



# Australian Government

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## Department of Industry, Innovation and Science

### Submission from the Department of Industry, Innovation and Science to the Senate Economics Legislation Committee Inquiry into the

#### *Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018*

and the

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

*January 2019*

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## Introduction

The Department of Industry, Innovation and Science (the department) is pleased to provide a submission to the Senate Economics Legislation Committee in regards to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018 (the primary Bill) and the Passenger Movement Charge Amendment (Timor Sea Maritime Boundaries Treaty) Bill 2018 (the complementary Bill) tabled in Parliament on 28 November 2018 (the Bill package).

The *Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea* (the Treaty) was signed on 6 March 2018 in New York by the then Minister for Foreign Affairs, the Hon Julie Bishop MP. The Treaty is an historic achievement for Australia and Timor-Leste, and its implementation is firmly in Australia's interests. The Bill package is a key part of the legislative changes required to bring the Treaty into force. Further legislative amendments will be forthcoming when the transitional arrangements for affected petroleum activities, the discussions of which are currently ongoing, are finalised.

As the Commonwealth agency most affected by the Treaty, the department coordinated the preparation of the Bill package across the Commonwealth. The Bill package includes amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and 18 other pieces of legislation administered by other portfolios. The department consulted with these portfolios in the preparation of this submission.

## Reasons for Referral/Principal Issues

### 1. Impact on Australia's relationship with Timor-Leste

The Bill package will have a positive impact on Australia's relationship with Timor-Leste and lays the groundwork for a strong bilateral relationship going into the future. The Bill package, through implementing the Treaty, settles a long-running dispute over the maritime boundaries between our countries and creates a pathway for the development of the Greater Sunrise gas fields, the economic benefits of which will be substantial, particularly for Timor-Leste. Australia wants to see the Greater Sunrise gas fields developed in a way that maximizes benefits for the people of Timor-Leste and the Bill package is a crucial element of the overall work required to achieve this outcome. Overall, the Bill package fundamentally demonstrates Australia's commitment to a robust, mutually beneficial bilateral relationship with Timor-Leste specifically, and to international law and the rules based order more generally.

### 2. Impact on business in the region

The Bill package, by implementing the Treaty, impacts petroleum activities in the Joint Petroleum Development Area (JPDA), those petroleum activities that will transfer in part from exclusive Australian jurisdiction to exclusive Timorese jurisdiction, and petroleum activities in respect of the Greater Sunrise gas fields. These projects are at various stages from exploration through to decommissioning.

The Treaty creates a new regime for the Greater Sunrise gas fields, the Greater Sunrise Special Regime (GSSR), and also establishes transitional arrangements for these affected petroleum activities, importantly requiring that any petroleum activities entered into under previous

agreements (including those projects transitioning to an exclusive Timorese regime) continue under conditions or terms equivalent to those currently in place. These transitional arrangements deliver stability and certainty for businesses with operations in the Timor Sea. Since the Treaty was signed, the two countries have been working closely with affected petroleum operations on negotiating the transitional arrangements required to transition affected petroleum activities.

## Summary of the Treaty

In 2016, Timor-Leste commenced conciliation proceedings under the *United Nations Convention on the Law of the Sea* (UNCLOS) to resolve its maritime boundary dispute with Australia. Through this conciliation process, Australia and Timor-Leste agreed to the Treaty, which supersedes the provisional arrangements agreed in the:

- 2002 *Timor Sea Treaty Between the Government of East Timor and Government of Australia* (Timor Sea Treaty); and
- 2003 *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields* (Intentional Unitisation Agreement).

When the Treaty enters into force, these agreements will cease, which will abolish the Joint Petroleum Development Area (JPDA) established under the Timor Sea Treaty.

The Treaty also establishes the following:

### *Maritime Boundaries*

The Treaty establishes the continental shelf boundary<sup>1</sup> and exclusive economic zone boundary<sup>2</sup> between Australia and Timor-Leste. The Eastern and Western continental shelf boundary lateral lines could be adjusted depending on the outcome of any agreement on maritime boundary delimitation between Timor-Leste and Indonesia, and only following the commercial depletion of the fields straddling those lines.<sup>3</sup>

### *Transitional Arrangements*

We refer you to our response on page 2: [Impact on business in the region](#)

### *The Greater Sunrise Special Regime*

The GSSR is established over the Special Regime Area (SRA).<sup>4</sup> Within the SRA, the States shall jointly exercise their rights as coastal States pursuant to UNCLOS.<sup>5</sup> The objective of the GSSR is the joint development, exploitation and management of petroleum in the Greater Sunrise gas

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<sup>1</sup> Article 2 of the Treaty.

<sup>2</sup> Article 4 of the Treaty.

<sup>3</sup> Article 3 of the Treaty.

<sup>4</sup> Article 7 of the Treaty.

<sup>5</sup> Article 7(2) of the Treaty.

fields for the benefit of both States.<sup>6</sup> Geographically, the SRA is an amalgamation of Western Greater Sunrise and Eastern Greater Sunrise areas.<sup>7</sup> The GSSR will remain in force until commercial depletion of the Greater Sunrise gas fields.<sup>8</sup>

Annex B to the Treaty provides for the governance and exercise of jurisdiction in the SRA. A Designated Authority is established to carry out the day-to-day regulation and management of petroleum activities on behalf of Australia and Timor-Leste.<sup>9</sup> The Designated Authority will be the Timor-Leste statutory authority responsible for the petroleum sector, the Autoridade Nacional do Petróleo e Minerais. The Designated Authority will, subject to the approval of the Governance Board, enter into the Greater Sunrise Production Sharing Contract (GSPSC) with the Greater Sunrise Contractor as soon as practicable and under conditions equivalent to those in Production Sharing Contracts JPDA 03-19 and JPDA 03-20 and to the legal rights held under Australian retention leases NT/RL2 and NT/RL4.<sup>10</sup>

The Governance Board for the GSSR will be comprised of one representative appointed by Australia and two representatives appointed by Timor-Leste.<sup>11</sup> As well as approving a decision of the Designated Authority to enter into or terminate the GSPSC,<sup>12</sup> the Governance Board will assess and approve a development plan for the Greater Sunrise gas fields<sup>13</sup> and will have strategic oversight over the GSSR.<sup>14</sup> The Governance Board will establish and oversee an assurance and audit framework for revenue verification and offshore petroleum and administration;<sup>15</sup> approve amendments to the Interim Petroleum Mining Code;<sup>16</sup> and approve the final Petroleum Mining Code.<sup>17</sup>

Australia and Timor-Leste will cooperatively exercise jurisdiction in the GSSR, with particular jurisdictional competencies delegated to the Designated Authority.<sup>18</sup> The Treaty provides for Australia and Timor-Leste to implement special arrangements for customs and migration, quarantine, vessels and criminal jurisdiction. Australia and Timor-Leste have also agreed to consult as necessary on the cooperative exercise of certain other jurisdictional competencies.<sup>19</sup>

Special provision is made with respect to petroleum pipelines. Australia and Timor-Leste have agreed that in relation to a potential pipeline commencing in the SRA and landing in Australia, that pipeline will be under Australia's exclusive jurisdiction. In relation to a potential pipeline

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<sup>6</sup> Article 1 of Annex B to the Treaty.

<sup>7</sup> Annex C to the Treaty.

<sup>8</sup> Article 23(1) of Annex B to the Treaty.

<sup>9</sup> Article 6 of Annex B to the Treaty.

<sup>10</sup> Article 4 of Annex B to the Treaty; see also Articles 1(2)(c), 1(2)(d), 1(2)(g) and 1(2)(h) of Annex D to the Treaty.

<sup>11</sup> Article 7(1) of Annex B to the Treaty.

<sup>12</sup> Article 7(3)(b) of Annex B to the Treaty.

<sup>13</sup> Article 9 of Annex B to the Treaty.

<sup>14</sup> Article 7(1) of Annex B to the Treaty.

<sup>15</sup> Article 7(2)(b) of Annex B to the Treaty.

<sup>16</sup> Article 7(2)(d) of Annex B to the Treaty.

<sup>17</sup> Article 7(2)(e) of Annex B to the Treaty.

<sup>18</sup> Article 6(3) and Article 16(3) of Annex B to the Treaty.

<sup>19</sup> Article 16 of Annex B to the Treaty.

commencing in the SRA and landing in Timor-Leste, that pipeline will be under the exclusive jurisdiction of Timor-Leste.<sup>20</sup>

#### *Jurisdiction over Bayu-Undan Pipeline*

The Treaty confirms that in relation to the existing Bayu-Undan Pipeline, which transports gas produced from the Bayu-Undan Gas Field to the Darwin liquefied natural gas processing facility at Wickham Point, Australia exercises exclusive jurisdiction over that pipeline.<sup>21</sup>

#### *Treaty Implementation*

The Treaty will come into force on the day on which Australia and Timor-Leste have notified each other in writing through diplomatic channels that their respective requirements for entry into force have been fulfilled.<sup>22</sup> Australia's requirements for entry into force will be met when the relevant transitional arrangements provisions have been finalised and the Australian Parliament has passed all domestic legislation to enable it to implement its obligations under the Treaty.

### **Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018**

The primary Bill proposes, amongst consequential amendments to other legislation, to give effect to the maritime boundary changes by amending the 'offshore areas' established under the OPGGS Act. It also implements the special arrangements for regulating petroleum pipelines in areas of foreign continental shelf jurisdiction and petroleum activities in the joint jurisdiction Special Regime Area (SRA). The primary Bill also establishes the SRA in Australian law through amendments to the *Seas and Submerged Lands Act 1973*.

This Bill is structured in schedules that commence on the occurrence of particular events. Schedule 1 of this Bill contains the majority of the amendments to the OPGGS Act and commences on entry into force of the Treaty. Schedule 2 primarily repeals redundant provisions and comes into force following commencement of the GSPSC.

#### Schedule 1 – Entry into force of the Treaty

Schedule 1 of this Bill will commence on entry into force of the Treaty. The relevant Commonwealth Minister will announce, by notifiable instrument, the day that the Treaty enters into force.

Schedule 1 of this Bill will:

- Repeal provisions giving effect to the superseded Timor Sea Treaty and International Unitisation Agreement, including the JPDA, the Greater Sunrise unit area, and Western Greater Sunrise area;
- Amend the scheduled areas for Western Australia, the Northern Territory, and the Territory of Ashmore and Cartier Islands;

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<sup>20</sup> Article 10 of Annex B to the Treaty.

<sup>21</sup> Article 3 of Annex D to the Treaty.

<sup>22</sup> Article 13 of the Treaty.

- Include a transitional provision that incorporates the Eastern Greater Sunrise area into the offshore area of the Northern Territory until the commencement of Schedule 2;
- Provide for two new ‘international offshore areas’ for the purposes of the Bayu-Undan pipeline corridor and a potential Greater Sunrise pipeline corridor. The Commonwealth Minister will be the responsible decision maker (Joint Authority) for these new offshore areas. The National Offshore Petroleum Titles Administrator (NOPTA) and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) will have all their usual functions and powers in these new offshore areas.
- Provide for alterations to particular permits and licences which, immediately prior to commencement of the schedule, adjoined the Western side of the JPDA:
  - Extend the route of the pipeline under pipeline licence WA-8-PL to reflect the new continental shelf boundary;
  - Create a new pipeline licence for the part of the existing Bayu-Undan pipeline which currently sits in the JPDA and which will become Timor-Leste’s continental shelf;
  - Extend any environment plan and safety case which is in force in respect of WA-8-PL to the new Bayu-Undan pipeline licence;
  - Alter the permit area of Petroleum Exploration Permit WA-523-P to reflect the new continental shelf boundary;
  - Expressly provide that the provisions creating, extending or altering licences or permits do not otherwise affect the continuity of the licence or permit or the operation of the OPGGS Act, the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* or regulations or other instruments made for the purposes of either of those Acts.

The effect of the amendments in Schedule 1 of this Bill is to transition the regulation of the petroleum activities which overlap the new continental shelf boundary, excluding petroleum activities in the SRA. The effect of Schedule 1 in regards to each transitioning project is summarised below:

### **Buffalo (WA-523-P)**

The Treaty provides that the Buffalo Oil Field will be situated on the continental shelf of Timor-Leste. In respect of WA-523-P, this Bill will specify the graticular sections which constitute the blocks under the title as a result of the change in continental shelf boundary. This Bill will expressly provide that the alteration of the permit area under WA-523-P does not otherwise affect the continuity of the permit or the operation of the OPGGS Act, the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* or regulations or other instruments made for the purposes of either of those Acts.

### **Bayu-Undan Pipeline (BU-1-PL and WA-8-PL)**

In respect of the Bayu-Undan pipeline, this Bill will establish the Bayu-Undan pipeline international offshore area and create a new licence. This Bill also ensures that any environment

plan or safety case currently in operation will continue to apply to WA-8-PL as well as to the new licence. It also establishes that the licence WA-8-PL continues to be a prior usage right.

This Bill provides for the cooperation, including the sharing of information, between the Joint Authority for the Bayu-Undan pipeline international offshore area and the Timorese Designated Authority for the effective management and regulation of the Bayu-Undan gas field.

### **Laminaria-Corallina (WA-18-L and AC/L5)**

The Laminaria and Corallina Fields will remain under Australian jurisdiction. In respect of WA-18-P and AC/L5, this Bill will expressly specify that the alteration of the licence areas does not otherwise affect the continuity of the licences or the operation of the OPGGS Act, the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* or regulations or other instruments made for the purposes of either of those Acts.

### **Greater Sunrise (NT/RL2 and NT/RL4)**

In respect of the Greater Sunrise retention leases, the Bill creates the legislative infrastructure required for the regulation of the Greater Sunrise gas fields to be transitioned to joint regulation pursuant to the GSSR, with day-to-day regulation by the Designated Authority, overseen by the Governance Board.

Maintaining and incorporating the Eastern Greater Sunrise area into the Northern Territory offshore area will ensure that NT/RL2 and NT/RL4 continue uninterrupted during the negotiation period for the GSPSC. The Bill will not affect the operation of the OPGGS Act in respect of the retention leases in Eastern Greater Sunrise so that, for example, the leases will be able to be renewed if required.

### **Schedule 2 – Commencement of the Greater Sunrise Production Sharing Contract**

Schedule 2 will commence by Proclamation on a date not earlier than the commencement of the GSPSC.

Schedule 2 will:

- Amend the offshore area of the Northern Territory by repealing the Eastern Greater Sunrise offshore area;
- Repeal the definitions and provisions previously required for the operation of the Eastern Greater Sunrise area including: Principal Northern Territory, Eastern Greater Sunrise offshore area, Greater Sunrise unitisation agreement, Greater Sunrise unit reservoir petroleum production licence, Greater Sunrise unit reservoirs, and Greater Sunrise visiting inspector;
- Revoke any retention lease in force immediately before the commencement of Schedule 2 with notes explaining that the provision comes into force only once the GSPSC under the Treaty has come into force and it contains equivalent conditions to the legal rights held under the retention leases. The following provisions of the OPGGS Act will not apply to the revocation: Div 4 of Pt 2.3 and ss 14, 115, 132(3) and 178.
- Sections 61(2A)(a) and 64(2) which are repealed in Schedule 2 are saved for the purpose of proceedings occurring after the repeal. Relevant transitional provisions in Schedule 6 relating to Eastern Greater Sunrise are also saved.

## **Retention Leases NT/RL2 and NT/RL4**

When the GSPSC agreed between the Designated Authority and the Greater Sunrise Contractor commences, the rights of the retention lessee are transitioned from the retention leases to the GSPSC. Accordingly, Schedule 2 of the Bill will come into force and revoke the retention leases.

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

The complementary Bill makes consequential amendments to the *Passenger Movement Charge Act 1978* (the PMC Act) by removing references to the JPDA. The JPDA will cease to exist upon entry into force of the Treaty. The amendments made by the primary Bill and the complementary Bill together maintain the same position in relation to the passenger movement charge in the SRA, as previously applied in relation to the JPDA, under the PMC Act.

## **Budget Impact**

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

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

The Designated Authority responsible for the day-to-day regulation and management of Petroleum Activities in the Special Regime Area (SRA) will be self-funded by fees collected under the applicable Petroleum Mining Code and the Greater Sunrise Production Sharing Contract (GSPSC). The domestic implementation of the Treaty benefits Australia and provides certainty and stability for investors in establishing an international legal basis for the continued development of major oil and gas deposits in the Timor Sea.

## **Offer to provide further information**

The department extends an offer to provide, either verbally or written, any further requested information on the proposed amendments, including addressing any specific concerns or questions the Senate Economics Legislation Committee may have.

Any specific requests can be met by contacting [REDACTED] (Lead Negotiator, Timor Treaty Implementation, Resources Division) on 02 [REDACTED] or [REDACTED]

[REDACTED] (Manager, Timor Sea Section, Resources Division) on [REDACTED]  
[REDACTED]