



Timor Gap Treaty (Transitional Arrangements) Act 2000

No. 25, 2000



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An Act to amend the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* and other legislation consequentially on the United Nations Transitional Administration in East Timor administering East Timor, and for related purposes

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No. 25, 2000

An Act to amend the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* and other legislation consequentially on the United Nations Transitional Administration in East Timor administering East Timor, and for related purposes

[Assented to 3 April 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Timor Gap Treaty (Transitional Arrangements) Act 2000*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Sections 3 to 7 and Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) are taken to have commenced at the transition time.
- (3) Items 18 to 25 of Schedule 2 commence immediately before the commencement of Schedule 1 to the *Crimes at Sea Act 2000*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 The transition time

In this Act:

transition time means 1.23 am Australian Central Standard Time on 26 October 1999.

Note: This time corresponds to the time in New York when the United Nations Security Council adopted Resolution 1272 (1999), which established UNTAET and gave it responsibility for the administration of East Timor. In 2000 the text of the Resolution was available in the Library of the Department of Foreign Affairs and Trade and accessible on the Internet through the Department's or the United Nations' world-wide web site.

5 Validity of things done by the Ministerial Council and the Joint Authority

- (1) Any thing done by the Ministerial Council or the Joint Authority, during the period commencing on the transition time and ending on 5.55 pm Australian Central Standard Time on 10 February 2000, is not invalid:
 - (a) merely because the Republic of Indonesia ceased to be a party to the Treaty, and UNTAET became a party to the Treaty, at the transition time; or
 - (b) merely because of an invalidity in the membership of the Ministerial Council or the Joint Authority.

(2) In this section:

Joint Authority and **Ministerial Council** have the meanings given them by subsection 5(1) of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*.

Treaty has the meaning given by subsection 5(1) of the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990* (as in force immediately before the transition time).

UNTAET means the United Nations Transitional Administration in East Timor.

6 Protection against retrospective criminal liability

A person does not commit an offence if the person would not have committed the offence had the amendments made by the items in Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) commenced on the day on which this Act received the Royal Assent (rather than commencing at the transition time).

7 Preservation of immunity from prosecution

If a person would have had an immunity from proceedings under subsection 9A(3) of the *Crimes at Sea Act 1979* but for the amendments made by items 5 and 6 of Schedule 2 commencing retrospectively at the transition time, the person has that immunity by virtue of this section.

Schedule 1—Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990

1 Title

Omit all the words from and including “**between Australia**”, substitute “**on the Zone of Cooperation in the Timor Gap**”.

2 Section 1

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

3 Subsection 5(1) (at the end of the definition of *Treaty*)

Omit all the words from and including “the Schedule”, substitute:
Schedule 1, and includes that Treaty:

- (a) as amended from time to time; and
- (b) as read with the Notes exchanged between Australia and the United Nations Transitional Administration in East Timor at Dili, on 10 February 2000, the text of which is set out in Schedule 2.

4 At the end of section 13

Add:

- (2) When applying subsection (1):
 - (a) during the period of the administration of the United Nations Transitional Administration in East Timor (*UNTAET*):
 - (i) UNTAET is to be treated as the body politic of the territory (the *territory*) administered by it under United Nations Security Council Resolution 1272 (1999) of 25 October 1999 at New York; and
 - (ii) the competent authority in relation to the Taxation Code and the territory is the Transitional Administrator of UNTAET, or a person authorised by the Administrator to be such an authority; and
 - (iii) a reference to a resident of a Contracting State is a reference to a resident of the territory, when the case requires; and
 - (b) after the territory ceases to be administered by UNTAET:

- (i) the body politic of the territory and the competent authority are the body and the authority identified in the regulations; and
- (ii) a reference to a resident of a Contracting State is to be interpreted in accordance with the regulations.

Note: In 2000 the text of the Resolution was available in the Library of the Department of Foreign Affairs and Trade and accessible on the Internet through the Department's or the United Nations' world-wide web site.

5 Schedule (heading)

Repeal the heading, substitute:

Schedule 1—Timor Gap Treaty

Note: This is the copy of the Treaty referred to in the definition of *Treaty* in subsection 5(1) of this Act.

6 At the end of the Act

Add:

Schedule 2—Notes exchanged between Australia and UNTAET

Part 1—Australia's Note to UNTAET

Note: This is the copy of Australia's Note, referred to in the definition of *Treaty* in subsection 5(1) of this Act.

Note No. 2/2000

The Australian Mission in East Timor presents its compliments to the United Nations Transitional Administration in East Timor (UNTAET) and has the honour to refer to UNTAET's Note to the Mission dated 10 February 2000 which reads as follows:

“The United Nations Transitional Administration in East Timor (UNTAET) presents its compliments to the Australian Mission in East Timor and has the honour to refer to the fact that, pursuant to United Nations Security Council resolution 1272 (1999) of 25 October 1999, and in accordance with paragraph 35 of the Report of the Secretary-General (S/1999/1024), the United Nations will conclude such international agreements with States and international

organisations as may be necessary for the carrying out of the functions of UNTAET in East Timor.

An agreement between UNTAET, acting on behalf of East Timor, and Australia, providing practical arrangements for the continuity of the terms of the “Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia” (the “Timor Gap Treaty”) in the transitional period, will benefit the people of East Timor and will assist UNTAET in carrying out its functions entrusted to it under Security Council resolution 1272 (1999). The conclusion of this agreement, however, is without prejudice to the position of the future government of an independent East Timor with regard to the Treaty.

UNTAET therefore has the honour to advise the Australian Mission in East Timor that all rights and obligations under the Timor Gap Treaty previously exercised by Indonesia are assumed by UNTAET, acting on behalf of East Timor, until the date of independence of East Timor. UNTAET, acting on behalf of East Timor, and Australia may enter into subsidiary arrangements or agreements relating to the continued operation of the terms of the Treaty. In agreeing to continue the arrangements under the terms of the Treaty, the United Nations does not thereby recognise the validity of the “integration” of East Timor into Indonesia.

If the understanding of Australia is in accordance with the foregoing advice, UNTAET has the honour to propose that this Note and Australia’s confirmatory Note in reply shall constitute an agreement between UNTAET, acting on behalf of East Timor, and Australia which shall be applied as of 25 October 1999”.

The Australian Mission has the honour to advise that the foregoing proposal is acceptable to the Government of Australia and to agree that the UNTAET Note and this reply shall constitute an Agreement between the Government of Australia and UNTAET which shall be applied as of 25 October 1999.

The Australian Mission in East Timor avails itself of this opportunity to renew to the United Nations Transitional Administration in East Timor the assurances of its highest consideration.

[Seal and initials omitted]

DILI

10 February 2000

Part 2—UNTAET’s Note to Australia

Note: This is the copy of UNTAET’s Note, referred to in the definition of *Treaty* in subsection 5(1) of this Act.

UNTAET

United Nations Transitional Administration in East Timor

The United Nations Transitional Administration in East Timor (UNTAET) presents its compliments to the Australian Mission in East Timor and has the honour to refer to the fact that, pursuant to United Nations Security Council resolution 1272 (1999) of 25 October 1999, and in accordance with paragraph 35 of the Report of the Secretary-General (S/1999/1024), the United Nations will conclude such international agreements with States and international organizations as may be necessary for the carrying out of the functions of UNTAET in East Timor.

An agreement between UNTAET, acting on behalf of East Timor, and Australia, providing practical arrangements for the continuity of the terms of the “Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia” (the “Timor Gap Treaty”) in the transitional period, will benefit the people of East Timor and will assist UNTAET in carrying out its functions entrusted to it under Security Council resolution 1272 (1999). The conclusion of this agreement, however, is without prejudice to the position of the future government of an independent East Timor with regard to the Treaty.

UNTAET therefore has the honour to advise the Australian Mission in East Timor that all rights and obligations under the Timor Gap Treaty previously exercised by Indonesia are assumed by UNTAET, acting on behalf of East Timor, until the date of independence of East Timor. UNTAET, acting on behalf of East Timor, and Australia may enter into subsidiary arrangements or agreements relating to the continued operation of the terms of the Treaty. In agreeing to continue the arrangements under the terms of the Treaty, the United Nations does not thereby recognize the validity of the “integration” of East Timor into Indonesia.

If the understanding of Australia is in accordance with the foregoing advice, UNTAET has the honour to propose that this Note and Australia’s confirmatory Note in reply shall constitute an agreement between UNTAET, acting on behalf of East Timor, and Australia which shall be applied as of 25 October 1999.

UNTAET avails itself of this opportunity to renew to the Australian Mission in East Timor the assurances of its highest consideration.

10 February 2000

[Seal and initials omitted]

Schedule 2—Other Acts

Crimes at Sea Act 1979

1 Subsection 3(1) (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

2 Subsection 3(1)

Insert:

East Timor:

- (a) during the period of the administration of the United Nations Transitional Administration in East Timor (*UNTAET*)

means:

- (i) when referred to in a geographic sense—the territory administered by UNTAET under United Nations Security Council Resolution 1272 (1999) of 25 October 1999 at New York; and
- (ii) when referred to as a body politic—UNTAET; and
- (b) after the territory ceases to be administered by UNTAET—has the meaning given by the regulations.

3 Subsection 3(1) (definition of *Indonesia*)

Repeal the definition.

4 Paragraphs 9A(2)(b) and (c)

Omit “*Indonesia*”, substitute “*East Timor*”.

5 Paragraphs 9A(3)(a) and (b)

Omit “of *Indonesia*”, substitute “in force in *East Timor*”.

6 Paragraph 9A(3)(c)

Omit “*Indonesia*”, substitute “*East Timor*”.

7 Subsection 9A(6) (definition of *petroleum*)

Omit “the Schedule to the *Petroleum (Australia-Indonesia Zone of Cooperation) Act 1990*”, substitute “Schedule 1 to the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*”.

Note: The heading to section 9A is altered by omitting “**Australia-Indonesia**”.

8 Subsection 17A(1)

Omit “Indonesia” (first occurring), substitute “East Timor”.

9 Subsection 17A(1)

Omit “a criminal law of Indonesia”, substitute “a criminal law in force in East Timor”.

10 Subparagraphs 17A(1)(b)(iii) and (iv)

Omit “Indonesia”, substitute “East Timor”.

Note: The heading to section 17A is altered by omitting “**Indonesian laws**” and substituting “**the laws of East Timor**”.

11 Subsection 17B(1)

Omit “Indonesia”, substitute “East Timor”.

12 Paragraph 17B(2)(a)

Omit “Indonesian authorities”, substitute “authorities of East Timor”.

13 Subparagraph 17B(2)(b)(i)

Omit “Indonesian authorities”, substitute “authorities of East Timor”.

14 Subparagraph 17B(2)(c)(i)

Omit “of Indonesia”, substitute “in force in East Timor”.

15 Subparagraph 17B(2)(c)(ii)

Omit “Indonesian authorities”, substitute “authorities of East Timor”.

16 Subsection 17B(3)

Omit “Australian or Indonesian authority”, substitute “authority of Australia or East Timor”.

17 Application

Section 9A of the *Crimes at Sea Act 1979*, as in force immediately before the transition time, continues to apply to acts covered by it (as so in force) done before the transition time.

Crimes at Sea Act 2000

18 Section 4

Insert:

Area A of the Zone of Cooperation has the same meaning as in the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*.

19 Section 4

Insert:

East Timor:

- (a) during the period of the administration of the United Nations Transitional Administration in East Timor (***UNTAET***)

means:

- (i) when referred to in a geographic sense—the territory administered by UNTAET under United Nations Security Council Resolution 1272 (1999) of 25 October 1999 at New York; and
- (ii) when referred to as a body politic—UNTAET; and
- (b) after the territory ceases to be administered by UNTAET—has the meaning given by the regulations.

20 Section 4

Insert:

law of criminal investigation, procedure and evidence has the same meaning as in clause 1 of Schedule 1.

21 Section 4

Insert:

petroleum has the same meaning as in the Treaty set out in Schedule 1 to the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*.

22 Section 4

Insert:

police officer means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

23 After Part 3

Insert:

Part 3A—Cooperation between Australia and East Timor in the enforcement of criminal law

6A Criminal laws applicable in Area A of the Zone of Cooperation

- (1) The provisions of the substantive criminal law in force in the Northern Territory from time to time apply to a criminal act done in Area A of the Zone of Cooperation that is connected with, or arises out of, the exploration for, or exploitation of, petroleum resources as if the act had been done in the Northern Territory.
- (2) However, the relevant substantive criminal law does not apply to:
 - (a) an act done on or from a ship or aircraft; or
 - (b) an act done by a national of East Timor who is not also a national of Australia; or
 - (c) an act done by a permanent resident of East Timor who is not also a national of Australia.
- (3) Proceedings for an offence against a substantive criminal law as applied under this section may not be instituted against a person if:
 - (a) the person has been acquitted or discharged without penalty in proceedings for an offence against a law in force in East Timor arising out of the same act; or
 - (b) the person has incurred a penalty under a law in force in East Timor for such an offence; or
 - (c) a competent authority of East Timor has decided not to prosecute the person for such an offence.
- (4) A prosecution for an offence against a law applied by subsection (1) may only be heard and determined if the Attorney-General consents in writing to the prosecution.

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- (5) Although the Attorney-General has not consented to a prosecution under subsection (4):
- (a) a person may be arrested for the offence, and a warrant for the arrest of a person for the offence may be issued and executed; and
 - (b) a person may be charged with the offence; and
 - (c) a person charged with the offence may be remanded in custody or on bail.
- (6) The provisions of the laws of criminal investigation, procedure and evidence in force in the Commonwealth and the States from time to time apply to a criminal act done in Area A of the Zone of Cooperation that is connected with, or arises out of, the exploration for, or exploitation of, petroleum resources in the same way as those provisions apply to maritime offences under clause 3 of Schedule 1.
- (7) In this section:
- criminal act* means an act that would, if done in the Northern Territory, contravene the substantive criminal law in force in the Northern Territory.

State includes the Northern Territory.

6B Transit of persons accused of offences against the laws of East Timor

- (1) If East Timor wishes to transport in custody through Australia a person (the *accused*) who has been arrested for an offence against a criminal law in force in East Timor that applies in Area A of the Zone of Cooperation, the following provisions apply:
- (a) the accused may be transported in custody through Australia; and
 - (b) if an aircraft or ship transporting the accused makes a landing or calls at a place in Australia:
 - (i) the person holding the accused in custody before the landing or call is made may hold the accused in custody for not more than 24 hours; and
 - (ii) a police officer may provide reasonable and necessary assistance to facilitate the transport of the accused in custody; and

- (iii) a magistrate to whom application is made, according to the regulations, on behalf of East Timor is required to issue a warrant ordering a person specified in the warrant to hold the accused in custody for a period or periods the magistrate considers necessary to facilitate the transport of the accused in custody; and
 - (iv) the Attorney-General may, on application on behalf of East Timor, authorise, in writing, a magistrate to issue a warrant ordering a person specified in the warrant to hold the accused in custody for a further specified period in order to facilitate the transport of the accused in custody; and
 - (v) the Attorney-General may at any time direct a person having custody of the accused under this paragraph to release the accused; and
 - (vi) the total period of custody under subparagraphs (i) and (iii) must not exceed 96 hours.
- (2) A police officer may, without warrant, arrest a person if the officer has reasonable grounds for believing that the person has escaped from custody authorised by subsection (1).
 - (3) A person arrested under subsection (2) must be returned to custody.
 - (4) For the purposes of this section, a place at which an aircraft or ship begins its journey or voyage is to be treated as a place at which the aircraft has landed, or the ship has called, as the case requires.

6C Agreements relating to enforcement of criminal laws in Area A of the Zone of Cooperation

- (1) The regulations may give effect to an agreement or arrangement between Australia and East Timor about the enforcement of criminal laws applying in Area A of the Zone of Cooperation.
- (2) The regulations may, for example:
 - (a) provide for the production of documents, the summoning of witnesses and the taking of evidence by authorities of East Timor for use in proceedings in Australia; and
 - (b) provide for:

-
- (i) the apprehension and detention in Area A of the Zone of Cooperation, by authorities of East Timor, of persons accused of offences against criminal laws of Australia applied under this Part; and
 - (ii) the transport and surrender, in Area A of the Zone of Cooperation or elsewhere, of the persons to Australian authorities; and
- (c) provide for:
- (i) the apprehension and detention in Area A of the Zone of Cooperation, by Australian authorities, of persons accused of offences against criminal laws in force in East Timor; and
 - (ii) the transport and surrender, in Area A of the Zone of Cooperation or elsewhere, of the persons to authorities of East Timor; and
- (d) prescribe the practice and procedure of magistrates in performing functions under regulations made for the purposes of this section.
- (3) A provision for detention of a person under this section may only authorise detention until the time it first becomes practicable to surrender the person to an appropriate authority of Australia or East Timor.
- (4) A provision made under paragraph (2)(c) excludes the application of the *Extradition Act 1988* from offences to which the provision applies.

24 Subclause 1(1) of Schedule 1 (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

25 Schedule 2 (heading immediately before item 7)

Repeal the heading, substitute:

Petroleum (Timor Gap Zone of Cooperation) Act 1990

Customs Act 1901

26 Subsection 4(1) (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

27 Subsection 4(1)

Insert:

East Timor:

(a) during the period of the administration of the United Nations Transitional Administration in East Timor (*UNTAET*)

means:

(i) when referred to in a geographic sense—the territory administered by UNTAET under United Nations Security Council Resolution 1272 (1999) of 25 October 1999 at New York; and

(ii) when referred to as a body politic—UNTAET; and

(b) after the territory ceases to be administered by UNTAET—has the meaning given by the regulations.

28 Subsection 4(1) (definition of *Indonesia*)

Repeal the definition.

29 Subsection 58B(1) (definition of *external place*)

Omit “*Indonesia*”, substitute “*East Timor*”.

30 Subsections 58B(2), (3), (4) and (5)

Omit “*Indonesia*”, substitute “*East Timor*”.

31 Subsection 131AA(3)

Omit “the Schedule”, substitute “Schedule 1”.

32 Subsection 131AA(3)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Fringe Benefits Tax Assessment Act 1986

33 Subsection 67(12)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Income Tax Assessment Act 1936

34 Subsection 6(1) (definition of *Timor Gap treaty*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

35 Subsection 177B(1)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Migration Act 1958

36 Subsection 5(1) (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Passenger Movement Charge Act 1978

37 Section 3 (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Passenger Movement Charge Collection Act 1978

38 Section 3 (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

39 Section 3 (definition of *Timor Gap Treaty*)

Repeal the definition, substitute:

Timor Gap Treaty means the Treaty defined by subsection 5(1) of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*.

Petroleum (Submerged Lands) Act 1967

40 Subsection 5(1) (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Quarantine Act 1908

41 Subsection 5(1) (definition of *Area A of the Zone of Cooperation*)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Workplace Relations Act 1996

42 Subsection 5A(1)

Omit “*Australia-Indonesia*”, substitute “*Timor Gap*”.

Note: The heading to section 5A is altered by omitting “**Australia-Indonesia**” and substituting “**Timor Gap**”.

[*Minister’s second reading speech made in—
House of Representatives on 17 February 2000
Senate on 13 March 2000*]

(17/00)
