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Report 49

The Timor Sea Treaty

Joint Standing Committee on Treaties

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the Committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the Committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACTU	Australian Council of Trade Unions
AMOU	Australian Maritime Officers Union
AMSA	Australian Maritime Safety Authority
DFAT	Department of Foreign Affairs and Trade
DITR	Department of Industry, Tourism and Resources
EEZ	Exclusive Economic Zone
FLNG	Floating Liquefied Natural Gas
ICJ	International Court of Justice
IUA	International Unitisation Agreement
JPDA	Joint Petroleum Development Area
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MOU	Memorandum of Understanding
NIA	National Interest Analysis
NM	Nautical Miles
OH&S	Occupational Health and Safety

PSC	Production Sharing Contract
UNCLOS	United Nations Convention on the Law of the Sea
UNTAET	United Nations Transitional Administration in East Timor
ZOC	Zone of Cooperation
ZOCA	Zone of Cooperation Area A



List of recommendations

Recommendation 1

The Committee supports the Timor Sea Treaty and recommends that binding treaty action be taken. (Paragraph 4.61)

Recommendation 2

The Committee recommends that the Government of Australia use its best endeavours in accordance with the Memorandum of Understanding signed in Dili on 20 May 2002 to conclude the International Unitisation Agreement for the Greater Sunrise fields on or before the date on which the Timor Sea Treaty is ratified and in any event before 31 December 2002 as this would serve the best interests of both nations. (Paragraph 4.62)

Recommendation 3

The Committee urges the Government of Australia to use its presence on the administrative agencies of the Joint Petroleum Development Area to ensure that the occupational health and safety and environmental standards that prevail in the JPDA are equivalent or superior to those applying in Australian jurisdiction. (Paragraph 5.41)

Background

The treaty actions

- 1.1 On 20 May 2002, East Timor became the world's newest sovereign state. The signing of the *Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea Between Australia and East Timor* (the 2002 Exchange of Notes) and the *Timor Sea Treaty between the Government of Australia and the Government of East Timor* (the Treaty) also occurred on this day. Both treaty actions were tabled in Parliament on 25 June 2002.
- 1.2 The 2002 Exchange of Notes entered into force immediately on signing and applies until the entry into force of the Treaty. This action provided a legal framework for the continuation of current petroleum activities being undertaken in the designated area of the Timor Sea.
- 1.3 The Treaty enters into force when both parties have notified each other that their respective requirements are completed. It delimits and provides the legal basis for the exploration, exploitation and sharing of revenue from petroleum resources in the Joint Petroleum Development Area (JPDA).

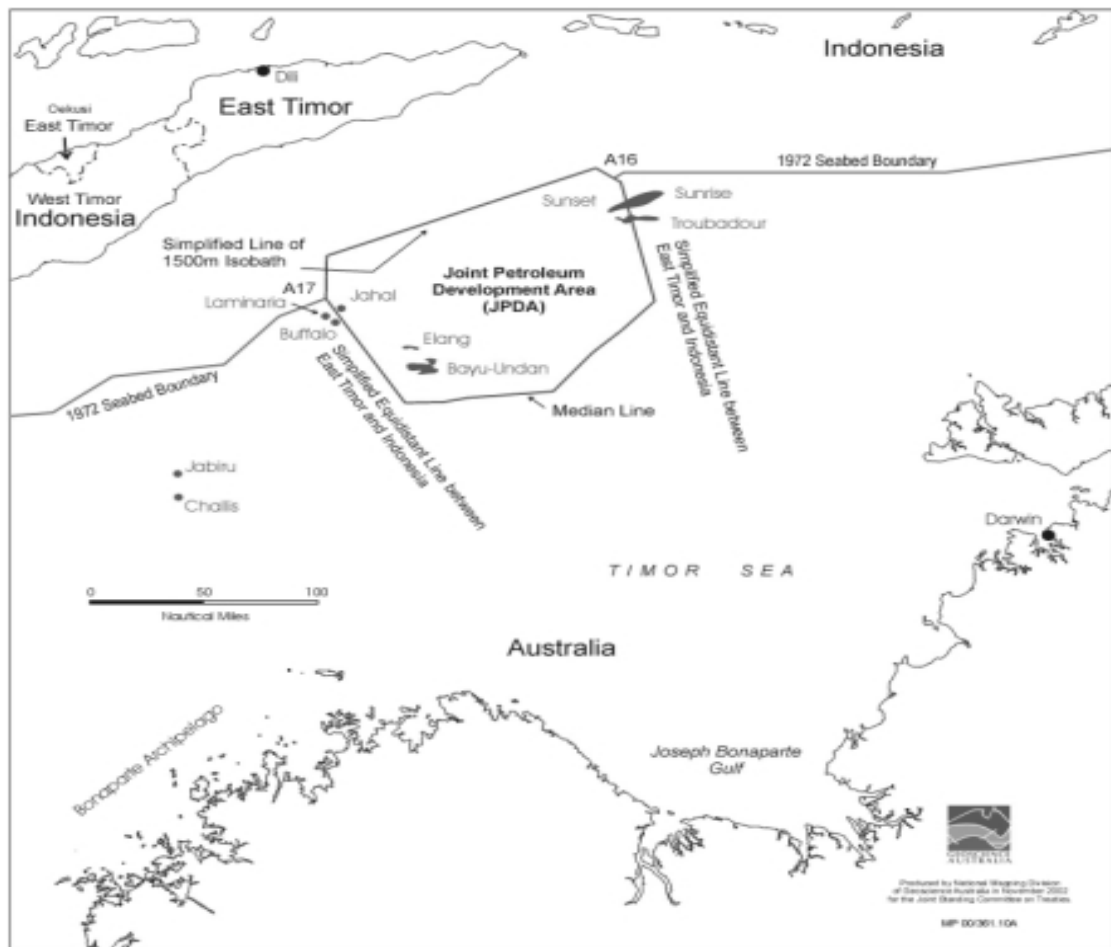


Figure 1 Location and dimensions of the JPDA

Source National Mapping Division, Geoscience Australia

A brief history

- 1.4 A brief history of negotiations between Australia and its northern neighbours over the delimitation of the seabed boundary of the Timor Sea is helpful in understanding the terms of the proposed Treaty and the debate surrounding them.
- 1.5 The original delimitation of the Timor Sea seabed occurred as a result of bilateral negotiations between Australia and Indonesia. On 18 May 1971 the countries signed an *Agreement establishing Certain Seabed Boundaries*. On 9 October 1972 they signed a supplementary *Agreement establishing Certain Seabed Boundaries in the area of the Timor and Arafura Seas* (the supplementary agreement). Both seabed agreements entered into force on 8 November 1973.

- 1.6 The supplementary agreement establishing the seabed boundary of the Timor Sea between Australia and Indonesia is based on the 1958 Geneva Convention on the Law of the Continental Shelf which asserts that ‘The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources’ (Article 2). Australia was largely successful in gaining Indonesian acceptance of its claim that its maritime boundary was delimited by the Timor Trough, a depression:
- More than 550 NM long and on average 40 NM wide, and the seabed slopes on opposite sides to a depth of over 10,000 feet.¹
- 1.7 However, Portugal (the administrative power in East Timor until 1975) was not included in negotiations. Under the 1958 Convention, Portugal maintained that the boundary between East Timor and Australia should be based on a median distance between the two territories. Portugal’s position resulted in a gap in the boundary delimiting the seabed of the Timor Sea, which became known as the Timor Gap.
- 1.8 The 1958 Convention provided for cases in which:
- the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary ... shall be determined by them ... [or] unless another boundary line is justified by special circumstances, the boundary is the median line ... (Article 6(1)).
- 1.9 The difference between the Portuguese and Indonesian positions was based on the insistence of the former on a median distance, and the allowance by the latter of Australia’s continental shelf claim. Each country took a differing view of the Timor Trough. Portugal understood the Timor Trough as an incidental depression rather than the edge of the continental shelf and Indonesia understood the Timor Trough as constituting the edge.
- 1.10 The absence of Portugal from the maritime delimitation negotiations meant the points at which the Gap occurred (known as A16 and A17) were recognised by Australia and Indonesia as provisional in the 1972 supplementary agreement (Article 3).²
- 1.11 In 1976 Indonesia annexed East Timor. The recognition by Australia of Indonesian sovereignty over East Timor in 1979 made it possible to begin negotiations to delimit the boundaries of the Gap. Indonesia took up the

1 Robert J. King, *Submission No. 43*, pp. 2-3.

2 Robert J. King, *Submission No. 43*, p. 5.

Portuguese position on the Gap by maintaining that the Timor Trough did not delimit Australia's continental shelf but instead was an incidental depression within a shared shelf.

- 1.12 Australia maintained its territorial claims based on the limits of its continental shelf by maintaining that the Timor Trough constituted a special circumstance; that is, that the Timor Trough defined the edge of Australia's continental shelf.
 - 1.13 The potential resource wealth of the disputed area encouraged Australia and Indonesia to set in place arrangements delimiting a Zone of Cooperation (ZOC) and the terms upon which revenue from the exploitation of resources within the Zone would be shared. These arrangements were concluded with the signing of the Timor Gap Treaty between Australia and Indonesia on 11 December 1989. The Timor Gap Treaty entered into force on 9 February 1991. Production at the Elang-Kakatua oil fields within the ZOC began in 1998.³
 - 1.14 The Timor Gap Treaty provided for the ZOC to be divided into three areas. Australia and Indonesia would jointly administer Area A with Australia and Indonesia having title to a 50:50 share of revenue from petroleum exploration and exploitation activities. Australia would administer Area B and share ten percent of revenue with Indonesia, and Indonesia would administer Area C and share ten percent of revenue with Australia.
 - 1.15 On 25 October 1999, the United Nations Transitional Administration in East Timor (UNTAET) became the administering power in East Timor following a ballot in which the population voted for independence from Indonesia. UNTAET took over Indonesia's rights and obligations under the Timor Gap Treaty in order to preserve a stable framework that would allow for continued investment in the exploration and exploitation of petroleum resources in the ZOC.
 - 1.16 An Exchange of Notes between Australia and UNTAET was signed on 10 February 2000 to take effect from 25 October 1999 and to operate until East Timor's independence. The 2000 Exchange of Notes effectively continued the terms of the Timor Gap Treaty.
 - 1.17 On 5 July 2001 Australia and UNTAET concluded a Memorandum of Understanding (MOU) that put in place the Timor Sea Arrangement (the Arrangement). The Arrangement provides the basis for the Timor Sea Treaty in determining the administrative mechanisms for the JPDA and that:
-

3 Robert J. King, *Submission No. 43*, p. 28.

Of the petroleum produced in the JPDA, 90 percent shall belong to East Timor and 10 percent shall belong to Australia (Article 4(a)).

- 1.18 The JPDA is delimited along the same boundaries as Area A of the ZOC (ZOCA) set out in the Timor Gap Treaty.
- 1.19 After East Timor's independence the Exchange of Notes done on 20 May 2002 acts as an interim agreement continuing the Arrangement until the Timor Sea Treaty enters into force. The 2002 Exchange of Notes specified that East Timor would not have access to the additional 40 percent of JPDA petroleum resources (above the 50 percent to which it was entitled under the 2000 Exchange of Notes) until the Timor Sea Treaty entered into force. The revenue from this 40 percent of JPDA petroleum resources was to 'be placed in a US dollar denominated interest bearing escrow account' (Article 4(d)). On the entry into force of the Timor Sea Treaty all monies and interest in the account will be paid to East Timor.
- 1.20 On 20 May 2002, Australia and East Timor signed the Timor Sea Treaty that allows for the continued exploration and exploitation of the resources of the JPDA under the terms set out in the Arrangement.
- 1.21 Article 2(b) of the Treaty states that:
- Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia's or East Timor's position on or rights relating to a seabed delimitation or their respective seabed entitlements.

Costs and future protocols

- 1.22 Once ratified, the Treaty will remain in force until there is a permanent delimitation of the Timor Sea seabed or for 30 years from the date of its entry into force, whichever is sooner. The Treaty also provides for renewal by agreement between the parties (Article 22). The Treaty may be amended at any time by written agreement between the parties (Article 24).
- 1.23 The National Interest Analysis (NIA) states that Australia will incur no major costs through the proposed treaty action. Any additional costs that are incurred will be of a minor administrative type.
- 1.24 The Treaty requires Australia and East Timor to work expeditiously and in good faith to reach an International Unitisation Agreement (IUA) in relation to any deposit that straddles the boundary of the JPDA (Article 9). An MOU to this effect was also signed on 20 May 2002. The IUA will be a

separate treaty action and will thus require tabling in Parliament and be subject to scrutiny by this Committee.

- 1.25 The Treaty provides for the negotiation of a Petroleum Mining Code which will govern the exploration, development and exploitation of petroleum within the JPDA as well as the export of petroleum from the JPDA. If the treaty parties cannot agree to a Code, the Joint Commission will adopt an interim Code (Article 7).

Consultation

- 1.26 The NIA indicates that the Commonwealth Government consulted with representatives from state and territory governments, industry representatives, including Phillips Petroleum and the Sunrise Joint Venture Partners, over Timor Sea arrangements.
- 1.27 The Committee advertised for submissions on 3 July 2002 in *The Australian*, *The West Australian* and *The Northern Territory News*. In addition it invited submissions directly from state and territory governments, industry stakeholders and unions with an interest in the exploration and exploitation of petroleum resources in the Timor Sea as well as non-government organisations with interests in or concerns about East Timor.

Conduct of the Inquiry

- 1.28 On 19 May 2002, the Minister for Foreign Affairs sent a letter to the Committee informing it that the Exchange of Notes would be signed and enter into force on 20 May 2002.
- 1.29 The texts of and NIAs for the Exchange of Notes and the Treaty were tabled in both Houses of Parliament on 25 June 2002. As a result of a typographical error in the NIAs, amended versions of the NIAs were re-tabled on 27 August 2002.
- 1.30 On 26 June 2002 the Committee informed the Minister for Foreign Affairs that it would require longer than the usual 15 sitting day period to consider the proposal to ratify the Timor Sea Treaty. The longer period for the Committee's consideration of the Treaty was required because of the anticipated high level of interest in the proposed treaty action among the Australian public.

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- 1.31 An initial public hearing was held in Canberra on Friday 12 July 2002 in which the Exchange of Notes and the Treaty were considered with nine other treaty actions tabled on 18 and 25 June 2002. A follow up public hearing specifically on the Treaty was held in Canberra on 26 August.
 - 1.32 The Committee took evidence in Perth on 2 October, in Darwin on 3 October and in Melbourne on 4 October and returned to Canberra for two further hearings on 8 and 14 October.
 - 1.33 Submissions received are listed at Appendix A. Those individuals and organisations who gave evidence at the public hearings into the Exchange of Notes and the Treaty are listed in Appendix B. Exhibits are listed at Appendix C.

Provisions of the treaty

Purpose of the treaty

- 2.1 The Treaty provides a legal and fiscal framework that allows for the continuation of exploration and exploitation of oil and gas resources in an area of the Timor Sea that is currently subject to overlapping claims by Australia and East Timor.
- 2.2 The Treaty serves the interests of Australia in three ways. First, it provides for the receipt of direct revenue from petroleum resources in the JPDA (Article 4). Second, Australians will benefit through employment opportunities that arise as the result of the processing in Australia of resources from the JPDA.¹ Third, it promotes the future economic viability of one of Australia's nearest neighbours.²

Boundary delimitation, resource and revenue sharing

- 2.3 The Treaty will enter into force without prejudicing the territorial claims of Australia or East Timor to areas of the Timor Sea seabed that lie between the two countries (Article 2(b)). The Treaty is in accord with Article 83(3) of the United Nations Convention on the Law of the Sea (UNCLOS). Article 83(3) requires States with opposite or adjacent coasts, that cannot reach agreement on a maritime boundary delimitation to make

1 National Interest Analysis, para. 8.

2 Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 22.

every effort to enter into provisional arrangements of a practical nature pending a final agreement.

- 2.4 Annex A of the Treaty establishes the JPDA along the same boundary delimitations as ZOCA set out in the Timor Gap Treaty between Australia and Indonesia. Within the JPDA, Australia and East Timor will jointly control, manage and facilitate the exploration, development and exploitation of petroleum resources.
- 2.5 The Treaty designates ownership of the petroleum resources of the JPDA at a proportion of 90 percent to East Timor and 10 percent to Australia (Article 4(a)).
- 2.6 The Treaty makes provision for the taxation of petroleum activities conducted within the JPDA. Annex G of the Treaty sets out a taxation code for the avoidance of double taxation and the prevention of fiscal evasion.

Regulatory and administrative bodies

- 2.7 The Treaty provides for a three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council (Article 6).

The Designated Authority

- 2.8 For the first three years after the Treaty's entry into force a Designated Authority will carry out the day-to-day administration of the JPDA. After the three-year period the Designated Authority will be the East Timor Government Ministry responsible for petroleum activities or, if decided by the Ministry, an East Timor statutory authority.
- 2.9 Petroleum related activities will require a contract between the Designated Authority and a limited liability corporation. Other administrative responsibilities of the Designated Authority include:
- the preparation of estimated annual income and expenditure of the Designated Authority;
 - the preparation of Annual Reports;
 - requesting assistance from appropriate authorities in Australia and East Timor for search and rescue operations, security threats and air traffic services and pollution prevention measures;
 - establishment of safety zones and restricted zones for the safety of navigation and petroleum operations;

- controlling movements of vessels, aircraft, structures and personnel involved in petroleum exploration and exploitation activities; and
 - health, safety, environmental protection and assessments and work practices (Annex C).
- 2.10 The Designated Authority will be financed from fees attached to petroleum activities within the JPDA. In the event that fees are inadequate to cover the cost of the Designated Authority, 90 percent of the expense will be borne by East Timor and 10 percent by Australia.
- 2.11 The Designated Authority is responsible to the Joint Commission.

The Joint Commission

- 2.12 The Joint Commission will consist of commissioners appointed by East Timor and Australia. There will be one more commissioner appointed by East Timor than by Australia. The Joint Commission will meet annually or as required and will be chaired by a member nominated by Australia and East Timor on an alternate basis.
- 2.13 The Joint Commission will establish policies and regulations relating to petroleum activities in the JPDA and oversee the work of the Designated Authority. More specifically, the powers of the Joint Commission include:
- directing the Designated Authority in the discharge of its responsibilities;
 - conferring additional responsibilities upon the Designated Authority as required;
 - if necessary, adopting an interim Petroleum Mining Code;
 - approving the financial estimates of expenditure and income made by the Designated Authority;
 - designating the Designated Authority for the first three years;
 - auditing and inspecting the Designated Authority's books at the request of a Joint Commissioner;
 - auditing and inspecting contractor's books and accounts;
 - considering and adopting the Designated Authority's annual report; and
 - amending the Petroleum Mining Code as required (Annex D).

- 2.14 Any Commissioner may refer a matter of disagreement to the Ministerial Council for resolution.³

The Ministerial Council

- 2.15 The Ministerial Council will consist of an equal number of Ministers from Australia and East Timor. The Council will meet at the request of Australia or East Timor or the Joint Commission. Meetings will be chaired by a representative of Australia and East Timor on an alternate basis.
- 2.16 The Ministerial Council will consider for resolution any matter that may be referred to it by Australia or East Timor or by Commissioners of Australia or East Timor.

Dispute resolution

- 2.17 In the event that a dispute cannot be resolved within the Ministerial Council, Annex B of the Treaty provides for the appointment of an arbitral tribunal that will consist of one arbitrator appointed by Australia and one by East Timor.
- 2.18 The arbitrators shall, within a period of 60 days, appoint an arbitrator from a third country that has diplomatic relations with both Australia and East Timor. If no agreement on the third arbitrator can be reached within the required timeframe Australia or East Timor may request the President of the International Court of Justice to make the appointment. If the President is an Australian or East Timorese national then the Vice-President may be invited to act in this capacity.
- 2.19 The resolution will be reached by majority vote.

Petroleum Mining Code

- 2.20 Article 7 of the Treaty provides for Australia and East Timor to negotiate an agreed Petroleum Mining Code which shall govern petroleum related activities within the JPDA. If the parties cannot agree on a Code the Joint Commission shall at its inaugural meeting adopt an interim code.

3 William Campbell, *Transcript of Evidence*, 12 July 2002, p. 37.

International Unitisation Agreement

- 2.21 An IUA treats a resource that straddles an international boundary as a single unit. It defines the scope of the resource and provides the terms for the administrative and regulatory regimes that will apply to the development and exploitation of the resource and the sharing of revenue deriving from the resource (Article 9).
- 2.22 The Timor Sea Treaty provides for an IUA to be negotiated for the development and exploitation of any reservoir that extends across the boundary of the JPDA (Article 9). The Greater Sunrise gas and oil fields are known to straddle the boundary of the JPDA and will be treated on the basis that 20.1 percent of it lies within the JPDA and 79.9 percent lies within Australian jurisdiction (Annex E). This means that East Timor will receive approximately 18 percent and Australia approximately 82 percent of the revenue from the Greater Sunrise development.

Implementing legislation

- 2.23 The *Timor (Joint Petroleum Development Area) Bill 2002* will provide for petroleum activities in the JPDA. The Bill describes the administrative arrangements and applicable law for the JPDA. There will also be consequential minor amendments to other legislation including the *Crimes at Sea Act 1979*, the *Customs Act 1901*, the *Income Tax Assessment Acts 1936 and 1997* and the *Petroleum (Submerged Lands) Act 1967*.

Seabed boundary delimitation

- 3.1 In the period between the announcement of the results of the ballot in which the population of East Timor voted for independence and its accession to independence, the media provided an acute reflection of the mixed emotions among the Australian public concerning its near neighbour.
- 3.2 On the one hand, media reports celebrated the role played by the Australian Defence Force and volunteers in assisting East Timor's recovery from the outbreak of violence that followed the ballot result.¹ On the other, the Australian Government was criticised for not acting sooner. These reports recalled the uneasiness felt by many Australians at the acceptance of Indonesia's annexation of East Timor by successive Australian governments.²
- 3.3 Continued ill ease at the vulnerability of East Timor was reflected in expressions of concern to the Committee that Australia had failed to treat its northern neighbour fairly in treaty negotiations. In particular, these concerns focused upon the dimensions of the JPDA set out in the Treaty.

1 P. Cole-Smith, 'World Owes Australia Thanks: US', *Sydney Morning Herald*, 14 January 2000; C. Smith, 'UN Chief Lauds Darwin's Spirit', *Northern Territory News*, 19 February 2000; G. Reid, 'Queen Praises Our Brave Timor Troops', *Mercury*, 30 March 2000.

2 L. Wright, 'Intelligence Leaks Just Part of the Great Political Flux', *The Canberra Times*, 2 January 2002; S. Burchill, 'Apologists are Reviving History to Absolve Jakarta', *Age*, 15 March 2000; A. Ramsey, 'How Gough Whitlam's Words Sealed the Tragedy', *Sydney Morning Herald*, 16 September 2000.

The JPDA

- 3.4 The Department of Foreign Affairs and Trade (DFAT) acknowledged that the Treaty has been criticised by non-government organisations because of ‘the structure of the JPDA, [that is] where the boundaries exist ...’³
- 3.5 The principal document on which criticisms of JPDA boundaries were based is an *Opinion in the Matter of East Timor’s Maritime Boundaries* by Vaughan Lowe, Christopher Carleton and Christopher Ward (the Lowe Opinion). The Lowe Opinion was commissioned by Oceanic Exploration and Petrotimor, an oil and gas company that was granted an exploration concession by the Portuguese Timor administration in 1974.
- 3.6 Oceanic Exploration and Petrotimor are plaintiffs in an action seeking compensation from the Commonwealth Government, the Phillips Group and the Joint Authority in relation to its claim for this concession. The proceedings are presently before the Federal Court of Australia. At the time of writing:
- There have been a number of interlocutory skirmishes ... and no defences have been filed.⁴
- 3.7 Criticisms of the boundaries of the JPDA can be divided between those that refer to the north-south dimensions of the JPDA arguing that Australia and East Timor ought to settle a permanent seabed boundary along a line equidistant from each country’s baseline. In effect these arguments call for the replacement of the JPDA with a permanent maritime boundary.
- 3.8 There has also been criticism of the lateral dimensions, that is, the eastern and western lines, of the JPDA. This position supports the enlargement of the breadth of the JPDA.

The north-south dimensions of the JPDA

- 3.9 The JPDA has been criticised as being based upon ZOCA provided for by the ‘illegitimate’ Timor Gap Treaty.⁵ The Timor Gap Treaty is presented as illegitimate because it arose as the result of the occupation of East Timor by Indonesia, an occupation that was not recognised by the United Nations.

3 Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 24.

4 Ron Nathans, *Transcript of Evidence*, 8 October 2002, p. 193.

5 For example, Rob Wesley-Smith, *Transcript of Evidence*, 3 October 2002, p. 99, Demetrio Amaral de Carvahlo, *Transcript of Evidence*, 3 October 2002, p. 113, and David Pargeter, *Transcript of Evidence*, 4 October 2002, p.154.

- 3.10 In response to claims that the JPDA is based upon the Timor Gap Treaty the Committee was informed that, in fact, the dimensions of the JPDA (and thus the dimensions of ZOCA) coincide with the concession granted to Oceanic Exploration and its subsidiary Petrotimor in 1974.⁶
- 3.11 The northern boundary of the JPDA is based on Australia's claims to its continental shelf under the principle of natural prolongation enunciated in Article 2 of the 1958 Convention on the Law of the Continental Shelf and reaffirmed in Article 76 of the 1982 UNCLOS. UNCLOS entered into force on 16 November 1994.
- 3.12 The southern boundary of the JPDA is based on a median line between East Timor and Australia. The median distance principle was enunciated in Article 6(1) of the 1958 Convention of the Law of the Continental Shelf and reaffirmed in Article 15 of the 1982 UNCLOS.
- 3.13 The submissions that dispute the legitimacy of the JPDA argue that the northern line should be removed because natural prolongation no longer has currency in international law. They argue that Australia and East Timor should agree to a seabed boundary at the median distance between the two countries as they have opposite or adjacent coastlines that are less than 400 NM apart as per article 15 of the UNCLOS.
- 3.14 Delimitation based on the principle of median distance would move significant hydrocarbon resources that currently fall within the JPDA and Australian jurisdiction to the possession of either East Timor or Indonesia. These resources include the Greater Sunrise, Elang Kakatua and Bayu-Undan oil and gas fields that are partially or entirely within the JPDA as well as the Laminaria and Buffalo oil and gas fields that are currently completely within Australian jurisdiction.
- 3.15 The suggestion that Australia and East Timor should settle their maritime boundary along a line of equidistance not only ignores Australia's continental shelf claim but also East Timor's Exclusive Economic Zone (EEZ) claim that extends 200 NM from its coastline. East Timor claimed an EEZ when its Parliament passed *Lei No. 7/2002, Fronteiras Maritimas do Territorio da Republica Democratica de Timor-Leste* (Maritime Zones Act).

The lateral dimensions of the JPDA

- 3.16 It has been suggested that points A16 and A17, which lie at the beginning of either side of the Timor Gap, could have been spaced at wider points. Thus it could be argued that:

6 Chris Ward, *Transcript of Evidence*, 8 October 2002, p. 196.

the narrower gap left by the agreement represented an encroachment by Australia and Indonesia on the area that could be claimed by Portugal.⁷

- 3.17 However, another view has suggested that the convergence of the eastern and western lateral boundaries is:

The result of East Timor being at the head of a convex coastline that consists of the Island of Timor and the Indonesian archipelago to the east.⁸

- 3.18 The Lowe Opinion argues that the eastern and western lateral dimensions of the JPDA are open to challenge under the current principles of international law. The eastern boundary of the JPDA is derived along a line of equidistance between East Timor and Indonesia by giving full effect to Indonesian island of Leti. However, because of the relative size of East Timor to Leti it could be argued that a line giving a less than full effect be drawn.⁹

- 3.19 In responding to the Lowe Opinion, Dean Bialek of the University of Melbourne argued that:

the Lowe opinion ... fails to mention ... that Indonesia is an archipelagic state – meaning that its islands form part of its territory and it can draw base lines around the outermost points of its islands and can treat all the waters within as its own territory. You could say that makes the Indonesian archipelago, including the archipelagic waters, tantamount to a territorial continent ...¹⁰

- 3.20 Chris Ward of Deacons Lawyers and co-author of the Lowe Opinion challenged the fairness of:

placing a state that has an archipelagic baseline against a state that does not.¹¹

- 3.21 Victor Prescott, Emeritus Professor of Geography at the University of Melbourne, explains the disparity by noting that although:

East Timor and Indonesia are both archipelagic states ... only Indonesia is able to draw archipelagic baselines ... [because East Timor's archipelagic lines] ... would not enclose an area of sea

7 Robert J. King, *Submission No. 43*, p. 5.

8 Victor Prescott, 'East Timor's Possible Boundaries with Indonesia and Australia in the Timor Sea', *Exhibit No. 11*, p. 3.

9 Vaughan Lowe, Christopher Lowe and Christopher Ward, *Opinion in the Matter of East Timor's Maritime Boundaries*, 11 April 2002, paras. 39 and 40.

10 Dean Bialek, *Transcript of Evidence*, 4 October 2002, p. 135.

11 Chris Ward, *Transcript of Evidence*, 8 October 2002, p. 200.

equal to its land territory, that is required by article 47(1) [of the UNCLOS].¹²

- 3.22 The eastern lateral boundary of the JPDA is significant in that it runs across the gas and oil fields of the Greater Sunrise. Giving a less than full effect to the island of Leti, and thus altering this line, would change the proportion of Greater Sunrise that falls under JPDA and Australian jurisdictions.
- 3.23 On the western side of the JPDA the Lowe Opinion challenges the origin of the line arguing that it ought to have been drawn from the thalweg of Moti Masin rather than to the east of this point. This would allow the line to proceed through point A18 rather than point A17 and thus incorporate the oil and gas fields of Laminaria and Corallina.¹³
- 3.24 The Committee notes that Professor Prescott has pointed out that:
- In fact the western boundary south of Point 17 is a line of equidistance between the nearest points on the coasts of East and Indonesian Timor.¹⁴
- 3.25 The Committee notes, however, that the democratically elected Government of East Timor has judged that the entering into force of the Treaty in its current terms best serves the national interests of its constituents in the circumstances.

Negotiation or litigation

A provisional treaty and a permanent delimitation

- 3.26 The Committee heard suggestions that the ratification of the Treaty could compromise the strength of any future claims that East Timor might make in relation to the area under dispute:
- the fact that states accept for interim purposes certain boundary lines has been consistently held in international jurisprudence to be a matter that affects the equities in any subsequent delimitation proceeding and it is not certain that the without prejudice clause

12 Victor Prescott, 'East Timor's Possible Boundaries with Indonesia and Australia in the Timor Sea', *Exhibit No. 11*, p. 8.

13 Vaughan Lowe, Christopher Lowe and Christopher Ward, *Opinion in the Matter of East Timor's Maritime Boundaries*, 11 April 2002, para. 38.

14 Victor Prescott, 'East Timor's Possible Boundaries with Indonesia and Australia in the Timor Sea', *Exhibit No. 11*, p. 7.

would be sufficient to save East Timor from that fate in any subsequent delimitation proceeding.¹⁵

- 3.27 Gillian Trigg of the University of Melbourne and Dean Bialek have argued that, in fact:

The Timor Sea Treaty sails as close to recognition of East Timor's sovereignty over the disputed seabed as it is possible to manoeuvre without conceding the point entirely ... Were it not for the [without prejudice] provision, an implication to be drawn from the Timor Sea Treaty is that Australia's claim to the full extent of the continental shelf up to the Timor Trough is seriously prejudiced.¹⁶

- 3.28 The Committee is aware that Article 2 of the Treaty contains a 'without prejudice' clause and refers explicitly to Article 83 of the UNCLOS which is concerned with the making of provisional arrangements to exploit natural resources in areas that are the subject of disputed claims.¹⁷

Australian declarations

- 3.29 Australia has made declarations under Articles 287(1) and 298(1)(a) of the UNCLOS and Article 36(2) of the Statute of the International Court of Justice (ICJ). The declarations exclude Australia from the compulsory jurisdiction of the Convention and the Court in matters of the delimitation of maritime boundaries.
- 3.30 The Committee reported on these treaty actions in *Report 47: Treaties Tabled on 18 and 25 June 2002*.
- 3.31 The Justice and International Mission Unit of the Uniting Church in Australia expressed concern that:

Australia's declarations were motivated to stop the [ICJ] from considering the maritime boundary between Australia and East Timor with implications for the exploitation of the oil and natural gas fields within the Timor Sea.¹⁸

and suggested that the motivation for the declarations was:

15 Chris Ward, *Transcript of Evidence*, 8 October 2002, p. 191.

16 Gillian Trigg and Dean Bialek, 'The Timor Sea Treaty and Interim Arrangement for Joint Development of Petroleum Resources of the Timor Gap', *Exhibit No. 10*, p. 12.

17 Dean Bialek, *Transcript of Evidence*, 4 October 2002, pp. 126, 128 and 133 and Pat Brazil, *Submission No. 22*, pp. 1-2.

18 The Justice and International Mission of the Uniting Church in Australia, *Submission No. 34*, p. 1.

that the Australian Government recognises it is able to negotiate from a position of power with regard to ... East Timor.¹⁹

3.32 Australians for a Free East Timor claimed that:

The Australian government ... seek[s] to prevent East Timor gaining Maritime Boundaries other than the JPDA ... as shown by its withdrawal on 19th March [sic] from the jurisdiction of the ICJ in relation to Maritime boundaries for East Timor ...²⁰

3.33 DFAT rejected the notion of unequal negotiating positions and said that, in relation to the East Timor negotiating team, it:

consisted primarily of UN funded negotiators – very skilful and able international negotiators – and they still continue to draw on those negotiators...

and further, as to Australia's attitude towards East Timor:

But I think there is a more fundamental point here, and that is that Australia made it possible for East Timor to realise its independence ambitions. We have a very large and expensive military presence in East Timor to underpin that act of independence. We are, if not the largest, one of the largest aid donors to East Timor.²¹

3.34 The Department of the Attorney-General stated that the declarations apply to all of Australia's maritime boundaries, not just those with East Timor, and that 'East Timor has said it is keen on negotiation as a means of resolving these disputes.'²² The Department drew the Committee's attention to some 'very odd results' that have arisen in instances of third party arbitration:

The case I am thinking of is a boundary that was set by arbitration between Canada and France in relation to some French possessions very close to the coastline of Canada. These islands ended up with an exclusive economic zone which was 200 nautical miles long and 10½ nautical miles wide.²³

3.35 In response to suggestions that the declaration under the ICJ was intended to deprive East Timor of the opportunity to seek the Court's ruling on its maritime boundary with Australia, the Attorney-General's Department pointed out that East Timor was not yet a member of the United Nations

19 The Justice and International Mission of the Uniting Church in Australia, *Submission No. 34*, p. 1.

20 Australians for a Free East Timor, *Submission No. 6*, p. 1.

21 Geoffrey Raby, *Transcript of Evidence*, 8 October 2002, p.235.

22 William Campbell, *Transcript of Evidence*, 12 July 2002, pp. 50-1.

23 William Campbell, *Transcript of Evidence*, 12 July 2002, p. 51.

and so, in the Department's view, does not have status to refer a matter to the ICJ.²⁴

3.36 Gillian Trigg and Dean Bialek have argued that:

The unique geographical, geological, historical, political and economic characteristic of each disputed boundary preclude the formulation of hard and fast rules for delimitation.²⁵

3.37 The Committee explored the possible outcomes of a litigated settlement with some witnesses. One scenario that emerged was that one of the parties could win complete jurisdiction of the disputed JPDA. It was put to witnesses that, in this event, although Australia might be able to wear the impact of such a loss, East Timor's precarious economic condition would make it an all or nothing gamble for that country.

3.38 In response to this suggestion Mark Zirnsak, representing the Uniting Church, agreed:

there is the possibility that East Timor could come off financially worse if international arbitration were to result in a maritime boundary along the Timor Trough ... a negotiated settlement is obviously preferable ...²⁶

This is because a negotiated settlement would allow the parties to consider a wide range of factors in graduated terms rather than in the black and white terms of international law to which a court or arbitral tribunal would be constrained. This wider range of factors includes:

how such a fledgling nation can develop infrastructure and an economic basis for survival and development.²⁷

Conclusions

3.39 The terms of the Treaty touch upon issues of delimitation in so far as they provide for the dimensions of a JPDA in which petroleum activities can be conducted. The Committee is of the view that the 'without prejudice' clause taken together with the explicit acknowledgment of Article 83 of the UNCLOS in Article 2 of the Treaty provides for the agreement of both parties that the terms of the Treaty are provisional.

24 William Campbell, *Transcript of Evidence*, 12 July 2002, p. 51.

25 Gillian Trigg and Dean Bialek, 'The New Timor Sea Treaty and Interim Arrangements for Joint Development of Petroleum Resources of the Timor Gap', *Exhibit No. 10*, p. 19.

26 Mark Zirnsak, *Transcript of Evidence*, 4 October 2002, p. 161.

27 David Pargeter, *Transcript of Evidence*, 4 October 2002, p. 160.

3.40 A considerable body of evidence, in the form of oral and written submissions, was received regarding the various principles and possibilities that might be considered in settling the maritime boundary between Australia and East Timor. However, it is not within the purview of the Committee's inquiry into the Treaty to prejudge the possible outcomes of negotiation or litigation on the matter of a permanent maritime delimitation.

Resource sharing arrangements

- 4.1 The fundamental function of the Treaty is to provide a framework in which levels of fiscal and legal security are adequate to allow the development of the resources of an area of the Timor Sea seabed that is currently subject to overlapping claims by Australia and East Timor.
- 4.2 The resource sharing arrangements set out in Article 4 of the Treaty provide for East Timor having title to 90 percent of the resources of the JPDA and Australia having title to 10 percent. Annex E of the Treaty provides for the unitisation of the Greater Sunrise oil and gas fields on the basis that 20.1 percent lies within the JPDA and 79.9 percent lies within Australian jurisdiction.

The Bayu-Undan Field

- 4.3 The participants in petroleum activities in the Bayu-Undan oil and gas field include Phillips Petroleum, Inpex Sahul, Santos and Petroz.
- 4.4 Phillips has estimated that the Bayu-Undan field contains 400 million barrels of condensate and liquified petroleum gas (LPG) and 3.4 trillion cubic feet of natural gas.¹
- 4.5 The Bayu-Undan participants intend to develop the resources in two phases. The first phase involves stripping the extracted gas of its liquids, reinjecting the gas into the ground and selling the liquids. They expect production from this phase of the project to commence in early 2004 with

¹ Phillips Petroleum, *Submission No. 36*, p. 3.

production peaking at around 110,000 barrels per day of condensate and LPG.²

- 4.6 The second phase of the development involves piping gas to Darwin for export to Japan. The Bayu-Undan participants have contracted to supply 3 million tonnes of LNG a year to Tokyo Electric Power Company and Tokyo Gas for a period of 17 years commencing in January 2006.³

Benefits to East Timor and Australia

East Timor

- 4.7 The royalties and taxation revenue flowing to East Timor should amount to between \$US2.5 – \$US3 billion.⁴ East Timor expects to receive \$US70 million (\$A127 million) in 2004. Revenue is expected to peak at \$US300 million in 2013.⁵
- 4.8 In addition to this direct revenue flow, the participants have pledged \$US13 million of direct investment for associated project training and community infrastructure, such as port, airport and health facilities, in East Timor. They will also spend \$US44 million in on-going costs in East Timor over the 20 year life of the project.⁶
- 4.9 In terms of the employment and training of nationals and permanent residents of East Timor:

As part of the installation phase of the gas recycling project, a total of 61 East Timorese are working offshore and onshore. This number includes four East Timorese who, after attending the Madang Maritime college in PNG ... are now serving the required sea time to obtain the Seaman Grade 2 qualification ...

Phillips has committed \$US2 million to be invested from now until March 2004 in training ... A further \$US5 million over the next 10 years has been committed to provide additional on-the-job training, subject only to the LNG project going ahead [that is phase two of the project].⁷

2 Phillips Petroleum, *Submission No. 36*, p. 3.

3 Phillips Petroleum, *Submission No. 36*, p. 3.

4 Phillips Petroleum, *Submission No. 36*, p. 4.

5 Mari Alkatiri, 'Timor Sea Oil is Passport from Poverty', *Australian Financial Review*, 2 September 2002.

6 Phillips Petroleum, *Submission No. 36*, p. 4.

7 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 50. (The \$US2 million and \$US5 million are in addition to the \$US13 million dedicated to training and infrastructure. Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 56.)

- 4.10 A further benefit to East Timor will be the supply of LPG from the second phase of the project at a concessional rate which Phillips estimates to be worth 'some \$A20 million over the next 20 years.'⁸ The supply of cheap LPG will enable East Timor to replace imported diesel fuel for power generators.

Australia

- 4.11 Australia stands to gain an estimated \$A2 billion in direct revenue from the exploitation of the resources of the Bayu-Undan over the life of the project.⁹
- 4.12 At the time of writing, 20 new jobs have been created in Darwin and 54 jobs Australia-wide.¹⁰ The construction of the LNG plant in Darwin will create an estimated 1,200 jobs.¹¹ During the operation phase the LNG plant will create 100 direct jobs and between 300 and 500 indirect jobs for 20 years. The construction of the pipeline from the Bayu-Undan to Darwin together with investments in Darwin are estimated at approximately \$US1.5 billion.¹²
- 4.13 Bayu-Undan gas will not supply an Australian LNG market. The complete resources of the Bayu-Undan have been committed to overseas customers.¹³

The Greater Sunrise Field

- 4.14 The participants in the development of the Greater Sunrise oil and gas fields include Woodside Energy, Phillips Petroleum and Shell Development.
- 4.15 At the time of writing Woodside estimated the Greater Sunrise fields to contain about 8 trillion cubic feet of gas.¹⁴ The Government of the Northern Territory estimates that the fields contain approximately 300 million barrels of condensate.¹⁵
- 4.16 Woodside stated that work on the Greater Sunrise venture has been:

8 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 51.

9 Phillips Petroleum, *Submission No. 36*, p. 4.

10 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 50.

11 Phillips Petroleum, *Submission No. 36*, p. 5.

12 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 54.

13 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 60.

14 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 265.

15 Andrew Andrejewskis, *Transcript of Evidence*, 3 October 2002, p. 71.

what we would consider assessment work, scoping work, concept work and screening work to try to understand what is the best way to go forward and develop this field.¹⁶

- 4.17 Woodside informed the Committee that to progress to the next stage, 'what we refer to as the basis of the design phase ...', would involve a potential commitment of \$A200 million.¹⁷ The overall investment in the project is an estimated at \$A6 billion.¹⁸
- 4.18 The timetable for committing to the design phase is currently scheduled for the first quarter of 2003.¹⁹ Woodside has a target date of October 2008 for the first sales of gas.²⁰

Benefits to Australia and East Timor

- 4.19 At the time of writing this report the IUA is still the subject of negotiations between Australia and East Timor. The amounts of direct fiscal benefits given in the following section are subject to the Sunrise IUA confirming that Australia and East Timor will have title to 79.9 percent and 20.1 percent respectively of the resources of the Greater Sunrise as provided for in Annex E of the Treaty.
- 4.20 Because of the relatively early stages of development of the Greater Sunrise resources the Committee was not provided with the complete detail of the fiscal and development benefits to Australia and East Timor.
- 4.21 Over the length of the project, with Sunrise gas being processed using a floating liquefied natural gas (FLNG) facility (the stated preferred option of the participants), Australia and East Timor could expect over \$A30 billion in export revenues and approximately \$A8 billion in taxes.²¹
- 4.22 Shell and Woodside are investing \$A11 million in FLNG technology.²²

Australia

- 4.23 The Committee heard that, under current expectations of the tax structures, the resources of the Greater Sunrise would be worth an estimated \$A400 million a year to Australia.²³

16 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 262.

17 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 260.

18 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 260.

19 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 263.

20 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 266.

21 Shell Development, *Submission No. 51*, p. 2.

22 Shell Development, *Submission No. 51*, p. 2.

23 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 265.

- 4.24 Apart from the direct revenue, the Committee explored the benefits that would flow to Australia if the Sunrise venture partners opt to bring the resource onshore rather than processing offshore on a FLNG facility, as well as the possibility of the gas being used to supply the domestic market.
- 4.25 In the event that Sunrise participants brought gas onshore Peter Brain of the National Institute of Economic and Industry Research, who was engaged by the Northern Territory Chamber of Commerce and Industry and the Territory Construction Association, estimated the financial benefit to be in the order of \$A22 billion with the employment of a workforce of about 20,000 people.²⁴ If the Sunrise partners choose the FLNG option, the Committee was advised that the benefits would be in the order of \$A1 million.²⁵
- 4.26 The Sunrise development requires the consumption of approximately 900 terajoules extra per day to be economically viable. This figure can be put into perspective in view of the fact that the entire east coast market is 1,400 terajoules a day.
- 4.27 The Northern Territory Government canvassed possible domestic customers for Sunrise gas. These included:
- a number of mineral processing projects, aluminium smelting, alumina refining such as [Alcan] Gove, a zinc refinery at McArthur River and some other mineral processing areas south of Darwin.
 - There are customers in Australia, including the piping of gas to South Australia, New South Wales via Moomba and the potential also to go to the Mount Isa region.²⁶
- 4.28 The role of the expansion of current projects and the development of new projects was emphasised as the key to increasing domestic consumption to the required amount to make onshore processing and supply of Sunrise gas viable:
- If we look at an aluminium smelter plus the new zinc smelter plus expansion on Gove plus power just in the Northern Territory alone, that would take care of something of the order of half of that particular 980 [terajoules] or close to it.²⁷
- 4.29 It was pointed out that the relation between consumption and supply is not all one way. The supply of gas is likely to increase consumption:

24 Bruce Fadelli, *Transcript of Evidence*, 3 October 2002, p. 65.

25 Bruce Fadelli, *Transcript of Evidence*, 3 October 2002, p. 66.

26 Andrew Andrejewskis, *Transcript of Evidence*, 3 October 2002, p. 72.

27 Andrew Andrejewskis, *Transcript of Evidence*, 3 October 2002, p. 74.

Sunrise is critical to the establishment of some of the customers I mentioned ... Without the large volume of gas that Sunrise could supply, these projects could not proceed.²⁸

Further:

Natural gas is not available in sufficient quantities in the Central Australian region to underpin development ... of energy-hungry projects [such as large scale hard rock mining].²⁹

- 4.30 The Northern Territory Government and the Northern Territory Minerals Council also referred to increased competition in the domestic market as a result of bringing gas onshore which, the Committee was advised, could actually reduce the price of gas in various states in real terms by 10 cents or 20 cents per gigajoule.³⁰

East Timor

- 4.31 East Timor could expect to receive approximately \$A100 million a year from the development of Sunrise resources under the terms stated in Annex E of the proposed Treaty.
- 4.32 In terms of indirect benefits flowing to East Timor from the development of Sunrise resources, Woodside acknowledged that the Treaty provides for the training and education of East Timorese. David Maxwell stated that:
- based on past experiences in other projects, we would seek to work with both the Australia side and the East Timor side to maximise opportunities for both ... Provided that people have suitable capacity and capabilities ... we would support training and development on both the Australia side and the East Timor side.³¹

The national interests of Australia and East Timor

- 4.33 The Committee acknowledges that its purpose is to provide for parliamentary and public scrutiny of treaty actions in terms of their promotion or obstruction of Australia's national interest. It is for the Government and Parliament of East Timor to represent the interests entrusted to them. However, the Committee understands that:

28 Andrew Andrejewskis, *Transcript of Evidence*, 3 October 2002, p. 75.

29 Kezia Purick, *Transcript of Evidence*, 3 October 2002, p. 82.

30 Andrew Andrejewskis, *Transcript of Evidence*, 3 October 2002, p. 79.

31 David Maxwell, *Transcript of Evidence*, 14 October 2002, p. 266.

Australia has an interest in promoting East Timor's future economic viability ... underpinned by Timor Sea revenue.³²

- 4.34 The inquiry's terms of reference require the consideration of the implications of the proposed ratification of the Timor Sea Treaty in terms of Australia's national interest. Persuasive arguments were made that the national interests of Australia and East Timor are interrelated – the Treaty does not represent a zero sum game in which one party's gain is the other party's loss.
- 4.35 The Australian Council of Trade Unions (ACTU) focused upon the interrelation of the national interests of Australia and its neighbours observing that the rim to the north of Australia was an area of instability.³³
- 4.36 Alan Matheson, representing the ACTU, illustrated, in more direct terms, how the instability of states within this rim might have an adverse influence on Australia's national interest:

Nauru is now in the top five of money launderers internationally. The last figures I saw were between \$70 million and \$150 million [of] Russian drug money being laundered through the front door in Nauru. While compensation and payments came ... they came too late. But certainly the governance of Nauru would not be what you would be hoping for in terms of the Timorese.³⁴

- 4.37 The significance of the income from the Bayu-Undan to East Timor is brought into perspective when it is recognised that the annual budget of East Timor is about \$US77 million, of which \$US30 million is aid from foreign donors.³⁵
- 4.38 The Uniting Church informed the Committee that:
- East Timor has only a 40% literacy rate, a GNP per capita of less than \$US340, life expectancy of 48 years and an infant mortality rate of 135 per thousand live births. The maternal mortality rate is reported to be twice that of other countries in South East Asia and the Western Pacific.³⁶

³² Geoffrey Raby, *Transcript of Evidence*, 12 July 2002, p. 22.

³³ Alan Matheson, *Transcript of Evidence*, 4 October 2002, p. 183.

³⁴ Alan Matheson, *Transcript of Evidence*, 4 October 2002, p. 185.

³⁵ Mari Alkatiri, 'Timor Sea Oil is Passport from Poverty', *Australian Financial Review*, 2 September 2002.

³⁶ Uniting Church in Australia, *Submission No. 34.1*, p. 2.

- 4.39 The Uniting Church also noted that Australia had reduced its overseas development assistance by 12.7 percent in the 2002-03 budget to \$A36 million.³⁷
- 4.40 DFAT informed the Committee that the decline in the level of funding is in accordance with a \$A150 million four year funding plan for the reconstruction and development of East Timor, announced by the Australian Government in May 2000. \$A40 million per annum was allocated for 2000-01 and 2001-02 and \$A35 million per annum allocated for 2002-03 and 2003-04. This aid package follows Australian assistance of \$A81 million in 1999-2000.³⁸
- 4.41 Oxfam/Community Aid Abroad referred to the decline in Australian funding as reflecting a more general trend among international donors to East Timor:
- International donors... may well carry [East Timor] through to 2004-05, but beyond that it is very unlikely they will get [current levels] of budgetary support. Donors are expecting that an agreement will be reached and their exit strategy, if you like, is the revenue stream that will come from the Timor Gap.³⁹
- 4.42 If the Bayu-Undan development were not to proceed because of a delay in the ratification of the Treaty, East Timor would lose the principal foundation of its economic viability:
- the political and social consequences of ... not having a viable source of income would be very serious ...⁴⁰

Timing of ratification

- 4.43 The necessity of prompt ratification of the Treaty for ensuring certainty to the Bayu-Undan developers has been put forcefully by the Prime Minister of East Timor, Mari Alkatiri:
- In a fickle and oversupplied world gas market ... uncertainty might deter investment for decades to come, perhaps forever.⁴¹
- 4.44 Phillips informed the Committee that the Bayu-Undan participants were committed to the delivery of liquified natural gas (LNG) to Japanese

37 Uniting Church in Australia, *Submission No. 34.1*, p. 2.

38 Department of Foreign Affairs, *Exhibit No. 13*, p. 1.

39 Peter Chamberlain, *Transcript of Evidence*, 4 October 2002, p. 176.

40 Peter Chamberlain, *Transcript of Evidence*, 4 October 2002, p. 177.

41 Mari Alkatiri, 'Timor Sea Oil is Passport from Poverty', *Australian Financial Review*, 2 September 2002.

customers by January 2006. In order to meet this obligation they required construction to begin on the LNG processing plant in Darwin by November 2002. They require the certainty provided by the entry into force of the Treaty before commencing construction.⁴²

- 4.45 Santos specified the time constraints imposed upon the Bayu-Undan participants to deliver their product within their contractual obligations and thus a satisfactory timetable for ratification of the Treaty could:

move a few weeks but it will not move a few months.⁴³

- 4.46 The Bayu-Undan participants require the ratification of the Treaty so that an Understandings Agreement they have with the Government of East Timor will come into effect. The Understandings Agreement covers the new Production Sharing Contracts (PSCs) that will become necessary on the entry into force of the Treaty:

The PSC needs to have the force of law. I think the treaty would be required to give us that comfort.⁴⁴

- 4.47 The Understandings Agreement was made necessary for two reasons. First, because of the changing tax regime that resulted from the alteration of the title to the resources of the JPDA from a 50:50 split under the terms of the Timor Gap Treaty to the 90:10 split under the Timor Sea Treaty.⁴⁵

- 4.48 The applicable tax regime under the former arrangement was that 50 percent of the resource was taxed at the Australian rate of about 30 percent and 50 percent of the resource was taxed at the Indonesian rate of about 45 percent. Under the new regime the applicable tax rate would be 10 percent of the resource being taxed at about 30 percent and 90 percent of the resource being taxed at 45 percent.

- 4.49 The Bayu-Undan participants also require protection from double taxation that is provided in Annex G of the Treaty in order to provide fiscal security for their investment.⁴⁶

- 4.50 The Understandings Agreement is also necessary because the old PSCs do not adequately provide for the production of gas, which is involved in the second phase of the Bayu-Undan development.⁴⁷

42 Phillips Petroleum, *Submission No. 36*, pp. 2-3.

43 Michael Price, *Transcript of Evidence*, 8 October 2002, p. 222.

44 Michael Lawry, *Transcript of Evidence*, 8 October 2002, p. 219.

45 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 52 and Wesley Glanville, *Transcript of Evidence*, 8 October 2002, p. 215.

46 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 52 and Michael Price, *Transcript of Evidence*, 8 October 2002, p. 220.

47 Wesley Glanville, *Transcript of Evidence*, 8 October 2002, p. 219.

- 4.51 The argument for securing the certain benefits flowing from the Bayu-Undan was put by Wesley Glanville, a representative of Santos, who argued that:

Greater Sunrise still has not resolved what its development process will be. To delay the ratification of the Timor Sea Treaty would prejudice commercially an existing, advanced development in Bayu-Undan.⁴⁸

- 4.52 The Committee accepts that there is a degree of uncertainty that accompanies a major development, like the Greater Sunrise, that is in its early phases. The benefits that will flow to Australia cannot be determined with any certainty because of a number of unknown factors. For instance, not only is the amount of direct revenue to Australia uncertain because of the absence of an IUA, but the indirect benefits, such as employment, are uncertain because the method of processing the resource is not yet decided.

- 4.53 Mr Glanville argued that adequate provision for good faith negotiations over the IUA were already in place:

Delaying the ratification of the Timor Sea Treaty pending the Sunrise International Unitisation Agreement would be against the terms and spirit of the 20 May Exchange of Notes and Memorandum of Understanding.⁴⁹

- 4.54 Woodside expressed concern that ratifying the Treaty separately to the IUA may lead to undesirable outcomes for the Greater Sunrise participants and the Australian national interest:

The East Timor side may see benefit in allowing [IUA negotiations] to drag as it becomes more important to Australia because Australia under the current structure enjoys more of the returns from the Greater Sunrise project. Allowing it to drag may be a negotiating tactic on the part of the East Timorese to extract more value out of the unitisation agreement.⁵⁰

- 4.55 Woodside's point was supported by Geoffrey Raby (DFAT) who suggested that ratification of the Treaty before the IUA:

would probably diminish the incentives on behalf of the negotiators to move quickly through the IUA.⁵¹

48 Wesley Glanville, *Transcript of Evidence*, 8 October 2002, p. 219.

49 Wesley Glanville, *Transcript of Evidence*, 8 October 2002, p. 213.

50 David Maxwell, *Transcript of Evidence*, 14 October, p. 264.

51 Geoffrey Raby, *Transcript of Evidence*, 14 October 2002, p. 271.

4.56 Because the Greater Sunrise constitutes a far larger resource in which Australia has a far larger stake Dr Raby concluded:

That the national interests are served most by ensuring that our disproportionately bigger interest in the Greater Sunrise is protected.⁵²

4.57 The Committee suggested that a delay in the ratification of the Treaty may jeopardise the \$A2 billion in revenue that will flow to Australia upon the development of the Bayu-Undan. DFAT responded that:

The resource does not disappear simply because a particular arrangement does not proceed in a certain timeframe.⁵³

Conclusions and recommendations

4.58 In the light of the evidence the Committee notes that the ratification of the Treaty is a fundamental condition precedent to the exploitation of the resources that lie beneath the Timor Sea. Significant benefit to the people and economies of the nations of Australia and East Timor will result from the immediate development of the Bayu-Undan and the ultimate development of the Greater Sunrise fields.

4.59 The Committee considers that there is an urgent need to progress negotiations on the IUA to provide the necessary certainty to allow the substantial investment required for the development of the Greater Sunrise fields, the economic and taxation benefits from which will ultimately be of significant benefit to both Australia and the emerging economy of East Timor.

4.60 The Committee notes that the Treaty was concluded on the basis of an MOU signed by Australia and East Timor on 20 May 2002 affirming that an IUA for the Greater Sunrise will be concluded by 31 December 2002.

Recommendation 1

4.61 **The Committee supports the Timor Sea Treaty and recommends that binding treaty action be taken.**

52 Geoffrey Raby, *Transcript of Evidence*, 14 October 2002, p. 275.

53 Geoffrey Raby, *Transcript of Evidence*, 14 October 2002, p. 275.

Recommendation 2

- 4.62 **The Committee recommends that the Government of Australia use its best endeavours in accordance with the Memorandum of Understanding signed in Dili on 20 May 2002 to conclude the International Unitisation Agreement for the Greater Sunrise fields on or before the date on which the Timor Sea Treaty is ratified and in any event before 31 December 2002 as this would serve the best interests of both nations.**

Minority Report by Senator Andrew Bartlett

The Australian Democrats have a number of concerns relating to Australia's ratification of the *Timor Sea Treaty between the Government of Australia and the Government of East Timor* (the Treaty) in its present form and in present circumstances.

For the purposes of this report, we concur with the Committee's summary of the relevant history and substance of the Treaty, as set out in Chapter 1 of its Report.

National Interest

The Australian Democrats acknowledge that the Committee's function is to consider and report on treaty actions with respect to their effect on Australia's national interest.

In this instance, we are persuaded by the weight of submissions which argued that Australia's national interest is inherently related to that of East Timor.

East Timor is a near neighbour of Australia and the world's newest sovereign state. It is clearly in Australia's best interests for East Timor to evolve into a strong, prosperous, democratic nation with proper regard for the rule of law.

As Oxfam Community Aid Abroad argued:

For Australia, an economically unviable East Timor could threaten national security and that of the region. An unstable East Timor could lead to a flow of refugees to Australia with associated costs. The Australian and international community would expect the Australian government to bear much of the responsibility for increased humanitarian aid and assistance, and the provision of continued peacekeeping and security assistance to East Timor.¹

For these reasons, the Democrats have given careful consideration to the many submissions which highlighted the serious consequences that ratification of the Treaty will have for the people of East Timor.

The East Timor Institute for Reconstruction Monitoring and Analysis stated that "this may be the most important issue for the future of our newly-independent country".²

1 Oxfam Community Aid Abroad, *Submissions No. 46*, p. 4.

2 East Timor Institute for Reconstruction Monitoring and Analysis, *Submissions No. 14*, p. 1.

It further argued that “without economic security and without the ability to rely on the rule of law both within our country and internationally”, East Timor faces the serious risk of becoming a “failed state”.³

Negotiation of the Treaty

A number of submissions alleged that the negotiation of the Treaty was unjustifiably hasty. Furthermore, it was claimed that East Timor’s agreement to the terms of the Treaty was extracted through undue pressure from Australia and reflects the unequal bargaining power of the two countries.

The Australian Democrats accept that Australia occupied a stronger position than that of East Timor in the negotiations leading to the signing of the Treaty. In particular, we note the vast difference in the relative wealth of each country and the fact that East Timor relies heavily on aid provided by the Australian Government.

It has also been argued that, because 40% of East Timor’s income from petroleum resources within the Joint Petroleum Development Area (JPDA) is being held in trust until the Treaty comes into force, East Timor had a compelling incentive to sign (and now to ratify) the Treaty.

This inequality of bargaining power may have influenced East Timor’s decision to sign the Treaty, however the Democrats do not believe that the Australian Government acted in bad faith or exerted undue pressure on East Timor during the negotiations.

We acknowledge that it is in the best interests of both countries to expedite an agreement for the sharing of revenue from petroleum resources in the JPDA. A number of companies with commercial interests within the JPDA argued persuasively that fiscal and regulatory certainty is vital to ensure ongoing investment in, and development of, those petroleum resources.

Clearly, then, there is a strong incentive for Australia and East Timor to reach an expeditious agreement so as to ensure that development opportunities are not lost. However, the economic benefits associated with expediency must not outweigh the fundamental importance of ensuring that the Treaty is fair and just.

For reasons outlined below, the Democrats do not believe that the Treaty represents a fair agreement between Australia and East Timor.

3 East Timor Institute for Reconstruction Monitoring and Analysis, *Submissions No. 14*, p. 6.

Furthermore, the Treaty neglects a number of key issues which we believe should be included in its provisions. For example, the Treaty is silent on environmental protection standards to be applied within the JPDA. This is an issue of considerable concern to the Democrats, given the potential impact on marine bio-systems and the implications regarding greenhouse gas emissions.

The Australian Maritime Officers Union (AMOU) raised concerns relating to the occupational health and safety (OH&S) standards applicable within the JPDA. In particular, the potential for OH&S standards within the JPDA to be less stringent than those which apply within Australia.

The Democrats are concerned by the Committee's willingness to rely on assurances from companies operating in the JPDA that they observe strict OH&S standards. This may well be the case, but the Democrats believe that it is inappropriate and undesirable for OH&S standards to be the subject of self-regulation within the private sector. For reasons of consistency and enforceability, Governments should take responsibility for determining and monitoring appropriate OH&S standards.

Australia and East Timor should negotiate appropriate OH&S standards to apply within the JPDA and these standards should be set out clearly in the terms of the Treaty, or annexed thereto.

The Treaty contains an employment preference clause for nationals and permanent residents of East Timor, however the Committee has acknowledged the practical difficulties associated with implementing such a clause. In particular, concerns have been raised regarding the lack of appropriate skills and training within the East Timorese workforce.

As noted in the Committee's report, Australia is well-placed to train East Timorese workers who seek to gain employment in the resource industry.

The Democrats believe that the issue of training should be specifically addressed in the terms of the Treaty.

In its submission to the Committee, the East Timor Independent Information Centre for the Timor Sea argued that:

Providing a stable environment for oil companies must not be prioritised over protecting the future of East Timor's sea, land, natural and human resources.⁴

This argument applies equally to the protection of Australia's natural and human resources.

4 East Timor Independent Information Centre for the Timor Sea, *Submissions No. 9*, p. 3.

Seabed boundary delimitation

The Australian Democrats believe that the revenue split of 90-10 in favour of East Timor represents a fair allocation of the resources within the JPDA, as it is defined within the Treaty.

However, uncertainty regarding the legality of the boundaries of the JPDA is crucial when assessing the overall fairness of this allocation between Australia and East Timor.

A series of legal opinions have given rise to conflicting interpretations of international law as it applies to the delimitation of seabed boundaries between Australia and East Timor. These divergent – and often equally persuasive – opinions illustrate the complexity of the legal principles governing the delimitation of seabed boundaries and the unique factual circumstances of this particular case.

An additional factor relevant to the delimitation of East Timor's maritime boundaries is the unitisation of the Greater Sunrise gas and oil fields, as provided for in the Treaty. Again there are conflicting legal opinions regarding this issue and it is unclear whether the International Unitisation Agreement would survive a subsequent change to East Timor's maritime boundaries, or whether it would be possible for the Agreement to be amended to reflect the new boundaries.

The Democrats believe that these issues must be resolved in accordance with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and any applicable customary law. If the parties are unable to reach a fair and just agreement, they should submit to the jurisdiction of the International Court of Justice (ICJ).

A number of submissions argued that the distribution of resources under the Treaty is likely to be a relevant consideration in the ultimate determination of East Timor's seabed boundaries, despite the 'without prejudice' clause contained in the Treaty (Article 2(b)).

The Democrats are sympathetic to those submissions which argue that the maritime boundaries between Australia and East Timor must be delimited as a matter of urgency, and prior to any further agreements on revenue sharing.

We are concerned that ratification of the Treaty may undermine the imperative to expedite the delimitation of seabed boundaries between Australia and East Timor. As Oxfam Community Aid Abroad notes:

The treaty does not ... provide any framework or mechanism for the advancement of maritime boundary negotiations.⁵

Jurisdiction of the International Court of Justice

The Australian Democrats take this opportunity to record our opposition to the declarations made by the Australian Government in March of this year, excluding Australia from the compulsory jurisdiction of the ICJ and UNCLOS with respect to maritime boundary disputes.

The Democrats believe that it is in Australia's best interests to support the structures and principles of the international legal system, which have been established to promote collective security, the just resolution of disputes and international peace. In practical terms, this means submitting to the rule of law even where this is contrary to our more immediate, financial interests.

Australia's withdrawal from the compulsory jurisdiction of the ICJ with respect to maritime boundary disputes is not only contrary to Australia's national interest, but sets a poor example in our dealings with East Timor.

In this respect, the East Timor Institute for Reconstruction Monitoring and Analysis made the point that:

Australia and others in the international community consistently encourage East Timor's new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices.... At the same time, Australia is not practicing what you are preaching. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message – that when the booty is large enough, the legal principles go out of the window.⁶

East Timor was not notified of Australia's decision prior to the making of the declarations. The National Interest Analysis with respect to these declarations, states:

This action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in relation to sea boundary delimitation that could not be made once the declaration under article 298(12)(a) of UNCLOS was made.

5 Oxfam Community Aid Abroad, *Submissions No. 46*, p. 3.

6 East Timor Institute for Reconstruction Monitoring and Analysis, *Submissions No. 14*, p. 5.

This decision clearly has adverse consequences for East Timor and may prevent it from “receiving the guidance and rulings”⁷ of the ICJ, in the event of a failure to resolve its competing claims with Australia.

It is arguable that Australia was at least morally, if not legally, obliged to give East Timor prior notice of this decision. In this respect, the Democrats note evidence to the effect that Australia’s withdrawal from the dispute resolution mechanisms under the ICJ and ONCLOS has been interpreted by the East Timorese as an act of bad faith on the part of the Australian Government.

Recommendations

For the reasons outlined above, the Australian Democrats recommend that the Treaty not be ratified in its present form.

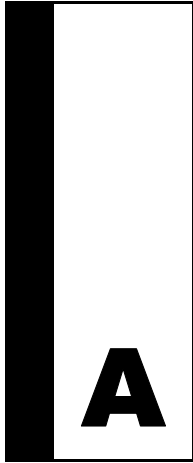
We note that during renegotiations, it will be possible for commercial activity to continue within the JPDA in accordance with the terms of the Exchange of Notes, which currently governs the sharing of revenue and remains in effect until the Treaty comes into force.

In addition, the Democrats make the following recommendations:

1. That Australia and East Timor negotiate a definitive time frame, not exceeding five years, in which the seabed boundaries between the two countries will be delimited, and agree to refer their competing claims to the ICJ in the event that a fair agreement cannot be reached.
 2. That Australia immediately reinstates its adherence to the dispute resolution mechanisms under the UNCLOS and to the jurisdiction of the ICJ pertaining to maritime boundary disputes.
 3. That, in negotiating the new Treaty, consideration be given to a requirement that all of Australia’s revenue, together with 40% of East Timor’s revenue, from petroleum resources within the JPDA be placed in a denominated interest bearing escrow account, pending the determination of the seabed boundaries.
 4. That the new Treaty include express provisions regarding:
 - (a) environmental standards to apply within the designated area;
 - (b) OH&S standards to apply within the designated area; and
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7 East Timor Institute for Reconstruction Monitoring and Analysis, *Submissions No. 14*, p. 6.

- (c) A commitment by Australia to assist in the provision of training for East Timorese nationals and permanent residents seeking to enter the resource industry.



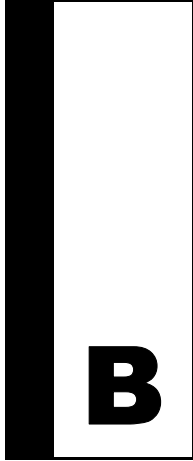
Appendix A – Submissions

- 1 Mr Clarrie Isaacs Yalurtja-Hajj
- 2 Dr Tim Anderson
- 3 Australian Patriot Movement
- 4 Mr John Severino
- 5 Job Link Joondalup Region Inc.
- 6 Australians for a Free East Timor
- 7 Australia East Timor Association
- 8 Hon J.D. Fischer MLC
- 9 The East Timor National NGO Forum
- 10 Kimberley Professional Fisherman's Association
- 11 Ms Joan Simpson
- 12 Nexen Petroleum Australia
- 13 East Timor Independent Information Centre for the Timor Sea
- 14 East Timor Institute for Reconstruction Monitoring and Analysis
- 15 Dr Vivian Louis Forbes
- 16 Australian Maritime Officers Union
- 17 Mr William Alford Fisher
- 18 Democratic Party of East Timor
- 19 Ms Susan Harris

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- 20 Australian Public Policy Research Network
 - 21 Woodside Australian Energy
 - 22 Phillips Fox
 - 22.1 Phillips Fox
 - 23 Labour Advocacy Institute of East Timor
 - 24 Progressive Labour Party
 - 25 Mr Bryan Havenhand
 - 26 Mr Matthew Coffey
 - 27 Mr Eric Gassy
 - 28 Mr Mervyn Murchie
 - 29 Mr Brian Manning
 - 30 Ms Toni Pollard
 - 31 Mr Quinton Temby
 - 32 East Timor Action Network/US
 - 33 Mr Stephen Langford
 - 33.1 Mr Stephen Langford
 - 34 Uniting Church in Australia
 - 34.1 Uniting Church in Australia
 - 35 Multiplex Constructions
 - 36 Phillips Petroleum Australia
 - 37 Asia-Pacific Coalition for East Timor
 - 38 Mr Dean Bialek
 - 39 Ms Melva Truchanas
 - 40 Mr Tim Thorne
 - 41 Australia East Timor Association
 - 42 Tokyo East Timor Association
 - 43 Mr Robert King
 - 44 BP Australia

45	Confidential
46	Community Aid Abroad
47	NSW Government
48	The Northern Territory Government
48.1	The Northern Territory Government
49	Confidential
50	Mr Robert Peters
51	Shell (Development) Australia
52	Ms Jenny Stephens
53	Union Aid Abroad - APHEDA
54	Mr Jordi Robert-Ribes
55	Ms Endie van Binsbergen
56	Queensland Government
57	Mr Aidan Ash
58	Ms Margret Pollock
59	Mr Lawrence De Costa
60	Ms Catherine Smith
61	Ms Cynthia O'Keefe
62	Australian Council of Trade Unions
63	Ms Anna McCormack
64	Miss Maryellen Flynn
65	Mr Dominic Amato
66	Mrs Valsa Mathew
67	Ms Helen McCauley
68	Mr Don Stokes
69	Mr Steven Aubrey
70	Mr Peter Jones
71	Mr Jonathan Peter

72	Presentation Sisters Wagga
73	Ms Barbara Symons
74	Ms Constance Ewald
75	Ms Ann Marshall
76	Ms Merrilyn Gates
77	Deacons
77.1	Deacons
78	Deacons
79	Confidential
80	Mr Peter Ryan
81	Ms Sally McGushin
82	Ms Nicole Schilling
83	Mr Lindsay Peet
84	Mr Ian Dumbrell
85	Ms Vanessa Yardley-Langridge
86	Ms Jennifer Holcroft
87	G A McKee and Associates



Appendix B – Witness list

Friday, 12 July 2002 - Canberra

Attorney-General's Department

Ms Rebecca Irwin, Acting Senior Adviser, Office of International Law

Mr William McFadyen Campbell, First Assistant Secretary, Office of International Law

Department of Foreign Affairs and Trade

Dr Gregory Alan French, Director, Sea Law, Environmental Law and Antarctic Policy Section

Dr Geoffrey Raby, First Assistant Secretary, International Organisations and Legal Division

Mr Dominic Trindade, Legal Adviser, Legal Branch

Department of Industry, Tourism and Resources

Mr Ian Walker, Manager, Timor Sea Team, Resources Division

Department of the Treasury

Mr Scott William Bartley, Manager, Business Income and Industry Policy Division

Monday, 26 August 2002 - Canberra**Phillips Fox**

Mr Pat Brazil, Special Counsel

Wednesday, 2 October 2002 - Perth**Private Citizens**

Mrs Marlene Kelly, Research Officer for the Hon. John Fischer MLC

Dr Vivian Louis Forbes, Adjunct Associate Professor, Curtin University,
Map Curator, University of Western Australia

Australian Maritime Officers Union

Mr Brad George, National Industrial Officer, Fremantle

Kimberley Professional Fisherman's Association

Mr Alan Fraser, President

Mr Adam Masters, Vice President

Phillips Petroleum Australia

Mrs Karen Brand, Managing Counsel

Mr Mike Nazroo, Vice President, Commercial

Thursday, 3 October 2002 - Darwin**Private Citizen**

Mr Matthew Coffey

Australians for a Free East Timor

Mr Rob Wesley-Smith, Spokesperson

East Timor Independent Information Centre for the Timor Sea

Mr Demetrio Amaral de Carvalho

East Timor Institute for Reconstruction Monitoring and Analysis

Mr Adriano do Nascimento, Timor Sea Project Coordinator

Honeywell Ltd

Mr Terry Almond, Manager (Honeywell) and Executive Member, NT Mineral Council (Inc.)

Northern Territory Chamber of Commerce and Industry

Mr Bruce Fadelli, President

Northern Territory Government

Mr Andrew Andrejewskis, Director, Petroleum Developments

NT Gas Pty Ltd

Mr Garth Borgelt, NT Manager and Member, NT Minerals Council

NT Minerals Council (Inc.)

Ms Kezia Purick, Chief Executive Officer

The East Timor National NGO Forum

Mr Cecilio Caminho Freitas, Executive Director

Friday, 4 October 2002 - Melbourne**Private Citizen**

Mr Dean Bialek, Lecturer, Faculty of Law, University of Melbourne

Australian Council of Trade Unions

Mr Alan Matheson, International Officer

BP Australia

Mr Geoff Coghill, Tax Manager - Indirect Taxes

Oxfam Community Aid Abroad

Mr Peter Chamberlain, Timor Response Manager

Mr James Ensor, Director of Public Policy

Uniting Church in Australia

Rev David Pargeter, Director, Justice and International Mission Unit,
Synod of Victoria

Dr Mark Zirnsak, Social Justice Development Officer, Justice and
International Mission Unit, Synod of Victoria and Tasmania

Tuesday, 8 October 2002 - Canberra**Private Citizen**

Mr John Imle, Energy Consultant, Oceanic Exploration Co. Ltd and
Petrotimor Companhia de Petroleos SARL

Attorney-General's Department

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Mr William McFadyen Campbell, First Assistant Secretary, Office of
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Ms Rebecca Irwin, Assistant Secretary, Office of International Law

Deacons

Mr Ron Nathans, Partner

Dr Christopher Ward, Barrister

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Dr Andrew Serdy, First Assistant Secretary, International Organisations
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Department of the Treasury

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Division

Santos Limited

Mr Wesley Glanville, Manager Legal

Mr Stephen Kelemen, Manager Northern Australia

Mr Michael Lawry, Manager Group Taxation

Mr Michael Price, Manager Commercial (Northern Business Unit)

Monday, 14 October 2002 - Canberra**Attorney-General's Department**

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Department of Industry, Tourism and Resources

Mr Ian Walker, Manager, Timor Sea Team, Resources Division

Department of the Treasury

Mr Michael Buckley, Manager, Resources and Environment Tax Unit
Business Income Division

Mr Anthony Free, Manager, Excise Unit, Indirect Tax Division

Mrs Ariane Pickering, Special Adviser-Treaties

Woodside Australian Energy

Mr David Maxwell, Director, Gas Business Unit

Mr Adrian Wilks, Commercial and JV Coordinator, Sunrise Project



Appendix C – Exhibits

- 1 Dr Andrew McNaughtan (Convener, Australia East Timor Association), *An Opinion in the Matter of East Timor's Maritime Boundaries* by Vaughan Lowe, Christopher Carleton, and Christopher Ward, 11 April 2002.
- 2 Mr Ron Nathans (Deacons), *East Timor's Maritime Boundaries*.
- 3 Mr Ron Nathans (Deacons), *East Timor Pipeline – Feasibility Study*.
- 4 Mr Pat Brazil (Special Counsel, Phillips Fox), 'Interim measures Pending Maritime Delimitation Agreements' by Ranier Lagoni, *The American Journal of International Law*, Vol 78, pp. 345-369.
- 5 Woodside Australian Energy, Slide presentation.
- 6 Mr Brad George (National Industrial Officer, Fremantle, Australian Maritime Officers Union), *The Australian Offshore Support Vessel Code of Safe Working Practice*, from the Australian Maritime Safety Authority.
- 7 Mr Andrew Andrejewskis (Director, Petroleum Developments, Northern Territory Government), *A Report to the Northern Territory Government by ACIL Consulting*, dated May 2002.
- 8 Mr Geoff Coghill (Tax Manager - Indirect Taxes, BP Australia), Slide presentation.
- 9 Mr Ron Nathans (Deacons), 'Stratigraphic Correlation across an Arc-Continent Collision Zone: Timor and the Australian Northwest Shelf' by T. R. Charlton, *Australian Journal of Earth Sciences* (1989) 36, pp. 363-375.
- 10 Mr William Campbell (First Assistant Secretary, Office of International Law, Business Income Division, Attorney-General's Department), 'The New Timor Sea Treaty and Interim

Arrangements for Joint Development of Petroleum Resources of the Timor Gap' by Gillian Trigg and Dean Bialek, *Melbourne Journal of International Law*, Vol 3, (2002), pp. 1-42.

- 11 Mr William Campbell (First Assistant Secretary, Office of International Law, Business Income Division, Attorney-General Department), 'East Timor's Possible Boundaries with Indonesia and Australia in the Timor Sea' by Victor Prescott.
- 12 Dr Geoffrey Raby (First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade), *East Timor Update, October 2002*, by AusAID.
- 13 Dr Geoffrey Raby (First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade), *Australian Development Cooperation with East Timor – Interim Strategy Outline Paper*, dated May 2001.