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UnitingJustice AUSTRALIA

SUBMISSION TO THE SENATE STANDING COMMITTEES ON ECONOMICS

MINERAL RESOURCE RENT TAX BILLS 2011

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1 | INTRODUCTION

UnitingJustice Australia, the justice and advocacy unit of the Uniting Church in Australia Assembly, welcomes this opportunity to comment on the Inquiry into the Mineral Resource Rent Tax Bills 2011. However, the limited timeframe and the timing precludes UnitingJustice from undertaking a detailed consideration of the legislation in its entirety, and makes consultation with our wider networks virtually impossible. Accordingly, the comments below are limited to a small selection of high-level issues that have been identified in the time available.

The comments in this submission (which was offered in this form to the House Standing Committee inquiry into the bills in November 2011) are based on the Uniting Church's belief that taxation is a profoundly moral matter. It is the primary means for ensuring the equitable distribution of wealth and the raising of public money – our 'common wealth' – in order that we may ensure that basic needs of people in society are met. In other words, it is one of the most important tools at our disposal for achieving economic justice and is vital to a flourishing society.

In its 1988 discussion paper entitled Economic Justice – the Equitable Distribution of Wealth,[1] the Uniting Church articulated the following principles that underpin our submission to the House Standing Committee just over two decades later:

- for Christians, the question of economic justice is the question of how we respond to God's free gifts;
- genuine wealth is not defined in monetary terms, but as those things that contribute to the well-being of humankind;
- genuine material wealth is neither money, or luxurious goods and services. Humankind will be genuinely materially wealthy when everyone has access to the following goods and services at the level required to satisfy basic human needs: appropriate food, clothing and healthcare; safe and secure housing; meaningful work, education, rest and enjoyment; and the opportunity to participate in and contribute to communities;
- access to genuine wealth cannot be restricted to a privileged section of society, for such wealth is a gift from God. The distribution of income and financial assets in Australia is inequitable. A small proportion of the population has control over most of the income and assets, while the majority of the population has limited access to these things; and
- the Uniting Church has a role to play in the economic policy debate, in helping society reflect on the nature of genuine wealth, especially the gift of the world and the communal nature of so much of the wealth that enriches human life.

About taxation in particular, the Uniting Church believes:[2]

- taxation is necessary if governments are to fulfil their responsibilities in provision of services ensuring that all people in the community have their basic needs met (a matter of human rights) and correcting the inequitable distribution of income and access to goods, services and resources which results when distribution is left to the private sector and market mechanisms;
- it is how people contribute, according to their means, to the well-being of the whole community, through redistribution and the provision of goods and services;
- when people argue about taxation, they are actually arguing about the level of responsibility they should accept for the community; and
- the government has a responsibility to protect the human rights of all Australians. This includes their economic, political and social rights. This requires the horizontal and vertical redistribution of income that is only possible through taxation.

In addition to the articulations of the Uniting Church, this submission is informed by international laws to which Australia is a signatory. Most relevant is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which imposes obligations on member States pertaining to how a State determines its mineral tax structure:[3]

1 Economic Justice – the Equitable Distribution of Wealth, Assembly Social Responsibility and Justice Committee, adopted for church-wide distribution and study by the 1988 Assembly, and is available at http://www.unitingjustice.org.au/images/pdfs/issues/economic-justice/discussionpapers/economicjustice_88.pdf

2 Ibid.

3 United Nations High Commission for Human Rights (UNHCHR). (1996). International Covenant on Economic, Social and Cultural Rights. Available at http://www2.ohchr.org/english/law/cescr.htm#art21

> The ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights (Preamble).
>
> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence (Article 1.2).
>
> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised herein, or at their limitation to a greater extent than is provided for in the present Covenant (Article 5.1).
>
> Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise freely their natural wealth and resources (Article 25).

2 | BACKGROUND

Australia's mining industry is a very profitable one, with a gross operating surplus of $81 billion in the 2009-10 financial year. This figure represents a significant growth over the past five years, with the 2003-04 figure a comparatively modest $26 billion.[4] Mining companies need to be aware that their profits depend on access to resources that form part of the common wealth of all Australians. It is reasonable to assume, then, that the higher the profits, the greater the percentage of funds that should be given back to the community – an assumption not reflected in the current levels of company tax applicable to mining corporations.

The 2009 Henry Report recommended the introduction of a 'resource rent tax' to cover mineral extraction in Australia.[5] The Report noted:

> Through the Australian and State governments, the community own rights to non-renewable resources in Australia and should seek an appropriate return from these resources.

The release of the Henry Report raised important questions as to what percentage of tax rate should be applied to the mining industry. While the Report noted that nations such as Norway impose a 78% tax on rents from the petroleum sector, it was eventually determined that a lower rate would be more appropriate (and realistic) for the Australian markets. In the final recommendations of the Henry Report, then, a resources super profits tax of 40% was suggested.

Prime Minister Gillard announced in July 2010 the Minerals Resource Rent Tax (MRRT), which we believe is a watered-down version of former-Prime Minister Kevin Rudd's Resources Super Profits Tax (RSPT). Under the new proposal, the actual rate of tax to be applied was cut to 30 per cent, however, in reality, this rate is actually only 22.5 per cent.

The mining boom that has driven up profits in this sector over the past five years in particular, has offered very little benefit to ordinary Australians – many of whom have been hit hard by the Global Financial Crisis (GFC). A tax on the mining industry, then, is an essential tool for ensuring the even distribution of our national wealth.

3 | CONSIDERATIONS OF THE RIGHTS OF FIRST PEOPLES

The Uniting Church is also concerned about the potential for abuse with regards to our Indigenous communities. As with the Native Title Act, we are troubled by the wording utilised in the legislation currently before us, and feel that the language employed throughout overlooks the important distinction between formal native title holders and broader Indigenous communities. We take this opportunity to emphasise the limited and limiting nature of rights conferred under the Native Title Act, with only specific land-holding entities such as tribal or language groups being afforded proprietary rights. We feel this restriction fails to adequately reflect the complex nature of particularly remote Indigenous groups: many such communities may be made up of several different language groups, some of whom will not have traditional rights to the local land. Any attempts by mining companies to divide resources among the members of these communities can – and does – lead to conflict.[6]

The United Nations Committee on the Elimination of Racial Discrimination, in its general Recommendation XXIII, has highlighted some specific implications of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) for Indigenous peoples:

> The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and their resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardised … The Committee especially calls upon State Parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

A study examining agreements between mining companies and Indigenous communities revealed that the outcomes – in terms of the benefits procured by Indigenous peoples – are highly variable and alarmingly

4 Australian Bureau of Statistics (ABS), Australian System of National Accounts, cat. no. 5204, December 2009.

5 Australian Government, Australia's Future Tax System: Report to the Treasurer, December 2009.

6 Altman, J. & Martin, D. (2009). Power, Culture, Economy: Indigenous Australians and Mining, Research Monograph 30, Aboriginal Economic Policy Research.

inconsistent.[7] We express our concern then over the potential for exploitative agreements to continue to be created by mining corporations under the proposed legislation.

In line with the principles of the Uniting Church outlined at the commencement of this submission, the Uniting Church is additionally concerned about the following aspects of the proposed legislation:

4 | DIVISION 20 - TAXABLE RESOURCES

> 20-5 1. A taxable resource is a quantity of any of the following:
>
> a. iron ore
>
> b. coal
>
> c. anything produced form a process that results in iron ore of coal being consumed or destroyed without extraction
>
> d. coal seam gas extracted as a necessary incident of mining coal.

We note that one of the arguments most commonly employed by the powerful mining lobby against the implementation of this tax is that it will reduce our competitiveness in this field. However, recent figures released by the Australian Bureau of Statistics reveal that Australia is in possession of[8]

- 38% of the world's nickel resources
- 38% of the world's uranium resources
- 33% of the world's lead
- 28% of the world's zinc
- 25 % of the world's brown coal
- 20% of the world's silver
- 15% of the world's iron ore
- 13% of the world's gold.

We question, then, the decision of the Government to institute a tax designed only to cover one area of our mining industry. We again emphasise that the natural resources of Australia form part of the common wealth for all peoples, and are disappointed to see that the bulk of the profits from the extraction of the above listed resources are excluded from the legislation and so will necessarily remain with the mining companies themselves.

5 | DIVISION 35 - MINING EXPENDITURE

> 35-15 Meaning of upstream mining operations
>
> Mining operations for a mining project interest are upstream mining operations for the mining project interest to the extent the operations:
>
> (a) are operations or activities of a kind mentioned in paragraph 35-20
>
> (1)(a) for the mining project interest; and
>
> (b) do not involve doing anything to, or with, the taxable resources extracted from the project area for the mining project interest after those taxable resources reach their valuation point.
>
> Examples: The following are some examples of operations or activities that might be upstream mining operations:
>
> (a) obtaining the agreement of native title holders as part of the process of obtaining a production right over the project area;
>
> (h) rehabilitation of a project area from damage caused by activities relating to the exploration, extraction and movement of taxable resources to the valuation point.

This aspect of the legislation is also discussed in the accompanying explanatory memoranda:

> 1.27 As the MRRT is intended to apply only to upstream profits, it is a tax on a narrow portion of mining profits unlike, for example, the income tax, which seeks to tax all sources of income comprehensively
>
> 1.28 The MRRT is a tax on realised profits. As the proceeds from the sale of a resource are typically realised downstream of the valuation point, the MRRT requires taxpayers to determine the amount of those proceeds that are reasonably attributable to the resource and upstream operations for tax purposes. The tax is not intended to tax the value added in downstream activities
>
> 1.29 To calculate the MRRT profit at the valuation point, the sales proceeds are reduced by an amount that recognises the arm's length value of the downstream operations using the most appropriate and reliable method. Allowable upstream capital and operating expenditure is then directly and immediately deducted, along with royalty credits, carry forward losses, starting base depreciation, starting base losses and losses transferred from other projects.

Our concern with this area lies with the examples provided in the text of the legislation, specifically with regards to obtaining the agreement of native title holders and the rehabilitation of the environment after the life

7 O'Faircheallaigh, C. (2004). "Denying Citizens their Rights? Indigenous People, Mining Payments and Service Provision," Australian Journal of Public Administration, vol. 63, no.2, pp. 42-50.

8 See http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/5072a12ec8aecbbdca25779e001c47ed!OpenDocument

of the mine has ended. Including these examples as possible tax exemptions when categorised as part of the upstream activities for mining corporations, prevents them from being considered in the way that we believe they should be – as natural aspects of the mining industry. In accordance with our belief on this matter, the responsibility for them should not be avoided through what we argue is a taxation loophole. While the Uniting Church believes that both environmental protection and the provision of social and community services for Indigenous groups is a responsibility to be shared by all Australians, the extraordinary profits collected by the mining companies should see them assume a high level of accountability in these areas.

In line with this above criticism, the Uniting Church is also concerned with an aspect of the Introduction to the Explanatory Memorandum (p. 3):

> In the early years of the MRRT, the project's starting base provides another important allowance. The starting base is an amount to recognise the value of investments the miner has made before the MRRT.
>
> Other allowances include losses the project made in earlier years and losses transferred from the miner's other projects (or from the projects of some associated entities).

Again, we are concerned with the potential for abuse within this section of the legislation. We do not believe that the wording precludes companies from transferring loss between partner and/or associated entities in order to avoid their obligations under law. We would hope that these aspects of the legislation are further tightened prior to its passing to prevent mining companies eschewing their liabilities.

6 | CONCLUSION

The Uniting Church commends the Government on pursuing the introduction of this important pieces of legislation in face of almost overwhelming pressure from the mining lobby. However, we believe that the legislative package – as it stands – is flawed, and requires amendment before being passed. In particular, we are concerned about the preservation of the rights of First Peoples, which we do not believe are adequately safeguarded or recognised. We reiterate the importance of protecting the bountiful natural resources of Australia, which form the foundation of our nation's common wealth.