**Seas and Submerged Lands Amendment Proclamation 2019**

**EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

*under section 10B of the Seas and Submerged Lands Act 1973*

Section 10B of the *Seas and Submerged Lands Act 1973* provides that the Governor-General may, from time to time, by Proclamation declare, not inconsistently with Articles 55 or 57 of the *United Nations Convention on the Law of the Sea* (UNCLOS) or any relevant international agreement to which Australia is a party, the limits of the whole or any part of the exclusive economic zone (EEZ) of Australia.

Article 55 of UNCLOS provides that the EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V of UNCLOS, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of the Convention. Article 57 provides that the EEZ shall not extend beyond 200 nautical miles from the baselines from which the breath of the territorial seas is measured.

The purpose of the *Seas and Submerged Lands Amendment Proclamation 2019* (the Proclamation) is to give effect to the EEZ boundary between Australia and Timor-Leste in the Timor Sea, in accordance with Article 4 of the *Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Treaty).

The limits of Australia’s EEZ were first declared on 26 July 1994 in the *Seas and Submerged Lands Act 1973 - Proclamation under Section 10B* (existing Proclamation under Section 10B), which was amended in 2005 to give effect to the 2004 *Treaty between the Government of Australia and the Government of New Zealand establishing certain Exclusive Economic Zone and Continental Shelf Boundaries*.

On 6 March 2018 Australia and Timor-Leste signed the Treaty, which establishes the EEZ boundary between Australia and Timor-Leste in the Timor Sea. Article 4 of the Treaty provides that the EEZ boundary between the Parties in the Timor Sea comprises the geodesic lines connecting six points that lie south of Australia’s current declared EEZ boundary in the Timor Sea:

|  |  |  |
| --- | --- | --- |
| Point | Latitude | Longitude |
| TA-5 | 11° 20' 02.90"S | 126° 31' 58.40"E |
| TA-6 | 11° 04' 37.65"S | 127° 39' 32.81"E |
| TA-7 | 10° 55' 20.88"S | 127° 47' 08.37"E |
| TA-8 | 10° 53' 36.88"S | 127° 48' 49.37"E |
| TA-9 | 10° 43' 37.88"S | 127° 59' 20.36"E |
| TA-10 | 10° 29' 11.87"S | 128° 12' 28.36"E |

Since the EEZ boundary agreed in the Treaty is north of the boundary in the existing Proclamation under Section 10B, the Proclamation would revise the limits of Australia’s EEZ in the Timor Sea in accordance with the Treaty. The Proclamation is consistent with Australia’s obligations under Articles 55 and 57 of UNCLOS, and with other relevant international agreements to which Australia is a Party.

Details of the Proclamation are set out in the Attachment.

The Proclamation is a legislative instrument for the purposes of the *Legislation Act 2003*.

No public consultation was undertaken in relation to the Proclamation as it simply gives effect to the EEZ boundary established by the Treaty. Public consultation was undertaken by the Joint Standing Committee on Treaties (JSCOT) as part of its review of the Treaty. Submissions from a range of interest groups were received by JSCOT in respect of the Treaty, and taken into consideration by the Committee before issuing its final report in which it recommended that binding treaty action be taken.

Authority: Section 10B of the *Seas and Submerged Lands Act 1973*

**Attachment**

**Details of the *Seas and Submerged Lands Amendment Proclamation 2019***

Section 1 – Name

Section 1 gives the name of the Proclamation as the *Seas and Submerged Lands Amendment Proclamation 2019*.

Section 2 – Commencement

Section 2 provides that Sections 1-4 of the Proclamation commence the day after the Proclamation is registered.

Section 2 also provides that Schedule 1 of the Proclamation will commence after the Treaty enters into force, by linking it to the commencement of the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019* (which is currently before the House of Representatives as the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018*). Specifically, this section provides that Schedule 1 commences the later of: the start of the day after the instrument is registered; and the commencement of Schedule 1 to the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019*, however the provisions do not commence at all if the latter does not occur. Since the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Bill 2018* provides that Schedule 1 of the Bill enters into force when the Treaty enters into force, this means that Schedule 1 of the Proclamation will enter into force after the Treaty enters into force.

Section 3 – Authority

Section 3 confirms that the instrument is made under section 10B of the *Seas and Submerged Lands Act 1973* (the Act).

Section 4 – Schedules

Section 4 clarifies that items in the Schedule have the effect of amending or repealing sections of the *Seas and Submerged Lands Act - Proclamation under Section 10B*. Section 4 also clarifies that the other items in the Schedule have effect according to their terms.

Schedule 1 – Amendments

Item 1 revises the application of paragraph (d), to make clear that it no longer applies to ‘items 2 and 3’ in the Schedule, but only to certain paragraphs within those items. This is because, while paragraph (d) refers to coordinates being expressed in terms of the Australian Geodetic Datum 1966 (“AGD 66”), the amended coordinates inserted by the Proclamation are expressed in terms of the World Geodetic System 1984 (“WGS 84”) (see Item 2 below).

Item 2 clarifies that for the purpose of paragraphs 2(za) to (zf) in the Schedule all coordinates are determined by reference to the WGS 84, and that WGS 84 is taken to be equivalent to the Geodetic Datum System of Australia 1994. This is because Australia’s existing EEZ boundary in the Timor Sea (covering the Timor and Arafura Seas) is expressed using AGD 66 while the geographical coordinates referred to in the Treaty are expressed using the WGS 84. This paragraph clarifies that for the purpose of paragraphs 2(za) to (zf) the coordinates are determined by reference to WGS 84.

Item 3 provides the heading *Timor Sea West* to clarify the region to which the coordinates in that paragraph relate.

Item 4 first provides two revised coordinates that link point TA-05 to Australia’s existing proclaimed EEZ west of point TA-05. Under the heading *Australia/Timor Leste,* Item 4 then provides the revised coordinates for points TA-5, TA-6, TA-7, TA-8, TA-9 and TA-10 (which are listed as (za), (zb), (zc), (zd), (ze) and (zf) respectively) in order to reflect the agreed EEZ boundary between Australia and Timor-Leste in Article 4 of the Treaty. Under the heading *Arafura Sea,* the Item then provides revised coordinates that link point TA-10 to Australia’s existing EEZ boundary east of point TA-10.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Seas and Submerged Lands Amendment Proclamation 2019***

The *Seas and Submerged Lands Amendment Proclamation 2019* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the disallowable legislative instrument**

The *Seas and Submerged Lands Amendment Proclamation 2019* gives effect to the exclusive economic zone (EEZ) boundary between Australia and Timor-Leste in the Timor Sea, in accordance with Article 4 of the *Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Treaty).

The Proclamation is made under section 10B of the *Seas and Submerged Lands Act 1973*. Under that provision, the Governor-General may, from time to time, by Proclamation declare, not inconsistently with Articles 55 or 57 of the *United Nations Convention on the Law of the Sea* (UNCLOS) or any relevant international agreement to which Australia is a party, the limits of the whole or any part of the EEZ of Australia.

Since the EEZ boundary agreed in the Treaty is north of the boundary in the existing Proclamation under Section 10B, the Proclamation would revise the limits of Australia’s EEZ in the Timor Sea in accordance with the Treaty. The Proclamation is consistent with Australia’s obligations under Articles 55 and 57 of UNCLOS, and with other relevant international agreements to which Australia is a Party.

**Human rights implications**

The *Seas and Submerged Lands Amendment Proclamation 2019* does not engage any of the applicable rights or freedoms.

**Conclusion**

The *Seas and Submerged Lands Amendment Proclamation 2019* is compatible with human rights as it does not raise any human rights issues.