

# PROOF HANSARD



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

## SENATE

**THURSDAY, 6 MARCH 2003**

Timor Sea excerpts only

### CORRECTIONS

This is a **PROOF ISSUE**. Suggested corrections for the Official Hansard and Bound Volumes should be lodged in writing with the Director, Chambers, Department of the Parliamentary Reporting Staff (Facsimile (02) 6277 2977), **as soon as possible but not later than:**

**Thursday, 13 March 2003**

BY AUTHORITY OF THE SENATE

S.40.1.67

# PROOF HANSARD

# SENATE CONTENTS

THURSDAY, 6 MARCH

<del>Petitions —</del>	
<del>Education: Deregulation of University Fees .....</del>	<del>9205</del>
<del>Immigration: Asylum Seekers .....</del>	<del>9205</del>
<del>Terrorism: Suicide Bombings .....</del>	<del>9205</del>
<del>Notices —</del>	
<del>Presentation .....</del>	<del>9205</del>
<del>Business —</del>	
<del>Rearrangement .....</del>	<del>9206</del>
<del>Rearrangement .....</del>	<del>9206</del>
<del>Notices —</del>	
<del>Postponement .....</del>	<del>9206</del>
<del>Late Payment of Commercial Debts (Interest) Bill 2003 —</del>	
<del>First Reading .....</del>	<del>9206</del>
<del>Second Reading .....</del>	<del>9207</del>
<del>Notices —</del>	
<del>Postponement .....</del>	<del>9207</del>
<del>Parliamentary Zone —</del>	
<del>Approval of Works .....</del>	<del>9207</del>
<del>Approval of Works .....</del>	<del>9207</del>
<del>Approval of Works .....</del>	<del>9207</del>
<del>Indonesia: Terrorist Attacks .....</del>	
<del>Health Legislation Amendment (Private Health Insurance Reform) Bill 2003 —</del>	
<del>First Reading .....</del>	<del>9209</del>
<del>Second Reading .....</del>	<del>9209</del>
<del>Health: Nuclear Testing .....</del>	
<del>Gibb, Mr Maurice .....</del>	
<del>Iraq .....</del>	
<del>Human Rights: Burma .....</del>	
<del>Iraq .....</del>	
<del>Committees —</del>	
<del>Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee Meeting ..</del>	<del>9211</del>
<del>Ovine Johne's Disease .....</del>	
<del>Iraq .....</del>	
<del>Iraq .....</del>	
<del>Foreign Affairs: United States .....</del>	
<del>Committees —</del>	
<del>Community Affairs References Committee Reference .....</del>	<del>9212</del>
<del>International Criminal Court .....</del>	
<del>Military Detention: Australian Citizens .....</del>	
<del>Committees —</del>	
<del>Community Affairs References Committee Extension of Time .....</del>	<del>9213</del>
<del>Finance and Public Administration References Committee Extension of Time .....</del>	<del>9213</del>
<del>Iraq .....</del>	
<del>Iraq .....</del>	
<del>Medicare: Bulk Billing .....</del>	
<del>Iraq —</del>	
<del>Suspension of Standing Orders .....</del>	<del>9214</del>
<del>Medicare: Bulk Billing .....</del>	
<del>Committees —</del>	
<del>Regulations and Ordinances Committee Ministerial Correspondence and Delegated</del>	
<del>Legislation Monitor .....</del>	<del>9219</del>
<del>Workplace Relations Amendment (Protecting the Low Paid) Bill 2003 —</del>	
<del>First Reading .....</del>	<del>9219</del>
<del>Second Reading .....</del>	<del>9219</del>
<del>Petroleum (Timor Sea Treaty) Bill 2003 .....</del>	
<del>Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 .....</del>	
<del>Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 —</del>	
<del>First Reading .....</del>	<del>9219</del>
<del>Business —</del>	
<del>Consideration of Legislation .....</del>	<del>9220</del>
<del>Petroleum (Timor Sea Treaty) Bill 2003 .....</del>	
<del>Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 .....</del>	
<del>Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 —</del>	
<del>Second Reading .....</del>	<del>9222</del>

**SENATE CONTENTS**—*continued*

Business—	
Consideration of Legislation .....	9232
Petroleum (Timor Sea Treaty) Bill 2003 .....	9232
Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 .....	9232
Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003—	
Second Reading .....	9232
In Committee .....	9235
Third Reading .....	9240
New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002 .....	9240
New Business Tax System (Venture Capital Deficit Tax) Bill 2002—	
Second Reading .....	9240
Third Reading .....	9240
Snowy Hydro Corporatisation Amendment Bill 2002—	
Second Reading .....	9240
Third Reading .....	9242
Maritime Legislation Amendment Bill 2002—	
Second Reading .....	9242
Third Reading .....	9244
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002—	
Second Reading .....	9244
Questions Without Notice—	
Trade: Free Trade Agreement .....	9245
Iraq .....	9245
Defence: Anthrax Vaccination .....	9246
Forestry: Forest Policy .....	9246
Banking: Credit Card Schemes .....	9247
Health: Allied Health Professionals .....	9248
Banking: Credit Card Schemes .....	9249
Information Technology: Internet Content .....	9250
Health: General Practitioners .....	9250
World Conference on Doping in Sport .....	9251
Health: General Practice .....	9252
Questions Without Notice: Additional Answers—	
Health: Staff Shortages .....	9253
Questions Without Notice: Take Note of Answers—	
Answers to Questions .....	9253
Committees—	
Treaties Committee—Report: Government Response .....	9256
Delegation Reports—	
Parliamentary Delegation to the Islamic Republic of Iran and the Hashemite Kingdom of Jordan .....	9277
Membership .....	9279
Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2003 [No. 2]—	
Second Reading .....	9279
Business—	
Rearrangement .....	9298
Documents—	
Auditor-General's Reports—Report No. 31 of 2002-03 .....	9298
Consideration .....	9299
Consideration .....	9299
South Australia: National radioactive Waste Repository—	
Return to Order .....	9299
Adjournment—	
International Women's Day .....	9300
Tasmania: Meander Dam .....	9301
Iraq .....	9301
Small Business .....	9303
Northern Territory .....	9304
Documents—	
Tabling .....	9305
Indexed Lists of Files .....	9305

Question negatived.

### **MEDICARE: BULK BILLING**

~~Senator LUDWIG (Queensland) (11.05 a.m.)—by leave I wish to speak to a matter that arose during general business notices of motion. We voted for general business notice of motion No. 371, standing in the name of Senator Nettle and I am pleased that Senator Nettle is in the chamber. There was a problem in relation to it that created a little bit of paperwork confusion, and it is not surprising given the number of motions that were dealt with today and the other issues that have been about. I seek leave to have the question put again.~~

~~The ACTING DEPUTY PRESIDENT (Senator Collins)—Is leave granted for the question to be put again?~~

~~Leave granted.~~

~~The ACTING DEPUTY PRESIDENT (Senator Collins)—The question is that the motion be agreed to:~~

~~Question negatived.~~

### **COMMITTEES**

#### **Regulations and Ordinances Committee**

##### **Ministerial Correspondence and Delegated Legislation Monitor**

~~Senator McGAURAN (Victoria) (11.07 a.m.)—On behalf of Senator Tehen and the Standing Committee on Regulations and Ordinances, I present a volume of ministerial correspondence relating to the scrutiny of delegated legislation for the period June 2002 to February 2003 and the Delegated Legislation Monitor for 2002.~~

#### **WORKPLACE RELATIONS AMENDMENT (PROTECTING THE LOW PAID) BILL 2003**

##### **First Reading**

~~Bill received from the House of Representatives.~~

~~Senator ABETZ (Tasmania—Special Minister of State) (11.07 a.m.)—I move:~~

~~That this bill may proceed without formalities and be now read a first time.~~

~~Question agreed to.~~

~~Bill read a first time.~~

##### **Second Reading**

~~Senator ABETZ (Tasmania—Special Minister of State) (11.08 a.m.)—I move:~~

~~That this bill be now read a second time.~~

~~I seek leave to have the second reading speech incorporated in *Hansard*.~~

~~Leave granted.~~

~~The speech read as follows—~~

The bill proposes that the objects of the Workplace Relations Act be amended to include a primary focus on the low paid and their needs in adjusting the safety net.

It is the intention of the Workplace Relations Act 1996 that awards should provide a safety net of fair minimum wages and conditions without discouraging agreement making for award workers above that safety net. The federal workplace relations system is now firmly focused upon the setting of wages and conditions of employment at the enter-

prise level. Agreement making gives employers and employees the opportunity to increase the productivity and competitiveness of Australian enterprises. This in turn ensures a stronger and more resilient economy with healthier employment prospects. In this way agreement making at the workplace level offers rewards for employees, employers and for Australia as a nation.

A key part of the principal object of the Workplace Relations Act is that actual wages should, as far as possible, be determined by bargaining at the workplace or enterprise level. A central feature of the legislative framework is the Australian Industrial Relations Commission's role in encouraging bargaining. Decisions of the Commission on the adjustment of rates of pay in awards need to be consistent with and reinforce the safety net role of awards. This is important to ensure genuine safety net standards, to encourage agreement making and to meet overall economic objectives.

This bill is part of the Government's continuing effort to protect the employment prospects of the low paid and to reduce the prospect of unemployment for vulnerable low-skilled workers. While unemployment has fallen substantially from the highs of the early 1990s and Australia is weathering the economic effects of international uncertainty, many people still find it difficult to gain employment.

The bill proposes that the objects of the Workplace Relations Act be amended to include the needs of the low paid as a primary focus in adjusting the safety net. It is further proposed that section 88 of the Workplace Relations Act be amended to require the Commission to consider the following matters when adjusting the safety net:

- the primary consideration of the needs of the low paid, including their need for employment
- the employment prospects of the unemployed; and
- the capacity of employers to meet increased labour costs.

In introducing this bill the Government is demonstrating its ongoing commitment to maintaining a safety net of minimum wages and conditions for low paid employees, as well as enhancing the employment prospects for the low paid, low skilled and unemployed. The bill is also consistent with the Government's commitment to create an appropriate framework for pay and working arrangements to be determined at the workplace level.

~~Debate (on motion by Senator Crossin) adjourned.~~

#### **PETROLEUM (TIMOR SEA TREATY) BILL 2003**

##### **PETROLEUM (TIMOR SEA TREATY) (CONSEQUENTIAL AMENDMENTS) BILL 2003**

#### **PASSENGER MOVEMENT CHARGE (TIMOR SEA TREATY) AMENDMENT BILL 2003**

##### **First Reading**

~~Bills received from the House of Representatives.~~

~~Senator ABETZ (Tasmania—Special Minister of State) (11.08 a.m.)—I move:~~

~~That these bills may proceed without formalities, may be taken together and be now read a first time.~~

~~Senator BROWN (Tasmania) (11.09 a.m.)—Madam Acting Deputy President, I object. These are extraordinarily important bills. I will not object, of course, to the motion that the bills be read a first~~

time, but I will object at the outset to the process which the government is about to engage in today, particularly in light of the fact that the government has just voted down a debate on the impending war in Iraq. It now introduces a bill into the Senate which went through the House of Representatives yesterday. I have no problem with that, but I wish to flag that I will have a problem with consequent events if the government moves to have this legislation railroaded through the Senate today.

Question agreed to.

Bills read a first time.

## BUSINESS

### Consideration of Legislation

**Senator ABETZ** (Tasmania—Special Minister of State) (11.10 a.m.)—I seek leave to move a motion to exempt these bills from the provisions of standing order 111.

**Senator BROWN** (Tasmania) (11.10 a.m.)—by leave—I wish to speak about the seeking of leave to move a motion for the exemption of these bills from the provisions of standing order 111. I will be granting leave because it is not my intention to go through the long tortuous process that the government would need to go through if I block leave at this stage. But I do so with a very heavy heart. I totally object to what is happening here. The government wants to seek leave now to suspend standing orders—having not been able to do so over a debate on the war in Iraq which the Prime Minister tells us will be happening in about a week's time—because (a) the government did not get its act in order to have this legislation brought before the parliament long ago and (b) it now wants to railroad through a piece of legislation which is totally inimical to justice, fair play, decency—to a proper regard by our nation for our newest and poorest neighbour, East Timor. I am going to allow leave, and the processes after that we will deal with as they come. But I state my objection now and will continue to do so as this process moves forward.

Leave granted.

**Senator ABETZ** (Tasmania—Special Minister of State) (11.12 a.m.)—I move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to these bills.

I table a statement of reasons justifying the need for these bills to be considered during these sittings. The statement reads:

Urgent passage is required to establish an international legal basis for development of major oil and gas deposits in the Joint Petroleum Development Area (JPDA). Without the legal framework in place industry will be unable to commit to investment in the area and benefits to both Australia and East Timor may be lost. In particular, such development will underpin the economic future of East Timor and strengthen its ties with Australia.

The main projects include the Bayu-Undan and Greater Sunrise developments and investment that are estimated to collectively contain recoverable reserves of around 11 trillion cubic feet of gas and 700 million barrels of petroleum liquids.

Bayu-Undan, which lies wholly within the JPDA, is estimated to contain around \$A15 billion worth of petroleum. While East Timor will receive ownership of 90 per cent of the resource, Australia will also receive substantial benefits from the development and processing of natural gas, including construction and operation of an LNG plant in Darwin.

Greater Sunrise, with petroleum resources valued at around \$A30 billion, is particularly important for Australia, with 20.1 per cent of its reserves located within the JPDA and 79.9 per cent located within Australian waters.

**Senator BROWN** (Tasmania) (11.15 a.m.)—The minister has just read out the government's so-called reasons for urgency, but anybody who reads the statement will find no reasons for urgency. The question that goes straight to the government is: why bring the bill in here this morning and expect it to go through today? That is where the urgency is, apparently, but there is no justification for that urgency in the statement.

The statement—I cannot say 'lies'—is not true in a number of respects. It says, for example, that the joint development area for major oil and gas deposits under this formula will strengthen East Timor's ties with Australia. That is hugely debatable, to say the least. The East Timorese are feeling very frustrated and overrun indeed. To see that, you only have to read today's newspapers—the *Age*, the *Financial Review*. The East Timorese are being subjected to extraordinary, improper, unfair, unethical duress in this matter by the Howard government and by the corporations which are behind the curtain, including Woodside, Shell, Phillips and Osaka. Madam Acting Deputy President, you can bet that they are behind the government, pushing this all the way.

Alexander Downer, the Minister for Foreign Affairs, is flying to Dili today to sign a treaty which was hammered out some time last year. The government did not get this legislation into the parliament to have it ratified until yesterday, and it wants it through today. The argument is that, with the Japanese, the Bayu-Undan part of the development—the contracts for that and the sale of the products from that—needs to be fixed within the next few days, if not the next few weeks. Why has the government not got its house in order? The question is: why did we not get this legislation—if not at the end of last year—when the parliament resumed in February?

I believe we are being ambushed with this legislation. In the absence of any explanation as to why it could not have been brought into the parliament before yesterday, let alone into the Senate today, we are being ambushed, in the interests of the big oil companies, to cheat East Timor. We Greens are not going to be a part of that. This is outrageous legislation. This is the big oil companies, with the active compliance of the Prime Minister, no less, defrauding East Timor of its resources. It is a fraud. It is illegal. When we get to the bill, I will be moving certain amendments to at least try to fix the worst of it. Alexander Downer, the minister, is flying to Dili because, as he said this morning, Australia stands to get \$50 billion out of this. Wrong! The big oil companies are going to snatch the majority of that. It is \$50 billion which

belongs to East Timor. The reserves we are talking about are wholly within East Timor's legal seabed limits. We will be talking about this a little further.

This is outrageous. It is illegal and it is unethical. No wonder the government wants to rush it through here. It says, 'Let's not have the debate going a little longer. Let's coerce everybody, including the Senate and the East Timorese, by saying that, if you do not this, these contractual arrangements might fall through in a few days time.' This is a studied manipulation of the Senate. I hope the opposition will not put up with it, but I suspect they will. We will wait; we will hear. I am going to have quite a lot more to say about this. I am very angry about this legislation—and I do not use that word lightly.

The less than one million East Timorese have a very powerful and wealthy friend and neighbour in Australia. When it comes to the crunch on the major resource base that this poor country has, here is Australia rushing through legislation, and demanding and coercing the East Timorese into the same action, which defrauds them of that resource. It is a shameful day in Australian politics. It is a shameful day in international relations in our region. It is a shameful day in this parliament. I will be having quite a lot more to say about it before this debate is through.

**Senator STOTT DESPOJA** (South Australia) (11.21 a.m.)—I will not go to the substance of the Petroleum (Timor Sea Treaty) Bill 2003, the Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 because this not the time to do it, although I understand why people find this legislation very hard to support. I want to put it on record that, while the government will get its leave to debate the legislation before us, the Democrats wish to object in the strongest possible terms about the process. For most of us and our advisers who have been awake studying this legislation through the night, it is an entirely unacceptable situation to deal with these bills with less than 24 hours notice. We have had less than 24 hours to look at the information before us in the form of these bills being tabled and available for us to discuss them. Indeed, it has been virtually impossible to draft amendments that should be drafted, that should be considered and debated, that should be passed in order to alleviate the worst aspects of the legislation and that seek to improve it in the way that it should be. On behalf of the Democrats I want to make that clear, through you, Madam Acting Deputy President, to the government.

I concur with Senator Brown on the issue of the reasons for urgency. While I acknowledge that we are between a rock and a hard place, the rationale that has been put forward is the fact that the treaty is to be ratified by the 11th and today is the sixth. You only have to do the math to work out that this is the last possible parliamentary opportunity for us to debate and pass the legislation so that it is ready for the ratification of the treaty. That is the reason for urgency. That is why the Australian Democrats have agreed to this debate. That is why we will not stand in the way

of leave for debating this legislation, but I do not think anyone in this chamber could hold their head high and genuinely, honestly, say that the process has been anything but deficient.

We know that this treaty was available. The aspects of this treaty have been studied by the Joint Standing Committee on Treaties, and I should acknowledge the work of Senator Andrew Bartlett in relation to that. The Democrats put a submission in and we put very clearly on record our concerns and our unhappiness with the substance of the legislation. I record my disappointment today, as I will in the debate later, that the recommendations we put forward have not been adopted by government. Given that they were not going to change the elements, or the substance, of the treaty as it had been discussed and debated, why did it take so long for it to get to the chamber? Why did it take so long for it to get to the House of Representatives—which it did only yesterday—so that we are in this extraordinary situation today where we are dealing with it literally on the run. I have had an opportunity to circulate a second reading amendment that goes to the heart of some of the Australian Democrats' objections. While this should have been a day of celebration, it is not.

On a final note, while I find this legislation very hard to support, I am listening to who is asking me to support it: Oxfam; Community Aid Abroad; the President of East Timor, representing the East Timorese people, Jose Ramos Horta, who is well known to us all. When these people, with whom many of us have been involved in the debate about East Timorese independence for many years now—certainly since the inception of the Democrats—ask us to support it, it places us in a very difficult and gut-wrenching position. I think 'heavy heart' was the expression that Senator Brown used. It is a difficult situation in which we find ourselves today. I do not know if my party can actively support this legislation. We will certainly have to see what amendments are debated on the floor and what amendments the clerks have had time to draft, because that is literally the situation in which we find ourselves. The government will have leave to have this debate. I think the Australian people and the East Timorese people are under no illusions as to how this debate has come about. They are very much aware of the heavy-handed tactics that have been used in the discussion, in the debate, in the negotiation process, and recognise that the real reason for urgency, which is not referred to in this memo, is the fact that we have five days and this is our last parliamentary opportunity. So we will have the debate.

**Senator O'BRIEN** (Tasmania) (11.25 a.m.)—The opposition will support this motion. The reason that this matter is now urgent is the absolute tardiness of the government in bringing this legislation before the parliament. It should have been here at least three months ago. As a result, we are running up against the deadline that Senator Stott Despoja has referred to. I am satisfied that this is a treaty which has the support of East Timor and the Australian government. There are extreme consequences if the legislation is not dealt with today. We know we have until

12.45 to deal with it, so I am not going to spend a great deal of time on my feet now. I sincerely hope that the wishes of the people of East Timor, as represented by their government, are reflected in this debate today. The opposition will certainly be respecting that in the way that we deal with this legislation.

**Senator ABETZ** (Tasmania—Special Minister of State) (11.26 a.m.)—I am grateful for the indications that have been given that we can proceed with the debate. It is unfortunate when legislation comes up on short notice and there are time frames that have to be met, but this was a relatively complex matter. As I understand it, 12 separate pieces of legislation needed to be amended. That complexity of course takes some time. I simply indicate for the record—and we will undoubtedly go through this ad nauseam in the debate—that the democratically elected government of East Timor supports this legislation going through this place. If individual senators in this place happen to think that, having being elected by the people of Tasmania or indeed other places, they have greater authority to speak than the Prime Minister of East Timor on this issue, I would find that somewhat patronising, nearly colonial, but we will get to that debate later on. It is a nation in its own right. It has self-determination. I have a press release, which I will read into the record later if need be, that was issued by the Prime Minister of East Timor only yesterday in support of the legislation. I will not go on. I thank the Senate for allowing this bill to proceed and I accept that it does make it difficult with amendments et cetera, for which I apologise.

Question agreed to.

**Senator Brown**—I ask that both Senator Nettle's and my objections and opposition to the motion be recorded.

**PETROLEUM (TIMOR SEA TREATY) BILL  
2003**

**PETROLEUM (TIMOR SEA TREATY)  
(CONSEQUENTIAL AMENDMENTS) BILL  
2003**

**PASSENGER MOVEMENT CHARGE (TIMOR  
SEA TREATY) AMENDMENT BILL 2003**

**Second Reading**

**Senator ABETZ** (Tasmania—Special Minister of State) (11.28 a.m.)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

*The speeches read as follows—*

**PETROLEUM (TIMOR SEA TREATY) BILL 2003**

The purpose of the Petroleum (Timor Sea Treaty) Bill 2003 is to give effect to the Timor Sea Treaty signed by Australia and East Timor on 20 May 2002.

The Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 which I will also introduce to Parliament, provide for amendments that will be required to related Acts to reflect the new leg-

islation and repeal the Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990.

The Treaty provides a framework for the exploration, development and exploitation of the petroleum resources in the Joint Petroleum Development Area (JPDA) created by the Treaty.

Ratification of the Treaty will enable industry to rapidly proceed with development of Timor Sea natural gas.

East Timor separated from Indonesia on 26 October 1999 (Australian time). Since then, Indonesia has had no jurisdiction over East Timor or the maritime zones generated by East Timorese territory, nor over petroleum operations in the former Zone of Co-operation (now known as the JPDA).

Subsequently, Australia entered into an agreement with the United Nations Transitional Administration in East Timor (UNTAET) that allowed Australia and East Timor to benefit from the continuation of exploration and production activities in an area of overlapping territorial claims in the Timor Sea.

This agreement continued the arrangements that had been in place with Indonesia, but with UNTAET as the new treaty partner.

On 20 May 2002 East Timor became independent and UNTAET's administration ceased.

On that date, East Timor and Australia signed a new Treaty to govern operations in the former Timor Gap and an Exchange of Notes to govern the period until the new Treaty came into force.

The Exchange of Notes effectively continues previous arrangements until the new Treaty comes into force. However, it is intended that when the Treaty does enter into force its provisions will be applied retrospectively to 20 May 2002.

Aspects of the Treaty include:

- the former Zone of Cooperation Area A now becomes the Joint Petroleum Development Area (JPDA)
- sharing by Australia and East Timor of upstream petroleum revenue split 90/10 in East Timor's favour, where previous arrangements between Australia and Indonesia saw a 50/50 revenue split;
- a joint three tiered administrative structure involving both Australia and East Timor to govern the day to day running and broader policy issues in the JPDA;
- a tax code for the imposition of taxes on income derived from the JPDA, and;
- continuation of current terms and conditions for the existing Elang-Kakatua project as well as Bayu-Undan and Sunrise.

The previous arrangements with Indonesia have demonstrated that the joint development concept is an effective means to allow petroleum exploration and development to take place in an area of overlapping claims.

Those arrangements worked effectively from 1991 to 1999 and facilitated the expenditure of over US\$700 million on petroleum exploration and development in the former Zone of Cooperation.

The first commercial production of petroleum in the former Zone of Cooperation commenced in July 1998 with the development of the Elang-Kakatua oilfield. The field is now nearing the end of its commercial life, producing at a rate of about 6,000 barrels of oil per day.

Total revenue to Australia from this source is expected to be about A\$0.5 million in 2002-03, and has been in excess of A\$40 million to date, in addition to company tax receipts.

Two other discoveries in the JPDA are moving towards first production over the next few years.

Firstly, joint-venture partners in the Bayu-Undan field have been working towards developing its liquids phase.

Production of the field's estimated 400 million barrels of condensate and Liquefied Petroleum Gas (LPG) is expected to commence in mid 2004. Total investment in the liquids phase of the project is estimated to be around A\$3.5 billion.

The partners also plan to establish a liquefied natural gas (LNG) processing facility near Darwin to process the field's 3.4 trillion cubic feet of gas for export. The planned gas phase for Bayu-Undan involves an additional investment of around A\$800m for a pipeline, and it is estimated that investment in an LNG plant near Darwin will approach A\$2 billion.

Production is scheduled to commence in 2006, and the yearly value of LNG exports from this facility is expected to approach A\$1 billion per year at full production.

Over the life of the project, total revenue to Australia from the liquids and gas phases, and including revenue from the pipeline and LNG plant are expected to total to some A\$1.5 billion. East Timor revenues are expected to be around A\$6 billion.

Secondly, industry is considering development options for the Greater Sunrise field, which contains an estimated 8.35 trillion cubic feet of natural gas and 295 million barrels of condensate.

As the field straddles the border of the JPDA and Australian jurisdiction, an International Unitisation Agreement has recently been agreed between Australia and East Timor to allow the development to proceed. Development of the Greater Sunrise field could provide revenue to Australia of around A\$8.5 billion.

As can be seen from the examples I have given today, industry is prepared to invest huge amounts in the JPDA, with resulting substantial revenue to Australia. The enactment of these bills will provide the legislative framework under which these projects can be realised and contribute significantly to investor certainty in the area.

It is clearly in the national interest that this bill be approved as soon as possible. I commend this bill.

#### PETROLEUM (TIMOR SEA TREATY) (CONSEQUENTIAL AMENDMENTS) BILL 2003

The Government recently introduced to Parliament the Petroleum (Timor Sea Treaty) Bill 2003, which is a package of three Bills, and which gives effect to the Timor Sea Treaty.

The Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 gives effect to provisions contained in certain Articles of the Treaty relating to criminal jurisdiction, customs, employment regulation, migration, quarantine, income tax and fringe benefits tax. The bill also repeals the Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990.

The related Acts which will be amended as a result of the principal Act are the:

Crimes at Sea Act 2000

Customs Act 1901

Fringe Benefits Tax Assessment Act 1986

Income Tax Assessment Act 1936

International Organisations (Privileges and Immunities) Act 1963

Migration Act 1958

Passenger Movement Charge Collection Act 1978

Petroleum (Submerged Lands) Act 1967

Quarantine Act 1908

Superannuation Guarantee (Administration) Act 1992

Taxation Administration Act 1953

Workplace Relations Act 1996

A further Act, the Passenger Movement Charge Act 1978, is amended by a separate bill, the Passenger Movement Charge (Timor Sea Treaty) Bill 2003. This Act requires a separate amendment bill as the Act itself imposes a tax.

In most cases, the consequential amendments to the various Acts are relatively minor - in many instances they merely amend the relevant Act by using expressions such as "Joint Petroleum Development Area" where "Area A of the Zone of Cooperation" or simply "Area A" previously appeared, as is the case in the Migration Act 1958 or Petroleum (Submerged Lands) Act 1967 amongst others.

In the case of amendments to tax-related Acts, the changes are in some cases more detailed, for instance applying the transfer pricing provisions to transactions between Australia and areas such as the JPDA where Australia has a shared allocation of taxing rights with another country, and providing foreign tax credits for foreign tax paid to the other country (e.g. East Timor) by Australian residents on income from such an area. These changes are explained in detail in the notes on clauses section of the Explanatory Memorandum.

The Timor Sea Treaty is to be taken to have effect on 20 May 2002. In order for this to take place certain parts of the bill retrospectively amend relevant legislation as of 20 May 2002.

However, to prevent any retrospective criminal liability arising under the amendments, offence provisions in the Petroleum (Timor Gap Zone of Cooperation) Act 1990 have been preserved from repeal for the period between 20 May 2002 and the date at which this Act receives Royal Assent.

It is clearly in the national interest that these legislative amendments be approved as soon as possible. I commend this bill.

#### PASSENGER MOVEMENT CHARGE (TIMOR SEA TREATY) AMENDMENT BILL 2003

The final bill to give effect to the Petroleum (Timor Sea Treaty) Act 2003 is the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003.

The changes to the Passenger Movement Charge Act 1978 effected by the bill are of a purely technical nature, and will not alter existing arrangements.

Most simply reflect the change of name of the area formerly referred to in Passenger Movement Charge Act 1978 as "Area A", which is reference to the former Zone of Cooperation Area A, situated in the waters between Australia and East Timor, to the "Joint Petroleum Development Area".

This change of name is required as a result of the ratification by Australia and East Timor of the Timor Sea Treaty which was signed by the Prime Minister on behalf of Australia on 20 May 2002 and which replaces the former Timor Gap Treaty.

The Treaty arrangements we have entered into with East Timor do not change the rights and responsibilities of companies and persons working in the Timor Gap.

Instead, it provides for a continuation of those arrangements with effect from 20 May 2002. It is therefore appropriate for this bill to retrospectively amend the relevant legislation that date.

I commend this bill.

**Senator O'BRIEN** (Tasmania) (11.29 a.m.)—As I indicated, we welcome the Petroleum (Timor Sea Treaty) Bill 2003, the Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 to the Senate some three months after they were due. We should question the extraordinary manner in which the government has handled what is a critically important treaty to both Australia and East Timor. On Tuesday night, the opposition was advised by the government of the introduction of these bills, then by 2 p.m. yesterday we were advised that they were to be pulled from the *Notice Paper*. In what was an on-again off-again scenario, the bills were introduced into the House two hours after the scheduled time and, only with Labor's cooperation, they passed through the House nine minutes before its adjournment last night.

What has been even more interesting is the 10 months it has taken for the government to do what could have been done in three months. The delay has been agreement on the International Unitisation Agreement relating to the Greater Sunrise field, which straddles the Joint Petroleum Development Area. The Greater Sunrise partners claim that it is critical to their interests and to the nation's interests that the treaty not be ratified prior to the signing off of the unitisation agreement. Why? Because whilst ever the Timor Sea Treaty remains unratified the Australian government enjoys greater negotiating strength. The other reason is related to the diplomatic mismanagement of the entire negotiation process by the foreign minister, Mr Downer—a process by which Mr Downer has demonstrated his ability to throw ministerial tantrums in public and in private.

Australia's long-term strategic policy objective in East Timor is surely to help it become a viable state free from foreign interference, free from internal unrest and free to determine its own destiny. It is obviously in our national interest to have a good relationship with our closest neighbour. East Timor is one of the poorest states in the world with GNP per capita of less than \$US340 and an annual budget of around \$US77 million. Foreign aid currently constitutes more than 40 per cent of East Timor's GDP.

These bills implement the ratification of the Timor Sea Treaty. When the United Nations Transitional Administration in East Timor, UNTAET, became the administering power in East Timor, it took over Indonesia's rights and obligations under the old Timor Gap Treaty. On 5 July 2001, Australia and the administration concluded a memorandum of understanding that put in place a new Timor Sea arrangement. The arrangement provides that, of the petroleum produced in the Joint Petroleum Development Area, 90 per cent shall belong to East Timor and 10

per cent shall belong to Australia. The Joint Petroleum Development Area is delimited along the same boundaries as set out in the Timor Gap Treaty. On 20 May last year, Australia and independent East Timor signed the Timor Sea Treaty, which allows for the continued exploration and exploitation of the resources of the Joint Petroleum Development Area on the same terms as set out in the July 2001 arrangement entered into with the UN administration.

The Joint Select Committee on Treaties of this parliament held an inquiry into the Timor Sea Treaty throughout the course of 2002 and recommended its ratification. A key sticking point was the desire of some in the energy sector—Greater Sunrise field partners, in particular—to secure an international unitisation agreement prior to ratification. The objective of the International Unitisation Agreement is to define the resource and revenue sharing arrangements for those fields which straddle the Joint Petroleum Development Area. The key issue here is the Greater Sunrise field, 20 per cent of which is assumed to lie within the Joint Petroleum Development Area. The remaining 80 per cent lies in Australia's jurisdiction. The Sunrise venture partners were insistent that the treaty not be ratified prior to the detailed finalisation of the International Unitisation Agreement because negotiating leverage would have been lost.

The Howard government had committed to ratifying the treaty by 31 December last year. Labor has been critical of its failure to do so because it has put at risk another project—the Bayu-Undan project—which lies wholly in the Joint Petroleum Development Area. The Bayu venture partners have a contract to supply liquefied natural gas to Japanese power producers from an LNG plant to be constructed in Darwin. Appearing before a Joint Select Committee on Treaties hearing last year, DFAT First Assistant Secretary Dr Geoff Raby declared the government's preparedness to risk the Bayu-Undan project and the estimated \$A2 billion in government revenue it would provide to ensure the best possible deal is secured with respect to the International Unitisation Agreement.

The Bayu-Undan project is critical to the Northern Territory's economic future. The potential loss of the Darwin LNG plant represents a huge human and financial cost to the Northern Territory including the equivalent of \$US1 billion for the pipeline from the Bayu-Undan field to Darwin, \$US1½ billion in investment in Darwin for the LNG plant, 1,200 jobs in Darwin during the construction phase and 100 direct jobs during the operation phase. In addition, the loss of indirect jobs could be as high as 500.

To meet their gas supply contract obligations, the Bayu partners require ratification of the Timor Sea Treaty by 11 March 2003—next Tuesday. Labor in the Senate will do all that is possible to ensure that these bills have a smooth passage by the close of business today and to secure the Bayu-Undan project and the economic benefits this project represents to Australia and, more importantly, to East Timor. In closing, I acknowledge the role of the member for Lingiari, Mr Snowdon, and Senator Trish Crossin for

their endeavours in assuring that this bill has come before parliament, thereby assuring the benefits that will flow from this legislation to Darwin and East Timor and to the people of both countries. I should also congratulate the Northern Territory Labor government, which has demonstrated its ability and willingness to work in partnership to deliver benefits to the people of the Northern Territory.

I am aware that an amendment has been circulated in the name of Senator Stott Despoja. That amendment is yet to be moved, but I want to indicate that, whilst the opposition shares some of the views expressed in that motion, it will not be able to support it. Point (b) of the amendment deals with the government's insistence on signing the IUA relating to the Greater Sunrise oilfield. The opposition is not in a position to come to a conclusion on this issue and neither was the Joint Standing Committee on Treaties. Prime Minister Alkatiri will be signing the international unitisation agreement on Friday and the executive council of this country will, I understand, give assent immediately on the signing of the international unitisation agreement. Therefore, this amendment is hypothetical.

In relation to point (c) of the amendment, the government has denied that the treaty, and in particular Greater Sunrise, is the reason for withdrawal. The department has advised that the court may give East Timor a worse outcome. Both sides, Australia and East Timor, are comfortable with the far more generous agreement—that is, moving from a fifty-fifty split to a 90-10 split in East Timor's favour—and an agreement between the two nations which, according to their Prime Minister, East Timor is happy with ensures East Timor will see revenue flowing immediately the IUA has been signed. If we were to rely on the court option, we do not know how long it would be before East Timor received much needed revenue. A matter such as this could possibly be tied up in the court for years. So the opposition will not be supporting the amendment, and I thought I would use this opportunity to make these comments even though the amendment has not yet been moved. We will be supporting the bills.

**Senator STOTT DESPOJA** (South Australia) (11.40 a.m.)—I rise to speak on the Petroleum (Timor Sea Treaty) Bill 2003, the Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003. I thank Senator O'Brien for making the Labor Party position clear. The Australian Democrats begin this debate by recording strongly our opposition to the process. As Senator O'Brien and others have outlined, there have been ample opportunities for the government to bring legislation on the Timor Sea Treaty to the parliament before now. I record the disappointment of all that it has taken place in this way. We recognise that the legislation before us will be passed, and the effect of the legislation will be to provide what are now desperately needed resources to the East Timorese people. We understand that fiscal and regulatory certainty is vital to ensure ongoing investment in and development of the petroleum rich area of the Timor Gap. However,

we have very serious concerns regarding the fairness of the Timor Sea Treaty, particularly relating to the way that the Australian government has negotiated with the East Timorese in bringing the treaty to the point of ratification. I take this opportunity to put some of those concerns on the public record. The Australian Democrats have provided our concerns to the Joint Standing Committee on Treaties previously, and I am sorry and angry that the opportunity was not taken by the government to bring up some of those points during negotiation. As I said, there has been sufficient time.

The Democrats have never believed that this debate should occur in a context of pitting the interests of the East Timorese against those of Australians. On the contrary, we believe that it is in Australia's national interest for East Timor, our newest neighbour, to develop into a strong, prosperous and democratic nation with a proper regard for the rule of law. In its submission to the inquiry of the Joint Standing Committee on Treaties, the East Timor Institute for Reconstruction Monitoring and Analysis warned East Timor faces a serious risk of becoming a failed state:

... without economic security, and without the ability to rely on the rule of law both within our country and internationally.

A strong East Timor will help to defuse other tensions within our region rather than add to them. I mentioned Oxfam Community Aid Abroad earlier, an organisation I am sure all of us have contact with. I do, as Democrat spokesperson on foreign affairs and aid issues. Oxfam Community Aid Abroad have urged us to support this legislation. Their submission said:

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.

Of course, we should be contemplating increased aid. Unfortunately, that is not a debate we will be able to have today, because of lack of time.

The Democrats also believe that it is in Australia's national interests to support the structures and principles of the international legal system, a system that has been established to promote collective security, the maintenance of international peace, just resolution of disputes et cetera. In practical terms, this means submitting to the rule of law even when this is contrary to our more immediate and financial interests. For this reason, the Australian Democrats strongly oppose the government's decision to withdraw from the jurisdiction of the International Court of Justice with respect to the determination of seabed boundaries. I was going to move an amendment on that, but I see Senator Brown has covered the issue in his amendment relating to the International Court of Justice. The Democrats will be strongly supporting that amendment. It is an appalling move by the government to withdraw from the jurisdiction of that court, and it sets a poor example. While we are talk-

ing about the promotion and establishment of democratic institutions and the rule of law in East Timor, this sends a very poor message. As one submission said:

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 practising 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.

We have got an opportunity to put those legal principles back in, and I hope that senators will consider that today.

Significantly, East Timor was given no prior notification of Australia's decision to withdraw from the jurisdiction of the court. That is extraordinary. The national interest analysis expressly stated that this was to prevent any action being commenced against Australia that could not be initiated after the declaration had been made. With respect to the distribution of resources under the treaty, the Democrats believe that a 90-10 split in favour of East Timor represents a fair allocation of the distribution of these resources within the Joint Petroleum Development Area, as defined by the treaty. In fact, I think former Senator Vicki Bourne, who was foreign affairs spokesperson for the Australian Democrats and a long advocate for independence in East Timor, advocated that on record in the very early days of the debate about the treaty.

But, as we know, in the context of this treaty the boundaries of the joint development area are contentious. It has been argued that they permit Australia to gain the benefit of resources which rightfully belong to the East Timorese. East Timor claims that the boundary between Australia and itself should be determined according to the median line between the two countries, whereas Australia of course argues that it should be determined according to the outer limit of the natural prolongation of the continental shelf at the Timor Trough, which is about 50 kilometres south of East Timor's coast. A series of legal opinions have given rise to conflicting interpretations of international law as it applies to the delimitation of seabed boundaries between East Timor and Australia. These divergent and often quite persuasive opinions illustrate the complexity of the legal principles governing the delimitation of seabed boundaries and the unique factual circumstances of this particular case. So we are aware of the complexities of these debates and the equally persuasive nature of some of the differing legal opinions. No-one is pretending that this is easy or not a grey area.

The Democrats believe that these seabed boundaries must be determined in accordance with the provisions of the United Nations Convention on the Law of the Sea and any applicable customary law. If the parties are unable to reach a fair and just agreement then they should submit to the jurisdiction of the International Court of Justice. By proceeding with the ratification of the treaty and finalising the unitisation

agreement before the determination of seabed boundaries, Australia not only is accessing resources that potentially belong to East Timor but might actually prejudice East Timor's future claims to the disputed areas.

So what we are now left with is a situation in which Australia has no incentive and no legal obligation to negotiate with East Timor in an attempt to conclusively determine these seabed boundaries. This is an appalling way for Australia to treat our newest nation neighbour. I think it really highlights the hypocrisy of the government in this debate. As we know, it is necessary for this treaty to be ratified before 11 March to ensure that the Bayu-Undan development proceeds. We have heard debates previously about the urgency associated with this legislation because of that very tight time frame—again a tight time frame that the government could have alleviated.

The Timorese people, as we know, urgently require the resources that will flow from this development. We are hearing that from their government, the representatives of the President and community aid organisations. While I acknowledge the comments of Senator Abetz on record earlier about paternalism or patronising and colonialist attitudes, I am quite happy to disagree on occasions with other governments. I think the most recent example in my case would be the governments of the United States and the UK. Just because a government says something on behalf of its elected people—

**Senator Abetz**—Pity you don't disagree with Iraq!

**Senator STOTT DESPOJA**—I certainly disagree with Saddam Hussein.

**Senator Abetz**—As an afterthought!

**Senator STOTT DESPOJA**—I am not going to demean this debate, which is an incredibly important one for the East Timorese people, by getting sidetracked, but the principle of not always agreeing with what a government says is a legitimate one, even if it is a democratically elected government, as in the governments of the UK and the US. We are as senators entitled to disagree with what a government says. The difference in this case for me is that the people who have been democratically elected are the very same people with whom we have been involved in the debate about a free East Timor for many years and that I trust these people. When Xanana Gusmao, the President, or Jose Ramos Horta say that this is in their interest then I believe them. That is why I approach this debate with a heavy heart, wanting these resources to be available to the East Timorese who desperately need them but at the same time wanting my country to save some face by doing the right thing on behalf of not only the East Timorese national interest but our own. Hence the importance of reinserting in this debate the International Court of Justice. We should be dealing with the issue of seabed boundaries in a way that does not compromise future claims and ensures that allocation of resources is fair. So I want the government to do that and at the same time I recognise that the people who I have

worked with and admired in this debate are asking us to pass these laws.

The Democrats have consulted directly with a number of groups, including the government, on this issue. I have of course met with Minister Downer and his department. I have also met with many other organisations, such as Oxfam Community Aid Abroad, and they have urged us to support the passage of these bills. So we cannot stand in their way, and we will not. However, because of the ongoing dispute regarding maritime boundaries and the extent to which the Greater Sunrise field lies within the joint development area, East Timor wanted ratification to proceed independently of the unitisation agreement. The unitisation agreement provides that 79.9 per cent of the Greater Sunrise oil and gas field lies within Australia's jurisdiction, while the remaining 20.1 per cent falls within the JPDA. As we know, the Timorese dispute this and, under the principles of international law, argue that most, if not all, of Greater Sunrise rightfully belongs to East Timor.

By insisting that the unitisation agreement be finalised prior to the ratification of the treaty, the government has compelled East Timor to agree to compromise its long-term interests in order to meet its short-term needs. Australia's insistence has resulted not only in an unsatisfactory outcome for the East Timorese people but also in a situation where the ratifying legislation was delayed, as we see, until the last moment. Here we are rushing this legislation through—and it is not even the eleventh hour anymore; it is almost the twelfth hour—without proper scrutiny. This is not the way to make good laws; we know that. This does not promote good governance and it does not set a good example to our nearest neighbours.

The Democrats also take this opportunity, therefore, to put on record our disappointment at the absence of a number of matters from the treaty and from these bills: for example, environmental standards to be observed in relation to petroleum activities within the joint development area and occupational health and safety standards to apply to those who work within that area. We certainly welcome the announcement this week of Australia's latest aid package to help reduce poverty within East Timor. There is no doubt that East Timor desperately requires such assistance, both financial assistance and other types of assistance, particularly in these formative years. It is hypocritical of the government on the one hand to provide aid to East Timor but on the other hand to potentially prevent East Timor from accessing resources which arguably belong to it and which would enable it to progress more rapidly towards financial independence. As Dr Alkatiri indicated last week, the best way to alleviate poverty in East Timor is to give it an equitable share of the revenues from the Timor Sea petroleum developments.

The Australian government has acted as a bully throughout these negotiations with East Timor and I am ashamed of the way that we have dealt with East Timor on this issue. Compare this to the way that, in

recent times, this government—and I acknowledge this—played a leadership role, eventually, in stopping human rights abuses against the East Timorese people by helping them achieve independence. That was a proud moment for our nation. It was long overdue, and I will not go into the history, but it was a proud moment. The Australian government did play a leadership role in helping East Timor to the point of independence, but now we have turned around and are potentially strangling its access to much needed resources. We urge the government to proceed with negotiations with East Timor for the final delimitation of the seabed boundaries. We urge the government to do so in good faith and in accordance with the relevant principles of international law. We urge the government to resubmit to the jurisdiction of the International Court of Justice so that it can determine those disputes in relation to maritime boundaries. I think it is time for us to show leadership to our new neighbour, and we must act responsibly and fairly in our dealings with it.

I reiterate the concerns of the Australian Democrats over the way that this process has come about and the eleventh hour dealings before us today in relation to the legislation. There is a bit of legislation there; it is not a one-page bill, and nor would you expect it to be. Going through the legislation, as we have been doing overnight, there are many aspects which we would have liked to have spent more time on. We would have liked to ask the government about some of the issues and, as I said earlier in the debate, have vital amendments drafted to ensure that we submit to international law and try to get a better deal for our East Timorese neighbours. The Democrats will not stand in the way of the passage of this legislation—I have said that on the record—but I make it clear that we are not happy with the process and we are not happy with the final legislation. We understand the reasons for urgency, hence our willingness to allow this debate to occur. I think the numbers are such in the chamber today that this legislation will pass. I acknowledge the request of the East Timorese people made through their elected representatives: their Prime Minister and their President. For that reason, we will not be opposing this legislation before us today.

My concerns are outlined in a second reading amendment that has been circulated in my name on behalf of the Australian Democrats. I thank Senator O'Brien for outlining his opposition. Needless to say, I am a little disappointed—it would be nice to win something in this debate. Who knows, you may have a change of heart on some of the amendments before you and we may see a bill which is better not only for the East Timorese people but also for the Australian people, whom we are here to represent. That is what I would like to see. I move:

At the end of the motion, add:

“but the Senate condemns the Government's handling of these Bills and the manner in which it has conducted negotiations with East Timor regarding the Timor Sea Treaty (“the Treaty”), in particular:

- (a) the very late introduction of the Bills prior to the commercial deadline for ratification of the Treaty,

which has limited the ability of the Parliament to properly scrutinise the bills;

- (b) the Government's insistence on signing the International Unitisation Agreement relating to the Greater Sunrise oil and gas field prior to ratifying the Treaty; and
- (c) the Government's withdrawal from the jurisdiction of the International Court of Justice to determine disputes regarding maritime boundaries.

However, the Senate notes that East Timor stands to lose billions of dollars in revenue from the Bayu Undan development if the Bills are not passed today and it is the express wish of East Timor that they are passed".

**Senator CROSSIN** (Northern Territory) (11.57 a.m.)—The passing of the Petroleum (Timor Sea Treaty) Bill 2003, Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and the Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003 will mark a significant day for the Northern Territory. I want to take on board and acknowledge all of the comments made by the Australian Democrats in relation to the passage of this bill and about how inept—I think it would be fair to say—the government has been in ensuring that proper scrutiny is applied to these bills as they go through the parliament. In prefacing my comments, let me say that these bills will give effect, as we all know, to the Timor Sea Treaty between Australia and East Timor. The bills will provide a framework for the exploration, development and exploitation of the petroleum resources in what is now known as the Joint Petroleum Development Area created by the treaty. This legislation is critically important not only for Australia but even more so for East Timor. In some respects, the comments made today have been correct. Those of us who have stood side by side with the East Timorese people and been with them all through their long struggle for independence would have wanted a better outcome from what this government proposes with the unitisation agreement. At the end of the day, both the President of East Timor, Xanana Gusmao, and Jose Ramos Horta have indicated to us that the East Timorese government is happy for this legislation to be passed and it is with that agreement that we will support this.

This will underpin the economic wellbeing of both Australia—and, in particular, the Northern Territory—and East Timor. It benefits Australia and provides certainty for investors by establishing a legal basis for continued development of major oil and gas deposits in the Timor Sea. Both projects rely on the passage of this legislation before they proceed—those projects, of course, are the Bayu Undan project and the proposed Sunrise gas field. Petroleum production and revenue as a result of the treaty will more than likely be split between Australia and East Timor on a 90-10 basis, with the 90 per cent in East Timor's favour.

The unnecessary delays in the ratification process have put at risk a multibillion dollar gas project and trade deal as well as hundreds of potential Northern Territory jobs. Up to \$2 billion in revenue is expected to be generated for this government and this country.

Why has it taken this government so long to get this legislation before this parliament, days before a deadline indicated to us by the gas companies and nine months after the signing of the treaty last May? We talk about it being one minute to midnight—it is almost one second to midnight here. We expected this legislation to be dealt with last year. One has to ask why it was not ready to come before the parliament last year and why this legislation has not undergone the scrutiny and examination that every other piece of legislation usually enjoys and deserves in this parliament.

Last year the Joint Standing Committee on Treaties presented its 49th report. Even there, in one of its recommendations, it suggests that the government of Australia use its best endeavours to try and get the treaty ratified 'in any event before 31 December 2002 as this would serve the best interests of both nations'. But there have been delays and there have been unsatisfactory answers as to why there have been delays. In the Senate estimates in February I asked representatives from the Department of Foreign Affairs and Trade where the legislation was at and what the impediments were. Although I understand that they are not responsible for drafting the legislation, I asked if the impediment was due to the fact that the unitisation agreement had yet to be signed—was this government holding the East Timorese government to ransom by saying, 'You sign the unitisation agreement, and we will give you the treaty through the parliament'? But the representatives from the Department of Foreign Affairs and Trade indicated to me that they did not believe there was any impediment. I said, 'Does the unitisation agreement need to be signed, sealed and delivered before the Timor treaty can be ratified?' Dr Raby answered, 'That is not necessarily so.' I asked, 'One is not dependent upon the other?' His answer was, 'There is no technical dependency.' So we have never been given any clear reason why this legislation has taken so long to come before this parliament. We do know that it is in some way linked to contracts that may or may not have an 11 March date on them. But, really, this legislation could have been dealt with before the Christmas period and be well and truly out of the way by now. It has taken this government 10 months to do what it could have done in a number of months following the signing of the treaty last May.

It is expected that East Timor can receive billions of dollars over the 20-year lifespan of this project. It is difficult to overstate the importance of this revenue to the world's newest and also poorest nation—one that is also a very dear and close neighbour of this country. Australia, of course, will receive substantial benefits from the development and processing of natural gas. Over the life of the project, total revenue to Australia from the liquid and gas phases is expected to total almost \$1.5 billion. So this is a significant and substantial investment for our economy. One would have thought that the government might have dealt with it with a little more haste than it has. The gas deposits in the Timor Sea are almost three times as large as those that were in the North West Shelf and they are conservatively estimated to be worth at

least \$100 billion. This project will no doubt cement the position of Darwin and Australia in the world energy market. In total, we are talking about \$2 billion for the pipeline from Bayu Undan to Darwin and \$1.5 billion for investments in Darwin alone. The Bayu Undan project is estimated to contain around \$US15 billion worth of petroleum.

The bringing of gas onshore to the Northern Territory allows for the multimillion dollar development that has been recently announced at McArthur River and the expansion and development of mining activities by Alcan at Nhulunbuy, not to mention, of course, significant growth in jobs and opportunity for people in the Territory and for businesses as well. I want to pay tribute to the Northern Territory Labor government—and, in particular, to the Chief Minister, Clare Martin, and her team—which has, since it was elected in 2001, played a key, crucial and central role in negotiations, not only between the gas companies involved in these projects but also between East Timor and Australia. This is a critical project for the Northern Territory. The Northern Territory government has known that and it has personally made the securing of what is in the best interests of the Territory its ambition and project, while never forgetting the very valuable and dear friendship and relationship we have with East Timor. This project will develop long-term economic benefits for the Territory once the projects go ahead.

We know that this parliament has been given the minimum amount of time to pass this legislation. No time has been given to effectively scrutinise this legislation which fundamentally affects our bilateral relationship with our newest neighbour in our region. This legislation will affect the future of the largest resources in this country's recent history. Australia's long-term strategic policy objective in East Timor must be to help it to become a viable state, free from foreign interference and internal unrest and free to pursue its economic independence. In order to do that, we need to ensure that any benefits East Timor can derive from these projects are maximised to the point where they do in fact enjoy strong economic growth. An independent and strong East Timor is in our national interest. It is also in our national interest to have good relations with East Timor.

I was going to spend the time talking about the poor way in which our Minister for Foreign Affairs, Alexander Downer, has handled relationships with East Timor and, in particular, the many reports in the media of his appalling performance at a meeting held on 27 November last year with the East Timorese government. But I think that just goes to highlight the valuable role Clare Martin has played in this and the work that she has done in ensuring that, while the federal government may not have such a good rapport with the East Timorese and has handled this quite badly in some ways, at least the Northern Territory government and Clare Martin have been there to ensure that the interests of the East Timorese are being looked after and listened to during this process.

The most effective way for Australia to ensure that East Timor is a strong and independent neighbour is

to continue to develop those relationships and to provide the maximum assistance that we possibly can. The government have offered no explanation for the delay in these bills. I believe that they have tried to link the ratification of this treaty and this legislation with the unitisation agreement. I am not happy about the fact that parties in this chamber who have wanted to scrutinise this legislation have been denied the opportunity to do so. I understand that time is of the essence and that this is a piece of legislation that the people of the Northern Territory are relying on very heavily, and certainly the people of East Timor are relying on even more so.

In concluding, I do want to place on record that I am quite disappointed that Senator Scullion, my colleague from the Northern Territory, is not here to join in this debate. I would have thought that with this very crucial piece of legislation relating to the Northern Territory he may well have wanted some words in the transcript indicating his support for this kind of project. But of course that has been the case in the Northern Territory with the CLP government for many years—hands off the wheel when it comes to investing in big projects and putting in the long hard work that has been needed. At least the Clare Martin government has done that. Our relationship with the East Timorese people in the Northern Territory is strong and growing. This is a significant day, not only for them but for us, and this will be of significant assistance to the economy in the Northern Territory and to the people of the Territory.

**Senator BROWN** (Tasmania) (12.10 p.m.)—Last night, as the newspaper reports tell us, the Prime Minister phoned his opposite number in East Timor to deliver blackmail. What the Prime Minister effectively did was to coerce a poor and weak neighbour, through blackmail, into accepting an agreement to develop the fossil fuels—

**Senator Abetz**—Mr Acting Deputy President, I rise on a point of order. This is clearly casting an aspersion on the Prime Minister, accusing him of engaging in blackmail. Not only is it illegal but it is casting an aspersion on the Prime Minister and ought be withdrawn.

**The ACTING DEPUTY PRESIDENT (Senator Watson)**—Senator Brown, you should not accuse the Prime Minister of blackmail. I ask you to withdraw that.

**Senator BROWN**—I believe that that is what happened.

**The ACTING DEPUTY PRESIDENT**—That is my ruling.

**Senator BROWN**—I am not going to withdraw that. That is exactly what happened last night. It would be a breach of faith, in my own view of the matter, to withdraw that statement.

**The ACTING DEPUTY PRESIDENT**—For a second time, Senator Brown, I ask you to withdraw the blackmail allegation against the Prime Minister, or rephrase it.

**Senator BROWN**—Last night the Prime Minister made a call to his opposite number in East Timor to

effectively coerce East Timor into making an agreement which was against its own interests.

**Senator McGauran**—Mr Acting Deputy President, I rise on a point of order.

**The ACTING DEPUTY PRESIDENT**—Senator Brown, there is another point of order.

**Senator BROWN**—Yes, but I am making my point of order.

**The ACTING DEPUTY PRESIDENT**—It is a point of order being made against you whilst you are on your feet.

**Senator BROWN**—A point of order cannot intervene on a point of order.

**The ACTING DEPUTY PRESIDENT**—Yes, it can. That is the whole purpose of points of order.

**Senator McGauran**—Quite obviously Senator Brown, if I can garnish what he was trying to say, is debating your instruction, which was to withdraw and rephrase if he wishes to. Surely he has enough grasp of the English language to find another word that is within the standing orders. I put it to you, Mr Acting Deputy President Watson, that he is challenging your ruling.

**The ACTING DEPUTY PRESIDENT**—Your point of order is that he is debating the issue. Senator Brown, you cannot debate my ruling. I have made a ruling; I have given you an option. It is up to you to either withdraw the term or to use some alternative phraseology.

**Senator BROWN**—Last night the Prime Minister used blackmail on East Timor, and I will not withdraw that. It is a matter of fact. This is such a serious matter; it is such deplorable behaviour by Australia against our poor East Timorese neighbour. We have to call a spade a spade, and that is what I am doing. I do not believe that is outside standing orders. I am prepared to further fill out the reasons for my making that statement, but it would be not proper for me to withdraw a statement which is factual in effect.

**The ACTING DEPUTY PRESIDENT**—Senator Brown, you are impugning a motive against the Prime Minister—accusing him of blackmail. That is unacceptable, and I ask you to withdraw it or to use some alternative language. I am sorry.

**Senator BROWN**—The motive of the Prime Minister last night was to coerce East Timor, in terms of resources and money, through a threat to withdraw this legislation if the East Timorese government did not agree to sign the agreement today. That is why Mr Downer has gone to Bali. That is a statement of fact. That is what the Prime Minister did. I will not withdraw.

**The ACTING DEPUTY PRESIDENT**—Senator Brown, you are challenging the authority of the chair. I have asked you to withdraw. You can withdraw and then use alternative language if you wish, but it is a requirement that you should respect the decision of the chair.

**Senator BROWN**—Chair, I believe you are wrong in your ruling. I stand by my statement. The Prime Minister and the government of Australia are

involved in blackmail of the clearest order against our poor East Timorese neighbour. That is what has happened. I am not going to withdraw that. I am prepared to elaborate on it if you will give me the opportunity to do so, but I will not withdraw a statement of fact.

**The ACTING DEPUTY PRESIDENT**—If you are going to dissent, it is necessary to put your dissent in writing.

**Senator BROWN**—No, Chair, I am not dissenting; I am not accepting the ruling. I will leave that matter for you to determine.

**The ACTING DEPUTY PRESIDENT**—You are refusing to withdraw, and I have asked you to withdraw. If you are going to dissent from my ruling, your next stage is to put it in writing, I have been advised by the Clerk.

**Senator BROWN**—I will reiterate, with the greatest respect to you, Mr Acting Deputy President: this is a matter of enormous importance. As I said earlier today, I am very angry about—

**Senator Abetz**—Mr Acting Deputy President, I raise a point of order: I think you have been very lenient with the honourable senator. You have given him a course of action to withdraw and then, if he wishes to, to use alternative language. He has now defied your ruling on a number of occasions and repeated the word. We have all had to withdraw from time to time when we do not like to; yet 24 hours later we usually go back to our offices and say, 'Yep, that was a fair cop and it should have been withdrawn.' The honourable senator has been given the opportunity to withdraw. If he does not, quite frankly, Mr Acting Deputy President, he should not be given the opportunity to flagrantly violate your ruling, disregard it and, as a result, hold not only you but the standing orders and this whole place in contempt.

**The ACTING DEPUTY PRESIDENT**—I will read standing order 198, 'Objection to ruling', for the clarification of the Senate:

(1) If an objection is taken to a ruling or decision of the President, such objection must be taken at once and in writing, and a motion moved that the Senate dissent from the President's ruling.

(2) Debate on that motion shall be adjourned to the next sitting day, unless the Senate decides on motion, without debate, that the question requires immediate determination.

**Senator BROWN**—Thank you, Mr Acting Deputy President. I say again, with great respect, that I am not complying with your ruling. I do not withdraw. But I am not issuing a dissent with that. Somebody else can do that if they wish to. My position is clear: I am not withdrawing the comments I made, because they are factual. (*Quorum formed*)

**The ACTING DEPUTY PRESIDENT**—Senator Brown, under the circumstances, I have no alternative other than to name you for persistently disobeying a ruling of the Acting Deputy President. I am therefore required to report that to the Senate. Following that, you will be given an opportunity to make an explanation and then it will be up to the minister to move a motion which I presume will be debated at the next

day of sitting. I report to the Senate that Senator Brown has persistently disobeyed a ruling of the Acting Deputy President, and I now call on Senator Brown to make an explanation.

**Senator BROWN**—I thank you, Mr Acting Deputy President. You required me to withdraw the word ‘blackmail’ as applied to the Prime Minister. I had made the statement to the Senate that the Prime Minister had engaged in overnight blackmail by ringing his opposite number in East Timor to apply pressure to have the East Timorese sign an agreement today for the development of the Timor Gap oil and gas fields in return for having this bill go through the Senate today, as reported by today’s *Age* newspaper. The chamber should know that the East Timorese government has been put under unacceptable—

**Senator Faulkner**—Mr Acting Deputy President, I raise a point of order. I would like to be clear that you are taking this action under standing order 203(3).

**The ACTING DEPUTY PRESIDENT**—That is correct.

**Senator Faulkner**—My point of order—and this has been raised previously as a point of order in this place when in the unusual circumstance these sorts of matters have been before us—is this: you called on Senator Brown to make an explanation. I think I heard you correctly.

**The ACTING DEPUTY PRESIDENT**—Correct.

**Senator Faulkner**—Under standing order No. 203(3), it is competent for that to occur. But it is also competent when you invoke that standing order after a senator has been reported to call upon the senator concerned, in this case Senator Brown, to make an explanation or an apology.

**The ACTING DEPUTY PRESIDENT**—He is doing that.

**Senator Faulkner**—I do not believe that was done. He was called on to make an explanation. I am not suggesting that Senator Brown would necessarily—

**Senator Abetz**—He’s not big enough to apologise.

**Senator Faulkner**—This is a procedural point that has been raised before in this circumstance.

**Senator Abetz**—You’re right.

**Senator Faulkner**—I know I am right. Whether Senator Brown avails himself of such an opportunity is entirely a matter for him. My point of order is that that opportunity should be extended to a senator in this circumstance. That is my only point of order. I am not suggesting for one moment that in this instance, or in any other instance, a senator might necessarily avail themselves of that opportunity. But I like to be consistent in the way these matters are dealt with. I think that in the most recent circumstance when a senator was reported we had the then President call on the senator to make an apology. Of course the point was taken quite properly that that senator could have made an explanation or an apology. I believe the Acting Deputy President called on Senator Brown in this instance to make an explana-

tion. I think, if we are going to conform strictly to the standing orders, either is appropriate.

**The PRESIDENT**—Senator Faulkner, I believe that what you have just said is correct. Therefore, I call upon—

**Senator Faulkner**—In that instance. Thank you for ruling that way, Mr President. This may not seem to be a major point, but it has been raised before; therefore, I think Senator Brown ought to be asked properly to be called upon to make an explanation or an apology, not called upon to make an explanation.

**The PRESIDENT**—That is what I intend to do. I call upon Senator Brown to make an explanation or an apology, as it says in the standing orders.

**Senator BROWN**—I thank Senator Faulkner for drawing our attention to that option. I do not make an apology, but I will make an explanation. I said in the debate earlier that the Prime Minister had been engaged in overnight blackmail of his opposite number in the East Timorese government, and I stand by that. The reasons I made that statement are very clear. We are debating today a piece of legislation that will involve, according to the Minister for Foreign Affairs, Mr Downer, a \$50 billion break for Australia from the development of the oil and gas fields which are wholly within East Timorese waters, according to my interpretation and the interpretations of a number of international jurists.

But the boundaries were moved to exclude part of those oilfields during the period of the Indonesian occupation of East Timor, and this treaty effectively excludes the lot and gives to Australia if not fifty-fifty then the majority of the profits that will flow to governments from those oilfields. This is Australia being involved in a grand theft of the resources of our small neighbour East Timor—the most impoverished neighbour in the neighbourhood having its one resource that is going to help it get up off the ground in the future taken by its richest neighbour.

This is Prime Minister Howard, on behalf of the oil corporations, ringing the Prime Minister of East Timor, Dr Alkatiri, and saying to Dr Alkatiri, according to the *Age* report, ‘If you do not sign the agreement for the development of the Greater Sunrise field’—which is the biggest field and which is East Timorese—‘and give that resource in the major part to Australia, then we won’t have this legislation go through the Senate today,’ which allows for the development of the other, smaller oilfield, which the East Timorese want to see developed. That is the Prime Minister saying, ‘Do as we want or we will take away a potentially lucrative contract with the Japanese for development of the Bayu-Undan oilfield.’ That is blackmail—that is overnight blackmail. The Senate may ask me to withdraw that comment, but to do so would be to ask me to withdraw a factual comment which accurately describes the Prime Minister’s behaviour in this affair and I will not do so.

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—Under standing order 204, I move:

That Senator Brown be suspended from the sitting of the Senate.

Question put.

The Senate divided. [12.35 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	58
Noes.....	8
Majority.....	50

AYES

- |                  |                   |
|------------------|-------------------|
| Abetz, E.        | Barnett, G.       |
| Bishop, T.M.     | Bolkus, N.        |
| Boswell, R.L.D.  | Brandis, G.H.     |
| Buckland, G.     | Calvert, P.H.     |
| Campbell, I.G.   | Carr, K.J.        |
| Chapman, H.G.P.  | Colbeck, R.       |
| Collins, J.M.A.  | Conroy, S.M.      |
| Cook, P.F.S.     | Coonan, H.L.      |
| Crossin, P.M.    | Denman, K.J.      |
| Eggleston, A.    | Ellison, C.M.     |
| Evans, C.V.      | Faulkner, J.P.    |
| Ferguson, A.B.   | Ferris, J.M. *    |
| Forshaw, M.G.    | Harradine, B.     |
| Heffernan, W.    | Hill, R.M.        |
| Hogg, J.J.       | Humphries, G.     |
| Hutchins, S.P.   | Johnston, D.      |
| Kemp, C.R.       | Kirk, L.          |
| Knowles, S.C.    | Lees, M.H.        |
| Ludwig, J.W.     | Lundy, K.A.       |
| Macdonald, I.    | Macdonald, J.A.L. |
| Mackay, S.M.     | Marshall, G.      |
| McGauran, J.J.J. | McLucas, J.E.     |
| Moore, C.        | O'Brien, K.W.K.   |
| Payne, M.A.      | Ray, R.F.         |
| Santoro, S.      | Scullion, N.G.    |
| Sherry, N.J.     | Stephens, U.      |
| Tchen, T.        | Tierney, J.W.     |
| Troeth, J.M.     | Watson, J.O.W.    |
| Webber, R.       | Wong, P.          |

NOES

- |                 |                   |
|-----------------|-------------------|
| Allison, L.F. * | Bartlett, A.J.J.  |
| Brown, B.J.     | Cherry, J.C.      |
| Greig, B.       | Murray, A.J.M.    |
| Nettle, K.      | Stott Despoja, N. |

\* denotes teller

Question agreed to.

The PRESIDENT—Under standing order 204, Senator Brown, you are suspended from the Senate for the remainder of the sitting today.

Senator Brown then withdrew from the chamber.

Debate (on motion by Senator Ian Campbell) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.40 a.m.)—I move:

That consideration of government business order of the day relating to the consideration of the Petroleum (Timor

Sea Treaty) Bill 2003 and two related bills continue until concluded.

Question agreed to.

PETROLEUM (TIMOR SEA TREATY) BILL 2003

PETROLEUM (TIMOR SEA TREATY) (CONSEQUENTIAL AMENDMENTS) BILL 2003

PASSENGER MOVEMENT CHARGE (TIMOR SEA TREATY) AMENDMENT BILL 2003

Second Reading

Debate resumed.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.41 p.m.)—by leave—I seek a commitment from the Manager of Government Business in relation to the suspension of Senator Brown. In this circumstance, it would be sensible for the Senate to ensure that the will of the Senate is reflected in future votes of the Senate, which now of course might occur through a period of our routine of business that otherwise would not be the case, because of debate on the important piece of legislation the manager referred to. I indicate to the Senate, so the will of the Senate is reflected in any votes of the Senate, that the opposition would in this circumstances be willing to extend a pair to Senator Brown. I would seek the guidance of the government, if that would be their approach also.

The PRESIDENT—The Manager of Government Business has departed. We will follow that up.

Senator CHERRY (Queensland) (12.42 p.m.)—It is very hard to speak after those particular events. I want to put my objection on the record of debate on this Timor Sea Treaty legislation—it has already been said by Senator Stott Despoja on behalf of my party—to the way in which this treaty has been negotiated. My objection relates in particular to the fact that this is a continuation of the Australian government's failure to follow decent process in terms of international law. Prior to the signing of this treaty, the Australian government withdrew from the compulsory jurisdiction of the International Court of Justice relating to the delimitation of maritime boundaries. This is something which the Democrats at the time took extreme offence to, and continue to, because it means that in the negotiation of this particular treaty there was simply no umpire who would determine whether it was fair or unfair. I do not particularly share the motives that Senator Brown has suggested may have been underpinning some of that. The framework within which this treaty was negotiated was not a fair one, because it was not done in the proper context of the International Court of Justice as a final potential arbiter.

In many respects, this is only the most recent incidence of the Howard government failing to follow proper form in terms of international law and protocols. A few quick examples dropped out of my computer: the dropping of the government accounts with the International Labor Organisation for the first time in many decades, as if international standards on labour were no longer important; the government's

refusal to sign the optional protocols of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination Against Women, denying Australian citizens the right to take complaints under those conventions to international tribunals; and the adverse findings against the nation by the United Nations Human Rights Committee and the Committee for the Elimination of Racial Discrimination over this government's Wik 10-point plan legislation. The result has been ignored by this government. In fact, the government attacked the committee system of the United Nations and sought the support of a whole range of rather unsavoury countries for a comprehensive overhaul of the United Nations committee system.

Australia has refused to ratify the Kyoto protocol. It has failed to nominate members to the International Criminal Court. More recently, we have been a part of what former Ambassador to the United Nations Richard Woolcott has described as the 'unconscionable pressure' applied by the United States—with the support of Australia—on the UN Security Council to back a war on Iraq. Indeed, Mr Woolcott has warned of our growing international isolation as a result of that particular pressure on the UN. The relationship under which this treaty has been negotiated highlights our continuing pariah status as an international citizen.

It is very unfortunate that the treaty has been negotiated in this environment. It is a pity that the Australian government could not have come to this treaty with fully clean hands which would have shown that we were prepared to put our treaty, our obligations and our position before the international arbiters. I want to put that on the record because I was extremely unhappy about it. I do not propose to call people names or to engage in stunts in this place, but I want to ensure that our view is noted—that is, international law should be respected by this government—and the fact that we are disappointed at where this legislation has come from.

**Senator O'BRIEN** (Tasmania) (12.46 p.m.)—On behalf of Senator Stephens, I seek leave to have her contribution to this debate incorporated in *Hansard*.

Leave granted.

*The document read as follows—*

I rise to speak on the extraordinary delay in Australia's ratification of the Timor Sea Treaty. In November last year the Joint Standing Committee on Treaties, of which I am a member, produced a report recommending that the treaty be promptly ratified. It also recommended that the unitisation agreement regarding the Greater Sunrise field be finalised by the end of December 2002. The Government failed to do either of these things.

Instead it has protracted negotiations surrounding the unitisation agreement, which decides the distribution of revenue in the Greater Sunrise field, spanning both the Joint Petroleum Development Area and Australian territorial waters.

This has further delayed the ratification of the treaty. The Government has badly mismanaged these negotiations

Time has always been of the essence in ratifying this treaty – the industries involved in the extraction of oil and gas in the Timor Sea require significant investment and have long

planning timeframes. Most at stake has been the proposed development of the Bayu-Undan field, which has been estimated to contain 400 million barrels of condensate and liquefied petroleum gas, and 3.4 trillion cubic feet of natural gas. This development will also involve piping gas to Darwin for export to Japan. The Bayu Undan participants, including Phillips Petroleum and Santos, 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.

This development should generate an estimated \$2 billion in direct revenue for Australia. Due to the planned construction of a gas pipeline from the Bayu Undan field to Darwin, it is also vitally important to the economy of the Northern Territory, in terms both of investment and employment. It has been extremely difficult for those whose jobs or businesses might benefit from this pipeline to make plans, such as has been the uncertainty surrounding the ratification of the treaty. Leaving it as late as this to ratify has meant that many of these people have had to hedge their bets, largely expecting the deal not to go ahead. This has been disastrous for some Darwin businesses and individuals.

East Timor has had even more at stake in the prompt ratification of the Treaty.

Revenues from oil and gas represent East Timor's greatest opportunity to meet peoples basic needs. This revenue is vital for East Timor to fund economic development, health and education. The annual budget of East Timor, as noted by the Committee's report, is about \$US77 million, \$US30 million of which is provided by foreign aid. This foreign aid has begun to decline.

From the Bayu-Undan development, East Timor is expected to receive royalties and taxation amounting to between US\$2.5 and US\$3 billion. East Timor expects to receive \$US70 million in revenue, that is almost their entire annual budget, in 2004, and revenue is expected to peak at \$US300 million in 2013. The importance of this revenue to East Timor cannot be overstated.

East Timor is in critical need of jobs, education and training. As Mr Peter Chamberlain told the committee, 'the skill base in East Timor is low. Attention is often drawn to the destruction of physical infrastructure in East Timor, but the loss of capacity during the colonial Portuguese period and the Indonesian period is almost of more long-term harm.'

As such it is not only the revenue stream that makes developments in the Timor Sea so important to East Timor. It is also the upstream and downstream benefits that will involve building the capacity of the East Timorese workforce, and strengthening the local economy.

The Uniting Church, in a submission to the committee, states 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.'

The stability of East Timor must be an aid priority not only because it is a developing country – East Timor is also one of Australia's closest neighbours. The report notes that '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.'

It is in Australia's best interests to support East Timor to become self sufficient, and to develop into a stable, and economically viable, nation. In a time when we should be doing all we can to promote stability in our region, clearly

we should be dedicating resources to prevent economic and social instability in East Timor. In a time when the Australian government claims to be working hard to prevent refugee flows at their source, we should do everything we can to prevent another situation in East Timor in which people will need to flee.

Australia is in a particularly good position to help East Timor build the capacity of its workforce, and become a viable economy. As Community Aid Abroad/Oxfam submitted, 'The alternative is to have an East Timorese neighbour that is dependent on Australian development assistance for many years into the future.'

The delay in ratification of the Timor Sea Treaty was certainly not in the best interests of East Timor, only succeeding in creating further uncertainty in this still unstable democracy regarding the future base of the country's economy.

In the past month, East Timorese Prime Minister Mari Alkatiri has accused the Australian Government of stalling the ratification of the Treaty in order to get Australia a better deal on the unitisation agreement. He said, 'Australia knows that these revenues are vital for us. I am very surprised by their attitude. I never thought a democratic country like Australia would play this kind of role with a poor neighbour.'

The way in which these negotiations have been undertaken do Australia no credit, damaging our relationships with East Timor and with the industries involved in the potential developments in the Timor Sea.

In failing to finalise the unitisation agreement by December last year, and in refusing to ratify the Treaty without the completion of this agreement, the Government has seriously jeopardised the proposed Bayu-Undan liquefied natural gas development.

Ratification of the treaty by March 11 is a key condition of Phillips Petroleum's contract to supply LNG to Japan. After this week, parliament does not sit again until the 18th of March – thus the Government has left itself absolutely no leeway in getting the ratification bill through parliament. That this bill is going through the Senate today is an absolute disgrace. It shows that the Government is willing to throw aside developments that could so benefit Australia and East Timor, for the sake of getting a bigger slice of another pie.

This has obviously caused great consternation on the part of those involved in the development, and those with greatest stakes in it, particularly those in the Northern Territory and East Timor.

The Government has long known about the time constraints for the ratification of the treaty. Phillips made it abundantly clear, as did Santos. The Joint Standing Committee reported on this in no uncertain terms. It has been nothing short of irresponsible for this Government to delay the matter for so long.

The Joint Standing Committee concluded in November last year that it is in the best interests of both East Timor and Australia for this Treaty to be promptly ratified, and for the oil and gas resources in the Joint Petroleum Development Area to be developed. It also recommended that the International Unitisation Agreement be concluded by the end of last year. Prime Minister Howard himself promised the prompt ratification of the treaty when he attended independence celebrations in East Timor last May.

The ratification of the Treaty has been anything but prompt.

The oil and gas resources in the Timor Sea present a significant opportunity to both Australia and East Timor. This is an important matter to our country and our region, and it

has been handled with nothing short of carelessness by this government. By putting this treaty before parliament at the 11th hour, or more like the 11 and a halfth hour, it shows very little regard for all of those, in Australia and in East Timor, who stand to benefit from developments in the Bayu-Undan field.

**Senator ABETZ** (Tasmania—Special Minister of State) (12.46 p.m.)—by leave—I thank honourable senators, or most of them anyway, for their contribution to this debate. I indicate at the outset that the very effective senator for the Northern Territory, Senator Nigel Scullion, wished to take part in this debate but, given the time constraints on this matter and the importance of getting the legislation through, he has very kindly and in a most considerate way agreed not to speak. But I think it is appropriate that his support and close following of this legislation be noted and acknowledged.

I thank Senator O'Brien for his contribution on behalf of the opposition. This is an important piece of legislation. Time is of the essence so, other than the comments about the short notice, can I say that I agree with Senator O'Brien on why this legislation has been brought into the chamber now. I accept that the legislation has been brought into the chamber at very short notice. I accept that it is undesirable when that happens, but unfortunately it does happen on occasions.

As I understand it, the treaty was submitted to the Joint Standing Committee on Treaties in June, which then reported in November. As a result, complex legislation had to be drafted. As I indicated before, 12 pieces of legislation required amendment. Complex negotiations also had to take place with East Timor on a range of issues following the signature of the treaty, including the production sharing contract for the Bayu-Undan field, which needs to be issued to the contractor when the treaty comes into force. It is a matter of regret that we do not have as much time as we would otherwise like to have to debate this measure. We will be opposing the Australian Democrats' second reading amendment. I complete by remarks by again thanking most honourable senators for their cooperation in this debate.

Question put:

That the amendment (**Senator Stott Despoja's**) be agreed to.

The Senate divided. [12.53 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	8
Noes.....	42
Majority.....	34

AYES

- |                 |                   |
|-----------------|-------------------|
| Allison, L.F. * | Cherry, J.C.      |
| Greig, B.       | Lees, M.H.        |
| Murray, A.J.M.  | Nettle, K.        |
| Ridgeway, A.D.  | Stott Despoja, N. |

NOES

- |               |              |
|---------------|--------------|
| Abetz, E.     | Bishop, T.M. |
| Brandis, G.H. | Buckland, G. |
| Calvert, P.H. | Carr, K.J.   |

Chapman, H.G.P.	Colbeck, R.
Collins, J.M.A.	Cook, P.F.S.
Crossin, P.M.	Denman, K.J.
Eggleston, A.	Evans, C.V.
Ferris, J.M. *	Forshaw, M.G.
Harradine, B.	Hogg, J.J.
Humphries, G.	Hutchins, S.P.
Johnston, D.	Kemp, C.R.
Kirk, L.	Lightfoot, P.R.
Ludwig, J.W.	Lundy, K.A.
Marshall, G.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Moore, C.	O'Brien, K.W.K.
Payne, M.A.	Ray, R.F.
Sherry, N.J.	Stephens, U.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Watson, J.O.W.
Webber, R.	Wong, P.

\* denotes teller

Question negatived.

Original question agreed to.

Bills read a second time.

**In Committee**

**PETROLEUM (TIMOR SEA TREATY) BILL 2003**

Bill—by leave—taken as a whole.

**Senator NETTLE** (New South Wales) (12.56 p.m.)—I move Australian Greens amendment (1) on sheet 2861:

(1) Page 15 (after line 10), at the end of the bill, add:

***PART 6—TREATY AMENDMENTS***

***26 Amendment of paragraph (a) of Annex E under Article 9(b) of Treaty***

- (1) The Commonwealth considers that equity with East Timor requires the first sentence of paragraph (a) of Annex E under Article 9(b) of the Treaty to be amended with the figure 20.1% replaced by 100% and the second sentence of the paragraph omitted.
- (2) The Commonwealth will during 2003 seek agreement with East Timor for this amendment of the Treaty.

In speaking to this amendment, I would first like to seek leave to incorporate a statement from NGOs from East Timor. It was circulated at the beginning of this debate. The whips on duty were Senator Mackay and Senator Campbell.

**Senator O'Brien**—Senator Brown showed me a document which I believe he intended to incorporate. If it is the same document, we gave such leave and we will give the same leave to Senator Nettle.

**Senator Abetz**—To assist, we agree, but I think documents of this nature should in future be tabled as opposed to incorporated.

Leave granted.

*The document read as follows—*

**Submission to the Australian Parliament's Joint Standing Committee on Treaties**

**Regarding the Timor Sea Treaty And the Related Exchange of Notes Between the Government of Australia and The Government of the Democratic Republic of East Timor Summary**

1. East Timor is a sovereign nation which has no maritime boundaries, and whose claims overlap those of Australia.
2. East Timor should not be subjected to illegal historical precedents or made to negotiate under pressure.
3. The current Treaty was written too quickly and, for example, does not adequately protect the marine environment.
4. Revenues from oil and gas in the disputed territory should be held in trust until the boundaries are agreed to based in principles of international maritime law.

Dear respected members of the Australian Parliament:

East Timor is a nation whose sovereignty was formally recognized by the international community on 20 May 2002. With independence, East Timor has the fundamental right to determine its territorial boundaries – land, air and water – following national legal principles laid out in our Constitution, and following international legal principles laid out in the UN Convention on the Law of the Sea (UNCLOS).

East Timor does not yet have clear territorial boundaries with Australia and in fact, the two countries have overlapping claims in the Timor Sea.

In 1972, the governments of Australia and Indonesia agreed upon their maritime boundaries using the continental shelf argument as a basis for the negotiation. This agreement was never recognized by the Government of Portugal which at that time had administrative authority over East Timor. The 1972 line drawn by Indonesia and Australia intrudes into East Timor's waters, even though they left a gap where they recognized that they had no claim against Portuguese Timor. This gap left a still-contested area in the Timor Sea called "the Timor Gap".

In 1975, Indonesia unilaterally seized East Timor, and annexed it the following year. The international community represented by the United Nations, however, never recognized this annexation and continued to officially recognize East Timor as an area under the administration of Portugal. Australia was the only nation to legally accept the illegal annexation, which was condemned by eight U.N. General Assembly resolutions. In 1989, Indonesia and Australia concluded negotiations over the joint exploration and production of oil and gas in the Timor Gap. Without any resolution of maritime boundaries in the area, the two nations signed the Timor Gap Treaty, using the 1972 continental shelf boundary as the basis of the partnership agreement and agreeing to joint exploration and production of oil and gas within the Zone of Cooperation area of the Timor Gap. The treaty was challenged in the International Court of Justice by Portugal, although the court could not rule because of Indonesia's refusal to recognize the authority of the court.

Because the annexation of East Timor was illegal, unilateral and never recognized by the United Nations, the 1989 treaty was an illegal treaty. For this reason, any agreement that uses the boundaries for the joint sharing of oil and gas which are used in the 1989 Timor Gap Treaty must also be viewed as illegal and in conflict with the principles of the international community, UNCLOS, other international laws, and the Constitution of the Democratic Republic of East Timor which came into effect on 20 May 2002.

In March of this year, Australia withdrew from UNCLOS and International Court of Justice (ICJ) processes as they relate to the resolution of maritime boundaries. Although the treaty says it does not prejudice this issue, it enacts temporary boundaries which unfairly and illegally advantage Australia. Also, based on this proposed treaty, the money from Laminaria-Corallina and other oil fields in

contested areas goes to Australia, despite the fact that these areas are within East Timor's territorial claims. It is likely that when the question of maritime boundaries between Australia and East Timor is finally resolved, these revenues will be already spent and unrecoverable by East Timor.

Australia must commit itself to resolving the maritime boundary question following the principles of international maritime law. Australia should cancel its withdrawal from UNCLOS and ICJ processes, and return to the community of law-abiding nations. This is the only way East Timor can be assured that its rights will be respected.

Under pressure by oil companies, Australia in turn pressured East Timor to sign the treaty within hours of becoming independent. This is not an appropriate way to relate to a new neighbour which is just developing governmental and democratic structures. This treaty, which has a 30-year term, will greatly affect East Timor's ability to meet this new nation's basic needs. More time must be taken to allow East Timorese people and their representatives to fully understand all aspects of the issue.

For example, the current treaty does not adequately protect East Timor or Australia's marine environment. As a new nation, East Timor has not had time to develop proper environmental laws or practices. It may be appropriate for us to rely on Australian law, but as a small, underdeveloped nation, East Timor may have different needs and concerns than Australia. 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.

With East Timor's independence, all the natural wealth of the nation, both in the sea and on land, must be used to benefit the East Timorese people. The East Timorese government must work with great diligence to ensure that the oil and natural gas resources in the Timor Sea are used in the interests of national reconstruction and prosperity for the people of the Democratic Republic of East Timor. At this time, East Timor is taking steps to rebuild despite limited resources, both human and economic. Given this situation, it is very unfair for a large and wealthy nation such as Australia to continue to take natural resources from East Timor. The East Timorese people have a far greater need for this wealth than Australia, which is already relatively prosperous, and has much greater oil and gas resources elsewhere.

Based on the above concerns, a group of East Timorese civil society organizations formed the Independent Information Centre for the Timor Sea (CIITT), an information centre formed by thirteen East Timorese non-governmental organizations with the goal of monitoring and analysing the process of determining legal maritime boundaries and the process of oil and natural gas exploration and production in the Timor Sea. The goal of this group is to maintain the sovereign borders of East Timor, to optimise the use of natural gas and oil resources for the prosperity of the East Timorese people, and to decrease the negative effects which sometimes accompany petroleum development. We will continue to follow the process for resolving the issue of maritime boundaries between Australia and East Timor and also the exploration and production of gas and oil in the Timor Gap. This monitoring process began while East Timor was still under UN administration.

The CIITT includes organizations representing different constituencies, but with a common goal of ensuring that the resources of the Timor Sea are used in the most safe and effective way to advance the prosperity of our people. Some of our member organizations are making separate submissions to your Joint Standing Committee, going into more detail on certain aspects of the Timor Sea Treaties.

As a coalition, we support the issues raised by the submissions of each of our members.

We consider that the 1989 Treaty between Australia and Indonesia was an illegal treaty, including the agreement on how oil and natural gas reserves would be explored and exploited in the Timor Gap. This agreement will clearly have a very serious political and economic impact on East Timor and the legal determination of the maritime boundaries of East Timor.

During the transitional period, the United Nations and Australia carried out negotiations which led to the Exchange of Notes signed in February 2000 and the Draft Arrangement of July 2001 which was then signed on 20 May 2002 by the Government of Australia and the new Government of East Timor. This process will potentially impact the proper determination of maritime boundaries and territories such as the Exclusive Economic Zones of the countries which are disputed. This treaty was signed before East Timor had any maritime boundary legislation and for that reason, should not be viewed as legal.

**Senator NETTLE**—I thank the chamber. The amendment seeks to put the treaty in line with international law with regard to the location of the two gas fields that we are discussing in this legislation—that is, to put them 100 per cent in the ownership of East Timor. East Timor is a poor country; the UN rates it amongst the 20 poorest of the world. When Indonesia withdrew three years ago, it followed a scorched earth policy that left about 70 per cent of the modest infrastructure in ruins. But one of the most vital assets of the Timorese economy is the potentially vast reservoirs of undersea oil and gas in the Timor Gap.

Senators would be well aware that, in recent negotiations between Australia and East Timor, the so-called joint petroleum development area was divided up 90 per cent to East Timor and 10 per cent to Australia. Under the United Nations Convention on the Law of the Sea, many believe East Timor would have sovereign rights over the whole area, but that is not the real problem here. In fact, the best evidence indicates that East Timor is being deprived of its share of much more significant resources. Vaughan Lowe is a professor in international law at Oxford University and a recognised international expert on determining maritime boundaries. Earlier this year, he showed that East Timor could potentially claim a significantly wider area than previously recognised.

To the west of the joint petroleum development area are significant oil fields currently providing good revenue to the Australian Treasury that appear to lie within East Timor's potential borders. But the most important resource in the whole Gap area is on the eastern border. The Greater Sunrise gas fields straddle the border of the joint development area, and Professor Lowe's opinion indicates that they should be largely or completely East Timor's. Combining these areas to the east and the west, it becomes apparent that, if the Timor Sea Treaty is ratified in its current form, East Timor will receive revenues from less than 40 per cent of the resources to which they are entitled.

The maritime borders between Australia and East Timor have never been defined, so why doesn't East Timor simply claim its boundaries and take the issue

to the International Court of Justice if Australia does not agree? We will go on to that in more detail in discussion on the second amendment, but they cannot take it to the International Court of Justice because in March last year, when these issues became clearer, Australia withdrew from the jurisdiction of the International Court of Justice with respect to maritime boundary determination. By pulling out, Australia has denied East Timor the option of getting an enforceable ruling that would allow them to claim their own sovereign territory.

Finally, let us not forget the lucrative downstream developments that will probably take place on Australian soil, such as the planned pipeline and processing plant in Darwin. In the end, it looks like East Timor may get only about one-third or less of the benefit of its own resources—not so generous a deal as the much proclaimed 90-10 per cent split would suggest. The federal government's Joint Standing Committee on Treaties ducked this issue in the conclusions of its report on the Timor Sea Treaty, released some time ago. This will happen only if the Australian public demand that their government does so. Should the Timor Sea Treaty and the arrangements of the Greater Sunrise gas fields be ratified as is, or should the process be held up, causing delays to investment in projects and thus delays in paying revenue to East Timor treasuries? Both countries would like a mutually acceptable resolution. Firstly, we could allow East Timor a much larger share of the Greater Sunrise gas fields than the 18 per cent they would receive from the treaty as it stands. Australia should also—and we will get on to this in the next amendment—recommit to the International Court of Justice on maritime boundaries issues so that the boundaries between East Timor and Australia can be determined.

Australia is, of course, a significant and generous aid donor to East Timor, but the value of this aid is significantly less than the long-term value of the oil and gas resources which Australia is currently depriving East Timor of. Australia, as we have heard Senator Brown say earlier, has also used heavy-handed tactics in insisting that the ratification of the Timor Sea Treaty be linked to a final agreement on the unitisation of the Greater Sunrise field. This linking was not necessary but was done by Australia in order to use the urgency for a finalisation of the Timor Sea Treaty as a way of pressuring the East Timorese into accepting a less than equitable outcome. Again the Australian government used its disproportionate negotiating advantages to coerce an outcome favourable to Australia and disadvantageous to East Timor. Under this deal East Timor will receive only about 18 per cent of revenues from Greater Sunrise, whilst it is entitled to a much larger share, if not the whole amount. I commend this amendment to the Senate.

**Senator STOTT DESPOJA** (South Australia) (1.04 p.m.)—The Australian Democrats will be supporting the amendment moved by Senator Nettle on behalf of Senator Brown. As I outlined in my contribution to the second reading debate, we are partial to this idea in relation to equitable apportioning. My

understanding of this amendment is that this would put all of Greater Sunrise into the JPDA. That is something that has been argued for by the East Timorese. Also, it would act as an incentive for Australia to act expeditiously in relation to the final delimitation of boundaries.

As I acknowledged in my contribution to the second reading debate, there are competing legal arguments—sometimes equally persuasive ones—in relation to the debate about boundaries, but certainly the Democrats believe that those in favour of the East Timorese are quite persuasive. A hundred per cent may seem to some in the community or some in this chamber to be a generous apportioning, but, let us face it, if any nation requires the resources, it is certainly East Timor. The Australian Democrats support the amendment before us. I am not sure if there will be a division, but I put on record that seven Democrat senators will be voting in favour of this motion.

**Senator O'BRIEN** (Tasmania) (1.06 p.m.)—The opposition will not be supporting this agreement for two good reasons. Firstly, notwithstanding the argument with regard to what some people might say should be the outcome in this matter, the outcome as agreed between the government of East Timor and Australia is reflected in schedule 1 of the bill. That is what is sought to be amended here, so what the Senate would be proposing would be to intervene in the agreement between Australia and East Timor. I quote a press release from the Prime Minister yesterday in which he said:

The negotiations were complex and difficult, but I am personally pleased with the outcome. The negotiated text is, I believe, truly nonprejudicial to either country's position on permanent maritime boundaries. It should provide a satisfactory economic result for all parties.

It is clear that this is not a matter on which there is a clear-cut position and to seek to intervene in the treaty today would be very dangerous, given the time that we have available to deal with this. I understand that the timetable is not of the making of the opposition or the minor parties in the Senate. The other reason Labor would not support this amendment is the potential for it to prevent the passage of this legislation in time to meet the necessary timetable for the Bayu-Undan field to proceed. I think that would be much more prejudicial to the East Timorese in terms of the revenue that they stand to gain from it. I note that annex E, under article 9(b) of the treaty, provides for either Australia or East Timor to request a review of the production sharing formula. One can interpret the Prime Minister of East Timor to be suggesting that that is what may happen in the future, but I do not want to presume that; I would rather hear that directly from East Timor. For those two reasons, Labor will not be supporting the amendment that is before the chamber today.

**Senator ABETZ** (Tasmania—Special Minister of State) (1.08 p.m.)—The government opposes this amendment for the reasons outlined by Senator O'Brien. It really is patronising in the extreme, and also bizarre, to have a senator come into this place, as has a senator from my own home state—not being Senator O'Brien—and suggest that somehow he is

clothed with all knowledge and authority on this matter and that he knows better than the democratically elected government of Australia and, this is the important part, the democratically elected government of East Timor. This is an agreement that both countries want, and here we have an assertion by the Greens that, no, having been elected from the state of Tasmania, they know better than the democratically elected Prime Minister of East Timor. It really shows the patronising, nearly colonialist approach that is being taken to this new nation. It is quite capable of standing on its own two feet and negotiating these agreements in a mature way. To suggest that it does not have that capacity, to suggest that it cannot do that on its own behalf but needs a senator from Tasmania to assist it, I think is a slap in the face to the newly democratically elected government of East Timor.

I will not bother reading the quote from the press release—Senator O'Brien has done that—indicating the government's support. In relation to the detail of the amendment, the apportionment of the Greater Sunrise resources was agreed with East Timor on the basis that 20.1 per cent was attributed to the Joint Petroleum Development Area which is the subject of the Timor Sea Treaty. The treaty provides for the unitisation of petroleum that extends across the boundary of the Joint Petroleum Development Area. Annex E, which is referred to in the amendment, requires a unitisation agreement for Sunrise to be agreed on the basis that 20.1 per cent is attributed to the Joint Petroleum Development Area and 79.9 per cent to Australia. This agreement has been reached between two democratically elected governments, and, quite frankly, I think it is in the interest of the East Timorese especially that this development get under way as soon as possible so that the revenue streams can start flowing into that country. Whilst you can argue slightly around the margins, I suppose, at the end of the day there is an overwhelming sense of goodwill towards East Timor from this government, the opposition and, I would have thought, all Australian people. We have shown that in numerous ways and we are showing it again by having come to an agreement which is acceptable to the East Timorese Prime Minister, his government and the Australian government.

**Senator NETTLE** (New South Wales) (1.11 p.m.)—I thank the minister for his comments. I believe it is patronising in the extreme for the Australian government to believe that they can determine international maritime boundaries, especially between Australia and East Timor, rather than work through the international legal processes that are in place to determine those boundaries. East Timor is a country of extreme poverty and we are a country of relative wealth within our region. For us to believe we can use our negotiating position and our disproportionate wealth to determine international maritime boundaries outside of the international law that is in place—and that we will deal with in the next amendment—I believe to be patronising in the extreme.

Question negatived.

**Senator NETTLE** (New South Wales) (1.13 p.m.)—I move the following amendment:

2) Page 15 (after line 10), at the end of the bill, add:

**27 Reference to International Court of Justice by addition of paragraph (e) to Annex E under Article 9(b) of Treaty**

(1) The Commonwealth considers that equity with East Timor requires the addition of the following paragraph to Annex E under Article 9(b) of the Treaty:

(e) The question of the permanent delimitation of the seabed between Australia and East Timor must be referred by the Commonwealth to the International Court of Justice in 2003 and the Court's ruling shall be accepted as determining the matter.

(2) The Commonwealth will during 2003 seek agreement with East Timor for this amendment to the Treaty.

As I mentioned previously, in March 2002 Australia withdrew from the jurisdiction of the International Court of Justice over the determination of maritime boundaries. In doing so it has thwarted East Timor's ability to determine maritime boundaries with Australia in accordance with internationally accepted principles. It has also undermined its ability to claim its maritime resources, which appear to be significantly greater than those contained within the Joint Petroleum Development Area, the area covered by the Timor Sea Treaty. The determination of maritime boundaries is regularly done by application to the United Nations Convention on the Law of the Sea. By withdrawing from the International Court of Justice, Australia has refused to be bound by the internationally accepted norms of the United Nations Convention on the Law of the Sea and has thus used bullying tactics to disadvantage East Timor. I commend this amendment to the Senate.

**Senator STOTT DESPOJA** (South Australia) (1.14 p.m.)—The Australian Democrats strongly support this amendment. As I said in my remarks in the second reading debate, had it not already been circulated I would have circulated a comparable amendment in my name. Senator John Cherry and I, on behalf of the Australian Democrats, have explained our opposition to the Australian government's withdrawal from the ICJ. The fact that prior notification was not given to the East Timorese is something else we find quite appalling. I think the use of the term 'bullying' is quite appropriate in this context. Clearly it does not have the same connotations that some language might have in this place. In fact, so strong was the response to one particular word—blackmail—someone was thrown out. It is useful to note that in the last year the word 'blackmail' was used at least 17 times in debates in this chamber. Most recently it was used in a comment by—and I am happy to be corrected—I think Senator Cook in a question time in the last couple of days in response to Senator Coonan. Maybe 'bullying' is an acceptable term; it certainly is appropriate in the case today.

The Australian Democrats put our opposition and concerns about the ICJ on the record in our submis-

sion to the Joint Standing Committee on Treaties during its examination of the treaty last year. We recorded our opposition to the declaration made by the Australian government in March last year to exclude Australia from the compulsory jurisdiction of the ICJ and UNCLOS with respect to maritime boundary disputes. We believe it is in Australia's best interests to support the structures and the principles of the international legal system, one that has been established to promote collective security, maintain peace and help resolve disputes. In practical terms, this means submitting to the rule of law even when this is contrary to our more immediate financial interests. Our withdrawal from the compulsory jurisdiction of the ICJ with respect to maritime boundary disputes is not only contrary to our national interest but also sets a poor example to the people of East Timor.

I have given examples of other responses to this decision by Australia from the submissions to the Joint Standing Committee on Treaties. As noted in the committee's report, we are well placed as a nation to train East Timorese workers who seek to gain employment in the resource industry or who are looking for information about infrastructure, be it education, the public sector or the creation of good governance structures, yet Australia's decision on the ICJ provides a very poor example to the East Timorese. I think the amendment before us is a good one. I commend it to the Senate and I would hope that the opposition would support it, given that there are no defensible reasons for us to be exempt from the ICJ jurisdiction in relation to maritime boundaries. The Australian Democrats put on record our strong support for the amendment before us.

**Senator ABETZ** (Tasmania—Special Minister of State) (1.18 p.m.)—Can I indicate to Senator Stott Despoja and other senators in this chamber that the amendment that is being proposed takes us a lot further than just putting Australia back into—if that is what we want it to do—the jurisdiction of the International Court of Justice. I invite the Australian Democrats to have a look at the actual wording of the amendment, which says:

The question of the permanent delimitation of the seabed between Australia and East Timor must be referred ... to the International Court of Justice ...

This amendment is so ridiculous that, even if Australia wanted to give 100 per cent to East Timor, we could not do that today because we would have to submit it to the International Court of Justice and delay a result that I am sure both sides would agree to. Why would you want to force anybody into a court when both sides can negotiate an agreement?

There is an argument, which I do not accept, that we should be part of the International Court of Justice to detail maritime boundaries; but to say that we have to go, irrespective of an agreement being reached, is absolutely ludicrous and absolutely silly. There is no good public policy reason for such an amendment whatsoever. Indeed, I think all of us are agreed, given public liability and other matters, that taking things to court usually means everybody is a loser—other than the lawyers who might earn some money along the

way. It is a lot better to negotiate an outcome. The reason Australia withdrew from the jurisdiction of the International Court of Justice in relation to maritime boundaries is that the international court has made decisions which have left both countries with an unsatisfactory situation, decisions that neither side has liked and that have been impractical. It is therefore a lot better to negotiate.

Can I indicate that, as I understand it, 90 per cent of the resource will be going East Timor's way. Ten per cent comes to Australia. I think it is a pretty generous agreement. But, nevertheless, I am sure even the Democrats would agree that, if you can negotiate something rather than go to court, that option ought to be allowed. This amendment would make going to court absolutely mandatory. Even if we wanted to give 100 per cent to East Timor, we could not do so; we would have to go to the International Court of Justice. It is a silly amendment—a stupid amendment—that should be thrown out on that basis. But, just as a little matter of interest: I happen to note that the President of the International Court of Justice is a Chinese national. I wonder whether Senator Brown would be interested in that President ruling on the boundaries of Tibet.

**Senator O'BRIEN** (Tasmania) (1.21 p.m.)—The situation that we have again is a proposed amendment at one second to midnight in this process which the opposition is concerned would become an opportunity, perhaps for those within government who are not so keen for the Petroleum (Timor Sea Treaty) Bill 2003 to proceed, for it to be held up and miss the deadlines. The arguments that have been put with regard to resolving this have merit in terms of a final resolution being determined by the court, but I do not know that that is necessarily what East Timor wants at this stage and I am pretty sure it is not what this government wants at this stage. I suspect that even if we pass the amendment, the outcome that is sought would not necessarily occur—certainly not within the time proposed. And if the matter were to be referred to the International Court of Justice, one wonders how much time would be taken in the processing of the matter, even if it were referred on the last day of 2003, as this resolution would allow.

The alternative position is the position that the East Timorese government adopts. They believe that this legislation should be passed and they will continue the process of negotiation with any items that they believe ought—not in a temporary sense but in a permanent sense—to be remedied in discussion between our two countries. I think that is the desirable outcome. It may be that the best outcome cannot be achieved in those circumstances under this government. Responding to the realities of this situation, the deadline we are facing and the fact that when this legislation leaves here, if it is amended, we have no certainty as to whether the amendment will be accepted and, if not, when it will come back and how it will be dealt with, on balance the opposition is of the view that it would be better that the legislation pass unamended. Therefore, we effectively meet the request of the East Timorese government, which is to give effect to this legislation in time to allow the

Bayu-Undan project to commence without prejudice, allowing the benefits from that project to begin to flow and to assist the East Timorese economy. That will assist the East Timorese to take the steps necessary to build their fledgling nation to take its place in the region without the need that it now has for international aid. I am not saying it will not need international aid; I think all this will do will be to minimise that and allow the nation to stand on its own two feet.

I reiterate that the opposition believe that this matter should have been before the parliament some time ago. It would have given us time to more fully consider these matters. We do not have that time today. The opposition cannot change that fact. In recognising that, we will not support the amendments for the reasons I have outlined.

**Senator STOTT DESPOJA** (South Australia) (1.25 p.m.)—To begin at the point where Senator O'Brien concluded his remarks, this has not been an ideal process. I think Senator Abetz has noted that there is a weakness in the amendment. I acknowledge that this amendment to the Petroleum (Timor Sea Treaty) Bill 2003 is not perfect with respect to the idea that, ideally, you negotiate in good faith and if there are problems you take them to a court—in this case, the ICJ. I am not sure that anyone is suggesting this, but I would like to emphasise that these amendments do not unilaterally amend the treaty. They have obviously been worded in a way that takes into account the concerns that a number of us had earlier, and that is that this might actually seek to amend the treaty per se. What it actually does is the Commonwealth of Australia calling for or saying that they will do something or consider doing something, as opposed to unilaterally amending the treaty.

I acknowledge Senator Abetz's point in relation to when we call for negotiation of the boundaries. One hopes that it would happen in good faith and, if there were a dispute, it would go to a court environment—specifically the ICJ in this case. I think this goes to the heart of how difficult this debate has been in relation to the process, the lack of time and the perfecting of amendments. So, while I acknowledge that there is that weakness, I think the people in this chamber who are concerned about Australia's withdrawal from the ICJ in relation to maritime boundaries will agree that this is the best we have at the moment. Obviously it does not have the support of chamber. I think, under the circumstances, it is hardly surprising that the amendments are slightly imperfect given the nature and the time of this debate. I hope that in future—and not only in relation to this issue—our government not only negotiates in good faith but also remembers that we are not always negotiating as equal powers. There may be a democratically elected government in East Timor, but the country that is resource rich and powerful is Australia. That is why it is even more incumbent upon us to ensure that we deal in a fair and appropriate way.

Amendment negatived.

Bill agreed to.

Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003 and Passenger Movement

Charge (Timor Sea Treaty) Amendment Bill 2003 agreed to.

Bills reported without amendment; report adopted.

### Third Reading

**Senator ABETZ** (Tasmania—Special Minister of State) (1.31 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

**Senator Nettle**—I ask that it be recorded that I voted against the legislation.

**Senator Stott Despoja**—I seek to have it recorded that the Australian Democrats did not vote in favour of this legislation.

## NEW BUSINESS TAX SYSTEM (CONSOLIDATION AND OTHER MEASURES) BILL (No. 2) 2002

### NEW BUSINESS TAX SYSTEM (VENTURE CAPITAL DEFICIT TAX) BILL 2002

#### Second Reading

Debate resumed from 3 March, on motion by **Senator Ian Campbell**:

That these bills be now read a second time.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.31 p.m.)—I thank honourable senators for their support for the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002 and the New Business Tax System (Venture Capital Deficit Tax) Bill 2002. Their passage will essentially complete the implementation of the consolidation regime, an important plank in the government's business tax reform agenda. The consolidation regime will promote business efficiency and commercial flexibility, improve the integrity of the tax system and reduce ongoing income tax compliance costs for those company groups that consolidate. The New Business Tax System (Venture Capital Deficit Tax) Bill 2002 ensures that venture capital deficit tax applying to certain pooled development funds investing in venture capital continues to apply under the simplified imputation regime. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

### Third Reading

Bills passed through their remaining stages without amendment or debate.

## SNOWY HYDRO CORPORATISATION AMENDMENT BILL 2002

#### Second Reading

Debate resumed from 3 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator O'BRIEN** (Tasmania) (1.33 p.m.)—The Snowy Hydro Corporatisation Amendment Bill 2002 makes an amendment to the Snowy Hydro Corporatisation Act 1997. The bill makes a change to the act