RNT:dgr

BAR ASSOCIATION OF QUEENSLAND

25 January 2013

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane Qld 4000

By Email: *sdiic@parliament.qld.gov.au*

Dear Sir

Re: Inquiry into the Gasfields Commission Bill 2012

The policy to which the Bill seeks to give effect is one which aims to achieve 'sustainable coexistence' between the stated interests (s 2) which, of course, is a desirable aim.

There are some matters which the Bar Association would mention for your consideration. They are listed below using as heading the clause numbers of the Bill.

Clause 8(2) (b) and clause 17

Certain of the commissioners are to be appointed representing specified interests. In the circumstances it is likely that the individual commissioners will include a landholder, a member of a community in which the onshore gas industry operates, or a participant in the onshore gas industry.

On the other hand clause 17 requires disclosure by a commissioner (or a close relative) of a "direct or indirect pecuniary interest in a matter" considered by the commission. The expression "direct or indirect pecuniary interest" is a wide concept. At the least it may be appropriate expressly to permit a global disclosure of the interest which qualified the commissioner under clause 8(2) (b).

Further, if that qualifying interest is also one which means the commissioner has a "direct or indirect pecuniary interest in a matter" considered by the commission it seems at odds with the Bill's contemplation that the commissioner represent the sectional interests identified in clause 8(2)(b) that the particular commissioner is precluded by clause 17 (3) from doing so.

Clause 22

There is no equivalent in this clause to the provision made by clause 21(4) to require the government entity to notify the commission that one of the subparagraphs of clause 22 (2) applies. The considerations which lead to the inclusion of clause 21(4) (which related to the reasons for non-provision of 'information") would seem to apply equally to the non-provision of "advice" under clause 22.

BAR ASSOCIATION
OF QUEENSLAND
ABN 78 009 717 739
Ground Floor
Inns of Court
107 North Quay
Brisbane Qld 4000

Tel: 07 3238 5100
Fax: 07 3236 1180
DX: 905
chiefexec@qldbar.asn.au

Constituent Member of the Australian Bar Association

Clause 24
Similarly, clause 24 does not contain a provision the equivalent of clause 21(4) when clause 24(3) contemplates that there may be situations where access to the required documents or material is not provided.

Further, clause 24(3) (e) is very wide. It excludes from the requirement to provide materials of a very wide range of things which may well impair the commission's activities and which might be thought to justify some amendment to the Bill.

Clause 24(3) (e) permits the exclusion of confidential materials altogether; notwithstanding that the Bill otherwise takes precautions to preserve confidential information: see clauses 25(2), 33(6) and 37. A different course would be to require the production of the material but in a way which ensures its confidentiality is identified and thus facilitates its preservation.

Further, clause 24(3) (e) permits the non-production of even non-confidential material where the giving of it "might be detrimental" to the giving entity's commercial or other interests. Thus this may be used to keep from the commission, material required by it *because* handing it to the commission (and the consequential reliance on it by the commission in making its report to the Minister or otherwise making policy recommendations) might be detrimental to the interests (commercial or otherwise) of the entity.

Clause 33
By sub-paragraph (6) it is provided that the report to the Minister is not to be prepared in a way which discloses confidential information. A different course would be to allow for a confidential section of the report confined to that information which is confidential.

Clause 42(1)
This form of words is not unique to the Bill. But it is one which is difficult to give effect to. It declares that a commissioner is not exposed to civil liability for an act done (or omission made) honestly and without negligence under the Act. But that would not (on its face) protect against an act purportedly done under the Act (albeit wrongly) or one done (or omitted to be done) negligently.

Thus the provision seeks to exclude liability where in all likelihood none would otherwise exist, but not to exclude civil liability in the usual of situations where it would most likely exist. Similarly clause 42(2) operates to impose that liability on the State only where clause 42(1) would operate to exclude it. Thus it is difficult to see in what circumstances subparagraph (2) would apply.

The Bar Association is happy to provide any clarification you may wish in relation to the above matters.

Yours faithfully

Roger Traves S.C.
President