



Queensland

Gasfields Commission and Other Legislation Amendment Act 2017

Act No. 35 of 2017

An Act to amend the Biodiscovery Act 2004, the Gasfields Commission Act 2013, the Right to Information Act 2009, the Sustainable Ports Development Act 2015 and the Public Service Regulation 2008 for particular purposes

[Assented to 13 September 2017]



Queensland

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Gasfields Commission and Other Legislation Amendment Act 2017*.

Part 2 Amendment of Biodiscovery Act 2004

2 Act amended

This part amends the *Biodiscovery Act 2004*.

3 Amendment of s 3 (Purposes of Act)

Section 3(2)(a)(ii), after ‘agreements’—
insert—

, and subsequent use agreements under those agreements,

4 Amendment of pt 5, hdg (Benefit sharing agreements)

Part 5, heading, ‘agreements’—
omit.

5 Replacement of pt 5, div 1, hdg (Entering into agreement)

Part 5, division 1, heading—
omit, insert—

[s 6]

Division 1 Agreements

6 **Amendment of s 33 (Power to enter into agreement)**

Section 33, heading, after ‘into’—

insert—

benefit sharing

7 **Amendment of s 34 (Content of agreement)**

(1) Section 34, heading, after ‘of’—

insert—

benefit sharing

(2) Section 34—

insert—

(4) The agreement must also state the terms (the ***prescribed minimum terms***) that must be included in any subsequent use agreement entered into under the agreement.

(5) The prescribed minimum terms must include a requirement for a subsequent user to provide benefits of biodiscovery, by way of the biodiscovery entity, to the State.

8 **Amendment of s 35 (Conditions of agreement)**

(1) Section 35, heading, after ‘of’—

insert—

benefit sharing

(2) Section 35(2)—

omit, insert—

(2) It is also a condition of the agreement that the biodiscovery entity must not allow another entity

to use any of the native biological material the subject of the agreement for biodiscovery, unless the other entity is—

- (a) an entity that is engaged by the biodiscovery entity to assist it with biodiscovery in relation to the material and that, under the engagement, is not—
 - (i) entitled to any gain from use of the material other than a fee for providing the assistance that is not calculated by reference to the results of commercialisation of the material; and
 - (ii) required to provide any benefits of biodiscovery to the State; or

Example—

a biotechnology research entity that conducts a toxicology test on a product derived from native biological material for a fixed fee

- (b) an entity mentioned in section 54(2)(a) or (b) or (3); or
- (c) a party to a benefit sharing agreement concerning the material; or
- (d) a party to a subsequent use agreement concerning the material.

9 Insertion of new s 35A

Part 5, division 1—

insert—

35A Subsequent use agreements

- (1) This section applies if a benefit sharing agreement (the *head agreement*) is in force between the State and a biodiscovery entity (the *primary user*).
- (2) The primary user may enter into an agreement (a

[s 10]

subsequent use agreement) with another biodiscovery entity (a *subsequent user*) allowing the subsequent user to use the native biological material the subject of the head agreement for biodiscovery if the subsequent use agreement includes the prescribed minimum terms required under the head agreement.

- (3) A subsequent user may enter into an agreement (also a *subsequent use agreement*) with another biodiscovery entity (also a *subsequent user*) allowing the other subsequent user to use the native biological material the subject of the head agreement for biodiscovery if each subsequent use agreement includes the prescribed minimum terms required under the head agreement.
- (4) A subsequent use agreement ceases to have effect if the head agreement or subsequent use agreement under which it was entered into ends.

10 Amendment of s 37 (Content of plan)

- (1) Section 37, after paragraph (a)—

insert—

- (aa) if the biodiscovery entity proposes that native biological material, the subject of the agreement, may be used under a subsequent use agreement—the activities to be carried out under a subsequent use agreement;

- (2) Section 37(d)—

omit, insert—

- (d) the types of activities the entity proposes engaging another entity mentioned in section 35(2)(a) to carry out for the entity;

11 Amendment of pt 7, div 2, hdg (Offences about benefit sharing agreements)

Part 7, division 2, heading, ‘benefit sharing’—

omit.

12 Amendment of s 54 (Using native biological material for biodiscovery without a benefit sharing agreement)

(1) Section 54, heading, ‘a benefit sharing agreement’—

omit, insert—

particular agreements

(2) Section 54(1), after ‘agreement’—

insert—

or subsequent use agreement

(3) Section 54(2)(c)—

omit, insert—

(c) biodiscovery to which a benefit sharing agreement concerning the material applies, carried out for a biodiscovery entity by another entity under an engagement mentioned in section 35(2)(a).

13 Insertion of new s 55A

After section 55—

insert—

55A Contravening prescribed minimum terms of a subsequent use agreement

A subsequent user who is a party to a subsequent use agreement must not contravene a prescribed minimum term of the agreement.

Maximum penalty—100 penalty units.

Part 3 **Amendment of Gasfields Commission Act 2013**

18 Act amended

This part amends the *Gasfields Commission Act 2013*.

19 Amendment of s 7 (Commission’s functions)

(1) Section 7(g)—

omit.

(2) Section 7—

insert—

(ia) supporting the provision, to the community and stakeholders, of information prepared by appropriate entities on health and wellbeing matters relating to the onshore gas industry or geographical areas in which the onshore gas industry operates;

(ib) facilitating appropriate entities to undertake community engagement and participation in initiatives about assessing health and wellbeing concerns relating to onshore gas activities;

(3) Section 7(ca) to (l)—

renumber as section 7(d) to (n).

(4) Section 7(n), as renumbered, ‘(k)’—

omit, insert—

(m)

(5) Section 7—

insert—

(2) In this section—

[s 20]

appropriate entities includes, for example—

- (a) a government department, or agency, of Queensland or elsewhere; and
- (b) an entity that is performing or has performed an independent academic or scientific study.

20 Replacement of s 9 (Membership of commission)

Section 9—

omit, insert—

9 Membership of commission

The commission consists of—

- (a) a full-time or part-time commissioner, who is the chairperson; and
- (b) up to 6 part-time commissioners.

9A Appointment as a commissioner

- (1) Each commissioner is to be appointed by the Governor in Council.
- (2) In deciding whom to recommend to the Governor in Council for appointment to the commission, the Minister must be satisfied—
 - (a) each person nominated for appointment is eligible under section 10; and
 - (b) the commission will include—
 - (i) a commissioner who has knowledge of, or experience with, the interests of landholders; and
 - (ii) a commissioner who has knowledge of, or experience with, the interests of communities in which the onshore gas industry operates; and

(iii) a commissioner who has knowledge of, or experience with, the onshore gas industry.

(3) The performance of the commission's function mentioned in section 7(d) is not invalid for the purposes of the *Regional Planning Interests Act 2014* only because of a defect or irregularity in the appointment of a commissioner or because the commission was not properly constituted.

21 Amendment of s 10 (Eligibility for appointment as a commissioner)

Section 10, 'qualified'—

omit, insert—

eligible

22 Replacement of ss 15 and 16

Sections 15 and 16—

omit, insert—

15 Leave of absence

The Minister may approve a leave of absence for a commissioner who requests the leave.

16 Acting commissioner

(1) The Minister may appoint a person (whether or not a commissioner), the Minister is satisfied is an eligible person, to act as the chairperson—

(a) during a vacancy in the office of chairperson; or

(b) during any period, or all periods, when the chairperson is absent from duty or from the State or, for any other reason, can not

[s 23]

perform the duties of the office of chairperson.

- (2) The chairperson may appoint any other commissioner to act as the chairperson during a period, of not more than 14 days, when the chairperson—
 - (a) is absent from duty or from the State; or
 - (b) for any other reason, can not perform the duties of the office of chairperson.
- (3) The Minister may appoint a person, the Minister is satisfied is an eligible person, to act as a commissioner—
 - (a) during a vacancy in the office of a commissioner; or
 - (b) during any period, or all periods, when a commissioner is absent from duty or from the State or, for any other reason, can not perform the duties of the office of a commissioner.
- (4) In this section—

eligible person means a person who is eligible under section 10 for appointment as a commissioner.

23 Amendment of s 19 (Disclosure of interests at commission board meetings)

- (1) Section 19(1)(b)—

omit, insert—

- (b) the interest could conflict with either or both of the following—
 - (i) the proper performance of the commission's functions for the matter;

(ii) the proper exercise of the commission's powers for the matter.

(2) Section 19—

insert—

(6A) This section, other than subsection (4), applies to the chief executive officer, as if the chief executive officer were a commissioner.

Note—

The chief executive officer does not have a right to vote at a commission board meeting.

(3) Section 19(6A) and (7)—

renumber as section 19(7) and (8).

24 Amendment of s 21 (Purposes of commission board meetings)

Section 21(c)—

omit.

25 Amendment of s 22 (Conduct of commission board meetings)

Section 22(4), '3 part-time commissioners'—

omit, insert—

2 other commissioners

26 Amendment of s 29 (Gasfields community leaders council)

(1) Section 29(2), 'chairperson and other individuals that the chairperson'—

omit, insert—

chief executive officer and other individuals the commission

[s 27]

- (2) Section 29(3), ‘chairperson’—
omit, insert—
chief executive officer

27 Replacement of s 30 (General manager)

Section 30—

omit, insert—

30 Employment of chief executive officer

- (1) The commission must employ a chief executive officer.
- (2) The chief executive officer is employed under this Act and not the *Public Service Act 2008*.
- (3) The commission may at any time remove the chief executive officer from office for any reason or none.
- (4) The chairperson may appoint a person, other than a commissioner, to act in the office of chief executive officer during—
 - (a) a vacancy, or all vacancies, in the office; or
 - (b) any period, or all periods, when the chief executive officer is absent from duty, or can not, for another reason, perform the functions of the office.
- (5) If the office of chief executive officer is vacant for more than 4 months, the Minister may request the chairperson to have the vacancy filled.
- (6) Subsection (7) applies if the person employed as the chief executive officer resigns the person’s role as a public service officer in order to accept the employment.
- (7) Section 17(2) and (3) applies to the person as if a reference in the section to appointment or service as a commissioner were a reference to

employment or service as the chief executive officer.

30A Responsibilities of chief executive officer

- (1) The chief executive officer is responsible for the day-to-day administration of the commission, including, for example—
 - (a) implementing the strategic priorities of the commission set at commission board meetings; and
 - (b) developing plans to address key issues being considered by the commission; and
 - (c) for section 31, managing the process of employing other staff of the commission; and
 - (d) managing the other staff of the commission.

Note—

See section 32(2)(c) for when an officer or employee whose services are made available to the commission under section 32 is taken to be a member of the staff of the commission.

- (2) The chief executive officer is also responsible for carrying out any direction given by the chairperson to the chief executive officer in relation to helping the commission perform its functions.

28 Amendment of s 31 (Commission staff)

Section 31, heading—

omit, insert—

[s 29]

31 Other commission staff

29 Amendment of s 33 (Commission not subject to outside direction)

Section 33, 'general manager and staff'—

omit, insert—

chief executive officer or other staff

30 Amendment of s 34 (Annual budgets and financial management policies)

Section 34(6) and (7), 'part-time commissioners'—

omit, insert—

other commissioners

31 Amendment of s 36 (Delegation)

(1) Section 36(1)—

omit, insert—

(1) The chairperson may delegate any of the chairperson's functions to any other commissioner or to the chief executive officer.

(2) Section 36(2), 'general manager'—

omit, insert—

chief executive officer

(3) Section 36—

insert—

(2A) The chief executive officer may delegate any of the chief executive officer's responsibilities under section 30A to other staff of the commission.

(4) Section 36(2A) and (3)—

renumber as section 36(3) and (4).

32 Amendment of s 39 (Use of confidential information)

Section 39(1)(a), ‘, general manager or staff’—

omit, insert—

or the chief executive officer or other staff

33 Amendment of s 41 (Appointments and authority)

Section 41(b), ‘, the general manager or staff’—

omit, insert—

or the chief executive officer or other staff

34 Amendment of s 42 (Signatures)

Section 42, ‘general manager’—

omit, insert—

chief executive officer

35 Amendment of s 44 (Protection from liability)

Section 44, ‘general manager’—

omit, insert—

chief executive officer

36 Replacement of pt 6, hdg (Other matters)

Part 6, heading—

omit, insert—

Part 6 Miscellaneous

37 Insertion of new pt 7

After section 46—

insert—

Part 7

Transitional provisions for Gasfields Commission and Other Legislation Amendment Act 2017

47 Definitions for part

amending Act means the *Gasfields Commission and Other Legislation Amendment Act 2017*.

former, in relation to a provision, means the provision as in force at any time before the commencement.

48 Appointment of initial chief executive officer

- (1) This section applies if, immediately before the commencement, a person was employed as the general manager under former section 30.
- (2) On the commencement, the person is taken to be appointed as the chief executive officer under section 30 as in force on the commencement.

49 Initial chief executive officer—how employed and prohibition on particular benefits

- (1) The person taken to be appointed as the chief executive officer under section 48—
 - (a) is employed by the commission as the chief executive officer on the same terms, as far as practicable, as the person was, immediately before the commencement, employed on as the general manager; and
 - (b) is not entitled to an amount or other benefit that is or might otherwise be payable to, or

acquired by, the person because of the repeal of former section 30.

- (2) Subsection (1)(b) has no effect on superannuation entitlements or leave entitlements.
- (3) No compensation is payable to the person because of the repeal of former section 30.

50 Continuation of particular former provisions about general manager

Former sections 30(4), 39, 41 and 42 continue to apply to each person who, at any time before the commencement, was employed as the general manager under former section 30, as if the amending Act had not been enacted.

38 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definitions *chairperson*, *commissioner* and *general manager*—

omit.

- (2) Schedule 1—

insert—

chairperson means the person appointed as the chairperson under section 9A.

chief executive officer means the person appointed as the chief executive officer under section 30.

commissioner means a person appointed as a commissioner under section 9A.

- (3) Schedule 1, definition *onshore gas industry*, paragraph (b), ‘with’—

omit, insert—

within

[s 39]

- (4) Schedule 1, definition *onshore gas operator*, paragraph (b),
'with'—
omit, insert—
within

Part 4 Amendment of Right to Information Act 2009

39 Act amended

This part amends the *Right to Information Act 2009*.

40 Amendment of sch 1 (Documents to which this Act does not apply)

- (1) Schedule 1, section 11, after paragraph (b)—
insert—
- (ba) a subsequent use agreement;
 - (bb) a record kept by a department about a
subsequent use agreement;
- (2) Schedule 1, section 11(ba) to (f)—
renumber as section 11(c) to (h).

Part 5 Amendment of Sustainable Ports Development Act 2015

41 Act amended

This part amends the *Sustainable Ports Development Act 2015*.

42 Amendment of s 19 (Port overlay required)

Section 19(4)—

omit, insert—

- (4) However, a port overlay can not regulate development that is—
 - (a) PDA assessable development, PDA self-assessable development or PDA exempt development for a priority development area under the Economic Development Act; or
 - (b) regulated development for a State development area under the State Development Act.

Part 6 Amendment of Public Service Regulation 2008

43 Regulation amended

This part amends the *Public Service Regulation 2008*.

44 Amendment of sch 1 (Public service offices, their heads and applied provisions)

- (1) Schedule 1, item 2, column 2, ‘general manager’—

omit, insert—

chief executive officer

- (2) Schedule 1, item 2, column 3, note, ‘general manager’—

omit, insert—

chief executive officer

[s 45]

45 Amendment of sch 3 (Applied rulings for declared public service offices)

Schedule 3, section 2(2), after ‘Gasfields Commission’—

omit, insert—

, other than the chief executive officer

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