

The Senate

Economics
Legislation Committee

Timor Sea Maritime Boundaries Treaty
Consequential Amendments Bill 2018
[Provisions]

Passenger Movement Charge Amendment
(Timor Sea Maritime Boundaries Treaty)
Bill 2018 [Provisions]

February 2019

© Commonwealth of Australia 2019

ISBN 978-1-76010-901-1

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>

Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics Legislation Committee

Committee members

Senator Jane Hume (<i>Chair</i>)	Victoria, LP
Senator Chris Ketter (<i>Deputy Chair</i>)	Queensland, ALP
Senator David Bushby (<i>to 21 January 2019</i>)	Tasmania, LP
Senator Jenny McAllister	New South Wales, ALP
Senator Amanda Stoker	Queensland, LP
Senator Peter Whish-Wilson	Tasmania, AG

Secretariat

Mr Mark Fitt, Secretary
Dr Andrew Gaczol, Principal Research Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph: 02 6277 3540
Fax: 02 6277 5719
E-mail: economics.sen@aph.gov.au

Table of Contents

Membership of the Committee	ii
Chapter 1.....	1
Introduction	1
Conduct of the inquiry	2
Acknowledgements	3
Scope and structure of the report.....	3
Overview of the bills	3
Commencement	4
Financial impact	5
Regulation impact on business	5
Compatibility with human rights.....	6
Chapter 2.....	9
Views on the bills	9
Support for the bills	9
Issues	9
Committee view.....	11
Additional Comments by Labor Senators	13
Appendix 1	15
Submissions	15

Chapter 1

Introduction

1.1 On 29 November 2018, the Senate referred the provisions of the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018 and the Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018 to the Economics Legislation Committee for inquiry and report by 8 February 2019. As the bills are directly related to one another, both bills are to be dealt with together in this inquiry report.

1.2 The primary bill under examination in this inquiry, the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018, contains the major substantive changes. It gives effect to the treaty between Australia and the Democratic Republic of Timor-Leste establishing their maritime boundaries in the Timor Sea.¹

1.3 The bill is the first tranche of legislation which amends Commonwealth legislation to partially implement the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea*, which was signed in New York on 6 March 2018 (the treaty). The Government intends to introduce a second tranche of legislation to give effect to the remaining provisions of the treaty in 2019.²

1.4 The shorter Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018 amends the *Passenger Movement Charge Act 1978* by replicating the exemption from passenger movement charge in relation to journeys to an installation in the special regime area.³ Accordingly, the majority of the analysis and comment will be on the primary bill.

1.5 On 28 November 2018, the Hon. Mr Dan Tehan MP, Minister for Education, gave his second reading speech for the two bills. Speaking specifically about the primary bill, the Minister for Education, explained that the bill:

...proposes to give effect to the treaty by repealing the *Petroleum (Timor Sea Treaty) Act 2003* and transitioning the area of current joint administration known as the Joint Petroleum Development Area in recognition of Timor-Leste's sovereign jurisdiction;

...amends the *Seas and Submerged Lands Act 1973* to establish and define the Greater Sunrise Special Regime area as an area over which Australia will exercise its rights as a coastal state jointly with Timor-Leste;

1 Second reading speech, the Hon. Mr Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 28 November 2018, p. 6.

2 *Explanatory Memorandum*, p. 1.

3 Second reading speech, the Hon. Mr Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 28 November 2018, p. 8.

...implements the arrangements for petroleum activities in the joint jurisdiction special regime area as well as for the regulation of petroleum pipelines in areas of foreign continental shelf jurisdiction consistent with the terms of the treaty;

...provides for amendments to affected offshore petroleum titles as a consequence of the treaty. Necessary consequential amendments to give effect to all of these elements are also made to other legislation by this bill;

...repeals provisions that gave effect to the superseded *Timor Sea Treaty and International Unitisation Agreement* and amends the scheduled areas for Western Australia, the Northern Territory and the Territory of Ashmore and Cartier Islands affected by the maritime boundary;

...provides for two new 'international offshore areas' for the purposes of the Bayu-Undan pipeline corridor and a potential Greater Sunrise pipeline corridor;

...alters particular offshore petroleum permits and licences which adjoined the western side of the Joint Petroleum Development Area. The effect is to reflect that part of their Australian title will transition to the continental shelf of Timor-Leste upon entry into force of the treaty;

...gives effect to the Greater Sunrise Special Regime area, which mirrors the special regime area established by the Greater Sunrise Special Regime in annex B of the treaty. The purpose of the Greater Sunrise Special Regime is to facilitate the joint development, exploitation and management of petroleum activities in the Greater Sunrise gas fields;

...establishes the legal infrastructure required for the regulation of Greater Sunrise to be transitioned to a designated authority that will act on behalf of Australia and Timor-Leste. This designated authority will, subject to the approval of the governance board for the Greater Sunrise Special Regime, enter into the Greater Sunrise production-sharing contract with the Greater Sunrise contractor...; and

...maintains and incorporates the Eastern Greater Sunrise offshore area into the Northern Territory offshore area to ensure the Australian retention leases in the Eastern Greater Sunrise offshore area continue uninterrupted during the period between entry into force of the treaty and when the Greater Sunrise production sharing contract commences. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* will also continue to apply to these retention leases during this period.⁴

Conduct of the inquiry

1.6 Submissions to the inquiry closed on 11 January 2019. The committee received six submissions. The submissions are listed in Appendix 1 of this report.

4 Second reading speech, the Hon. Mr Dan Tehan MP, Minister for Education, *House of Representatives Hansard*, 28 November 2018, pp. 6–7.

Acknowledgements

1.7 The committee thanks all submitters who provided evidence to the inquiry.

Scope and structure of the report

1.8 The report consists of two chapters:

- Chapter 1 (this chapter) provides an overview of the inquiry and provides a background to the bills and a summary of the bills' main provisions; and
- Chapter 2 details the views on the bills as received in submissions to the inquiry as well as the committee's views and recommendations.

Overview of the bills

Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018

1.9 The bill's explanatory memorandum (EM) states that the purpose of the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018 is to partially implement the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea*. The Government intends to introduce a second tranche of legislation to give effect to the remaining provisions of the treaty in 2019. All legislation required to implement the treaty must pass before the treaty can enter into force.⁵

Schedules to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018

1.10 The bill consists of three schedules:

- **Schedule 1**—Provisions commencing when new treaty comes into force;
- **Schedule 2**—Provisions commencing once Greater Sunrise Production Sharing Contract comes into force; and
- **Schedule 3**—Compensation for acquisition of property.

Summary of amendments

1.11 **Schedule 1** to the bill contains amendments to relevant legislation that will support and effect the legislative framework to implement the treaty bill and will commence when the treaty enters into force.

1.12 **Schedule 2** to the bill contains amendments to relevant legislation that will support and effect the legislative framework to implement the treaty and will commence on a day to be fixed by Proclamation. As the amendments in the Schedule are dependent on commencement of the Greater Sunrise Production Sharing Contract (GSPSC (within the meaning of the treaty)), that day will not be before the GSPSC commences.⁶

5 *Explanatory Memorandum*, p. 1.

6 *Explanatory Memorandum*, p. 52.

1.13 **Schedule 3** to the bill refers to the mechanisms that apply to those persons and/or companies who seek compensation for compulsorily acts of acquisition conducted by the Commonwealth with relation to this treaty.⁷

Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018

1.14 This bill has only one schedule which consists of an amendment of the *Passenger Movement Charge Act 1978*. The schedule in essence removes references to the 'Joint Petroleum Development Area' (JPDA) and replaces it with the term 'Greater Sunrise special regime area'.⁸

1.15 The existing JPDA will cease to exist upon entry into force of the treaty. The amendments maintain the same imposition of passenger movement charge in relation to the Greater Sunrise special regime area, which previously applied in relation to the JPDA, under the *Passenger Movement Charge Act 1978*.⁹

Commencement

1.16 Schedules 1 to 3 of the primary bill commence on the day the bill receives royal assent¹⁰ but subject to the conditions explained below.

1.17 Schedule 1 of the bill commences when the treaty enters into force. The treaty enters into force when Australia and Timor-Leste have officially notified each other that their respective requirements have been fulfilled. There is no default commencement if the treaty has not entered into force within a certain amount of time after royal assent. As the date of entry into force is not wholly within the control of the government and the exact timing is uncertain, a default commencement has not been included, to avoid a situation where Schedule 1 commences and the treaty has not entered into force.¹¹

1.18 Schedule 2 of the bill commences on a day to be fixed by proclamation. That day should not occur before the GSPSC (within the meaning of the treaty) commences. Article 4 of the treaty's Annex B requires the Designated Authority to enter into the GSPSC as soon as practicable. As the execution of the GSPSC requires coordination with Timor-Leste and the Greater Sunrise Contractor, the date is not wholly within the control of the Australian government and the exact timing is uncertain. The Proclamation day does not have a default commencement if the Proclamation is not made within a certain amount of time because Australia is required to maintain the current arrangements for the petroleum activities currently

7 *Explanatory Memorandum*, p. 60.

8 *Exploratory Memorandum*, p. 62.

9 *Exploratory Memorandum*, p. 16.

10 *Exploratory Memorandum*, p. 19.

11 *Exploratory Memorandum*, p. 19.

being undertaken in the Eastern Greater Sunrise offshore area until the GSPSC commences.¹²

1.19 Schedule 3 of the bill commences when the treaty enters into force.¹³

1.20 Sections 1 to 3 of the Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018 commences on the day the bill receives Royal Assent.¹⁴

1.21 Schedule 1 of the bill commences on the later of: the start of the day after the Bill receives Royal Assent; or the start of the day when Schedule 1 to the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2018* commences. However, if Schedule 1 to the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2018* does not commence, then Schedule 1 of this bill does not commence at all.¹⁵

Financial impact

1.22 The EM states that Australia and Timor-Leste have agreed that, from the date the treaty enters into force, Timor-Leste will receive all future upstream revenue derived from petroleum activities from Kitan oil field and Bayu-Undan gas fields. Previously, both Australia and Timor-Leste received benefits from revenue derived from petroleum activities in the JPDA including these two fields. In addition, Australia and Timor-Leste have agreed that the Buffalo oil field, which previously fell within the continental shelf of Australia, will fall within the continental shelf of Timor-Leste and Timor-Leste will receive all future revenue from that oil field.¹⁶

1.23 The EM states that the development of the Greater Sunrise fields is expected to yield Australia an estimated US\$2 to 8 billion in revenue over the life of the project. The divergent revenue estimate is dependent on the terms of the development concept that is still to be agreed between Australia, Timor-Leste and the Greater Sunrise Joint Venture for the development of the Greater Sunrise fields. The exact financial benefit to Australia will depend on a range of factors, including this concept, as well as the economics of the project and prevailing market prices for oil and gas.¹⁷

Regulation impact on business

1.24 The EM argues that the new treaty and association legislation is not expected to create additional regulatory burden on business during the transition to Timorese jurisdiction.¹⁸

12 *Exploratory Memorandum*, p. 19.

13 *Exploratory Memorandum*, p. 19.

14 *Explanatory Memorandum*, p. 61

15 *Explanatory Memorandum*, p. 61.

16 *Exploratory Memorandum*, p. 2.

17 *Exploratory Memorandum*, p. 3.

18 *Exploratory Memorandum*, p. 11.

1.25 The EM acknowledges that there are likely to be administrative costs for the affected petroleum companies related to attendance at transitional arrangement negotiations. These include, for example, travel and representation, professional services, record-keeping document drafting and other items. As negotiations are ongoing and will continue for an unspecified period, an accurate estimate cannot be given for regulatory costs related to negotiations on the transitional arrangements. These will vary for each business and much of this information is commercial-in-confidence and not available to help inform the government on potential costs.¹⁹

1.26 The EM also notes that additional Australian legislative and regulatory amendments may be required at the conclusion of negotiations. Companies may also face costs after the transition to exclusive Timorese jurisdiction. Any costs that companies incur after the transition to Timor-Leste's jurisdiction will constitute the costs of doing business and thus not regulatory costs.²⁰

Compatibility with human rights

1.27 The EM states that these bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²¹

Human rights implications

1.28 The EM notes that Article 17 of the *International Convention on Civil and Political Rights* prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.²²

1.29 The amendment in item 74 of Schedule 1 of the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018 engages the protection against arbitrary interference with privacy and reputation.²³

1.30 Item 74 of Schedule 1 also amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS) Act* to insert new section 695XA, which will enable the Chief Executive Officer (CEO) of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to share offshore information²⁴

19 *Exploratory Memorandum*, p. 11.

20 *Exploratory Memorandum*, p. 11.

21 *Exploratory Memorandum*, p. 16.

22 *Exploratory Memorandum*, p. 16.

23 *Exploratory Memorandum*, p. 16.

24 As defined in subsection 695U(1) of the OPGGS Act.

with the Timorese Statutory Authority, for the purposes of the exercise of the latter's powers or the performance of its functions.²⁵

1.31 The treaty sees the regulation and management of the Greater Sunrise and Bayu-Undan fields and pipelines shared between the Timorese Designated Authority (TDA) and Australian authorities. It is expected that information relating to the pipelines, may need to be shared with the TDA to ensure that the projects are managed effectively and to ensure Australia discharges its obligations.²⁶

1.32 Offshore information may be or include personal information, within the meaning of the *Privacy Act 1988* (the Privacy Act). This power therefore constitutes a potential interference with privacy. In addition to new section 695XA, the use or disclosure of personal information is regulated under the Privacy Act. The interference with privacy is therefore, according to the EM, lawful.²⁷

1.33 The new section 695XA is, according to the EM, reasonable, necessary and proportionate. The sharing of offshore information or things is discretionary. The CEO of NOPSEMA therefore has the ability to specifically consider the type of information to be shared and the rationale for sharing it in each particular case before making a decision to share the information. The sharing of information must be directed at facilitating the relevant TDA in the exercise of its powers or the performance of its functions.²⁸

1.34 The EM also explains that, as an additional safeguard to protect personal information, section 695Y of the OPGGS Act applies to offshore information to the extent that it is personal information. Before information is made available under the new section 695XA, the CEO of NOPSEMA is required to take reasonable steps to ensure the information is de-identified.²⁹

1.35 According to the EM, the remainder of the amendments made by the bills do not abridge or otherwise engage with applicable human rights or freedoms. The amendments are largely mechanical or technical in nature, as they make consequential amendments to Commonwealth legislation in relation to the implementation of permanent maritime boundaries in the Timor Sea, and provide for the exploitation of petroleum resources in the Greater Sunrise fields, as agreed in the treaty.³⁰

Conclusion

1.36 The EM concludes that the bills are compatible with human rights as, to the extent that they may limit human rights or freedoms, those limitations are reasonable, necessary and proportionate.³¹

25 *Exploratory Memorandum*, pp. 16–17.

26 *Exploratory Memorandum*, p. 17.

27 *Exploratory Memorandum*, p. 17.

28 *Exploratory Memorandum*, p. 17.

29 *Exploratory Memorandum*, p. 17.

30 *Exploratory Memorandum*, p. 17.

31 *Exploratory Memorandum*, p. 18.

Chapter 2

Views on the bills

2.1 The committee received a total of six submissions for this inquiry.

Support for the bills

2.2 Despite raising some specific concerns, the submissions received were supportive of passing the legislation. The Department of Industry, Innovation and Science submitted:

The bill package will have a positive impact on Australia's relationship with Timor-Leste and lays the groundwork for a strong bilateral relationship going into the future. The bill package, through implementing the treaty, settles a long-running dispute over the maritime boundaries between our countries and creates a pathway for the development of the Greater Sunrise gas fields, the economic benefits of which will be substantial, particularly for Timor-Leste...Overall, the bill package fundamentally demonstrates Australia's commitment to a robust, mutually beneficial bilateral relationship with Timor-Leste specifically, and to international law and the rules based order more generally.¹

2.3 The Uniting Church of Australia's Synod of Victoria and Tasmania commented:

The Synod of Victoria and Tasmania welcomes the treaty and the spirit in which the Australian Government negotiated it. The Synod therefore requests that the Committee recommend the rapid passage of the bills through the Australian Parliament.²

Issues

History and outcomes of previous negotiations

2.4 The territory of today's Timor-Leste has existed under three legal jurisdictions since the early 1970s: as part of Portugal's overseas possessions; an annexed province of Indonesia; and as an independent nation-state. This reality has effected interpretations and negotiations of its sea boundary and the ownership of the region's oil and gas deposits.³

2.5 A number of submitters commented on the length of time required for a treaty which recognised Timor-Leste's claims to be negotiated and signed, and how this had, in some quarters, undermined Australia's international standing. Professor Andrew Serdy observed:

1 Department of Industry, Innovation and Science, *Submission 6*, p. 2.

2 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 1.

3 *Submission 2* by Mr Robert J. King provides a comprehensive discussion of this history.

I thus agree with the explanatory memorandum to the bills when it contends that it would be damaging to Australia's international standing to prevent the 2018 treaty entering into force by not passing these bills. I would merely add that this would compound the earlier, and as far as the boundary itself is concerned now irreparable, damage to the national interest from the counterproductive post-1999 policy, and the bills are hence a necessary exercise in damage limitation.⁴

Fate of revenues already collected

2.6 The Uniting Church of Australia's Synod of Victoria and Tasmania questioned the fate of revenues raised prior to the treaty's signing. It commented:

The Synod is concerned that the Australian Government will continue to hold onto all the revenue gained from the gas and oil deposits that have been exploited before this treaty was finalized, that had this treaty been in place the Australian Government would not have had access to...⁵

Regulatory equivalence and taxation

2.7 The new treaty arrangements are intended to ensure conditions and terms equivalent to existing arrangements. Eni Australia, an energy company which is also operating in the Joint Petroleum Development Area (JPDA) between Australia and Timor-Leste established in 2002 under the Timor Sea Treaty, reiterated the need for such arrangements to continue:

A condition of the transition from JPDA to exclusive Timor-Leste jurisdiction is that petroleum activities shall continue on terms of 'conditions equivalent' (legal, fiscal and operational).

The details of how 'conditions equivalent' will be achieved under the new legal and fiscal regime in Timor-Leste is still the subject of negotiation, and is to be agreed by all parties. The [Production Sharing Contract] PSC in the JPDA are subject to project-specific legal, fiscal, and operational regimes, and accordingly there are effectively unique rules for each PSC.

Re-drafting of the PSCs is required to recognise the change in sovereignty and maintain conditions equivalent, and is a joint effort between the representatives of Australia and Timor-Leste Governments and the Contractors of the PSCs.⁶

2.8 Eni also made specific reference to 'fiscal equivalence' and expressed its interest in understanding the Australian legislative mechanism which will lead to such equivalence.⁷

2.9 The Uniting Church of Australia's Synod of Victoria and Tasmania raised questions on tax arrangements. The Church commented:

4 Professor A.L. Serdy, *Submission 1*, p. 1.

5 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 4.

6 Eni Australia, *Submission 4*, p. 2.

7 Eni Australia, *Submission 4*, p. 4.

The Synod is not clear how the overly generous tax credits related to the Petroleum Resource Rent Tax (PRRT) will be treated for the corporations that have operated Greater Sunrise projects since 2004. The Synod believes the Committee should ensure that the tax credits granted by the Australian Government to corporations that have been operating in the Greater Sunrise area do not impact on any future royalty revenue imposed by the Timor Leste Government on the corporations involved.⁸

Committee view

2.10 The decades long question of ownership of the oil and gas deposits lying between Timor-Leste and Australia has, despite many years of controversy, now finally been resolved. The bills presented to the Parliament bring legislative substance to the 2018 treaty and the evidence received from submitters indicates support for the bills and their provisions.

2.11 The Committee notes the concerns expressed in the submissions, particularly with regard to expressed need for equivalent conditions between previous arrangements and those that will apply in the future, and observes that these bills are only the first tranche of legislation designed to give effect to the treaty.

2.12 The Committee agrees that the treaty and supporting bills support Australia's commitment to a mutually beneficial bilateral relationship with Timor-Leste specifically, and to international law and the rules based order more generally and recommends that the bills be passed.

Recommendation 1

2.13 The Committee recommends that the bills be passed.

Senator Jane Hume

Chair

8 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 4.

Additional Comments by Labor Senators

1.1 Labor Senators are generally supportive of the bills, subject to consideration of the tranche of amendments currently being developed by the Government to enact other parts of the Timor Sea Maritime Boundaries Treaty, which have not been introduced into the Parliament as yet.

1.2 Labor Senators are prepared to work constructively with the Government on this matter and believe that the committee should be given an opportunity to scrutinise the additional amendments when they are introduced into the Parliament.

1.3 Labor recognises the importance of Australia's relationship with Timor-Leste and its achievements as one of the world's newest and proudest democracies.

Senator Chris Ketter
Senator for Queensland

Senator Jenny McAllister
Senator for New South Wales

Appendix 1

Submissions

Submissions

- 1 Professor Andrew Serdy
- 2 Mr Robert J. King
- 3 Uniting Church in Australia Synod of Victoria and Tasmania
- 4 Eni Australia
- 5 Timor Sea Justice Forum NSW
- 6 Department of Industry, Innovation and Science (DIIS)