

## Chapter 2

### Views on the bills

2.1 The committee received a total of six submissions for this inquiry.

#### **Support for the bills**

2.2 Despite raising some specific concerns, the submissions received were supportive of passing the legislation. The Department of Industry, Innovation and Science submitted:

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...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.<sup>1</sup>

2.3 The Uniting Church of Australia's Synod of Victoria and Tasmania commented:

The Synod of Victoria and Tasmania welcomes the treaty and the spirit in which the Australian Government negotiated it. The Synod therefore requests that the Committee recommend the rapid passage of the bills through the Australian Parliament.<sup>2</sup>

#### **Issues**

##### ***History and outcomes of previous negotiations***

2.4 The territory of today's Timor-Leste has existed under three legal jurisdictions since the early 1970s: as part of Portugal's overseas possessions; an annexed province of Indonesia; and as an independent nation-state. This reality has effected interpretations and negotiations of its sea boundary and the ownership of the region's oil and gas deposits.<sup>3</sup>

2.5 A number of submitters commented on the length of time required for a treaty which recognised Timor-Leste's claims to be negotiated and signed, and how this had, in some quarters, undermined Australia's international standing. Professor Andrew Serdy observed:

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1 Department of Industry, Innovation and Science, *Submission 6*, p. 2.

2 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 1.

3 *Submission 2* by Mr Robert J. King provides a comprehensive discussion of this history.

I thus agree with the explanatory memorandum to the bills when it contends that it would be damaging to Australia's international standing to prevent the 2018 treaty entering into force by not passing these bills. I would merely add that this would compound the earlier, and as far as the boundary itself is concerned now irreparable, damage to the national interest from the counterproductive post-1999 policy, and the bills are hence a necessary exercise in damage limitation.<sup>4</sup>

### ***Fate of revenues already collected***

2.6 The Uniting Church of Australia's Synod of Victoria and Tasmania questioned the fate of revenues raised prior to the treaty's signing. It commented:

The Synod is concerned that the Australian Government will continue to hold onto all the revenue gained from the gas and oil deposits that have been exploited before this treaty was finalized, that had this treaty been in place the Australian Government would not have had access to...<sup>5</sup>

### ***Regulatory equivalence and taxation***

2.7 The new treaty arrangements are intended to ensure conditions and terms equivalent to existing arrangements. Eni Australia, an energy company which is also operating in the Joint Petroleum Development Area (JPDA) between Australia and Timor-Leste established in 2002 under the Timor Sea Treaty, reiterated the need for such arrangements to continue:

A condition of the transition from JPDA to exclusive Timor-Leste jurisdiction is that petroleum activities shall continue on terms of 'conditions equivalent' (legal, fiscal and operational).

The details of how 'conditions equivalent' will be achieved under the new legal and fiscal regime in Timor-Leste is still the subject of negotiation, and is to be agreed by all parties. The [Production Sharing Contract] PSC in the JPDA are subject to project-specific legal, fiscal, and operational regimes, and accordingly there are effectively unique rules for each PSC.

Re-drafting of the PSCs is required to recognise the change in sovereignty and maintain conditions equivalent, and is a joint effort between the representatives of Australia and Timor-Leste Governments and the Contractors of the PSCs.<sup>6</sup>

2.8 Eni also made specific reference to 'fiscal equivalence' and expressed its interest in understanding the Australian legislative mechanism which will lead to such equivalence.<sup>7</sup>

2.9 The Uniting Church of Australia's Synod of Victoria and Tasmania raised questions on tax arrangements. The Church commented:

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4 Professor A.L. Serdy, *Submission 1*, p. 1.

5 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 4.

6 Eni Australia, *Submission 4*, p. 2.

7 Eni Australia, *Submission 4*, p. 4.

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The Synod is not clear how the overly generous tax credits related to the Petroleum Resource Rent Tax (PRRT) will be treated for the corporations that have operated Greater Sunrise projects since 2004. The Synod believes the Committee should ensure that the tax credits granted by the Australian Government to corporations that have been operating in the Greater Sunrise area do not impact on any future royalty revenue imposed by the Timor Leste Government on the corporations involved.<sup>8</sup>

### **Committee view**

2.10 The decades long question of ownership of the oil and gas deposits lying between Timor-Leste and Australia has, despite many years of controversy, now finally been resolved. The bills presented to the Parliament bring legislative substance to the 2018 treaty and the evidence received from submitters indicates support for the bills and their provisions.

2.11 The Committee notes the concerns expressed in the submissions, particularly with regard to expressed need for equivalent conditions between previous arrangements and those that will apply in the future, and observes that these bills are only the first tranche of legislation designed to give effect to the treaty.

2.12 The Committee agrees that the treaty and supporting bills support Australia's commitment to a mutually beneficial bilateral relationship with Timor-Leste specifically, and to international law and the rules based order more generally and recommends that the bills be passed.

### **Recommendation 1**

**2.13 The Committee recommends that the bills be passed.**

**Senator Jane Hume**

**Chair**

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8 The Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 3*, p. 4.

