

# **Review of the *Swan and Canning Rivers Management Act 2006***

Report to the Minister for Environment  
by the Department of Biodiversity, Conservation and Attractions  
2018

## ***Introduction***

This review is submitted to Parliament in accordance with section 137 of the *Swan and Canning Rivers Management Act 2006* (the Act).

The Act makes provision for the protection of the Swan and Canning rivers to ensure maintenance of ecological and community benefits and amenity. The Act and the Swan and Canning Rivers Management Regulations 2007 (the Regulations) came into operation on 25 September 2007. The Act provides a range of powers to the Swan River Trust (the Trust) and the Department of Biodiversity, Conservation and Attractions (the department) for the planning, development and management of the Swan Canning rivers and associated lands.

Section 137 of the Act requires the Minister for Environment (the Minister) to carry out a review of the operation and effectiveness of the Act as soon as practicable five years from its commencement. The review became due from September 2012 however its commencement was postponed to allow for the implementation of the State Government decision to transfer the operational and management functions of the Swan River Trust to the Department of Parks and Wildlife (now the Department of Biodiversity, Conservation and Attractions). The amendments to the Act and Regulations to enact these changes came into effect from 1 July 2015.

In accordance with section 137(1) of the Act, 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 appears to the Minister to be relevant to the operation and effectiveness of the Act.

The department has undertaken this review and considered all operations and functions listed under the Act, not just those attributed to the Trust. The Trust has considered this review and supported its presentation to the Minister. Recommendations regarding the future of the Act and Regulations are provided in the conclusion.

## ***Background to the Act and previous reviews***

There has been a long-standing recognition of the importance of the Swan Canning river system as part of the social, economic, and environmental framework of Perth. The Act was created in recognition of the need for effective planning and management of the rivers and to ensure that development around the rivers was appropriate to protect this important resource.

A review by Zelestis (1987)<sup>1</sup> described the major issues relating to the relationships and powers available for the protection and management of the rivers as:

- overlapping responsibilities of government agencies;
- inadequate coordination of these agencies particularly with regards to development;
- lack of mechanisms to assess the overall impacts of proposed developments on rivers; and
- geographic limitations on various statutory powers.

The *Swan River Trust Act 1988* addressed in part some of these issues and established the Swan River Trust. It included powers relating to development approvals.

A review of the Trust and its operations conducted by Carr and Gale (1994)<sup>2</sup> concluded that the value of the Trust had been demonstrated. A further confidential review conducted for the Minister by the CSIRO Australian Research Centre for Water in Society (Syme & Nancarrow, 2002)<sup>3</sup> considered the operations of the Trust and made recommendations for functional and structural changes including changes to Board membership to provide improved community and expert representation.

The subsequent *Swan and Canning Rivers Management Act 2006* replaced the *Swan River Trust Act 1988* and enacted these changes, which included:

- the creation of the Swan Canning Riverpark, intended to be a 'Kings Park for the river';
- creation of the River reserve and placing of the care, control and management of the reserve with the Trust;
- streamlining and improving development control powers with increased transparency and consultation provisions;
- the transfer of ownership of riverbed leases to the Trust from Department of Transport;
- the establishment of shared responsibility between foreshore land managers and the Trust for shorelines including the management of erosion and protection of river walls; and
- the requirement for a River Protection Strategy to provide a coordinated and agreed management approach across government agencies to critical river issues.

In 2012 a substantial review of the Regulations was undertaken. Several changes were made to improve operational management and to streamline decision-making and approvals for land-use planning and development.

Additional changes were made to the Act and Regulations in 2015 which transferred the operational and decision-making powers of the Trust to the Chief Executive Officer (CEO) of the then Department of Parks and Wildlife, now the Department of Biodiversity, Conservation and Attractions. This change maintained community stewardship through the Swan River Trust, while improving efficiency and strengthening management of the Riverpark through amalgamation of operational management functions with the then Department of Parks and Wildlife.

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<sup>1</sup> Zelestis, C.L., 1987, *A review of the legislation and administrative arrangements concerning the protection of the Swan and Canning Rivers – a report submitted to the Hon. the Minister for Environment, Government of Western Australia.*

<sup>2</sup> Carr, D., & Gale, A., 1994, *Review of the Swan River Trust Act and its relevance to statewide waterways management*, Waterways Commission.

<sup>3</sup> Syme, G., & Nancarrow, B., 2002, *A review of options for the evolution of the Swan River Trust – a confidential report to the Minister for Environment and Heritage*, CSIRO.

Under these changes, the Trust retained oversight of the management of the Swan Canning River reserve in a significant strategic role with advisory powers. This is in line with the long-standing tradition in Western Australia for important community conservation assets to be overseen by independent bodies reporting to the Minister.

### ***Operation and effectiveness of the Act***

The significant functions under the Act are covered in the following parts:

- Part 2 – Land and waters to which the Act applies;
- Part 3 – Swan River Trust;
- Part 4A – Management of land and waters;
- Part 4B – Administration;
- Part 4 – Targets and strategic documents;
- Part 5 – Development in development control area;
- Part 6 – River protection notices;
- Part 7 – Investigation and enforcement;
- Part 8 – Legal proceedings;
- Part 9 – Swan and Canning Rivers Foundation;
- Part 10 – General; and
- Part 11 – Transitional provisions

A summary of the operation and effectiveness of each part is provided below along with references to relevant sections of the Regulations as appropriate.

#### *Part 2 Land and Waters to which the Act applies*

Part 2 identifies the geographic areas to which the Act applies including the River reserve, the Riverpark and the Development Control Area (DCA). It establishes the authority of the Trust as the body responsible for the care, control and management of the River reserve.

Section 12 provides for the joint responsibility for the Riverpark shoreline to be shared between the CEO and adjoining land manager. This joint responsibility has facilitated shared investments in the ongoing maintenance and rehabilitation of both river walls and natural shorelines along the length of the river system.

#### *Part 3 Swan River Trust*

This part sets out how the Trust is to be established and managed, including relationships with local governments and remuneration of members.

This part was reviewed and amended to transfer operational and management functions from the Swan River Trust to the department from 1 July 2015. The Trust's role was re-focused to be strategic and advisory. Efficiencies were achieved by merging the operational and management powers of the Trust, including staff and financial management, with the department.

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

This Part provides the CEO with the powers to manage land as well as grant leases and licenses.

#### *Part 4B Administration*

This Part details the functions of the CEO which focus on operational and day to day management of the river systems and Riverpark as well as responsibility for managing the shoreline.

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

This Part deals specifically with the requirement to create a River Protection Strategy and processes to be followed in undertaking this. It also describes the structure and processes for strategic documents, including management programmes, which are binding upon any agreed partners and the Trust and CEO.

The River Protection Strategy was released in October 2015 and will be reviewed in 2021 as per the requirements of the Act. Various government organisations have signed on as implementation partners for the Strategy and have been working with the department to ensure the delivery of coordinated actions focused on the Riverpark.

The Act provides for the establishment of management programmes, which are a useful mechanism for coordinating the management of issues or geographic areas where different regulatory organisations or foreshore land managers need to agree on management approaches. Management programmes also provide a means to reduce the regulatory burden for the authorities listed in Schedule 5.

Schedule 5 authorities are government organisations with regulatory and/or land management responsibilities around the River reserve that are required to perform their functions with due regard to the objectives and principles of the Act. Schedule 5 authorities can access a streamlined planning approval process when undertaking works in accordance with an approved management programme or under a financial limit as specified in the regulations.

#### *Part 5 Development in the development control area*

This part provides for coordinated land-use planning and development control powers with the objective of protecting, enhancing and managing the ecological and community benefit and amenity of the River reserve and Riverpark. This provision addresses the historical situation when land use planning was the responsibility of the Western Australian Planning Commission (WAPC) and 21 adjoining local governments (now 20 local governments with the City of Subiaco no longer a riverfront council), which created fragmented and uncoordinated decisions.

The single planning body responsible for assessment under the Act has delivered multiple benefits and efficiencies including:

- improved environmental and amenity outcomes for the rivers;
- integrated advice;
- dedicated specialist staff allowing for closer relationships and consultation with proponents, consultants and other decision makers; and
- a clear and well understood framework for proponents, providing certainty and support.

Regulatory changes in 2012 simplified the development approvals required by Schedule 5 authorities and leaseholders. These organisations and individuals were subsequently able to obtain approvals through a shorter and simpler permit process rather than via a development approval under Part 5 of the Act. These amendments were well-received and facilitated improvements to working relationships with foreshore managers and leaseholders, as well as organisational efficiencies.

#### *Part 6 River Protection Notices*

This Part allows river protection notices to be used when there is a need to protect the health of the rivers, generally in situations where cooperative approaches to dealing with prolonged, non-point source and/or landscape-scale problems has not worked. They provide the flexibility to establish, on a case-by-case basis, the action required to resolve complex environmental problems. Such problems are not effectively dealt with by traditional 'one size fits all' regulatory

approaches. Although this mechanism under the Act has yet to be used, it is considered appropriate to leave the provisions in place to enable response to issues as required.

#### *Part 7 Investigation and enforcement*

This part provides for the investigative powers and processes to be followed in investigating breaches of the Act or Regulations. It also includes the powers of inspectors.

#### *Part 8 Legal Proceedings*

This part provides for processes and requirements for prosecutions, infringement notices and enforcement of other Acts.

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

This part provides for the creation and management of a foundation to attract funding and support the implementation of the Act. This has yet to occur however, there is a benefit in retaining the provision.

#### *Part 10 General*

This part covers various generalities including delegations, protection from personal liability and the provisions for the Act review. These provisions are all necessary for the smooth functioning of the Act and are in accordance with accepted legal practice.

#### *Part 11 Transitional provisions*

This includes provisions to allow for the orderly transition of powers and functions that were transferred from the Trust to the department through the Act amendments that came into effect from 1 July 2015.

### ***The need for the continuation of the functions of the Act***

The original issues identified by Zelestis (1987) that prompted the establishment of the Act are still relevant today. The functions as undertaken by the Swan River Trust and the department continue to deliver value in ensuring integrated planning for and management of a river system that provides economic, ecological and community benefits to the Western Australian community.

The Act enables coordinated decision making between the State Government and various local governments, allowing the cumulative impacts of development to be considered by one organisation and ensuring the delivery of environmental and community outcomes. There continues to be value in retaining the statutory planning powers under the Act with the objective of ensuring the Swan and Canning rivers remain an iconic community asset.

The Swan River Trust continues to have a significant strategic role as a community representative body supporting the Minister. It works closely with the department in overseeing the implementation of the *Swan Canning River Protection Strategy* as well as in providing high-level strategic advice on significant development issues and planning applications.

### ***Other matters relevant to the operation and effectiveness of the Act***

While the Act and the functions of the Trust and the department continue to provide value, this review has identified improvements that may be made. An overview of each Part of the Act and associated operational issues is provided in Appendix 1 along with recommendations.

The proposed recommendations for changes to the Act and Regulations are largely administrative and focus on improving operational efficiency and streamlining approvals. They

do not introduce any significant functional changes. Further opportunities to align management responsibilities with, or under the *Conservation and Land Management Act 1984* (CALM Act) may be pursued at a later date.

The recommendations of this review of the Act and Regulations are as follows.

*Recommendation 1: Develop amendments to Part 2 of the Act to allow minor changes to boundaries of the Riverpark, the River reserve, and the Development Control Area without requiring changes to the Act.*

*Recommendation 2: Progress amendments to the Regulations to require commercial operators in the River reserve to obtain a licence for commercial activities as per section 32 of the Act, to mitigate the need for operators to obtain both a permit and a licence.*

*Recommendation 3: Update how fines are listed in the Act and Regulations to modernise the amounts and use penalty units, in line with other Western Australian Acts.*

*Recommendation 4: Reduce red tape by developing amendments to the Regulations to increase the scope of activities, works or acts that can be approved by regulation rather than by requiring a Part 5 approval under the Act.*

*Recommendation 5: Implement amendments to section 89 of the Act as recommended by the Law Reform Commission of Western Australia Compensation for Injurious Affection (2008) report.*

*Recommendation 6: Include a new section in Part 5 similar in nature to section 164 of the Planning and Development Act 2005 that allows for the approval of unlawfully commenced developments that meet development policies and requirements.*

*Recommendation 7: Improve compliance functions by amending Part 7 to give authorised officers the power to seize evidence, in line with other relevant Western Australian Acts.*

*Recommendation 8: Improve compliance functions by amending Part 7 to include new inspectorial powers, including the right to request identification and entry/access powers.*

*Recommendation 9: Amend Part 7 of the Act and/or the Regulations to provide the Department with various enforcement options including requiring developers to remove or modify any structures that trespass on the River reserve or other Trust lands, where the original development approval was given by another planning authority.*

*Recommendation 10: Amend Part 8 to allow infringement notices to be given by registered post.*

*Recommendation 11: Update Schedule 5 to recognise machinery of government and legislative changes that have modified the organisations and other Acts with functions affected by the Act.*

*Recommendation 12: Update the listing of local governments in Schedule 7.*

*Recommendation 13: Review and update Schedule 8 cross-authorisations of departmental officers to deal with regulations as listed under other Acts.*

Notwithstanding the above recommendations, this review indicates that the Act continues to provide an effective framework for management and statutory planning decisions for a complex river system within an urban setting.

## ***Conclusion***

The Swan and Canning river system is an important community asset and an economic resource on which the value of adjoining businesses and residential properties depend. Since 2007, the Act has provided an effective statutory framework for the protection of the Swan and Canning rivers and associated land to ensure maintenance of ecological and community benefits and amenity. It does this by enabling:

- integrated and coordinated decision-making to ensure appropriate riverside development in a timely and efficient manner; and
- effective management and collaboration with other government organisations, local governments and communities to deliver on-ground conservation outcomes and improved local facilities.

The powers and functions of the Act reflect the ongoing need for coordinated decision-making across government. The Act provides a contemporary model for integrated planning and management of a complex social and environmental system.

This review has identified improvements that could be made to the operation of the Act and Regulations to ensure the Act and Regulations remain relevant as well as assist in reducing red tape. Should a decision be made in the future to progress changes to the Act and Regulations, thorough consultation will be undertaken with relevant stakeholders and the public prior to drafting any changes for approval.

## **Appendix 1: Swan and Canning Rivers Management Act 2006 Act review – by Part**

Each part of the *Swan and Canning Rivers Management Act 2006* (the Act) was reviewed in accordance with the terms outlined in section 137.

### *Part 1 – Preliminary*

This Part contains the title, objectives and principles of the Act. All are still valid and appropriate representing a contemporary approach to integrated river management.

*Recommendation: No changes needed.*

### *Part 2 – Land and Waters to which the Act applies*

The three defined areas within the Act – the River reserve, Riverpark, and Development Control Area (DCA) – have different powers and functions ascribed to the Swan River Trust (the Trust) and Department of Biodiversity, Conservation and Attractions (the department).

Sections 8 -12 of the Act defines these different areas and provides for a decision-making and management role over the Riverpark, recognises the vesting of the River reserve with the Trust as well as shared responsibility for shorelines between the department and the foreshore land managers.

No amendments are required to these sections of the Act.

*Recommendation: No changes needed.*

### *Section 13 – Amending schedules 1-4 by regulation*

This section deals with amending the boundaries for the Riverpark, River reserve, and DCA. Section 13 allows for regulations to adjust Schedules 1-4 which define the catchment area, Riverpark, DCA and River reserve respectively by reference to deposited plans held by Landgate. This section was intended to deal with changes where lots were added to or removed from lots within the Riverpark or River reserve which would then create a subsequent need to amend the DCA boundary to follow these cadastral boundaries. There is no clear mechanism for use when boundaries need to be amended on deposited plans held by Landgate due to mapping errors or changes arising from planning decisions under the Metropolitan Region Scheme. It also means that relatively small changes to the Riverpark, River reserve and DCA created by minor reclamations to support river walling require substantial regulatory processes to be followed creating an unnecessary workload. This has added a layer of complexity for major riverfront redevelopments.

The *Conservation and Land Management Act 1984* (CALM Act) and the *Land Administration Act 1997* (Land Act) both have provisions allowing for changes to boundaries and areas of certain Crown reserves by Ministerial order rather than the creation of regulation or legislation amendments. In the case of the LA and Administration Act, changes of up to 5% area are allowed. A similar process would be envisaged for the Act. Consultation provisions would still apply for relevant local governments and public authorities who may be in any way affected by proposed minor boundary changes.

*Recommendation 1: Develop amendments to Part 2 of the Act to allow minor changes to boundaries of the Riverpark, the River reserve, and the Development Control Area without requiring changes to the Act.*

### *Part 3 – Swan River Trust*

This part sets out how the Trust is to be established and managed including relationships with local governments and remuneration of members.

The Trust has a high-level, strategic advisory role. Efficiencies have been gained from the transfer of operational functions to the department which provides executive support to the Trust.

*Recommendation: No changes needed.*

#### *Part 4A – Management of land and waters*

This Part provides powers for dealing with the land and waters including the issuing of leases and licenses. Sections 28 - 31 are uncontentious and relate primarily to the management of the River reserve and lease management. These sections need no modifications.

##### *Section 32 – Grant of licences over River reserve*

There is an inconsistency in how licences and permits are treated in the Act and Regulations. Licences were originally intended to be the mechanism by which commercial activities were managed. The Act stipulates that a licence may be granted but no concomitant regulations were created to support the requirement to obtain a licence for commercial activities. Permits are required under the Regulations for commercial activities but were more generally intended to be used for the control of works related to development. As a result, commercial operators are issued with a permit and a licence to comply with the Act and Regulations.

Clarifying the application of licences and permits and introducing a regulation to support licensing will improve management of commercial operators and streamline the current system where some operators are currently issued both permits and licences to comply with the Act and Regulations. The changes will allow operators to have a single licence to operate.

Commercial operators on the water also require multiple licences because of the operation of the CALM Act over marine reserves and parks. Legislative amendments and administrative mechanisms to integrate and align with the CALM Act will be considered to support efficient implementation.

The Act prescribes a fine of \$50,000 for non-compliance with a condition attached to a licence whereas there is no fine attached under regulations for not holding a licence. Contemporary approaches to fines have also moved from specifying fine amounts within Acts and Regulations and using penalty enforcement units instead. This makes it easier to modify financial fines and penalties as needed without undertaking the extensive processes required to amend an Act.

*Recommendation 2: Progress amendments to the Regulations to require commercial operators in the River reserve to obtain a licence for commercial activities as per section 32 of the Act, to mitigate the need for operators to obtain both a permit and a licence.*

*Recommendation 3: Update how fines are listed in the Act and Regulations to modernise the amounts and use penalty units in line, with other Western Australian Acts.*

#### *Part 4B – Administration*

##### *Division 1 – Functions and powers of CEO*

Section 33 lists the functions of the CEO, which focus on operational and day-to-day management needs of the river systems and Riverpark as well as supporting decision-making of the Minister in relation to land-use planning and development control. The CEO also has functions to manage the River reserve and shoreline, carry out works and provide facilities within the Riverpark. This includes lands vested with the Trust that are not included as part of the River reserve. Given the recent amendments in 2015, no further changes are required.

*Recommendation: No changes needed.*

## *Part 4 – Targets and Strategic Documents*

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

This division provides the ability to set ecological and community benefit and amenity targets by regulations and establishes consultation requirements. Any targets established under this section must be reported on by the Trust.

*Recommendation: No changes needed.*

### *Division 2 – Strategic documents*

This division defines the strategic documents under the Act including the River Protection Strategy (RPS), management programmes and other strategic documents not prepared by the Trust that may be approved by the Minister for Environment. It also outlines content requirements for these documents.

### *Division 3 – Preparation etc of river protection strategy and management programmes*

This division provides the requirements for preparation, consultation and approval of strategic documents. There are extensive consultation requirements including with local governments specifically and the general public. There is a requirement to consult with and obtain the agreement of each relevant Minister whose portfolio functions are likely to be affected by the draft RPS. It also establishes the review requirements for all strategic documents. The RPS was released in November 2015, after completing all these requirements.

Management programmes allow the Trust and CEO to establish agreed management arrangements with other bodies. This has diverse benefits including clarifying situations where there may be administrative and legislative overlaps, and reducing approvals required under the Act. A management programme was included in the RPS for implementation of agreed actions by partner organisations.

A management programme under section 53 was also created in collaboration between the Trust and the Department of Transport to resolve issues relating to, and improve the efficiency of, the management of moorings within the Riverpark. The programme was gazetted in September 2015 with the agreement of the Ministers for Transport and Environment.

*Recommendation: No changes needed.*

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

This division sets the compliance requirements for Schedule 5 authorities to perform functions within the DCA and Riverpark in accordance with the strategic documents, including the RPS and the role of the Trust in reporting on compliance. The requirements for reporting by the Trust to the Minister are important to retain accountability and ensure that the Minister is well informed. The binding requirement on participating organisations is appropriate given the importance of the RPS as a major coordinating document involving multiple regulatory organisations.

*Recommendation: No changes needed.*

## *Part 5 – Development – development in development control area*

Part 5 provides the powers and processes to be undertaken by the department and the Trust in dealing with applications for development within the DCA, which includes the River reserve, public reserves and foreshores of the rivers. Any development on a lot wholly within the DCA must receive Ministerial approval. Any kind of construction, building, or works that changes the purpose and land use of the area are considered development and must receive a Part 5 approval *unless exempt under regulation*. The Regulations provide a mechanism for defining

specific works, acts or activities that do not constitute development and instead can be approved through a less onerous permit process.

Other statutory processes and requirements within Part 5 relating to the development of reports, approval pathways, consultation, and advertising requirements are all consistent with similar provisions in other planning legislation.

There is scope to consider what additional activities or financial limits are appropriate at this time to reduce any unnecessary Part 5 approvals.

*Recommendation 4: Reduce red tape by developing amendments to the Regulations to increase the scope of activities, works or acts that can be permitted by regulation rather than by requiring a Part 5 approval under the Act.*

#### *Section 75 – Trust input into draft report*

This section was inserted and came into effect from 1 July 2015 as part of the transfer of responsibilities from the Trust to the department. The Trust retains a strategic and advisory role and provides comments and recommendations on draft reports to the CEO.

*Recommendation: No changes needed.*

#### *Section 89 Injurious affection – Law Reform recommended changes*

The Law Reform Commission of Western Australia *Compensation for Injurious Affection* (2008) report made several specific recommendations in relation to the Act that have been considered as part of this review. The report included recommendations that:

- section 89 (1) of the *Swan and Canning Rivers Management Act 2006* be amended to define owner as the proprietor of an estate or interest in land;
- section 89 of the *Swan and Canning Rivers Management Act 2006* be amended to ensure that a person whose land is subject to a development control area, and not to a reserve, may claim compensation for injurious affection upon first sale of the land.

*Recommendation 5: Implement amendments to section 89 of the Act as recommended by the Law Reform Commission of Western Australia Compensation for Injurious Affection (2008) report.*

#### *Proposed new section – approvals for unlawfully commenced development*

The *Planning and Development Act 2005* allows for a planning authority to grant approval for development which has unlawfully commenced. The SCRM Act has no clear way to deal with minor acts of unauthorised development that would have been approved subject to conditions if the applicant had applied. Such clauses would be useful. Such clauses would still allow the department the right to prosecute any individual who has unlawfully undertaken development. The clause should not act to encourage developers to commence development without lawful approval.

*Recommendation 6: Include a new section in Part 5 similar in nature to section 164 of the Planning and Development Act 2005 that allows for the approval of unlawfully commenced developments that meet development policies and requirements.*

#### *Part 6 – River Protection Notices*

This Part allows river protection notices to be used when there is a need to protect the health of the rivers, generally in situations where cooperative approaches to dealing with prolonged, non-point source and/or landscape-scale problems has not worked. They provide the flexibility to establish, on a case-by-case basis, the action required to resolve complex environmental problems. Such problems are not effectively dealt with by traditional ‘one size fits all’ regulatory

approaches. Although this mechanism under the Act has yet to be used, it is considered appropriate to leave the provisions in place to enable response to issues as required.

*Recommendation: No changes needed.*

### *Part 7 – Investigation and enforcement*

This part provides for the investigative powers and processes to be followed in investigating breaches of the Act or Regulations.

#### *Powers to seize evidence*

Authorised officers do not have the power to seize evidence when an offence has been committed. Compliance activities would benefit from having an improved ability for authorised officers to gather evidence.

*Recommendation 7: Improve compliance functions by amending Part 7 to give authorised officers the power to seize evidence, in line with other relevant Western Australian Acts.*

#### *Proposed additional powers*

The department's capacity to enforce compliance under the Act and Regulations would benefit from several regulatory amendments to enable inspectorial powers including:

- the right to request identification;
- entry and access powers that extend beyond the Riverpark boundary; and
- identification of offenders – by making a vessel owner responsible for identifying offenders either present or operating the vessel at the time of the offence.

Such amendments could be based on clauses such as section 124 of the CALM Act which prescribes public officers for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and CALM Act section 114D and section 114E.

*Recommendation 8: Improve compliance functions by amending Part 7 to include new inspectorial powers, including the right to request identification and entry/access powers.*

#### *Section 116 – development trespassing into the River reserve*

Where development is approved by either a local government or the Western Australian Planning Commission (WAPC) and the construction of that development trespasses onto the River reserve, the department has limited recourse to have the encroaching works removed.

*Recommendation 9: Amend Part 7 of the Act and/or the Regulations to provide the Department with various enforcement options including requiring developers to remove or modify any structures that trespass on the River reserve or other Trust lands, where the original development approval was given by another planning authority.*

### *Part 8 – Legal Proceedings*

This part provides for processes and requirements for prosecutions, infringement notices and enforcement of other Acts.

### *Infringement notices*

Issuing of infringement notices is required within 35 days after the offence is alleged to have been committed and requires that notices are given in person by an authorised officer. An allowance for infringement notices to be sent by registered post would improve enforcement ability. The *Environmental Protection Act 1986* and the CALM Act allow infringement notices to be sent by registered post.

*Recommendation 10: Amend Part 8 to allow infringement notices to be given by registered post.*

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

This part provides for the creation and management of a foundation to attract funding and support the implementation of the Act. This has yet to occur however, there is a benefit in retaining the provision.

*Recommendation: No changes needed.*

### *Part 10 – General*

This part covers various generalities including delegations, protection from personal liability and the provisions for the Act review. These provisions are all necessary for the smooth functioning of the Act and are in accordance with accepted legal practice.

*Recommendation: No changes needed.*

### *Part 11 – Transitional provisions*

This includes provisions to allow for the orderly transition of powers and functions that were transferred from the Trust to the department through the Act amendments that came into effect from 1 July 2015. These provisions are necessary and no change is required.

*Recommendation: No changes needed.*

### *Schedules 1 - 4*

Schedules 1 - 4 define the boundaries of the catchment, the Swan Canning Riverpark, the DCA, and the River reserve by reference to deposited plans and lots whose titles and details are held by Landgate. See Part 2 for a short discussion on potentially improving the process to amend administrative boundaries.

*Recommendation: No changes needed.*

### *Schedule 5 – Authorities*

This schedule lists various organisations and CEOs of departments responsible for administering functions under their respective acts that relate to matters affected by the Act. There are various rights and obligations accruing to the Schedule 5 authorities under the Act ranging from requirements for negotiation, agreement and consultation on a range of matters (particularly strategic documents Part 4), as well as reporting requirements. The list needs to be revised as some Acts have been modified or deleted and changes made to other government entities that may legitimately need to be included or removed.

*Recommendation 11: Update Schedule 5 to recognise machinery of government and legislative changes that have modified the organisations and other Acts with functions affected by the Act.*

### *Schedule 6 – Constitution and Proceedings of the Board*

These provisions were reviewed with the amendments passed in 2015 and do not require change.

*Recommendation: No changes needed.*

### *Schedule 7 – Local governments*

This schedule lists 21 local governments adjoining the Swan Canning river system. This needs to be updated to reflect the recent City of Perth boundary changes as the City of Subiaco is no longer a riverfront local government.

*Recommendation 12: Update the listing of local governments in Schedule 7.*

### *Schedule 8 – Prescribed Regulations*

This lists the regulations under other Acts under which departmental officers are cross-authorised to deal with and issue infringements. This list should be reviewed in conjunction with the relevant regulatory organisations to ensure ongoing willingness to continue with cross-authorised enforcement.

*Recommendation 13: Review and update Schedule 8 cross-authorisations of departmental officers to deal with regulations as listed under other Acts.*