

Minerals Resource Rent Tax Repeal and Other Measures Bill 2013

Portfolio: Treasury

Introduced: House of Representatives, 13 November 2013

Summary of committee concerns

1.142 The committee seeks clarification whether the measures contained in Schedules 6 and 7 of the bill are compatible with the rights to an adequate standard of living and to social security.

1.143 The committee also seeks clarification whether the amendments in Schedules 8 and 9 to remove the low-income support bonus and schoolkids bonus will be accompanied by appropriate mechanisms to monitor and address any undue hardship that the cessation of these payments may cause to vulnerable individuals and families.

Overview

1.144 This bill proposes to repeal the mineral resources rent tax (MRRT) by repealing a number of acts (Schedule 1).⁷¹ It also makes consequential amendments to other legislation,⁷² required as a result of the repeal of the MRRT (Schedules 2- 9).

1.145 The MRRT applied from 1 July 2012 to taxable resources (broadly iron ore and coal) after they were extracted from the ground but before they underwent any significant processing or value adding. Coal seam gas produced as a necessary incident of coal mining was also included as a taxable resource. The effect of the bill will be that taxpayers do not incur liabilities for MRRT on or after 1 July 2014. However, the amendments do not affect the rights, powers and obligations of taxpayers and the Commissioner of Taxation in respect of MRRT liabilities that arise before this date.

1.146 This bill also seeks to repeal the following MRRT-related measures: loss-carry back (Schedule 2); geothermal expenditure deduction (Schedule 5); low income superannuation contribution (Schedule 7); the income support bonus (Schedule 8); and schoolkids bonus (Schedule 9).

1.147 The bill will revise the following MRRT-related measures: capital allowances for small business entities (Schedules 3 and 4); and the superannuation guarantee charge percentage increase (Schedule 6).

71 *Minerals Resource Rent Tax Act 2012; Minerals Resource Rent Tax (Imposition—Customs) Act 2012; Minerals Resource Rent Tax (Imposition—Excise) Act 2012; and Minerals Resource Rent Tax (Imposition—General) Act 2012.*

72 Including the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

Compatibility with human rights

Statement of compatibility

1.148 The bill is accompanied by an explanatory memorandum which includes a statement of compatibility addressing the compatibility of the provisions contained in each of Schedules 1 to 9. The statement of compatibility states that the repeal of the tax itself effected by Schedule 1 does not engage or limit any human rights.

1.149 The statement of compatibility further notes that the consequential amendments to other legislative provisions are compatible with human rights as they either restore the situation of those affected to the position that obtained before the introduction of the MRRT, or repeal provisions which were dependent on income from the MRRT which will not be available as a result of the repeal of the MRRT.

1.150 The committee considers that the statement of compatibility adequately addresses any human rights issues engaged by Schedules 1 to 5 and that these Schedules do not give rise to serious human rights concerns. The committee's concerns with regard to the remaining Schedules are set out below.

Committee view on compatibility

Right to an adequate standard of living and right to social security

1.151 Schedule 6 of the bill defers by two years the proposed gradual increase in the compulsory superannuation contribution by employers to 12%. The statement of compatibility states that this does not engage any human rights. The statement of compatibility notes that the measure 'does not affect an individual's eligibility for the social security safety net of the Age Pension (funded from Government revenue), which continues to be a fundamental part of Australia's retirement income system to ensure people unable to support themselves can have an adequate standard of living.'

1.152 Schedule 7 of the bill proposes to repeal the low income superannuation contribution (LISC) for contributions made for financial years starting on or after 1 July 2013. The LISC is a payment for an individual who has concessional contributions (such as SG payments, and salary sacrificed amounts) and an annual adjusted taxable income of \$37,000 or less. The maximum amount payable is \$500. The contribution was designed to return the 15 per cent tax paid on concessional contributions by an individual's superannuation fund to low income earners. The statement of compatibility notes that the LISC 'was funded with the expected revenue from the MRRT, which is being repealed. In order to ensure that the concessions in the superannuation system are sustainable for present and future generations, the LISC is also being repealed.' The statement of compatibility concludes that Schedule 7 does not engage any human rights.

1.153 The committee considers that the provision of superannuation engages both the right to an adequate standard of living⁷³ and the right to social security.⁷⁴ A similar view was consistently taken by the predecessor to this committee (former committee).⁷⁵

1.154 The proposed increase in the superannuation guarantee may be viewed as a measure to promote both of these rights. The deferral of the introduction of that measure may therefore be viewed as a limitation on these rights that would need to be justified. The reduction of the amount paid to low-income earners to compensate them for the tax paid on their superannuation contributions also limits these rights and requires justification.

1.155 The committee expects that limitations on rights should be justified in a statement of compatibility by setting out the legitimate objective being pursued, the rational connection between the measure and that objective, and the reasonableness and proportionality of the measure.⁷⁶

1.156 The committee intends to write to the Treasurer to seek clarification whether the measures contained in Schedules 6 and 7 of the bill are consistent with the right to an adequate standard of living and the right to social security.

Repeal of the low-income support bonus (Schedule 8)

1.157 The low-income support bonus (ISB) was intended to provide payments to eligible recipients to help them plan expenditure and provide a buffer against unexpected costs. The eligible recipients are those receiving ABSTUDY Living Allowance, Austudy, Newstart Allowance, Parenting Payment, Sickness Allowance, Special Benefit, Youth Allowance, Transitional Farm Family Payment, and Exceptional Circumstances Relief Payment. ISB is also paid to eligible recipients under the Veterans' Children Education Scheme,⁷⁷ and the Military Rehabilitation and Compensation Act Education and Training Scheme.⁷⁸ People on any of these payments receiving more than the basic amount of Pension Supplement are not eligible for the ISB.

1.158 The ISB comprises an indexed, non-means tested bonus paid twice yearly of \$105.80 for single people (or \$211.60 per annum) or \$88.20 for most people who are an eligible member of a couple (that is, \$176.40 per annum per person). Eligible

73 Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

74 Article 9 of the ICESCR.

75 See, for example, Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013*, pp 78-80.

76 See Parliamentary Joint Committee on Human Rights, *Practice Note 1*.

77 Prepared under Part VII of the *Veteran's Entitlement Act 1986*.

78 Determined under the *Military Rehabilitation and Compensation Act 2004*.

members of a couple separated by illness, or couples where a partner is in respite care or in gaol, receive the single rate of \$105.80 (or \$211.60 per annum per person). The ISB is exempt from income tax. ISB payments were made to eligible recipients in March and September 2013; the next instalment of the ISB payment is due to be paid in March 2014.

1.159 The statement of compatibility notes that the proposed removal of the ISB engages the rights to social security and to an adequate standard of living. It notes:

[T]he right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage. Any removal of entitlements must be justified in line with Article 4 [of the ICESCR] in the context of the full use of the maximum available resources of the State party.⁷⁹

1.160 The statement of compatibility further notes that this was a measure that was to be funded from the revenue to be raised by the MRRT and that with the removal of that tax, such measures are being removed. It maintains that the repeal of the ISB 'is a non-arbitrary measure that is reasonable, necessary and proportionate' in view of the modest sum involved, the range of existing social support programs, indexation and other factors to ensure that persons affected will continue to enjoy the right to social security and to an adequate standard of living.⁸⁰

1.161 The removal of the ISB may be viewed either as a limitation or retrogressive measure. The committee accepts that the sums involved by the removal of the ISB are relatively modest. However, its removal may nevertheless have a detrimental effect on low-income and disadvantaged households, particularly in light of concerns regarding the adequacy of allowance payments in general.⁸¹ The committee notes that the ISB was introduced last year in recognition that:

households relying on income support allowances as their main source of income may find it difficult to manage when unanticipated expenses, such as urgent repairs or unexpectedly large bills, arise. People in paid employment are more likely to be able to set aside some money for such circumstances, while allowance recipients may not be able to do so.⁸²

79 Statement of compatibility, p 84.

80 Statement of compatibility, para 4.66.

81 See, for example, Parliamentary Joint Committee on Human Rights, *Fifth Report of 2013*; and Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, 29 November 2012.

82 Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012, Statement of compatibility, p 15.

1.162 The committee notes the government's view that the package of existing payments and assistance available to individuals and families will be adequate to meet their needs, consistent with requirements under articles 9 and 11 of the ICESCR. The statement of compatibility, however, does not explain the basis on which the government makes that assessment. As the former committee has recognised, 'the matter of adequacy is not easily determined', but, the burden of demonstrating adequacy lies with the government.⁸³ The committee is concerned that there does not appear to have been any impact assessment to determine the actual effect of the removal of this payment on human rights.

Repeal of the Schoolkids bonus (Schedule 9)

1.163 Schedule 9 of the bill proposes to repeal the schoolkids bonus payment.⁸⁴ The schoolkids bonus is an indexed family assistance payment that is available to eligible families receiving Family Tax Benefit Part A for a child in primary or secondary school. It is exempt from income tax. Young people in school receiving Youth Allowance or certain other income support or veterans' payments may also qualify for the bonus.

1.164 The annual value of the schoolkids bonus is \$410 for each primary school child and \$820 for each high school child, paid in equal instalments in January and July. Payments were made to eligible recipients in January and July 2013; the new instalment would be payable from January 2014, based on eligibility as 1 January 2014.

1.165 The statement of compatibility notes that the repeal of the schoolkids bonus engages the rights to social security and to an adequate standard of living. It also notes that such rights may be limited in accordance with article 4 of the ICESCR.

1.166 The statement of compatibility argues that these rights are ensured through the system of family assistance and income and veterans' support payments which have the primary purpose of meeting the costs associated with raising a child. It notes that the schoolkids bonus 'is a supplementary payment designed to provide additional assistance for education expenses' and that the bill 'does not affect an individual's or child's right or access to family tax benefit or income support and veterans' payments.'⁸⁵

1.167 The reduction in the payment of the schoolkids bonus may be viewed either as a limitation or retrogressive measure. While the committee recognises that government's overall fiscal objectives and the need to have sustainable social

83 Parliamentary Joint Committee on Human Rights, *Fifth Report of 2013*, para 1.115.

84 By amendments made to the *A New Tax System (Family Assistance) Act 1999*; *A New Tax System (Family Assistance) (Administration) Act 1999*; *Income Tax Administration Act 1997*; and *Social Security (Administration) Act 1999*.

85 Statement of compatibility, p 88.

support systems are legitimate objectives, the statement of compatibility should have clearly set out the objective being pursued by the non-continuation of a benefit which is for many families be a substantial sum of money, and how the measure is a reasonable and proportionate way of achieving that objective. The statement of compatibility does not do this, but appears to rely on the claim that without the schoolkids bonus families in any event enjoy the rights to social security and to an adequate standard of living to an acceptable level by virtue of the main social support payment systems.

1.168 The committee intends to write to the Treasurer to seek clarification whether the measures proposed by Schedules 8 and 9 will be accompanied by appropriate mechanisms to monitor and address any disproportionate impact the cessation of these payments may have on disadvantaged individuals, children and families, particularly where they cause undue hardship.