

## Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2]

*Portfolio: Treasury*

*Introduced: House of Representatives, 23 June 2014*

### **Purpose**

1.256 This bill proposes to repeal the mineral resources rent tax (MRRT) by repealing a number of acts (Schedule 1).<sup>1</sup> It also makes consequential amendments to other legislation,<sup>2</sup> required as a result of the repeal of the MRRT (Schedules 2- 9).

1.257 This bill also seeks to repeal the following MRRT-related measures: loss-carry back (Schedule 2); geothermal expenditure deduction (Schedule 5); low income superannuation contribution (Schedule 7); the income support bonus (Schedule 8); and schoolkids bonus (Schedule 9).

1.258 The bill will revise the following MRRT-related measures: capital allowances for small business entities (Schedules 3 and 4); and the superannuation guarantee charge percentage increase (Schedule 6).

### **Background**

1.259 This bill is a reintroduction of the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 which the committee considered in its *First Report of the 44th Parliament*.<sup>3</sup>

1.260 The committee considered the Parliamentary Secretary to the Treasurer's response in its *Eighth Report of the 44th Parliament* and noted that the response had not provided a detailed and evidence-based explanation for the measures in accordance with the committee's usual expectations.<sup>4</sup>

### **Committee view on compatibility**

#### ***Right to social security***

1.261 The right to social security is guaranteed by article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This right recognises the importance of adequate social benefits in reducing the effects of poverty and plays

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1 *Minerals Resource Rent Tax Act 2012; Minerals Resource Rent Tax (Imposition—Customs) Act 2012; Minerals Resource Rent Tax (Imposition—Excise) Act 2012; and Minerals Resource Rent Tax (Imposition—General) Act 2012.*

2 Including the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

3 Parliamentary Joint Committee on Human Rights, *First Report of the 44th Parliament*, 10 December 2013, pp. 35-40.

4 Parliamentary Joint Committee on Human Rights, *Eight Report of the 44th Parliament*, 24 June 2014, pp 51-53.

an important role in realising many other economic, social and cultural rights, particularly the right to an adequate standard of living and the right to health.

1.262 Access to social security is required when a person has no other income and has insufficient means to support themselves and their dependents. Enjoyment of the right requires that sustainable social support schemes are:

- available to people in need;
- adequate to support an adequate standard of living and health care; and
- accessible (providing universal coverage without discrimination and qualifying and withdrawal conditions that are lawful, reasonable, proportionate and transparent; and
- affordable (where contributions are required).

1.263 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to social security. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;
- the obligation not to unjustifiably take any backwards steps that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

1.264 Specific situations which are recognised as engaging a person's right to social security, include health care and sickness; old age; unemployment and workplace injury; family and child support; paid maternity leave; and disability support.

### ***Right to an adequate standard of living***

1.265 The right to an adequate standard is guaranteed by article 11(1) of the ICESCR, and requires States parties to take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia.

1.266 The obligations of article 2(1) of the ICESCR also apply in relation to the right to an adequate standard of living, as described above in relation to the right to social security.

### ***Deferral of proposed increase in compulsory superannuation contribution***

1.267 Schedule 6 of the bill defers by two years the proposed gradual increase in the compulsory superannuation contribution by employers to 12 per cent.

1.268 The statement of compatibility concludes that Schedule 6 does not engage any human rights, noting that the measure to defer the proposed increase in the compulsory superannuation contribution:

...does not affect an individual's eligibility for the social security safety net of the Age Pension (funded from Government revenue), which continues to be a fundamental part of Australia's retirement income system to ensure people unable to support themselves can have an adequate standard of living.<sup>5</sup>

1.269 The committee considers that the provision of superannuation engages both the right to an adequate standard of living<sup>6</sup> and the right to social security.<sup>7</sup> A similar view was consistently taken by the committee during the previous parliament.<sup>8</sup>

1.270 The proposed increase in the superannuation guarantee may be viewed as a measure to promote both of these rights. The deferral of the introduction of that measure may therefore be viewed as a limitation on these rights.

1.271 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective. The committee notes that to demonstrate that a limitation is permissible, legislation proponents must provide reasoned and evidence-based explanations of why the measures are necessary in pursuit of a legitimate objective.

**1.272 The committee therefore seeks the Treasurer's advice as to whether the deferral of the proposed increase to the compulsory superannuation contribution by two years is compatible with the right to social security and the right to an adequate standard of living and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**

*Repeal of low-income superannuation contribution*

1.273 Schedule 7 of the bill proposes to repeal the low income superannuation contribution (LISC) for contributions made for financial years starting on or after 1 July 2013. The statement of compatibility concludes that Schedule 7 does not engage any human rights, noting that the LISC:

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5 EM, p. 81.

6 Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

7 Article 9 of the ICESCR.

8 See, for example, Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013*, pp 78-80.

...was funded with the expected revenue from the MRRT, which is being repealed. In order to ensure that the concessions in the superannuation system are sustainable for present and future generations, the LISC is also being repealed.<sup>9</sup>

1.274 As discussed above, the committee considers that the provision of superannuation engages both the right to an adequate standard of living,<sup>10</sup> and the right to social security.<sup>11</sup>

1.275 The reduction of the amount paid to low-income earners to compensate them for the tax paid on their superannuation contributions limits these rights.

1.276 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

**1.277 The committee therefore seeks the Treasurer's advice as to whether the repeal of the LISC is compatible with the right to social security and the right to an adequate standard of living, and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**

*Repeal of the low-income support bonus (Schedule 8)*

1.278 Schedule 8 proposes to repeal the low-income support bonus (ISB).<sup>12</sup> The ISB was intended to provide payments to eligible recipients to help them plan expenditure and provide a buffer against unexpected costs.<sup>13</sup>

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9 EM, p. 82.

10 Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

11 Article 9 of the ICESCR.

12 By amendments made to the *Social Security Act 1991*; *Social Security (Administration) Act 1999*; *Farm Household Support Act 1992*; *Income Tax Assessment Act 1997*.

13 The eligible recipients are those receiving ABSTUDY Living Allowance, Austudy, Newstart Allowance, Parenting Payment, Sickness Allowance, Special Benefit, Youth Allowance, Transitional Farm Family Payment, and Exceptional Circumstances Relief Payment. ISB is also paid to eligible recipients under the Veterans' Children Education Scheme (Prepared under Part VII of the *Veteran's Entitlement Act 1986*), and the Military Rehabilitation and Compensation Act Education and Training Scheme (Determined under the *Military Rehabilitation and Compensation Act 2004*). People on any of these payments receiving more than the basic amount of Pension Supplement are not eligible for the ISB.

1.279 The statement of compatibility notes that the proposed removal of the ISB engages the rights to social security and to an adequate standard of living. It notes:

[T]he right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage. Any removal of entitlements must be justified in line with Article 4 [of the ICESCR] in the context of the full use of the maximum available resources of the State party.<sup>14</sup>

1.280 The statement of compatibility further notes that this was a measure that was to be funded from the revenue to be raised by the MRRT and that with the removal of that tax, such measures are being removed. It maintains that the repeal of the ISB 'is a non-arbitrary measure that is reasonable, necessary and proportionate' in view of the modest sum involved, the range of existing social support programs, indexation and other factors to ensure that persons affected will continue to enjoy the right to social security and to an adequate standard of living.<sup>15</sup>

1.281 The removal of the ISB may be viewed either as a limitation or retrogressive measure. The committee accepts that the sums involved by the removal of the ISB are relatively modest. However, its removal may nevertheless have a detrimental effect on low-income and disadvantaged households, particularly in light of concerns regarding the adequacy of allowance payments in general.<sup>16</sup> The committee notes that the ISB was introduced in 2012 in recognition that:

households relying on income support allowances as their main source of income may find it difficult to manage when unanticipated expenses, such as urgent repairs or unexpectedly large bills, arise. People in paid employment are more likely to be able to set aside some money for such circumstances, while allowance recipients may not be able to do so.<sup>17</sup>

1.282 The committee notes the statement of compatibility asserts that the package of existing payments and assistance available to individuals and families will be adequate to meet their needs, consistent with requirements under articles 9 and 11 of the ICESCR. The statement of compatibility, however, does not explain the evidence on which that assessment is made.

1.283 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

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14 EM, p. 84.

15 EM, para 4.66.

16 See, for example, Parliamentary Joint Committee on Human Rights, *Fifth Report of 2013*; and Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, 29 November 2012.

17 Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012, EM, p. 15.

**1.284** The committee therefore seeks the Treasurer's advice as to whether the measure to repeal the ISB is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**

*Repeal of the Schoolkids bonus (Schedule 9)*

1.285 Schedule 9 of the bill proposes to repeal the schoolkids bonus payment.<sup>18</sup> The schoolkids bonus is an indexed family assistance payment that is available to eligible families and people in certain other categories.<sup>19</sup>

1.286 The statement of compatibility notes that the repeal of the schoolkids bonus engages the rights to social security and to an adequate standard of living. It also notes that such rights may be limited in accordance with article 4 of the ICESCR.

1.287 The statement of compatibility argues that these rights are ensured through the system of family assistance and income and veterans' support payments which have the primary purpose of meeting the costs associated with raising a child. It notes that the schoolkids bonus 'is a supplementary payment designed to provide additional assistance for education expenses' and that the bill 'does not affect an individual's or child's right or access to family tax benefit or income support and veterans' payments.'<sup>20</sup>

1.288 The reduction in the payment of the schoolkids bonus may be viewed either as a limitation or retrogressive measure.

1.289 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

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18 By amendments made to the *A New Tax System (Family Assistance) Act 1999*; *A New Tax System (Family Assistance) (Administration) Act 1999*; *Income Tax Administration Act 1997*; and *Social Security (Administration) Act 1999*.

19 The eligible people are those receiving Family Tax Benefit Part A for a child in primary or secondary school. Young people in school receiving Youth Allowance or certain other income support or veterans' payments may also qualify for the bonus.

20 EM, p. 88.

**1.290** The committee therefore seeks the Treasurer's advice as to whether the measure to repeal the schoolkids bonus payment is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is reasonable and proportionate measure for the achievement of that objective.