

The Senate

Economics Legislation Committee

Provisions of the Greater Sunrise Unitisation
Agreement Implementation Bill 2004 and the
Customs Tariff Amendment (Greater Sunrise)
Bill 2004

March 2004

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CHAPTER 1

INTRODUCTION

Background

1.1 The Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 were introduced into the House of Representatives on 10 March 2004 by the Hon Ian Macfarlane MP, Minister for Industry, Tourism and Resources. On the same day, the bills were introduced into the Senate by Senator Ian Campbell, Minister for Local Government, Territories and Roads.

Purpose of the bills

1.2 The Greater Sunrise Unitisation Agreement Implementation Bill 2004, together with the Customs Tariff Amendment (Greater Sunrise) Bill 2004, puts in place the framework necessary to give effect to the Agreement between Australia and the Democratic Republic of Timor-Leste relating to the unitisation of the Sunrise and Troubadour (Greater Sunrise) petroleum fields.¹

1.3 The Agreement, signed in Dili on 6 March 2003, governs the unitisation of the Greater Sunrise petroleum resource. Where a petroleum resource, whether comprised of one or more pools, straddles a boundary between administrative systems, sound resource management often requires the resource to be developed as a single unit. This is known as the *unitisation* of a petroleum resource. Without unitisation, production from one part of the resource could adversely affect the resource as a whole or the interests of those with an interest in the resource on the other side of the boundary.²

1.4 The Greater Sunrise Unitisation Agreement Implementation Bill 2004 puts into place the administrative arrangements for the unit development of the Greater Sunrise petroleum resource.³ The Customs Tariff Amendment (Greater Sunrise) Bill 2004 gives effect to Article 22 of the Agreement, which provides for the duty-free entry into the Greater Sunrise unitisation area of all goods and equipment required for petroleum activities.⁴

1 *Explanatory Memorandum*, Greater Sunrise Unitisation Agreement Implementation Bill [Greater Sunrise Bill] 2004, p.1. In the report, the names Timor-Leste and East Timor are used interchangeably.

2 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

3 *Second Reading Speech*, Greater Sunrise Bill, p.1.

4 *Second Reading Speech*, Customs Tariff Amendment (Greater Sunrise) Bill 2004, p.1.

Reference of the bills

1.5 On 10 March 2004, the Senate adopted the Selection of Bills Committee Report No.4 of 2004 and referred the provisions of the bills to the Senate Economics Legislation Committee for consideration and report by 23 March 2004.

Submissions

1.6 The Committee advertised its inquiry into the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 on the internet. In addition the Committee contacted a number of organisations alerting them to the inquiry. A list of submissions received appears at **Appendix 1**.

Hearings and evidence

1.7 The Committee held one public hearing at Parliament House, Canberra, on Monday, 22 March 2004.

1.8 Witnesses who appeared before the Committee at that hearing are listed in **Appendix 2**.

1.9 Copies of the Hansard transcript are tabled for the information of the Senate. They are also available through the internet at <http://aph.gov.au/hansard>.

Acknowledgment

1.10 The Committee wishes to thank all those who assisted with its inquiry.

CHAPTER 2

THE BILL

Background to the bills

2.1 The Greater Sunrise petroleum resource comprises the Sunrise and Troubadour deposits and lies in the Timor Sea, approximately 500 kilometres north-west of Darwin.¹

2.2 The field straddles the border of the Joint Petroleum Development Area, which is the area of shared jurisdiction between Australia and East Timor established by the *Timor Sea Treaty*, and an area of sole Australian jurisdiction located within the Northern Territory adjacent area.² The former area is labelled in the bill as the Western Greater Sunrise area, the latter as the Eastern Greater Sunrise area.

2.3 In June 2003, Mr John Hartwell, Head, Resources Division, Department of Industry, Tourism and Resources, described the resource to the Joint Standing Committee on Treaties as 'a world-class petroleum resource containing an estimated 8.4 trillion cubic feet of natural gas and 295 million barrels of condensate. It is estimated that 20.1 per cent of these resources lie within the JPDA – the Joint Petroleum Development Area – and 79.9 per cent outside it'.³

2.4 On 6 March 2003, Australia and East Timor agreed to the unitisation of the Greater Sunrise petroleum resource.⁴ Under the unitisation agreement, East Timor's share of the Greater Sunrise field is calculated by reference to the agreed formula that applies to the sharing of the JPDA, where East Timor has title to 90% of the petroleum resource. This means that East Timor receives 90% of the 20.1% of the Greater Sunrise field that lies within the Joint Petroleum Development Area. Australia's share is the 10% remainder of the 20.1% from the JPDA, and the 79.9% of the Greater Sunrise field outside the JPDA. 'Allowing for the calculations involved, Australia's actual share of the Greater Sunrise gas field is some 82%'.⁵

2.5 The Financial Impact Statement in the Explanatory Memorandum to the bill states that the development of the Greater Sunrise resource is expected to yield \$8.5 billion in revenue to Australia over the life of the project.

1 *Transcript of Evidence*, Joint Standing Committee on Treaties, 23 June 2003, Hartwell, p.72.

2 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

3 *Transcript of Evidence*, Joint Standing Committee on Treaties, 23 June 2003, Hartwell, p.72.

4 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

5 *Draft Bills Digest*, *Greater Sunrise Unitisation Agreement Implementation Bill 2004*, p.3.

2.6 The Greater Sunrise unitisation agreement will be ratified by Australia and East Timor once both countries have put in place the domestic arrangements required to enable them to fulfil their obligations under the Agreement. The Greater Sunrise Unitisation Agreement Implementation Bill 2004 [the Greater Sunrise bill] and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 do this for Australia.⁶

Principles underlying the Greater Sunrise bill

2.7 According to the Explanatory Memorandum, two general principles underlie the framework of the bill.⁷

2.8 First, Australia and East Timor have agreed that development of the Greater Sunrise resource should 'to the extent necessary, be subject to consistent administrative requirements'. This means that there will be a consistent legislative regime for petroleum operations in the unit area in relation to safety, occupational health and environmental protection.⁸

2.9 Second, the two countries have agreed that the essential elements of the different petroleum licensing regimes on each side of the boundary will be maintained. For example, in the Joint Petroleum Development Area a contractual licensing regime is in place, while in the area of sole Australian jurisdiction a legislated licensing regime is in place. As neither system is to override the other, persons conducting petroleum activities in the unit area will have to meet the requirements of both regimes.⁹

Changes made by the bills

2.10 The Greater Sunrise bill amends a number of acts to give effect to the main provisions of the Greater Sunrise Unitisation Agreement. The acts amended by the bill are the *Petroleum (Submerged Lands) Act 1967*, the *Petroleum Resource Rent Tax Assessment Act 1987*, and the *Radiocommunications Act 1992*. Some other implementing measures will be done by amending regulations, while others may be implemented by the exercise of existing powers under legislation (in particular, the *Petroleum (Submerged Lands) Act 1967*). Article 22 of the agreement is implemented by the amendments to the *Customs Tariff Act 1995* in the Customs Tariff Amendment (Greater Sunrise) Bill 2004.

2.11 The Explanatory Memorandum outlines this approach to implementation, 'in contrast to wholesale application of the agreement as Australian law' in the following terms:

6 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

7 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

8 *Explanatory Memorandum*, Greater Sunrise Bill, p.1.

9 *Explanatory Memorandum*, Greater Sunrise Bill, pp.1-2.

[The approach] ensures that the implementation is integrated with existing statutory provisions. However, this approach does lead to a risk that further provisions may be needed to implement the agreement. Should there be a need for such further provisions, this regulation making-power will allow regulations to be made. Any such regulations must not be inconsistent with amendments made by this proposed amending Act.¹⁰

2.12 The major modifications made by the bills are:

- modifications to the arrangements between Commonwealth and Northern Territory governments relating to the administration of petroleum in the Northern Territory adjacent area.¹¹ These are designed to ensure consistency of administrative arrangements between the Western and Eastern Greater Sunrise areas;
- modifications to the petroleum resource rent tax arrangements to ensure that the same taxation regime applies whether the petroleum is recovered from the Western or the Eastern Greater Sunrise areas;¹² and
- amendment to the *Customs Tariff Act 1995* to provide for the duty-free entry, into the Greater Sunrise unitisation area, of all goods and equipment for petroleum activities whether from Australia, East Timor, or elsewhere.¹³

10 *Explanatory Memorandum*, Greater Sunrise Bill, p.7.

11 *Explanatory Memorandum*, Greater Sunrise Bill, p.2.

12 *Explanatory Memorandum*, Greater Sunrise Bill, p.4.

13 *Explanatory Memorandum*, Customs Tariff Amendment (Greater Sunrise) Bill 2004, p.1.

CHAPTER 3

EVIDENCE TO THE INQUIRY

3.1 As stated in Chapter 1, the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004 put in place the framework necessary to give effect in Australian law to the Agreement between Australia and the Democratic Republic of Timor-Leste relating to the unitisation of the Greater Sunrise petroleum fields.

3.2 Some objections to the passage of the bills as drafted were raised in evidence to the inquiry. In each case, the objections reflected concerns not primarily with the text of the bills, but with the content of the Agreement and the process by which it was negotiated.

3.3 The main concerns raised related to the following questions:

- whether the Australian government has negotiated and intends to negotiate in good faith with the Democratic Government of Timor-Leste; and
- whether any revenue generated from the Greater Sunrise resource should be held in trust or escrow until such time as the maritime boundary dispute between Australia and East Timor is settled.

Question of good faith

3.4 The Timor Sea Justice Campaign argued that there were a number of grounds for concern about the extent to which the Australian government had negotiated the unitisation agreement with East Timor in good faith. They suggested that Australia had coerced the government of East Timor into signing the agreement by refusing to ratify the *Timor Sea Treaty* until East Timor signed the Greater Sunrise Unitisation Agreement.¹

3.5 The organisation also raised concerns about Australia's commitment to reaching agreement with East Timor about the maritime boundary between the two countries, which is in dispute.² The East Timor Institute for Reconstruction Monitoring and Analysis informed the Committee that the whole Greater Sunrise field lies on East Timor's side of the median line between the two countries.³

1 Submission 3, Timor Sea Justice Campaign, p.4.

2 Submission 3, Timor Sea Justice Campaign, p.4.

3 Submission 4, East Timor Institute for Reconstruction Monitoring and Analysis, Attachment 1, pp.3, 6.

3.6 The Greater Sunrise Unitisation Agreement is without prejudice to any unresolved territorial claims.⁴ However, the Timor Sea Justice Campaign expressed the view that the Agreement grants Australia a greater share of the Greater Sunrise field than it is likely to be entitled once the maritime boundaries are agreed. They suggested that, as a consequence, the Australian government has an incentive not to resolve the boundary dispute in the near future.

3.7 The Timor Sea Justice Campaign and other organisations cited three examples of what it described as the Australian government's attempt to delay resolution of the maritime boundary dispute. First, the Australian government has agreed to meetings with East Timor to negotiate the issue every six months and not each month as requested by the Timorese. Second, in March 2002, the Australian government withdrew its agreement for the dispute with East Timor to be arbitrated through the dispute resolution mechanisms of the International Court of Justice and the International Treaty on the Law of the Sea. Third, according to Oxfam Community Aid Abroad, although states are obliged under international law to refrain from exploiting resources in areas of overlapping claims, the Australian government has in the past year issued two new permits for exploration in the disputed area.⁵

3.8 Representatives from the Attorney-General's department rejected the suggestion that the government has failed or would fail to act in good faith in the border negotiations.⁶ On the question of the frequency of meetings, Mr William Campbell, General Counsel (International Law), Office of International Law, noted that the issues raised at each meeting include complex questions of law, geomorphology and geography. He said:

I just do not think it is realistic to have a negotiation one month and then expect that all of those issues that are raised in one round of negotiations could be given adequate consideration by respective governments.⁷

3.9 On the question of international arbitration of the dispute, Mr Campbell stated that it is the government's view that maritime boundaries are best negotiated by an agreement and not decided in third party proceedings such as arbitration or an international court. Mr Campbell advised the Committee that the Australian government has adopted this view in relation to all maritime boundary delimitation issues and not just in relation to the boundary with Timor Leste.⁸

4 Draft Bills Digest, *Greater Unitisation Agreement Implementation Bill 2004*, p.2.

5 Submission 9, Oxfam Community Aid Abroad, p.3; Submission 3, Timor Sea Justice Campaign, p.4; Submission 4, East Timor Institute for Reconstruction Monitoring and Analysis.

6 *Transcript of Evidence*, 22 March 2004, Campbell, p.10.

7 *Transcript of Evidence*, 22 March 2004, Campbell, p.11.

8 *Transcript of Evidence*, 22 March 2004, Campbell, pp.18,21.

3.10 Finally, on the question of exploration licences in areas of disputed claim, Mr John Hartwell, Head, Resources Division, Department of Industry, Tourism and Resources, noted that:

In areas that Australia has long exercised jurisdiction and in which we continue to exercise jurisdiction, it is not the Australian government's position that we will not release areas that fall under our jurisdiction. So the answer to that is we will continue to administer those areas appropriately in line with our jurisdictional responsibilities.⁹

Trust or escrow

3.11 Under the terms of the Greater Sunrise Unitisation Agreement, East Timor's production share from Greater Sunrise gas fields is about 18%, and Australia's is approximately 82%.¹⁰

3.12 The Timor Sea Justice Campaign suggested that all Australian revenues from Greater Sunrise be placed in trust, or escrow, until maritime boundaries are finalised between the two countries. When the boundaries are finalised, the trust should be distributed in accordance with those boundaries. According to the Timor Sea Justice Campaign:

This removes any incentive for Australian governments to delay and removes the possibility of Australia being unjustly enriched at the expense of East Timor.¹¹

3.13 In a similar vein, Oxfam Community Aid Abroad argued that the Australian government should hold all revenues received from activities on Timor-Leste's side of the median line, but outside of the Joint Petroleum Development Area in escrow until permanent maritime boundaries are established.¹²

3.14 The Committee notes that either Australia or East Timor may request a review of the production sharing formula, and that the formula may be altered by agreement between Australia and East Timor. In the meantime, however, the formula provides that production shall be shared on the basis that 20.1% is attributed to the JPDA and 79.9% is attributed to Australia.¹³

9 *Transcript of Evidence*, 22 March 2004, Hartwell, p.19.

10 *Draft Bills Digest, Greater Sunrise Unitisation Agreement Implementation Bill 2004*, p.3.

11 *Submission 3, Timor Sea Justice Campaign*, pp.4-5.

12 *Submission 9, Oxfam Community Aid Abroad*, p.2.

13 *Draft Bills Digest, Greater Sunrise Unitisation Agreement Implementation Bill 2004*, pp.2-3.

3.15 Mr Campbell, Attorney-General's Department, said that there is no need to put proceeds from the Greater Sunrise development in an escrow or trust account because the unitisation agreement itself specifies the allocation of the proceeds between Australia and East Timor.¹⁴

3.16 In elaborating on this issue, Mr Campbell informed the Committee that there was an escrow account between the time the *Timor Sea Treaty* was negotiated and the time it was brought into force. The reason for that was to ensure that the benefits accruing to East Timor from the *Timor Sea Treaty* would be given to East Timor for that interim period.¹⁵

3.17 In this case, however, Mr Campbell said:

The unitisation agreement itself says that that is the amount that is to be attributed to Australia. There is nothing in the unitisation agreement that says that that is to be put in trust. It says that that is to be attributed to Australia.¹⁶

Customs amendment

3.18 The Customs Tariff Amendment (Greater Sunrise) Bill 2004 implements Article 22 of the Greater Sunrise Unitisation Agreement.

3.19 Article 15 of the *Timor Sea Treaty* provides that goods and equipment entering the Joint Petroleum Development Area are exempt from customs duty. Article 22 of the unitisation agreement extends that exemption to the rest of the Greater Sunrise area, to ensure consistency of administrative arrangements across the whole Greater Sunrise field.¹⁷

3.20 The customs laws of Australia and Timor-Leste will continue to apply for goods moved into and out of the Sunrise Unit Area, and customs duties will continue to be payable where such goods are permanently transferred to either country.¹⁸

3.21 The Committee questioned whether this customs exemption had the potential adversely to affect Australian industry participation in the development of the Greater Sunrise project.¹⁹

14 *Transcript of Evidence*, 22 March 2004, Campbell, p.10.

15 *Transcript of Evidence*, 22 March 2004, Campbell, p.10.

16 *Transcript of Evidence*, 22 March 2004, Campbell, p.17.

17 Submission 2, Woodside Energy Ltd, p.3.

18 Submission 2, Woodside Energy Ltd, p.4.

19 *Transcript of Evidence*, 22 March 2004, O'Brien, p.8.

3.22 However, the Committee noted assurances received from Woodside Energy Ltd, the operator of the Sunrise Unit Area, that its practice of maximising local content in its projects would be 'unchanged by the Customs Tariff Amendment (Greater Sunrise) Bill 2004'.²⁰ In correspondence with the Minister for Industry, Tourism and Resources, Woodside stated that:

Woodside ... is committed to maximising local industry participation in the project and commits to undertake those industry consultation processes of the kind normally required of projects under the Enhanced Project By-Law Scheme ... In accordance with our usual practice, it is Woodside's intention to prepare a local industry participation plan for the project and to liaise with Australian and Timor-Leste stakeholders.²¹

Conclusion

3.23 The Committee notes that the bills are consistent both with the *Timor Sea Treaty* and the Greater Sunrise Unitisation Agreement, to which both Australia and Timor-Leste are signatories.

Recommendation

3.24 The Committee recommends that the Senate pass the bills.

SENATOR GEORGE BRANDIS

Chairman

20 Tabled document, Correspondence from Woodside Energy Ltd to the Hon. Ian Macfarlane, Minister for Industry, Tourism and Resources, dated 21 March 2004.

21 Tabled document, Correspondence from Woodside Energy Ltd to the Hon. Ian Macfarlane, Minister for Industry, Tourism and Resources, dated 21 March 2004.

DISSENTING REPORT

Senator Natasha Stott Despoja on behalf of the Australian Democrats

The Australian Democrats do not support the recommendation of the Committee.

In our view, proceeding with the ratification of the Greater Sunrise International Unitisation Agreement (the "Greater Sunrise IUA") at this time, and in these circumstances, is neither in Australia's, nor Timor-Leste's, best interests.

Procedural Issues

One of the first points that needs to be made in relation to the *Greater Sunrise International Unitisation Agreement Implementation Bill 2004* and the *Customs Tariff Amendment (Greater Sunrise) Bill 2004* (the "Greater Sunrise Bills") is that the Government introduced these Bills at very short notice and is seeking to rush them through the Parliament.

The legislation came on for debate in the Senate just a few hours after it was introduced to the House of Representatives, yet the Government could not provide any compelling reason for urgent passage of the Bill.

The Bill was subsequently referred to this Committee, at the Democrats' insistence, but this Committee process has also been restricted by a very short time frame. There has been some indication that the short time frame for this inquiry has resulted in the exclusion of evidence that might otherwise have been presented to the Committee. For example, Mr Nicholson, who represented the Timor Sea Justice Campaign, indicated that he was aware of:

"a number of organisations, including some large NGOs, [that] were considering making submissions but, due to the extremely short time frame and also the limited nature of the invitation to give submissions, some people were deterred."¹

Mr Nicholson argued that the Committee should not interpret the small number of submissions as an indication of any lack of interest in this issue. On the contrary, he suggested that there was a growing interest "across various sectors of Australian society" regarding Australia's relationship with Timor-Leste and the Timor Sea negotiations.

The Democrats believe it is a matter of deep regret that the Government has sought to rush through both this inquiry and the parliamentary debate on the Greater Sunrise Bills.

¹ *Transcript of Evidence*, 22 March 2004, Nicholson, page 2.

We accept that fiscal and regulatory certainty is vital to ensure ongoing investment in, and development of, the Greater Sunrise Gas Field. However the Government has failed to provide any compelling evidence to suggest that either Australia or Timor-Leste would lose any revenue if ratification were prolonged for a few weeks. Indeed, there is no certainty that Timor-Leste will ratify the agreement immediately.

It is particularly disappointing that this Committee has been deprived of the opportunity to consider additional evidence which may have influenced our assessment of these bills

The Greater Sunrise International Unitisation Agreement

During this inquiry, the point has been made by both the Government and the Opposition that the Greater Sunrise Bills simply implement the terms of the Greater Sunrise Agreement which has already been signed by Australia and Timor-Leste. While that is true, it would be misleading to consider the text of the Greater Sunrise Agreement in isolation from the circumstances in which it was signed.

The area of the Timor Sea covered by the Greater Sunrise Agreement is subject to competing claims by Australia and Timor-Leste. Timor-Leste claims that, under international law, the Greater Sunrise gas field falls within its jurisdiction. This view is supported by the Timor Sea Justice Campaign, which pointed out that the gas field is twice as close to Timor-Leste than it is to Australia².

It follows that, should Timor-Leste's claim prevail, it would be entitled to the taxation revenue generated through the exploitation of the Greater Sunrise field.

It was on this basis that Timor-Leste expressed some reluctance to sign the Greater Sunrise Agreement, particularly as it was unclear whether the agreement would survive a subsequent change to Timor-Leste's maritime boundaries, or whether it would be possible for the agreement to be amended to reflect the new boundaries.

However, there is evidence to suggest that Australia insisted that Timor-Leste sign the Greater Sunrise Agreement before it would proceed with ratification of the Timor Sea Treaty. There were compelling commercial incentives for the Timor Sea Treaty to be signed by 11 March 2003. Specifically, ratification was required before that date to ensure that Bayu-Undan development proceeded. It was in these circumstances that Timor-Leste agreed to sign the Greater Sunrise Agreement.

By insisting that the Greater Sunrise Agreement be finalised prior to the ratification of the Timor Sea Treaty, the Australian Government compelled Timor-Leste to agree to compromise its long-term interests in order to meet its short-term needs.

Australia's relationship with Timor-Leste:

² *Transcript of Evidence*, 22 March 2004, Nicholson, page 2.

The Democrats have long argued that the debate concerning the apportionment of resources in the Timor Sea should not occur in a context in which Australia's interests are pitted against those of Timor-Leste.

On the contrary, we believe that it is in Australia's best interests to make every effort to help Timor-Leste become a strong, independent and financially-secure nation. This was also the view put forward by the Timor Sea Justice Campaign, which argued that it was:

"in Australia's national interest to have East Timor as an economically independent, developed state with good health and education facilities in the future rather than the possibility of East Timor having to go into debt, of East Timor remaining aid dependent and a Timorese elite which is hostile to Australia.³"

Similar evidence was provided to the Joint Standing Committee on Treaties during its inquiry into the provisions of the Timor Sea Treaty. For example, Oxfam Community Aid Abroad argued:

"For Australia, an economically unviable East Timor could threaten national security and that of the region. An unstable East Timor could lead to a flow of refugees to Australia with associated costs. The Australian and international community would expect the Australian government to bear much of the responsibility for increased humanitarian aid and assistance, and the provision of continued peacekeeping and security assistance to East Timor.⁴"

The Democrats believe that depriving Timor-Leste of desperately needed resources will be detrimental to Australia's relationship with our newest neighbour and detrimental to regional security.

Financial benefit to Australia is not the sole determining factor as to whether a particular action is in Australia's best interests. Other factors need to be considered. In these circumstances, the Democrats are persuaded that the negative impact of the Greater Sunrise agreement on Australia's foreign relations and standing within in the international community outweighs the financial benefit that will flow from the agreement.

Withdrawal from the International Court of Justice

The Democrats believe that the competing claims over the Timor Sea must be resolved in accordance with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and any applicable customary law. If the parties are

³ *Transcript of Evidence*, 22 March 2004, Nicholson, page 7.

⁴ Oxfam Community Aid Abroad, *Submission No. 46*, page 4, Joint Standing Committee on Treaties, *Report 49: The Timor Sea Treaty*.

unable to reach a fair and just agreement, they should submit to the jurisdiction of the International Court of Justice (ICJ).

We take this opportunity to once again record our opposition to the declarations made by the Australian Government, excluding Australia from the compulsory jurisdiction of the ICJ and UNCLOS with respect to maritime boundary disputes.

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

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

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

Australia and others in the international community consistently encourage East Timor's new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices.... At the same time, Australia is not practicing what you are preaching. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message – that when the booty is large enough, the legal principles go out of the window.⁵

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

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

This decision clearly has adverse consequences for Timor-Leste and may prevent it from "receiving the guidance and rulings"⁶ of the ICJ, in the event of a failure to resolve its competing claims with Australia.

It is arguable that Australia was at least morally, if not legally, obliged to give Timor-Leste prior notice of this decision. In this respect, the Democrats note evidence to the effect that Australia's withdrawal from the dispute resolution mechanisms under the

⁵ East Timor Institute for Reconstruction Monitoring and Analysis, *Submission No. 14*, page 5, Joint Sanding Committee on Treaties, *Report 49: The Timor Sea Treaty*.

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

ICJ and UNCLOS has been interpreted by the Timorese as an act of bad faith on the part of the Australian Government.

Holding tax revenue in trust

Given the competing claims over the Greater Sunrise gas field and the laxity with which the Australian Government has approached the maritime boundary negotiations to date, the Democrats believe that taxation revenue obtained from the exploitation of Greater Sunrise should be held in trust pending the permanent delimitation of maritime boundaries. This revenue can then be apportioned between the parties in accordance with permanent boundaries.

This reflects a recommendation made by the Timor Sea Justice Campaign in its evidence before the Committee.

The Democrats agree with the Timor Sea Justice Campaign that requiring the Greater Sunrise tax revenue to be held in trust would provide a strong incentive for both parties to proceed with the negotiation of the maritime boundaries expeditiously and in good faith.

Recommendation 1:

That the bills be amended to require that all taxation revenue obtained from the Greater Sunrise gas field be held in trust pending the permanent delimitation of maritime boundaries between Australia and Timor-Leste.

Recommendation 2:

That in the absence of any such amendment, the bills not be passed.

Senator Natasha Stott Despoja
Australian Democrats

Australian Greens Dissenting Report

Achieving an honourable outcome

There are strong reasons for rejecting these bills. Amongst those not outlined in the majority report, but coming from the evidence:

- Australia is "taking" Timor-Leste's oil and gas resources to the value of \$8 billion. This is badly needed by Timor-Leste, the region's poorest country, for reconstruction and development, including schools, hospitals and security.
- There is a growing perception in Timor-Leste that Australia has used coercion to make Timor-Leste's government agree to this exploitation. Appreciation for Australia's help is turning to hostility against Australia's theft.
- While government offices appearing before the committee had met representatives of the oil company (Woodside) frequently, they had not met any of the 13 East Timorese community organisations opposed to this bill. None of the departmental officers had been to Timor-Leste's embassy in Canberra. The accommodation by the Timorese government has changed to the opposition. The majority report is to accept the bills. In that case fair safeguards should be built in.

Because of the evidence that Australia is being dilatory in efforts to set the sea boundaries with Timor-Leste, and because these bills promote the re-allocation of Timor-Leste's resources to Australia, the bills should have a sunset clause to promote a resolution of the disputed boundaries.

Meanwhile, a trust fund should be set up for Australian revenue derived from the disputed oil and gas fields, to be released when the sea boundaries are agreed, according to that agreed boundary.

If Australia's wish for a bipartisan settlement of the dispute over boundaries is not met by the end of 2005, the matter should be referred to the International Court of Justice for resolution.

Failure to adopt such neighbourly and fair amendments may damage our nation's relationship with Timor-Leste for decades to come.

Senator Bob Brown
Australian Greens Senator

APPENDIX 1

SUBMISSIONS RECEIVED

- 1 Ms Annette Madvig
- 2 Woodside Energy Ltd.
- 3 Timor Sea Justice Campaign
- 4 East Timor Institute for Reconstruction Monitoring and Analysis
- 5 Ms Janet Hunt
- 6 Mr Stanley Stork
- 7 Mr Alan Taylor
- 8 Australians for a Free East Timor
- 9 Oxfam Community Aid Abroad

APPENDIX 2

PUBLIC HEARING AND WITNESSES

MONDAY, 22 MARCH 2004 - CANBERRA

TIMOR SEA JUSTICE CAMPAIGN

NICHOLSON Mr Daniel, Spokesperson

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

FRENCH, Dr Greg, Legal Adviser

MORAITIS Mr Chris, Senior Legal Adviser

DEPARTMENT OF INDUSTRY, TOURISM AND RESOURCES

GRIFFITHS, Mr John, Manager, Offshore Resource Branch, Resources Division

HARTWELL, Mr John, Head of Division, Resources Division

ATTORNEY-GENERAL'S DEPARTMENT

BRIEN, Mr Joshua, General Counsel (International Law), Office of International Law

CAMPBELL, Mr William, General Counsel (International Law), Office of International Law

DEPARTMENT OF THE TREASURY

HOOD, Mr Chris, Senior Tax Counsel, Tax Counsel Network