

Gasfields Commission Bill 2012

Report No. 20

**State Development, Infrastructure and Industry
Committee**

March 2013

State Development, Infrastructure and Industry Committee

Chair	Mr David Gibson MP, Member for Gympie
Acting Chair	Mr Ted Malone MP, Member for Mirani
Deputy Chair	Mr Tim Mulherin MP, Member for Mackay
Members	Mr Scott Driscoll MP, Member for Redcliffe (until 12 February 2013) Mr Michael Hart MP, Member for Burleigh Mr Seath Holswich MP, Member for Pine Rivers Mr Rob Katter MP, Member for Mount Isa Ms Kerry Millard MP, Member for Sandgate Mr Bruce Young MP, Member for Keppel
Staff	Dr Kathy Munro, Research Director Ms Margaret Telford, Principal Research Officer Ms Mary Westcott, Principal Research Officer Ms Rhia Campillo, Executive Assistant (ceased 15 February 2013) Ms Dianne Christian, Executive Assistant (commenced 18 February 2013)
Technical Scrutiny of Legislation Secretariat	Ms Renee Easten, Research Director Ms Marissa Ker, Principal Research Officer Ms Tamara Vitale, Executive Assistant
Parliamentary Library	Ms Nicolee Dixon
Contact details	State Development, Infrastructure and Industry Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7230
Fax	+61 7 3406 7500
Email	SDIIC@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/sdiic

Acknowledgements

The committee thanks those who briefed the committee, gave evidence and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of State Development, Infrastructure and Planning, and the Integrity Commissioner for his valuable advice to the committee.

Contents

Abbreviations	iv
Recommendations	vi
Points for clarification	viii
1 Introduction	1
1.1 Role of the committee	1
1.2 The referral	1
1.3 The committee's inquiry process	1
1.4 Background to the Bill	2
1.5 Policy objective of the Bill	2
1.6 Should the Bill be passed?	2
2 Examination of the Bill	3
2.1 Establishment of the Gasfields Commission	3
2.2 Purpose of the Gasfields Commission	3
2.3 Functions of the Gasfields Commission	4
<i>Referrals</i>	4
2.4 Membership of the Gasfields Commission	5
<i>Termination of appointment</i>	6
2.5 Disclosure of interests by commissioners	6
2.6 Gasfields Commission board meetings	9
2.7 Powers of the Gasfields Commission	9
<i>Power to require particular information from government entities and prescribed entities</i>	9
<i>Power to require information from prescribed entities</i>	10
<i>Compulsory consultation</i>	11
<i>Extension of powers</i>	11
2.8 Confidential information	12
2.9 Gasfields Community Leaders Council	13
2.10 Alternative staffing arrangements	14
2.11 Review of the Gasfields Commission Act	15
3 Fundamental legislative principles	16
3.1 Rights and liberties of individuals	16
3.2 Administrative power	17
3.3 Protection against self-incrimination	18
3.4 Immunity from proceedings	18
3.5 Clear and precise	18
3.6 Proposed new offence provisions	20
3.7 Explanatory Notes	20
Appendices	22
Statement of Reservation	29

Abbreviations

Bill	Gasfields Commission Bill 2012
CEO	chief executive officer
commission	Gasfields Commission
CSG	coal seam gas
department	Department of State Development, Infrastructure and Planning
FLP	Fundamental Legislative Principle
OQPC	Office of the Queensland Parliamentary Counsel
QMDC	Queensland Murray-Darling Committee Inc

Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Gasfields Commission Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill or gave evidence at the public hearings, and others who informed the committee's deliberations including the Gasfields Commissioners and the officials from the Department of State Development, Infrastructure and Planning who briefed the committee; the Integrity Commissioner; the committee's secretariat; the Technical Scrutiny of Legislation Secretariat; and the Parliamentary Library.

I would also like to thank Ted Malone MP, the former Chair of the committee, who led the committee through the early stages of the preparation of this report.

I commend the report to the House.

A handwritten signature in blue ink, appearing to read 'D Gibson', with a stylized flourish underneath.

David Gibson MP
Chair

March 2013

Recommendations

Recommendation 1 2

The committee recommends that the Gasfields Commission Bill 2012 be passed.

Recommendation 2 5

The committee recommends that the Gasfields Commission Bill 2012 be amended to clarify that the Gasfields Commission can refer matters, when appropriate, to relevant agencies.

Recommendation 3 5

The committee recommends that the Gasfields Commission Bill 2012 be amended to incorporate an additional category within clause 9 to include individuals with qualifications or experience in matters relating to environmental science or natural resource management.

Recommendation 4 8

The committee recommends that clause 17 of the Gasfields Commission Bill 2012 be amended to remove the penalty provision.

Recommendation 5 8

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert a definition of “*close relative*” in terms such as in the *Economic Development Act 2012*.

Recommendation 6 8

The committee recommends that clause 17 of the Gasfields Commission Bill 2012 be amended to reflect section 9 of Schedule 1 of the *Hospital and Health Services Act 2011*, to which should be added a requirement that the minutes should also record instances in which a conflicted person has taken part in a vote on an issue that concerned him or her.

Recommendation 7 8

The committee recommends that following the assent of the Gasfields Commission Bill 2012, the chairperson of the Gasfields Commission consult with the Integrity Commissioner to draft appropriate integrity protocols for the Gasfields Commission.

Recommendation 8 9

The committee recommends that clause 17(2) of the Gasfields Commission Bill 2012 be amended to require that the chairperson and the other commissioners disclose their interest to all the commissioners.

Recommendation 9 9

The committee recommends that clause 20 of the Gasfields Commission Bill 2012 be amended to clarify that in the absence of the chairperson, quorum for the commission board meeting will be the acting chairperson and three other commissioners.

Recommendation 10 9

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert an additional subclause in the nature of subclause 21(4) in clauses 22 and 24 in order to create greater consistency in the application of the Gasfields Commission’s powers.

Recommendation 11 **13**

The committee recommends that the Gasfields Commission Bill 2012 be amended to incorporate a head of power for the Gasfields Commission to establish one or more Community Leaders Councils for the purpose of assisting the commission to identify issues affecting the coexistence of landholders, regional communities and the onshore gas industry in Queensland.

Recommendation 12 **14**

The committee recommends that the Gasfields Commission Bill 2012 be amended to include an additional subclause in clause 30 to the effect of:

An arrangement under subsection (1) must be on terms acceptable to the chief executive of the department, local government, government entity or corporation.

Recommendation 13 **15**

The committee recommends that the Bill include a provision requiring a review of the proposed Gasfields Commission Act within five years of its commencement.

Recommendation 14 **20**

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert a definition for “*relevant material*” in Schedule 1.

Recommendation 15 **20**

The committee recommends that the Gasfields Commission Bill 2012 be amended to rectify the error in the definition of “*general manager*”.

Recommendation 16 **20**

The committee recommends that the Gasfields Commission Bill 2012 be amended to rectify the error in the definition of “*commission board meeting*”.

Points for clarification**Point for clarification 1****4**

The committee seeks clarification from the Minister about any proposed guidelines that may be developed by the Gasfields Commission around its purpose of managing and improving the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland.

Point for clarification 2**14**

The committee seeks clarification from the Minister regarding the Terms of Reference that will be developed to ensure that the Gasfields Community Leaders Councils function in accordance with the Gasfields Commission's purpose and contemporary best practice models of community representation, including Indigenous representation.

Point for clarification 3**17**

The committee seeks clarification from the Minister as to whether judicial review will be available to persons aggrieved by Gasfields Commission decisions.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 The referral

On 27 November 2012, the Gasfields Commission Bill 2012 (the Bill) was referred to the State Development, Infrastructure and Industry Committee (the committee) for examination and report. Pursuant to Standing Order 136(2), the Committee of the Legislative Assembly fixed the time for the tabling of the report on the Bill to be by 27 March 2013.

1.3 The committee's inquiry process

The committee was briefed by officers of the Department of State Development, Infrastructure and Planning (the department) at a private briefing on 28 November 2012.

Around 6 December 2012, the committee called for written submissions on the Bill to be provided by 25 January 2013. Advertisements were placed in nine newspapers (see Appendix A), letters were sent to stakeholders seeking written submissions and an email was sent to the committee's email subscribers for the same purpose. The committee received 17 submissions (see Appendix B for a list of submitters).

In a letter dated 17 December 2012, the department clarified matters relating to the private departmental briefing. The committee received a written briefing from the department on 22 January 2013.

The Gasfields Commission Chairperson, Mr John Cotter, three Gasfields Commissioners - Don Stiller, Ian Hayllor and Ray Brown - and the General Manager of the Gasfields Commission, Mr Andrew Brier, privately briefed the committee on 13 February 2013. Mr Cotter and Mr Brier also gave evidence at the public hearing in Brisbane.

The committee received oral evidence at a public hearing held at Parliament House in Brisbane on 13 February 2013 (see Appendix C) and at a public hearing held at the Empire Theatre, Toowoomba on 15 February 2013 (see Appendix D).

The committee received a letter from the Gasfields Commission dated 20 February 2013 responding to several matters raised by submitters and witnesses.

On 4 March 2013, the department provided the committee with its response to the evidence in the submissions and that given at the public hearings.

The written submissions, the written briefings from the department, the letter from the Gasfields Commission and the transcripts of the departmental briefing and the public hearings are published on the committee's webpage at www.parliament.qld.gov.au/SDIIC.

1.4 Background to the Bill

The Gasfields Commission commenced operation on 1 July 2012. The Bill *“formalises its formation and provides it with the powers it requires to undertake the work”*.¹ Its establishment was an LNP election commitment and was part of the First 100 Day Action Plan.²

1.5 Policy objective of the Bill

The policy 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”*.³

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend that the Bill be passed. After examining the Bill, and considering issues raised in submissions and evidence provided at the private briefing and public hearing, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Gasfields Commission Bill 2012 be passed.

¹ Hon JW Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning, Record of Proceedings, 27 November 2012, pp 2,755 – 2,756, p 2,755.

² Gasfields Commission Bill 2012, Explanatory Notes, pp 1 - 2.

³ Gasfields Commission Bill 2012, Explanatory Notes, p 1.

2 Examination of the Bill

The committee considered the key policy proposals in the Bill. These are outlined in the sections below.

2.1 Establishment of the Gasfields Commission

The policy 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”*.⁴ The evidence provided to the committee showed strong support for the establishment of the Gasfields Commission under the Gasfields Commission Bill 2012 (the Bill). AgForce, for example, described the establishment of the Commission as *“a positive move forward”*⁵ and a representative from QGC Pty Ltd said at a public hearing that the Gasfields Commission can play a *“very valuable”* role by assisting parties to *“come together and resolve issues before they snowball”*.⁶

Committee comment

The committee notes that the Gasfields Commission has been operating since 1 July 2012.⁷ The committee holds the view that the establishment of the Gasfields Commission as a statutory body will be beneficial as it will provide it with clearer separation from the Government and hence aid its ability to *“facilitate better relationships between landholders, regional communities and the onshore gas industry in Queensland”*.⁸

2.2 Purpose of the Gasfields Commission

The purpose of the proposed Gasfields Commission Act is to establish the Gasfields Commission to manage and improve the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland.⁹

Some of the submitters to the committee’s inquiry were of the view that there should be a definition of *“sustainable coexistence”* in the Bill.¹⁰ The Gasfields Commission and the the Department of State Development, Infrastructure and Planning, however, stated that sustainable coexistence may look different in the various regions of Queensland and if the term was defined in the Bill, it *“could have the effect of limiting the Commission’s ability to review local factors and issues and make recommendations that reflect the needs and environment of particular areas”*.¹¹ In addition to this, the department stated that defining *“sustainable coexistence”* was *“not considered appropriate as there is no agreement between interest groups on the definition of sustainable co-existence”*.¹²

⁴ Gasfields Commission Bill 2012, Explanatory Notes, p 1.

⁵ AgForce, Submission 3, p 1.

⁶ Brian Lorigan, General Manager, Land and Community, QGC Pty Ltd, Public Hearing, Brisbane, 13 February 2013, transcript, p 7. See also, Cotton Australia, Submission 6, p 3; QGC, Submission 8, p 1; APPEA, Submission 10, p 1; Toowoomba Regional Council, Submission 12, p 1; Western Downs Regional Council, Submission 13, p 1; Queensland Resources Council, Submission no 14, p 5.

⁷ Jamie Merrick, Director-General, State Development Group, Department of State Development, Infrastructure and Planning, Private Departmental Briefing, 28 November 2012, transcript, p 2.

⁸ Gasfields Commission Bill 2012, Explanatory Notes, p 1.

⁹ Gasfields Commission Bill 2012, cl 2.

¹⁰ See eg, Friends of Felton, Submission 2, p 1; Toowoomba Regional Council, Submission 12, p 2.

¹¹ John Cotter, Chairman, Gasfields Commission Queensland, Letter to the Chair, State Development, Infrastructure and Industry Committee, 20 February 2013, p 1. See also, Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 3.

¹² Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 3.

Committee comment

The committee considers that a definition of “*sustainable coexistence*” is unnecessary – the term can be interpreted using ordinary dictionary meanings. In addition, as pointed out by the department and the Gasfields Commission, the breadth of the term may be limited if it is defined in the Bill.

The committee considers, however, that there would be benefit in the Gasfields Commission developing guidelines on how it perceives sustainable coexistence in the various regions of Queensland. This would give the public greater confidence in the Gasfields Commission because they would be aware of what the commission is hoping to achieve.

Point for clarification 1

The committee seeks clarification from the Minister about any proposed guidelines that may be developed by the Gasfields Commission around its purpose of managing and improving the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland.

2.3 Functions of the Gasfields Commission

Clause 6 of the Bill sets out the Gasfields Commission’s functions. Several of the submitters contended that it would be beneficial to add further functions to the dozen functions already there. Queensland Conservation, for example, proposed that cl 6 should be amended “*to include avoiding, minimizing and mitigating adverse social, economic and environmental impacts caused by CSG development as a core function of the [Gasfields] Commission*”.¹³

The department considers that matters such as “*setting environmental thresholds, monitoring environmental impacts and sanctioning companies*” are “*out-of-scope as the Gasfields Commission is being set up to manage and improve co-existence rather than duplicate existing functions of government*”. The department notes that these functions “*are undertaken elsewhere for example through the Department of Environment and Heritage Protection and the Environmental Protection Act 1994*”.¹⁴

Committee comment

Most of the functions in cl 6 are of an advisory or facilitatory nature as the Gasfields Commission is neither a regulatory nor decision-making body. The committee accepts the department’s position that the additions proposed to cl 6 by the submitters would be “*out-of-scope*” and the committee considers that the functions as stated in cl 6 are adequate.

Referrals

At present, the Bill does not make any mention of the Gasfields Commission referring matters to other agencies. At the Brisbane public hearing, John Cotter, the chairperson of the Gasfields Commission was asked about referring matters. Mr Cotter replied that, “*It is very easy to put forward accusations to an organisation like the commission*”.¹⁵ He continued:

... the best action for the commission is to see that that information is referred by the person putting it forward, not necessarily the commission, because I believe that would place far too much legal onus on

¹³ Queensland Conservation, Submission 9, p 2. See also: Queensland Murray-Darling Committee Inc, Submission 1, pp 2-5; Toowoomba Regional Council, Submission 12, pp 1-2.

¹⁴ Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 1.

¹⁵ John Cotter, Chair, Gasfields Commission, Public Hearing, Brisbane, 13 February 2013, transcript, p 5.

the commission to validate that information and I do not believe that that would be in the best interests of the objective of the commission.

Committee comment

The committee understands that the Gasfields Commission does not have the resources to investigate and validate all matters brought before it and thus it would not be appropriate to mandate that it refer matters to the appropriate agency if it is not a matter that falls within the remit of the commission. The committee recognises, however, that in some instances, it may be incumbent upon the Gasfields Commission to refer matters to other agencies.

Recommendation 2

The committee recommends that the Gasfields Commission Bill 2012 be amended to clarify that the Gasfields Commission can refer matters, when appropriate, to relevant agencies.

2.4 Membership of the Gasfields Commission

Division 2 of Part 2 of the Bill deals with membership of the Gasfields Commission. Clause 8 sets out who the Commission must include and cl 9 sets out the necessary qualifications or experience required for appointment as a commissioner.

Property Rights Australia proposed the addition of a commissioner who has *“recognised qualifications or extensive experience in the field of water hydrology and a sound understanding of underground aquifers”* in cl 8 because of the potential impact of onshore gas production on water sources.¹⁶

With respect to membership of the Gasfields Commission, the department is of the view that the skill sets *“are deliberately broad”* and as such the scope covers the suggestions made by submitters.¹⁷

Committee comment

The committee notes that while it may be valuable to have a commissioner with hydrogeological skills, the committee does not consider that it would be appropriate to mandate it in cl 8. The committee considers that it would be better to widen the available pool of applicants and the range of skills available to the commission by including an additional category in cl 9 – that of a person with qualifications or experience in matters relating to the environment. This may be, for example, a person with an environmental science qualification, a natural resource management background, or a person with particular skills, such as a soil scientist or hydrogeologist. This would also address concerns raised by the QMDC and the Upper Dawson Branch WPSQ.¹⁸

Recommendation 3

The committee recommends that the Gasfields Commission Bill 2012 be amended to incorporate an additional category within clause 9 to include individuals with qualifications or experience in matters relating to environmental science or natural resource

¹⁶ Property Rights Australia, Submission 15, p 2.

¹⁷ Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 2.

¹⁸ See Queensland Murray-Darling Committee, Submission 1, p 5; Upper Dawson Branch WPSQ, Submission 4, p 1.

management.

In its submission, Rockhampton Regional Council suggested at least one commissioner should come from Central Queensland and possibly another from North Queensland so that the focus is not solely on southern Queensland.

Committee comment

Rockhampton Regional Council's concern about the lack of representation for Central and North Queensland may, at least partially, be assuaged by the proposed establishment of the northern Gasfields Community Leaders Council. This is discussed in greater detail below in Part 2.9.

Termination of appointment

The Queensland Resources Council was concerned about cl 13 which enables the Governor in Council to remove a commissioner from office at any time for any reason or none.¹⁹ It considered that there should be further detail of the processes.

Committee comment

The committee is satisfied with how cl 13 and 28 are currently drafted as there are enough checks and balances in the process to obtain the Governor in Council's approval to ensure that any decision to terminate is not taken lightly.

To terminate the appointment of a commissioner or general manager, an Executive Council Minute would have to be prepared, outlining the background to the matter and the purpose and consequence of the proposed termination. The Minute would have to be submitted to the Executive Councillors for their consideration. If they agree that it should proceed to the Governor in Council, it would be submitted for his or her approval. The Governor in Council can ask questions about the matter and seek further information and advice before granting approval.²⁰

Also, as noted in Part 3.1 below, provisions that allow the Governor in Council to remove a statutory body's corporate CEO, board members or commissioners "*for any reason or none*" are not uncommon.

2.5 Disclosure of interests by commissioners

The Bar Association of Queensland identified a potential problem in the Bill - the interplay between cl 8 and 17 of the Bill. Clause 8 requires commissioners to have a particular interest in order to be appointed. Clause 17 requires commissioners to disclose direct or indirect pecuniary interest in matters considered by the commission and to absent themselves from consideration of matters in which they have disclosed an interest. If disclosure is not made, or if a commissioner participates in a matter in which the commissioner has disclosed an interest, the commissioner faces a maximum penalty of 100 penalty units (\$11,000²¹). This issue was drawn into sharper relief by the Gasfields Commission which provided the committee with a copy of legal advice sought by two commissioners concerned about the extent of their potential legal exposure under cl 17.

¹⁹ The Queensland Resources Council also expressed concern about cl 28(3) which similarly provides for the termination of the general manager of the Gasfields Commission.

²⁰ Everyone's Parliament, "Governor in Council and Executive Council in Queensland", Factsheet 4.2, www.parliament.qld.gov.au.

²¹ *Penalties and Sentences Act 1992*, s 5.

To assist it in dealing with this potential anomaly, the committee sought advice from the Integrity Commissioner, Dr David Solomon. The letter received by the committee from the Integrity Commissioner is in Appendix E.

With respect to the penalty in cl 17, the Integrity Commissioner advised the committee that the *Hospital and Health Boards Act 2011*, amongst other Acts, does not include penalty provisions in relation to the disclosure of interests by members of the Hospital and Health boards and committees. This is even though the boards “control services and may exercise extensive powers”.²² However, as discussed in Part 3.5 below, the penalty provisions for a failure to disclose are not without precedent – see *Gold Coast Waterways Authority Act 2012*, s 70; the repealed *Transport Operations (TransLink Transit Authority) Act 2008*, s 54; and the *Economic Development Act 2012*, s 135. The maximum penalty for each of these is also 100 penalty units (\$11,000) – the same amount as that in cl 17 of the Bill.

Currently there is no definition of “close relative” in the Bill. The Integrity Commissioner recommended that a similar definition to that in previous legislation be adopted, such as that in the repealed *Urban Land Development Authority Act 2007*.²³ Similar definitions are also found in the *Recreation Areas Management Regulation 2007*, s 54; *Nature Conservation (Administration) Regulation 2006*, r 143; the repealed *Transport Operations (TransLink Transit Authority) Act 2008*, Schedule 2; and the *Economic Development Act 2012*, Schedule 1. These Acts define a close relative as a spouse, parent, grandparent, sibling, child or grandchild. See also Part 3.5 below.

Clause 17 forbids a commissioner who has disclosed an interest relating to a matter from participating in the commission’s consideration of the matter. This could, amongst other things, lead to the Gasfields Commission having trouble with attaining quorum. The Integrity Commissioner was of the view that a better approach than that in the Gasfields Commission Bill 2012 is that in the *Hospital and Health Boards Act 2011*. The Integrity Commissioner pointed out that in that Act, if a member of a board or a committee has a direct or indirect interest in an issue being considered or about to be considered by a board or committee and it could conflict with the person’s duties in considering the issue:

1. the person must disclose the interest to the meeting
2. the person must not be present when the board or committee considers the issue or decides the issue unless the board or committee directs otherwise
3. the person must absent themselves when the board or committee is deciding whether to give such a direction.

The Integrity Commissioner considered that the second of these points was particularly relevant to the Gasfields Commission because “members are chosen for their expertise in particular areas and the reason for them having that expertise may also give rise to a possible conflict of interest”. The process under the *Hospital and Health Boards Act 2011* enables the conflicted member to contribute to the discussion, and perhaps the decision, of the Committee or Board.²⁴

The Integrity Commissioner noted that if the Bill is passed, members of the Gasfields Commission will be statutory office holders and as such will be able to seek advice on ethics or integrity issues under the *Integrity Act 2009*. The chairperson of the Gasfields Commission will also be able to seek advice about the conduct of the commission and thus the Integrity Commissioner would be able to assist “in drawing up appropriate integrity protocols for the Commission”.²⁵

²² Queensland Integrity Commissioner, Letter to the committee, 11 March 2013, p 1.

²³ Queensland Integrity Commissioner, Letter to the committee, 11 March 2013, p 2.

²⁴ Queensland Integrity Commissioner, Letter to the committee, 11 March 2013, pp 2-3.

²⁵ Queensland Integrity Commissioner, Letter to the committee, 11 March 2013, p 3.

Committee comment

The committee recognises that problems may arise because cl 8 requires that commissioners represent sectional interests and cl 17 requires that commissioners disclose any direct or indirect interest the commissioner or a close relative has in a matter being considered by the Gasfields Commission and absent themselves from participating in the commission's consideration of the matter if they have disclosed an interest. The committee is concerned that the useful expertise that commissioners could bring to the various matters considered by the commission would not be able to be utilised. In addition, quorum for commission board meetings may be impossible or difficult.

The committee is of the view that the recommendations made by the Integrity Commissioner will assist in clarifying cl 17 and resolving issues that may arise because of the interplay between cl 8 and 17. With respect to the matter of a penalty, the committee considers that the penalty in cl 17 is excessive given that the Gasfields Commission is an advisory body, not a decision making body.

Recommendation 4

The committee recommends that clause 17 of the Gasfields Commission Bill 2012 be amended to remove the penalty provision.

Recommendation 5

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert a definition of "close relative" in terms such as in the *Economic Development Act 2012*.

Recommendation 6

The committee recommends that clause 17 of the Gasfields Commission Bill 2012 be amended to reflect section 9 of Schedule 1 of the *Hospital and Health Services Act 2011*, to which should be added a requirement that the minutes should also record instances in which a conflicted person has taken part in a vote on an issue that concerned him or her.

Recommendation 7

The committee recommends that following the assent of the Gasfields Commission Bill 2012, the chairperson of the Gasfields Commission consult with the Integrity Commissioner to draft appropriate integrity protocols for the Gasfields Commission.

Clause 17(2) provides that the chairperson of the Gasfields Commission must disclose his or her interests to all the other commissioners but the other commissioners need only disclose an interest to the chairperson. The Queensland Resources Council suggested that disclosure in all cases should be to all the commissioners because it could not see any reason for the differentiation.

Committee comment

The committee considers that it would be appropriate to amend cl 17 so that disclosure is to all commissioners. This would ensure greater transparency and would be likely to invoke greater confidence in the Gasfields Commission's processes.

Recommendation 8

The committee recommends that clause 17(2) of the Gasfields Commission Bill 2012 be amended to require that the chairperson and the other commissioners disclose their interest to all the commissioners.

2.6 Gasfields Commission board meetings

Clause 20 of the Bill provides for the conduct of commission board meetings. At present, it is unclear how quorum is determined if the chairperson is absent.

Committee comment

The committee considers that if the chairperson is absent from a commission board meeting, quorum for the meeting should be the presiding chairperson (the commissioner chosen by the commissioners present at the meeting) and three part-time commissioners. This parallels the quorum requirement when the chairperson is present, that is, the chairperson and three part-time commissioners.

Recommendation 9

The committee recommends that clause 20 of the Gasfields Commission Bill 2012 be amended to clarify that in the absence of the chairperson, quorum for the commission board meeting will be the acting chairperson and three other commissioners.

2.7 Powers of the Gasfields Commission

Part 3 of the Bill provides for particular powers of the Gasfields Commission. Amongst those powers is the power to require particular information from government entities and prescribed entities (cll 21 – 24).

Power to require particular information from government entities and prescribed entities

Clause 21 gives the Gasfields Commission 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 under cl 21(3). Subclause 21(4) states that if subcl (3) applies, the entity must inform the commissioner in writing that it applies. At present there is no equivalent subsection in cl 22 (Power to require advice) and cl 24 (Power to require particular information from prescribed entities). The Bar Association of Queensland recommended that a similar provision to subcl 21(4) be included in cll 22 and 24.

Committee comment

The amendment proposed by the Bar Association would bring greater consistency between cll 21, 22 and 24. The proposed amendment appears to be practical as it would mean that the Gasfields Commission would be advised that it will not receive the advice or information it has requested.

Recommendation 10

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert an additional subclause in the nature of subclause 21(4) in clauses 22 and 24 in order to create greater consistency in the application of the Gasfields Commission's powers.

Power to require information from prescribed entities

Clause 24 of the Bill enables the Gasfields Commission to require particular information from the following entities:²⁶

- landholders; or
- onshore gas operators; or
- companies engaged under a written agreement to carry out work, on behalf of an onshore gas operator, that relates to the exploration or production of petroleum.

The information has to be provided unless:

- the material is in someone else's possession or control and the other person has refused to give the material to the entity (cl 24(3)(a)); or
- complying with the requirement would place the entity in contravention of a law (cl 24(3)(b)); 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 (cl 24(3)(c)); or
- the giving of the material might tend to incriminate the entity (cl 24(3)(d)); or
- the material is confidential to the entity or the giving of the relevant material might be to the detriment of the entity's commercial or other interests (cl 24(3)(e)).

The maximum penalty for failing to comply with cl 24 is 100 penalty units (\$11,000).

The QMDC, Cotton Australia and Property Rights Australia expressed concern that onshore gas companies may withhold particular information using cl 24(3)(d) and (e). The Bar Association also noted the width of cl 24(3)(e). It recommended that the information under cl 24(3)(e) be provided to the Gasfields Commission but in a way which ensures its confidentiality is identified and preserved.

The Bar Association also pointed out that:²⁷

... 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.

Committee comment

Taking into account the Gasfields Commission's functions, the committee is satisfied with the current provisions. The committee recognises that some documents that may be useful to the commission may not be provided by certain prescribed entities relying on cl 24(3)(d) and (e). Nevertheless, given that the Gasfields Commission's key functions are advisory and facilitatory, and not decision-making or regulatory, the committee considers that such exemptions will not unduly impact on the Gasfields Commission's ability to perform its functions. Further, as evidenced by the submissions received by the committee and as expressed by the witnesses at the public hearings, there is considerable support for the Gasfields Commission and its work, and thus entities may well opt to provide documents despite the availability of the exemptions.

²⁶ Proposed Schedule 1.

²⁷ Bar Association of Queensland, Submission 11, p 2.

Compulsory consultation

Clause 23 of the Bill states 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 (subcl 23(1)). However, the clause goes on to state (subcl 23(2)) that this requirement is directory only and does not create rights or impose legally enforceable obligations on the State, a government entity or anyone else. It also states (subcl 23(3)) that a failure to consult does not affect the validity of any decision. Two stakeholders identified an apparent anomaly in that the second part of the clause appears to effectively negate the first part.²⁸ The QRC wrote in its submission:²⁹

Given the emphasis placed in the Deputy Premier's speech in introducing the Bill ... that the commission "has the teeth it needs to get the job done", QRC questions whether subsection (2) undermines an important aspect of the Bill's intent.

At the departmental briefing on the Gasfields Commission Bill 2012 and in an email to the committee, the department said that subclauses 23(2) and (3) were included in the Bill on the advice of the Office of the Queensland Parliamentary Counsel (OQPC). The OQPC advised the department that without the inclusion of subclauses 23(2) and (3) that subclause 23(1) could provide grounds for judicial review if an agency failed to consult with the Gasfields Commission. The department said that this is particularly pertinent given that there are parties that are opposed to development of the onshore gas industry. The department advised the committee that administrative procedures relating to consultation arrangements with the Gasfields Commission would be worked out after the Bill is passed.³⁰

Committee comment

The committee acknowledges the submitters' concerns about cl 23 but accepts the department's reasons for including subclauses (2) and (3) in the provision and thus it does not recommend any change to cl 23 with respect to this matter.

Extension of powers

Rockhampton Regional Council contended that companies about to undertake major projects should have to consult with the Gasfields Commission³¹ and the Friends of Felton suggested that the Gasfields Commission should be able to recommend against the establishment of a particular CSG development proposal.

As discussed above, the department's position is that the Gasfields Commission is being established to manage and improve coexistence while avoiding duplicating existing Government functions.

Committee comment

The committee considers that requiring companies to consult with the Gasfields Commission before undertaking major projects and the Gasfields Commission being able to recommend against the establishment of particular onshore gas development proposals go beyond the purpose of the Gasfields Commission as articulated in the Gasfields Commission Bill 2012.

²⁸ Queensland Murray-Darling Committee, Submission 1, p 5; Queensland Resources Council, Submission 14, p 3.

²⁹ Queensland Resources Council, Submission 14, p 3.

³⁰ Holly Kluver-Jones, Principal Policy Officer, Resource Sector Facilitation Division, Department of State Development, Infrastructure and Planning, Departmental Briefing, 28 November 2012, transcript p 6; Danielle Ellem, Project Manager, Resource Sector Facilitation, Department of State Development, Infrastructure and Planning, Email to Mary Westcott, 11 March 2013.

³¹ Rockhampton Regional Council, Submission 17, p 1.

2.8 Confidential information

“Confidential information” is defined in proposed Schedule 1. It:

- means any information that:
 - could identify an individual; or
 - is about a person’s current financial position or financial background; or
 - would be likely to damage the commercial activities of a person to whom the information relates; but
- does not include –
 - information that is publicly available; or
 - statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

Pursuant to cl 37, a commissioner, general manager or staff member of the commission is not permitted to disclose confidential information unless the disclosure is:

- in the performance of functions under the proposed Act; or
- with the consent of the person to whom the information relates; or
- otherwise required or permitted by law.

Confidential information was a key point of contention in the submissions and at the public hearings. QGC, for example, is of the view that the definition of confidential information is inadequate and that any confidential information provided to the Gasfields Commission by landholders, onshore gas operators and contractors should not be disclosed without prior consent.³² Similarly, AgForce would prefer that it was compulsory for the consent of the person who provided the information to be given before the information is disclosed.³³

The department stated that the definition of “confidential information” was “drafted on advice from the Office of Parliamentary Counsel to ensure there is no infringement of fundamental legislative principles”.³⁴

The Gasfields Commission is of the view that the protections within the legislation are sufficiently wide to match the intentions of the Bill.³⁵

Committee comment

The committee recognises that the Gasfields Commission needs access to information to be able to perform its functions, but that some information must remain confidential.³⁶ The committee considers that the concerns of the resource companies and the agricultural sector with respect to confidential information may be unnecessary because cl 24(3)(e) enables prescribed entities to avoid complying with a requirement to give stated documents or information to the Commission if “the relevant material might be to the detriment of the entity’s commercial or other interests”. Thus, the

³² QGC, Submission 8, p 1.

³³ AgForce, Submission 3, p 1.

³⁴ Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 2.

³⁵ John Cotter, Chairman, Gasfields Commission Queensland, Letter to the Chair, State Development, Infrastructure and Industry Committee, 20 February 2013, p 2.

³⁶ See cl 25, 37.

committee is satisfied with the current protections in the provisions relating to confidential information.

2.9 Gasfields Community Leaders Council

The Gasfields Community Leaders Council is based on the Surat Basin CSG Engagement Committee. It has been praised as providing *“a really good vehicle for both formal and informal engagement”*.³⁷

In its submission, AgForce proposed that there be more than one Gasfields Community Leaders Council.³⁸ This is now occurring with the establishment of a northern Gasfields Community Leaders Council.³⁹ The Gasfields Commission is considering adding more committees or instituting regional groups that feed into a leaders council.⁴⁰

The Toowoomba Regional Council suggested that the Gasfields Community Leaders Council include a representative from the farming sector.⁴¹

Property Rights Australia proposed that it should be made clear how the Gasfields Commission hears the views of the Gasfields Community Leaders Councils.⁴²

Committee comment

The committee considers that the establishment of the northern Gasfields Community Leaders Council is a good step. It is concerned, however, that the Bill does not provide for such establishment and that the Gasfields Commission Bill 2012 could be enhanced by creating an explicit head of power to establish one or more Gasfields Community Leaders Councils as required.

Recommendation 11

The committee recommends that the Gasfields Commission Bill 2012 be amended to incorporate a head of power for the Gasfields Commission to establish one or more Community Leaders Councils for the purpose of assisting the commission to identify issues affecting the coexistence of landholders, regional communities and the onshore gas industry in Queensland.

At present, it appears that some fine-tuning of the Gasfields Community Leaders Councils is required. Evidence was provided at the committee’s public hearing in Brisbane by Dale Stiller of Property Rights Australia that only one meeting had been held of the southern Gasfields Community Leaders Council in October 2012 and there were so many attendees that it proved unwieldy. He also said that it was unclear whether anything had resulted from the resolutions passed at the meeting.⁴³ While it was resolved that such meetings would be held each quarter, another meeting has not yet taken place.

³⁷ Andrew Barger, Director, Resource Policy, Queensland Resources Council, Brisbane Public Hearing, transcript, p 8.

³⁸ AgForce, Submission 3, p 1.

³⁹ John Cotter, Chairman, Gasfields Commission Queensland, Brisbane Public Hearing, transcript, p 6.

⁴⁰ John Cotter, Chairman, Gasfields Commission Queensland, Letter to the Chair, State Development, Infrastructure and Industry Committee, 20 February 2013, pp 2-3.

⁴¹ Toowoomba Regional Council, Submission 12, p 2.

⁴² Property Rights Australia, Submission 15, p 4.

⁴³ Public Hearing, Brisbane, 13 February 2013, transcript, p 32. See also, Sue Dillon, Program Manager, AgForce, Brisbane Public Hearing, transcript, p 18.

In its letter to the committee, the Gasfields Commission stated that it was examining “*models of community representation that will enable it to engage with leaders in different geographical areas and properly represent the area’s interest, without having a membership that is so large it becomes unwieldy and ineffective*”.⁴⁴

The committee notes that the Gasfield Commission anticipates developing terms of reference for the Gasfields Community Leaders Council that will include provisions for specifying which groups, including Indigenous interests, should be represented. The committee also notes that the Gasfields Commission intends to “*spell out the mechanism by which the discussions and decisions of the council will be conveyed to and acted on by the Commission*”.

Point for clarification 2

The committee seeks clarification from the Minister regarding the Terms of Reference that will be developed to ensure that the Gasfields Community Leaders Councils function in accordance with the Gasfields Commission’s purpose and contemporary best practice models of community representation, including Indigenous representation.

2.10 Alternative staffing arrangements

Western Downs Regional Council expressed concern in its submission and at the public hearing about the potential secondment of council staff by the Gasfields Commission. It was concerned that it may lose officers with critical expertise, without recompense, and this could have “*a major impact on local council resources*”. The Western Downs Regional Council was also concerned about its ability to refuse a request for staff.⁴⁵

Both the Gasfields Commission and the department supported an amendment to accommodate the Western Downs Regional Council’s concerns.⁴⁶

Committee comment

The committee understands the difficulties that can be faced by local governments with respect to staffing in regions in which the onshore gas industry is operating. The committee therefore proposes an amendment to the Bill to address the concerns of local government and reflect the suggestions proposed by the department and the Gasfields Commission.

Recommendation 12

The committee recommends that the Gasfields Commission Bill 2012 be amended to include an additional subclause in clause 30 to the effect of:

An arrangement under subsection (1) must be on terms acceptable to the chief executive of the department, local government, government entity or corporation.

⁴⁴ John Cotter, Chairman, Gasfields Commission Queensland, Letter to the Chair, State Development, Infrastructure and Industry Committee, 20 February 2013, p 2.

⁴⁵ Western Downs Regional Council, Submission 13, p 2.

⁴⁶ John Cotter, Chairman, Gasfields Commission Queensland, Letter to the Chair, State Development, Infrastructure and Industry Committee, 20 February 2013, p 3; Department of State Development, Infrastructure and Planning, Response to public submissions and hearings, 4 March 2013, p 3.

2.11 Review of the Gasfields Commission Act

At present, the Bill does not make provision for a review of the Act.

Committee comment

The committee considers that the Bill should include a provision requiring a formal review of the proposed Act be undertaken within five years of its commencement. This will enable an evaluation of the Gasfields Commission to determine whether it is achieving its purpose of managing and improving the sustainable coexistence of landholders, regional communities and the onshore gas industry in Queensland.

Recommendation 13

The committee recommends that the Bill include a provision requiring a review of the proposed Gasfields Commission Act within five years of its commencement.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that “*fundamental legislative principles*” are the “*principles relating to legislation that underlie a parliamentary democracy based on the rule of law*”. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

3.1 Rights and liberties of individuals

Section 4(2)(a) *Legislative Standards Act 1992* – Does the Gasfields Commission Bill 2012 have sufficient regard to the rights and liberties of individuals?

Clause 13 allows the Governor in Council to, at any time, remove a Commissioner from office “*for any reason or none*”.

Whilst membership of the Gasfields Commission may not be the sole income stream for a part-time commissioner, the role of chairperson is a full-time role and may potentially be the main (or only) income stream of that person. Given the role of chairperson would involve significant responsibility, the remuneration for that position is likely to be significant. If a person assumed personal financial liabilities commensurate with that level of remuneration and then they were suddenly removed from their position, without recourse to any appeal mechanism, it is not inconceivable that they (and their family) may encounter sudden and significant financial hardship.

No appeal rights from the Governor in Council’s actions are specified in this Bill, however a commissioner may have some action at law in respect of their removal from office (eg. under their contract of appointment). Any challenge to the decision is made more difficult by the fact that the removal decision can be made “*for any reason or none*” and the fact that there is no requirement under the Bill for any kind of information notice or written reasons to be provided (such as would normally provide grounds upon which to base an appeal/seek redress).

Provisions that allow the Governor in Council to remove a statutory body’s corporate CEO, board members or Commissioners “*for any reason or none*” are not uncommon.

Subclause 28(3) similarly allows the Commission to remove the general manager appointed under subcl 28(1) from office, at any time, for any reason or none.

Committee comment

As discussed above in Part 2.4, the committee is satisfied with cl 13 and 28.

Clause 24 empowers the commission to request what might be considered to be private or personal information from a prescribed (non-government) entity (including an individual) and **clause 25** gives the commission qualified power to publish any information that is relevant to a function of the commission or its purpose.

There is potential for the application of either cl 24 or 25 to infringe the right of an individual to a reasonable expectation of privacy. Safeguards to protect individual privacy have however been inbuilt into both cl 24 and 25. Clause 24 only empowers the commission to request documents when those documents are “*reasonably required for the effective and efficient carrying out of the Commission’s functions*” and compliance is not required where a ground for refusal given under subcl 24(3) is enlivened. It is not specified in subcl 24(3) whether a ground for refusal merely has to be claimed by an entity or whether it has to be established by the entity, however given the significant penalty of maximum 100 penalty units for non-compliance it is likely that any entity

seeking to rely on a ground for refusal in subcl 24(3) would have to establish the veracity of the ground it claimed.

A prescribed entity is appropriately protected from giving the commission documents or access to those documents where the relevant material might tend to incriminate the entity (subcl 24(3)(d)). The prescribed entity may also refuse access to the documents where the relevant material is confidential to the entity, or the giving of the relevant material might be to the detriment of the entity's commercial or other interests (subcl 24(3)(e)). These privacy protections are broad, especially that offered by subclause 24(3)(e).

Committee comment

The committee is satisfied with the safeguards in cl 24 of the Gasfields Commission Bill 2012. See Part 2.7 above for further comment on this provision.

Whilst **subclause 25(1)** allows the commission to publish any information relevant to the purpose of, or a function of, the commission, subcl 25(2) prohibits the commission from publishing any *confidential* information under subcl (1). *Confidential Information* is defined in the dictionary in Schedule 1 to mean any information that could identify an individual, or is about a person's current financial position/financial background, or would be likely to damage the commercial activities of a person to whom the information relates. Confidential information does not include information that is publicly available, or statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

There are therefore dual privacy safeguards inherent in cl 25. Firstly the information able to be published must be relevant to the purpose of, or a function of, the commission. Secondly, *confidential information* cannot be published, which by its definition precludes publication of any (non-public) information that could identify a person, that amounts to personal financial information, or that would be likely to damage the commercial activities of a person to whom the information relates. The wide scope of the definition of confidential information should protect from publication most personal information that comes into the possession of the commission, especially given the threshold test that the information must be relevant to a purpose of, or a function of, the commission. It appears to be wide enough to also protect information that is "*commercial in confidence*".

Committee comment

The committee is satisfied with the safeguards in cl 25 of the Gasfields Commission Bill 2012.

3.2 Administrative power

Section 4(3)(a) *Legislative Standards Act 1992* - Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

The Bill appears to be largely silent on avenues of redress or review available to persons aggrieved by decisions of the Commission.

Committee comment

The committee seeks confirmation from the Minister that judicial review will be available to persons aggrieved by Commission decisions.

Point for clarification 3

The committee seeks clarification from the Minister as to whether judicial review will be available to persons aggrieved by Gasfields Commission decisions.

Clause 23: It appears that grounds for judicial review could not be found in the failure of a government entity to consult with the commission when developing policy or legislation intended to affect the onshore gas industry, although other grounds for review may arise from the policy/legislation or decisions made thereunder.

Committee comment

Clause 23 is discussed above in Part 2.7. The committee is satisfied with the response presented by the department.

3.3 Protection against self-incrimination

Section 4(3)(f) *Legislative Standards Act 1992* - Does the Bill provide appropriate protection against self-incrimination?

Yes – A prescribed (non-government) entity is appropriately protected from giving the commission documents or access to those documents where the giving of the relevant material might tend to incriminate the prescribed entity (see subcl 24(3)(d)).

Committee comment

The committee is satisfied that the Bill provides appropriate protection against self-incrimination.

3.4 Immunity from proceedings

Section 4(3)(h) *Legislative Standards Act 1992* - Does the Bill confer immunity from proceeding or prosecution without adequate justification?

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 the Act (subcl 42(1)). Where subcl 42(1) will prevent a civil liability attaching to the commissioner, the general manager or staff, the liability attaches instead to the State.

While these provisions do confer immunity from civil liability (technically an FLP concern) it is a fairly standard wording designed to allow statutory officers to undertake their statutory duties without fear of personal liability (absent dishonesty and negligence). It is less usual to see that protection extended to all staff.

Attaching civil liability to the State preserves an appropriate remedy for aggrieved persons.

Committee comment

Clause 42 is unlikely to operate in a manner detrimental to the rights and liberties of any individual and the committee is satisfied with the Bill on the matter of immunity from proceedings.

3.5 Clear and precise

Section 4(3)(k) *Legislative Standards Act 1992* - Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Clause 17 requires a commissioner to disclose a direct or indirect pecuniary interest held by the Commissioner or his/her close relative, in a matter being considered (or about to be considered) by the commission, where that interest could conflict with the proper performance of the commissioner's functions for the matter. A failure to disclose attracts a significant maximum penalty of 100 penalty units (\$11,000) (subcl 17(2)). The chairperson is required to disclose his/her relevant

interest to all of the other commissioners however a part-time commissioner is only required to make his/her disclosure to the chairperson (subcl 17(2)). It is unclear as to the rationale behind these different disclosure requirements, although they are also found in s 135 of the *Economic Development Act 2012*. The explanatory notes for the Gasfields Commission Bill regarding subcl 17(2) merely restate its content rather than offering any reason for the differing disclosure requirements.

Once a commissioner has disclosed such an interest relating to a matter, the commissioner is prohibited, under subcl 17(3), from participating in the commission's consideration of the matter. If the commissioner participates in the commission's consideration of the matter in contravention of the subcl 17(3) prohibition, they can be liable to a maximum penalty of 100 penalty units.

The penalty provisions above for a failure to disclose are not without precedent – see *Gold Coast Waterways Authority Act 2012* s.70; *Transport Operations (TransLink Transit Authority) Act 2008*, s.54; and the *Economic Development Act 2012*, s.135.

The term “*direct or indirect pecuniary interest*” is very broad and could conceivably operate to render one or more commissioners ineligible to consider most matters that come before the commission. Given the small membership of the commission (4-7 commissioners) this could easily lead to quorum difficulties. There is also potential for the broad duty to disclose both direct and indirect pecuniary interests to potentially conflict with a Commissioner's contractual obligations should they be a party to a commercial contract containing a confidentiality clause.

The term “*close relative*” is not defined in this Bill, but has been defined in other Queensland legislation (eg. *Recreation Areas Management Regulation 2007*; *Nature Conservation (Administration) Regulation 2006*; the repealed *Transport Operations (TransLink Transit Authority) Act 2008*; *Economic Development Act 2012*) as meaning the spouse, parent, grandparent, sibling, child or grandchild of a person. It would be preferable for the term to be defined in this Bill itself, absent this however guidance as to the accepted meaning of “*close relative*” could be drawn from the definitions offered under comparable other Queensland legislation listed above.

Committee comment

Part 2.5 above presents a number of relevant recommendations regarding cl 17 of the Bill, particularly with respect to the persons to whom disclosure is made; a definition of close relative; and the penalty attached to the provision.

The committee draws the Minister's attention to the very broad application of cl 17 given the breadth of the term “*direct or indirect pecuniary interest*” and the wide number of people potentially covered by the term “*close relative*”.

Subclause 20(4) provides that the quorum for a commission board meeting is the chairperson and 3 part-time commissioners (ie. 4 of the 4-7 commissioners). Subclauses 20(2) and 20(3) contemplate occasions where the chairperson may be absent from a commission board meeting and provide that in such circumstances another commissioner chosen by the commissioners present must preside.

Committee comment

The issue regarding cl 20 is discussed above in Part 2.6 and the committee has presented a recommendation to address it.

Subclause 24(1)(a) references “*stated documents or information*” and “*stated types of documents or information*” as constituting *relevant material* yet no further, more specific, definition of what constitutes relevant material is offered in the rest of the Bill. The term *relevant material* is bolded and italicised in subcl 24, leaving the reader with an expectation that, as is usually the case with

bolded italicised terms, a more detailed definition can be found elsewhere in the Bill, which is not the case here. Throughout the Bill *relevant material* refers to stated documents or types of documents requested from a person/entity by the commission, and therefore what constitutes *relevant material* will vary with each request. Accordingly it would be very difficult to provide a specific dictionary definition that would encapsulate all possible examples of *relevant material*. However, a reference could be made to the relevant provision, such as in the definition of “*commission board meeting*”.

Committee comment

The committee recommends that the oversight identified in subclause 24 be rectified.

Recommendation 14

The committee recommends that the Gasfields Commission Bill 2012 be amended to insert a definition for “*relevant material*” in Schedule 1.

The Dictionary in **Schedule 1** defines “*general manager*” as the person appointed as general manager under s 29. This is an error. The appointment of a general manager is provided for in s 28.

Committee comment

The committee recommends that the error identified in s 28 be rectified.

Recommendation 15

The committee recommends that the Gasfields Commission Bill 2012 be amended to rectify the error in the definition of “*general manager*”.

The committee also notes that the Dictionary in **Schedule 1** defines “*commission board meeting*” with reference to section 19. This is a wrong reference as it should be section 18. The committee recommends that the error be rectified.

Recommendation 16

The committee recommends that the Gasfields Commission Bill 2012 be amended to rectify the error in the definition of “*commission board meeting*”.

3.6 Proposed new offence provisions

The proposed new offence provision in cl 17(2) is an issue of some contention as discussed above in Part 2.5 and reflected in the committee’s Recommendation 4.

3.7 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. In respect of compliance with fundamental legislative principles, the explanatory notes for the Bill merely state that it “*has been drafted with regard to the Fundamental Legislative Principles as defined in section 4 of the Legislative*

Standards Act 1992". Given some potential FLP issues have been identified, some qualitative discussion of the Bill's level of compliance with FLPs beyond '*drafted with regard to*' would have been preferable. In general the explanatory notes offer little benefit or guidance, often merely restating the content of each provision rather than offering an explanation as to the rationale for it.

Committee comment

The committee notes that the Explanatory Notes to the Gasfields Commission Bill 2012 did provide information under the required headings but the committee was not satisfied with the contents of the Explanatory Notes. They provided little illumination regarding the rationale for the provisions and little assistance in interpreting the Gasfields Commission Bill 2012.

Appendices

Appendix A – Newspapers in which advertisements were placed seeking written submissions on the Gasfields Commission Bill 2012

Newspapers in which advertisements were placed
1. Bowen Independent
2. Chinchilla News
3. Rockhampton Bulletin
4. Toowoomba Chronicle
5. Central Queensland News
6. Roma Western Star
7. Courier Mail
8. Gladstone Observer
9. Mackay Daily Mercury

Appendix B – Stakeholders from whom submissions were received

Submitters	
1.	Queensland Murray-Darling Committee Inc
2.	Friends of Felton Inc
3.	AgForce
4.	Upper Dawson Branch WPSQ
5.	Private submission
6.	Cotton Australia Limited
7.	Arrow Energy
8.	QGC
9.	Queensland Conservation (QCC)
10.	APPEA
11.	Bar Association of Queensland
12.	Toowoomba Regional Council
13.	Western Downs Regional Council
14.	Queensland Resources Council
15.	Property Rights Australia
16.	Steinohrt Enterprises Pty Ltd
17.	Rockhampton Regional Council

Appendix C – Witnesses at the public hearing in Brisbane on 13 February 2013

Witnesses
1. Mr John Cotter, Chairperson, Gasfields Commission
2. Mr Andrew Brier, General Manager, Gasfields Commission
3. Mr Paul Woodland, Manager, GCLNG External Affairs, QGC
4. Mr Brian Lorigan, General Manager, Land & Community, QGC
5. Mr Matthew Paul, APPEA
6. Mr Andrew Barger, Queensland Resources Council
7. Ms Sue Dillon, Project Manager, AgForce
8. Mr Michael Murray, National Water Policy Manager & Queensland Policy Manager, Cotton Australia Limited
9. Mr Nigel Parratt, Rivers Project Officer, Queensland Conservation
10. Mr Dale Stiller, Vice Chairman, Property Rights Australia
11. Mr Bill Blake, Property Rights Australia (Principal, McKays Solicitors)

Appendix D – Witnesses at the public hearing in Toowoomba on 15 February 2013

Witnesses
1. Mr Ian Whan, President, Friends of Felton
2. Ms Kathie Fletcher, Policy Officer, Queensland Murray-Darling Committee Inc
3. Ms Megan Phillips, Principal Planner, Toowoomba Regional Council
4. Mr Phil Berting, Chief Executive Officer, Western Downs Regional Council

Appendix E – Letter from Queensland Integrity Commissioner regarding clause 17

Queensland
Integrity Commissioner

PRIVATE AND CONFIDENTIAL

11 March 2013



Mr David Gibson
Chair
State Development, Infrastructure
and Industry Committee
Parliament House
BRISBANE QLD 4000

Email: sdiic@parliament.qld.gov.au

Dear Mr Gibson

I have received your formal request for advice on integrity issues associated with the *Gasfields Commission Bill 2012* following a discussion with you as Chair, and with the Deputy Chair, of the State Development Infrastructure and Industry Committee.

In particular you have asked for my advice on the following matters:

1. Whether it is appropriate for the Bill to contain penalties in clause 17.
2. The most appropriate definition of a close relative.
3. Any suggestion you have with respect to procedures for the Commissioners managing disclosures during meetings.
4. How you might assist the Commission in its management of questions of probity and integrity following the formal establishment of the Commission as a statutory entity.

1. **The penalties provision in cl. 17.** This appears to me to be an unusual provision. Some of the legislation with which I am familiar, including the *Integrity Act 2009*, contain provisions relating to the disclosure of interests but do not contain a penalty provision. A comparison can be made, for example, with the *Hospital and Health Boards Act 2011*, which deals with the disclosure of interests in Schedule 1, section 9. As I understand it, the Gasfields Commission will be primarily an advisory body, as set out in s. 6 of the Bill. On the other hand the Hospital and Health Boards control services and may exercise extensive powers. The Parliament did not consider it necessary to include penal provisions in relation to the disclosure of interests by member of the Hospital and Health Service Boards. In my view it would be quite inappropriate to include penalty provisions in relation to the disclosure of interests by members of the Gasfields Commission.

Level 13, 53 Albert Street Brisbane
PO Box 15290, City East
Queensland 4002 Australia
Phone +61 7 7 3224 2351
Fax +61 7 3224 2326
Website www.integrity.qld.gov.au

2. **The definition of a close relative.** This issue is discussed in the legal advice provided by Mr Peter Shannon to Mr Don Stiller and Mr Ian Hayllor – a copy of which you have provided to me. He points out:

The expression “close relative” is in fact defined in other Acts so it is not without precedent to be defined – for example in s. 111(5) of the *Urban Land Development Authority Act 2007* and Schedule 2 of the *Transport Operations (Translink Transit Authority) Act 2008* it is defined as follows:

Close relative, of a person, means the person’s –

- (a) spouse; or
- (b) parent or grandparent; or
- (c) brother or sister; or
- (d) child or grandchild.

The inclusion of a similar definition in the draft Bill would remove uncertainty as to what a “close relative” is for the purposes of the Bill. We would think consideration should certainly be given as to whether or not “relatives-in-law” and/or step-children are intended to be covered, although the foregoing definition would seem a preferable approach.

I agree with this conclusion. There appears to me to be no justification for having different definitions of “close relative” in different pieces of legislation, unless there is a good reason for doing so. There appears to be none here.

3. **Managing disclosures during meetings.** I mentioned earlier that the *Hospital and Health Boards Act 2011* has a provision dealing with disclosure of interests. It provides, inter alia, that where a member of a board or committee has a direct or indirect interest in an issue being considered or about to be considered by a board or committee, that could conflict with the person’s duties in considering the issue:

- (1) the person must disclose the interest to the meeting
- (2) the person must not be present when the board or committee considers the issue or decided the issue unless the board or committee directs otherwise
- (3) the person must absent themselves when the board or committee is deciding whether to give such a direction.

It seems to me that this is a far better way of dealing with the problem of possible conflicts than that set out in the Gasfields Commission Bill. First, the Hospital and Health Boards Act appropriately, in my view, requires disclosure to the relevant meeting. Second, and more important, it has a process that allows for the conflicted member to be able to contribute to the discussion, and perhaps the decision, of the Committee or board. This is particularly important where, as is the case with both the Hospital Boards and the Gasfields Commission, members are chosen for their expertise

in particular areas and the reason for them having that expertise may also give rise to a possible conflict of interest.

In each instance where a possible conflict was declared it would be for the remaining members of the board or committee to decide whether they think they would benefit from the contribution of the conflicted person (a) to the discussion of the issue and (b) to the decision.

The most likely outcome would that the conflicted person would be invited to be present for the discussion, but not the final vote.

If the conflicted person did take part in the vote this should be noted in the minutes and in any advice that the Commission provided on the particular issue.

My **recommendation** therefore is that clause 17 should be amended to reflect the provision of s. 9 of the Schedule of the *Hospital and Health Services Act 2011*, to which should be added a requirement that the minutes should also record where a conflicted person has taken part in a vote on an issue that concerned them.

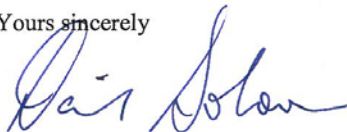
4. **The Commission's relationship with the Integrity Commissioner**

The members of the Commission will all be statutory office holders and as such will be recognised as "designated persons" under the Integrity Act and will be able to seek advice on ethics or integrity issues concerning themselves.

In addition the Commission Chairman may seek advice about his conduct of the Commission. This would allow for consultation between the Commission and the Integrity Commission in drawing up appropriate integrity protocols for the Commission.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely



Dr David Solomon AM
Queensland Integrity Commissioner

Statement of Reservation

I wish to respectfully express a statement of reservations on the Gasfields Commission Bill 2012.

Whilst I acknowledge there are many aspects of the bill that will assist in facilitating equitable development of the onshore gas industry there are shortfalls that do not address what I consider to be the greater community concerns.

It is my contention that there are strong expectations from the community on the role that the Commission will play on establishment of this bill that are not adequately addressed.

The most pertinent areas of our concern, as itemised in the State Development, Infrastructure and Industry Committee Report, are addressed as follows:

1. 2.2 Purpose of the Gasfields Commission

It is my position that in some cases the competing interests of the onshore gas industry and those of the community are irreconcilable. The existing bill is based on the premise that there is always a position of sustainable coexistence. This ensures that throughout the balance of the bill there is inadequate authority of the commission to protect all interests and, more specifically, those of the community.

It was heard in the submissions that not enough detail has been released on other protection mechanisms in this industry, such as Regional Plans. Without knowing the nature of protection from the planning instruments, it is vital that the Gasfields Commission retains enough authority to balance community interest against those of the onshore gas industry. Under the existing bill, the scope and authority of the commission is inadequate.

I acknowledge the committee report's recommendation that this requires further clarification. However, this does not ensure resolution of this issue.

2. 2.3 Functions of the Gasfields Commission

Based on the above rationale we believe that there is a requirement for the roles of the Commission to be expanded. This includes the requirement to investigate and report issues of concern that will impact on social and economic integrity of certain areas. The Commission plays such a critical role in the interface between the community and the government that they should be required to report these matters at all costs. Again, this point is substantiated by the fact that Regional Plans are not all finalised and therefore no security exists going forward.

3. 2.7 Powers of the Gasfields Commission

Many submissions highlighted the requirement for access to information and the imbalance between industry and the community in either negotiations or disputes. The proposed bill requires the necessary instrument to ensure information is made available to ensure the most equitable outcome for both parties.

4. 2.8 Confidential Information

Many of the submissions identified merit in ensuring at least certain levels of information are made available from both industry and community/landholder interests to achieve the best workable outcome. It is my contention that access to information to relevant parties must be enshrined in the legislation coupled with confidentiality safeguards.

Not all reservations are detailed here and will be raised during debate on this legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Katter', with a long horizontal line extending from the end of the signature.

Rob Katter
Member for Mount Isa