



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

ACCI SUBMISSION

Senate Standing Committees on Economics
Inquiry into the Minerals Resource Rent Tax Bill 2011
and related bills
[Superannuation Guarantee (Administration)
Amendment Bill 2011 & Ors]

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Senate Standing Committees on Economics Inquiry – Minerals
Resource Rent Tax Bill 2011 and related bills

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1. ABOUT ACCI

1.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 28 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 350,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

1.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including Fair Work Australia, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

TABLE OF CONTENTS

- 1. ABOUT ACCI.....iii
 - 1.1 Who We Areiii
 - 1.2 What We Doiii
- 2. INTRODUCTION 1
- 3. DETAILED RESPONSE TO SG (ADMINISTRATION) AMENDMENT BILL
2011..... 2
- 4. ACCI MEMBERS..... 23

2. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a written submission in relation to the Senate Standing Committees on Economics inquiry into the Minerals Resource Rent Tax Bill 2011 and related bills.
2. The Committee is inquiring into the following Bills:
 - a. [Minerals Resource Rent Tax \(Consequential Amendments and Transitional Provisions\) Bill 2011](#)
 - b. [Minerals Resource Rent Tax \(Imposition-Customs\) Bill 2011](#)
 - c. [Minerals Resource Rent Tax \(Imposition-Excise\) Bill 2011](#)
 - d. [Minerals Resource Rent Tax \(Imposition-General\) Bill 2011](#)
 - e. [Minerals Resource Rent Tax Bill 2011](#)
 - f. [Petroleum Resource Rent Tax \(Imposition-Customs\) Bill 2011](#)
 - g. [Petroleum Resource Rent Tax \(Imposition-Excise\) Bill 2011](#)
 - h. [Petroleum Resource Rent Tax \(Imposition-General\) Bill 2011](#)
 - i. [Petroleum Resource Rent Tax Assessment Amendment Bill 2011](#)
 - j. [Superannuation Guarantee \(Administration\) Amendment Bill 2011](#)
 - k. [Tax Laws Amendment \(Stronger, Fairer, Simpler and Other Measures\) Bill 2011](#)
3. This submission focuses on the Superannuation Guarantee (Administration) Amendment Bill 2011 (the Bill).
4. This further submission is made without prejudice to ACCI or its members' views.

3. DETAILED RESPONSE TO SG (ADMINISTRATION) AMENDMENT BILL 2011

BACKGROUND

5. The Superannuation Guarantee (Administration) Amendment Bill 2011 was introduced into the House of Representatives on 2 November 2011. It proposes to increase the employer superannuation guarantee levy (SGL) from 9% of payroll to 12%, in seven stages between 2013/14 and 2019/20.
6. On 21 November the House of Representatives Economics Committee provided the House of Representatives with its report. ACCI provided a written submission to the House of Economics Committee inquiry into the Bill.¹
7. On 23 November, the Bill passed the House of Representatives with one amendment moved by the Government, which had the effect of removing the age limit for which contributions must be made to eligible employees. ACCI has identified that consequential amendments are now necessary to income taxation legislation, which is dealt with more fully below.

ACCI'S INTEREST

8. The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of 38 business organisations, both Chambers and national Industry Associations. It is Australia's largest and most representative business network. Most of our members are deeply involved in employment and workplace issues on behalf of their constituents, the majority of which are employers in small and medium businesses.
9. Self-evidently, ACCI and our members have a deep interest in this matter, which is of significance economically, fiscally, socially and industrially. Our estimate is that, if fully implemented, this increase amounts to an extra \$20 billion per year paid in employer superannuation levies.

¹The ACCI submission can be accessed here:

<http://www.aph.gov.au/house/committee/economics/MineralsTax/subs/Sub08-ACCI%20SUBMISSION%20ON%20THE%20SUPERANNUATION%20GUARANTEE%20Nov2011.pdf>

10. On 24 November, the Presidents and Chief Executives of twenty-six member associations who attended ACCI's General Council meeting signed a resolution of protest in the wake of the passage of the bill through the House of Representatives (**Attachment A**). That resolution outlines core concerns with the legislative measures and this submission re-affirms those issues which span industries and sectors across Australia.
11. ACCI's Chief Executive, Peter Anderson, articulated these and other concerns in a recently published opinion piece in *The Australian* newspaper, titled "Parliament Trashes its Own New Paradigm on Super Levy Hike" (5 December (**Attachment B**)).
12. Comments from the business community, both large, small and SMEs, in metropolitan and regional Australia are similarly united in their concern that employers are yet again doing the heavy lifting to bolster retirement incomes for staff, yet feel that scant attention is paid to their difficulties.
13. For example, comments received by the Victorian Employers' Chamber of Commerce and Industry (VECCI) from business owners are similar to those received by other ACCI members (see box below):

Entitlements like this are incredibly biased towards Employees who sadly too often believe that the boss pays the wages/super when in fact it is the productive work they should be doing. Where does the Fair Work Act take into account Employers' Entitlements. Let's all go west and dig up some super, it's all in the ground we are being told!

... try running a small business so [they] can see the other side of the argument.

The Super issue should not be part of the mining tax package, are they trying to hide the issue? Small business will have to pay for it not the mining industry.

We have a family shoe store in Warrnambool & employ 8 staff, often buy the time you pay all the taxes, GST, PAYG, super etc, there's not a lot left for the boss. Why should small business be propping up all of ones retirement. Shouldn't it work both ways, why not have employers put in 10% and workers 5% that's a massive 15%. Surely the employer shouldn't be the only one forking out the big bucks. Small Businesses need to be preserved & kept viable, please don't drain us to the last cent.

Why should small business provide extra super as well as large pay rises every year? We are in the business to make money for ourselves and work

extremely hard to try to make ends meet. Contrary to [other] remarks sometimes there is NO extra money to provide more for employees. You have to remember it is not just wages and super that we are paying but work cover, insurance, rent, power, phone, rates, stock(which is an asset) but you have to first buy it to be able to sell it, and all of these keep costs keep going up. Over the past 5 years my costs have doubled but my turnover has remained stagnant. In the town where I have a business we have over 80 empty shops in the CBD and this means 80 less businesses in the town and that is 80 less employers.

Hear this from a small business owner. Our employees are very well paid, and get hefty pay rises from us because we think they deserve them, and we tell them so. Every time they get that voluntary increase we give more to their super fund, not just their pay packet. We take little from that business and some of our employees earn more than us. During tough times we've taken a salary cut so as not to have to retrench some of them. Perhaps some employees could make make a contribution to their own future by putting in some of their own funds, after all it is THEIR FUTURE RETIREMENT not mine. Go look up how many people are employed by small business in this country, and see how many would be out of work if we made the choice not to run that business. Yes it's our choice to work hard but thank God we have employees who don't think they are there to indulge us.

Compulsory Super was introduced originally in place of a cost of living pay rise and so subsequent pay increases have been minimal. With all the tinkering they do to super funds double dipping on taxing it admin fees and the fact that they are tied into the biggest casino in the world – the stock market and are subjected to the fluctuations of said market it really is just pouring money down the drain. I would rather have that 9% in my hand to decide what I am going to do with it rather than have no say in what happens to money I have already earned!!! Increasing it just gives superfunds and those who invest them more money to gamble with. Considering the amount I have invested out of my own pocket was totally lost during the last global financial crisis why would I want to give them anymore of my hard earned to fritter away. Maybe if politicians had to finance there own superannuation fund rather than have it come out of our taxes they would be a little more careful with the laws they make surrounding superfunds. I say go back to the days when the funds were secured and capital guaranteed because as it stands now without the age pension none of us workers will have a chance in retirement – that is if they don't keep changing the age of that too.

Where do they think small business will conjure the money from? Thin air?

14. There has been no meaningful policy discussion of the impact of previous reforms on employers and business owners. Aside from the fact that each time the wages bill goes up, the superannuation bill goes up, there have been policy changes since the 9% obligation was reached which have also, surreptitiously, increased employer obligations. For example, the Government was silent in its second reading and explanatory materials as to the fact that employers have been required to provide higher increases to superannuation contributions as a result of the changes in 1 July 2008 to pay all employees based on “ordinary time earnings” (as opposed to other concessional earning bases). This resulted in employees receiving higher contributions as a result of applying the 9% to most incidents of salary and wages.²
15. Moreover, the award modernisation process which commenced in 2008 by the Australian Industrial Relations Commission (now Fair Work Australia) and concluded in 2010, resulted in many modern awards requiring employers to contribute a higher quantum for some industry modern awards, particularly in award reliant industry sectors such as retail, hospitality and fast-food.
16. In July 2005, employers were required to comply with choice of fund rules, which was a new and additional compliance burden within the superannuation guarantee system. This level of compliance is dependent on whether employees exercise choice and continues to be an ongoing compliance burden.
17. The requirement for businesses to make quarterly payments of superannuation contributions in 2003 was not without consequences to business’ cash flow. Each time wages and salaries are adjusted upwards (whether as part of individual, collective or award based increases), this also results in a proportionate increase to superannuation contributions.
18. In addition, the superannuation threshold (of \$450 per month) has not increased at least for a decade, meaning a progressive erosion of the exemption and an increase, year on year, to the pool of employees for whom payments are made (for whom the real beneficiaries is largely the fund and their commission agents).

² The ATO Superannuation Guarantee Ruling SGR 2009/2 (13 May 2009) sets out how employers are to calculate ordinary time earnings for the purpose of the SG legislation. This includes shift loadings, commissions, allowances and loadings, bonuses, piece rates, director’s fees, and payments in lieu of notice.

19. There appears to be an impression that employers have over the last decade been paying a static 9%. This is clearly not the case.

THE PARLIAMENTARY PROCESS

20. The Superannuation Levy Bill was introduced as one of ten (10) “*related Bills*” to the Minerals Resource Rent Tax Bill 2011.
21. There is no natural or necessary connection between superannuation policy and the funding of retirement incomes, and taxation policy for the mining and resources sector. They are two separate issues, and both are issues of a substantial policy nature affecting the economy and broader society in potentially profound ways. Both issues require deep and considered policy consideration in their own right.
22. Indeed, the cognate Parliamentary process is at odds with the Government's dedicated review into the superannuation system, led by Jeremy Cooper and to past inquiries into superannuation or parts of the superannuation system.³ The Retirement and Income Modelling Unit (RIM) (a dedicated team within the Treasury Department which is resourced to provide advice and analysis on retirement and income policy) did not contribute a submission to the most recent House of Representatives Committee inquiry, as it has done so in past Parliamentary inquiries, on the implications of increasing the SGL.⁴ As stated by the RIM in its submission to the Senate Select Committee on

³ For example, and in addition to the extensive Henry Tax Review and Cooper Super System Review into the governance, efficiency, structure and operation of Australia's superannuation system, there have been a number of dedicated superannuation / retirement policy inquiries such as: House of Representatives Economics Committee Inquiry into improving the superannuation savings of people under 40 (2005); Productivity Commission Research Report, Economic Implications of an Ageing Australia (2005); Senate Select Committee on Superannuation Inquiry into Superannuation and Standards of Living in Retirement (2002); Senate Standing Committee on Superannuation (eleven separate inquiries from 1992 to 1996); Review into the Australian Taxation Office's administration of the Superannuation Guarantee Charge: A report to the Assistant Treasurer, Inspector-General of Taxation; (March 2010); Australian Government 2004 consultation on the discussion paper ‘Australia's Demographic Challenges; Productivity Commission Review of the Superannuation Industry (Supervision) Act 1993 and Certain Other Superannuation Legislation Inquiry Report (2001); Senate Select Committee on Superannuation and Financial Services, Final Report “Enforcement of the Superannuation Guarantee Charge” (2001); House Economics Standing Committee Inquiry Tax Laws Amendment (2011 Measures No.8) Bill 2011 (2011).

⁴ See Treasury 65 page submission to the Senate Select Committee on Superannuation Inquiry into Superannuation and Standards of Living in Retirement (2002) <http://rim.treasury.gov.au/content/pdf/ERContribution.pdf>.

Superannuation Inquiry into Superannuation and Standards of Living in Retirement:⁵

Any assessment of the adequacy of retirement incomes therefore needs to have regard, as far as possible, to all of the various income sources available to retirees. At a minimum, no discussion of adequacy can be considered complete without incorporating the contribution from both superannuation and the Age Pension. However, the living standards and wellbeing of retirees will also be affected by factors outside of the retirement income system. These include tangible factors such as home ownership and the level of public services and government benefits and subsidies, as well as less tangible considerations such as family relationships and social contact.

23. There was considerable debate when the SG was announced by the then Treasurer in his 1991-92 Budget speech and considerable debate and subsequent government amendments in the Senate. Business expects the same level of discourse and debate in relation to the proposals before the Parliament.
24. The mere fact that the Government asserts an association on the basis that 'the mining tax is needed to provide workers with better superannuation' (as the government from Prime Ministerial level down have claimed for over a year) is no reason why the Parliament or its Committees should compromise one or other of the issues by dealing with these Bills cognately or jointly.
25. Indeed, the Government's abovementioned claim is misleading, and has been for the past eighteen months.
26. The proposed mining tax revenue will not and does not fund the seven increases to the superannuation levy contemplated by the Superannuation Levy Bill. All the mining tax revenue will do (in this regard) is supplement loss of revenue to Treasury (i.e. Government) consequent on the higher superannuation contributions made by employers (due to the fact that superannuation is concessionally taxed). Moreover, the corporate tax reduction and the small business asset write off proposals, whilst welcomed, fall far short of funding the superannuation levy rises for reasons set out in this submission.
27. Whether the mining tax linkage is tenuous (as we assert) or not, the consequence of this joinder is that the Superannuation Levy Bill is being dwarfed in the public and parliamentary debate by the controversy

⁵ Ibid, at p.3.

over the mining tax. Thus the hundreds of thousands of employers who will be paying higher superannuation levies for seven of the next nine years are being denied the natural justice of having their views on the legislation that sets their obligations dealt with in a full and complete manner. Retirement incomes policy more generally, a crucial issue for our nation given its demographics, is getting the short straw.

28. In brief, ACCI does not accept the parliament sliding through proposals for a \$20 billion levy on employers on the coat tails of a debate about how to best tax the mining industry.

SUMMARY OF ACCI'S POSITION

29. Aside from the failure to provide a "fair go" so far in the Parliamentary process (see above), ACCI opposes the seven proposed increases in the Superannuation Levy Bill. There are twelve (12) good reasons:
- a. The Bill is a new \$20 billion compulsory levy on payroll, akin to a new payroll tax (it's not a tax in the strict sense, but operates on employers as a tax).⁶ Taxes and levies on payroll are taxes and levies on jobs. The more people employed, the more hours of work provided by employers, the more levy employers pay. Nor is the proposal 'a 3% increase'. It is actually a one-third (33%) increase to an existing employer levy;
 - b. The Bill has no credible or workable funding base;
 - c. The proposed levy increase was specifically rejected by the Henry Tax Review;
 - d. Regrettably, the proposed levy increase cannot be reliably or realistically funded by a wage-superannuation trade off. This is because of the less centralised nature of our wages system compared to when compulsory superannuation was first introduced;
 - e. The proposed quid pro quo's for business from the mining tax package (corporate tax reduction, small business asset write off) go nowhere near funding the costs of the levy increase;
 - f. The proposed levy increase represents a breach of faith to Australia's employers, who were promised at the 2007 general

⁶ *Roy Morgan Research Pty Ltd v Commissioner of Taxation* [2011] HCA 35 (28 September 2011). The High Court upheld the validity of the superannuation guarantee charge on the basis that it was imposed for a public purpose and therefore a tax within the meaning of the Australian Constitution.

- election that the incoming government did not intend to increase the superannuation levy;
- g. The cost impact of the levy increase is borne directly by employers, but indirectly by the community through less investment in jobs, infrastructure and growth;
 - h. Whether the 9% paid by employers is or is not adequate for future retirement income purposes, the idea that Australian employers should bear the burden of funding the whole or bulk of the superannuation guarantee levy is unbalanced and unfair, by both international standards and domestic considerations;
 - i. The Bill represents significant cost shifting by the Commonwealth to the private sector, and in particular small and medium enterprises. About half of the costs of the Bill will be paid for by SME's (that's about \$10 billion per year, once fully implemented);
 - j. Aside from the economics, the Bill raises serious equity issues for SME's. Small and medium business owners, not their employees, risk being the retiring poor of the next generation;
 - k. At a time of low confidence in superannuation and of share and property market volatility, there are better and wiser investments for the \$20 billion expenditure; and
 - l. The case for the Bill is weaker now in December 2011 than it was when first announced in May 2010, given that the government's superannuation industry reform package (largely supported by ACCI) is claimed by the government to add to retirement savings equivalent to a 1% rise in the superannuation levy, and given that superannuation returns have continued to be poor.

SUPPORTING ARGUMENTS

30. In May 2010 the Government announced, in breach of its 2007 election commitment⁷ and contrary to the recommendations of its Henry Tax Review (**Attachment C**), an increase the employer superannuation guarantee levy (SGL) from 9% to 12% of payroll. The increase would occur in seven steps between 2013 and 2019/2020.

⁷ N Sherry and W Swan, Report on superannuation incorrect, media statement (5 November 2007).

31. The Henry Tax Review recommended leaving the superannuation guarantee levy at 9% and instead making changes to the way superannuation contributions and earnings were taxed. Specifically:⁸

Retirement incomes should be improved by removing the tax on superannuation contributions currently payable by the fund, and halving the tax on superannuation fund earnings to 7.5 per cent.

32. The basis for this recommendation was relatively straightforward, namely, it would lead to a larger increase in private savings relative to a ratcheting up of the superannuation guarantee levy. The Henry Tax Review found:⁹

The recommended changes to the taxation of superannuation would increase private savings more than would an increase in the superannuation guarantee rate to 12 per cent under the current tax arrangements. These benefits would result mainly from halving the earnings tax to 7.5 per cent, which would significantly increase superannuation assets and increase private savings. Superannuation assets are estimated to increase by approximately \$590 billion (nominal dollars) by 2029 under the taxation proposals, compared to approximately \$370 billion (nominal dollars) if the superannuation guarantee were to be increased to 12 per cent (see Chart A2–9).

33. Treasury advice to the Government released under Freedom of Information details the heavy cost to the budget of increasing the superannuation guarantee levy to 12% relative to the limited impact that measure would have in terms of reducing outlays on pensions. The cumulative net cost to the budget over the next ten years is almost \$40bn¹⁰. Savings on the age pension are fractionally small, only 0.04 per cent of GDP per annum on average over the next ten years and outweighed five-fold by the damage to the budget that arises from increasing the superannuation guarantee levy to 12%¹¹. Rather than improving over time, this ratio actually worsens slightly over time.
34. If the Government's objective is to increase national savings, the Henry Tax Review recommendations and detailed analysis reveals that there are more cost effective means of realising this goal. Instead, these have been neglected in favour of a policy change that the Henry Tax Review explicitly recommended against. Projected budget savings on

⁸ Treasury, *Australia's Future Tax System, Report to the Treasurer: Part Two Detailed Analysis Volume 1 of 2*, December 2009, page 95.

⁹ *Ibid.*, page 114.

¹⁰ Treasury, *Email: National Savings*, January 2011, page 2. Accessible here: http://www.treasury.gov.au/documents/1956/PDF/Email_re_national_savings.pdf

¹¹ *Ibid.*, pages 2 and 3.

pension outlays are grossly outweighed by the cost to the budget from the increase in the superannuation guarantee.

35. The Government announcement was made in the context of the (then) resource super profits tax package. Despite the subsequent downward revision of that package, the government has maintained its intent.
36. The Superannuation Guarantee (Administration) Amendment Bill 2011 was introduced into the House of Representatives on 2 November 2011, jointly with mining tax legislation (Minerals Resource Rent Tax Bill 2011; Minerals Resource Rent Tax (Imposition–Customs) Bill 2011; Minerals Resource Rent Tax (Imposition–Excise) Bill 2011; and Minerals Resource Rent Tax (Imposition–General) Bill 2011).
37. If passed, the Bill would transitionally increase the SGL from 9% to 12% commencing from 1 July 2013 until 2019/20 as follows:

Table 1.1

<i>Quarter during the income year</i>	<i>Charge percentage (%)</i>
2013-14	9.25
2014-15	9.5
2015-16	10
2016-17	10.5
2017-18	11
2018-19	11.5
2019-20 and subsequent income years	12

38. Whilst technically a separate Bill, the Explanatory Memorandum indicates that the provisions are dependent upon the passage of the Government's Minerals Resources Rent Tax Package (MRRT). Clause 2 of the Bill indicates that the measures to increase the SGL do not commence "at all unless all of the [mining tax] Acts have commenced before 1 July 2013".

39. The Henry Tax Review recommended that there should be no change to the contribution rate nor the monthly threshold. That Report stated:¹²

Recommendations for system design

The superannuation guarantee rate should remain at 9 per cent. The Panel has considered carefully submissions proposing an increase in the superannuation guarantee rate. Such an increase could be expected to lift the retirement incomes of most workers. However, the Panel considers the rate of compulsory saving to be adequate. The Age Pension and the 9 per cent superannuation guarantee (when mature) can be expected to provide the opportunity for people on low to average wages with an average working life of 35 years to have a substantial replacement of their income, well above that provided by the Age Pension. This strikes an appropriate balance for most individuals between their consumption opportunities during their working life and compulsory saving for retirement. The Panel considers that more can be done through preservation and other rules to ensure that the 9 per cent contribution rate produces an adequate retirement income for greater numbers of people, and its other recommendations are made partly for this purpose. For higher income workers especially, the third pillar provides an opportunity to access significantly higher income replacement rates.

The superannuation guarantee broadly should continue to cover employees. While those who derive business income should make provision for their retirement during their working lives, the diverse and varying risks and circumstances of business and entrepreneurship argue for allowing full flexibility in their saving and investment decisions. The voluntary superannuation system is available to small business people for contributing to meeting their retirement needs. However, there can be a fine line between those who are self-employed and those who are performing contracted duties similar to an employee. This distinction arises in a number of areas of policy. In its final report, the Panel will consider further how to distinguish the self-employed, including whether the scope of the superannuation guarantee could be extended to include with greater clarity and certainty arrangements that are close in nature to a formal employer-employee relationship. The \$450 per month threshold should continue to apply, as the compliance costs to the employer of providing superannuation guarantee contributions to marginally attached workers are outweighed by the benefits to the employee.

¹² Australia's future tax system, The retirement income system: Report on strategic issues (May 2009), page 2.

40. The Government, has, however, acted in spite of this analysis and recommendation.
41. In current dollar terms this is estimated to cost employers in excess of \$20 billion per year when fully implemented. That would more than double the revenue that was expected to be generated by Mining Tax.
42. Moreover, a confidential Treasury note to the Government titled “*Information Briefing: National Savings*”, which was released by Treasury pursuant to an FOI request, on 31 January 2011 (**Attachment D**) stated that reducing the superannuation tax rate from 15% to 7.5% would provide greater benefit to national savings than an increase in the SGL to 12%:

Key Points

- The changes that will be implemented in response to the AFTS report will have a national savings benefit. This benefit is largely the result of the increase in compulsory superannuation contributions, starting in 2013-14.
 - However, the AFTS recommendations would result in a greater increase in private savings than the measures to be adopted. This is largely the result of a proposed reduction of the earnings tax to 7.5%, which would increase superannuation assets and private savings. At this stage, the Government has no plans to make any changes to the taxation of superannuation investment earnings.
43. The Government claims this decision will achieve two main outcomes – “*greater adequacy and greater equity.*” It claims the measures will directly address issues associated with Australia’s ageing population and boost private and national savings. It estimates that a 30 year old earning average full time wages will have an additional \$108,000 in retirement savings as a result of this increase in the SGL charge. It also cites the Intergenerational Report 2010 to underline the challenges faced by an ageing population.
 44. The case for increasing the SGL is weaker in December 2011 than it was when first proposed in May 2010 because:
 - a. MySuper and SuperStream reforms are being progressed by government (largely supported by ACCI) to the superannuation industry consequent on the Governance, Efficiency, Structure and Operation of Australia’s Superannuation System (the Cooper Review). Those reforms have been said by the government itself to increase retirement savings equivalent to the value of a 1% increase in the SGL; and

- b. Volatility and underperformance on share and property markets have seen significant losses in value in recent years, despite continuing and continuous contributions being made by employers into employee superannuation funds. The confidence of the community in superannuation as a savings vehicle has been tested. A recent article published in *The Australian* titled “Another losing year for most super savers” is a timely reminder (**Attachment E**). Pouring more money into superannuation is poor policy if that money is able to be used for more beneficial economic purposes. It should be recalled that that a percentage of revenue to be extracted from private employers will be taken by the finance industry as commissions, and that the remainder will be invested by trustees in share and property markets that are currently highly volatile.
45. The Mining Tax package does not provide an adequate funding base. Whilst the Government has indicated that it will also seek to reduce the company tax rate from 30% to 29%, this will not apply to unincorporated employers (who still pay the SGL). Small business tax concessions are largely cash flow deferrals. These are merited in their own right. In any event, the value of these ‘benefits’ is grossly outweighed by the cost of the SGL increases. It is recognised, however that the government has attempted to ameliorate the cost impacts by phasing in the increases over a period of years. As much as this is better than nothing, it does not address the fundamental issue for the parliament, that is, should the costs be imposed and fall the way proposed once the transitional period is complete. That is the substantive question. The parliament should not be side-tracked by transitional arrangements, no matter how well intended.
46. Claims that the increase can be funded by wage trade-offs do not withstand scrutiny. There is no centralised wage fixation as there was when the SGL was first introduced. There is no amending legislation to require minimum wage setting by Fair Work Australia to discount future wage rises. Once legislated as an employer obligation, incentive would be removed for unions in enterprise bargaining to voluntarily agree to discount wage rises for higher superannuation. This Bill, if enacted, will kill the prospect of wage-superannuation trade-offs in collective bargaining, at least for this first 12%.
47. The most senior voices of the trade union movement have continually advocated that the starting point for bargaining will be 12%. The national secretary of the Australian Manufacturing and Workers Union

vociferous in claiming that “[w]e will resist any attempt to trade off pay rises for this increase.”¹³

48. A further extract from the FOI Treasury note “*Information Briefing: National Savings*” indicates that:

When considering an increase in the superannuation guarantee rate to 12 per cent, the increase in superannuation guarantee contributions has been directly offset by a decrease in the growth of gross cash wages.

49. It is clear that Treasury considers the SGL increase to be directly linked (ie. funded) by wage trade-offs. Given that the Bill being submitted to the Parliament fails to provide any mechanism to deliver a wage trade-off as intended, (indeed, voting the Bill up achieves the opposite result), then the Treasury assured assumed funding based fails to exist. This should be a grave concern to the Government and Parliament. In and of itself, it is a reason to reject or delay passage of the Bill, if the Senate is to perform its proper role of accountability on the Executive. However, there is no statutory or non-statutory mechanism that would make this a reality in all cases. If the Government's intention is that increases are funded by trade off in wages, then the existing Bill does not achieve that objective.
50. In any event, 90% of employers (employing 50% of the workforce) are SME's who do not collectively bargain, let alone bargain for wage superannuation trade-offs. These employers employ under awards made by Fair Work Australia.
51. In fact, if the Parliament enacts this levy increase, it will effectively kill off any chance of the move from 9% to 12% being funded as part of a wage-superannuation trade-off. Unions would have no incentive to discount future wage rises for an obligation imposed by the Parliament on employers. The Government's planned funding basis would be seriously undermined.
52. To reiterate, there are no measures in the Bill which would facilitate, let alone require, minimum wage increases to be traded off against transitional increases to the SGL (contrast this to the case when the SGL was raised to 9%). Even if small business collectively bargained, powerful unions wouldn't need to concede ground to them. These smaller employers have never seen wage rises discounted for the first 9% they are paying.

¹³ *The Australian* newspaper, 24 November, 2011.

53. There is no provision requiring employees to co-contribute part of the increased levy into a relevant fund. International practice is for pensions and retirement incomes to be part funded by the public sector (government), the private sector (employers) and individuals (employees). In some countries, employees are required to make mandated contributions in addition to employer contributions. Australia stands alone in requiring employers to fund the whole amount, with the exception that in some industries aspects of the first 3% were subject to some wage trade-offs in the 1980's. But this was not generally the case, and was not the case with respect to the increases from 3% to 6%, except in the occasional collective agreement.
54. Finally, there are serious equity issues. Most of the employers who will be paying the proposed levy rise are small and medium business owners who are business people that do not decry a good retirement income for their staff. Yet most small business people don't have the capacity to squirrel away 9% let alone 12% of earnings each year for their own superannuation. Not only do they take the risk to employ others, but they carry the burden of funding retirement incomes and taking pension pressure off future government budgets. No-one in Government is talking about their retirement. Their retirement capital is their business assets, if any is left that survives competition, family break up or partnership collapse. And what does government do with that – it taxes it – the capital gains tax. Yet when it comes to the staff superannuation they have funded, it is concessionally taxed. Unless something is done about this, these small business owners risk being the retiring poor of the next generation, that is, those that try to retire. That is a matter of social equity and fairness, not just a cost or industrial relations issue.
55. Curiously, the Committee House of Representatives report rejected ACCI's position [to not increase the SGL], reiterated that workers' retirement savings should be increased, whilst in the same instance accepting that small business conditions are tough and "*is often struggling*" (at 4.60):
- The mining boom is generating significant profits but not all Australians are benefitting from this prosperity. In particular, small business is often struggling, and workers' retirement savings should be increased.
56. In fact, the House of Representatives Committee failed to engage in any substantive way with the substantive arguments advanced by ACCI. Similarly, in its rush to pass the legislation, nor did the independents and various members of the House of Representatives

Senate Standing Committees on Economics Inquiry – Minerals
Resource Rent Tax Bill 2011 and related bills

who received correspondence from the Chief Executive of ACCI on 21 November 2011 in a last ditch appeal to engage Lower House balance of power Members of the Parliament on the issue. The correspondence is set out in full below:

Senate Standing Committees on Economics Inquiry – Minerals
Resource Rent Tax Bill 2011 and related bills

21 November 2011

Dear

I write in reference to the Superannuation Guarantee (Administration) Amendment Bill 2011, which is one of the "related Bills" to the Minerals Resource Rent Tax Bill. This Superannuation Bill, as you would be aware, proposes to increase the employer superannuation guarantee levy from 9% of payroll to 12%, in seven stages between 2013/14 and 2019/20. It is listed on the House notice paper for debate this week. It is also due for report by the House Economics committee today, after an extraordinarily short inquiry in which only 3 working-days' notice was given to stakeholders before submissions closed.

The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of 38 business organisations, both Chambers and national Industry Associations. It is Australia's largest and most representative business network. Most of our members are deeply involved in employment and workplace issues on behalf of their constituents, the majority of which are employers and small and medium businesses.

Self-evidently, ACCI and our members have a deep interest in this matter. Our estimate is that, if fully implemented, the superannuation increase amounts to an extra \$20 billion per year paid in employer superannuation levies.

In this final scheduled sitting week for 2011, ACCI makes two appeals to you on the Superannuation Bill.

- Firstly, due process. We believe that the House should de-couple the Superannuation Bill from the Minerals Resource Rent Tax Bill, and deal with the Superannuation Bill independently in the first sittings of 2012. Doing so would recognise that the Superannuation Bill has such significance on employers and retirement incomes policy that it deserves objective analysis in its own right, and to not to be marginalised by a debate between large and small miners about how the resource industry should be taxed.
- Secondly, the substantive issue. These are highlighted in ACCI's submissions to the House Economics Committee. We make the point that if parliament enacts this levy increase, it will effectively kill off any chance of the move from 9% to 12% being funded as part of a wage-superannuation trade-off. Unions would have no incentive to discount future wage rises for an obligation imposed by the parliament on employers. The government's planned funding basis would be seriously undermined.

These concerns and suggestions were echoed at a national meeting of senior employer associations executives in Melbourne last Friday.

By way of background, I attach a copy of ACCI's submission to the House Economics Committee, and an ACCI opinion piece published on 26th August, which summarises our approach to the Superannuation Bill.

I would be pleased to meet or speak with you on this issue prior to further parliamentary debate.

Yours sincerely

Peter Anderson
Chief Executive

57. So far, aside from a noted responses, no substantive replies have been received.
58. The small business community can rightly feel confused about the irreconcilable messages, such as the concern expressed by the Government and Parliamentarians on one hand towards business and the reality that they are going to be required to pay an extra 3% in direct costs on the other hand.
59. Treasury officials did concede at the Committee hearings on 8 November, that there would be employment effects (at page 10 of Committee Transcript). This was provided as evidence without reference to any in-house or commissioned economic modeling by Treasury. If Treasury has modeled the employment effects as a consequence of the measures, then this needs to be released in full so that this Committee and Parliament can assess the impact on business, employees (particularly lower income earners who stand to lose the most according to one commissioned report as part of the Henry Tax Review), as well as the broader economy.¹⁴
60. There is little improvement to workers' retirement incomes without a job and if the employment effects disproportionately affect particular groups or cohorts of workers, then this needs to be fully explained and accounted for by the Government.

No Regulation Impact Statement

61. There is no Regulation Impact Statement (RIS) accompanying the Bill. The thirteen page explanatory statement accompanying the Bill did not include any analysis on the impact the measures would have on business, including collective or individual wage negotiations and related on-costs, nor how the increase in the SGL would be funded.
62. There is not one example which would measure the hypothetical impact of raising the SGL on a small to medium sized business, including assessing all labour related direct and indirect on-costs and

¹⁴ According to the Parliamentary Bills Digest No. 77, 2011-12 (18 November), prepared for the Bill, at p.29 (footnotes omitted) it is stated:

The Government has not prepared separate modelling on the broader economic impact of increasing the Superannuation Guarantee rate.

Recent modelling undertaken as part of the Henry Tax Review found that the long run effects of increasing the Superannuation Guarantee rate to 12 per cent was to reduce wages by 2.679 per cent. The impact on lower income earners was to actually reduce their overall welfare. This is due to these households being liquidity constrained and unable to smooth their consumption by spending more prior to the superannuation preservation age and by consuming less in retirement. (emphasis added)

how an increase would impact on business cash flow, profitability or employment effects.

63. A search of the Office of Best Practice Regulation suggests that there does not appear to be any evidence of a Prime Ministerial declaration (based on exceptional circumstance) for an RIS not to be produced with the Bill (the result would be a Post Implementation Review one to two years after implementation). This contrasts with the *Stronger Super* reforms which did undergo a satisfactory RIS process and which ACCI is extensively engaged in their implementation. Once again, this reiterates that it is vitally important that a proper debate occur prior to increasing the SGL, to ensure that all costs and benefits are assessed in its own right and that a future-proof funding base is identified which is supported by both business, workers and the community.

Productivity Commission Review of Default Funds

64. The Government on 21 September and as part of its policy response to the Cooper Review indicated in its *Stronger Super Information Pack* that:¹⁵

The Government has announced it will request Fair Work Australia to review the default superannuation funds named in modern awards so that, following the transitional period, only those products meeting the MySuper criteria continue to be included in those awards as default funds.

Further, the Government will ask the Productivity Commission to design a process for the selection and ongoing assessment of the superannuation funds to be included in modern awards or enterprise agreements as default funds. The Productivity Commission review will seek to ensure that this process is transparent, competitive and subject to systemic review. The review will be completed before MySuper products are able to be offered from 1 July 2013.

65. Given that the Government will direct the Productivity Commission to consider aspects of default fund arrangements, it would also be appropriate for the PC to examine broader aspects of superannuation system, including the potential increase of the SGL and retirement incomes policy more generally.
66. The case is even stronger for a dedicated arms length review, considering that the Henry Tax Review specifically recommended against increasing the existing SGL and the Government has not relied on any other recommendation or inquiry to uprate the SGL.

¹⁵ Page 7.

Removal of Age Limit

67. The original Bill amended the existing age limit for employer payments from 70 to 75 years. The Government's second reading speech indicated that the age limit for superannuation contributions would be removed altogether "*as a result of strong representations from members of the Labor caucus and cross-bench*". This alone will mean employers funding superannuation for an additional 18,000 Australians aged 75 years and over. The Government amendment to its own Bill to remove the existing age limit of 70 years was successful.
68. While ACCI did not oppose this measure in principle, it is to be noted that this represents an increase in employer obligations in and of itself, and a further cost transfer from the public sector to the private sector. The cost increase for the affected employers is neither irrelevant nor inconsequential.
69. However, there does not appear to be a corresponding amendment to the *Income Tax Assessment Act 1997* to allow employers to claim superannuation contributions as an expense. The explanatory memorandum to the original Bill indicated (at p.6) that increasing the age limit to 75 years would align with income taxation legislation in the following manner:

Raising the superannuation guarantee age limit from 70 to 75

1.8 Under subsection 19(1) and paragraph 27(1)(a) of the SGAA 1992, salary or wages paid to an employee who is 70 or over does not count towards the calculation of the SG shortfall. Since there is no SG shortfall, this means that employers are not required to make SG contributions for employees who are aged 70 or over.

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

1.10 Raising the SG age limit to 75 brings the SG amendments in line with provisions of the *Income Tax Assessment Act 1997* (ITAA 1997) which allow employers to claim a full deduction for all contributions to

superannuation funds made on behalf of their employees up to age 75 and allow self-employed people to make deductible contributions until they turn 75.

70. It appears that to maintain that consistency, consequential amendments would now be necessary to the *Income Tax Assessment Act 1997* (ITAA 1997).

71. If the Government does not introduce consequential amendments, then this is yet another new and additional cost imposed on employers, which must require further scrutiny and analysis by the Parliament.

ACCI RECOMMENDATIONS

Recommendation 1: That the Committee recommend to the Parliament that it provide full opportunity to consider the mining tax legislation and the Superannuation Levy Bill on their merits and in their own right, and that the debate on the Superannuation Levy Bill be deferred to 2012 and that it not be debated concurrently or conjointly with the mining tax Bills.

Recommendation 2: The Committee should consider the Superannuation Levy Bill on its merits and in its own right, and advise the Senate that its substantive report will need to be deferred in 2012 to enable proper consideration and input on the funding of retirement incomes policy in Australia and the issues raised in this and other submissions.

Recommendation 3: The Committee should recommend rejection of the Superannuation Guarantee (Administration) Amendment Bill 2011. It should recommend that the Government not proceed with the 9% to 12% levy increase until at least two conditions are met:

- a workable and fair funding base is found; and
- a workable and fair approach is developed to support the retirement incomes of small and medium business people.

Recommendation 4: At the very least, the Committee should recommend that the Government amend the Fair Work laws so as to require minimum wage decisions by Fair Work Australia to discount increases it may order by the relevant cost to employers of the corresponding years of the seven proposed levy rises.

Recommendation 5: That the Committee recommend that the forthcoming Productivity Commission review of default fund allocation in modern industry/occupation awards, be expanded to a more wide ranging inquiry into retirement incomes policy which informs the Government and all stakeholders more fully. In the interim, the Bill be deferred until that review is complete.

Recommendation 6: Amendments should be made to the *Income Tax Assessment Act 1997 (ITAA 1997)* as a consequence of removing the SG age limit, to allow employers to claim a full deduction for all contributions to superannuation funds made on behalf of their employees beyond 75 in addition to self management superannuation funds.

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Resource Rent Tax Bill 2011 and related bills

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Resource Rent Tax Bill 2011 and related bills

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Resource Rent Tax Bill 2011 and related bills

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