SUPREME COURT OF QUEENSLAND

CITATION:	*Australia Pacific LNG Pty Limited & Ors v The Treasurer, Minister for Aboriginal and Torres Strait Island Partnerships & Minister for Sport* [2016] QSC 113
PARTIES:	**AUSTRALIA PACIFIC LNG PTY LIMITED** ACN 001 646 331 (first applicant) **AUSTRALIA PACIFIC LNG (CSG) PTY LIMITED** ACN 099 577 769 (second applicant) **AUSTRALIA PACIFIC LNG CSG MARKETING PTY LIMITED** ACN 008 750 945 (third applicant) **AUSTRALIA PACIFIC LNG (MOURA) PTY LIMITED** ACN 064 989 813 (fourth applicant) **v** **THE TREASURER, MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER PARTNERSHIPS AND MINISTER FOR SPORT** (respondent)
FILE NO/S:	SC No 1027 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application for joinder
DELIVERED ON:	27 May 2016
DELIVERED AT:	Brisbane
HEARING DATE:	14 April 2016
JUDGE:	Holmes CJ
ORDERS:	**1. The application for joinder is dismissed.** **2. Tri-Star Petroleum Company and Tri-Star Australia Holding Company are to pay the applicants' costs of the application for joinder.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JOINDER OF CAUSES OF ACTION AND OF PARTIES – PARTIES – OTHER MATTERS – where the first, second, third and fourth applicants made an application for a statutory order of review under the *Judicial Review Act 1991* (Qld) of a decision made pursuant to s 148(1)(a) of the *Petroleum and Gas (Production*

and Safety) Regulation 2004 (Qld) – where Tri-Star Petroleum Company and Tri-Star Australia Holding Company sought to be made a party to that proceeding pursuant to s 28 of the *Judicial Review Act 1991* (Qld) – where the first, second, third and fourth applicants resisted the joinder – where the Tri-Star companies had an interest in the review decision – where the Tri-Star companies had no right to be heard or otherwise participate in the initial decision-making process – whether the Tri-Star companies' interest entitled them to participate in the proceeding

Judicial Review Act 1991 (Qld), s 28
Petroleum and Gas (Production and Safety) Regulation 2004 (Qld), s 148

Australian Broadcasting Commission Staff Association v Bonner (1984) 2 FCR 561, considered
Fordham and the State of Victoria v Evans (1987) 14 FCR 474, considered
Friends of Hinchinbrook Society Inc v Minister for Environment (1996) 69 FCR 1, considered
United States Tobacco Company v Minister for Consumer Affairs (1998) 20 FCR 520, considered

COUNSEL: L Kelly QC, with M Johnston, for the applicants
K Barlow QC, with J Houston, for the applicants for joinder
A D Scott for the respondent

SOLICITORS: Clayton Utz for the applicants
Tucker & Cowen for the applicants for joinder
Crown Law for the respondent

[1] **HOLMES CJ:** Tri-Star Petroleum Company and Tri-Star Australia Holding Company (to whom I will collectively refer as "Tri-Star") seek to be joined as respondents to this proceeding, an application for a statutory order of review under the *Judicial Review Act* 1991. The applicants in that proceeding, Australia Pacific LNG Pty Limited, Australia Pacific LNG (CSG) Pty Limited, Australia Pacific LNG CSG Marketing Pty Limited and Australia Pacific LNG (Moura) Pty Limited (collectively, "Australia Pacific LNG") resist that joinder. The existing respondent, the Treasurer, and the intervenor, the Attorney-General,[1] neither consent to nor oppose the joinder.

[2] Section 28 of the *Judicial Review Act* provides:

"**28 Application to be made party to proceeding**

(1) If—

(a) a person is interested in—

[1] Under s 78A of the *Judiciary Act* 1903.

(i) a decision; or

(ii) conduct (including conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision); or

(iii) a failure to make a decision or perform a duty according to law; and

(b) an application has been made to the court under this Act in relation to the decision, conduct or failure;

the person may apply to the court to be made a party to the application.

(2) The court may grant or refuse the application."

Tri-Star also sought joinder under Rule 69(1)(b) of the *Uniform Civil Procedure Rules* 1999, but I doubt its relevance, since the discretion under s 28 is more broadly expressed. The criteria in the Rule – that the person's presence is necessary, or that it is desirable, just and convenient, to enable the court to adjudicate effectually and completely on the matters in dispute – are among the matters which the court would, in any event, take into account in the exercise of its discretion under s 28.

The decision under review

[3] Australia Pacific LNG is a producer of petroleum (in the form of coal seam gas) and must pay a petroleum royalty to the State Government on the petroleum it produces and sells. The royalty is payable at ten per cent of the "wellhead value" of the petroleum sold. The wellhead value is, pursuant to s 148(1)(a) of the *Petroleum and Gas (Production and Safety) Regulation* 2004, "the amount that the petroleum could reasonably be expected to realise if it were sold on a commercial basis", less, by virtue of s 148(1)(b), expenses and earlier losses. Under s 148C(5) of the Regulation, if the Minister reasonably believes that the selling price of a producer's petroleum is less than its market value (because, for example, the product is being purchased by an associated entity of the producer) he or she can make a "petroleum royalty decision" about how the "components of the wellhead value of [the] petroleum" are to be calculated. Alternatively, the petroleum producer can apply to the Minister, under s 148D of the Regulation, for a petroleum royalty decision.

[4] In 2011, Australia Pacific LNG applied for a petroleum royalty decision from the relevant Minister, the Treasurer, under the Regulation. The decision was made on 16 December 2015 and communicated on 4 January 2016 to Australia Pacific LNG, which then applied for judicial review of it. It is that application in which Tri-Star seeks to be joined.

Tri-Star's dealings with Australia Pacific LNG

[5] In 2002, Tri-Star sold certain oil and gas interests governed by joint operating agreements and a project agreement to Australia Pacific LNG. The conditions of the sale included that Australia Pacific LNG would become the operator under the joint operating agreements and that it would pay a "vendor royalty" to be calculated on the revenue (i.e. income without deductions) from petroleum from the assigned interests at the point at which it entered a pipeline for delivery to customers. The revenue was the amount which

"would be determined as an arm's-length value" by the government; in other words, in accordance with the formula used for making a petroleum royalty decision under the Regulation.

[6] The deed under which the sale took place also provided for Tri-Star to retain a 45% reversionary interest in the interests sold, the event triggering the reversion to be the point at which Australia Pacific LNG's revenue exceeded the purchase price, certain expenditures and royalties. (Whether or not that trigger point has been reached is presently the subject of litigation in this court.) In addition, Tri-Star has since acquired a 1.6086% interest in a petroleum lease and a 0.75% interest in an authority to prospect (the "current interests"), each of which is governed by a joint operating agreement. Each party under the joint operating agreements has the right to take its share of production in kind or otherwise dispose of it. If it does not, the operator has the right to purchase or sell it "for the account of" the party. The operator is to give the other parties notice of the sales it proposes to make of its share of the petroleum, upon which the party can elect to sell to the same purchaser on the same terms.

[7] Each joint operating agreement provides for the operator to give other parties access to "information pertaining to the development or operation of the Contract Area" (the Contract Area being the lands and petroleum interests developed and operated under the agreement). Specifically, the operator is to furnish other parties with copies of any forms or reports filed with government agencies, drilling reports, well logs, tank tables, daily gauge and run tickets and reports of stock on hand. Those rights are preserved by the 2002 deed of sale. A clause of the deed also requires Australia Pacific LNG to provide Tri-Star with a monthly report detailing the amount of petroleum produced from the area of the interests assigned under the deed, the quantities sold to third parties and the identity of any related third party, the price and terms of the sales, and the 3% amount constituting the vendor royalty for the previous month.

The making and content of the decision under review

[8] The decision itself is not before the court. It is said to be marked "commercial in confidence" and to contain information which cannot be disclosed, by virtue of the provisions of the *Petroleum and Gas (Production and Safety) Act* 2004. Some of its content can be discerned from Australia Pacific LNG's review application, which includes as a ground that the "netback" method adopted by the decision is not capable of determining "the amount that the petroleum could reasonably be expected to realise if it were sold on a commercial basis", within the meaning of s 148(1)(a) of the Regulation, with the consequence that the decision was not authorised by the Regulation. Other particularised grounds are that the adoption of the netback method amounted to imposing excise duty in contravention of the Regulation and the Commonwealth Constitution and that there was a breach of the rules of natural justice in that Australia Pacific LNG was not given an opportunity to be heard in relation to various reports and other matters relied on in the making of the decision. There is also an unparticularised ground that the making of the decision was an improper exercise of power, as failing to take relevant considerations into account, as resulting in an uncertain exercise of power and as unreasonable.

[9] Counsel for Tri-Star explained, without objection, that the netback method for determining the wellhead value of petroleum entailed, in this context, identifying the revenue from the first available arm's-length export sale of petroleum and deducting from

it the arm's-length expenses of transporting and processing the petroleum incurred between the wellhead and the sale. Before the decision was made, the netback method had featured in a briefing note which Tri-Star had provided to the then Premier in March 2014, advocating it as the appropriate method for determining royalties payable to the State. Tri-Star explained in the briefing note that it had a common interest with the government in the calculation of royalties, because its royalties from Australia Pacific LNG were calculated using the same wellhead value as that adopted by the State. Its concern was that the current royalty pricing structure was susceptible to transfer pricing, which could lead to an artificial understatement of wellhead value. Tri-Star argued in the note that the legislation supported the adoption of the netback calculation, based on the market price at the shipping point.

Tri-Star's arguments for joinder

[10] Tri-Star's first argument for joinder turned on the fact that the vendor royalty payable to it depended on the Treasurer's methodology for determining the petroleum royalty payable by Australia Pacific LNG to the State; which, as was apparent from the terms of the application for review, involved the netback method. Correspondence from Australia Pacific LNG made it clear that it had calculated vendor royalty on the basis of the petroleum royalty decision. There was a marked drop in the vendor royalty paid between December 2015 and January 2016; if the export prices and royalty rates had remained the same over the two months, the vendor royalty paid would have been some $600,000 higher. The petroleum royalty decision had, it followed, adversely affected Tri-Star, making it a "person interested" in the decision.

[11] Counsel for Tri-Star pointed out that Jenkinson J made an order for joinder in rather similar factual circumstances in *Fordham and the State of Victoria v Evans.*[2] The party seeking to be joined in that case claimed an entitlement to the payment of royalties based on a wellhead value which would be established by a determination made under Commonwealth legislation. The relevant application for review was of a decision as to how the determination should be made. Jenkinson J took the view that the real possibility that the legal rights of the party seeking joinder against the applicants for review could be affected by the decision was sufficient to give it an interest in the decision.

[12] In addition, Tri-Star maintained, the decision could affect its reversionary interest, to which, on one view, it was already entitled; or at the least would be entitled at some future time. If it were presently the holder of the reversionary interest, it was currently a petroleum producer, holding 45% of the interests which were the subject of the 2002 deed, so that Australia Pacific LNG had effectively acted as its agent in seeking the petroleum royalty decision. If the reversionary right had not been triggered, Tri-Star would nonetheless become a petroleum producer in the future, and the decision was likely to operate as a precedent relevant to its prospective liability to pay petroleum royalties. Its current interests in the petroleum tenures made it a participant in the operating agreements, as would the 45% interest on reversion. Under those agreements, Tri-Star could sell its petroleum to Australia Pacific LNG or into the market of which Australia Pacific LNG had notified it. To date, Australia Pacific LNG had proposed sales to one of its own related entities on conditions which included Tri-Star's having to pay a percentage of the petroleum royalty arising from the sale. Tri-Star had elected instead to "bank" its share of the petroleum, but if the market were limited to entities associated with Australia

[2] (1987) 14 FCR 474.

Pacific LNG, it could expect on any future sales to have to pay a share of the petroleum royalty which had resulted from the decision under review.

[13] Because its interests were affected by the decision, Tri-Star said, it ought, as a matter of natural justice, to be able to participate in the review application. Its interests were different from those of Australia Pacific LNG, because the latter was concerned with the whole process of calculation of the wellhead value of the petroleum, whereas Tri-Star was concerned with calculation of its value at the delivery point to the pipeline. Tri-Star conceded that it had advocated to the government for the adoption of the netback methodology. It had contended then, and continued now to contend, that it was the correct methodology to apply; the question, though, was whether it had been applied in accordance with the Act and the Regulations. Tri-Star might wish to make submissions about "the appropriateness, manner and extent of calculation of each component of 'netback' between the delivery point and the point of sale…to third parties". Once Tri-Star saw the decision, it could determine whether it agreed or disagreed with it and how the vendor royalty was calculated in accordance with it. It was not necessary, in any event, that it have an interest in challenging the decision in order to be a person interested who would appropriately be joined. If it took the position of supporting the decision, it would have a different perspective from the respondent Minister: the perspective of a producer or potential producer affected by the Minister's decision.

[14] To support the last proposition - that a party might properly be joined in order to support a decision - Tri-Star pointed to *Friends of Hinchinbrook Society Inc v Minister for Environment*[3], a decision of Branson J. In that case, the applicant for substantive relief was an interest group which sought, among other things, orders under the *Administrative Decisions (Judicial Review) Act* in relation to the decision of the federal Minister for the Environment to approve a development. The State of Queensland sought to be joined. It had been involved in facilitating the development and had granted the developer the necessary permits and approvals under Queensland law. Branson J noted that the State of Queensland considered that it was in its own interests and that of its citizens generally for it to be able to place evidence and submissions before the court; it had contended that considerable benefit was expected to flow to the State from the development. Against that consideration were the interests of the other parties in a fair, efficient and timely hearing and in the minimisation of costs. Joinder was likely to add to the time taken in, and the costs of, the hearing. It was contended for the applicant that there was no reason to suppose that the State of Queensland would in fact be able to put any evidence or submission before the courts which the existing respondent could not provide. Branson J acknowledged that that was a factor, but merely one factor, to be taken into account in the exercise of discretion. Her Honour concluded that the interests of justice would be served by making the State of Queensland a party. Tri-Star argued for a similar approach here, with it joined on the same condition as was imposed on the State of Queensland in the *Hinchinbrook* case: that it not be entitled to costs against any other party (while remaining liable to a costs order against it).

[15] Australia Pacific LNG had raised its statutory right to confidentiality as an argument against joinder. Part 5 of Chapter 6 of the *Petroleum and Gas (Production and Safety) Act 2004* made information disclosed, inter alia, in connection with an application for a petroleum royalty decision "confidential information', which could not be disclosed unless the Minister was satisfied it was appropriate in the circumstances to do so. Tri-Star

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[3] (1996) 69 FCR 1.

contended, however, that it had a contractual right to see the information under the relevant operating agreement, which entitled it to access to "information pertaining to the development or operation of the Contract Area", including the operator's books and records. In any event, if there were really a concern about confidentiality, the court could make appropriate orders limiting what was made available to Tri-Star.

Australia Pacific LNG's arguments against joinder

[16] Australia Pacific LNG rejected the contention that Tri-Star's reversionary interest or current interests gave it any interest in the decision under review. Tri-Star was not a petroleum producer; the decision had no application to it; and, were it in the future to become a producer of petroleum, it could sell to whom it chose, and could seek its own petroleum royalty decision. It would not be bound by the existing decision. There was no basis for Tri-Star to assert that Australia Pacific LNG was acting for it in making its application for a petroleum royalty decision; if it had thought that was the case, it would have made suggestions to Australia Pacific LNG as to what it should submit, rather than making its own representations to the Crown urging the netback methodology, against the interests of Australia Pacific LNG.

[17] Australia Pacific LNG did accept that Tri-Star had an interest in the decision to the extent that it informed the calculation of the vendor royalty. However, the court's discretion should be exercised against joinder. The mere fact that Tri-Star had adopted a yardstick for royalty calculations which happened to be the formula set by the government was not sufficient reason to join it. It had not, in its contract with Australia Pacific LNG, included any right to challenge the determination made. It had no entitlement under the Regulation to seek a petroleum royalty decision in its own right or in respect of petroleum produced by Australia Pacific LNG. Nor had it any entitlement to be advised of Australia Pacific LNG's application, to be heard on it or to be notified of the decision made on it. If it had no right to participate in the decision-making process, it would be an anomaly to permit it to be involved in judicial review of the decision.

[18] Next, Australia Pacific LNG pointed out that the legislative intention to be discerned from Part 5 of Chapter 6 of the Act was that third parties should have no role in relation to an application for a petroleum royalty decision. Australia Pacific LNG was entitled to have its confidentiality protected. It rejected the proposition that the operating agreement gave Tri-Star any entitlement to information about royalties. The deed under which Tri-Star sold its interest to Australia Pacific LNG in 2002 provided for the information which the latter was to provide to the former, as to amounts of petroleum produced and sold, and to whom, and the amount of the revenue to which Tri-Star was entitled. There was no suggestion that information had not been provided. In correspondence after the decision was made, Tri-Star had sought from Australia Pacific LNG a copy of the Treasurer's decision, but had not identified any entitlement to it.

[19] In any event, Australia Pacific LNG argued, Tri-Star had not indicated what evidence or submissions it could put before the court which other parties would not be able to advance. It was apparent from Tri-Star's submission to the Premier that its interests were aligned with those of the State. It asserted that it shared a common interest with the State in the calculation of royalties and in realizing the true market value for the gas sold. It had suggested that it wished, if joined, to make submissions as to "the appropriateness, manner and extent of the calculation of each component of "netback"'; but that would involve questions of merit, not the validity of the decision. It had no rights to be heard;

against that, Australia Pacific LNG had an entitlement to a fair, efficient and timely hearing of its application without its costs being increased.

Tri-Star's interest in the decision

[20] It may be accepted that s 28 of the *Judicial Review Act* is a beneficial provision and ought not be construed narrowly.[4] It is in very similar terms to s 12 of the *Administrative Decisions (Judicial Review) Act 1997 (Cth)* so that, as Tri-Star submitted, decisions in relation to that section are relevant in construing s 28. The approach of the Full Court of the Federal Court in *United States Tobacco Company v Minister for Consumer Affairs*[5] (adopted by Mullins J in *North Queensland Conservation Council Inc v The Executive Director, Queensland Parks and Wildlife Service*[6]) is of assistance. Section 28 is to be regarded as concomitant with s 20, which permits a person aggrieved by a decision to seek review, the difference being that to be a person interested in the decision gives no right to be joined in the review proceeding, but merely a right to the exercise of the court's discretion as to joinder.[7] The interest "need not be a legal, proprietary, financial or other tangible interest", but it does require something beyond "the concern of a person who is a mere intermeddler or busybody".[8] It may be sufficient that the decision has an indirect effect on the interests of the applicant for joinder, provided that it is not too remote.[9]

[21] Having regard to the authorities cited, I conclude that Australia Pacific LNG's concession that Tri-Star had an interest in the decision, as bearing on the calculation of its royalty, was correctly made. But the precise nature of Tri-Star's interest on that basis is not clear. It seems unlikely, given its representations to government, that Tri-Star had any reason to suppose that the adoption of the netback method would in fact reduce its royalties; but its royalties did diminish markedly between December 2015 and January 2016. There was a pronounced drop between the prices Australia Pacific LNG achieved in December 2015 and the price arrived at for January 2016, using the netback method. But it does not follow that because Tri-Star's royalties have gone down it must directly have been financially affected by the decision. It is certainly possible that there is some anomaly in the method adopted by the decision under review which results in calculation of export prices lower than should commercially be expected. But it might also be the case, as posited by Australia Pacific LNG, that a slump in export petroleum prices, also affecting the prices actually achieved, is responsible for the drop. There being no evidence as to what the cause of the lower price is, it is not fact, but a possibility, that the decision has had a direct adverse financial effect on Tri-Star.

[22] The reversionary and current interests also require consideration. It is, of course, a matter of speculation whether Tri-Star will be held presently entitled to the reversionary interest. The notion that Australia Pacific LNG in any real sense acted on Tri-Star's behalf in obtaining the petroleum royalty decision is an unconvincing proposition when one considers that Tri-Star made its own approach to government seeking an outcome as to method which, one may reasonably infer, was at odds with what Australia Pacific LNG sought. If the reversion has not been triggered, there is no more than a future prospect of Tri-Star's becoming a petroleum producer. If it chooses to dispose of petroleum derived

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4 *Australian Broadcasting Commission Staff Association v Bonner* (1984) 2 FCR 561 at 573.
5 (1988) 20 FCR 520.
6 [2000] QSC 165.
7 *United States Tobacco Company v Minister for Consumer Affairs* at 527.
8 *United States Tobacco Company v Minister for Consumer Affairs* at 527.
9 *Re McHattan and Collector of Customs* (1977) 18 ALR 154 at 157.

from that interest or its current interests (which are minor), it need not sell other than in arm's length sales, domestic or export. If it does sell to related parties, it will have the opportunity to mount its own arguments as to how the royalty calculation should be made. True, the decision in question here might operate as a precedent; but that seems to me too remote an interest per se to warrant joinder.

The joinder discretion

[23] The argument that because its interests are affected by the decision as described, Tri-Star is entitled, as a matter of natural justice, to participate in the proceeding, is not persuasive. Indeed, as counsel for Australia Pacific LNG pointed out, there is something anomalous in the suggestion that an entity which had no right to participate in the decision-making process would have a right to be heard on its review. The content of natural justice is variable; it must depend on the statutory context. The *Judicial Review Act* does not confer a right to be heard on any party with an interest, merely an entitlement to the exercise of the court's discretion as to whether it should be joined. The exercise of discretion must depend on a consideration of the nature and extent of the interest affected by the decision and the attendant advantages and disadvantages of joinder: its likely effect on the efficiency and timeliness of the disposition of the review application, the related question of the impact of joinder on the interests of the existing parties and whether the presence of the additional party is likely to have any elucidating effect by advancing on what the existing parties can put before the court.

[24] As to the question of the interest affected, *Fordham and the State of Victoria v Evans*, as already observed, bore some factual similarity to the present case. As here, the prospective party had contracted to be paid royalties depending on wellhead value as determined under statute, the ascertainment of which was the subject of the relevant decision. Unsurprisingly, Jenkinson J observed that the weight of the applicant's interest as a consideration in favour of joinder might be great or small, depending on the nature of the interest. His Honour noted that when that entity entered the contract under which it was to receive royalties, based on a value assessed with reference to State royalties, it had no reason to suppose it would be able to take part in any proceeding affecting that value. In his Honour's view, that meant that its claim to an exercise of discretion in its favour was not strong. The considerations which led Jenkinson J "to accede, but doubtfully"[10] to joinder were that the applicant for review consented to the joinder and that the Federal minister responsible for the decision-making, who was one respondent, did not oppose it. The second consideration was that the entity seeking joinder stood to gain or lose a "very great" amount of money, depending on the outcome of the proceeding.

[25] As I have already explained, it is by no means clear in the present case that Tri-Star has been directly financially affected by the application of the methodology which the decision adopted. If it has, it is in a context (as in *Fordham*) in which it contracted for that outcome without stipulating any right of challenge. And there is a further question as to whether any error would be reviewable. Tri-Star suggested that it might wish to challenge the decision if it emerged that the netback methodology had not been applied in accordance with the Act and Regulation, or that the Act or Regulation were invalid. I must say that I have difficulty in seeing how incorrect application of the netback method, which is not statutorily prescribed, could itself found a basis for review; and no ground

[10] At 478.

was offered for supposing that either Act or Regulation was invalid. Certainly that is not the position of Australia Pacific LNG, which instead contends, in effect, that the netback method was an impermissible means of carrying out the determination required by s 148(1)(a) of the Regulation, but takes no point about the validity of the Act and Regulation or the actual application of the netback method. Neither of Tri-Star's suggested bases for challenge, then, is presently an issue in the proceeding. The expansion of matters in dispute, even if within the contemplation of s 28, plainly would have an effect on the existing parties' ability to achieve a timely determination without additional expense.

[26] However, Tri-Star contended that it was not necessary to a favourable exercise of discretion that it wished to challenge the decision; it might appropriately be joined in order to support it. The *Hinchinbrook* case does offer some support for the argument that a party may be joined to argue for, rather than against, the validity of a decision. But Tri-Star's position is rather different from the State's in the *Hinchinbrook* case. It seeks involvement in the case in order to advance its own commercial interests; there is no question of public interest involved, as there was there. If its role were one of seeking to maintain the decision, it seems most unlikely that it could offer anything beyond what might be advanced by the Minister. It is very difficult to see how evidence beyond the materials on which the decision was made could be admissible, and there is no reason to suppose that the existing parties will not adequately advance the competing submissions as to whether or not the decision was within power.

[27] Another consideration is the prospect of loss of the confidentiality of the material which led to the making of the decision and the decision itself. Tri-Star's contractual entitlement to information under the operating agreements appears to be limited to operations on the tenures themselves. The rights under the deed of sale are also specific and limited. It does not seem that Tri-Star would be entitled to expert reports on export sales or information about third parties and their dealings with Australia Pacific LNG, beyond the identity of related parties and the details of specific sales of petroleum from the assigned interests. Even if I am wrong about that, the prospect of the court's having to undertake construction of the agreements and deed to determine Tri-Star's rights to information is significant, as adding complexity to the case. It is true that orders could be made by the court to preserve confidentiality, but the need to do so again would add complication to the proceeding; and there seems a strong prospect that the making of such orders would limit the utility of any submissions that Tri-Star could make.

Conclusion

[28] Tri-Star is certainly not a necessary party to the proceeding, and its interest in the decision to be reviewed is not strong. The uncertainty of what position it would wish to take in the proceedings is a factor militating against the granting of joinder. There is no clear advantage, for the purposes of determining the issues in the proceeding, in joining it. It is likely that to do so will add complication and expense.

Orders

[29] For the reasons given, I do not consider it appropriate to order joinder. I refuse the application. Tri-Star Petroleum Company and Tri-Star Holding Company should pay the applicants' costs of the application.