

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Resources and Northern Australia

Export Charges (Imposition—Customs) Act 2015

Export Charges (Imposition—General) Act 2015

International Organisations (Privileges and Immunities) Act 1963

Maritime Powers Act 2013

Radiocommunications Act 1992

Telecommunications Act 1997

Transport Safety Investigation Act 2003

Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019

Purpose and Operation

The *Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019* (the Regulations) amend Commonwealth regulations to partially implement *the Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea* (New York, 6 March 2018) [2018] ATNIF 4 (the Treaty). The Treaty establishes permanent maritime boundaries between Australia and Timor-Leste and a regulatory framework for petroleum development in the Timor Sea.

When the Treaty enters into force, it will supersede and replace the provisional arrangements agreed in the Timor Sea Treaty Between the Government of East Timor and Government of Australia (Dili, 20 May 2002) [2003] ATS 13 (the Timor Sea Treaty) and the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields (Dili, 6 March 2003) [2007] ATS 11 (the Greater Sunrise unitisation agreement).

The Regulations make amendments to regulations that are required for the Treaty to enter into force, and must be approved before this can occur.

The purpose of the Regulations is to make amendments that are technical in nature. For example, references to the Timor Sea Treaty are removed if no longer required, or replaced with references to the Treaty as necessary. In addition, the Regulations repeal two regulations,¹ as they will become redundant when the Treaty enters into force. All of these provisions come into effect when the Treaty enters in force.

The Treaty can be viewed free of charge in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Details of the Regulations are set out in Attachment A.

¹ *International Organisations (Privileges and Immunities—Timor Sea Proceedings) Regulations 2017*, *Timor Sea Treaty Designated Authority (Privileges and Immunities) Regulations 2003*.

Authority

Authority for the Governor-General to make regulations, prescribing all matters required or permitted by the applicable act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the applicable act is provided by:

- section 15 of the *Export Charges (Imposition—Customs) Act 2015*;
- section 15 of the *Export Charges (Imposition—General) Act 2015*;
- subsection 13(1) of the *International Organisations (Privileges and Immunities) Act 1963*;
- section 122 of the *Maritime Powers Act 2013*;
- subsection 314(1) of the *Radiocommunications Act 1992*;
- subsection 594(1) of the *Telecommunications Act 1997*; and
- section 71 of the *Transport Safety Investigation Act 2003*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

In developing the Regulations, the Department of Industry, Innovation and Science consulted the relevant Commonwealth agencies, including:

- Attorney-General's Department;
- Australian Transport Safety Bureau (ATSB);
- Department of Agriculture;
- Department of Communications and the Arts;
- Department of Foreign Affairs and Trade; and
- Department of Home Affairs

Regulatory Impact

A Regulation Impact Statement (RIS) was prepared for the Treaty. The Office of Best Practice Regulation has advised a subsequent RIS is not required for implementing legislation.

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker of a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. A Statement of Compatibility with Human Rights has been prepared to meet that requirement and is set out at Attachment B.

Details of the *Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019*

Section 1 Name

This section provides that the title of the Regulations is the *Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019* (the Regulations).

Section 2 Commencement

This section provides for the Regulations to commence at the same time as Schedule 1 to the *Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019*.

That Schedule commences on the day the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018 enters into force for Australia. The Minister must announce, by notifiable instrument, the day the Treaty enters into force.

Section 3 Authority

This section provides that the Regulations are made under the following Acts:

- the *Export Charges (Imposition—Customs) Act 2015*;
- the *Export Charges (Imposition—General) Act 2015*;
- the *International Organisations (Privileges and Immunities) Act 1963*;
- the *Maritime Powers Act 2013*;
- the *Radiocommunications Act 1992*;
- the *Telecommunications Act 1997*; and
- the *Transport Safety Investigation Act 2003*.

Section 4 Schedules

This section provides a machinery clause that enables the Schedule to the Regulations to operate according to its terms.

Schedule 1—Amendments and repeals

Part 1—Amendments

Export Charges (Imposition—Customs) Regulation 2015

Item 1 Section 5

This item inserts a new definition of the *Timor Sea Maritime Boundaries Treaty* in section 5 of the Regulation, to support the operation of new paragraph 25(1)(i) (which is inserted by item 2 (below)).

Item 2 Paragraph 25(1)(i)

This item repeals and replaces paragraph 25(1)(i) of the *Export Charges (Imposition—Customs) Regulation 2015*, which currently refers to the Joint Petroleum Development Area within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003* (PTST Act). The Joint Petroleum Development Area will be redundant when the Treaty enters into force, and the PTST Act will also be repealed.

Paragraph 25(1)(i) is updated to reference the new maritime boundaries areas, as defined by the Treaty, in relation to goods that are consigned to, and for consumption on, either a resources industry fixed structure, or a resources industry mobile unit.

Export Charges (Imposition—General) Regulation 2015

Item 3 Section 5

This item inserts a new definition of the *Timor Sea Maritime Boundaries Treaty* in section 5 of the Regulation, to support the operation of new paragraph 25(1)(i) (which is inserted by item 4 (below)).

Item 4 Paragraph 25(1)(i)

This section repeals and replaces paragraph 25(1)(i) of the *Export Charges (Imposition—General) Regulation 2015*, which currently references the Joint Petroleum Development Area within the meaning of the PTST Act. The Joint Petroleum Development Area will be redundant when the Treaty enters into force, and the PTST Act will also be repealed.

Paragraph 25(1)(i) is updated to reference the new maritime boundaries areas, as defined by the Treaty, in relation to goods that are consigned to, and for consumption on, a resources industry fixed structure, or a resources industry mobile unit.

Maritime Powers Regulation 2014

Item 5 After paragraph 7(1)(d)

This item inserts a reference to the Treaty, as in force at the time the amendments commence, into subsection 7(1) of the *Maritime Powers Regulation 2014* (the MP Regulation). As a result, the Treaty is an international agreement for section 12 of the *Maritime Powers Act 2013* (the MPA). The effect of this is that the exercise of powers may be authorised under the MPA in relation to a vessel, installation or aircraft in the Greater Sunrise Special Regime Area in certain circumstances.

The MPA provides a broad set of enforcement powers for use in, and in relation to, maritime areas. The powers can be used by maritime officers to give effect to Australian laws and international agreements and decisions.

An international agreement is defined in section 8 of the MPA to mean an agreement or arrangement between Australia and one or more other countries. The same section defines international decision to mean a decision made by:

- (a) the Security Council of the United Nations; or

- (b) another international body that, under international law, makes decisions that are binding on its members.

An authorisation is necessary to begin the exercise of powers under the MPA, except for the exercise of aircraft identification powers and the exercise of powers to ensure the safety of persons. Once authorised, maritime officers can exercise powers for a range of purposes. The following are maritime officers:

- (a) Customs officers (as defined by the *Customs Act 1901*);
- (b) members of the Australian Defence Force;
- (c) members of the Australian Federal Police;
- (d) other persons appointed by the Minister.

Section 12 of the MPA provides that an international agreement or international decision applies to a vessel, installation, or aircraft if the agreement or decision provides for the exercise of powers by Australia in relation to the vessel, installation or aircraft and the agreement or decision is prescribed by the MP Regulation.

Radiocommunications Regulations 1993

Item 6 Regulation 38

Item 6 repeals and substitutes regulation 38 to remove reference to the Timor Sea Treaty (TST) as defined in subsection 5(1) of the *Petroleum (Timor Sea Treaty) Act 2003* and replaces it with reference to the Treaty.

The amendment is technical in nature, and ensures that the new Treaty will continue to be regarded in the same way as the TST, by a person or body exercising a power under the *Radiocommunications Act 1992* (the RC Act).

Under paragraph 299(1)(b) of the RC Act, a person or body in exercising a power conferred under the Act (other than Part 4.4 or 5.5), must have regard to any treaty or convention between Australia and another country or countries that makes provision in relation to radio emission and any instrument or writing specified in the regulations.

Subsection 299(3) of the RC Act also specifies that regulations made for the purposes of paragraph 299(1)(b) may prescribe a specified instrument or writing as in force or existence at the time when the regulations come into effect or as amended or altered from time to time.

It is appropriate for regulation 38 to reflect that the Treaty is incorporated “as altered from time to time”, to ensure that Australia can continue to meet its obligations.

Telecommunications Regulations 2001

Item 7 Schedule 1 (table item 18)

Item 7 is a technical amendment to repeal and substitute item 18 in the table of Schedule 1 to the *Telecommunications Regulations 2001*. The amendment removes the reference to the PTST Act and replaces it with a reference to the Treaty, as in force from time to time.

Section 589 of the *Telecommunications Act 1997* provides for an instrument under the Act (which includes regulations) to make provision in relation to a matter by applying, adopting

or incorporating (with or without modifications) matter contained in any other instrument or writing as in force at a particular time or as in force from time to time. It would be appropriate, in this case, that the Treaty would be incorporated “as in force from time to time”, to ensure that Australia can continue to meet its obligations.

Schedule 1 to the *Telecommunications Regulations 2001* details the international agreements prescribed for the purposes of the definition of ***listed international agreement*** in clause 2 of Schedule 3 to the *Telecommunications Act 1997*. Schedule 3 to that Act sets out the carriers’ powers and immunities when inspecting land, and installing and maintaining infrastructure.

The amendments are required because the Act applies to the exploration and exploitation of the resources of the continental shelf of Australia. Schedule 3 to the Act also requires carriers undertaking their activities to do so in a manner consistent with prescribed international treaties, where relevant. Carriers undertaking Schedule 3 activities in the continental shelf in the Greater Sunrise Special Regime area must do so in a manner consistent with the Treaty.

Transport Safety Investigation Regulations 2003

Item 8 Paragraph 5.3(1)(d)

This item repeals and substitutes current paragraph 5.3(1)(d) of the *Transport Safety Investigation Regulations 2003* (TSI Regulations).

The current paragraph 5.3(1)(d) of the TSI Regulations has the effect that Article 21 of the TST is an international obligation consistent with which powers vested in the Australian Transport Safety Bureau (ATSB) and the Chief Commissioner of the ATSB, by the *Transport Safety Investigation Act 2003* (the TSI Act), are to be exercised.

Article 21 of the TST, regarding air traffic services, has the effect that Timor-Leste and Australia shall cooperate in relation to the operation of air services, the provision of air traffic services and air accident investigations.

The ratification, by Australia, of the Treaty will repeal and render obsolete the TST.

Article 21 of the TST has been replicated in the Treaty such that Australia has an international obligation to, among other things, cooperate with relevant authorities to provide assistance in relation to air traffic services within areas and boundaries referred to in the Treaty.

Subsections 12AD(1) and (2) of the TSI Act, in conjunction with new paragraph 5.3(1)(d) of the TSI Regulations have the effect that the powers vested in the ATSB and the Chief Commissioner of the ATSB, by the TSI Act, are to be in a manner consistent with Australia’s international obligation under the Treaty. The relevant obligations under the Treaty include an obligation to, among other things, cooperate with relevant authorities to provide assistance in relation to air traffic services within areas and boundaries referred to in the Treaty.

Part 2—Repeals

International Organisations (Privileges and Immunities—Timor Sea Proceedings) Regulations 2017

Item 9 The whole of the instrument

Item 9 repeals the whole of the *International Organisations (Privileges and Immunities—Timor Sea Proceedings) Regulations 2017*. The instrument is no longer required given conclusion of the Conciliation Proceedings between the Democratic Republic of Timor-Leste and the Commonwealth of Australia pursuant to Article 298 and Annex V of the 1982 United Nations Convention on the Law of the Sea (Permanent Court of Arbitration Case No. 2016-10).

Timor Sea Treaty Designated Authority (Privileges and Immunities) Regulations 2003

Item 10 The whole of the instrument

Item 10 repeals the whole of the *Timor Sea Treaty Designated Authority (Privileges and Immunities) Regulations 2003*. The privileges and immunities conferred by this instrument were a requirement under the PTST Act but they are no longer required under the Treaty. Australia is under no obligation to provide any privileges or immunities to the new designated authority.

Statement of Compatibility with Human Rights

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

Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019

These Regulations are 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 Legislative Instrument

The *Timor Sea Legislation Amendment (Maritime Boundaries Treaty) Regulations 2019* (the Regulations) are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations amend Commonwealth regulations to partially implement the *Treaty Between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea* (New York, 6 March 2018) [2018] ATNIF 4 (the Treaty). The Treaty establishes permanent maritime boundaries between Australia and Timor-Leste, and a regulatory framework for petroleum development in the Timor Sea.

The Regulations amend regulations that have been identified as a requirement for the Treaty to enter in to force, and must also be approved before the Treaty can enter into force.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as it does not raise any human rights issues.

Senator the Hon Matt Canavan
Minister for Resources and Northern Australia