

Excerpts relating to Sunrise IUA only



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CORRECTIONS

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PARLIAMENTARY ZONE**Approval of Works**

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.43 a.m.)—by leave—I wish to speak to the government motion that has been passed regarding the temporary vehicle barriers in the parliamentary zone. I did not want to delay the motion by denying formality, nor do I want to speak against the motion. I do want to state briefly that the Senate has just agreed to continue having the temporary vehicle barriers—the oversized plastic white Lego blocks, as they are often described—around Parliament House. As I said, I did not vote against the motion but I think it needs to be noted how extraordinarily unsightly these things are and how unsatisfactory it is that they have been around for so long. I am pleased to see that the motion relating to the approval of works suggests that they will disappear eventually and be replaced with something more workable. I am not a security expert, but I am not convinced that they are overly significant in preventing terrorist attacks on Parliament House. I do think they very significantly affect the visual amenity of what is otherwise a very significant building to international visitors as well as to Australians. I just wanted to put on record my strong desire that they disappear as soon as reasonably possible.

The PRESIDENT—I agree with the last part of your statement, Senator, and I am trying very hard to make sure that happens.

**KYOTO PROTOCOL RATIFICATION BILL 2003
[NO. 2]****Report of Environment, Communications, Information Technology and the Arts Legislation Committee**

Senator EGGLESTON (Western Australia) (9.45 a.m.)—I present the report of the Environment, Communications, Information Technology and the Arts Legislation Committee on the Kyoto Protocol Ratification Bill 2003 [No. 2], together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator EGGLESTON—I seek leave to make some comments on this report.

The PRESIDENT—I do not think you need leave. You can just comment on it.

Senator Faulkner—He does now that the damn thing has been put. This morning has been a joke. We have already had the question put.

The PRESIDENT—You are seeking leave to take note of the report, Senator?

Senator EGGLESTON—I seek leave to take note of the report.

The PRESIDENT—Is leave granted?

Senator Faulkner—No. I am sorry, Mr President, but do you mean he is seeking leave to move a motion that the Senate take note of the report? I want to be clear on what we are doing now.

Senator EGGLESTON—You are quite right, Senator Faulkner. I seek leave to move a motion that the Senate take note of the report.

Senator MACKAY (Tasmania) (9.46 a.m.)—by leave—At the joint whips meeting last night, the Government Whip and I, along with representatives from other parties, had a discussion about what we would do with reports from legislation committees. This has been raised by the government as a difficulty in that opposition senators are making statements with respect to legislation committees when comments should be properly made within the purview of the second reading speeches and in committee. Based on that, we had a broad agreement across the parties that we would attempt where possible, unless there were extraordinary extenuating circumstances, not to make statements on the reports of legislation committees.

Senator EGGLESTON (Western Australia) (9.47 a.m.)—As it happens, I was not at the whips meeting last night. I seek leave to continue my remarks.

The PRESIDENT—I am advised there is nothing to continue, so you cannot continue your remarks.

Senator Faulkner—I hope nobody reads the *Hansard* of this morning.

The PRESIDENT—I think the matter would be best left there.

BUDGET**Consideration by Legislation Committees
Report**

Senator FERRIS (South Australia) (9.48 a.m.)—On behalf of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Eggleston, I present the report of the committee on the 2003-04 additional estimates, together with the *Hansard* record of the committee's proceedings.

Ordered that the report be printed.

**GREATER SUNRISE UNITISATION
AGREEMENT IMPLEMENTATION BILL 2004
CUSTOMS TARIFF AMENDMENT (GREATER
SUNRISE) BILL 2004****In Committee**

Consideration resumed from 24 March.

**GREATER SUNRISE UNITISATION AGREEMENT
IMPLEMENTATION BILL 2004**

The CHAIRMAN—The committee is considering the Greater Sunrise Unitisation Agreement Implementation Bill 2004. The question is that the bill stand as printed.

Senator BROWN (Tasmania) (9.48 a.m.)—Last night I asked the minister if he could identify for the committee the minister for the environment in East Timor. I expect he will do that now, as we have had time overnight to consider it. I also draw the committee's attention to the article by Rowan Callick on page 10 of today's *Australian Financial Review*. It states:

... the East Timorese government has indicated it is unlikely to seek ratification from its own parliament.

That refers to ratification of the unitisation agreement. The article continues:

Rather, it hopes to extend its sea boundaries to encompass the field, which is being operated by Woodside Energy Ltd, owner of 33.44 per cent.

Further on, the article says:

The East Timorese government is determined to extend its boundaries to both east and west of the areas covered by the Timor Sea Treaty, which has been ratified by both countries and which grants East Timor 90 per cent of oil and gas receipts within that zone.

Greater Sunrise straddles the boundary to the east, thus the need for a separate agreement.

East Timor's Prime Minister, Mari Alkatiri, upset by Australia's issuing last month of an exploration licence in a disputed area next to Greater Sunrise, said the Sunrise agreement was signed "on the clear understanding that Australia recognised our claims and sought not to prejudice our rights in the Timor Sea".

These rights included negotiating permanent boundaries "in good faith". Article 22 of the treaty says it "shall be in force until there is a permanent seabed delimitation".

Woodside is expected to lobby in Dili for it to ratify the agreement on the revenue split, but the East Timorese government is understood to have decided to suggest the company first press Canberra to consider extending East Timor's sea boundary to the east. The border with East Timor follows that agreed between Australia and Indonesia in 1972.

I ask the minister: what is the state of play with Prime Minister Alkatiri? Could the minister acquaint the committee with the current political situation, which is quite obviously tense? We in this parliament are being asked to ratify an agreement which, according to the public indications, is falling down. East Timor is not going to ratify it as things stand. I think it is a very serious matter. If this ratification were to proceed, that would obviously be done on the basis that East Timor was reciprocating, but now we read that that is not the case. I would suggest that, if it is not the case and if the government cannot show us that it is the case, then we should hold off on this debate until we have a clear indication that East Timor, the other party to this agreement, is on board or has indeed walked away from it.

Senator ABETZ (Tasmania—Special Minister of State) (9.52 a.m.)—I will deal with some of the matters that I did not have time to deal with last night, and then some of the matters that have been raised this morning.

The issue of employment was raised last night. The question, really, is whether this committee stage should be used as a remedial class for certain senators who have not bothered to read the IUA. It is quite obvious in article 18 of the IUA which provides for preference to be given to East Timorese and Australian nationals for employment in the unit area. The Timor Sea Treaty has a similar provision. I would have thought that anybody who had just the most basic, most fundamental interest in this issue would have bothered to read the IUA and acquaint themselves with those basic issues rather than jump up and ask all sorts of questions and make inflammatory comments on the way, completely oblivious to what the provisions of the IUA are.

Senator Brown this morning has continued the nonsense of asking: what is the name of the minister for the environment in East Timor? If he does not know, I am sorry, but he will have to do that homework for himself. What is in a name? Whether the minister for the environment is called Joe or Max, quite frankly I am not sure that makes a difference.

Senator Stott Despoja—Or Josephine.

Senator ABETZ—Indeed, or Josephine or Maxine. I am not sure that it makes any real difference to the quality of the debate that we are going to have about this bill and about the IUA, or to the future development of the concept for the joint project. It is one of those sorts of stunts from this particular senator that are now becoming quite tedious. Asking a question like what somebody's name is, quite frankly, bears no relevance or relationship to the matter at hand. The matter at hand is: is this good legislation? Let us have a debate about those things. I know Senator Brown disagrees, but whether this legislation is good, bad or indifferent is not based on whether the minister for the environment is Max, Maxine, Joe or Josephine. It is completely irrelevant, but Senator Brown seeks to waste the Senate's time by asking the question again. I would have thought that, on reflection last night, he would have been so embarrassed at having proposed such a silly question that he would hope that it would be forgotten. In fact, I had forgotten it, thinking it was just a matter of overexuberance on Senator Brown's part without much thought being given. But for him to come back into this chamber after reflection and repeat the question defies all genuine logic and thinking on the legislation. Let us debate the legislation and the issues involved. Whether or not we know somebody's name does not bear any relationship to the issues that we need to deal with.

In relation to the article referred to, the government's position is that in order to give certainty we have agreed to implement this legislation. That is our position. As I understand it nothing has changed in relation to that. In relation to environmental approvals, which was raised yesterday as well, I can indicate that

environmental approvals for the Sunrise LNG project have not been finalised, recognising that the project is still at the concept stage, as I said yesterday. This matter will be progressed when a formal proposal is made by the LNG proponents. In relation to the Sunrise unit area, however, following an exhaustive public review process the EIS for the offshore production facilities was approved by the Northern Territory and Commonwealth environmental agencies in May 2003. 'Production facilities' means the drilling and installation of wells; offshore platforms and processing facilities; offshore condensate storage and off-loading; and all other equipment required to process the gas to its first point of sale, the entry point to the offshore pipeline.

Senator BROWN (Tasmania) (9.57 a.m.)—I came this morning in a very constructive frame of mind and proceeded on that basis, but I see the minister has not done the same. I want to go to the substance of his response, however, and I first go back to the employment position. We understand from the documents before us that at the peak of this development there will be 4,000 jobs. The question I asked the minister last night was: how many of those jobs is it estimated will go to East Timorese nationals? The glib statement that preference will be given to East Timorese and Australian nationals does not answer that question. What I want to know is: how many hundreds of East Timorese is it expected will be employed on the offshore development of this project? Frankly, I believe that the East Timorese will be cheated on this as well. I think this is all verbiage. I do not think there is any real intention to make sure that there is a fifty-fifty breakdown of the employment on the offshore installation. But, if there is, please let it be made clear to the Senate that that is the case. Let us have something concrete added to the statements about this being a development on behalf of both nations.

I will be taking the minister through the agreement shortly to see just how well he knows it. I have a couple of questions arising from what he has said. Firstly, he has made contradictory statements. He said that environmental approvals have not been finalised but then he said that the environmental impact statement was approved in May 2003 for the offshore facilities. I ask the minister: where is that environmental impact statement? Can he provide it to the committee now? If it has been approved then what is it that has to be finalised? There is a contradiction in those statements. Who did the EIS, the environmental impact statement, that was approved in May 2003 and who approved it?

Senator ABETZ (Tasmania—Special Minister of State) (10.00 a.m.)—A lot of issues have been raised. I do not think you could necessarily describe it as being constructive. Nevertheless, I have been accused of making a glib statement in relation to employment. That glib statement which Senator Brown refers to is,

in fact, the statement signed off by the East Timorese government in the IUA.

Senator Brown—Under duress.

Senator ABETZ—Senator Brown, last time we had this debate you made all these inflammatory comments. At the end of the day, you were not prepared to withdraw them and you were bounced out of this place. When you run out of arguments you use hyperbole and emotive and extravagant language, as you do in every other debate that you involve yourself in. I simply say to you that the democratically elected government of East Timor signed that glib statement that you accuse me of making. If you accuse me of making it, so be it, but in so doing you also accuse the Prime Minister of East Timor of having signed off on that glib statement.

When you have a concept or a proposal for a project, you are dealing with general figures. If you ask for an exact number of East Timorese workers who may be employed on a future project, of course nobody can give that figure. Suffice to say that preference is to be given to East Timorese and Australian nationals. I would have thought that it was within the interests of any project developer to ensure that they employ as many nationals as possible, if for no other reason than to maintain the goodwill of the two governments with which they will need to cooperate.

In relation to the Environment Protection (Impact of Proposals) Act 1974, there is a report from Environment Australia that I am happy to table. It goes for 54 pages. There is some detailed information in that. There is also a covering letter that was signed by Gerard Early, First Assistant Secretary, Approvals and Wildlife Division. Although the letter that I am tabling does not have a date on it, I am advised that it was written in May 2003. I table the documentation.

Senator BROWN (Tasmania) (10.03 a.m.)—I would like a copy of that as soon as possible please. I did ask the minister who approved the environmental impact statement and I will put that question again. I also ask: who carried out the environmental impact statement which was approved? Could he give an outline of what is in the statement and what work was done to assess the environment and then the impact on the environment of the development? By the way, the minister assured us yesterday that this was not yet a development and that he did not know about this EIS. But this morning it has become a development which has an intended environmental impact statement. I ask the minister if he could acquaint the committee with the contents of that statement so that we might know what the environmental impact assessment is. I ask what the state of the environment is now, what it will be after and what are the threats enumerated in this EIS from this project?

Senator ABETZ (Tasmania—Special Minister of State) (10.05 a.m.)—It is all explained in the documen-

tation. I do not intend to delay the committee by reading through 54 pages and the letter of explanation. It is all there. If Senator Brown were genuinely interested in this sort of information, there would have been the opportunity to consult with the relevant minister's office to get it rather than seeking to delay the Senate and for me, once again, to do his homework for him.

Senator BROWN (Tasmania) (10.05 a.m.)—It is the minister who has not done his homework. He hasn't got the foggiest. It is not good enough in a committee dealing with an important matter like this. The chamber has the right to be informed on the thrust and the impact on the environment of this proposed development which, just last night, the minister was telling us did not exist. We know it does. We now know that there is an environmental impact assessment, and the minister cannot give a summary of that to the committee. One has to see from that that the minister did not know that an environmental impact statement had been done and now he does not know what is in it. I see that he is getting advice on it.

Nevertheless, I ask him to explain to the committee whether there are any concerns expressed in that environmental impact statement about the impact of this development because it is very important. We are dealing here with the ratification of the agreement which will allow the development to proceed. It is the minister's job to inform the committee so that it can be sure that it is doing the right thing. You cannot do that if there is information relating to the environment in a 50-page statement—obviously a lot of work has gone into that—and the minister cannot inform the committee about any concerns that arise out of that environmental impact assessment.

I ask the minister to give us that information so that we can proceed from a point of being informed. It is a very serious matter. If the minister will not give it to us, the committee need to have time to look at the statement. I ask that the committee return to this at a later hour so that we have time to appraise this environmental impact assessment statement ourselves. I move:

That the committee report progress.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that the bill stand as printed.

Senator BROWN (Tasmania) (10.08 a.m.)—The committee will proceed on the basis of not knowing what is in that assessment until the debate is over. I object to that. That is not the proper way for us to be proceeding.

Senator Abetz—This is just wasting time.

Senator BROWN—It should not be wasting time, as the minister intervenes, because we should have a

minister who is informing us as we go. The problem here lies with the minister. I ask at the outset, before I move to the provisions of this agreement which the minister has studied and has challenged us about: is this an interim agreement? We understand that it is a provisional agreement; does that mean interim?

Senator ABETZ (Tasmania—Special Minister of State) (10.09 a.m.)—One of the great difficulties is that Senator Brown has a reputation in this chamber for wasting time going over the same ground time and time again and then, when you do not respond to some of the quite frivolous questions he raises, making all these personal attacks—that the minister does not have the foggiest idea et cetera—and getting into personal abuse and personal vitriol. I remind the Senate and Senator Brown that it costs \$10,000 an hour to run this place. I think honourable senators have a duty and an obligation to keep in mind when they seek to filibuster during debates the great imposition they place on the Australian taxpayer.

The environment assessment report was done under the Environment Protection (Impact of Proposals) Act 1974. That is different to the EPBC Act. This report was done after full public review. Advertisements were placed, and a joint EIS document was prepared to meet Commonwealth and state requirements and released for public review from 15 December 2001 to 9 February 2002. There was nothing secret. To suggest that we are trying to hide things is just contrary to all the objective evidence. It was out there for full public review, and here I am on behalf of the government having to answer the sorts of things that the honourable senator should have known about if he had been genuinely tracking this as a matter of the sort of passion he now claims. I could understand his antics yesterday whilst we were on broadcast.

Senator O'Brien—He still is: on Sky. He's on broadcast because of Sky.

Senator ABETZ—How silly of me. There was I thinking that we were not on broadcast, but of course Sky broadcasts as well.

Senator Stott Despoja—I'm sure there are millions watching.

Senator ABETZ—You see, Senator Stott Despoja, the problem is that when you only have to satisfy two or three per cent of the population to get yourself into this chamber then all you have to do is appeal to a very small group within the Australian community, so the few who are watching Sky channel may do—but I agree with you. In relation to whether or not it is an interim agreement, I am not sure—and I served for some time on the initial Joint Standing Committee on Treaties—whether or not within international law there is a particular term 'interim agreement'. There may well be. I did not come across it during my studies as a law student, later as a lawyer or later as Chair of the

Senate Legal and Constitutional Legislation Committee or in my time on the Joint Standing Committee on Treaties, but there might be such a thing. Mr Temporary Chairman Macdonald, with your experience in foreign affairs matters you may be able to assist the Senate but, as I understand it, this is a fully binding international agreement which stands by itself and is fully enforceable as such.

Senator STOTT DESPOJA (South Australia) (10.13 a.m.)—I have a query that I raised previously in the committee process but also in my contribution to the second reading debate. Again, it relates to the negotiations on the boundaries, the number of meetings that take place and the fact that, despite the requests of the Timor Leste government to meet on a monthly basis, Australia has chosen to have those discussions every six months. As I hope you would be aware, Minister, when I asked this question of officials at the committee on Monday night they indicated their preference for six-monthly meetings but—as they can probably tell you—I was not satisfied with the response. I do not think that saying, ‘It is a complex debate; obviously maritime boundaries take considerable discussion and you need time between meetings,’ was a sufficient answer. I still think that six months is an ambiguous number.

What is the government’s position and what is your position in relation to those meeting time frames? Given that it is quite a controversial issue, would the government consider changing that timetable? Would the government consider meetings on a more frequent basis to perhaps satisfy some of the needs and concerns of Timor Leste, recognising that every six months, twice a year, is not a lot of time in which to make a great deal of progress on the boundary discussions and negotiations? The least I am hoping for today is an acknowledgement that this is of disappointment to the Timor Leste government. Perhaps it is something we could consider just as an added demonstration of good faith in relation to those negotiations.

Senator ABETZ (Tasmania—Special Minister of State) (10.15 a.m.)—Senator Stott Despoja raises a very reasonable issue. I can understand the concern she has raised. I sought to address that in my summing up speech on the second reading. Senator Stott Despoja asked what the government’s view was; then she slipped into another mode and asked what my view was. It will not surprise her to hear that of course my view is the government’s view. In relation to the particular negotiations, I am sure Senator Stott Despoja realises that I am not the minister with the carriage of the actual issues. I am taking the bill through here but it is the responsibility of the Minister for Industry, Tourism and Resources, Mr Ian Macfarlane.

I understand that in general terms meetings for negotiations on sea boundaries usually take place on a

six-monthly basis elsewhere. A lot of work is undertaken by officials and information needs to be gathered and gleaned from the issues that are raised at the meetings. I am more than happy to indicate Senator Stott Despoja’s concerns to the minister and see what can be done in that regard, ensuring that Australia’s interests are maintained, of course. Regularity of meetings does not necessarily mean that they would be productive meetings if the work that needs to be done between them is not able to be done within the time frame.

I do not claim to be an expert in what is a reasonable or unreasonable time frame other than being advised that it is, in general terms, six-monthly. I understand that on 12 November last year it was established that formal negotiating rounds would be held twice yearly, starting next month. Senator Stott Despoja, I will pass on to my colleague Ian Macfarlane your wish or suggestion that, rather than being held six-monthly, that time period be truncated. I think that is the best I can do in the circumstances.

Senator O’BRIEN (Tasmania) (10.18 a.m.)—While we are on that subject I would ask the minister to indicate the opposition’s concern that apparently we are prepared to say to the government of East Timor that we have difficulty resourcing the negotiations better than on a six-monthly basis. Frankly, to suggest that work cannot be done between meetings only suggests that we are not prepared to apply the resources to allow the work to be done in time for more frequent meetings. The opposition strongly suggests to the government that, if the government of East Timor believes that there are matters which can be productively dealt with on a more frequent basis than six-monthly, we should attempt to meet their timetable and apply the necessary resources so that work can be done between meetings. If the East Timorese government finds it has difficulty doing its work then perhaps that matter ought to be revisited in consultation with the Australian government, but it is very difficult in my mind to justify the position of six-monthly negotiations. Frankly, if the Prime Minister of East Timor is agitating for more frequent meetings, we would support that agitation.

Senator ABETZ (Tasmania—Special Minister of State) (10.20 a.m.)—I will briefly respond to Senator O’Brien. I may have misunderstood what Senator O’Brien said or I may not have expressed myself properly. I did not suggest that work could not be done between the six-monthly formal meetings—they are formal meetings, as I understand it, every six months—but there is a lot of work and contact that takes place in between those formal meetings. Those sorts of boundary negotiations are, by their very nature, complex. The timetable that has been agreed to between Australia and East Timor takes account of this. In any case, as I said before and as I understand these negotiations,

there are discussions on an informal basis that it would be expected would take place.

Having said that, I fully accept that it is an issue that we, as an Australian government and nation, ought to be cognisant of. We will see what we can do in relation to the timetable. Having taken on board their concerns, I invite Senator Stott Despoja and Senator O'Brien to accept that, whilst they have raised a relevant issue surrounding the general issue, it does not relate to the actual bill that is before us, albeit it is of interest and relevance to the agreement that has been signed. The need for us to progress this is quite clear. I will pass on the sentiments of Senator Stott Despoja and Senator O'Brien to the minister.

Senator HARRIS (Queensland) (10.22 a.m.)—Could the minister give the chamber some understanding of how Australia initially laid claims to this resource we refer to as Sunrise? What I am looking for is the progression of the issue from Timor as a Portuguese colony to the point where Indonesia ultimately invaded East Timor and took possession of the island and obviously laid claim to the natural resources that lay off it. What was the transition from Portugal's authority or dominion over that area? My understanding is that Oceanic did have exploration permits granted under Portugal. I am looking for clarification of the process of when that resource was initially claimed by Australia and how Australia went about appropriating those exploration leases. To a large degree those are the concerns that One Nation has in relation to this whole process. There obviously had to be a formal transition from Portugal across either to an East Timorese entity and/or subsequently to Indonesia resulting from the invasion. Could the minister assist us with information in relation to that progression?

Senator ABETZ (Tasmania—Special Minister of State) (10.24 a.m.)—I am learning that I have to pick up my reading glasses from the optometrist. I have just been handed the report of the Joint Standing Committee on Treaties, *Report 49: The Timor Sea Treaty*, tabled in November 2002. There is 'A Brief History' at 1.4, page 2 that takes you through that. The brief history, unfortunately, goes over four pages. I will not seek to read all of that. What I might seek to do is give a brief explanation as I understand it. If I am wrong, I am sure I will get a whisper in my left ear.

As I understand it, one of the ways for a country to lay claim to the resources contained in the sea or under the sea under international law is to go to the edge of the continental shelf. Australia has a continental shelf that reaches across to the Indonesian archipelago and East Timor further than the halfway mark, as I understand it. We have laid claim as we have based on the continental shelf being part of the country's economic zone under international law.

In relation to the transition from Portugal to Indonesia and to East Timor, I am just trying to think that through. I confess I had not given it consideration until Senator Harris raised that. It would seem to me that the rights that may have accrued to Portugal and then to Indonesia and then to East Timor would have been exactly the same under international law, because Australia's claim was based on the continental shelf. During the period of time that the people of East Timor were governed by Portugal, then Indonesia and now under self government—and I do not want to sound flippant to Senator Harris—the continental shelf did not shift, so Australia's entitlements have not changed by virtue of the unfortunate occurrences the East Timorese have had to suffer over the years. I am not sure I can assist Senator Harris further other than to say that I have been advised that there is some discussion of the history of this as well on the DFAT web site. I am not sure if I am necessarily able to take the matter any further.

Senator HARRIS (Queensland) (10.28 a.m.)—I thank the minister for that detailed answer. Australia has always laid claim to the resource on the basis of the continental shelf, as he has explained. But that position is somewhat in conflict with Australia's support of the principle of the international agreement of the sea in which Australia's position prior to this issue was, I believe, that the international boundary should have been halfway between the two. As I said in my speech in the second reading debate, Australia withdrew from that agreement in March of last year. That would indicate that, to some degree, that was as a result of realising that this resource would lay well outside of Australia's jurisdiction.

The other area of concern that One Nation has with the structure of the legislation pertains to the way in which the resource rental tax and any other revenues that are gained from this area are distributed. I place on record my thanks to the minister for the briefing the government provided yesterday in relation to some of these concerns. I understand that 90 per cent of the revenues that are to be derived from the granting of the leases and the revenues that will come from that are to be split 90-10. In other words, East Timor will derive 90 per cent of those revenues from the establishment of control of the leases and 10 per cent will obviously come to Australia.

In relation to the resource rental tax itself, that will be Australian revenue. When we look at the proportion of the boundary as it lies at the present moment, 80 per cent of that production lies within Australia's area, so it is one thing to say publicly that East Timor will receive 90 per cent of the revenues from the resource when, in actuality, that is not fiscally correct because the greater percentage of the volume of the resource sits within Australia's designated area and Australia will keep the entire revenue from that resource rental tax. When we

look at the resource rental tax, it is somewhat complex because it is based on the profits that the petroleum company derive from revenues from that resource. There are exploration costs that could be amortised over the volumes of the field but, ultimately, that petroleum company comes up with a profit from that resource.

The Australian government receives 40 per cent of the petroleum company's profits—that is what the resource rental tax is. Philosophically and morally One Nation has a problem with that. If the government were to say that they would provide to East Timor that portion of the resource rental tax on the same basis of 90 per cent of it going to East Timor and 10 per cent of it being retained by Australia, then One Nation may give quite different consideration to the outcome of this legislation. But while it stands that 80 per cent of the resource is claimed by Australia and Australia will derive 100 per cent of the resource rental tax on that, I have a problem. So I would ask the minister: firstly, is my understanding correct and, secondly, is the government prepared to consider placing that revenue from the resource rental tax on the basis of the same split of 90 per cent to East Timor and 10 per cent to Australia?

Senator ABETZ (Tasmania—Special Minister of State) (10.34 a.m.)—In relation to a previous matter Senator Harris raised—if I can quickly backtrack—this particular Joint Standing Committee on Treaties report on the Timor Sea treaty is most informative, in particular paragraph 1.9, which I have had the opportunity of squinking through. It indicates that, with regard to the Timor Trough, as it is known, Portugal was of the view that it was merely an indentation and therefore the boundary should be in the median or the halfway mark, whereas Indonesia was of the view that the Timor Trough represented the edge of the continental shelf. On that basis Indonesia took a different view from that of Portugal. I dare say it is a geological issue as to whether it is a mere indentation or whether it is the edge of our continental shelf. I will leave it to others to argue that but I understand there is a wealth of evidence to suggest that the Timor Trough is, in fact, the edge of our continental shelf.

Mr Temporary Chairman, I am getting it from both sides now. I thought I was completely confused with Senator Harris's question; now the advice I have been given has added to that confusion in my mind. But, simple soul that I am, I will try to explain it in simple terms. As I understand it, the resource rental tax that Australia will get will be levied only on that which is harnessed solely from the Australian side of the boundary. The 90-10 split is for the joint development field, so there will be no resource rental tax from the joint area. Did I do justice to Senator Harris's question? I hope I have. That is as good as I can do at the moment, Senator Harris.

Senator HARRIS (Queensland) (10.37 a.m.)—Yes, Minister, what you are saying is absolutely correct. I think it would assist the minister if one of his advisers showed him a document that I provided to the department yesterday. It is a colour copy. The minister will then be able to follow what I am saying.

Senator Abetz—I always like coloured pictures. It helps me to understand.

Senator HARRIS—Yes, a picture tells a thousand words. This one is exceptionally good.

Senator Abetz—I have it now.

Senator HARRIS—I apologise that I have not provided that for the opposition. There was nothing untoward about that. During the minister's answer to my next question, I will try and get another copy of this for the opposition and everybody else in the chamber, because it does very clearly depict the situation I am explaining to the minister. The minister's answer is exactly correct. On the joint area there will be no resource rental tax applicable to Australia. But if the minister looks at the diagram, he will see an orange outline. That is the joint area. Sunrise and Troubadour sit largely to the east of that. This is the point I am making: the eastern boundary on that is an arbitrary line. This arbitrary line is being negotiated, I understand, between Australia and East Timor at this point in time.

What I am saying very clearly to the chamber is that if Australia were, in a very generous way, to say to East Timor, 'We will move that boundary to the east so that the whole of that resource would then sit within the joint area' then the suggestion I am putting to the minister would be a reality—East Timor would get 90 per cent of the resource rental tax and Australia would retain only 10 per cent. One Nation's interest here is to try and ensure that East Timor does derive the maximum benefit from this resource. When we look at what East Timor has gone through as a nation, very few of us here would ever wish that on anyone. I would think that Australia, being the compassionate nation that we are, would look very favourably at assisting East Timor by ensuring that the majority of the benefits from this resource go to East Timor.

At the present moment, we have the IMF in East Timor and the World Bank making loans to assist the East Timorese people. If my figures are correct, my understanding is that Australia, over the 30 to 40 years of the life of this field, will derive approximately \$8.9 billion in resource rental tax from this field. I know it is easy for me to stand here and hand out what is perceived to be Australia's revenue, but I think that, in this case, a lot of Australian people would stand beside me and agree that if Australia could do this for East Timor then this could—and, in all probability, would—put East Timor on a very strong, independent financial footing. That is the reason I am arguing this so

strongly. Yes, we have, at the present moment, an arbitrary boundary set. What One Nation is asking is: can that boundary be moved to the east to take in the entire Sunrise and Troubadour field? That resource rental tax would then be split, with East Timor getting 90 per cent of it and Australia receiving 10 per cent. While the minister is considering that, I will quickly get some colour photocopies of this for the opposition and the other senators—if they do not have it at their fingertips.

Senator ABETZ (Tasmania—Special Minister of State) (10.43 a.m.)—I commence my response by congratulating Senator Harris and thanking him for taking the opportunity of getting a personal briefing on this matter from departmental officials. He has gone to the bother of informing himself rather than coming in here with uninformed questions and expecting others to do the homework for him. He has shown a genuine interest in this issue by seeking to inform himself as best he possibly can. By doing that, he does save the Senate some considerable time. As I understand Senator Harris's proposition, he is saying that if the boundary could be moved to the east then more of the gas field would fall into East Timorese territory. He says that the line that has been drawn on the eastern boundary is an arbitrary line. It is, to a certain extent, an arbitrary line—albeit that it has been negotiated as being the eastern boundary. With respect to Senator Harris, I suggest that if we were to move it on this map by a millimetre or however much further to the east then that also would be an arbitrary line.

But, as I understand it, the eastern boundary is in fact a permanent boundary over which there is no discussion and the discussions that are taking place between East Timor and Australia refer to the northern boundary. That is the area over which we are engaged in dialogue with the East Timorese government. My attention has been drawn to paragraph 2.4 of the Joint Standing Committee on Treaties November 2002 report, report No. 49, which states:

Annex A of the Treaty establishes the JPDA along the same boundary delimitations as ZOCA—
zone of cooperation—

set out in the Timor Gap Treaty between Australia and Indonesia. Within the JPDA, Australia and East Timor will jointly control, manage and facilitate the exploration, development and exploitation of petroleum resources.

There is a map on page 2 of the report that details that. But, as I indicated earlier to Senator Harris, the eastern boundary is a permanently delimited boundary between Australia and Indonesia. I am not sure that I can take it further than that at this stage, other than to say that I accept that, to Senator Harris, that would not necessarily be a satisfactory way of handling the matter. The departmental officials are, of course, available for further discussion. That may well be after the legis-

lation has been dealt with, but I am sure that they would be able to satisfy you and ease your mind on some of the concerns that you do have.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Harris, it might be appropriate to seek leave to have that document tabled. That would assist Hansard and it would also assist others who are not present but who are busy elsewhere in this building to appreciate what detail there is there.

Senator HARRIS (Queensland) (10.47 a.m.)—I seek leave to table the coloured hard copy of the document.

Leave granted.

Senator HARRIS—In closing, I thank the minister for the clear detail as to which boundary is being negotiated. I come back to my statement that, by having a fixed eastern boundary, 80 per cent of the resource is still sitting in Australia's area of jurisdiction. My point is that, if for nothing other than a compassionate reason, I believe it would be a wonderful gesture by the Commonwealth of Australia to make a commitment to splitting that resource rental tax. Let the resource sit where it is for the purpose of the boundary, but a commitment from the Commonwealth to divide the finances from that resource rental tax on the 90-10 split, and for 90 per cent of that to go to East Timor, would underpin East Timor's finances and their ability to rebuild their nation. It would give them long-term stability and it would make them far less exposed to having to go to the International Monetary Fund or to raise funds through other avenues to rebuild their nation. This resource has the capacity to underpin and to provide to the East Timorese people an opportunity for expansion and a better standard of living and to remove their exposure to any form of debt for the next 30 to 40 years. We may not be willing to move the boundary, but I think we should be willing to split that resource rental tax, with 90 per cent going to East Timor and Australia retaining the other 10 per cent.

Senator STOTT DESPOJA (South Australia) (10.51 p.m.)—I have another question to put to the minister. At the committee on Monday night, I asked about the issuing of new exploration licences. I thank officials for the response, but I just want some clarification. My understanding is that, since the IUA in March 2003, Australia has unilaterally granted at least two—not one, but two—exploration licences in areas of the Timor Sea neighbouring Greater Sunrise. The permit numbers that I have here are permit NT/P65 on 22 April 2003 and permit NT/P68 on 23 February 2004.

First of all, I ask the minister to confirm whether or not that is indeed the case. I can certainly see one of his advisers nodding. Clearly, the government considers this to be appropriate, but I wonder if the government acknowledges whether there is room for that kind of

unilateral activity to be considered as showing poor faith, certainly not good faith. Is it the government's understanding that under international law we are obliged to refrain from unilateral exploitation in areas where there may be overlapping claims? Is that indeed our obligation under international law? What is the government's response to that?

Senator ABETZ (Tasmania—Special Minister of State) (10.52 a.m.)—I will deal quickly with the issue that Senator Harris raised in his contribution. I understand his sentiments. I think that is a proper debate to be had—whether this nation wants to be more generous to the people of East Timor. If that is our wish and desire as a nation, I would like to think that we could achieve that in a way which would not compromise the integrity of our international boundaries. I understand the sentiment of what Senator Harris is saying but I suggest to him that, as it relates to the rest of the world, the precedent of adjusting international boundaries for the purpose of showing generosity means that you forgo that part of your sovereign area for, I would imagine, all time. I would be concerned about the precedent that that would set. I simply suggest to Senator Harris that the generosity of spirit that is being shown by him and One Nation to East Timor might be able to be achieved through another mechanism rather than through adjusting international boundaries. I leave that on the table for Senator Harris to consider.

In relation to Senator Stott Despoja's contribution, I can confirm the licence letters and numbers she read out. I understand that licences NT/P65 and NT/P68 have been granted. NT/P68 lies only slightly within the area. I have been advised that East Timor has made claims, as suggested by Senator Stott Despoja. Some of those areas contain producing fields. The government does not accept that East Timor has rights over the deposits in those areas. It is the government's view that these deposits are within areas of the continental shelf over which Australia has sovereign rights. Australia has exercised its sovereign rights in this area over an extensive period of time. The grant of the permits does not contravene Australia's obligations under international law.

Senator STOTT DESPOJA (South Australia) (10.55 a.m.)—Thank you, Minister. I go again to the issue of good faith and the perception that Australia is not necessarily operating in good faith, first of all in relation to those licences. Could you let us know now, or take it on notice, what feedback the Australian government has had, if any, from the Timor Leste government on those licences?

I thank you for your answer about international law although I think it is going to be a matter for debate in this chamber. There will be different views as to whether we are fulfilling our obligations under international law in proceeding with that unilateral explora-

tion. I ask the government this, and I can probably predict the answer from the last answer: is it not the case that we should not be issuing new licences in that area until we have a determination on the permanent boundaries? Regardless of the government's perceptions of international law obligations, shouldn't we, as part of our good faith agenda, not be issuing new licences until there is a permanent determination of the boundaries?

Senator ABETZ (Tasmania—Special Minister of State) (10.57 a.m.)—My advice is that the previous Labor government in 1974 advised Portugal that they should never grant any permits to Oceanic at the time. Australia's position under successive governments has been quite strong in this area. The argument I put again is that under international law it is quite appropriate to say that your zone of economic influence et cetera is the boundary of the continental shelf—until it is decided otherwise. That is what has been negotiated. It has been that way now for 30 years this year, so Australia has maintained a very consistent line with the former rulers, if you like, of East Timor—Portugal. Our position as a nation has not wavered, be it under a Labor government or a Liberal government, and there have been a number over the past 30 years. Having said that, somebody might be making a claim or disputing that, but we have asserted for a long period of time that we are entitled to that view under international law. Australia believes that what we are doing is appropriate and we do not see it as a breach of good faith. We see it as doing what we are entitled to do and what we believe we have been entitled to do for over three decades.

Senator STOTT DESPOJA (South Australia) (10.59 a.m.)—I am well aware now of the government view in relation to our obligations under international law, even though I think a number of people consider that where there is a case of an overlapping claim we are obliged to not proceed with that unilateral action. Does the government have legal advice that declares or insists we are meeting our international obligations and that we are not in any way in conflict with those international obligations? I have a second question but I will wait for the minister.

Senator ABETZ (Tasmania—Special Minister of State) (11.00 a.m.)—I know that there is, and quite properly, within the Australian population a great feeling of support for our friends in East Timor and I think that was witnessed by this government's decision to assist the people of East Timor by sending in troops. I do not think the goodwill of the Australian people and this government towards the people of East Timor can or should be questioned. The fact that now East Timor and indeed, prior to them, Portugal, have made certain claims does not of itself make those claims right or substantiated and, as a result, we believe that we

should continue as we are. So often claims are made that, at the end of the day, are not supported under law. We believe that whilst a claim has been made it is not sustainable under international law and that is why we are proceeding as we are. The general legal advice on this is, as I indicated earlier, in relation to the international boundaries and the continental shelf, and I am not sure that I can necessarily take that any further. A challenge or claim has been made. The question is: should we stop everything in response to that or do we say that we are going to continue because we believe that after such a lengthy period of time the law is on our side? Potentially we could argue that the claim is not necessarily being made in good faith and, while I am sure it is, we have a different understanding of the law and our entitlements.

Senator STOTT DESPOJA (South Australia) (11.02 a.m.)—I do not seek to prolong this but I would just like to finish with this particular matter and raise one other. I am not going to get into a discussion about good faith. I think my views are already on record. Without doubt there is a question of whether the government is acting in good faith, not only in dealings with the government of Timor Leste but also, I think, internationally as well. I want to know if that different perspective to which you referred, the different legal view that the government has about our obligations under international law, has been substantiated by recent legal evidence that the government was willing to provide to the chamber.

The second question I have relates to another issue that I raised: the frequency with which Australia is planning on having meetings with the Timor Leste government—six monthly, as has been discussed, as opposed to monthly—and the request by the Timorese. I acknowledge the minister's response to me earlier and I thank him for saying that he will take this up with the relevant minister, but I have a specific question now for the minister to answer, preferably within the committee stage of the bill, and that relates to resources. The response that I have had from the minister and officials in terms of the rationale for those meetings on a six-monthly basis relates partly to resources as well as to the complexity of the debate and the legal matters at hand. What resources are being provided by this government to the relevant departments in order to expedite the negotiations? That includes people power and money, if the government will put that information on the table. Is it the case that greater resources are required and, if so, will the government provide greater resources to the relevant departments in order to expedite the negotiations?

Senator ABETZ (Tasmania—Special Minister of State) (11.04 a.m.)—My advice is that diplomatic communications regarding the matters raised by Senator Stott Despoja form part of the framework of bilat-

eral negotiations and are confidential. I am sure that Senator Stott Despoja would also acknowledge that the legal advice that the government receives is government-in-confidence. On this matter, I simply suggest to her that her leader, Senator Bartlett, is a member on the Joint Standing Committee on Treaties and I would assume that they may have explored in general terms the issue of what the law is and what the legal advice is. I am not sure whether the committee did or not but possibly that would be a better forum for that in the future.

In relation to resources and money being made available to ensure that we have more than the six-monthly meetings, as I understand it, it is not an issue of resources and money as such. It is more an issue of having valuable discussions. It was decided in November last year to have the first meeting in April this year—next month—and then to have formal discussions every six months. In fact, I would anticipate that after the first discussion in April 2004 officials from both sides will have a lot of work to do and will undoubtedly communicate with one another between the six-monthly meetings. It is not that nothing gets done in between the six-monthly periods. My anticipation is that a lot of work will be done. I have already acknowledged and accepted that I will take Senator Stott Despoja's concerns to the minister to ascertain whether that timetable can be usefully truncated. I am sure that the minister will take up the concerns of Senator Stott Despoja and Senator Harris, who I think raised the issue as well, and we will see what we can do in that regard.

Senator BROWN (Tasmania) (11.07 a.m.)—I will ask the minister about recent negotiations with Indonesia on the boundaries. For clarification for the committee, I ask: has Australia moved towards an agreement with Indonesia on confirming the 1972 seabed boundary on either side of the Timor Gap? If it is negotiating or has so moved, what relevance does it see for East Timor on both ends of the so-called gap and for its interests, which are very clearly compromised by the 1972 seabed boundary negotiated between the then Australian government and the Suharto regime, against, I might add, the wishes of Portugal?

Senator ABETZ (Tasmania—Special Minister of State) (11.08 a.m.)—This is very much outside the legislation we are debating, but nevertheless I can inform Senator Brown that my understanding is that Australia's maritime boundaries with Indonesia are settled. The 1972 seabed agreement is in force and, as I am informed, there are no negotiations to change it. It is in force and there is no intention by this government to try to change that, and the advisers indicate that they are not aware of any approaches from Indonesia to change it. So, in response to Senator Brown's question as to whether Australia has moved towards an agreement with Indonesia on the 1972 seabed boundary, that

has now been in place for over 32 years and there are no further discussions being initiated from either side of that boundary.

Senator BROWN (Tasmania) (11.09 a.m.)—The point here, though, is that, on both the eastern and western side of the Timor Gap, we now have a third party that is very concerned about that boundary—that is, Timor Leste. We have three countries interested in where the boundary starts and finishes. I ask the government whether it has had representations from East Timor about that. Has the matter been settled to the satisfaction of Timor Leste as far as the boundaries on either side of the Timor Gap are concerned?

The TEMPORARY CHAIRMAN (**Senator Lightfoot**)—The question is that the bill stand as printed.

Senator BROWN (Tasmania) (11.10 a.m.)—I think the minister is seeking advice on the matter. I note that Portugal's dispute with the boundaries was refused a hearing at the International Court of Justice because the Suharto regime refused to allow jurisdiction, which is just what the Howard government is doing now with the same boundaries. The Labor spokesman, Senator O'Brien, might clarify ALP policy here as to whether Labor would, if necessary, be amenable to the International Court of Justice being an arbiter if the boundaries could not otherwise be resolved. That is implied but not explicit in Labor's policy on the matter.

While the minister is getting advice on that, I want to come back to the environmental impact assessment and ask the minister: is there a time limit before which work must begin or be completed on this project? It is quite important as far as the environmental assessment is concerned, which was done under the previous Australian Environment Protection (Impact of Proposals) Act, which is no longer law. Under what legislation and by what process would any variations to the proposal be assessed? Would that be under the old law or under the new EPBC Act in Australia?

Senator HARRIS (Queensland) (11.13 a.m.)—I am just seeking clarification. I understand that Senator Brown has amendments to move.

The TEMPORARY CHAIRMAN (**Senator Lightfoot**)—Please proceed. The gentleman in the gallery should take a seat.

Senator HARRIS—Mr Temporary Chairman, I am seeking clarification from you in relation to standing orders. I understand that Senator Brown has spoken twice concurrently but he has amendments to move. Does that standing order preclude Senator Brown from now moving his amendments?

The TEMPORARY CHAIRMAN—It does not now.

Senator HARRIS—I know it does not now, because I have stood, but I am seeking some clarification.

Had I or no other senator stood, would that preclude Senator Brown from moving those amendments?

The TEMPORARY CHAIRMAN—Yes.

Senator McGAURAN (Victoria) (11.14 a.m.)—On a point that may be of interest to you, Mr Temporary Chairman, that is not just a gentleman in the gallery; that is the member for Aston.

The TEMPORARY CHAIRMAN (**Senator Lightfoot**)—I do not know what that statement was about, Senator McGauran, but I guess it will be recorded in *Hansard*.

Senator STOTT DESPOJA (South Australia) (11.14 a.m.)—He is a gentleman—we acknowledge that. I ask a question of the minister. I know there was some discussion, certainly in the second reading stage and in the committee stage, about Australia's decision to withdraw from the ICJ. I note that, in response to some of our concerns and some of our questions, the government has said that this is actually a general withdrawal for the purposes of maritime boundaries and that it is not specific to the issue and the negotiations involving Timor Leste. I want to get on the record from the minister a confirmation or otherwise that Australia's decision to withdraw from the ICJ occurred only two months before Timor Leste's independence and when the Timor Sea Treaty was signed. Is that the case? Can the government confirm that?

Senator ABETZ (Tasmania—Special Minister of State) (11.16 a.m.)—There was a release issued by the then Attorney-General, the Hon. Daryl Williams AM QC MP, and the Minister for Foreign Affairs, the Hon. Alexander Downer MP, on 25 March 2002 which sets out the government's position on that. Believe it or not, I do not think that it would be fruitful for me to seek to add to the joint statement of the Attorney-General and the Minister for Foreign Affairs which was publicly released at that time.

Senator STOTT DESPOJA (South Australia) (11.17 a.m.)—I thank the minister for an answer. My understanding is that the government has previously indicated that one of the reasons that Timor Leste was not given any prior notice of this government's decision to withdraw from the ICJ was to prevent any actions being taken or commencing before Australia's withdrawal. That suggests to me that it is a very specific decision by Australia to withdraw from the jurisdiction of the ICJ and to do so in a way that would potentially disadvantage Timor Leste. So, despite the responses we have had and the arguments we have heard that suggest this was a general decision in relation to maritime boundaries, it smacks of a very specific decision affecting Timor Leste—that is actually one of the reasons that have been put on record. Does that not suggest, Minister, that it is a bit disingenuous to argue that this was a general withdrawal, as opposed to a very specific withdrawal, which was done in a way that

does affect Timor Leste and was done two months before its independence?

Senator BROWN (Tasmania) (11.18 a.m.)—I will be moving Australian Greens amendments R(1) and R(2) on sheet 4200 revised (2). The reason for these amendments comes out of the debate we have just had. We believe that Australia has and should have an obligation to abide by not just the letter but the spirit of the international treaties it signs, and it just cannot be selective about that. The minister might laugh about it, but it is important that we establish propriety in these matters. The propriety here is that when you sign an agreement like this you do not selectively withdraw if you do not think you are going to win a court case—and that is what has happened here. Australia has withdrawn from the jurisdiction of the International Court of Justice because it believes, looking at rulings over the last decade, that the international court is likely to come down and say the dividing line between Australia and Timor Leste is halfway between, which would mean, we aver, that the gas and oilfields we are dealing with are East Timorese. If you do not abide by that because you think the ruling will go against you, then you are withdrawing from international jurisdiction just as it was meant to be under this legislation.

That is what President Suharto did. You might expect it of dictatorships but you do not expect it of democracies which support the rule of law and the arbitration of international courts—and Australia signed that agreement with that spirit. It has been stated that there is a list of other countries which have not signed the agreement. So be it, but many countries have signed the agreement. We are in an age of globalisation and the Howard government is a leading exponent of globalisation, but surely the rhetoric about globalisation wears a bit thin when you have international courts to rule on global disputes and the government says suddenly, ‘Because claiming ownership on the East Timorese side of the sea is not going to serve the safety or security of Australia, we withdraw.’

It is just not acceptable behaviour. That is why I have asked the Labor Party, as the alternative government, what its position will be if it comes to office. It is a matter for the impending election. I notice that the Labor Party’s policy does say that East Timor will be treated fairly. Ultimately, if there is a continuing dispute between Australia and Timor Leste then going to the court is the way of resolving it. Timor Leste has to abide by the outcome: if the court decides that it is a continental shelf matter then Timor Leste loses. Australia has to abide by the outcome: if the court decides that the line should be down the middle then Timor Leste gains, as we believe it should. It is really very important for both sides to be unequivocating about this. The Greens have moved this amendment because it would require that the International Court of Justice

be opened again as the avenue for resolution of a dispute which is becoming intractable and extraordinarily damaging to our relationship with Timor Leste and therefore our relationship with the neighbourhood, not just for now but for decades to come.

The second amendment puts a time limit on the establishment of the boundary and the agreement to it, and this act would cease to have effect if that agreement is not made by the end of 2006. It may be asked: what if the international court has not made a determination by then? Clearly, the parliament would have to reconsider and change this date if that were to be a matter of contention at the time—and of course we can do so. The problem with the current situation is that there is no date. It may take 30 years to extract the oil and gas. The behaviour of the Australian government indicates that it is not anxious to have the border matter resolved. As Senator Stott Despoja and Senator Harris have been pointing out, the East Timorese wish for frequent negotiation on this has been spurned by the Howard government, which says the meetings should be six-monthly. And of course the court which could resolve the matter has been spurned by the Howard government. The evidence clearly is that the Australian government wants to have this agreement put in place and the oil and gas extracted before the boundary matter is settled. If we as a parliament do not put in a time and date then this could drift on for the next three decades. Increasingly, the goodwill that we have in East Timor will turn to hostility as that happens.

People are seeking simple resource justice around the world; it is a major global issue. What led to the meltdown in Seattle a couple of years ago and to the failure of the talks in Cancun last year was the injustice of the way resources are dealt with by the rich countries vis-a-vis the poor. If ever there was a clear case of that—and unfortunately Australia is involved in it—it is the perceived injustice of the sea boundary between Australia and Timor Leste. If you want to resolve an injustice then you go to court and have the matter settled. That is what these amendments do. They are at the heart of the matter; they are extremely important. I would expect that the opposition, in the spirit of its own policy, would support the amendments. They do not conflict with opposition policy; in fact they complement it and make it more specific. I would expect that the government, if it cannot meet these dates, should be telling us now what its targeted resolution date is. All the evidence stacks up to the government not wanting a resolution of this matter. It does not have the courage of its convictions to allow the international court to settle the matter as it should.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Senator Brown, do you intend to take those amendments one by one or are you going to

move them together? You will need to seek leave if you propose to move them together.

Senator BROWN—I will take them one by one, thank you.

Senator Abetz—Which one is he going to move?

The TEMPORARY CHAIRMAN—Amendment (1).

Senator Abetz—Mr Temporary Chairman, on a point of order: this is a clear example of wasting time. The honourable senator has spoken to both his amendments in the one speech. They clearly flow on from one another. It is quite appropriate that they should be dealt with together. When he is given the opportunity to ensure that the Senate business be expedited, he straightaway says, no, he wants them dealt with separately. I would ask Senator Brown to reflect. I seek his agreement that these two amendments be taken together to save the time of the Senate.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—It is Senator Brown's choice as to whether he takes them separately or together.

Senator BROWN—Senator Abetz may be out of the loop, but there has been an indication to me by at least one other party in the place that the vote is not the same on both amendments. Therefore I intend to have them put separately. That is the proper thing to do in respect of all parties in the parliament. It is not time wasting. It is an extremely important matter. It would help if the minister were prepared to give information on the basis of the amendments put forward. I move the first amendment:

R(1) Page 3 (after line 24), after clause 4, add:

5 Referral to International Court of Justice

If the matter of a permanent maritime boundary between Australia and Timor-Leste is not finally agreed by 31 December 2005, the Minister for Foreign Affairs of the Commonwealth must refer the matter to the International Court of Justice for adjudication.

I will come back to the agreement, which is the matter at hand.

Senator Abetz—Excuse me, I was on a point of order.

The TEMPORARY CHAIRMAN—I beg your pardon, you were on a point of order, Senator Abetz. I ruled on it but I did not make that quite clear. I make it quite clear that there is no point of order, that Senator Brown has the option of moving his amendments together or singly.

Senator BROWN—That is a correct ruling, Mr Temporary Chairman. Article 6 of the agreement, which is the subject of the amendment as well as the bill, refers to the unit operator. It says:

A single Sunrise Joint Venturer shall be appointed by agreement between the Sunrise Joint Venturers as their agent for

the purposes of exploiting the Unit Reservoirs in accordance with this Agreement ... The appointment of and any change of the Unit Operator shall be subject to prior approval of the Regulatory Authorities.

In article 8, 1(a) says:

Either Australia or Timor-Leste may request the Unit Operator to undertake a redetermination of the Apportionment Ratio.

I ask the minister to explain the function of the office of unit operator. What would happen if either Australia or Timor Leste made that request to the unit operator to undertake a redetermination of the apportionment?

Senator ABETZ (Tasmania—Special Minister of State) (11.30 a.m.)—This is exactly the sort of waste of time that this chamber has to put up with time and time again. Senators from the Australian Democrats and One Nation sought a briefing on some of these matters before the matter came into the Senate. They did their homework and sought clarification on a whole range of issues so that we could truncate this debate. We are now going back to seeking explanations on the treaty that went through, as I understand it, the Joint Standing Committee on Treaties. It was considered by that parliamentary committee and now Senator Brown is taking us through the treaty. It has been signed by the Prime Minister of East Timor and by the Australian government. It has the force of international law now as a treaty between the two governments and we are seeking, by the actual legislation before us, to implement this treaty. Senator Brown, in his previous comments, talked about a selective approach to treaties. It is very interesting that he does not seem to want this particular treaty that we signed with East Timor implemented.

In relation to the International Court of Justice, the misrepresentations made by the honourable senator were manifold. I suggest to him that mere repetition of bland assertions does not turn them into fact in the absence of evidence. In relation to the International Court of Justice, out of 189 members only 61 members have signed up. Only about one-third of the world community have signed up to the International Court of Justice. Out of that one-third, the majority have reservations in relation to the jurisdiction of the International Court of Justice—a majority of the 61 members. So Australia is not some international pariah having put its own reservation on the International Court of Justice; it is with the majority of the countries that have signed up to the International Court of Justice in putting on a reservation.

At the end of the day—and this might come as a surprise to Senator Brown and the Australian Greens—the first obligation of the Australian parliament is, in fact, to the Australian people. We have a huge maritime boundary—I was about to say bigger than anybody else's but I am not sure whether that is necessarily cor-

rect, so I will not say that; but pretty big by world standards would, I think, be a safe assertion to make. We seek to negotiate these things. I can see the lawyers already rubbing their hands at Senator Brown's amendment. They can see the trips to The Hague or wherever the International Court of Justice sits and they can see the meter ticking over.

If there is one thing that has really taken hold in the Australian community in recent times it has been alternate dispute resolution. You do not rush off to court every time you have a little problem; you sit down, negotiate and see whether you can achieve an outcome. That is what we are doing with New Zealand, on the other side of the map of Australia, on the south-east part of our nation. On the north-west part of our nation, we are having dealings with East Timor. That is as it ought to be. The amendment is to put in these arbitrary timetables that say, 'If a matter is not determined by 31 December 2005, well, guess what?' If I were the East Timorese government reading this amendment, if it were to get in, I would sit back and say, 'We are not negotiating one little bit and, as a result, off to court we go.'

I would be gobsmacked if this matter were resolved in the International Court of Justice within 12 months. But Senator Brown's amendment would mean that the legislation would no longer be in force. What is the purpose of this legislation? It is to give effect to the treaty that East Timor signed with Australia. You have to ask what motivates Senator Brown with this type of amendment. It is not to implement this particular international treaty. It seems now that he is cherry picking on international treaties. They no longer seem to have this great aura that we should bow down and worship them, as Senator Brown would have us do with the International Court of Justice. He now wants to cherry pick as well, which is very interesting. In fact, that is what you ought to do as a sovereign nation. You ought to have a look at each international treaty and ask a very simple question: is it within Australia's interest? I confess, standing in the Australian parliament, that is one of the major tests I apply to any international treaty that we might sign: is it within Australia's interest? It should surely be one of the fundamental questions.

We, along with the majority of the countries that have signed up to the International Court of Justice, have put that ruler over the International Court of Justice and said, 'It's pretty good but we've got reservations in certain areas.' We are able to put those reservations into the International Court of Justice treaty and we have done so, along with the majority of the countries that have signed up to it. That is acting responsibly not only internationally but also nationally.

I indicate that article 8 of the unitisation agreement allows redetermination of the apportionment ratio upon technical grounds at the request of either treaty partner.

A redetermination of this kind must not occur within five years of any prior technical redetermination. Redetermination on any other ground may occur at any time by agreement between the parties to the treaty.

The government oppose the Green amendments because they seek to put unrealistic timetables not only on the negotiations but also on the International Court of Justice. I would have thought that if you had legislation in this country saying that the High Court had to make a decision by a particular time or else, the judiciary would take a very dim view of that. If I were the International Court of Justice I would be saying if this were passed, 'Fancy this Green senator from Tasmania trying to put a timetable on the International Court of Justice'—and that is basically what he is seeking to do. These are ill-considered amendments. The government's position is that we will not be referring this to the International Court of Justice, because we prefer to do things by negotiation. Seeking to force the matter into court and forcing unrealistic timetables on the International Court of Justice is not the approach of this government.

Goodwill to East Timor has been shown by this government in particular and by all Australians. We have made a significant contribution to East Timor and we will continue to do so. It is a matter of regret when two good friends cannot agree on something, but to try to play the card that just because two good friends cannot agree on a particular matter it is going to sour relations and blow up into a Seattle type situation is to use the sort of extravagant language that we have unfortunately become quite used to from Senator Brown.

It might be interesting for people to know that the honourable senator speaks with the same sort of passion, the same sort of emotion and the same sorts of adjectives in relation to the people of East Timor as he does in relation to the issue of whether or not we ought to be wearing jackets in this chamber. It is an act that is repeated time and time again. We have now spent a considerable period of time on this bill. The position of the government on these amendments is quite clear, and I do not intend to take any further part in the debate on them.

Senator O'BRIEN (Tasmania) (11.40 a.m.)—Again, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 relate to simply implementing matters already agreed between Australia and Timor Leste. As far as the opposition is concerned, only those matters that are agreed between Australia and the sovereign nation of Timor Leste should be referred to in this legislation, because what this legislation is proposing to do is to implement that agreement—to give effect to the agreement on Australia's part, understanding that Timor Leste has to do exactly the same or the treaty will fail.

Giving effect to those matters is intended to clear the way for the Greater Sunrise project to go through its processes: obtain its investors; make its capital decisions; proceed with the processes of appropriate approval, dealing with both nations; consider the options as to whether there will be processing in Australia, at sea or in East Timor; and get on with the job of getting the project up and running. When that happens, and only when all of that happens, will any revenue flow to either nation.

The opposition's position in relation to the continuing negotiations with East Timor about a final settlement on sea boundaries is set out clearly in my contribution to the second reading debate, and I do not intend to repeat it. We have given a very clear and unequivocal commitment in that regard. But I should also say that we have noted with extreme concern in the past the government's decision to withdraw from the jurisdiction of the International Court of Justice. This has had the consequence that neither Australia nor Timor Leste now recognises that court's jurisdiction on these matters.

So, to make a purely technical point on the amendment, the suggestion that ultimately the matter has to be referred to the ICJ is not feasible unless decisions are taken by the governments of both nations to support such a proposal. Putting an amendment in this bill to say that that will happen would, if it became law, probably render the continuation of the unitisation process quite difficult. But let us get back to reality. The opposition believe that the government will simply reject this amendment, and we will not insist on it if the consequences are to delay the project. So I do not think we are going to buy into this argument. We think it is really quite false in relation to what this is about. The opposition when in government will negotiate in good faith with the government of Timor Leste to resolve outstanding issues.

One should understand the consequences that delaying this project might have. That is the contribution we should consider at the moment. There was an article in yesterday's *Australian* on page 26 titled 'Qatar pumps up volume on LNG market' by Nigel Wilson, which said:

Competition facing Australia in the rapidly expanding international liquefied natural gas market was underscored yesterday when Qatar announced it would treble LNG production to 60 million tonnes by the end of the decade.

Australia exports 7.5 million tonnes of LNG a year and if all projects come together may lift output to around 20 million tonnes next decade.

One of the projects that would lift us to around that level is the Gorgon project, which is not in an area disputed by Timor Leste. All of this LNG coming on the market will have an impact on the commercial viability, saleability and price of LNG in the future, so any-

thing which delays the coming on stream of gas from this project may mean that the project will not go ahead at all if the markets cannot be found. There are markets which are available but, with that amount of LNG coming onto the market from Qatar over the next decade, we cannot be confident that the future will see opportunities to market gas from projects such as this.

I do not believe that the government of Timor Leste want to see this matter delayed. They would appreciate that the consequences of delaying the project are worse than the consequences of proceeding now. The unitisation agreement has their support. We are not going to stand in the way of it coming into effect, nor are we going to stand in the way of the project commencing in a timely fashion, because the risks are probably a lot greater for Timor Leste if we do that. We do not want to take that risk.

Senator STOTT DESPOJA (South Australia) (11.47 a.m.)— I rise to address the amendment before us moved by Senator Brown. The Democrats will be voting differently on the two amendments. We will be supporting the first amendment moved by Senator Brown but we will not be supporting the second amendment, even though we understand and are quite sympathetic to the intent of the second amendment. I will obviously address that when we come to it.

I begin by stating that while we have strong views on this issues—it has been probably one of the most passionate and emotive debates we have had in here for a while, although of course we have many—I do not think we need to resort to personal attacks. I do not think it is necessary. I am sure we can talk about each other's motives at another time but I would prefer we stick to the issues at hand. I am certainly trying to be very disciplined in this regard and I ask other people to be as well, but if they do not want to that is up to them.

Attacking the first amendment on its grounds, one claim is that it would result in increased illegal activity, that lawyers would be rubbing their hands with glee and that this would be almost a point of first resort instead of a point of last resort. That is something we really need to remember when we are talking about the ICJ's role. That is captured by this amendment: it is a very clear acknowledgement that it is the place of last resort for dealing with these kinds of disputes. That is its intention. That is how it will be and should be used. This amendment attempts to encapsulate that.

This amendment imposes an obligation on the Australian government that, if the maritime boundaries have not been permanently determined by 2005, the matter will be referred to the International Court of Justice. That is a reasonable time line. Perhaps the worst fault I could argue about is that it is perhaps slightly simplistic. One of the things that would make this more workable would be if we had a better, more expeditious time line in relation to the negotiations.

Hence, my continual reference to that monthly request by the Timor Leste government and Australia's decision to have six-monthly meetings. If that is a problem of resources then let us make sure that the resources are provided to the departments or to the departmental officials. If there are other reasons we need to hear them outlined.

The intention of the amendment is clear. It is basically to provide an incentive to the Australian government to proceed with the negotiations expeditiously and in accordance with international law. It recognises that the jurisdiction of the ICJ is not something that should be invoked immediately but, as I said, should be an avenue of last resort when negotiations fail to reach an agreement. I have already stated that the Democrats believe it is in Australia's best interests to support the structures and principles of the international legal system. Clearly those principles have been established to protect international collective security and to result in the just resolution of disputes and international peace. In practical terms, what does this mean for us? It means submitting to the rule of law, even if sometimes it is not in our immediate or short-term financial interests. Surely that is the message we should be sending not only to our newest nation and neighbour but also, indeed, to the rest of the world.

The thing that seals it for me in relation to the ICJ is that if we are so confident of Australia's position then we should have nothing to fear from subjecting our claim to the international legal arena. If our legal stance is so strong and we are so confident of it, why are we so nervous about the ICJ? I have taken on board the minister's comments that there are other nations that have withdrawn or are not part of it. In our case that is specifically in relation to maritime boundaries. I again put on the record that Australia covertly withdrew from the ICJ for the purposes of maritime boundaries two months before the independence of Timor Leste without prior notification to East Timor at that time that that was our plan. In rationale provided since, the government has suggested—I believe it was Alexander Downer, our Minister for Foreign Affairs—that one of the reasons for that withdrawal was a concern about the commencement of claims by Timor Leste. That is, they were anxious that claims could be made or would commence. Hence the decision not only to withdraw but to withdraw in private.

I have one remaining question to the minister on this issue: were there any other potential claims that Australia was concerned about at the time of its decision to withdraw from the ICJ or was a potential claim by Timor Leste the primary motivation behind its covert lodging of the declaration in New York? Is there something else that we do not know about? Were there other claims at that time?

Senator Abetz—The joint statement answers all that.

Senator HARRIS (Queensland) (11.53 a.m.)—I rise to put on the record One Nation's consideration of this amendment. I would like to commence by saying that, if the Timor Leste parliament were to support the matter being referred to the International Court of Justice for adjudication, that would be the sovereign right of the East Timor people and One Nation would very clearly recognise that right. I also believe that, irrespective of what happens with this amendment, East Timor could pursue that particular action, so to some degree the amendment that we have in front of us will not fail, even if this amendment is voted down.

If we were considering an issue in relation to the International Criminal Court, One Nation would have quite a different stance on this, favouring extradition in criminal cases involving Australians residing overseas or other Australian citizens. Just as other countries should have and maintain jurisdiction over their citizens in criminal matters, Australia should maintain sovereignty over Australian citizens in international criminal matters. Where is the relevance between the two? The relevance is that the International Criminal Court relates to criminal activities while the International Court of Justice should and would adjudicate on issues that are unresolved between countries. One Nation has a very clear policy of ensuring that Australia's sovereignty is not in any way abridged. I indicate to the chamber clearly that I will abstain from voting on the Greens amendment and in abstaining clearly show that this is an issue that rightly should and probably will be addressed by the East Timorese people.

Senator BROWN (Tasmania) (11.56 a.m.)—I think it would be fair for the minister to answer Senator Stott Despoja's simple question about the motivation for withdrawing from the ICJ and its ability to determine maritime boundaries as far as Australia is concerned. The failure to do so corroborates the obvious answer, which is yes, it was motivated by the forthcoming independence of Timor Leste and the recognition by the Australian government and the oil companies with it, including Woodside, that it would put under a cloud the determination in the Timor Gap Treaty, infamously agreed between Australia and Indonesia in 1989, that the boundaries would go against the interests of Timor Leste in favour of Australia. So it is an important amendment we bring forward here.

In response to Senator O'Brien's comments on why Labor would not support it, let me say that the parliament must always remain, and is constitutionally established as, the maker of the laws of this country and the ultimate determining authority. It is not the executive, it is not the Prime Minister and is not the Minister for Foreign Affairs; it is the parliament. When it comes to matters like the failure of the executive and the Minis-

ter for Foreign Affairs and the Prime Minister to do the just and honourable thing, which is to have this matter referred to the International Court of Justice, of course, it is not only the prerogative but I believe the responsibility of the Australian parliament to address that shortcoming. The argument that this might delay this project is not ethical.

We have submissions from a number of East Timorese groups and their supporters talking about the bullying of Australia and the unseemly haste in getting East Timor to sign the treaty on Independence Day. I was there and I recognised at the time the misgivings in East Timor about that. We cannot get away from that. Let me read from the submission to the Senate from the East Timor Independent Information Centre for the Timor Sea. This is signed by 13 groups in East Timor, specifically by Demetrio do Amaral, the Director of the Haburas Foundation, the national environment organisation, but also by representatives of the East Timor NGO Forum, the East Timor Centre for Small Business Administration, The East Timorese Institute for Reconstruction Monitoring and Analysis, the East Timorese Women's Communication Forum, the East Timor Study Group, the Pro-Democratic Students' Movement—

Senator McGauran—They got themselves well organised. I wonder who helped them.

Senator BROWN—The government might sling off in that patronising fashion with that interjection about the East Timorese organisations but, on their behalf, I resent that. It is also signed by the President of the East Timorese Union Confederation, the Policy Analysis Division of the Human Rights Foundation, the Director of the Labour Advocacy Institute for East Timor, the Administrative Coordinator of the National East Timorese Students' Resistance, the Timor Socialist Workers' Union and the Coordinator of the Kdalak Suli Mutu, Maria Angelina Sarmiento. In summary it says:

1. East Timor is a sovereign nation which has no maritime boundaries, and whose claims overlap those of Australia.
2. East Timor should not be subjected to illegal historical precedents or made to negotiate under pressure.
3. The current Treaty was written too quickly and, for example, does not adequately protect the marine environment.
4. Revenues from oil and gas in the disputed territory should be held in trust until the boundaries are agreed to based in principles of international maritime law.

Addressed to 'Dear respected members of the Australian Parliament' it says well down in this very considered submission which has a trace of anguish built into it:

Under pressure by oil companies, Australia in turn—

having committed itself to resolving the maritime boundary question following the principles of international law—

pressured East Timor to sign the treaty within hours of becoming independent. This is not an appropriate way to relate to a new neighbour which is just developing governmental and democratic structures. This treaty, which has a 30-year term, will greatly affect East Timor's ability to meet this new nation's basic needs. More time must be taken to allow East Timorese people and their representatives to fully understand all aspects of the issue.

For example, the current treaty does not adequately protect East Timor or Australia's marine environment. As a new nation, East Timor has not had time to develop proper environmental laws or practices. It may be appropriate for us to rely on Australian law, but as a small, underdeveloped nation, East Timor may have different needs and concerns than Australia. Providing a stable environment for oil companies must not be prioritised over protecting the future of East Timor's sea, land, natural and human resources.

The groups involved go on to ask that we:

1. Do not ratify the Treaty which was signed by Australian Prime Minister John Howard and East Timorese Prime Minister Mari Alkatiri on 20 May 2002 in Dili.
2. Carry out a review of the 20 May 2002 Treaty with attention to the fact that East Timor should receive the oil and gas reserves in the Timor Sea in concordance with the rights and principles laid out by the international law of the sea.
3. Settle the question of maritime boundaries between the two nations in accordance with the principles of the UN Convention on the Law of the Sea (UNCLOS), accepting the decision of the International Court of Justice on matters related to international maritime law.
4. Ask the Governments of Australia and East Timor to agree that all revenues from oil and gas fields in disputed territory must be held in a Trust Fund until there is settlement of the boundaries.

They go on to say:

We hope that this settlement can be arrived at by negotiation between Australia and East Timor, but if that fails, there must be impartial arbitration procedures available. After settlement, this Trust Fund will be divided based on the boundaries between the two nations.

There is a sense of appealing to our own sense of justice written through that. We then looked at a submission to the Senate from Ms Janet Hunt, who many will know is an Australian of extraordinary note who has had a long history in international affairs, social justice, the environment and Australia's ability to do the right being when we are dealing with people overseas who are working at a disadvantage with a rich and powerful nation like ours. In her submission Ms Hunt says:

Over half of post-conflict societies return to conflict and the possibility of East Timor becoming a failed state should not be ruled out. This is not in Australia's interest, let alone East Timor's. One of the major factors in its ability to consolidate its democracy will be its ability to deliver some socio-economic benefits to its rapidly growing and young population, and for this it will need substantial revenue. Depriving it of revenue which it should be legally entitled to is not smart policy.

So it is important that we consider what is happening here. In response to the minister, I go back to the *Australian Financial Review* article from today headed ‘Timor explores new boundaries’ by Rowan Callick, the Asia-Pacific editor. It finishes with a reference to the pressure building in the United States about this injustice. Other senators have referred to the appeal to the Australian government from 53 members of the US Congress marshalled by leading leftist Noam Chomsky. The article says:

Professor Chomsky, the principal fund-raiser for the East Timor Action Network in the US, which exercises strong lobbying power in Washington, said the network had shown the government of Australia “the world is watching as talks begin on a permanent maritime boundary with East Timor”.

“It is putting Australia’s Prime Minister on notice that what is at stake in these negotiations are East Timor’s rights as an independent nation to establish national boundaries and to benefit from its own resources,” he said. “Without public pressure, Australia profits by waiting out the exhaustion of the resources.”

The article goes on to say:

On March 9, members of Congress led by Massachusetts Democrat Barney Frank wrote to Prime Minister John Howard calling on Australia “to move seriously and expeditiously in negotiations with East Timor to establish a fair, permanent maritime boundary and an equitable sharing of oil and gas resources in the Timor Sea”.

The article concludes:

The US is building a massive embassy in Dilli.

Mr Alkatiri, who has accused Australia of deliberately dragging out the boundary negotiations, has hired American academic Peter Galbraith, who strongly criticised Canberra two years ago when he was employed by the United Nations in the team negotiating the Timor Sea Treaty with Australia.

That article, as I said, begins with the line, ‘East Timor is starting to walk away from what it sees as inadequate deals’. It goes on to say that East Timor is moving towards not ratifying the very matter we are ratifying through the vote coming up in the Senate today. That is because what we are being asked to ratify here is manifestly unjust. What we on the crossbenches are arguing is: bring the justice back into it, and give Australia the dignity that we are going to lose in the coming debate about this matter by doing so. It is as important for our country and our sense of justice as it is for the East Timorese struggling to build a strong democratic country, a near neighbour of ours, in the years ahead.

I have one further point to make on this. It is extremely important that the alternative government make it clear that the International Court of Justice will be brought back in as a dispute resolving mechanism if we can not get a decision between East Timor and Australia. I know Senator O’Brien made a submission a while ago, which was a good one. The Labor Party’s policy, as amended, says that Labor recognises that the

people of East Timor have the right to secure, internationally recognised borders with all neighbouring countries and that a future Labor government will negotiate in good faith with the government of East Timor in full accordance with international law and all its applications, including the United Nations Convention on the Law of the Sea. The Labor Party’s policy says that, in government, Labor will do all things reasonably practical to achieve a negotiated settlement within three to five years and that the conclusion of the maritime boundary should be based on the joint aspirations of both countries.

What is missing there is a clear indication that if the matter cannot be settled then the International Court of Justice will be given the arbitration power. I think it is very important that we hear that from the alternative government. It will make a difference to the people of East Timor, as well as to the many Australians who will increasingly see the injustice of the position that the current government has taken on this matter. (*Quorum formed*)

Question put:

That the amendment (**Senator Brown’s**) be agreed to.

The committee divided. [12.17 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes.....	11
Noes.....	46
Majority.....	35

AYES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Lees, M.H.
Murphy, S.M.	Murray, A.J.M.
Nettle, K.	Ridgeway, A.D.
Stott Despoja, N.	

NOES

Abetz, E.	Barnett, G.
Bishop, T.M.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Campbell, G.	Carr, K.J.
Chapman, H.G.P.	Collins, J.M.A.
Conroy, S.M.	Cook, P.F.S.
Crossin, P.M.	Denman, K.J.
Eggleston, A.	Ferris, J.M. *
Forshaw, M.G.	Hill, R.M.
Hogg, J.J.	Humphries, G.
Hutchins, S.P.	Johnston, D.
Kirk, L.	Knowles, S.C.
Lightfoot, P.R.	Ludwig, J.W.
Lundy, K.A.	Macdonald, J.A.L.
Mackay, S.M.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Moore, C.	O’Brien, K.W.K.
Patterson, K.C.	Ray, R.F.
Santoro, S.	Scullion, N.G.
Sherry, N.J.	Stephens, U.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Watson, J.O.W.

Webber, R.

Wong, P.
* denotes teller

Question negatived.

Senator BROWN (Tasmania) (12.20 p.m.)—I have some further questions coming out of the unitisation agreement. Article 9 talks about the administration of the unit area, and subclause (2) of that says:

A Sunrise Commission ... shall be established for the purpose of facilitating the implementation of this Agreement and shall consult on issues relating to exploration and exploitation of petroleum in the Unit Area.

Then subclause (8) says:

The Sunrise Commission shall consist of three members. Two shall be nominated by Australia and one shall be nominated by Timor-Leste.

I want to point out, as East Timorese groups have, that this effectively gives Australia total say over the administration of the Sunrise project. I ask the minister: why is it not two representatives of Australia and two representatives of Timor Leste, and who will be the Australian representatives on the administrative commission?

Senator STOTT DESPOJA (South Australia) (12.22 p.m.)—I want to put on record the Democrat view on the second amendment by Senator Brown. Has he moved that amendment? I was having difficulty hearing. Senator Brown, did you move that second amendment?

Senator Brown—No.

Senator STOTT DESPOJA—I will wait until you have done that. Will that proceed expeditiously, as we hope the negotiations on maritime boundaries will?

The TEMPORARY CHAIRMAN (**Senator Sandy Macdonald**)—The question is that the bill stand as printed.

Senator BROWN (Tasmania) (12.23 p.m.)—I have asked that question of the minister, and I ask it again. Is it not true that the administration of this area has effectively become an Australian bailiwick and that the representative of Timor Leste is outnumbered and therefore Timor Leste is effectively left without authority in the administration of the area?

The TEMPORARY CHAIRMAN—The question is that the bill stand as printed.

Senator BROWN (Tasmania) (12.23 p.m.)—It is not satisfactory for the minister to say nothing in response to an important question like that. We have been asked about it. The East Timorese groups are asking about it. It is going to be a further source of aggravation for East Timor down the years that they have no say in the administration of this area. They are effectively outvoted two to one by this unitisation agreement, which puts two Australians in the saddle and leaves the East Timorese as helpless participants in the administration of what they see as their territory. I re-

mind the committee of the words of one East Timorese group which said, 'This leaves Australia occupying East Timorese territory.' They are very strong words but that is how it is being perceived by analysts in Dili, and you can see why. Under this agreement, Australia will have administrative control of a large and important resource that the East Timorese quite justifiably see as theirs. You can see why that has extended right up to the Prime Minister, who is now backing off from this agreement. I remind the government that the agreement has yet to be ratified in the East Timorese parliament. There is something of a focus coming on to the process there. No doubt the bullying by the Australian government will continue and no doubt the blackmail that is involved in saying, 'If you don't proceed with this then you will not get any revenues at all' will continue. That is just not satisfactory.

Senator Abetz—Mr Temporary Chairman, I raise a point of order. Senator Brown on a previous occasion was required to leave the chamber for refusing to withdraw the word 'blackmail'. In the context of this debate he is accusing the government of engaging in blackmail. I do not know whether he wants to make a martyr of himself again but I invite him to withdraw what is a very offensive term as it applies to the government and our negotiations with East Timor.

Senator BROWN—On the point of order, Senator Abetz is quite wrong. I was asked to leave when I applied that term to the Prime Minister on a previous occasion. I have not done that on this occasion. But blackmail is blackmail. I have used it in a different context and it is appropriate language.

The TEMPORARY CHAIRMAN—On the point of order, it may not be an appropriate word, Senator Brown, but, in view of the fact that you are not using it in reference to a particular person—I do ask you to temper your language—you do not need to withdraw it.

Senator BROWN—I can understand why the minister cavils at the term. I presume the minister is going to remain out of the debate on my other question, but I am going to ask it anyway. Article 13 of this agreement is about abandonment and the prospect that the joint venturers, including Woodside, will abandon the project. I want to know this from the minister: in that situation, who pays? We in Tasmania, as the minister will know, have a sorry history of major mining organisations removing themselves when the profit days are ended and leaving the clean-up to the public purse. It is not going to be good enough for Australia to say, 20 or 30 years hence, 'We will readjust the boundaries now and give East Timor back its sea because it can bear the cost of the clean-up.' What is the arrangement for ensuring that Woodside et al pay the costs of any environmental or other damage done as a result of the project? What is, and who will take, the cost if the project is abandoned?

The TEMPORARY CHAIRMAN—The question is that the bill stand as printed. You do not have the call, Senator Brown.

Senator NETTLE (New South Wales) (12.28 p.m.)—Before we move on to the next amendment that we are yet to debate in the committee stage, I would be interested in hearing from the minister the explanation in relation to the question that Senator Brown has just asked about the Sunrise commission. It is set up in this agreement that is part of the legislation that we are passing today. The Sunrise commission is made up of two Australian representatives and one East Timorese representative. I would be interested to hear what the minister's explanation is as to how this provides a fairer forum of justice than the international court that makes decisions about sea boundaries. I would be interested to hear from the minister as to why a body set up in this agreement with two Australians and two Timorese is a more appropriate body to be administering the decisions in this agreement than an international court that is designed to determine maritime boundaries along the way.

Senator Abetz—That is what they signed up to. That is what was decided between East Timor and Australia.

Senator NETTLE—I note that the minister, whilst being unprepared to stand up and answer the question on the record, is currently interjecting in the chamber to say that this is an agreement that has been signed by the Australian and East Timorese governments. Everyone within the debate has acknowledged that. We have also acknowledged the voices in East Timor, coming from the Timorese people in particular, that are concerned about the manner in which the agreement was signed, among other things. Senator Brown has spoken about that and has used appropriate language to describe the way in which that agreement was signed. Now we see that with this legislation the government is proposing to ram through an agreement which will continue the dissension and the sentiment within East Timor that the Timorese have been robbed of their oil.

If the Australian government allowed this to go to the International Court of Justice, it would be open for all the world to see that that is exactly what the Australian government, with the support of the opposition, are doing here in the chamber today. They are saying: 'Let's draw a line between Australia and East Timor. Let's look at the oil on the Timorese side of the line and let's say it's ours. We won't say that all of it is ours; we'll just say that a bit of it is ours.' That is what the government propose to do. Government members will continue to stand up and argue until they are blue in the face that they think this is appropriate. But it is simply not appropriate to say: 'Let's draw a line between our reserves. We want some of the oil reserves on your side of the line.' That is what the Australian

government are doing. They can talk with as much aplomb as they like about how they are doing this with their friends in East Timor and how they are looking after the people of East Timor, but it defies imagination to understand how oil that belongs to the Timorese should in any way be taken by Australians. That is the nature of this very agreement.

I am sure the minister, along with other members of the government, will continue here and elsewhere to speak about how this will benefit the East Timorese people. It does not. It never will. Ramming this piece of legislation through with the support of the government and the opposition in this chamber is not going to improve the situation for people in East Timor. It is not going to improve the capacity to deal with and make decisions about the resources between Australia and East Timor into the future. All it is going to do is perpetuate a sense that the Australian government believes it is appropriate to step into East Timor's area of jurisdiction and take its oil for the profit of Australian oil companies.

This agreement is simply not going to improve that situation. The minister can say as many times as he likes that this is the agreement and the government wants to bring it into play. There is another agreement, Minister. It is called international law, and that is where the boundary between Australia and East Timor should be determined. Australia has pulled out of that jurisdiction, so it cannot be determined at the moment by international law. The government is seeking to ensure that this legislation, not international law, determines who gets what oil.

This is just another example of the Australian government saying: 'We know better than international law. We know better about the way in which maritime boundaries have been decided around the world for a raft of different countries. We will ensure that our decision sticks, not a decision by the International Court of Justice.' It is not acceptable, Minister. You can get up and argue or you can sit there and stay silent.

Senator Abetz—Thank you very much!

Senator NETTLE—It is not acceptable for us to take the oil of the East Timorese, and nothing you say is going to justify that case. The Timorese people will always know that Australia, their nearest neighbour, has come in and ensured that control of those resources—resources needed by one of the poorest countries in our region—is being determined by the Australian government, and they will always know that the Australian government believes that it should be able to determine the future of those resources, not the people of East Timor.

Senator BROWN (Tasmania) (12.34 p.m.)—I note that the minister has gone on strike. Nevertheless, there are very important questions here that ought to be answered. If there were a division in the parliament be-

tween the opposition and the government on this matter, there would be a very different debating circumstance here and there would be an enormous lengthening of the debate beyond the one we are having. It is not satisfactory for the minister to go on strike and not respond to the important matters that are being raised simply because it is the Greens, the Democrats and One Nation rather the opposition that is raising the questions.

I want to ask about the matter of the customs exemption. The minister might supply the committee with the estimates of the revenue forgone to the oil companies establishing the Greater Sunrise project through the waiving of customs duty both to East Timor and to Australia. The minister is indicating that he is not going to answer. I want to elaborate on it just so that we do not fail to put the matter on record. Let us say that the project, which is going to bring \$30 million to the proponents, costs \$4 billion to establish and let us say that there is a 15 per cent customs application which is waived. That is \$600 million that is gifted to the oil corporations at the expense of the Australian and East Timorese exchequers. Even on the 20 per cent-80 per cent cut here, it is \$120 million that East Timor will be deprived of as a gift to Woodside and its fellow developers in this oilfield. We frequently get into a debate in this place about people who are said not to pay their dues in terms of social services and so on. There is very rarely a debate about corporate welfare. But it is an extremely lucrative gas and oilfield being developed here. There is competition for it. Senator Harris has been talking about the dispute over the oilfield. I wonder whether the complainants, who think they were robbed and divested of their rights to develop this oilfield and who are not Australian, would get the customs break that is occurring with Woodside.

Whatever the case, we believe that the customs exemption should apply. I have seen figures showing that 40 per cent of the materials required for the development of this field will come from outside Australia and 60 per cent from inside, so that may diminish the figures I have been given. But I think that, to seriously deal with huge amounts of money like this, this committee needs to know from the minister, before the first litre of oil or gas is pumped, what the figures are for the revenue forgone to the Australian people and, in particular, to the East Timorese people through this agreement.

Senator NETTLE (New South Wales) (12.38 p.m.)—During this debate I thought it would be appropriate to pay tribute to an Australian who spent many years working on the issue of the oil which belongs to the Timorese and which is being claimed by the Australian government. That individual is a man by the name of Andrew McNaughton. Andrew McNaughton has advised the Timorese government on this issue, has

worked with the Greens and, I am sure, has worked with others to provide both advice and assistance on this matter. He has travelled to Canberra at each point at which the legislation has been debated. Unfortunately, due to his sudden passing away at Christmas time last year, he is not able to be here with us today. Yet there are so many in the Australian community who have been inspired by the work of Andrew McNaughton. I know they are driven to ensure that the fantastic work that Andrew has done to stand up for the Timorese and their rights in the face of such an onslaught by the Australian government is continued both here in the chamber and in the community. A raft of others who have been involved in the process will ensure this is so.

It is important that Andrew should be acknowledged for the work he has done for many years on this issue and that his spirit and his determination to work on these issues and to seek justice for the Timorese people should be carried on and continued here in the chamber. The Greens and others, I am sure, are very pleased to be a part of continuing the legacy of struggle that Andrew McNaughton has been so central to for so many years.

Senator BROWN (Tasmania) (12.40 p.m.)—I totally endorse what Senator Nettle has just said. It is so important that Andrew McNaughton is recognised in this debate. In fact, my first real working contact with Andrew was when he came to put up a series of pictures of East Timorese people being tortured. It was 1996, just seven years ago, and the President and the Speaker at the time banned that display from being shown in this parliament. Such was the relationship with the Suharto regime at the time. There was a lot of controversy about it. It was shown in the New South Wales parliament and later in the ACT Legislative Assembly, but it was banned in this parliament. The Suharto regime had such reach through the government and the opposition of the day—with very sterling exceptions—that the Presiding Officers were able to ban even a display of the reality of the horror of the situation in East Timor.

After that, Andrew McNaughton's selflessness, humanity and sense of social justice—and he would be outraged at what is happening today—were built into the centre of the relationship the Australian people have with the East Timorese people and the honour in that relationship, which is being undermined by what is happening in the agreement that we are asked to pass today. It effectively undermines the rights of East Timorese to have their schools, their hospitals, their roads and their security paid for in the years ahead through royalties from the development of this oil and gas quotient in the east Timor Sea. I turn now to the second Greens amendment on sheet 4200. I move:

R(2) Page 3 (after line 24), after clause 4, add:

6 Cessation of operation of Act

This Act ceases to have effect on 31 December 2006 if a permanent maritime boundary between Australia and Timor-Leste is not agreed to by that date.

This amendment is independent of the earlier one that did not succeed, which would have had the matter referred to the International Court of Justice. But it does, effectively, put a sunset clause on the operation of this agreement if the dispute, which must be resolved if this agreement is to be an honourable one, continues. This amendment says to the Australian government, 'Move on now and resolve the sea boundary dispute with East Timor in whatever way you will but resolution is required by the parliament.' That is an important move for this parliament when we are faced with a government which is being deliberately dilatory because it does not want to reach a resolution on the seabed boundary, because Woodside does not want to reach a resolution on the seabed boundary and because it is not in the interests of the power politics of this country to do the right thing.

Senator Abetz—You can repeat it if you like; it doesn't make it true.

Senator BROWN—Senator, I do not think you honour yourself with such comments. The matter is important and I appeal to all parties to look at this sunset clause. It gives another 20 months or so for a determination to be made, and I commend it to all parties. It will at least give the East Timorese a sense that there is pressure on the Australian government for once—instead of the bullying of the East Timorese government to come to a resolution—and it is being applied by the Australian parliament, which wants the Australian government to be honourable about this matter in a way that it has not been to date. It is an important amendment, and it is one the Greens say reflects opposition sentiment in the matter as well as the sentiments of other crossbench members.

Progress reported.

PRIVACY AMENDMENT BILL 2004

Second Reading

Debate resumed from 9 March, on motion by **Senator Coonan**:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (12.45 p.m.)—I rise to speak on the Privacy Amendment Bill 2004. The original bill makes five amendments to the Privacy Act 1988. The government describes four of these amendments as tidying up measures. Labor are pleased to be in a position to support the government in strengthening and improving privacy legislation where possible. We are very interested in seeing a well-functioning privacy regime in this country and even more interested in seeing the results of a full and proper review of

the Privacy Act, which was due in December but is expected to happen some time this year. We look forward to hearing when this review is to be conducted and when a full response from the government will be available. Of course, that will obviously follow the review itself. The fifth amendment before us adds a further measure to the Privacy Amendment Bill 2003 by providing the Federal Privacy Commissioner with a new audit function. It will amend the Privacy Act to enable the Privacy Commissioner to audit acts and practices of Commonwealth agencies in relation to the personal information specified in the regulations. This function is additional to the Privacy Commissioner's existing function of auditing whether records are maintained by Commonwealth agencies in accordance with the information privacy principles.

Labor have indicated that we are prepared on this occasion to support this amendment because of the beneficial impact which it brings. However, we would like to note that this appears to be adding yet another set of functions to the Office of the Federal Privacy Commissioner, which is already under pressure, without any extra resources being provided. This was a matter that was explored in estimates, and the view of the opposition is well known to the Attorney-General. The reality is that, as with any funded agency, the Privacy Commissioner will probably be forced to find some way to reallocate existing resources to carry out these extra functions. In estimates the commissioner informed us he has already done so. However, this is a less than ideal outcome both for those citizens whose privacy is being protected by the functions of the Privacy Commissioner and for the office itself, which will be forced to provide further prioritisation to its already limited resources. I would urge the government to ensure that the issue of adequate resourcing is considered as part of its full and proper review of the Office of the Federal Privacy Commissioner when it happens later this year. With these minor reservations noted, I am pleased to confirm that Labor are supporting the amendments before us to the Privacy Act. We reiterate our ongoing commitment to supporting further improvements to the Privacy Act in the future.

Senator STOTT DESPOJA (South Australia) (12.48 p.m.)—The Australian Democrats welcome the changes contained in this legislation, the Privacy Amendment Bill 2004. As some senators may know, we have had a long and active history of debating privacy law issues. I have certainly been very keen on this area and have responsibility for it as the privacy spokesperson for the Australian Democrats. I tabled a private member's bill in 1997 in an attempt to extend privacy laws to the private sector, something that the government enacted in 2000. Since then I have been campaigning on a variety of privacy fronts. One that remains elusive is the issue of genetic privacy.