



INFORMATION, ANALYSIS  
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INFORMATION AND RESEARCH SERVICES

Bills Digest  
No. 7 2003–04

## Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003

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Amendments) Bill 2003

Brendan Bailey  
Law and Bills Digest Group  
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# Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003

**Date Introduced:** 5 March 2003

**House:** Representatives

**Portfolio:** Industry, Tourism and Resources

**Commencement:** On the day of Royal Assent but, where relevant, various provisions in the Bill are made retrospective to coincide with the date of the signing of the Timor Sea Treaty between Australia and East Timor (20 May 2002).

## Purpose

This Bill is part of a package of Bills to give effect to the Timor Sea Treaty between Australia and East Timor and to make consequential amendments. The Bill also repeals the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*.

## Background

[This Bill was the subject of urgent passage and it passed both Houses on 6 March 2003. This Bills Digest has been prepared after the debate.]

Background details can be found in Bills Digest No. 6, 2003–04 for the Petroleum (Timor Sea Treaty) Bill 2003.

## Main Provisions

Most of the amendments made by this Bill are relatively minor. They change the references in relevant Commonwealth Acts from the Zone of Cooperation (former Timor Gap Treaty with Indonesia) to the Joint Petroleum Development Area (Timor Sea Treaty with East Timor).

The taxation related amendments are more detailed and the *Alert Digest* (No. 3 of 2003) of the Senate Standing Committee for the Scrutiny of Bills notes the retrospective effect of the civil aspects of the taxation amendments. The Senate Committee has noted that there

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is no assurance that taxpayers will not be adversely affected by retrospectivity and the Committee has sought the Minister's advice on the matter.<sup>1</sup>

### **Schedule 1 – Consequential amendments**

**Items 1 to 33** make minor amendments to the following Acts to recognise the change from the Zone of Cooperation to the Joint Petroleum Development Area:

- *Crimes at Sea Act 2000*
- *Customs Act 1901*, and
- *Fringe Benefits Tax Assessment Act 1986*.

**Items 34 to 38** make the same consequential amendments to the *Income Tax Assessment Act 1936*.

**Items 39 to 51** address the issue of the interaction of the Taxation Code under the Timor Sea Treaty and the activities of Australian taxpayers who might be able to shift Australian-based profits into their activities in the JPDA through mechanisms such as related entity transfer (also known as international profit shifting or transfer pricing). Unless amendments are made to the *Income Tax Assessment Act 1936*, the end-result would be that all taxable profits for that company would be taxed differently to that which would apply had the profits been generated solely in Australia. As a simplification, the Australian taxable amount in the JPDA is based on only 10 per cent of business profits from the JPDA with the other 90 per cent taxable in East Timor.

Without these consequential amendments, the Commissioner for Taxation is unable to correct any inappropriate allocation of income and expenses between Australian taxpayer related parties who operate in the JPDA. These amendments allow the Commissioner to apply 'transfer pricing rules' to protect Australia's income tax revenues. The amendments also allow the treatment of the tax paid in East Timor on income derived in the JPDA to be classed as a foreign tax credit. Technically, the JPDA (the source of the income) is not a 'foreign country'. It is regarded, however, as covered by an international tax sharing treaty.

**Item 53** allows the recognition of the 'Designated Authority' as an international organisation for the purposes of the *International Organisations (Privileges and Immunities) Act 1963* for the period of the Timor Sea Treaty.

**Items 54 to 69** make minor amendments to the following Acts to recognise the change from the Zone of Cooperation to the Joint Petroleum Development Area:

- *Migration Act 1958*
- *Passenger Movement Charge Collection Act 1978*, and
- *Petroleum (Submerged Lands) Act 1967*.

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**Item 70** repeals the whole of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*. This Act gave effect to the Timor Gap Treaty between Australia and Indonesia. The treaty is now replaced by the new treaty with East Timor. (But see the limited continuation of certain provisions at **Item 82**, below).

**Items 71 to 75** make minor amendments to the *Quarantine Act 1908* to recognise the change from the Zone of Cooperation to the Joint Petroleum Development Area.

**Items 76 and 77** amend the *Superannuation Guarantee (Administration) Act 1992* so that it applies to all employers in the JPDA but only in relation to an Australian resident employee of that employer. The *Explanatory Memorandum* indicates that the amendments apply from 1 July 2003 (see paragraph 103).

**Items 78 to 79** amend the *Taxation Administration Act 1953* to allow the exchange of information on taxation matters in connection with obligations under international agreements such as the Taxation Code that applies under the Timor Sea Treaty. Without this amendment, disclosure of information would breach taxpayer secrecy provisions in taxation legislation.

**Item 80** repeals a special provision (section 5A) in the *Workplace Relations Act 1996*. That section referred to the now lapsed Timor Gap Treaty Zone of Cooperation with Indonesia.

**Item 82** continues the operation of limited provisions of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* to provide a transitional cover between the period that the Timor Sea Treaty was signed on 20 May 2002 and until this package of Bills giving effect to the Timor Sea Treaty receives the Royal Assent. These continuing provisions deal with:

- the recognition of the 'old' Joint Authority under the *International Organisations (Privileges and Immunities) Act 1963*
- offences for unauthorised prospecting and development, and
- the powers of inspectors.

## Concluding Comments

Concluding comments can be found in Bills Digest No. 6, 2003–04 for the Petroleum (Timor Sea Treaty) Bill 2003.

## Endnotes

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<sup>1</sup> *Alert Digest*, No. 3 of 2003, Senate Standing Committee for the Scrutiny of Bills, 19 March 2003, pp. 13–14.

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