

*Boating Western Australia Inc*



***BOATING WESTERN AUSTRALIA INC.***

***SUBMISSION TO***

***THE SWAN RIVER TRUST***

***CONCERNING***

***THE DRAFT SWAN AND CANNING RIVERS  
MANAGEMENT BILL OF DECEMBER, 2004.***

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#### PREAMBLE.

This Draft Bill results from a policy announced by the State Premier and the Minister for the Environment in January 2004, which related to the creation of this State's first "Heritage Icon", the Swan – Canning Rivers Park. Boating Western Australia Inc. are pleased that an attempt is being made to clarify and improve the management of these rivers. Boating W.A. shares the philosophy that the improvements already made in the overall quality of these rivers should be maintained for the benefit of all interested community groups, and that voluntary community involvement in these efforts is likely to be the most successful approach.

Great haste was emphasized to those responsible for the implementation of the plan and we were grateful to be included in a briefing by the Chief Executive Officer of the Swan River Trust, Mr. Darryl Miller. However great haste in the course of implementing such a complex plan would always be counter productive to the objects of the exercise, which should be a well considered, workable and community supported piece of legislation.

It soon became apparent that the haste and time frames that the Swan River Trust had been placed under reflected the lack of a serious understanding of the complexity of the task imposed upon the Trust by the politicians. The result of this haste has been a change in the normal process of development of the Legislation and the associated regulations, which are still incomplete. Haste has replaced the required consideration, negotiation and thoroughness expected of such a significant management strategy.

When the number of Ministries, Local Government Authorities and government agencies are considered, it was obvious to all that conclusive negotiations with all interested parties could not be completed by the target date for the release of the consultation paper on 17<sup>th</sup> May 2004. The final Project Group Workshop scheduled for 7<sup>th</sup> May 2004 was cancelled. Thus the political imperative has once again superceded the community interests of "normal" consultation processes, and a thorough development of all the issues, before the proposed Bill has been drafted.

Finally, after a lack of further community consultation since April 2004, the "Draft Swan and Canning Rivers Management Bill" was released, shortly before Christmas. "Boating W.A." is pleased to record, following our earlier comments, that some allowance was made for the Christmas and annual holiday period as it affected community based stakeholders. Thus the "Project Reference Group" meeting and briefing was not held until 8<sup>th</sup> February, 2005. Curiously the draft Bill has been published for a longer period than was utilized for the determination of the issues which the "Bill" seeks to remedy. This does not assist community credibility with the thoroughness and efficiency of the process.

It appears to us that as a result of haste taking precedence over a more thorough development of the Bill, the legislation becomes a “blank cheque”, with the expectation that Parliament will approve hollow legislation and allow the regulations, the machinery of the resultant Act, to be developed later and implemented without consideration by Parliament. With the truncated community input and lack of Parliamentary scrutiny, most observers would have good reason to question the process.

Apart from these general provisos we have other observations about some of the provisions of the Bill, which whilst not exhaustive should be considered. These issues are indicated in the following text.

## OBSERVATIONS ON THE DRAFT SWAN AND CANNING RIVERS MANAGEMENT BILL

Sect.6. The objectives should also include for the provision of facilities and infrastructure, and the imperative for local authorities to support such requirements and plans, where such works will assist the public to cooperate with the intentions of maintaining the health of the river. This is consistent with Table 5. “Shared responsibility”.

Sect.7. We believe that requiring public authorities to, “only consider the objectives of the new legislation when carrying out their functions” is indecisive and voluntary. The purpose of the Bill is to give direction to ensure that policies and objectives are adhered to.

Sect.12. In various places in the Bill text and the Explanatory notes it is clearly indicated that the river bed is vested in the Trust. However the East Fremantle Town Council enjoys a unique privilege in the metropolitan area of having its boundary to the middle of the Swan River. We cannot locate any part of the Bill which specifically records the amendment of this town boundary to the river edge. We think that this amendment should be clearly defined to provide clarity of management and consistency with intent. Failure to do this will indicate no change, no improvement and no resolution to this anomaly.

Sect.13. Jointly vesting land and waters with the Trust and another agency would not appear to give the Trust the final management control which the Bill seeks to portray. This could allow the expansion of the Port of Perth, reclamation of the river and additional Infrastructure and commercial facilities controlled by the Department for Planning and Infrastructure. The latter are also the ultimate State Planning Authority and would have a conflict of interest. The Trust should have ultimate control to give the stated aims of the Bill some credibility.

Sect.14.(2). This section could be proposing that an entity requiring access to the river may have to enter into an easement, lease or licence with two parties jointly to cross that jointly managed land to the river. This would be creating difficulties and one or other authority should have the control of the issuing of such licences. Preferably this

would be the Trust and would be consistent with such requirements proposed later, for all public and private utilities to be licenced in the vicinity of, or under or over the rivers.

Sect.16.(2). We believe that this section is not as transparent as it would appear to be as we do not believe that the Governor would be equipped to make such decisions without expert advice from the Ministry concerned. Such decisions should be made by an independent and suitably qualified panel of three arbitrators.

Sect.20. We appreciate that the selection of the Board needs to reflect the expertise required to oversee the many functions of management and uses of the River Park. We have not noted that any corporate or financial management skills have been listed and we believe that these are basic to the objects. Likewise water based recreational community groups should be included, even if rotated after the single term of appointment expires, and with equity in mind such positions should not be confined to those organizations which are government funding dependent. Within this proposal the six members to be appointed by the Minister should be defined for balance of representative interest, so that integrity and a transparently ethical approach to these appointments is clearly seen.

Sect.22. The remuneration of the members of the Board should be stated as equal with traveling and allowances being variable only as appropriate to assist with attendance at meetings.

Sections 25 and 27. These clauses still seem to fall short of giving the Trust the final authority it may require to ensure that necessary works or programs are implemented expeditiously by local or other authorities. We do not believe that the word "consultation" is adequate to ensure that other departments deal with issues promptly.

Sections 32 to 34. There seems to be an undesirable favouring of DPI interests. It is understandable that existing leases will be recognized but to agree that DPI will continue to administrate leases on behalf of the Trust and retain all the income is unrealistic and quite contrary to the best interests of the Trust and the broader community. This is surprising as the Trust obviously needs an increased budget and there is no improvement in the Trust's controls which is an objective of this Bill. This puts the DPI in a position of having a vested interest in continuing the current trend of using public land adjoining the rivers (free of cost) for development and leasing to private commercial interests purely for the financial gain of the Ministry. The public benefit of these commercial dealings is highly questionable when set against the loss of public open space and amenity. It draws into question the whole purpose and credibility of this Bill when viewed by others.

We consider that there has been poor control and management of the infrastructure of public utilities and larger commercial interests concerning easements, pipelines and over head cables and the like as they affect the waterways. It appears that not all of these items are properly recorded or subject to conditional licences and easements. It is fundamental to us that the Trust under its new management system should have all such interests clearly recorded. Even today after all the recent sewage spill disasters, there are still sewage pumping facilities adjoining the river with their original outfall pipes still connected to the main sewers. It does not need an Act of Parliament to rectify the obvious.

A \$10,000 maximum fine is inconsistent with other environmental penalties being applied in the broader community and unless related to those personally responsible will not engender any more conscientious management. In reality it would not be possible for the Trust to suspend the licence say, of the Water Authority for a sewer crossing the Swan River so the penalties and controls have to be realistic to maintain a high standard and ensure that the public interest is well protected.

Sect.38. As the Trust may appoint committees for specific functions, Boating Western Australia Inc. would like to record that it would be prepared to participate in such work should the need arise. Our membership comprises a wealth of experienced boaters and professional people who could be of great value to various discussions.

Sect.42. It seems quite extraordinary that it is not intended that the Trust should receive any income from leases created by government activities on the river edges. The Trust finances should be benefiting from areas for which it has responsibilities instead of the DPI. The Trust would be more judicious in its approval of developments, but would have a more regular income to complete its environmental work and general management.

Sect.49.(1)(a). This clause places the Trust in direct conflict with DPI and its aspirations which are obviously quite different to the statements in this clause. Unless the Trust has more control of the river bank it will be a continuing case of “bolting the stable door after the horse has bolted”. If the Trust delegates the DPI to look after these community interests the intentions of this Bill are further emasculated.

Sections 50 to 54. One management policy is adopted but another is to be prepared. Much consultation should take place with the relevant ministries and local authorities as well as the community. The word “Ministry” is not used under the heading of “Consultation” which infers that the Trust is further lacking authority and is not superior in its area of responsibility. There is so much policy, which is fundamental to this Bill and which is to be prepared after the Bill has been passed, that it renders the Bill lacking in substance. We would have thought that it would be better for future management if this work had been completed first.

Sect.69. This allows for the resumption of one hectare of existing water area per development every five years. This could be varied by both houses of Parliament to allow in excess of this resumption in separate developments in or close to the city. In the existing political climate and the stated aims of DPI this clause is likely to be worthless and the ability of Parliament to vary this protection should be deleted. This is a test of the sincerity of the proponents of this Bill.

Sect.76. Once again regulations are to be written to specify the types of developments which can be approved by the Trust. These are referred to in section 118. We consider that these regulations and those relating to the Minister’s authority should be included in this Bill.

Sect.79. We question why there is no provision for appeal by members of the community or community groups against the Minister’s approval, whilst there is an ability for the development applicant to appeal against a condition of the approval?

Sect.82. "Power of approval may be conferred on the Trust". As previously stated would it not be better to clarify these classes and regulations before the Bill is submitted to Parliament so that it is informed before approving the Bill and for clearer management?

Sect.84(7). Where a landowner is affected by an approval he can be compensated. However in this subsection, that owner's land may be compulsorily resumed. The owner could be deliberately placed in an un-favourable position by planning decisions which may benefit the government or the approved developer and be forced to sell to the government. This clause could easily be utilized by a government having a vested interest and would be a clear case of abuse of power. This condition cannot be allowed to remain.

Sect.86. A river protection notice can be given to owners or occupiers of land in the catchment area. This should include specifically, owners, lessees, licencees and occupiers of such land. This will include those having pipes, cables or drains, or other infrastructure on or over the land. There is no time limit for the Trust to issue a notice following the need for a river protection notice. There is no time limit for the person receiving the notice to respond with a control or preventative plan of action, or the other possible requirements.

Sect.89. Notice of memorial on title to be given. There is no time limit to advise those affected by lodgment or withdrawal of the notice. This should be 7 working days.

Sect.97. The Trust may appoint inspectors of their own or from other public authorities. There needs to be a limit to the number of agencies that can be used for practical purposes. If this cross pollination of agencies being authorized to apply the laws of other ministries persists, there will be confusion amongst the public and a requirement for each others inspectors to have an unreasonable knowledge of the law. It may simplify matters to employ lawyers to become inspectors.

Sect.100. We are concerned that the Bill proposes to give inspectors the right to enter "any premises". This is far too draconian and needs to be redrafted in a more relevant form and should require a reasonable notice of intent to be given.

Sect.103. The ability to bring a prosecution 24 months after the date of the complaint is far too long and selects against the defendant. There is no limit on the time for a complaint from the date of the event. The prosecution need not specify the date of the offence. Two months should be adequate for the Trust to react to a complaint and give notice of a prosecution. This whole section appears to be far too unjust and to the detriment of a reasonable opportunity to mount a fair defence.

Sect.105. Is an interesting comparison with the principles set out in section 103.

Sect.111. We are disappointed that one of the two functions of the Swan and Canning Rivers Foundation is to "encourage donations". This quite clearly states the real position of the Trust in importance to the proponents of this Bill. To create such a fanfare about the great step forward that the new "River Park" and its associated legislation was going to be and then base the structure on donations seems quite extraordinary. The Trust

must have guaranteed stand alone funding which should include income from commercial or government entities with leases in the management area. The concept of the major ministry responsible for state planning, infrastructure and marine transport being excluded from the Trust controls and retaining income from what is recognized as Trust leases and the like, seriously undermines the credibility of the stated intentions and this Bill.

#### COMMENT

This Draft Bill appears to be a piece of legislation which is being propelled through its process before much of the associated work has been completed. Therefore it will be passed as a “skeleton” philosophy, with the management and administration regulations still to be created and the extensive inter-ministry and local government negotiations incomplete. This process could take years and in the meantime the Act will be to all intents and purposes, unworkable until all the regulations have been properly researched and written.

Any unfortunate citizen who wishes to be cooperative with the philosophy of helping to preserve these rivers for posterity will be unable to pick up a single piece of legislation from day one and act upon it. It is unacceptable, and inequitable of government to expect that all members of society likely to be in contact, either directly or indirectly with these rivers will be keeping a daily watch for new regulations as they “trickle out” from the still numerous and relevant government authorities.

It is apparent that in reality, and despite the obstacles, the community is more advanced than government in improving its social attitudes to these issues. It is government which is lagging in providing the necessary infrastructure to enable further advances to be made. It is successive state governments which have created and approved a collection of practices and policies which, over the years, have given rise to most of the problems facing the community as the major stakeholders in these rivers.

In many cases various ministries have been aware of the problems and have failed to take action which was available and did not need an Act of Parliament. Some of these remedies are still not identified in this Draft Bill, further illustrating that the Bill is not the much heralded panacea for the protection of our rivers.

It is the state government that needs to recognize these issues and ensure that each relevant ministry, department or authority is directed to promptly cooperate with the Swan River Trust to agree solutions and cede control of the relevant matters to allow the objectives of this legislation to be achieved without unnecessary inter-departmental delays.

Boating Western Australia Inc. would like to see a public announcement by the Premier, supported by the Cabinet, that he has directed all relevant Ministers to prioritize cooperation with the Swan River Trust, in order to clarify and simplify management and implementation of the ideals of this Bill. The requirement for other agencies to have “due regard to the new Act in the course of performing duties under their own legislation” is weak, indecisive and lacking leadership.

The Bill is so inadequate that it should be returned for further research and development, as it is not achieving the degree of structure and information required of such a broad and far reaching piece of legislation. The “devil” is in the detail and as no draft regulations are attached to the Draft Bill, Parliament is not able to fully and fairly assess the full import or efficiency of the Draft Bill.

It is not what is in the wording, but what is not included in the wording which is so disappointing to anyone hoping to pick up and read about the new River Park management. It indicates a project less than half complete compared to that which has been promised by government

Boating Western Australia supports, and is on record as having always supported a responsible boating community attitude towards the use of the inland waterways and the sea. However unless government is prepared to take the lead in a tangible way by providing the obvious infrastructure needed, and supplied in other places, as well as proper controls over other government agencies, this Act will be conspicuous for its political rather than its practical contribution to society.

Boating Western Australia does not believe that the detail of the Draft Bill answers the assertion of Monash University Associate Professor Tony Wong “that there is a need for a strong institutional framework....and there needs to be integration of State and local government bodies”. We believe that the integration is too incomplete to warrant passage of this Bill at this time, but consider that with further effort a better and more socially acceptable document can be created.