the *Environmental Protection Act 1986* section 33(1), the *Environmental Protection (Swan and Canning Rivers) Policy 1997* ceases to have the force of law.

6. Acts in Schedule 1: consequential amendments

The Acts mentioned in Schedule 1 are amended as set out in that Schedule.

7. Power to amend regulations

- (1) The Governor, on the recommendation of the Minister, may make subsidiary legislation amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the *Swan and Canning Rivers Management Act 2006*.

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Part 2 Swan River Trust Act 1988 repealed and consequential
amendments

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- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

Part 3 — Transitional and saving provisions

8. Application of *Interpretation Act 1984*

- (1) The provisions of the *Interpretation Act 1984* (for example, sections 16(1), 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the repeal of the *Swan River Trust Act 1988* as if that Act were repealed and re-enacted by the *Swan and Canning Rivers Management Act 2006*.
- (2) The other provisions of this Act are additional to the provisions applied by subsection (1) and do not affect the operation of the provisions applied by subsection (1).

9. Transitional regulations

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subsection (1) —
 “transitional matter” means a matter that needs to be dealt with for the purpose of —
 - (a) effecting the transition from the provisions of the *Swan River Trust Act 1988* to the provisions of the *Swan and Canning Rivers Management Act 2006*; or
 - (b) effecting the transition from the provisions of an Act amended by a provision of this Act (the **“amending provision”**) as in force before this Act comes into operation to the provisions of that Act as in force after the amending provision comes into operation.

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- (3) Regulations made under subsection (1) may provide that specified provisions of the *Swan and Canning Rivers Management Act 2006* as in force on or after the commencement of that Act, or of subsidiary legislation made under that Act, or of an Act amended by this Act —
- (a) do not apply; or
 - (b) apply with specified modifications,
- to or in relation to any matter.
- (4) If regulations under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subsections (3) and (4) —
“specified” means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or
 - (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

10. Construction of references in written laws

- (1) Unless the context otherwise requires, a reference in a written law to an enactment repealed by section 4 includes a reference to the corresponding provision, if any, of the *Swan and Canning Rivers Management Act 2006*.

- (2) A reference in a written law to the management area of the Swan River Trust may, where the context so requires, be read as if it had been amended to include or be a reference to the development control area under the *Swan and Canning Rivers Management Act 2006*.

11. Trust continues

The Swan River Trust established under the *Swan and Canning Rivers Management Act 2006* is a continuation of and the same legal entity as the Swan River Trust established under the *Swan River Trust Act 1988*, with the same rights and obligations as that body.

12. Membership of the Trust

- (1) On the commencement day the members of the Swan River Trust established under the *Swan River Trust Act 1988* cease to hold office.
- (2) If in a written law or other document or instrument there is a reference to the chairman or a member of the Swan River Trust, that reference may, where the context so requires, be read as if it had been amended to be a reference to the chairman or a member of the board of the Swan River Trust established under the *Swan and Canning Rivers Management Act 2006*.

13. Certain leases have effect as if entered into by Swan River Trust

- (1) A lease of land in the River reserve within the meaning of the *Swan and Canning Rivers Management Act 2006* that —
- (a) was entered into under the *Marine and Harbours Act 1981* section 12; and
 - (b) is in effect immediately before the commencement day,
- has effect on and after that day as if it had been entered into by the Swan River Trust under the *Swan and Canning Rivers*

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Management Act 2006 instead of the Minister under the *Marine and Harbours Act 1981* section 12.

- (2) The Registrar of Titles is to take notice of this provision and is empowered to record and register in the appropriate manner any necessary documents, and otherwise to give effect to this provision.
- (3) The operation of this provision and the *Swan and Canning Rivers Management Act 2006* section 11 is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of property, rights or liabilities or the disclosure of information;
 - (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any property, right or liability;
 - (d) as causing any contract or other instrument to be void or otherwise unenforceable; or
 - (e) as releasing or allowing the release of any surety.

14. Subsidiary legislation

Regulations made under the *Swan River Trust Act 1988* continue in force as if they were made under the *Swan and Canning Rivers Management Act 2006* and may be amended or repealed accordingly.

Part 4 — Amendments to Metropolitan Region Scheme

15. Metropolitan Region Scheme amended

The amendments in this Part are to the Metropolitan Region Scheme.

16. Effect of amendments

- (1) The amendments to the Metropolitan Region Scheme effected by this Part have effect as though the provisions were enacted under the *Planning and Development Act 2006*.
- (2) Nothing in this Part affects the operation of the *Planning and Development Act 2006* with respect to amendments to the Metropolitan Region Scheme as amended by this Act.

17. Clause 3 amended

Clause 3 is amended as follows:

- (a) in the definition of “Scheme Act” by deleting the full stop and inserting instead a semicolon;
- (b) by inserting after the definition of “Scheme Act” the following definition —

“

“**Swan development control area**” has the meaning given to “development control area” in the *Swan and Canning Rivers Management Act 2006*.

”.

18. Clause 10A amended

Clause 10A is amended by deleting “*Swan River Trust Act 1988*” and inserting instead —

“ *Swan and Canning Rivers Management Act 2006* ”.

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19. Clause 24 amended

Clause 24(2)(b)(i) and “or” after it are deleted and the following is inserted instead —

“

- (i) the erection on a lot of a single dwelling house which will be the only building on the lot, no part of which lot is within the Swan development control area or abuts any part of the Swan development control area; or

”.

20. Clause 29 amended

Clause 29(1)(a) is amended as follows:

- (a) in subparagraph (ii) by deleting “management area within the meaning of the *Swan River Trust Act 1988*” and inserting instead —

“ Swan development control area ”;

- (b) in subparagraph (iii) by deleting “that management area” and inserting instead —

“ any part of the Swan development control area ”.

21. Clause 30A replaced

Clause 30A is repealed and the following clause is inserted instead —

“

30A.

- (1) In this clause —

“**Minister for Planning**” means the Minister to whom the administration of the *Planning and Development Act 2006* is committed;

“SCRM Minister” means the Minister to whom the administration of the *Swan and Canning Rivers Management Act 2006* is committed;

“Trust” means the Swan River Trust established by the *Swan and Canning Rivers Management Act 2006* section 16.

- (2) Without limiting clause 30, if an application for approval relates to —
- (a) a development on land comprised in a lot —
 - (i) any part of which is within the Swan development control area; or
 - (ii) that is not in the Swan development control area but abuts waters that are in the Swan development control area;
 - or
 - (b) a development —
 - (i) of land that abuts the Swan development control area; or
 - (ii) that in the opinion of the Commission is likely to affect waters in the Swan development control area,other than a development to which paragraph (a) applies,
- then, unless subclause (9) applies, the Commission is to give full particulars of the application to the Trust.
- (3) The Trust, within 42 days after the day on which it receives particulars of the application or within such longer period as the Commission allows, is to give to the Commission its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.

- (4) If the Trust fails to give its advice within the time allowed under subclause (3), it is taken to have no advice to give on the application.
- (5) Subject to any direction under subclause (7), the Commission is to determine an application referred to in subclause (2)(a) in a manner that is consistent with the advice of the Trust on the application.
- (6) The Commission is to have regard to the advice of the Trust when determining an application referred to in subclause (2)(b) but is not required to make a determination that is consistent with that advice.
- (7) If the Commission does not agree with part or all of the advice of the Swan River Trust on an application referred to in subclause (2)(a) —
 - (a) the matter on which there is not agreement is to be resolved in the manner determined by the SCRM Minister and the Minister for Planning;
 - (b) the Minister for Planning is to direct the Commission accordingly; and
 - (c) the Commission is to determine the application in accordance with the direction.
- (8) Nothing in subclause (7) is to be read as limiting the *Planning and Development Act 2005* section 17.
- (9) The Trust may determine that any particular class or description of application need not be referred to it for advice under this clause and is to notify the Commission of any such determination.

”.

22. Clause 32A amended

Clause 32A is amended by deleting “land or waters in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.” and inserting instead —

“

land comprised in a lot that is wholly, or waters that are, within the Swan development control area.

”.

Schedule 1 — Consequential amendments

[s. 6]

1. Conservation and Land Management Act 1984 amended

- (1) The amendments in this clause are to the *Conservation and Land Management Act 1984**.

[* *Reprint 5 as at 24 September 2004.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 77.]*

- (2) Section 13(3a) is amended by deleting “*Swan River Trust Act 1988* before any waters that are in the management area” and inserting instead —

“

Swan and Canning Rivers Management Act 2006
before any waters that are in the development control
area or the Riverpark

”.

- (3) Section 17(4a) is amended by deleting “management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*” and inserting instead —

“

development control area or the Riverpark as defined
in the *Swan and Canning Rivers Management Act 2006*

”.

- (4) Section 99(1)(ac) is deleted and the following paragraph is inserted instead —

“

- (ac) in the case of land that is in the development control area or the Riverpark as defined in the *Swan and Canning Rivers Management Act 2006*, after consultation with the Swan River Trust;

”.

2. East Perth Redevelopment Act 1991 amended

- (1) The amendments in this clause are to the *East Perth Redevelopment Act 1991**.

[* *Reprint 2 as at 20 May 2005.*

For subsequent amendments see Gazette 12 July 2005 p. 3235-6 and 19 August 2005 p. 3865-6.]

- (2) Section 24(2)(d) is deleted and the following paragraph is inserted instead —

“

- (d) the Swan River Trust established by the *Swan and Canning Rivers Management Act 2006*;

”.

3. Jetties Act 1926 amended

- (1) The amendments in this clause are to the *Jetties Act 1926**.

[* *Reprint 2 as at 4 February 2000.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 228.]

- (2) Section 7(3) is amended by deleting “section 50 of the *Swan River Trust Act 1988*” and inserting instead —

“

the *Swan and Canning Rivers Management Act 2006*
section 70

”.

4. Land Administration Act 1997 amended

- (1) The amendments in this clause are to the *Land Administration Act 1997**.

[* *Reprint 2 as at 24 June 2005.*]

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- (2) Section 45(6) is amended by deleting “management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*,” and inserting instead —

“

development control area or Riverpark as defined in the *Swan and Canning Rivers Management Act 2006*,

”.

5. *Marine and Harbours Act 1981* amended

- (1) The amendments in this clause are to the *Marine and Harbours Act 1981**.

[* *Reprint 2 as at 14 May 2004.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 272.]

- (2) Section 12(3) is amended by deleting “section 50 of the *Swan River Trust Act 1988*” and inserting instead —

“

section 70 of the *Swan and Canning Rivers Management Act 2006*

”.

6. *Planning and Development Act 2005* amended

- (1) The amendments in this clause are to the *Planning and Development Act 2005**.

[* *Act No. 37 of 2005.*]

- (2) Section 36(a) is deleted and the following paragraph is inserted instead —

“

- (a) in a manner that is contrary to or inconsistent with —

- (i) the *Swan and Canning Rivers Management Act 2006* Part 5;

- (ii) any amendment made to the Metropolitan Region Scheme by the *Acts Amendment (Swan River Trust) Act 1988* section 14, 15 or 17; or
 - (iii) any amendment made to the Metropolitan Region Scheme by the *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006* section 21;
- ”.
- (3) Section 80 is amended as follows:
- (a) by deleting “management programme in force under Part 3 of the *Swan River Trust Act 1988*” and inserting instead —
“
strategic document in force under the *Swan and Canning Rivers Management Act 2005* Part 4
”;
 - (b) by deleting “Schedule 2” and inserting instead —
“ Schedule 7 ”.
- (4) Section 112(2) is amended by deleting “management area of the Swan River Trust as defined in the *Swan River Trust Act 1988*.” and inserting instead —
“
development control area as defined in the *Swan and Canning Rivers Management Act 2006*.
”.

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- (5) Section 241(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) any management programme for the development control area in force under the *Swan and Canning Rivers Management Act 2006* Part 4 that may affect the subject matter of the application.

”.

- (6) Section 245(5)(a) is amended by deleting “management area as defined in the *Swan River Trust Act 1988*,” and inserting instead —

“

development control area as defined in the *Swan and Canning Rivers Management Act 2006*,

”.

7. *Swan Valley Planning Act 1995* amended

- (1) The amendments in this clause are to the *Swan Valley Planning Act 1995**.

[* *Reprint 1 as at 12 September 2003.*]

- (2) Section 13(1)(b) is amended by deleting “section 53(2) of the *Swan River Trust Act 1988*,” and inserting instead —

“

section 73(2) of the *Swan and Canning Rivers Management Act 2006*;

”.

8. *Waterways Conservation Act 1976* amended

- (1) The amendments in this clause are to the *Waterways Conservation Act 1976**.

[* *Reprinted as at 20 September 2002.*]

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 487-8.]*

- (2) Section 3(1) is amended by inserting in the appropriate alphabetical positions —

“

“development control area” has the meaning given
by the *Swan and Canning Rivers Management
Act 2006*;

“Riverpark” has the meaning given by the *Swan and
Canning Rivers Management Act 2006*;

”.

- (3) Section 9(1a) is repealed and the following subsection is inserted instead —

“

- (1a) This Act does not apply in respect of the development control area or the Riverpark.

”.

- (4) Section 10(6) is repealed and the following subsection is inserted instead —

“

- (6) This section does not apply in respect of the development control area or the Riverpark.

”.

- (5) Section 56(1a) is repealed and the following subsection is inserted instead —

“

- (1a) Local laws must not be made under this section to have effect in the development control area or the Riverpark.

”.

- (6) Section 61(2) is repealed and the following subsection is inserted instead —

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“

- (2) The CEO may appoint any person to be an inspector under this Act in relation to any portion of the State other than the development control area or the Riverpark, but an appointment must not be made in relation to a management area without prior consultation with the Management Authority for that area.

”.

- (7) Section 62(2) is repealed and the following subsection is inserted instead —

“

- (2) The CEO may appoint any person to be an honorary inspector under this Act in relation to any portion of the State other than the development control area or the Riverpark, but an appointment must not be made in relation to a management area without prior consultation with the Management Authority for that area.

”.

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