Petroleum (Timor Sea Treaty) Act 2003

No. 9, 2003

Compilation No. 1

Compilation date: 21 October 2016
Includes amendments up to: Act No. 61, 2016
Registered: 16 November 2016

Prepared by the Office of Parliamentary Counsel, Canberra
About this compilation

This compilation

This is a compilation of the Petroleum (Timor Sea Treaty) Act 2003 that shows the text of the law as amended and in force on 21 October 2016 (the compilation date).

The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.
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Petroleum (Timor Sea Treaty) Act 2003

Compilation No. 1  Compilation date: 21/10/16  Registered: 16/11/16

Authorised Version C2016C01094 registered 16/11/2016
An Act to give effect to the Timor Sea Treaty, and for related purposes

Part 1—Preliminary

1 Short title

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

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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent</td>
<td>2 April 2003</td>
</tr>
<tr>
<td>2. Sections 3 to 5</td>
<td>20 May 2002</td>
<td>20 May 2002</td>
</tr>
<tr>
<td>3. Sections 6 and 7</td>
<td>The day on which this Act receives the Royal Assent</td>
<td>2 April 2003</td>
</tr>
<tr>
<td>4. Subsection 8(1)</td>
<td>20 May 2002</td>
<td>20 May 2002</td>
</tr>
<tr>
<td>5. Subsection 8(2)</td>
<td>The day on which this Act receives the Royal Assent</td>
<td>2 April 2003</td>
</tr>
<tr>
<td>7. Schedule 1</td>
<td>20 May 2002</td>
<td>20 May 2002</td>
</tr>
</tbody>
</table>
Part 1 Preliminary

Section 3

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.

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.

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.

Penalty for contravention of this subsection: 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:

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

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.

rebateable 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
   (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
Part 4 Transitional provisions

Section 24

(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.
Endnotes

Endnote 1—About the endnotes
The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:
Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The Legislation Act 2003 authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

MISdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can
be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.
Endnote 3—Legislation history

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and year</th>
<th>Assent</th>
<th>Commencement</th>
<th>Application, saving and transitional provisions</th>
</tr>
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<tr>
<td>Petroleum (Timor Sea Treaty) Act 2003</td>
<td>9, 2003</td>
<td>2 Apr 2003</td>
<td>s 3–5, 8(1), 9–25 and Sch 1: 20 May 2002 (s 2(1) items 2, 4, 6, 7) Remainder: 2 Apr 2003 (s 2(1) items 1, 3, 5)</td>
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<td>Statute Update Act 2016</td>
<td>61, 2016</td>
<td>23 Sept 2016</td>
<td>Sch 2 (items 74–76): 21 Oct 2016 (s 2(1) item 1)</td>
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Petroleum (Timor Sea Treaty) Act 2003

Compilation No. 1

Compilation date: 21/10/16

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Endnote 4—Amendment history

<table>
<thead>
<tr>
<th>Provision affected</th>
<th>How affected</th>
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<tr>
<td>Part 2</td>
<td></td>
</tr>
<tr>
<td>s 6</td>
<td>am No 61, 2016</td>
</tr>
<tr>
<td>s 7</td>
<td>am No 61, 2016</td>
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<tr>
<td>s 8</td>
<td>am No 61, 2016</td>
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