The Senate

Select Committee on Fuel and Energy

The mining tax:
Still bad for the economy—Still bad for jobs

Second Interim Report

July 2010

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List of Abbreviations

AC	Order of Australia - Companion
ACAPMA	Australasian Convenience and Petroleum Marketers Association
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AGEA	Australian Geothermal Energy Association
AMEC	Association of Mining and Exploration Companies
APPEA	Australian Petroleum Production and Exploration Association
ASX	Australian Securities Exchange
ATSE	Australian Academy of Technological Sciences and Engineering
AWU	Australian Workers' Union
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CNG	Compressed natural gas
Committee	Senate Select Committee on Fuel and Energy
CPI	Consumer Price Index
Department	The Department of the Treasury
EGS	Enhanced Geothermal Systems
ESAA	Energy Supply Association of Australia
FMG	Fortescue Metals Group
FOB	Free on Board
Government's initial response	*Stronger, Fairer, Simpler: A tax plan for our future*
Henry Tax Review	Australia's Future Tax System Review

Henry Tax Review Report	*Australia's future tax system: Report to the Treasurer*
Hon.	Honourable
HSA	Hot Sedimentary Aquifer
LNG	Liquefied natural gas
LPG	Liquefied petroleum gas
MOU	Memorandum of Understanding
MP	Member of Parliament
MRRT	Minerals Resource Rent Tax
NPV	Net Present Value
NSW	New South Wales
PRRT	Petroleum Resource Rent Tax
RER	Resource exploration rebate
RSPT	Resource Super Profits Tax
SWIS	South West Interconnected System
Treasury	The Department of the Treasury
US	United States
Venture	North West Shelf Gas Venture
WA	Western Australia
WA Treasury	Western Australian Department of Treasury and Finance
XC	Commodity exports
XNC	Non-commodity exports

Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Government secrecy and contempt of the Senate

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

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

Government gave unfair competitive advantage to the big three

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

Recommendations

Recommendation 1

3.133 The committee recommends that government proposals to make major structural changes to Australia's tax system should involve meaningful consultation on draft proposals with all relevant stakeholders, prior to making final policy decisions. This will help ensure:

- **a more transparent assessment of the merits of any such proposal; and**
- **a more meaningful opportunity to provide input into the policy development process for all relevant stakeholders, including state and territory governments whose revenue would be impacted by any proposed change.**

Recommendation 2

3.134 The committee recommends that proceeds from a proposed tax should not be included in the Budget until the consultation process regarding that tax has been completed and the legislation has been introduced or is imminent.

Recommendation 3

3.135 The committee recommends that any future tax reform process give proper consideration to Australia's future energy and fuel security in formulating relevant taxation reform measures.

Recommendation 4

3.136 The committee recommends that the government should not implement any future taxation reform without first providing the Australian public with independently verified modelling demonstrating any impact of the proposed reform on:

- **Employment;**
- **Investment;**
- **Industry;**
- **Australia's global competitiveness;**
- **Cost of living; and**
- **The Australian economy as a whole.**

Recommendation 5

3.137 The committee recommends that as a matter of priority, the government consult with small and mid-tier mining companies, on the design of incentives to encourage investment in exploration.

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.**

Chapter 1

Terms of reference

1.1 On 25 June 2008, the Senate established the Senate Select Committee on Fuel and Energy (the committee) to inquire into and report on the impact of higher petroleum, diesel and gas prices and several related matters.

1.2 The full terms of reference for this inquiry are extensive and can be found at appendix 1. As the terms of reference for this inquiry are broad, the committee has decided to report in stages. This second interim report discusses taxation arrangements on fuel and energy products under the following parts of the inquiry's terms of reference:

(e) the existing set of federal and state government regulatory powers as they relate to fuel and energy products;

(f) taxation arrangements on fuel and energy products including:

(i) Commonwealth excise,

(ii) the goods and services tax, and

(iii) new state and federal taxes;

(g) the role of alternative sources of energy to coal and alternative fuels to petroleum and diesel, including but not limited to: LPG, LNG, CNG, gas to liquids, coal to liquids, electricity and bio-fuels such as, but not limited to, ethanol;

(h) domestic energy supply and the domestic oil/gas exploration and refinement industry, with particular reference to:

(i) the impact of Commonwealth, state and local government regulations on these industries,

(ii) increasing domestic oil/gas exploration and refinement activities, with a view to reducing Australia's reliance on imported oil,

(iii) other tax incentives, and

(iv) securing Australia's future domestic energy supply;

...

(j) any related matters.

Conduct of the inquiry to date

1.3 The inquiry was advertised in *The Australian* and details of the inquiry were placed on the committee's website.

1.4 Following the release of the report *Australia's future tax system: Report to the Treasurer* (referred to as the 'Henry Tax Review Report') on 2 May 2010, and the

Australian Government's Tax Policy Statement in response to the Henry Tax Review Report titled *Stronger, Fairer, Simpler: A tax plan for our future* (the government's initial response), the committee wrote to state and territory governments and key stakeholders to determine their views on the Henry Tax Review Report and the government's initial response. The committee has received 21 such submissions to date, and these are listed at appendix 2. The evidence received in regard to the Henry Tax Review Report and the government's initial response is discussed at chapter 3.

1.5 On 2 July 2010, the Australian Government announced new/revised resource tax arrangements. The committee subsequently held two public hearings in Canberra in July 2010 to hear evidence on the new/revised measures. Details of the public hearings, including a list of the witnesses who gave evidence are provided at appendix 3.

1.6 The committee continued to receive submissions, hold public hearings and undertake site visits for its broader inquiry, which will be discussed in the committee's final report.

Scope

1.7 The committee has conducted this inquiry with particular reference to Australia's energy and fuel security going forward. Consequently the committee has explored how current regulation and taxation arrangements on various sectors of industry may affect Australia's energy and fuel security, including the effect on investment in domestic energy and fuel supplies.

1.8 In this context the committee closely examined the relevant recommendations made in the Henry Tax Review Report, the Australian Government's initial response released on 2 May 2010, and the subsequent revised measures announced on 2 July 2010.

Acknowledgement

1.9 The committee thanks those organisations and government departments who made submissions and gave evidence at the committee's public hearings. Their work has assisted the committee considerably in its inquiry and the committee thanks them for their contributions.

Note on references

1.10 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard from 13 July 2010 relate to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

Chapter 2

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

Introduction

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

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

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

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

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

Chronology

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

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

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

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

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

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

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

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

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

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

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

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

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

Public hearing—5 July

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

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

> CHAIR—The reason you get to the $10½ billion, which seems a very short way down from the $12 billion, is that you have revised upwards your commodity prices?
>
> Dr Henry—There would be some element of that in it but, as to how much, I have not seen any analysis that would permit me to answer that question. I do not know, but there must be some element of it because we have, after all, revised up commodity prices since budget.[6]
>
> …
>
> Dr Henry—…As we discussed earlier, one is a change to the commodity price forecasts in the last couple of months That is one issue.

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

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

> CHAIR—Have you also revised volumes?
>
> Dr Henry—Yes.
>
> CHAIR—Upwards or downwards?
>
> Dr Henry—We would have revised volumes, but I would have to take on notice the direction of those changes to particular commodities.[7]

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

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

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

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

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

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

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

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

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

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

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

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

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

2.23 Specifically, the Clerk of the Senate noted:

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

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

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

> …I am writing to request you allow Dr Henry to provide proper answers to important and legitimate questions which remain unanswered about the new resource rent tax arrangements announced on 2 July 2010.[13]

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

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

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

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

Public hearing—13 July

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

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

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

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

> CHAIR—So, if the Treasurer is going to provide the information in any event, why would you not be at liberty to provide it to the committee this morning?
>
> Dr Henry—Of course I am very happy to ask the Treasurer whether he would be comfortable with me publishing the information today in this committee or whether he would prefer himself to publish the information shortly.
>
> CHAIR—We gave you notice yesterday that we would be seeking these answers again today. Maybe we should have a short interruption so you can check with the Treasurer whether he would be comfortable with you answering the questions of this committee here. You have the information, presumably.
>
> ...
>
> CHAIR—Do you know when the Treasurer is expected to release this information?
>
> Dr Henry—No, I don't. I honestly do not, but I understand that it is imminent. That is to say, I understand that it is within a matter of days.
>
> CHAIR—Will it include information about the assumptions about commodity prices and volumes under the RSPT and the MRRT?
>
> Dr Henry—As I said, it is my understanding that the publication, if you like, has not been finalised. The form of the release of the information has not been finalised.
>
> CHAIR—I propose we have a short interruption of the committee to enable you to inquire with the Treasurer's office as to whether he is indeed

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

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

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

> CHAIR—Dr Henry, has the Treasurer given you any indication as to whether he is happy for you to provide this information to the committee in the public interest?
>
> Dr Henry—I have taken the opportunity of the break to consult with the Treasurer's staff. I have not spoken directly with the Treasurer myself but I have spoken with his staff and I can report that it is the Treasurer's intention to publish the information imminently. I can confirm that the information, the publication if you like, is still in draft form, it has not yet been finalised. I can also report that, as I indicated earlier, the Treasurer would be publishing the information.
>
> CHAIR—The information that we have been seeking?
>
> Dr Henry—Some of the information that you have been seeking.
>
> CHAIR—Which bits?
>
> Dr Henry—In particular, information that would allow the reader to determine how much of the net revenue impact of the 2 July announcement is due to parameter variations, including commodity prices, and how much is due to policy decision. That is one of the issues which you will recall we spent some time on at the last committee hearing. In fact, you referred to it again this morning. So the Treasurer intends imminently to put that information into the public domain.[16]

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

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

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

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

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

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

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

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

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

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

> CHAIR—Are you in a position today to tell us what your commodity price assumptions are and what your assumptions are around production volumes at the basis of the assessment of the fiscal impact of the MRRT expanded PRRT?
>
> Dr Henry—No, I am not and, as I did on the last occasion that we met, I would refer that question to the Treasurer for his consideration.
>
> Answer:
>
> Information was provided by the Treasurer in the Government’s Economic Statement July 2010 to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (as announced on 2 May 2010). Page 5 of this document notes expected movements in iron ore and coal prices.[21]

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

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

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

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

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

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

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

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

Committee comment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 3

The Henry Tax Review, the government's initial response and Australia's energy and fuel security

Introduction

3.1 This chapter discusses the Australia's Future Tax System Review (the Henry Tax Review), the resulting report *Australia's future tax system: Report to the Treasurer* (the Henry Tax Review Report) and the Australian Government's Tax Policy Statement in response to the Henry Tax Review Report, titled *Stronger, Fairer, Simpler: A tax plan for our future* (the government's initial response). In particular the chapter examines the Henry Tax Review Report recommendations relevant to the committee's terms of reference, and the government's initial response to these, in light of the information available at the time of printing.

3.2 The committee has followed the progress of the Henry Tax Review throughout its inquiry, with a particular interest in the influence of the Henry Tax Review Report on the Energy Green and White Papers. As the Henry Tax Review was ongoing for a large portion of the committee's inquiry, the committee encountered some difficulty in obtaining information on issues which were being considered by the Henry Tax Review.

3.3 Following the release of the Henry Tax Review Report and the government's initial response on 2 May 2010, the committee wrote to state and territory governments and key stakeholders to ascertain their views. This chapter discusses the issues raised in those submissions.

3.4 On 2 July 2010, the new Prime Minister announced new/revised resource taxation measures to replace those outlined in the government's initial response. The committee notes that the majority of the submissions discussed below were received prior to the announcement of the new/revised taxation measures and consequently relate mainly to the measures outlined in the government's initial response. The impact of the new/revised tax measures and how they compare with the original measures is discussed at chapter 4.

The Henry Tax Review

3.5 The Henry Tax Review was announced by the Treasurer on 13 May 2008. It was established to look at Australia's tax and transfer system and make recommendations to simplify and enhance Australia's tax structure.[1]

3.6 The Review Panel was comprised by:

- Dr Ken Henry AC, Chair (Secretary, Department of the Treasury);
- Dr Jeff Harmer (Secretary, Department of Families, Housing, Community Services and Indigenous Affairs);
- Professor John Piggott (Professor of Economics and Associate Dean, Research, Australian School of Business, University of New South Wales);
- Mrs Heather Ridout (Chief Executive, Australian Industry Group); and
- Mr Greg Smith (Adjunct Professor, Economic and Social Policy, Australian Catholic University).[2]

3.7 The Review Panel delivered its final report to the Treasurer in December 2009, and it was released by the Australian Government on 2 May 2010, in conjunction with the government's initial response.[3]

3.8 The Henry Tax Review Report made a total of 138 recommendations, covering personal taxation, investment and entity taxation, land and resource taxes, consumption taxes, taxes to enhance social and market outcomes, the transfer system as well as institutions, governance and administration. A number of the recommendations made intersect with the committee's terms of reference, and these are identified in appendix 12.

The government's initial response

3.9 The government's initial response to the Henry Tax Review Report, released on 2 May 2010, addressed some of the recommendations made by the review. The measures in the initial government response relating to the proposal for a new Resource Super Profits Tax were subsequently replaced by the new/revised resource tax arrangements announced on 2 July 2010. It is not clear whether the measures

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1 Department of the Treasury, *Australia's future tax system: Timeline*, http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/timeline htm (accessed 7 June 2010); and Department of the Treasury, *Australia's future tax system: Terms of reference*, http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference htm (accessed 7 June 2010).

2 Department of the Treasury, *Australia's future tax system: The Review Panel*, http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/review_panel htm (accessed 7 June 2010).

3 Department of the Treasury, *Australia's future tax system: Timeline*, http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/timeline htm (accessed 7 June 2010).

proposed by the government address the Henry Tax Review recommendations in their entirety, as the final form of the measures had not been confirmed at the time this report was printed.

3.10 A number of the recommendations made in the Henry Tax Review Report have not yet been responded to. The government has indicated that further measures covering other aspects of the Henry Tax Review recommendations will be announced over the coming months. The government has also stated that some of the recommendations made in the Henry Tax Review Report are not government policy and will therefore not be adopted. Those recommendations which intersect with the committee's terms of reference, but which will not be adopted by the government are identified in appendix 12.[4]

3.11 While the government's initial response outlines measures regarding taxation for small business and superannuation guarantees and contributions, this chapter discusses the measures outlined in the government's initial response *Stronger, Fairer, Simpler: A tax plan for our future*, which relate to the committee's terms of reference. These measures are namely the:

- Resource exploration rebate
- Resource Super Profits Tax
- Cutting the company tax rate
- State infrastructure fund

Concerns regarding the government's initial response

3.12 The details of the measures proposed by the government in its initial response had not been finalised at the time that submissions were sought. Submitters raised concerns about a lack of certainty which they hoped would be addressed through further consultation with the government.[5]

3.13 The committee sought information about the consultation process that took place in relation to the government's initial response. Dr Ken Henry AC, Secretary of the Department of the Treasury, explained:

> 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

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

5 Woodside Energy Ltd, *Submission H8*, p. 1; and Energy Supply Association of Australia (ESAA), *Submission H10*, p. 1.

> those consultations, were available to the government in its consideration of its response to the report as well.[6]

3.14 The Australian Petroleum Production and Exploration Association (APPEA) noted the ability of governments to undertake fiscal reform, however, stated that this must be well informed:

> From a fiscal perspective, the Australian taxation framework has provided a stable basis for companies to make large scale investment commitments. The industry recognises that governments can change fiscal settings, however reforms must take account of the impact on both current and future investments.[7]

3.15 APPEA does not agree with the basis on which the government justified the proposed tax reform:

> The case for reform to the taxation of resource extraction activities was in part justified by the Government on the basis of an estimated decline in the contribution made by the sector since 2000. APPEA does not agree with the basis of this claim.[8]

3.16 APPEA explained that, as demonstrated in figure 1, if the amount of tax paid by the oil and gas sector is separated from the aggregated amount of tax paid by the resources sector as a whole:

> Overall, what is clear is that the petroleum industry's total taxation contribution to governments (resource taxes plus company tax) has approximately (and consistently) equated to the industry's net profit for the entire decade. It is APPEA's contention that this dispels any suggestion that the industry 'has not paid its way'. [9]

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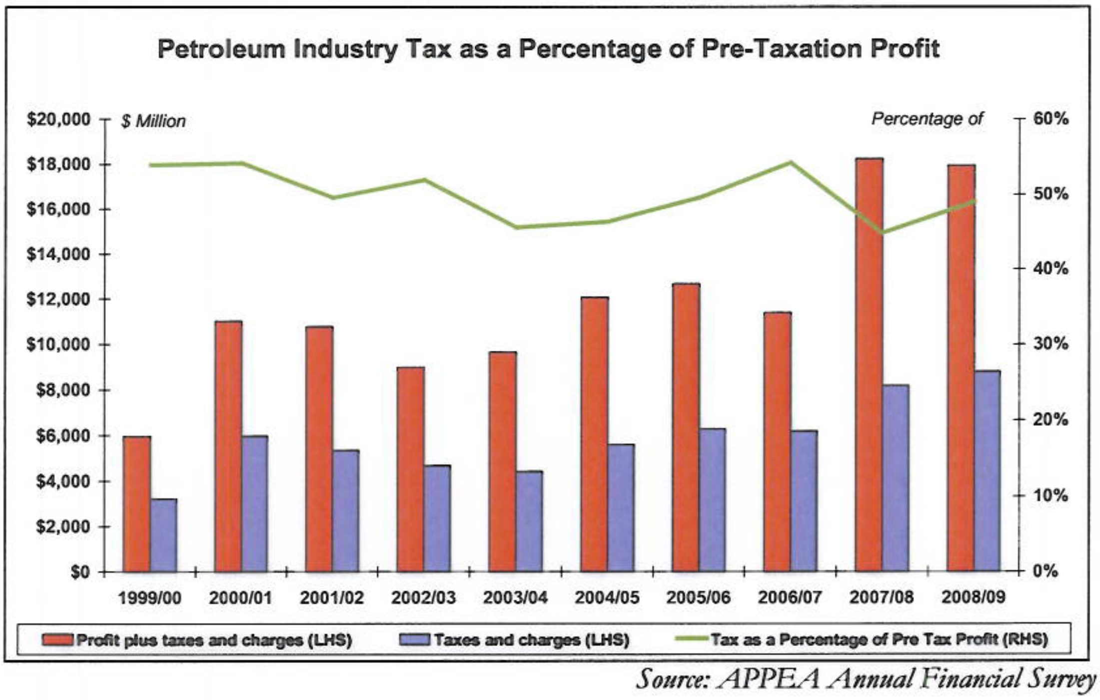
6 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 4.

7 Australian Petroleum Production and Exploration Association (APPEA), *Submission H17*, p. 1.

8 APPEA, *Submission H17*, p. 2.

9 APPEA, *Submission H17*, p. 2.

Figure 1-Total Petroleum Industry Tax Contribution



Source: Australian Petroleum Production and Exploration Association (APPEA), Submission H17, Attachment 1, p. 6.

Resource exploration rebate

3.17 The Henry Tax Review Report recommended that a refundable tax offset for companies which incur exploration expenses be implemented:

> Recommendation 32: If earlier access to tax benefits from exploration expenses (relative to other expenses) is to be provided, it should take the form of a refundable tax offset at the company level for exploration expenses incurred by Australian small listed exploration companies, with the offset set at the company income tax rate.[10]

3.18 The government largely addressed this recommendation in its initial response, proposing a refundable tax offset at the company level, set at the prevailing company tax rate, for exploration expenditure where the exploration was undertaken in Australia, and the expenditure was incurred on or after 1 July 2011.[11]

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10 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer*, December 2009, p. 87.

11 Australian Government, *Resource Exploration Rebate*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/5_Fact_sheet_Resource_Exploration_Rebate_Final.pdf (accessed 6 May 2010).

3.19 However, the government's proposed measure was to be available to all companies, not only Australian small listed exploration companies as suggested by the Henry Tax Review recommendation.[12]

3.20 The proposal for a resource exploration rebate was to be the substitute for a flow-through share scheme which had been promised by the government before the 2007 election.

3.21 The resource exploration rebate (RER) also provided for an expansion of the definition of exploration expenditure to include expenditure incurred in exploring for geothermal energy.[13]

3.22 Under the measure, expenditure on depreciating assets that were first used for exploration could be written off immediately, and subject to various eligibility criteria, expenditure incurred in exploring or prospecting for minerals, petroleum or quarry minerals could be immediately deducted.[14]

3.23 According to the government's initial response, the measure was to provide a stronger incentive to carry out exploration. The government intended to consult on the exposure draft legislation which was to give effect to the rebate.[15]

3.24 On 2 July 2010, the Prime Minister announced that the RER will not be pursued, however, resource exploration costs will continue to be deductible and a Policy Transition Group will consider the best way to promote future exploration.[16]

Comments on the resource exploration rebate

3.25 The Australian Geothermal Energy Association (AGEA) noted that the RER was to provide important assistance to the geothermal energy industry, but expressed concern about the commencement date of the measure, particularly due to investors' aversion to risk in the aftermath of the global financial crisis, and consequently recommended bringing the commencement date forward to 1 July 2010:

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12 Australian Government, *Resource Exploration Rebate*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/5_Fact_sheet_Resource_Exploration_Rebate_Final.pdf (accessed 6 May 2010).

13 Australian Government, *Resource Exploration Rebate*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/5_Fact_sheet_Resource_Exploration_Rebate_Final.pdf (accessed 6 May 2010).

14 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, p. 22.

15 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, pp 22-23.

16 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).

> A number of the leading companies now have joint venture agreements with other energy companies who have choices about where to spend funds for a quicker return and these decisions are outside of the control of the geothermal companies. Our members with these investors have warned that neither their own finances nor those of their investors/partners will be spent on any activity likely to gain a benefit from the proposed RER before July 1 2011. As most of the activity undertaken by the industry is considered to be in the exploration stage, little or no activity is likely to occur in the industry over the coming 12 months if the start date is not bought forward. [17]

3.26 AGEA further stated that clarification of the definition of exploration activity was required:

> Exploration activity in the geothermal sector is all activity prior to the commencement of commercial expansion or that point in the project where a reserve can be announced. Before that point a decision to expand to commercial scale development on the basis of the capacity of the available resource to support a commercially viable project is not made. The activity prior to this point would typically include traditional geoscience work, shallow drilling, deep drilling, rig mobilisation and demobilisation, proof of concept testing, demonstration drilling, reserves delineation drilling and reservoir enhancement testing. For a typical EGS or HSA project this can incur tens of millions of dollars in expenditure to get to this point with most of these funds being raised from the private sector.[18]

3.27 The Australasian Convenience and Petroleum Marketers Association (ACAPMA) noted their expectation that the resource exploration rebate would have encouraged exploration for resources:

> During the 1990s and again in 2004 and 2008, the Australian Government introduced measures into the PRRT to encourage petroleum exploration. These included the ability to transfer undeducted exploration expenditure to other projects held by the same entity, an uplift of 150% on PRRT deductions in designated offshore frontier areas and a 'look back' rule to allow for retention leases on sites to be explored with deductions on expenditure allowed where a production is derived. We believe that the implementation of resource exploration rebate would only bring other mined products into line with the upstream petroleum industry.[19]

3.28 The New South Wales (NSW) Government observed that the RER would have increased incentives to conduct exploration:

17 Australian Geothermal Energy Association (AGEA), *Submission H6*, pp 2-3.

18 AGEA, *Submission H6*, p. 4.

19 Australasian Convenience and Petroleum Marketers Association (ACAPMA), *Submission H5*, p. 2.

> Compared to the current high degree of risk to investors that is inherent in mining exploration, the proposed tax rebate should reduce the level of risk exposure and increase their incentive to invest.[20]

3.29 The Australian Workers' Union (AWU) noted that the RER would have been particularly beneficial for smaller exploration companies:

> Small exploration companies currently do not get a tax benefit from their deductible exploration expenses until they become profitable. For many companies this means waiting for many years to receive a benefit – years in which a project may stall and jobs can be lost...By providing the opportunity for immediate rebates for exploration spending, the RER will provide a boost to the competitiveness of smaller miners for whom existing tax arrangements preclude deductions until a profit is made.[21]

3.30 BP also noted that the RER would have only affected smaller companies:

> The resource exploration rebate will have no material beneficial impact on oil and gas exploration, as it does not apply a multiplier on frontier exploration expenditure. Therefore only companies that make a tax loss will see a benefit in the form of a cash refund, but typically such companies are not large enough to participate in substantial oil and gas exploration.[22]

3.31 The committee heard evidence that exploration incentives are needed to encourage small to mid-tier companies to explore for Australian oil, and the withdrawal of the RER may have placed that in jeopardy:

> **All small companies certainly want to become big companies, but the ability to become a big company is the ability to grow and is dependent to some extent on the ability to raise capital to support exploration**. They also are the companies that can go or are willing to go to places that the big companies are not able to commercially justify. They are the ones who can go into the nooks and crannies of some of the basins to where it is commercially viable for them to do something but not for others. In other words, they play a very, very important and somewhat unacknowledged role in the integrated nature of Australia's oil and gas industry.
>
> **Because they tend not to pay PRRT, up until now they have not been able to pass through the deductions that might be associated with exploration** against a PRRT because they do not have a PRRT liability and possibly are unlikely to do so even under the new regime. **From an investment point of view, that makes it difficult for them to attract capital, so this industry has very long argued for what was called a flow-through share scheme, which was in fact incorporated into the government's election platform in the 2007 election. That has since been replaced, post Henry tax review, by a resource exploration rebate,**

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20 New South Wales (NSW) Government, *Submission H20*, p. 2.

21 Australian Workers' Union (AWU), *Submission H18*, p. 8.

22 BP, *Submission H19*, pp 1-2.

> **which we also warmly welcomed.** It certainly was not the flow-through share scheme. Some members preferred it; some members preferred the flow-through share scheme, but it is certainly true to say that it retained the notion of the need and the acknowledgement of the need to provide incentive for the small cap to midcap players to continue to explore in Australia. That was acknowledged. **Under the new package now, we have been quite disturbed to see that that has been dropped**. The government have gone on to say that they would like the new policy transition group to explore, so to speak, other incentives for exploration... We are optimistic that it will have a look at this issue. It is a very real issue. We would very much like—and I think it is in Australia's best interest—to have Australia's small and midcap players exploring for our oil rather than going overseas and exploring for somebody else, particularly in the context of Australia now producing around 50 per cent of what it is consuming, with a deficit of around $16 billion in liquids, in oil, compared with only 10 years ago, where we had a net surplus in oil and we were producing around 108 per cent of what we were consuming. These are issues of the national interest, and certainly exploration incentives for the small to midcap companies are an important vehicle for being able to address those. *[emphasis added]* [23]

3.32 APPEA noted its support for a flow-through share scheme, as promised by the government before the 2007 election, over the RER:

> APPEA has consistently advocated the benefits that would arise from an appropriately structured and targeted flow through share regime. The advantage of such a system is that it will assist companies in raising capital from equity markets. The exploration credit measure announced by the Government targets the existing tax distortion that prevents companies without assessable income from gaining the full after company tax value of exploration expenditure. While the rebate will address this distortion, the advice from member companies at this stage is that it may not address the challenges of raising equity capital. This is because the benefit accrues at the company, not the subscriber level.[24]

3.33 This support was echoed by Mr Simon Bennison, Chief Executive Officer (CEO) of the Association of Mining and Exploration Companies (AMEC):

> The whole issue for the exploration sector is that to get the amount of capital that is required to drive exploration in this country requires the raising of significant capital. That is done through equity finance, and that is why the flow-through shares, for want of a better description, had been proposed from industry and were supported by government in the election platform, as opposed to the rebate itself, which was cash back—after you had made the expenditure you would go and claim the rebate and get reimbursed the rebate. That is fine, but that allows you only to put a certain amount—at that stage it was 30 per cent—back into exploration and other

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23 Ms Belinda Robinson, Chief Executive, APPEA, *Committee Hansard*, 13 July 2010, pp 22-23.

24 APPEA, *Submission H17*, p. 5.

> expenses, whereas if you were raising the full equity from the flowthrough shares arrangement you would be putting all that expenditure on an annual basis, and any other further raisings, back into the full exploration program.[25]

3.34 Further, Mr Mike Young, Managing Director of BC Iron noted to the committee that a flow-through share scheme would introduce more investor confidence for the industry.[26]

3.35 Noting industry support for a flow-through share scheme, the committee questioned why the Henry Tax Review recommended the RER over a flow-through scheme. Dr Henry explained to the committee that:

> The [Henry Review] committee was not of the view that there was a need to provide further exploration incentives. There was also—and I do not know if this was reflected in the report but I am nevertheless happy to say it—a view that something like a flow-through share scheme would introduce an additional level of complexity to the tax system. That was a consideration... And we came to the view that there was a simpler, neater and, dare I say, more elegant way of providing much the same incentive for exploration were the government to judge such an incentive to be important. That was the background of the [Henry Review] committee's recommendation.[27]

3.36 Given evidence received about the potential benefits of the RER for smaller companies, the committee sought information on why the measure will no longer be pursued. Dr Henry merely stated to the committee 'That is a government decision.'[28]

3.37 The committee was told that industry was disappointed about the removal of the RER, as Mr Stephen Pearce, Chief Financial Officer (CFO) of Fortescue Metals Group (FMG) explained:

> ...In our discussions with the government prior to the MRRT being announced, we had certainly argued that the exploration rebate should be retained. So we were particularly disappointed that the exploration rebate had not continued or that the flow-through share scheme proposal, which has been on the table for probably the last decade, also has not progressed.[29]

3.38 Mr Bennison of AMEC explained to the committee that while industry had preferred a flow-through share arrangement, they had welcomed an RER. However, the RER has been removed, and has not been replaced with a flow-through share

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25 Mr Simon Bennison, Chief Executive Officer (CEO), Association of Exploration and Mining Companies (AMEC), *Committee Hansard*, 13 July 2010, p. 98.

26 Mr Mike Young, Managing Director, BC Iron, *Committee Hansard*, 13 July 2010, p. 102.

27 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, pp 46-47.

28 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 45.

29 Mr Stephen Pearce, Chief Financial Officer (CFO), Fortescue Metals Group (FMG), *Committee Hansard*, 13 July 2010, p. 77.

scheme. Mr Bennison went on to explain to the committee that there are significant differences between the two programs:

> Mr Bennison—The industry has always welcomed an RER and has made this known to the government on a number of occasions. Given the amount of conjecture that has been around this over recent times we have actually put a chronology together that identifies the times at which government has been engaged in this process from when the RER was first announced. We have gone to great lengths to explain to government that the RER is very different to what the industry was initially asking for and what the government committed itself to in the 2007 election policy platform, which was really an exploration development program modelled around the flow-through shares. The flow-through share arrangement was there to address a taxation asymmetry problem that we had and a distortion that we believed needed to be addressed. That was there to provide equity finance for the sector; versus an RER, which was more or less there to rebate industry, and also in part address that asymmetry, but which really was not addressing the issue of raising equity finance, which is the major hurdle for exploration and exploration development within this country.
>
> CHAIR—If I can paraphrase what you are saying, the resource exploration rebate was better than nothing—
>
> Mr Bennison—Absolutely.
>
> CHAIR—It was not as good as what you had been promised before the last election by the government when they promised flow-through shares but it was better than nothing, but you have actually now ended up with nothing.
>
> Mr Bennison—Correct. I think the important thing is there are distinct differences in the roles of both programs.[30]

Resource Super Profits Tax

3.39 The Henry Tax Review Report made a series of recommendations regarding the application of a resource rent tax, and the form it should take. In summary, recommendations 45, 46 and 47 recommend that a uniform resource rent tax be imposed and that it:

- replace existing resource charging arrangements on non-renewable resources;
- be administered by the Australian Government;
- be levied at a 40 per cent rate, which is adjusted to offset any changes in the company income tax rate to ensure a combined statutory tax rate of 55 per cent;

30 Senator Mathias Cormann, Chair, Senate Select Committee on Fuel and Energy, and Mr Bennison, AMEC, *Committee Hansard*, 13 July 2010, p. 98.

- apply to non-renewable resource projects, such as oil, gas and minerals, with the exception of lower value minerals which would continue to be subject to existing arrangements where appropriate;
- measure rents as net income, less an allowance for corporate capital, and that the allowance be set at the long-term government bond rate;
- require a rent calculation for projects;
- allow losses to be carried forward with interest or transferred to other commonly owned projects, and that the tax value of any residual losses be refunded when a project is closed;
- be allowed as a deductible expense when calculating income tax, with any loss refunds treated as assessable income;
- not provide concessions to encourage exploration or production activity at a rate faster than the commercial rate or in a particular geographic area;
- should not allow deductions above acquisition costs to stimulate investment;
- allow existing projects to be transferred into the new system with an appropriate adjustment to the starting base for the allowance for corporate capital;
- be implemented in accordance with a time-frame set out by the Australian Government; and
- is implemented with clear guidelines as to how existing investments and any investment in the interim will be treated under the new resource rent tax.[31]

3.40 In response to these recommendations, the government announced its proposed Resource Super Profits Tax (RSPT), which was to commence on 1 July 2012, at a rate of 40 per cent on profits made from Australia's non-renewable resources.[32]

3.41 It was proposed that the RSPT would replace the crude oils excise, and would operate in parallel with state and territory royalty regimes. The Australian Government was to provide resource companies with a refundable credit for royalties paid to state or territory governments, allowing the states and territories to continue to

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31 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer,* December 2009, p. 89.

32 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, p. 21.

collect a stable stream of revenue from royalties, while removing the effects that royalties have on investment and production.[33]

3.42 It was intended that those projects already covered by the current Petroleum Resource Rent Tax (PRRT) would remain in the scope of the PRRT unless they elected to transfer to the RSPT. However, any election into the RSPT was to be irrevocable.[34]

3.43 The government explained the operation of the RSPT in a fact sheet as follows:

> The RSPT will apply to super profits made from all non-renewable resources on or after 1 July 2012 at a rate of 40 per cent. RSPT liabilities will be deductible with RSPT refunds being assessable for income tax purposes.
>
> Through the RSPT, the Government will effectively make a contribution of 40 per cent to the costs of the project outlaid by the entity. An entity will be able to access the contribution by deducting the costs outlaid on a project from: the project's RSPT income; from income of another project owned by the entity or owned by another entity of the same wholly owned company group.
>
> Any remaining costs will be carried forward to be deducted as a loss against future income or be refundable at the 40 per cent rate on a reasonable basis, such as when an entity exits the resource sector. The basis for refundability will be determined through consultation with stakeholders.
>
> Delays in utilising the costs could occur due to costs exceeding income and due to depreciating assets being expensed over the life of the asset. These undeducted costs are held in an account called the RSPT capital account. The government will compensate an entity for this delay by providing an interest allowance on the balance in the RSPT capital account. The RSPT allowance rate will be set at the long term government bond rate.
>
> Entities that have interests in existing projects that will be subject to the RSPT will be given an RSPT starting base to recognise past investment. Special arrangements will be provided to allow the starting base to be used over the first five years of the operation of the RSPT to reduce the RSPT payable on these projects interests. Any unused starting base can be carried forward to be deducted against future income of that project interest, though

33 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, p. 21; and Australian Government, *Resource Super Profits Tax*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/10_Fact_sheet_Resource_Profit_Tax_Final.pdf (accessed 6 May 2010).

34 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, p. 21; and Australian Government, *Resource Super Profits Tax*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/10_Fact_sheet_Resource_Profit_Tax_Final.pdf (accessed 6 May 2010).

> it cannot be deducted against income from other project interests and is not refundable.
>
> Investment expenses by an entity between the time of announcement and commencement of the RSPT will be given the same treatment as for that outlaid post commencement.[35]

3.44 The government stated that it intended to consult with stakeholders on RSPT design issues including the taxing point and transitional arrangements for existing projects prior to the commencement of the measure. The consultation process commenced with the release of the Announcement Paper, *The Resource Super Profits Tax: a fair return to the nation*.[36]

3.45 Shortly after the release of the government's initial response, the initial round of discussions with the Consultation Panel began, followed by public consultations in various capital cities commencing from 24 May 2010.[37]

3.46 On 2 July 2010, the Prime Minister announced that the RSPT would be replaced by a new Minerals Resource Rent Tax (MRRT), and an expanded PRRT. Details of the new arrangements are discussed at chapter 4.

Concerns regarding the Resource Super Profits Tax

3.47 A number of the submissions received by the committee regarding the Henry Tax Review and the government's initial response noted that at the time submissions were sought, industry and stakeholders had not had the opportunity to undertake any detailed analysis on the consequences of the RSPT, particularly as the draft legislation was unavailable at the time, and consultations between a number of stakeholders and the government were ongoing. However a series of initial concerns were raised.

The removal of state royalties and the consultation process

3.48 The committee asked questions about the level of consultation which took place on the resource rent tax measure as recommended by the Henry Tax Review. The committee confirmed with the Department of the Treasury that the original resource rent tax proposed by the Henry Tax Review was designed to replace state royalties:

> CHAIR—The resource rent tax model which was recommended by your review was based on the proposition that state royalties would be abolished

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35 Australian Government, *Resource Super Profits Tax*, Fact Sheet, pp 3-4, http://www.futuretax.gov.au/documents/attachments/10_Fact_sheet_Resource_Profit_Tax_Final.pdf (accessed 6 May 2010).

36 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, p. 21; and Australian Government, *Resource Super Profits Tax*, Fact Sheet, pp 1 and 6, http://www.futuretax.gov.au/documents/attachments/10_Fact_sheet_Resource_Profit_Tax_Final.pdf (accessed 6 May 2010).

37 APPEA, *Submission H17*, p. 3.

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

Dr Henry—That was the government decision...[38]

3.49 The committee notes that Dr Henry made it very clear that the RSPT was designed to replace state royalties, if not straight away, then over time. Dr Henry also conceded that under the RSPT, there could be a nil return to the community from the exploitation of these non-renewable resources if there was no 'super profit' and all state royalties were either refunded or abolished:

Dr Henry—That was the government decision. Whether it is the case that the government decided on that particular formulation because the states had indicated they were not going to abolish their royalties is another matter. I am not sure that that is the reason why the government settled on that particular design. I think, rather, the issue was that that would be the easiest way of introducing new taxation arrangements, at least in some transitional period. I must say—or rather, I do not have to say it but I will say it—that it was my expectation as an adviser that, were the government able to legislate that particular package and that particular design, at some point, not immediately, obviously, but at some point, state royalties would disappear. So I saw the government's proposal as an interim arrangement with respect to royalties.

CHAIR—So, when you say it was part of the transitional arrangements and interim arrangements, your assessment or your take on it was that the refunding of state royalties was going to be a temporary measure?

Dr Henry—That is a personal judgement. As far as I know, the government did not come to any particular view on that matter. But it just seemed to me that, with the business of states levying royalties and then the Commonwealth refunding those royalties to taxpayers and levying the Commonwealth tax instead, at some point states would see that there was no need for them to levy the royalties in the first place. But that is a personal judgement.

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

> CHAIR—If the federal government had gone along with your judgement and I guess with the proposition of your review and state royalties had been abolished or would be abolished then wouldn't it be the case that some mining companies would get access to our non-renewable resources for free—i.e. if they are not making a super profit under the RSPT or if they are not subject to the MRRT?
>
> Dr Henry—Yes, that is certainly the case. It is certainly the case that under the RSPT, the MRRT and, for that matter, the petroleum resource rent tax, if businesses are not making a significant rate of return on the extraction of the mineral resources then, in the absence of royalties, there would be no tax. That is of course why, in the committee's report and also in the government's initial response to the committee's report, the abolition of royalties was said to remove a considerable distortion in the taxation arrangements applying to natural resources, and it is why the report and the government's response to the report indicated that it was very likely that minerals investment would actually increase under these taxation arrangements.[39]

3.50 The committee notes the concerns the Western Australian Department of Treasury and Finance raised in relation to the Commonwealth's 'unwelcome intrusion' into the area of state royalties:

> Turning next to the issue of the state's autonomy over mining and petroleum royalties, we view the Commonwealth's proposed mining tax regime as an unwelcome intrusion into an area of state government responsibility, 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. The intentions of the Henry review committee were quite clear in this regard. Industry is also likely to bring pressure to bear on states to abolish their royalties so that companies need comply with only one regime, rather than two. Such an outcome would increase WA's reliance on Commonwealth grants and exacerbate the already high vertical fiscal imbalance between the Commonwealth and the states. A related issue is the extent to which the Commonwealth government will seek to cap the royalties that are creditable against liabilities under the MRRT and expanded PRRT. In our view, it is essential that states have full flexibility to alter their royalty regimes as appropriate to their specific circumstances.[40]

3.51 Despite Dr Henry's assurances about consultation with state and territory governments impacted by the RSPT proposal, the committee heard concerns about the

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

40 Mr Michael Barnes, Acting Under Treasurer, Department of Treasury and Finance, Western Australia, *Committee Hansard*, 13 July 2010, p. 3.

lack of consultation on the RSPT measure, including the possible future abolition of state royalties, 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.[41]
>
> 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.[42]

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41 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. 7.

42 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.

3.52 The committee heard from Western Australian Department of Treasury and Finance that revenue from royalties has increased with commodity prices because the royalty system in Western Australia is value based not volume based:

> CHAIR—Because there seems to be a general lack of understanding on how royalties are operating. I am just asking you to explain it for the benefit of the public. One of the arguments that has been used by senior cabinet ministers at a federal level, and all of the government members and senators who run through the talking points around the super profits tax and its success, is that state royalties are volumes based, taxes based on volumes, so they have not enabled the community to get their fair share of increasing commodity prices and only a profits based resource rent tax will enable the community to get a fair share of the increased value of those commodities. Would you care to comment (1) on the operation of state royalties in Western Australia, which I understand to be values based, and sensitive to price; and (2) on whether in fact a profits based resource rent tax is the only way to achieve a fair return to the community?
>
> Mr Barnes—The vast majority of Western Australia's royalty regime is an ad valorem, or value based royalty system, not volume based; therefore our royalty revenue rises in line with increases in commodity prices and in line with increases in volumes. The chart I have in front of me shows that royalty revenue has increased substantially over the last four or five years, reflecting the increase in commodity prices that we have seen over that time. In 2004-05 our royalty revenue was less than $1½ billion; in 2008-09 our royalty revenue was approaching $3½ billion.
>
> CHAIR—So there have been significant adjustments to your revenue as a result of the increase in commodity prices?
>
> Mr Barnes—Absolutely.[43]

3.53 The committee heard evidence from the Western Australian Department of Treasury and Finance stating that 'if there is a view that the community is not receiving a fair return' for its non-renewable resources then the department would prefer the Commonwealth and states work together to design enhancements to the royalty regimes:

> CHAIR—You recommended that this minerals resource rent tax should not proceed. Can you summarise the basis for your view that the MRRT should not proceed?
>
> Mr Barnes—I guess it is because of some of those risks that I outlined in my opening statement. It is also as a result of the general principle of a concern that the Commonwealth is intruding in what is historically and, arguably, constitutionally a state responsibility not a Commonwealth responsibility and the implications of that for the current vertical fiscal imbalance between the Commonwealth and the states and the implications

43 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. 9.

> for the revenue autonomy and policy flexibility of the states. They are issues that we are very concerned about.
>
> Our preference, therefore, is that the MRRT not proceed. If there is a view that the community is not receiving a fair return from resource companies, however a 'fair return' is defined—a very subjective thing to define—we would prefer that the Commonwealth and the states work together to design enhancements to the royalty regimes of the states to address that issue.[44]

Design

3.54 APPEA emphasised that the measure should not reward failure:

> The industry does not support the introduction of a risk sharing provision (via a rebate or refund at the end of a project life). Rather, a higher priority should be placed on the application of appropriate uplift rates to reflect the risks associated with exploration and development decisions in the industry.[45]

3.55 BP noted, that while in principle, a 'true rent tax' is efficient, the RSPT as it was initially proposed, was flawed:

> Firstly, setting the uplift on expenditures at the Long Term Bond Rate does not adequately reflect project risk, and the proposal to offer a refundable offset for loss-making projects does not work as a proxy. Secondly, depreciating capital investments over long time lines does not reflect the very deep capital requirements in industries such as Liquefied Natural Gas (LNG), and would see projects paying a "profit" tax when they are still many years away from breaking even on a cash flow basis. Thirdly, imposing the change retrospectively on projects that were sanctioned on a fundamentally different basis is both unfair and, because it impacts different companies differently, is inequitable. For example the North West Shelf Venture appears to be alone amongst current oil and gas projects in Commonwealth waters to be denied the option to opt-in to the RSPT or to remain on current arrangements.[46]

3.56 APPEA were particularly concerned to ensure that existing projects would not be disadvantaged under the transitional provisions provided:

> Any fundamental shift in the investment framework must be very carefully considered and managed, with projects transitioning into the new regime not being adversely impacted. In addition, value adding activities post the taxing point should not be taxed via the RSPT. Changes should only be

44 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. 15.

45 APPEA, *Submission H17*, p. 3.

46 BP, *Submission H19*, pp 1-2.

> introduced on a prospective basis, while retrospective impacts must be avoided, or the impacted parties should be fully compensated.[47]

3.57 APPEA further noted that 'Competitive neutrality must underpin the design of any new system.'[48] In their submission, APPEA argued that it is essential that taxation neutrality is maintained for commodities competing for the same market, so it is important that natural gas is not disadvantaged in relation to coal and other fuels.[49]

Markets, production and investment

Energy industry

3.58 The Australian Energy Market Operator (AEMO) and the Australian Energy Market Commission (AEMC) both noted that the impact of the RSPT would have varied between market participants:

> The impact of any tax on the cost of generation would then not only relate to the incidence of the tax on the supplier but also the specific terms of the contract between parties.[50]

3.59 AEMC commented that the RSPT could have potentially impacted on input costs for market participants, explaining that:

> The market rules are designed such that changes in input costs for market participants can be reflected in market offers – on the basis of which the market is dispatched, and prices are set. Price expectations are the main signal for new investment. Hence, price signals might change, but there is no obvious detriment to ongoing security of supply – and is no different in principle to other cost changes that the market routinely accommodates.[51]

3.60 ESAA expressed some concern about the possible impact of the RSPT on energy prices, noting:

> esaa observes that, to the extent that the RSPT serves to increase the input costs of coal and gas for electricity generation (and gas as a direct domestic energy source), it would be rational economic behaviour to expect industry participants to attempt to pass through such costs to end consumers.[52]

3.61 AEMO noted that increased costs and prices could impact on competitiveness and investment outlook:

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47 APPEA, *Submission H17*, p. 3.

48 APPEA, *Submission H17*, p. 3.

49 APPEA, *Submission H17*, p. 3.

50 Australian Energy Market Operator (AEMO), *Submission H3*, p. 2; See also, Australian Energy Market Commission (AEMC), *Submission H1*, p. 2.

51 AEMC, *Submission H1*, p. 2.

52 ESAA, *Submission H10*, p. 1.

> Should a generator suffer an increase in marginal fuel supply cost due to the processes described above, it would be expected that its marginal offer price would increase as a consequence. Where those impacts fall differently on different participants, they could also impact on relative competitiveness and the dispatch of generation. Any impacts of the proposed tax will first be observed in the short term market outcomes. There may also be longer term impacts arising from any changes in the investment outlook for the various sectors of the energy industry.[53]

3.62 AEMO further noted that if the RSPT had impacted on investment for certain sectors, this may have affected future energy demand:

> It should also be noted that extractive and processing industries represent a significant proportion of energy demand in our markets. Forecast future demand for energy is premised upon strong growth in these sectors. Any change to investment in these industries, either positive or negative, would impact on future energy demand.[54]

3.63 The Australian Academy of Technological Sciences and Engineering (ATSE) also expressed:

> ...considerable concerns about the proposed change in taxation arrangements for resources due to the heightened sovereign risk it implies and the consequent reduction in potential investment in badly needed new energy infrastructure.[55]

3.64 A key concern for ATSE has been the lack of investment in new electricity generating capacity, due largely to uncertainty regarding carbon pricing, and changing policies on renewable energy targets, and support for renewables in general. ATSE noted:

> Investors have made it clear that even before the *RSPT* proposal, Australia had moved from being regarded as a low return/low risk investment prospect to a low return/high risk environment. With the potential for higher domestic costs for coal and gas under a new tax regime, appetite for investment will be further reduced.[56]

Resources industry

3.65 Woodside Energy noted that they are concerned to ensure there is certainty for their existing projects, most of which currently operate under the PRRT with the exception of the North West Shelf Project, which operates on a royalty regime. Woodside have noted that they would be very concerned if a change in taxation

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53 AEMO, *Submission H3*, p. 2.

54 AEMO, *Submission H3*, p. 2.

55 Australian Academy of Technological Sciences and Engineering (ATSE), *Submission H14*, p. 1.

56 ATSE, *Submission H14*, p. 1.

regime resulted in a loss of value of its projects. Woodside further suggested that consideration be given to extending the PRRT regime to cover all oil and gas projects.[57]

3.66 The impact of uncertainty on industry investment was illustrated by FMG:

> The uncertainty has a major impact on a company like Fortescue at this point in time. We have, per our stock exchange release of a month or two ago, deferred any investment decisions on both the Solomon project and the Western Hub. The sorts of sums involved that we are talking about are $15 billion to $20 billion of investment. We would love to have certainty around these issues so that we can move forward as a company, expand rapidly and create jobs for Australia.[58]

3.67 In its submission in June 2010, the AWU argued that large mining companies would be able to absorb the new tax, and the RSPT would actually benefit smaller mining companies:

> It is only taxing super normal profits, and the features of the tax have a lot of benefits to smaller, less profitable mines, operating on narrower margins than the majors.
>
> These smaller players constitute hundreds of companies employing thousands of members. These companies produce gold, uranium, copper, zinc among others.
>
> Compensation for royalty payments and the cut in the company tax rate will be particularly beneficial to the smaller players.[59]

3.68 However, Mr Pearce of FMG, in setting out FMG's concerns with the government's consultation process over the MRRT pointed out that changes to the original RSPT favoured larger mining companies at the expense of the smaller miners:

> There are seven key items that we believe still need to be addressed to provide clarity and certainty to the industry. With respect to interest deductibility, we remain opposed to a tax of this scale being calculated and levied prior to the deduction of interests and other costs, particularly in a project’s first five years of operation. With respect to the uplift rate, the current proposal clearly favours the large multinational companies with access to cheaper funds over emerging companies. In relation to the infrastructure recharge, clarity is required so that the arm’s length basis evidenced by external third party agreements forms the basis of the net back charge. There is also the issue of the extraction allowance. Similar to LNG, iron ore is a capital intensive path to market and this allowance should be structured to encourage innovation and new technology. It is essential to better recognise infrastructure capital in the transition arrangements and to encourage ongoing large-scale infrastructure investments. The MRRT

57 Woodside Energy Ltd, *Submission H8*, p. 1.

58 Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 73.

59 AWU, *Submission H18*, p. 5.

> threshold should be increased to $100 million to encourage growth of the smaller players. And we believe magnetite mines should be excluded.
>
> FMG acknowledge that individual companies in the iron ore industry will be impacted differently by each of these factors. The two items that impact Fortescue most significantly are clarity around the arm's length principle to be applied and a better balanced approach to the transition arrangements that recognise the large dollar value invested in high-risk infrastructure assets. Investment in infrastructure should be encouraged and companies should be rewarded to risking the large sums of capital for the benefit of all Australians.
>
> I have a couple of closing comments on the process. FMG have been a loud and constant opposer of the flawed RSPT for a number of key reasons: (1) the devastating impact that such an ill thought-through tax would have had on the whole Australian mining industry; (2) the obvious flaws in the economic theory and the gap between the elegant economics and the practical reality; and (3) the lack of process and consultation with the industry prior to announcing one of the most significant changes to Australia's taxation system.
>
> **The Gillard government chose a different path of consultation and worked with three large multinational, multicommodity companies. In my view, they do appear to have addressed a number of the key issues with the RSPT, but a number of key factors have been negotiated that tend to favour them.** Genuine consultation and clarity are urgently required to provide certainty to an industry that has the capacity to build the next generation of Australia's wealth. We need certainty of process, manageable legislative risk and delivery of a fairer outcome for all elements of the iron ore industry. And we need the key principles addressed prior to moving to detailed implementation of the heads of agreement that do not adequately represent all elements of the industry. *[emphasis added]* [60]

3.69 ATSE noted concerns that the RSPT may have had a negative impact on overseas investment in Australian projects:

> Application of the new tax on existing operations will further scare overseas investors as they will see it as a potential precedent which could expand to industries using Australian resources in the event they are perceived as making more than bond rate returns on capital. International energy companies have many alternatives for investing their capital, particularly in higher growth markets in Asia where governments are prepared to make long term agreements guaranteeing not to vary taxation and other conditions for the lifetime of the project.[61]

3.70 APPEA were also concerned to ensure that exploration and investment in Australia would not be discouraged as a result of the RSPT. In their submission to the

60 Mr Pearce, FMG, *Committee Hansard*, 13 July 2010, p. 66.

61 ATSE, *Submission H14*, p. 1.

committee they noted that while the potential impact of the RSPT had been uncertain, it could have affected investment decisions in two ways:

> Firstly, it may influence incremental investment decisions on existing projects and secondly, it will be important in determining final investment decisions for future projects and activities. Until such time as the final details are determined (including the critical transitional details), the medium to long term impacts will remain uncertain.[62]

3.71 A significant concern for ATSE was the impact the RSPT could have had on gas supply:

> The bridge between coal based power and new low emission technologies in the next decade or more will be gas. The *RSPT* could well reduce exploration for new gas resources and therefore the potential domestic supply, at least on the east coast, so increasing power prices by more than would have otherwise been the case.[63]

3.72 Griffin Energy explained to the committee that coal supply contracts in Western Australia are often high volume and low margin, and consequently:

> While the final details of the RSPT are yet unknown, it is clear that taxing the profits above the long term bond rate of existing (and depreciated) mining operations at up to 40% will lead to lower long term revenues for these operations. Reducing the returns of these marginal businesses may lead to a future reallocation of capital away from these mining operations, when further investment is required to maintain mining output. Reduction in mining output or mine closure would have devastating impacts on the town of Collie and the surrounding district.[64]

3.73 BlueScope Steel noted that while they did not expect an immediate impact from the RSPT, as a consumer of a range of domestic mineral raw materials they were concerned about:

> ...the potential medium term impact of the tax on the cost and availability of raw materials, especially those raw materials that are not readily substitutable by imports...If the RSPT was to cause a reduction in the development of new minerals resources in Australia, this could contribute to reduced supply, which would increase prices of these minerals. Our ability to pass on such price increases through increased selling prices for our steel products would be constrained by the internationally traded nature of these products. This would erode margins for our domestic iron and steelmaking operations.[65]

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62 APPEA, *Submission H17*, p. 4.

63 ATSE, *Submission H14*, p. 1.

64 Griffin Energy, *Submission H9*, p. 2.

65 BlueScope Steel, *Submission H13*, p. 1.

Renewable energy industry

3.74 AGEA noted that while the RSPT would not have directly applied to the geothermal energy sector, any impact on the mining sector may have adversely affected the geothermal industry, as the mining industry will be a very important early customer of geothermal energy:

> While it is AGEA's understanding that the proposed RSPT will not apply to the geothermal energy sector, the industry is concerned about any dampening of activity in the broader mining industry as it will be an important early customer of geothermal energy. This is particularly the case in central South Australia and the Pilbara and Mid-West regions of Western Australia Where geothermal energy is the ideal source of renewable energy for mining projects given its abundance and base load character. [66]

Employment

3.75 ACAPMA noted that the RSPT may have affected employment in the upstream sector:

> ...the tax on profits reduces the net income of upstream companies, and this may have an impact on an upstream operator's appetite to employ.[67]

3.76 APPEA noted that if investment in potential projects was hindered by the RSPT, the potential job opportunities that these projects offer may have been lost:

> The final impact on jobs and employment will hinge on the way the new regime influences project economics, particularly those in the process of making final investment decisions. Australia has the potential to see significant growth associated with the development of the nation's gas resources, with upside potential of more than $200 billion in capital investment and the creation of around 50,000 jobs. Many of the proposed development [sic] in the industry require significant capital and human resourcing in regional areas. Poorly structured fiscal settings may see many of these opportunities lost.[68]

3.77 This argument was echoed by BP, who stated:

> The main driver of employment in the oil and gas sector is the construction of new projects. Current projects that have been confirmed to remain covered by the PRRT should be unaffected, however projects that either pre- or post-date the PRRT appear to be covered by RSPT. A reduction in sanctioned projects will have an impact on employment. This applies at established projects such as the NWSV as well as Greenfields projects,

66 AGEA, *Submission H6*, p. 2.

67 ACAPMA, *Submission H5*, p. 2.

68 APPEA, *Submission H17*, p. 4.

> because many incremental investments continue to be made through the life of a development.[69]

3.78 AGEA expressed concern that if the mining sector, as an important early customer of geothermal energy, was negatively impacted by the RSPT, this would affect the ability of the geothermal energy industry to develop projects and provide jobs:

> ...the sector could be employing in the region of 17,300 people by 2050 and 3,800 by 2020. While most of these jobs can reasonably be expected to be associated with research and development activities in the sector and projects that are not dependant on the demand from off grid or mining projects, it is reasonable to expect that there will be some impact on these jobs in the shorter term.[70]

3.79 Given evidence received by the committee raising concerns about the possible impact of the RSPT on jobs and investment, at its public hearing of 5 July 2010, the committee sought information on the potential impact of the RSPT. Dr Henry explained to the committee:

> …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.** *[emphasis added]* [71]

Energy and fuel security

3.80 The South West Interconnected System (SWIS) electricity grid in Western Australia relies on coal fired generation for 40 per cent of its installed capacity. Griffin Energy argue that if mining operations had been negatively impacted, and consequently the supply of coal to the SWIS had been reduced, this may have affected the security of supply in the SWIS as:

> ...there are no fuel-substitution alternatives for coal to provide the balanced generation portfolio that maintains security of supply in the SWIS. In other

69 BP, *Submission H19*, p. 2.

70 AGEA, *Submission H6*, pp 2-3.

71 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 30.

> words, it will be unlikely that the State can allow these operations to fail. The only way to do this (in the event of the withdrawal of private capital) is for the State to step in and subsidise the mining operations. Reducing royalty obligations would have little or no impact (given royalties are netted from the overriding 40% RSPT take). This means contracts would need to be renegotiated between coal suppliers and state-owned utilities, which would warrant either an increase in electricity tariffs or a direct taxpayer subsidy. Either way, the impact would distort the electricity market.[72]

3.81 BP noted that due to the need of incremental investment in some established projects such as the North West Shelf Gas Venture, the RSPT could have had an impact on resource exploration and production, thereby affecting supply and security:

> Undermining the economics of the Venture will make these investments harder to justify, reducing resource recovery. The same is true of future offshore projects, if they are forced to operate under the RSPT rather than the more appropriate framework of the Petroleum Resource Rent Tax (PRRT). However it is not possible to be precise on the impact in the absence of further clarity on the RSPT details.[73]

3.82 While APPEA observed that the impact of the RSPT on Australia's energy and fuel security would have to have been assessed in light of the final detail of the measure, stating that:

> Factors critical to Australia's fuel and energy security are the commercialisation of discovered resources and the exploration for new petroleum deposits. The RSPT can be expected to impact on both exploration and development decisions.[74]

Need for further detail

3.83 ESAA noted that as a number of details regarding the tax remained to be finalised via consultation at the time submissions were sought, it was difficult to determine the possible impact of the RSPT, for example:

> As highlighted in the initial Government briefing documentation, a key issue which will need to be resolved is the determination of appropriate methodology to determine the value of a resource for taxation purposes. This is particularly problematic where operations exhibit a high degree of vertical integration between mine and production facility as is sometimes the case in the electricity generation sector.[75]

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72 Griffin Energy, *Submission H9*, pp 1-2.

73 BP, *Submission H19*, p. 2.

74 APPEA, *Submission H17*, p. 4.

75 ESAA, *Submission H10*, p. 2.

Cutting the company tax rate

3.84 The Henry Tax Review Report recommended that the company income tax rate be reduced, as follows:

> Recommendation 27: The company income tax rate should be reduced to 25 per cent over the short to medium term with the timing subject to economic and fiscal circumstances. Improved arrangements for charging for the use of non-renewable resources should be introduced at the same time.[76]

3.85 In response the government initially proposed to reduce the company income tax rate from the current level of 30 per cent, to 29 per cent for the 2013-2014 income year, and then to 28 per cent from the 2014-2015 income year, in conjunction with the introduction of the RSPT on 1 July 2012.[77]

3.86 The Prime Minister's announcement of 2 July 2010 stated that under the new/revised tax arrangements, the company tax rate will continue to be cut to 29 per cent from 2013–14 but will not be further reduced under current fiscal conditions. Small companies will benefit from an early cut to the company tax rate to 29 per cent from 2012–13.[78]

State infrastructure fund

3.87 Recommendation 48 of the Henry Tax Review Report suggests that the Commonwealth and state governments should negotiate the allocation of revenues and risks arising from the resource rent tax.[79]

3.88 In light of this recommendation, the government's initial response proposed the establishment of a state infrastructure fund, using some of the proceeds from the RSPT. The fund was to be created to assist states and territories in investing in infrastructure, and it was intended that the funding would be distributed in a manner

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76 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer*, December 2009, p. 86.

77 Australian Government, *Cutting the Company Tax Rate*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/1_Fact_sheet_Company_Tax_Cut_Final.pdf (accessed 6 May 2010).

78 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).

79 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer*, December 2009, p. 89.

which appropriately recognised the significant infrastructure demands of resource-rich states.[80]

3.89 According to the government's initial response, the funding was intended to be provided as projects were built, so that states did not have to wait until projects were complete and production commenced to receive funds. The government's initial response stated that the fund was to be paid to the states each year, commencing in 2012-2013 at an amount of $700 million and was expected to grow over time.[81]

Credibility of the proposed regional infrastructure fund

3.90 It appears to the committee that the state infrastructure fund is now referred to as the regional infrastructure fund. The proposed regional infrastructure fund is intended to provide $6 billion to invest in critical infrastructure projects with potential partner funding from state governments, private investors and/or local governments. The government states that the fund will recognise the large infrastructure demands of resource-rich states. It is intended that the fund will be distributed in accordance with the value of mining production paying the tax. [82] Details of the fund are still not available. The committee is concerned about the lack of transparency provided in the detail available about where the government expects the revenue to come from under the proposed regional infrastructure fund.

3.91 The committee notes that it is difficult, if not impossible, to assess whether the allocation of expenditure from the proposed fund to individual jurisdictions is appropriate when the government is not prepared to reveal where the revenue will come from on a geographical basis.

3.92 The Western Australian Department of Treasury and Finance noted in evidence that the operation of the fund was an issue. They also noted that the government's 2007 election commitment to Western Australia was still outstanding:

> Another outstanding issue is the operation of the proposed Regional Infrastructure Fund, including states' share of the funding and its treatment under the Commonwealth Grants Commission process. Finally, there is a need for clarity on the status of Commonwealth election commitments relating to a Western Australian infrastructure fund financed from Gorgon

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80 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, pp 6 and 21-22; and Australian Government, *State Infrastructure Funding*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/4_Fact_Sheet_State_infrastructure_funding.pdf (accessed 6 May 2010).

81 Australian Government, *Stronger, Fairer, Simpler: A tax plan for our future*, May 2010, pp 6 and 21-22; and Australian Government, *State Infrastructure Funding*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/4_Fact_Sheet_State_infrastructure_funding.pdf (accessed 6 May 2010).

82 Australian Government, *Regional Infrastructure Fund*, Fact Sheet, p. 1, http://www.futuretax.gov.au/documents/attachments/Fact_Sheet_infrastructure_fund.pdf (accessed 10 July 2010 and 26 July 2010).

> and/or Pluto project PRRT revenues and a flow through share scheme to encourage exploration activity.[83]

3.93 The committee is concerned that the proposed regional infrastructure fund will be yet another repetition of the government's promised fund from 2007. The committee notes that Western Australia is still waiting for that fund to eventuate.

3.94 The committee's view is that this proposed regional infrastructure fund is part of the government's strategy to encourage acceptance of its new tax, the MRRT/expanded PRRT. The committee is concerned that while the MRRT/expanded PRRT has the potential to raise tens of billions of dollars in revenue over a decade, the government is only intending to contribute $6 billion under the fund to infrastructure over the same period. On this basis the committee highly doubts that this proposal is a serious attempt to invest in infrastructure.

Other issues arising out of the Henry Tax Review Report

Energy and fuel security

3.95 Given the substantive nature of the review, the committee sought information on the possible impact that taxation arrangements could have on energy security and was informed that:

> It is possible that taxation arrangements could have an impact on energy security in two ways that occur to me immediately. The first is that taxation arrangements could affect the level of investment in various energy technologies, potentially in an adverse way if not properly structured. There is also the possibility that taxation arrangements could be structured in such a way as to lead to a diversification of energy sources. Of course, the present tax law contains such provisions that encourage, for example, renewable energies.[84]

3.96 However, Dr Henry explained to the committee that the recommendations of the Henry Tax Review Report did not address energy and fuel security:

> ...I think it is fair to say that none of the recommendations were specifically designed to enhance Australia’s energy security.[85]

Cash bidding for exploration permits

3.97 The committee asked Dr Henry for further information on recommendation 49 of the Henry Tax Review Report, which states:

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

84 Dr Henry, Department of the Treasury, *Committee Hansard*, 5 July 2010, p. 2.

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

> The Australian and State governments should consider using a cash bidding system to allocate exploration permits. For small exploration areas, where there are unlikely to be net benefits from a cash bidding system, a first-come first-served system could be used.[86]

3.98 The committee asked Dr Henry about the reasoning behind the recommendation:

> CHAIR—...Can you explain the rationale for promoting cash-bidding allocation of exploration permits? Wouldn't that cause a shift in the grant of exploration permits leading to explorers allocating their budgets to cash bids rather than actual, tangible exploration work?
>
> Dr Henry—That rather assumes that the companies we are talking about here have fixed budgets. I am not at all sure that the companies do have fixed budgets. I know they talk as if they do, but they do not seem to have a lot of trouble accessing additional financial capital when commodity prices increase, so I am not at all sure that their financial capital is fixed. In fact, I know it is not. I do not know if there would be such an effect as you have postulated, but we did not consider such an effect. Instead what we were motivated by was something that we have discussed earlier, which was ensuring that the Australian community generally gets a fair value for its resources.
>
> CHAIR—But I guess we have already gone there, because the Australian community might get as little as $0 for the resource if—
>
> Dr Henry—Yes, but if somebody is prepared to pay money to secure rights over those resources then it is appropriate that that money go to the community. That is all.[87]

Road transport taxes and fuel excise

3.99 The Henry Tax Review Report also made a series of recommendations surrounding road transport taxes, including congestion charges, charges for heavy vehicles, fuel taxes, road user charges, taxes on motor vehicle ownership and road infrastructure.

3.100 In particular, the Henry Tax Review Report recommended that the current fuel excise be phased out over time in favour of road user charges, and that if fuel excise is retained all fuels should be taxed equally:

> Recommendation 65: Revenue from fuel tax imposed for general government purposes should be replaced over time with revenue from more efficient broad-based taxes. If a decision were made to recover costs of roads from road users through fuel tax, it should be linked to the cost of

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86 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer*, December 2009, p. 89.

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

> efficiently financing the road network, less costs that can be charged directly to road users or collected through a network access charge. Fuel tax should apply to all fuels used in road transport on the basis of energy content, and be indexed to the CPI. Heavy vehicles should be exempt from fuel tax and the network access component of registration fees if full replacement charges are introduced.[88]

3.101 The committee notes that the government has announced that that it will not index fuel tax to the Consumer Price Index (CPI).[89]

3.102 ACAPMA noted their support for the recommendations in the Henry Tax Review Report regarding road transport charges:

> The removal of all fuel excise and registration taxes, if replaced by more efficient road user charges, would be positive progress. By removing the fuel excise, which is largest component of the board price after production costs, the motorist would be able to understand the relationship of board price to the wholesale price. By then charging, as recommended in the Henry Tax Review, congestion taxes as well as 'mass-distance-location' charges, motorists would be able to better manage their personal transport requirements. This, in some cases, could reduce the cost of transport when managed correctly.[90]

3.103 The Australian Automobile Association noted its support for the introduction of a road user charge to replace fuel excise, as recommended by the Henry Tax Review.[91]

The introduction of fuel excise on gas products

3.104 In 2004, an energy white paper, *Securing Australia's Energy Future*, was released proposing that all fuels which can be used in an internal combustion engine should be subject to fuel tax. Consequently legislative reforms were made in 2006, which provided for the introduction of an excise on liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG) from 1 July 2011. The excise is to be phased in over four years commencing at 2.5 cents per litre in 2011, and reaching a maximum excise rate of 12.5 cents per litre in 2015.[92]

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88 Australia's Future Tax System Review Panel, *Australia's future tax system: Report to the Treasurer*, December 2009, p. 93.

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

90 ACAPMA, *Submission H5*, p. 2.

91 Mr Mike Harris, Chief Executive, Australian Automobile Association, 'Henry Report Recommendations', Media Release, 2 May 2010.

92 Richard Webb, *Excise taxation: developments since the mid-1990's*, Parliamentary Library Research Brief, No. 15, 2005-06, 13 April 2006, http://www.aph.gov.au/library/pubs/rb/2005-06/06rb15.htm (accessed 2 June 2010).

3.105 The LPG industry have raised concerns about the negative impact which will be created by the introduction of an excise on LPG in conjunction with the amendment of the LPG Vehicle Rebate Scheme in 2009, which reduced the rebate level for LPG conversion of vehicles from $2000 every year at a rate of $250 every year over four years to $1000 until it reaches $1000 per annum:

> The imposition of fuel excise on LPG and continued reduction of the LPG Vehicle Rebate Scheme will have a negative, immediate and sustained impact on; the private motorist, small businesses and their employees, the Australian vehicle manufacturing and transport industries and, most importantly, the Government's assurance and credibility with regard to Australia's energy security and the clean energy debate.[93]

3.106 LPG Australia made extensive comment on the introduction of a fuel excise on LPG, noting concerns that the excise will remove incentive for investment in LPG, particularly due to the reduction in the price differential between LPG and unleaded petrol, and consequently:

> Severely and negatively impacts on 3,300 Australian small businesses and ~20,000 employees who are engaged in the LPG vehicle equipment supply and conversion industry.[94]

3.107 The committee received comment from BOC as to the impact of the implementation of the excise:

> The application of excise to LNG will significantly change the relative economics of LNG compared to diesel for heavy vehicles...There is already an excise rebate for diesel and the proposed tax on LNG will in fact negate the price incentive for heavy vehicle fleet owners to switch from diesel to LNG. By 2015, LNG will incur an excise of 12.5 cents per litre which, on an equivalent basis, is the same excise as applied to diesel.[95]

3.108 LPG Australia further argued that introduction of the excise, and reduction of the rebate will impact on Australia's energy and fuel security in respect of manufacturing, reduced choice in LPG options, reduced demand for LPG Autogas, and a significant impact on small business and employment in the LPG sector.[96]

3.109 BOC sees a contradiction in the government's acknowledgement of LNG's role in Australia's energy future, and the introduction of the excise:

> While the Government continues to acknowledge the role LNG plays in ensuring Australia's energy security, some of the benefits to local industry in developing this alternative fuel are offset by the proposed Alternative Fuel tax. What this fledgling industry needs is greater support from

93 LPG Australia, *Submission H11*, p. 4.

94 LPG Australia, *Submission H11*, pp 3-4.

95 BOC, *Submission H16*, p. 2.

96 LPG Australia, *Submission H11*, pp 3-4.

> Government to grow the industry that will ultimately support Energy Security in Australia.[97]

3.110 LPG Australia stated that 'LPG, as an indigenous, abundant, clean and economical alternative transport fuel directly supports the Government's energy framework.'[98] Consequently they call for a delay in the introduction of a fuel excise for 5 years, and reinstatement of the rebate at $2000 per annum for five years.[99]

Committee comment

Risk to investment and competitiveness of the Australian industry

3.111 The committee notes that through the RSPT the government sought to impose an internationally uncompetitive new tax on mining, an industry of significant importance to the Australian economy.

3.112 The committee notes industry concerns that the RSPT would have a significant negative impact on investment and Australia's international competitiveness. Of particular concern is the evidence the committee received regarding the damage the RSPT could have done to Australia's attractiveness as an investment destination. The committee remains concerned that due to uncertainty regarding Australia's changing resource taxation arrangements, Australia's investment reputation could remain damaged for some time.

3.113 The committee specifically notes announcements made by FMG and Xstrata suspending a series of projects due to the announcement of the RSPT.[100]

3.114 The committee is particularly concerned that a decrease in investment in Australia due to the government's taxation reforms would affect resource production and consequently energy supply – a situation which would obviously be detrimental to Australia's future fuel and energy security. Consequently, the committee considers that future taxation reform should give more serious consideration to its impacts on Australia's future fuel and energy security.

Impact on jobs

3.115 The committee remains concerned that the government announced and intended to proceed with the RSPT, a new tax which due to its impact on investment decisions and company income, would have had significant implications for Australian jobs.

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97 BOC, *Submission H16*, p. 2.

98 LPG Australia, *Submission H11*, pp 4-5.

99 LPG Australia, *Submission H11*, pp 4-5.

100 'List of projects shelved or under review', *The Age*, 3 June 2010, http://www.theage.com.au/business/list-of-projects-shelved-or-under-review-20100603-x370.html (accessed 22 July 2010).

3.116 The committee is particularly concerned about the potential for new taxes on mining to impact on consumer prices, noting evidence provided by industry highlighting the possibility of industry participants passing through any additional cost burden to customers.

3.117 The committee is concerned that the government has not sought any assessment of the impact of its new/revised mining tax arrangements on jobs and investment in the mining industry.

3.118 The committee is particularly concerned about the impact of the reforms on jobs and the economy, given Dr Henry's confirmation that the impact of the MRRT/expanded PRRT arrangements on jobs and investment in the mining industry would be worse than the impact from the previously proposed RSPT.

Thorough consultation with all stakeholders is imperative

3.119 The committee harbours significant concerns about the lack of consultation with state governments, industry and relevant stakeholders throughout the government's entire taxation reform process.

3.120 In particular, the failure of the government to appropriately consult with state governments on the proposal to abolish state royalties highlights the flawed policy process followed in establishing the government's taxation reform measures.

3.121 In the committee's view it was a lack of consultation which led directly to the failure of the government's proposed RSPT. The committee believes it is inexcusable that the government failed to properly consult with industry about the implications of the proposed tax on them.

Impact on state royalties

3.122 The committee is astounded that the government would consider proceeding with a tax designed to replace state royalties without engaging in a thorough and genuine consultative process with state and territory governments.

3.123 The change to the RSPT proposal prior to the 2 May 2010 announcement from abolishing state royalties to refunding them appears to have been made very late in the process and without much conviction. Indeed, Treasury Secretary Dr Henry indicated to the committee that he considered it to be an 'interim arrangement'.

3.124 The committee does not share the view that a Resource Super Profits Tax ensures a fairer return for the community where state royalties supposedly do not.

3.125 The committee is concerned about the confusion, even among senior government ministers, about the operation of state royalty regimes. Contrary to assertions made by government ministers and others, state royalties on mineral resources are invariably value based. Suggestions that the community does not receive an increased return from royalties as commodity prices increase are plainly wrong.

Royalties are a charge on production rather than profits, with the community receiving a certain and reliable return from the exploitation of those non-renewable resources irrespective of whether a profit is made. Federal income and company tax arrangements already provide for the taxation of mining profits.

3.126 The committee notes that under a profit based resource rent tax regime without state royalties in place (or with state royalties refunded) Australians are not assured of a fair and certain return from the exploitation of those non-renewable resources.

3.127 Furthermore, royalties are imposed by state governments on state owned resources on behalf of the people in respective states. Royalties are an important part of state budgets in resource rich states, helping to fund schools, hospitals, police and many other important services. All Australians get a fair return from increased royalty revenue for those states through the Commonwealth Grants Commission process.

Implications for Australia's energy and fuel security

3.128 The committee finds that in imposing a significant new tax on mining, the Henry Tax Review failed to consider the risks to Australia's future fuel and energy security.

3.129 Further the committee is concerned that the introduction of an excise on gas products will be detrimental to Australia's future energy and fuel security, and is of the view that the government's measures contradict purported acknowledgement of gas products in ensuring Australia's future energy and fuel security. In addition, the committee considers that these measures will negatively affect the incentive for Australians to adopt gas power supplies as a lower emission alternative.

Need for exploration incentives

3.130 The committee notes that the RER would have provided benefits to the geothermal energy industry, and considers that any future exploration incentive program should also provide for expenditure incurred in exploring for geothermal energy.

3.131 The committee notes concerns that now that the RER will no longer be pursued by the government, the incentive it was to provide to encourage investment in exploration, particularly for small to mid tier companies is longer apparent. The committee considers that the Policy Transition Group must give priority to developing a well considered exploration incentive scheme in close consultation with industry.

3.132 The committee draws attention to the notable industry support for a flow-through share scheme, and considers that the Policy Transition Group should give serious consideration to implementing such a scheme, in close consultation with industry.

Recommendations

Recommendation 1

3.133 The committee recommends that government proposals to make major structural changes to Australia's tax system should involve meaningful consultation on draft proposals with all relevant stakeholders, prior to making final policy decisions. This will help ensure:

- **a more transparent assessment of the merits of any such proposal; and**
- **a more meaningful opportunity to provide input into the policy development process for all relevant stakeholders, including state and territory governments whose revenue would be impacted by any proposed change.**

Recommendation 2

3.134 The committee recommends that proceeds from a proposed tax should not be included in the Budget until the consultation process regarding that tax has been completed and the legislation has been introduced or is imminent.

Recommendation 3

3.135 The committee recommends that any future tax reform process give proper consideration to Australia's future energy and fuel security in formulating relevant taxation reform measures.

Recommendation 4

3.136 The committee recommends that the government should not implement any future taxation reform without first providing the Australian public with independently verified modelling demonstrating any impact of the proposed reform on:

- **Employment;**
- **Investment;**
- **Industry;**
- **Australia's global competitiveness;**
- **Cost of living; and**
- **The Australian economy as a whole.**

Recommendation 5

3.137 The committee recommends that as a matter of priority, the government consult with small and mid-tier mining companies, on the design of incentives to encourage investment in exploration.

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]

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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.

...

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.

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—

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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?
>
> 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]

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]

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]

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

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

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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

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

Dissenting Report by Government Senators

Introduction

1.1 Government senators have significant concern with the view taken by the report of this committee regarding the new Mineral Resources Rent Tax (MRRT). We also reject the naming of the report, and its recommendations.

1.2 A breakthrough agreement was achieved between the Australian Government and the mining industry on 2nd July, 2010, on arrangements which will underpin major economic reforms to strengthen our economy, including an historic boost to superannuation, new and better infrastructure, and business tax cuts including an up-front tax break and less red tape for small businesses.

1.3 This agreement provides certainty to the resources industry, to mining communities around the country, and to the broader Australian economy. These facts lead us to believe that this policy sends a very clear message to the world that the Australian resources sector is strong and its future is secure.

1.4 Government senators dissent from the report. We suggest that the report has not given due weight to the extensive consultation process undertaken by government, the significant benefits of broader economic reforms of which the MRRT is a part, responsiveness to concerns raised by individuals in public debate, and the importance of ensuring a fairer share of Australia's finite resource wealth is utilised for the benefit of all Australians.

Consultation

1.5 Government senators do not agree with the assertion that consultation in the development of the MRRT proposal was narrow in scope. Consultation on the design of the MRRT was significant, including multiple consultations through the Australia's Future Tax System Review (AFTS Review) process; discussion of resource tax arrangements in the AFTS consultation papers; and formal submissions to government from the mining industry about the desirability for changes to resource taxation and the form the industry would prefer those changes to take.

1.6 Following the ATFS Review process, significant contact between government and industry was maintained, including many hours of consultations at ministerial and official levels with miners of different sizes and miners of different commodities.

1.7 Treasury has noted that there had also been discussions with at least 10 State and Territory departments, including the Western Australian Treasury, as part of the consultation process that informed the design of the MRRT.

1.8 It should be noted by the committee that as a product of consultation, the MRRT proposal announced by the government on 2nd July, 2010, has limited the application of the new regime to iron ore, coal and oil and gas.

Responsive to Smaller Miners

1.9 The new MRRT proposal announced by the Australian Government has also been directly responsive to the public demands made by the leader of the smaller miners, Fortescue Metals Group Limited CEO Andrew Forrest, on 29th June 2010.

1.10 Fortescue asked for an open discussion of the headline tax rate. The MRRT more than delivered on this point, with a 30 per cent headline rate, and a 25 per cent extraction allowance to recognize the contribution of miner expertise up to the mine gate.

1.11 Fortescue asked for a higher uplift rate. The MRRT provides a higher uplift rate of the long term Government bond rate plus seven per cent. This in particular is of more value to small miners than to large miners, because large miners are more likely to be able to access their deductions immediately by offsetting them against other profits rather than having to wait and uplift them.

1.12 Fortescue asked for immediate write-off of new capital investment. The MRRT delivers this. Immediate write-off of new investment benefits miners that are about to make substantial new investments in their mines and it means that mines do not pay the MRRT until they have made enough profits to cover their initial investment.

1.13 Fortescue asked for transferability of deductions between projects to be maintained. This is of little value to single project miners, but is valued by miners with multiple projects as it allows them to immediately access deductions from one project that is under construction by transferring them against profits from other projects.

1.14 Fortescue asked for the taxing point to be set at the point of mineral extraction. The MRRT affirmed that the taxing point would be set close to the resource, ensuring the arrangements did not tax the profits generated by downstream activities such as transport infrastructure.

1.15 Fortescue asked for past investment to be valued at double its book value, for the purpose of resource taxation. The MRRT provides significantly more generous treatment than the previous model by allowing miners to have the full market value of existing value of existing projects, including the value of mining rights, recognized as their starting base.

1.16 Fortescue also asked for the refundability of unused deductions to be removed, which the new MRRT also reflects.

1.17 In addition, the new MRRT also provides a $50 million threshold to exempt the smallest miners from the regime.

1.18 We believe that in developing the proposed reforms, the views of smaller miners have been taken into account by government, including those stated publicly by Fortescue.

Industry Views on the MRRT Proposal

1.19 The new arrangements were welcomed by industry as improving the outlook for investment and for jobs.

1.20 Following the announcement of the MRRT on 2nd July, 2010, the Minerals Council of Australia said that “Today’s proposal on a new Minerals Resource Rent Tax stands to deliver a positive outcome for Australia and its minerals industry.” The MCA also stated that “This package is broadly consistent with the minerals industry’s underlying principles of tax reform: international competitiveness, sovereign risk and competitive neutrality across company size, commodity mix and ownership structure.”

1.21 Further, Fortescue CEO Andrew Forrest said investors had a renewed interest in his projects. On 3 July he said "the healing started almost immediately. We had emails and phone calls from bankers saying Fortescue, we're prepared to talk to you again."

1.22 This indicates the fact that broad consultation and responsiveness in government policymaking has contributed to an arrangement that supports investment and jobs, while providing the mining industry with much greater certainty about future taxation reform.

Revenue

1.23 On 2nd July, 2010, the Government clearly stated the implications for net revenue from the new arrangements. The Government announced that the new arrangements were expected to raise $10.5 billion over the forward estimates, which is $1.5 billion less than the previous arrangements had been expected to raise. The Government also outlined that it would reduce some of the associated tax cuts, in line with the reduction in expected revenue.

1.24 The Government provided further details of the different contributions to the revenue figures in an Economic Statement released on 14th July, 2010. This statement outlined that policy changes had reduced expected revenue by $7.5 billion, but that parameter variations had increased expected revenue by $6 billion. The Economic Statement also provided information on the Terms of Trade assumptions, as has been the practice of successive governments in their budget documentation. The Treasury has explained that its revenue estimates are based on the most recent available information, reflect current high prices but do not assume commodity prices remain at their current levels indefinitely. Treasury assumes that commodity prices will decline gradually over time as global supply comes on stream. This is a prudent and conservative assumption.

1.25 Regarding geographic distribution of revenue raised by the MRRT, the Treasury has explained why it is not possible to identify the revenue raised on a state by state or commodity by commodity basis with any certainty. "MRRT is a profits-based tax with tax assessed on a project by project basis and with losses transferable between projects operated by the same company. As the level of profits from mining projects is not available on a State by State basis, and there is no information available on how many mining companies might elect to transfer losses between taxable projects (which may be located in different states), it is not possible to determine the distribution of MRRT profits by State with any certainty."

1.26 Treasury also noted that "It is not usual practice for government to release estimates of the revenue impacts of the individual components that make up revenue estimates for policy measures. To do so would be potentially misleading due to important interactions between components in determining the overall revenue implications of a measure."

A Fairer Return on Resource Wealth

1.27 The new arrangements will deliver a fairer return to the Australian community for its non-renewable resource wealth. These returns will be used for much needed economic investments.

1.28 One important area of investment is in infrastructure. Through the last commodity boom, the mining industry noted that significant capacity constraints emerged, created by a lack of government investment in infrastructure. We note that the new resource tax arrangements will fund a $6 billion regional infrastructure fund to address this need.

1.29 The revenue from the new arrangements will be used in other ways that also benefit the economy. It will support an increase to superannuation and cuts to business taxes for all companies and tax relief and simplification for unincorporated as well as incorporated small businesses.

1.30 The Government has outlined a process for finalising the design details of the new resource tax arrangements. On 2 July it announced that it would establish a Policy Transition Group (PTG) led by Resources Minister Martin Ferguson AM and Mr Don Argus AC to consult with industry and advise the Government on the implementation of the new MRRT and PRRT arrangements.

1.31 We believe that the government has made significant progress on reforms to the taxation treatment of resource wealth in Australia. The new Mineral Resources Rent Tax (MRRT), developed in consultation with the mining industry, will provide certainty to the resources industry, mining communities, and the Australian economy.

Senator Steve Hutchins

Senator Don Farrell

Senator Anne McEwen

Appendix 1

Terms of Reference

That a select committee, to be known as the Select Committee on Fuel and Energy, be established to inquire into and report by **30 August 2010** on:

a. the impact of higher fuel and energy prices on:
   i. families,
   ii. small business,
   iii. rural and regional Australia,
   iv. grocery prices, and
   v. key industries, including but not limited to tourism and transport;

b. the role and activities of the Petrol Commissioner, including whether the Petrol Commissioner reduces the price of petroleum;

c. the operation of the domestic energy markets, and petroleum, diesel and gas markets, including the fostering of maximum competition and provision of consumer information;

d. the impact of an emissions trading scheme on the fuel and energy industry, including but not limited to:
   i. prices,
   ii. employment in the fuel and energy industries, and any related adverse impacts on regional centres reliant on these industries,
   iii. domestic energy supply, and
   iv. future investment in fuel and energy infrastructure;

e. the existing set of federal and state government regulatory powers as they relate to fuel and energy products;

f. taxation arrangements on fuel and energy products including:
   i. Commonwealth excise,
   ii. the goods and services tax, and
   iii. new state and federal taxes;

g. the role of alternative sources of energy to coal and alternative fuels to petroleum and diesel, including but not limited to: LPG, LNG, CNG, gas to liquids, coal to liquids, electricity and bio-fuels such as, but not limited to, ethanol;

h. domestic energy supply and the domestic oil/gas exploration and refinement industry, with particular reference to:

   i. the impact of Commonwealth, state and local government regulations on these industries,
   ii. increasing domestic oil/gas exploration and refinement activities, with a view to reducing Australia's reliance on imported oil,
   iii. other tax incentives, and
   iv. securing Australia's future domestic energy supply;

i. the impact of higher petroleum, diesel and gas prices on public transport systems, including the adequacy of public transport infrastructure and record of public transport investment by state governments; and

j. any related matters.

Appointment of the Committee

That the committee consist of 8 members, 2 nominated by the Leader of the Government in the Senate, 4 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of Family First in the Senate and 1 nominated by any minority group or independent senator.

a. On the nominations of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and any minority group and independent senators, participating members may be appointed to the committee;

b. participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of committee, but may not vote on any questions before the committee; and

c. a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.

That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

That the committee elect an Opposition member as its chair.

That the chair of the committee may, from time to time, appoint another member of the committee to be the deputy chair of the committee, and that the member so appointed act as chair of the committee at any time when there is no chair or the chair is not present at a meeting of the committee.

That, in the event of an equally divided vote, the chair, or the deputy chair when acting as chair, have a casting vote.

That the committee have power to appoint subcommittees consisting of 4 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and interim recommendations.

That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

Appendix 2

Submissions received regarding the Henry Tax Review and the government's initial response

No.	Submitter
H1	Australian Energy Market Commission
H2	Australian Energy Regulator
H3	Australian Energy Market Operator
H4	Australian ITER Forum
H5	Australasian Convenience and Petroleum Marketers Association
H6	Australian Geothermal Energy Association
H7	Western Power
H8	Woodside Energy
H9	Griffin Energy
H10	Energy Supply Association of Australia
H11	LPG Australia
H12	Australian Automobile Association
H13	Blue Scope Steel
H14	Australian Academy of Technological Sciences and Engineering
H15	CONFIDENTIAL
H16	BOC Limited
H17	Australian Petroleum Production and Exploration Association
H18	The Australian Workers' Union
H19	BP Australia Limited
H20	Premier of New South Wales (NSW) on behalf of the NSW Government
H21	Premier of Western Australia (WA) on behalf of the WA Government

Appendix 3

Witnesses who appeared before the committee at public hearings

Canberra, Monday 5 July 2010

BARTLEY, Mr Scott, Principal Adviser, Resource Tax Unit, Business Tax Division
Department of the Treasury

DAVIS, Mr Graeme, Manager, Business Tax Division
Department of the Treasury

FRANCIS, Mr Geoff, Principal Adviser, Resource Tax Secretariat
Department of the Treasury

HENRY AC, Dr Ken, Secretary
Department of the Treasury

PARKER, Mr David, Executive Director, Revenue Group
Department of the Treasury

Canberra, Monday 13 July 2010

ALTUS, Mr Mark, Director, Revenue and Intergovernmental Relations
Department of Treasury and Finance, Western Australia

BARNES, Mr Michael, Acting Under Treasurer
Department of Treasury and Finance, Western Australia

BARTLEY, Mr Scott, Principal Adviser, Resource Tax Unit, Business Tax Division
Department of the Treasury

BENNISON, Mr Simon, Chief Executive Officer
Association of Mining and Exploration Companies

DAVIS, Mr Graeme, Manager, Business Tax Division
Department of the Treasury

FLANAGAN, Mr David, Managing Director
Atlas Iron Limited

HENRY AC, Dr Ken, Secretary
Department of the Treasury

McCULLOUGH, Mr Paul, General Manager, Business Tax Division
Department of the Treasury

MULLEN, Mr Noel, Deputy Chief Executive, Commercial and Corporate
Australian Petroleum Production and Exploration Association Ltd

PEARCE, Mr Stephen, Chief Financial Officer
Fortescue Metals Group Ltd

ROBINSON, Ms Belinda, Chief Executive
Australian Petroleum Production and Exploration Association Ltd

WILLMOTT, Ms Deidre, Head of Government Relations
Fortescue Metals Group Ltd

YOUNG, Mr Mike, Managing Director
BC Iron Limited

Appendix 4

Pro forma letter to state and territory governments and key stakeholders

AUSTRALIA

THE SENATE

SELECT COMMITTEE ON FUEL AND ENERGY

Key Stakeholders

Dear Sir/Madam

Australia's future tax system: Report to the Treasurer (the 'Henry Tax Review')

I am writing on behalf of the Senate Select Committee on Fuel and Energy (the committee). The committee has broad terms of reference; however it is currently concentrating on the following terms of reference relating to Australia's fuel and energy security:

e. the existing set of state government regulatory powers as they relate to petroleum, diesel and gas products;
f. taxation arrangements on petroleum, diesel and gas products including:
  i. Commonwealth excise,
  ii. the goods and services tax, and
  iii. new state and federal taxes;
g. the role of alternative fuels to petroleum and diesel, including but not limited to: LPG, LNG, CNG, gas to liquids, coal to liquid, electricity and bio-fuels such as, but not limited to, ethanol;
h. the domestic oil/gas exploration and refinement industry, with particular reference to:
  i. the impact of Commonwealth, state and local government regulations on this industry,
  ii. increasing domestic oil/gas exploration and refinement activities with a view to reducing Australia's reliance on imported oil, and
  iii. other tax incentives;
j. any related matters.

The committee would like to ascertain your views

As you will be aware on 2 May 2010 the Australian Government released *Australia's future tax system: Report to the Treasurer* (referred to as the 'Henry Tax Review') and a Tax Policy Statement in response to the Henry Tax Review titled *Stronger, Fairer, Simpler: A tax plan for our future.*

The reason for this correspondence is to seek your advice and feedback about the impact of the recommendations of the Henry Tax Review and the government's response on fuel and energy security in your field. In particular, the Fuel and Energy Committee is interested in your assessment of the impact of the so called '*Resource Super Profits Tax'* on both fuel and energy security and on jobs in your field, particularly in regional communities.

The committee poses the following specific questions:

1. *What is your assessment of the impact of the proposed 'Resource Super Profits Tax' on your field?*

2. *Specifically, what is your assessment of the impact of the 'Resource Super Profits Tax' on fuel and energy security in your field?*

3. *Specifically, what is your assessment of the impact of the 'Resource Super Profits Tax' on jobs in your field?*

4. *How do you foresee the proposed resource exploration rebate impacting on your field*?

5. *Do you have any other issues you wish to raise with the committee about the recommendations set out in the Henry Tax Review and/or the government's response to those recommendations?*

Responses requested by 31 May 2010

Please provide your response to the above questions to the committee at fuelenergy.sen@aph.gov.au by close of business Monday 31 May 2010. Please note your response may be used by the committee in formulating its report on these terms of reference.

You can contact Penelope Robinson, the secretary of the committee on 02 6277 3743 if you would like to discuss this request.

Yours sincerely

Senator Mathias Cormann
CHAIR
SENATE SELECT COMMITTEE ON FUEL AND ENERGY

13 May 2010

THE SENATE

SELECT COMMITTEE ON FUEL AND ENERGY

All State Premiers and Territory Chief Ministers

Dear Premier/ Chief Minister

Australia's future tax system: Report to the Treasurer (the 'Henry Tax Review')

I am writing on behalf of the Senate Select Committee on Fuel and Energy (the committee). The committee has broad terms of reference; however it is currently concentrating on the following terms of reference relating to Australia's fuel and energy security:

e. the existing set of state government regulatory powers as they relate to petroleum, diesel and gas products;

f. taxation arrangements on petroleum, diesel and gas products including:
- *i. Commonwealth excise,*
- *ii. the goods and services tax, and*
- *iii. new state and federal taxes;*

g. the role of alternative fuels to petroleum and diesel, including but not limited to: LPG, LNG, CNG, gas to liquids, coal to liquid, electricity and bio-fuels such as, but not limited to, ethanol;

h. the domestic oil/gas exploration and refinement industry, with particular reference to:
- *i. the impact of Commonwealth, state and local government regulations on this industry,*
- *ii. increasing domestic oil/gas exploration and refinement activities with a view to reducing Australia's reliance on imported oil, and*
- *iii. other tax incentives;*

j. any related matters.

The committee would like to ascertain your views

As you will be aware on 2 May 2010 the Australian Government released *Australia's future tax system: Report to the Treasurer* (referred to as the 'Henry Tax Review') and a Tax Policy Statement in response to the Henry Tax Review titled *Stronger, Fairer, Simpler: A tax plan for our future*.

The reason for this correspondence is to seek your advice and feedback about the impact of the recommendations of the Henry Tax Review and the government's response on fuel and energy security in your state/territory. In particular, the Fuel and Energy Committee is interested in your assessment of the impact of the so called '*Resource Super Profits Tax*' on both fuel and energy security and on jobs in your state/territory, particularly in regional communities.

PO Box 6100, Parliament House Canberra ACT 2600 Tel: (02) 6277 3635 Fax: (02) 6277 5794
Email: fuelenergy.sen@aph.gov.au
Internet: http://www.aph.gov.au/Senate/committee/fuelenergy_ctte/index.htm

The committee poses the following specific questions:

1. *What is your assessment of the impact of the proposed 'Resource Super Profits Tax' on your state/territory?*

2. *Specifically, what is your assessment of the impact of the 'Resource Super Profits Tax' on fuel and energy security in your state/territory?*

3. *Specifically, what is your assessment of the impact of the 'Resource Super Profits Tax' on jobs in your state/territory?*

4. *How do you foresee the proposed resource exploration rebate impacting on your state/territory?*

5. *Do you have any other issues you wish to raise with the committee about the recommendations set out in the Henry Tax Review and/or the government's response to those recommendations?*

Responses requested by 31 May 2010

Please provide your response to the above questions to the committee at fuelenergy.sen@aph.gov.au by close of business Monday 31 May 2010. Please note your response may be used by the committee in formulating its report on these terms of reference.

You can contact Penelope Robinson, the secretary of the committee on 02 6277 3743 if you would like to discuss this request.

Yours sincerely

Senator Mathias Cormann
CHAIR
SENATE SELECT COMMITTEE ON FUEL AND ENERGY

13 May 2010

Appendix 5

Correspondence between the committee and Dr Ken Henry AC

AUSTRALIA

AUSTRALIAN SENATE

SENATE SELECT COMMITTEE ON FUEL AND ENERGY

Dr Ken Henry AC
Secretary to the Treasury
Department of Treasury
Treasury Building
Langton Crescent
Parkes ACT 2600

Dear Dr Henry

Inquiry into Fuel and Energy

I am writing on behalf of the Senate Select Committee on Fuel and Energy (the committee).

The committee is continuing its inquiry into fuel and energy matters, focussing on fuel and energy security. In particular the committee is inquiring into the following issues: regulation and taxation of energy and fuel products, the role of alternative energy sources and alternative fuels (including but not limited to gas, nuclear and biofuels), as well as the security and reliability of fuel and energy supply into the future and related infrastructure.

The committee has received a large body of evidence on issues associated with Australia's energy security, including various views on the type and level of taxation that should apply to Australia's present and future energy mix. This evidence includes differing views on the role of taxation and regulation in relation to fuel and energy security in Australia.

The committee recognises your expertise and extensive experience in taxation matters and notes that on 2 May 2010 the Australian Government released *Australia's future tax system: Report to the Treasurer* (the Henry Committee report) and a Tax Policy Statement in response titled *Stronger, Fairer, Simpler: A tax plan for our future* (the government's response).

Following the postponement of the public hearing scheduled for early June, the committee would again like to invite you to appear at its public hearing in Canberra, now to be held on 5 July 2010, in your capacity as Secretary of the Department of Treasury.

The issues the committee would like to explore in terms of their implications for Australia's fuel and energy security include:

- The impact of the proposed 'Resource Super Profits Tax';
- The operation of the state infrastructure fund; and
- The proposed resource exploration rebate.

Please find below a link to the committee website, which contains the committee's terms of reference, submissions received, and other information pertaining to the inquiry.

http://www.aph.gov.au/Senate/committee/fuelenergy_ctte/index.htm

The committee would greatly appreciate your contribution to the inquiry and a response to this invitation at your earliest convenience. I can be contacted directly on (08) 9325 4227 if you would like to discuss any matters raised in this invitation.

Yours sincerely

Senator Mathias Cormann
CHAIR
SENATE SELECT COMMITTEE ON FUEL AND ENERGY

23 June 2010

Australian Government

The Treasury

OFFICE OF THE SECRETARY

29 June 2010

Senator Mathias Cormann
Chair
Senate Select Committee on Fuel and Energy
Australian Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Cormann

INQUIRY INTO FUEL AND ENERGY - 5 JULY 2010

Thank you for your letter dated 23 June 2010 inviting me to appear at the Committee's public hearing scheduled for 5 July 2010.

I would like to advise that Mr David Parker (Executive Director, Revenue Group, The Treasury) and I will be in attendance at the public hearing to address the issues you have raised in your letter.

Yours sincerely

Ken Henry
Secretary to the Treasury

Langton Crescent, PARKES ACT 2600 • Telephone: 02 6263 3738 • Facsimile: 02 6263 3360

Appendix 6

Letter of 5 July 2010 from the committee to Dr Ken Henry AC

AUSTRALIA

AUSTRALIAN SENATE

SENATE SELECT COMMITTEE ON FUEL AND ENERGY

Dr Ken Henry AC
Secretary to the Treasury
Department of Treasury
Treasury Building
Langton Crescent
Parkes ACT 2600

Dear Dr Henry

Inquiry into Fuel and Energy

I am writing on behalf of the Senate Select Committee on Fuel and Energy (the committee).

The committee greatly appreciates your appearance before the committee today. On behalf of the committee I would like to thank you and the officials from the Department of Treasury who also appeared today, for your contribution to the inquiry.

The committee seeks responses to the questions taken on notice during the course of today's hearing by close of business on Friday 9 July 2010.

For your information I attach a copy of the proof Hansard from today's hearing.

Please do not hesitate to contact the committee secretariat on (02) 6277 3635 if you would like to discuss any matters raised in this letter.

Yours sincerely

Senator Mathias Cormann
CHAIR
SENATE SELECT COMMITTEE ON FUEL AND ENERGY

5 July 2010

PO Box 6100, Parliament House, Canberra ACT 2600 Tel: (02) 6277 3437 Fax: (02) 6277 3899
Email: fuelenergy.sen@aph.gov.au Internet: http://www.aph.gov.au/senate/committee/fuelenergy_ctte/index.htm

Appendix 7

Letter of 8 July 2010 from the committee to Dr Ken Henry AC

AUSTRALIAN SENATE

SENATE SELECT COMMITTEE ON FUEL AND ENERGY

Dr Ken Henry AC
Secretary to the Treasury
Department of the Treasury
Treasury Building
Langton Crescent
Parkes ACT 2600

Dear Dr Henry

Inquiry into Fuel and Energy

I am writing on behalf of the Senate Select Committee on Fuel and Energy (the committee).

Further to my letter of 5 July 2010 on behalf of the committee, I would like to bring to your attention that the committee fully expects that the responses to the questions taken on notice by the Department of the Treasury at the public hearing of the committee on 5 July 2010, will be provided to the committee, in the time frame requested in that letter.

If the responses to those questions on notice have not been provided to the committee by close of business Friday 9 July 2010 as requested, the committee intends to hold a public hearing early next week at which the Department of the Treasury will be asked to appear, to provide the information requested and answer any further questions which may arise.

Please do not hesitate to contact the committee secretariat on (02) 6277 3635 if you would like to discuss any matters raised in this letter.

Yours sincerely

Senator Mathias Cormann
CHAIR
SENATE SELECT COMMITTEE ON FUEL AND ENERGY

8 July 2010

PO Box 6100, Parliament House, Canberra ACT 2600 Tel: (02) 6277 3437 Fax: (02) 6277 3899
Email: fuelenergy.sen@aph.gov.au Internet: http://www.aph.gov.au/senate/committee/fuelenergy_ctte/index.htm

Appendix 8

Responses provided to the questions taken on notice at the public hearing on 5 July 2010 by the Department of the Treasury

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 1

Topic: **Resource tax - heads of agreement between the Government and three major mining companies**

The CHAIR asked:

CHAIR—If the essence was released and there is nothing that has been kept private, can the committee get a copy of that contract that was signed between the government and the three majors?

Dr Henry—That is a matter we will refer to the minister.

....

CHAIR—But you have taken on notice the question of providing us with a copy of the contract, and, given that, as you say, supposedly all elements of the deal are public, I suspect the government will not have any problems in following through with that request from the committee. When did you perform the analysis around the costings of the MRRT-PRRT arrangements?

Answer:

A copy of the heads of agreement that was signed by the Government is attached.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

ATTACHMENT

MINERAL RESOURCE RENT TAX HEADS OF AGREEMENT

The Design of the Minerals Resource Rent Tax

The new resource tax will apply from 1 July 2012 only to mined iron ore and coal. All other minerals are excluded.

The rate of tax will be 30% applied to the taxable profit at the resource.

Taxable profit is to be calculated by reference to:

- The value of the commodity, determined at its first saleable form (at mine gate) less all costs to that point
- An extraction allowance equal to 25% of the otherwise taxable profit will be deductible to recognise the profit attributable to the extraction process. (i.e. this to only tax the resource profit)
- Arms length principles on all transactions pre and post first saleable form.

MRRT is to be calculated on an individual taxpayer's direct ownership interest in the project.

There will be no MRRT liability for taxpayers with low levels of resource profits (i.e. $50m per annum).

All post 1 July 2012 expenditure is to be immediately deductible for MRRT on an incurred basis. Non-deductible expenditure will be broadly consistent with PRRT.

MRRT losses will be transferable to offset MRRT profits the taxpayer has on other iron ore and coal operations.

Carried-forward MRRT losses are to be indexed at the allowance rate equal to the LTBR plus 7 percent.

The MRRT will be an allowable deduction for income tax.

All State and Territory royalties will be creditable against the resources tax liability but not transferable or refundable. Any royalties paid and not claimed as a credit will be carried forward at the uplift rate of LTBR plus 7 percent.

Starting Base

The starting base for project assets is, at the election of the taxpayer, either:

- Book value (excluding the value of the resource) or

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

- Market value (as at 1 May 2010).

All capital expenditure incurred post 1 May 2010 will be added to the starting base and depreciated against mining operations from 1 July 2012.

"Project assets" for the purpose of the MRRT will be defined to include tangible assets, improvements to land and mining rights (using the Income Tax definition).

Where book value is used to calculate starting base, depreciation will be accelerated over the first 5 years. The undepreciated value will be uplifted at LTBR plus 7 percent.

Where market value is used to calculate starting base, there will be no uplift and depreciation will be based on an appropriate effective life of assets, not exceeding 25 years.

Any undepreciated starting base and carry forward MRRT losses are to be transferred to a new owner if the project interest is sold.

Implementation Committee

A mutually acceptable Committee comprising credible, respected industry leaders will oversee the development of more detailed technical design to ensure the agreed design principles become effective legislation. This will have the objective of ensuring the agreed principles are effected in line with their intent in a commercial, practical manner.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 2

Topic: MRRT/PRRT – revenue in 2012-13 and 2013-14

The CHAIR asked:

CHAIR—Are you able to provide us with exactly how much revenue the proposed MRRT and changes to the PRRT are expected to raise in net terms in 2012-13 and 2013-14?

Mr Parker—Do you mean in the individual years?

CHAIR—Yes. The RSPT was $3 billion, in 2012-13, and then it was $9 billion; what is it now?

Dr Henry—We will take that question on notice.

Answer:

A document outlining the revenue in 2012-13 and 2013-14 from the revised resource tax arrangements was tabled during the hearing. The revised arrangements raise $4 billion in 2012-13 and $6.5 billion in 2013-14.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 3

Topic: MRRT/PRRT – revenue by geographic region

The CHAIR asked:

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.

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 4

Topic: **MRRT/PRRT – revenue impact to 2020**

The CHAIR asked:

CHAIR—Any forecast is a forecast. What I would like to know on behalf of the committee is: what is your best guess at this point on the basis of the work that you have done in Treasury about the impact of revenue projections beyond forward estimates will be between now and 2020?

Dr Henry—Again, we will have to take that question on notice because I think it is, at least in the first instance, for the Treasurer to indicate to me whether he would like to see any such numbers in the public domain.

Answer:

It is not the usual practice of governments to release the medium and long term revenue impacts of individual measures. The Government is committed to its fiscal strategy to: return the Budget to surplus by 2012-13; achieve budget surpluses, on average, over the medium term; keep taxation as a share of GDP, on average, below the level for 2007-08; and improve the Government's net financial worth over the medium term.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 5

Topic: MRRT/PRRT – exchange rate forecast

The CHAIR asked:

CHAIR—Has Treasury made any adjustments to its forecast exchange rate in estimating revenues from the MRRT-PRRT changes compared to the assumptions used to estimate the revenues from the RSPT?

Dr Henry—I would need to take that on notice. I am not trying to be cute here; I just do not know. We probably have, because when we conduct new forecasts as far as the exchange rate is concerned we just take the current exchange rate, and the exchange rate has moved. I would expect so, but if you do not mind I would like to take that on notice just to be sure.

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 6

Topic: RSPT – revenue shares from iron ore and coal

The CHAIR asked:

CHAIR—Sure. In the modelling you did on the RSPT, can you recall whether the iron ore and coal sectors were expected to contribute the overwhelming majority of the revenue?

Dr Henry—I cannot recall and I was not personally involved in the revenue numbers, but I suspect it would be true.

CHAIR—I can see some people nodding. I just wonder whether somebody at the table knows. Hansard cannot pick up nods.

Dr Henry—Yes, it would be true.

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.

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 7

Topic: MRRT/PRRT – revenue from existing coal mines

The CHAIR asked:

CHAIR—How much of the minerals resource rent tax revenue is expected to come from the profits of existing coal mines as they were valued at 1 May 2010?

Dr Henry—We would have to take that on notice as well, Senator, and we would need to bear in mind my earlier comment about the time profile of revenue as well, because of the treatment of the starting cost base for depreciation purposes.

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 8

Topic: MRRT/PRRT – oil price assumption

Senator IAN MACDONALD asked:

Senator IAN MACDONALD—Going right back to when we were talking about the $10.5 billion, and forecasting commodity prices—which, again, you have just mentioned, and you say have been going well—the oil price seems to be heading southward. Was that taken into account in any work you did on the expanded—

Dr Henry—I presume so. I would need to check, but I would imagine that the work that we spoke about earlier utilised the most current forecasts for oil prices.

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 9

Topic: MRRT/PRRT – impact on electricity prices

The CHAIR asked:

CHAIR—I was not talking about iron ore so much. I am focused, in particular, on the application of the PRRT to the coal seam gas sector. Would that be expected to put upward pressure on prices?

Dr Henry—I do not think so. I think that in respect of those commodities we are pretty much a price taker on world markets.

CHAIR—Even though 80 per cent of our power generation is coal fired and much of the rest is gas sourced, you do not expect this tax to raise domestic, commercial and industrial power costs?

Dr Henry—I do not want to claim to be an expert in this particular area, and I would want to take some advice before being conclusive on this point, but as a general proposition, no, I would not expect price impacts.

Answer:

As indicated in Dr Henry's response at the hearing, the new resource tax arrangements are not expected to result in higher electricity prices. Projects falling within the scope of the PRRT, as a result of its expanded coverage, and the MRRT will only pay additional tax (additional to existing royalties and excise) where they are highly profitable. Consequently, supply and investment decisions for these commodities should not be adversely affected by the resource tax and therefore should not increase domestic prices. Oil and gas projects, including coal seam gas projects, will not be subject to additional tax until the value of the starting base, state and federal resource charges and any uplift allowances have been recovered.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 10

Topic: MRRT/PRRT – impact on electricity prices

The CHAIR asked:

CHAIR—Could we go back to where I started? I have conceptually conceded the point about the RSPT for the sake of argument. My question was about the changed arrangement towards MRRT/expanded PRRT as announced by the government. You made statements before that you did not expect an impact on price. Do you now expect an impact on price? I have gone through some of the thinking. The government essentially, by interposing themselves with the banks, are accessing cash flow. The PRRT is not as pure economically as what the RSPT was from an economist's point of view. I would have thought there was an argument that existing projects could be expected to have higher costs as banks would seek to reprice debt to reflect the higher risk profile to them. The questions, then, are whether there is capacity under contractual arrangements for costs—for example, under a change of government law clause—to be passed on and whether companies will require customers to pay these costs. Because we are talking coal and gas suppliers, would you expect them to seek to pass on increased costs to our electricity generators?

Dr Henry—I think I have already answered that question. No, I would not expect it. There may be some peculiarities of the market. I said I am not an expert in this area, and I would want to take further advice before answering the question conclusively, but I would not expect there to be an impact on prices. The PRRT is not a pure profits-based tax in comparison with the RSPT, but it is nevertheless a profits-based tax. Its intention is to tax pure profit. Whether it does so or does not depends critically upon the uplift rate, as I indicated earlier. Under the PRRT, the uplift rates are pretty generous—in fact, they are very generous—and under the proposed MRRT the uplift rate of 700 basis points is also very generous. In assessing the economic incidence of this profits tax, I think we can be reasonably confident that it would not have significant economic effects.

Answer:

See response to Question 9 above.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 11

Topic: MRRT/PRRT – average tax rates by rate of return

The CHAIR asked:

CHAIR—In the Treasurer's economic note of 9 May there was a table comparing the average tax rise of mining projects with differing rates of returns under existing arrangements and the proposed RSPT. Has the Treasury done similar analysis of the effects on average taxpayers under the MRRT expanded PRRT? I see you nod, but *Hansard* cannot pick up a nod.

Mr Davis—We have done some internal work to calculate those, yes.

CHAIR—So you have done some work. Can you share the results of that work with the committee?

Mr Davis—I will take that on notice.

Answer:

Comparable tax rate analysis to that in the Treasurer's Economic Note of 9 May has not been conducted for the MRRT or PRRT as announced on 2 July 2010. An example of the MRRT is included in the Government's fact sheet: *A New Resource Taxation Regime*.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 12

Topic: **MRRT/PRRT – revenue estimates**

The CHAIR asked:

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 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?

Answer:

The Government has not released this level of detail, in line with usual budget practice.

Senate Select Committee on Fuel and Energy

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Fuel and Energy

5 July 2010

Question: 13

Topic: **Change in growth dividend**

The CHAIR asked:

CHAIR—The budget reported that the resource tax reforms would increase GDP by 0.3 per cent. How has the estimate been affected by the change from an RSPT to an MRRT-expanded PRRT?

Dr Henry—My understanding is that the numbers for the so-called growth dividend, against the 2 July heading, are driven by the cut in the company tax rate by one percentage point and by nothing else.

CHAIR—So there are no impacts on the growth dividend from the changes from RSPT to an MRRT-expanded PRRT, other than less of a reduction in company tax rate?

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.

Answer:

The reductions in the growth dividend in 2012-13 and 2013-14 reflect the changed arrangements for cutting the company tax rate.

Appendix 9

Letter of advice from the Clerk of the Senate dated 12 July 2010

AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

rh.let 17343

12 July 2010

Senator Mathias Cormann
Chair
Select Committee on Fuel and Energy
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Cormann

You have asked for advice about the answers provided by the Treasury Department to questions taken on notice at a hearing of the Select Committee on Fuel and Energy on 5 July 2010. Several of the answers take the form of a statement that "The Government has not released this level of detail, in line with usual budget practice". You are correct in your assessment of these as "non-answers".

Taking your second question first, the resolution of the Senate appointing the committee on 25 June 2008 provided for the committee and any subcommittee to have power to send for and examine persons and documents, to move from place to place and to sit in public or in private. In other words, the committee has the full range of inquiry powers to enable it to pursue the terms of reference delegated to it by the Senate. There is thus no basis for any suggestion that the committee is limited to asking questions about matters that are already in the public domain. Indeed, if committees were so limited, there would be little rationale for any inquiry being undertaken. The whole point of Senate committee inquiries is to gather information from any appropriate source and to report to the Senate on its terms of reference. Committees are fact-finding in nature and may often need to find those facts from private or previously unpublished sources.

In relation to your first question, as you know, the Senate has long recognized that there are certain kinds of information in the possession of the government that it would not be in the public interest to disclose. Accordingly, the Senate has in practice refrained from pressing requests for information about such matters. In a resolution dated 16 July 1975, the Senate declared that it would consider any claims of privilege advanced for the non-production of information but that it reserved the right to determine them in the particular circumstances of each case. Otherwise, the resolution went on to declare, "it is the obligation of all such persons to answer questions and produce documents". If any minister or officer of the Commonwealth does not wish to provide answers or information to a committee, the claim for non-disclosure must be based on a recognised ground of public interest immunity which is ultimately assessed by the Senate. There is no other basis on which a public servant has a discretion to withhold information from a committee (other than in accordance with the protection afforded by a Privilege Resolution 1(16) against being asked to give opinions on matters of policy).

In the past, there has been some degree of acceptance of claims based on the following grounds:

- prejudice to legal proceedings;
- prejudice to law enforcement investigations;
- damage to commercial interests;
- unreasonable invasion of privacy;
- disclosure of Executive Council or cabinet deliberations;
- prejudice to national security or defence;
- prejudice to Australia's international relations;
- prejudice to relations between the Commonwealth and the states.

Claims based on the following grounds have **not** been accepted:

- a freedom of information request has been or could be refused;
- legal professional privilege;
- advice to government;
- secrecy provisions in statutes;
- working documents;
- "confusing the public debate" and "prejudicing policy consideration".

A claim that the "Government has not released this level of detail, in line with usual budget practice" is not amongst the recognized grounds that have previously gained some acceptance in the Senate. Without further elaboration, it is difficult to see how this statement could operate as a claim of public interest immunity.

In the courts, public interest immunity is a rule of evidence that protects executive documents from production in legal proceedings on the ground that production would be harmful to the public interest. It involves the court balancing the competing public interests between the proper administration of justice on the one hand and the desire of the executive not to disclose the information on the other. In the Senate, the concept of public interest immunity operates analogously with its operation in the courts, although there are obvious differences. In order for any assessment of competing public interests to occur, it is necessary for there to be some statement of the possible harm to the public interest that could ensue from the disclosure of the information in question. A statement that an action is in line with usual practice goes nowhere towards providing an assessment of the harm to the public interest that could ensue from a departure from that practice.

Turning now to your third question, if the committee is not prepared to accept the grounds advanced for not answering the questions (a position that would be entirely consistent with Senate practice in this area), then the committee should seek elaboration of the reasons from Treasury officers when they appear before the committee tomorrow. In particular, the committee should draw the Treasury officers' attention to the resolution of the Senate of

13 May 2009 which is a codification of the Senate's practice in relation to claims of public interest immunity and sets out a procedure to be followed when a witness does not wish to answer a question.

I also draw the committee's attention to Privilege Resolution 1(10) which sets out the process to be followed where a witness objects to answering a question on any ground. If the Treasury witnesses decline to provide better elaboration of the grounds on which the questions taken on notice have not been answered, the committee may wish to consider in private session during the course of tomorrow's hearing whether it wishes to insist on an answer from the witnesses (and whether it would be prepared to receive the information in private session). Note that the Treasury officers also have the right (under the resolution of 13 May 2009 and under Privilege Resolution 1(16)) to refer the questions to the Treasurer. If, in the end, no more satisfactory justification is provided for not answering the questions, the committee may then wish to treat it as a refusal to answer the questions and to report the facts to the Senate in accordance with Privilege Resolution 1(10). It is often the case, however, that follow-up questioning of a witness can elicit the information that the committee requires to discharge its terms of reference.

Please let me know if I can be of any further assistance.

Yours sincerely

Rosemary Laing

(Rosemary Laing)

Appendix 10

Senator Cormann's letter to the Prime Minister dated 12 July 2010

SENATOR MATHIAS CORMANN
Liberal Senator for Western Australia

Hon Julia Gillard MP
Prime Minister
Parliament House
Canberra ACT 2600

Dear Prime Minister

Tomorrow morning Treasury Secretary Dr Henry will appear for a second time before the Senate Fuel and Energy Committee to answer questions about the Minerals Resource Rent Tax and expanded Petroleum Resource Rent Tax.

In that context I am writing to request you allow Dr Henry to provide proper answers to important and legitimate questions which remain unanswered about the new resource rent tax arrangements announced on 2 July 2010.

Indeed, during a meeting of the Fuel and Energy Committee last Monday Dr Henry took 13 questions on notice. Most of those questions would easily be answered on notice, as Treasury would hold the information. Yet, key questions remain unanswered even after the deadline for answers has passed.

In refusing to answer those questions your government advanced the proposition that it ' has not released this level of detail, in line with usual budget practice'.

This of course is not an acceptable reason to refuse answering a question put to a government official in the course of a Senate Committee hearing. Indeed, the fact that information hasn't been publicly released is not one of the recognised public interest grounds on which a refusal by government officials to answer questions from a Senate Committee can be based. Please note relevant advice from the Clerk of the Senate attached for your consideration.

I refer you also to a similar attempt by your government to refuse answering questions about tax revenue in the past. On that occasion it was in the context of the increase in the Alcopops tax. At first, questions about the amount of additional tax revenue were not answered on the basis that 'this information is not publicly available'. However, when it was pointed out that the mere fact that information was not publicly available (or had 'not been released') is not a proper ground to refuse answering questions put forward by a Senator or a Senate Committee, the information was eventually provided.

I urge you to consider the public interest and do the same on this occasion.

Among other things the Senate Fuel and Energy Committee wants to know:

- Where the $10.5 billion in revenue from the MRRT/expanded PRRT is expected to come from both by sector and geographically.

- What changes in assumptions were made between the 2010/11 budget and the new tax arrangements announced on 2 July 2010:
    - to commodity prices
    - commodity volumes
    - the exchange rate
    - to any of the other variables that have been changed.

Proper answers to these and other questions are in the public interest. I can't see how your government could possibly argue that answers to those and other questions is not in the public interest, unless you are seeking to hide embarrassing information from public scrutiny.

Your government is seeking to impose a massive new tax on the mining industry.

You have entered into a heads-of-agreement with three major mining companies having conducted all negotiations in private.

Your new tax on mining and the deal you entered into clearly has serious implications for the budget, our economy, jobs and investment in the mining industry and of course for resource rich States like Western Australia and Queensland in particular.

The Australian people are entitled to receive answers to the questions we are putting forward on their behalf.

I urge you to consider the public interest at stake here and not just the political interest of your government.

Kind regards

Mathias Cormann
SENATOR FOR WESTERN AUSTRALIA

12 July 2010

cc. Hon Wayne Swan MP, Treasurer
Dr Ken Henry AC, Secretary of the Treasury

See: appendix 9 as attachment to appendix 10

Appendix 11

Responses provided to the questions taken on notice at the public hearing on 13 July 2010 by the Department of the Treasury

SENATE SELECT COMMITTEE ON FUEL AND ENERGY
<u>Questions on Notice</u>

Canberra Tuesday 13 July 2010

Department of the Treasury

QoN No.	Hansard Page Reference	Senator	Question
1	30-31	Cormann	**CHAIR**—Let us get straight into it, then. Are you now in a position to provide answers to all the questions you took on notice last Monday? **Dr Henry**—I have, as you know, provided the committee with responses to all of the questions taken on notice. In respect of a number of those questions, having referred the questions to the Treasurer for his consideration, I gave a response to the effect that that sort of information is not generally provided. I presume your question is whether at this point I am able to provide such information, notwithstanding that it is not general practice for such information to be provided. I would, of course, wish to take that question on notice and refer it to the Treasurer for his consideration, since I would want to inquire of the Treasurer whether he wishes to reconsider whether the committee should be provided with additional information. However, that is essentially by way of background, because I am able to say to the committee that it is my understanding that the Treasurer will shortly be putting more information into the public domain, some of which information goes very much to the questions that I took on notice at the last committee hearing. **Answer:** Information was provided by the Treasurer in the Government's *Economic Statement July 2010* to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (released on 2 May 2010).
2	34	Cormann	**CHAIR**—Are you in a position today to tell us what your commodity price assumptions are and what your assumptions are around production volumes at the basis of the assessment of the fiscal impact of the MRRT expanded PRRT? **Dr Henry**—No, I am not and, as I did on the last occasion that we met, I would refer that question to the Treasurer for his consideration. **Answer:** Information was provided by the Treasurer in the Government's *Economic Statement July 2010* to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (as announced on 2 May 2010). Page 5 of this document notes expected movements in iron ore and coal prices.

3	35	Cormann	**CHAIR**—So what are the actual mineral price and volume assumptions used in the MRRT impact calculations, given that you consider them to have strengthened since the budget? **Dr Henry**—As I have already indicated, that is a question that I will refer to the Treasurer. **Answer:** Information was provided by the Treasurer in the Government's *Economic Statement July 2010* to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (as announced on 2 May 2010). Page 5 of this document notes expected movements in iron ore and coal prices.
4	36	Cormann	**CHAIR**—Sure. Over what period do the ABARE long-term minerals price and volume forecast go which you considered for the purposes of the budget? **Dr Henry**—I do not know, I am sorry; I would have to take that question on notice. **CHAIR**—Does somebody here know? I would like to minimise the number of questions you take on notice, for understandable reasons. **Dr Henry**—I understand, but I can assure you that with respect to that question I can get you an answer to that question very quickly. **CHAIR**—Even though you might not know the specific period, they are long-term forecasts which will go up to a decade with obviously reducing accuracy moving forward—that is fair to say, isn't it? Long-term: it is not just over the next 12 months; it is over an extended period of time, isn't it? **Senator HUTCHINS—**Can I just ask a question? **CHAIR—**Hang on, can we just get the answer? **Dr Henry**—Senator, perhaps I should know the answer to that question, but I do not. I would like to check it; I would not like to mislead the committee. **Answer:** Treasury uses a range of data sources as inputs to inform its preparation of costings of policy measures. ABARE commodity forecasts and projections, which span the period to 2014-15, were one such source of information used to prepare the costings of the Government's revised resource taxation arrangements. The relevant ABARE document is *Australian Commodities (March 2010)*.
5	37-38	Cormann	**CHAIR—**You are, of course, spot-on in that last part of your answer. However, we have not been able to find any evidence in the market whatsoever of improvements in the commodity price outlook that might 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.

			Answer: 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.
6	38-39	Cormann	**CHAIR**—The question really is whether anything happened between 1 or 2 May and 2 July which can give you cause to significantly change your commodity price forecasts. What is the event that happened, other than information from the companies? Is there anything else, other than information provided directly to you by the companies? **Dr Henry**—As I indicated, I will have to take on notice the first part of that question. As I have already indicated, 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 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. **Answer:** 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.
7	40	Cormann	**CHAIR**—Will you be able to provide us on notice—I know that you will have to check with the Treasurer, but I consider this information to be in the public interest—a table with all of the changes in assumptions about all of the variables that have led to the fiscal outcome of a $10½ billion revenue projection for the 2012-14 budget forward estimates period? If the Treasurer is listening, he might want to consider making that part of his announcement. We would be very grateful. **Dr Henry**—I will certainly take it on notice and consult with the Treasurer. **Answer:** Information was provided by the Treasurer in the Government's *Economic Statement July 2010* to clarify how the revenue estimates for the revised resource taxation arrangements differ from those for the RSPT (released on 2 May 2010). • Policy changes accounted for a $7.5 billion decrease in revenue, after taking into account parameter revisions. • Parameter revisions accounted for a $6.0 billion increase in resource tax revenue, with changes to commodity price and exchange rate assumptions contributing positively to the overall increase and changes to expense assumptions detracting from the overall increase.

8	40	Cormann	**CHAIR**—If you had not changed your assumptions on commodity prices and volumes, what would have been the net fiscal impact of the MRRT expanded PRRT deal then? **Dr Henry**—As I have indicated previously, I think you have asked that question previously. **CHAIR**—No, the question I asked previously was how much you would have raised under the RSPT if you changed all of your assumptions equally. My question now is a bit different. **Dr Henry**—It is a different question; you are quite right. But I provide the same answer. **Answer:** The Government's *Economic Statement July 2010* indicates that the improved resource taxation arrangements would have raised $4.5 billion in the absence of any parameter revisions.
9	42	Cormann	**CHAIR**—We had Western Australian treasury here this morning. They tell us that they expect between 60 and 65 per cent of the revenue to come from Western Australia. I refer you also here to the quote by Mr Parker on page 15 of the *Hansard* transcript from last week's hearing where he said that it 'would not be a difficult piece of analysis' to identify how much of the $10½ billion would come from Western Australia, Queensland or other states. Are Western Australian treasury right when they tell us that around $6.8 billion of revenue from the MRRT would come from Western Australia? **Dr Henry**—I do not know and I would have to take that question on notice. **Answer:** See answer to Question 10.
10	42-43	Cormann	**CHAIR**—Please do. I table the Western Australian treasury methodology and their assumptions—for your purpose—because the Western Australian treasury and the Western Australian government are being entirely transparent and they are very keen for this information to be scrutinised by yourselves. In fact, this morning WA treasury officials explained to us that they have not had an opportunity yet to talk to anyone in the federal government about the way the MRRT and the expanded PRRT arrangements are going to work out for them and a whole range of associated issues. I did offer to provide you with the acting undertreasurer's mobile number, but I think you are making separate arrangements. But if you can please on notice review the conclusions of the Western Australian treasury, particularly where they come to the conclusion that nearly $7 billion conservatively—out of $10½ billion—would come out of Western Australia and tell me whether you agree and if you do not agree why and on what basis you come to a different view. Is that something you can take on notice? **Dr Henry**—I can. I am curious to know—I guess I can find out for myself—whether the Western Australia treasury has indicated where the $7 billion is going to come from. **CHAIR**—I am not going to go through all of the evidence but I invite you to review their evidence this morning. **Answer:** MRRT is a profits-based tax with tax assessed on a project by project basis and with losses transferable between projects operated by the same company. As the level of profits from mining projects is not available on a State by State basis, and there is no information available on how many mining companies might elect to transfer losses between taxable projects (which may be located in different states), it is not possible to determine the distribution of MRRT profits by State with any certainty.

11	46-47	Hutchins	**Senator HUTCHINS**—Mr Chairman, you will get your chance again. Would there have been any other government departments, like the Queensland Treasury? Let us go back to Western Australia. As I understand it, the collection of the royalties in Western Australia is not done by Treasury; it is done by the Department of Mines and Petroleum. They actually administer the tax. Would it be more appropriate for, say, your body, the consultative committee, to speak to them in addition to Treasury? **Dr Henry**—It may be. I do not know. I was not a member of that panel and I simply cannot recall. I do not know whether anyone else can. No. I am sorry, Senator. I would have to take that on notice. **Senator HUTCHINS—**Could you take that on notice, Dr Henry. **Dr Henry**—Yes, certainly. **Senator HUTCHINS—**It would be interesting to see how many of the state bureaucracies—not just, say, the cover letter of Western Australian government or New South Wales government but whether or not their variety of government departments—were involved in the discussions. If you could take that on notice it would be appreciated. **Answer:** At least 10 State and Territory departments had some engagement with Treasury on RSPT related matters. This included the Treasury departments of all States and Territories (other than the ACT) who met with the Panel in Canberra (Victoria and WA attended by phone).
12	49-50	Cormann	**CHAIR**—Whose idea was the 25 per cent extraction allowance? **Dr Henry—**I indicated last time that officials were not party to the face-to-face discussions that occurred between the government and the mining executives. **CHAIR**—Does that mean that you do not know? **Dr Henry**—Well, I cannot be sure. I have a view, but I cannot be sure. **CHAIR**—So we do not know whether it was an idea that came from the government or whether it was an idea that came from the companies themselves? **Dr Henry**—I think it was an idea that came from the companies, but I cannot be sure. **CHAIR—**But it was certainly not an idea that came from Treasury? **Dr Henry—**I can confirm that it was not an idea that came from Treasury. **CHAIR**—Who came up with the 25 per cent figure? **Dr Henry**—Again, I do not know. **CHAIR**—So you do not know how that was determined? **Dr Henry**—No, I do not. **CHAIR**—Do you know what the effect on the budget is going to be of the 25 per cent extraction allowance? **Dr Henry**—I am not sure that it is possible to answer that question. But I do not, no. **CHAIR**—Perhaps you could take it on notice and see whether you can answer what the fiscal impact specifically of the 25 per cent extraction allowance is going to be. **Dr Henry—**Yes. I am certainly happy to take it on notice. I am just indicating that I am not sure that the question can be answered, but we will see. **Answer:** It is not usual practice for government to release estimates of the revenue impacts of the individual components that make up revenue estimates for policy measures. To do so would be potentially misleading due to important interactions between components in determining the overall revenue implications of a measure.

	51	Cormann	**CHAIR**—In your analysis, in your modelling of the fiscal impact, have you assessed how the state royalty credit arrangements interact with revenue from coal versus revenue from iron ore? **Dr Henry**—Yes. **CHAIR**—Can you share your conclusions with us? **Dr Henry**—I will have to take that question on notice. **Answer:** Net MRRT revenue is determined as a residual amount after the payment of royalties. Net MRRT revenue will be lower where royalties account for a higher proportion of MRRT assessable mining profits.
13	52	Cormann	**CHAIR**—My judgment relies on the judgment of the West Australian Treasury and the West Australian government, because their assessment is that, because of the interaction between state royalties and the MRRT as it relates to coal as opposed to iron ore, that the larger share of revenue will come from iron ore. I would like to know how much of the share would come from iron ore as opposed to coal. **Dr Henry**—I understand. We will, as I indicated, take that question on notice and see if we are able to provide the committee with that level of detail. **CHAIR**—By five pm on Friday? **Dr Henry**—I will ask the Treasurer and we will provide an answer to the question by five pm on Friday. **CHAIR**—I do not mean to be cute here but obviously we are running hard now against political cycles and pre-election deadlines. If the Treasurer and the Gillard government were of a mind not to answer that question, they are actually under an obligation to state the public interest reasons as to why they think it is not in the public interest for that information to be provided. So next time round I do not want to have just a one-line answer which says, 'The government does not provide this level of detail consistent with usual budget practice.' The next time round either we would like to see the answer to that question or, if the government does not think it is in the public interest for an answer to be provided, a clear explanation as to why they think that is the case so that the government can be judged on that assessment. **Answer:** It is not usual practice for government to release estimates of the revenue impacts of the individual components that make up revenue estimates for policy measures. To do so would be potentially misleading due to important interactions between components in determining the overall revenue implications of a measure.
14	53	Cormann	**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 directory 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. **Answer:** Treasury officials involved in the negotiation process were in the Treasury building and all engagement with them was conducted by phone.

15	53-54	Cormann	**CHAIR**—When did you first see the final negotiated agreement? **Dr Henry**—When did I first see it? **CHAIR**—Yes. **Dr Henry**—It was finalised rather late. It was finalised not long before the announcement. All I can say in response to that is that I saw it shortly before the announcement. **CHAIR**—How shortly before the announcement? **Dr Henry**—I would need to check, but I think the night before the announcement. **CHAIR**—Like at 9 pm, 10 pm? **Dr Henry**—I really do not know. **CHAIR**—Was it early evening or late evening? **Dr Henry**—I do not know. **Senator HUTCHINS**—Had you eaten? **Dr Henry**—That is a very good question. **CHAIR**—It is not that long ago. You say you cannot recall it. **Dr Henry**—I simply cannot recall. I am not trying to be unhelpful. I simply cannot recall. **Answer:** Dr Henry first saw the final negotiated agreement early in the evening of 1 July 2010.
16	55	Fifield	**CHAIR**—To confirm: the advice we are going to get from the Treasurer imminently will clearly separate any changes to revenue projections due to parameter variations from those that are due to policy changes? **Dr Henry**—Yes. That is my understanding. As I indicated earlier, I have not seen the final version of any such document, but I understand that that is the Treasurer's intention. **Senator FIFIELD**—Dr Henry, you say you have not seen the final version of that document. You would have seen a draft version. I assume it has been drafted within Treasury or is it a document which requires input from the Department of Finance and Deregulation as well? **Dr Henry**—I am going to seek the Treasurer's counsel on how I should answer that question. **Answer:** The document at issue, *Economic Statement July 2010*, was released on 14 July 2010.
17	55-56	Fifield	**Senator FIFIELD**—If I might phrase the question in a different way: are we talking about an earlier than usual MYEFO being released? **Dr Henry**—I have no knowledge of an earlier than usual MYEFO. I can confirm that. **Senator FIFIELD**—You can confirm that? **Dr Henry**—I can confirm that I have no knowledge of an earlier than usual MYEFO, but one has to be careful. **Senator FIFIELD**—Do you not have knowledge of that because a decision has not been taken, as opposed to preparations currently under way to provide that option? **Dr Henry**—I feel I am in a difficult position without the Treasurer's guidance. I do not want to put him in a difficult position by answering these questions. So I think I will refer these questions to the Treasurer. **Answer:** The document at issue, *Economic Statement July 2010*, was released on 14 July 2010.

18	56	Fifield	**Senator FIFIELD**—Perhaps you could answer this question. Have previous treasurers released earlier than usual MYEFOs shortly before elections or perhaps even after an election has been called but before the caretaker period starts? **Dr Henry**—I am hesitating on the 'earlier than usual' bit. In my experience—and I think I am right here—MYEFO is a document which can be released at any time between the start of October and the end of January. MYEFOs published in that period would be regarded as usual timing, these days anyway. They have been published only since the Charter of Budget Honesty was enacted. It is certainly the case that MYEFOs were published after the government—that is, the former government—indicated that it was calling an election. **Senator FIFIELD—**That is true, but before the caretaker period formally commences? **Dr Henry—**I would need to check that. I think there is an instance of MYEFO having been published during the caretaker period. **Answer:** The document at issue, *Economic Statement July 2010*, was released on 14 July 2010.
19	58	Cormann	**CHAIR**—Sure. But the thing is that you have attempted it and you have done the work—that is what we assessed last time—and you have come up with a conclusion. With all of the provisos that that is a long-term forecast, is your assessment of the impact higher or lower than the Goldman Sachs JBWere assessment of $35 billion in lost revenue? **Dr Henry**—I will obviously want to refer that question to the Treasurer. **Answer:** It is not the usual practice of governments to release the medium and long term revenue impacts of individual measures. The Government is committed to its fiscal strategy to: return the Budget to surplus by 2012-13; achieve budget surpluses, on average, over the medium term; keep taxation as a share of GDP, on average, below the level for 2007-08; and improve the Government's net financial worth over the medium term.
20	59	Cormann	**CHAIR**—Have you assessed the status quo tax status versus the tax status of mining companies or projects once the MRRT applies? You did that work in the context of the RSPT. **Dr Henry**—I must be a bit slow; I am sorry. Are you asking whether we have assessed the total tax burden— **CHAIR**—Yes. **Dr Henry**—as a proportion of, let us say, accounting profit? That is the sort of thing? I really do not know. For individual companies, you mean? **CHAIR**—Yes, or projects. **Dr Henry**—By individual projects? **CHAIR**—Have you done case studies or have you made an overall assessment as to what the average impact would be? **Dr Henry**—The average impact? I do not know, but that is relatively easy to find out. I will take that one on notice. **Answer:** The Treasury has not undertaken company based case study analysis of the MRRT or an analysis of its average impact on companies. A hypothetical example is included in the *A New Resource Taxation Regime* fact sheet on the Government's future tax website: www futuretax.gov.au. Its purpose is to show how the MRRT would operate.

21	62	Cormann	**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. **CHAIR—**Just to put context around the question, I assume that economic rent would be incorporated into a market valuation, would it not? **Dr Henry**—One would hope so. Indeed. **Answer:** 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.

Appendix 12

Initial summary of the government response to the Henry Tax Review recommendations

Initial Summary of the Government Response to the Henry Tax Review Recommendations		
Australia's Future Tax Review Recommendation	**Government Response in report Stronger, Fairer, Simpler: a tax plan for our future**	**Relevant Fuel and Energy Terms of Reference**
Tax and Transfer System		
Recommendation 1	The Government will introduce the Resource Super Profits Tax as one of the four taxes listed in this recommendation. See below for further detail.	F
Company and other investment taxes		
Recommendation 27	*Cutting the Company Tax Rate*	E, F, H
Recommendation 32	*Resource Exploration Rebate*	E, F, H
Land and resource taxes: Charging for non-renewable resources		
Recommendation 45	*Resource Super Profits Tax (RSPT)*	E, F, H
Recommendation 46	Could be covered under RSPT measure.	E, F, H
Recommendation 47	See *Resource Super Profits Tax* above.	E, F, H
Recommendation 48	*State Infrastructure Fund*	E, F, H
Recommendation 49	Could be covered under RSPT measure.	E, F, H
Recommendation 50	Could be covered under RSPT measure.	E, F, H
Enhancing social and market outcomes: Taxes to improve the environment		
Recommendation 58	No response received to date.	D, E, F, H
Recommendation 59	No response received to date.	D, F, H
Recommendation 60	No response received to date.	D, E, F, H
Enhancing social and market outcomes: Road transport taxes		
Recommendation 61	No response received to date.	I
Recommendation 62	No response received to date.	I
Recommendation 64	No response received to date.	I
Recommendation 65	Will not be implemented.	E, F, I
Recommendation 66	No response received to date.	I
Recommendation 67	No response received to date.	I
Recommendation 68	No response received to date.	I
Enhancing social and market outcomes: Rationalising other taxes		
Recommendation 80	Will not be implemented.	E, F, I
Institutions, governance and administration: State tax reform		
Recommendation 119	No specific measure relating to this recommendation. Consultation is planned with States and Territories in relation to the measures discussed above.	E, F, H, I
NOTE: Initial assessment made on documents available as at 6 May 2010. Assessment based on the following resources: *Australia's Future Tax System: Report to the Treasurer, Tax Policy Statement: Stronger, Fairer, Simpler - a tax plan for our future,* and *Prime Minister and Treasurer Press Release: Stronger, Fairer, Simpler - a tax plan for our future (dated 2 May 2010).*		

Initial Summary of the Government Response to the Henry Tax Review Recommendations		
NOTE: Initial assess ment made on documents available as at 30 June 2010. Assessment based on the following resources: *Australia's Future Tax System: Report to the Treasurer, Tax Policy Statement: Stronger, Fairer, Simpler - a tax plan for our future, and Prime Minister and Treasurer Press Release: Stronger, Fairer, Simpler - a tax plan for our future (dated 2 May 2010).*		
Australia's Future Tax Review Recommendation	**Government Response in report Stronger, Fairer, Simpler: a tax plan for our future**	**Relevant Fuel and Energy Terms of Reference**
Tax and Transfer System		
Recommendation 1: Revenue raising should be concentrated on four robust and efficient broad-based taxes: • personal income, assessed on a more comprehensive basis; • business income, designed to support economic growth; • rents on natural resources and land; and • private consumption. Additional specific taxes should exist only where they improve social outcomes or market efficiency through better price signals. Such taxes would only be used where they are a better means to achieve the desired outcome than other policy instruments. The rate of tax would be set in accordance with the marginal spillover cost of the activity.User charging should play a complementary role, as a mechanism for signalling the underlying resource cost of publicly provided goods and services. With both specific taxes and user charges, revenue would be a by-product of the tax or charge, not the reason for it. Other existing taxes should have no place in the future tax system and over time should be abolished.	The Government proposes to introduce the Resource Super Profits Tax as one of the four taxes listed in this recommendation. See below for further detail.	F

Company and other investment taxes		
Recommendation 27: The company income tax rate should be reduced to 25 per cent over the short to medium term with the timing subject to economic and fiscal circumstances. Improved arrangements for charging for the use of non-renewable resources should be introduced at the same time.	Cutting the Company Tax Rate: Company income tax rate will be reduced to 29 per cent for the 2013-2014 income year, and to 28 per cent from the 2014-2015 income year, in conjunction with the introduction of the Resource Super Profits Tax on 1 July 2012. The reduction of the company tax rate for eligible small business companies will commence earlier, starting in the 2010-2013 income year, at a rate of 28 per cent.	E, F, H
Recommendation 32: If earlier access to tax benefits from exploration expenses (relative to other expenses) is to be provided, it should take the form of a refundable tax offset at the company level for exploration expenses incurred by Australian small listed exploration companies, with the offset set at the company income tax rate.	***Resource exploration rebate (RER)***: a refundable tax offset for exploration expenditure will be provided at the company level, and set at the prevailing company tax rate (provided the exploration is undertaken in Australia). This measure will be available for exploration expenditure incurred on or after 1 July 2011. $1.1 billion will be invested in the rebate in the two years commencing 2012-2013. The RER will be available to all companies, not just Australian small listed exploration companies as suggested in the Henry Tax Review recommendation. In addition, the definition of exploration expenditure will be expanded to include expenditure incurred in exploring for geothermal energy. if a company receives a refund under the Resource Exploration Rebate, a franking debit will not arise in the company's franking account, however, when the company pays its PAYG instalment, franking credits will not arise until deferred franking debits are recovered. Subject to various eligibility criteria, expenditure incurred in exploring or prospecting for minerals, petroleum or quarry minerals can be immediately deducted. Expenditure on depreciating assets first used for exploration can be written off immediately. The Government will consult on the exposure draft legislation which will give effect to the rebate.	E, F, H

Land and resource taxes: Charging for non-renewable resources		
Recommendation 45: The current resource charging arrangements imposed on non-renewable resources by the Australian and State governments should be replaced by a uniform resource rent tax imposed and administered by the Australian government that: (a) is levied at a rate of 40 per cent, with that rate adjusted to offset any future change in the company income tax rate from 25 per cent, to achieve a combined statutory tax rate of 55 per cent; (b) applies to non-renewable resource (oil, gas and minerals) projects, except for lower value minerals for which it can be expected to generate no net benefits. Excepted minerals could continue to be subject to existing arrangements if appropriate; (c) measures rents as net income less an allowance for corporate capital, with the allowance rate set at the long-term Australian government bond rate; (d) requires a rent calculation for projects; (e) allows losses to be carried forward with interest or transferred to other commonly owned projects, with the tax value of residual losses refunded when a project is closed; and (f) is allowed as a deductible expense in the calculation of income tax, with loss refunds treated as assessable income.	***Resource Super Profits Tax (RSPT):*** a RSPT will commence on 1 July 2012 at a rate of 40 per cent on profits made from Australia's non-renewable resources. The RSPT will replace the crude oils excise, and will operate in parallel with State and Territory royalty regimes. The Government will provide resource entities with a refundable credit for state royalties paid, allowing the states to continue to collect a stable stream of revenue from royalties, while removing the effects they have on investment and production. Projects which are already covered by the current Petroleum Resource Rent Tax (PRRT), will remain in the scope of the PRRT unless they elect to transfer to the RSPT. Transitional arrangements have been made for existing projects. The government intends to consult with stakeholders on design issues, and this process has commenced with the release of the Announcement Paper *The Resource Super Profits Tax: a fair return to the nation*.	E, F, H

Recommendation 46: The resource rent tax should not provide concessions to encourage exploration or production activity at a faster rate than the commercial rate or in particular geographical areas, and should not allow deductions above acquisition costs to stimulate investment.	Could be covered under ***RSPT*** measure.	E, F, H
Recommendation 47: Existing projects should be transferred into the proposed system with an adjustment, as appropriate, to the starting base for the allowance for corporate capital. The Australian government should set out a time-frame to implement the resource rent tax and provide guidance at the time of announcement on how existing investments and investment in the interim will be treated under the resource rent tax.	See ***Resource Super Profits Tax*** above.	E, F, H
Recommendation 48: The Australian and State governments should negotiate an appropriate allocation of the revenues and risks from the resource rent tax.	***State infrastructure fund***: some of the proceeds from the RSPT will be used to create a fund to assist States to invest in infrastructure. The fund is intended to be provided as projects are built, so that States do not have to wait until projects are complete and production commences to receive funds. The fund will start in 2012-2013 at an amount of $700 million and is expected to grow over time.	E, F, H
Recommendation 49: The Australian and State governments should consider using a cash bidding system to allocate exploration permits. For small exploration areas, where there are unlikely to be net benefits from a cash bidding system, a first-come first-served system could be used.	Could be covered under ***RSPT*** measure.	E, F, H
Recommendation 50: The Australian and State governments should abolish fees and stamp duties on the transfer of interests in a resource project except those related to administrative costs.	Could be covered under ***RSPT*** measure.	E, F, H

Enhancing social and market outcomes: Taxes to improve the environment		
Recommendation 58: Once the Carbon Pollution Reduction Scheme (CPRS) is operational, additional measures which seek to reduce emissions (in sectors covered by the CPRS), and which are not justified on other grounds, should be phased out.	No response received to date. The government has announced that the introduction of a CPRS will be delayed until after 2012.	D, E, F, H
Recommendation 59: The industry assistance arrangements introduced in consequence of the CPRS should be regarded as transitional. The Government's policy is to commission an independent review of the CPRS, including in relation to emissions-intensive trade-exposed (EITEs) assistance, every five years starting in 2014. To complement this, the Productivity Commission should be asked to undertake and publish an annual review of CPRS-related assistance arrangements for the life of the CPRS to provide a basis for future decisions on assistance policy. To assist the Productivity Commission, an Associate Commissioner with appropriate knowledge and industry expertise should be appointed to the review.	No response received to date. The government has announced that the introduction of a CPRS will be delayed until after 2012.	D, F, H
Recommendation 60: The government should continue to monitor tax concessions aimed at supporting environmental outcomes, and consider replacing them with targeted spending programs where this would be a more effective and efficient method of achieving the appropriate environmental outcome.	No response received to date. The government has announced that the introduction of a CPRS will be delayed until after 2012.	D, E, F, H

Enhancing social and market outcomes: Road transport taxes		
Recommendation 61: Governments should analyse the potential network-wide benefits and costs of introducing variable congestion pricing on existing tolled roads (or lanes), and consider extending existing technology across heavily congested parts of the road network. Beyond that, new technologies may further enable wider application of road pricing if proven cost-effective. In general, congestion charges should apply to all registered vehicles using congested roads. The use of revenues should be transparent to the community and subject to further institutional reform.	No response received to date.	I
Recommendation 62: The Council of Australian Governments (COAG) should accelerate the development of mass-distance-location pricing for heavy vehicles, to ensure that heavy vehicles pay for their specific marginal road-wear costs. Revenue from road-wear charges should be allocated to the owner of the affected road, which should be maintained in accordance with an asset management plan. Differentiated compliance regimes to enforce this pricing policy may need to be considered to balance efficiency benefits from pricing against the costs of administration and compliance for some road users.	No response received to date.	I

Recommendation 64: On routes where road freight is in direct competition with rail that is required to recover its capital costs, heavy vehicles should face an additional charge on a comparable basis, where this improves the efficient allocation of freight between transport modes.	No response received to date.	I
Recommendation 65: Revenue from fuel tax imposed for general government purposes should be replaced over time with revenue from more efficient broad-based taxes. If a decision were made to recover costs of roads from road users through fuel tax, it should be linked to the cost of efficiently financing the road network, less costs that can be charged directly to road users or collected through a network access charge. Fuel tax should apply to all fuels used in road transport on the basis of energy content, and be indexed to the CPI. Heavy vehicles should be exempt from fuel tax and the network access component of registration fees if full replacement charges are introduced.	The section of the recommendation relating to the indexation of fuel tax to CPI will not be implemented. See Prime Minister and Treasurer Press Release: Stronger, Fairer, Simpler - a tax plan for our future (dated 2 May 2010). No response to the rest of the recommendation has been received to date.	E, F, I
Recommendation 66: The revenue-raising component of State taxes on motor vehicle ownership and use should be made explicit, and over time only be used to recover those costs related to road provision. The administrative costs of providing government services should be recovered through user charges where applicable. Quantity limits on taxi licences should be phased out.	No response received to date.	I

Recommendation 67: Governments should continue to reform road infrastructure provision, applying economic assessment to investments comparable to that for other forms of infrastructure.	No response received to date.	I
Recommendation 68: COAG should develop a National Road Transport Agreement to establish objectives, outcomes, outputs and incentives to guide governments in the use and supply of road infrastructure. COAG should nominate a single institution to lead road tax reform, and ensure implementation of this agreement.	No response received to date.	I
Enhancing social and market outcomes: Rationalising other taxes		
Recommendation 80: The luxury car tax should be abolished.	Will not be implemented. See Prime Minister and Treasurer Media Release: Stronger, Fairer, Simpler - a tax plan for our future (dated 2 May 2010).	E, F, I
Institutions, governance and administration: State tax reform		
Recommendation 119: Reforms to State taxes should be coordinated through intergovernmental agreements between the Australian government and the States to provide the States with revenue stability and to facilitate good policy outcomes.	No specific measure relating to this recommendation. Consultation is planned with States and Territories in relation to the measures discussed above.	E, F, H, I