



Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003

No. 10, 2003

**An Act to make amendments consequential on the
enactment of the *Petroleum (Timor Sea Treaty) Act
2003*, 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) (Consequential Amendments) Act 2003

No. 10, 2003

An Act to make amendments consequential on the enactment of the *Petroleum (Timor Sea Treaty) Act 2003*, and for related purposes

[Assented to 2 April 2003]

The Parliament of Australia enacts:

1 Short title

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

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 4 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. Schedule 1, items 1 to 52 | 20 May 2002 | 20 May 2002 |
| 3. Schedule 1, item 53 | The day on which this Act receives the Royal Assent | 2 April 2003 |
| 4. Schedule 1, items 54 to 75 | 20 May 2002 | 20 May 2002 |
| 5. Schedule 1, items 76 and 77 | The day on which this Act receives the Royal Assent | 2 April 2003 |
| 6. Schedule 1, items 78 to 82 | 20 May 2002 | 20 May 2002 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 7. Schedule 1, item 83 | The day on which this Act receives the Royal Assent | 2 April 2003 |

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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Consequential amendments

Part 1—Amendments

Crimes at Sea Act 2000

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

Repeal the definition.

2 Section 4 (definition of *East Timor*)

Repeal the definition.

3 Section 4

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

4 Section 4 (definition of *petroleum*)

Repeal the definition, substitute:

petroleum has the same meaning as in the Treaty (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*).

5 Subsection 6A(1)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Note: The heading to section 6A is altered by omitting “**Area A of the Zone of Cooperation**” and substituting “**the Joint Petroleum Development Area**”.

6 Subsection 6A(6)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

7 Subsection 6B(1)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

8 Subsection 6C(1)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Note: The heading to section 6C is altered by omitting “**Area A of the Zone of Cooperation**” and substituting “**the Joint Petroleum Development Area**”.

9 Subparagraph 6C(2)(b)(i)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

10 Subparagraph 6C(2)(b)(ii)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

11 Subparagraph 6C(2)(c)(i)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

12 Subparagraph 6C(2)(c)(ii)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

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

Repeal the definition.

14 Subclause 1(1) of Schedule 1

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

15 Clause 10 of Schedule 1

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Note: The heading to clause 10 is altered by omitting “**Area A of the Zone of Cooperation**” and substituting “**the Joint Petroleum Development Area**”.

16 Paragraph 14(3)(b) of Schedule 1

Repeal the paragraph, substitute:

(b) is not within the Joint Petroleum Development Area;

17 Subparagraph 14(4)(a)(ii) of Schedule 1

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

18 Schedule 1 (legend of the map in Appendix 1)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Customs Act 1901

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

Repeal the definition.

20 Subsection 4(1) (definition of *Australian seabed*)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

21 Subsection 4(1) (definition of *East Timor*)

Repeal the definition.

22 Subsection 4(1)

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

23 Subsection 4(1) (paragraph (a) of the definition of *place outside Australia*)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

24 Subsection 4(1) (paragraph (b) of the definition of *place outside Australia*)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

25 Subsection 4(1) (definition of *resources installation in Area A*)

Repeal the definition.

26 Subsection 4(1)

Insert:

resources installation in the Joint Petroleum Development Area
means a resources installation that is attached to the seabed in the
Joint Petroleum Development Area.

27 Subsection 4(9A)

Repeal the subsection, substitute:

(9A) If it is necessary to determine whether a resources installation is attached to the seabed in the Joint Petroleum Development Area, subsection (9) has effect as if a reference to the Australian seabed were a reference to the seabed in the Joint Petroleum Development Area.

28 Subsection 58B(2)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

29 Subsection 58B(3)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

30 Subsection 58B(4)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

31 Subsection 58B(5)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

32 Section 131AA

Repeal the section, substitute:

131AA Special provisions for goods taken to Joint Petroleum Development Area

- (1) Goods taken out of Australia for the purpose of being taken to a resources installation in the Joint Petroleum Development Area and there used for a purpose related to petroleum activities are not liable to any duty of Customs in relation to the taking of the goods out of Australia.
- (2) Goods brought into Australia for the purpose of being taken to a resources installation in the Joint Petroleum Development Area and there used for a purpose related to petroleum activities are not liable to any duty of Customs in relation to the bringing of the goods into Australia.
- (3) In this section:

petroleum activities has the same meaning as in the Treaty (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*).

Fringe Benefits Tax Assessment Act 1986

33 Subsection 67(12)

Omit “*Petroleum (Timor Gap Zone of Cooperation) Act 1990*”, substitute “*Petroleum (Timor Sea Treaty) Act 2003*”.

Income Tax Assessment Act 1936

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

Repeal the definition.

35 Subsection 6(1)

Insert:

Timor Sea Treaty means the Treaty defined by subsection 5(1) of the *Petroleum (Timor Sea Treaty) Act 2003*.

36 Paragraph 6AA(4)(e)

Repeal the paragraph, substitute:

(e) *Petroleum Act adjacent area* means:

- (i) an area that is an adjacent area for the purposes of the *Petroleum (Submerged Lands) Act 1967*; and
- (ii) the Joint Petroleum Development Area within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*.

37 Subsection 23AG(7) (paragraph (b) of the definition of double tax agreement)

Omit “Timor Gap treaty”, substitute “Timor Sea Treaty”.

38 Subsection 136AA(1)

Insert:

area covered by an international tax sharing treaty has the meaning given by subsection (4).

39 Subsection 136AA(1)

Insert:

international tax sharing treaty:

- (a) means an agreement between Australia and another country under which Australia and the other country share tax revenues from activities undertaken in an area identified by or under the agreement; and
- (b) does not include an agreement within the meaning of the *International Tax Agreements Act 1953*.

40 At the end of section 136AA

Add:

- (4) If, under an international tax sharing treaty, Australia and another country share tax revenues from activities undertaken in an area identified by or under the agreement, that area is referred to in this Division as the *area covered by the international tax sharing treaty*.

41 At the end of section 136AC

Add:

; or (c) a taxpayer:

- (i) supplied or acquired property under the agreement in connection with a business; and

- (ii) carries on that business in an area covered by an international tax sharing treaty.

42 Paragraph 136AE(4)(a)

Repeal the paragraph, substitute:

- (a) a taxpayer (other than a partnership or trustee):
 - (i) is a resident and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is a resident and carries on a business in an area covered by an international tax sharing treaty; or
 - (iii) is a non-resident and carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia; or
 - (iv) is a non-resident and carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia; and

43 Paragraph 136AE(4)(e)

Repeal the paragraph, substitute:

- (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
 - (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv);

44 Paragraph 136AE(5)(a)

Repeal the paragraph, substitute:

- (a) a taxpayer:
 - (i) is a partnership and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is a partnership and carries on a business in an area covered by an international tax sharing treaty; or

- (iii) carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia and is a partnership in which any of the partners is a non-resident; or
- (iv) carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia and is a partnership in which any of the partners is a non-resident; and

45 Paragraph 136AE(5)(e)

Repeal the paragraph, substitute:

- (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
 - (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv);

46 Paragraph 136AE(6)(a)

Repeal the paragraph, substitute:

- (a) a taxpayer:
 - (i) is the trustee of a trust estate and carries on a business in a country other than Australia at or through a permanent establishment of the taxpayer in that other country; or
 - (ii) is the trustee of a trust estate and carries on a business in an area covered by an international tax sharing treaty; or
 - (iii) carries on a business in Australia at or through a permanent establishment of the taxpayer in Australia and is the trustee of a trust estate of which any of the beneficiaries is a non-resident; or
 - (iv) carries on a business in an area covered by an international tax sharing treaty and also carries on a business somewhere else in Australia at or through a permanent establishment of the taxpayer in Australia and is the trustee of a trust estate of which any of the beneficiaries is a non-resident; and

47 Paragraph 136AE(6)(e)

Repeal the paragraph, substitute:

- (e) in the Commissioner's opinion, the derivation of the income or the incurring of the expenditure is attributable, in whole or in part, to activities carried on by the taxpayer:
 - (i) at or through the permanent establishment that is referred to in subparagraph (a)(i) or (iii); or
 - (ii) in the area covered by the international tax sharing treaty that is referred to in paragraph (a)(ii) or (iv);

48 After subsection 136AE(8)

Insert:

(8A) In this section:

- (a) a reference to income being derived from a source in Australia is to be read as including a separate reference to income being derived from a source in an area in Australia that is covered by an international tax sharing treaty; and
- (b) a reference to expenditure being incurred in deriving income from a source in Australia is to be read as including a separate reference to expenditure being incurred in deriving income from a source in an area in Australia that is covered by an international tax sharing treaty.

Note: This means that the following are the 3 different kinds of sources referred to in this section:

- (a) a source in Australia (but not in an area covered by an international tax sharing treaty);
- (b) a source in an area in Australia that is covered by an international tax sharing treaty;
- (c) a source out of Australia.

49 Subsection 160AF(1)

Repeal the subsection, substitute:

(1) If:

- (a) the assessable income of a year of income of a resident taxpayer includes:
 - (i) income that is foreign income; or

- (ii) income, or a profit or gain, that is derived from a source in an area covered by an international tax sharing treaty to the extent to which that income, profit or gain is taxed in Australia; and
 - (b) the taxpayer has paid foreign tax in respect of that income, profit or gain; and
 - (c) the taxpayer was personally liable for that tax;
- the taxpayer is, subject to this Act, entitled to a credit of:
- (d) the amount of that foreign tax, reduced in accordance with any relief available to the taxpayer under the law relating to that tax; or
 - (e) the amount of Australian tax payable in respect of that income, profit or gain;
- whichever is the less.

50 Subsection 170(14)

Insert:

international tax sharing treaty has the meaning given by subsection 136AA(1).

51 Subsection 170(14) (definition of *relevant provision*)

Repeal the definition, substitute:

relevant provision means:

- (a) paragraph (3) of Article 5, or paragraph (1) of Article 7, of the United Kingdom agreement or a provision of any other double taxation agreement that corresponds with either of those paragraphs; or
- (b) paragraph 7, 8 or 9 of Article 5, or Article 7, of the Taxation Code in Annex G to the Timor Sea Treaty or a provision of any other international tax sharing treaty that corresponds with any of those paragraphs or that Article.

52 Subsection 177B(1)

Omit “*Petroleum (Timor Gap Zone of Cooperation) Act 1990*”, substitute “*Petroleum (Timor Sea Treaty) Act 2003*”.

***International Organisations (Privileges and Immunities) Act
1963***

53 After section 5A

Insert:

5B Special provisions in relation to Designated Authority

- (1) The Designated Authority is an international organisation to which this Act applies.
- (2) The Designated Authority ceases to be an international organisation to which this Act applies on the day specified in the regulations.
- (3) In this section:

Designated Authority has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

Migration Act 1958

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

Repeal the definition.

55 Subsection 5(1) (definition of *Australian seabed*)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

56 Subsection 5(1)

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

Passenger Movement Charge Collection Act 1978

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

Repeal the definition.

58 Section 3

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

59 Section 3 (definition of *petroleum*)

Omit “Timor Gap Treaty”, substitute “Timor Sea Treaty”.

60 Section 3

Insert:

petroleum activities has the same meaning as in the Timor Sea Treaty.

61 Section 3 (definition of *petroleum operations*)

Repeal the definition.

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

Repeal the definition.

63 Section 3

Insert:

Timor Sea Treaty means the Treaty defined by subsection 5(1) of the *Petroleum (Timor Sea Treaty) Act 2003*.

64 Section 3 (definition of *Zone of Cooperation*)

Repeal the definition.

65 Paragraph 5(l)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Petroleum (Submerged Lands) Act 1967

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

Repeal the definition.

67 Subsection 5(1)

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

68 Paragraph 5A(1A)(c)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

69 Paragraph 5A(3)(b)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Petroleum (Timor Gap Zone of Cooperation) Act 1990

70 The whole of the Act

Repeal the Act.

Quarantine Act 1908

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

Repeal the definition.

72 Subsection 5(1) (definition of *Australian seabed*)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

73 Subsection 5(1)

Insert:

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

74 Paragraph 6A(a)

Omit “Area A of the Zone of Cooperation”, substitute “the Joint Petroleum Development Area”.

Note: The heading to section 6A is altered by omitting “**Area A of the Zone of Cooperation**” and substituting “**the Joint Petroleum Development Area**”.

75 Paragraph 6A(b)

Omit “Area A”, substitute “the Joint Petroleum Development Area”.

Superannuation Guarantee (Administration) Act 1992

76 After section 4

Insert:

4A Extension to Joint Petroleum Development Area

This Act:

- (a) extends to the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*); and
- (b) has effect as if that Area were part of Australia.

77 After paragraph 27(1)(c)

Insert:

- (ca) salary or wages paid by an employer to an employee who is not a resident of Australia for work done in the Joint Petroleum Development Area (within the meaning of the *Petroleum (Timor Sea Treaty) Act 2003*);

Taxation Administration Act 1953

78 Subsection 3C(2A)

Repeal the subsection, substitute:

- (2A) Subsection (2) does not apply to the extent that the person makes a record of the information, or divulges or communicates the information:
 - (a) for the purposes of this Act; or
 - (b) in the performance of the person’s duties as an officer; or

Schedule 1 Consequential amendments
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- (c) for the purposes of complying with an obligation Australia has under an agreement between Australia and another country.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

79 After paragraph 68(3)(b)

Insert:

- (ba) the recording or disclosure is for the purposes of complying with an obligation Australia has under an agreement between Australia and another country; or

Workplace Relations Act 1996

80 Section 5A

Repeal the section.

Part 2—Application, saving and transitional provisions

81 Application—items 34 to 52

The amendments made by items 34 to 52 of this Schedule apply in relation to events that occur, and circumstances that arise, on or after 20 May 2002.

82 Continued operation of certain provisions in the *Petroleum (Timor Gap Zone of Cooperation) Act 1990*—item 70

Despite the repeal of the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* by item 70 of this Schedule, sections 6, 7 and 8, and subsections 9(2), (3) and (4), of that Act have the effect, for the period that:

- (a) starts on 20 May 2002; and
- (b) ends on the day on which the *Petroleum (Timor Sea Treaty) Act 2003* receives the Royal Assent;

that they would have had if that Act had not been repealed.

83 Application—items 76 and 77

- (1) The amendments made by items 76 and 77 of this Schedule apply in relation to superannuation guarantee shortfalls for the year starting on 1 July 2003 and all later years.
- (2) In this item:
 - superannuation guarantee shortfalls* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.
 - year* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

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

(20/03)