

WESTERN AUSTRALIA

ACTS AMENDMENT (SWAN RIVER TRUST) ACT 1988

No. 21 of 1988

AN ACT to amend the *Conservation and Land Management Act 1984*, the *Jetties Act 1926*, the *Land Act 1933*, the *Marine and Harbours Act 1981*, the *Metropolitan Region Town Planning Scheme Act 1959*, the *Metropolitan Region Scheme*, the *Parliamentary Commissioner Act 1971*, the *Town Planning and Development Act 1928*, the *Waterways Conservation Act 1976* and the *Financial Administration and Audit Act 1985*.

[Assented to 5 October 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Swan River Trust) Act 1988*.

Commencement

2. This Act shall come into operation on the day on which the *Swan River Trust Act 1988* comes into operation.

PART 2—CONSERVATION AND LAND MANAGEMENT ACT 1984**Principal Act**

3. In this Part the *Conservation and Land Management Act 1984** is referred to as the principal Act.

[*Act No. 126 of 1984 as amended by Acts Nos. 86 and 98 of 1985 and 113 of 1987.]

Section 13 amended

4. Section 13 of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (3a) The Minister shall consult the Swan River Trust established by the *Swan River Trust Act 1988* before any waters that are in the management area within the meaning of that Act are reserved under this section as a marine nature reserve or marine park. ”.

Section 17 amended

5. Section 17 of the principal Act is amended by inserting after subsection (4) the following subsection—

“ (4a) Where a proposal referred to in subsection (2) relates to land that is in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988* the Minister shall refer the proposal to the Swan River Trust and subsections (3) and (4) shall, with all the necessary changes, apply to that body in the same way as they apply to the Commission or the Authority. ”.

Section 99 amended

6. Section 99 of the principal Act is amended in subsection (1) by inserting after paragraph (a) the following paragraph—

- “ (aa) in the case of land that is in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*, after consultation with the Swan River Trust; ”.

PART 3—JETTIES ACT 1926**Section 7 amended**

7. Section 7 of the *Jetties Act 1926** is amended by inserting after subsection (2) the following subsections—

- “ (3) Where the erection or construction of a jetty is required to be approved under section 50 of the *Swan River Trust Act 1988* or under the Metropolitan Region Scheme made under the *Metropolitan Region Town Planning Scheme Act 1959*, a licence shall not be granted under this section—

- (a) unless that approval has been granted; or
- (b) on any term or condition that is contrary to or inconsistent with an approval so granted.

(4) If an approval referred to in subsection (3) has been granted for the erection or construction of a jetty, a licence shall not be refused under this section but may be granted, in accordance with subsection (3) (b), subject to compliance with any condition. ”.

[*Reprinted as approved 11 August 1976 and amended by Act No. 35 of 1986.]

PART 4—LAND ACT 1933**Section 37B amended**

8. Section 37B of the *Land Act 1933** is amended by inserting after subsection (3) the following subsection—

- “ (4) In respect of land in the management area of the Swan River Trust, within the meaning of the *Swan River Trust Act 1988*, the Minister shall consult with that body before—

- (a) any such land is reserved under this Part; or

- (b) the purpose of any such land that is a reserve under this Part is cancelled, amended, or the boundary thereof is altered, otherwise than by an addition thereto, under this Part. ”.

[*Reprinted as at 2 May 1985 and amended by Acts Nos. 98 of 1985, 14 of 1986 and 113 of 1987.]

PART 5—MARINE AND HARBOURS ACT 1981

Section 12 amended

9. Section 12 of the *Marine and Harbours Act 1981** is amended by inserting after subsection (2) the following subsections—

“ (3) Where a development to which the proposed lease relates is required to be approved under section 50 of the *Swan River Trust Act 1988* or under the Metropolitan Region Scheme made under the *Metropolitan Region Town Planning Scheme Act 1959*, a lease shall not be granted under this section—

(a) unless that approval has been granted; or

(b) on any term or condition that is contrary to or inconsistent with an approval so granted.

(4) If an approval referred to in subsection (3) has been granted for a development to which a proposed lease under this section relates, the Minister shall not refuse to grant a lease under this section but he may grant the lease, in accordance with subsection (3) (b), subject to the inclusion in the lease of any term or condition. ”.

[*Act No. 21 of 1981 as amended by Acts Nos. 98 of 1985 and 113 of 1987.]

PART 6—METROPOLITAN REGION TOWN PLANNING SCHEME ACT 1959

Principal Act

10. In this Part the *Metropolitan Region Town Planning Scheme Act 1959** is referred to as the principal Act.

[*Reprinted as approved 20 February 1984 and amended by Acts Nos. 54, 92, 98 and 109 of 1985 and 6 of 1986.]

Section 32A inserted

11. After section 32 of the principal Act the following section is inserted—

Power of amendment restricted

“ 32A. The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any provision of Part 5 of the *Swan River Trust Act 1988* or any amendment made to the Scheme by sections 14, 15, 16 or 17 of the *Acts Amendment (Swan River Trust) Act 1988*. ”.

Section 35B amended

12. Section 35B of the principal Act is amended by inserting after subsection (2) the following subsections—

“ (3) The power in section 35C (1) shall not be exercised in respect of any land or waters in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.

(4) A declaration under section 35C (1) that is in force immediately before the commencement of the *Acts Amendment (Swan River Trust) Act 1988* ceases to have any force on that commencement in respect of any land or waters referred to in subsection (3). ”.

PART 7—METROPOLITAN REGION SCHEME**Interpretation**

13. In this Part “the Scheme” means the Metropolitan Region Scheme* made under Part III of the *Metropolitan Region Town Planning Scheme Act 1959*.

[*Consolidated as at 1 April 1984 and published in the *Government Gazette* on 29 November 1985 at pages 4470-4.]

Clause 10A inserted

14. After clause 10 of the Scheme, the following clause is inserted—

“ 10A. Clauses 13, 16 (2), 18, 24 and 28 do not apply to a development to which Part 5 of the *Swan River Trust Act 1988* applies. ”.

Clause 29 amended

15. Clause 29 of the Scheme is amended in subclause (1)—

(a) by deleting paragraph (a) and substituting the following paragraph—

“ (a) the application is for the development of land—

(i) reserved under Part II of this Scheme;

(ii) part of which is in the management area within the meaning of the *Swan River Trust Act 1988*;

or

(iii) which abuts that management area, or ”; and

(b) in paragraph (c), by inserting after “development of land” the following—

“ (not coming under paragraph (a) (iii)) ”.

Clause 30A inserted

16. After clause 30 of the Scheme, the following clause is inserted—

“ 30A. (1) Without limiting clause 30 of this Scheme, where an application for approval relates to—

(a) a development of land—

(i) part of which is in the management area within the meaning of the *Swan River Trust Act 1988*; or

(ii) that is not in that management area but abuts waters that are in that area,

the Commission shall give full particulars of the application to the Minister for Waterways; or

(b) a development—

(i) of land that abuts that management area but does not come within paragraph (a) (ii);

or

(ii) that in the opinion of the Commission is likely to affect waters in that management area,

the Commission shall give full particulars of the application to the Trust and in determining the application shall have regard to any recommendations the Trust may make.

(2) The Minister for Waterways shall give notice in writing to the Minister for Planning specifying the manner in which an application that comes within paragraph (a) of subclause (1) shall be determined so far as it relates to land described in that paragraph.

(3) The Minister for Planning shall refer the contents of such notice to the Commission and, subject to subclause (4), the Commission shall not determine the application otherwise than in accordance with that notice.

(4) If any difference or dispute arises in relation to an application that comes within subclause (1) (a)—

(a) the same shall be resolved in such manner as the Minister for Waterways and the Minister for Planning shall determine;

(b) the Minister for Planning shall direct the Commission accordingly; and

(c) the Commission shall determine the application in accordance with such direction.

(5) Nothing in subclause (4) shall be read as limiting section 18 (4) of the *State Planning Commission Act 1985*.

(6) In this clause—

“Minister for Planning” and “Minister for Waterways” mean respectively the Ministers to whom the administration of the Scheme Act and the *Swan River Trust Act 1988* are committed; and

“the Trust” means the Swan River Trust established by section 6 of the last-mentioned Act. ”.

Clause 32A inserted

17. After clause 32 of the Scheme the following clause is inserted—

“ 32A. The power in clause 32 of this Scheme shall not be exercised in respect of any land or waters in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*. ”.

PART 8—PARLIAMENTARY COMMISSIONER ACT 1971**Schedule amended**

18. The *Parliamentary Commissioner Act 1971** is amended, in the Schedule—

(a) by inserting after the item relating to the Superannuation Board the following—

“ Swan River Trust established by section 6 (1) of the *Swan River Trust Act 1988*. ”; and

(b) by deleting the item commencing with the words “Waterways Commission” and substituting the following item—

“ Waterways Commission, Leschenault Inlet Management Authority and Peel Inlet Management Authority constituted under the *Waterways Conservation Act 1976*. ”.

[*Reprinted as approved 19 July 1983 and amended by Acts Nos. 124 of 1984, 69, 92, 98, 107 and 110 of 1985, 39, 51 and 101 of 1986 and 9, 47, 50, 89 and 113 of 1987.]

PART 9—TOWN PLANNING AND DEVELOPMENT ACT 1928**Principal Act**

19. In this Part the *Town Planning and Development Act 1928** is referred to as the principal Act.

[*Reprinted as approved 22 May 1980 and amended by Acts Nos. 72 of 1980, 79 of 1981, 73, 120 and 122 of 1982, 32 of 1983, 7, 92 and 109 of 1985 and 26 and 77 of 1986.]

Section 7 amended

20. Section 7 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) Where a management programme in force under Part 3 of the *Swan River Trust Act 1988* relates to land or waters that are within or abut the district of a municipality referred to in Schedule 2 of that Act, the local authority of that municipality in preparing or amending a town planning scheme shall have due regard to that management programme. ”.

Section 53 amended

21. Section 53 of the principal Act is amended by inserting after “this Act” the following—

“ and to any management programme for the time being in force under Part 3 of the *Swan River Trust Act 1988*, ”.

Section 54 amended

22. Section 54 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) In this section, where the area in which the land the subject of the appeal is situate includes or comprises land or waters that are within or abut the management area within the meaning of the *Swan River Trust Act 1988*, “Minister” includes the Minister to whom the administration of the *Swan River Trust Act 1988* is committed. ”.

PART 10—WATERWAYS CONSERVATION ACT 1976**Principal Act**

23. In this Part the *Waterways Conservation Act 1976** is referred to as the principal Act.

[*Act No. 131 of 1976 as amended by Acts Nos. 16 of 1980, 97 of 1982, 78 of 1984, 98 of 1985, 77 of 1986 and 113 of 1987.]

Section 4 amended

24. Section 4 of the principal Act is amended by repealing subsection (4).

Section 9 amended

25. Section 9 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) The powers of the Commission do not apply in respect of the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*. ”.

Section 10 amended

26. Section 10 of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (6) This section does not apply in respect of the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*. ”.

Section 11 amended

27. Section 11 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

“ (2) The members of the Commission are—

- (a) a Commissioner appointed under section 13, who shall be chairman;
- (b) the person who holds or acts in the office of chairman of the Swan River Trust established by section 6 of the *Swan River Trust Act 1988*, *ex officio*; and
- (c) the persons who hold or act in the office of chairman of a Management Authority. ”.

Section 14 amended

28. Section 14 of the principal Act is amended—

- (a) by repealing subsection (1); and
- (b) in subsection (4), by deleting paragraph (a).

Section 23 amended

29. Section 23 of the principal Act is amended in subsection (2) by inserting after paragraph (d) the following paragraph—

“ (da) to provide services to the Swan River Trust as required by section 31 (1) of the *Swan River Trust Act 1988*; ”.

Section 56 amended

30. Section 56 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (1a) By-laws shall not be made under this section to have effect in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*. ”.

Section 60 repealed

31. Section 60 of the principal Act is repealed.

Section 61 amended

32. Section 61 of the principal Act is amended in subsection (2) by inserting after “the State” the following—

“ other than the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988* ”.

Section 62 amended

33. Section 62 of the principal Act is amended in subsection (2) by inserting after “the State” the following—

“ other than the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988* ”.

PART 11—*FINANCIAL ADMINISTRATION AND AUDIT ACT 1985***Schedule 1 amended**

34. Schedule 1 of the *Financial Administration and Audit Act 1985* is amended by inserting after the item relating to the State Planning Commission the following—

“ Swan River Trust ”.
