

# **Wild Rivers Bill 2005**

## **Explanatory Notes**

### **Title of the Bill**

*Wild Rivers Bill 2005*

### **Policy Objectives of the Bill**

The objectives of the *Wild Rivers Bill* (the Bill) is to preserve the natural values of wild rivers through:

- a process for a river and all or part of its catchment to be declared as a wild river area; and
- a framework to provide for the regulation (through other existing Acts) of activities and resource allocations so that the natural values of the wild rivers are preserved.

To achieve the objectives, the Bill also amends the *Coastal Protection and Management Act 1995*, the *Environmental Protection Act 1994*, the *Fisheries Act 1994*, the *Forestry Act 1959*, the *Fossicking Act 1994*, the *Integrated Planning Act 1997*, the *Land Protection (Pest and Stock Route Management) Act 2002*, the *Mineral Resources Act 1989*, the *Nature Conservation Act 1992*, the *State Development and Public Works Organisation Act 1971*, the *Transport Infrastructure Act 1994*, the *Vegetation Management Act 1999*, and the *Water Act 2000*.

### **Reasons Why the Proposed Legislation is Necessary**

It is necessary to draft new legislation to achieve the Government's Wild Rivers Policy for the following reasons:

- not all activities that impact on the natural values of river systems are currently regulated;
- there are no existing mechanisms to comprehensively manage at a catchment scale all resource allocations and activities that impact on the natural values of river systems;
- there are no existing mechanisms to set appropriate limits on resource allocations and activities for the purpose of preserving the natural values of river systems; and

- there is no existing process to coordinate and integrate the regulation of the various resource allocations and activities that impact on the natural values of river systems.

Currently there is no overall comprehensive State regulation of agricultural or some animal husbandry activities. These activities can have severe adverse affect on the natural bio-physical values of river systems, such as water quality, altered hydrology, and reduced riparian function. Only a very small number of local government planning schemes address these activities.

Other than water resource planning, there is no other existing mechanism to manage resource allocations and activities at a whole-of-catchment scale. Vegetation management is undertaken at a regional ecosystem scale, and not for the purpose of preserving natural values of river systems. Many developments, such as urban expansion and industrial development, are regulated at a local government area scale, which rarely covers whole river catchments. Other developments, such as mineral exploration and extraction, commercial fishing, road building, etc, are generally not managed on a catchment basis. Catchment management plans may cover whole river catchments but they are not regulatory instruments.

The Acts that regulate these resources and activities generally do not set development limits at the catchment scale. Those Acts that do set limits, generally do so under the principles of ecological sustainable development (ESD), which permits a loss in natural values to achieve economic and social benefits. The level of preservation sought for wild rivers, which have all or almost all of their natural values intact, is higher than for ESD but below that generally provided in a national park. Hence it is necessary to clearly specify limits on resource allocations and activities for the purpose of preserving the natural values of wild river systems.

Currently there is no legislation, process or mechanism to coordinate the management of key natural resources within a river system and its catchment. There are several Acts that independently manage land, water, vegetation and marine resources but no process to coordinate these powers for the purpose of preserving a wild river's natural values. It is essential that these natural resources be managed in a holistic and integrated fashion across the whole catchment to effectively preserve a river's natural values. Local government planning schemes could achieve this coordination to some extent, but few local government areas cover whole river catchments and, where planning schemes do exist, these could address relevant activities in different ways. Also wild rivers could be preserved in national parks but few parks cover whole catchments from source to sea.

## **Means of Achieving Objectives**

The objectives of the legislation are achieved by:

- declaring a river and all or part of its catchment a wild river area;
- identifying and mapping of management areas to determine the level of controls of specific activities;
- limiting further resource allocation, especially water, in a wild river area;
- minimising the effects that development activities may have on wild river natural values; and
- requiring assessment of future developments that are likely to adversely affect natural values of a wild river.

The key features of the Bill are:

- process to declare a wild river (including moratorium provisions);
- process to amend a wild river declaration;
- process to revoke a declaration;
- recognition of existing rights;
- requirement to assess certain development against codes contained in a wild river declaration; and
- amendments to other Acts to require certain other activities and resource allocations to be assessed against wild rivers codes or other wild river requirements.

To achieve the Bill's objectives, it is important that activities (including developments and resource allocations) that could potentially adversely affect the natural values of a wild river are managed. The Bill provides a head of power to guide the management of certain land-use, water-related, vegetation-related and mining activities (including impacts) within the wild river area. Wherever possible this is then implemented through changes to existing legislation. The Bill does not have its own system of authorisation and compliance. Rather, it is enabling legislation that requires the objectives of the wild rivers legislation and wild river declarations to be considered when making decisions under other legislation on specified developments and activities.

## **Estimated Cost of Implementation for Government**

The cost to develop wild river declarations and associated development codes will be covered by existing resources within the Department of Natural Resources and Mines (NR&M), with assistance from other agencies on specific matters. Resources will be required for advertising notices, preparing declaration proposals, undertaking community consultation, assessing public submissions and drafting final declarations. The total cost to develop these declarations will depend on the number of rivers nominated for declaration.

Additional resources may be required by NR&M if the level of community consultation is extended in remote regions of the state or to better capture Indigenous interests. This will be determined through experience in developing the declarations. Any request for additional resources will be dealt with as part of normal budgetary processes.

The additional cost for State agencies to assess proposed developments in wild river areas is not expected to be significant. No new compliance processes will be created as the Bill uses current regulation and compliance processes in existing Acts. While there are some new requirements to assess certain activities under the Bill, for example agricultural and animal husbandry activities, the level of future development is not expected to be high. Wild rivers tend to be in regions of the State where little development has occurred and generally have limited development pressure. Also future development in such areas is further limited by existing restrictions on vegetation clearing. NR&M will be the assessment manager for these additional assessments and existing resources are expected to cover the cost. Offsetting this small increase in assessment activity is the savings from not having to assess activities that are prohibited in parts of wild river areas. The extent of any increased workload for government agencies to administer the Bill will depend on the number of rivers declared.

## **Consistency with Fundamental Legislative Principles**

The Bill does not breach any fundamental legislative principles. The Bill does not directly regulate any activities and therefore does not confer any rights or obligations. The Bill expressly states that existing rights are protected under the Bill and there is no retrospective law proposed in the consequential amendments to other Acts.

## **Consultation**

A detailed consultation process has been undertaken in developing the Bill.

A policy implementation paper was prepared for the Wild Rivers Policy and circulated to key stakeholder groups.

The following processes were adopted for consultation with the community:

- Release and presentation of the Policy Consultation Paper;
- Meetings to discuss the paper with stakeholder representative groups on request;
- Release and presentation of the Draft Wild Rivers Bill and Explanatory Material; and
- Meetings to discuss the draft Bill with stakeholder representative groups on request.

The proposals for the Bill were also developed in consultation with other relevant government departments.

### **Regard for aboriginal and islander custom**

The Bill contains no provisions that will affect aboriginal or islander custom.

## **Part 1 Preliminary**

### **Clause 1 Short title**

Clause 1 of the Bill describes the short title of the Bill as being the *Wild Rivers Act 2005*.

### **Clause 2 Commencement**

Clause 2 of the Bill provides for the Bill to commence on a date to be fixed by proclamation.

### **Clause 3 Definitions**

Clause 3 of the Bill provides that the dictionary of special terms used in the Bill is to be found in schedule 2.

### **Clause 4 Notes in text**

Clause 4 of the Bill provides that notes in the text of the Bill are part of the Bill.

**Clause 5 Purpose of Act**

Clause 5 of the Bill sets out the purposes of the Bill. Primarily the Bill is to preserve the natural values of wild rivers.

Natural values provide the basis for sustaining healthy ecological processes in a river system. They create and form the biophysical habitat for native flora and fauna and provide scenic, recreational and heritage appeal. The aim of the Bill is to ensure that a declared wild river's environment is maintained in its largely natural state, and impacts from necessary development minimised.

The main natural values of interest are:

- Hydrologic processes – the natural rainfall, runoff and infiltration processes that transmit water from source to sea (or terminal wetland) via stream and aquifer networks. These processes are most affected by dams, weirs and barrages; levee and floodplain banks; broadscale vegetation clearing; water extraction; and broadscale hardening of land surfaces. A wild river is one that contains minimal impediment to flow and limited take of water for consumptive purposes compared with the river's natural flow volume. The natural flow regime is preserved in a wild river.
- Geomorphic processes – the natural erosion, transport and deposition of sediments by water downstream to coastal landscapes (e.g. estuaries, beaches), floodplains, or terminal wetlands. These processes maintain the physical integrity of the river system and support ecological processes. Geomorphic processes are most affected by dams, weirs and barrages; instream sand and gravel extraction; stream realignment; levee banks; increased soil erosion; and loss of riparian vegetation. A wild river is one where the natural geomorphic processes occur essentially unhindered and are not adversely affected by extraction of quarry material (or mineral resource) essential to these processes.
- Riparian function – the stabilisation of stream banks, the provision of habitats (both aquatic and terrestrial), the interfacing of aquatic and terrestrial habitats, and the natural filtering of pollutants entering a waterway. The function is most affected by riparian vegetation clearing; disturbance by stock; invasive weeds; altered geomorphic processes; and altered hydrologic processes. A wild river will have a healthy riparian zone along its length.
- Water quality – the natural physical and chemical attributes of water that sustain aquatic and terrestrial flora and fauna within a river

system and its receiving waters (i.e. estuary, terminal wetland). Water quality is most affected by ‘unnatural’ pollutants (e.g. pesticides, heavy metals, pathogens, etc.); increased concentrations of natural pollutants (e.g. nutrients, suspended solids, etc.); loss of wetlands that act as natural filters; and clearing of the riparian zone. There can be many triggers for these impacts. A wild river will have natural, or near natural, water quality.

- Wildlife corridor function – sufficient areas of natural habitat within and along the river that allow native terrestrial and aquatic fauna to safely live and migrate within their natural ranges. This value is most affected by dams, weirs and barrages; riparian vegetation clearing or degradation; competition from exotic fauna; altered hydrologic processes; and poor water quality. A wild river will have large healthy corridor areas (both aquatic and terrestrial) that allow free movement of fauna.

Wild rivers will typically have a high level of naturalness with largely unmodified hydrologic, geomorphic and biological processes resulting in natural quality water, instream habitat and riverine biodiversity. It is the *degree of naturalness* that is the primary criterion for determining whether or not a river should be nominated for wild river status. It is not intended to declare a river as wild simply to protect an ancillary value, e.g. the protection of a rare or threatened species. There are existing mechanisms, such as species recovery plans (under the *Nature Conservation Act 1992*), to address those needs.

While wild rivers may contain or support other values, such as economic, social, scientific, educational and Indigenous, the Bill is intended to preserve the natural values listed above.

### **Clause 6 Act binds all persons**

Clause 6 of the Bill provides that the Act will bind the Crown in each of its capacities, as far as the Parliament permits.

## **Part 2 Wild river areas**

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

#### **Clause 7 Minister may declare wild river areas**

Clause 7 provides that the Minister may declare a part of the State to be a wild river area. This could be, for example, a catchment of a river, or only part of a catchment. While the Minister is the only person authorised to nominate a river for wild river status, this does not prevent the Minister from receiving letters from the community requesting consideration of a certain river for possible declaration.

While rivers can be declared as ‘wild’, a wild river declaration will apply to the catchment as well. This recognises that activities in a catchment can impact on the natural values of a river. Therefore, if the natural values of a wild river are to be adequately preserved, then activities that may impact on them need to be regulated.

Although not provided for in the legislative provisions, the Minister will consult with other Ministers about an intention to declare a wild river area before a notice of intent to declare (see clause 8) is published. The Minister will seek any relevant information from other departments about the proposal before the notice of intent is published.

#### **Clause 8 Public notice of intention to declare a wild river area**

Clause 8 provides for the publishing of a notice of intent to declare a wild river area (*notice of intent*). This notice forewarns potentially affected community members that the Minister is considering declaring an area a wild river area.

Clause 8(1) requires that the Minister must publish the notice of intent. Usually this notice will be published in local newspapers and will be available from the internet, NR&M head and regional offices and relevant local governments. The Bill allows the method of advertising the notice to differ depending on where the particular wild river is located. Some of the potentially affected areas may not receive regular newspapers or may not have access to the internet and therefore alternative means of advertising the notice of intent, for example via indigenous radio, may be appropriate.

Clause 8(2) provides for the content of the notice of intent. The notice of intent can be issued at the same time as a declaration proposal (see clause 11) or it may be published beforehand. This separation of the notice of

intent from the declaration proposal is to enable a moratorium to be applied to a proposed wild river area before a declaration proposal is prepared. This could occur in the event that there is an indication that a sudden increase in applications for resource allocations or development approvals (that may result from certain rivers being considered for nomination) could impact on the natural values of the proposed wild river area before a formal declaration proposal is published.

Clause 8(3) provides that a notice of intent may relate to more than just one wild river. If it is found that an adjacent river (or rivers) has similar high natural values, multiple rivers could be included in the same notice of intent and declaration proposal process. This would streamline the process of declaring wild rivers (where possible) and ensure the community is not unnecessarily consulted.

### **Clause 9 Moratorium period**

Clause 9 provides the start and finish times for the moratorium period. Clause 9(a) states that the moratorium period starts either on the day stated in a notice of intent, or on the day the notice is published, whichever is the later. Clause 9(b) states that the moratorium period finished either on the day an approved wild river declaration has effect, or the day the Minister decided not to declare a wild river, whichever is the earlier.

### **Clause 10 Application of moratorium**

A moratorium will ensure that during the moratorium period, development and resource allocations that could be regulated to the extent proposed if the wild river were declared, do not occur until a decision whether or not to declare is made, as such approvals may undermine the natural values of the proposed wild river. A moratorium is necessary to prevent water entitlements being issued across the wild river area, vegetation clearing for certain purposes being approved in high preservation areas and mining tenements being granted in high preservation areas and watercourses or lakes in preservation areas until a decision on declaring the river is made.

Clause 10(1) states the notice of intent applies as a moratorium on particular activities as set out in subsequent clauses. The moratorium applies to the taking and interfering with water in the whole of the proposed wild river area, vegetation clearing in the high preservation area and applications for mining tenements in the high preservation area or in a watercourse or lake in the preservation area of a proposed wild river area.

Clause 10(2)(a) sets out the water moratorium, under the *Water Act 2000*, that will apply as a water moratorium for the purposes of the Wild Rivers Act. Any applications for a water entitlement will not be accepted or, if

received before the moratorium began, will not be dealt with if the granting of the application would have the effects of increasing the amount of water or increase the rate at which it may be taken, or change the location or the flow conditions under which water may be taken, increase or change the interference with the water, or, change the purpose for which the water may be taken or interfered with. The moratorium may state the type of applications that are exempt from the moratorium.

Clause 10(2)(b) provides that during a moratorium, new works for the taking or interfering with water must not be started or existing works must not be altered if the effect of these actions increase the amount of water or change the location from which is water is being taken or could be taken. Any changes must not increase the rate at which water is being taken or could be taken or increase or change the interference with the water. The moratorium may state the type of works that are exempt from the moratorium.

Clause 10(3) provides for a moratorium on vegetation clearing in the high preservation area of a proposed wild river area. Section 22A(2A) of the *Vegetation Management Act 1999* provides a list of purposes for which an application for vegetation clearing would not be a properly made application. If the application is for those purposes listed, despite section 3.2.1 of the *Integrated Planning Act 1997* (which allows applications for a development approval to be lodged), the application is taken to be not properly made and must not be accepted by the authorising agency. For wild rivers, the list of purposes for which applications may be received has been reduced from the existing list of purposes in the *Vegetation Management Act 1999*. From the time of the notice of intent, applications for vegetation clearing in the high preservation area will only be accepted for the following purposes (as defined in the *Vegetation Management Act 1999*):

- necessary to control non-native plants or declared pests; or
- to ensure public safety; or
- for establishing a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site for the fence, firebreak, road or infrastructure; or
- a natural and ordinary consequence of other assessable development for which a development approval as defined under the *Integrated Planning Act 1997* was given, or a development application as defined under the *Integrated Planning Act 1997* was made, before 16 May 2003; or

- for clearing of encroachment.

Decisions about vegetation clearing applications (that are received) during the moratorium period will occur according to the applicable Regional Vegetation Management Code.

Applications for vegetation clearing in the proposed high preservation area will not be accepted for the following purposes:

- a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26; or
- for fodder harvesting; or
- for thinning; or
- for an extractive industry; or
- for clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes.

There has been a reduction in the number of purposes that can be applied for to clear native vegetation because the high preservation area of a proposed wild river area is considered to be of particular significance in maintaining the natural values of the wild river. Purposes such as thinning, and the clearing of regrowth, are not appropriate for the high preservation area because of the high level of biophysical importance, including connectivity, that is placed on the high preservation area of a wild river.

Clause 10(4) provides for a moratorium on the granting of new mining tenements in the proposed high preservation area or in any watercourse or lake in a proposed wild river area. In the proposed high preservation area and all watercourses and lakes applications for new mining tenements in those areas will not be accepted. If an application has been received before the moratorium began, it will not be dealt with until the decision is made whether or not to declare.

Clause 10(5) provides that a moratorium on the granting of new mining tenements does not apply to applications to which a special agreement Act applies (e.g. *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*).

### **Clause 11 Public notice about declaration proposal**

Clause 11(1) provides that the Minister must prepare and publish a ***declaration proposal*** for that wild river area and a notice about the declaration proposal for the wild river area (called a ***declaration proposal notice***). This notice is published as soon as practicable after the publishing

of a notice of intent to ensure the declaration is finalised as soon as possible and the moratorium period is not unnecessarily protracted.

Clause 11(2) provides for the content of the declaration proposal notice. The notice must state details concerning the proposed wild river area and where copies of the declaration proposal will be available for inspection and purchase. It will also outline how and by when written submissions may be made. This is to ensure full public access to all documents.

Clause 11(3) provides that the day by which submissions must be made will not be earlier than 20 business days after the day the declaration proposal notice was published. Twenty days is the minimum period for submissions to be made. The Minister may wish to extend the time available for submissions to any period (e.g. to 40 business days) in areas where communication and consultation may be difficult or time consuming (i.e. in remote areas). The minimum time has been set to ensure the consultation process is not unduly long if it is not necessary.

Clause 11(4) provides that if the Minister has prepared the declaration proposal before publishing the notice of intent, the contents of a declaration proposal notice may be incorporated into the notice of intent and a separate declaration proposal notice will not be required. The separation of the notice of intent from the declaration proposal is to enable a moratorium to be applied to a proposed wild river area before a declaration proposal is prepared.

### **Clause 12 Content of a declaration proposal**

Clause 12 details the information that may be contained within a declaration proposal. However, the proposal is not limited to the items listed in this section.

The purpose of a declaration proposal is to outline the background to the wild river proposal and the potential new 'rules' that would apply if the river were declared. The declaration proposal may contain information relating to the history and other relevant information about the area or the rivers that are part of the proposed wild river area. Although not required by the legislative provisions, any cultural, recreational, or scenic attributes of the area, if known, may be included in the declaration proposal. It is expected that some of this information will be gathered through the consultation process with the community that lives in the proposed wild river area.

**Clause 13 Matters Minister must consider**

Clause 13(1) provides that the Minister must consider the declaration proposal, the results of community consultation about the declaration proposal, and all properly made submissions when finalising the wild river declaration. The Minister must also consider any water resource plan or resource operations plan that applies to part or all of the proposed wild river area. The Minister is not restricted to considering these issues (see clause 13(3)), and could take into account any other relevant information (for example, advice from NR&M).

Clause 13(2) provides that a wild river declaration must not be inconsistent with a water resource plan or a resource operations plan in some respects. However the declaration may differ (and prevail) from a water resource plan or a resource operations plan in relation to the matters set out in this clause. For example, the declaration can, in regards to the types of works for taking overland flow water (such as off-stream storages), list whether the works are assessable or self-assessable in a wild river area. Also the declaration can list works that interfere with overland flow water in a floodplain management area as assessable or self-assessable. In regards to a subartesian management area, the declaration may specify that works to take sub-artesian water (e.g. bores, wells, spears, etc.) are assessable or self-assessable for taking or interfering with this water.

**Clause 14 Content of wild river declaration**

The wild river declaration will not contain much of the background information presented in the declaration proposal as the wild river declaration is the regulatory instrument and so is limited to the information required to enable effective management of activities and resource allocations.

Clause 14(1) provides for the extent of the information that must be contained in a wild river declaration. The declaration will describe the area by naming the main river and major tributaries (by name if they are known) and the physical location of the rivers will be detailed on a map. The declaration will outline the extent of the high preservation area, the preservation area, and any floodplain or subartesian management areas contained within the wild river area.

The declaration will list the activities and resource allocations that will be regulated or prohibited in the wild river area. The declaration itself does not regulate or prohibit the activities or resources. This is achieved through the consequential amendments to the existing Acts that currently regulate the resources or activities.

The declaration will list the types of works for taking overland flow water in a wild river area and for interfering with overland flow water in a floodplain management area that are assessable or self-assessable development for the purposes of the *Integrated Planning Act 1997*. Works associated with the taking or interfering with subartesian water in a subartesian management area that are assessable or self-assessable development will also be listed.

The wild river declaration will list in a schedule the threshold limits that apply for certain activities and resource allocations. For example, the threshold limit may define how many and what size licences can be issued for non-stock and domestic water use in the preservation area.

For some activities regulated through the *Integrated Planning Act 1997*, separate codes that specifically relate to those activities in a wild river area will be referred to in the wild river declaration. For example, if a development application is lodged for a material change of use for an eco-tourism resort (i.e. commercial development), the development application must be assessed against a code that has been developed specifically for the wild river area. The code may include buffers and offsets from the river to ensure the natural values of the river are preserved. Codes may also be developed to regulate the carrying out of activities under other Acts. For example, licences, leases or permits granted for the getting of forest products regulated under the *Forestry Act 1959*, will be required to be issued in accordance with an approved code. Where possible, existing codes will be revised and where necessary adopted for wild river purposes.

This clause also provides that the information contained in the declaration be available on the department's website or at a department's regional office for that area.

Clause 14(2) provides that a wild river declaration may include a process for the reservation or granting of unallocated water for specific purposes in a wild river area. The reservation of water for particular purposes will be detailed in a wild river declaration. If a complicated process for granting reserved water is required, a related amendment allows the process to be detailed in a Regulation under the *Water Act 2000*.

Clause 14(3) provides that the declaration may include more than one wild river in a wild river area. If it is found that adjacent rivers contain similar natural values and would be subject to similar proposed resource limits and management rules, the option exists to combine the wild rivers into one wild river area. However, there may still be details specific to each wild river.

**Clause 15 Deciding whether to make declaration**

Clause 15 provides for the Minister to decide whether or not to proceed with a wild river declaration. If the Minister decides not to declare a wild river then the Minister is required to publish a notice stating the decision and reasons why.

**Clause 16 Approval of wild river declaration**

Clause 16 provides for the Governor in Council to approve a wild river declaration. The approval of the wild river declaration is notified in the gazette. The declaration is a statutory instrument and will be tabled by the Minister in the Legislative Assembly within 14 sitting days after the declaration is approved. This is to provide the parliament with information about the declaration and to make the declaration available for public viewing.

**Clause 17 Effect of declaration on activities and taking natural resources**

The Bill recognises that all existing agreements, permits, lease conditions and undertakings are honoured immediately prior to a declaration coming into effect. This clause preserves existing rights of entities to carry out activities and take natural resources. These rights have been preserved even though this may lead to activities occurring in a wild river area after a declaration is made, that are inconsistent with the purpose of the Bill and the requirements for new activities imposed as a result of the declaration.

The rights preserved are set out below:

- the activity was being carried out, or the natural resource was being taken, under the authority of another Act or law, immediately before a wild river declaration takes effect. For example, a person was taking water for irrigation purposes under the *Water Act 2000* immediately before a wild river declaration takes effect. The person can continue to take water for this purpose after the declaration takes effect.
- the activity, or the taking of the natural resource, was authorised by a licence, permit or other approval document held by a person under the authority of another Act or law, immediately before a wild river declaration takes effect. For example, a person held a water entitlement and development permit for associated water works, under the *Water Act 2000* and the *Integrated Planning Act 1997*, immediately before a wild river declaration takes effect. These rights are preserved even though the works may not have been constructed before the wild river declaration takes effect. The person can start to

construct the relevant works, and start to take water in accordance with their entitlement, after the declaration takes effect.

- the activity, or the taking of the natural resource, was authorised by a special agreement Act such as the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*. These rights are preserved even though the relevant activity, for example, the construction of particular works specifically authorised by the special agreement Act, was not being carried out before the wild river declaration takes effect.

This clause ensures the above rights continue, despite a wild river declaration. However this clause does not negate the need for a person to fulfil any requirements of another Act. For example, a person who held a water entitlement immediately before a wild river declaration takes effect, but no development permit for associated works, could still be required by the *Integrated Planning Act 1997* to obtain a development permit for associated works.

### **Clause 18 Applications received but not decided**

Clause 18 refers to applications received by authorising agencies before the commencement of the wild river declaration but about which no decision has been made. It does not include applications about water and mining tenements, which would be put on hold until after an amendment has been approved. After which application regarding water would be dealt with as per the declaration and the mining tenements as per the *Mineral Resources Act 1994*.

## **Division 2 Amending wild river declaration**

### **Clause 19 Amending a wild river declaration**

Clause 19 provides for the Minister to amend a declaration if the Minister is satisfied that the purposes of the Act are not being met in the wild river area to which the declaration applies.

### **Clause 20 Public notice of intention to amend wild river declaration**

Clause 20 provides for the publishing of a notice of intent to amend a wild river declaration (*notice of intent*). This notice forewarns potentially affected community members that the Minister is considering amending a wild river declaration.

Clause 20(1) requires that the Minister must publish the notice of intent. Usually this notice will be published in local newspapers and will be available from the internet, NR&M head and regional offices and relevant local governments. The Bill allows the method of advertising the notice to differ depending on where the particular wild river is located. Some of the potentially affected areas may not receive regular newspapers or may not have access to the internet and therefore alternative means of advertising the notice of intent, for example via indigenous radio, may be appropriate.

Clause 20(2) provides for the content of the notice of intent. The notice of intent can be issued at the same time as an amendment declaration (see clause 26) or it may be published beforehand. This separation of the notice of intent from the amendment declaration is to enable a moratorium to be applied to a proposed wild river area before an amendment declaration is prepared. The notice must contain the wild river declaration being amended, reasons for the amendment and description of the moratorium that will apply and where further information can be obtained.

### **Clause 21 Moratorium period**

Clause 21 provides the start and finish times for the moratorium period. Clause 21(a) states that the moratorium period starts either on the day stated in a notice of intent, or on the day the notice is published, whichever is the later. Clause 21(b) states that the moratorium period finishes either on the day an approved wild river amendment declaration has effect, or the day the Minister decided not to amend a wild river declaration whichever is the earlier.

### **Clause 22 Application of moratorium**

Clause 22 provides for a moratorium to be applied to the area outlined in the notice of intent and covers water, vegetation clearing and mining in the ways stated in clause 10 of the Bill.

### **Clause 23 Public notice about amendment proposal**

Clause 23(1) provides that the Minister must prepare and publish an *amendment proposal* for the wild river declaration and a notice about the amendment proposal for the wild river declaration (called an *amendment proposal notice*). This notice is published as soon as practicable after the publishing of a notice of intent (clause 20) to ensure the amendment is finalised as soon as possible and that the moratorium period is not unnecessarily protracted.

Clause 23(2) provides for the content of the amendment proposal notice. The notice must state details concerning the wild river declaration being

amended and where copies of the amendment proposal will be available for inspection and purchase. It will also outline how and by when written submissions may be made. This is to ensure full public access to all documents.

Clause 23(3) provides that the day for which submissions must be made will not be earlier than 20 business days after the day the amendment proposal notice was published. Twenty days is the minimum period for submissions to be made. The Minister may wish to extend the time available for submissions to any period (e.g. to 40 business days) in areas where communication and consultation may be difficult or time consuming (i.e. in remote areas). The minimum time has been set to ensure the consultation process is not unduly long if it is not necessary.

Clause 23(4) provides that if the Minister has prepared the amendment proposal before publishing the notice of intent, the contents of an amendment proposal notice may be incorporated into the notice of intent and an amendment proposal notice will not be required. The separation of the notice of intent from the amendment proposal is to enable a moratorium to be applied to the area outlined in the notice of intent before an amendment proposal is prepared.

#### **Clause 24 Content of a amendment proposal**

Clause 24 details the information that may be contained within an amendment proposal, for example: the wild river declaration being amended, the reasons for amendment, details of the proposed amendments (e.g. changes to the wild river area boundary), activities that may be affected and how, moratorium details, proposed community consultation and where further information will be available.

#### **Clause 25 Matters Minister must consider**

Clause 25 provides that the Minister must consider the results of community consultation about the amendment proposal and all properly made submissions when finalising the amended declaration. The Minister must also consider any water resource plan or resource operations plan that applies to part or all of the proposed wild river area. The Minister is not restricted to considering these issues, and will take into account any other relevant information (for example, advice from NR&M).

Clause 25(2) provides that an amendment proposal must not be inconsistent with a water resource plan or a resource operations plan. However the amendment proposal may differ (and prevail) from a water resource plan or a resource operations plan in relation to three matters. The amendment proposal can, in regards to the types of works for taking

overland flow water (such as off-stream storages), list whether the works are assessable or self-assessable in a wild river area. Also the amendment proposal can list works that interfere with overland flow water in a floodplain management area as assessable or self-assessable. In regards to a subartesian management area, the amendment proposal may specify that works to take sub-artesian water (e.g. bores, wells, spears, etc.) are assessable or self-assessable for taking or interfering with this water.

### **Clause 26 Content of wild river amendment declaration**

Clause 26 provides for the extent of the information that must be contained in a wild river amendment declaration. The amendment declaration will describe, for example, the wild river declaration being amended, any changes to existing declaration boundaries, additions or removals of subcatchments to the wild river area, or any amalgamation of a wild river area with another (or part thereof).

### **Clause 27 Deciding whether to make amendment declaration**

Clause 27 provides for the Minister to decide whether or not to proceed with an amendment declaration. If the Minister decides not to amend a wild river declaration then the Minister is required to publish a notice stating the decision and reasons why.

### **Clause 28 Approval of wild river amendment declaration**

Clause 28 provides for the Governor in Council to approve a wild river amendment declaration. The approval of the wild river amendment declaration is notified in the gazette. The amendment declaration is a statutory instrument and will be tabled by the Minister in the Legislative Assembly within 14 sitting days after the amendment declaration is approved. This is to provide the parliament with information about the amendment declaration and to make the declaration available for public viewing.

### **Clause 29 Effect of amendment declaration on activities and taking natural resources**

Clause 29 provides for the existing rights of entities to continue carrying out an activity or taking the benefit of a resource allocation if it was authorised before a wild river amendment declaration takes effect. This section ensures that those authorisations and rights are protected despite a wild river amendment declaration. For example, granted water entitlements whether fully utilised or not, are existing rights and are protected.

However, this right does not extend to any increase in the activity or resource allocation if the increase is inconsistent with what is currently

authorised whether fully utilised or not. Increase means in relation to carrying out an activity or taking a natural resource, includes increasing the area, quantity, frequency or intensity over and above the extent provided for in the original authorisation.

The consequential amendments being made to other Acts as a part of this Bill do not in any way impinge on any rights provided by those Acts or other Acts (e.g. the Wild Rivers Act will not prevent the construction of fish traps in a watercourse constructed as a part of the indigenous traditional use of the watercourse). However this clause does not negate the need to fulfil any requirements of another Act (e.g. while the Wild Rivers Act will not impact on franchise agreement Acts such as *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, any requirements of, for example the *Water Act 2000*, need to be adhered to).

### **Clause 30 Applications received but not decided**

Clause 30 refers to applications received by authorising agencies before the commencement of the wild river amendment declaration but about which no decision has been made. It does not include applications about water and mining tenements, which would be put on hold until after an amendment declaration has been approved. After which application regarding water would be dealt with as per the amendment declaration and the mining tenements as per the *Mineral Resources Act 1994*.

An authorising agency must deal with any lawful application received before the amendment declaration as if the amendment declaration was not in place (i.e. under the rules that existed at the time of the application). Therefore an applicant will not need to re-do the application to satisfy the requirements of the amendment declaration.

### **Clause 31 Minor amendments of wild river declaration**

Clause 31 provides for minor amendments to a declaration (an amended declaration), approved by the Governor in Council, without going through the process required when a new declaration is being proposed. This allows for the correction of minor errors or to make other changes that are not of a substantial nature.

## **Division 3            Revoking wild river declarations**

### **Clause 32    Revoking a wild river declaration**

Clause 32 provides for the revocation of a wild river declaration. If the wild river for some reason no longer displays the natural values of a wild river or if the Minister decides (based on valid evidence) that there is a need to utilise the resources or develop activities in a wild river area that would result in the area no longer qualifying as “wild”, the Minister may decide that the declaration of the wild river is no longer appropriate.

Clause 32(1) requires a notice to be published (a *revocation proposal notice*) stating the intent to revoke a wild river area. The process outlined will ensure that revocation is a transparent and public process.

Clause 32(2) requires the revocation notice must state the wild river area, the reasons for the proposed revocation and inviting submissions about the proposed revocation. It will also state the activities and resource allocations that would be affected by the revocation. The minimum standard is that this notice will be published in local newspapers and will be available from the internet and relevant local governments. The method of advertising the notice may differ depending on where the particular wild river is located. Some of the areas may not receive regular newspapers or have access to the internet and therefore alternative means of advertising the notice of intent, for example via indigenous radio, may be required. Written submissions would be invited and the details of when, where and to whom submissions are to be made would be included in the notice.

Clause 32(3) provides that the day for which submissions must be made will not be earlier than 20 business days after the day the notice about the proposed revocation was published. Twenty days is the minimum period for submissions to be made. The Minister may wish to extend the time available for submissions (e.g. to 40 business days) in areas where communication and consultation may be difficult or time consuming (i.e. in remote areas).

Clause 32(4) requires that the Minister must consider all properly made submissions regarding the proposed revocation.

### **Clause 33    Deciding whether to revoke declaration**

Clause 33 provides for the Minister to decide whether or not to proceed with a declaration revocation. If the Minister decides not to revoke a wild river declaration then the Minister is required to publish a notice stating the decision and reasons why.

**Clause 34 Approval of revocation of wild river declaration**

Clause 34 provides for the Governor in Council to approve the revocation of a wild river declaration. The revocation has effect when it is notified in the gazette. As with wild river declarations, the revocation of a declaration is to be tabled in the Legislative Assembly by the Minister within 14 sitting days after the revocation is approved. This is to provide the parliament with information about the revocation and to make the reasons for revocation available for public viewing.

**Clause 35 Effect of revocation on activities and taking natural resources**

Clause 35 provides that any person carrying out an activity or taking the benefit of a resource before a revocation of a declaration is no longer bound by the requirements of the declaration after it is revoked.

**Clause 36 Effect of revocation on applications received but not decided**

Clause 36 provides that applications received before the revocation has effect are not subject to the requirements of the declaration. Any conditions or parts of authorisations that applied, as a result of the wild river declaration, will no longer apply.

For example, if an application for an agricultural activity was received prior to the revocation of a wild river declaration, after the revocation the application lapses (to the extent wild rivers applied) and the activity can commence and continue without a wild river approval (similar to before the river was declared). However, if the agricultural activity was listed as assessable in a local government planning scheme, then the planning scheme requirements still apply. In the event the application was for a level 2 environmentally relevant activity (ERA), the wild river declaration had the effect of making it assessable (rather than self-assessable) and imposing wild river code requirements. After the revocation of the declaration, the ERA reverts back to a level 2 self-assessable ERA, and the application is processed on that basis with no additional wild river requirements.

**Division 4 Miscellaneous****Clause 37 Relationship with water resource plans**

Clause 37 provides that where a wild river declaration differs to a water resource plan or resource operations plan in relation to clause 14(1)(h), (i),

(j) and (l) (e.g. interfering with overland flow) the wild river declaration will prevail. These are the only activities in which a wild river declaration may differ and prevail over a water resource plan or resource operations plan. In all other matters the water resource plan or resource operations plan provisions will prevail over a wild river declaration. This recognises the extensive and often lengthy consultation process that is undertaken to finalise a water resource plan to provide for the equitable allocation and management of water.

### **Clause 38 Minister must prepare report on consultation process**

Clause 38 provides that within 30 business days after a wild river declaration is approved the Minister must prepare a report (a *consultation report*) that includes a summary of the issues raised during the consultation period and how the issues have been dealt with. This ensures a transparent consultation process (similar to a water resource planning process) where the issues raised by the community are properly addressed. Via this process, the community can be assured that all issues raised during consultation have been carefully considered and dealt with by the Minister.

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

Clause 39 requires all notices and documents that are “published” (i.e. *wild river documents*) to be sent to each local government whose local government area includes all or part of the wild river area to which the notices relate. The local government, after receiving a wild river document, must make a copy available for inspection by the public.

The Minister may also send a copy of the wild river documents to any other entity the Minister considers to be appropriate. These other entities are not specifically named in the Bill but could include, for example, a regional natural resource management body or an Indigenous or Traditional Owner group. Sending copies of wild river documents to bodies or persons other than the local government may be necessary because there may be parts of Queensland that are proposed to be declared wild river areas, whose community do not have ready access to local government or the internet. The need to inform the community that live and work in the proposed wild river area may require contact to be made by means appropriate for that particular area. These methods may include utilising indigenous radio or contacting specific organisations unique to that area. These methods of providing information will be considered on an individual basis and tailored to suit the needs of the communities concerned.

Copies of all wild river documents must be kept by the Chief Executive for public inspection at the department's head office and regional office for the wild river area or proposed wild river area.

#### **Clause 40 Report by Minister on wild river declaration**

Clause 40 provides that the Minister must provide a report (a *wild river report*) at least every five years about the effectiveness of a wild river declaration, the first report being due within five years after the declaration was originally approved. The report must include a summary of the findings of any known and relevant research and monitoring that relates to the purpose of the Act and may include a summary of the developments and development pressures in the area. Any research or monitoring, whether undertaken by the department, any other department, or any other research body, may be relevant and included in the report. However, no specific monitoring program needs to be established purely for assessing the wild river declaration.

A single report can cover more than one wild river declaration.

Any amendments to a declaration will also be mentioned in the report. Any other information that may be relevant to the wild river may be included in the report but is not mandatory.

### **Part 3 Activities And Taking Natural Resources In Wild River Areas**

#### **Clause 41 Classification of wild river area into high preservation and preservation area**

Clause 41 provides for the distinction between the high preservation area and preservation area of a wild river area, and the identification of floodplain and subartesian management areas to assist in the regulation of activities and resource allocations across the wild river area.

Clause 41(1) states that the high preservation area will include the wild river, its major tributaries, special features and a surrounding buffer.

The *major tributaries* will be determined using these guiding principles:

- the larger tributaries in the catchment, i.e. directly connected to the main stream;
- tributaries that contribute most of the flow volume to the mouth of the river; or

- tributaries that contribute or contain most of the ecologically significant flow to the system (for example, flows that trigger key breeding events of significant native flora and fauna).

Special features are hydrologically connected, off-stream elements of the river network that play a significant role in maintaining the natural values of the river. Examples include wetlands, floodplain complexes, connecting land surrounding a gorge, etc.

To preserve the riparian function, water quality and wildlife corridor values of the wild river, the Bill proposes that an area of up to one kilometre either side of the wild river; its major tributaries and special features will be included in the high preservation area. This buffer may vary in width from wild river to wild river. Clause 41(2) states the rest of the declared wild river area is to be known as the preservation area.

It is necessary to differentiate between the two areas because the river is particularly sensitive to changes in the high preservation area (given its proximity to the river) in relation to the effects or impacts of development and or resource use. Activities and resource use have a greater effect on the natural values of the wild river if carried out in close proximity to the river. It is for this reason that while some activities and resource allocations will be regulated in the preservation area, those that have the potential for the most harm will be prohibited in the high preservation area.

Clause 41(3) provides for the identification of floodplain or sub-artesian management areas. Each floodplain management area will cover a major floodplain unit(s) that requires particular rules in regard to managing interference with overland (floodplain) flows flowing out of or flowing into a wild river, or moving across the floodplain. Each sub-artesian management area will cover relevant sub-artesian aquifer(s) known to be hydrologically connected to the wild river. Generally these will be most prominent in river systems that depend heavily on groundwater discharge for base flows of the river.

#### **Clause 42 Effect of classification on particular development applications**

Clause 42(1) applies to development applications for material change of use and operational works for agricultural and animal husbandry activities in wild river areas. Historically agriculture has not been regulated to any great extent, although some local governments do incorporate some of these activities into their planning schemes. Although some animal husbandry is regulated under other Acts, there are no standard definitions of what constitutes agricultural activities or animal husbandry activities

and planning schemes differ in their approach. The potential for these activities to affect the natural features of a wild river (such as water quality and hydrologic processes) is potentially high.

Amendments to the *Integrated Planning Act 1997* will make agricultural activities and animal husbandry activities in a wild river area assessable development for the purposes of the *Integrated Planning Act 1997*. For this purpose, the Bill defines agricultural activities and animal husbandry activities. Wild river declarations will identify applicable codes for the assessment of these activities. Amendments make:

- a material change of use for agricultural activities or animal husbandry activities in a wild river area assessable by inserting in schedule 8, part 1, table 2, a new item 11;
- operational work for agricultural activities or animal husbandry activities in a wild river area assessable by inserting in schedule 8, part 1, table 4, a new item 10.

Clause 42(2) and 42(3) have the effect of prohibiting new agricultural activities and animal husbandry activities in the high preservation area of a wild river area. Applications for agricultural or animal husbandry activities in a high preservation area of a wild river area are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

Clause 42(4) provides that subsection 42(5) applies to the extent the application relates to development in the preservation area in the wild river area.

Clause 42(5) provides that despite the *Integrated Planning Act 1997*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

### **Clause 43 Effect of declaration on particular development applications**

Clause 43 applies to development applications for a material change of use, reconfiguration of a lot or operational works associated with urban, commercial or industrial development in a wild river area. Local governments will continue to assess these applications as assessment manager, however, in assessing the application must comply with the

applicable code for the development, mentioned in the wild river declaration.

For example, the code may set buffer zones and set backs from a watercourse or wetland in order to protect riparian vegetation and water quality. The codes will be developed in consultation with the relevant local authority. Other development (building works and plumbing and drainage works) is not captured by this provision.

#### **Clause 44 Relationship with other Acts**

Clause 44 provides that, except for the activities mentioned in clauses 42 and 43, the prohibition and regulation of activities and taking of natural resources in a wild river area are dealt with in those Acts that specifically regulate those activities. The Bill amends a number of these other Acts to provide the framework for the implementation of requirements relating to a wild river declaration.

## **Part 4 Exemption of particular projects from application of Act**

#### **Clause 45 Exemption of particular projects from application of this Act**

Clause 45 provides for the exemption of particular projects from the potential requirements of any future wild river declaration. The Aurukun mining and Papua New Guinea (PNG) pipeline projects, described in clauses 46 and 47, are the only projects to fall into this category. An exemption has been included for these projects because of their importance to Government and their potential to attract large investment interest.

This clause provides that this Bill, and any other Act (to the extent it regulates or prohibits an activity or the taking of a natural resource, for wild rivers purposes), does not apply to the Aurukun mining and Papua New Guinea (PNG) pipeline projects.

This clause does not negate the need for the above projects to in the future satisfy the requirements of another Act, to the extent it applies to those projects for purposes other than wild rivers purposes. For example, development permits could still be required by the *Integrated Planning Act 1997* for particular activities and works associated with the above projects.

**Clause 46 Meaning of Aurukun project**

Clause 46 describes the Aurukun project, stating that the proposed extraction, transportation and processing of bauxite and kaolin near Aurukun and Weipa is part of the project. The bauxite and kaolin are on land prescribed as “restricted area 315” (RA315) under the *Mineral Resources Regulation 2003*, schedule 3, part 188.

**Clause 47 Meaning of PNG pipeline project**

Clause 47 describes the PNG pipeline project as involving the proposed construction and operation of one or more pipelines to transport gas from the Southern Highlands of Papua New Guinea, across Torres Strait and Cape York Peninsula to other parts of the State. This pipeline may also be used to link to pipelines of other States. The project includes other works associated with the pipeline, for example, construction camps and roads, to enable the construction of the pipe or pipelines.

**Part 5 Miscellaneous****Clause 48 Meaning of specified works**

Clause 48 provides a definition of the term “specified works”.

These works include desnagging (the minimum necessary to allow safe navigation of a marked navigable channel), infrastructure and works prescribed under a regulation to be necessary for disaster management, and “transportation” infrastructure and works such as roads, railways, infrastructure for the transmission or distribution of electricity, pipelines, conveyor belts and cables. Additional “transportation” infrastructure not already included in the definition, may be prescribed under a regulation.

The terms “road” and “railway” are intended to include any type of road or railway. They are not intended to be constrained by the definitions of these terms that are contained in the *Transport Infrastructure Act 1994*.

The Bill makes amendments to a number of other Acts, requiring an assessment manager to refuse to receive development applications under the *Integrated Planning Act 1997* in certain circumstances. Most commonly, these restrictions apply to development that is proposed to be carried out in the high preservation area of a wild river area. The requirement that the assessment manager refuse to receive the development applications, effectively prohibits the development from taking place, as a development permit is required for the work to be carried out. These

provisions sometimes allow applications to still be lodged if the development is for “specified works”. Consequently, the development is not prohibited provided it is for “specified works”.

The exemptions discussed above only permit a development application to be lodged, in cases where it would otherwise have to be refused to be received. The specified works must still be assessed against all relevant requirements including any applicable codes, for the development, identified in the wild river declaration, in order to proceed.

#### **Clause 49 Delegation by Minister**

Clause 49 provides that the Minister may delegate powers under this Act to an appropriately qualified public service officer or employee.

#### **Clause 50 Delegation by chief executive**

Clause 50 provides that the chief executive may delegate powers under this Act to an appropriately qualified public service officer or employee.

#### **Clause 51 Regulation-making power**

Clause 51 provides for the Governor in Council to make regulations under the Bill. Regulations may be made to fix fees and charges under the Bill and for other purposes.

## **Part 6 Amendments of other Acts**

#### **Clause 52 Others Acts amended**

Clause 52 provides for Schedule 1 to amend other Acts.

### **Schedule 1 Consequential and minor amendments of other Acts**

The Bill amends a number of other Acts to provide the framework for the implementation of requirements relating to a wild river declaration.

In particular, the Bill makes amendments to a number of other Acts, requiring an assessment manager to refuse to receive development applications under the *Integrated Planning Act 1997* in certain circumstances. Most commonly, these restrictions apply to development

that is proposed to be carried out in the high preservation area of a wild river area.

The requirement that the assessment manager refuse to receive the development applications, effectively prohibits the development from taking place, as a development permit is required for the work to be carried out and it is not possible to obtain one (given that a development application cannot be properly lodged). The prohibition is applied at the time the development application is lodged, to prevent unnecessary processing and assessment of development applications that would otherwise have to be refused.

It is possible difficulties may arise for assessment managers when a development application is lodged for development on land described by reference to a lot and plan, and the land to which a prohibition applies (for example the high preservation area) covers only part of the nominated lot and plan. If the development application does not clearly indicate the part of the nominated lot and plan proposed to be used for the development, the assessment manager may be unsure whether the application is able to be received as a properly made application. To manage this issue, NR&M will consult with other departments about the possibility of making changes to the relevant development application forms.

Also, the provisions inserted by this Bill sometimes provide exemptions from the prohibitions discussed above, for example they may allow applications to still be lodged if the development is for “specified works”. These exemptions only permit a development application to be lodged, in cases where it would otherwise have to be refused to be received. The specified works must still be assessed against all relevant requirements including any applicable codes, for the development, identified in the wild river declaration, in order to proceed.

### **Amendment of the Coastal Protection and Management Act 1995**

Clause 1 of the Bill inserts a new sub-section 73(3) of the *Coastal Protection and Management Act 1995* to provide that any applications for the extraction of instream quarry material in wild river marine or tidal areas will have no effect. This will ensure consistency of regulation of instream mining within a wild river area, under relevant Acts.

Clause 2 of the Bill inserts a new section 104A, which has the effect of prohibiting, in a wild river area, new operational works in a coastal management district (listed in schedule 8, part 1, table 4, item 5 of the

*Integrated Planning Act 1997*) except for those operational works for specified works (as defined in the Wild Rivers Act). Applications for these operational works in a wild river area are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to operational works for specified works in the wild river area, then despite the identified sections in the *Integrated Planning Act 1997*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 3 of the Bill amends the schedule dictionary of the *Coastal Protection and Management Act 1999*. It provides for the addition of the meaning of specified works, wild river area and wild river declaration to be included. It makes reference to the provision that these definitions are provided for in the *Wild Rivers Act 2005*.

### **Amendment of the Environmental Protection Act 1994**

Clause 1 of the Bill inserts a new section 73(AA), which applies to development applications for a material change of use for an environmentally relevant activity (ERA) (other than those for mining or petroleum activities), and development for an ERA (other than those for mining or petroleum activities) for which a code of environmental compliance has been made under the *Environmental Protection Regulation 1998*, to the extent the ERA will occur in a wild river area.

Sub-sections 73AA(2) and (3) have the effect of prohibiting, in a wild river high preservation area, the development outlined above, for new ERAs. ERAs for dredging and extracting rock and other material are also prohibited in all watercourses and lakes in a wild river preservation area (not just the high preservation area). Applications for this prohibited development are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to development in the wild river preservation area which is not prohibited (that is, ERAs other than dredging and extracting rock and other material in watercourses and lakes),

then, despite the identified sections in the *Integrated Planning Act 1997*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 2 of the Bill inserts a new sub-section 93(2A) in the *Environmental Protection Act 1994* to ensure that for any environmental authorities issued for Level 2, code-compliant, petroleum activities in a wild river area, the conditions stated in the wild river declaration for that area must also be complied with.

Clause 3 renumbers section 97(b)(ii) to (vi) to 97(b)(iii) to (vii).

Clause 4 of the Bill inserts a new sub-section 97(b)(ii) in the *Environmental Protection Act 1994* to provide that when deciding whether to grant or refuse an application for a non-code compliant authority for petroleum activities in a wild river area, the administering authority must consider the wild river declaration for that area.

Clause 5 of the Bill provides for a new section 98(2) of the *Environmental Protection Act 1994* relating to non-code compliant environmental authorities for petroleum activities in a wild river area. It requires that the conditions of the authority, imposed by the administering authority, must include the conditions set out in the wild river declaration for the area.

Clause 6 renumbers 113(b)(ii) to (viii) to 113(b)(iii) to (ix).

Clause 7 of the Bill inserts a new sub-section 113(b)(ii) relating to criteria that must be taken into account when considering an application for a level 1 petroleum activity in a wild river area. The wild river declaration for the area must be taken into account when considering the granting or refusing of the application.

Clause 8 of the Bill amends sub-section 114(2) to provide that for level 1 petroleum activities in a wild river area, the conditions of the authority, imposed by the administering authority, must include the conditions set out in the wild river declaration for the area.

Clause 9 of the Bill inserts a new sub-section 150(ga) in the *Environmental Protection Act 1994* which relates to the application documents for an environmental authority (mining activities). The new provision provides that a wild river declaration is to be considered an application document, if any part of the mining tenement applied for relates to a wild river area.

Clause 10 of the Bill inserts a new sub-section 151(1)(c) in the *Environmental Protection Act 1994*. This amendment makes any mining project carried out in any part of a wild river area, except for those activities covered by a prospecting or a mining claim environmental authority, a level 1 mining project.

Clause 11 of the Bill inserts a new sub-section 151(2)(b)(iii) in the *Environmental Protection Act 1994*. This amendment ensures that for any mining project carried out in any part of a wild river area, only those activities covered by a prospecting or a mining claim environmental authority, is a level 2 mining project.

Clause 12 of the Bill inserts a new sub-section 162(2) in the *Environmental Protection Act 1994* that provides that when decisions are being made about an Environmental Impact Statement (EIS), the wild river declaration is taken to be part of the criteria for deciding if an EIS is required, where this is relevant. This will ensure that the wild river natural values are taken into account when deciding whether or not an EIS is required.

Clause 13 of the Bill inserts a new sub-section 163(3) in the *Environmental Protection Act 1994* that provides that when the Minister is deciding whether or not to overturn the decision about the requirement for an EIS, the wild river declaration is taken to be part of the criteria for making that decision, where this is relevant.

Clause 14 of the Bill provides for a new Division 3 in Chapter 5, part 2 of the *Environmental Protection Act 1994*. This division relates specifically to non-code compliant applications for environmental authorities for prospecting and mining claim activities in a wild river area, because the mining activities authorised by these authorities have the potential to cause an adverse effect on the natural values of a wild river area. Environmental management (EM) plans may be required for these applications, but this requirement will be considered individually in light of the potential impact of each application on the natural values of a wild river area.

A new section, 163A, provides for the application of division 3 to non-code compliant applications for an environmental authority (prospecting) or an environmental authority (mining claim), where these relate to mining activities in a wild river area.

A new section, 163B, provides for the decision about whether or not an EM plan will be required for the application for the prospecting or mining claim environmental authority. The administering authority when making the decision must consider the standard criteria and the wild river declaration for the area. If no decision is made within the required period,

it is taken that no EM plan is required. The required period is ten business days from the time the application is received or, if the authority gives written notice, there may be a longer period for the decision to be made.

Clause 15 of the Bill provides for a new section 169A regarding the effect of a decision to require an EM plan, on the processing of a non-code compliant application for a level 2 mining project. If an EM plan is required (under section 163B) then the administering authority must not decide the application until the EM plan process is complete.

Clause 16 of the Bill provides for the amendment of sub-section 170(4)(b), relating to non-code compliant applications for certain level 2 mining projects. This amendment provides that when deciding whether to impose additional conditions on the environmental authority, in addition to considering any Environmental Protection Policy requirement and the standard criteria, the administering authority must also, to the extent the application relates to mining activities in a wild river area, consider the wild river declaration for the area.

Clause 17 provides for the renumbering of sub-sections 171(2)(c) to (e) as sub-sections 171(2)(d) to (f).

Clause 18 of the Bill provides for new sub-section 171(2)(c) which requires a wild river declaration to be taken into account when deciding an application for an environmental authority for certain level 2 mining projects.

Clause 19 of the Bill provides for new sub-sections 171D(4) and (5). If an EM plan is required (under section 163B), the EM plan process must be completed before a draft environmental authority is issued for certain level 2 mining projects.

Clause 20 of the Bill provides for sub-sections 173(2)(b) to (d) to be renumbered as sub-sections 173(2)(c) to (e).

Clause 21 of the Bill provides for new sub-section 173(2)(b) which requires that when deciding whether or not to allow a non-code compliant application for an environmental authority (mining claim) for a level 1 mining project to proceed, a wild river declaration must be taken into account for that part of the application that falls within a wild river area. The part of a wild river declaration to be considered may include the natural values of the mining claim locality, or detail desirable buffers or offsets to watercourses and lakes.

Clause 22 of the Bill provides for new subsections 175(4) and (5). This provides that when preparing a draft environmental authority for a non-

code compliant application for an environmental authority (mining claim) for a level 1 mining project, if an EM plan is required (under section 163B), then the EM plan process must be completed before a draft environmental authority is issued.

Clause 23 of the Bill provides for a new section 176 to allow additional conditions to be imposed on certain environmental authorities (mining claim) for level 1 mining projects, if that is considered to be necessary or desirable. When considering additional conditions, the administering authority must consider the wild river declaration for a wild river area, where that is relevant.

Clause 24 of the Bill provides for a new sub-section 189(1)(da) that provides that an EM plan must state, for mining activities that will occur within a wild river area, how the applicant proposes to minimise any adverse effects on the wild river area of those mining activities.

Clause 25 rennumbers sub-sections 193(3)(b)(iii) and (iv) to 193(3)(b)(iv) and (v).

Clauses 26 of the Bill provides for new sub-section 193(3)(b)(iii) to provide that if an application relates to an environmental authority (exploration or mineral development) for a level 1 mining project, when deciding the application the administering authority must consider any wild river declaration that is relevant.

Clause 27 of the Bill provides for a new sub-section 203(1)(da) to provide that if a non-code compliant application relates to an environmental authority (mining lease) for a level 1 mining project, the EM plan must state, for mining activities that will occur within a wild river area, how the applicant proposes to minimise any adverse effects on the wild river area of those mining activities.

Clause 28 provides that sections 207(2)(c) and (d) are renumbered to 207(2)(d) and (e).

Clause 29 of the Bill provides for new subsection 207(2)(c) which requires that when deciding whether or not to allow a non-code compliant application for an environmental authority (mining lease) for a level 1 mining project to proceed, a wild river declaration must be taken into account for those parts of the application that fall within a wild river area.

Clause 30 of the Bill provides for a new sub-section 210(3)(b)(iii) relating to additional conditions that may be imposed on a draft environmental authority (mining lease) for a level 1 mining project. When considering

additional conditions, the administering authority must consider, where relevant, the wild river declaration for a wild river area.

Clause 31 of the Bill provides for sections 223(d) to (f) to be renumbered as 223(e) to (g).

Clause 32 of the Bill provides for new sub-section 223(d) which requires the tribunal to consider, when making an objections decision about a non-code compliant application for an environmental authority (mining lease) for a level 1 mining project, the relevant wild river declaration for any part of the application that falls within a wild river area. Objections can be received about matters such as the application for the environmental authority (mining lease), or the conditions included in the draft environmental authority (mining lease). This sub-section means that when making an objections decision (i.e. whether to approve the application, approve with different conditions or refuse) a wild river declaration must be taken into account, where relevant.

Clause 33 of the Bill provides for new sub-section 225(3)(c) which requires that when the EPA Minister decides whether or not to finally approve a non-code compliant application for an environmental authority (mining lease) for a level 1 mining project, which was objected to, that a wild river declaration must be taken into account for the part of the application that falls within a wild river area.

Clause 34 of the Bill provides for the addition of various definitions into the *Environmental Protection Act 1994*.

Clause 35 of the Bill changes the existing definition of environmental management plan, to take into account the plans that can now be required under section 163B for prospecting and mining claim activities.

### **Amendment of the *Fisheries Act 1994***

Clause 1 of the Bill amends sub-section 55(2) to require the chief executive to also have regard to any applicable wild river declaration when considering an application for an authority under the *Fisheries Act 1994*.

Clause 2 of the Bill provides new section 76DA, which applies to development applications for a material change of use for aquaculture assessed against the *Fisheries Act 1994* (i.e. not aquaculture assessed as an environmentally relevant activity), and operational work for waterway barrier works, to the extent that development will occur in a wild river area. Amendments have also been made to the *Integrated Planning Act 1997* to

make the above development in a wild river area, if it is currently self-assessable development, assessable development.

Sub-sections 76DA(2) and (3) have the effect of prohibiting, in a wild river high preservation area, new development as outlined above. Applications for this prohibited development are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to development in the wild river preservation area, this is not prohibited. For this development, despite the identified sections in the *Integrated Planning Act 1997*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

New section 76DB applies to development applications for operational work relating to removal, destruction, etc of marine plants, to the extent that development will occur in a wild river area. Amendments have also been made to the *Integrated Planning Act 1997* to make the above development in a wild river area, if it is currently self-assessable development, assessable development.

Sub-sections 76DB(2) and (3) have the effect of prohibiting, in a wild river area, development as outlined above unless it is for specified works (defined in the Bill) or necessary to install authorised works or infrastructure. Applications for any prohibited development are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to specified works (defined in the Bill) or necessary to install authorised works or infrastructure, despite the identified sections in the *Integrated Planning Act 1997*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

New section 76DC applies to development applications for building or operational work in declared fish habitat areas in wild river areas. Amendments have also been made to the *Integrated Planning Act 1997* to make the above development in a wild river area, if it is currently self-assessable development, assessable development.

Sub-sections 76DC(2) and (3) have the effect of prohibiting, in a wild river high preservation area, development as outlined above unless it is for specified works (defined in the Bill). Applications for any prohibited development are taken to not be properly made applications for the *Integrated Planning Act 1997* and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to specified works (defined in the Bill), the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 3 of the Bill provides for a new sub-section 90(1)(d) that provides that a person must not unlawfully release fish (as defined in the *Fisheries Act 1994*) in a watercourse in a wild river area, that are not native/endemic to the wild river area. This is to retain the genetic integrity of the fish population in the wild river area.

Clause 4 of the Bill inserts definitions in the Act to provide reference to the *Wild Rivers Act 2005*.

### **Amendments to the *Forestry Act 1959***

Clause 1 of the Bill inserts definitions in the Act to provide reference to the *Wild Rivers Act 2005*.

Clause 2 of the Bill provides for a new section 33A that requires the chief executive to prepare a management plan for the management of State forests, timber reserves and forest entitlement areas in a wild river area. When preparing this management plan the chief executive must have regard to any code developed under section 44A (see clause 3). Private forestry on freehold land will continue to be regulated through the *Vegetation Management Act 1999*.

Clause 3 of the Bill provides for the insertion of new section 44A that provides that the chief executive may approve a code of practice for the

getting of forest products in a wild river area, except for quarry material in a watercourse or lake (the taking of which is prohibited). This code may set buffer distances for different forest products.

A new section 44B provides that any leases, licences or permit granted for the getting of forest products must be in accordance with the code approved under 44A.

Clause 4 of the Bill provides for a new sub-section 55(2) to provide that licences for quarry material must be refused if they relate to a watercourse or lake in a wild river area. This effectively prohibits licences for instream quarrying from being issued under the *Forestry Act 1959*. This will ensure consistency across all legislation relevant to new instream mining.

Clause 5 of the Bill provides for a new sub-section 56(2A) to provide that the chief executive must refuse to grant a permit, licence, lease or other authority or enter an agreement or contract in relation to the getting of instream quarry material in a watercourse or lake in a wild river area. This will ensure consistency across all legislation relevant to new instream mining.

### **Amendments to the *Fossicking Act 1994***

Clause 1 of the Bill provides for the definitions of lake, and high preservation, preservation and wild river area to be inserted into Section 3 of the *Fossicking Act 1994*.

Clause 2 of the Bill provides for all of the high preservation area and all watercourses and lakes in the preservation area to be included in the definition of 'protected area'. This will effectively prohibit fossicking in all watercourses, lakes and high preservation areas of wild rivers. Given the impacts that fossicking activities can potentially have, this restriction will assist in the preservation of wild river natural values.

### **Amendments to the *Integrated Planning Act 1997***

Clause 1 of the Bill provides for a new item 11 in Schedule 8, part 1, table 2 that makes a material change of use of premises for agricultural or animal husbandry activities in wild river areas (as defined in the Bill), assessable development. This has the effect of making some activities that have traditionally not been assessable development under planning schemes or Schedule 8 of the *Integrated Planning Act 1977* (IPA), assessable development, therefore a development approval will now be required for those activities to start. This has been necessary due to the adverse effect of these agricultural activities and animal husbandry activities on the

natural values of rivers. Clause 42 of the Bill provides that development applications for these activities in the high preservation area of a wild river area will not be received. This effectively prohibits new agricultural and animal husbandry activities in the high preservation area of a wild river area. Clause 42 also provides that applications for a material change of use for agricultural and animal husbandry activities, to the extent that the premises is in the preservation area of a wild river area, must be assessed against the applicable code for those activities, identified in the wild river declaration for the area.

Clause 2 of the Bill allows operational work associated with taking or interfering with water in relation to overland flow and subartesian water in a wild river area to be made assessable development by a wild river declaration. Amendments have also been made to the *Water Act 2000* to prohibit, in a wild river high preservation area, this assessable development unless it is for town water supply or is operational work related to a granted water entitlement or water permit. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to operational work in a wild river preservation area, or, in a wild river high preservation area - town water supply or is operational work related to a granted water entitlement or water permit, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 3 of the Bill amends schedule 8, part 1, table 4, item 3(d) to include the provision that if a wild river declaration includes a floodplain management area, works that interfere with overland flow in the floodplain management area can be made assessable development for the purposes of the IPA by the wild river declaration. Floodplain management areas will be defined in a wild river declaration and are deemed to be drainage and embankment areas for the purposes of the *Water Act 2000*. A wild river declaration will also indicate, for this category of assessable development, the subcategories for which a development application can or cannot be lodged. Amendments have also been made to the *Water Act 2000* to prohibit, in a wild river floodplain management area, this assessable development unless it is for specified works (defined in the Bill) or is operational work which the wild river declaration states a development

application can be lodged for. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to specified works, or is operational work which the wild river declaration states a development application can be lodged for, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 4 of the Bill provides for a new item 10 in Schedule 8, part 1, table 4 that allows operational works for agricultural and animal husbandry activities (as defined in the Bill) to be made assessable development in wild river areas by a wild river declaration. This has the effect of making these works (that have traditionally not been uniformly assessable development under the IPA), development requiring a development permit before they can be carried out. This has been necessary due to the adverse effect of these agricultural activities and animal husbandry activities on the natural values of rivers. Clause 42 of the Bill provides that development applications for these works in the high preservation area of a wild river area will be not be received. This effectively prohibits new operational works for agricultural and animal husbandry activities in the high preservation area of a wild river area. Clause 42 also provides that applications for operational works for agricultural and animal husbandry activities, to the extent that the premises is in the preservation area of a wild river area, must be assessed against the applicable code for those activities, identified in the wild river declaration for the area.

Clause 5 of the Bill provides a new item 4 in Schedule 8, part 1, table 5 that makes development in a wild river area for an environmentally relevant activity (other than mining activities or a petroleum activity) for which a code of environmental compliance has been made under the *Environmental Protection Regulation 1998*), assessable development. This means that in a wild river area, these ERAs (previously self-assessable according to the code of environmental compliance) are now all assessable development, similar to ERAs without a code of environmental compliance. Amendments have also been made to the *Environmental Protection Act 1994* to prohibit, in a wild river high preservation area, this assessable development. ERAs for dredging and extracting rock and other material are also prohibited in all watercourses and lakes in a wild river preservation area (not just the high preservation area). Applications for any prohibited

development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to ERAs in a wild river preservation area (other than ERAs for dredging and extracting rock and other material in all watercourses and lakes in a wild river preservation area), the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 6 of the Bill amends the IPA schedule 8 to make building work in a declared fish habitat area, that is currently self-assessable, assessable development if it is in a wild river area. Therefore, A development permit will need to be obtained before this building work can start, in a wild river area. Amendments have been made to the *Fisheries Act 1994* to prohibit, in a wild river high preservation area, development as outlined above unless it is for specified works (defined in the Bill). Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to specified works (defined in the Bill), the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 7 of the Bill amends the IPA schedule 8 to make a material change of use for aquaculture, that is currently self-assessable, assessable development if it is in a wild river area. Therefore, a development permit will need to be obtained before this activity can start, in a wild river area. Amendments have been made to the *Fisheries Act 1994* to prohibit, in a wild river high preservation area, development as outlined above. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to a wild river preservation area, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the

development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clauses 8 of the Bill amends IPA Schedule 8 part 2, table 4, item 1(b) to provide that operational work for the taking of overland flow water and subartesian water in a wild river area is self-assessable if stated to be self-assessable in a wild river declaration. The declaration will also state whether any operational works for the taking of overland flow water and subartesian water in a wild river area are assessable development.

Clause 9 of the Bill replaces the existing IPA Schedule 8, part 2, table 4, item 1(c) to provide that operational works that interfere with overland flow water, in an area declared under *Water Act 2000* to be a drainage and embankment area, is self-assessable development if stated as self-assessable under the *Water Act 2000* or a wild river declaration. A floodplain management area defined in a wild river declaration is taken to be a drainage and embankment area for the *Water Act 2000*. The declaration will also state whether any operational works for interfering with overland flow water in a floodplain management area are assessable development.

Clause 10 of the Bill makes operational work for waterway barrier works, that is currently self-assessable, assessable development if it is in a wild river area. Therefore, a development permit will need to be obtained before these works can start, in a wild river area. Amendments have been made to the *Fisheries Act 1994* to prohibit, in a wild river high preservation area, development as outlined above. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to a wild river preservation area, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 11 of the Bill makes operational work in a declared fish habitat area, that is currently self-assessable, assessable development if it is in a wild river area. Therefore, a development permit will need to be obtained before these works can start, in a wild river area. Amendments have been

made to the *Fisheries Act 1994* to prohibit, in a wild river high preservation area, development as outlined above unless it is for specified works (defined in the Bill). Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to a wild river preservation area, or specified works in a wild river high preservation area, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 12 of the Bill makes operational work impacting on marine plants, that is currently self-assessable, assessable development if it is in a wild river area. Therefore, a development permit will need to be obtained before these works can start, in a wild river area. Amendments have been made to the *Fisheries Act 1994* to prohibit, in a wild river area, development as outlined above unless it is for specified works (defined in the Bill), or it is necessary and unavoidable to install other lawful works. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to, in a wild river area, specified works (defined in the Bill), or it is necessary and unavoidable to install other lawful works, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 13 of the Bill amends Schedule 8, part 2, table 5, item 1 to provide that development for environmentally relevant activities (other than mining and petroleum activities) for which a code of environmental compliance has been made, are only self-assessable outside a wild river area. This amendment is linked to the amendments made by clause 5 of the Bill (which provides a new item 4 in Schedule 8, part 1, table 5).

Clause 14 of the Bill amends an error in Schedule 8A, table 3, items 9 and 10.

Clause 15 of the Bill inserts a new item 11 in Schedule 8A, table 3 to provide that the chief executive administering the *Wild Rivers Act 2005* is the assessment manager for a development application relating to agricultural and animal husbandry activities in a wild river area if there is no other assessable development forming part of the development application.

Clause 16 of the Bill amends an error in Schedule 8A, table 4, items 4 to 7.

Clause 17 of the Bill inserts new items 10, 11 and 12 in Schedule 8A, table 4 to set out who is the assessment manager for development applications relating to development regulated under the *Vegetation Management Act 1999*, the *Water Act 2000* and the *Wild Rivers Act 2005*, if there is no other assessable development forming part of the development application.

Clause 18 of the Bill inserts definitions in Schedule 10 for wild river areas and declarations that are defined in the *Wild River Act 2005*.

### **Amendments to the *Land Protection (Pest and Stock Route Management) Act 2002***

Clause 1 of the Bill inserts a new sub-section 78(7)(h) in the *Land Protection (Pest and Stock Route Management) Act 2000*. This provides that a wild river area is to be considered an environmentally significant area for the purposes of pest control notices. This provision recognises that a wild river area is environmentally significant, due to its high level of natural values. An environmentally significant area can have pest control notices issued which requires the landholder to remove or otherwise address any specified pest or weed.

Clause 2 of the Bill inserts a definition for wild river area.

### **Amendments to the *Minerals Resources Act 1989***

Clause 1 of the Bill provides a new section 391AA which sets out the restrictions applying to the grant of mining tenements, and renewals of mining tenements, in the following parts of declared wild river areas:

- the high preservation area;
- any watercourse or lake in a wild river area.

The new sections 391AA(1) and (2) have the effect that applications for the following can be approved:

- the renewal of a mining claim anywhere in a wild river area (including watercourses and lakes); and

- the grant and renewal of a specific type of exploration permit (that is, restricted to limited hand sampling techniques as further defined in this section of the Bill) in watercourses and lakes in a wild river area and on land only in the wild river preservation area (that is, not on land in the wild river high preservation area).

These sections do not otherwise affect the granting of mining tenements in the wild river preservation area outside of watercourses or lakes.

Currently applications for the renewal of a mining claim are permitted to be granted. Under the *Mineral Resources Act 1989*, those tenements must be renewed if certain requirements of the legislation are met. Similar rights do not exist for other mining tenements. The amendment is therefore consistent with these current rights under the *Mineral Resources Act 1989*.

In relation to exploration permits, the amendment provides that this restricted form of exploration permit can be applied for because it is recognised this activity has very limited impact on the natural values of a wild river, and in addition it may be a necessary part of a larger exploration program sourcing a mineral deposit elsewhere in the catchment. Subsection (5) includes a specific definition for limited hand sampling techniques for exploration for this section.

These restrictions apply to applications lodged after a wild river area is declared and applications placed on hold as a result of a moratorium that applied prior to the wild river area being declared.

These restrictions in high preservation areas and watercourses and lakes in wild river areas are similar to the restrictions that can be applied in restricted areas under the *Mineral Resources Regulation 2003*.

The new section 391AA(3) provides that the restrictions outlined above, do not apply to applications relating to projects for which a special agreement Act (e.g. *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*) was enacted, and which the special agreement Act allows to be made. This exemption has been included in the Bill because it is not intended to restrict rights to apply for and be granted mining tenements that may exist under these Acts, to the extent those rights apply to the projects for which the special agreement Acts were enacted.

### **Amendments to the *Nature Conservation Act 1992***

Clause 1 of the Bill provides for a new sub-section 117(1)(A) in the *Nature Conservation Act 1992*. This sub-section provides that final management plans for protected areas under the *Nature Conservation Act 1992* will have

to be consistent with any wild river declaration that applies to all or part of the protected area unless the management plan provides a greater level of environmental protection. In some instances a wild river may form part or all of a declared protected area under the *Nature Conservation Act 1992*.

Clause 2 of the Bill provides for a definition for wild river declaration to be inserted in the dictionary.

### **Amendments to the *State Development and Public Works Organisation Act 1971***

These provisions ensure development applications associated with projects declared to be significant projects under the *State Development and Public Works Organisation Act 1971* will be assessed where appropriate against applicable codes identified in a wild river area declaration.

Clause 1 of the Bill provides for a new sub-section 37A in the *State Development and Public Works Organisation Act 1971*. Development applications for a significant project which this section applies to will have a limited information and referral stage, to ensure the development application can be assessed against applicable codes identified in a wild river area declaration. In the event that there is any inconsistency between the conditions proposed in the Coordinator-General's report and the referral agency's conditions, then the referral agency's conditions prevail (sub-section 37A(3)).

Clause 2 of the Bill provides for new sub-sections 39(3A) to (3C) in the *State Development and Public Works Organisation Act 1971*. These provisions ensure if a development application is lodged in relation to a significant project after a wild river area is declared, for development within that wild river area, the assessment manager can still assess the application against the relevant wild rivers applicable codes and apply conditions (consistent with those codes) that may be inconsistent with the conditions originally applied by the Coordinator-General's report. Sub-section 39(3C) provides in the event of any inconsistency between the conditions applied under sub-section 39(3B) and 39(1)(a), then the conditions applied under subsection 39(3B) (the wild rivers conditions) prevail.

Clause 3 of the Bill provides for a new sub-section 138(3A) in the *State Development and Public Works Organisation Act 1971*. This provides that despite sub-section 138(1) if a wild river declaration has been approved for an area, then the Coordinator General cannot raise or lower the level of the water in any body of water, or, take, impound, divert or use, either

permanently or temporarily the water in any body of water, without a proper authorisation. This is consistent with the current provisions in relation to a finalised water resource plan under the *Water Act 2000*.

Clause 4 of the Bill provides for the addition of definitions into the *State Development and Public Works Organisation Act 1971*.

### **Amendments to the *Transport Infrastructure Act 1994***

The amendments, together with other related consequential amendments to other legislation under the Bill, are directed at prohibiting new instream mining and stream realignment activities in a wild river area. This recognises the adverse effects of stream alignment activities and the removal of sand and gravel from a watercourse on the natural values of a wild river. However, the provisions do not prevent extraction of quarry material from non-watercourse and lake localities.

Clause 1 of the Bill provides for a new sub-section 35(2). Currently section 35 provides that under temporary occupation and use of land for the purposes of carrying out road works, the chief executive can do anything on that land that is necessary or convenient. The new sub-section provides that despite this, quarry material must not be extracted from a watercourse in a wild river area. Note that in the *Transport Infrastructure Act 1994* the definition of watercourse includes lakes.

Clause 2 of the Bill provides a new sub-section 39(4). Currently section 39 allows the chief executive to divert a watercourse or construct a watercourse, whether temporary or permanent, when carrying out road works. The new sub-section provides that the chief executive is not authorised to divert or re-align a watercourse or extract quarry material from a watercourse in a wild river area.

Clause 3 of the Bill provides for a new sub-section 167(4). Section 167 relates to railway work in watercourses. With approval, diversion or construction of watercourses is normally allowed. The new sub-section provides that despite this, approval for the realignment of a watercourse or extraction of quarry material will not be granted in a wild river area.

Clause 4 of the Bill provides for a new sub-section 306(3). Section 306 relates to busway transport infrastructure works in watercourses. With approval, diversion or construction of watercourses are normally allowed. The new sub-section provides that despite this, approval for the realignment of a watercourse or extraction of quarry material will not be granted in a wild river area.

Clause 5 of the Bill inserts definitions into Schedule 6 of the *Transport Infrastructure Act 1994*.

### **Amendments to the *Vegetation Management Act 1999***

Clause 1 of the Bill provides for a new sub-section 16(8). To sufficiently regulate vegetation clearing in the wild river high preservation area, the area is taken to be an area of high nature conservation value under the *Vegetation Management Act 1999*. The process to declare an area of high nature conservation value as outlined in the *Vegetation Management Act 1999* need not be duplicated as consultation about wild river declarations is very similar to that required under the *Vegetation Management Act 1999* and it would be repeating a similar process if both consultation requirements were to occur.

Clause 2 of the Bill provides for new sub-sections 17(1A) and 17(2A) to provide that in addition to areas of high nature conservation value and areas vulnerable to land degradation, a high preservation area of an area declared to be a wild river area is taken to be an area of high nature conservation value. A code prepared for vegetation clearing as part of the wild river declaration is the code required under sub-section 17(2).

Clause 3 of the Bill provides for new Part 2, division 4, sections 19A to 19C allowing declared area codes to be amended.

Section 19A provides for the standard process to amend a declared area code. This process requires a full consultation process as set out in the *Vegetation Management Act 1999* similar to the amendment of the regional vegetation clearing codes.

Section 19B provides for the Governor in Council to approve an amended declared area code by Gazette notice, that copies of the amendment must be kept in all relevant departmental offices during working hours, and that a person can buy a copy of the amendment for a set fee.

Section 19C provides for the amendments of a declared area code, without undergoing a full consultation process, if the amendment is minor, is not a change of substance, or is a change of a type mentioned in the code.

Clause 4 of the Bill provides for a new sub-section 22A(2A) of the *Vegetation Management Act 1999*. The sub-section provides a list of purposes for which an application for vegetation clearing would not be a properly made application. If the application is for those purpose(s) listed, despite section 3.2.1 of the *Integrated Planning Act*, the application is taken to be not properly made and must not be accepted.

For wild rivers, the list of purposes for which applications may be received has been reduced from the current list in the *Vegetation Management Act 1999*. From the time of the notice of intent, applications for vegetation clearing in the high preservation area will only be accepted for the following purposes listed in the *Vegetation management Act 1999*:

- necessary to control non-native plants or declared pests; or
- to ensure public safety; or
- for establishing a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site for the fence, firebreak, road or infrastructure; or
- a natural and ordinary consequence of other assessable development for which a development approval as defined under the *Integrated Planning Act 1997* was given, or a development application as defined under the *Integrated Planning Act 1997* was made, before 16 May 2003; or
- for clearing of encroachment.

Applications for vegetation clearing in the proposed high preservation area will not be accepted for the following purposes:

- a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26; or
- for fodder harvesting; or
- for thinning; or
- for an extractive industry; or
- for clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes.

There has been a reduction in the number of purposes that can be applied for to clear native vegetation because the high preservation area of a proposed wild river area is considered to be of particular significance in maintaining the natural values of the wild river. Purposes such as thinning, and the clearing of regrowth, are not appropriate for the high preservation area because of the high level of biophysical importance, including connectivity, that is placed on the high preservation area of a wild river.

Clause 5 of the Bill provides additions to the Schedule to provide for the definitions of wild river high preservation area, wild river area and wild river declaration that are listed in the *Wild Rivers Act 2005*.

**Amendments to the *Water Act 2000***

Clause 1 of the Bill provides for a replacement sub-section for sub-section 20(6) of the *Water Act 2000* to include the provision that a person may take overland flow water or take or interfere with subartesian water unless a wild river declaration, wild river moratorium or regulation limits or alters the water that may be taken. This provision adds a wild river declaration to the list of mechanisms that can regulate the taking of overland flow water or taking or interfering with subartesian water.

Clause 2 of the Bill provides for a new sub-section 46(5) that requires the contents of a draft water resource plan to be consistent with a wild river declaration that applies to part or all of the proposed plan area. This will ensure that the provisions in the water resource plan will not take precedence over an existing wild river declaration.

Clause 3 of the Bill inserts a sub-section 47(ba) to include the contents of any wild river declaration in matters the Minister must consider when preparing a draft water resource plan.

Clause 4 of the Bill inserts a new sub-section 55(2A) that provides that the Minister may amend a water resource plan if it is inconsistent with a wild river declaration only in regards to the matters mentioned in section 14(1)(h) to (l) or (2) of the Bill. This is possible because of the consultation process that is required as a part of developing a wild river declaration.

Clause 5 of the Bill provides for a new sub-section 57(c) which provides that the Governor in Council can approve amendments to a water resource plan to make it consistent with a wild river declaration in regards to the the matters mentioned in section 14(1)(h) to (l) or (2) of the Bill.

Clause 6 of the Bill inserts a sub-section 98(6) to provide that a draft resource operations plan must not be inconsistent with a wild river declaration.

Clause 7 of the Bill inserts a sub-section 99(ca) to include the contents of any wild river declaration in matters the chief executive must consider when preparing a draft resource operations plan. This is to ensure consistency between the two planning processes.

Clause 8 of the Bill inserts a new sub-section 106(c) to provide that the Governor in Council can approve an amendment of a resource operations plan so that it is consistent with an amended water resource plan or wild river declaration, without having to go through the full process of amendment of a resource operations set out in the *Water Act 2000*. This is

possible because of the consultation process that is required as a part of developing a wild river declaration.

Clause 9 of the Bill replaces section 205 to provide that certain decisions made by the chief executive must be in accordance with a water resource plan or a resource operations plan as well as a relevant wild river declaration. This is to ensure consistency with decision making in a wild river area that may also have a water resource plan or resource operations plan.

Clause 10 of the Bill amends the heading of this section so the section applies also to the granting of a licence under wild river declaration process.

Clause 11 of the Bill amends section 212(1) to include that a wild river declaration may also include a process for the future allocation of water.

Clause 12 of the Bill inserts a new sub-section 266(4) to set out the rules by which a riverine protection permit must be dealt with within a wild river area. If the application relates to a wild river area, the application is taken to not be made and therefore must not be accepted unless it is for an activity to control non-native plants and pests, or for specified works (as defined in the Bill) or if the activity doesn't require a development permit or if one is already held. For the purposes of wild rivers, the definition of vegetation now includes dead vegetation. This restriction on the type of applications that can be received is to assist in the preservation of instream integrity of watercourses in a wild river area, while recognising that some activities (e.g. those related to carrying out specified works (as defined in the Bill)) will need to occur.

Clause 13 of the Bill inserts a new sub-section 280(3) which provides that applications for the granting of an allocation of quarry material in any watercourse or lake in a wild river area will be taken not to be made. This means the application can not be accepted or received. This does not apply to renewals of existing quarry material permits.

Clause 14 of the Bill inserts a new sub-section 814(2AA) (a) and (b). Section 814 sets out the provisions for destroying vegetation, excavating and placing fill without a permit. Sub-section 814(2) (a)(viii) provides that if a regulation is in place, a permit is not needed. The amendment provides that despite this provision, this exemption does not apply to a wild river area. This recognises that any regulation (exempting the requirement of a permit) that may have previously been given for the activities stated above would not necessarily have recognised the high level of natural values that exist in a wild river area. In addition a new sub-section (2AB) is inserted to

provide that despite section 17(2)(b) of the Bill, the requirements for a riverine protection permit apply.

Clause 15 of the Bill amends sub-section 851(2) to provide that an interested person (as defined in the *Water Act 2000*) may only appeal a decision about a wild river declaration if a different decision, consistent with the declaration, could have been made.

Clause 16 of the Bill replaces sub-section 966(1)(c) which refers to operational work in a drainage and embankment area controlling the flow of water into or out of a watercourse, lake or spring. The intent of the current sub-section is to control the flow of water into or out of a watercourse immediately adjacent to the watercourse. The new sub-section replaces the previous provision with a provision that makes reference to only operational work in a drainage and embankment area. The reference to the controlling the flow of water into or out of a watercourse, lake or spring is deleted because in wild river areas, the floodplain management areas (which will be taken to be drainage and embankment areas for the purposes of the *Water Act 2000*) may not lie immediately adjacent to the watercourse. Some floodplains can extend laterally from a watercourse for kilometres while still carrying flow that ends up in the main stem of the system. While there may not be an immediate link between the area covered by the drainage and embankment area and a watercourse, interference with overland flow through this area can still have an effect on the hydrological, riparian and floodplain health of the wild river catchment.

Clause 17 of the Bill inserts new clauses 966A, 966B and 966C. Clause 966A has the effect of prohibiting in a wild river high preservation area operational work associated with taking or interfering with water in relation to overland flow water and subartesian water unless it is for town water supply or is operational work related to a granted water entitlement or water permit. Applications for any prohibited development are taken to not be properly made applications for IPA and accordingly the assessment manager must refuse to receive the application. To the extent the application relates to operational work in a wild river preservation area, or, in a wild river high preservation area - town water supply or is operational work related to a granted water entitlement or water permit, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 966B has the effect of prohibiting in a floodplain management area operational work in relation to interfering with overland flow water in the floodplain management area unless it is for operational work for specified work (as defined in the Bill) or is operational work which the wild river declaration states a development application can be lodged for. A wild river declaration will also indicate, for this category of assessable development, the subcategories for which a development application can or cannot be lodged. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

To the extent the application relates to specified works, or is operational work which the wild river declaration states a development application can be lodged for, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code, for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

Clause 966C has the effect of prohibiting development in relation to the removal of instream quarry material in a wild river area. Applications for any prohibited development are taken to not be properly made applications for the IPA and accordingly the assessment manager must refuse to receive the application.

Clause 18 of the Bill amends sub-section 967(4)(c) to provide that a development permit for IPA approval for development is subject to the permit being in accordance with the requirements of a wild river declaration.

Clause 19 of the Bill provides for a new section 1013C, floodplain management areas. A floodplain management area is taken to be a drainage and embankment area for the purposes of the *Integrated Planning Act 1997*. This provides a mechanism by which works in relation to overland flow water on the floodplain can be regulated.

Clause 20 of the Bill provides for a new sub-section 1014(2)(ga) to provide for a regulation to state a process for the granting or otherwise dealing with unallocated water in a wild river area.

Clause 21 of the Bill provides for a new sub-section 1046(8) to provide that a subartesian management area in a wild river area is taken to be a sub-artesian area for the *Water Act 2000*.

Clause 22 of the Bill provides for amendments to Schedule 4 of the *Water Act 2000* to include definitions of words relating to specific provisions relating to wild river areas. References are made to the *Wild Rivers Act 2005* for information on the definitions of these words except for declared pests, which is defined in the *Land Protection (Pest and Stock Route Management) Act 2002*.

Clause 23 of the Bill provides for a change of an existing definition in the *Water Act 2000*. The definition of vegetation includes dead vegetation in a wild river area. This change in definition was required in order to prohibit and/or regulate the clearing of instream dead vegetation that provides important habitat for aquatic organisms as well as the role it plays in hydrologic and geomorphic processes.

## **Schedule 2    Dictionary**

The schedule to the Act contains definitions necessary for interpretation of the Act. Most of the definitions refer to defined terms in other Acts.