

# **Wild Rivers Bill 2005**

## **Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Henry Palaszczuk MP**

### **Title of the Bill**

*Wild Rivers Bill 2005*

### **Objectives of the Amendments**

Twelve amendments to the *Wild Rivers Bill 2005* (the Bill) are proposed for the following purposes:

- set a maximum period for a wild rivers moratorium;
- to make the revocation of a wild river area subject to Parliamentary scrutiny;
- to clarify a number of provisions which have the potential to be mis-interpreted;
- to correct minor errors; and
- to clarify the effects of the Bill on applications for grants and renewals of mining tenements.

### **Achievement of the Objectives**

The objectives are achieved by making amendments to various existing provisions of the Bill including adding terms to the Dictionary.

### **Alternative Ways of Achieving Policy Objectives**

Alternate ways of achieving policy objectives were not explored as the proposed amendments address the issues raised.

## **Estimated Cost for Government Implementation**

Additional cost may occur as a result of the amendments. In particular, the requirement to advertise in a newspaper circulating throughout the State may incur additional costs.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

There has been minimal consultation on the proposed amendments as they do not change the previous policy position. NR&M has consulted extensively with Cape York mining interests including Comalco, the Queensland Resources Council, Alcan and Sigma Resources. No other key stakeholders have been consulted.

# **Notes on Provisions**

## **Part 2 - Wild river areas**

### **Division 1 - Declaring wild river areas**

#### **Clause 9     Moratorium Period**

The Bill currently imposes a moratorium while the Minister decides whether to declare a wild river area, which ends when the Minister makes a decision. This amendment restricts the moratorium to a period of 12 months, but the Minister may extend this for a further 12 months by publishing a moratorium extension notice before the initial 12 month period expires. This moratorium extension notice will be published in the appropriate newspapers or by announcement over radio broadcasting in the appropriate area.

**Clause 10(4) Application of moratorium**

Clause 10(4) is amended so that the rules applying to declared wild river areas (set out in the new Part 10A of the *Mineral Resources Act 1989* to be inserted under clause 1, Schedule 1) also apply during the moratorium period. This outcome is achieved by requiring, during the moratorium period, any proposed wild river, preservation and high preservation areas to be treated as though they are declared wild river, preservation and high preservation areas.

This ensures there is consistency of approach during the moratorium period and after a wild river area is declared.

**Division 2 – Amending wild river declarations****Clause 21 Moratorium Period**

The Bill currently imposes a moratorium while the Minister decides whether to amend a wild river declaration, which ends when the Minister makes a decision. This amendment restricts the moratorium to a period of 12 months, but the Minister may extend this for a further 12 months by publishing a moratorium extension notice before the initial 12 month period expires. This moratorium extension notice will be published in the appropriate newspapers or by announcement over radio broadcasting in the appropriate area.

**Division 3 – Revoking wild river declarations****Clause 34 Approval of revocation of wild river declaration**

The purpose of this amendment is to make the revocation process for a wild river area subject to Parliamentary scrutiny. This is achieved by inserting a requirement in clause 34 of the Bill that prior to the revocation of a wild river declaration being approved by Governor in Council, it must be endorsed by Parliament. Therefore the process to revoke a wild river will be the following:

- the Minister publicly announces the intention to revoke a wild river and invites submissions;
- the Minister considers submissions about the revocation proposal;

- if the Minister decides to continue, the revocation is presented to Parliament;
- if Parliament endorses the revocation, it is forwarded to Governor in Council for approval; and
- the revocation is tabled in Parliament after approval by the Governor in Council.

## **Division 4 – Miscellaneous**

### **Clause 39 Copies of documents to be available for public inspection**

This amendment includes the moratorium extension notice (see the amendments to clauses 9 and 21) in the group of documents required to be made available for public inspection.

## **Schedule 1 - Consequential & minor amendments of other Acts**

### ***Mineral Resources Act 1989***

#### **Clause 1 Part 10A Wild river areas**

These amendments impose certain restrictions on grants and renewals of mining tenements after a wild river declaration is made. These restrictions will also apply during any moratorium periods (see the amendments to clause 10).

The current restrictions in the Bill were intended to apply to applications for grants and renewals, only to the extent that those applications related to land in a proposed or declared wild river high preservation area and watercourses and lakes in a proposed or declared wild river preservation area. However, feedback from consultation indicated that this intention was not clear from the current provisions of the Bill. It appears that the effect of the Bill on applications for grants and renewals of mining tenements was unclear, particularly with respect to when the wild river restrictions have the effect of “splitting” land the subject of an application for a grant or renewal. The concern raised is that the exclusion, from an application, of land in a wild river high preservation area and watercourses and lakes in a

wild river preservation area, may cause the remaining land to not be contiguous. The unintended consequence is that multiple mining tenements may need to be granted where a single tenement would previously have been possible.

The proposed new Part 10A to the *Mineral Resources Act 1989* clarifies the restrictions on grants and renewals of mining tenements in wild river areas. It does not alter the policy position with respect to the effect of the restrictions, but the new provisions take a different approach in achieving the policy objectives.

The new sections 383 and 384 do not prevent applications for the grant or renewal of a mining tenement which relate to land in a wild river area, including land in the high preservation area, from being lodged. However, if those applications are approved, for most mining tenements land that forms part of the wild river high preservation area and watercourses and lakes in the wild river preservation area will be excluded from the land to which the mining tenement applies. Land excluded from a mining tenement will not be subject to rent payable under the tenement.

The amendments allow an exploration permit to apply to watercourses and lakes in a wild river area, however exploration in these areas may be carried out using only limited hand sampling techniques, as defined in section 382. The term “explore” is defined under the *Mineral Resources Act 1989* and it is the intent of the Bill that the limited hand sampling techniques restriction will apply to all forms of exploration permitted under that definition.

In keeping with the policy approach of recognising existing rights, the amendments do not affect renewals of a mining claim anywhere in a wild river area.

The new sections should also be read with section 17 (Effect of declaration on activities and taking natural resources) of the Bill, which ensures rights to carry out mining activities under mining tenements granted or renewed prior to a wild river declaration are not affected by the wild river declaration. The restrictions on carrying out mining activities will only be relevant to mining tenements granted or renewed after a wild river declaration is made.

The new section 385 gives an applicant the ability to apply to the mining registrar to amend an application for the grant or renewal of a mining tenement, to exclude all or part of a wild river area from the application. Reasons for an applicant wanting to amend an application may include the potential for reducing environmental obligations and the number of objections to the grant of the mining tenement. The mining registrar may

require the applicant to fulfil such further obligations as may be appropriate, for example, re-advertising the area the subject of the application, giving written notification to affected landholders, local government and agencies, or submitting a revised plan of operations. What obligations may be appropriate will depend on the progress of the original application at the time that the amending application is made. The exclusion of land is a change in the substance of the application that should be considered by all relevant persons, hence, the original application must not proceed until the amending application is approved or withdrawn by the applicant.

A possible benefit of not amending an application under section 385 and continuing to include a wild river high preservation area in the land covered by the application is that, if the wild river high preservation area changes, the new section 386 provides an expedited application process for land that was part of the original application and that is no longer subject to wild river restrictions to be added to the original mining tenement, provided the application is made within 12 months after the original grant. The purpose of this section is to reduce duplication of process for any wild river area for which the applicant has already undergone consultation and met all relevant regulatory requirements prescribed by the *Mineral Resources Act 1989*. In the circumstance, a decision regarding the addition of such land to a mining tenement can be made having regard to any objections or relevant recommendations in the original application process. In approving an application, further conditions and an additional security deposit for the mining tenement may be imposed. The expedited application process under section 385 is available for a period of 12 months from the original grant or renewal in recognition of any public consultation that has already occurred. After 12 months has expired, it is considered appropriate for applications to be treated as a new application.

If a mining tenement has been granted or renewed, and land forming part of the original application is no longer subject to wild river restrictions, an alternative process for having that land added back in to the mining tenement exists pursuant to the new clause 386A. By way of example, this process could be used if more than 12 months have passed from the relevant grant or renewal (as the section 386 process is not available in this situation), or if the original application was amended under section 385 to remove the relevant land from the application (again, the section 386 process is not available in this situation). However, an application under this section will be dealt with in accordance with the normal process that applies under the *Mineral Resources Act 1989*. Although the expedited process under section 386 is not to be available, the outcome of an

approved application under section 386A is the same in that land is added to an existing tenement rather than the creation of a new tenement. The process is similar for including additional surface area to a mining lease under the *Mineral Resources Act 1989*.

Sections 385, 386 and 386A do not extend to prospecting permits because of the short term nature of this type of tenement.

It is expressly stated, so as to remove any doubt, that the exclusion of land forming part of a wild river area under this Part 10A will not prevent a single mining tenement applying to the remaining land.

## ***Water Act 2000***

### **Clause 17 Operational Works in Wild Rivers**

Section 966A(2) was intended to prohibit, in a wild river high preservation area, any operational work that is a dam or weir and other operational work whether it is in the watercourse or outside the watercourse, unless it is for town water supply or related to an existing water entitlement or permit. The current section only prohibits dams and weirs where the works are also for town water supply. This amendment clarifies that the prohibition on dams and weirs also applies if the operational work is in relation to a granted water entitlement or permit. This section continues to prohibit, in a wild river high preservation area, any operational work that is not a dam or weir, unless it is for town water supply or related to an existing water entitlement or permit.

## **Schedule 2 - Dictionary**

### **Reference to “Activities”**

There is no existing definition of ‘activities’ in the Bill as this term was intended to be interpreted broadly. However, concerns have been raised that the term might not include “works” within its meaning. To put the matter beyond doubt, this provision inserts a definition into the Dictionary clarifying that activities include works.

**Dictionary Reference to “Properly Made Submission”**

One component of a properly made submission is that the submission must be made by an ‘invited’ person. However sections 11(2)(c), 23(2)(c) and 32(2)(d) state that a submission may be made by ‘any entity’. Given this the definition of a properly made submission is being amended to remove “(a) is made by an entity invited to make the submission”.

**Dictionary Reference to “Publish”**

Notices are required to be published in the several instances, including: notice of intent to declare or amend a wild river area, moratorium extension notice, notice of declaration proposal, notice of amendment proposal and notice of revocation proposal. In addition to being published in a paper circulating in the area to which the notice applies, this amendment requires that notices are also published in a paper circulating throughout the State. This amendment ensures that all people who may be affected by the notice, whether residing in or near the area, or outside the area, will be informed.