Chapter 4

The new Minerals Resource Rent Tax

Introduction

4.1 This chapter examines the Prime Minister's announcement on 2 July 2010 of a Minerals Resource Rent Tax and an expanded Petroleum Resource Rent Tax and the implications of that announcement.

The announcement on 2 July 2010 of the Minerals Resource Rent Tax

4.2 On 2 July 2010, the Prime Minister announced the removal of any resource rent tax from all mineral resources other than iron ore, coal, oil and gas. The Resource Super Profits Tax (RSPT) was scrapped and a new tax on profits from iron ore and coal production called the Minerals Resource Rent Tax (MRRT) was announced. Proposed to come into effect from 1 July 2012, the MRRT regime would apply to profits from iron ore and coal produced in Australia. The Prime Minister also announced the extension of the current Petroleum Resource Rent Tax (PRRT) regime to all Australian onshore and offshore oil and gas projects, including the North West Shelf.

4.3 The Prime Minister stated that under the MRRT iron ore and coal would be subject to a new profits based tax of 30 per cent, as opposed to the 40 per cent rate proposed under the RSPT.[1] Other changes included changes to the uplift factor from 100 per cent of the accounting book value of existing capital under the RSPT. This would enable miners to elect to use the book or market value for project assets on the basis that the book value starting base would be the long term bond rate plus 7 per cent. Where the RSPT made provisions for deductions for the cost of extracting resources and getting them to the taxing point, the MRRT provides for a 25 per cent extraction allowance. The RSPT allowed for a resource exploration rebate which would not be pursued under the MRRT.[2]

4.4 Under the RSPT all state and territory royalties paid by mining companies were to be refunded, with those arrangements changed under the MRRT. The Policy Transition Group is still to give this aspect of the changes further consideration. All

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1 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', Press Release, 2 July 2010, p. 1, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

2 'What's changed: mining tax plans compared', *Australian Financial Review*, 2 July 2010, http://afr.com/p/national/politics/what_changed_mining_tax_plans_compared_AldyBQn86Mw2r65DgX0l4I (accessed 9 July 2010).

the modifications of the original RSPT scheme were said by the government to reduce estimated revenue by merely $1.5 billion over the forward estimates.[3]

4.5 Two further revisions to the RSPT scheme were identified:

- The company tax rate would continue to be cut to 29 per cent from 2013–14 but would not be further reduced under current fiscal conditions. Small companies would benefit from an early cut to the company tax rate to 29 per cent from 2012–13.
- The resource exploration rebate would not be pursued. Resource exploration costs would continue to be deductible and a Policy Transition Group[4] would consider the best way to promote future exploration.[5]

4.6 The Prime Minister asserted that these changes would deliver Australians an equitable return for the extraction of the nation's most profitable non-renewable commodities—iron ore, coal, oil and gas—while protecting and growing Australia's mining industry.

4.7 The Prime Minister also suggested that the agreement was 'the result of intense consultation and negotiation' and that the changes recognised the views of the mining industry in relation to how new investments would be treated.[6]

3 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', Press Release, 2 July 2010, p. 1, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

4 A Policy Transition Group, to be led by Resources Minister Martin Ferguson AM, Mr Don Argus AC, and comprising selected industry leaders, will oversee the development of more detailed technical design to ensure the design principles become effective legislation. 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', Press Release, Attachment, 2 July 2010, p. 4, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

5 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', Press Release, 2 July 2010, p. 1, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

6 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', Press Release, 2 July 2010, pp 1 and 3, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

MRRT—Bulk commodity resource tax arrangements

4.8 The specific principles of the MRRT announced were as follows:

- MRRT assessable profits would be calculated on the value of the commodity, determined at its first saleable form (at mine gate), less all costs to that point.
- Projects would be entitled to a 25 per cent extraction allowance which would reduce taxable profits subject to the MRRT. This allowance is said to recognise the contribution of the miner's expertise to profits at the mine gate and would reduce the effective rate down from 30 per cent to 22.5 per cent.
- Small miners with resource profits below $50 million per annum would not have an MRRT liability.
- Miners would be able to elect to use the book or market value as the starting base for project assets, with depreciation accelerated over 5 years when book value, excluding mining rights, is used; or effective life (up to 25 years) when market value at 1 May 2010, including mining rights, is used. All post 1 May 2010 capital expenditure would be added to the starting base.
- A book value starting base would be uplifted with the long term bond rate plus 7 per cent. However, a market value starting base would not be uplifted.
- Investment post 1 July 2012 would be able to be written off immediately, rather than depreciated over a number of years. This would allow mining projects to access the deductions immediately, and means a project would not pay any MRRT until it has made enough profit to pay off its upfront investment.
- The deductibility of expenditure under MRRT would be broadly based on the categories used in the PRRT regime.
- MRRT losses would be transferable to other iron ore and coal projects in Australia. This would support mine development because it means a company could use the deductions that flow from investments in the construction phase of a project to offset the MRRT liability from another of its projects that is in the production phase.
- Unutilised MRRT losses would be carried forward at the government long term bond rate plus 7 per cent.

- Unused credits for royalties paid would be uplifted at the government long term bond rate plus 7 per cent, as per other expenses. Unutilised royalty credits would not be transferrable or refundable.[7]

PRRT—National taxation system for oil and gas (onshore and offshore Australia)

4.9 The PRRT regime, which currently only applies to *offshore* petroleum projects would be extended to cover all oil, gas and coal seam methane projects, onshore and offshore. The PRRT would apply at a rate of 40 per cent.

4.10 The specific principles of the PRRT announced were as follows:

- Companies would be able to elect to use market value as the starting base for project assets, including oil and gas rights.
- All state and federal resource taxes would be creditable against current and future PRRT liabilities from a project.[8]

4.11 The standard features of the current PRRT would otherwise apply, including the range of uplift allowances for unutilised losses and capital write-offs; immediate expensing for expenditure and limited transfer of the tax value of losses.[9]

Concerns regarding the MRRT/expanded PRRT

The Heads of Agreement between the government, BHP, Rio Tinto and Xstrata – not a deal with 'the' mining industry

4.12 The committee heard evidence from a number of witnesses expressing concern that the government had chosen to negotiate only with the three biggest mining companies (BHP, Rio Tinto and Xstrata), excluding 317 other mining companies directly impacted by the proposed new tax.

4.13 The Department of the Treasury had no direct involvement in negotiations between government ministers and those big three mining companies. The following exchange between the chair and Dr Ken Henry AC, Secretary of the Department of the Treasury, outlines the limited involvement the Department of the Treasury had

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7 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', Press Release, Attachment, 2 July 2010, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

8 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', Press Release, Attachment, 2 July 2010, p. 3, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

9 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', Press Release, Attachment, 2 July 2010, p. 4, http://www.pm.gov.au/node/6868 (accessed 21 July 2010).

with the negotiations between the government, BHP, Rio Tinto and Xstrata. The Department of the Treasury had no direct involvement with the negotiations:

> CHAIR—Just going back to the level of Treasury involvement in the negotiation between the government and BHP, Rio and Xstrata, can you describe for us again in detail what level of involvement Treasury officials did have in those negotiations?
>
> Dr Henry—I cannot add much to what I said last week, which is that we were involved very heavily in the quantification of proposals and beyond that we were involved in a quality assurance or due diligence role in providing advice to government in respect of propositions that the companies were advancing.
>
> CHAIR—So you were not personally present for any of the sessions of the negotiations?
>
> Dr Henry—That is certainly true.
>
> CHAIR—Who was the most senior Treasury official directly involved in the negotiations between the government and BHP, Rio and Xstrata?
>
> Dr Henry—As I have indicated, there was no Treasury official…directly involved in the negotiations as such. There were Treasury officials who were, during that time, having discussions with senior executives of those companies about numbers and design issues.
>
> CHAIR—So those Treasury officials were waiting in the Treasurer's office and somebody would come in and out of the negotiations with BHP, Rio and—
>
> Dr Henry—No. I would have to check, but I think that most—and maybe all—of those consultations occurred during that period by phone. I think the Treasury officials, on all occasions—I would need to check—would have been in the Treasury building.
>
> CHAIR—So the way it would have worked was that the Treasurer and Minister Ferguson were having negotiations with BHP, Rio and Xstrata and then somebody would walk out, pick up the phone and talk to a Treasury official and say, 'They have just told us this. Is this right? We have just agreed to do that. What does that mean?' Is that the way it worked?
>
> Dr Henry—That is a relatively accurate characterisation of it.[10]

4.14 The committee heard evidence from Mr Simon Bennison, Chief Executive Officer (CEO), Association of Mining and Exploration Companies (AMEC) about the role of AMEC in the resource sector. AMEC is a national organisation. It represents mainly the mid-tier to junior production and exploration companies across Australia. It has about 140 members in this category. It also represents a vast number of the service industries to the resource sector, particularly companies that are involved in drilling and equipment supply. AMEC has over 100 member companies that fit into

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10 Senator Mathias Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 52–53.

this category. Effectively AMEC acts as an advocacy and policy organisation for these members.[11]

4.15 Mr Mike Young, Managing Director, BC Iron Limited who appeared as part of a panel of witnesses who belong to AMEC noted:

> Mr Young—Can I add something about the heads of agreement as I went through it and as we were modelling this. We have had to do six iterations based on the various assumptions. My assumption, cynical as it may be, is that the companies who negotiated this MOU will have only done one model because they understand the underlying assumptions of all these points, and we do not.
>
> CHAIR—So they have a competitive advantage, in effect, compared to you because they would have been part of the discussions?
>
> Mr Young—Yes, absolutely. And that is part of the consultation process that I would have expected. The first time I knew that there had been an agreement with the mining industry was over my Weet-Bix watching Sky News. When you look at how many miners there are in Australia currently mining iron ore, it is BHP, Rio, Atlas, Murchison, Mount Gibson, Cleveland- Cliffs and Grange Resources. Next year there will be BC Iron and probably Gindalbie.[12]

4.16 Mr David Flanagan, Managing Director, Atlas Iron Limited, who also appeared as part of a panel of witnesses who belong to AMEC noted:

> From a compliance point of view with the ASX, we are obliged to make material disclosures to the market, just to keep the market informed. There are a number of measures on what is 'material', and one of them is if something can impact the value of your company by more than 10 per cent. So there are some companies that have an understanding of whether this is material and some companies that do not. We feel disadvantaged by that.[13]

4.17 Mr Young further noted that:

> By not being in the room, particularly with Rio Tinto and BHP, who have clearly shown that they do not wish to share their rail infrastructure and will fight tooth and nail to avoid it, a cynic might think that the deal they have negotiated for themselves would be prejudicial to any of their competitors in the Pilbara. A cynic might say that.[14]

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11 Mr Simon Bennison, Chief Executive Officer (CEO), Association of Mining and Exploration Companies (AMEC), *Committee Hansard*, 13 July 2010, p. 81.

12 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Mike Young, Managing Director, BC Iron Limited on behalf of AMEC, *Committee Hansard*, 13 July 2010, p. 86.

13 Mr David Flanagan, Managing Director, Atlas Iron Limited on behalf of AMEC, *Committee Hansard*, 13 July 2010, p. 90.

14 Mr Young, BC Iron Limited and AMEC, *Committee Hansard*, 13 July 2010, p. 86.

4.18 The committee heard evidence from 'junior' miners about the impact on their business of not being 'in the room' with the government and BHP, Rio Tinto and Xstrata for the negotiations.

Committee comment

4.19 The committee is concerned that there are a number of features of the MRRT/expanded PRRT which unfairly favour the big three mining companies at the exclusion of the smaller to mid-tier mining companies, including: the non-inclusion of interest costs before profits are assessed; the removal of the resource exploration rebate (RER); the inclusion of magnetite; and the accounting practices for valuation (either market or book value). In addition, the option of full transferability of losses between projects favours the large multi-project companies, who are also able to direct their investment into those areas where the mining tax has been effectively abolished.

4.20 The committee heard evidence about the lack of industry consultation on the government's decision not to proceed with the RER, as described in chapter 3. It appears that the Department of the Treasury was not involved either, as the following exchange illustrates:

> CHAIR—Moving to the decision to do away with the resource exploration rebate, who made that decision?
>
> Dr Henry—That is a government decision.
>
> CHAIR—Presumably it was a direct outcome of the negotiations with BHP, Rio and Xstrata?
>
> Dr Henry—I do not know if it was a direct outcome of those negotiations but the decision was taken contemporaneously, so it may well have been.
>
> CHAIR—Was Treasury involved in any discussions with that part of the mining sector most directly impacted by that decision, which would not have been the three companies around the table?
>
> Dr Henry—We certainly were following the announcement of 2 May. We certainly were involved in extensive consultations with all sorts of companies about the RSPT and the other elements of that particular tax package, including the exploration rebate.
>
> CHAIR—What was the feedback that you got in those discussions?
>
> Dr Henry—Well, none of it was terribly positive.
>
> CHAIR—That was, I guess, a reflection of the industry’s perception of the RSPT as an overall package. The government is proceeding with that and it is removing the exploration rebate, which it is fair to say impacts on one particular section of the industry more than on others. In particular, it impacts more on that section of the industry that continues to pay state royalties and will not see them refunded. So this is another area where, as a result of the package, the smaller and mid-tier mining companies are actually going to be worse off as a result of the deal that was done by the government, aren’t they?

> Dr Henry—I was not personally involved in those discussions with the mid-tier mining companies.
>
> CHAIR—I do not think there were any with the government, to be honest.[15]

4.21 The Department of the Treasury again took questions on the RER on notice and provided a response later in the hearing:

> CHAIR—Just in terms of the fiscal impact first—and then we will go to the impact on mining companies—in the budget papers the fiscal impact is $1.8 billion. The government will provide $1.8 billion over four years from 2010-11. But the revised figures that were circulated and that have been reported talk about $1.1 billion in savings from removing the resource exploration rebate. What is the reason for that?
>
> Dr Henry—That strikes me as a very good question. I am sorry; I do not know and I apologise for that. I will need to take that on notice.[16]

4.22 The committee also heard evidence that the Department of the Treasury was not aware of the membership of the Policy Transition Group, announced by the government on 2 July 2010, to be chaired by Mr Don Argus AC:

> CHAIR—The policy transition panel which is going to be chaired by Don Argus. Will state governments, who are, after all, significantly impacted by all of this, be represented in this policy transition group?
>
> Dr Henry—I do not know. The membership of that panel, as I understand it, has not yet been finalised. I am not able to indicate to the committee this morning what the composition of that panel might be.[17]

Committee comment

4.23 The committee is concerned that not only was a central Commonwealth Government agency, the Department of the Treasury, unaware of the detail of the Policy Transition Group, so were the representatives of the mining industry that appeared before the committee, with a direct commercial interest in its outcome.

4.24 The committee's view is that fundamental issues relating to this new MRRT/expanded PRRT are still to be analysed, demonstrating that this is an example of 'policy on the run'. It is the committee's view that these decisions have such a critical impact on the economy and jobs that they cannot be taken properly without careful consideration and transparent communication.

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15 Dr Henry, Department of the Treasury and Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, *Committee Hansard*, 5 July 2010, p. 45.

16 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 46.

17 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 49.

The impact on jobs and investment in the mining industry in Western Australia, Queensland and New South Wales

4.25 The committee received evidence that the impact of the MRRT/expanded PRRT on jobs and investment would be worse than the impact of the RSPT. The committee is concerned that the result of this process, the MRRT/revised PRRT, has serious implications for the Budget, the economy, jobs and investment in the mining industry. These implications do not appear to have been subject to analysis by the government. Mr David Parker, Executive Director of the Revenue Group of the Department of the Treasury noted in the following exchange with the Chair:

> CHAIR—So, at this stage, as far as you are aware, nobody across government knows what the impact on investment or the impact on jobs is going to be from the revised MRRT/expanded PRRT arrangements?
>
> Mr Parker—As I said, we have not done that modelling. Let me just make the obvious point that the economic effect of the tax was obviously a contentious matter. KPMG Econtech and ourselves believed that, because of the improved tax arrangements, it would lead to an expansion over time—not instantaneously, but over time. Clearly the industry did not believe that. You would have to ask the industry what they now believe in the response.[18]

4.26 The committee's concerns about the lack of assessment and modelling before the MRRT/expanded PRRT was announced are further reflected in the following exchange between the chair and Dr Henry:

> CHAIR—Let us go back to basics, because you are into a specific case study. What we talked about before was when the RSPT was announced it came with a KPMG Econtech modelling based either on abolition of the state royalties or complete refund. I think their view was that there would be a favourable impact in terms of jobs and investment. That was the KPMG Econtech assessment.
>
> Dr Henry—That is correct.
>
> CHAIR—Given that under the MRRT/expanded PRRT arrangements there will not be a refund of state royalties for those lower profit or marginal projects, then it stands to reason that the same conclusion cannot be reached now—
>
> Dr Henry—That is right.
>
> **CHAIR—and the impact on investment and jobs would have to be worse now compared to what it would have been—**
>
> **Dr Henry—You mean in aggregate. We think that is the case. We agree with you on that.** *[emphasis added]*

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18 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr David Parker, Executive Director, Revenue Group, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 21.

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> CHAIR—I place on record—this is a statement not so much for you as for the government— that I am somewhat concerned that the impact on investment and jobs was not properly assessed and was not modelled before the deal was finalised, given that much has been said in the political rhetoric over the last six to seven weeks about how this tax reform is going to be good for investment and good for jobs. The reality is that the government is flying blind when it comes to the impact on investment and jobs of the changes they have made to what used to be the super profits tax.
>
> Dr Henry—It is not for me to defend the government, even less to defend the companies. As I indicated earlier, you and I can have this conversation at a conceptual level about what the economic impact of various taxes should be and the companies simply point-blank refused to accept our analysis. They said that is wrong. They also say that under this new design the economic outcomes in respect of investment, employment and so on will be stronger than under the originally announced package.
>
> CHAIR—The thing is the reason you are here is because this committee is interested in your view and your considered assessment. I guess we have come to a consensus view as to what the impact on jobs and investment of the MRRT-PRRT arrangements is in a directional sense compared to the RSPT.
>
> Dr Henry—Yes.[19]

4.27 In contrast, the committee heard evidence that the Department of the Treasury had analysed the impact of the RSPT on investment and jobs. Dr Henry noted in the following exchange:

> Dr Henry—...the RSPT itself, by design, is a neutral tax. The RSPT itself, by design, should not affect investment decisions, should not affect employment decisions, should not affect output decisions and so on. Given that the RSPT, a neutral tax, was in economic substance replacing royalties, because they were going to be refunded, one could be pretty confident conceptually that activity would expand, not contract. Now, as we have discussed, particularly in some of the questions that the chair asked earlier, it is not possible to make such a conclusive statement in respect of the interplay between the MRRT and the royalties, principally because the royalties are now being credited against an alternative tax—that is, the MRRT—not refunded and secondly because—the chair also went to this question—one cannot be absolutely sure that the MRRT provides a neutral uplift rate, whereas the RSPT does by definition.
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> Senator IAN MACDONALD—Can I just put this in noneconomists' and simple politicians' language. You are saying that with the RSPT you would have been fairly confident in saying that there would be no impact on jobs or investments and therefore jobs—

19 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 32.

> Dr Henry—No, that is right. [20]

4.28 The committee heard evidence about the impact of the MRRT on small to mid-tier mining companies compared to the larger miners, as noted by Fortescue Metals Group (FMG):

> CHAIR—...Just going through the levels of risk, would the smaller miners face different risks relative to the larger miners in terms of being able to access the value of MRRT tax credits?
>
> Mr Pearce—Yes. A lot of the smaller miners are single project companies and therefore will not be able to benefit from let us call it the transferability you can have through multiple projects. That will make it more difficult for them to get benefit from any carry-forward credits et cetera.
>
> CHAIR—So in a strange way smaller and medium-size companies all the way up to FMG might actually end up paying MRRT comparatively sooner because they are not able to offset some of the losses from other projects.
>
> Mr Pearce—That could be a very real outcome.[21]

Why earnings over $50 million?

4.29 The committee received evidence that the government was still to finalise aspects of its policy and modelling on the MRRT:

> CHAIR—The government has said—and I have the press release here—that those relevant mining companies earning over $50 million are subject to the MRRT. Is that $50 million gross or net?
>
> Dr Henry—Net.
>
> CHAIR—And, if they earn $51 million, are they taxed on the $1 million or the whole $51 million?
>
> Dr Henry—This is a matter for further consideration, I am advised.
>
> CHAIR—So that has not been decided yet.
>
> Dr Henry—Not to my knowledge.
>
> CHAIR—What tax rate applies to the smaller mid-tier miners? They are not going to be taxed on $50 million gross, are they?
>
> Dr Henry—No.
>
> CHAIR—Do you have any modelling on how all of this is expected to play out in terms of impact on various sections of the mining industry?
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> Dr Henry—No.[22]

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20 Senator Ian Macdonald, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 30.

21 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Stephen Pearce, Chief Financial Officer (CFO), Fortescue Metals Group (FMG), *Committee Hansard*, 13 July 2010, p. 78.

4.30 The committee also received evidence from FMG about the lack of information concerning how the figure of $50 million was reached:

> CHAIR—Has the government provided any explanation to you on why it chose to exempt miners under a $50 million threshold?
>
> Mr Pearce—No, we have had no discussion as to how that $50 million threshold was arrived at…we would prefer to see the threshold at $100 million so that you are encouraging smaller and developing miners to grow and giving them that exemption through that key growth phase…to me [the $50 million threshold] is set at a level that would approximate about a six-plus million tonne iron ore producer. We believe that should encourage some of the junior iron ore producers to develop and get established financially.[23]

A competitive advantage enjoyed by the major three mining companies

4.31 As noted in this report, the committee is concerned that the major three mining companies gained a competitive advantage over the rest of the mining industry due to the government's decision to negotiate with them exclusively. The committee received evidence about the impact on productivity of the unresolved features of the MRRT on small to mid-tier miners:

> Mr Flanagan—There are a couple of elements there. If you are a company that is able to convey to its shareholders with a great degree of certainty what this MRRT means, those shareholders are going to have a greater degree of confidence in holding shares in that company. I get queries from my shareholders and they say, 'David, what does this tax mean for you?' I am not able to give them that degree of certainty, so—
>
> CHAIR—Is anybody able to give them that degree of certainty?
>
> Mr Flanagan—If you are in the room I would have thought that you would have a high degree of certainty.
>
> CHAIR—You mean the ones that were in the room.
>
> Mr Flanagan—Yes, those three guys: BHP, Rio and Xstrata. They would have that. That is my view. I suppose that makes it easier for them to convey the investment proposition. They have that greater certainty; therefore they have a greater likelihood of being able to access those funds. Because those businesses are currently generating very strong cash flows, unlike us—we are just getting up and running—the cost of capital and access to capital for those guys is not an issue. Uncertainty hits those companies that are growing. We are currently negotiating to bring a partner in for our Ridley magnetite project, which is in the Pilbara, close to the coast. We are getting a lot of interest in it, but we are spending a lot of time

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22 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 38.

23 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 77.

> talking to these guys about all these unknown variables in relation to the tax.[24]

4.32 The committee received evidence about the vulnerability of small and mid-tier companies to the impacts of the MRRT:

> Mr Flanagan—I do not know if that is necessarily true or not, but one of the big differences between the majors and us small guys is size, and that size provides more capital shelter against being impacted by the MRRT. It provides a lower cost of capital; therefore the sensitivities in these uncertainties are different for both of us.
>
> CHAIR—So in fact you could be impacted more quickly than BHP and others—we had this discussion with FMG earlier—because you cannot transfer losses between projects to the same extent, can you?
>
> Mr Flanagan—Correct. One of the issues is the market value or the book value. If we take a small value and we are forced to write it off over 25 years, the incremental benefit of that discount every year is much smaller than if you have $60 billion. With the fluctuating commodity prices over that time, that imposes a disadvantage on those guys who were not in the room that day.[25]

4.33 Mr Young noted the impact of this lack of certainty:

> CHAIR—Are the issues to be resolved just implementation issues, or do you think there are more substantial questions? Listening to your comments about the design features it seems to me that they really are catering for the BHPs, the Rio Tintos and the Xstratas. I am not trying to put words in your mouth but it sounds to me as if you still have some fundamental concerns that go beyond mere implementation issues. Is that a fair characterisation?
>
> Mr Young—It is a fair question. I have six columns here, six different variables that I am modelling because I have no certainty. As I said to you before, the people who were in the room have certainty that one of these columns is closest to correct. So, firstly, I just want certainly on that. I just want to go with this table and explain it to somebody who is in the know and basically say, 'Can you please tell me which of these columns I should be modelling and telling my shareholders about?' As the CEO of a public company staring down the barrel of an election and the inherent delay that represents, that bothers me.[26]

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24 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Flanagan, Atlas Iron Limited and AMEC, *Committee Hansard*, 13 July 2010, p. 89.

25 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Flanagan, Atlas Iron Limited and AMEC,, *Committee Hansard*, 13 July 2010, p. 87.

26 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Young, BC Iron Limited and AMEC, *Committee Hansard*, 13 July 2010, p. 90.

4.34 The committee received evidence about AMEC's disappointment with the consultation process and in particular with the decision not to proceed with the exploration rebate:

> Mr Bennison—No. I think that at the moment we are disappointed with the negotiations that have taken place without consultation with the exploration sector in particular in this whole process.
>
> CHAIR—In the mid-tier sector there have been none, haven't there?
>
> Mr Bennison—Yes, that is right.
>
> CHAIR—So that is less than you had under the previous Prime Minister?
>
> Mr Bennison—Correct, but at least we were going through a consultation process that was part of the government's initiative to try and get industry input. A lot of people had various views on the value of that process, but at the moment we have no engagement at all with the government in trying to make sure that those things that are of value, in particular to the exploration sector—for example, the exploration rebate—are kept on the table and negotiated through.[27]

4.35 The committee received evidence that the need for investor confidence was associated with 'country risk' for Australia. Mr Young of BC Iron Limited noted:

> ...It certainly does not tick any of those boxes. More to the point, what it does do is introduce more risk into the sector. For example, when you are looking at the risk in investing in a company you look at commodity risk, technical risk, logistical risk—and we have see that recently with far-flung countries—marketing risk and country risk. What this tax did was introduce a new level of country risk for Australia, which is really disappointing to me, having lived here for 23 years and worked in the industry. Australia was seen as very safe in terms of sovereign risk. I think there is an opportunity through this process, and I would hope that there is a process. For example, with some of that country risk the damage that has been done will take some time to heal. One of the ways of doing that is, for example, bringing in a flow-through share type scheme, which the government did promise, because that would then introduce some more investor confidence.[28]

4.36 The committee received evidence from AMEC about the need to restore certainty and confidence in the marketplace:

> What is critical in trying to sum up is that we really need transparency and honesty in this process. They are a couple of critical ingredients that we feel frustrated with and have been lacking to date. We want to get rid of all the speculation that is occurring, not only in the media but elsewhere, to make sure that people have the confidence to be able to let their shareholders

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27 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Bennison, AMEC, *Committee Hansard*, 13 July 2010, p. 101.

28 Mr Young, BC Iron Limited and AMEC, *Committee Hansard*, 13 July 2010, p. 102.

> know and to make sure that companies in the exploration space have more certainty as to where they will be sitting in the next four to six months. Trying to raise capital out there at the moment is an extraordinarily difficult task. Junior explorers in particular are suffering at the moment, and they can clearly identify that, so the sooner that this speculation on what is in, what is out and what the details surrounding this whole process are is over—in particular, for us to get confidence back into the very high risk reward component of the exploration industry—the better. I think that can only come with the government addressing that component. It is a pity that that was thrown out within the original negotiations of the MRRT.
>
> There are aspects of that that we would obviously seriously like addressed as soon as possible so that the exploration sector in particular can have confidence and can go back out to the marketplace and we can see a much improved investment in the exploration end of town. I will just reinforce that. Over the last 10 years, we have seen investment deteriorate in Australia from about 25 per cent of global expenditure down to about 12. That is still continuing to drop. We just cannot afford not to be out there looking for the new deposits and the new mines over the next five to 10 years, at that rate of decrease in exploration. So there are lots of issues underpinning why we need to be back in this space and why we need to develop programs that are going to enhance the industry being able to get confidence back in its investment fraternity and the capacity to raise equity finance in that area.[29]

4.37 The committee received evidence that the administration and compliance costs of the MRRT/expanded PRRT had not yet been thoroughly assessed by the Department of the Treasury:

> CHAIR—How do administration and compliance costs for the MRRT/expanded PRRT compare to those that you would have expected under the RSPT?
>
> Dr Henry—We are not certain about that yet and that is a matter that is still under consideration.
>
> CHAIR—Would you expect it to be more complex or less complex?
>
> Dr Henry—Yes and no.
>
> CHAIR—'Yes and no' what? Yes, more complex?
>
> Dr Henry—In some respects, yes, in other respects, no.
>
> CHAIR—But overall? In the fullness of time, after all of the issues have been properly considered?
>
> Dr Henry—Exactly, that is precisely why we do need the fullness of time and we will be applying some part of fullness of time to the analysis, but hopefully not all of the fullness of time.[30]

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29 Mr Bennison, AMEC, *Committee Hansard*, 13 July 2010, p. 100.

30 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 40.

4.38 The committee also received evidence from the Western Australian Department of Treasury and Finance that the costs of administration of the MRRT could place a heavier burden on state governments, however given the lack of information available it was only possible to 'hazard a guess':

> CHAIR—So you would not have a guesstimate? On the basis of what you know and what is in the public [domain], would you have a perception as to whether it will be more complex or simpler to administer?
>
> Mr Barnes—If I was to hazard a guess, I would guess that it would be more complicated, given that it tries to define the taxing point as close as possible to the point of extraction. Defining the mine gate, the costs that are incurred and the costs that are deductible against that mine gate value is not a straightforward exercise. So I expect that there will be significant compliance costs and I expect that they would in a general sense outweigh the compliance cost associated with the state's royalty regime, which is a relatively simple regime.[31]

4.39 The committee received evidence from FMG about the 'reasonably significant burden' of the compliance and administration costs of the MRRT:

> CHAIR—What is your assessment of the compliance and administration costs related to the application of the MRRT?
>
> Mr Pearce—I have not done a formal assessment but obviously there would be a reasonably significant burden in terms of administration, completing returns et cetera, as there is with any tax.[32]

Questions on notice put to the Department of the Treasury

4.40 The committee put a series of important and legitimate questions to the government through the Department of the Treasury during its two hearings on issues related to matters including the MRRT/expanded PRRT. As noted in the chronology in chapter 2, the first hearing was held on 5 July 2010 (at which the Department of the Treasury took 13 questions on notice) and the second hearing was held on 13 July 2010, (at which the Department of the Treasury took 21 questions on notice).

4.41 Given the potential threat to the mining industry and jobs posed by the MRRT/expanded PRRT, many of these questions centred on requests for information setting out where the $10.5 billion in revenue over the forward estimates was expected to come from and about the changes in projections and assumptions in the seven week period between the Budget and the Prime Minister's announcement on 2 July 2010. The process the committee went through in seeking responses to these questions is set out in chapter 2 of this report.

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31 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Michael Barnes, Acting Under Treasurer, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 14.

32 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 79.

4.42 The committee notes that the Department of the Treasury took questions on notice in relation to the impact of the tax on the period beyond the forward estimates and questions about the contributions from the iron ore and coal sectors were also taken on notice. The exchange below sets out one example:

> CHAIR—Does anybody have an indication? You obviously seem to know. Do you know what the approximate share of iron ore and coal was going to be under the RSPT?
>
> Mr Davis—No. I know they were important contributors to the revenue, but I do not know the shares.
>
> CHAIR—Can you tell us that on notice.
>
> Mr Davis—I will take that on notice.[33]

4.43 On 9 July 2010, the Department of the Treasury responded to the committee's question with the following statement 'The Government has not released this level of detail, in line with usual budget practice.'[34] The committee considers this a non-answer. The committee considers that full and complete answers to these questions are in the public interest. The committee is concerned that the full impact of these changes cannot be measured because the government has refused to provide the information requested by the committee.

Where is the $10.5 billion coming from – geographically and by resource source?

4.44 The committee heard evidence that the revenue from the new MRRT/expanded PRRT arrangements was estimated to be $10.5 billion over two financial years 2012-2014. This amount is only $1.5 billion less than the revenue that the government may have otherwise raised under the RSPT. Mr Parker from the Department of the Treasury provided an explanation of the figures as set out below:

> …The $12 billion figure for the RSPT was, if you like, a whole system costing—that is, it took the RSPT gross revenue, netted off royalty refunds, accounted for the deductibility of RSPT payments in corporate income tax. So in the number there was the corporate income tax effect. It also took into account the effect of changed company tax payments at the personal level, so it was a full system costing. The same full system costing has been done for the MRRT—that is, netting off royalties to the extent that MRRT payments are in excess of royalties, otherwise creditable, taking account of the effect under company tax and also under personal tax. The whole system, the nature of the costing, is unchanged in that sense, but embedded in that are a number of ups and downs by taking into account the interactions between the profits based tax and the corporate income tax and at the shareholder level.

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33 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Graeme Davis, Manager, Business Tax Division, the Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 20.

34 Department of the Treasury, answers to questions on notice, Question 6 'RSPT – revenue shares from iron ore and coal', 5 July 2010 (received 9 July 2010).

> **So the differences in the costing come about for two reasons: one we have already explored, which is the change in commodity prices that have occurred since budget time, and the other effect that is relevant is the smaller scope of the MRRT compared to the RSPT in particular. In fact the MRRT applies only to coal and iron ore and the RSPT was to apply to the whole sector.** *[emphasis added]* [35]

4.45 The committee heard evidence about the expected revenue from the MRRT/expanded PRRT:

> CHAIR—The media has just been able to provide me with what you have not been able to, which is the expected revenue from the new resource tax framework—MRRT and PRRT—is four billion in 2012-13, so it is one billion higher, and 6½ billion in 2013-14, which is a bit lower. Does that sound right?
>
> Mr Parker—Yes, I understood that those numbers had been released in the media.[36]

4.46 The committee also heard the following evidence about the expected revenue from the MRRT/expanded PRRT and the forward estimates:

> CHAIR—Now that we have this table, which you have just tabled, can I just go back to an issue that we discussed earlier: the headline 'Tax rate for the MRRT has been cut by a quarter'. There have been many other changes that would be expected to reduce revenue like the 25 per cent extraction allowance, market valuation for existing assets et cetera. Can you just explain to the committee why revenues in the forward estimates only fall by 12½ per cent? Where is that $10½ billion coming from?
>
> Dr Henry—We have had this discussion, and there are a number of elements to it. As we discussed earlier, one is a change to the commodity price forecasts in the last couple of months That is one issue.
>
> 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.
>
> Senator IAN MACDONALD—It would have to be upwards, wouldn't it?
>
> Dr Henry—It depends.
>
> CHAIR—Can we perhaps get on notice—I would like to think it would not take too long—advice on the specific assumptions: how much is the change in commodity prices, how much is the change in volumes, how much is the change in the exchange rate? Can you explain any of the variables that have

35 Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 14.

36 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 14.

> changed from the budget six weeks ago to when the announcement was made of the revised MRRT/expanded PRRT arrangements. Very specifically, what we are interested in is where the $10½ billion is expected to come from by way of both sector and geographically. Given the revisions in commodity prices and the like, would it have been conceivable that you could have raised $30 billion a year through your RSPT?
>
> Dr Henry—We have not done that work. Is it conceivable? I guess it is conceivable because you have conceived it.
>
> CHAIR—The reason I am asking is that there has been such a dramatic change in six weeks. That means there has been a revision, which has a significant impact on the way the figures flowthrough the budget.[37]

4.47 The committee heard the following evidence from Mr Parker from the Department of the Treasury about who would be expected to pay the $10.5 billion:

> They will be companies involved in coal, iron ore and petroleum extraction not presently under the PRRT arrangements, which will be brought under the PRRT arrangements. The number of companies has been reduced quite significantly. There is a mention in the government's press release that the estimated number of companies under the regime will fall from 2½ thousand to around 320. Whether they pay MRRT or not in any particular year will then depend on whether they are profitable in that year.[38]

4.48 The committee heard evidence that 'it was a coincidence' that the Department of the Treasury were revising commodity prices at the same as the MRRT/expanded PRRT was being negotiated:

> CHAIR—…When you became aware of the deal that had been negotiated, its parameters and everything else, did you initially model the fiscal impact on the assumptions in the budget, commodity price volumes and everything else or did you immediately review all of your assumptions before making that assessment?
>
> Dr Henry—I think I indicated the last time we met that we were revising our commodity price forecasts at the same time.
>
> CHAIR—It was coincidence; one did not lead to the other.
>
> Dr Henry—It was coincidence.[39]

4.49 The committee is deeply concerned that despite promises to the contrary, the government has still not provided answers to the committee's questions concerning

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

38 Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 16.

39 Senator Cormann, Chair, and Senator Macdonald, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 40-41.

where the $10.5 billion was coming from geographically (that is by state) or by resource source. The following discussion sets out the Department of the Treasury taking these questions on notice on 5 July 2010:

> CHAIR—Are you able to identify for us where the expected revenue, the $10½ billion, will come from geographically? How much is expected to come from Western Australia, how much from Queensland and how much from any of the other states and territories?
>
> Mr Parker—We would have to take that question on notice.
>
> CHAIR—Is that something that you have assessed?
>
> Mr Parker—No, we have not assessed it by region; it has been assessed by commodity. That was based on the discussions which took place with the companies involved in the negotiation. But I am not aware that that has been mapped across the regions.
>
> CHAIR—So you do not know how much of the $10½ billion would come from Western Australia, Queensland or whatever?
>
> **Mr Parker—We have not done that analysis. It would not be a difficult piece of analysis to do.** *[emphasis added]*
>
> CHAIR—I suspect you will have to do that analysis, because the federal government has committed to an infrastructure fund to be based, in a proportional sense, on where the revenue comes from. Given the shift in focus to coal, iron ore, oil and gas exclusively away from all the other resources, I suspect states like South Australia will now pay much less into the system, whereas the burden for states like Western Australia and Queensland will increase, proportionately speaking. That is a fair assessment, generally speaking, isn't it?
>
> Mr Parker—I prefer to actually do the numbers before I make a comment on that.[40]

4.50 On 9 July 2010, the Department of the Treasury responded to the committee's question with the following statement 'The Government has not released this level of detail, in line with usual budget practice.'[41] The committee considers this a non-answer.

4.51 The committee is concerned that information on the geographic basis of revenue income has not been published, despite Mr Parker's initial assessment that this 'would not be a difficult piece of analysis to do'.[42] At the second hearing on 13 July 2010, Dr Henry made the following comments:

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40 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, pp 15-16.

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

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

CHAIR—Last week we asked you questions on where the $10½ billion of revenue is expected to come from for the period 2012-14—where it is coming from geographically and where it is expected to come from by resource. When you took those questions on notice, indications either from you or Mr David Parker at the time were that, 'This is not going to be very difficult to get hold of and we will take it on notice.' Specifically in relation to the geographic sourcing of the revenue, essentially he said, 'I will have to do a bit of work but it would not be too hard to identify that.'

Dr Henry—I am sorry, Senator, that is not my recollection. I would have to consult the Hansard record.

CHAIR—The Hansard record will show that is what David Parker in fact said. I think you, Dr Henry, and I agreed that you would have to do the work, given the government's commitments for the infrastructure fund to be proportionate to the revenue raised in individual jurisdictions.

Dr Henry—Yes.

CHAIR—Can I just understand more clearly. When you assessed those questions on notice, you would have been in a position to answer those questions except that the Treasurer came to the view that that information should not be provided to the committee in that form.

Dr Henry—No, not in respect of geographic impact and impact by commodity. I stand to be corrected here but I do not believe that work has been done. I do not believe that we have that work sitting in the department in a form in which it could be made available to this committee or indeed to anybody else. That is work which has yet to be done.[43]

Lack of information regarding Budget processes and assumptions

4.52 The committee notes that very limited information is available regarding the processes employed by the Department of the Treasury regarding its modelling and assumptions:

> 4.2 The Market for Exports
>
> Exports are separated into commodity exports and non-commodity exports. Commodity exports (XC) consist primarily of mining and agricultural products, while non-commodity exports (XNC) consist primarily of manufactured goods and services. Foreign demand for Australian exports depends on external competitiveness; that is, the price of Australian exports relative to the price of substitutes on world markets. Demand rises as our export prices fall relative to world prices.
>
> The supply of exports is driven by internal competitiveness; that is, the ability of the traded goods sector to attract resources from the non-traded goods sector. Domestic (internal) producers move resources into the

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

production of exports on the basis of relative domestic prices of traded goods and non-traded goods.

To capture the impact of the two different types of cost competitiveness, exports are modelled using a demand and supply framework that is simplified greatly by exploiting the following dichotomy.

For commodity exports, Australia is assumed to be a small open economy where commodity export prices are determined by world prices. The world will take as much as Australia wishes to supply at the going world price. Demand and supply curves are estimated for commodity exports. The former determines the $A export commodity price and the latter determines the quantity of commodities produced.

In contrast, domestic producers of non-commodities export only a relatively small proportion of their total output and, therefore, foreigners can purchase as much of Australia's exports as they wish without affecting the price. At that price there is limited foreign demand for those exports. Only a demand curve is estimated for non-commodity exports. Since the supply curve is assumed to be perfectly elastic, it does not need to be estimated because the price of non-commodity exports is determined by the domestic price of non-commodities, which is estimated in the business sector of the model.

Factors other than external and internal competitiveness that have an influence, include:

- the growth of our major trading partners. An increase in our major trading partner growth will, other things equal, increase demand for our exports and lead to a corresponding increase in export prices;
- the strong productivity growth in the mining and agricultural sectors, which appears to have assisted in maintaining Australia's commodity export supply;
- fluctuations in oil prices relative to world prices generally. An increase in the world oil price increases the price of Australia's oil exports and increases the price of commodities exported by Australia that are substitutes for oil; and
- the declining trend in world commodity prices relative to world prices generally.[44]

4.53 In the Pre-election Economic and Fiscal Outlook published by the Department of the Treasury there is the following discussion on commodity prices without an explanation of any of the underlying assumptions behind them:

As in the Economic Statement, the terms of trade are forecast to rise by 17 per cent in 2010-11, underpinned by substantial increases in the contract prices of Australia’s commodity exports, including iron ore and coal. The terms of trade are forecast to fall by 4½ per cent in 2011-12, a little more

44 Department of the Treasury, *Treasury Macroeconomic (TRYM) Model Documentation*, Part 2, pp 4.7-4.8, http://www.treasury.gov.au/contentitem.asp?ContentID=236&NavID=016 (accessed on 22 July 2010).

than at Budget, as increased global supply capacity starts to weigh on prices of some commodities.

The 17 per cent rise in the terms of trade for 2010-11 is an upward revision from the 14¼ per cent rise forecast at Budget.

The Budget estimates for the terms of trade discounted the sharp and unsustainable run-up in spot prices of some commodities, particularly iron ore. A sharp fall in the iron ore spot price was anticipated and factored into the forecasts. The Budget forecasts assumed that contract prices for bulk commodities would increase substantially — as they have done — but that the increases for iron ore prices would be substantially less than suggested by the prevailing spot prices.

Historically there have been wide divergences between spot prices of bulk commodities at any point in time and contract prices that are subsequently negotiated. These divergences will narrow under the new contracting arrangements for iron ore and metallurgical coal, but they can still be substantial...

The Budget estimates were conservative, reflecting the volatility in prices and uncertainty about where they may settle.

Subsequent information from industry sources suggested that the estimates for iron ore prices were too low, movements in spot prices notwithstanding, and the current forecasts have been revised accordingly.

The current forecasts are broadly consistent with current spot prices for the bulk commodities, although iron ore spot prices are lower than expected. However, market analysts suggest that part of the reason for this is the seasonal pattern of Chinese demand, which is expected to rebound later in the year when Chinese steel mills look to rebuild iron ore stocks.[45]

Uncertainty surrounding commodity forecasts

4.54 The committee heard evidence about the uncertainty surrounding estimates forecasts of commodity prices. Dr Henry noted:

...There is considerable uncertainty surrounding estimates forecasts of commodity prices. We in the Treasury forecast commodity prices for the budget and we forecast commodity prices at Mid-Year Economic and Fiscal Outlook times. We forecast them at other times through the year as well but, for publication, we essentially have two forecasts of commodity prices. Others who comment on these things, including the companies themselves, have the ability to forecast, to various degrees, commodity prices every morning, maybe even several times during the day. Because commodity prices are volatile, as I indicated earlier, a forecast of commodity prices conducted, say, two months after an earlier forecast of commodity prices could well be quite different. If somebody is suggesting that, because of

45 Department of the Treasury, *Pre-election Economic and Fiscal Outlook 2010*, p. 3, http://www.treasury.gov.au/documents/1858/PDF/01_Overview.pdf (accessed on 26 July 2010).

> that, the earlier forecast is a bungle then I would suggest that they know very little about forecasting.[46]

Upward revisions of the commodity prices under MRRT

4.55 At the first hearing on 5 July 2010, the committee heard evidence about the upwards revision by the Department of Treasury of commodity prices:

> 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.[47]

4.56 At the second hearing on 13 July 2010, Dr Henry made the following remark:

> 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.[48]

4.57 On 16 July 2010, the Department of the Treasury responded to the committee's question with the following statement:

> 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.[49]

4.58 The committee does not consider that the advice in the *Economic Statement July 2010* provides the level of detail sought by the committee.

4.59 Dr Henry again took the questions regarding commodity prices on notice:

> CHAIR—…we have not been able to find any evidence in the market whatsoever of improvements in the commodity price outlook that might

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46 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 9.

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

48 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 35.

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

have happened between 1 May and 1 July 2010. On what data are you basing your assessment that, in the final two years of the forward estimates period, commodity prices are likely to increase significantly?

Dr Henry—A mix of forecasts internally generated and information supplied by the companies themselves.

CHAIR—So the companies themselves have said to you that they expect significant increases in commodity prices in the last two years of the forward estimates period.

Dr Henry—I think so. Certainly generally that is correct. The only reason I am hesitating is because your question relates to both of those years. I think it is the case that in both of those years the companies indicated higher commodity prices than we had been thinking previously.

CHAIR—Can you share the data with us? Have those companies released that data publicly? Have they advised the market of expectations of significantly higher—

Dr Henry—I do not know whether and to what extent the companies have published that information. I would have to take that on notice. As to whether the information can be shared with the committee, again that is a question I would wish to refer to the Treasurer.[50]

4.60 On 16 July 2010, the Department of the Treasury responded to the committee's question with the following:

Treasury is not aware of any official media release being issued in the period 1 May 2010 to 1 July 2010 by BHP Billiton, Rio Tinto or Xstrata indicating significantly increased price expectations over the relevant period. However, an official Xstrata media release, dated 5 May 2010, (available on their website) announced that higher contract coal prices have been settled upon.

BHP Billiton, Rio Tinto and Xstrata indicated to Treasury that they expect a significant increase in prices received, in part due to a progressive shift from pricing under long term contract arrangements to shorter term pricing linked more closely to movements in the spot market.

Treasury is not in a position to release the pricing information provided by the companies as it was provided on a confidential basis.[51]

4.61 The committee notes that Dr Henry took on notice the question in relation to the price decomposition of the two upward revisions:

...in revising our commodity price forecasts we did some work internally, which did lead to upward revisions in our commodity price forecasts. We relied on publicly available information and we spoke to the companies. As

50 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 37–38.

51 Department of the Treasury, answers to questions on notice, Question 5, 13 July 2010 (received 16 July 2010).

> I understand it, in discussions with the companies there was a further but relatively modest upward revision to the forecast we had already come to. I do not have with me the price decomposition of those two upward revisions to commodity prices and will have to take on notice that question.[52]

4.62 On 16 July 2010, the Department of the Treasury responded to the committee's question with the following:

> Changes to commodity price and exchange rate assumptions contributed positively to the parameter revisions over the forward estimates (which accounted for a $6.0 billion increase in resource tax revenue), while changes to expense assumptions made a negative contribution to the overall parameter revisions. The changes to commodity price assumptions reflect internal Treasury advice that iron ore and coal prices should be revised up, as well as company advice, including that prices received would be positively influenced by the shift toward shorter term pricing of sales.[53]

4.63 The committee notes that the Department of the Treasury 'appreciates the difficulty' of not having access to the base assumptions for commodity prices, as revealed in the following exchange with Dr Henry:

> CHAIR—Let us talk that one through. For the purposes of assessing the fiscal impact of the MRRT expanded PRRT arrangements, you have already built in increased commodity price assumptions which essentially are directly related to the economic rent to be expected. If the economic rent then drives the market valuation what you are really saying is that for you to generate tax revenue from those existing projects commodity prices would have to increase over and beyond the increased assumptions that you have already built into your model?
>
> Dr Henry—In order to generate revenue in the near term they do not need to even increase at all, because it depends upon the profile that you have for commodity prices. If you have, for example, declining commodity prices in your profile the net present value calculation will obviously discount the entire relevant time horizon of the commodity prices—let us say, 25 years. It is therefore going to be reflective of the discounted average of commodity prices. If the commodity prices are declining you will get revenue in the early years with straight-line depreciation of the market value over a 25-year period. You will get revenue in the early years without any need for commodity prices to increase.
>
> CHAIR—Again, we cannot really assess that because we do not know what your base assumptions are around commodity prices?
>
> Dr Henry—That is right. I appreciate the difficulty you are in.[54]

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52 Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 38–39.

53 Department of the Treasury, answers to questions on notice, Question 6, 13 July 2010 (received 16 July 2010).

54 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 62–63.

4.64 The committee notes that 'these difficulties' were raised with the committee by those companies not 'in the room'; including AMEC. Mr Young noted the 'wide range' of potential impacts of the MRRT on net present value (NPV):

> ...We have assumed an iron price of US$105 a tonne. We flatlined it for the assumption so that we did not change any other variables. We assumed an Australian-US dollar exchange rate of 90c for the life of our deposit, which is approximately 10 years. We basically assumed that the first saleable form at the mine gate is assessed at the FOB price, which is the price you receive when you sell it at the ship's rail. We also looked at deducting the port, rail and haulage prices—in other words, the price that I need to pay to transport my ore from the mine gate to the ship's rail. That is called the net back. I believe that is the principle behind what is going to take place, although when I look at the MOU there is not a lot of detail. We ran six cases because of the uncertainty of all the variables. In today's company tax rate, our average tax rate would be around 36 per cent. That includes company tax plus royalties; they are basically six per cent above the company tax rate. The RSPT had about a 55 per cent effective tax rate for our company, and the MRRT in its six iterations that we ran varies between 40 per cent and 53 per cent effective tax rate. That equates to an impact on our NPV of between minus five per cent and minus 21 per cent. That is quite a wide range.[55]

Differences between the RSPT and the MRRT - the comparative status of royalty/profits based tax under the RSPT and the MRRT

4.65 The committee heard evidence on the operation of the RSPT and the impact on state royalties as set out in chapter 3. The committee also heard evidence about the intended operation of the MRRT. Instead of refunding the royalties a credit will be provided against an MRRT liability. Dr Henry noted:

> …With respect to royalties and companies' liability to bear the burden of royalties, there is a very significant difference between the original proposal—that is, the RSPT—which would have refunded those royalties to the companies, and the MRRT. The MRRT, instead of refunding the royalties in full to the companies, provides a credit against an MRRT liability. So as you say, Senator, if there is no MRRT liability then there would be no refund of royalties.[56]

4.66 The committee heard evidence about the impact of this change:

> CHAIR—That means, in those circumstances, companies would well and truly have got access to the resource for free. How does that coincide with the statement of getting a fair return for the community?
>
> Dr Henry—That is the point, isn't it: what does one mean by a 'fair return'? The view was taken—and I am talking now about the view of the

55 Mr Young, BC Iron Limited and AMEC, *Committee Hansard*, 13 July 2010, pp 85–86.

56 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 5.

> committee, my review committee—that if a resource is of such marginal value commercially that somebody who extracts a resource makes no profit from that extraction, then there should be no price payable to the Australian community for the extraction of that resource. There is a very important qualification to that, I should hasten to add. That is, some resources have, if not a commercial value, a significant value to the community. For example, old growth forests have substantial environmental value to the community, and the committee would therefore not have recommended these sorts of pricing arrangements for the utilisation of timber from old-growth forests.
>
> But in the case of iron ore, coal, sand and gravel and so on the committee's view was that these resources do not have an alternative value to the community. The value to the community is their commercial value. If they have low commercial value then it is appropriate that the community receive a low, possibly zero, price for those resources. That is the reason why, as we have already discussed, in our contracted modelling of the economic effect of this proposal, the modellers came to the view that this would lead to an increase in the rate of extraction of those particular commodities which have low commercial value but are nevertheless at the moment taxed.[57]

4.67 The committee also heard evidence about the operation of the royalties regime under the MRRT from Dr Henry:

> …Yes, but just to clarify, under the MRRT, as we have discussed, the royalties continue. Under the RSPT, the original design, you are right: it is purely profits based tax. Indeed, it is called a super profits tax—that is, a tax applying to super profits. Because the royalties were to be refunded there was to be no other tax apart from normal company tax, of course, which applies to all activities that are incorporated.
>
> So, yes, you are right that under the RSPT design the amount of revenue raised, say, per tonne of commodity would have been quite sensitive to the profitability of the venture. In particular, it would have been quite sensitive to the world price of the resource. It would also have been sensitive to the costs of extraction. Those things are true. Royalty arrangements are less sensitive to those things, although some royalties are, of course, ad valorem royalties, so they are still sensitive to price, but not so sensitive to costs of extraction, which is one of the reasons why the Minerals Council does not like them—or is on the record as not liking them. That is true, but it is the case also that under royalties based arrangements, depending upon international prices and depending upon costs, the profitability of extraction of particular minerals will change over time. In fact, profitability is highly volatile in the mining sector. Therefore, with royalty arrangements where the royalty rate does not change in response to the change in the profitability of extraction, those royalty arrangements cause distortions in the pattern of investment in the resources sector. It is what the Minerals Council said to us, but it is also what our own economic analysis had

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

suggested to us would be the case and it is what the modelling also confirmed. [58]

4.68 Dr Henry also noted that:

> ...it is the case that **if a royalty regime is in place rather than a profits based tax there is greater certainty about the level of revenue that will accrue to the community from the extraction of, let us say, a tonne of minerals. But there is at the same time rather less certainty about the number of tonnes of minerals that will be extracted**. That is why the Minerals Council, in its submission to our review, recommended in very strong terms, as I recall, that the existing royalty arrangement should be replaced with a profits based tax. *[emphasis added]* [59]

The cut to the company tax rate

4.69 The committee received evidence about the impact of the reduction of the company tax rate announced on 2 July 2010, which was also taken on notice by the Department of the Treasury:

> Dr Henry—No. I should have been clearer. Let me put it this way. Those numbers in the 2 May row reflect a combination of the effects of a cut in the company tax rate. But bear in mind that the second step down in the company tax rate—that is, from 29 per cent to 28 per cent—in the 2 May row takes effect from, I think, 2013-14. That is one impact. Another impact that is reflected in that row relates to the RSPT refund of royalties. When you move from 2 May to 2 July, two things happen. Firstly, instead of having a two percentage point cut in the company tax rate there is a one percentage point cut in the company tax rate. That explains part of the difference in those numbers. But another part of the difference in the numbers comes from the redesign of the RSPT, the fact that it is an MRRT without royalties now being refunded.
>
> CHAIR—Can you disaggregate that for us, maybe on notice?
>
> Dr Henry—I will have to take it on notice.[60]

4.70 On 9 July 2010, the Department of the Treasury responded to the committee's question with the following 'The reductions in the growth dividend in 2012-13 and 2013-14 reflect the changed arrangements for cutting the company tax rate.'[61]

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58 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 7.

59 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 6.

60 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 44.

61 Department of the Treasury, answers to questions on notice, Question 13 'Change in growth dividend', 5 July 2010 (received 9 July 2010).

The policy development process for both the RSPT and the MRRT/expanded PRRT deal were flawed

4.71 The committee received evidence about the extensive consultation process for the Henry Tax Review:

> The review itself, as you would be aware, undertook very extensive consultation with taxpayers, with businesses and representatives of the business community, with community sector organisations and so on. There were hundreds of consultations. We received over 1,000 submissions to the review. When I think back over the tax review exercises that I have been engaged in in the past quarter century, this one stands out as having involved the most extensive consultation. All of the outcomes of those consultations were available to the government in its consideration of its response to the report.[62]

4.72 The committee received evidence about the consultation with the resources sector regarding the government's response to the Henry Tax Review:

> There was some consultation. I am not sure that I am personally aware of all the consultation that occurred between ministers and others; in fact I would be pretty sure that I am not aware of all of the consultation that would have occurred. I am aware of some consultation that occurred, in particular with senior people in the resources sector. Of course, as I indicated earlier, all of the review panel's consultations, or the outcomes of those consultations, were available to the government in its consideration of its response to the report as well.[63]

4.73 The committee received evidence about the consultation with state and territory governments regarding the resource rent tax:

> CHAIR—The resource rent tax model which was recommended by your review was based on the proposition that state royalties would be abolished altogether and be replaced with a profit based resource rent tax. Were state and territory governments ever formally consulted on that proposition as far as you are aware?
>
> Dr Henry—Yes, at officials level certainly and at political level also.
>
> CHAIR—And you are quite certain about that?
>
> Dr Henry—I am absolutely certain.
>
> CHAIR—And that was before this was announced?
>
> Dr Henry—Yes.
>
> CHAIR—But presumably the response then was that state and territory governments were not going to abolish their royalties and hence the

62 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 3.

63 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 4.

government decided to refund them under certain circumstances? That is right, isn't it?

Dr Henry—That was the government decision...[64]

4.74 As noted in chapter 3, the committee heard concerns about the lack of consultation on the RSPT measure from the Western Australian Department of Treasury and Finance:

CHAIR—Did the Australian Treasury contact you before the release of the superprofits tax?

Mr Barnes—Before the original public announcement the Commonwealth Treasury did give a very general heads-up of the direction that the recommendations were heading in, but at no stage prior to public release did we actually see the recommendations, nor—by definition, given that we did not see the recommendations—were we asked to comment or provide input on the recommendations.

CHAIR—The original proposal was for the resource superprofits tax to replace state royalties and that state royalties would be abolished. As far as you are aware, has anyone from the federal government at an official or government-to-government level discussed the prospect of abolishing state royalties with WA Treasury or the WA state government?

Mr Barnes—In the initial heads-up that I mentioned, that prospect was flagged as the direction that the Henry review committee was heading in.

CHAIR—What was your response to that?

Mr Barnes—We were not really given the opportunity to respond; it was more in the nature of a one-way communication that that was the direction the review was heading in.

CHAIR—...You are in Canberra today; why wouldn't Ken Henry and others pick up the phone or sit down with you and give you some answers to all these questions?

Mr Barnes—You would probably have to ask Ken Henry that question. We have sent off a letter or two and emails to try to get clarity around some of these issues, but so far it has been to no avail.

CHAIR—How many letters and emails have you been sending to federal Treasury or the federal government?

Mr Barnes—I can recall two.

CHAIR—So you have been trying to have a meeting or discussion but so far that has not eventuated.

Mr Barnes—Yes—certainly not to the level of detail that we need.[65]

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64 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 4.

4.75 In his evidence before the committee that same day, Dr Henry noted:

> CHAIR—In consultations with the state government, clearly the state government would be a key stakeholder in all of this. Did you provide them with any analysis on the likely economic impacts of the minerals resource rent tax on Western Australia?
>
> Dr Henry—Certainly I did not. I do not believe anybody in my department did so.
>
> CHAIR—Have you shared with WA Treasury how Commonwealth Treasury calculated the revenue expected from the minerals resource rent tax?
>
> Dr Henry—I do not believe so, Senator. I stand to be corrected, but I do not believe so.
>
> CHAIR—Have you provided any information to the state government in Western Australia or, indeed, other state governments on how state royalty arrangements will interact with the application of the minerals resource rent tax?
>
> Dr Henry—The 2 July statement makes pretty clear the form of that interaction.
>
> CHAIR—Except it does not seem to be so clear to the officers of WA treasury…there has not, as I understand it, been any formal confirmation of that through any of the official channels.
>
> Dr Henry—That is probably right, but I am sure that, over the next two years, before the tax starts operation, there will be plenty of opportunity for that sort of consultation and for that sort of detail to be settled.
>
> CHAIR—Over the next two years, I guess. Some people are of the view that the only reason the federal government has had any discussions with anyone is that it is facing an eminent election. After the election I guess some of that dynamic will change again. Are you giving an absolute guarantee on behalf of the government that state governments will be properly consulted after the election?
>
> Dr Henry—It is not for me to speak on behalf of the government.[66]

4.76 The committee received evidence from the small to mid-tier mining companies about the impact of the lack of consultation in the policy development process for the MRRT, on their businesses:

> CHAIR—Do you think that the Rudd and Gillard Labor governments have sufficiently taken into account that voice, those views, or have they been focusing on the big end of town?

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65 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 8.

66 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 48.

Mr Bennison—It is probably split. I think in the process of the initial policy arrangements with the RSPT we were part of the general consultation process that was put in place.

CHAIR—That was post the announcement, after the announcement, of the tax?

Mr Bennison—That is correct. We obviously have unfortunately had little participation in negotiations that have taken place since the Prime Minister announced the new regime within the MRRT and obviously in the period from her appointment into the conclusions around the MRRT.

CHAIR—So you were not involved in any consultations around the design of the so-called resource super profits tax initially, were you?

Mr Bennison—Not on the initial occasion, no. Basically it was handed to us as a confirmed arrangement. We had tried to participate in the Henry tax review process, under the impression we would get involved in issues relating to exploration and development programs. That is the only component where we had any input.

CHAIR—So essentially the government announces the resource super profits tax, you then are involved in the consultation process after that has been announced, but before that reaches any conclusion there is a change in Prime Minister, the Prime Minister has a meeting in her office to conclude the deal with BHP, RIO and Xstrata. You were not part of that process of negotiation under the new Prime Minister, were you?

Mr Bennison—Correct.

CHAIR—Have you been given any indication about your level of involvement as the voice for the small and mid-tier companies in the policy transition group?

Mr Bennison—**No, at this stage we have not had any engagement with the government formally to see how we will be engaged in that process. That is something we obviously hope to take up with the government. We have written to the Prime Minister and to relevant ministers, the Treasurer and the Minister for Resources and Energy, in an effort to engage them. We have done that since the appointment of the new Prime Minister and obviously since the resolution of the MRRT arrangements.** *[emphasis added]*

CHAIR—So you have sought a meeting but you have not heard back yet about a meeting, have you?

Mr Bennison—Correct.

CHAIR—Has the government asked you to provide any details about your financials or any financial modelling in regard to the types of projects your members invest in?

Mr Bennison—At this stage, no.

CHAIR—How can they assess the impact of the tax, the MRRT, on the small and medium end of town versus the big end of town if they do not have that information?

> Mr Bennison—That is a good question. I assume that they will be engaging some of our members to perhaps glean that information.
>
> CHAIR—Are you aware whether they have engaged any? You have two of your members here. Have you been asked for—
>
> Mr Flanagan—We did handover the information as part of the consultation process on the RSPT. I would expect that would have given them an inkling but I can only guess at what went on inside the MRRT negotiations.
>
> CHAIR—Okay, but the design of the MRRT was negotiated with BHP, RIO and Xstrata. Have you been asked to provide information around how the MRRT would impact on a company like yours?
>
> Mr Flanagan—No, not since the MRRT has come out.
>
> Mr Young—No, we have not either.[67]

4.77 The committee heard evidence from Mr Pearce, of FMG regarding FMG's understanding about the membership of the Policy Transition Group to be lead by Mr Don Argus AC. The committee is concerned that directly impacted mining companies do not appear to have been given a voice in the process:

> CHAIR—Have you been given any indication that you will be involved in the policy transition group?
>
> Mr Pearce—It is my understanding that the committee members of that group will not be taken directly from the industry that has a specific interest in the outcome.[68]

The effect of the MRRT/expanded PRRT on the magnetite industry

4.78 The committee is extremely concerned about the inclusion of magnetite under the MRRT. The committee is concerned that the government is not yet able to clarify for the mining companies whether the taxing point for magnetite will be pre or post processing, given the impact of this decision on the economic viability of this type of mining. The committee heard evidence from the Western Australian Department of Treasury and Finance about their 'particular concern around the potential impact of the MRRT on the emerging magnetite iron ore industry in Western Australia's mid-west' as set out below:

> …it is of concern that there is no detailed analysis or modelling of the impact of the proposed MRRT and expanded PRRT regime, particularly by industry and/or region. In this regard we have a particular concern around the potential impact of the MRRT on the emerging magnetite iron ore industry in Western Australia's mid-west. We believe that magnetite iron ore should be excluded from the MRRT. Unlike the traditional hematite

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67 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Bennison, Mr Flanagan and Mr Young, AMEC, *Committee Hansard*, 13 July 2010, pp 81–83.

68 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 67.

> iron ore, magnetite ore requires extensive processing to convert it into a marketable product. While the Commonwealth's stated intention is to apply the MRRT taxing point as close to the point of extraction as possible so that only the value of the resource extracted is taxed, rather than the value added by processing, our view is that a better option is to exclude magnetite ore from the scope of the MRRT.[69]

4.79 The committee heard evidence from FMG about their attempts to engage in dialogue with the government over the inclusion of magnetite under the MRRT:

> CHAIR—You mentioned the emerging lower grade magnetite iron ore industry issues which are uniquely affected under the MRRT. Can you talk us through some of the impacts, and have you discussed those impacts with anyone in government?
>
> Mr Pearce—We raised the issues in that brief meeting that we had with Minister Ferguson. We have not really had any response at this point in time. Magnetite is an emerging industry in the very early days of its life cycle. It also requires significant investment in downstream processing.
>
> CHAIR—You have raised those issues with Minister Ferguson. There has not been much of a response, but has he given you an indication as to when a conclusive response to those issues will be forthcoming?
>
> Mr Pearce—No, we have not really had a response at this point in time. I am assuming that they will be dealt with as part of the committee process.[70]

Committee comment

4.80 The committee understands that magnetite at the point of extraction is worth less than gravel and it only becomes a valuable resource after a significant processing and value adding. The government's inclusion of magnetite in the MRRT demonstrates again the government's lack of understanding of the mining industry. This could have been addressed by the government through meaningful and genuine consultation with the whole mining industry. As a direct result of not consulting with small to mid-tier miners the government was unable to grasp the impact of its decision to include magnetite into the scope of the MRRT on the economy and jobs and investment in the mining industry, particularly in Western Australia.

4.81 The committee also heard evidence from AMEC about the potential for part of the industry to be 'killed in its infancy':

> CHAIR—Going back to the issue of the emerging lower-grade magnetite iron ore industry, what are the unique impacts on that part of the industry from the MRRT? There have been arguments that magnetite should be excluded for a range of reasons. Can anyone here talk us through this?

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69 Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, pp 2–3.

70 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 73.

> Mr Bennison—I will start off and I will then throw to David. We have a considerable number of magnetite producers in the west and I think it is fair to say that their preferred position would be to be exempted from the MRRT arrangements. Their justification is pretty much on the in-the-ground value of their product and the extraction cost. They are obviously drawing parallels to other commodities that have been exempted—whether it is bauxite or others—where the value add and the actual treatment of this product down the track is the real issue for them. So, from a magnetite point of view, their position has been made quite clear and I know that they have had some discussions with the government, but to what detail I am not quite privy to. David might have some more information on that.
>
> Mr Flanagan—We are really just at the beginning of the magnetite industry in Australia and the potential for magnetite to make a significant contribution to the Australian economy. In the short term, in those construction jobs, thousands and thousands of people would have employment opportunities out of it. But the magnetite projects are typically very long life. Atlas have a magnetite project and we would envisage that having a mine life in the order of 35 years. So there is a significant opportunity there. Because it is a new industry and it is very capital intensive, there is an element of technology risk in starting these projects and a very large capital risk. So they in themselves are a reasonable barrier to entry into that industry. Typically, to go and start these sorts of industries—which would employ so many people and break such new ground and do so much value adding of a very low-grade product—the government would often provide taxation incentives in some countries. So, in effect, what this MRRT does is it creates uncertainty and effectively another barrier to entry for investors to come and get those projects up.
>
> CHAIR—So it might actually kill a part of the industry in its infancy?
>
> Mr Flanagan—Well it is definitely not increasing the price and value of them.[71]

The disproportionate impact of the MRRT/expanded PRRT on Western Australia

4.82 The committee is concerned that there are particular implications for states like Western Australia, Queensland and New South Wales, where the share of the tax revenue contribution is expected to increase as a result of these changes. The impact on Western Australia is expected to be particularly significant. The committee heard evidence from the Acting Under Treasurer of the Western Australian Department of Treasury and Finance indicating that:

> ...Preliminary analysis by the WA Department of Treasury and Finance suggests that Western Australian projects will contribute around 60 to 65 per cent of the total MRRT revenue. In 2013-14 this equates to around \$3.9 billion of the Commonwealth Treasury’s \$6.5 billion revenue estimate for that year coming from Western Australia. Even after the planned cut in the

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71 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Bennison and Mr Flanagan, AMEC, *Committee Hansard*, 13 July 2010, pp 94–95.

> company tax rate to 29 per cent and a share of the proposed Regional Infrastructure Fund, we estimate that this package will see an overall net contribution from Western Australia of around $3 billion in 2013-14. This is on top of Western Australia's already very substantial net fiscal subsidy to the Commonwealth, estimated at around $11 billion in 2008-09. Our concern is that such a large redistribution of wealth from Western Australia may not be in the national interest and reduces incentives for the state to put in place growth-promoting policies and infrastructure.[72]

4.83 Over the forward estimates a 65 per cent share in MRRT revenue from Western Australia would mean that about $7 billion out of the $10.5 billion in estimated revenue would come from that state.

4.84 The Western Australian Department of Treasury and Finance outlined the methodology and assumptions it used to come to its conclusions about the share of the revenue under the MRRT out of Western Australia, pointing out to the committee:

> CHAIR—It is strange that it takes a committee of the Senate to give WA treasury a hearing with federal Treasury. Maybe Mr Altus can go through the background to the 60 to 65 per cent share.
>
> Mr Altus—Certainly. You will appreciate that there is no published data on profits, let alone resource rents, by commodity type and by state. Therefore, we have used, as Michael has indicated, value-of-production data as a proxy for profits or rents and we have used the value-of production data that the Grants Commission has published in its working papers because that gives us the level of disaggregation by commodity type and by state that we need. The Grants Commission data is of course only historical data, so we have escalated it into 2012-13 and 2013-14 terms essentially using published data in states' budget papers on their expected growth in royalties over that period after adjusting for any policy changes impacting on those royalty projections. We focused primarily on iron ore and coal in this exercise on the basis that evidence that has been given to this committee by the Commonwealth Treasury suggests that the vast majority of the revenue under the new Commonwealth resources rent tax regime would be from those two commodities as opposed to coming from the petroleum projects onshore and the North West Shelf project that would fall within the scope of the expanded PRRT regime. Based purely on the value of production analysis that we have done, which focuses mainly on iron ore and coal, that suggests about a 50 per cent share or contribution by Western Australia, but we have then made some further adjustments to allow for the fact that proportionally the credits that would be allowed against MRRT liabilities for iron ore would be less than the credits that would be allowed for coal, reflecting the fact that ad valorem royalty rates for iron ore at around six per cent overall are less than the ad valorem royalty rates for coal, which are around eight per cent. Without going through the technical aspects of that adjustment, after you do that adjustment for the crediting of state royalties,

72 Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 2.

that lifts Western Australia's contribution to an estimated 60 per cent or so. We have settled on an overall figure of 60 to 65 per cent after making a broad brush allowance for the expanded petroleum resource rent tax and the likely contribution that Western Australia would make to that revenue stream. Our analysis indicates that Western Australia's contribution to the expanded PRRT revenues could be in the order of 80 to 85 or 88 per cent, which we have assumed would lift the overall average to between 60 and 65 after allowing for the evidence to this committee that the vast majority of the revenues from the overall Commonwealth resource rent tax regime will be from oil and coal. I should also say that we have a piece of paper which documents in step-by-step form exactly how we have done this calculation.

CHAIR—Could you share that piece of paper with us?

Mr Altus—We would be very happy to share that with you. As Michael has indicated, we would be very happy for it to be open to scrutiny, including from the Commonwealth Treasury, to let us know if there is any information or methodology issues that we might have overlooked or if there is a better way of doing it.

CHAIR—You have now put your methodology out there for scrutiny. You are prepared to table your document. Would you expect federal Treasury to do the same so you can swap notes in effect?

Mr Barnes—We would hope that this would be the start of that engagement process.[73]

Committee comment

4.85 As noted above, the Western Australian Department of Treasury and Finance tabled a detailed summary of the methodology and assumptions it used. It also provided the committee with answers to questions about the commodity price and assumptions used.

4.86 The Western Australian Department of Treasury and Finance explicitly invited scrutiny of its methodology and assumptions from the Commonwealth Department of the Treasury and others. At the time of printing this report no Commonwealth official or minister has disputed the findings of the Western Australian Department of Treasury and Finance's analysis about how much revenue would come from Western Australia under this new/revised tax on mining.

4.87 In relation to the share of the funding for Western Australia under the promised regional infrastructure fund, the committee heard the following evidence from the Western Australian Department of Treasury and Finance Acting Under

73 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Barnes and Mr Mark Altus, Director, Revenue and Intergovernmental Relations, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, pp 10 -11.

Treasurer, indicating that any information they had was limited to information that is publicly available:

> CHAIR—Are you aware whether or not the design of the funding arrangements will be changed as a result of the change from the RSPT to the MRRT given the increased share of revenue expected to come from Western Australia?
>
> Mr Barnes—We are working on the assumption that the arrangements are largely the same as the original announcement in relation to the regional infrastructure fund but, again, we are only operating on what is in the public arena.[74]

4.88 The committee then heard further evidence in this regard concerning the economic impacts of the MRRT on Western Australia:

> CHAIR—…Has the Commonwealth Treasury provided you with any analysis of the likely economic impacts of the minerals resource rent tax?
>
> Mr Barnes—No, nothing over and above what is publicly available.
>
> CHAIR—Has the Commonwealth Treasury sought any advice from you in calculating those amounts for their own internal purposes?
>
> Mr Barnes—No, I do not believe so.
>
> CHAIR—So what information has the Australian government provided to you on how state royalty arrangements will interact with the application of the minerals resource rent tax?
>
> Mr Barnes—Again, formally nothing over and above what is in the public arena already.[75]

4.89 The committee heard evidence that the Western Australian Department of Treasury and Finance had not been consulted about participating in a Policy Transition Group regarding the MRRT:

> CHAIR—Will the WA Treasury play a role in the policy transition group as far as you are aware?
>
> Mr Barnes—To date and to the best of my knowledge we have not been invited to. But we would expect and hope that that would be the case.
>
> CHAIR—But so far you have not been invited to participate.
>
> Mr Barnes—That is right.[76]

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74 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 5.

75 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 5.

4.90 During the hearing on 5 July 2010, the Department of the Treasury took questions on notice about how much revenue was coming from Western Australia and Queensland. As quoted earlier in this chapter, Mr Parker from the Department of the Treasury stated:

> CHAIR—So you do not know how much of the $10½ billion would come from Western Australia, Queensland or whatever?
>
> **Mr Parker—We have not done that analysis. It would not be a difficult piece of analysis to do.** *[emphasis added]*
>
> CHAIR—I suspect you will have to do that analysis, because the federal government has committed to an infrastructure fund to be based, in a proportional sense, on where the revenue comes from. Given the shift in focus to coal, iron ore, oil and gas exclusively away from all the other resources, I suspect states like South Australia will now pay much less into the system, whereas the burden for states like Western Australia and Queensland will increase, proportionately speaking. That is a fair assessment, generally speaking, isn't it?
>
> Mr Parker—I prefer to actually do the numbers before I make a comment on that.[77]

4.91 The committee is concerned that this information has not been forthcoming as set out in chapter 2. The committee is further concerned that the government do this analysis if they are serious about their commitment to provide funding in the promised infrastructure fund to individual states proportionate to the share of revenue raised in those states.

4.92 The Premier of Western Australia noted in the Western Australian Government's submission to the committee that:

> The Commonwealth has estimated that it will receive $10.5 billion (net credits for State Royalties) over the period 2012-13 to 2013-14 from its proposed MRRT and expanded PRRT. In the absence of further details from the Commonwealth it is difficult to estimate Western Australia's contribution to this figure with any precision, as there is no published historical data or projections on profitability or resources rents for the mining industry by commodity type and State. Nonetheless a range of 60-65% is considered justifiable, based primarily on value of production estimates for iron ore and export quality coal derived from State royalty projections and Grants Commission data.[78]

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76 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 14.

77 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, pp 15–16.

78 Premier of Western Australia on behalf of the Western Australian Government, *Submission H21*, p. 1.

4.93 The committee notes that in their evidence before the committee and in response to questions on notice, the Western Australian Department of Treasury and Finance provided detailed information about their methodology, and their commodity price and production volume assumptions for public scrutiny, yet the Commonwealth Government has refused to do the same. When asked about how much of the $10.5 billion would come from existing projects, at the second hearing on 13 July 2010, Dr Henry made the following comment:

> CHAIR—Out of the $10½ billion, how much is expected to come from existing projects?
>
> Dr Henry—I do not know. I do not have that information with me. I will have to take that question on notice.[79]

4.94 On 16 July 2010, the Department of the Treasury responded to the committee's question with the following:

> The answer to this question depends upon how existing projects are defined. If existing projects are defined to include both those that are currently operating and those that are under development or consideration, then it is likely that most, if not all, of the $10.5 billion in additional revenue from resource projects in 2012-13 and 2013-14 will come from existing projects.[80]

4.95 The committee is concerned that no one from the government has disputed the assertions that about $7 billion out of the $10.5 billion would be raised in Western Australia and it is the committee's view that this would seem to be a disproportionate mining tax revenue share coming from Western Australia. Senator Cormann noted that 'Western Australia accounts for 96 per cent of Australia's iron ore production'.[81]

4.96 The committee notes at the hearing on 13 July 2010, Department of the Treasury officials appeared to agree that most of the MRRT revenue is expected to come from iron ore.[82]

4.97 The committee notes the different interaction between the MRRT and state royalties, impacting differently on iron ore and coal. The committee received evidence about the impact of the taxation changes on the states. Mr Michael Barnes, Acting Under Treasurer, Department of Treasury and Finance, Western Australia noted:

> …we view the Commonwealth’s proposed mining tax regime as an unwelcome intrusion into an area of state government responsibility,

79 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, p. 62.

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

81 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, *Committee Hansard*, 13 July 2010, p. 51.

82 Dr Henry, Department of the Treasury, *Committee Hansard*, 13 July 2010, pp 51-52.

undermining the state's autonomy and budget flexibility. While the proposed MRRT and expanded PRRT are currently envisaged to operate alongside state royalties, with a tax credit available for state royalty payments, we are concerned that over time there is a significant risk that states will effectively be crowded out of this revenue base, at least in respect of iron ore, coal and petroleum.[83]

4.98 The Acting Under Treasurer also noted that the Western Australian Department of Treasury and Finance had limited input in relation to the consultation process on the taxation reform process.[84]

Discrepancies in the evidence on the direction of the iron ore commodity price outlook

4.99 The committee understands that the spot price for iron ore had been falling in the relevant period from 2 May 2010 to 2 July 2010 by 30 per cent in United States (US) dollars.[85]

4.100 The committee is concerned that there appears to have been no significant changes in commodity price outlook for iron ore over this period, yet the Department of the Treasury on behalf of the government significantly upgraded its iron ore commodity price expectations, to an extent that has not been made public by the government.

4.101 The committee is concerned that until this material is made available in the public domain, there is a lack of transparency around this process. This directly impacts on the credibility of the Budget revenue estimates.

4.102 As noted above, the committee heard evidence from representatives of AMEC about the shift in commodity prices between May and July 2010:

> Mr Young—We receive a daily market report called the Platts Steel Market Daily. That is basically a company which collects information on ore sales and sends it to subscribers. We get this as an iron ore miner. On 30 April 2010 the iron ore spot price for 62 per cent iron delivered into China was **US$176 a tonne. As of 9 July 2010, the midpoint for that same one is US$119**.
>
> CHAIR—So it has gone down?
>
> Mr Young—Significantly. If we do what is called an FOB netback—in other words, we remove the price of shipping and the price of shipping

83 Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 3.

84 Mr Barnes, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 8.

85 The Steel Index, *Iron Dore Daily Edition: July 12, 2010*, www.steelindex.com (accessed 27 July 2010).

water to China, effectively—that price has gone from $164 a tonne down to US$110 a tonne for Australia to China capsize vessels. That is an example of how the spot price has come down since 30 April 2010.

CHAIR—In that same period, are you aware of any significant improvements in the commodity price outlook?

Mr Young—The commodity price outlook, particularly since the GFC, has been a bit more guesstimate work than it has been in the past. But all of the commodity price forecasts, long term forecasts, that I have seen—for example, Credit Suisse—have the iron ore prices down below $100 a tonne. It goes out and then it comes down.

CHAIR—So that is, if anything, less than what it has been.

Mr Young—That is right. From the anecdotal evidence that I have had in discussing iron ore prices with a lot of the analysts, they are just waiting for things to settle down with regard to what is happening in Europe before they start making some forecasts. We are starting to get some better news out of the States, but certainly there was a dip in the sentiment in the last several months…

Mr Flanagan—I am not sure. **For our budget purposes we are assuming a flat iron ore price for the next year**. *[emphasis added]* [86]

4.103 The committee heard evidence from FMG noting that:

...As an individual company where the operations are located in Australia, which is Fortescue and all within iron ore, obviously we have a very direct and significant potential impact from the MRRT and therefore I would expect our effective tax rate under the MRRT to be higher. If you were a multinational company and a multi commodity company, the impact from just iron ore and coal would be watered down by the lack of impact through the other commodities and through the other countries.[87]

Is the MRRT/expanded PRRT constitutional?

4.104 The committee notes that Dr Henry confirmed that no fresh legal advice on constitutionality had been sought post the RSPT. The committee is concerned that given changes to the taxing point (brought forward to the point of extraction) that there is a clear question mark here as to when a 'resource rent tax' becomes for all intents and purposes a 'royalty'? The committee heard evidence on these points in the exchange set out below:

CHAIR—Let me put it this way. You would be well aware of the constitutional limitations on the Commonwealth to propose taxes on state-owned resources. There is a view expressed by some, including the Premier in Western Australia, that the revised MRRT-PRRT arrangements, in his

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86 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Young and Mr Flanagan, AMEC, *Committee Hansard*, 13 July 2010, pp 84–85.

87 Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 80.

judgement and based on advice he has in front of him, are getting—he thinks there is a case that they might be unconstitutional. I am keen to understand where your assessment is. Given that you are going all the way back and you are now applying a tax on a resource—

Dr Henry—On profits.

CHAIR—Well—

Dr Henry—I think this may be the point.

CHAIR—On profits but excluding everything that comes after the extraction really.

Dr Henry—But we are not appropriating a resource. The Commonwealth is not appropriating a resource here.

CHAIR—The way you have put it previously is that you think the Australian government should impose a price on the resource, that the resource is an asset for all Australian people and that really, through taxation arrangements, you are applying a price on the resource.

Dr Henry—Yes.

CHAIR—That sounds very much to me like a royalty without calling it a royalty because that would get you into territory where the Commonwealth would be beyond power.

Dr Henry—It might or it might not be, and I do not want to voice an opinion on what is a relatively fine matter of constitutional law. If your question is do we have any doubts about the constitutional validity of the government's proposals, the answer to that is, no, we have no doubts.

CHAIR—So have you got advice to put that beyond doubt in your mind?

Dr Henry—We have no recent external advice.

CHAIR—Have you got advice that is post the change from RSPT to the MRRT arrangements?

Dr Henry—Tell me if I am wrong fellas, but so far as I know we have not sought external legal advice on the constitutionality of the government's MRRT proposal.

CHAIR—But you did so for the RSPT?

Mr Parker—We did have it for the RSPT. Insofar as the taxing point is concerned—that is, the first saleable form under the MRRT—it is not, in my understanding, in any degree of substance different to the RSPT design.[88]

88 Senator Cormann, Chair, Senate Select Committee on Fuel and Energy, and Dr Henry and Mr Parker, Department of the Treasury, *Committee Hansard*, 5 July 2010, pp 40–41.

Committee comment

The government did not negotiate with 'the' mining industry

4.105 The committee is of the view that the government failed to act in the public interest by choosing to negotiate the design of the MRRT and expanded PRRT arrangements exclusively and in private with BHP, Rio Tinto and Xstrata.

4.106 The committee is unconvinced by government assertions that is has reached agreement with 'the' mining industry. Given the significant and ongoing concerns expressed by most mining companies directly impacted by this tax.

4.107 The committee is not critical of the three mining companies concerned. They no doubt acted in the best interests of their shareholders as they saw it at the time. This is entirely appropriate from their point of view.

4.108 It is not however appropriate for an Australian Government to negotiate the design of a significant new tax, exclusively with three out of 320 companies directly concerned. The committee considers the government's approach to these negotiations to have been unfair and inequitable to those companies and not in the public interest.

4.109 Given the impact of the new/revised mining tax arrangements on jobs and in the mining industry, the committee is of the view that the government should immediately task the Department of the Treasury to properly assess the impact of these changes on the small to mid-tier mining companies. If it is not prepared to scrap the mining tax altogether, it should adjust it to ensure it is fairer and more equitable.

4.110 Given that iron ore, coal and oil and gas exports come predominantly from Western Australia, Queensland and New South Wales, this work should also include a proper assessment of the impact on jobs and on investment in the mining industry in those states.

Concerns with the consultation and Budget processes

4.111 The committee's view is that the consultation and Budget processes followed in this instance, demonstrate that this is no way to run a government, nor is it the way to introduce a new tax regime in Australia.

4.112 It is the committee's view that while the initial (RSPT) tax was 'bad' – the MRRT/expanded PRRT is much worse on many levels.

Government's flawed policy development processes

4.113 The committee is concerned, as noted above, about the government's lack of consultation and negotiation prior to the announcement of the MRRT/expanded PRRT. It is the committee's view that these processes were flawed.

4.114 The committee considers negotiation with a select group of three at the exclusion of 317 other stakeholders with a direct interest in the outcome of the negotiations is not a genuine consultation process with all materially interested stakeholders.

4.115 The committee is concerned that the three major mining companies were able to influence the tax design – including features which were advantageous to them at the expense of the small and mid-tier mining companies – for example the abolition of the resource exploration rebate and the transferability of losses provision which favours major companies, which has given them a competitive advantage compared to those excluded from the discussions.

4.116 The committee believes that by only negotiating with the big three mining companies, (BHP, Rio Tinto and Xstrata) and excluding all others, the big three mining companies have been given an unfair competitive advantage compared to small to medium sized miners. The committee is concerned that the big three mining companies also got a much clearer insight into government thinking and assumptions which gave them a better understanding of how they would be impacted by the tax and consequently more certainty. The committee believes these three miners were given a competitive advantage courtesy of the government's decision to negotiate with them exclusively.

4.117 Further the committee is concerned that the Department of the Treasury and major industry stakeholders and interested state governments were not adequately involved when the 'deal' was done.

4.118 The committee is also concerned about the ongoing failure of the consultation process, even after the 'deal' was made and announced by the Prime Minister on 2 July 2010.

4.119 The committee believes that the government has a responsibility to foster competitive neutrality which did not happen in this case because of the government's haste to reach an agreement and its inexplicable failure to be transparent once that agreement was made.

Limited role for the Department of the Treasury in the MRRT/expanded PRRT negotiations

4.120 The committee is concerned that the Department of the Treasury was not heavily involved in the negotiations over the MRRT/expanded PRRT. The committee is concerned that the Secretary of the Department of the Treasury was only advised of the outcome of the negotiations after the 'deal was done' and shortly before it was announced publicly.

'Non -answers' from the government

4.121 In light of the discussion in chapter 2, the committee is very concerned that it appears that the government has not allowed the Department of the Treasury to fully answer the questions they took on notice, despite two separate appearances before the committee.

4.122 The committee is concerned that neither the commodity prices nor the production volume assumptions requested by the committee have been provided to the committee nor have they been published by the government.

4.123 In the interests of transparency, the committee considers that the form of the answers provided particularly in response to the second set of questions on notice, taken by the Department of the Treasury, gives a dishonest impression of an attempt to provide answers to those questions without providing any substantive response to those questions.

4.124 The committee is concerned that the 'non-answers' to its questions creates the suspicion that the government has in fact something to hide. Why else would they attempt to avoid proper scrutiny through a Senate committee? Indeed, on 14 July 2010, the day after the committee’s second hearing with the Department of the Treasury, the government was forced to reveal that rather than $1.5 billion in lost revenue as a result of the 'deal', the government had lost $7.5 billion in revenue and that the assumption of increased commodity prices and production volumes was expected to raise an additional $6 billion, to take the projected revenue from $4.5 billion to $10.5 billion.

4.125 The committee is also concerned that the Australian public were told that the government had supposedly got their assumptions so wrong in the Budget delivered seven weeks prior to the ‘deal’ that the RSPT would have raised $24 billion between 2012- 2014, not $12 billion, as previously estimated.

4.126 The committee is concerned about whether anyone can now trust that the government has got its figures right this time. The committee is concerned that the government is not prepared to disclose key assumptions and open the figures up for scrutiny. The key assumptions of concern to the committee are those relating to commodity prices and production volumes for iron ore and coal. The committee's view is that it is in the public interest for the government to make this information publicly available in the interests of openness and transparency.

Recommendations

Recommendation 6

4.127 The committee recommends that the proposal for a Minerals Resource Rent Tax and for an expanded Petroleum Resource Rent Tax should be scrapped immediately.

Recommendation 7

4.128 The committee recommends that the government immediately task the Department of the Treasury to properly assess the impact of the MRRT/expanded PRRT on:

- **smaller and mid-tier mining companies;**
- **jobs;**
- **investment in the mining industry (including in those mining magnetite); and**
- **state budgets and economies in Western Australia, Queensland and New South Wales.**

The committee seeks a government undertaking that it will release this analysis immediately upon its completion.

Recommendation 8

4.129 The committee recommends that the Senate not deal with any legislation seeking to implement the new/revised mining tax arrangements, the MRRT/expanded PRRT proposal, until the government has provided answers to all outstanding questions about:

- **commodity price and production volume assumptions;**
- **revenue estimates beyond the forward estimates;**
- **where the revenue from this new tax is expected to come from geographically and by sector; and**
- **the analysis of the impact of the MRRT/expanded PRRT on smaller and mid-tier mining companies, jobs, investment in the mining industry and state budgets in Western Australia, Queensland and New South Wales.**

Recommendation 9

4.130 The committee recommends that in the event that the MRRT/expanded PRRT is not scrapped, magnetite be excluded from the ambit of the new/revised mining tax arrangements.

Recommendation 10

4.131 The committee recommends that stronger processes be put in place by government to ensure open and transparent Budget information is provided to the public.

Recommendation 11

4.132 The committee further recommends that in the interests of openness and transparency, matters including commodity price and production volume assumptions and the source of the revenue for new initiatives, such as the proposed MRRT/expanded PRRT, be made public as a matter of course.

Recommendation 12

4.133 That the Senate require the Department of the Treasury, in consultation with central agencies, to table a bi-annual report in the Senate for the first five years of operation of this new/revised tax on mining, detailing the impacts of the MRRT/expanded PRRT (if it is ever implemented), including:

- **the amount of revenue raised under the tax;**
- **a break down on a state and territory basis;**
- **any variations in commodity prices and production volumes in comparison with Budget assumptions;**
- **detail of any relevant Budget assumptions utilised by government; and**
- **an assessment of the impact of the MRRT/expanded PRRT on the level of, and the mix of, mining investment in Australia.**

Senator Mathias Cormann
Chair