

## **Gasfields Commission Bill 2012**

### **Explanatory Notes for amendments to be moved during consideration in detail by the Deputy Premier and Minister for State Development, Infrastructure and Planning**

#### **Title of the Bill**

Gasfields Commission Bill 2012

#### **Objectives of the amendments**

The amendments will amend the Gasfields Commission Bill 2012 (the Bill) to clarify and improve provisions of the Bill primarily in response to State Development, Infrastructure and Industry Committee recommendations.

The objective of the amendments to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* is to provide increased certainty to RTA Weipa Pty Ltd in relation to its rights and powers to construct, own and operate the proposed Boyd Port infrastructure for the South of Embley project.

#### **Achievement of the objectives**

The objectives are achieved by way of amendments to the Bill as described in the notes on provisions.

#### **Alternative ways of achieving policy objectives**

Legislative amendments are the only means of achieving the policy objectives.

#### **Estimated cost for government implementation**

The costs of the Gasfields Commission have been calculated at \$2.5 million per year. These costs are currently being met through existing budgets.

The amendments to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* will not impose a cost on government for implementation.

#### **Consistency with fundamental legislative principles**

There are no fundamental legislative principles issues in relation to the amendments to the Gasfields Commission Bill 2012.

Regarding the amendments to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, there is the potential that the role of RTA Weipa in relation to the port would affect the rights and liberties of individuals. In particular, these concerns relate to RTA Weipa's ability to recover 'reasonable costs', require security deposits, issue notices, and the apparent absence of a review process for these decisions.

RTA Weipa will negotiate port access with third parties on a commercial basis. The exercise of the rights under these provisions does not impact upon currently existing rights or liberties of individuals. These rights will need to be negotiated with RTA Weipa on a commercial basis. There are therefore no current rights or liberties that are being affected by these provisions.

If an individual was concerned that RTA Weipa was seeking to recover in excess of the reasonable costs or in any other way were misusing its monopoly power, the individual could seek to have the matter reviewed under the monopoly prices oversight provisions (Part 3) of the *Queensland Competition Authority Act 1997*.

## **Consultation**

The amendments to the Gasfields Commission Bill 2012 are primarily made as a result of Report No. 20 from the State Development, Infrastructure and Industry Committee, which considered submissions from the community and industry.

The amendments have been prepared in consultation with the GasFields Commission Queensland, Office of the Queensland Parliamentary Counsel and the Department of the Premier and Cabinet.

The *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* is a special agreement Act and requires the agreement of Rio Tinto Alcan Weipa to amend. The company has been consulted on the amendments and has agreed to them.

Public consultation (including consultation with the traditional owners of the area) on the South of Embley project was undertaken as part of the Environmental Impact Statement process for the project. The Environmental Impact Statement was assessed by the Coordinator-General who found that the project could proceed subject to conditions and recommendations set out in the Coordinator-General's Report on the Environmental Impact Statement for the South of Embley project.

## Notes on Provisions

**Amendment 1** inserts a new clause 1A in the Bill to provide for the Act's commencement on 1 July 2013. This amendment assists with aligning the Gasfields Commission's reporting cycle with the commencement of the 2013 – 2014 financial year.

**Amendment 2** amends clause 17 (Disclosure of interests) to give effect to Recommendation 4 of the State Development, Infrastructure and Industry Committee report.

The purpose of this amendment is to remove the penalty provisions in relation to the disclosure of interest requirements for Commissioners.

This amendment is made in response to Recommendation 4 of the State Development, Infrastructure and Industry Committee report. The State Development, Infrastructure and Industry Committee considered the penalty excessive given that the Gasfields Commission is an advisory body, not a decision making body.

Amendment 2 also includes a new clause 17A in the Bill to give effect to the Committee's Recommendation 5. The purpose of this amendment is to include a definition of 'close relative', similar to the terms in the *Economic Development Act 2012*.

This amendment inserts a new reference which defines the term 'close relative' in response to Recommendation 5 of the State Development, Infrastructure and Industry Committee report. 'Close relative' has been defined to include a spouse; or parent or grandparent; or brother or sister; or child or grandchild.

Additionally, amendment 2 also amends clause 17 to give effect to Recommendation 6 of the State Development, Infrastructure and Industry Committee report.

The amendment states that Commissioners will be required to provide an annual register of pecuniary interests and will be required to update these registers as per existing public service requirements. For the Chair, the register will be provided to the responsible Minister and the Integrity Commissioner, and for Commissioners, the register will be provided to the Chair.

Additionally, where an issue is being considered by the Commission, Commissioners will be required to disclose any conflicts of interest to all Commissioners. The Commission intends to develop detailed procedures to support these provisions, and will seek advice from the Integrity Commissioner in doing so.

**Amendment 3** amends clause 21 (Power to require particular information from government entities) of the Bill to give effect to the Committee's Recommendation 10.

The purpose of the amendment to clause 21 is the amend subclause (4) to clarify that the application of the obligation under the existing subclause (4) only exists when an exemption applies.

An additional subclause has been included in clauses 22 and 24 of the Bill, consistent with the amendment to clause 21. These amendments create greater consistency in the application of the Gasfields Commission's powers.

The clause as amended provides the Commission with the power to require particular information from government entities. The government entity must comply with a request from the Gasfields Commission unless it falls within one of the exemptions specified in the relevant clause. The amended clause 21 states that an entity must inform the Commission in writing that the exemption applies.

**Amendment 4** amends clause 22 (Power to require advice) of the Bill to give effect to the Committee's Recommendation 10.

As previously described, the purpose of the amendment to clause 22 is the amend subclause (4) to clarify that the application of the obligation under the existing subclause (4) only exists when an exemption applies.

The clause as amended provides the Commission with the power to require particular information from government entities. The government entity must comply with a request from the Gasfields Commission unless it falls within one of the exemptions specified in the relevant clause. The amended clause 22 states that an entity must inform the Commission in writing that the exemption applies.

**Amendment 5** amends clause 24 (Power to require particular information from prescribed entities) of the Bill to give effect to the Committee's Recommendation 10.

The purpose of the amendment to clause 24 is to amend subclause (4) to clarify that the application of the obligation under the existing subclause (4) only exists when an exemption applies.

The clause as amended provides the Commission with the power to require particular information from government entities. The government entity must comply with a request from the Gasfields Commission unless it falls within one of the exemptions specified in the relevant clause. The amended clause 24 states that an entity must inform the Commission in writing that the exemption applies.

**Amendment 6** amends clause 28 (General manager) to remove specific responsibilities of the general manager regarding financial administration, direction of staff and authorisation of spending by the Commission, with the approval of the Minister.

The purpose of the amendment is to ensure that greater responsibility is attributed to the Gasfields Commission rather than solely the general manager. Less prescription surrounding the role and responsibilities of a general manager within legislation is important, as this will maintain operational flexibility while the role of the general manager evolves.

**Amendments 7 and 8** amends clause 30 (Alternative staffing arrangements) to include an additional subclause. These amendments give effect to Recommendation 12 of the State Development, Infrastructure and Industry Committee report. There were concerns raised by stakeholders about the potential secondment of local government staff to the Gasfields Commission without agreement.

The purpose of these amendments is to clarify that the Gasfields Commission may arrange for the services of officers or employees of a department, local government, government

entity or government owned corporation to be made available to the Commission, only with the agreement from the officer or employee's chief executive.

There is nothing in clause 30 that requires a chief executive to enter into an arrangement with the Gasfields Commission for the services of officers or employees. Arrangements will only be made with the agreement of all parties.

**Amendment 9** amends clause 32 (Annual budgets) to ensure that greater responsibility is attributed to the Gasfields Commission with regard to financial and performance management, rather than attributed solely to the general manager.

The purpose of this amendment is to reflect that it is the Commission's responsibility to prepare an annual budget and financial management policies. However, the responsible Minister will scrutinise and approve the budget and financial management policies prepared by the Commission.

These financial documents, or any amendments proposed to them, will have no effect until the Minister has given their approval. The term 'financial management policies' refers to the policies that will be observed by the Gasfields Commission in undertaking financial and performance management, as per section 57 of the *Financial Accountability Act 2009* which applies to the Commission as a statutory body.

**Amendment 10** amends clause 33 (Annual report) to ensure that greater responsibility is attributed to the Gasfields Commission regarding the Commission's annual report, rather than attributed solely to the general manager. This will also assist in maintaining the desired level of operational flexibility while the role of the general manager evolves.

The purpose of this amendment is to clarify that it is the Gasfields Commission's responsibility to prepare and provide to the responsible Minister, a written report about the operations of the Commission during each financial year.

**Amendment 11** amends clause 34 (Delegation) to give the Gasfields Commission the ability to delegate any of the Commission's functions to the general manager or other staff of the Commission. Existing subclause (1) already allows the chairperson of the Commission to delegate any of the chairperson's functions to a Commissioner.

The purpose of the amendment is to include an additional head of power in the Bill for the delegation of functions to the general manager or other staff to ensure the seamless and effective operation of the Gasfields Commission.

**Amendment 12** inserts a new Part 7 after clause 44 entitled Amendment of Acts.

The *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* is amended by inserting a new section 4D and new schedule 4.

Schedule 4 contains a proposed further agreement between the State of Queensland (acting through the Department to Natural Resources and Mines) and RTA Weipa Pty Ltd (ACN 137 266 285) and Rio Tinto Aluminium Limited (ACN 009 679 127).

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RTA Weipa is seeking to construct, own and operate the Boyd Port facilities proposed as part of its South of the Embley bauxite project located about 40 kilometres south-west of Weipa. As highlighted in the Coordinator-General's Report on the Environmental Impact Statement for the South of Embley project, there is some ambiguity as to whether the current provisions in the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* provide the company with the requisite authority to construct, own and operate the port facilities.

The proposed further agreement amends the Principal Agreement to provide the company with the increased certainty it is seeking to facilitate its investment decision for the South of Embley Project by clarifying RTA Weipa's rights to construct, own and operate the proposed Boyd Port facilities.

In particular, the amendments seek to:

- define the limits of the Boyd Area in which these amendments will apply;
- outline the facilities that may be used or occupied in connection with the Boyd Port;
- provide RTA Weipa with the ability to construct, own and operate the Boyd Port without the appointment of a port authority under the *Transport Infrastructure Act 1994* (TIA);
- outline the rights required by RTA Weipa to run the Boyd Port and the time in which they may be exercised;
- ensure that relevant maritime safety and pollution laws apply;
- ensure that RTA Weipa reports details of tonnages shipped through the Boyd Port;
- clarify the circumstances under which RTA Weipa may enter into a sub-lease of an area within its special mining lease for the purposes of the construction and operation of a port and port facilities, in addition to the Boyd Port, for the shipment of bauxite; and
- clarify that in exercising its Boyd Port rights, RTA Weipa will not be required to obtain a lease under the *Land Act 1994* for land within the Boyd Area but beyond the area of its existing Special Bauxite Mining Lease

Under the *Land Act 1994*, a person who unlawfully builds, places or maintains any structure, improvement, work or thing on non-freehold land commits a trespass related act. For land that is unallocated State land (including land beneath the sea), the clarification confirms that RTA Weipa will not be engaging in a trespass related act if it exercises its rights under the amended terms of the agreement within the Boyd area.

Being a special agreement Act, both the Queensland Government's and RTA Weipa's agreement is required before the amendments can be introduced into the Parliament. Final agreement between the parties on these amendments has been achieved.

**Amendments 13 and 14** amend schedule 1 (Dictionary) which contains defined terms used throughout the Bill.

The purpose of amendment 13 is to correct the cross-reference contained in the definition of 'commission board meeting' as it incorrectly refers to section 19. The amendment will correct this cross-referencing error to make reference to section 18.

Additionally, the purpose of amendment 14 is to correct the cross-reference contained in the definition of 'general manager' as it incorrectly refers to section 29. The amendment will correct this cross-referencing error to make reference to section 28.

These amendments give effect to Recommendation 15 and 16 of the State Development, Infrastructure and Industry Committee's report.

***Amendment 15*** amends the long title of the Bill to take into account the amendments to the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*.