

A Submission

to the Inquiry

into the

**Timor Sea Maritime Boundaries Treaty
Consequential Amendments Bill 2018
[Provisions] and the Passenger Movement
Charge Amendment (Timor Sea Maritime
Boundaries Treaty) Bill 2018 [Provisions]**

Timor Sea Justice Forum NSW

per

Dr Susan Connelly RSJ
14.01.19

A Submission to the Inquiry into the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018 [Provisions] and the Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018 [Provisions]

The Timor Sea Justice Forum NSW acknowledges that the Maritime Boundary between Australia and Timor-Leste, signed in New York on 6 March 2018, delivered greater fairness to the Timorese people regarding the resources of the Timor Sea. We note also that Australia has benefitted handsomely from the agreement, securing a hefty 20% of resources which lie closer to Timor-Leste than to Australia. However, Timor's share of 70% or 80% (depending on other decisions) is far better than the 18% which Australia claimed was Timor's share in the early 2000s.

The two Bills which are the subject of this Inquiry seek to clarify terms and arrangements which affect Australian law as a result of the new Timor Sea Maritime Boundaries Treaty. These are procedural matters affecting various Australian laws and operations, and as such, are no doubt correct in their detail.

Of some concern is the mention of the establishment of a Joint Authority to facilitate contracts and other important matters concerning the exploitation of the Timor Sea resources. The Timor Sea Justice Forum NSW cannot insist strongly enough that Australia should take great pains to observe fitting legal and moral standards in its part in the establishment and operation of this Authority. This should not have to be stated. Australian citizens should not have to demand of their representatives that dealings with regional neighbours should be done transparently and fairly. However, past history shows that good faith, honesty and honour have not been defining aspects of the Australian treatment of the people of Timor-Leste regarding the maritime resources.

Examples of the misinformation and skewed interpretations which have accompanied Australia's actions regarding the Timor Sea are contained in the speech which Mr Dan Tehan MP gave when commending the Bills to the House. Once again, omissions, distortions and embellishments regarding Australian actions towards Timor-Leste are thus included in the Hansard record, thereby bestowing a measure of credibility on them which they do not deserve.

Comments on his statements follow, and are indented.

He stated: "Through this treaty, Australia and Timor-Leste have settled a long-running dispute over our maritime boundaries, agreed upon a pathway for the development of Greater Sunrise and laid the foundation for a new chapter in our bilateral relations."

The "long-running dispute" was of Australia's making, an effect of the actions it took when Timor-Leste achieved Independence in 2002. These actions themselves were rooted in Australia's prior agreements with the illegal occupying power, Indonesia

Instead of re-negotiating the Timor Gap Treaty of 1989 with Timor-Leste in a fair and transparent manner, Australia chose to withdraw from international oversight. This had the effect of concealing its designs on the Greater Sunrise area.

The resulting Timor Sea Treaty of 2002 was portrayed as "generous" by Australia, as it replaced the 50/50 Australia/Indonesia split of the JPDA with a 90/10 Timor/Australia split. But as all the resources lay on Timor's side of the internationally accepted median line, seizing 10% of them cannot be truthfully described as "generous".

Following the 2002 decision, Australia then began capitalising on the advantages bestowed by lack of international scrutiny, working to gain the greatest share possible from Greater Sunrise. An agreement was made and the CMATS (Certain Maritime Arrangements in the Timor Sea) Treaty was signed. This was again portrayed as a "generous" Australian act as it accorded Timor-Leste 50% of the resources in that particular area, instead of the 18% which was the previous Australian position.

One of the measures Australia undertook to acquire the 50% of the area was to spy on the Timorese negotiators. No Australian government has admitted to this, but denial is superfluous, given the current pursuit of the ASIS employee who was involved, "Witness K", and his lawyer, Bernard Collaery.

"The treaty is a landmark for international law and the rules based order. It was the result of the first ever compulsory conciliation under the 1982 United Nations Convention on the Law of the Sea," Mr Tehan continued.

It is astounding that the circumstances of this "landmark" are omitted. In fact, Australia was forced into the compulsory conciliation, finding it had no other option. The Australian government resisted the conciliation, complicating and lengthening the process, and subjecting Australian citizens to international disgust. The six objections Australia mounted against the process were all found to be baseless¹.

"Australia and Timor-Leste demonstrated goodwill and preparedness to compromise during negotiations. The parties, and the independent conciliation commission, recognise the outcome was fair, balanced and consistent with international law."

There is no proof of "goodwill" on Australia's part, as the negotiations were held in secret, and so the ordinary Australia has no way of knowing what tactics were used, or for how long, before the parties were able to come to amicable agreement. Given the disdain for the Timorese demonstrated publicly by successive Australian governments, why should anyone assume that private negotiations would be an improvement?

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

"This bill establishes the legal infrastructure required for the regulation of Greater Sunrise to be transitioned to a designated authority that will act on behalf of Australia and Timor-Leste."

What measures will be taken to ensure that the interpretation of Australian rights is not to the detriment of Timor-Leste - as has been consistently the case in the past? The operation of this authority is a matter of concern to fair-minded people, given the disturbing history of Australian operations in the Timor Sea. It is to be hoped that the Australian representative on the Authority knows the history, at the very least, and realises that the evidence supports views opposite to those expressed by successive

¹ Permanent Court of Arbitration, PCA Case No 2016-10, *A Conciliation Commission constituted under Annex X to the 1982 United Nations Convention on the Law of the Sea between The Democratic Republic of Timor-Leste and The Commonwealth of Australia*, "Decision on Australia's Objections to Competence", 19 September 2016. <https://pcacases.com/web/sendAttach/1921> Accessed 09.01.19.

Australian governments.

The Timor Sea Justice Forum urges the Australian government to reverse its past trajectory in relation to Timor-Leste. (Let us remember that despite the considerable Australia aid to Timor since 1999, the tax revenues we received in the same period from disputed areas in the Timor Sea were nearly double the amount expended on development aid. It has been properly concluded by many that Timor-Leste has been Australia's greatest donor.)

Mr Tehan concluded: "Overall, this bill fundamentally demonstrates Australia's commitment to a robust, mutually beneficial, bilateral relationship with Timor-Leste specifically and to international law and the rules based order more generally. This bill lays the foundation for a stronger relationship with Timor-Leste and creates a pathway for the development of Greater Sunrise, the economic benefits of which will be significant, particularly for Timor-Leste."

The Timor Sea Justice Forum commends the stated commitment as worthy of Australia and Australians. We sincerely hope that this commitment will be realised fairly, transparently and honestly.

Thank you for the opportunity to make a submission to the Inquiry.



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for

Timor Sea Justice Forum NSW