

Gasfields Commission Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the Gasfields Commission Bill 2012.

Policy objectives and the reasons for them

The objective of the Bill is to provide for the establishment of the Gasfields Commission (the Commission) and prescribe the Commission's membership, objectives, functions, powers and obligations. As stated in the Bill, the objective of the Commission is to facilitate better relationships between landholders, regional communities and the onshore gas industry in Queensland.

The Bill also provides the necessary head of power for the statutory appointments of the Gasfields Commissioner (the chairperson), the Commission's part-time commissioners and the general manager by the Governor in Council. The Bill details the functions of the Commission, and provides it with the necessary powers it requires to achieve its functions.

Queensland is strong exponential growth in the onshore gas industry. Landholders and communities have expressed concerns associated with this industry, including apprehension about water and land contamination and the impact on social infrastructure.

The gas and agriculture sectors are very important to the government and constitute two of the four pillars of the economy. Establishing the Gasfields Commission was an election commitment and its purpose is to manage and improve the sustainable coexistence between landholders, regional communities and the onshore gas industry.

Achievement of policy objectives

To achieve its objectives, the Bill will establish the Gasfields Commission and set out its powers and functions. The Commission will work with landholders, regional communities and the onshore gas industry in Queensland to facilitate better relationships between all parties as the industry evolves.

The Commission will achieve its objective by:

- making recommendations to the relevant Minister that regulatory frameworks and legislation relating to the onshore gas industry be reviewed or amended;
- making recommendations to the relevant Minister and onshore gas industry about leading practice or management relating to the onshore gas industry;
- advising the Minister and government entities about matters relating to the onshore gas industry;

- advising Minister and government entities about the ability of landholders, regional communities and the onshore gas industry to coexist within an identified area;
- obtaining information from government entities, landholders and relevant entities;
- obtaining advice about the onshore gas industry or functions of the Commission from government entities;
- partnering with other entities for the purpose of conducting research related to the onshore gas industry;
- publishing educational materials and other information about the onshore gas industry;
- reviewing the effectiveness of government entities in implementing regulatory frameworks that relate to the onshore gas industry; and
- convening advisory bodies to assist the Commission to perform any of the above functions.

Alternative ways of achieving policy objectives

The establishment of a Gasfields Commission is a key election commitment and was part of the First 100 Day Action Plan. The Commission is now operational however legislation is required to formally establish the Commission as a statutory body and provide it with the powers necessary to meet its objective. Legislation is the only option that will provide the head of power to appoint the chairperson, commissioners and general manager and provide the required powers which will otherwise delay or prohibit the continuation of the already established Gasfields Commission.

Estimated cost for government implementation

The Cabinet Budget Review Committee (CBRC) has approved the expenditure of \$2.5M for the first 12 months of the Commission's operation. Ongoing funding is still to be determined and will be the subject of a submission to CBRC.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the Fundamental Legislative Principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Community

Public consultation on the proposed role, functions and powers of the Commission was undertaken between 19 April 2012 and 25 May 2012.

Fifty-five submissions on the powers and functions of the Commission were received by the closing date of 25 May 2012. The Government and the Commission carefully reviewed the submissions and took them and other results of public consultation into account when developing the proposed powers and functions suggested in this submission.

The majority of the submissions suggested the focus of the Commission should be on health impacts, water quality, food security and land access arrangements. There was also a focus on dispute resolution, scientific research, and education. Thirteen submissions were identical and expressed negative views about the coal seam gas (CSG) industry. These submissions support a 12 month moratorium on CSG projects and suggest that landholders should have the right to refuse mining companies entry to their land.

The Commissioners reviewed the submissions and in addition to the views expressed in these submissions, considered that it would require statutory powers to compel information from parties and be a compulsory stakeholder for legislation and policies relevant to the onshore gas industry..

The peak bodies, AgForce, Queensland Farmers' Federation, Queensland Resources Council and the Australian Petroleum Production and Exploration Association are all supportive of the establishment of the Commission.

Government

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel, the Department of the Premier and Cabinet and Queensland Treasury and Trade, the Department of Natural Resources and Mines, the Queensland Water Commission, the Department of Environment and Heritage Protection and the Department of Justice and Attorney-General. Government agencies are generally supportive of the proposals outlined in the Bill.

Consistency with legislation of other jurisdictions

The legislation for the Gasfields Commission is consistent with legislation in other jurisdictions.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 provides that the ‘Short title’ of the Act may be cited as the *Gasfields Commission Act 2012*.

Purpose

Clause 2 provides the purpose of this Act is to establish the Gasfields Commission to manage and improve the sustainable co-existence of landholders, regional communities and the onshore gas industry in Queensland.

Act binds all persons

Clause 3 confirms that the Act binds all persons, including the State.

Definitions

Clause 4 provides that the dictionary in the schedule defines particular words used in the Act.

Part 2 Gasfields Commission

Division 1 Establishment, functions and powers of Commission

Establishment of Commission

Clause 5 provides the establishment of the Gasfields Commission.

Commission’s functions

Clause 6 sets out the functions of the Commission.

Commission's powers

Clause 7 states that the Commission has the powers necessary or convenient to perform the Commission's functions. The Commission also has the other powers given to the Commission under this or another Act.

Division 2 Membership

Membership of the Commission

Clause 8 determines the membership numbers and the appropriate requirements of the Commissioners under the Commission. The membership of the Commission must include a full-time Commissioner who is the chairperson and up to six part-time Commissioners. In deciding whom to recommend to the Governor in Council for appointment, the Minister must be satisfied that each person nominated for appointment is qualified under section 9 and that the Commissioners will include a Commissioner who represents the interest of landholders; a Commissioner who represents the interests of communities in which the onshore gas industry operates and a Commissioner who represents the onshore gas industry. This provision will ensure that the interests of the relevant parties are represented within the Commission. The Commissioners are appointed by the Governor in Council.

Eligibility for appointment as a Commissioner

Clause 9 provides that a Commissioner must possess certain qualifications or experience in a required field to be a Commissioner. The relevant fields include the onshore gas industry; a branch of science relating to the exploration or production of petroleum or the impact of those activities on the environment; legal practice relevant to the exploration or production of petroleum; negotiations between landholders and the onshore gas industry; land management; land valuation; community development; the financial and business sector. This provision will ensure that appointed Commissioners have relevant knowledge or experience to carry out their duties.

Term of appointment

Clause 10 provides that a Commissioner is appointed for a term, not longer than three years, stated in the Commissioner's instrument of appointment. A Commissioner may be reappointed.

Conditions of appointment

Clause 11 sets out the conditions of remuneration and allowances for a Commissioner. A Commissioner is to be paid the remuneration and allowances decided by the Governor in Council and the Commissioner holds office on terms and conditions not provided for by this Act, that are decided by the Governor in Council. The Commissioners are appointed under this Act and not the *Public Service Act 2008*.

Resignation

Clause 12 provides that a Commissioner may resign by signed notice given to the Minister.

Termination of appointment

Clause 13 provides that the Governor in Council may remove a Commissioner from office at any time for any reason or no reason.

Leave of absence

Clause 14 provides that the Minister may grant leave to the chairperson in accordance with entitlements available to the chairperson under the chairperson's conditions of office. The chairperson may also grant leave to a part-time Commissioner in accordance with the entitlements available to the part-time Commissioner under the part-time Commissioner's conditions of office.

Acting chairperson

Clause 15 provides that the Minister may appoint a person qualified for appointment as the chairperson to act as the chairperson. This may occur during a vacancy in the office or during any period when the chairperson is absent from duty or from the State, or for another reason, can not perform their duties. The chairperson may appoint a part-time Commissioner to act as the chairperson during a period of no longer than 14 days, when the chairperson is absent from duty or from the State, or for another reason, can not perform the duties of the office.

Preservation of rights

Clause 16 applies if a person is appointed as a Commissioner and the person resigns from their role as a public servant to accept appointment as a commissioner. The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the Commissioner were a continuation of service as a public service officer. Section 16(3) outlines the entitlements of the person at the end of their term of office or on resignation, for example, salary level.

Division 3 Disclosure of interests by Commissioners

Disclosure of interests

Clause 17 applies if a Commissioner or their close relative has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission and that interest could conflict with the proper performance of the Commissioner's functions for the matter.

The Commissioner must, as soon as practicable disclose the interest to, in the case of the chairperson, all the other Commissioners or in the case of a part-time Commissioner, disclose to the chairperson. The maximum penalty is 100 penalty units.

If a Commissioner has disclosed an interest relating to a matter, they must not participate in the Commission's consideration of the matter. The maximum penalty is 100 penalty units.

Division 4 Commission board meetings

Commission board Meetings

Clause 18 provides that the chairperson must convene a meeting of Commissioners (a *Commission board meeting*) at least six times each year.

Purposes of Commission board meetings

Clause 19 provides that the Commission board meetings are to ensure the Commission performs its functions and exercises its power in an appropriate, effective and efficient way; to set the strategic priorities of the Commission and to develop plans to address key issues being considered by the Commission.

Conduct of Commission board meetings

Clause 20 provides the conduct of Commission board meetings including times and places of meetings to be decided by the chairperson. The chairperson must preside at all meetings at which the chairperson is present. If the chairperson is absent from a Commission board meeting, another commissioner chosen by the Commissioners present must preside. The clause also provides for the quorum for meetings which is stated to be the chairperson and three part-time Commissioners. Subject to this Act, the Commission may conduct its meetings in the way it considers appropriate.

Part 3 Particular powers of the Commission

Division 1 Powers relating to government entities

Power to require particular information from government entities

Clause 21 provides that the chairperson may request information from a government entity by written notice. The chairperson may request information in the government entity's possession or control that relates to the onshore gas industry and a function of the Commission. The clause also outlines that the Commission must provide a reasonable time to the entity to respond, which is stated as at least 10 business days, by which the information must be given. The government entity must comply with a request made of it under subclause (1) unless exempt under subclause (3), because for example, complying with the request would place the entity in contravention of a law. If any of these exemptions apply, the entity must inform the Commissioner in writing relating to this provision. The purpose of this provision is to enable the Commission to obtain appropriate information relevant to a matter that is relevant to the onshore gas industry and consistent with the functions of the Commission.

Power to require advice

Clause 22 provides that the chairperson may, by written notice, require the chief executive of a government entity to provide advice to the chairperson of the Commission. This can occur

if the advice relates to a function of the Commission and relates to a function of the government entity; and is something about which the chief executive could reasonably be able to provide advice. The chief executive must, within a reasonable time, comply with a request made of him or her under subclause (1) unless complying with the requirement would place the chief executive or entity in contravention of a law or the requirement relates to someone else's confidential information and the other person has refused to consent to it being disclosed to the Commissioner despite the entity's reasonable efforts to obtain the consent. This provision clarifies the type of relevant information the Commission can require of a government entity as advice.

Compulsory consultation

Clause 23 provides that a government entity that is developing policy or legislation intended to affect the onshore gas industry must consult with the Commission about the proposed policy or legislation during the development. However, while it is Parliament's intention that this provision is complied with, this clause is directory only and does not create rights or impose legally enforceable obligations on the State, government entity or anyone else. Additionally, failure to comply with this clause does not affect the validity of any decision. This consultation is essential to ensure that government has a consolidated approach to achieving the best outcomes for landholders, regional communities and the onshore gas industry in Queensland.

Division 2 Powers relating to landholders, onshore gas operators and other entities

Power to require particular information from prescribed entities

Clause 24 provides that the chairperson may, by written notice, require a prescribed entity to give the chairperson particular information. This includes stated documents or information (the *relevant material*), or stated types of documents or information in its possession or control that the Commission reasonably requires for the effective and efficient carrying out of the Commission's functions; or access to the relevant material. The notice must state how, and a reasonable period by which, the relevant material, or access to the relevant material, must be given. The clause states that an entity given a notice under subclause (1) must comply with the notice, unless the exemptions of subclause (3) applies: for example, where complying with the requirements would place the entity in contravention of a law. This had a maximum penalty of 100 penalty units.

Division 3 Other

Publishing information

Clause 25 provides that the Commission may publish any information relevant to the purpose or function of the Commission. However, the Commission must not publish any confidential information under subclause (1). The purpose of this provision is to ensure that the public has access to information and statistics on the onshore gas industry gathered by the Commission.

Advisory bodies

Clause 26 provides that the chairperson may establish the advisory boards he or she considers appropriate. The ability to establish advisory boards will provide the chairperson or Commission with additional or technical advice about a matter relevant to a function of the Commission or feedback about advice the Commission proposes to give a Minister or government entities. This will enable to Commission to gather information or obtain advice from an advisory body to ensure the best outcome for landholders, regional communities and onshore gas operators.

Gasfields community leaders council

Clause 27 states that the Commission must establish a committee (the *Gasfields community leaders council*) for the purpose of assisting the Commission to identify issues affecting the co-existence of landholders, regional communities and the onshore gas industry in Queensland. The Gasfields community leaders council is to consist of the Commission chairperson and other individuals that the chairperson is satisfied represent local governments, regional communities and the onshore gas industry. The chairperson is to preside at meetings of the Gasfields community leaders council.

Part 4 Administration

General Manager

Clause 28 provides that the Commission must employ a general manager under this Act (and not the *Public Service Act 2008*). The Commission may at any time remove the general manager from office for any reason or no reason. Clause 16 (Preservation of Rights) applies if a reference to appointment as a Commissioner were a reference to employment as the general manager. The general manager is responsible for the financial administration of the Commission and directing the other staff of the Commission. However, the general manager may authorise spending by the Commission during a financial year only under the budget for that year, unless the Minister otherwise approves. The chairperson may also direct the general manager about helping the Commissioners perform the Commission's functions. Subclause 5 does not prevent the attachment of the Commission to a department to ensure the Commission is supplied with the administrative support services it requires to perform its functions effectively and efficiently.

The chairperson may appoint a person, other than the Commissioner, to act in the office of general manager during any vacancy in the office or any period when the general manager is absent from duty or can not perform the functions of the office for another reason.

Commission staff

Clause 29 states that the Commission may employ other staff it considers appropriate to perform its functions. The other staff are to be employed under the *Public Service Act 2008*.

Alternative staffing arrangements

Clause 30 provides that the general manager may arrange with the chief executive of a department, a local government, a government entity or a government owned corporation for the services of officers or employees of the department, local government, entity or corporation to be made available to the Commission. Subclause (2) clarifies the employment arrangements of an officer or employee whose services are made available.

Commission not subject to outside direction

Clause 31 provides that Commissioners, the general manager and staff of the Commission are not subject to direction in the performance of their duties by any person, other than from within the Commission.

Annual budgets

Clause 32 outlines the timeframe and approval requirements for the Commission's annual budget. The clause provides that the general manager must prepare a budget of the Commission's estimated costs for the next financial year, consistent with the strategic priorities of the Commission, before each 31 March. The general manager must present the budget to the Commissioners for approval and then give the approved budget to the Minister.

The Minister must approve (or refuse to approve) a budget by each 30 April. However, if the Minister does not meet this deadline, it does not prevent the Minister from approving (or refusing to approve) the budget at a later time. A budget will have no effect until it has been approved by the Minister. During a financial year the general manager may prepare amendments to the budget for that year. An amendment of a budget has no effect until it has been approved by the chairperson in consultation with the part-time Commissioners in the case of a minor amendment; or otherwise, the Minister on the recommendation of the chairperson in consultation with the part-time Commissioners. If the chairperson and the part-time Commissioners differ about the recommendation to the Minister for approval under this section, the Minister may still give the approval. This section defines a *minor amendment*.

Annual report

Clause 33 provides the requirements of the general manager regarding the Commission's annual report. The general manager must provide the Minister a written report regarding the operations of the Commission during each financial year. Before the report is given to the Minister the Commissioners must approve the report. The report must be given to the Minister as soon as practicable after the end of the financial year, but within a period that will allow the report to be tabled in the Legislative Assembly within 3 months after the end of the financial year to which the report relates. Without limiting subclause (1), the general manager must include in the report, for example, details of the functions performed by the Commission and financial statements. The clause provides that a description may include statistics. The report must not disclose confidential information.

Delegation

Clause 34 provides that the chairperson may delegate any of the chairperson's functions to a part-time Commissioner. In this section, *functions* also includes powers.

Part 5 General offences and legal proceedings

Division 1 General offences

False or misleading statements

Clause 35 provides that this section applies to a person who, in compliance with this Act, must provide information to the chairperson. The person must not state anything to the chairperson that the person knows is false or misleading in a material particular. This has a maximum penalty of 100 penalty units.

False or misleading documents

Clause 36 provides that this section applies to a person who, in compliance with this Act, must provide information to the chairperson. The person must not give the chairperson a document containing information that the person knows is false or misleading in a material particular. This has a maximum penalty of 100 penalty units.

This provision does not apply to a person when, on giving the document, the person tells the chairperson, to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably obtain, the correct information – and gives the correct information. This provision is necessary to ensure the accuracy of documentation given that the Commission has the power to require particular information from government entities, landholders and onshore gas operators.

Use of confidential information

Clause 37 applies to a person who is, or has been, a Commissioner, general manager or staff member of the Commission and obtains confidential information in administering or performing a function under this Act. The person must not, whether directly or indirectly, disclose the confidential information, unless the disclosure is in the performance of functions under this Act or with the consent of the person to whom the information relates or otherwise required or permitted by the law. This has a maximum penalty of 50 penalty units.

Division 2 Evidentiary provisions

Summary offences

Clause 38 states that an offence against this Act is a summary offence.

Appointments and authority

Clause 39 provides that in a proceeding, the appointment under this Act of a Commissioner and the authority to a Commissioner, the general manager or staff of the Commission to do anything under this Act, must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

Signatures

Clause 40 states that a signature purporting to be the signature of a Commissioner or the general manager is evidence of the signature it purports to be.

Other evidentiary aids

Clause 41 states that in a proceeding, a certificate purporting to be that of the chairperson stating any of the following matters in subclause (1)(a) to (d) is evidence of the matter. A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

Protection from liability

Clause 42 provides that a Commissioner, the general manager or other staff of the Commission do not incur civil liability for an act done, or omission made, honestly and without negligence under this Act. If subclause(1) prevents a civil liability attaching to the Commissioner, general manager or staff, the liability attaches instead to the State.

Commission is a statutory body

Clause 43 outlines that the Commission is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Commission's power under this Act are affected by that Act. Part 2B states that, a statutory body may exercise a power under this Act only if the body is satisfied, on reasonable grounds, that exercising the power is necessary or convenient for performing its functions under its authorising Act or another Act.

Part 6 Other Matters

Regulation-making power

Clause 44 states that the Governor in Council may make regulations under this Act.

Schedule Dictionary

The schedule contains the Dictionary (as mentioned in *clause 4*) and defines particular words in the Act.