

# Chapter 1

## Introduction

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

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

1.3 The bill is the first tranche of legislation which amends Commonwealth legislation to partially implement the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea*, which was signed in New York on 6 March 2018 (the treaty). The Government intends to introduce a second tranche of legislation to give effect to the remaining provisions of the treaty in 2019.<sup>2</sup>

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

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

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

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

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

2 *Explanatory Memorandum*, p. 1.

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

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

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

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

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

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

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

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

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

## **Conduct of the inquiry**

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

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

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## Acknowledgements

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

## Scope and structure of the report

1.8 The report consists of two chapters:

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

## Overview of the bills

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

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

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

1.10 The bill consists of three schedules:

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

### *Summary of amendments*

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

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

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5 *Explanatory Memorandum*, p. 1.

6 *Explanatory Memorandum*, p. 52.

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

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

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

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

**Commencement**

1.16 Schedules 1 to 3 of the primary bill commence on the day the bill receives royal assent<sup>10</sup> but subject to the conditions explained below.

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

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

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7 *Explanatory Memorandum*, p. 60.

8 *Exploratory Memorandum*, p. 62.

9 *Exploratory Memorandum*, p. 16.

10 *Exploratory Memorandum*, p. 19.

11 *Exploratory Memorandum*, p. 19.

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being undertaken in the Eastern Greater Sunrise offshore area until the GSPSC commences.<sup>12</sup>

1.19 Schedule 3 of the bill commences when the treaty enters into force.<sup>13</sup>

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

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

### **Financial impact**

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

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

### **Regulation impact on business**

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

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12 *Exploratory Memorandum*, p. 19.

13 *Exploratory Memorandum*, p. 19.

14 *Explanatory Memorandum*, p. 61

15 *Explanatory Memorandum*, p. 61.

16 *Exploratory Memorandum*, p. 2.

17 *Exploratory Memorandum*, p. 3.

18 *Exploratory Memorandum*, p. 11.

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

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

### **Compatibility with human rights**

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

#### ***Human rights implications***

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

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

1.30 Item 74 of Schedule 1 also amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS) Act* to insert new section 695XA, which will enable the Chief Executive Officer (CEO) of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to share offshore information<sup>24</sup>

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19 *Exploratory Memorandum*, p. 11.

20 *Exploratory Memorandum*, p. 11.

21 *Exploratory Memorandum*, p. 16.

22 *Exploratory Memorandum*, p. 16.

23 *Exploratory Memorandum*, p. 16.

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

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

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

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

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

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

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

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

26 *Exploratory Memorandum*, p. 17.

27 *Exploratory Memorandum*, p. 17.

28 *Exploratory Memorandum*, p. 17.

29 *Exploratory Memorandum*, p. 17.

30 *Exploratory Memorandum*, p. 17.

***Conclusion***

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

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31 *Exploratory Memorandum*, p. 18.