



Coalition Members' Dissenting Report

Liberal Members of the House of Representatives Standing Committee on Economics outline herewith dissenting remarks from the majority committee advisory report on the Tax Laws Amendment (2012 Measures No. 6) Bill 2012 (TLAB No. 6).

Liberal Members do not support the majority report recommendation that the House of Representatives pass the TLAB No. 6 as proposed.

Rather, it is our considered view that the TLAB No. 6 Bill be amended such that Schedule 1 – Native title benefits be excised from the Bill.

Additionally, Liberal Members reinforce our opposition to the Government's Minerals Resource Rent Tax (MRRT) and its associated expenditure and our intention to repeal the MRRT should the Coalition form Government following the next general election.

Issues in the Bill

Schedule 1 – Native title benefits

Liberal Members of the Committee note and agree with paragraphs 2.4, 2.5, and 2.6 insofar as the majority advisory report highlights that opinions provided to the Committee fell into three broad categories.

Paragraphs 2.5 through 2.10 reasonably outline the evidence provided to the Committee.

The concerns raised in paragraph 2.15 encapsulate legitimate concerns that Liberal Members found compelling and overwhelming such that excision of Schedule 1 from the Bill is warranted.

The legitimate concerns raised by the Minerals Council of Australia and others, and supported by Liberal Members, are not borne from nefarious intent. Rather, the concerns are a consequence of uncertainty driven by the TLAB No. 6 Bill as highlighted by the Minerals Council of Australia and supported by BHP Billiton and the Chamber of Minerals and Energy of Western Australia:

The Minerals Council of Australia supports the government's policy objective to deliver a more flexible and less legalistic approach to native title and to deliver practical outcomes for Indigenous Australians. We are committed to working with the government to ensure that agreement monies constructively contribute to socio economic outcomes for Indigenous Australians in line with the government's *Closing the Gap* policy objectives. While we support reforms to the taxation system to maximise the economic value of the native title compensation and benefits packages, we are concerned that the proposed native title payment tax treatment may have a range of unintended consequences. Specifically, we consider that those amendments disincentivise investment in intergenerational wealth creation, as tax will be payable on any transfer of monies to future generations or on income earned. It disincentivises the provision of benefits under agreements to Aboriginal people who are resident in an area but who are unrelated to native title determination and it limits the main tax treatment to the defined beneficiaries.¹

The majority advisory report in paragraph 2.19 outlines that the concerns raised by many witnesses were not compelling and "unlikely to eventuate ... because native title agreements are now structured to prevent it occurring, and this feature of the contracts has been largely driven by the mining companies themselves ...".

Liberal Members find the conclusion reached in paragraph 2.19 counterintuitive. It is compelling that the authors of the agreements to which the majority members refer and rely are the very parties highlighting the problems arising from the TLAB No. 6 Schedule 1.

Ms O'Dwyer: I want a pretty simply short answer to the question as to whether, in the view of the people who are sitting around the table today, it would be better not to proceed with this aspect of the legislation, assuming that no changes were made to it, because

1 Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, Canberra, 30 January 2013, p. 15 and Mr Mark Donovan, BHP Billiton, & Dr Debra Fletcher, The Chamber of Minerals and Energy of Western Australia, *Committee Hansard*, Canberra, 30 January 2013, p. 18.

it would do more harm than good. I just want to understand where people sit on this question.

Mr Murphy: The position of the State of Western Australia is that it would do more harm than good. Clearly, there are many issues that have been raised just in this short session today which indicate that there are differences of opinion about what is the best way to deal with the matter. I think the only point of agreement that you actually have is that there is much disagreement about what should be done. So until such time as there is further investigation and data about what is the likely consequence of change and the best way to proceed, the state of WA's position would be to do nothing – do no harm at this point in time.

Chair: So far we have got 'don't proceed' from BHP and Rio –

Dr Fletcher: And CME members overall support that position as well.²

This position was also promulgated by the Minerals Council of Australia:

Ms Stutsel: The position of the Minerals Council would be that, no, we do not think the legislation should proceed. Our preferred position would be to stay with the status quo, and that is largely because the differences that will be formalised by these arrangements will lead to a diminution in the sustainable outcomes being achieved from agreements.³

Further, the sentiment of paragraph 2.23 of the majority advisory report demonstrates the breadth of concern raised.

As highlighted above, the principle adopted by the majority advisory report that is contained in paragraph 2.26 again is counterintuitive and betrays the compelling weight of concern expressed by the authors of the very agreements Government Members rely upon.

It is also noted by Liberal Members of the Committee that there are matters of principle that are potentially offended by Schedule 1.

Making compensatory (or any other) income exempt from tax violates the key tax principle of horizontal equity (ie a dollar earned by one person, regardless of how it is earned or from what activity, is given the same tax treatment as if it were earned by another person).

² *Committee Hansard*, Canberra, 30 January 2013, p. 24.

³ Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, Canberra, 30 January 2013, p. 25.

However, if this income was to be taxable in the hands of the indigenous recipient(s), it would likely increase the compensation sought by the amount of tax expected to be paid. As such, the incidence of any tax paid would likely be borne by the compensator (likely to be a mining or agri-business), increasing their costs as a consequence.

Schedule 3 – Geothermal energy explorers

Schedule 3, which provides a deduction for certain costs associated with exploration for sources of geothermal energy, was announced by the Government as part of the final design of the Minerals Resource Rent Tax (MRRT) and is an expenditure associated with the MRRT.

The Coalition will repeal the MRRT.

The MRRT has proved to be a public policy farce from its inception as the Resource Super Profits Tax. It is a tax that has not raised any meaningful revenue.

Mr Steven Ciobo MP
Deputy Chair

Ms Kelly O'Dwyer MP

Mr Scott Buchholz MP

