Executive Summary

When the review of Australia's taxation system—Australia's Future Tax System Review (the Henry Tax Review) was commissioned in May 2008, Australians were promised root and branch reform leading to a 'fairer, simpler' tax system.

Instead, the centrepiece of the government's initial response to the 138 Henry Tax Review recommendations announced on 2 May 2010 was a complex $24 billion new tax on mining.

The government sought to impose its so called Resource Super Profits Tax (RSPT) without having engaged in any meaningful dialogue with industry or state governments (who were going to have their royalties abolished in the process).

Key information about highly relevant assumptions driving revenue estimates for the new tax was kept secret by the government. Even so, the increasing consensus was that the government had massively underestimated the revenue which would flow from its new tax. Following extensive questions raised in this inquiry, the government now concedes that revenue over the forward estimates would have been double the $12 billion estimated in the 2010-11 Budget only two months earlier.

The RSPT proposal and the way it was introduced did immediate damage to the economy, jobs and investment in the mining industry.

The government agreed, changed Prime Minister and sought to 'move forward' by negotiating changes to its mining tax – albeit with the three largest mining companies only.

On 2 July 2010, within a week of changing Prime Minister, the government announced its new mining tax proposal – the now $10.5 billion Minerals Resource Rent Tax (MRRT) and expanded Petroleum Resource Rent Tax (PRRT). Hundreds of mining companies directly impacted by this new tax had been excluded from any discussions in the lead-up to its announcement. State and territory governments were again excluded from any discussions even though changes to the royalty arrangements under the new tax are directly relevant to them.

The government's new mining tax has significant implications for the Budget, the economy, jobs and investment in the mining industry and for states like Western Australia (WA), Queensland and New South Wales (NSW) in particular. Yet, the government sought to keep important detail about the impact of its new mining tax proposal on all these important areas secret.

Initially, the government sought to hide the true impact of its new mining tax proposal on revenue estimates in the Budget. Then, during the committee's inquiry, Dr Ken Henry AC, Secretary of the Department of the Treasury, conceded that the government had made changes to assumptions on a number of key variables including commodity prices, production volumes and exchange rates which were part responsible for increased revenue from the tax. However, no information was provided on how much of the revenue impact had come from changes in assumptions and how much had arisen from changes to the original mining tax.

The day after the committee's final hearing with Dr Henry, the Treasurer released an Economic Statement. As a result we now know that $6 billion out of $10.5 billion in revenue from the new mining tax is based on changed assumptions for commodity prices, production volumes and other variables. We also now know that the change from the RSPT to the MRRT/expanded PRRT arrangement in itself reduced estimated revenue by $7.5 billion.

The committee is of the view that the development of the so-called Resource Super Profits Tax was severely handicapped by a failure to first consult on its *specifics*. Most detailed policy proposals will at first be released for consultation. This would usually happen either through a 'green' paper or through a draft report in an inquiry context. The government's failure to adhere to this time-tested policy development principle directly contributed to the mistakes it made.

Yet, these same mistakes are being repeated in regards to the MRRT/expanded PRRT proposals. These latest changes have been exposed to no consultation with most of the affected sector. Moreover, 'policy by deal' with selected large companies, is no way to develop robust and meaningful reform in the public interest. Indeed, from this perspective, the policy development process behind the MRRT and expanded PRRT is even worse than that which developed the RSPT. The risk is real that it will deliver even worse policy outcomes, either through lack of understanding of all the implications or through a failure to consider better alternative approaches.

The committee is very concerned that the government still refuses to release basic information on the design and implications of the tax.

We still do not know what the commodity price, production volume, exchange rate and other assumptions are

This is very basic information which should be publicly available. Without it we cannot know whether the government's revenue estimates are credible and can be trusted. Governments relying on revenue from mining taxes, with Budget outcomes sensitive to changes in any of these variables should publish those key assumptions as a matter of course. It is 'usual budget practice' for example for state governments (of both persuasions) in Western Australia to do so.

We still do not know how much of the $10.5 billion comes from Western Australia, Queensland, New South Wales or any of the other states and territories

The WA Department of Treasury and Finance has conservatively estimated that about $7 billion out of $10.5 billion will come from Western Australia. It is a figure that has not been disputed by the government. If the WA Treasury estimate is accurate, and they have released their methodology and assumptions for scrutiny, then it is no wonder the government is seeking to keep that information secret from people in Western Australia.

We still do not know how much revenue is expected to come from iron ore, how much from coal and how much from oil and gas

Dr Henry conceded during the inquiry that most of the revenue from the government's new mining tax over the forward estimates will come from iron ore. How much?

We still don't know what the impact of the new mining tax will be beyond the forward estimates.

We know that Treasury has done the work to assess the impact of the new mining tax beyond the forward estimates and we know that the government spent the estimated revenue from the Resource Super Profits Tax beyond the forward estimates.

We do know that the new mining tax proposal will be worse for jobs and investment in the mining industry than its RSPT predecessor

Dr Henry confirmed this during the committee's inquiry. However, Treasury officials also confirmed that no analysis similar to the KPMG Econtech assessment of the impact of the new mining tax arrangements on jobs and investment in the mining industry had been undertaken or commissioned by the government.

Government secrecy and contempt of the Senate

The government is treating all of this information sought by the committee as if it relates to state secrets. The committee is concerned that the true impact of this new tax on the Budget, the economy, jobs, on investment in the mining industry and on states like WA, Queensland and NSW cannot be properly assessed without it. It is unclear why the government is not prepared to reveal the information. Even though required to do so under relevant orders of the Senate, the government refused to provide an explanation as to why it thinks providing the information is not in the public interest. The government persisted with its refusal to provide the information or an explanation even after the committee specifically pointed those requirements out to the government. The committee explicitly pointed out that any refusal by government to provide information requested by a Senate committee had to be based on a recognised public interest ground. The committee considers that in refusing to provide the information requested, and in refusing to explain why it is supposedly not in the public interest to do so, the government may be in contempt of the Senate. If an election had not been called, the committee would have put a motion forward in the Senate to pursue this matter.

The only obvious reason why the government has not been prepared to provide this information is that it does not suit its political strategy. The government is understandably keen to put the damaging debate about the mining tax behind it as quickly as possible. The committee is concerned that the government appears to think that answering those basic questions above would cause so much political embarrassment that it prefers to face the criticisms about secrecy and a possible contempt of the Senate.

Government gave unfair competitive advantage to the big three

Finally, in negotiating with the three biggest mining companies only, the government gave those companies an unfair competitive advantage.

No one can criticise companies like BHP, Rio Tinto and Xstrata for trying to get the least bad deal from a government seeking to impose a $24 billion new tax on mining. Those companies were acting in the best interests of their shareholders – as they must.

However the government, negotiating exclusively with those three companies, did not act in the public interest – and it should have.

The interests of large multi-commodity, multi-project and multi-national mining companies are often different from the interests of smaller and mid-tier mining companies.

In its haste to reach a new deal quickly, the government gave BHP, Rio Tinto and Xstrata a clear competitive advantage. One, by allowing them to directly influence the ultimate design of the new tax and, two, by giving them highly preferential access to inside information about government assumptions and thought processes around the new tax.

Smaller and mid-tier mining companies who appeared before the committee's inquiry were understandably and legitimately aggrieved by this.

Adding to their frustration is that the government not only refused to consult with them before the deal, but it has also refused to have any meaningful discussions after the deal was done. This has left many small and mid-tier mining companies inappropriately in the dark over the effects of the proposed tax on their business. This is more than just an inconsequential failure. This is a dereliction of the duty of a government to provide business and individuals with basic information about government tax and policy settings fairly and equitably.

Ultimately, the effect of such bad policy development is to create uncertainty and reduce investment. Between $15 to $20 billion of planned investment by Fortescue Metals Group (FMG) remains on hold because of the government created uncertainty.

At the time of reporting, state governments also remain ignorant of the implications for their fiscal position. The Australian Government has yet to respond to two requests from the Western Australian Government to meet and discuss the tax.

Given the government's approach to developing the MRRT remains at least as flawed as the previous effort, the committee has no confidence that this new mining tax proposal improves on the design of the RSPT proposal.

Conclusion

The government wants to move forward from this debate because of the damage it has done to its political reputation.

In seeking to move forward, things were rushed and not properly thought through. Instead of allowing for proper scrutiny to proceed the government is seeking to cover up anything that may prove politically embarrassing. That may be in the government's political interest, but it is not in the public interest.

The Senate has to consider the public interest. This new tax on mining is still bad for the Australian economy and it is still bad for jobs.

If it was not the government would be prepared to answer all of the outstanding questions. They have not and they will not.

The committee recommends that the new tax on mining be scrapped immediately.