

Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries

Regulatory Impact Statement

Department of Foreign Affairs and Trade (OBPR Reference Number: 21507)

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Regulatory Impact Statement

What is the policy problem?

1. Since Timor-Leste's re-emergence as an independent State on 20 May 2002, Australia and Timor-Leste have not been able to reach agreement on a permanent maritime boundary through negotiations. The existing Timor Sea Treaty regime between Australia and Timor-Leste is a provisional arrangement of a practical nature allowing for the joint development of resources in the Timor Sea pending agreement on the final delimitation of permanent maritime boundaries. Should provisional arrangements continue, Australia and Timor-Leste will not have permanent maritime boundaries delineated, exacerbating a long-standing irritant in our bilateral relationship.

Compulsory Conciliation

2. On 11 April 2016 Timor-Leste commenced compulsory conciliation proceedings under Article 298 and Annex V of the *United Nations Convention on the Law of the Sea* (UNCLOS) to resolve differences with Australia on maritime boundaries in the Timor Sea. Australia engaged in the conciliation in good faith in accordance with our international obligations, and worked under the auspices of the Conciliation Commission to agree with Timor-Leste a treaty to delimit our maritime boundaries.

3. On 30 August 2017, on the basis of a proposal made by the Commission, Australia and Timor-Leste reached agreement on a comprehensive package of measures. This included:

- a maritime boundary;
- a mechanism that would enable the possible adjustment of certain segments of that boundary, following the establishment by Timor-Leste and Indonesia of a boundary between their respective maritime zones;
- a special regime for the joint development, exploitation, and management of the largest known resource, the Sunrise and Troubadour gas fields (collectively, "Greater Sunrise"), and the sharing of the resulting revenue;
- a process to formalize the Parties' agreement in the form of a treaty; and
- a process of intensive engagement between the Parties and the Greater Sunrise Joint Venture, the private holder of the commercial licence to Greater Sunrise (the "Joint Venture"), with the objective of reaching

agreement on the overall approach, or development concept, to be taken for the development of the resource.

Maritime Boundaries Treaty

4. The *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries* (the Treaty) will define Australia's permanent maritime boundaries with Timor-Leste. The Treaty would terminate the existing Timor Sea Treaty and International Unitisation Agreement upon entry into force.

5. A Treaty will:

- establish permanent maritime boundaries between Australia and Timor-Leste in the Timor Sea;
- address the legal status of the Greater Sunrise Fields and provide for the joint development, exploitation and management of the resource as well as the sharing of revenue through the establishment of the Greater Sunrise Special Regime.
- expand Timor-Leste's areas of exclusive maritime jurisdiction, with certain oil and gas fields transferring to Timor-Leste's exclusive jurisdiction;
- put in place transitional arrangements to ensure certainty and security for affected offshore petroleum operations in the Timor Sea.

6. The Government needs to act to implement the conciliation outcome and to facilitate with Timor-Leste the sustainable exploitation of resources the Timor Sea. Should the status quo prevail, Australia and Timor-Leste will not establish permanent maritime boundaries and the provisional arrangements will continue to apply, which would continue to exacerbate a major irritant in our bilateral relationship. If Australia does not act in good faith in relation to the conciliation process, there will be significant reputational costs to Australia. In particular, a decision not to sign and ratify a treaty developed between the parties is very likely to affect the bilateral relationship between Australia and Timor-Leste negatively, as well as Australia's international standing. It also means that the Greater Sunrise resource will not be able to be developed.

Why is government action needed?

7. Australia and Timor-Leste reached agreement on permanent maritime boundaries under a compulsory international process under UNCLOS. Our long-running dispute over maritime boundaries has been a significant bilateral irritant in Australia's relationship with Timor-Leste, which has prevented Australia from deepening our relationship with one of our closest neighbours. A Treaty would demonstrate Australia's commitment to international law and reinforce peaceful dispute resolution norms. It would establish Australia's maritime boundaries and affect regulatory arrangements for companies that currently operate in the Joint Petroleum Development Area (JPDA) under the Timor Sea Treaty, which would

transition to Timorese jurisdiction under the Treaty. Australian Government action is required to bring the Treaty into force, fulfil our international law obligations, and to facilitate the continued sustainable exploitation of resources in the Timor Sea.

8. Implementation of the Treaty will require Australia to amend existing regulatory arrangements to reflect our new agreed boundaries, including in relation to:

- dissolution of the Joint Petroleum Development Area (JPDA),
- creation of the Greater Sunrise Special Regime (GSSR), and
- areas of seabed currently administered for the purpose of offshore petroleum operations under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

9. In addition, Australia and Timor-Leste would need to finalise arrangements to transition the companies operating in affected areas prior to entry into force.

Implementing Legislation

10. Before entry into force can take place, Australia would need to pass implementing legislation through the Parliament. Australia needs to give effect in Australian law to the GSSR Area that would be established by the Treaty and remove references in legislation to the JPDA, which would cease upon entry into force of the Treaty. In addition, consequential amendments are required to a number of Acts to reflect our new maritime boundaries, including but not limited to, the areas of seabed currently administered for the purpose of offshore petroleum operations under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Transitional Arrangement Negotiations

11. Arrangements to transition the Bayu-Undan and Kitan projects into exclusively Timor-Leste jurisdiction must be agreed between Timor-Leste and the affected petroleum companies for these two projects. Similarly, a Treaty would provide for transitional arrangements for Greater Sunrise and the JPDA 11-106 project. Pursuant to the terms of the existing Article 22 of the Timor Sea Treaty and Article 27 of the International Unitisation Agreement, under a Treaty these projects would continue under conditions or terms equivalent to those in place under those agreements.

12. In relation to the Buffalo project, a Treaty would stipulate that security of title and any other rights held by the titleholder would be preserved through conditions equivalent to those in place under Australian domestic law and as determined by agreement between Australia, Timor-Leste and the titleholder.

Greater Sunrise Special Regime (GSSR)

13. A Treaty would recognise Australia and Timor-Leste's shared sovereign rights over the Sunrise and Troubadour (Greater Sunrise) Fields. A Treaty would establish

the GSSR to jointly develop, exploit and manage the Greater Sunrise resource and share revenue.

Entry into force

14. Once domestic processes are completed, including amendments to relevant legislation and regulatory changes, Australia and Timor will exchange diplomatic notes advising that they have completed the ratification process. Both Parties are aiming for entry into force as soon as practicable.

Policy options considered to achieve this objective

No action

15. Taking no action, including in relation to implementation of the Treaty, will risk Australia's international reputation and risk severe damage to the relationship with Timor-Leste. The Conciliation process was a compulsory process aimed at resolving the issue of delimiting permanent maritime boundaries between Australia and Timor-Leste. Australia's engagement in the conciliation in good faith in accordance with our international obligations would be undermined by taking no action.

A Treaty

16. The Treaty represents the only policy option for establishing Australia's permanent maritime boundaries with Timor-Leste. This is the case for two reasons: first, the existing Timor Sea Treaty regime between Australia and Timor-Leste is a provisional arrangement. This regime only allows for the joint development of resources in the Timor Sea pending agreement on the final delimitation of permanent maritime boundaries. Second, the Treaty has come about through a compulsory international process (the Timor Conciliation).

17. The Treaty is an historic agreement for Australia and Timor-Leste as it will allow us to settle a long-running dispute, delimit our maritime boundaries, and lay the foundation for a new chapter in our relationship with one of our closest neighbours. Moreover, the Treaty will benefit both countries. Australia recognises the significance of the Treaty for Timor-Leste. Australia was committed to finding an outcome that would best support Timor-Leste's future.

18. The provisions of the Treaty will facilitate the continued commercial development and exploitation of resources in the Timor Sea within a clear and certain regulatory framework. It will also ensure Australia continues to meet its national security, environmental management, industry best practice and international legal requirements with respect to those areas of seabed that would fall within Australian exclusive jurisdiction or joint Australian and Timorese jurisdiction.

Impact analysis

19. In the absence of quantitative data in relation to the potential costs of a treaty, this impact analysis is based on a qualitative assessment.

Diplomatic Benefits

20. The issue of disputed boundaries and resource-sharing in the Timor Sea has dominated our bilateral relationship with Timor-Leste and has been a long-standing sensitivity. Implementation of the Treaty, and its required regulatory changes, would open a new chapter in relations between Australia and Timor-Leste. The Treaty facilitates cooperation and will contribute to a strong and prosperous Timor-Leste.

21. The conciliation that led to our treaty under UNCLOS' dispute resolution procedures was the first of its kind. As two democratic nations and close neighbours, Australia and Timor-Leste have highlighted the value of international law, and particularly UNCLOS, in the international rules-based system. Our joint success through the conciliation sets a positive example for the region and the international community. Our participation in the process and implementation of the Treaty will highlight Australia's commitment to international law and to the peaceful settlement of disputes.

Commercial Benefits

22. A treaty would enable commercial benefits to flow to Australia, Timor-Leste and companies operating in the area. A treaty would also unlock the development of the Greater Sunrise gas fields. Under the Treaty concluded under the auspices of the conciliation commission, Australia would receive either 20% or 30% of the upstream revenue from the Greater Sunrise fields, depending on the development option chosen (i.e. either a pipeline to a liquefied natural gas processing plant in Australia, or in Timor-Leste).

23. A treaty would provide for Australia and Timor-Leste to develop the Greater Sunrise gas fields together and share in the benefits. A treaty would support Timor-Leste's economic development by providing significant new opportunities for income and commercial and industrial development. Seventy or eighty per cent of revenue from Greater Sunrise will flow to Timor-Leste, depending on how the resource is developed.

24. Successful completion of transitional arrangement negotiations will ensure the transition from shared or exclusively Australian jurisdiction to Timorese jurisdiction for the affected companies, and will facilitate the continued commercial development and exploitation of resources in the Timor Sea within a clear and certain regulatory framework. Transitional arrangements, including the provision of conditions equivalent to the Timor Sea Treaty, reflects both Australia and Timor-Leste's interest in ensuring that existing petroleum operations continue with minimal impact and is an obligation under our existing treaty obligations. More broadly, the benefits of greater

regulatory certainty would flow down to supply chains, contractors and employees in both Australia and Timor-Leste.

Impact on business

25. A Treaty would require Australia and Timor-Leste to provide companies operating in the Timor Sea with conditions equivalent. In this respect, compliance with the Treaty ought not to create additional regulatory burden on business. In order to achieve this, whole-of-government transitional arrangement negotiations would be required with Timor-Leste and the petroleum companies that operate currently in the Timor Sea (including those operating in the JPDA), whose operations would transition to Timorese jurisdiction. The Department of Industry, Innovation, and Science (DIIS) would lead these whole-of-government transitional arrangement negotiations.

26. Given the differences between the JPDA petroleum regime and the Timor-Leste petroleum regime over issues such as taxation, migration, employment and environmental management, negotiations are expected to be lengthy and complex. Further complicating matters would be that each of these projects are different and require, to some degree, an individualised approach.

Regulatory burden

27. By providing conditions equivalent to operating businesses, compliance with the Treaty ought not to create additional regulatory burden on business in their transition to Timorese jurisdiction.

28. There are likely administrative costs for the affected petroleum companies related to attendance at transitional arrangement negotiations, for example, travel and representation, professional services, record-keeping and document drafting, intersessional consultations, and providing information. These negotiations are ongoing and will continue for an unspecified period. Therefore, an accurate general estimate cannot be given for regulatory costs related to transitional arrangements negotiations, particularly as they vary for each business involved, and this commercial-in-confidence information is not available to the Government.

29. The costs related to transitional arrangements are one-off costs, rather than ongoing regulatory costs related to compliance. These costs are time-limited and associated with the transition to Timorese jurisdiction. There are also confidentiality limitations, particularly commercial-in-confidence obligations, which prevent a full description of the content of these negotiations. At the conclusion of negotiations, additional Australian legislative and regulatory amendments may be required to ensure conditions or terms equivalent. Companies may also face costs after they transition to exclusive Timorese jurisdiction. Any costs companies incur after transition to Timor-Leste's jurisdiction will constitute the costs of doing business, not regulatory costs.

30. Under the Treaty, Australia and Timor-Leste will jointly exercise sovereign rights within the GSSR. The Treaty's treatment of the Greater Sunrise resource provides a pathway to agreement on a development concept and the certainty required for commercial entities to invest in and develop the resource. Once operationalised, this would result in commercial benefits for both Australia and Timor-Leste. Costs associated with implementing the development concept are the cost of doing business, rather than regulatory burden associated with compliance with the Treaty, which would exist in any case.

31. Australia is a committed partner in Timor-Leste's effort to diversify its economy and facilitate private sector growth, and views the Treaty as representing a new chapter in Australia-Timor-Leste relations that would energise our economic partnership. The development of Greater Sunrise is crucial to Timor-Leste's development and prosperity, and Australia would collaborate with Timor-Leste and the Greater Sunrise Joint Venture to find a pathway to develop Greater Sunrise that maximises the benefits for Timor-Leste.

Cost/Benefit Analysis

Option 1 – No action

32. There are significant net costs and no net benefits for Australia should we choose to not to take any action. As discussed above, taking no action would damage Australia's international reputation and risk severe damage to our bilateral relationship with Timor-Leste.

33. The conciliation was a compulsory process aimed at resolving the issue of delimiting permanent maritime boundaries between Australia and Timor-Leste. Taking no action would undermine Australia's good faith engagement in the conciliation and Australia would very likely face considerable criticism for walking away from a mutually agreed treaty text developed in an international process under UNCLOS. As such, Australia's international reputation would be damaged and our role as a leader in dispute resolution and an upholder of the rules-based international order would be negatively affected.

34. From the perspective of our bilateral relationship, Timor-Leste expects Australia to act in good faith and take action to implement a treaty permanently establishing our shared maritime boundaries. Given that the delimitation of maritime boundaries between Australia and Timor-Leste has been a source of tension for many years, a decision not to take action to sign a treaty would exacerbate those tensions and prevent further positive development of our bilateral relationship.

Option 2 – A treaty

35. The diplomatic and commercial benefits that flow from a treaty between Australia and Timor-Leste offer a significant net benefit to the community and will secure Australia's national interest. A treaty is an opportunity to finalise our

permanent maritime boundaries with Timor-Leste. Permanency in our maritime boundaries will create certainty and stability for resource development in the Timor Sea.

36. A further net benefit of a treaty would be its contribution to strengthening the bilateral relationship between Australia and Timor-Leste, and its support for Timor-Leste's economic development. Australia is Timor-Leste's largest development and security partner, and the relationship has great potential for further positive expansion. A treaty would also provide new opportunities for commercial and industrial development for Timor-Leste through its expanded maritime jurisdiction, and a stable and prosperous Timor-Leste is in Australia's interest.

37. Under a treaty Timor-Leste would receive all future revenue from the Bayu-Undan gas and condensate field, which would transition to Timor-Leste's exclusive jurisdiction. While a net cost of this option would be that Australia would receive a smaller share of the oil and gas revenue from currently developed projects in the Timor Sea, a treaty would provide a pathway for the development of the Greater Sunrise gas fields, which in the long term would provide a greater net benefit to Australia. It would also provide significant commercial and developmental benefits for Timor-Leste. The exact benefit that will flow to each country will depend on the development model for the project and future market prices.

38. Under this option, Australia's good faith involvement in international dispute resolution mechanisms and its reputation as a reliable partner that contributes to stability in the region are important benefits.

Best option

39. The best option is to sign the treaty concluded under the auspices of the conciliation process with Timor-Leste. This option would deliver the greatest net benefit to the community and would serve Australia's national interests. A treaty would provide stability through a permanent maritime boundary and would therefore enable companies to operate with certainty in the Timor Sea. It would provide for the Greater Sunrise fields to be developed and for those resources to be exploited, bringing commercial benefits to companies, Timor-Leste and Australia. A treaty would strengthen Australia's relationship with Timor-Leste and bring a number of economic, commercial and developmental benefits to Timor-Leste, which is ultimately in Australia's interest.

Consultation process

40. Over the 20 month period that the conciliation occurred, petroleum companies operating in the JPDA were consulted and kept aware of the process, consistent with the information and statements that were made public.

41. At the request of the Conciliation Commission, the Sunrise Joint Venture was also consulted in an effort to agree a development concept for the Greater Sunrise gas fields for inclusion in the Treaty. This included a series of preliminary discussions by videoconference and face-to-face trilateral meetings with Australia and Timor-Leste. Australia and Timor-Leste also concluded an Information-Sharing Agreement.

42. All other affected companies have been informed of the impacts of the Treaty to their individual projects. Australia and Timor-Leste will also publicise the Treaty and its new boundaries, providing business with clarity around the changes.

43. Consultation on transitional arrangements would be undertaken should the preferred option be adopted. This consultation would likely be extensive and protracted.

Implementation and evaluation

44. This policy of establishing permanent maritime boundaries between Australia and Timor-Leste will be implemented through:

- *a Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries;*
- amendments to legislation;
- development and finalisation of transitional arrangements, including new production sharing contracts; and
- DIIS's management of Australia's offshore oil and petroleum arrangements, including management of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and its ongoing role in establishment and management of the GSSR.

45. Evaluation will be ongoing. In particular, evaluation will occur through:

- ongoing bilateral engagement with Timor-Leste. The Department of Foreign Affairs and Trade would lead Australia's engagement with Timor-Leste;
- governance and regulatory arrangements established under the Treaty for the GSSR, including its management bodies (for example, the Governance Board); and
- the Department of Industry, Innovation and Science leading ongoing industry consultation and feedback over time.

46. The full text of the Treaty will be released publicly and following signature, the text will be tabled in Parliament and examined by the Joint Standing Committee on Treaties.

Conclusion

47. It is in Australia's interest to sign and ratify the Treaty with Timor-Leste. The Treaty achieves: a permanently delineated maritime boundary with Timor-Leste; ensures regulatory continuity, provides stability and certainty to business, and limits the impact of the boundary changes on petroleum companies that will transition from Australian or joint jurisdiction to sole Timorese jurisdiction under the Treaty. It delivers a number of diplomatic and commercial benefits to both Australia and Timor-Leste and facilitates exploitation of the Greater Sunrise gas fields.