

Chapter 2

Chronology of the committee's examination of recent resource taxation reform and the request for responses to questions taken on notice by the Department of the Treasury

Introduction

2.1 The committee has examined the taxation reform process throughout its inquiry. The committee has been particularly interested in how any proposed reforms might impact on the mining and resources industry. In examining fuel and energy security, the committee has considered their impact on both exploration and production and the implications for energy affordability.

2.2 The review of Australia's taxation system—Australia's Future Tax System Review (the Henry Tax Review)—reported in late 2009. Its report was not made public until May 2010. Consequently, the committee found it difficult to examine issues which were under consideration by the Henry Tax Review for a significant portion of its inquiry. However, once the Henry Tax Review report was released publicly, the committee began an extensive examination of the recommendations of that report and the government's subsequent response announced on 2 May 2010 and the new/revised resource tax arrangements announced on 2 July 2010.

2.3 This chapter outlines the process the committee undertook to examine the recent resource taxation reform process, including:

- *Australia's future tax system: Report to the Treasurer* (the Henry Tax Review Report) released 2 May 2010;
- *Stronger, Fairer, Simpler: A tax plan for our future* (the government's initial response) released 2 May 2010;
- The new/revised resource tax arrangements announced on 2 July 2010; and
- The *Economic Statement July 2010*, released by the Treasurer on 14 July 2010.

2.4 In outlining the process the committee undertook to examine the resource taxation reform process, this chapter gives particular attention to the announcement of the Resource Super Profits Tax (RSPT) on 2 May 2010 and the subsequent announcement of a Minerals Resource Rent Tax (MRRT) on 2 July 2010. In so doing, the chapter documents the committee's efforts to obtain relevant information about the new/revised resource tax arrangements announced on 2 July 2010. The chapter draws specific attention to the failures of the government to provide meaningful responses to questions taken on notice by the Department of the Treasury at public hearings held on 5 July and 13 July 2010.

Chronology

2.5 The Treasurer announced the Henry Tax Review on 13 May 2008. The stated objective was to take a 'root and branch'¹ approach in examining Australian and state government taxes and interactions with the transfer system, with the view of delivering a 'fairer, simpler' tax system. The review team was to make recommendations 'to position Australia to deal with the demographic, social, economic and environmental challenges that lie ahead'.²

2.6 The Henry Tax Review Report was delivered to the Treasurer in December 2009 and made 138 recommendations. The report was publicly released on 2 May 2010 in conjunction with the government's initial response.³ The government accepted only a small number of the recommendations made.

2.7 The centrepiece of the government's initial response was a proposal to apply a Resource Super Profits Tax. The RSPT was promoted as a scheme that would ensure Australians received 'a fair share from our valuable non-renewable resources'.⁴ The Henry Tax Review Report and the government's initial response are discussed in more detail at chapter 3.

2.8 On 13 May 2010, the committee wrote to state and territory governments and key stakeholders, seeking their views on the Henry Tax Review Report and the government's initial response. A copy of the standard letters, which pose five specific questions, can be found at appendix 4.

2.9 The committee also sought submissions through its website. To date, it has received 21 submissions specific to the Henry Tax Review Report and the government's initial response, both from stakeholders and state governments.

2.10 On 23 June 2010, the committee wrote to Dr Ken Henry AC, Secretary of the Department of the Treasury, inviting him to appear at a public hearing to be held on 5 July 2010. The secretary replied to the committee on 29 June 2010, accepting the invitation to appear. Copies of this correspondence can be found at appendix 5.

1 Department of the Treasury, 'Australia's future tax system', <http://taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm> (accessed 26 July 2010).

2 Department of the Treasury, 'Australia's future tax system', <http://taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm> (accessed 26 July 2010).

3 For a full timeline of events surrounding the release of the Henry Review and the government's response see, Department of the Treasury, 'Australia's future tax system: Timeline' <http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/timeline.htm> (accessed 21 July 2010).

4 The Honourable Kevin Rudd MP, Prime Minister, and the Hon. Wayne Swan MP, Treasurer, 'Stronger, Fairer, Simpler: A tax plan for our future', Media Release, 2 May 2010.

2.11 On 24 June 2010, the new Prime Minister, the Hon. Julia Gillard MP, announced that the government would undertake negotiations with the mining industry on the proposed resource taxation arrangements.⁵

2.12 From 24 June 2010 negotiations on a new mining tax proposal commenced between the Treasurer, the Minister for Resources, Energy and Tourism and BHP, Rio Tinto and Xstrata. No other stakeholders were invited to participate in those negotiations.

2.13 On 2 July 2010 the Prime Minister announced that an agreement had been reached with BHP, Rio Tinto and Xstrata, and released details of the new proposed resource tax arrangements. The detail of the new/revised arrangements is discussed in detail in chapter 4.

Public hearing—5 July

2.14 On Monday 5 July 2010, the committee held a public hearing with Dr Ken Henry AC, Secretary to the Treasury, and officers from the Department of the Treasury. The objective of the hearing was to seek information on the new taxation arrangements. The committee gave specific attention to the revenue projections from the proposed MRRT (and the changes to the Petroleum Resource Rent Tax) in the forward estimates. The committee was particularly interested in why there was only a \$1.5 billion differential in tax revenues between the RSPT and the MRRT. This was despite the reduction in tax rate from 40 to 30 per cent, an increase in the uplift rate, a new 25 per cent extraction allowance, and despite the fact that the MRRT was to apply only to coal and iron ore, while the RSPT was to apply to the whole sector.

2.15 Evidence taken by the committee suggested that this was a result of projected increases in commodity prices and production volumes:

CHAIR—The reason you get to the \$10½ billion, which seems a very short way down from the \$12 billion, is that you have revised upwards your commodity prices?

Dr Henry—There would be some element of that in it but, as to how much, I have not seen any analysis that would permit me to answer that question. I do not know, but there must be some element of it because we have, after all, revised up commodity prices since budget.⁶

...

Dr Henry—...As we discussed earlier, one is a change to the commodity price forecasts in the last couple of months That is one issue.

5 The Honourable Julia Gillard MP, Prime Minister, 'Transcript of joint press conference with Deputy Prime Minister Wayne Swan', Interview, Parliament House, Canberra, 24 June 2010, <http://www.pm.gov.au/node/6855> (accessed 19 July 2010).

6 Senator Mathias Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Ken Henry AC, Secretary, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 9.

CHAIR—Have you also revised volumes?

Dr Henry—Yes.

CHAIR—Upwards or downwards?

Dr Henry—We would have revised volumes, but I would have to take on notice the direction of those changes to particular commodities.⁷

2.16 During the course of the public hearing, there were numerous questions which officers from the Department of the Treasury declined, or were unable, to answer. These officers undertook to provide the answers to these questions, on notice, after the hearing. In total, 13 questions were taken on notice. These can be found at appendix 8.

2.17 The questions taken on notice related to underlying commodity price and production volume assumptions, inquiries about where the revenue was expected to come from geographically and by sector and a range of related issues.

2.18 In taking questions on notice regarding the expected revenue from the new/revised taxation arrangements, and how much of that expected revenue would come from particular jurisdictions, senior Treasury officials noted that 'We have not done that analysis. It would not be a difficult piece of analysis to do.'⁸

2.19 Later that afternoon, the committee wrote to Dr Henry seeking responses to the questions by close of business on Friday 9 July 2010. A copy of the letter can be found at appendix 6.

2.20 On 8 July 2010, the committee wrote to Dr Henry again, emphasising that the committee fully expected responses to the questions taken on notice by close of business, Friday 9 July 2010. The letter advised that if the responses were not provided in the requested timeframe, the committee would hold a further public hearing in the following week to seek the requested information. A copy of the letter can be found at appendix 7.

2.21 On Friday 9 July 2010, the Department of the Treasury provided the committee with responses to the questions taken on notice, but not answers to some key questions. The committee was not satisfied with the responses provided by the department. Despite noting at the public hearing, for example, that information regarding the expected revenue by geographic region 'would not be a difficult piece of analysis to do',⁹ the answer to the question taken on notice stated: 'The Government has not released this level of detail, in line with usual budget practice'.¹⁰ The responses

7 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 43.

8 Mr David Parker, Executive Director, Revenue Group, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 15.

9 Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 15.

10 Department of the Treasury, answers to questions on notice, Question 3 'MRRT/PRRT – revenue by geographic region', 5 July 2010 (received 9 July 2010).

provided to questions taken on notice at the public hearing of 5 July 2010 can be found at appendix 8. Because the committee was not satisfied with the responses provided by the department, it invited the Secretary of the Department of the Treasury to appear again at a public hearing to be held on 13 July 2010.

2.22 Further, on receipt of the responses from the Department of the Treasury, Chair of the committee, Senator Mathias Cormann, sought advice from the Clerk of the Senate on three matters:

- An assessment of the responses provided to a number of the committee's questions, which stated 'The Government has not released this level of detail, in line with usual budget practice';
- The ability of the committee to seek information not in the public domain; and
- The grounds on which the Department of the Treasury would have to base any refusal to answer questions asked by the committee.

2.23 Specifically, the Clerk of the Senate noted:

A claim that the "Government has not released this level of detail, in line with usual budget practice" is not amongst the recognized grounds that have previously gained some acceptance in the Senate. Without further elaboration, it is difficult to see how this statement could operate as a claim of public interest immunity...In order for any assessment of competing public interests to occur, it is necessary for there to be some statement of the possible harm to the public interest that could ensue from the disclosure of the information in question. A statement that an action is in line with usual practice goes nowhere towards providing an assessment of the harm to the public interest that could ensue from a departure from that practice.¹¹

2.24 The advice provided by the Clerk of the Senate can be found at appendix 9.

2.25 Prior to the public hearing on 13 July, the committee chair also wrote to the Prime Minister, requesting that she 'allow Dr Henry to provide proper answers to important and legitimate questions'.¹² A copy of this letter, which was copied to Dr Henry, can be found at appendix 10. The letter read:

...I am writing to request you allow Dr Henry to provide proper answers to important and legitimate questions which remain unanswered about the new resource rent tax arrangements announced on 2 July 2010.¹³

11 Dr Rosemary Laing, Clerk of the Senate, Letter to Senator Mathias Cormann, 12 July 2010, p. 2. See appendix 9.

12 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, Letter to the Prime Minister, the Hon. Julia Gillard MP, 12 July 2010, p. 1. See appendix 10.

13 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, Letter to the Prime Minister, the Hon. Julia Gillard MP, 12 July 2010, p. 1. See appendix 10.

2.26 The chair is yet to receive a response to this letter.

Public hearing—13 July

2.27 On 13 July 2010, the committee held a public hearing to hear further evidence from Dr Henry and officers from the Department of the Treasury, as well as from the Western Australian Department of Treasury and Finance, and representatives of the mining and resources industry. Details of the public hearing and the witnesses who gave evidence are available at appendix 3.

2.28 At the public hearing the committee sought full responses to the questions taken on notice at the 5 July public hearing. In response to many of these questions, the Secretary of the Department of the Treasury, Dr Henry, informed the committee:

...it is my understanding that the Treasurer will shortly be putting more information into the public domain, some of which information goes very much to the questions that I took on notice at the last committee hearing.¹⁴

2.29 The committee continued to seek the information requested on notice:

CHAIR—So, if the Treasurer is going to provide the information in any event, why would you not be at liberty to provide it to the committee this morning?

Dr Henry—Of course I am very happy to ask the Treasurer whether he would be comfortable with me publishing the information today in this committee or whether he would prefer himself to publish the information shortly.

CHAIR—We gave you notice yesterday that we would be seeking these answers again today. Maybe we should have a short interruption so you can check with the Treasurer whether he would be comfortable with you answering the questions of this committee here. You have the information, presumably.

...

CHAIR—Do you know when the Treasurer is expected to release this information?

Dr Henry—No, I don't. I honestly do not, but I understand that it is imminent. That is to say, I understand that it is within a matter of days.

CHAIR—Will it include information about the assumptions about commodity prices and volumes under the RSPT and the MRRT?

Dr Henry—As I said, it is my understanding that the publication, if you like, has not been finalised. The form of the release of the information has not been finalised.

CHAIR—I propose we have a short interruption of the committee to enable you to inquire with the Treasurer's office as to whether he is indeed

14 Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 31.

comfortable with you providing the information that we think should be provided in the public interest to this committee today.¹⁵

2.30 The committee adjourned briefly to allow Dr Henry to consult with the Treasurer's office to take advice on the committee's request for this information. When the public hearing resumed, the committee continued with the line of questioning pursued before the break:

CHAIR—Dr Henry, has the Treasurer given you any indication as to whether he is happy for you to provide this information to the committee in the public interest?

Dr Henry—I have taken the opportunity of the break to consult with the Treasurer's staff. I have not spoken directly with the Treasurer myself but I have spoken with his staff and I can report that it is the Treasurer's intention to publish the information imminently. I can confirm that the information, the publication if you like, is still in draft form, it has not yet been finalised. I can also report that, as I indicated earlier, the Treasurer would be publishing the information.

CHAIR—The information that we have been seeking?

Dr Henry—Some of the information that you have been seeking.

CHAIR—Which bits?

Dr Henry—In particular, information that would allow the reader to determine how much of the net revenue impact of the 2 July announcement is due to parameter variations, including commodity prices, and how much is due to policy decision. That is one of the issues which you will recall we spent some time on at the last committee hearing. In fact, you referred to it again this morning. So the Treasurer intends imminently to put that information into the public domain.¹⁶

2.31 During the public hearing of 13 July 2010, the Department of the Treasury again took a series of questions on notice, and the committee advised officers of the department that responses to the questions taken on notice were required by close of business, Friday 16 July 2010.

2.32 On 14 July 2010, the Treasurer released the *Economic Statement July 2010*, 'to provide an update of its economic forecasts and key fiscal aggregates'.¹⁷ That statement revealed that:

The net revenue impact of this policy change [new resource rent tax arrangements], relative to the forecast RSPT at Budget and excluding

15 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 31–33.

16 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 33.

17 The Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer and the Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, *Economic Statement July 2010*, p. iv.

parameter variations, is to reduce estimated revenue by \$7.5 billion over the forward estimates.¹⁸

2.33 This was in sharp contrast with previous government assertions that the new mining tax arrangements would reduce revenue by only \$1.5 billion.¹⁹

2.34 The Treasurer further conceded during a broadcast on ABC Radio that same day, that the RSPT would have raised \$24 billion in revenue over the forward estimates – or double the \$12 billion revenue estimate published in the 2010-11 Budget only two months earlier.²⁰

2.35 The committee notes that the Department of the Treasury provided responses, but non-answers, to many of the 21 questions taken on notice at the public hearing of 13 July 2010. The committee does not consider these responses to be satisfactory. Many of the responses referred to the information contained in the *Economic Statement July 2010*, and do not provide sufficient detail to answer the questions put to the department. The response to the second question on notice provides a case in point:

CHAIR—Are you in a position today to tell us what your commodity price assumptions are and what your assumptions are around production volumes at the basis of the assessment of the fiscal impact of the MRRT expanded PRRT?

Dr Henry—No, I am not and, as I did on the last occasion that we met, I would refer that question to the Treasurer for his consideration.

Answer:

Information was provided by the Treasurer in the Government's Economic Statement July 2010 to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (as announced on 2 May 2010). Page 5 of this document notes expected movements in iron ore and coal prices.²¹

18 The Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer and the Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, *Economic Statement July 2010*, Appendix C.

19 The Hon. Julia Gillard MP, Prime Minister, the Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer, and the Hon. Martin Ferguson MP, Minister for Resources and Energy, 'Breakthrough agreement with industry on improvements to resources taxation', Media Release, 2 July 2010, <http://www.pm.gov.au/node/6868> (accessed 2 July 2010).

20 Alexandra Kirk, 'Budget update: booming commodities key to new mining deal and bigger surplus', *PM with Mark Colvin*, ABC News Radio National, 14 July 2010, <http://www.abc.net.au/pm/content/2010/s2953676.htm> (accessed 27 July 2010).

21 Department of the Treasury, answers to questions on notice, Question 2, 13 July 2010 (received 16 July 2010).

2.36 Treasury says that information on commodity price assumptions and production volumes are contained on page 5 of the *Economic Statement July 2010*. Yet, page 5 of the *Economic Statement July 2010* states:

Over the past year iron ore prices have more than doubled and there have been substantial increases in coal prices. The terms of trade are forecast to increase by 17 per cent in 2010–11 - to around their highest levels on record, before declining as expected increases in global supply start to moderate commodity price pressures (Chart 3).²²

2.37 This clearly does not answer the committee's question at all. The committee is of the mind that the government's answer is misleading at best, wilfully deceptive at worst. The responses provided to the questions taken on notice at the public hearing of 13 July 2010 can be found at appendix 11.

2.38 Despite the fact that Dr Henry suggested that the Treasurer would address 'some' of the committee's questions in his *Economic Statement July 2010*, the Treasurer really only addressed one—how much tax revenue the MRRT would raise when using the same price forecasts. Moreover, Dr Henry led the committee to believe that the government's announcement would include commodity-specific information on prices and volumes and also some region-specific data. This was not the case. Given the election has now been called, the committee will not be able to pursue further whether that has been as a result of deletions in the report imposed by the government.

Committee comment

2.39 The committee notes that rather than deliver the promised root and branch reform of our tax system, the government delivered a significant new tax on mining with major implications for the economy, jobs and investment in the mining industry.

2.40 The committee further notes that the new mining tax arrangements will make our tax system more, not less, complex.

2.41 The committee is greatly concerned that the government has kept highly relevant information on key budget assumptions secret, despite their obviously significant impact in changing mining tax revenue estimates.

2.42 The committee notes with great concern that despite repeated requests, the government has not allowed Treasury to provide the committee with appropriately detailed information about:

- forecasts for commodity prices, production volumes and the exchange rate in both the 2010-11 Budget and the 2010-11 Economic Statement for all years in the forward estimates;

22 The Hon. Wayne Swan MP, Deputy Prime Minister and Treasurer and the Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, *Economic Statement July 2010*, p. 5.

- the breakdown of expected revenue by geographic region and by sector; and
- estimates of the revenue raised beyond the forward estimates.

2.43 The forecasts are the basis upon which revenue estimates for both the original Resource Super Profits Tax and the new/revised resource taxation arrangements have been made. Further, the committee notes that while the Commonwealth Department of the Treasury was not able to provide information on commodity price and volume forecasts, the Western Australian Department of Treasury and Finance was able to provide all of its relevant forecasts to the committee. In fact, that information is published as a matter of course in the Western Australian State Government Budget papers.

2.44 The committee considers that the provision of detail regarding the Australian Government's revised forecasts for commodity prices and production volumes, is central to the ability to appropriately examine the new/revised resource taxation arrangements and is in the public interest.

2.45 The committee is aware that Treasury clearly has the information requested about forecasts for commodity prices and production volumes, exchange rates and estimates beyond the forward estimates. Treasury also revealed during the inquiry that it would be relatively easy to identify the breakdown of expected revenue by geographic region and sector.

2.46 The committee is very concerned that despite noting at the public hearing that information regarding the expected revenue by geographic region 'would not be a difficult piece of analysis to do', the information was not subsequently provided on notice.²³

2.47 The committee feels that the Secretary to the Treasury, Dr Henry, was put in a difficult position by the government. He had the capacity to answer the questions but clearly was prevented from doing so by the government. He had clearly been gagged. This lack of transparency raises serious questions about the integrity of the new tax on mining designed by the government.

2.48 The committee also wishes to emphasise that the government has not cooperated with the procedures of the Senate. Even after a second chance to answer questions, the answers provided by the government are clearly non-answers. During the second hearing, the chair specifically explained to Dr Henry (who was referring all difficult questions to the Treasurer) that if the Treasury/government was of a mind not to answer them that they were obliged, in keeping with the advice from the Clerk of the Senate (appendix 9), to identify the recognised grounds of public interest immunity supporting their non-disclosure. In each instance, officers from the Department of the Treasury failed to nominate grounds for public interest immunity.

23 Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 15.

2.49 If the Parliament had not been prorogued by the Prime Minister, the committee would have reported this failure to follow proper and established processes to the Senate and recommended that the Senate find the government in contempt.

