

Other matters arising

- 5.1 The Committee received over 80 submissions to its inquiry into the proposed ratification of the Timor Sea Treaty. The majority of these expressed views and provided information on delimitation and resource sharing issues. However, aspects of two other issues featured in written and oral evidence received by the Committee. These issues addressed the adequacy of the terms of the Treaty and the agencies that the Treaty provides for in ensuring adequate employment and environmental standards in the JPDA.

Employment

Employment preference clauses

- 5.2 The Australian Maritime Officers Union (AMOU) referred to a difference between the 1989 Timor Gap Treaty, which included an employment preference clause for nationals and permanent residents of Australia and Indonesia (Article 24), and the Timor Sea Treaty, which only provides for the preferred employment of the nationals and permanent residents of East Timor (Article 11).¹ The Committee explored why an employment preference clause for nationals and permanent residents of Australia had not been included in the Treaty as well as the propriety of making this sort of requirement in a treaty.
- 5.3 The AMOU argued that the employment preference clause for nationals of East Timor would not produce the desired effect because:

¹ Australian Maritime Officers Union, *Submission No. 16*, p. 2.

The [occupational health and safety] requirement ... effectively removes the ability for any East Timorese to work in the JPDA because of the current lack of training, education and previous employment experience ... Under the [1989 arrangements] the employment opportunities would have been transferred to Australians²

- 5.4 The AMOU stated that it would be satisfied with the application of the resource split to employment so that a 90 percent East Timor, 10 percent Australia workforce would apply in the JPDA.³ This would enable:

Australia to train up the East Timorese to the 90-10 position over a period of time.⁴

- 5.5 An advantage to East Timor of having an Australian presence in the JPDA would be the familiarisation of the East Timor workforce with Australian standards and work practices. Linking the skills and conditions of the East Timor and Australian workforces in this way would provide benefits to both parties in terms of their suitability for employment in projects both within and outside the JPDA.⁵

- 5.6 Dr Raby explained the absence of an employment preference clause for Australian nationals:

What we are dealing with, with this treaty, is not an issue of industry policy. This is a legal instrument that is permissive ... it creates a legal framework for commercial development to proceed. How that is structured is a matter of government policy and, ultimately, a matter for commercial decision of the partners.⁶

- 5.7 The Committee inquired whether, in the light of the low level of skills among the East Timorese workforce, the employment preference clause was merely aspirational. The Attorney General's Department pointed out that the employment clause:

only binds governments, and the governments do not employ the employees.⁷

The Committee heard that the clause is essentially a statement of intent.⁸ In fact, the level of employment of nationals from a third country under the 1989 Treaty was around 15 percent.⁹

2 Australian Maritime Officers Union, *Submission No. 16*, p. 2.

3 Brad George, *Transcript of Evidence*, 2 October 2002, p. 20.

4 Brad George, *Transcript of Evidence*, 2 October 2002, p. 20.

5 Brad George, *Transcript of Evidence*, 2 October 2002, p. 27.

6 Geoffrey Raby, *Transcript of Evidence*, 5 July 2002, p. 41.

7 William Campbell, *Transcript of Evidence*, 14 October 2002, p. 279.

8 William Campbell, *Transcript of Evidence*, 14 October 2002, p. 279.

- 5.8 Australian nationals will benefit from employment arising as a result of onshore processing. The Committee is of the view that for all practical purposes the Treaty does not require an employment preference clause for Australians.
- 5.9 The Committee is convinced of the international competitiveness of the Australian maritime workforce and urges the Australian Government to ensure that the employment of Australians in the JPDA is not eroded by the undermining of adequate standards of OH&S.¹⁰

Training

- 5.10 The AMOU raised a number of issues regarding the employment of East Timorese nationals and the ability of East Timor to realise the full benefits available under the Treaty.
- 5.11 The Committee commends the training and employment programs that are currently being run by Phillips. Australia can also continue to play a significant role in improving levels of literacy and education in East Timor. Improving literacy rates is vital in enabling East Timor to realise the full potential of the benefits flowing to it under the terms of the Treaty.
- 5.12 The AMOU acknowledged that:
- East Timor is going to have trouble in the initial stages with supplying people who can comply with some of the basic requirements of international marine law – one of which is the use of English as the international language.¹¹
- 5.13 The Northern Territory Minerals Council pointed out that Australia is in a strong position to train East Timorese nationals:
- our standards of education and training are exceptionally high, particularly in the resource industry ... the Northern Territory University [and] training advisory councils that cover the respective industries and groups in the Northern Territory ... could provide advice and the opportunity for training here in the Territory.¹²
- 5.14 The AMOU focused on the potential export earnings to Australia from the training of a maritime workforce of East Timorese nationals. Australia has the infrastructure required for training already in place with:

9 Ian Walker, *Transcript of Evidence*, 14 October 2002, p. 278.

10 See below, paras. 5.18 – 5.25.

11 Brad George, *Transcript of Evidence*, 2 October 2002, p. 27.

12 Kezia Purick, *Transcript of Evidence*, 3 October 2002, p. 84.

The Australian Maritime College ... at Port Moresby ... the Challenger TAFE in Fremantle, two maritime colleges in New South Wales, a technical college in New South Wales and the maritime college in Tasmania ...¹³

5.15 The AMOU reiterated its concern that:

We need to hurry up and spend some time and money on assisting people with English-language training.¹⁴

5.16 The Committee acknowledges the existence of:

a committee on training and education, which is chaired by Prime Minister Alkatiri and has membership from the Northern Territory government, the Commonwealth and industry.¹⁵

5.17 The Committee encourages the Commonwealth together with other stakeholders to continue to explore specific ways of maximising the Treaty benefits to East Timor in the gaining of skills for nationals over the long term.

Occupational health and safety

5.18 Another issue raised was the adequate enforcement of satisfactory standards of occupational health and safety (OH&S) within the JPDA.

5.19 The AMOU was concerned that, although the Treaty provided a framework for the generation of OH&S standards, it did not contain any reference to the specific and substantive standards that would apply or how these standards would be derived. Brad George of the AMOU inquired:

How could Australia agree to standards in the Timor Gap that may be less stringent and definitely less enforceable than those operating in the Bass Strait?¹⁶

5.20 In responding to queries about OH&S standards the Northern Territory Minerals Council stated that:

In the resource industry ... the issue of safety is the number one priority ... By nature it is a very hazardous industry: whether it is hard rock mining or petroleum developments offshore ... That would be of paramount importance to the operators in having not only a skilled workforce but also a workforce that was attuned to

13 Brad George, *Transcript of Evidence*, 2 October 2002, p. 9.

14 Brad George, *Transcript of Evidence*, 2 October 2002, p. 29.

15 Ian Walker, *Transcript of Evidence*, 12 July 2002, p. 37.

16 Brad George, *Transcript of Evidence*, 2 October 2002, p. 20.

the safety and health requirements of that project and of the company and the industry generally.¹⁷

5.21 Phillips confirmed the importance of OH&S in the petroleum industry:

We apply world-class occupational health, safety and environmental standards wherever we operate ...¹⁸

5.22 The AMOU suggested that acceptable minimum OH&S and environmental standards could be ensured within the JPDA by Australia and East Timor committing to the adoption of the superior legislation of whichever country covers these matters.

5.23 The Attorney General's Department responded that the adoption of a 'superior legislation' clause would have posed significant diplomatic difficulties:

You get into a question about what is superior. There would be an argument over that particular item ... I do not think it would have been realistic to have on the face of the document for East Timor that Australian laws will apply to occupational health and safety. The East Timorese simply would not have agreed to that, although that well might be the outcome.¹⁹

5.24 Instead of the 'superior legislation' clause suggested by the AMOU, DITR drew the Committee's attention to Article 12 of the Treaty that provides for OH&S standards:

that are no less effective than those standards and procedures that would apply to persons employed on similar structures in Australia and East Timor.²⁰

5.25 The Committee accepts that the form of words guaranteeing adequate standards of OH&S are satisfactory to their purpose and acknowledges that a similar form of words was used in the Timor Gap Treaty (Article 25).

Flags of convenience

5.26 The AMOU identified the use of flags of convenience as a major potential contributor to the difficulty of enforcing adequate OH&S and environmental safety standards:

17 Kezia Purick, *Transcript of Evidence*, 3 October 2002, p. 84.

18 Mike Nazroo, *Transcript of Evidence*, 2 October 2002, p. 57.

19 William Campbell, *Transcript of Evidence*, 8 October 2002, p. 251.

20 Ian Walker, *Transcript of Evidence*, 8 October 2002, p. 251.

Article 17 – Petroleum Industry Vessels, provides a number of statements but actually delivers nothing ... all vessels working in Australian and international waters are required to comply with the manning certificates (crewing), operating standards and safety rules of their flag state. [However] not a single vessel operating in the Bayu-Undan is flagged in Australia or East Timor. The article would therefore rely solely on the goodwill of the flag states eg Panama and Norway to enforce the international conventions down here in the Timor Sea.²¹

The problem is not so much one of not having in place adequate standards as these are provided for under international conventions, but rather the difficulty of enforcing compliance to these standards.

5.27 There are three ways of ensuring adequate compliance to standards in Australia. First, standards are enforced if vessels are flagged in Australia. Second, when a vessel calls into an Australian port it is subject to the scrutiny of the Australian Maritime Safety Authority (AMSA). Third, an Australian crew will ensure adequate standards by reporting breaches.

5.28 However:

The AMOU believe that there is currently not a single vessel operating in the Bayu-Undan that is flagged in Australia or East Timor ... the vessels in the construction phase are effectively operating out of Indonesia ... [and] the vessels crewed by foreign nationals – those involved in the construction phase and effectively, under this treaty, any vessel from this point onwards that wishes to come out of Kupang [an Indonesian port] – are not subject to any enforcement process.²²

5.29 The AMOU submitted that vessels operating in the JPDA should be subject to the enforcement of minimal OH&S and environmental standards. The three ways in which enforcement could be ensured appear to be either flagging requirements (although the AMOU has stated that it did not object *per se* to flag of convenience arrangements²³), or port of call requirements, or the inclusion of an employment preference clause for Australian nationals.

5.30 In response to concerns over the enforcement of OH&S and environmental safety standards the Committee heard that:

Currently the procedure ... for ships seeking to enter the [JPDA] for the purpose of stopping at a fixed platform is that the contract

21 Australian Maritime Officers Union, *Submission No. 16*, p. 3.

22 Brad George, *Transcript of Evidence*, 2 October 2002, pp. 20-1.

23 Brad George, *Transcript of Evidence*, 2 October 2002, p. 26.

operator is required to ensure that the ship complies with international safety and operating standards, in that the vessel possesses the required certificates. This is similar to the procedures conducted by AMSA when a ship enters an Australian port...

It is envisaged that when the Timor Sea Treaty enters into force the provision concerning petroleum industry vessels ... which is also similar to article 26 of the Timor Gap Treaty, will enable the designated authority to issue regulations in the same way that the joint authority has done under the petroleum mining code.²⁴

Environment

- 5.31 Concerns about the provision and enforcement of general environmental standards governing petroleum activities in the JPDA were similar to the those relating to OH&S standards. In addition to concerns about the general provision and enforcement of environmental standards in the JPDA the Committee encountered two more specific environmental concerns. The first raised the possibility that the entry into force of the Treaty might have an adverse effect upon fisheries management. The second related to the issue of ownership of the greenhouse gasses that are produced in processing petroleum products.

Fisheries

- 5.32 The Committee heard concerns that the Timor Sea Treaty dealt solely with the seabed resources without mentioning water column resources.²⁵ The 90:10 split in seabed resources was seen as having implications for a future acceptance on the part of Australia to a median water column boundary with East Timor in the JPDA (the median line between Australia and East Timor forms the southern boundary of the JPDA).
- 5.33 Australian acceptance of a median distance boundary for the JPDA water column would exacerbate the fishery management problems that have emerged since the conclusion of a boundary with Indonesia on the same principle.²⁶
- 5.34 The Committee acknowledges that in terms of the successful fisheries management the greatest possible area of water column is desirable.

24 Julie-Anne Atwell, *Transcript of Evidence*, 14 October 2002, p. 283.

25 Vivian Forbes, *Transcript of Evidence*, 2 October 2002, p. 42.

26 The Australian Indonesian Maritime Delimitation Agreement was signed in Perth on 14 March 1997. The Committee reported on this treaty in its *Thirteenth Report*.

However the conclusion of maritime boundaries needs to take more than fisheries management into account. The specific concerns raised about fisheries, while they may be valid concerns, do not come within the terms of the Treaty:

The Timor Sea Treaty does not purport to deal with jurisdiction over fisheries resources.²⁷

Greenhouse gas

- 5.35 Matthew Coffey raised concerns in relation to the possible liabilities that Australia might incur in the event that a future regime of carbon credits was established. Although East Timor is entitled to revenue from 90 percent of the resources of the JPDA:

We are receiving 100 percent of the greenhouse gas emissions here in Darwin. That is not codified in the EIS and it is not in the current treaty negotiations. I fear that, whether we take the Kyoto protocol or the Montreal agreement in the future, we will have to trade carbon and have carbon taxes and carbon sinks ... I do not like the idea of bringing in ... 4.6 million tonnes per annum of CO₂ that we only get 10 percent for.²⁸

- 5.36 The Committee suggested that Mr Coffey's concerns might be addressed by making provision for a 90:10 split in gas emissions to reflect the 90:10 split in the resource.²⁹

- 5.37 The Northern Territory Government pointed out that in the event that Sunrise gas was brought onshore:

The use of gas to power alternative developments actually saves a lot of greenhouse gas emissions.³⁰

This is because gas could be used to replace diesel fuel, which is currently used to provide energy to industry. The burning of diesel produces more greenhouse gas emissions than LNG.

- 5.38 In relation to Sunrise gas and possible future greenhouse gas emission the Committee was informed that:

The unitisation agreement would ... have attached to it the regulations by which the depletion of the reservoir would be governed.³¹

27 William Campbell, *Transcript of Evidence*, 8 October 2002, p. 247.

28 Matthew Coffey, *Transcript of Evidence*, 3 October 2002, p. 95.

29 Matthew Coffey, *Transcript of Evidence*, 3 October 2002, p. 97.

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

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

Conclusions and recommendation

- 5.39 The Committee acknowledges the desirability of an Australian presence within the workforce of the JPDA as benefiting both Australia and East Timor. The agencies responsible for administration of the JPDA must ensure that the levels of occupational health and safety and environmental standards are not compromised so as to exclude Australians from work in this area.
- 5.40 Environmental standards will be extremely important in this area and Australia is in a position to influence the enforcement of these standards.

Recommendation 3

- 5.41 **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.**

Julie Bishop MP

Committee Chair

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