

Chapter 4

The negotiation and development of the MRRT

4.1 While criticisms of the MRRT were broad and varied, a common thread running through this criticism was that the MRRT's design flaws were, in large measure, attributable to the deeply flawed process of developing the tax.

4.2 In particular, critics from both the resources sector and academia suggested that the government had engaged in rushed, behind-closed-doors negotiations with a small group of multi-national, multi-project mining companies, to the exclusion of the overwhelming majority of Australian miners, and entirely for reasons of political expediency.

4.3 This chapter considers the process by which the MRRT was designed, including the extent of the involvement in that process of the Department of the Treasury and mining corporations that would be paying the tax.

The MRRT Heads of Agreement process

4.4 As noted in chapter one, the design features of the MRRT were determined in negotiations in late June, early July 2010 between the government and representatives from BHP Billiton, Rio Tinto and Xstrata. The agreement struck between the government and the large miners on the key features of the MRRT was recorded in the MRRT Heads of Agreement.

4.5 AMEC characterised the MRRT process as 'ill thought-through, shambolic, [and] non-consultative,' and emphasised that neither it nor its members were consulted during the Heads of Agreement process.¹

4.6 As AMEC told the committee:

The MRRT was clearly ill conceived as it was a direct result of a private and secret consultation process with three large multinational companies. AMEC was not consulted in any way during this private negotiation process. It should be acknowledged that these companies had no mandate to act on behalf of hundreds of mining and exploration companies with Australian projects or interests in iron ore and coal. They did not have any mandate to act in any way on behalf of AMEC or its wide membership base.²

1 Mr Simon Bennison, Chief Executive Officer, AMEC, *Proof Committee Hansard*, Perth, 8 April 2013, p. 13.

2 Mr Simon Bennison, Chief Executive Officer, AMEC, *Proof Committee Hansard*, Perth, 8 April 2013, p. 1.

4.7 FMG endorsed AMEC's characterisation of the Heads of Agreement process, telling the committee that FMG was 'very frustrated with the outcome' of the 'secret negotiation' between the government and the three large miners.³

4.8 Despite having a very different perspective on the merits of rent-based resource taxation, Dr Denniss was also critical of the manner in which the MRRT was developed. While conceding that the process behind the development of the MRRT was beyond his area of expertise, Dr Denniss suggested that he did not believe:

...you get the best policy when you design it very quickly, in isolation. It seems to me that if we had had a more transparent process we probably would have had more views. We would have had more people putting information on the table, rather than the mining companies themselves, and we probably could have overcome some of those problems I have identified.⁴

The level of Treasury's involvement in the Heads of Agreement process

4.9 Concerns have previously been expressed regarding the extent of Treasury's involvement in the negotiations between the government and the three large mining companies on the tax.⁵ These concerns were explored in the current inquiry.

4.10 It is already a matter of public record that Treasury officials were not present during the government's negotiations of the Heads of Agreement with BHP Billiton, Rio Tinto and Xstrata. Instead, the government was represented by the Treasurer, the Minister for Resources and Energy, their respective chiefs of staff, and a senior advisor to the Prime Minister, Mr Tom Bentley.⁶

4.11 However, the significance of Treasury not being 'in the room' during the negotiations was disputed by Treasury officials during this inquiry. Asked if Treasury officers were present during the Heads of Agreement negotiations, Mr Rob Heferen (Executive Director, Treasury) emphasised that it was not the case that 'this business was going on and we were miles away not being engaged.' He further suggested that it was not particularly noteworthy that Treasury officers were not present during the negotiations:

And advice had been provided in the lead-up to the discussions so issues were worked through. Like any department doing its role, Treasury provided advice to its minister. The cabinet analogy, where ministers make

3 Mr Stephen Pearce, Chief Financial Officer, FMG, *Proof Committee Hansard*, Perth, 8 April 2013, p. 3.

4 Dr Richard Denniss, Executive Director, The Australia Institute, Australian National University, *Proof Committee Hansard*, Canberra, 3 April 2013, p. 1.

5 See, for instance, Select Committee on the Scrutiny of New Taxes, *The Mining Tax: A bad tax out of a flawed process*, June 2011, pp. 36-39.

6 Senate Select Committee on the Scrutiny of New Taxes, *The Mining Tax: A bad tax out of a flawed process*, June 2011, p. 36.

decisions in cabinet, is a useful one; it is very rare for others to be involved in that decision-making process.⁷

4.12 Under questioning from the committee, BHP Billiton indicated that they did, in fact, have meetings with Treasury officials during the Heads of Agreement negotiation process.⁸

4.13 Treasury also rejected suggestions that it had been unusually reliant on information provided by the mining companies in arriving at its projections during the development of the MRRT. Treasury, as Mr Heferen told the committee:

...has its own avenues to try and understand the price of volumes and so forth. Information for the minister is very important, but it would go through a pretty considered process of triaging that to make sure that it resonates with everything else around that could be used to check, and those processes were certainly gone through.⁹

The lack of consultation with the States

4.14 The government has also been criticised for not consulting with the States on the design of the tax, particularly in light of the Henry Review's recommendation that the Australian and State governments 'should negotiate an appropriate allocation of the revenues and risks from the resource rent tax.'¹⁰

4.15 In his submission to this inquiry, the Treasurer of Queensland, the Hon Tom Nicholls MP, also linked the shortfall in revenue collected to date from the MRRT with the apparent failure of the Commonwealth to consult with the States on the tax:

Despite the experience gained by the States through many years of partnership with the mining companies in the development of their industry, we were not invited to be in any way involved in the forecasting of revenue collected in the first half of the year – forecasting which has been proved inaccurate.¹¹

4.16 Asked if the Commonwealth had in fact asked Western Australia to agree not to raise its royalties as part of the introduction of the MRRT, Mr Marney told the committee that he had no recollection of any such request 'in the limited negotiations and consultations that were undertaken and my recollection is that the Premier made it

7 Mr Rob Heferen, Executive Director, Treasury, *Proof Committee Hansard*, Canberra, 3 April 2013, p. 44.

8 Mr Brian Purdy, Senior Manager Finance, BHP Billiton Iron Ore, BHP Billiton, *Proof Committee Hansard*, Melbourne, 29 April 2013, pp. 30-31.

9 Mr Rob Heferen, Executive Director, Treasury, *Proof Committee Hansard*, Canberra, 3 April 2013, p. 32.

10 Australia's Future Tax System, *Report to the Treasurer*, part 2: detailed analysis, vol. 1, December 2009, p. 231

11 Queensland Government, *Submission 3*, p. 1.

very clear to the Commonwealth Treasurer as to what his intentions were in terms of royalty policy going forward.’¹²

4.17 Supporters of the concept of a rent-based resources tax – if not necessarily of the design of the MRRT specifically – also told the committee that given state ownership of resources, it would have been logical to design the MRRT in consultation with the States.

4.18 For example, Dr Denniss told the committee that a ‘well-designed scheme’ (which he did not think the MRRT was) ‘would have started with both the federal government and the state government in the room.’ Dr Denniss further agreed with Senator Cormann’s suggestion that while Dr Henry had recommended that the Commonwealth consult with the States on a resource rent tax, the Treasurer had never attempted to do so.¹³

4.19 As discussed further in the next chapter, Professor Garnaut was also strongly of the view that given the legitimate interest of both the States and the Commonwealth in onshore resource taxation, it followed that negotiations on a rent-based resources tax in Australia would ideally take place within broader Commonwealth-state discussions about federal financial relations.¹⁴

Committee view

4.20 It is widely accepted by both supporters and opponents of the MRRT that the process followed by the government in developing first the RSPT and then the MRRT was deeply flawed.

4.21 First there was the complete lack of consultation.

4.22 When commissioning the Henry Tax Review, the government raised significant expectations. It was to be root and branch reform of our tax system to make it simpler, fairer, more efficient and less distorting.

4.23 Instead of releasing the Henry Tax Review when the government received it, the report was kept secret until the government was ready to announce the RSPT along with the revenue it would generate for the budget.

4.24 Furthermore, neither the RSPT nor the MRRT bear much resemblance with what was recommended by the Henry Tax Review.

4.25 When the RSPT ended in tears, instead of cutting its losses, the government made a bad process worse.

12 Mr Tim Marney, Under Treasurer, Department of Treasury, Western Australia, *Proof Committee Hansard*, Perth, 8 April 2013, p. 36.

13 Dr Richard Denniss, Executive Director, The Australia Institute, Australian National University, *Proof Committee Hansard*, Canberra, 3 April 2013, p. 2.

14 Professor Ross Garnaut AO, *Proof Committee Hansard*, Melbourne, 29 April 2013, p. 1.

4.26 They excluded 99 per cent of the industry, to negotiate the design of a new tax personally, exclusively and in secret with the three biggest miners operating in Australia.

4.27 State and Territory governments, which have a significant interest in how the MRRT was to interact with royalties on iron ore or coal, incredibly and incompetently, were excluded from the process.

4.28 To cover up the lack of credibility of its original MRRT revenue estimates the Treasurer went out of his way to keep his flawed MRRT revenue assumptions secret, where other governments release that sort of information transparently as a matter of course.

4.29 The government failed to properly assess the cost of significant concessions made in the MRRT Heads of Agreement, signing up without a proper understanding of the fiscal implications of the mining tax deal.

4.30 When various flaws in the MRRT Heads of Agreement became too obvious to ignore, the government started to blame everyone (except themselves) from the States and Territories who were increasing their royalties to Treasury who had failed to run proper forecasts.

4.31 Every step of the way, when further failures of the government's mining tax were exposed, the government sought to hide the fiscal implications through more secrecy and cover-ups.

4.32 The reality is that the failure of the MRRT was entirely predictable and indeed predicted.

4.33 Moving forward, genuine sustainable tax reform can only be successfully pursued with genuine, active and inclusive engagement with all relevant stakeholders through an open and transparent process. Indeed genuine tax reform should be pursued from a position of fiscal strength, not just as a lazy grab for cash by a Labor government under constant short term fiscal pressure.

