

# **Wild Rivers and Other Legislation Amendment Bill 2007**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the bill is the *Wild Rivers and Other Legislation Amendment Bill 2007*.

#### **Policy Objectives**

The objectives of the Bill are:

(1) to declare wild river areas for the following river systems:

- Staaten;
- Hinchinbrook;
- Settlement;
- Gregory;
- Morning Inlet; and
- Fraser

on the basis of prepared declarations which have taken into consideration community consultation and the most recent amendments to the *Wild Rivers Act 2005* (the Act);

- (2) to validate all notices published under the Act in regard to these wild river areas;
- (3) declare the code made by the Minister on 30 January 2007 to be the Wild Rivers Code; and
- (4) to provide a statutory process to amend the wild rivers code for the purposes of the Act.

## **Reasons for the Policy Objectives**

Preserving the natural values of Queensland's wild rivers is a key government election commitment. This is achieved through wild rivers declarations, made under the Act, that control development activities in these areas.

In December 2005, the Government published notices of intent to declare and declaration proposal notices (the 'notices') under the Act, for six proposed wild river areas – Staaten, Gregory, Settlement, Fraser, Hinchinbrook and Morning Inlet. Stakeholders were then consulted on the proposals.

Throughout 2006, negotiations were undertaken with stakeholders to resolve issues about the Act and the proposed declarations, resulting in Act amendments that received bipartisan support. These amendments received assent on 7 December 2006.

In November 2006, the validity of the notices was questioned in regard to a potential technical flaw. Given the importance of the declarations to key stakeholders and the desire to implement the Government's election commitments as soon as possible, the Bill proposes a legislative remedy to overcome any technical flaws in the notices and to ensure the timely declaration of all six wild river areas.

To fully implement the declarations, new developments need to be subject to wild river requirements as outlined in a development code. Consequently, the Bill will declare the code made by the Minister on 30 January 2006 to be the Wild Rivers Code. A draft *Wild Rivers Code* (the Code) was released for public comment in December 2005 and again in December 2006 after it was revised based on earlier comment and recent Act changes.

A process has also been provided in the Act to amend the Wild Rivers Code. This process will provide transparency for the development and amendment of the code.

## **How the Policy Objectives will be achieved**

The policy is to be achieved by:

1. Declaring the six wild river areas,
2. Validating all existing notices for those six wild river areas;

3. Declaring the code made by the Minister on 30 January 2007 to be the Wild Rivers Code
4. Adding a process to amend the Wild Rivers Code.

### **Estimated administrative Cost to the Government for implementation**

The passage of the Bill will not have any financial impacts. The implementation of the legislation will be undertaken by the Department of Natural Resources and Water from within existing agency resources.

### **Consistency with Fundamental Legislative Principles**

There may be some fundamental legislative principle issues –

#### 1) Declarations and notices

Clause 14 of the Bill inserts a new part 6 in the Act. The part deems particular notices and documents prepared or published for the purpose of declaring particular areas as wild river areas to be valid (section 53). It also, in effect, deems particular declarations for these areas to be wild river declarations. It is arguable (*Legislative Standards Act 1992*, s 4(4)) that such deeming may adversely affect the rights and liberties, or impose obligations, retrospectively.

However, the purported deficiencies in the notices that the Bill is seeking to validate were of a technical nature. Whilst arguably some details were missing from the notices, the notices referred to declaration proposals and provided details of how to view those proposals. Those declaration proposals, which were readily available through publication on the Department's internet site, available at Departmental and relevant local government offices or via post on request, contained all the information arguably lacking from the notices.

#### 2) Codes

The Bill inserts a new Part 1A in the Act to provide for amending the Code. The Code contains numerous requirements for assessing development in wild river areas for the purposes of the Integrated Development Assessment System (IDAS) under the *Integrated Planning Act 1997*. As such, the Code arguably has a legislative character. Amendments to the Code will be approved by the Governor in Council but will not be subordinate legislation. It is arguable (*Legislative Standards Act 1992*, s

4(4)(b)) that the process for approving amendments to the Code does not provide for sufficient scrutiny by the Legislative Assembly.

The Code is an extensive document containing a considerable amount of technical material which is not considered suitable for inclusion in subordinate legislation. The code has undergone an extensive consultation process and will be tabled in the Legislative Assembly with the Bill.

The Legislative Assembly will be given full opportunity to scrutinise the Code during debate of the Bill. It is not envisaged that future amendments to the Code will be significant in nature and therefore do not merit that level of scrutiny. The process for amending the code is consistent with that used by the Department of Natural Resources and Water for amending declared area codes under the *Vegetation Management Act 1999*. The Government is proposing to review processes for making IDAS codes under the *Integrated Planning Act 1997* with a view to devising a uniform process. The review will include the process for amending the Code under the Act.

## **Consultation**

### **Community**

Members of the public have not been consulted on the proposals.

### **Government**

Departments of the Premier and Cabinet; Justice and Attorney General; Mines and Energy; Communities and Disability Services; Public Works; Primary Industries and Fisheries; Emergency Services; Local Government, Planning, Sport and Recreation; Employment and Industrial Relations; and State Development and the Environmental Protection Agency were consulted in relation to the Bill.

## **Results of consultation**

### **Government**

All departments consulted support the Bill.

## **Notes On Provisions**

### **Part 1                      Preliminary**

#### **Short title**

Clause 1 provides that the short title of the Act is the *Wild Rivers and Other Legislation Amendment Act 2007*.

### **Part 2                      Amendment of Wild Rivers Act 2005**

#### **Act amended in pt 2**

Clause 2 provides that *the Wild Rivers Act 2005* is amended in part 2.

#### **Insertion of new pt 1A**

Clause 3 inserts a new Part 1A into the Act which establishes the Wild Rivers Code, provides a process for amending the code and deals with codes generally.

#### **New Part 1A Codes**

##### **New Division 1 – Wild rivers code**

##### **New Section 6A – What is the wild rivers code**

New section 6A provides that the wild rivers code is the Wild Rivers Code made by the Minister on 30 January 2007.

##### **New s. 6B – Code amendments**

New section 6B outlines the process for making wild river code amendments (other than minor or permitted amendments which are dealt with in new section 6C). The amendment must be approved by the Governor in Council and the approval notified in the Gazette. The Minister is required to table a copy of the amendment in the Legislative Assembly within 14 sitting days after the approval of the amendment is gazetted.

New sub-section 6B(4) confirms that the power to amend the code in this section includes power to replace the code. This merely confirms what can already be done by virtue of the definition of ‘amend’ under the *Acts Interpretation Act 1954*, section 36.

### **New s.6C – Code amendments not requiring gazettal or tabling**

New section 6C provides a process for making minor and permitted amendments to the wild rivers code, with Governor in Council approval but without notification or tabling. Minor amendments include correcting small errors and changes of no substance. Permitted amendments will be of a type listed in the new section 6C and may include, for example, amending definitions in the dictionary and amending probable solutions for the required outcomes.

### **New s 6D – Publication of wild rivers code**

New section 6D requires the wild rivers code to be available for inspection by the public once approved.

### **New Division 2 – Codes generally**

#### **New section 6E – Code for IDAS**

New section 6E replaces section 17A of the Act in order to keep the sections on the code together.

### **Amendment of s 12 (Content of declaration proposal)**

Clause 4 amends section 12 of the Act which provides for matters which a declaration of a wild river proposal may contain.

Clause 4(1) makes a minor amendment to paragraph (1)(b) that is consequential to the amendment being made by clause 4(3) which is outlined below.

Clause 4(2) is a standard renumbering clause.

Clause 4(3) provides that a declaration proposal may include a list of any proposed high risk species or moderate risk species which pose a risk to the natural values of the proposed wild river area if they were established through agriculture. Constraints will apply to the use of such species in the wild river area if declared. It is important for potentially affected stakeholders to be aware of the proposed species and to provide comment on them in formal submissions.

### **Amendment of s 13 (Matters Minister must consider)**

Clause 5 is a change of subsection number to correct an error.

### **Amendment of s 14 (Content of wild river declaration)**

Clause 6 amends section 14 of the Act which sets out matters for inclusion in a wild river declaration.

Clause 6(1) is a standard renumbering clause.

Clause 6(2) includes as a matter that must be included in a declaration the natural values of the wild river that the declaration is intended to preserve.

Clause 6(3) clarifies that declarations only need to include information about those activities or the taking of natural resources that are regulated by the wild river declaration itself, and not those regulated by other legislation or other instruments.

Clause 6(4) clarifies that declarations only need to include information about any threshold limits for carrying out activities or taking natural resources in the wild river area if such threshold limits exist. An example of a potential threshold is a water allocation cap that is to apply in the wild river area.

Clause 6(5) provides that a declaration must include a list of any proposed high risk species or moderate risk species which pose a risk to the natural values of the proposed wild river if they were established through agriculture. Constraints will apply to the use such species in the wild river area.

Clauses 6(6) and 6(7) are standard renumbering clause.

Clause 6(8) adds a new subsection 2 to clarify that a declaration can refer to a code to be an applicable code for assessing development in that wild river area under the Integrated Development Assessment System. This clarifies the head of power for the declaration to refer to specific codes for particular types of development assessment.

### **Omission of s 17A (Code for IDAS)**

Clause 7 omits this section which has been moved to new section 6E (see clause 3).

### **Amendment of s 20 (Public notice of intention to amend wild river declaration)**

Clause 8 amends this section which sets out requirements for a public notice of intention to amend a wild river declaration.

Clause 8(1) removes any doubt that a public notice must refer to the title of the wild river declaration being amended. The current wording could suggest the unintended consequence that the entire declaration needs to be included in the notice.

Clause 8(2) clarifies that a moratorium may or may not be imposed whilst a proposal to amend a declaration is being considered. Whether a moratorium is imposed is dependant on the scale and type of the proposed amendment.

### **Amendment of s 21 (Moratorium Period)**

Clause 9 amends this section to clarify that a moratorium period is only required if a moratorium is imposed whilst a declaration is proposed to be amended.

### **Amendment of s 23 (Public notice about amendment proposal)**

Clause 10 amends this section which relates to the making of public notices about an amendment proposal for a wild river declaration.

Clause 10(1) clarifies that subsection 23(1)(a) refers to an amendment of a declaration.

Clause 10(2) removes any doubt that a notice must refer to the title of the wild river declaration proposed to be amended. The current wording could suggest the unintended consequence that the entire declaration needs to be included in the notice.

### **Amendment of s 24 (Content of amendment proposal)**

Clause 11 amends section 24 which sets out matters that may be included in an amendment proposal for a wild river declaration.

Clause 11(1) amends the heading of the section to more accurately reflect the fact that the section only relates to discretionary content of an amendment proposal.



Clause 11(2) amends section 24(a) to remove any doubt that an amendment proposal may refer to all or part of the wild river declaration. The current wording could suggest the unintended consequence that the amendment proposal is to include the entire wild river declaration.

### **Amendment of s 25 (Matters Minister must consider)**

Clause 12 changes subsection numbers related to the adding of a new subsection to section 14 of the Act by clause 6.

### **Amendment of s 26 (Content of wild river amendment declaration)**

Clause 13 amends this section which sets out matters that must be included in a wild river amendment declaration. The amendment removes any doubt that a wild river amendment declaration must refer to the title of the wild river declaration being amended. The current wording could suggest the unintended consequence that the entire declaration needs to be included in the amendment declaration.

### **Amendment of s 37 (Relationship with water resource plans)**

Clause 14 changes subsection numbers related to the adding of a new subsection to section 14 of the Act by clause 6.

### **Amendment of s 39 (Copies of documents to be available for public inspection)**

Clause 15 ensures that a declaration made under this Bill will be made available for public inspection in the same manner as any other wild river document. It also allows amended (consolidated) declarations to be held for public inspection.

### **Insertion of new Part 6**

Clause 16 inserts a new part (Part 6) that on assent:

1. Declares the six wild river areas; and
2. Validates the existing notices.

### **New Part 6 – Declaration and validation of particular matters for Wild Rivers and Other Legislation Amendment Act 2007**

#### **New section 52 – Definition for pt 6**

New section 52 inserts a definition of ‘prepared declaration’ for the purposes of the new Part 6. This section defines the six documents that are deemed by the Bill to be declarations under the Act for the six wild river areas (Fraser, Gregory, Morning Inlet, Hinchinbrook, Settlement and Staaten).

### **New Section 53 – Validation of particular matters**

New section 53 validates certain public notices of intent and declaration proposal notices relating to these six wild river areas. These notices are taken to be and always to have been valid for the purposes of the Act.

### **New section 54 – Particular documents taken to be wild river declarations**

New section 54 deems the six documents to be declarations under the Act despite the process in the Act.

The purpose of this provision is to ensure that the wild rivers areas are declared immediately on assent of this Bill and that there can be no doubt about the validity of those declarations in the light of the possible technical error in the original notices of intent and declaration proposal notices.

In addition, when the possible technical error came to light, a second notice of intent and declaration proposal notice was made, the consultation period for which has not expired. This amendment will make the declaration without the need to complete that second consultation process.

The new section also removes the requirement for the Minister to table the six wild river declaration documents in the Legislative Assembly or to prepare consultation reports. However, the Minister is required to publish the six wild river declarations on the department’s website.

### **Amendment of schedule (Dictionary)**

Clause 17 adds and amends definitions for a number of terms associated with this Bill.

In particular the definition of ‘high risk species’ and ‘moderate risk species’ to broaden the definition to include plant species that are not pasture or grain species. This will allow the proposed establishment of woody fodder species that pose a risk to the natural values of a wild river to be regulated in a wild river area. The new definitions reiterate that the species will be listed in wild river declarations.

### **Part 3                      Amendment of *Environmental Protection Act 1994***

Clause 18 provides that *the Environmental Protection Act 1994* is amended.

#### **Amendment of s 73AA (Development applications in relation to wild river areas)**

Clause 19 makes a minor amendment to correct an error by removing the term ‘19 (dredging material)’ from the list of Level 2 environmentally relevant activities because dredging material is not a Level 2 environmentally relevant activity.

### **Part 4                      Amendment of *Vegetation Management Act 1999***

Clause 20 provides that the *Vegetation Management Act 1999* is amended.

#### **Insertion of new s 19D (Application of ss19A-19C to wild rivers code)**

Clause 21 adds a subsection to remove the need for the wild rivers code or a part of that code to also be approved under the *Vegetation Management Act 1999*. This removes unnecessary duplication.

### **Part 5                      Amendment of *Water Act 2000***

Clause 22 provides that the *Water Act 2000* is amended.

#### **Amendment of s 966A (Application in relation to operational work in wild river areas)**

Clause 23 amends this section to clarify that operational works to interfere with water in the wild river area is a regulated activity. New operational

work to interfere is prohibited in a high preservation area, whilst new operational work to interfere, excluding dams and weirs, is prohibited in a nominated waterway within a preservation area.