



Petroleum (Timor Sea Treaty) Act 2003

No. 9, 2003

**An Act to give effect to the Timor Sea Treaty, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Petroleum (Timor Sea Treaty) Act 2003

No. 9, 2003

An Act to give effect to the Timor Sea Treaty, and for related purposes

[Assented to 2 April 2003]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Petroleum (Timor Sea Treaty) Act 2003*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 April 2003
2. Sections 3 to 5	20 May 2002	20 May 2002
3. Sections 6 and 7	The day on which this Act receives the Royal Assent	2 April 2003
4. Subsection 8(1)	20 May 2002	20 May 2002
5. Subsection 8(2)	The day on which this Act receives the Royal Assent	2 April 2003
6. Sections 9 to 25	20 May 2002	20 May 2002
7. Schedule 1	20 May 2002	20 May 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Object of the Act

The object of this Act is to enable Australia to fulfil its obligations under the Treaty.

4 Ministerial Council, Joint Commission and Designated Authority authorised to exercise rights of Australia

The Ministerial Council, the Joint Commission and the Designated Authority exercise the rights and responsibilities of Australia, in relation to the exploration, development and exploitation of the petroleum resources of the JPDA, in accordance with the Treaty.

5 Definitions

- (1) In this Act, unless the contrary intention appears:

JPDA means the Joint Petroleum Development Area established in Article 3 of the Treaty.

Petroleum Mining Code means the Code referred to in Article 7 of the Treaty (including the interim code referred to in paragraph 7(b) of the Treaty).

Treaty:

- (a) means the Timor Sea Treaty between Australia and East Timor done on 20 May 2002, being the Treaty the text of which is set out in Schedule 1; and
 - (b) includes that Treaty as amended from time to time.
- (2) Unless the contrary intention appears, a word or an expression that is defined in the Treaty has, when used in this Act, the same meaning as in the Treaty.

Part 2—General provisions

6 Prospecting for petroleum

A person commits an offence if the person:

- (a) prospects for petroleum in the JPDA; and
- (b) does so without the approval of the Designated Authority.

Maximum penalty: Imprisonment for 5 years.

7 Petroleum activities

(1) A person commits an offence if the person:

- (a) undertakes activities to produce petroleum in or from the JPDA; and
- (b) does so otherwise than:
 - (i) in accordance with a production sharing contract; or
 - (ii) with the approval of the Designated Authority.

Maximum penalty: Imprisonment for 5 years.

(2) In subsection (1):

activities to produce petroleum includes exploration, development, initial processing, production, transportation, marketing, as well as planning and preparation for such activities.

8 Powers of inspectors

(1) An inspector appointed under the Petroleum Mining Code may, for the purpose of ascertaining whether:

- (a) the Petroleum Mining Code; or
- (b) regulations and directions that have effect under the Petroleum Mining Code; or
- (c) contract terms and conditions applying to petroleum activities in the JPDA;

have been complied with, at all reasonable times and on production of a certificate of appointment as an inspector:

- (d) enter or board any structure, vessel or aircraft that is in the JPDA and is being used for petroleum activities; and
 - (e) inspect and test any equipment being used or proposed to be used for petroleum activities in the JPDA; and
 - (f) enter or board any structure, vessel, aircraft or building in which the inspector has reason to believe that there are any documents relating to petroleum activities in the JPDA, and inspect, take extracts from and make copies of any of those documents.
- (2) A person commits an offence if the person:
- (a) is in charge of any structure, vessel, aircraft or building referred to in subsection (1); and
 - (b) does not, at the request of an inspector, provide the inspector with all reasonable facilities and assistance for the effective exercise of powers under this section.

Maximum penalty: 50 penalty units.

9 Jurisdiction of State and Territory courts

- (1) Subject to this section, the courts of each State and Territory are invested with federal jurisdiction in civil matters:
 - (a) relating to an act or omission done in the JPDA; and
 - (b) involving damage suffered or expenses incurred by:
 - (i) Australia, a State or a Territory; or
 - (ii) a person who is a national, or permanent resident, of Australia.
- (2) The jurisdiction with which courts are invested by subsection (1) is invested within the limits, other than limits having effect by reference to localities, of their respective jurisdictions (whether those limits are as to subject-matter or otherwise).
- (3) This section does not limit the jurisdiction of the courts of a State or Territory arising otherwise than under this section.

10 Northern Territory laws to be applied

- (1) Subject to this section, in exercising jurisdiction conferred by section 9, a court is to apply the laws, whether written or unwritten, in force in the Northern Territory.
- (2) The laws referred to in subsection (1) do not include laws that are:
 - (a) substantive criminal laws; or
 - (b) laws of criminal investigation, procedure and evidence; within the meaning of Schedule 1 to the *Crimes at Sea Act 2000*, but nothing in this section detracts from the operation of that Act.
- (3) A law is taken to be in force in the Northern Territory even if it applies only in part of the Northern Territory.
- (4) This section does not require a court to apply a law that is inconsistent with a law of the Commonwealth (including this Act).
- (5) This section does not limit the operation that any law has apart from this section.
- (6) The regulations may provide that a law, or specified provisions of a law, referred to in subsection (1) are not to be applied for the purposes of that subsection, or are to be so applied with specified modifications.

Part 3—Tax provisions

Division 1—Tax provisions

11 Definitions

In this Division:

Australian tax means:

- (a) tax imposed by the *Fringe Benefits Tax Act 1986*; or
- (b) income tax imposed as such by any Act; or
- (c) a charge imposed by the *Superannuation Guarantee Charge Act 1992*.

Medicare levy means the Medicare levy imposed by the *Medicare Levy Act 1986*.

Medicare levy surcharge means the Medicare levy surcharge imposed by the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

12 Australian tax—Treaty and taxation code have the force of law

Subject to this Part, the provisions of the Treaty and of the taxation code, so far as those provisions affect Australian tax, have the force of law according to their tenor.

13 Medicare levy and Medicare levy surcharge to be treated as income tax

For the purposes of this Part, Medicare levy and Medicare levy surcharge are taken to be income tax and to be imposed as such and, unless the contrary intention appears, references to income tax are to be construed accordingly.

14 Incorporation of Australian tax laws

- (1) Subject to subsection (2), the following Acts are incorporated and are to be read as one with this Part:
 - (a) the *Fringe Benefits Tax Assessment Act 1986*;
 - (b) the *Income Tax Assessment Act 1936*;
 - (c) the *Income Tax Assessment Act 1997*;
 - (d) the *Superannuation Guarantee (Administration) Act 1992*.
- (2) The provisions of this Part have effect in spite of anything inconsistent with those provisions contained in any of the following Acts:
 - (a) the *Fringe Benefits Tax Assessment Act 1986* (other than section 67 of that Act);
 - (b) the *Income Tax Assessment Act 1936* (other than Part IVA of that Act);
 - (c) the *Income Tax Assessment Act 1997*;
 - (d) the *Superannuation Guarantee (Administration) Act 1992* (other than section 30 of that Act);
 - (e) an Act imposing Australian tax.

15 Calculation of gross tax payable for the purposes of rebate calculations under the taxation code

- (1) This section applies where, under Article 5, 12, 13 or 14 of the taxation code, a taxpayer is entitled to a rebate against income tax of 90% of the gross tax payable in Australia on particular profits, or particular income, derived by the taxpayer in a year of income.
- (2) In determining that rebate, the gross tax payable in Australia on those profits or that income is calculated using the formula:

$$\frac{\text{Notional Australian tax}}{\text{Taxable income}} \times \text{Rebatable amount}$$

where:

notional Australian tax means the amount of income tax that would be assessed under the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* in respect of the taxpayer's

taxable income of the year of income if the taxpayer was not entitled to any rebate of income tax or credit against the taxpayer's liability for income tax.

rebatable amount means so much of the taxpayer's taxable income of the year of income as is attributable to those profits or to that income, as the case may be.

taxable income means the number of whole dollars in the taxpayer's taxable income of the year of income.

- (3) A reference in this section to income tax is a reference to income tax imposed as such by any Act.

Division 2—Application and other provisions

16 Definitions

- (1) In this Division:

new taxation code has the same meaning as taxation code has in the Treaty.

old taxation code has the same meaning as Taxation Code had in the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* immediately before 20 May 2002.

year of income has the same meaning as in the *Income Tax Assessment Act 1936*.

- (2) If an expression used in subsection 17(2) or 18(1) is also used in the old taxation code, the expression has the same meaning as in the old taxation code.
- (3) If an expression used in subsection 17(3) or 18(2) is also used in the new taxation code, the expression has the same meaning as in the new taxation code.

17 Application of taxation codes in relation to business profits and business losses

Calculating business profits and business losses

- (1) For the purposes of this section, business profits derived, and business losses incurred, in the following periods are to be calculated separately:
- (a) the period (the *first period*):
 - (i) starting at the beginning of the 2001-2002 year of income; and
 - (ii) ending on 19 May 2002; and
 - (b) the period (the *second period*):
 - (i) starting on 20 May 2002; and
 - (ii) ending at the end of the 2001-2002 year of income.

Continued application of old taxation code

- (2) Despite the repeal of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*, the old taxation code continues to apply in relation to business profits derived, and business losses incurred, in the first period.

Application of new taxation code

- (3) Subject to section 19, the new taxation code applies in relation to business profits derived, and business losses incurred:
- (a) in the second period; and
 - (b) in all years of income that begin after the 2001-2002 year of income ends.

Note: Section 19 deals with the application of the new taxation code in relation to individual residents of East Timor.

18 Application of taxation codes in relation to dividends etc.

Continued application of old taxation code

- (1) Despite the repeal of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*, the old taxation code continues to apply in relation to:
- (a) dividends paid; and
 - (b) interest paid; and
 - (c) royalties paid; and
 - (d) gains of a capital nature accrued; and
 - (e) losses of a capital nature incurred; and
 - (f) income in respect of professional services, or other independent activities of a similar character, derived; and
 - (g) salaries, wages and other similar remuneration derived; and
 - (h) other income (but not including business profits) derived; before 20 May 2002.

Application of new taxation code

- (2) Subject to section 19, the new taxation code applies in relation to:
- (a) dividends paid or credited; and

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- (b) interest paid or credited; and
- (c) royalties paid or credited; and
- (d) gains of a capital nature accrued; and
- (e) losses of a capital nature incurred; and
- (f) income in respect of professional services, or other independent activities of a similar character, derived; and
- (g) salaries, wages and other similar remuneration derived; and
- (h) other income (but not including business profits) derived; on or after 20 May 2002.

Note: Section 19 deals with the application of the new taxation code in relation to individual residents of East Timor.

19 Application of new taxation code in relation to individual residents of East Timor

The new taxation code applies only in relation to the 2003-2004 year of income, and all later years of income, for a person if the person is:

- (a) an individual; and
- (b) a resident of East Timor.

20 Amendment of assessments for 2001-2002 year of income

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made for the 2001-2002 year of income for the purposes of giving effect to this Part.

Part 4—Transitional provisions

21 Definitions

In this Part:

former Petroleum Mining Code has the same meaning as Petroleum Mining Code had in the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* immediately before 20 May 2002.

Joint Authority has the same meaning as it had in the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* immediately before 20 May 2002.

new Petroleum Mining Code means the Petroleum Mining Code referred to in Article 7 of the Treaty (including the interim code referred to in paragraph 7(b) of the Treaty).

22 Retrospective effect of authorities and production sharing contracts

If the Designated Authority determines that:

- (a) an approval the Designated Authority grants to a person to prospect for petroleum, or to undertake petroleum activities, in the JPDA; or
- (b) a production sharing contract the Designated Authority enters into with a person;

is to be taken to have had effect on and from 20 May 2002, the approval or contract is taken, for the purposes of this Act, to have had effect on and from that day.

23 Interim Petroleum Mining Code

If the Joint Commission:

- (a) adopts an interim code under paragraph 7(b) of the Treaty; and

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- (b) determines that the interim code is to be taken to have had effect on and from 20 May 2002;
the interim code is taken, for the purposes of this Act, to have had effect on and from that day.

24 Actions taken under former Petroleum Mining Code

- (1) Anything that the Joint Authority purported to do on or after 20 May 2002 for the purposes of the former Petroleum Mining Code is taken, for the purposes of this Act, to have been done by the Designated Authority for the purposes of the new Petroleum Mining Code.
- (2) Without limiting subsection (1), any regulations or directions the Joint Authority purported to issue on or after 20 May 2002 under the former Petroleum Mining Code are taken, for the purposes of this Act, to have been issued by the Designated Authority under the new Petroleum Mining Code.
- (3) Anything that an inspector appointed under the former Petroleum Mining Code purported to do on or after 20 May 2002 for the purposes of the former Petroleum Mining Code is taken, for the purposes of this Act, to have been done by an inspector appointed under the new Petroleum Mining Code for the purposes of the new Petroleum Mining Code.

Part 5—Regulations

25 Regulations

- (1) The Governor-General may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties not exceeding a fine of 10 penalty units for offences against regulations made for the purposes of Part 3.

Schedule 1—Timor Sea Treaty

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

TIMOR SEA TREATY

**THE GOVERNMENT OF AUSTRALIA
and
THE GOVERNMENT OF EAST TIMOR**

CONSCIOUS of the importance of promoting East Timor's economic development;

AWARE of the need to maintain security of investment for existing and planned petroleum activities in an area of seabed between Australia and East Timor;

RECOGNISING the benefits that will flow to both Australia and East Timor by providing a continuing basis for petroleum activities in an area of seabed between Australia and East Timor to proceed as planned;

EMPHASISING the importance of developing petroleum resources in a way that minimizes damage to the natural environment, that is economically sustainable, promotes further investment and contributes to the long-term development of Australia and East Timor;

CONVINCED that the development of the resources in accordance with this Treaty will provide a firm foundation for continuing and strengthening the friendly relations between Australia and East Timor;

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, which provides in Article 83 that the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution;

TAKING FURTHER INTO ACCOUNT, in the absence of delimitation, the further obligation for States to make every effort, in a spirit of understanding

and co-operation, to enter into provisional arrangements of a practical nature which do not prejudice a final determination of the seabed delimitation;

NOTING the desirability of Australia and East Timor entering into a Treaty providing for the continued development of the petroleum resources in an area of seabed between Australia and East Timor;

HAVE AGREED as follows:

Article 1: Definitions

For the purposes of this Treaty:

- (a) “Treaty” means this Treaty, including Annexes A-G and any Annexes subsequently agreed between Australia and East Timor.
- (b) “contractor” means a corporation or corporations which enter into a contract with the Designated Authority and which is registered as a contractor under the Petroleum Mining Code”.
- (c) “criminal law” means any law in force in Australia and East Timor, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose, “investigation” includes entry to an installation or structure in the JPDA, the exercise of powers of search and questioning and the apprehension of a suspected offender.
- (d) “Designated Authority” means the Designated Authority established in Article 6 of this Treaty.
- (e) “fiscal scheme” means a royalty, a Production Sharing Contract, or other scheme for determining Australia’s and East Timor’s share of petroleum or revenue from petroleum activities and does not include taxes referred to in Article 5 (b) of this Treaty.
- (f) “initially processed” means processing of petroleum to a point where it is ready for off-take from the production facility and may include such processes as the removal of water, volatiles and other impurities.

(g) “Joint Commission” means the Australia-East Timor Joint Commission established in Article 6 of this Treaty.

(h) “JPDA” means the Joint Petroleum Development Area established in Article 3 of this Treaty.

(i) “Ministerial Council” means the Australia-East Timor Ministerial Council established in Article 6 of this Treaty.

(j) “petroleum” means:

- i. any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;
- ii. any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- iii. any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other substances produced in association with such hydrocarbons;

and includes any petroleum as defined by sub-paragraphs (i), (ii) or (iii) that has been returned to a natural reservoir.

(k) “petroleum activities” means all activities undertaken to produce petroleum, authorised or contemplated under a contract, permit or licence, and includes exploration, development, initial processing, production, transportation and marketing, as well as the planning and preparation for such activities.

(l) “Petroleum Mining Code” means the Code referred to in Article 7 of this Treaty.

(m) “petroleum project” means petroleum activities taking place in a specified area within the JPDA.

(n) “petroleum produced” means initially processed petroleum extracted from a reservoir through petroleum activities.

(o) “Production Sharing Contract” means a contract between the Designated Authority and a limited liability corporation or entity with limited

liability under which production from a specified area of the JPDA is shared between the parties to the contract.

(p) “reservoir” means an accumulation of petroleum in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of petroleum.

(q) “taxation code” means the code referred to in Article 13 (b) of this Treaty.

Article 2: Without prejudice

(a) This Treaty gives effect to international law as reflected in the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 which under Article 83 requires States with opposite or adjacent coasts to make every effort to enter into provisional arrangements of a practical nature pending agreement on the final delimitation of the continental shelf between them in a manner consistent with international law. This Treaty is intended to adhere to such obligation.

(b) Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia’s or East Timor’s position on or rights relating to a seabed delimitation or their respective seabed entitlements.

Article 3: Joint Petroleum Development Area

(a) The Joint Petroleum Development Area (JPDA) is established. It is the area in the Timor Sea contained within the lines described in Annex A.

(b) Australia and East Timor shall jointly control, manage and facilitate the exploration, development and exploitation of the petroleum resources of the JPDA for the benefit of the peoples of Australia and East Timor.

(c) Petroleum activities conducted in the JPDA shall be carried out pursuant to a contract between the Designated Authority and a limited liability corporation or entity with limited liability specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

(d) Australia and East Timor shall make it an offence for any person to conduct petroleum activities in the JPDA otherwise than in accordance with this Treaty.

Article 4: Sharing of petroleum production

(a) Australia and East Timor shall have title to all petroleum produced in the JPDA. Of the petroleum produced in the JPDA, ninety (90) percent shall belong to East Timor and ten (10) percent shall belong to Australia.

(b) To the extent that fees referred to in Article 6(b)(vi) and other income are inadequate to cover the expenditure of the Designated Authority in relation to this Treaty, that expenditure shall be borne in the same proportion as set out in paragraph (a).

Article 5: Fiscal arrangements and taxes

Fiscal arrangements and taxes shall be dealt with in the following manner:

- (a) Unless a fiscal scheme is otherwise provided for in this Treaty:
- i. Australia and East Timor shall make every possible effort to agree on a joint fiscal scheme for each petroleum project in the JPDA.
 - ii. If Australia and East Timor fail to reach agreement on a joint fiscal scheme referred to in sub-paragraph (i), they shall jointly appoint an independent expert to recommend an appropriate joint fiscal scheme to apply to the petroleum project concerned.
 - iii. If either Australia or East Timor does not agree to the joint fiscal scheme recommended by the independent expert, Australia and East Timor may each separately impose their own fiscal scheme on their proportion of the production of the project as calculated in accordance with the formula contained in Article 4 of this Treaty.

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- iv. If Australia and East Timor agree on a joint fiscal scheme pursuant to this Article, neither Australia nor East Timor may during the life of the project vary that scheme except by mutual agreement between Australia and East Timor.

(b) Consistent with the formula contained in Article 4 of this Treaty, Australia and East Timor may, in accordance with their respective laws and the taxation code, impose taxes on their share of the revenue from petroleum activities in the JPDA and relating to activities referred to in Article 13 of this Treaty.

Article 6: Regulatory bodies

(a) A three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council is established.

(b) Designated Authority:

- i. For the first three years after this Treaty enters into force, or for a different period of time if agreed to jointly by Australia and East Timor, the Joint Commission shall designate the Designated Authority.
- ii. After the period specified in sub-paragraph (i), the Designated Authority shall be the East Timor Government Ministry responsible for petroleum activities or, if so decided by the Ministry, an East Timor statutory authority.
- iii. For the period specified in sub-paragraph (i), the Designated Authority has juridical personality and such legal capacities under the law of both Australia and East Timor as are necessary for the exercise of its powers and the performance of its functions. In particular, the Designated Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.
- iv. The Designated Authority shall be responsible to the Joint Commission and shall carry out the day-to-day regulation and management of petroleum activities.

- v. A non-exclusive listing of more detailed powers and functions of the Designated Authority is set out in Annex C. The Annexes to this Treaty may identify other additional detailed powers and functions of the Designated Authority. The Designated Authority also has such other powers and functions as may be conferred upon it by the Joint Commission.
- vi. The Designated Authority shall be financed from fees collected under the Petroleum Mining Code.
- vii. For the period specified in sub-paragraph (i), the Designated Authority shall be exempt from the following existing taxes:
 - (1) in East Timor, the income tax imposed under the law of East Timor;
 - (2) in Australia, the income tax imposed under the federal law of Australia;as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.
- viii. For the period specified in sub-paragraph (i), personnel of the Designated Authority:
 - (1) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Designated Authority in connection with their service with the Designated Authority other than taxation under the law of Australia or East Timor in which they are deemed to be resident for taxation purposes; and
 - (2) shall, at the time of first taking up the post with the Designated Authority located in either Australia or East Timor in which they are not resident, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them

and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of Australia or the Government of East Timor; goods which have been acquired or imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent or hired out, or otherwise disposed of except under conditions agreed in advance with the Government of Australia or the Government of East Timor depending on in which country the officer is located.

(c) Joint Commission:

- i. The Joint Commission shall consist of commissioners appointed by Australia and East Timor. There shall be one more commissioner appointed by East Timor than by Australia. The Joint Commission shall establish policies and regulations relating to petroleum activities in the JPDA and shall oversee the work of the Designated Authority.
- ii. A non-exclusive listing of more detailed powers and functions of the Joint Commission is set out in Annex D. The Annexes to this Treaty may identify other additional detailed powers and functions of the Joint Commission.
- iii. Except as provided for in Article 8(c), the commissioners of either Australia or East Timor may at any time refer a matter to the Ministerial Council for resolution.
- iv. The Joint Commission shall meet annually or as may be required. Its meetings shall be chaired by a member nominated by Australia and East Timor on an alternate basis.

(d) Ministerial Council:

- i. The Ministerial Council shall consist of an equal number of Ministers from Australia and East Timor. It shall consider any matter relating to the operation of this Treaty that is referred to

it by either Australia or East Timor. It shall also consider any matter referred to in sub-paragraph (c) (iii).

- ii. In the event the Ministerial Council is unable to resolve a matter, either Australia or East Timor may invoke the dispute resolution procedure set out in Annex B.
- iii. The Ministerial Council shall meet at the request of either Australia or East Timor or at the request of the Joint Commission.
- iv. Unless otherwise agreed between Australia and East Timor, meetings of the Ministerial Council where at least one member representing Australia and one member representing East Timor are physically present shall be held alternately in Australia and East Timor. Its meetings shall be chaired by a representative of Australia or East Timor on an alternate basis.
- v. The Ministerial Council may, if it so chooses, permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or any other means of electronic communication, and a member who so participates is to be regarded as being present at the meeting. A meeting may be held solely by means of electronic communication.

(e) Commissioners of the Joint Commission and personnel of the Designated Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in the JPDA.

Article 7: Petroleum Mining Code

(a) Australia and East Timor shall negotiate an agreed Petroleum Mining Code which shall govern the exploration, development and exploitation of petroleum within the JPDA, as well as the export of petroleum from the JPDA.

(b) In the event Australia and East Timor are unable to conclude a Petroleum Mining Code by the date of entry into force of this Treaty, the Joint Commission shall in its inaugural meeting adopt an interim code to remain in effect until a Petroleum Mining Code is adopted in accordance with paragraph (a).

Article 8: Pipelines

- (a) The construction and operation of a pipeline within the JPDA for the purposes of exporting petroleum from the JPDA shall be subject to the approval of the Joint Commission. Australia and East Timor shall consult on the terms and conditions of pipelines exporting petroleum from the JPDA to the point of landing.
- (b) A pipeline landing in East Timor shall be under the jurisdiction of East Timor. A pipeline landing in Australia shall be under the jurisdiction of Australia.
- (c) In the event a pipeline is constructed from the JPDA to the territory of either Australia or East Timor, the country where the pipeline lands may not object to or impede decisions of the Joint Commission regarding a pipeline to the other country. Notwithstanding Article 6(c)(iii), the Ministerial Council may not review or change any such decisions.
- (d) Paragraph (c) shall not apply where the effect of constructing a pipeline from the JPDA to the other country would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from a project in the JPDA for contracts to supply gas for a specified period of time.
- (e) Neither Australia nor East Timor may object to, nor in any way impede, a proposal to use floating gas to liquids processing and off-take in the JPDA on a commercial basis where such proposal shall produce higher revenues to Australia and East Timor from royalties and taxes earned from activities conducted within the JPDA than would be earned if gas were transported by pipeline.
- (f) Paragraph (e) shall not apply where the effect of floating gas to liquids processing and off-take in the JPDA would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from the JPDA for contracts to supply gas for a specified period of time.
-

(g) Petroleum from the JPDA and from fields which straddle the boundaries of the JPDA shall at all times have priority of carriage along any pipeline carrying petroleum from and within the JPDA.

(h) There shall be open access to pipelines for petroleum from the JPDA. The open access arrangements shall be in accordance with good international regulatory practice. If Australia has jurisdiction over the pipeline, it shall consult with East Timor over access to the pipeline. If East Timor has jurisdiction over the pipeline, it shall consult with Australia over access to the pipeline.

Article 9: Unitisation

(a) Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.

(b) Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

Article 10: Marine environment

(a) Australia and East Timor shall co-operate to protect the marine environment of the JPDA so as to prevent and minimise pollution and other environmental harm from petroleum activities. Special efforts shall be made to protect marine animals including marine mammals, seabirds, fish and coral. Australia and East Timor shall consult as to the best means to protect the marine environment of the JPDA from the harmful consequences of petroleum activities.

(b) Where pollution of the marine environment occurring in the JPDA spreads beyond the JPDA, Australia and East Timor shall co-operate in taking action to prevent, mitigate and eliminate such pollution.

(c) The Designated Authority shall issue regulations to protect the marine environment in the JPDA. It shall establish a contingency plan for combating pollution from petroleum activities in the JPDA.

(d) Limited liability corporations or limited liability entities shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum activities within the JPDA in accordance with:

- i. their contract, licence or permit or other form of authority issued pursuant to this Treaty; and
- ii. the law of the jurisdiction (Australia or East Timor) in which the claim is brought.

Article 11: Employment

(a) Australia and East Timor shall:

- i. take appropriate measures with due regard to occupational health and safety requirements to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor; and
- ii. facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

(b) Australia shall expedite and facilitate processing of applications for visas through its Diplomatic Mission in Dili by East Timorese nationals and permanent residents employed by limited liability corporations or limited liability entities in Australia associated with petroleum activities in the JPDA.

Article 12: Health and safety for workers

The Designated Authority shall develop, and limited liability corporations or limited liability entities shall apply, occupational health and safety standards and procedures for persons employed on structures in the JPDA that are no less effective than those standards and procedures that would apply to persons employed on similar structures in Australia and East Timor. The Designated Authority may adopt, consistent with this Article, standards and procedures

taking into account an existing system established under the law of either Australia or East Timor.

Article 13: Application of taxation law

- (a) For the purposes of taxation law related directly or indirectly to:
 - i. the exploration for or the exploitation of petroleum in the JPDA; or
 - ii. acts, matters, circumstances and things touching, concerning arising out of or connected with such exploration and exploitation

the JPDA shall be deemed to be, and treated by, Australia and East Timor, as part of that country.

- (b) The taxation code to provide relief from double taxation relating to petroleum activities is set out in Annex G.
- (c) The taxation code contains its own dispute resolution mechanism. Article 23 of this Treaty shall not apply to disputes covered by that mechanism.

Article 14: Criminal jurisdiction

- (a) A national or permanent resident of Australia or East Timor shall be subject to the criminal law of that country in respect of acts or omissions occurring in the JPDA connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of Australia or East Timor who is a national of the other country shall be subject to the criminal law of the latter country.
- (b) Subject to paragraph (d), a national of a third state, not being a permanent resident of either Australia or East Timor, shall be subject to the criminal law of both Australia and East Timor in respect of acts or omissions occurring in the JPDA connected with or arising out of petroleum activities. Such a person shall not be subject to criminal proceedings under the law of either Australia or East Timor if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the

same act or omission under the law of the other country or where the competent authorities of one country, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.

(c) In cases referred to in paragraph (b), Australia and East Timor shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the country most affected by the alleged offence.

(d) The criminal law of the flag state shall apply in relation to acts or omissions on board vessels including seismic or drill vessels in, or aircraft in flight over, the JPDA.

(e) Australia and East Timor shall provide assistance to and co-operate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

(f) Both Australia and East Timor recognise the interest of the other country where a victim of an alleged offence is a national of that other country and shall keep that other country informed, to the extent permitted by its law, of action being taken with regard to the alleged offence.

(g) Australia and East Timor may make arrangements permitting officials of one country to assist in the enforcement of the criminal law of the other country. Where such assistance involves the detention of a person who under paragraph (a) is subject to the jurisdiction of the other country that detention may only continue until it is practicable to hand the person over to the relevant officials of that other country.

Article 15: Customs, quarantine and migration

(a) Australia and East Timor may, subject to paragraphs (c), (e), (f) and (g), apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, the JPDA. Australia and East Timor may adopt arrangements to facilitate such entry and departure.

(b) Limited liability corporations or other limited liability entities shall ensure, unless otherwise authorised by Australia or East Timor, that persons, equipment and goods do not enter structures in the JPDA without first entering

Australia or East Timor, and that their employees and the employees of their subcontractors are authorised by the Designated Authority to enter the JPDA.

(c) Either country may request consultations with the other country in relation to the entry of particular persons, equipment and goods to structures in the JPDA aimed at controlling the movement of such persons, equipment or goods.

(d) Nothing in this Article prejudices the right of either Australia or East Timor to apply customs, migration and quarantine controls to persons, equipment and goods entering the JPDA without the authority of either country. Australia and East Timor may adopt arrangements to co-ordinate the exercise of such rights.

(e) Goods and equipment entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(f) Goods and equipment leaving or in transit through either Australia or East Timor for the purpose of entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(g) Goods and equipment leaving the JPDA for the purpose of being permanently transferred to a part of either Australia or East Timor may be subject to customs duties of that country.

Article 16: Hydrographic and seismic surveys

(a) Australia and East Timor shall have the right to carry out hydrographic surveys to facilitate petroleum activities in the JPDA. Australia and East Timor shall co-operate on:

- i. the conduct of such surveys, including the provision of necessary on-shore facilities; and
- ii. exchanging hydrographic information relevant to petroleum activities in the JPDA.

(b) For the purposes of this Treaty, Australia and East Timor shall co-operate in facilitating the conduct of seismic surveys in the JPDA, including in the provision of necessary on-shore facilities.

Article 17: Petroleum industry vessel—safety, operating standards and crewing

Except as otherwise provided in this Treaty, vessels of the nationality of Australia or East Timor engaged in petroleum activities in the JPDA shall be subject to the law of their nationality in relation to safety and operating standards and crewing regulations. Vessels with the nationality of other countries shall apply the law of Australia or East Timor depending on whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter the JPDA and do not operate out of either Australia or East Timor under the law of both Australia or East Timor shall be subject to the relevant international safety and operating standards.

Article 18: Surveillance

- (a) For the purposes of this Treaty, Australia and East Timor shall have the right to carry out surveillance activities in the JPDA.
- (b) Australia and East Timor shall co-operate on and co-ordinate any surveillance activities carried out in accordance with paragraph (a).
- (c) Australia and East Timor shall exchange information derived from any surveillance activities carried out in accordance with paragraph (a).

Article 19: Security measures

- (a) Australia and East Timor shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in the JPDA.
- (b) Australia and East Timor shall make arrangements for responding to security incidents in the JPDA.

Article 20: Search and rescue

Australia and East Timor shall, at the request of the Designated Authority and consistent with this Treaty, co-operate on and assist with search and rescue

operations in the JPDA taking into account generally accepted international rules, regulations and procedures established through competent international organisations.

Article 21: Air traffic services

Australia and East Timor shall, in consultation with the Designated Authority or at its request, and consistent with this Treaty, co-operate in relation to the operation of air services, the provision of air traffic services and air accident investigations, within the JPDA, in accordance with national laws applicable to flights to and within the JPDA, recognizing established international rules, regulations and procedures where these have been adopted by Australia and East Timor.

Article 22: Duration of the Treaty

This Treaty shall be in force until there is a permanent seabed delimitation between Australia and East Timor or for thirty years from the date of its entry into force, whichever is sooner. This Treaty may be renewed by agreement between Australia and East Timor. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Treaty shall continue even if the Treaty is no longer in force under conditions equivalent to those in place under the Treaty.

Article 23: Settlement of Disputes

(a) With the exception of disputes falling within the scope of the taxation code referred to in Article 13(b) of this Treaty and which shall be settled in accordance with that code, any dispute concerning the interpretation or application of this Treaty shall, as far as possible, be settled by consultation or negotiation.

(b) Any dispute which is not settled in the manner set out in paragraph (a) and any unresolved matter relating to the operation of this Treaty under Article 6(d)(ii) shall, at the request of either Australia or East Timor, be submitted to an arbitral tribunal in accordance with the procedure set out in Annex B.

Article 24: Amendment

This Treaty may be amended at any time by written agreement between Australia and East Timor.

Article 25: Entry into force

(a) This Treaty shall enter into force upon the day on which Australia and East Timor have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.

(b) Upon entry into force, the Treaty will be taken to have effect and all of its provisions will apply and be taken to have applied on and from the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Dili, on this twentieth day of May, Two thousand and two in two originals in the English language.

For the Government of Australia

John Howard (Prime Minister)
[Signature omitted]

For the Government of East Timor

Mari Alkatiri (Prime Minister)
[Signature omitted]

Annex A under Article 3 of this Treaty

Designation and Description of the JPDA

NOTE

Where for the purposes of the Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

THE AREA

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
 - (b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;
 - (c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;
 - (d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
 - (e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;
 - (f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;
 - (g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;
 - (h) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;
 - (i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;
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- (j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;
- (l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;
- (n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and
- (o) thence north-westerly along the geodesic to the point of commencement.

Annex B under Article 23 of this Treaty

Dispute Resolution Procedure

(a) An arbitral tribunal to which a dispute is submitted pursuant to Article 23 (b), shall consist of three persons appointed as follows:

- i. Australia and East Timor shall each appoint one arbitrator;
- ii. the arbitrators appointed by Australia and East Timor shall, within sixty (60) days of the appointment of the second of them, by agreement, select a third arbitrator who shall be a citizen, or permanent resident of a third country which has diplomatic relations with both Australia and East Timor;
- iii. Australia and East Timor shall, within sixty (60) days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chairman of the Tribunal.

(b) Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the country instituting such proceedings to the other country. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the country instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent country shall notify the country instituting proceedings of the name of the arbitrator appointed by the respondent country.

(c) If, within the time limits provided for in sub-paragraphs (a) (ii) and (iii) and paragraph (b) of this Annex, the required appointment has not been made or the required approval has not been given, Australia or East Timor may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of Australia or East Timor or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen, or permanent resident of Australia or East Timor or is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of Australia or East Timor shall be invited to make the appointment.

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- (d) In case any arbitrator appointed as provided for in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.
- (e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.
- (f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between Australia and East Timor, determine its own procedure.
- (g) Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to Australia and East Timor that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Treaty and relevant international law.
- (h) Australia and East Timor shall each bear the costs of its appointed arbitrator and its own costs in preparing and presenting cases. The cost of the Chairman of the Tribunal and the expenses associated with the conduct of the arbitration shall be borne in equal parts by Australia and East Timor.
- (i) The Arbitral Tribunal shall afford to Australia and East Timor a fair hearing. It may render an award on the default of either Australia or East Timor. In any case, the Arbitral Tribunal shall render its award within six (6) months from the date it is convened by the Chairman of the Tribunal. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to Australia and East Timor.
- (j) An award shall be final and binding on Australia and East Timor.
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Annex C under Article 6(b)(v) of this Treaty

Powers and Functions of the Designated Authority

The powers and functions of the Designated Authority shall include:

- (a) day-to-day management and regulation of petroleum activities in accordance with this Treaty and any instruments made or entered into under this Treaty, including directions given by the Joint Commission;
- (b) preparation of annual estimates of income and expenditure of the Designated Authority for submission to the Joint Commission. Any expenditure shall only be made in accordance with estimates approved by the Joint Commission or otherwise in accordance with regulations and procedures approved by the Joint Commission;
- (c) preparation of annual reports for submission to the Joint Commission;
- (d) requesting assistance from the appropriate Australian and East Timor authorities consistent with this Treaty
 - i. for search and rescue operations in the JPDA;
 - ii. in the event of a terrorist threat to the vessels and structures engaged in petroleum operations in the JPDA; and
 - iii. for air traffic services in the JPDA;
- (e) requesting assistance with pollution prevention measures, equipment and procedures from the appropriate Australian and East Timor authorities or other bodies or persons;
- (f) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;
- (g) controlling movements into, within and out of the JPDA of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law; and, subject to Article 15, authorising the entry of employees of contractors and their subcontractors and other persons into the JPDA;

- (h) issuing regulations and giving directions under this Treaty on all matters related to the supervision and control of petroleum activities including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code; and
- (i) such other powers and functions as may be identified in other Annexes to this Treaty or as may be conferred on it by the Joint Commission.

Annex D under Article 6(c)(ii) of this Treaty

Powers and Functions of the Joint Commission

1. The powers and functions of the Joint Commission shall include:
 - (a) giving directions to the Designated Authority on the discharge of its powers and functions;
 - (b) conferring additional powers and functions on the Designated Authority;
 - (c) adopting an interim Petroleum Mining Code pursuant to Article 7(b) of the Treaty, if necessary;
 - (d) approving financial estimates of income and expenditure of the Designated Authority;
 - (e) approving rules, regulations and procedures for the effective functioning of the Designated Authority;
 - (f) designating the Designated Authority for the period referred to in Article 6(b)(i);
 - (g) at the request of a member of the Joint Commission inspecting and auditing the Designated Authority's books and accounts or arranging for such an audit and inspection;
 - (h) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Commission;
 - (i) considering and adopting the annual report of the Designated Authority;
 - (j) of its own volition or on recommendation by the Designated Authority, in a manner not inconsistent with the objectives of this Treaty amending the Petroleum Mining Code to facilitate petroleum activities in the JPDA;
 2. The Joint Commission shall exercise its powers and functions for the benefit of the peoples of Australia and East Timor having regard to good oilfield, processing, transport and environmental practice.
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Annex E under Article 9(b) of this Treaty

Unitisation of Greater Sunrise

- (a) Australia and East Timor agree to unitise the Sunrise and Troubadour deposits (collectively known as 'Greater Sunrise') on the basis that 20.1% of Greater Sunrise lies within the JPDA. Production from Greater Sunrise shall be distributed on the basis that 20.1% is attributed to the JPDA and 79.9% is attributed to Australia.
- (b) Either Australia or East Timor may request a review of the production sharing formula. Following such a review, the production sharing formula may be altered by agreement between Australia and East Timor.
- (c) The unitisation agreement referred to in paragraph (a) shall be without prejudice to a permanent delimitation of the seabed between Australia and East Timor.
- (d) In the event of a permanent delimitation of the seabed, Australia and East Timor shall reconsider the terms of the unitisation agreement referred to in paragraph (a). Any new agreement shall preserve the terms of any production sharing contract, licence or permit which is based on the agreement in paragraph (a).

Annex F under Article 5(a) of this Treaty

Fiscal Scheme for Certain Petroleum Deposits

Contracts shall be offered to those corporations holding, immediately before entry into force of the Treaty, contracts numbered 91-12, 91-13, 95-19, and 96-20 in the same terms as those contracts, modified to take into account the administrative structure under this Treaty, or as otherwise agreed by Australia and East Timor.

Annex G under Article 13 (b) of this Treaty**Taxation Code for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in Respect of Activities Connected with the Joint Petroleum Development Area****Article 1****General definitions**

1. In this Taxation Code, unless the context otherwise requires:
 - (a) the term “Australian tax” means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;
 - (b) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
 - (c) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of East Timor, the Minister for Finance or an authorised representative of the Minister;
 - (d) the term “East Timor tax” means tax imposed by East Timor, other than any penalty or interest, being tax to which this Taxation Code applies;
 - (e) the term “framework percentage” means, in the case of Australia, ten (10) percent and, in the case of East Timor, ninety (90) percent;
 - (f) the term “law of a Contracting State” means the law from time to time in force in that Contracting State relating to the taxes to which this Taxation Code applies;

- (g) the term “person” includes an individual, a company and any other body of persons;
- (h) the term “reduction percentage” means, in the case of Australia, ninety (90) percent and, in the case of East Timor, ten (10) percent;
- (i) the terms “tax” or “taxation” mean Australian tax or East Timor tax, as the context requires; and
- (j) the term “year” means, in Australia, any year of income and, in East Timor, any tax year.

2. In the application of this Taxation Code at any time by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting State for the purposes of the taxes to which this Taxation Code applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

Article 2

Personal scope

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

- (a) the exploration for or the exploitation of petroleum in the JPDA; or
- (b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

Article 3

Resident

1. For the purposes of this Taxation Code, resident of a Contracting State means:

- (a) in the case of Australia, a person who is liable to tax in Australia by reason of being a resident of Australia under the tax law of Australia; and
- (b) in the case of East Timor, a person who is liable to tax in East Timor by reason of being a resident of East Timor under the tax law of East Timor,

but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:

- (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
- (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;
- (c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer. For the purposes of this subparagraph, an individual's nationality or citizenship of one of the Contracting States shall be a factor in determining the degree of the individual's personal and economic relations with that Contracting State;

- (d) if it cannot be determined with which Contracting State the person's personal and economic relations are the closer, the competent authorities of the Contracting States shall consult with a view to settling the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 4

Taxes covered

1. The existing taxes to which this Taxation Code shall apply are:

(a) in Australia:

- (i) the income tax, but excluding the petroleum resource rent tax;
- (ii) the fringe benefits tax;
- (iii) the goods and services tax; and
- (iv) the superannuation guarantee charge,

imposed under the federal law of Australia;

(b) in East Timor:

- (i) the income tax, including either the tax on profits after income tax or the additional profits tax, as applicable to a specified petroleum project or part of a project;
- (ii) the value added tax and sales tax on luxury goods ("value added tax"); and
- (iii) the sales tax,

imposed under the law of East Timor.

2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any relevant changes which have been made in their respective taxation law as soon as possible after such changes.

3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:

- (a) the exploration for or exploitation of petroleum in the JPDA; or
- (b) any petroleum exploration or exploitation related activity carried on in the JPDA,

unless the other Contracting State consents to the imposition of that tax.

4. Nothing in paragraph 3 of this Article shall be taken to prevent a Contracting State from imposing, in accordance with its law, penalty or interest charges relating to the taxes covered by this Taxation Code.

Article 5

Business profits

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, the JPDA in a year shall be reduced by the reduction percentage.

2. (a) Business profits or losses derived from the JPDA in a year by an individual who is a resident of a Contracting State may be taxed in both Contracting States as reduced by the reduction percentage.
- (b) Notwithstanding subparagraph 2(a), the Contracting State of which the individual is a resident may tax those profits or recognise those losses without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on those profits by the individual in that State for the tax paid in the other Contracting State.

3. Business profits derived from the JPDA in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable on those profits in that Contracting State.

4. Business losses, incurred in the JPDA in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by the reduction percentage.

5. Where losses are brought forward from prior years as a deduction, those losses may not also be taken into account when calculating the business profits or business losses for the year in which they are brought forward as a deduction.

6. Where profits include items of income which are dealt with separately in other Articles of this Taxation Code or where losses are dealt with separately in other Articles of this Taxation Code, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. In establishing whether business profits are derived from the JPDA for the purposes of this Article, regard is to be had to internationally accepted principles on the source of business profits, particularly taking into consideration the extent to which activities in the JPDA, or assets located in the JPDA, rather than elsewhere, contributed to those business profits. In applying such internationally accepted principles special regard shall be had to the location of:

- (a) any activities or functions contributing to the business profits;
- (b) any assets relevant to the derivation of the business profits; and
- (c) any business and financial risks assumed by an entity and which relate to the business profits.

8. For the purposes of paragraph 7, particular account should be had to the terms of any relevant unitisation agreement to the extent to which they do not conflict with the internationally accepted principles referred to in that paragraph.

9. In determining whether business losses are incurred in the JPDA, regard is to be had to internationally accepted principles as to where business losses are incurred, with a view to an approach consistent with paragraphs 7 and 8 of this Article.

10. Where particular business profits are derived wholly or principally from the JPDA, or particular business losses are incurred wholly or principally in the JPDA, then such profits or losses shall be treated as fully derived from or fully incurred in, as the case may be, the JPDA. In other cases, the relevant proportion should be attributed to the JPDA. In the application of this paragraph the Contracting States shall seek a consistent approach, including as between the treatment of profits and losses, and should consult if necessary to this end.

11. For the purposes of this Taxation Code, the East Timor additional profits tax shall be regarded as a tax on business profits.

Article 6

Shipping and air transport

1. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences at a place in the JPDA to any other place, whether inside or outside the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

2. Profits from all shipping and air transport internal to the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

3. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences outside the JPDA, and ends in the JPDA, shall not be regarded as derived from the JPDA.

Article 7

Petroleum Valuation

The value of petroleum shall for all purposes under the taxation law of both Contracting States be the value as determined in accordance with

internationally accepted arm's length principles having due regard to functions performed, assets used and risks assumed.

Article 8

Dividends

1. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a resident of the other Contracting State, may be taxed in that other Contracting State. However, such dividends may also be taxed in the first-mentioned Contracting State and according to the law of that State, but the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the dividends.

2. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a resident of that Contracting State, shall be taxable only in that State.

3. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a person who is not a resident of either Contracting State, may be taxed in both Contracting States but the taxable amount of any such dividends shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

5. Notwithstanding any other provisions of this Taxation Code, where a company which is a resident of a Contracting State derives profits, income or gains from the JPDA, such profits, income or gains may be subject in the other Contracting State to a tax on profits after income tax in accordance with its law, but such tax shall not exceed fifteen (15) per cent of the gross amount of such profits, income or gains after deducting from those profits, income or gains the

income tax imposed on them in that other State. Such tax shall be imposed upon the amount equivalent to the framework percentage of the amount that would be taxed but for this paragraph.

6. For the purposes of this Article, “derived from” has the same meaning as expressed in Article 5.

Article 9

Interest

1. Interest paid or credited by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.

3. Interest paid or credited by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term “interest” in this Taxation Code, includes interest from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any form of indebtedness and all other income assimilated to income from money lent by law, relating to tax, of the Contracting State in which the income arises.

Article 10

Royalties

1. Royalties paid or credited by a contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.

3. Royalties paid or credited by a contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term “royalties” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or
- (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

Article 11

Alienation of property

1. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting State, from

the alienation of property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or principally of property situated in the JPDA, the amount of gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to the framework percentage of the amount that would be the gain or loss but for this paragraph.

2. When a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or mainly of property situated in the JPDA, the amount of the gain or loss may, for the purposes of the law of a Contracting State, be an amount equivalent to the reduction percentage of the amount that would be the gain or loss but for this paragraph.

3. Notwithstanding paragraph 2, the Contracting State of which the individual is a resident may tax that gain or recognise that loss of a capital nature without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that gain by the individual in that other Contracting State.

Article 12

Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.

2. Notwithstanding paragraph (1), the Contracting State of which the individual is a resident may tax such income without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that income by the individual in that State for the tax paid in the other Contracting State.

3. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both

Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on income referred to in this paragraph.

Article 13

Dependent personal services

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.
2. Notwithstanding paragraph (1), the Contracting State in which the individual is a resident may tax such remuneration without such reduction. In such a case, that State shall provide a tax offset against the tax payable on such remuneration by the individual in that Contracting State for the tax paid in the other Contracting State.
3. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.

Article 14

Other income

1. Items of income of a resident of a Contracting State other than an individual, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, shall be reduced by the reduction percentage.
2. Items of income of a resident individual of a Contracting State derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, may be taxed in both Contracting States as reduced by the reduction percentage.

3. Notwithstanding paragraph (2), the Contracting State in which the individual is a resident may tax such items of income without such reduction. In such a case, that State shall provide a tax offset against the tax payable on those items of income by the individual in that State for the tax paid in the other Contracting State.

4. Items of income of a person who is not a resident of either Contracting State, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.

5. For the purposes of this Article, “derived from” has the same meaning as expressed in Article 5.

Article 15

Fringe benefits

For the purposes of the taxation law of Australia, the amount of Australian fringe benefits tax payable in relation to fringe benefits provided to employees in a year, in respect of employment exercised in the JPDA, shall be:

- (a) in the case of such employees who are residents of Australia, the fringe benefits tax may be applied without reduction;
- (b) in respect of employees who are residents of East Timor, the fringe benefits tax shall not be applied; and
- (c) in respect of employees who are not residents of either Contracting State, the amount payable shall be reduced by the reduction percentage.

Article 16

Superannuation guarantee charge

The superannuation guarantee charge imposed by Australia in respect of employment exercised in the JPDA in a year may be applied only in so far as it relates to employees who are residents of Australia, in which case it may be applied without reduction.

Article 17

Miscellaneous

In any case where income, profits or gains are not derived from the JPDA as that term is used in Article 5, for the purposes of this Code, neither Contracting State shall tax those income, profits or gains on a basis, in effect, of their source in the JPDA.

Article 18

Indirect taxes

Goods introduced into the JPDA, whether or not from a Contracting State, and services provided to a person in the JPDA, may, at or following introduction, be taxed in both Contracting States in accordance with applicable Australian goods and services tax law or the East Timor value added tax or sales tax law as the case may be, but the taxable amount in relation to such goods and services shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

Article 19

Avoidance of double taxation

1. In the case of Australia, subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), East Timor tax paid under the law of East Timor and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia of the following types:

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- (a) dividends paid wholly or mainly out of profits, income or gains as referred to in paragraph 1 of Article 8;
 - (b) interest paid by a contractor as referred to in paragraph 2 of Article 9;
 - (c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or
 - (d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8,

shall be allowed as a credit against Australian tax payable in respect of that income.

2. In the case of East Timor, subject to the provisions of the law of East Timor from time to time in force which relate to the allowance of a credit against East Timor tax of tax paid in a country outside East Timor (which shall not affect the general principle of this Article), Australian tax paid under the law of Australia and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of East Timor of the following types:

- (a) dividends paid wholly or mainly out of profits, income or gains as referred to in paragraph 1 of Article 8;
- (b) interest paid by a contractor as referred to in paragraph 2 of Article 9;
- (c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or
- (d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8,

shall be allowed as a credit against East Timor tax payable in respect of that income.

3. The dividends, interest or royalties taxed by a Contracting State in accordance with the provisions of this Taxation Code and referred to in this Article shall for the purposes of determining a foreign tax credit entitlement

under the law of the other Contracting State, be deemed to be income derived from sources in the first-mentioned Contracting State.

Article 20

Mutual agreement procedure

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must be presented within thirty-six (36) months from the first notification of the action resulting in taxation not in accordance with the provisions of the Taxation Code.
2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. In considering whether the actions of a Contracting State are or are not in accordance with the provisions of this Taxation Code for the purposes of this Article, particular regard is to be had to the objects and purposes of this Taxation Code, including especially that of the avoidance of double taxation.
4. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Taxation Code. The competent authorities of the Contracting States may meet from time to time or otherwise communicate for the purposes of discussing the operation and application of this Taxation Code. They may also consult together in relation to juridical or economic double taxation in cases not specifically provided for in this Taxation Code.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Taxation Code may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

Article 21

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for the prevention of avoidance or evasion of such taxes. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes. Such persons or authorities may disclose the information in public courts or tribunal proceedings or in judicial or tribunal decisions relating to taxes covered by this Taxation Code.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 22

Interaction with other taxation arrangements

Nothing in this Taxation Code is intended to limit the operation of a taxation arrangement concluded by either Contracting State with a third country or territory unless so provided for in such treaty.

Article 23

Transitional provisions

1. Business losses incurred in the JPDA by a person in a year previous to the year in which this Taxation Code enters into force and business losses apportionable in accordance with paragraph 2 to that part of the year prior to the date that this Taxation Code enters into domestic law effect, may, for the purposes of the taxation law of a Contracting State and in accordance with the provisions of that law, be carried forward for deduction against income which is subject to the provisions of this Taxation Code, in accordance with the provisions of this Taxation Code.
2. In the year in which this Taxation Code enters into force the Contracting States shall only apply the framework percentage or reduction percentage to that proportion of income, losses and other items addressed by this Taxation Code which corresponds to that portion of the period from the date of entry into domestic law effect to the end of the year.

Article 24

Review mechanism

At the request of either of the Contracting States, the Contracting States shall review the terms and operations of this Taxation Code with a view to amending the Taxation Code, if considered necessary.

Article 25

Entry into force

This Taxation Code shall enter into force at the same time as the Treaty to which it forms part.

*Minister's second reading speech made in—
House of Representatives on 5 March 2003
Senate on 6 March 2003]*

(19/03)

