The Parliament of the Commonwealth of Australia

Advisory Report on the Minerals Resource Rent Tax Bill 2011 and related bills

House of Representatives
Standing Committee on Economics

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Canberra

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Chair's foreword

Australia is experiencing an unprecedented mining boom with high levels of investment and profit. Mining companies generated profits of $92.8 billion to June and plan to invest $430 billion to expand their industry. In the last decade mining profits have jumped 262 per cent.

The Australian Government has taken the view that the massive profits of the mining sector should be more fairly taxed and the proceeds returned to all Australians. This is consistent with the evidence the committee received during the inquiry. United Voice stated, 'There is a substantial gulf between the perceived benefits of the mining boom and some of the actual impacts on our economy, environment, health and the day to day lives of Australians.'

The Mineral Resource Rent Tax (MRRT) will be a tax on mining profits. The proceeds of the tax will fund critical infrastructure, a cut in the company tax rate for small business, and make it possible to increase the superannuation guarantee from nine to 12 per cent.

Resource rent taxes are much more efficient than royalties. The Australia's Future Tax System Review found that royalty regimes were the most distorting taxes in the Federation.

The Minerals Resource Rent Tax Bill 2011 and the related bills implement important reforms to the Australian economy. They:

- apply a 22.5 per cent Mineral Resource Rent Tax (MRRT) on the profits that mining companies make on iron ore and coal on their mining activities only (excluding value adding activities such as transportation and concentration);
- extend the Petroleum Resource Rent Tax to the North West Shelf and the Australian mainland;

- increase the superannuation guarantee from 9 per cent to 12 per cent, remove the age limit of 70 for the superannuation guarantee, and implement a superannuation contribution for low income earners of up to $500 annually; and
- give small businesses simplified and greater up-front tax deductions for assets.

Although not formally a part of the package, the Government has also announced that, it will decrease the company tax rate for small businesses from 30 per cent to 29 per cent.

These reforms recognise that mineral resources belong to all Australians and it is only right that the profits from the mining boom be shared more widely.

During the inquiry there were differing views on how the tax would affect emerging miners, compared with established miners. Emerging miners believed that they would be paying a large amount of the revenue under the MRRT and that large miners would pay very little, due to the larger starting base that established miners have available to them as a deduction against the MRRT. However, Treasury advised the committee that:

> The value of the resource, to the extent that it is reflected in the starting base, will be reflective of the expected future cash flows from the exploitation of the resource, so they will be proportional. If you have a large starting base you would expect to have large revenue flow, and if you have a small starting base you will have a smaller revenue flow.[1]

The committee is confident that the MRRT will operate as intended.

Importantly, the other elements of the package deliver significant benefits to the Australian economy as a whole. Small business confirmed that the improved deductions will help them with their cash flow and make it easier for them to obtain finance to invest in their businesses during the two-speed economy. Business Enterprise Centres Australia said, 'we have small business, which is the backbone of the economy, struggling. There has to be a redistribution of that wealth.'

The MRRT will also fund substantial infrastructure investment in regional Australia through the Regional Infrastructure Fund.

The superannuation industry confirmed that Australians support compulsory saving for their retirement and that the Bills will help address the savings gap that currently exists for the great majority of Australians. The Financial Services Council stated, 'the current superannuation guarantee rate is at nine per cent and

1 Mr Patrick Sedgley, Treasury, *Committee Hansard*, Canberra, 9 November 2011, p. 40.

that will fail to provide people with their expectations of a comfortable retirement.'

Low income earners stand to significantly gain from the Bills. Unlike the majority of Australian workers, 3.5 million Australians on low incomes receive little or no tax benefit from contributing to super because their marginal income tax rate is equal to, or below, the 15 per cent tax applied to superannuation. The low income superannuation contribution in the legislation will distribute superannuation tax concessions more equitably.

The Bills implement important long run reforms to the Australian economy and ensure that all Australians will benefit from the mining boom. They should become law.

I would like to thank the organisations that assisted the committee during the inquiry through submissions or participating in the hearings in Canberra. I also thank my colleagues on the committee for their contribution to the report.

Julie Owens MP
Chair

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Coalition Members of the Committee

Membership of the Committee

Chair	Ms Julie Owens MP
Deputy Chair	Ms Kelly O'Dwyer MP
Members	Mr Scott Buchholz MP
	Mr Stephen Jones MP
	Dr Andrew Leigh MP
	Mr Tony Smith MP
	Mr Craig Thomson MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Mr David Monk
Technical Advisor	Mr Ian South
Research Officers	Dr Phillip Hilton
Administrative Officers	Ms Natasha Petrović

Terms of reference

On 2 November 2011 the Treasurer, the Hon Wayne Swann, MP, in accordance with Standing Order 215 (c) referred the following bills to the committee for inquiry and an advisory report by 21 November 2011:

Minerals Resource Rent Tax Bill 2011

Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Bill 2011

Minerals Resource Rent Tax (Imposition—General) Bill 2011

Minerals Resource Rent Tax (Imposition—Customs) Bill 2011

Minerals Resource Rent Tax (Imposition—Excise) Bill 2011

Petroleum Resource Rent Tax Assessment Amendment Bill 2011

Petroleum Resource Rent Tax (Imposition—General) Bill 2011

Petroleum Resource Rent Tax (Imposition—Customs) Bill 2011

Petroleum Resource Rent Tax (Imposition—Excise) Bill 2011

Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011

Superannuation Guarantee (Administration) Amendment Bill 2011

List of abbreviations

ACCI	Australian Chamber of Commerce and Industry
AFTS Review	Australia's Future Tax System Review
AIST	Australian Institute of Superannuation Trustees
AMEC	Association of Mining and Exploration Companies
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BECA	Business Enterprise Centres Australia
CME	Chamber of Minerals and Energy of Western Australia
COSBOA	Council of Small Business of Australia
EM	Explanatory Memorandum
FMG	Fortescue Metals Group
FOI	Freedom of information
ICAA	Institute of Chartered Accountants of Australia
MCA	Minerals Council of Australia
MRRT	Minerals Resource Rent Tax
OECD	Organisation for Economic Co-operation and Development

PRRT	Petroleum Resource Rent Tax
REIA	Real Estate Institute of Australia
RSA	Retirement savings account
RSPT	Resources Super Profits Tax
SG	Superannuation Guarantee

4 Sharing the benefits of the mining boom

Recommendation 1

That the House of Representatives pass all 11 Bills in the package, namely:

- the Minerals Resource Rent Tax Bill 2011 and the four related minerals Bills;
- the Petroleum Resource Rent Tax Assessment Amendment Bill 2011 and the three related petroleum Bills;
- the Superannuation Guarantee (Administration) Amendment Bill 2011; and
- the Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011.

1

Introduction

Referral of the bills

1.1 On 2 November 2011 the Hon Wayne Swan MP, referred a suite of bills (the Minerals Resource Rent Tax Bill 2011 and related draft legislation) to the Standing Committee on Economics for inquiry and report. The Bills are:

- Minerals Resource Rent Tax Bill 2011
- Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Bill 2011
- Minerals Resource Rent Tax (Imposition—General) Bill 2011
- Minerals Resource Rent Tax (Imposition—Customs) Bill 2011
- Minerals Resource Rent Tax (Imposition—Excise) Bill 2011
- Petroleum Resource Rent Tax Assessment Amendment Bill 2011
- Petroleum Resource Rent Tax (Imposition—General) Bill 2011
- Petroleum Resource Rent Tax (Imposition—Customs) Bill 2011
- Petroleum Resource Rent Tax (Imposition—Excise) Bill 2011
- Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011
- Superannuation Guarantee (Administration) Amendment Bill 2011.

Origins and purpose of the bills

1.2 The package of Bills covers a range of measures aimed at sharing the benefits of the mining boom across the economy and into the future including:

- applying a 22.5 per cent Mineral Resource Rent Tax (MRRT) on the profits that mining companies make on iron ore and coal on their mining activities only (excluding value adding activities such as transportation and concentration);
- extending the Petroleum Resource Rent Tax to all offshore and onshore gas and oil projects, including coal seam methane;
- increasing the superannuation guarantee from 9 per cent to 12 per cent;
- increasing the age limit for the superannuation guarantee; and
- improving asset-based deductions for small business.

Minerals rent taxation

1.3 The main piece of legislation, the Minerals Resource Rent Tax Bill, establishes a tax on the economic rents miners make from taxable resources (mainly iron ore and coal). 'Economic rent' is the return in excess of what is needed to attract and retain factors of production in the production process. The tax applies to that part of the profits made by miners that relates to the minerals as they are extracted from the ground but before they undergo any significant processing or value add.

1.4 The MRRT is a project-based tax, so a liability is worked out separately for each project the miner has at the end of each MRRT year. A miner has a project when it is entitled to iron ore or coal extracted under a mining lease. The miner's liability for a year is the sum of its projects' liabilities.

1.5 A project liability is worked out by multiplying mining profits (less allowances) by the tax rate of 22.5 per cent (that is, a nominal tax rate of 30 per cent, reduced by 25 per cent to recognise the miner's specialist skills in extracting minerals).[1]

1.6 Mining profit consists of mining revenue less mining expenditure. Mining revenue is mainly that part of the proceeds the miner receives from selling taxable resources that reasonably relates to the resources in the form and

1 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.

at the place they were in at their valuation point (usually when leaving the run-of-mine stockpile).[2]

1.7 Mining expenditure is principally the costs of finding and extracting the taxable resources and getting them to their valuation point.[3]

1.8 Mining profit may be reduced by allowances for past losses, for the miner's existing investments at 2 May 2010 (called a starting base allowance), and for the miner's Commonwealth, State and Territory mining royalty amounts. Some allowances can be transferred to other projects to reduce their mining profits.[4]

1.9 If a miner's total mining profit from all its projects comes to less than $50 million in a year, there is a low-profit offset that reduces the miner's liability for MRRT to nil. The offset phases out for mining profits between $50 million and $100 million.

1.10 The Bills are linked in their commencement dates to the passage of other legislation, including the Bills for the MRRT.

Background

Royalties

1.11 Throughout Australia, State and Territory governments tax non-renewable resources by applying a royalty to production. Royalties are generally applied on the basis of volume or value and do not take into account how profitable a mining operation is.[5]

1.12 Royalties therefore will only recover a small portion of mining rents when mining profits are high, but will also tax mining operations where no economic rent is present.

Australia's Future Tax System review

1.13 The Minerals Resource Rent Tax has its origins in the recommendations of the Australia's Future Tax System (AFTS) review.

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2 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.

3 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.

4 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.

5 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 5.

1.14 The AFTS review was charged with reviewing Australia's tax system to examine and make recommendations to create a tax structure that will position Australia to deal with the demographic, social, economic and environmental challenges of the 21st century and enhance Australia's economic and social outcomes.[6]

1.15 The AFTS review found that the royalty regimes applied by the States and Territories are among the most distorting taxes in the Federation and are not particularly flexible.

1.16 As a consequence of being distorting and relatively inflexible, royalties tend to be set at rates low enough for the mining industry to continue to operate in periods of low to average commodity prices. However, this means that royalties will fail to provide an adequate return to the community when commodity prices are high.

1.17 The company tax is a profits-based tax, which generally applies to incorporated businesses and will tend to raise more revenue from mining operations when profits are high. However, the AFTS review found that there would be benefits to the economy more broadly through lowering the company tax rate to assist in attracting internationally mobile capital investment.

1.18 The AFTS review concluded that a lower company tax rate was desirable for Australia but only if a specific profits-based tax was extended to mining operations to ensure a sufficient return to the community in periods of high commodity prices.[7]

1.19 In response to the AFTS review, the Government decided that, from 1 July 2012, the Minerals Resource Rent Tax (MRRT) will apply to profits from coal and iron ore operations, while the Petroleum Resource Rent Tax (PRRT) will be extended to all offshore and onshore gas and oil projects, including coal-seam methane. These commodities account for the bulk of Australia's mineral wealth.

Consultation in the development of the MRRT

1.20 In May 2010, the Government announced that it would introduce a Resources Super Profits Tax (RSPT). The design of the RSPT was largely rejected by the mining industry and the Government began consultation and negotiation with the three largest members of the Australian

6 Terms of reference, are available at http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference.htm.

7 Australia's Future Tax System – Report to the Treasurer, December 2009, pp. 217-46.

resources industry and developed a heads of agreement for the Minerals Resource Rent Tax (MRRT). There followed what the Government described as one of the most comprehensive stakeholder consultation processes ever conducted by an Australian government.[8]

1.21 The consultation on the MRRT was driven by the Policy Transition Group (PTG) and the Resource Tax Implementation Group.

1.22 The design of the MRRT is based on the recommendations of the PTG. The PTG was chaired by Mr Don Argus AC and the Hon Mr Martin Ferguson AM MP, Minister for Resources, Energy and Tourism. The PTG consulted extensively across Australia on the new resource tax arrangements and reported to the Government in December 2010, making 94 recommendations.[9]

1.23 In accepting all of the PTG's recommendations, the Government further established the Resource Tax Implementation Group, which comprised representatives from industry and the tax profession, to work closely with the Treasury, the Australian Taxation Office and the Department of Resources, Energy and Tourism to develop the legislation for introduction to Parliament.[10] This represented a cooperative approach between industry and government in the process of tax reform.

1.24 The committee heard widespread criticism from many who were not consulted on the original RSPT or on the MRRT Heads of Agreement with the three large companies. However, the committee heard wide support and satisfaction with the consultation processes that followed.[11] For example, ICAA stated that much of these consultations were a template for the future:

> The fact that the government gave the Policy Transition Group, who were drawn largely from experts in the relevant mining and resources sectors, the opportunity to examine the issues, to go through a consultative process across the country, to talk to stakeholders to hear their concerns and to deliberate and make recommendations about those issues and solutions to those issues

8 The Hon. Mr Bill Shorten MP, Assistant Treasurer and Minister for Financial Services and Superannuation, *House of Representatives Hansard*, 2 November 2011, p. 2.

9 Policy Transition Group – Report to the Australian Government, New Resource Taxation Arrangements, December 2010; Mr Paul McCullough, Treasury, *Committee Hansard*, Canberra, 8 November 2011, p. 1.

10 The Hon. Mr Wayne Swan MP, Deputy Prime Minister and Treasurer, *Media Release No. 096*, 21 December 2010.

11 Mr Mitchell Hooke and Mr Brian Purdy, Minerals Council of Australia, *Committee Hansard*, 9 November 2011, p. 20.

> demonstrates a very sound way to go about resolving some of the complexities in the policy-making process.
>
> Turning to the Resource Tax Implementation Group, features of the RTIG process that I believe would be standout indicators for how we could do things better in other areas of policy design across the tax system would be the fact that you had a combination of experts from within the resources industry, experts from within the tax profession, who typically are engaged on a quite frequent basis with government, Treasury and the tax office in the design and development of policy and law. Certainly, there was the contribution that flowed from the involvement of senior officials from the Australian Taxation Office who could provide a perspective around how they would ultimately want to potentially administer the law once it is in place. Of course, the officials from the Treasury promoting the policy objectives of the government meant that you had quite a well rounded constructive process that did, I believe, deliver a better outcome than might otherwise have been the case had you not employed a consultative process like that.[12]

Policy drivers

Minerals Resource Rent Tax

1.25 The strategic thinking that drives the Bills was summed up by the Treasurer, the Hon. Mr Wayne Swan MP, in a speech that he delivered in Western Australia in mid 2010. In this speech, the Treasurer explained that:

> We are on the cusp of something special here. Our future is looking so much more promising than one year ago. It is about maximising our opportunities – keeping Australia ahead of the pack, just as we were ahead of the pack in dealing with the global recession. It is about managing our resource wealth sustainably, capturing a fairer share for all Australians and turning it into other forms of wealth that last. It is about reinvesting the proceeds of the resources boom to strengthen the resources sector and to broaden

12 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Committee Hansard*, 9 November 2011, pp. 13-14.

> the whole economy, invest in capacity and boost national savings.[13]

1.26 The challenges to which such thinking responded were described by the Treasurer in some detail in a ministerial statement to the parliament delivered shortly after the speech above. In the words of the Treasurer:

> The Australian people own 100 per cent of Australia's natural resources and they deserve a fairer share of the super profits mining companies make, particularly during this boom. As these profits have risen in recent years the Australian people's share of those profits has fallen.
>
> Before the last boom, the country got $1 in every $3 of mining profits through royalties and resource charges but at the end of that boom, that was down to just $1 in $7. It is impossible to justify a system where Australians pay proportionately more tax as their income goes up, while mining companies pay proportionately less as their profits go up. The companies have been unable to justify this, and I cannot let the situation stand.
>
> Profits were over $80 billion higher in 2008-09 than in 1999-2000 yet governments only collected an additional $9 billion in revenue. The Government simply wants to take the Australian people's share of mining profits back to around where it was in the early 2000s. The Howard Government was not overtaxing the resource sector then, and this Government won't either. In fact, we will get the same share with a more pro-investment tax structure.[14]

1.27 The Treasurer elaborated by stating that the existing arbitrary and ever-changing state royalty regimes result in less mining investment, fewer mining jobs and less mining production. Worse still, royalties tax production and ignore the costs involved in generating that output. This results in too many Australian mines shutting down before they have exhausted the resources available, while suppressing the establishment of other mines. As a result, too many commercially viable resources are left

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13 The Hon. Mr Wayne Swan MP, "Harnessing the Boom: Address to the Chamber of Commerce and Industry of Western Australia", Perth, 17 May 2010. The speech is available at: http://www.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2010/010.htm&pageID=005&min=wms&Year=2010&DocType=1.

14 The Hon. Mr Wayne Swan MP, "A Stronger Economy and a Fairer Share for All Australians: Ministerial Statement", House of Representatives, Canberra, 24 May 2010. The speech is available at: http://www.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2010/013.htm&pageID=005&min=wms&Year=2010&DocType=1.

to waste in the ground, for no better reason than that state royalties have made their exploitation uneconomic.

1.28 The committee heard from the Minerals Council of Australia (MCA), which does not agree that resource taxes have failed to keep pace with the boom and have declined as a share of profits. While the MCA supports the concept of a profits based tax, it argues that this needs to involve fundamental reform of state royalty arrangements. However, the MCA accepts the final design of the MRRT as a workable outcome.[15]

1.29 According to the Treasurer, the Government's objective was to ensure that Australia would have something of enduring public benefit to show from the sale of our non-renewable resources, that Australia would not squander the advantages of record global mineral prices.

1.30 The Government has settled on an increased level of national savings as its preferred legacy of the mineral boom. To do this, the Government aims to deliver a package of measures, including boosting savings through an increased Superannuation Guarantee, phased in over ten years, as well as by boosting savings by making superannuation concessions fairer for low income earners.

1.31 This strategic thinking also addresses the demographic challenge of an aging society. Over the next 40 years, Australia's population will age rapidly, as an increasing proportion of the population will be older due to falling rates of mortality and lower rates of birth. There will be increasing numbers of older people to support, and fewer people of workforce age to provide that support.

Superannuation

1.32 Superannuation provides working people with the means to save for their retirement.

1.33 Because superannuation works to reduce welfare dependency, it has been the policy of successive Australian governments to make superannuation available to as many Australians as possible, so that they are able to save for their retirement in a prudentially supervised and concessionally taxed environment.

1.34 The adequacy of retirement incomes is typically assessed using the concept of the replacement rate, defined as the ratio of an individual's income or spending power after retirement to that before retirement.

15 Mr Mitchell Hooke, Minerals Council of Australia, *Committee Hansard*, 9 November 2011, p. 16.

There is no specific target set for the replacement rate, however, a worker on AWOTE might be expected to have a replacement rate of about 63 per cent.[16]

1.35 Related to the adequacy of retirement incomes is the level of household savings. Australia's net household savings was negative from 2002-03 until very recently, which means that households have been borrowing to spend more on goods and services than they could afford based purely on their income. Against this measure, net household wealth has been increasing due to the housing property market, but much of this increase is in the form of unrealised gains that are often not utilised until well after retirement. Individuals retiring while still carrying significant debt (home mortgages and consumer finance) are unlikely to find their retirement incomes to be adequate. Households that do not save while earning pre-retirement incomes will find retirement difficult.

1.36 To some extent the superannuation regime defers income into a compulsory retirement saving arrangement that might otherwise have been spent on consumption.

1.37 The Superannuation Guarantee was introduced in 1992 with a long term ambition to achieve a contribution rate of 15 per cent.[17] A ten-year phase in period followed and the Superannuation Guarantee minimum contribution rate was completed on 1 July 2002 with a rate of 9 per cent. The coverage of superannuation in Australia has grown significantly as a result of the introduction of the Superannuation Guarantee system.[18]

1.38 The Superannuation Guarantee directs some of an employee's current remuneration into improving their standard of living in retirement.

1.39 The previous Government contended that at nine percent there was a balance between employees forgoing current consumption for increases in living standards after retirement. On this basis the previous Government was not inclined to increase the superannuation guarantee rate.

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16 Australia's Future Tax System – The retirement income system: Report on strategic issues, May 2009, p. 11.

17 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 41.

18 Australian Government, *A More Flexible and Adaptable Retirement Income System,* 2004, p. 2.

Objectives and scope of the inquiry

1.40 The objective of the inquiry is to investigate the adequacy of the suite of Bills in achieving their various policy objectives and, where possible, identify any unintended consequences.

Conduct of the inquiry

1.41 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Thursday 3 November 2011.

1.42 Nine submissions and three exhibits were received. These are listed at Appendix A.

1.43 Public hearings were held in Canberra on Tuesday 8 and Wednesday 9 November 2011. A list of the witnesses who appeared at the hearing is available at Appendix B. The submissions and transcript of evidence were placed on the committee's website at http://www.aph.gov.au/house/committee/economics/index.htm.

2

Overview of the Bills

Mineral Resource Rent Tax Bills 2011

Introduction

2.1 Australia is experiencing an unprecedented mining boom with high levels of investment and profit. Mining companies generated profits of $92.8 billion to June and plan to invest $430 billion to expand their industry. The Assistant Treasurer, the Hon Bill Shorten, MP, noted that 'mining profits have jumped 262 per cent in the last decade.'[1] The Assistant Treasurer stated:

> The current arrangements fail to provide an appropriate return for these non-renewable resources to the Australian community, who owns the resources 100 per cent.[2]

2.2 The Australian Government has taken the view that the massive profits from the one-off exploitation of Australia's mineral assets by the mining sector should be more fairly taxed and the proceeds returned to all Australians now and into the future. The Mineral Resource Rent Tax (MRRT) will be a tax on mining profits. The proceeds of the tax will fund critical infrastructure, a cut in the company tax rate, and make it possible to increase the superannuation guarantee from nine to 12 per cent.

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1 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 1.

2 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 1.

Existing taxes

2.3 Currently, state and territory governments generally tax non-renewable resources by applying a royalty on production. Royalties are generally 'applied on the basis of volume or value and do not take into account how profitable a mining operation is.'[3] As profits are not taken into account, royalties are considered less effective than a mineral resource rent tax. The Explanatory Memorandum (EM) notes that 'Royalties therefore may only recover a portion of mining rents when mining profits are high, but will also tax mining operations where no economic rent is present, such as when profits are low.'

2.4 The Australian Future Tax System (AFTS) review found 'that royalty regimes applied by the states and territories were among the most distorting taxes in the Federation.'[4] The EM states:

> As a consequence of being distorting and relatively inflexible, royalties tend to be set at rates low enough for the mining industry to continue to operate in periods of low to average commodity prices. However, this means that royalties will often fail to provide an adequate return to the community when commodity prices are high.[5]

2.5 In addition to royalties, the company tax is a profits-based tax which generally applies to business and 'will tend to raise more revenue from mining operations when profits are high.'[6] However, the company tax was not considered a desirable mechanism for taxing mining operations. The EM stated:

> …the AFTS Review found that there would be benefits to the economy more broadly through lowering the company tax rate to assist in attracting internationally mobile capital investment.
>
> The AFTS Review concluded that a lower company tax rate was desirable for Australia but only if a specific profits-based tax was extended to mining operations to ensure a sufficient return to the community in periods of high commodity prices.[7]

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3 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 5.

4 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 7.

5 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 7.

6 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 7.

7 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 7.

Basic operation of the MRRT

2.6 In contrast to royalties, resource rent taxes take into account the profitability of a mining operation. One of the earliest forms of a resource rent tax was developed in 1948 by Cary Brown. Under a 'Brown tax', cash flow, after taking into account revenue and expenditure, is taxed at a constant percentage. Where there is positive cash flow, tax is charged but where there is negative cash flow, typically at the investment phase, the government provides a refund at the tax value. The EM notes that the Brown tax model, however, is difficult to implement 'because of the immediate nature of the refund.' [8]

2.7 In contrast, the Garnaut-Clunies Ross resource rent tax is similar to the Brown tax model except that there is no tax refund when there is negative cash flow. Instead, 'losses are carried forward and uplifted by an interest rate, so that they can be used as a deduction against positive cash flows in later years.'[9]

2.8 The MRRT proposed in the legislation is 'a tax on the economic rents miners make from the taxable resources (iron ore, coal and some gases) after they are extracted from the ground but before they undergo any significant processing or value add.'[10]

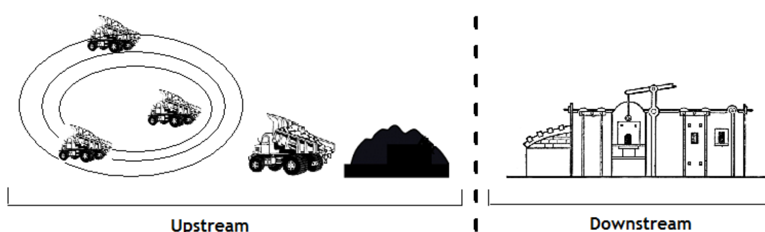
2.9 The MRRT is a project-based tax, so a liability is worked out separately for each project the miner has at the end of each MRRT year. The EM notes that 'the tax is imposed on a miner's mining profit, less its MRRT allowances, at a rate of 22.5 per cent (that is, at a nominal rate of 30 per cent, less a one-quarter extraction allowance to recognise the miner's employment of specialist skills).'[11]

2.10 A project's mining profit is mining revenue less its mining expenditure. The EM notes that 'mining revenue is, in general, the part of what the miner sells its taxable resources for that is attributable to the resources in the condition and location they were in just after extraction (the 'valuation point')'.[12] Mining expenditure is the cost the miner incurs in bringing the taxable resources to the ***valuation point***.

8 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 6.
9 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 6.
10 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.
11 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.
12 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.

2.11 The EM notes that 'the ***valuation point*** is typically just before the taxable resource leaves the run-of mine stockpile (also called the ROM stockpile or ROM pad). Diagram 2.1 shows the valuation point in the mining phase.

Diagram 2.1 The Valuation Point



In this diagram, the dashed line represents the valuation point at the run-of-mine stockpile. Upstream and downstream mining operations are illustrated.

Source *Explanatory Memorandum, p. 13*

2.12 As shown in diagram 2.1, mining operations that occur before the valuation point are **upstream mining operations** and those that occur later are **downstream mining operations**. In determining the mining revenue amount, the EM states:

> The MRRT is a tax on proceeds from selling a taxable resource (or on the proceeds which would have been realised if the resources had been sold instead of exported or sold) but only on that part of those proceeds that is reasonably attributable to the condition and location of the resource when it was at the valuation point. That amount must be attributed using the most appropriate and reliable method having regard to the miner's circumstances, the available information and certain statutory assumptions (to the extent to which they are relevant in applying a particular method). The statutory assumptions are that the downstream operations are carried on by a separate entity who has no interest in the resource and who deals independently with the miner in a competitive market.[13]

2.13 The MRRT takes into account the majority of upstream costs incurred by the miner in extracting the mine deposit. The EM states:

> Upstream costs are called ***mining expenditure*** if they are necessarily incurred by the miner in carrying on the upstream mining operations. Mining expenditure includes costs related to

13 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 13.

construction of the mining operation, blasting and digging, infrastructure, and capital assets used to transport the non-renewable resource to the valuation point (such as dump trucks and conveyor belts).[14]

2.14 Certain 'mining allowances' will reduce each project's mining profit. The EM notes that the most significant of the allowances is for mining royalties the miner pays to the states and territories' which ensures 'that the royalties and the MRRT do not double tax the mining profit.'[15]

2.15 Other allowances can include losses the project made in earlier years and losses transferred from other projects.

2.16 The Assistant Treasurer noted that 'unlike royalties, the MRRT recognises the massive investment that miners make.'[16]

What resources are covered by the MRRT

2.17 The EM notes that the MRRT applies to certain profits from iron and coal, and also applies to profits from gas extracted as a necessary incident of coal mining and gas produced by the in situ combustion of coal.

Date of effect and financial impact

2.18 The MRRT will apply from 1 July 2012. Table 2.1 shows the revenue implications of the MRRT.

Table 2.1 The financial impact of the MRRT

2011-12	2012-13	2013-14	2014-15
Nil	$3.7 billion	$4 billion	$3.4 billion

Source *Explanatory Memorandum, p.4*

Consequential Bills

2.19 The MRRT is imposed by the following three imposition Bills:

- Minerals Resource Rent Tax (Imposition—General) Bill 2011;
- Minerals Resource Rent Tax (Imposition—Customs) Bill 2011; and

14 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 14.
15 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 3.
16 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 1.

- Minerals Resource Rent Tax (Imposition—Excise) Bill 2011.

2.20 Each of the bills imposes the MRRT to the extent that it is a duty of customs, that it is a duty of excise and that it is a duty of neither customs or excise. The EM states:

> This reflects the constitutional requirement that laws imposing duties of customs shall deal only with duties of customs and that laws imposing duties of excise shall deal only with duties of excise (see section 55 of the Constitution). However, there is only one assessment Act.
>
> The approach of enacting a single assessment Act with multiple imposition Acts when a tax law could be a duty of customs, a duty of excise, as well as some other type of tax, complies with the Constitution. The same approach was followed for the enactment of the goods and services tax legislation.[17]

2.21 MRRT is not imposed on property belonging to a State. That ensures that the MRRT complies with section 114 of the Constitution, which prohibits the Commonwealth from imposing a tax on any kind of property of a State. In practice, this will only have an effect to the extent that a State mines its own taxable resources. In that case, the State will not be subject to MRRT.

Petroleum Resource Rent Tax Amendment Bills 2011

The extension of the Petroleum Resource Rent Tax

2.22 The Main Bill amends the PRRTAA 1987 to expand its coverage to onshore projects and the North West Shelf. From 1 July 2012, the PRRT will be extended to apply to petroleum production, including coal seam gas and shale oil, sourced from petroleum projects located onshore and in territorial waters, as well as from the North West Shelf project area. The PRRT will not apply to the Joint Petroleum Development Area in the Timor Sea.

2.23 During informal discussions with industry, it appears that the amendments to the PRRT are less significant than the other Bills in the package because:

17 Explanatory Memorandum, Minerals Resource Rent Tax Bill 2011, p. 31.

- the PRRT is already well known to industry; and
- the North West Shelf is unlikely to pay significant amounts of PRRT because the amount of royalties and excise paid will be taken into account in calculating PRRT. These royalties and excise are sufficiently high so as to preclude the PRRT being paid for these projects.

Imposition Bills for the PRRT

2.24 The PRRT was imposed by the Petroleum Resource Rent Tax Act 1987. That Act imposes the tax in respect of the taxable profit of a person of a year from a petroleum project. The Petroleum Resource Rent Tax Act 1987 will be repealed as part of the Main Bill and replaced by the three separate imposition Bills:

- the PRRT excise imposition Bill;
- the PRRT customs imposition Bill; and
- the PRRT general imposition Bill.

2.25 The three additional imposition Bills impose the PRRT to the extent that it is a duty of customs; to the extent that it is a duty of excise; and to the extent that it is neither a duty of customs nor one of excise. All three imposition Bills set the rate with respect to the taxable profits of a person of a year of tax in relation to a petroleum project at 40 per cent, consistent with the original imposition Act.

2.26 The constitutional validity of the PRRT is not in question. However, the three imposition Bills are being introduced to avoid the possibility of constitutional irregularities arising in the future. A similar approach has been adopted for the MRRT.

2.27 The imposition Bills will apply retrospectively from 1 July 1986, consistent with the commencement of the original imposition Act. Replacing the original imposition Act does not alter the operation of the PRRT.

2.28 The approach of enacting a single assessment Bill with multiple imposition Bills when a tax law could be argued to be a duty of customs, a duty of excise, as well as some other type of tax is not unusual. The same approach was followed for the enactment of the goods and services tax (GST) legislation.

2.29 PRRT is not imposed on property belonging to a State. That ensures that the PRRT complies with section 114 of the Constitution, which prohibits the Commonwealth from imposing a tax of any kind on property of a State. In practice, this will only have an effect to the extent that a State

directly recovers its own petroleum resources. In that case, the State will not be subject to PRRT.

Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011

Abolishing the entrepreneurs' tax offset

2.30 The entrepreneurs' tax offset was introduced into the *Income Tax Assessment Act 1997* (ITAA 1997) by the Tax Laws Amendment (2004 Measures No. 7) Act 2005 and applies to assessments for income years commencing on or after 1 July 2005.

2.31 The entrepreneurs' tax offset provides up to a 25 per cent tax offset on the income tax liability attributable to business income of small businesses that have an annual turnover of under $75,000. The benefit of the offset begins to phase out for small businesses with an annual turnover above $50,000 and eligibility ceases when turnover reaches $75,000. In addition, the entrepreneurs' tax offset is subject to an income test that restricts the eligibility of individuals whose income is over a threshold amount ($70,000 if they are single and $120,000 if they have a family).

2.32 The Australia's Future Tax System Review noted that removing the entrepreneurs' tax offset would reduce compliance and administration costs and provide a more equitable and neutral treatment between self-employment and employment income. The Australia's Future Tax System Review recommended (recommendation 6) the abolition of the entrepreneurs' tax offset as it is complex to administer and provides problematic incentives related to business structure.

2.33 On 8 May 2011, the Government announced as part of the small business tax reform package in the 2011-12 Budget that it would abolish the entrepreneurs' tax offset from the 2012-13 income year. It will have a positive annual Budget impact of $180 million.

Small business depreciation

2.34 Small businesses can choose to use the capital allowance arrangements in Subdivision 328-D of the ITAA 1997 to depreciate assets.

2.35 The existing capital allowance arrangements for small businesses allow low cost assets to be written off in the year the small business first started

to use the asset or had it installed ready for use. A low cost asset (except a horticultural plant) is defined in section 40-425 as one which has a cost of less than $1,000 at the end of the income year in which the asset started to be used or is installed ready for use, for a taxable purpose.

2.36 Other depreciating assets, generally those costing $1,000 or more, are allocated to one of two depreciation pools, depending on the effective life of the asset: the long life small business pool or the general small business pool. The pools are depreciated at different rates (5 per cent or 30 per cent).

2.37 Recommendation 29 of the Australia's Future Tax System Review (December 2009) proposed that the capital allowance arrangements for small business be streamlined and simplified by allowing:

- depreciating assets costing less than $10,000 to be immediately written off; and
- all other depreciating assets (except buildings) to be pooled together, with the value of the pool depreciated at a single declining balance rate.

2.38 In response to this review, the Government announced on 2 May 2010 that from the 2012-13 income year small businesses would be allowed to write off assets costing less than $5,000, and that simplified pooling arrangements would be provided for other assets.

2.39 On 10 July 2011, the Government announced that as part of the Clean Energy Future Plan the small business instant asset write-off threshold would be further increased from $5,000 to $6,500.

2.40 From the 2012-13 income year, these amendments enable small businesses that choose to use the capital allowance provisions in Subdivision 328-D to:

- write off depreciating assets costing less than $6,500 in the income year in which they start to use the asset or have it installed ready for use for a taxable purpose during or before that income year; and
- allocate depreciating assets costing $6,500 or more to the general small business pool and depreciated at a rate of 15 per cent in the year of allocation and 30 per cent in following years.

2.41 The measure will have a negative annual Budget impact of $1.1 billion.

Small business deductions for motor vehicles

2.42 Small businesses can choose to use the capital allowance arrangements in Subdivision 328-D of the ITAA 1997 to depreciate assets, including motor vehicles.

2.43 As part of the 2011-12 Budget, the Government announced that small business entities would be allowed to bring forward a deduction of up to $5,000 for any motor vehicles purchased in the 2012-13 and subsequent income years. The remainder of the purchase value of the motor vehicle is depreciated through the general small business pool at 15 per cent in the first year and 30 per cent in later years.

2.44 From the 2012-13 income year, small business entities that choose to use the capital allowance provisions in Subdivision 328-D can claim up to $5,000 as an immediate deduction for a motor vehicle in the year they start to use the motor vehicle, or have it installed ready for use, for a taxable purpose. Taking into account the amount already written off, the remainder of the purchase cost is depreciated as part of the general small business pool, at 15 per cent in the first year and 30 per cent in later years. This is an exception to the general small business capital allowance rules for depreciating assets.

2.45 The measure will have a negative annual Budget impact of $200 million in 2013-14 and $150 million in 2014-15.

Low income superannuation contribution

2.46 The low income superannuation contribution is part of a suite of reforms to improve the superannuation outcomes for Australians. It is dependent on the implementation of the MRRT package of Bills. It is designed to ensure a fairer distribution of Australia's wealth in the resources boom by benefiting low income earners.

2.47 Concessional contributions are generally contributions to a superannuation fund that receive concessional tax treatment. Concessional contributions are generally before tax contributions that include an employer's superannuation guarantee (SG) contributions, contributions made under a salary sacrifice arrangement and an individual's personal contributions that are deducted

2.48 The low income superannuation contribution seeks to effectively return the tax paid on concessional contributions by a person's superannuation fund or retirement savings account (RSA) provider to a person who is a

low income earner. Low income earners are defined as individuals with an adjusted taxable income of $37,000 or less.

2.49 The maximum amount payable is $500.

2.50 The measure will have a negative annual Budget impact of up to $1 billion.

Superannuation Guarantee (Administration) Amendment Bill 2011

2.51 Under the Superannuation Guarantee (SG) scheme, all employers are required to make a prescribed minimum level of superannuation contributions to a complying superannuation fund or a retirement savings account (RSA) on behalf of their eligible employees.

2.52 The legislation gradually increases the SG with increments of 0.25 per cent on 1 July 2013 and 1 July 2014. From then increments will increase by 0.5 percentage points applying annually up to 2019-20 when the SG rate will be set at 12 per cent.

2.53 The minimum level of employer superannuation contributions is the SG 'charge percentage' applied to each eligible employee's ordinary time earnings. The current SG charge percentage is 9 per cent.

2.54 The *Superannuation Guarantee Charge Act 1992* imposes the SG charge on any employer who has an SG shortfall in respect of a quarter. Where an employer does not contribute the minimum level of required employer superannuation contributions on time, they will be liable to pay to the Australian Taxation Office (ATO) a charge on the SG shortfall. The SG shortfall for a quarter is calculated pursuant to section 17 of the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992) and consists of the total of the employer's individual SG shortfalls for that quarter, a nominal interest component, and an administration component.

2.55 Currently, the SG charge is payable by employers who do not contribute 9 per cent of ordinary time earnings on time for eligible employees under the age of 70.

Raising the superannuation guarantee age limit from 70 to 75

2.56 Under subsection 19(1) and paragraph 27(1)(a) of the SGAA 1992, salary or wages paid to an employee who is 70 or over does not count towards the calculation of the SG shortfall. Since there is no SG shortfall, this means

that employers are not required to make SG contributions for employees who are aged 70 or over.

2.57 This Bill raises the SG age limit from 70 to 75 and requires employers to contribute to complying superannuation funds of eligible mature age employees under the age of 75.

2.58 Raising the SG age limit to 75 brings the SG amendments in line with provisions of the ITAA 1997 which allow employers to claim a full deduction for all contributions to superannuation funds made on behalf of their employees up to age 75 and allow self-employed people to make deductible contributions until they turn 75.

Increasing the superannuation guarantee charge percentage to 12 per cent

2.59 In order to avoid an SG shortfall in respect of a quarter, employers currently have to pay 9 per cent of ordinary time earnings in superannuation contributions for eligible employees. In order to increase future retirement incomes for Australian workers, this Bill gradually increases the SG charge percentage each year, reaching 12 per cent in 2019-20. Future rates are detailed below.

Table 2.2 Future changes to the SG percentage

Income year	**Charge percentage (%)**
2013-14	9.25
2014-15	9.5
2015-16	10
2016-17	10.5
2017-18	11
2018-19	11.5
2019-20 and subsequently	12

Source Explanatory Memorandum to the Bill, p. 10.

3

Operation and impact of the MRRT

Impact of the Bills on small miners – overview

3.1 The committee has carefully examined the features of the MRRT to assess its impact on miners, whether large or small. In particular, the committee has analysed the operation of the starting base – a feature designed to fairly recognise investment decisions made prior to the announcement of a profits based tax in May 2010 – to determine whether it has the potential to unduly favour the interests of the larger or more established miners. The committee has also considered those features of the Bill that are designed to specifically benefit smaller miners.

3.2 The committee is mindful of the need not to impose unnecessary compliance costs. This is particularly important for smaller miners that do not have the same capacity as larger miners to deal with these administrative burdens. It is also an issue for those developing new techniques to exploit taxable resources, such as magnetite producers, that are not at this stage expected to face significant MRRT liabilities.

3.3 The committee does not consider that the Bill discriminates against small or emerging miners. In most respects the MRRT applies in the same way to all miners regardless of their size. The exceptions are those features of the MRRT that are tailored to benefit smaller miners. In particular, the Bill relieves a miner of any MRRT liability if its mining profit is less than $50 million. The Bill also gives a small miner the choice to simplify their compliance and record keeping obligations. Both of these features exclusively serve the interests of smaller and emerging miners.

Small and emerging miners

Background

3.4 There were conflicting views put by mining representatives on the effect of the MRRT on small miners relative to large ones.

3.5 Fortescue Metals Group (FMG) and the Association of Mining and Exploration Companies (AMEC) expressed concerns that the bulk of the MRRT will be paid by the small and emerging miners, while the largest miners will pay little or no MRRT. This view was largely premised on the notion that BHP Billiton, Rio Tinto and Xstrata had secured a favourable agreement from the Government in mid-2010, at the expense of all other iron ore and coal miners. In particular, FMG and AMEC consider the design of the starting base to be unfair to small miners.[1]

3.6 In contrast, the Minerals Council of Australia (MCA) claimed that the bulk of MRRT liabilities will fall on larger miners with more profitable projects. It submitted that:

> The MRRT is based on the principle of competitive neutrality (i.e. neutral across included resources and different project configurations) with general tax principles applied in a consistent fashion. It has been aligned deliberately with familiar concepts and definitions of Australian tax law. No provision of the tax discriminates against smaller, emerging Australian miners; indeed, certain features of the MRRT (the low profit threshold and simplified obligations) are designed to lower the overall burden of the tax on smaller miners.[2]

3.7 The MCA also submitted that the claims 'that small miners will pay a disproportionate share of the MRRT contradict the experience with other profits-based mining taxes in Australia – notably company tax. Larger miners (with annual income above $1.46 billion a year) make up 0.5% of all mining companies but on the basis of the most recent official statistics pay more than 82% of net company tax for mining in Australia'.[3]

3.8 In support of its view, FMG cited modelling it had commissioned by BDO Corporate Tax (WA) that claimed to show that BHP Billiton and Rio

1 Fortescue Metals Group, *Submission 1*, p. 1; Association of Mining and Exploration Companies, *Submission 9*, p. 1.

2 Minerals Council of Australia, *Submission 7*, p. 21.

3 Minerals Council of Australia, *Submission 7*, p. 21.

Tinto were unlikely to pay MRRT in the first five years of its implementation.[4]

3.9 On 8 November 2011, the Treasurer and Deputy Prime Minister, the Hon. Mr Wayne Swan MP wrote to BDO expressing concerns that the modelling contained mathematical errors and made inconsistent assumptions that overstated deductions (including, for example, investments made in Canada and Guinea) and understated revenue. The Treasurer attached to that letter advice from the Treasury. That Treasury advice stated that if BDO's model were to be applied using more realistic assumptions, then both BHP Billiton and Rio Tinto would be shown as paying MRRT. The Treasurer also pointed out that BDO's example of a commercially realistic small miner was one that generated returns to investors of over 200 per cent per year, even after allowing for the payment of the MRRT. The Treasurer questioned whether it was appropriate to extend further concessions to a miner in such circumstances.[5]

3.10 BDO supplied updated modelling to the committee. According to BDO, the further modelling contained:

> Updates to the Rio model include refining the deduction for relevant expenditure incurred in the carrying on of upstream mining operations, while recognising that excluded expenditure has not been deducted due to the difficulties in identifying this non deductible expenditure.[6]

3.11 In evidence before the committee, Mr Sedgley of the Treasury said:

> It is a bit difficult to know how to interpret the revised modelling, because BDO have not disclosed the source of the new figures they have inserted into the model.[7]

3.12 In spite of submitting BDO modelling to the Committee, both BDO and FMG suggested in evidence that the focus should be on the fairness of the MRRT, rather than modelling assumptions. They submitted that equity would be served by amending the Bill so that any miner other than BHP

4 Fortescue Metals Group, *Submission 1*, p. 2.

5 Letter from the Treasurer and Deputy Prime Minister, the Hon. Mr Wayne Swan MP to Mr John Murray, BDO Corporate Tax (WA) Pty Ltd, dated 8 November 2011, available at: http://www.treasury.gov.au/documents/2223/PDF/MRRT_Response_Letter.pdf

6 Fortescue Metals Group, *Submission 1*, p. 2 of attachment.

7 Mr Patrick Sedgley, Treasury, *Committee Hansard*, Canberra, 9 November 2011, p. 44.

Billiton, Rio Tinto and Xstrata would have its liability capped to the highest effective rate of MRRT paid by any of those three miners.[8]

Analysis

3.13 In its submission the Treasury expressed the following views on FMG's proposed amendment:

> Fortescue's proposed amendments would introduce distortions and could be subject to constitutional challenge. They would also compromise the privacy of taxpayer information.[9]

3.14 The committee is cognisant of the fact that the amendment proposed by FMG is not limited to the benefit of small miners. By its own admission, FMG is not a small miner. However, the amendment it proposes would cap its own liability by reference to that of its competitors. Potentially, this could mean that the effective rate of MRRT paid by FMG is capped to that of its largest competitors simply because those other miners are in a phase of heavy investment (which would reduce their annual MRRT profit).

3.15 The committee is particularly concerned that the proposed cap has the potential to interfere with the normal commercial incentives to invest and grow a project. In the committee's view, the cap would tend to reduce the incentives for all miners to invest in developing their projects. The largest miners would be less inclined to invest than otherwise, because in doing so they would reduce their exposure to MRRT and incidentally reduce the MRRT liability of their competitors. The proposed amendment would create an absurd situation in which the investment of one miner has the effect of providing an effective tax deduction to another. At the same time, smaller miners would also be less inclined to invest than otherwise, because they would know that any costs they incur would be effectively non-deductible if they reduced their effective tax rate below that of their largest competitors. These kinds of distortions are highly undesirable and have the potential to erode the efficiency gains that a profits-based tax like the MRRT seeks to achieve.

3.16 The committee is also concerned that the amendments proposed by FMG could be characterised as amounting to an arbitrary or incontestable tax. It is a basic principle of our system that taxation should be sufficiently certain and contestable. The intent of FMG's amendments is to make the tax liability of one miner directly dependent on the tax liability of another.

8 Fortescue Metals Group, *Submission 1*, p. 2 of attachment.

9 Treasury, *Submission 6*, p. 1.

This means that a miner other than BHP Billiton, Rio Tinto and Xstrata would be unable to work out its own liability to MRRT until each of those large miners had lodged a MRRT return. This reduces the certainty with which a miner can work out its own liability to MRRT and reduces its ability to challenge the Commissioner of Taxation's assessment of that liability.

3.17 Like other tax laws, the Bill provides a period in which a miner and the Commissioner can alter the miner's original MRRT assessment to correct any mistakes. In addition, a dispute between the Commissioner and a miner over an assessment may need to be resolved through the courts, which can take many years. During these periods in which the MRRT liabilities of the largest miners are not yet finally settled, the amendment proposed by FMG and BDO has the potential to introduce considerable uncertainty across the industry.

3.18 The committee also notes that, while the MRRT liability of a miner would depend on the liability of BHP Billiton, Rio Tinto and Xstrata, it would have no ability to challenge the tax assessment of those others. Without this ability to challenge the basis of its own tax liability, there may be some doubt as to whether the tax was adequately contestable.

3.19 These are complex issues, which are not addressed in the FMG submission. The committee is conscious of the Treasury's advice and the evidence of the Institute of Chartered Accountants that:

> the proposal, as I understand it, would represent a novel way—that is to say an untested and new mechanism—by which to go about ascertaining the liability of particular taxpayers to MRRT that does not exist anywhere else in our tax system at this point. Once again, any of these ideas could certainly be considered, and the parliament should have the opportunity to put forward any amendments it believes are appropriate, but there are a couple of constraining factors that I think would need to be taken into account in deciding whether or not to do that.[10]

Conclusion

3.20 The Committee has considered a number of these constraining factors. The amendment proposed by FMG has the potential to interfere with investment decisions, which would harm the industry at large. It also

10 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Committee Hansard*, 9 November 2011, p. 15.

introduces significant uncertainty since a miner's liability to MRRT will depend on matters beyond their own control and knowledge. The amendments are also at risk of being seen as imposing an arbitrary or incontestable tax. For these reasons the committee does not support the amendments.

Transition arrangements and the starting base

Background

3.21 The starting base is part of the transition arrangements that recognise investments that existed before the announcement of the resource tax reforms on 2 May 2010.

3.22 A miner has two choices of starting base, i.e. the tax shield for existing investments:

- either the market value (including value of resource), which is allowed as a deduction spread over 25 years or the life of the mine. This isn't uplifted but unused annual allowances will be uplifted by CPI; or
- book value (excluding value of resource), is allowed over 5 years and is uplifted by bond rate plus 7 per cent.

3.23 Several witnesses to the committee identified the starting base as a proxy for excluding these investments from the MRRT, and so preserving the tax treatment that existed when these investments were made. These witnesses suggested this form of 'grandfathering' was not unusual in the context of a new tax.[11] For instance, the capital gains tax does not apply to assets purchased before that tax was announced in 1985.

3.24 Submissions and evidence from all mining industry witnesses supported this principle. However, the committee heard concerns expressed on behalf of small miners that the design of the starting base inherently favours existing large producers.

3.25 According to FMG and AMEC, this is likely to provide a tax shield sufficient for established large miners to have no significant MRRT liability for the foreseeable future. In contrast, they say, junior miners will not be entitled to a similar starting base. Both AMEC and FMG allege that

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11 Mr Mitchell Hooke, Minerals Council of Australia, *Committee Hansard*, 9 November 2011, p. 18.

the MRRT is unfair and discriminatory against small and emerging miners in this respect. In its submission, FMG stated:

> Junior miners will mostly be unable to utilise the market method methodology because in the early stages of development the markets heavily discount the expected value of any resource in the ground to reflect the project risk associated with its eventual development or otherwise.[12]

3.26 In testimony, FMG and AMEC acknowledged that the discounting on resources in the ground is the same for large and small companies.

Analysis

3.27 The Bill gives the same opportunities to miners both big and small to market value the mineral resources for the purposes of the starting base. While it is reasonable to expect that a project that was fully developed on 1 May 2010 will have a larger market value than another project that was in its earlier stages at that time, this itself is not discriminatory as between large and small miners.

3.28 Also, miners with large starting bases are likely to have large liabilities. That is, there is a direct relationship between the value of the mineral and the value of the revenues subject to MRRT. Further, under the MRRT, miners, whether large or small, cannot allocate that part of the starting base due to minerals in the ground against other mines.

3.29 The fact that established miners are expected to have larger starting bases simply reflects the fact that these miners have made significant investments before the announcement of the resource tax reforms. This is consistent with the policy aim of the starting base, which is to provide a limited recognition of the value of assets (including mineral assets) held by a miner at the time the resource tax reforms were announced. The policy is not to provide the same shield to all miners, it is to provide a shield that reflects the value of mining assets that a miner had before the resource tax reforms were announced and that will be subject to the MRRT.

Conclusion

3.30 The committee is satisfied that the design of the starting base is fair and equitable as between large and small miners. It is inevitable that emerging

12 Fortescue Metals Group, *Submission 1*, pp. 2-3.

projects will have lower starting bases than established projects, but this reflects the actual investment and the fact that the starting base is intended to limit the retrospective effect of the MRRT on pre-existing investments.

3.31 The committee also notes that, in contrast with past investments that are deductible via the starting base over a period of up to 25 years – or five years depending on the mechanism chosen by the mining company to calculate the starting base – the costs of developing a new project after 1 July 2012 will be immediately deductible under the MRRT. Accordingly, the committee does not agree with those submissions that claim the design of the starting base discriminates against small and emerging miners.

Concessions for small and emerging miners

Background

3.32 There is no MRRT liability for miners with MRRT profits of $50 million or less. To ensure that the low profit offset does not distort the production behaviour of an entity approaching the $50 million threshold, it phases out for profits between $50 million and $100 million.

3.33 Commenting on the phase-out, FMG submitted that:

> It would have been simpler and more equitable to allow the tax threshold to be a tax free threshold without a clawback mechanism. It would have been even simpler to exclude small miners on the basis of their tonnage rather than MRRT profits as this would have generated certainty and excluded unnecessary compliance costs.[13]

3.34 The Chamber of Minerals and Energy of Western Australia (CME) submitted that:

> While an exemption threshold is welcome, CME has concerns on how this threshold was determined and whether it provides the necessary shelter for junior and emerging miners and those producers mining low value resources. Until the impact of the MRRT on Australia's resource industries' international competitiveness and project costing is fully understood, CME recommends particular consideration needs to be given to a significant increase to the currently proposed phased threshold.

13 Fortescue Metals Group, *Submission 1*, pp. 4-5.

> Furthermore, CME strongly advocates that the threshold should be subject to indexation to ensure the policy intent of excluding small miners is met in ensuing years.[14]

Analysis

3.35 The committee notes that FMG's suggestion that the $50 million threshold be treated as a tax-free threshold would mean that the concession would not be targeted to the interests of small miners. Extending the concession to large miners, like FMG, would involve a considerable cost to the revenue. In order to contain this cost, it would be necessary to reduce the level of the threshold. It is difficult to see how a change of this sort would benefit small miners.

3.36 In response to FMG's suggestion of a tonnage-based exemption from the MRRT, the Treasury advised the committee that:

> A tonnage based exclusion would be very distortive and would lead to miners altering their production in order to remain under the tonnage limit. In addition, including a tonnage based concession within a profit based tax would erode some of the efficiency gains inherent in a profit based regime.[15]

3.37 The committee also notes that a tonnage-based exemption would tend to disadvantage miners who produce relatively low grade minerals and those whose value is lower because of distance to market.

3.38 Further, a tonnage exemption would not relieve any compliance costs. This is because producers would have to continue to operate as if the MRRT applies in case they go over the threshold and they wish to realise the deductions on their capital from when they started investing.

3.39 Like many thresholds in the tax law, the $50 million threshold for the low profit offset is not indexed to automatically increase each year. Instead, these thresholds are normally reviewed in the context of the Budget.

Conclusion

3.40 The committee does not consider that the basis for the low profit offset should be amended. As the MRRT is a profits-based tax, it is appropriate that the exclusion of small miners be based on the size of their profits, not the volume of their production. A tonnage-based exemption has the

14 Chamber of Minerals and Energy of Western Australia, *Submission 5*, p. 5.

15 Treasury, *Submission 6*, pp. 3-4.

potential to apply unfairly and to interfere with normal commercial decisions.

3.41 While it may be appropriate for the level of the $50 million threshold to be reviewed in the future, the committee considers this is best done following a review of whether the threshold is delivering the appropriate policy outcomes, rather than by automatically indexing the threshold.

Compliance costs on small and emerging miners

Background

3.42 Some miners may be below the $50 million profit threshold for some time before they start having an MRRT liability.

3.43 The Bill gives a miner the option to choose a simplified system if its profit (as measured for accounting purposes) is below certain limits. The method is simplified in that it excuses a miner from having any MRRT liability and from having to lodge an MRRT return. However, an important consequence of this choice is that the miner's starting base and its allowances are extinguished rather than carried forward to reduce any MRRT liability the miner has in a later year.

3.44 The CME submitted that small companies will not choose the simplified system because of the benefits under the MRRT regime of being able to carry forward losses, including investment and royalties, to reduce MRRT liabilities in later years:

> This approach will have the effect of denying access to an MRRT starting base, unused royalties or prior year expenditure for smaller producers that exceed the MRRT threshold. This will limit any incentive for smaller producers or those with low value resources to adopt the proposed simplified MRRT arrangements and distort decision-making associated with the MRRT threshold. Denial of access to an MRRT starting base and prior year expenditure will also impair the market value of these businesses in the event of a possible acquisition by existing MRRT taxpayers because an acquirer would want to be able to utilise the losses and unutilised royalty credits.[16]

16 Chamber of Minerals and Energy of Western Australia, *Submission 5*, pp. 5-6.

3.45 However, Mr Hooke of the MCA observed that, for growing companies, keeping these records at an early stage of their development was an investment for the future:

> there will be compliance costs and, for some companies that are growing, it is not a bad investment on their part to be taking account of the costs that they will incur as they move through the growth cycle. When you do income tax, as you know, you do that on a company platform. But keeping the records for MRRT applicability, and therefore potential liability, is on a project by project basis. So if companies are growing it actually makes good sense to be working through those compliance arrangements and even bearing the costs in the early phases.[17]

Analysis

3.46 The intention of the simplified MRRT is to reduce the complexity and compliance costs for those miners who are not likely to bear an MRRT liability immediately and for the foreseeable future. Miners in these circumstances can choose not to keep the records about assets, expenses and revenue so as to minimise the administrative burden of the MRRT. However, a natural consequence of this choice is that without this information it is not possible to take those assets, expenses and revenues into account in the future.

3.47 Inevitably, small miners will have to consider whether it is worthwhile for them to carry the compliance costs associated with tracking assets, expenses and revenues. Some small miners will assess the value of doing so exceeds the costs, and will not choose to use the simplified method. For the others, it is appropriate that they be able to choose the simplified method in the knowledge of the benefits of doing so.

Conclusion

3.48 The committee notes the advice from several witnesses that they will not use the simplified MRRT system, so as to preserve their ability to carry forward allowances to offset against future MRRT profits. However, it is appropriate that small miners be given the option to use the system if they wish. The consequences of choosing this option are an inevitable trade off between the costs and benefits of keeping records for the MRRT.

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17 Mr Mitchell Hooke, Minerals Council of Australia, *Committee Hansard*, 9 November 2011, p. 17.

The emerging magnetite industry

Background

3.49 The evolution of Australia's iron ore industry has seen the development of a new extractive industry, the processing of low-grade magnetite ore into magnetite concentrate and pellets as a feedstock to the steelmaking process.

3.50 The magnetite industry is expected to continue to grow substantially in the future. The Magnetite Network informed the committee that:

> Selected MagNet member projects in Western Australia, alone, represent an initial capital investment of some $21.8 billion, an estimated $119.5 billion in annual export revenue, more than 14 750 direct construction jobs and 5 500 direct permanent jobs.[18]

3.51 Given the extensive processing required to produce magnetite, it is generally expected that its producers will not face high MRRT liabilities. The MCA submitted that:

> Projects mining relatively low value minerals which require significant downstream processing or "beneficiation" (e.g. magnetite ore) are unlikely to have significant (or indeed any) MRRT liabilities.[19]

3.52 The Magnetite Network submitted that magnetite ore is not a saleable product and has very little value that will be taxable under the MRRT. For this reason, the Magnetite Network suggested that magnetite has more in common with minerals excluded than those included in the MRRT. It proposed that magnetite be excluded from the MRRT on the basis that magnetite projects are unlikely to be liable for MRRT but would incur significant compliance costs that could damage the emerging industry.[20]

Analysis

3.53 Magnetite production involves significant processing and value adding in order to produce high grade concentrate and pellets from low grade ore. Although many of these costs relate to downstream operations (and so are not directly deductible under the MRRT), these costs will be taken into

18 Magnetite Network, *Submission 4*, p. 2.

19 Minerals Council of Australia, *Submission 7*, p. 21.

20 Magnetite Network, *Submission 4*, p. 2.

account in working out the revenue that reasonably relates to the low grade ore before it has been processed. For this reason, it may be reasonable to assume that magnetite producers will face lower MRRT burdens than other miners.

3.54 The heavy investment occurring in the magnetite industry will also serve to reduce its exposure to paying MRRT. Upstream investments made before 1 July 2012 will contribute to a starting base that will reduce future MRRT liabilities. Upstream investments made on or after 1 July 2012 will be immediately deductible under the MRRT. This further suggests that magnetite producers may not face significant MRRT liabilities in the near future.

Conclusion

3.55 It is appropriate that the resource tax reforms contained in this Bill are robust with respect to these new industries and technologies while ensuring they do not stifle these developments.

3.56 The committee considers it appropriate that the MRRT apply to magnetite, as it does to other types of iron ore. Nevertheless, given the high levels of initial investment occurring in the industry and the relatively high processing costs involved, it may be reasonable to expect that magnetite producers will not face significant MRRT liabilities especially in the early years of the MRRT. In that event, the operation of the low profit offset and the option for small miners to use the simplified system adequately address any concerns that the MRRT will impose undue burdens on these emerging miners.

Modelling and revenue estimates

Background

3.57 The *Explanatory Memorandum* to the Minerals Resource Rent Tax Bill 2011 shows the following revenue estimates:

Table 3.1 Revenue estimates for the MRRT

2011-12	2012-13	2013-14	2014-15
Nil	$3.7 billion	$4 billion	$3.4 billion

Source *Explanatory Memorandum, p. 4*

3.58 In evidence, Treasury stated that it expected that the larger mining companies would be paying the clear majority of the tax. The three large mining companies (Rio Tinto, BHP Billiton and Xstrata) comprise 88 per cent of the market share of iron ore in Australia,[21] and this mineral will provide approximately 75 per cent of the revenue under the MRRT.[22]

3.59 These estimates and the way Treasury calculated them were challenged by Fortescue Metals, who engaged BDO, an accounting firm, to model the effects of the MRRT. BDO did not model the MRRT in aggregate, but rather it looked at how the MRRT operated at the firm level. It found that Rio Tinto would have no MRRT liability in the first few years due to its varying deductions. This is clearly inconsistent with the Treasury figures, which imply that large firms could pay up to $1 billion in MRRT.

3.60 The BDO analysis also found that a very profitable smaller miner, with MRRT revenues of over $500 million and profit levels of 300 per cent, would have an MRRT liability of between $20 million and $50 million.[23]

3.61 AMEC also challenged Treasury's calculations. They commissioned Professor Pietro Guj of the University of Western Australia, who generated calculations of how the tax would affect an emerging producer.

3.62 During the hearings, a number of parties requested Treasury to release the data and assumptions underlying their modelling so that these disparities could be resolved.[24] For example, ICAA stated:

> We as a community should expect full transparency around the implementation of significant new policy like this. I am not sure that we have had that full transparency. I think in the latter part of the consultative process, over the last year or so, there certainly has been a very significant attempt to share information and to share thinking about the policy design and the expectations for the new mining tax. But I do not think it would reasonable to say that we have seen all of the relevant information, nor have we seen certain key aspects of the information such as, for example, the economic modelling that underpins the detailed analysis behind the mining tax.[25]

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21 Mr Colin Brown, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 7.

22 Mr Colin Brown, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 38.

23 Fortescue Metals Group, *Submission 1*, pp. 9-10.

24 Mr John Murray, BDO, *Committee Hansard,* Canberra, 9 November 2011, p. 2; Mr Simon Bennison, AMEC, *Committee Hansard,* Canberra, 9 November 2011, p. 31.

25 Mr Yasser El-Ansary, ICAA, *Committee Hansard,* Canberra, 9 November 2011, p. 14.

Analysis

3.63 There are a number of preliminary points that must be considered. For example, Treasury develops its estimates in a different way to the methods described above.

> ... it is a bit like saying we would model tobacco excise based on working out which people smoked and how much they smoked and adding that all up. We do not do that. We look at it from the aggregate data end of things—looking at importations, sales and production. So in our modelling we do not end up knowing who is paying it, we only know the overall result ... [26]

3.64 When looking at the macroeconomic effects of a tax, Treasury's approach of working with aggregate numbers is preferable. If Treasury were to consolidate a large number of estimates of how a tax would work at the firm level, this aggregation would multiply any possible errors and create a great deal more uncertainty about the estimates.

3.65 The other preliminary point is that the modelling provided by BDO has been subject to quality issues. BDO needed to correct a number of errors in previously published work. For example, it included Canadian and Guinean capital expenditure, when the MRRT only applies to Australian projects. However, Fortescue stated that the current iteration was accurate.[27] BDO has also made some assumptions that are not realistic, for example:

- assuming that a resource is low value for calculating revenues, but then assuming the resource is high value for calculating the starting base, which acts as a deduction; and
- assuming that a company's investment will be on upstream activities within the mine, and hence a deduction, whereas it is mainly on downstream activities, such as a railway, which means that it will not be a deduction for MRRT.[28]

3.66 Treasury responded to the transparency point in two ways. Firstly, it stated that it had already released a version of the model on the Internet in response to a Freedom of Information request:[29]

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26 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 42.

27 Mr Marcus Hughes, Mr Julian Tapp, Fortescue Metals Group, Mr John Murray, BDO, *Committee Hansard,* Canberra, 9 November 2011, pp. 7-8.

28 The Hon. Mr Wayne Swan MP, Treasurer and Deputy Prime Minister, *Exhibit 2,* p. [3].

29 Treasury, 'RSPT and MRRT Revenue Estimates,' http://www.treasury.gov.au/contentitem.asp?NavId=087&ContentID=1962> viewed 11 November 2011.

> It is available on the Treasury website and it was released under FOI on 14 February 2011. That is the model that we utilise—the only omissions from what was released on the website due to commercial-in-confidence information as the model was extensively informed by information which was provided on a commercial-in-confidence basis by mining companies ...
>
> It is a copy of the model. The assumptions that we used in the model are kind of embedded in there. It is not a precis of it. It was released under FOI, so what we actually published was what we were using at the time.[30]

3.67 There is another important reason for believing that the design of the MRRT will raise the forecast revenue, absent of changes due to movements in economic parameters. The design of the MRRT reflects consultation with the mining industry, including the provision of confidential information to the Treasury. The Government then used this information provided in good faith by the mining industry to determine the appropriate MRRT tax rate and size of deductions. In effect, the Heads of Agreement contains implicit revenue projections based on information provided by the mining industry which were integral to the design of the MRRT.

3.68 Treasury stated that the model includes some commercially sensitive information that had been provided to Treasury on a confidential basis. This related to the volume of production, the prices and the starting base:[31]

> Those matters were informed by consultation with companies. On an ongoing basis the Treasury renews its forecasts of commodity prices using a range of information, including consultations with industry groups. So that information is, as a result, commercially sensitive and was withheld from what was published on the website. Similarly the starting base that is used in the model was informed by consultations with industry. Again, that information was considered commercially sensitive and was withheld from the model. By the way, that was in consultation with the entities that provided the information. That is a requirement under the FOI Act. If we have third party information we actually have to ask for people's permission to release it.[32]

30 Mr Colin Brown, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 38.

31 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 38.

32 Mr Colin Brown, Treasury, *Committee Hansard,* Canberra, 9 November 2011, pp. 38-39.

3.69 AMEC has sought to work with Treasury in order to develop its own firm-based modelling. The Association stated in evidence:

> When the University of WA did its independent modelling and we took it to Treasury, obviously they were saying, 'The differential you're identifying is because of A, B and C.' We said: 'That's fine. Now you tell us the parameters that you've been using that would enable us to try and line the modelling up so that we're comparing apples with apples.' That is where their constraints started to emerge, in the sense that they were not able to divulge the key parameters that were discussed as commercial-in-confidence in July last year—that is, price, exchange rate et cetera. All we could do was discuss the parameters—that the fact was that the resource was a key component, yet we differed a bit on the valuation of that resource and a couple of other key aspects.[33]

3.70 Treasury replied that AMEC's modelling accurately drew out a number of features of the MRRT, although it did not demonstrate a difference between large and emerging miners, which was the key point of the exercise.[34] Smaller firms have done some early modelling on the effects of the MRRT on their operations and will make formal announcements once the Bills become law.[35]

3.71 Treasury reiterated to the committee that the release of third party information provided to agencies is set down in legislation and that its actions at all times have been as required by law.[36] It also noted that its estimates are consistent with those of the large mining companies, who will pay the great majority of the tax:

> One miner thinks that they and two other miners are not going to be paying too much tax. The view of one of the other miners, who is on the Resource Tax Implementation Group, is quite different. Their view happens to coincide with the modelling and the estimates that we had done. Mr Brown referred earlier to some information being provided. It is true that, fortuitously, that information reflected what we had already estimated ourselves. The design has, if you like, those two points of corroboration about it.[37]

33 Mr Simon Bennison, AMEC, *Committee Hansard,* Canberra, 9 November 2011, p. 31.

34 Mr Patrick Sedgley, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 39.

35 Mr Derek Humphrey, Brockman Resources Ltd, *Committee Hansard,* Canberra, 9 November 2011, p. 32.

36 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 41.

37 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 19.

Conclusion

3.72 The committee is of the view that Treasury has acted as openly as possible in developing its estimates for the MRRT. In order to design the tax so it operates as intended, it has used commercially sensitive information from large mining companies. Treasury is not able to release this information because the companies have not authorised it. The alternative would be for Treasury to develop taxes without this sort of information, which would lead to inferior policy.

3.73 Treasury has a good track record in providing estimates across a range of macroeconomic issues and the committee was not presented with any evidence that suggested otherwise in this case.

3.74 Smaller miners stated to the committee that they had some idea of how the MRRT would affect them and that they would make formal announcements when the bills became law. What in fact appears to be their main concern is that they cannot verify that large miners would be paying substantial amounts of MRRT.

3.75 At first instance, the tax affairs of these companies, like any other business, are between the government and the taxpayer. Further, both Treasury and the larger miners agree on the amounts that are likely to be paid. Given that Treasury also has a good track record in implementing tax reform, the committee is of the view that the weight of evidence supports its revenue estimates and that further action is neither required nor legally possible.

Mining investment growth

Background

3.76 During the inquiry, the committee received a range of views about whether the MRRT would affect mining investment in Australia. For example, Treasury stated that investment growth in Australia is very strong:

> In relation to mining investment since the announcement of the mining tax reforms, mining investment has increased from $35 billion in 2009-10 to $47 billion in 2010-11 and to an expected $82 billion in 2011-12. Mining employment has also grown substantially by 24.3 per cent over that period—that is around

> 44,000 jobs. That compares with employment grown of 2.1 per cent for the whole economy over that same period.[38]

3.77 However, the Minerals Council of Australia argued that investment that has already commenced will continue, but that a smaller proportion of the investment under consideration might eventuate than would otherwise be the case.[39]

3.78 AMEC and the Magnetite Network argued that Australia should be taking advantage of the investment window which now exists. In the medium to long term, iron ore and coal prices will drop because investment is occurring around the world, increasing supply. Investing now is more attractive because it increases the chances of capturing some of these higher prices.[40]

Analysis

3.79 As Treasury noted in evidence, determining the extent to which the MRRT causes changes to investment is a difficult exercise.[41] Given the long time lags involved in assessing projects and constructing them, it may be some time before conclusions can be made about what miners actually did in response to the MRRT, rather than what they are currently saying they are doing. However, investment remains strong and growing.

3.80 Evidence was not presented about the impact the current royalty regimes, which are a volume based taxes, have on current investment levels. Treasury evidence is that a profits based tax is more neutral than a volume based tax which continues to apply even if a mine is not profitable.

3.81 A profits based tax that allows for sufficient return on capital should not affect production and investment. Investors are only taxed if they are highly profitable. Because they can still earn a reasonable return, they should still continue to invest. For the MRRT, investors can earn the bond rate plus seven percent before any tax is charged.

3.82 Royalties are taxes on investment and production, and they are implemented arbitrarily with continual changes.

3.83 The Minerals Council of Australia, Fortescue Metals, and Treasury made the point during the inquiry that a new tax will change the commercial

38 Mr Patrick Sedgley, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 3.

39 Mr Mitchell Hooke, MCA, *Committee Hansard,* Canberra, 9 November 2011, p. 19.

40 Ms Megan Anwyl, MagNet, *Committee Hansard,* Canberra, 8 November 2011, p. 26; Mr Simon Bennison, AMEC, *Committee Hansard,* Canberra, 9 November 2011, p. 25.

41 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 12.

environment and will become part of a company's considerations in making an investment decision.[42] The pertinent question then becomes the long term effects on the mining sector of replacing a volume based tax with a profits based one across the life of mines, through high and low prices, and for highly profitable mines and more marginal mines.

3.84 In regards to the effect that the MRRT might have on investment, Treasury argued that the minerals sector already faces a number of more practical constraints:

> One reason for not updating the estimates of the impact on investment and jobs has been the feedback we received that the MRRT itself is not really a limiting factor on investment levels in the industry or employment. The limiting factors that the industry is facing are more in the nature of things like supply constraints in terms of the supply of capital goods, infrastructure availability, labour shortages and approval processes. Those things are much more of a constraint on growth in investment and jobs in the industry than the MRRT is. As we pointed out yesterday, there is very considerable planned investment in the pipeline, and the factors that are limiting that level of investment really go to things which are not anything to do with the MRRT.[43]

3.85 Because of its fundamental design features, the MRRT is likely to have little if any effect on mining investment. The MRRT revenues fall as mining profits fall, so investment in mining is shielded. This does not happen with royalties, which must be paid regardless of profitability. Because investment returns in a downturn will affect some investment decisions, profit-based taxes are better for investment than production or revenue based taxes such as royalties.

Conclusion

3.86 The committee appreciates that capital markets are global and that Australia is competing against other resource rich countries for investment. But the evidence presented to the committee is that mining investment is facing more practical constraints, such as labour, development approvals, and infrastructure.

42 Mr Anthony Portas, MCA, *Committee Hansard,* Canberra, 9 November 2011, p. 22; Mr Marcus Hughes, FMG, *Committee Hansard,* Canberra, 9 November 2011, p. 11; Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 3.

43 Mr Colin Brown, Treasury, *Committee Hansard,* Canberra, 9 November 2011, p. 39.

3.87 The committee notes that the MRRT, as a profits based tax, is more neutral in its effect on investment than the volume based tax that it effectively replaces. Actual investment plans indicate strong growth in the mining sector with the full knowledge of the MRRT factored in.

Constitutionality

Background

3.88 Opponents and critics of the MRRT have questioned the constitutional validity of the proposed tax.

3.89 In 2011 the Senate, through the Select Senate Committee on New Taxes, examined and reported on the proposed MRRT. The Select Committee (which comprised two Government senators and four Opposition senators) pursued the constitutional issue, only to note that: 'Whether the proposed MRRT and expanded PRRT are constitutional remains unresolved.'[44]

3.90 The report identifies the alleged impediments to the MRRT in the Constitution as being sections 51(ii), 99 and 114.

Section 51(ii)

3.91 Chapter I, Part V of the Constitution sets out the powers of the Parliament. The relevant section reads as follows:

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to ...
>
> (ii.) Taxation; but so as not to discriminate between States or parts of States.

3.92 The concern appears to be the differential impact of the MRRT on the States and Territories and their royalty regimes, as the bulk of the affected mining operations take place in Western Australia and Queensland.

3.93 In their submission, the Fortescue Metals group wrote that:

44 Senate Select Committee on the Scrutiny of New Taxes, *The Mining Tax: a bad tax out of a flawed process*, 29 June 2011, p. 161.

> ...the MRRT Bills impose an entirely additional tax, over and above the existing State based royalty regime which still applies with all its alleged inefficiencies and it does so in a manner that prejudices any States seeking to vary their royalty rates in pursuit of their own policy objectives...the way in which the MRRT interacts with the royalty regime – automatically offsetting any royalty reduction with the increased MRRT payments.[45]

3.94 Fortescue propose that this constitutes a form of discrimination, if 'a more modern interpretation is applied to the concept of discrimination'.[46]

3.95 In their submission, Treasury responded to this claim by stating that:

> The MRRT provides miners with a full credit for all State royalties paid in relation to the resources. We are of the view that the MRRT therefore does not discriminate between States or give a preference to one State over another.[47]

Section 99

3.96 Chapter IV of the Constitution covers finance and trade. Section 119 reads as follows:

> The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

3.97 Once again, the concern appears to be the differential impact of the MRRT on the States and Territories, as the bulk of the affected mining operations take place in Western Australia and Queensland, leaving the mining industry in other States and Territories untouched. The arguments in relation section 51 (ii) appear to also apply here.

Section 114

3.98 Chapter V of the Constitution covers the States. The relevant section reads as follows:

> Section 114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind

45 Fortescue Metals Group, *Submission 1*, p. 5.

46 Fortescue Metals Group, *Submission 1*, p. 5.

47 Treasury, *Submission 6*, p. 4.

> belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

3.99 The concern of MRRT critics here appears to be that the proposed tax falls on minerals, which belong to the States. However, the intention of the Bill is to tax the profit on the mining operation per se, which means that it is unlikely to breach section 114.

Analysis

3.100 The committee pursued the issue of the possible constitutionality of the MRRT with expert witnesses from the Treasury. Asked if the Bill was unconstitutional, Treasury responded by stating, 'not according to our advice'.[48]

3.101 When asked if Treasury had sought legal advice, Treasury replied that:

> At various stages during the creation of a new law, it is standard practice to seek legal constitutional advice on elements of it. From my memory, that has happened four or five times. I recall that because I am the fellow that signs the bills for it. There have been various aspects we have taken advice on as we have gone through, and obviously we would not be presenting a bill to the parliament if any of those concerns had existed ... Legal advice in the design of the tax is not customarily made public. But you can take my word for you; I am not lying to you. The advice does not show any risk of unconstitutionality that we have identified.[49]

Conclusion

3.102 After carefully considering the matter and given the expert advice from Treasury, the committee has formed the view that the there is little evidence to suggest that the Bills are unconstitutional. Given the legal advice Treasury has received, the committee accepts that that the bills are consistent with the Constitution.

48 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 9.

49 Mr Paul McCullough, Treasury, *Committee Hansard,* Canberra, 8 November 2011, p. 9.

4

Sharing the benefits of the mining boom

Introduction

4.1 Mineral resources belong to Australians and it is only right that the profits from the mining boom should be shared more widely. The Mineral Resource Rent Tax (MRRT), as previously discussed, ensures that mining profits are taxed more effectively and fairly. At the same time, the legislative package and measures announced by the Government will ensure that the revenue from the MRRT will be allocated to helping small business and workers. This will be a clear demonstration of the proceeds from the mining boom flowing to other sectors of the economy.

4.2 The MRRT revenue will help reduce the company tax rate for small business from 30 to 29 percent, and introduce a small business asset write off and deduction for motor vehicles.

4.3 The Superannuation Guarantee (SG) levy is currently set at 9 per cent. Revenue from the MRRT will help fund, over time, an increase in the SG to 12 per cent. In addition, the legislation will enable eligible low income earners to receive the low income superannuation contribution.

4.4 This chapter will examine these measures in detail and highlight the importance of these initiatives.

Mining profits and a fair share for Australians

4.5 The mining boom is resulting in unparalleled profits but there is concern that not all sectors of the economy are sharing in this prosperity. Small

businesses, for example, often struggle and those that are trade exposed are particularly disadvantaged because of the high exchange rate. The multispeed economy or patchwork economy is a feature of the mining boom. The Real Estate Institute of Australia (REIA) noted the disparity between different sectors of the economy:

> I am describing a picture at odds with the glowing stories of a mining boom, of the rivers of gold that are supposed to be coursing through our economy. Some sectors are doing well, others are carrying the pain. This is why the focus on small business at the recent tax forum, at which REIA and COSBOA were represented, was important. We welcomed the emphasis given by the Treasurer in his closing speech on small business and his commitment to consultations between the tax office and small business with the aim of simplifying the tax system.[1]

4.6 The Business Enterprise Centres Australia (BECA) described a similar picture of the economy:

> It is a fairness thing. The terms 'two-speed', 'multispeed' or 'patchwork' economy are used constantly and it varies from state to state and region to region. There is a significant amount of wealth that is leaving our shores in payments to shareholders, and we have small business, which is the backbone of the economy, struggling. There has to be a redistribution of that wealth. That wealth is only taken out of the country once and if it can assist small business with direct and instant impact it can only assist.[2]

4.7 Similarly, the REIA noted that it is 'about redistributing the money that is going to come in as a result of the mining tax', and 'we are happy that the money is being redistributed towards small business.'[3]

4.8 United Voice described a more immediate effect of the mining boom on the cost of living pressures faced by service workers in mining communities:

> Many United Voice members work in mining communities, providing health, catering, security, cleaning and other services. However, they have not necessarily enjoyed the benefits of the mining boom, with the cost of living skyrocketing in mining communities. Although such workers may receive additional compensation for working in remote areas, it is barely enough to

1 Ms Amanda Lynch, REIA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

2 Ms Jackie Zelinsky, BECA, *Committee Hansard*, Canberra, 8 November 2011, p. 34.

3 Ms Amanda Lynch, REIA, *Committee Hansard*, Canberra, 8 November 2011, p. 32.

> cover the basics, such as rent, which can cost up to $2,000 a week. Many towns are now having trouble attracting service workers because they cannot afford the rent. There is a substantial gulf between the perceived benefits of the mining boom and some of the actual impacts on our economy, environment, health and the day-to-day lives of working Australians.[4]

4.9 However, The Australian Chamber of Commerce and Industry (ACCI) argued that there was no link between the taxation of the mining sector and superannuation policy. ACCI stated:

> There is no natural or necessary connection between superannuation policy and the funding of retirement incomes, and taxation policy for the mining and resources sector. They are two separate issues, and both are issues of a substantial policy nature affecting the economy and broader society in potentially profound ways. Both issues require deep and considered policy consideration in their own right.
>
> The mere fact that the government asserts an association on the basis that 'the mining tax is needed to provide workers with better superannuation' (as the government from Prime Ministerial level down have claimed for over a year) is no reason why the parliament or its Committees should compromise one or other of the issues by dealing with these Bills cognately or jointly.[5]

Concessions for small business

Reduction in the company tax rate

4.10 The revenue from the MRRT will allow the government to reduce the company tax rate for small business from 30 to 29 per cent from 2012-13. The Assistant Treasurer noted that this measure will 'assist up to 720,000 incorporated small businesses, allowing them to reinvest more of the profits to grow their businesses.'[6]

4.11 The proposed cut in the company tax rate was highly supported. The REIA commented that it supports 'a reduction in company tax rate to

4 Ms Rebecca Stark, United Voice, *Committee Hansard*, Canberra, 9 November 2011, p. 35.

5 Australian Chamber of Commerce and Industry, *Submission 8*, p. 3.

6 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 6.

29 per cent and the incremental increase in superannuation paid to employees.'[7] The REIA stated:

> At the moment it is a knife edge environment. Anything can tip the balance between a viable business and one that is going into insolvency. So the one per cent reduction in company tax is a very important initiative in terms of giving business a margin and room to move.[8]

4.12 The Council of Small Business Australia (COSBOA) noted that the tax cut was 'a good thing.'[9] BECA was also supportive of the company tax cut stating:

> A significant issue for micro- and small business is cash flow. Any reform which assists small business with cash flow can only be welcomed. Specifically, the MRRT will have two immediate benefits for small business: the reduction in company tax of one per cent for small businesses in the next financial year and the instant write-off increasing from $1,000 to $6,500 effective 1 July 2012.[10]

Small business asset write off and deduction for motor vehicles

4.13 Schedule 2 of the Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011 will benefit small businesses by allowing them to immediately write–off depreciating assets that cost less than $6,500. This measure will take effect from the 2012-13 income year. The Assistant Treasurer commented that 'this increase from a threshold of $1,000 will allow small businesses to claim a deduction for more expensive assets—those costing less than $6,500 instead of less than $1,000—providing a cash flow benefit.'[11]

4.14 This measure, again, was highly supported. COSBOA stated:

> Instant depreciation is always good, from $1,000 to $6½ thousand. That is a good thing because people understand money and they understand at the moment that if they buy something for $1,200 they are going to have to depreciate it over a few years but now they can do a lot of things very quickly and that will help with

7 Ms Amanda Lynch, REIA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

8 Ms Amanda Lynch, REIA, *Committee Hansard*, Canberra, 8 November 2011, p. 31.

9 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

10 Ms Jackie Zelinsky, BECA, *Committee Hansard*, Canberra, 8 November 2011, p. 30.

11 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 6.

> their cash flow. I believe it also makes the tax system simpler, which is something that we are always looking for as well.[12]

4.15 COSBOA, however, did note that for a small business to benefit from this measure they have got to spend money, and 'at the moment a lot of little businesses out there are struggling for cash.'[13] While this concern was noted, it was also acknowledged that the instant tax write-off introduced during the Global Financial Crisis did have a stimulatory effect by bringing forward purchases.[14] BECA agreed that the depreciation was a positive measure stating:

> Discussion earlier today in respect of this item raised the question of real benefits to small business if they did not have the money to buy equipment. I think that a better way to look at this is the fact that many businesses need to make capital purchases in order to run their businesses. This increase in the write-off will have an immediate effect on the bottom line. For those businesses that need to borrow to make that purchase, they are more likely to get the loan approved by their bank manager, as the cash flow analysis presented to the bank will reflect the instant write-off, showing a better bottom line.[15]

4.16 Schedule 3 provides an accelerated initial deduction for motor vehicles purchased by small businesses from the 2012-13 income year. This means that a small business that purchases a motor vehicle costing $6,500 or more from the income year 2012-13 will be able to immediately write off up to $5,000 and will be able to depreciate the remainder of the value at 15 per cent in the first year and 30 per cent in following years. The Assistant Treasurer stated that 'it will mean that a self-employed man or woman in a trade on a 30 per cent marginal tax rate buying a new ute worth $33,960 will receive a tax benefit of $1,275 in the year they purchase the vehicle.'[16] The Assistant Treasurer stated:

> Businesses with an annual turnover of less than $2 million will benefit from this small business package. That is 96 per cent of Australia's 2.7 million small businesses. That is over 2½ million

12 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

13 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

14 *Committee Hansard*, Canberra, 8 November 2011, p. 29.

15 Ms Jackie Zelinsky, BECA, *Committee Hansard*, Canberra, 8 November 2011, p. 30.

16 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 5.

> people who between them employ up to five million other people.[17]

4.17 The REIA was highly supportive of the accelerated initial deduction for motor vehicles stating:

> …given the reliance that real estate agents have on using motor vehicles in the course of their employment, and this extends to all small businesses, the REIA particularly appreciate the accelerated initial deduction for motor vehicles, permitting my members to immediately write off up to $5,000 and depreciate the remainder of the value at 15 per cent in the first year and 30 per cent in following years.[18]

4.18 COSBOA also commented that the $5000 vehicle depreciation was a 'good thing'.[19]

4.19 The Institute of Chartered Accountants in Australia (ICAA) commented that 'we must do everything we can to make tax compliance simpler for small business owners, and I believe the introduction of the $6,500 instant asset write-off measure as well as the $5,000 motor vehicle accelerated depreciation write-off will go some way towards making things simpler.'[20]

Concessions for workers

Increasing the Superannuation Guarantee Levy from 9 to 12 per cent

4.20 The Superannuation Guarantee (SG) system was introduced in 1992 and fully phased in by 2001 to its current rate of nine per cent. It was designed to jointly reduce the future fiscal burden of providing Age Pensions to a growing ageing population and to enable more people to fund their retirement at a standard of living higher than the Age Pension.

4.21 In 2006 the predecessor to the committee, the House of Representatives Standing Committee on Economics, Finance and Public Administration conducted an inquiry into improving the superannuation savings of

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17 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 5.

18 Ms Amanda Lynch, REIA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

19 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

20 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Committee Hansard*, 9 November 2011, p. 13.

people under 40.[21] The then committee found that 'the lifestyle expected in retirement by many under 40s far exceeds that which could be funded from SG savings alone.'[22]

4.22 Similarly, the Financial Services Council also warned that 'unfortunately, the current SG rate is at nine per cent and that will fail to provide people with their expectations of a comfortable retirement.'[23] The Australian Institute of Superannuation Trustees (AIST) stated:

> If the SG stays at nine per cent, even after 40 years of contributions over a working life, the majority of Australians will still rely heavily on the age pension. I think most Australians expect better from our system. Current balances for superannuation are quite low—they are approximately $71,000 for men and $40,000 for women. So the extra three per cent over a working lifetime will allow many Australians to enjoy retirement rather than just to get by.[24]

4.23 The AIST reported that its research and independent polling consistently shows that 'the Australian people—more than two-thirds—support the increase in SG from nine to 12 per cent and that many Australians are worried that they do not have sufficient funds for their retirement.'[25] In particular, AIST research showed that women were particularly vulnerable, with research conducted in 2010 showing that 'the median balance of Australian women at retirement was around $30,000.'[26]

4.24 The Assistant Treasurer, during his second reading speech, also noted that the current 9 per cent SG was inadequate particularly for women who can have significant breaks in their working life. The Assistant Treasurer commented that 'it is of great concern to me, and I know of great concern to the Prime Minister and Treasurer, that whilst women live longer than men, their super balances are in fact on average about 40 per cent lower.'[27] The Assistant Treasurer stated:

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21 House of Representatives Standing Committee on Economics, Finance and Public Administration, *Improving the Superannuation Savings of People under 40*, May 2006.

22 House of Representatives Standing Committee on Economics, Finance and Public Administration, *Improving the Superannuation Savings of People under 40*, May 2006, p. iii.

23 Mr Andrew Bragg, Financial Services Council, *Committee Hansard*, Canberra, 8 November 2011, p. 38.

24 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 38.

25 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 38.

26 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 38.

27 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 6.

> Our starting point is that nine per cent is simply not enough, especially for women, who have breaks in their career rearing the next generation when they are not earning, and therefore cannot put away the nine per cent for their future.
>
> That is why we are finishing, as Paul Keating planned many years before, the nine per cent up to 12 per cent. And in doing this we are strengthening superannuation.[28]

4.25 The legislation gradually increases the SG with increments of 0.25 per cent on 1 July 2013 and 1 July 2014. From then increments will increase by 0.5 percentage points applying annually up to 2019-20 when the SG rate will be set at 12 per cent. The cost of increasing the SG from 9 to 12 per cent is shown in table 4.1.

Table 4.1 Cost of increasing the SG from 9 to 12 per cent

2011-12	2012-13	2013-14	2014-15
Nil	Nil	-$240 million	-$500 million

Source Explanatory Memorandum, Superannuation Guarantee (Administration) Amendment Bill 2011, p. 3.

4.26 The Assistant Treasurer stated that 'the mining tax will pay for the tax concessional treatment of the additional three per cent superannuation guarantee—with workers retirement contributions taxed at 15 per cent instead of their marginal personal income tax rate.'[29]

4.27 There was wide support in the evidence for the proposed increase in the SG from 9 to 12 per cent. COSBOA stated:

> I will start by saying that the mining tax is an interesting thing. A major part of it is the increase in superannuation from nine per cent to 12 per cent, and that is a good thing. I have been around superannuation long enough, complaining about our process and our role in it, to also know that the superannuation guarantee is a good thing and that we need to increase it to help people retire into a decent life. Having said that, we need to make sure we manage that changing process properly.[30]

4.28 The AIST also supported the measure and, in particular, noted its importance to improving the retirement savings of women:

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28 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 9.

29 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 9.

30 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 29.

> The other issue for women is that they have time out of the workforce and, on average, the time out of the workforce costs women about 23 per cent of their retirement savings. Of course, we all know that women have longer retirement than men, so some of the measures contained within these bills are very important to assist women. We also know that the number of Australians aged over 65 is projected to grow from the current three million to 8.1 million in 2050 and, at the same time, the number of working Australians is going to decrease.[31]

4.29 While COSBOA supported increasing the SG from 9 to 12 per cent, it did raise concerns about compliance costs for small business.[32] However, BECA was not so concerned about this issue stating:

> From a BECA perspective, I support the fact that we do need to consider changes and the effect on the administrative processes for microbusinesses and small businesses. But in regard to the specific increase, BECA generally works with microbusinesses, home based businesses, people who are really only employing themselves. That is a huge percentage of our market. So an increase in superannuation is welcomed in that it is money that the small-business owners are actually going to put in savings. I think that it is a good thing. The incremental increase, whilst it will have some impact on admin—and I support Peter on being able to ensure that that is watched very carefully—particularly the slow phase-in over the first two years, I do not believe will make a huge impact. It will be absorbed into the overall on-costs.[33]

4.30 The AIST also believed the implementation for the SG increase could be managed noting that 'the gradual timetable for the implementation of the SG increases will give business plenty of time to adjust.'[34] The AIST stated:

> The phase-in period is much longer than the period that was given for super to get from nought to nine per cent, between 1992 and 2002. At that time, employers and other commentators warned that the SG would be a disaster for business, particularly small business, that businesses would be forced to lay off workers and that some businesses would be forced to close their doors. History has shown us, however, that none of these things occurred. Ten years after the SG was introduced, company profits had risen,

31 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 39.
32 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 28.
33 Ms Jackie Zelinsky, BECA, *Committee Hansard*, Canberra, 8 November 2011, p. 30.
34 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 39.

> unemployment had fallen and we found that SG rates were largely paid for from productivity gains in the form of forgone wages. It must also be noted that already in Australia one in four employers pays at least 10 per cent superannuation. So they pay above the SG rate and therefore increases will not kick in until much later for them.[35]

4.31 During the hearing, COSBOA noted that with the proposed changes to the SG, it would be expected that the Australian Taxation Office (ATO) would develop a communication strategy to inform small business and workers of the new arrangements. COSBOA noted that 'the ATO, as I think I have said before, are my agency of choice for communications with the small business community.'[36]

4.32 As previously noted, ACCI rejects the linkage between the MRRT and the changes to superannuation. ACCI proposed:

> That the Committee recommend to the Parliament that it provide full opportunity to consider the mining tax legislation and the Superannuation Levy Bill on their merits and in their own right, and that the debate on the Superannuation Levy Bill be deferred to 2012 and that it not be debated concurrently or conjointly with the mining tax Bills.[37]

4.33 ACCI stated that it 'opposes the seven proposed increases in the Superannuation Levy Bill' noting that 'the Bill is a new $20 billion compulsory levy on payroll, akin to a new payroll tax (it's not a tax in the strict sense, but operates on employers as a tax)'[38]. ACCI stated:

> Taxes and levies on payroll are taxes and levies on jobs. The more people employed, the more hours of work provided by employers, the more levy employers pay. Nor is the proposal 'a 3% increase'. It is actually a one-third (33%) increase to an existing employer levy.[39]

4.34 ACCI further commented that 'whether the 9% paid by employers is or is not adequate for future retirement income purposes, the idea that Australian employers should bear the burden of funding the whole or

35 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 39.
36 Mr Peter Strong, COSBOA, *Committee Hansard*, Canberra, 8 November 2011, p. 33.
37 Australian Chamber of Commerce and Industry, *Submission 8*, p. 4.
38 Australian Chamber of Commerce and Industry, *Submission 8*, p. 4.
39 Australian Chamber of Commerce and Industry, *Submission 8*, p. 4.

most of the superannuation guarantee levy is unbalanced and unfair, by both international standards and domestic considerations.'[40]

4.35 ACCI disputed claims that the increase in the SG can be funding by wage-trade-offs. ACCI stated:

> There is no amending legislation to require minimum wage setting by Fair Work Australia to discount future wage rises. Once legislated as an employer obligation, incentive would be removed for unions in enterprise bargaining to voluntarily agree to discount wage rises for higher superannuation. This Bill, if enacted, will kills the prospect of wage-superannuation trade-offs in collective bargaining, at least for this first 12%.[41]

4.36 In view of this concern, ACCI recommended that the government amend the Fair Work laws so as to require minimum wage decisions by Fair Work Australia to discount increases it may order by the relevant cost to employers of the corresponding years of the seven proposed levy rises.'[42]

4.37 The ICAA noted that the 'proposed increase in the compulsory retirement savings of working Australians is an important reform' and 'broadly, the institute is supportive of policies that deliver better retirement incomes for hardworking Australians.'[43] However, the ICAA stated:

> But there are other options. The Future Tax System review recommended that it would be more economically efficient to reform the complex tax arrangements that currently exist in respect of superannuation instead of going for the easy option of simply increasing the compulsory savings rate. In the institute's view, it would have been wise to look more closely at the recommendations made in this area before moving to increase the compulsory savings rate. Perhaps in the fullness of time, however, there will be an opportunity to do precisely that.[44]

4.38 During the hearing, it was noted that when the SG was introduced in 1992 pessimistic claims were made that the policy would lead to mass redundancies and businesses being regulated out of existence. Treasury, however, advised that none of these events occurred stating that 'the

40 Australian Chamber of Commerce and Industry, *Submission 8*, p. 5.

41 Australian Chamber of Commerce and Industry, *Submission 8*, p. 8.

42 Australian Chamber of Commerce and Industry, *Submission 8*, p. 9.

43 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Committee Hansard*, 9 November 2011, p. 13.

44 Mr Yasser El-Ansary, Institute of Chartered Accountants in Australia, *Committee Hansard*, 9 November 2011, p. 13.

nature of the superannuation guarantee levy and the slow introduction of the rate increase meant that its effects on employment were minimal.'[45]

4.39 Treasury were then asked whether the impact of raising the SG from 9 to 12 per cent would be of a similar nature, Treasury commented that 'given the time lag in which it will mature to 12 per cent, yes.'[46]

Raising the SG age limit

4.40 Currently, the SG only applies to people under age 70. The Superannuation Guarantee (Administration) Amendment Bill 2011 provides for the age limit to be raised from 70 to 75. The EM notes that 'in the 2013-14 income year, the first year for this measure, employers are required to pay additional SG amounts for their workers aged up to 75, on which superannuation funds will be subject to income tax at a 15 per cent rate.'[47]

4.41 The EM also noted that the 'in the 2014-15 income year, at the time employers lodge their tax returns for the 2013-14 income year, employers will be able to claim a deduction for the superannuation amounts paid to workers aged up to 75, which will be an ongoing cost to revenue.'[48] Table 4.2 sets out the cost of this measure:

Table 4.2 Costs of applying the SG to workers aged up to 75

2011-12	2012-13	2013-14	2014-15
Nil	Nil	$15 million	-$15 million

Source Explanatory Memorandum, Superannuation Guarantee (Administration) Amendment Bill 2011, p. 4.

4.42 However, during the Second Reading on the Bill, the Assistant Treasurer announced that the government had decided to remove the age limit altogether. The Assistant Treasurer stated:

> However, as a result of the strong representations from the members of the Labor caucus and backbench, including not least the member for Petrie and the member for Blair, and from the crossbench the member for Lyne and the member for New

45 Mr Paul McBride, Department of the Treasury, *Committee Hansard*, 8 November 2011, p. 10.

46 Mr Paul McBride, Department of the Treasury, *Committee Hansard*, 8 November 2011, p. 10.

47 Explanatory Memorandum, Superannuation Guarantee (Administration) Amendment Bill 2011, p. 3.

48 Explanatory Memorandum, Superannuation Guarantee (Administration) Amendment Bill 2011, p. 4.

> England, we have decided to remove the age limit for superannuation contributions altogether.
>
> This means that an additional 18,000 Australians over the age of 75 will get the benefit of superannuation if they continue working. This will commence on 1 July 2013 to provide sufficient lead time for older Australians and their employers to adjust.
>
> Making superannuation contributions compulsory for these mature-age workers will improve the adequacy and equity of the retirement income system and provide an incentive for those older Australians who wish to remain in the workforce longer not to be discriminated against if they do so.[49]

4.43 The AIST fully supported the proposal to remove the age restriction on the SG stating:

> Another important component of this bill is that we are eventually going to get rid of the age restrictions for SG. As we have an ageing population and people want to work longer, we think that this is an important measure for older workers.[50]

Low income superannuation contribution

4.44 Schedule 4 of the Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011 enables eligible low income earners to receive the low income superannuation contribution. The Assistant Treasurer commented that 'currently, 3.6 million low-income Australians, including around 2.1 million women get no (or minimal) tax benefit from contributing to superannuation, due to the fact that the 15 per cent superannuation contribution tax is above or equivalent to their income tax rate.'[51] The Assistant Treasurer stated:

> Let us reflect for a moment on these numbers—3.6 million Australians. That is around three out every 10 workers who do not get a tax benefit from contributing to superannuation; 2.1 million of them are women, that is three in every eight women in the workforce.
>
> Put another way the 3.6 million Australians includes:

49 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 9.

50 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 39.

51 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 6.

- Around 1.1 million workers in New South Wales
- Around 910,000 workers in Victoria
- Around 800,000 workers in Queensland
- Around 260,000 workers in South Australia
- Around 360,000 workers in Western Australia
- Around 90,000 workers in Tasmania
- Around 30,000 workers in the Northern Territory
- Around 50,000 workers in the ACT

> The Gillard government is acting on the recommendation of the Henry review, which said that superannuation tax concessions should be distributed more equitably.[52]

4.45 Low income earners are defined as individuals with an adjusted taxable income of $37,000 or less. The maximum amount payable is $500.

4.46 The EM noted that this measure is dependent on the implementation of the MRRT package of Bills.

4.47 The AIST commented on the importance of this measure stating:

> The lower income rebate is also a very important measure. As a result of the flat taxation of concessional contributions, around 3.5 million Australians get little or no income tax concessions on their superannuation guarantee. Providing a superannuation payment of up to $500 annually for eligible low-income earners effectively rebates that tax. The low-income rebate will be particularly of assistance to women, who make up the bulk of low-paid, part-time and casual workers. Indeed, it is expected that around 60 per cent of the recipients of the rebate will be women.[53]

Regional Infrastructure Fund

4.48 On 9 June 2010 the Government announced the establishment of the Regional Infrastructure Fund.[54] The Treasurer stated that 'the Government's Regional Infrastructure Fund (RIF) is a major new initiative

52 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 6.

53 Ms Fiona Reynolds, AIST, *Committee Hansard*, Canberra, 8 November 2011, p. 39.

54 The Hon Kevin Rudd, MP, Prime Minister, the Hon Anthony Albanese, MP, Minister for Infrastructure, Transport, Regional Development and Local Government, *Media Release*, $6 Billion Regional Infrastructure Fund, 9 June 2010.

that will provide an ongoing funding stream for economic infrastructure, subject to the passage of the Minerals Resource Rent Tax legislation.'[55]

4.49 The Department of Transport and Infrastructure notes that 'the Australian Government established the Regional Infrastructure Fund to invest the proceeds of a resurgent resource boom to address urgent infrastructure needs, while supporting the mining industry, boosting export capacity and developing and growing regional economies.'[56]

4.50 The Regional Infrastructure Fund is worth $6 billion over 2010-11 to 2020-21, with $5.6 billion subject to the passage of the MRRT.

4.51 The Department of Transport and Infrastructure noted that the broad objectives of the Regional Infrastructure Fund are to:

- Promote development and job creation in mining communities, and in communities which support the mining sector;
- Provide a clear benefit to Australia's economic development, and to investment in Australia's resource or export capacity; and
- Address potential capacity constraints arising from export production and resource projects.[57]

4.52 The Assistant Treasurer during his second reading speech stated:

> The MRRT will fund billions of dollars of new roads, bridges and other critical infrastructure, such as the Gateway project in Western Australia. Much of this infrastructure will benefit where the resources come from and where the workers and their families live, such as the great coalmining regions of New South Wales and Queensland.[58]

4.53 BECA was extremely supportive of the initiative particularly focusing on the benefits it would have for small business and identifying access to broadband as a significant gain. In particular, BECA noted that 60 per cent of the funding for the initiative came from the MRRT. BECA stated:

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55 The Hon Wayne Swan, MP, Treasurer, *Media Release*, Delivering the Infrastructure Australia Needs, 10 May 2011.

56 The Department of Transport and Infrastructure, [http://www.infrastructure.gov.au/infrastructure/rifp/], viewed 11 November 2011.

57 The Department of Transport and Infrastructure, [http://www.infrastructure.gov.au/infrastructure/rifp/], viewed 11 November 2011.

58 The Hon Bill Shorten, MP, Assistant Treasurer, Second Reading Speech, House of Representatives Hansard, 2 November 2011, p. 1.

> A really important initiative, however, funded by the MRRT is the new Regional Infrastructure Fund. Specifically, I refer to the Regional Development Australia Fund. Regional communities will be able to apply for funding to implement a range of projects. The benefits will flow on immediately to the micro-and small businesses in those specific locations. An obvious example, from a BECA perspective, is access to broadband. Of course, we are only a small way down this pathway, but our BECs are already seeing a positive impact on the small and microbusinesses at the local level as they are preparing themselves for the rollout. We are already starting to collect case studies on the geographic areas where it has arrived. The fact that 60 per cent of the funding of this comes from MRRT is an excellent start to redistributing the wealth of our mineral resources.

Overall conclusions

4.54 The mining boom is generating massive profits but not all Australians are benefitting. The government's proposal to tax mineral resources more efficiently and link the increased revenue to specific measures which support small businesses and workers is an effective solution to sharing Australia's mineral wealth across Australia and into the future.

4.55 Mineral resources are currently taxed through a combination of royalties and company tax. Royalties are an inefficient taxing arrangement. The Australia's Future Tax System Review found that royalty regimes were the most distorting taxes in the Federation. Specifically, royalties are often set at rates low enough to operate in periods when commodity prices are low to average. This means that royalties fail to provide an adequate return when commodity prices are high as they are now and have been through much of the mining boom. In contrast to royalties, the MRRT takes into account the profitability of mining operations.

4.56 While there were concerns raised that the MRRT would disadvantage small miners, the committee does not consider that the Bill discriminates against small or emerging miners. In most respects the MRRT applies in the same way to all miners regardless of their size. The exceptions are those features of the MRRT that are tailored to benefit smaller miners. In particular, the Bill relieves a miner of any MRRT liability if its mining profit is less than $50 million. The Bill also gives a small miner the choice

to simplify their compliance and record keeping obligations. Both of these features exclusively serve the interests of smaller and emerging miners.

4.57 Industry also expressed concerns that it was not able to access all of the information that Treasury used to generate its revenue estimates for the MRRT. Treasury released on the Internet as much of the modelling as it legally could in February this year. Some of the modelling was based on commercially confidential information provided to it by mining companies.

4.58 As detailed in this Chapter, the revenue from the MRRT will be used to fund a range of measures to support small business and workers. This linkage was generally supported. The Australian Chamber of Commerce and Industry (ACCI), however, did not accept that there was a connection between the taxation of mining resources and superannuation policy. In addition, ACCI rejected the measure to increase the Superannuation Guarantee for workers from 9 to 12 percent but was silent on the support measures proposed for small business.

4.59 In contrast to ACCI, the Business Enterprise Centres Australia (BECA) commented that 'there is a significant amount of wealth that is leaving our shores in payments to shareholders, and we have small business, which is the backbone of the economy struggling'. BECA concluded that 'there has to be a redistribution of that wealth.' The Real Estate Institute of Australia noted that it is 'about redistributing the money that is going to come in as a result of the mining tax', and 'we are happy that the money is being redistributed towards small business.' The Council of Small Business of Australia commented that 'the superannuation guarantee is a good thing and that we need to increase it to help people retire into a decent life.'

4.60 The committee rejects ACCI's position. The mining boom is generating significant profits but not all Australians are benefitting from this prosperity. In particular, small business is often struggling, and workers' retirement savings should be increased. In particular, women who have longer life expectancy have on average less retirement savings.

4.61 The government's approach to taxing mining resources more efficiently and distributing that revenue to small business and workers ensures that the additional taxation on mining resources is flowing through to tangible outcomes.

4.62 It should be noted that the cost of the superannuation package is not insignificant. During the hearing, Treasury confirmed that the cost across the forward estimates was approaching $2 billion.[59]

4.63 ACCI rejected the proposal to increase the SG from 9 to 12 per cent, and warned that 'once legislated as an employer obligation, incentive would be removed for unions in enterprise bargaining to voluntarily agree to discount wage rises for higher superannuation.' When the SG was first introduced in 1992 a range of fears were raised suggesting that small businesses would be regulated out of existence or there would be mass dismissal of employees.

4.64 Treasury indicated that these concerns were unfounded and confirmed that when the SG was first introduced, 'the nature of the superannuation guarantee levy and the slow introduction of the rate increase meant that its effects on employment were minimal.' In relation to the current proposal to lift the SG from 9 to 12 per cent, Treasury advised that the impact on employment would also be minimal.

4.65 In conclusion, the committee has thoroughly scrutinised the MRRT and notes that previously it has been subject to two extensive consultation processes. The committee is confident that the legislation will achieve its objectives and not, as some mining companies have suggested, result in smaller miners being disadvantaged and paying the bulk of the tax. In addition, the decision to link the MRRT to a range of measures to support small business and working people is a creative response and fully supported. The committee, therefore, recommends that the MRRT Bill and related bills be passed.

59 Ms Ruth Gabbitas, Treasury, *Committee Hansard*, Canberra, 8 November 2011, p. 10.

Recommendation 1

4.66 **That the House of Representatives pass all 11 Bills in the package, namely:**

- **the Minerals Resource Rent Tax Bill 2011 and the four related minerals Bills;**
- **the Petroleum Resource Rent Tax Assessment Amendment Bill 2011 and the three related petroleum Bills;**
- **the Superannuation Guarantee (Administration) Amendment Bill 2011; and**
- **the Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Bill 2011.**

Julie Owens, MP
Chair
17 November 2011

Appendix A – Submissions and exhibits

List of submissions

No.

1. Fortescue Metals Group Ltd
2. The Association of Superannuation Funds of Australia Limited
3. UnitingJustice Australia
4. Magnetite Network (MagNet)
5. Chamber of Minerals and Energy of Western Australia
6. Department of the Treasury
   - 6.1 Supplementary submission 1
   - 6.2 Supplementary submission 2
7. Minerals Council of Australia
8. Australian Chamber of Commerce and Industry (ACCI)
9. Association of Mining and Exploration Companies Inc

List of Exhibits

No.

1. Association of Superannuation Funds of Australia, Spotlight on Henry. A Comparative Analysis of the Henry Recommendations with the proposed increase of the Superannuation Guarantee to 12 per cent
2. Deputy Prime Minister and Treasurer, the Hon. Wayne Swan MP, correspondence to Mr John Murray of BDO, dated 8 November 2011
3. Sherif Andwares of BDO, correspondence to the Deputy Prime Minister and Treasurer, the Hon. Wayne Swan MP, dated 8 November 2011

Appendix B – Hearings and witnesses

Tuesday, 8 November 2011-Canberra

Department of the Treasury

Mr Paul McCullough, (former) General Manager, Business Tax Division

Mr Patrick Sedgley, Manager, Resource Tax Unit, Business Tax Division

Ms Kate Roff, Principal Adviser, Resource Tax Unit, Business Tax Division

Mr Haydn Daw, Manager, Small Business and Trusts Unit, Business Tax Division

Mr Paul McBride, General Manager, Personal and Retirement Income Division

Ms Ruth Gabbitas – Senior Adviser, Contributions & Accumulation Unit, Personal and Retirement Income Division

Mr Colin Brown, Manager, Costing and Quantitative Analysis Unit, Tax Analysis Division

Australian Taxation Office

Ms Stephanie Martin, Deputy Commissioner, Resource Rent Tax

Magnetite Network

Mr Bill Mackenzie, Managing Director, Asia Iron

Mrs Megan Anwyl, Executive Director

Small business organisations

Council of Small Business of Australia

Mr Peter Strong is the Executive Director

Ms Amanda Lynch, Deputy Chair

Real Estate Institute of Australia

Ms Amanda Lynch, Chief Executive Officer

Business Enterprise Centres Australia

Ms Jackie Zelinsky, CEO

Superannuation industry

Financial Services Council

Mr Andrew Bragg, Senior Policy Manager

Australian Institute of Superannuation Trustees

Ms Fiona Reynolds, CEO

Association of Superannuation Funds of Australia

Mr Ross Clare, Director, Research and Resource Centre

Wednesday, 9 November 2011 – Canberra

Institute of Chartered Accountants in Australia

Mr Yasser El Ansary, Tax Counsel

Fortescue Metals Group

Mr Julian Tapp, Director Strategy

Mr Marcus Hughes, Head of Tax

Mr John Murray, Tax Director, BDO Perth

Minerals Council of Australia

Mr Mitchell H. Hooke, Chief Executive Officer

Dr John Kunkel, Director, Economics and Taxation

Mr Anthony Portas, Head of Tax—Asia Pacific, Anglo American

Mr Brian Purdy, Vice President, Resource Tax Project, BHP Billiton

Association of Mining and Exploration Companies

Mr Simon Bennison, Chief Executive Officer

Mr Graham Short, National Policy Manager

Mr Derek Humphrey, CFO Brockman Resources

(Joined via Telephone Conference)

Mr David Richardson, CFO Gindalbie Metals

Mr Morgan Ball, CFO and Company Secretary BC Iron

United Voice

Ms Rebecca Stark, Head, Responsible Investment and Engagement

Department of the Treasury and the Australian Taxation Office

Mr Paul McCullough, (former) General Manager, Business Tax Division

Mr Patrick Sedgley, Manager, Resource Tax Unit, Business Tax Division

Ms Kate Roff, Principal Adviser, Resource Tax Unit, Business Tax Division

Mr Colin Brown, Manager, Costing and Quantitative Analysis Unit, Tax Analysis Division

Ms Stephanie Martin, Deputy Commissioner, Resource Rent Tax

Appendix C – List of advisory reports

Below is a list of advisory reports tabled by the House of Representatives Standing Committee on Economics in the 43rd Parliament.

No.

1. Inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011
2. Inquiry into Indigenous economic development in Queensland and advisory report on the Wild Rivers (Environmental Management) Bill 2010
3. Advisory report on the Taxation of Alternative Fuels Bills 2011
4. Advisory report on the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011
5. Advisory report on the Competition and Consumer (Price Signalling) Amendment Bill 2010 and the Competition and Consumer Amendment Bill (No. 1) 2011
6. Avisory report on the the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011
7. Advisory report on the Corporations (Fees) Amendment Bill 2011
8. Advisory report on the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011

9. Advisory report on the Minerals Resource Rent Tax Bill 2011 and related bills