

Annex 4:
Response to Notice

THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

and

THE COMMONWEALTH OF AUSTRALIA

**AUSTRALIA'S RESPONSE TO THE
NOTICE OF CONCILIATION**

2 MAY 2016

1. In accordance with Annex V, Article 3(c) of the 1982 *United Nations Convention on the Law of the Sea* (“UNCLOS”), the Commonwealth of Australia (“Australia”) provides this Response to the Notice of Conciliation received from the Democratic Republic of Timor-Leste (“Timor-Leste”) on 11 April 2016.
2. Australia will engage in this process in good faith, in accordance with its international obligations including those under UNCLOS. To this end, and in exercise of its rights, Australia appoints Dr Rosalie Balkin of Australian nationality and Professor Donald McRae of Canadian and New Zealand nationality as conciliators.
3. Australia takes this opportunity to note that once the Commission is constituted, Australia will make an immediate challenge to the competence of the Commission on a number of grounds, including on the basis that such competence is precluded by a bilateral treaty between the Parties, namely the 2006 *Certain Maritime Arrangements in the Timor Sea Treaty* (‘CMATS Treaty’), which entered into force on 23 February 2007. Article 4 of the CMATS Treaty precludes recourse to any form of dispute settlement in relation to maritime boundary delimitation between Australia and Timor-Leste for the life of that treaty.
4. Annex V, Article 13 of UNCLOS provides that “[a] disagreement as to whether a conciliation commission ... has competence shall be decided by the commission”. The question of the Commission’s competence in these proceedings should be resolved as a preliminary matter once the Commission is constituted. To allow for the preliminary determination of the Commission’s competence, Australia would be willing, with Timor-Leste’s agreement, to extend the timeframe given to the Commission to issue its report.
5. Australia agrees to Timor-Leste’s proposal that the Permanent Court of Arbitration (‘PCA’) be invited to act as the Registry for these proceedings. With regard to location, in Australia’s view it would be most appropriate to select a regional location for these proceedings, such as Singapore, where the facilities of the PCA will be available to the Parties free of charge.
6. Australia has appointed Mr John Reid as Agent and Ms Katrina Cooper as Co-Agent in this matter.

7. All communications concerning these conciliation proceedings should be notified to the Agent at the following address:

John Reid

First Assistant Secretary, Office of International Law
Attorney-General's Department
3-5 National Circuit
Barton, Australian Capital Territory 2600
AUSTRALIA

Telephone: +61 2 6141 3554

Email: John.Reid@ag.gov.au

and also to the Co-Agent at the following address:

Katrina Cooper

Senior Legal Adviser
Department of Foreign Affairs and Trade
R.G. Casey Building, John McEwen Crescent
Barton, Australian Capital Territory 0221
AUSTRALIA

Telephone: +61 2 6261 3103

Email: Katrina.Cooper@dfat.gov.au

8. Australia's Response is without prejudice to any position or argument Australia may wish to take before the Conciliation Commission, once constituted, on the issues raised by Timor-Leste, including in relation to competence. In this regard, Australia expressly reserves all its rights.

Canberra, Australia, 2 May 2016

Commonwealth of Australia