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## SENATE

SELECT COMMITTEE ON THE SCRUTINY OF NEW TAXES

**Reference: Mining taxes**

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MELBOURNE

BY AUTHORITY OF THE SENATE



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**SENATE SELECT COMMITTEE ON  
SCRUTINY OF NEW TAXES  
Wednesday, 8 December 2010**

**Members:** Senator Cormann (Chair), Senator Hutchins (Deputy Chair) and Senators Bushby, Cameron, Fifield and Williams

**Senators in attendance:** Senators Cameron, Cormann and Williams

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Carol Brown, Cash, Colbeck, Coonan, Crossin, Eggleston, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fisher, Forshaw, Furner, Heffernan, Humphries, Hurley, Johnston, Joyce, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Stephens, Sterle, Troeth, Wortley and Xenophon

**Terms of reference for the inquiry:**

To inquire into and report on:

- (a) new taxes proposed for Australia, including:
  - (i) the minerals resource rent tax and expanded petroleum resource rent tax,
  - (ii) a carbon tax, or any other mechanism to put a price on carbon, and
  - (iii) any other new taxes proposed by Government, including significant changes to existing tax arrangements;
- (b) the short and long term impact of those new taxes on the economy, industry, trade, jobs, investment, the cost of living, electricity prices and the Federation;
- (c) estimated revenue from those new taxes and any related spending commitments;
- (d) the likely effectiveness of these taxes and related policies in achieving their stated policy objectives;
- (e) any administrative implementation issues at a Commonwealth, state and territory level;
- (f) an international comparison of relevant taxation arrangements;
- (g) alternatives to any proposed new taxes, including direct action alternatives; and
- (h) any other related matter.

**WITNESSES**

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**Committee met at 8.59 am**

**CHAIR (Senator Cormann)**—I declare open this fourth hearing of the Senate Select Committee on Scrutiny of New Taxes. Today's hearing will inquire into the government's proposed minerals resource rent tax and expanded petroleum resource rent tax. These are public proceedings, although the committee might hear certain evidence in camera. The proceedings are governed by rules set by the Senate, copies of which have been given to the witnesses. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. I remind members of the committee that the Senate has resolved that public servants shall not be asked to give opinions on matters of policy.

[9.00 am]

**BOND, Mr Gerard, Head of Group Human Resources, BHP Billiton**

**DELANEY, Mr Bernie, Vice President, Government Relations, BHP Billiton**

**CHAIR**—Welcome, Mr Delaney and Mr Bond. Would you like to make an opening statement?

**Mr Bond**—Yes, we would. Thank you, committee members, for inviting us to appear today. Firstly, by way of introduction, I have been an employee of BHP Billiton for 13 years. During the period 1 April to 1 September of this year I was responsible for managing BHP Billiton's response to the recommendations of the Henry review and subsequently the matters arising in relation to the announcement of the RSPT on 2 May 2010. My previous position was project director fiscal stability. Bernie Delaney has been with BHP Billiton for over 20 years. Bernie has been involved with the proposed new taxes on the resources industry from the government relations' perspective.

BHP Billiton acknowledge and respect the role of the Australian government to set tax policy and that the parliament sets the tax laws. As the nation's biggest payer of corporate taxes, we understand this reality very well. This does not mean that BHP Billiton always consider a proposal for new taxes sound or in the best interests of the mining industry or Australia. In our industry in particular, tax stability and a rational tax regime is of paramount importance. The resources industry is characterised by large, multibillion dollar capital investments, long lead times, volatile prices and exchange rates, and hence risky and variable economic returns that are derived over an extended period of time.

Investments in the resources industry are typically significant, in our case ranging from \$2 billion to \$10 billion, and may not begin to generate a payback for five to 15 years. These investments are high risk and require operation over many decades, or more, to provide an appropriate return. A well-designed and stable tax regime is critical to a country to attract investment in the resources industry. There is strong competition for investment in resources. Australia has historically had a stable and rational tax system for the mining industry, which has contributed to the development of a globally competitive resources industry in this country. The RSPT, and now the MRRT, must be understood in this context. Changing the rules of the game after investments have been made and to a flawed new tax jeopardises Australia's leading position in the global resources industry.

We believe there are four principles that should govern consideration of minerals resources tax design. The four principles are: prospectivity, competitiveness, differentiation and resource based. Specifically, we believe that minerals taxation reform must be prospective—that is, any minerals resources tax must be prospective in its application so as to preserve Australia's position as a stable place for investment. On the second principle of competitiveness, any minerals resource tax must ensure that the overall tax burden is competitive with other minerals resources countries or Australia will lose investment to other countries with more attractive tax regimes. On the third principle of differentiation, any minerals resources tax should vary by



commodity in recognition of the fact that the investment characteristics and margins of individual commodities are different. On the principle of resource based, any minerals resource tax must be levied on the value of the minerals alone and not unintentionally penalise investments in infrastructure, processing or other enabling and value-adding activities.

Today I want to make four key points about recent proposals for a new minerals resources tax in Australia. They are: that the rationale for a new resources tax was based on a fundamentally false foundation, that the RSPT was fundamentally flawed in design, that the government recognise that the design of the RSPT was flawed and replaced it with the MRRT, and that we are concerned about some public statements made regarding the implementation of the MRRT.

**Senator WILLIAMS**—Could you repeat your first one?

**Mr Bond**—Yes: it is that the new resources tax was based on a fundamentally flawed and false foundation. On my first point about the flawed rationale for the resources tax, the fundamental and widely publicised foundation for the RSPT was that the mining industry was not paying its fair share of tax. The government repeated again and again that the industry was only paying 17½ per cent tax and pointed to the changes in royalties as a percentage of profits over the period 2002 to 2009 to evidence this. I would like to deal with both of those in turn. The 17½ per cent number was simply not representative of the facts. Rather than referring to actual tax payments as a percentage of actual earnings the Treasury relied on statistics from a draft report—and not even the latest draft—from a US university study that even its own authors have said was not appropriate for the purpose used by Treasury.

On the second analysis—the royalties as a percentage of earnings—this analysis inexplicably excluded the significant increase in company tax paid by the resources industry over the same period. We note in that analysis that the key reference years were also selected. The first coincided with a low point of industry profitability making the constant royalties appear a higher percentage of profits whilst the last two years, 08 and 09, were projections only and not actual results. We know now that that Treasury calculation of projected industry earnings for 08 and 09 were inflated through the use of unrealistic assumptions which had the effect of depicting an underpayment of total tax by the industry.

In BHP Billiton's case the reality is that over the last seven years to June 2010 BHP Billiton has paid over \$29 billion in tax and royalties to Australian governments. This amount equates to approximately 42 per cent of our profit from our Australian operations. In 2010, for every one dollar of profit from Australian operations, \$1.30 went back into Australia by, firstly, paying over \$5½ billion in taxes and royalties—in this year representing 46 per cent of operating profits from our Australian businesses—secondly, investing over \$8 billion on capital projects in Australia and, thirdly, returning \$1.9 billion in dividends to Australian based shareholders. In addition to the above, we spent many billions of dollars on goods and services and employment necessary to generate those profits. It should be noted also by the committee that over the last decade the industry returned 98 per cent of its cash flows to the Australian community through taxes and investment. This is before dividends to Australian shareholders.

The second point I said I wanted to cover today was that the RSPT was fundamentally flawed in design. If we look at how the petroleum resource rent tax was introduced in the late 1980s and compare it to the RSPT announcement, it is clear that there was no industry consultation on or

testing of the theory of the RSPT before it was announced by the government on 2 May 2010. This was despite our repeated efforts to engage with the government and Treasury prior to this time. BHP Billiton assessed this RSPT and concluded that it was poorly designed, did not meet any of the four principles of sound minerals taxation reform and would be very damaging to the future of the industry in Australia and, therefore, damaging to the future prosperity of all Australians if it were implemented.

The real world impact as opposed to the theoretical impact of the tax was not well understood by its designers. They were fatal flaws in design assumptions such as the value of loss refundability, the neutrality of the tax, what constituted a super profit and, most importantly, how it would actually impact resource development in Australia. The RSPT as proposed would have had a significant negative impact on the mining industry and service industries that support it and diminish one of the areas of the Australian economy that is now and forecast to be a competitive strength for this nation.

The RSPT would have reduced near-term investment in the industry and allowed other mineral rich countries to become substitutes for Australian products in meeting the forecast demand growth over the same period. It is a pragmatic commercial reality that tax policy, fiscal stability and broader regulatory practices matter in the global contest for investment finance in the resources industry. Australia faces fierce competition from other mineral rich countries. Australia has only 15 per cent of the world's iron ore resources, 13 per cent of gold and copper resources and six per cent of black coal resources. The RSPT would have had serious adverse consequences for the Australian minerals industry and its competitiveness on the world stage.

The third matter I would like to address is events after the announcement of the RSPT on 2 May. Following the announcement, we publicly acknowledged the government's right to review its taxation policies. Again, BHP Billiton does not object at all to sound principle-based minerals tax reform; however, it was simply quite clear that the RSPT did not meet those principles. With the public debate ongoing, we remained committed to constructively engage with the RSPT consultation panel led by Treasury and we made a presentation to them on 21 May 2010. However, as reported by many other participants at that time, the panel informed us that their scope was limited to transition only. They were focusing on the mechanics of moving to the RSPT, not on its design. Thereafter, BHP Billiton supported the Minerals Council of Australia in its efforts to raise public awareness of the industry's concerns about the RSPT. BHP Billiton also communicated its concerns to its stakeholders, including shareholders and employees, and urged the government to engage in genuine consultation.

BHP Billiton, along with Rio Tinto and Xstrata, were invited to meet with representatives of the federal government and Treasury in Canberra on 16 June 2010. In this meeting, for the first time the government indicated it was willing to consider some changes to the RSPT. We made the point that prospectivity was a threshold issue and that it had not been adequately considered by the government in its thinking. On the matter of competitiveness, we reiterated that 40 per cent was simply too high for any mineral and asked how this rate had been arrived at. The response to that question from the Treasury representative was that the 40 per cent was 'arbitrary', and it was apparent to us that international competitiveness was not a criterion for the choice of the tax's headline rate. The government also indicated to us that its focus was primarily on iron ore and coal and it also stated that any revisions to the tax proposal needed to preserve the \$3 billion and \$9 billion of tax revenue attributed to the RSPT in its first two years.

Prior to and during this meeting we asked that the government canvass views from as many affected companies as possible in order to get a broader view of the impact of the tax. BHP Billiton, Xstrata and Rio Tinto were invited to Canberra to attend a meeting on 29 June 2010 with representatives of government. At this meeting the government outlined the key elements of a different new resources tax, to be called the minerals resource rent tax or MRRT. Significantly, this MRRT allowed the starting base to be market value, thereby approximating the essential requirement of prospectivity. Other elements with which you are familiar in the announced RSPT were also present, such as immediate deductibility of expenditure, transfer ability of losses and the crediting of all royalties.

After further consideration of the rates applicable in other competing jurisdictions for coal and iron ore, the government's representatives settled on a proposal whereby the MRRT would have an effective rate of 22½ per cent. On 30 June 2010 representatives from each of BHP Billiton, Xstrata and Rio Tinto were invited by the government to go to Treasury's offices to be shown and to comment on certain input assumptions used by Treasury in its MRRT modelling. To allow each company to provide comments to Treasury, non-specific assumptions, without divulging commercially sensitive information proprietary to the other companies, we did separate sessions.

In our view, Treasury's assumptions shown to us did not reflect market conditions or likely industry activity. BHP Billiton expressed its views on assumptions pertaining to prices, volume, capital expenditure and foreign exchange. We do not know what use, if any, Treasury made of BHP Billiton's views or indeed of the views expressed by any other companies. We were never given a copy of Treasury's model nor did we ever review it.

At the conclusion of discussions on 1 July 2010, a carefully worded substantive document was finalised that captured the essential elements of the MRRT. Prior to its finalisation, I was involved in a line-by-line, word-by-word review of that document with Treasury representatives. At the government's suggestion, the document was titled a 'heads of agreement'. On 2 July 2010 the government announced the MRRT. BHP Billiton, Xstrata and Rio Tinto released a joint public statement acknowledging that the RSPT had been replaced by the MRRT and replicated in full the heads of agreement but for a paragraph on the policy transition group's role and its signatories.

The last matter we wish to address in this opening statement is a summary of where we see things now. Notwithstanding that the minerals resources industry in Australia already pays amongst the highest rates of tax globally, this government is pursuing the introduction of the MRRT. The manner in which the RSPT was proposed and amended has not been great for Australia's reputation, focusing as it did on near-term revenue rather than principle based reform. It has changed Australia's reputation as a stable fiscal environment in which to invest. Accordingly, close adherence to the MRRT design principles in the heads of agreement is essential. This MRRT may yield high near-term revenue but the full impact of having the highest taxing regime in the world on iron ore and coal will be experienced for decades to come.

Since the commencement of the current consultation process, we have been and remain committed to working constructively with the government's policy transition group to ensure the technical design of the MRRT is realised in line with the heads of agreement announced on 2 July 2010. Several issues have been raised through this process, including the crediting of all state royalties against the MRRT liability. We are concerned with the recent comments made by

some parties seeking to move away from all royalties being creditable. It was clear from the context of discussions we had with government and later with Treasury that ‘all’ meant all, current and future. The ‘all’ is essential for the MRRT to set a maximum rate of tax on the earnings of the iron ore and coal operations which, combined with the proposed company tax rate, is approximately 45 per cent. Any departure from this point would undermine a critical design feature of the MRRT.

We would also like to make an observation with regard to whether this tax favours one industry participant over another. We are of the strong view that this tax is neutral as to whether or not infrastructure is owned by the resource owner or the capital structure is employed by the resource owner. The liability for MRRT is unaltered. This was achieved through the heads of agreement term that arms-length principles would determine the value of all transactions pre and post the taxing point. This term was discussed in detail with representatives of the Treasury as part of a review of the draft heads of agreement prior to its being signed. The concept is essential to be adhered to in order to preserve the principles of resource based taxation and not penalise or favour ownership of infrastructure.

That concludes our opening statement.

**CHAIR**—Thank you very much for that very comprehensive statement. Would you be in a position to table a copy of that statement for the benefit of the committee?

**Mr Bond**—Yes.

**CHAIR**—That would be very much appreciated. Mr Bond and Mr Delaney, BHP Billiton was very critical of the lack of proper process—and you mentioned it again today—with no consultation or testing of the design features, of the original resource super profits tax, so-called. Do you think the process which led to the development of the MRRT and the expanded PRRT was a good public policy development process?

**Mr Bond**—I think it is fair to say that the whole experience and the formulation of the tax would not go down as world’s best practice on policy development. The only comment we would make is that the MRRT that resulted from the discussions had and the government’s thinking based on the feedback it got is a better tax than the RSPT.

**CHAIR**—A less bad tax from your point of view. I understand that BHP Billiton acted, as you must, in the best interests of your shareholders. But there is of course a different test for governments, which is to act in the public interest. The government sat down with essentially three taxpayers and designed a tax with broader application beyond those three taxpayers, behind closed doors, with all other stakeholders and the public at large excluded. It was not a very open and transparent process, was it?

**Mr Bond**—The conversations that we participated in were at the invitation of government. As taxpayers and industry participants, if invited to participate in those conversations, we naturally went. Prior to entering those discussions, during those discussions and after those discussions, we did urge the government to engage more broadly with other affected industry participants.

**CHAIR**—So you did urge the government to engage more broadly. You made some comments on some of the tax design features towards the end of your opening statement. Can you understand why the smaller and mid-tier mining companies feel a bit aggrieved and excluded from the process at a time when it matters most? They feel, and I have said to this committee, that your tax design needs were given preferential treatment by the government. Can you understand their point of view?

**Mr Bond**—I would have to take issue with your comment that it is our tax design. It is the government's tax design.

**CHAIR**—I am sorry; I accept that. But I feel that the government's tax design considered your tax design needs, because you had preferential access in terms of negotiations, and negotiation was exclusively with BHP Billiton, Rio Tinto and Xstrata. Have you got sympathy—and I think what you said earlier indicates that you might—for those smaller and mid-tier mining companies who feel aggrieved that they were excluded from the process at a time when it mattered most?

**Mr Bond**—I have two comments. We do not see the discussions we had as being negotiations. The government tabled its thinking and asked us for our thinking on it. This is a point that we have shared with industry participants. Our position on this tax, the previous tax, the RSPT, was entirely consistent with the four principles. We kept calibrating against the four principles. But to your point, we do understand, and if you were not party to those conversations you might feel aggrieved. The inference I cannot leave uncorrected is that it favours us over another industry participant. It does not.

**CHAIR**—But as you have mentioned, the transition group process is focusing exclusively on implementation issues and not on the fundamental design features of the tax.

**Mr Bond**—I think it is focusing on, for example, the more technical design features, the expansion and application.

**CHAIR**—You mentioned in your opening statement that the RSPT was flawed and that we needed sound tax principles and so on. You mentioned the minerals resource rent tax as a less bad tax. Do you think that the minerals resource rent tax, as proposed as a package, is a sound tax, or did you go into the discussion trying to get the least bad deal you possibly could?

**Mr Bond**—No, we did not go into it to gain any deal. We were very clear that government sets tax policy and parliament enacts it. We gave them our views on what they were proposing by reference to our four principles. What results is a tax that takes Australia's taxing of iron ore and coal to be the highest in the world. That has implications.

**CHAIR**—So the MRRT still leaves us with a situation where questions of international competitiveness in relation to this—you were nodding. *Hansard* cannot pick up a nod.

**Mr Bond**—No. My comment is that as a result of this tax, Australia will have the highest taxing regime for iron ore and coal globally.

**CHAIR**—That then impacts on one of your four fundamental—

**Mr Bond**—Correct. So our comment, when the MRRT was announced, was that it is far closer to the four principles, including competitiveness—

**CHAIR**—So it is less bad but it still will have a detrimental impact on our international competitiveness.

**Mr Bond**—When you have the highest rate of tax, by definition your competitiveness as a nation is less attractive than other countries.

**CHAIR**—So that is a yes. Can you talk us through the way the process happened in practice—the discussion, the negotiation, whatever you want to call it.

**Mr Bond**—Sure. We were invited to Canberra; we turned up. All discussions were had with all company representatives present. The government articulated verbally its thinking on a number of design issues and it asked for our comments. Our comments were invariably and consistently calibrated to those four principles, particularly prospectivity and competitiveness.

**CHAIR**—Who was in the room during the discussions?

**Mr Bond**—In the first discussions?

**CHAIR**—No, sorry. We are focusing on the minerals resource rent tax. I am focused on the period after Julia Gillard becomes Prime Minister and the announcement of MRRT discussions.

**Mr Bond**—During the discussions there was the Deputy Prime Minister and Treasurer, Mr Swan; the resources and energy minister, Mr Ferguson; their chiefs of staff, Mr Barrett and Ms Winters; and a senior advisor to the Prime Minister, Mr Bentley.

**CHAIR**—Were there any Treasury officials in the room at any stage of the process? Any public servants?

**Mr Bond**—Not in those particular discussions, but through the period of time we did meet with Treasury, as I articulated in the opening address.

**CHAIR**—Sure. But in the discussions you had with the Deputy Prime Minister and the Minister for Resources and Energy, there were no public servants present?

**Mr Bond**—Not in those ones, no.

**CHAIR**—Okay. So it was essentially the ministers and their private staff. At the end of the process, before the announcement that you signed the deal, who was involved at that time? You signed the heads of agreement. When I talk about a ‘deal’ I am talking about then heads of agreement. At the end of the process when you signed the heads of agreement, who was involved then?

**Mr Bond**—The secretaries were obviously involved in the signing of the document and the signatories. Is that the question you are asking?

**CHAIR**—Who was in the room when you signed the deal?

**Mr Bond**—The same people. There was no difference.

**CHAIR**—The Prime Minister was not in the original—

**Mr Bond**—The Prime Minister was not in the room, no.

**CHAIR**—But she was in the room to sign the heads of agreement?

**Mr Bond**—She signed the document, yes.

**CHAIR**—So was she in the room when that happened? She signed it at another location?

**Mr Bond**—It was in the same office. I think it was next door.

**CHAIR**—That she was not actually in the room with you?

**Mr Bond**—Correct.

**CHAIR**—So the three people that signed the heads of agreement for the government were the Prime Minister, the Deputy Prime Minister and the Minister for Resources and Energy?

**Mr Bond**—Yes.

**Mr Delaney**—Yes.

**CHAIR**—I presume you have a signed copy of the deal?

**Mr Bond**—I do.

**CHAIR**—You have got that with you, have you?

**Mr Bond**—I do.

**CHAIR**—Can you table a copy of the signed heads of agreement for the committee?

**Mr Bond**—I do not have a copy to table and would note that the committee already has a copy of the document in full, with the exception of a signatory pages, as provided by Treasury on 5 July.

**CHAIR**—We are quite keen as a committee, and have pursued this for some time, to receive it. We think it is in the public interest for the public at large to see a signed copy of the actual heads of agreement.

**Senator CAMERON**—Maybe, Chair, you can speak for yourself on these issues.

**CHAIR**—Senator Cameron, we could always have a private session and have a formal motion of the committee.

**Senator CAMERON**—We would be happy to do that.

**CHAIR**—Indeed.

**Senator CAMERON**—But don't speak for me.

**CHAIR**—I'm not speaking to you.

**Senator CAMERON**—Okay.

**CHAIR**—I would flag with you that the committee—the committee chair—is of the view that we should get a signed copy of the agreement. Would you have any objection to providing a signed copy of the agreement?

**Mr Bond**—The short answer is yes. We wish to respect expressed desire of the other signatories to not release it. We again note that with the exception of the signatures, the document in its entirety exists in the hands of the Senate estimates committee.

**CHAIR**—When you say you want to respect the wishes of the other signatories, you are talking about government ministers. That is correct, is it?

**Mr Bond**—Yes.

**CHAIR**—So BHP Billiton as such does not have an objection to the signed copy of the agreement being released?

**Mr Bond**—We do not.

**CHAIR**—Who has expressed to you on behalf of the other signatories for the government that they do not want the signed copy released?

**Mr Delaney**—The Prime Minister's office.

**CHAIR**—The Prime Minister's office has told you that they do not want to—

**Mr Delaney**—They believe it is appropriate not to release the heads of agreement with the signatures on it.

**CHAIR**—Have they explained why?

**Mr Delaney**—No, they just believe it is not appropriate to do so.

**CHAIR**—So they just made a statement—



**Mr Delaney**—With any agreement we would sign with any government we would need to respect the wishes of all of the signatories and whether or not they want this released in public—and there are six signatures on that heads of agreement.

**CHAIR**—Just to confirm again: BHP Billiton has no objection for the signatories being released.

**Mr Delaney**—We do not, but we can only speak for ourselves.

**CHAIR**—Sure, and I am only asking you to speak for yourself. Has anyone other than the Prime Minister's office expressed a view that the signatories should not be released?

**Mr Delaney**—Not that I am aware of.

**CHAIR**—So it is exclusively, as far as you are aware, the government that has asked for the signatories not to be released?

**Mr Delaney**—Yes, for the signatures not to be released.

**CHAIR**—This is the new era of openness and transparency! I am reflecting on the government, not on BHP Billiton.

**Mr Bond**—Okay.

**CHAIR**—I want to flag that the committee might in private session insist on an answer in relation to this. You would have been given the rules around the operation of Senate committees. We are in a position where we can make such a decision to insist on it. I guess, on notice, I urge BHP to reflect on that.

**Mr Delaney**—We understand that.

**CHAIR**—There is a well publicised dispute now, which you alluded to in your opening statement, between the government and principally BHP Billiton and Rio—and I expect Xstrata would be of a similar view, but I have not seen many public statements from them—about the mining tax and the treatment of state royalties. Are you certain that under the agreement you reached with the government on the MRRT all state royalties would be credited and refunded, including future increases?

**Mr Bond**—Yes, I am.

**CHAIR**—Why are you so certain?

**Mr Bond**—The discussions we had in relation to the proposed MRRT tabled by the government centred round prospectivity and competitiveness as threshold issues. The tax as designed is a top-up tax and by definition it sets the maximum rate of tax that would be levied on these two products. A top-up tax only operates when the royalties are credited in full. The point around prospectivity and competitiveness as it pertained to the royalties was paramount to that

discussion. This was not a wedge tax; this was a top-up tax and the government made it very clear that the royalties would be credited against the MRRT liability in full.

**CHAIR**—Including future increases?

**Mr Bond**—That goes to the point of prospectivity and competitiveness.

**CHAIR**—So how much discussion was there on this point in your discussions with the government?

**Mr Bond**—The discussions extended for many hours on a range of matters.

**CHAIR**—Sorry, on this matter: was it an incidental discussion?

**Mr Bond**—I do not believe it was incidental. The point was also discussed with the Treasury representatives when we reviewed the document referred to as the heads of agreement.

**CHAIR**—So you say—and you are very firm on this in your statement now—that, in the agreement you reached with the government on the MRRT, all state royalties would be credited and refunded, including future increases. Is that also the understanding of your CEO, Marius Kloppers?

**Mr Bond**—I believe it is, absolutely.

**CHAIR**—Would Marius Kloppers have signed the agreement on 2 July if there had not been a clear understanding at the conclusion of your discussions that all royalties would be credited, including future increases?

**Mr Bond**—I cannot speculate as to what our CEO would have done. All I can say is that the discussions were so clear on the design of the tax and its operation and the wording is unequivocally clear—‘all’ is all—that we were comfortable as a company to be able to so sign that document.

**CHAIR**—So you might have signed the document if this passage was not part of the heads of agreement?

**Mr Bond**—I do not think the issue of prospectivity and competitiveness would have been properly landed upon to a point whereby we would have said that the MRRT was a significant improvement on the RSPT. It was one of those threshold issues.

**CHAIR**—You talked about the international competitiveness issue as a threshold issue, yet international competitiveness is still undermined by the deal that you have signed, so you must have made a decision to compromise. Was this more of a threshold issue than the question of preserving international competitiveness?

**Mr Bond**—It is a subset of. It is an element that traverses both prospectivity so that things do not continually change and also competitiveness, the absolute rate of tax. Ergo the two most

important issues that we had with the previous tax and the MRRT initial concept as proposed by government meant that it was a discussed term.

**CHAIR**—The reason I am asking the question is that I want to get a sense as to how important this feature of the agreement was to BHP Billiton. Obviously, with the international competitiveness criteria there was some room to move. How important was your understanding that all state royalties, including future increases, would be credited?

**Mr Bond**—It is very important and it was also very clear. The mere absence of any other wording pertaining to the royalties, such wording that that did exist in relation to the RSPT, also evidences in our opinion that the points of discussion on the point have been fully reflected in the heads of agreement: all means all.

**CHAIR**—All means all indeed. When were you advised by the government that they had changed their mind or that there had been a change of interpretation?

**Mr Bond**—We were never advised by government; we just noted public comments made by certain members of parliament.

**CHAIR**—So there wasn't a discussion: 'We've got this passage in the heads of agreement which says all state and territory royalties will be creditable against the resources tax liability? We just want to clarify that you understand the government's thinking on this. We think it does not include all state royalties.'

**Mr Bond**—No, there was no discussion of that nature posed, and I will go back to my earlier comment that the whole concept and discussion pertaining to royalties was sufficiently clear to make the 'all' stand alone clearly as all.

**CHAIR**—Sure. That was during the discussions and when you signed the deal, but at some point in time something changed. From recollection, Minister Ferguson came to Perth for a Policy Transition Group meeting, and I think he made some statements there. You are aware of those statements. Was that the first time you heard there was a change—that is correct, is it?

**Mr Bond**—Yes.

**CHAIR**—And since then presumably you would have had discussions with the government about this point on whether all means all or whether all means some?

**Mr Bond**—I am not aware of any discussions.

**Mr Delaney**—We reinforced that point when we made our presentation to the Policy Transition Group—I do not recall the date but in our submission to the PTG.

**CHAIR**—You said in your opening statement that the Prime Minister's 2 July joint press release that was put out by the Prime Minister, the Deputy Prime Minister, the Treasurer and Minister Ferguson included the whole agreement with the exception of a paragraph on the Policy Transition Group. There is another key section missing in the Prime Minister's joint press release though, isn't there?

**Mr Bond**—To be clear: what we released was the entirety of the document with the exception of that last paragraph.

**CHAIR**—So that was your release.

**Mr Bond**—That was our release.

**CHAIR**—Are you aware that there is an important difference in the wording of the agreement—in the heads of agreement and in the attachment—which purports to reflect the heads of agreement to the Prime Minister, Deputy Prime Minister and Minister for Resources and Energy joint press release?

**Mr Bond**—We are aware of that difference. We would also direct the committee's attention to the fact that when the Policy Transition Group's terms of reference went out the full heads of agreement that included all royalties will be creditable was included.

**CHAIR**—Sure. When did you first notice a discrepancy? I would like to inform the discussion: in the 1½ page heads of agreement it states that 'All State and Territory royalties will be creditable against the resources tax liability,' yet in the Prime Minister's four-page release those very strategic 13 words disappeared when everything else was faithfully reproduced. Why do you think those 13 words may have disappeared from the press release?

**Mr Bond**—I have no idea.

**CHAIR**—Is that something the government has ever explained to you?

**Mr Bond**—No, they have not.

**CHAIR**—It would seem to indicate that the government between the time of signing the agreement and putting out the press release must have realised that there was an issue from the government's point of view.

**Mr Bond**—You can only speculate. I do not know. The fact of the matter is that those said 13 words did not appear in the announcement you are referring to.

**CHAIR**—Those 13 words did not appear in the announcement. From your point of view, you signed the heads of agreement in good faith with the government on 2 July. The same day the government puts out a press release—we are now in a phase leading into a federal election period. Wasn't it something that concerned you; that a key issue for you, which was a heads of agreement, was removed from the Prime Minister's press release?

**Mr Bond**—We took great comfort from the fact that, in the Policy Transition Group's terms of reference received by the government, it—

**CHAIR**—Which was much later, though.

**Mr Bond**—Only two weeks or so later, I believe.

**CHAIR**—We are talking about the time of the announcement.

**Mr Bond**—Sure, but all we can say is that the document we had, which was signed, had those words in it.

**CHAIR**—But nobody in the whole of Australia—nobody in the world—has seen the signed document. All we have is your word for the fact that there is a signed document. It is a secret signed document. We have the document but we have not seen that anybody has actually signed it.

**Senator CAMERON**—On a point of order: the witnesses have said there is a signed document. The witnesses have said that the document we have is exactly the same as the document except for the signatures. So I am not sure what the ‘secret’ signed document means unless there is some secrecy in terms of additional content that you are claiming. Is that what you are doing?

**CHAIR**—Thank you, Senator Cameron; there is no point of order. The signatures obviously are secret because they are not being publicly released. I do not understand the motivation.

**Senator CAMERON**—A secret signature.

**CHAIR**—I find this as funny as you do, Senator Cameron! I do not know why the government is trying to keep those signatures secret. You might want to take that up with the Prime Minister. I certainly do not understand the sensitivity around all of that. I go back to our issue at hand. Your view was that you did not put much focus on the press release, because you thought you had a deal, you thought you had a signed heads of agreement which, from your point of view, was very clear on the issue of state royalty credits.

**Mr Bond**—That is correct; we did not put any great emphasis on the press release. To us, the document as signed was the more deterministic document.

**CHAIR**—Where does this issue go from here?

**Mr Bond**—As I understand it, the issue continues to be considered by the Policy Transition Group and, beyond that, the parliament.

**CHAIR**—Sure, but the Policy Transition Group, as you have said, is looking at technical design and implementation issues. The Treasurer, the Prime Minister or Minister Ferguson at various times have all made comments that ‘all state royalties’ does not mean all state royalties from their point of view, that future increases are not to be included. The argument from their point of view is that increases in state royalties would undermine Commonwealth revenue. Ultimately this would have to be resolved at a government level, wouldn’t it, such as at the level of the Prime Minister, the Treasurer or minister Ferguson?

**Mr Bond**—Certainly in the discussions we had it was not said to be an issue of concern for the companies. The interplay between federal and state governments was said, as it is, to be a matter between the federal and state governments, not the companies.

**CHAIR**—When it is all said and done, if the governments walk away from the commitment in the heads of agreement that all state and territory royalties will be credited against the resources tax liability, what does that mean for the heads of agreement from the point of view of BHP Billiton?

**Mr Bond**—On the concern that we would have: after a long period of stability in the fiscal regime applicable to mineral resources in Australia, we had the RSPT experience. That caused a period of great uncertainty and destabilisation of investment. The MRRT, upon release, provided some degree of certainty. It is an increasing tax but it provided certainty. If we start having a sense that the tax design on such a fundamental point is going to alter from what has been documented in the heads of agreement, then what we are risking is a nation having further instability in the tax regime governing minerals—

**CHAIR**—I understand your perspective from a public interest point of view but I am asking about BHP Billiton specifically. You have signed a heads of agreement with the government. It includes a clause that the government is moving away from, it is fair to say. If, in the final analysis, when it is all said and done and the whole policy transitional process has been gone through, this clause will be implemented as the Prime Minister and so on are saying today and not the way you understand it to have been included in the agreement. What does that mean for BHP Billiton?

**Mr Bond**—To be clear, as we said at the outset, the government of the day sets tax policy and the parliament enacts it. All we can do is say that that document represented in full the entirety of the discussions and the intentions of the parties to those discussions at the said date. We did take comfort from the comments made by the Prime Minister prior to the election that her intention was to deliver that minerals resource tax in line with the document in its entirety—that was reiterated a number of times, pre and post the election. So we remain of the view that the intention and the quality of the MRRT will stand by reference to whether that term stands.

**CHAIR**—But, at the end of the day, you cannot enforce this heads of agreement in a court of law, can you?

**Mr Bond**—That is my point: government sets tax policy.

**CHAIR**—Are you then saying that, if the government just persists with the implementation of that, in the end you just accept it and move on?

**Mr Bond**—I do not know if the government is going to persist. I think there have been discussions about the policy transition group's opinion on the matter. I do not know; we will all get to see that. The government will legislate what it settles on. That document is not something that we can hold up to the government in any court.

**CHAIR**—Sure, but you started being quite strong about how important this was, but now you seem to be walking away from how important it is. I am trying to get a sense as to strongly you feel about this.

**Mr Bond**—Let me be clear: we feel very strongly about it. We feel that it was absolutely integral to the design of the MRRT. As I said, it is a top-up tax. The matter was discussed in full.

The whole issue of prospectivity and competitiveness centres on it. The whole issue of royalties was said by the government in our discussions to be something that they would handle and would not be something that was going to alter our liability under the MRRT—ergo, it is crystal clear in our minds and we do consider it to be a valid point. But I go back to the point about the government and the parliament: government sets tax policy and parliament enacts it.

**CHAIR**—You mentioned in your opening statement that the Treasury’s assumptions around the RSPT did not reflect market conditions and you provided information. Revenue estimates for the mining tax have continued to bounce around as underlying revenue assumptions kept being changed. We had the \$12 billion revenue estimate for the original RSPT and then it was \$10½ billion for the changed MRRT that included changes in commodity price assumptions. We were told that the original tax would have raised \$24 billion, but now with the Australian dollar exchange rate assumptions it is \$7.4 billion. Do you have confidence in the government’s mining tax revenue estimates and the underlying assumptions now being used for the MRRT?

**Mr Bond**—The short answer is that we do not know what underlying assumptions the Treasury has used and the projections of revenue are those of the Treasury. We do not have a comment on it.

**CHAIR**—Okay. You mentioned that you provided the government with information. You have already said that the original information used by government was wrong.

**Mr Bond**—No, we said the information that we saw was vastly different to that which we had on the same item. There was a difference pertaining to critical input assumptions and we simply articulated what our view was on those same assumptions.

**CHAIR**—When you had those discussions about your views, did you provide the government with market sensitive, commercial-in-confidence information from BHP Billiton?

**Mr Bond**—One point of clarification: we provided it to the Treasury. And, yes, the information that we did provide was market-sensitive, confidential information.

**CHAIR**—So you did not point them to information that was publicly available in order to inform their revised assumptions?

**Mr Bond**—In articulating what our view was on some assumptions, we certainly directed them to public sources that would give them a basis for having the view as to the approximate reasonableness of ours. For example when it comes to prices, we were able to point them to the forward curves for commodity prices and indeed exchange rates that were closer to our assumptions than theirs were.

**CHAIR**—Let me make this absolutely clear: the information you provided to the Treasury and/or the government was information that was otherwise publicly available but relied upon by BHP or was it very specific, very secret, commercial-in-confidence information tightly held within the senior management levels of BHP Billiton?

**Mr Bond**—It was certainly more the latter. The public information goes to inform our assumptions.

**CHAIR**—Was information of production volumes tightly held commercial-in-confidence data or was that publicly available data?

**Mr Bond**—The information as it pertains to volumes was very macro level; it was not specific. It was more in the nature of year-on-year change rather than bottom-up estimates. There was a difference in that rate of change period on period.

**CHAIR**—Much of your operation in Australia is in the Western Australian market—and I see you nod. You would be aware that the Western Australian government publish their commodity price and production volume assumptions in their budget papers. Do you have a problem with that?

**Mr Bond**—We do not have a view on it. What the government choose to do is their decision.

**CHAIR**—The Western Australian state government choose to publicly release those assumptions in their budget papers. Do you interact with the state government in Western Australia to help inform their thinking on commodity price assumptions moving forward?

**Mr Bond**—Not that I am aware of.

**CHAIR**—You might want to check that because I understand a survey in which all relevant mining companies participate is de-identified through the mines department in Western Australia and that then informs Treasury thinking. You might want to take that on notice—

**Mr Bond**—We will take that on notice.

**CHAIR**—and provide information in relation to it. Obviously, it is a matter of public record that the Western Australian state government publishes their commodity price assumptions. Leaving aside the information that you have provided to the federal government, would you be concerned if the federal government released their commodity price assumptions regarding the basis of this mining tax?

**Mr Bond**—We would have no view on what the government chooses to do in relation to its assumptions.

**CHAIR**—So your position in relation to the federal government is consistent with your position in relation to the state government in Western Australia, which is whatever the government chooses to do is what the government chooses to do.

**Mr Bond**—Correct. The only comment I would make for point of clarity is that the information we provided them was certainly commercial-in-confidence. We do not know how that played out in the assumptions that Treasury then used for the purposes of its modelling.

**CHAIR**—What you are saying is that, if Treasury accepted your commercially-sensitive forecast assumptions holus-bolus for their assumptions, you would be concerned about their being released?



**Mr Bond**—I think the Treasury's assumptions should always be viewed to be Treasury's assumptions. Provided no statement is given as to what our assumptions were, then our point of concern would be what we in confidence shared with Treasury becoming public.

**CHAIR**—This committee is not really interested in what you provided to Treasury. We understand the market-sensitive nature of that, but we are interested in the assumptions used by Treasury to estimate the mining tax revenue, because it has been bouncing around and clearly these assumptions are highly relevant to that. You have told us that you are not aware of the assumptions that the government used. Wouldn't it be in the public interest from the point of view of openness and transparency for everybody to be able to know what assumptions are being used by the government, separate from whatever information you might have provided?

**Mr Bond**—I do not have a view on that. That is your assumption.

**CHAIR**—I will conclude on this question before passing to Senator Cameron. I am not going to ask you how much tax you expect to pay because I understand that you are sensitive about that, and so I am not going to go there. What I want to get a sense of, though, are the proportions—not any dollar figures, not any commercially-sensitive information. How much of the MRRT revenue would come from iron ore and how much of it would come from coal production? Is that something you are able to share with us?

**Mr Bond**—Sure. There is likely to be more tax payable on earnings from our iron ore operations than our coal operations, and the simple fact of the matter is that the royalties paid in relation to coal are higher than for iron ore. As such, given I have described the MRRT as a top-up tax, it takes the maximum rate of tax to 45 per cent on the earnings at the mine. The deduction of a lower rate of royalty means that there will be a higher rate of tax topped up in relation to iron ore operations.

**CHAIR**—That is consistent with what the Treasury secretary, Ken Henry, has told the committee as well, but are you able to put a proportion on it for us? Have you modelled that for yourself? Again, I am not after dollar figures; I am after proportions. Is it 70-30? Is it 80-20?

**Mr Bond**—I do not have those proportions.

**CHAIR**—Is that something that you would be able to provide the committee on notice?

**Mr Bond**—I suspect we would not, because the tax liability is dependent upon what your production, earnings and prices are at a time in the future. By definition, it is a forward-looking statement and by securities law we do not make forward-looking statements.

**CHAIR**—You do not make forward-looking statements. You do not estimate what might happen?

**Mr Bond**—We are not permitted, as a result of securities law that governs us in a number of jurisdictions, to make forward-looking statements. Statements on future tax payments can be inferred to be a statement of future earnings, which we are not permitted to make.

**CHAIR**—In terms of your internal work, though, you would have made an assessment as to how the minerals resource rent tax is going to impact upon you and there are obviously figures floating around. The government has made an assessment as to how it is going to impact on the sector overall and it has come up with mining tax revenue estimates. Presumably, for the early stages of the proposed operation of the mining tax, you would have a sense. You already said that more would come from iron ore than from coal. You would have to have a sense, broadly, as to whether it is two-thirds to one-third or whether it is 75-25. I am not going to pin you on the exact proportion you give me, but I am just trying to get a bit of a high-level, broadbrush sense.

**Mr Bond**—I actually do not know the ratio that you are referring to, but it is fair to say that it will be more in relation to iron ore than coal.

**CHAIR**—It will be more in relation to iron ore than coal. It would be true to say that 96 or 97 per cent of iron ore production takes place in Western Australia, wouldn't it?

**Mr Bond**—Overwhelmingly so, yes.

**CHAIR**—So, if there is more tax on a resource of which 96 or 97 per cent is mined in Western Australia, most of the mining tax will be generated from projects in Western Australia, won't it?

**Mr Bond**—More will be, yes, but again I would say it depends on production, prices and the like prevailing at that time.

**CHAIR**—Do you expect production in Western Australia to scale back?

**Mr Bond**—No, but there is production growth in coal as well.

**CHAIR**—Sure, but as you already said, because of the proportionately higher state royalties, you are going to get larger credits, so your MRRT liability for coal is going to be lower. So your MRRT liability for iron ore is going to be higher. Since 96 or 97 per cent of iron ore production is in Western Australia, it stands to reason that most of the MRRT liability will come from Western Australia, where iron ore production takes place.

**Mr Bond**—Clearly, more will be yielded from the iron ore projects in Western Australia relative to other projects, yes.

**CHAIR**—Are you aware of analysis by the WA Treasury? They have made a conservative estimate that about 65 per cent of the mining tax revenue will be generated from projects in Western Australia.

**Mr Bond**—I am not aware of it, but the number does not surprise me.

**CHAIR**—The number does not surprise you, so you think that that is a reasonable estimate?

**Mr Bond**—As you have already said, more will come from iron ore than others and the number 65 per cent does not surprise me. Whether it is or is not the right number I do not have a view on, but the order of magnitude is not surprising.

**CHAIR**—It is in the ballpark?

**Mr Bond**—Yes.

**Senator CAMERON**—Mr Bond, a number of issues arise from your evidence. You say that you have your four principles that you are looking at. The government would have to have other principles in terms of its priorities, wouldn't it?

**Mr Bond**—As it pertains to tax reform? Yes.

**Senator CAMERON**—So maximising profitability and international competitiveness has to be lined up against the government being able to provide a whole range of services to the community, both mining communities and more broadly. Is that correct?

**Mr Bond**—The government sets tax policy. We have been clear on that.

**Senator CAMERON**—Yes, but you do understand what tax policy is about. Tax policy is about trying to provide the services, having sufficient funds to provide services.

**Senator WILLIAMS**—Adding interest.

**Mr Bond**—Tax policy is one half of the equation; budget and spending are the other half.

**Senator CAMERON**—When I was coming over here last night, I heard Senator Joyce talking about the triple bottom line, not in relation to this issue. Is BHP a company that has the triple bottom line approach?

**Mr Bond**—I actually do not know what you are referring to by the phrase 'triple bottom line'.

**Senator CAMERON**—You have never heard of the triple bottom line?

**Mr Bond**—No.

**Senator CAMERON**—Mr Delaney?

**Mr Delaney**—I think you are referring, Senator, to interests around economic returns, community contributions et cetera. I am not in a position to provide numbers because I do not have them readily available, but you will find in our annual report for the 2009-10 year what we regard as very significant community contributions that BHP Billiton make. Those numbers are generally in the ballpark of one per cent of the pretax profits.

**Senator CAMERON**—That is fine—what you say you pay. I am very perturbed—

**Mr Delaney**—We are very conscious of contribution to community et cetera. These four principles are principles that we have developed in order to assess, for our purposes, our views on particular tax proposals, and that is all that they are. They do not go beyond that.

**Senator CAMERON**—But that is not what I am asking. I was asking a senior officer of BHP involved in negotiating tax whether he knew what the triple bottom line was, and he said no. I am just flabbergasted that that is the case.

**Mr Delaney**—All I am saying to you is that we as a corporation—and bear in mind that what we are talking about in this hearing is a particular topic, but having said that—know that the company makes and you know that the company makes very substantial community contributions in a range of jurisdictions.

**Senator CAMERON**—Again, I am surprised that a senior officer who is involved in tax policy for BHP does not know what the triple bottom line is, but that is okay.

**CHAIR**—Senator Cameron, there is no need to reflect on the witness; just ask your questions.

**Senator CAMERON**—No, I am not reflecting; I am just saying I am surprised.

**CHAIR**—Just ask your questions.

**Senator CAMERON**—You do not need to defend the witness. I am sure he is capable of defending himself.

**CHAIR**—There are certain processes within Senate committees. We have certain standards that have to be maintained.

**Senator CAMERON**—I maintain them, so I do not need a lecture from you about maintaining standards.

**CHAIR**—Senator Cameron, I am chairing the committee. Please ask your questions.

**Senator CAMERON**—Mr Bond, the triple bottom line is sustainable economic, social and environment issues. That is well known, I would have thought. Do you accept that government have to deal with the environment, the social and the economic issues—that we have the responsibility to deal with all of these issues as a government?

**Mr Bond**—I do not have a view, Senator Cameron.

**Senator CAMERON**—You do not have a view?

**Mr Bond**—We certainly have—on the matters that you have now explained, the term that you are referring to—a view to those matters. If the government so chooses to do, agree. Yes, it is not unreasonable.

**Senator CAMERON**—It is not unreasonable. Don't you think it is absolutely essential that sustainability and social issues are important for governments?

**Mr Bond**—I do not have a view on government policy.

**Senator CAMERON**—Mr Delaney, you must have a view. You are the government relations—

**Mr Delaney**—I would just make a comment that government would choose its priorities across a range of considerations. I would just add to that that we on an annual basis publish in our annual report, in our sustainability report and in other documents—community reports—the contributions that we as a company make to what you have just defined as the triple bottom line.

**Senator CAMERON**—One of the issues the government has to deal with is a fair return to the community for its natural resources. Do you accept that, Mr Bond?

**Mr Bond**—I think we have made it very clear that the whole predication of a change in minerals taxation policy on the notion of fair return was a fallacy. I would welcome different statistics to those already provided by Treasury and government on the matter, but we would say that actual tax payments show that the industry is paying a high rate of tax.

**Senator CAMERON**—That is not what I am asking. I am asking in general terms: is it appropriate for the government to look for a fair return? You have already put on the record what you think is a fair return on what you are paying. I am saying: do you accept that the government has to look at the whole question of a fair return?

**Mr Bond**—I guess the government sets policy on a range of matters that would include a return. I just do not have a view on the word ‘fair’. What is fair is dependent upon the prism of belief you look through.

**Senator CAMERON**—This is just a general question. It is not rocket science. I am simply asking: isn’t it realistic for the government to get a fair return? I do not think there is any definition of ‘fair’. A fair return is a fair return.

**Mr Bond**—A fair return on what, sorry?

**Senator CAMERON**—A fair return on mineral resources owned by the Australian people.

**Mr Bond**—I really do not have a view. The concern I have is that I am aware of the discussions that have occurred on this topic between the state and federal governments and the views expressed by state governments that they are the owners of the resource under the Constitution.

**Senator CAMERON**—But you make value judgments all the time. You made value judgments about the RSPT. You cannot even make a simple value judgment as to whether the government is entitled to a fair return for its natural resources? I find that quite disturbing actually. BHP is not in a position to say whether it agrees that the government should get a fair return.

**Mr Bond**—I think you are twisting it. What I have said is that the government sets tax policy and that tax policy will include matters of the nature that you are referring to. But government sets tax policy.

**Senator CAMERON**—One of the issues you have raised is the issue of international competitiveness. You are arguing, I think, that international competitiveness is determined by the amount of tax that is paid. That is one of the issues, isn't it?

**Mr Bond**—It is more about the rate of tax.

**Senator CAMERON**—What discussions is BHP having internationally with governments about increasing the rate of tax for mineral exploitation?

**Mr Bond**—I am not across any of those discussions, if there are any. My involvement for the period specified in my opening address was in relation to the Australian situation.

**Senator CAMERON**—Don't you think that would be a relevant matter, because if governments around the world are not getting a fair or appropriate return from mining companies, in plural, and BHP in particular then saying that the tax in Australia is uncompetitive is not an appropriate way to look at it.

**Mr Bond**—You are implying by your question that countries are not getting a fair return.

**Senator CAMERON**—I am asking you whether countries have raised the issue with you.

**Mr Bond**—I am not aware of it if they have.

**Senator CAMERON**—Can you take that on notice?

**Mr Bond**—We can, yes.

**Senator CAMERON**—What discussions do you have with state governments in relation to royalties?

**Mr Bond**—The royalties are typically the product of an act and/or a state agreement governing the rights to develop the resource. So the discussions tend to be had at the inception of the agreement to allow our company to engage in that activity.

**Senator CAMERON**—But royalties do change, don't they?

**Mr Bond**—They do change, yes.

**Senator CAMERON**—I am asking you: what discussions do you have with state governments in relation to the level of royalties?

**Mr Bond**—I am not sure I understand. We have discussions, yes, but they are as and when one party seeks to amend the underlying agreement, typically.

**Senator CAMERON**—When was the last time the underlying agreement was amended in any state that affected BHP?

**Mr Bond**—I believe—and I stand subject to correction—that the most recent one was in Western Australia as it pertains to iron ore.

**Senator CAMERON**—What was that change?

**Mr Bond**—I think it has been well publicised, Senator, it was an agreement that resulted in a change in the rate of royalties paid on lump ore that was made. As a result of that and as part of that change in the agreement the assets governed by that agreement and the manner in which they could be used were also changed. In essence, the company was able to operate its assets governed by the state agreement differently to that at which it had been previously and the government had a higher rate of royalty resulting.

**Senator CAMERON**—So the government had a higher rate of royalty. Were there discussions with the state government prior to the announcement of the royalty increase?

**Mr Bond**—I was not party to them but I suspect there would have been, yes.

**Senator CAMERON**—There would have been?

**Mr Delaney**—Neither of us were involved in that.

**Senator CAMERON**—Who would have been involved?

**Mr Delaney**—Our colleagues in Perth in the iron ore business.

**Senator CAMERON**—You have lots of colleagues in Perth.

**Mr Delaney**—We do. It is a big operation.

**Senator CAMERON**—At what level?

**Mr Delaney**—In the leadership of BHP Billiton Iron Ore.

**Senator CAMERON**—Okay and who were they? What would their title have been? Who did it?

**Mr Delaney**—The president of BHP Billiton Iron Ore.

**Senator CAMERON**—And who is that?

**Mr Delaney**—Ian Ashby and the vice president for external affairs in iron ore, Ian Fletcher, and there may well have been others. That is not something that is in our role to comment on the detail because neither of us were involved in those activities at all.

**Senator CAMERON**—Okay. So you are not sure whether this was a negotiated increase or whether the government said we are going to increase—you do not know?

**Mr Delaney**—I could not comment. I have not been involved at all.

**Senator CAMERON**—Can you take on notice then to provide the committee with details of either the negotiations or the consultations, the dates when these discussions took place between BHP and the state government and whether these were consultations or negotiations.

**CHAIR**—I might send you a few copies of the *West Australian* newspaper which documented all of this over the 12-month period.

**Senator CAMERON**—I know the opposition relies on the *West Australian* and the *Australian* for all its lifeblood at question time, I do not need it thanks. I am happy here. Can that be done?

**Mr Bond**—We can take it on notice.

**Senator CAMERON**—When these negotiations or discussions took place was it before the RSPT was announced or after?

**Mr Bond**—Which discussions or negotiations?

**Senator CAMERON**—With the West Australian government on royalties.

**Mr Bond**—I actually do not know. As said by Mr Delaney we were not party to those discussions or that process, so I have no idea.

**Senator CAMERON**—I find it surprising that you would come here and make such a big issue of royalties and yet BHP at a senior level are talking to state government about royalties and you know nothing about it. You do not know any of the details, but you say it is a huge issue for the company.

**Mr Bond**—I think, as Senator Cormann has said, it was not something we were unaware of occurring but you are asking about the details and that is what I do not have to hand.

**Senator CAMERON**—We may have to seek those people involved in those negotiations.

**CHAIR**—We can certainly do that, Senator Cameron, but to be fair to the witnesses we were here to talk to them about the discussions with the federal government around the minerals resources rent tax. I do not think we can expect all officers of BHP to be aware—

**Senator CAMERON**—With the greatest respect, Chair, I think it is quite important what is happening with royalties when you talk about the taxation in the industry. I am asking about royalties and that is an important issue. Royalties are different in every state that you operate in aren't they?

**Mr Delaney**—Yes.

**Senator CAMERON**—Did you agree with the Minerals Council when they said that we should move from a royalties approach to a different approach?



**Mr Bond**—I think you are misrepresenting the totality of the Minerals Council's statement. What the Minerals Council said is that a profits based tax can be more efficient than a royalties based tax where, and I must emphasise the where because it is an important caveat which was not present in your question, its principles of tax reform were present which included prospectivity, competitiveness, resource based and differentiated.

**Senator CAMERON**—What are the locked-in investments from BHP in the near future in Australia?

**Mr Bond**—Could you please repeat the question.

**Senator CAMERON**—What investments have you committed to in terms of your iron ore and coal in Australia?

**Mr Bond**—I do not know that off the top of my head, but it is well articulated in our public disclosures that there are a number of iron ore projects and coal projects. The actual details are released quarterly in our production and development report.

**Senator CAMERON**—Could you take that on notice and advise us of that detail.

**Mr Bond**—Sure.

**Mr Delaney**—The secretariat might be able to get them from the website. They are all there on a quarterly basis. There are two. There is an exploration and development report and also a production report every quarter.

**Senator CAMERON**—But investment is still continuing?

**Mr Bond**—Yes.

**Senator CAMERON**—And significant investment?

**Mr Delaney**—It is what it is, whether you regard it as significant or otherwise. But it is substantial.

**Senator CAMERON**—What do you regard it as?

**Mr Delaney**—It is substantial.

**Senator CAMERON**—What is the difference between substantial and significant?

**Mr Delaney**—That is up to you.

**Senator CAMERON**—You changed the word; I am just asking. You say it is substantial. You have got no idea how much?

**Mr Delaney**—We do. It is all in our public documents.

**Senator CAMERON**—You do not have that here?

**Mr Delaney**—Not off the top of my head, and I would not want to give you inaccurate information.

**Senator CAMERON**—So investment is still continuing. Even though you said that the debate on the tax was damaging in terms of investment, investment is still continuing.

**Mr Bond**—The point we were making in the opening statement was that, in the period post the announcement of the RSPT and prior to the announcement of the MRRT, actually investment was very difficult for companies to proceed with. The share prices of resources companies fell. The ability to commit to large projects was made very difficult. You would note, and we could provide evidence, that there were a litany of projects that were unable to be proceeded with and that some projects were indeed cancelled. When the MRRT was documented, providing a less punitive rate of tax and providing, for reasons mentioned, more certainty, was a point that allowed investments to continue.

**Senator CAMERON**—So BHP cancelled projects, did it?

**Mr Bond**—That is not what I said.

**Senator CAMERON**—I am asking: did BHP cancel projects?

**Mr Bond**—BHP was not able to proceed with the approval of some projects.

**Senator CAMERON**—Do you think those approvals will proceed now?

**Mr Bond**—We have an approvals process that determines whether or not a particular project is proceeded with or not.

**Senator CAMERON**—Have any approvals taken place since the debate on the tax started?

**Mr Bond**—I will take that on notice too. I think it would be just a matter of the facts by reference to what we have announced to the market as to its timing. But it is my recollection that none were announced in the period from 2 May to 2 July.

**Senator CAMERON**—From when?

**Mr Bond**—From 2 May to 2 July.

**Senator CAMERON**—What about 29 September, the Mount Arthur project in New South Wales?

**Mr Bond**—That, sir, is after 2 July.

**Senator CAMERON**—Yes. So investments continue? Seven hundred and eighty-four million dollars in Mount Arthur; is that correct?

**Mr Bond**—As I said, after 2 July, when there was certainty provided, there was a less punitive regime proposed by the government. It did allow us and others in the industry to continue investment plans.

**Senator CAMERON**—So under the MRRT, even though you were still concerned about it, even though you are still arguing points, you could still make a \$784 million investment in the Mount Arthur coal project; is that correct?

**Mr Bond**—The MRRT design and rate would have been factored into that decision, and what you see there is a project that is able to withstand the higher rate of taxation that would arise under the MRRT.

**Senator CAMERON**—You said that you have had \$8 billion in capital projects in Australia. Those are in Western Australia, Queensland and New South Wales?

**Mr Bond**—It is all over the states. We operate in pretty much every state in Australia.

**Senator CAMERON**—In terms of your argument about fiscal stability in tax policy, how can a government make changes to a tax on a mining company without you arguing that it is a real problem for the industry? Professor Garnaut made submissions. Do you know Professor Garnaut?

**Mr Bond**—Yes.

**Senator CAMERON**—Have you read his submission?

**Mr Bond**—I have not.

**Senator CAMERON**—Professor Garnaut talks about the rent seeking by companies. Are you saying that there is no rent seeking on behalf of BHP in this debate?

**Mr Bond**—I would like to address the first question you just raised: how does a government do this? I think a better example of how previous governments in Australia have done this is evidenced by the petroleum resource rent tax. It was a clear policy of the Labor Party prior to its election in March 1983. It released a series of discussion papers dated December 1983. There were three public discussion papers issued. The process of engagement with state and industry was extensive. On the public record the then Treasurer and then resources minister stated that, as a result of that consultation, their original design concepts were significantly altered and improved upon—their wording. I would also say that the PRRT when introduced was greenfields. It was prospective in application, so it provided certainty. It did not change the rules of the game on past investments. The rate that it set was competitive with other oil and gas projects globally. You asked for an example of how you do it. You do it like that that is in line with the four principles of minerals tax reform.

**Senator CAMERON**—In terms of BHP's ongoing involvement in Australia, the investment you are making is investment that is going to produce significant returns for BHP, otherwise that investment would not be made; is that correct?

**Mr Bond**—We invest capital having regard to the rate of return on that project relative to other options we have in our portfolio globally and across different commodities. So, to answer your question, if a project is invested in it is because it provides an appropriate return on shareholder funds in making that investment.

**Senator CAMERON**—And you are going to continue engaging with government in the meantime on this tax issue through the PTG?

**Mr Bond**—We have made submissions to the PTG and, to the extent that we can, we will continue to engage with the PTG.

**Senator WILLIAMS**—You said BHP has paid 42 per cent tax over how many years?

**Mr Bond**—Seven years.

**Senator WILLIAMS**—The current payment is at 46 per cent?

**Mr Bond**—In the financial year 2010 we paid 46 per cent.

**Senator WILLIAMS**—That was cash payments?

**Mr Bond**—As a percentage of profits.

**Senator WILLIAMS**—I imagine a lot of superannuation funds would have shares in BHP. Do you have any idea what percentage of your share base is held by Australian superannuation funds?

**Mr Bond**—That I do not know. It is not something I have at the top of my mind.

**Mr Delaney**—We can get that.

**Senator WILLIAMS**—I would appreciate it if you could take that on notice.

**Mr Delaney**—I would prefer to get an accurate figure.

**Senator WILLIAMS**—The point I make is that the more tax you pay, the less dividends you pay to your shareholders; correct?

**Mr Bond**—Correct.

**Senator WILLIAMS**—The government is running the line that this is about collecting the money and increasing superannuation, but in actual fact if superannuation funds are invested in your company and you are paying them less money then that would be a reduction in the superannuation funds that are invested with you.

**Mr Bond**—When the RSPT was announced, there was a fall in the share price and it did impact on people's superannuation funds, yes.

**Senator WILLIAMS**—But returning to the dividends: if you have superannuation funds as shareholders in your companies and you pay less dividends to your shareholders, that is less money returned to those superannuation funds?

**Mr Bond**—Correct. I would make the point that our cash flows are, in the first instance, deployed to investing in projects that provide an appropriate rate of return for shareholders. If it does not come in the form of dividends, it would hopefully be in the form of capital growth. Then it goes to preserving the balance sheet and the third flow of funds is to our dividends.

**Senator WILLIAMS**—I just want to take you to the Argus-Ferguson policy transition group. Who makes up the group? There is Minister Ferguson and Don Argus. Are you aware of who else is on that group?

**Mr Delaney**—There is Mr Klingner—

**Senator WILLIAMS**—Where is he from?

**Mr Delaney**—I understand he is the chairman of ERA. There is Ms Smyth, who I understand is the chair of a small uranium exploration company—

**Senator WILLIAMS**—So the industry is represented well.

**Mr Delaney**—There is Mr Jordan from KPMG, who I understand is also involved with—I forget the technical term—the government's tax consultation panel or committee. They are industry people. There is also a secretariat of officials from Treasury, RET—Resources, Energy and Tourism—and there may well be officials from other organisations that I am not aware of.

**Senator WILLIAMS**—When are they due to report?

**Mr Delaney**—On the 17th, or thereabouts. That is as far as we know it. Obviously, it is up to them.

**Senator WILLIAMS**—After the report, will people like Mr Argus still have input? I suppose you would not be able to answer that as far as the development of policy goes. I will take you to another issue: the point of taxation of your resources. Is there any indication when that point is going to be? You cannot take FOB. It has been freighted, it may have been crushed, it may have been washed, it has gone through processing; have you had any indication of the point in the mining when you will be taxed?

**Mr Bond**—I think it was clear in the document referred to as the heads of agreement that the taxing point would be as close to the resource possible. That was even a principle. That principle has been reiterated in discussions with the PTG, I believe, but I stand to be corrected that the PTG has provided clarity on this very point—that it would be as close to the resource as possible.

**Senator WILLIAMS**—So someone in the company will have to calculate the value of that resource at that point.

**Mr Bond**—Correct.

**Senator WILLIAMS**—At the moment they would not do that. They calculate the sales and the FOB.

**Mr Bond**—Correct.

**Senator WILLIAMS**—So each company will have to run a whole separate line of book work to calculate the tax.

**Mr Bond**—There are two elements. Firstly, there would need to be a calculation of the imputed price at resource. That would be the FOB price that you alluded to, rolled back to cover various elements that the price seeks to compensate, such as port handling, rail infrastructure and the like, to get an imputed price at resource. That is how that would be done. As to your second question, yes, there is another level of compliance, another level of record-keeping, required to comply with this tax.

**Senator WILLIAMS**—And, of course, another level of cost for business. Will you find it difficult to get the value of the ore when it comes out the ground? Will it be difficult to assess its value prior to crushing, washing, processing, transporting, loading onto the ship et cetera?

**Mr Bond**—I think that will be a matter that the PTG will define and work through. There is a concept of taking the FOB price, netting back for costs associated with rail, port and infrastructure, and prior to it being loaded, from which you would deduct or share the costs of extracting the ore. That is how you would get to that calculation.

**Senator WILLIAMS**—Mr Bond, did you say in your opening statement that, as a result of the proposed tax, Australia would have the highest rate of tax on coal and iron ore in the world?

**Mr Bond**—I did.

**Senator WILLIAMS**—No other country has a higher rate?

**Mr Bond**—Not that we are aware of. Not in so far as it is a major competing supplier of that material.

**Senator WILLIAMS**—What percentage of the world's resources do we have in coal and iron ore? I think you mentioned that.

**Mr Bond**—Yes, I think I did mention that. I have a document here. I am not sure that the committee has it, but we have spare copies for the committee, too.

**Senator WILLIAMS**—Thank you.

**Mr Bond**—I draw your attention to page 19. There you will see our share of resources. To answer your question, we have 15 per cent of iron ore and six per cent of black coal.

**Senator WILLIAMS**—Correct me if I am wrong here: under the Australian Constitution section 51, the resources belong to the states. Is it constitutional for the federal government to tax those resources? Are there going to be questions about that given that the states collect the royalties and the states own the resources in the ground? Is there a constitutional question here about the federal government taxing those resources of the states?

**Mr Bond**—I think it has been well documented that people have raised that question, yes.

**Senator WILLIAMS**—Do you have an opinion on it?

**Mr Bond**—We do not have an opinion on it.

**Senator WILLIAMS**—Okay.

**CHAIR**—In relation to profit based taxes versus royalties, the MRRT as proposed does not actually replace state royalties, even if the government goes along with your view that all state royalties should be credited—does it?

**Mr Bond**—No. You will pay company tax, you will pay royalties and you will pay this MRRT top-up tax.

**CHAIR**—For projects that are not subject to MRRT because they are in a start-up phase or because they are in a declining phase, even BHP—as profitable as it is—will have to pay state royalties which will ultimately not be refunded. Is that correct?

**Mr Bond**—Under the MRRT, you will continue to pay royalties—absolutely—and thereafter all the royalty will do is be a credit to an MRRT liability that exists.

**CHAIR**—According to the heads of agreement, the royalty credits are not transferable between projects even for BHP—are they? Losses are transferable but royalty credits are not.

**Mr Bond**—Not royalty credits.

**CHAIR**—To the extent that a profits based tax which replaces state royalties would remove distortions in investment production decisions, the MRRT does not do that—does it?

**Mr Bond**—To the extent that you hold that theory that royalties do so distort, your point is valid.

**CHAIR**—I am in support of state royalty regimes. I am not coming at it from a point of view of being critical of state royalties. Like a lot of the arguments that have been put, profit based taxes replacing state royalties are much better according to some. Just to confirm again: the MRRT does not replace state royalties and you will continue to have to pay state royalties. There is a question about the potential increases and in some circumstances you will not actually be able to get your state royalty payments credited.

**Mr Bond**—Correct. I would also make the point that companies tax is a profits based tax.

**CHAIR**—Which is why the Treasury has described the MRRT as a top-up tax rather than a replacement tax. You mention that you are a globally operating company—of course, that is well-known—and that you are a multiproject, multicommodity company. How does the highest tax globally on iron ore and coal impact on your internal investment decisions vis-a-vis commodities other than iron ore and coal—uranium, copper or other commodities?

**Mr Bond**—All other things being equal, when iron ore and coal in Australia is going to have a higher rate of tax the returns from investing in those is lower than it would have been without the tax. So, all other things being equal, other commodities can become relatively more attractive and for the same commodity other countries can become relatively more attractive.

**CHAIR**—So it will have a distorting effect in terms of your investment decisions?

**Mr Bond**—Pre and post the MRRT, yes, it would alter it.

**CHAIR**—Thank you.

**Senator CAMERON**—You indicated that the debate had had an influence on superannuation returns. I note that the superannuation industry said there had been no effect on returns. Could you take on notice what the effect is from your perspective on superannuation returns in the short, medium and long term given that the industry says that the proposition you are putting forward is not correct?

**Mr Bond**—All we did was comment on and observe the change in the share market prices in the period immediately after the announcement of the RSPT. What alters the value of investments in minerals resources companies in Australia flows to superannuation funds. There may be a basis differential of interpretation that I do not understand.

**Senator CAMERON**—You do not understand?

**Mr Bond**—No, I do not understand how a—

**Senator CAMERON**—Are you absolutely certain that there has been any significant effect on superannuation returns in Australia as a result of this debate?

**Mr Bond**—The comment made was that, in the period after the announcement of the RSPT, the share prices of companies in the Australian resources sector fell; ergo, the value of superannuation funds' investments in those shares fell.

**CHAIR**—But there was another element to this, though. Moving forward, once the tax is in—

**Senator WILLIAMS**—It is not in yet.

**CHAIR**—and, as Senator Williams observes, it is not in yet—it will have an impact on your capacity to pay dividends, which in turn will have an impact on what the value of those investments held in superannuation funds could otherwise have been.



**Mr Bond**—The focus seems to be on superannuation funds. Sure, there will be less funds to be invested in projects and fewer dividends that will flow to all shareholders.

**Senator CAMERON**—Have you disclosed this to your shareholders and to the ASX, if it is such a big issue?

**Mr Bond**—You said it is a big issue; I am—

**Senator CAMERON**—But you are saying—

**CHAIR**—You will have to leave it there. You have put a question on notice.

**Senator CAMERON**—I want to know whether you have disclosed the matter of returns arising from the MRRT to your shareholders and to the ASX.

**CHAIR**—Thank you very much, Mr Bond and Mr Delaney. The committee very much appreciates your contribution to the inquiry. The committee will deliberate on whether it will insist on a copy of the signed agreement from BHP and notes that BHP itself does not have an objection to that signed agreement being released. We will ask similar questions of the other companies involved in that heads of agreement and advise you of our decision.

[10.36 am]

**LYONS, Mr Ross, General Manager, Taxation, Rio Tinto**

**O'NEILL, Mr Mark, Chief Adviser, Government Relations, Rio Tinto**

**CHAIR**—The committee now welcomes representatives of Rio Tinto to the hearing. Would you like to make an opening statement?

**Mr O'Neill**—Yes. Thank you for the opportunity. We will do our best to answer your questions. Rio Tinto is a leading international mining group combining Rio Tinto PLC, which is a London listed public company headquartered in the UK, and Rio Tinto Ltd, which is listed on the Australian Stock Exchange with Australian headquarters in Melbourne. The group finds, mines and processes the earth's mineral resources—metals and minerals that are essential for making thousands of everyday products that meet society's needs and contribute to improved living standards. Rio Tinto focuses on the development of first-class ore bodies into large, long life and efficient operations capable of sustaining competitive advantage through business cycles. Wherever we operate, health and safety is our first priority. Group businesses also put sustainable development at the heart of their operations. They work as closely as possible with host communities and countries, respecting their laws and customs. For Rio Tinto, it is important that environmental effects of its activities are kept to a minimum and that local communities benefit as much as possible.

Rio Tinto is a major investor and a major taxpayer in Australia. Our tax rate has been independently verified at over 35 per cent over the past decade. Over this period, we reinvested \$1 billion more in Australia than we made in after-tax profits from our Australian operations. That amounts to an investment of \$38.4 billion, in addition to paying \$20.3 billion in taxes and royalties. Since July this year we have announced a further \$7.2 billion of new investment in Australian projects. In addition to this capital investment, we also provide work for tens of thousands of employees, contractors and small businesses at more than 30 sites and communities across Australia. I particularly want to note and record that Rio Tinto is the largest private sector employer of Indigenous people in Australia.

Naturally, we work for the benefit of our shareholders, many thousands of whom are Australians, but we also work hard to make the benefits of mining reach people in every corner of the country. We are and always have been prepared to pay our fair share of tax to ensure that this happens. Much has been made of the so-called mining boom, and there is no doubt that Australia is very well placed to benefit from the rapid industrialisation taking place in places like China and India. But Australia is not automatically in this enviable position simply because we happen to have mineral resources. The fact is that Australia does not have a monopoly on deposits of iron ore, coal or anything else. Australia is in the position it finds itself in today because decades ago a number of visionary individuals and companies like Rio Tinto had the foresight and the appetite for risk to invest in mining projects in places like the Pilbara.

Over the decades there have been good times in the mining industry and there have also been very tough times. The companies that took the early risks and were bold enough and efficient

enough to survive through the bad times went on to become successful, even global players. These companies reinvested back into the further expansion of Australia's production capacity. They captured market share for Australia in the face of intense global competition. Today Australia is in a position to benefit from the rapid growth in demand for commodities because we have had this history of investment. We now have the infrastructure platforms, the technical know-how and experience needed to expand rapidly. The efficiency of our operations, itself a product of sustained investment in technology and innovation, allows us to compete on behalf of Australia against the most efficient and lowest cost producers in other resource rich countries and regions. So Australia's golden opportunity is not simply a fortunate accident of geology; it has been decades in the making and is built on the shoulders of companies like Rio Tinto.

If there has been a single factor that we might regard as the historical key to unlocking this wealth, it has been Australia's long and hard-earned reputation as a stable, predictable and safe place to invest. The development for the Australian mining industry has relied on our ability to attract very large amounts of foreign capital and the transparency and predictability of our taxation regime has been crucial in this regard. There is no doubt that the announcement of the RSPT came as a shock not just to the mining companies but also to foreign investors. What they saw was a proposal that raised the overall tax rates applying to Australian mining investments to internationally uncompetitive levels and that applied retrospectively to investments that had already been made.

There are a number of important mineral resources taxation principles that Rio Tinto and the mining industry generally has advanced. These are: that a tax must be prospective, internationally competitive, differentiated, mineral resource based, and equitable and efficient. In our view the original RSPT failed all five tests. The history of what led up to this and what then ensued has been fairly well documented and I do not want to unduly dwell on those events here. What I will say is that the heads of agreement entered into by the then government and the three mining companies in our view begins the process of rebuilding Australia's reputation as a predictable place to invest.

On this basis Rio Tinto has recently made a number of significant investment decisions. These reflect our expectation that the terms of the heads of agreement entered into with the government will be honoured in full. This includes the crediting of all state and territory royalties including future increases. This is absolutely vital to ensure that the overall rate of taxation remains internationally competitive over the long haul. It also includes the use of market value to mitigate the effect of retrospective application.

We are happy to answer questions. I should caution that we are not in a position to discuss matters that might be market sensitive, particularly matters that relate to internal price or volume forecasts, nor will we be able to speculate on how much tax we might expect to pay at some time in the future. Other than those sorts of matters, we will try to be as helpful to the committee as we can.

**CHAIR**—Thank you, Mr O'Neill. I know you were here to observe the evidence provided by BHP. I think that we did not at any point stray into any market-sensitive matters, and I do not expect that we would in our discussions with Rio Tinto either. I will start off. Is there a chance that you might be able to table a copy of your opening statement for the benefit of the committee?

**Mr O'Neill**—I will hand that up forthwith.

**CHAIR**—Thank you; that is tabled and accepted. Mr O'Neill, Rio Tinto along with others—and we have touched on it slightly today—was very critical of the lack of proper process which led to the announcement of the original mining tax, the resource super profits tax. Do you think the process which led to the development of the minerals resource rent tax was a good public policy development process?

**Mr O'Neill**—I am happy to say that it was not ideal. We view the entire process, if you like, from the report of the Henry review in late 2009 through to the announcement of the MRRT, as being effectively part of an overall process that was entered into. It is no secret that we do not regard much of that as being an ideal public policy process.

**CHAIR**—What would have been an ideal public policy development process?

**Mr O'Neill**—I think Mr Bond from BHP in evidence just given reflected on the process that was undertaken in relation to the petroleum resource rent tax in the 80s where you had a long period of policy being flagged, a long period of public consultation. You had numerous discussion papers and, presumably, hundreds if not thousands of meetings leading to that particular reform. That is a reasonable yardstick I think of the sort of public policy process that we would have preferred had led to where we are today.

**CHAIR**—So the process in the eighties around the PRRT was very open and very transparent over a long period of time, and there was an election in between, whereas this process was not transparent at all, was it?

**Mr O'Neill**—Not in our view.

**CHAIR**—I understand—the same as I understand that BHP Billiton, and Rio Tinto of course, acts in the best interests of its shareholders as it must and, invited to discussions with the government, of course you go. But do you understand why some of your competitors in the smaller and mid-tier mining companies feel aggrieved that they were excluded from that part of that process when it mattered, when you were inside the room being able to discuss these issues with the government?

**Mr O'Neill**—I can understand why they may feel that way. From our point of view, we were invited to join discussions with the government, and of course when you are a large public company and you get that sort of invitation that is precisely what you do.

**CHAIR**—Sure. To close this line of questioning, though, it would have been preferable, including for you, if the process had been more open and more inclusive, involving all other stakeholders and being more transparent for the public at large.

**Mr O'Neill**—That would have been a more ideal process, yes.

**CHAIR**—Do you think that the minerals resource rent tax as proposed is a sound tax or do you just think it is less bad than the original RSPT?

**Mr O'Neill**—I guess I would answer that in a couple of ways. Firstly, yes, certainly some of the features of the original RSPT that we found very challenging have been addressed in the MRRT design. In particular, the issue of the overall rate, which originally we regarded as very punitive, and the issue of retrospectivity have been dealt with. It is not, however, a tax without flaws. I do not believe it necessarily simplifies the taxation regime for resources, and that would probably have been something that we would have hoped could happen. Having said that, we—

**CHAIR**—Being generous does not simplify. It would be fair to say that it makes it more complex, doesn't it?

**Mr O'Neill**—It certainly does make it more complex. We now have three separate systems of resource taxation—state and territory royalties, corporate tax and the minerals resource rent tax. So in that respect, yes, it makes it more complicated. Having said that, we did in the end make a judgment that this was a regime that we could live with and we signed the heads of agreement accordingly.

**CHAIR**—When you say you made a judgment that this was a regime you could live with, it was the least bad that you could achieve in the discussions with the government?

**Mr O'Neill**—Under the circumstances of the process in the months leading up to it, we were satisfied that we had a vastly improved outcome—and, I might say, an improved outcome not just for the so-called big three miners but for smaller miners as well.

**CHAIR**—It was remiss of me not to ask BHP this question. The evidence earlier was that the 40 per cent headline rate for the RSPT was, as somebody said in the discussion, chosen 'arbitrarily'. Was there any scientific basis for the 30 per cent, or the effective rate of 22.5 per cent after the extraction allowance has been taken into account?

**Mr O'Neill**—I do not know. I have a background in science, so I would probably be a bit hypercritical of the idea that a process like this could be scientific. But I do believe that the final rate of 22.5 per cent, including the extraction allowance, was struck in reference to the rate of taxation in other countries and competing jurisdictions. I believe that the government did accept that the original proposal was uncompetitive. The new rate, which is around 45 per cent—

**CHAIR**—Effective?

**Mr O'Neill**—The effective overall tax rate of 45 per cent places us right near the top of the league table, if not at the top, in terms of the rate of tax on resources in other jurisdictions.

**CHAIR**—BHP suggests that it was the highest.

**Mr O'Neill**—It may well be, Senator; it has been some time since I looked at the league table.

**CHAIR**—Would you be able to assist us, Mr Lyons?

**Mr Lyons**—I cannot be sure if it is the highest but it is certainly in the top end of the rates.

**CHAIR**—In terms of having a detrimental impact on our international competitiveness, it still does though it is less dramatic than what it was under the RSPT proposal.

**Mr O'Neill**—The RSPT proposal was not just uncompetitive; it was profoundly uncompetitive, frankly. The proposed rate under the MRRT pulls us back to the top of the table but at least not with a huge amount of daylight between us and the second.

**CHAIR**—Were either of you in the room when the heads of agreement was signed?

**Mr O'Neill**—Yes.

**CHAIR**—I am not going to go through all these questions again, because I think we have established the other people in the room. Who signed the heads of agreement on behalf of Rio Tinto?

**Mr O'Neill**—Mr David Peever, managing director Rio Tinto Australia.

**CHAIR**—Presumably all parties to the signed agreement have a copy of that agreement.

**Mr O'Neill**—Indeed.

**CHAIR**—And you would have a copy of that signed agreement.

**Mr O'Neill**—We have a signed copy.

**CHAIR**—Would you object to a copy of that signed agreement being released?

**Mr O'Neill**—Senator, I would place on record that Rio Tinto does not have an objection; however, before we would unilaterally table that we would need to ensure that other parties were comfortable with that. In looking through previous transcripts, I believe that question has also been addressed to the government via Dr Henry and was taken on notice, so I am not sure what the outcome of that was.

**CHAIR**—It has not been provided.

**Mr O'Neill**—In that respect, we would be happy to table it. We would need to establish the position of the other signatories.

**CHAIR**—Sure. BHP Billiton has told us this morning that they are happy for it to be provided. Rio Tinto is happy for it to be provided. We will be asking the same question of Xstrata when they appear early next week. Has anyone raised with you that they are not happy for the signed heads of agreement to be released?

**Mr O'Neill**—Not directly, but equally we have not sought a view on that.

**CHAIR**—I will just flag with you, as I have with BHP Billiton, that the committee will deliberate on our intention to get access to a signed copy of the agreement. We find it very hard

to understand the government's reluctance to have a signed copy of the heads of agreement in public circulation. Given the process was not very open and transparent, I think—and I will recommend to the committee—that the committee should think in my view that it is in the public interest for a signed copy to be released.

Let us go to the issue of state royalties. There is, as we have also discussed with BHP Billiton, a well-publicised dispute between the government and the big three companies that were part of the discussion around the treatment of state royalty credits under the MRRT. Are you certain that under the agreement you reached with the government on the MRRT that all state royalties would be credited and refunded, including future increases?

**Mr O'Neill**—Our view is that the words in the heads of agreement accurately reflect the understanding that we reached in the discussions at least from our point of view. We signed that agreement on the basis that that issue had been resolved. I know that there has been some doubt cast on that, but our very clear view is that those words were carefully chosen and they are an important part of the agreement.

**CHAIR**—You say that it is your view that the words in the agreement accurately reflect this. So are you certain that under the agreement that you reached with the government all state royalties, including future increases, would be credited? Are you certain that, under the agreement that you reached with the government, that would be case?

**Mr O'Neill**—From our point of view, the answer would be yes.

**CHAIR**—What makes you so certain? Was there a specific focus on this point in the discussions that led you to the conclusion that there was a clear understanding? When this particular passage in the heads of agreement was put together was there a particular discussion around the specific wording?

**Mr O'Neill**—I cannot recall clearly the exact moment at which this was agreed, other than to say that all of the wording in the heads of agreement was extensively discussed—every clause. That included this particular section.

**CHAIR**—So every clause was extensively discussed, including this particular section. If this particular section had not been part of the heads of agreement would Rio Tinto have signed up to the agreement?

**Mr O'Neill**—That is hypothetical. But it was a key point for us, so I believe that it would have created significant difficulty for us in signing.

**CHAIR**—The reason I am asking the question is that I want to get a sense as to how strongly Rio Tinto feels about it. So it would have created significant difficulty for you in signing the agreement/

**Mr O'Neill**—Yes.

**CHAIR**—When were you advised by the government that they had changed their mind or had changed the way they chose to interpret that particular section of the agreement?

**Mr O'Neill**—I believe the first we heard of that was comments made by the resources minister at a meeting of the Policy Transition Group in Brisbane on—

**Mr Lyons**—I was the Perth meeting. I attended the Perth meeting.

**CHAIR**—Do you vaguely remember the date of that meeting? Was it before or after the federal election?

**Mr Lyons**—It was well after the federal election.

**CHAIR**—So on 2 July you signed a heads of agreement which included the very specific clause 'all state and territory royalties will be credited against the resources tax liability', and it was only after the election, not in a direct communication but through incidental comments of the Policy Transition Group, that you became aware that there is an issue?

**Mr Lyons**—That is correct.

**Mr O'Neill**—Yes.

**CHAIR**—Have you had any discussions with the government about this since?

**Mr O'Neill**—We have indicated to the government that we have a very clear view and recollection of what the cause meant, yes. We have also said as much publicly.

**CHAIR**—Have the two-way discussions with the government been exclusively through the media, or has the government given you direct feedback as to what is going to happen to this moving forward?

**Mr O'Neill**—I believe that the government's direct feedback to us has been that it has heard our point of view on this particular issue. That is not to say that the issue has been resolved, but we continue to talk to the government about how that might occur.

**CHAIR**—The heads of agreement is actually very concise. It is a page and a half. As you say, it says that 'all state and territory royalties will be credited against the resources tax liability'. It is a very clear statement, on the face of it. Are you aware that those 13 very strategic words were removed from the Prime Minister's four-page press release releasing the announcement, where there is an attachment which purports to reflect the heads of agreement reached with BHP Billiton, Rio and Xstrata?

**Mr O'Neill**—I am aware of it now. I do not believe we were at the time. I would point out that our own press release that was issued at the time of the announcement did include a full copy—every word of the heads of agreement other than the signatures. I would point out also that the terms of reference for the policy transition group did include those words.

**CHAIR**—It actually included a slightly different form of words. It is not quite exactly the way it was in the heads of agreement in the policy transition group. I think there are now three versions floating around. There is the heads of agreement version, the Prime Minister's press release version and then there is the policy transition group version.



**Mr O'Neill**—There is only one version that is signed by all parties, and as far as we are concerned that is the bible.

**CHAIR**—Within the policy transition group I think it talks about ‘at least up to’ so it has this implied suggestion that it could be more than what was agreed at time.

**Mr O'Neill**—Yes.

**Mr Lyons**—The policy transition group says ‘all state and territory royalties will be credited against the resources tax liability but not transferable or refundable’, Senator.

**CHAIR**—Okay. You might have been looking at a different section. I had this discussion with Dr Henry a few weeks ago. I had a different quote. Thank you very much. Why would the government faithfully reproduce the whole agreement with the exception of those 13 words—

**Senator CAMERON**—Point of order, Chair. You cannot ask Mr O'Neill or Mr Lyons to comment on what the government's thinking is. You cannot do it.

**CHAIR**—They are not public servants, Senator Cameron. The witness may choose to answer the question whatever way they wish.

**Mr O'Neill**—I obviously cannot comment on what they might have been thinking. All I can do is refer back to, as I say, the bible, which is the heads of agreement and what may be in a press release that we certainly did not see prior to it being issued. We just cannot give a view.

**CHAIR**—I understand your answer totally, but it seems to be intriguing that an issue that is an issue of controversy and dispute now between the three big companies and the Prime Minister, the Deputy Prime Minister and Minister Ferguson as to what it meant was altered from the heads of agreement, which you say is your bible, and the press release that goes out to supposedly reflect that bible. Has the government ever provided an explanation to you as to why there is a discrepancy?

**Mr O'Neill**—We have not sought an explanation and none has been provided. I only fairly recently became aware of that. I suspect that one explanation could be sloppy subediting by a media person, but I just do not know.

**CHAIR**—It seems to be very strategic sloppy editing by a person though, doesn't it?

**Mr O'Neill**—It would certainly be preferable if the words of the heads of agreement had been repeated in that press release but, as I say, our focus really is on the heads of agreement. As far as we are concerned, that is the document that matters.

**CHAIR**—Mr O'Neill, I think you are being very generous. Given that everything else has been faithfully reproduced, except for the 13 key words that are now a matter of dispute, it would seem to be very strategically targeted sloppiness, would it not?

**Mr O’Neill**—I do not think I can comment. The terms of reference for the PTG, which does repeat the words, as my colleague Ross has just pointed out, seem to have reverted to the original wording. So I guess that is encouraging.

**CHAIR**—So you reached an agreement in good faith. You think that the words are very clear. If when all is said and done things are not as clear as what you felt they were, and given the importance that you have attached to it, what would be Rio Tinto’s attitude to the minerals resource rent tax if Minister Ferguson’s statements stand that future increases will not be credited?

**Mr O’Neill**—All I can really say in response to that is that we are confident that the agreement will be honoured in full. In the event that it is not, then we would cross that bridge when we come to it. It is a hypothetical.

**CHAIR**—The thing is you say you are confident. I understand that you would be hopeful and that you would expect that the government would stick to its word, but your confidence is completely inconsistent with statements made by the Prime Minister, the Treasurer and the Minister for Resources and Energy. They have all said that to credit in future increases would be to undermine the revenue for the Commonwealth and that that is not part of the deal from where they stand today. What do you base your confidence on that this is going to be resolved to your satisfaction?

**Mr O’Neill**—I think we have an agreement and hopefully that will be honoured.

**CHAIR**—So you are being hopeful now? You are not confident anymore?

**Mr O’Neill**—I am hopeful and confident that this issue will be settled. We are continuing to consult with the government through the PTG. We have made those points very strongly in that process. Clearly, there is some difference in people’s recollections of what might have been agreed; but we think the wording is clear, and so we are very confident that the government will respect that.

**CHAIR**—This heads of agreement between the three most senior representatives of the government and the three big mining companies can hardly be enforced in court, can it?

**Mr O’Neill**—That is right. It is a heads of agreement. It does not have legal force. That is correct; it is a statement of fact.

**CHAIR**—That is right. I thought it was a statement of fact. So, in the end, post election your leverage is going to be quite limited to enforce what you thought was a very clear statement by the government before the election.

**Mr O’Neill**—Correct. But, as I say, I feel confident that this will be resolved and that—

**CHAIR**—I wish I shared your confidence, Mr O’Neill. I turn now to the revenue estimates. You would have heard this line of questioning to BHP Billiton, who appeared before the committee just before you. The revenue estimates have bounced around because various

assumptions were changed. You would be well aware of that; it has been one of public record. Do you have confidence in the government's mining tax revenue estimates today?

**Mr O'Neill**—Again, I remind you of my statements at the beginning that we are not prepared to talk about our own revenue—our own price and volume assumptions and exchange rate assumptions, for that matter, from which revenue estimates are derived.

**CHAIR**—I am not asking you about your assumptions.

**Mr O'Neill**—No. But in reflecting on the accuracy or otherwise of the government's forecast, I guess it becomes difficult to give a definitive view without perhaps betraying our view on those issues.

**Mr Lyons**—It is always difficult as well because the government publishes revenue estimates on all sorts of taxes, and we cannot really work out whether the government is correct or otherwise in terms of the estimates.

**CHAIR**—Sure. But this is a new tax, and clearly it is tax which is going to be sensitive to changes in commodity prices, production volumes, exchange rates and so on. The government in Western Australia, for example, which has a large revenue base that is equally sensitive to changes in these factors, publish their assumptions in their budget papers. So I do not think it is an inappropriate matter for inquiry in testing whether the government is choosing credible or appropriate assumptions and whether the revenue estimates are sound. I understand the sensitivities from your point of view in terms of your own data. When your discussions started with the government, they would have shared their commodity price assumptions with you in relation to the resource super profits tax.

**Mr O'Neill**—We had the view, and we expressed this view to the government, that the original revenue assumptions that accompanied the RSPT were a considerable underestimate. We did at various times during the discussions leading up to the MRRT express a view about those matters. Whether or not the government, in making its own projections, took account of the views that we might have expressed, we cannot be sure.

**CHAIR**—That is in relation to the government's assumptions around the MRRT revenue, but did the government share with you their assumptions around the RSPT revenue?

**Mr Lyons**—No.

**CHAIR**—So how are we able to come to the view that the government had it wrong or that they underestimated the revenue?

**Mr O'Neill**—On RSPT?

**CHAIR**—Yes.

**Mr O'Neill**—We did our own analysis. We came to the view that it was an underestimate. I think I can say that, in relation to the MRRT estimates, when we develop our own projections, there is always a range which goes from, obviously, high to low. I think we would be of the view

that the government's projections—the ones that it has released—do fall within the range of possibility.

**CHAIR**—Sure. The government have not shared with you, though, their actual commodity price and other assumptions as the basis of their revenue estimates. You do not have that information?

**Mr O'Neill**—No.

**CHAIR**—Have you provided the government with confidential data and market-sensitive data on your commodity price assumptions moving forward?

**Mr O'Neill**—There would have been a number of discussions, which were obviously in-confidence discussions, where we may have provided a view on issues that we would regard as commercial-in-confidence. We did not hand over data that would go to our own price assumptions, but we may well have discussed issues.

**CHAIR**—I will just place on record that I will ask the same question of BHP Billiton on notice. It was remiss of me not to ask it at the time. I have difficulty in accepting that any of the companies would have provided market-sensitive information to the government. The suggestion then is that you would have provided information to the government that you did not provide to the market.

**Mr O'Neill**—I do not believe that we would have provided information to the government that we were required to provide to the market and haven't.

**CHAIR**—You say that your commodity price assumptions are market sensitive. So by giving the government access to market-sensitive information, they have information not available to others. Would you have provided the government with market-sensitive information not available to others or would you have pointed them to publicly available information?

**Mr O'Neill**—We may at times have done both. We would certainly have pointed them towards publicly available information. But we are talking about commodity price forecasts, volume forecasts, exchange rate forecasts several years into the future.

**CHAIR**—Sure.

**Mr O'Neill**—So that would not be the sort of information that we would generally be discussing publicly.

**CHAIR**—How widely would your commodity price forecasts be shared within Rio Tinto? Are they tightly held across a small group or is there a broad group of senior executives that are aware of them?

**Mr O'Neill**—They are tightly held.

**CHAIR**—They are tightly held because of their market sensitivity?

**Mr Lyons**—Yes.

**CHAIR**—There are, presumably, reasons for keeping that information tightly held. By handing over this sort of information to the government, would that not put you at risk?

**Mr Lyons**—We did not hand any—

**Mr O'Neill**—We did not hand over—

**CHAIR**—You did not hand in market sensitive—

**Mr O'Neill**—We did not hand anything over, but we had discussions.

**CHAIR**—You had a verbal discussion around what your thinking was. You did not hand them a spreadsheet with your commodity price forecasts moving forward?

**Mr Lyons**—No.

**Mr O'Neill**—No.

**CHAIR**—From what you are saying to me, the government would have made a judgment on what you told them verbally, but there is not actually a piece of paper that changed hands?

**Mr O'Neill**—No.

**CHAIR**—Other than information that you might have pointed them to that was publicly available?

**Mr O'Neill**—Or where we have suggested to them, based on our view, that a better number may be as follows.

**CHAIR**—That is a rather informal way of discussing these sorts of things, isn't it?

**Mr Lyons**—It had to be because it is market sensitive information.

**CHAIR**—Presumably, any other company in the same situation as you are in would be in the same position: they would have to be very careful about how they handle market sensitive information in their discussions with government, wouldn't they?

**Mr Lyons**—Yes.

**CHAIR**—Do you have any difficulties with the state government in Western Australia publishing their commodity price assumptions as the basis of their budget?

**Mr O'Neill**—No.

**CHAIR**—Are you involved in a process with the state government in Western Australia which informs their understanding of what general broad market conditions and expectations around commodity price production volumes and the like are?

**Mr Lyons**—I think our iron ore group in WA is, but again I do not think we are providing forecast information. I think we are providing—

**CHAIR**—Of course not, and I would not expect you to. You point them to your understanding of publicly available information, and that fits into a process where the government comes up with an assumption. That is right, isn't it?

**Mr Lyons**—The government comes up with its own numbers. We have no ownership of their numbers.

**CHAIR**—That is broadly consistent with what happened at the federal level, isn't it?

**Mr Lyons**—No. The process in the WA government is a process where they go—

**CHAIR**—It is an official process rather than a discussion with, say, the Prime Minister, the Deputy Prime Minister or the Treasurer. It is an established process through the public service; I understand that.

**Mr Lyons**—It is slightly different, I think, because the process with the WA government is around point in time, public information. As I said, in the process with the federal government we would have given indicative comments about the future but not market sensitive information that was handed to them in writing.

**CHAIR**—So the government is not able to rely on commercial-in-confidence data provided by Rio Tinto in writing of the assumptions that it has come up with or estimates made of tax revenue?

**Mr Lyons**—I do not know. That is the government.

**Mr O'Neill**—Correct. We are not providing material that we would regard as commercial in confidence or market sensitive in writing. We may have in discussion.

**CHAIR**—Can you clarify that, perhaps, on notice?

**Mr O'Neill**—I think it would involve the trawling through of people's recollections.

**CHAIR**—This is a key issue and I will tell you why. The government has refused to share commodity price assumptions with the public. Your position has argued that those price assumptions are critically important to scrutinise the effect of the tax on the budget, the economy and so on. The government is saying the reason they cannot release that information is that companies like yours have provided commercial-in-confidence data to the government. You have said that you have not provided any commercial-in-confidence data in writing but that you may have provided some information in discussions. If you have not provided information in discussions and there is no information in writing, then the government has got no reason not to

release that information, in particular given that they are the government's assumptions and not your assumptions. That point is quite important, so I would urge you to take that on notice and give it some thought.

**Mr O'Neill**—We will take it on notice.

**CHAIR**—How much of your operation in Rio Tinto is iron ore and how much is other resources?

**Mr Lyons**—I do not know what the percentages are.

**Mr O'Neill**—I do not know the percentages. Iron ore is a very significant part of our revenue, yes. The exact percentage we would have to come back to you with.

**CHAIR**—More than half? Less than half?

**Mr Lyons**—More than half.

**CHAIR**—Are you involved in coal?

**Mr O'Neill**—Yes.

**CHAIR**—I will ask you the same question as I asked BHP. I am not asking about your tax liabilities or about specific dollar figures but about proportions. What is your expectation of how your MRRT liability on iron ore projects is going to compare proportionately with your MRRT liability on coal projects?

**Mr O'Neill**—It will certainly be greater on iron ore; we know that. We would need to come back to you on precise percentages, provided that that was not too difficult.

**Mr Lyons**—We could probably go to the answer that BHP gave. The 65-35 number you were talking to BHP about is not unreasonable.

**CHAIR**—If you would take it on notice and give us your view of the percentages between iron ore and coal, that would be appreciated. I understand that you say 65/35 is reasonable, but 96 or 97 per cent of Australian iron ore production is in WA, of course, so it is fair to say that most of the tax from the MRRT would be generated by projects in Western Australia.

**Mr O'Neill**—I think that is a reasonable assumption.

**Senator CAMERON**—Mr O'Neill, consistent with BHP, you have argued the points about competitiveness in terms of tax. Isn't tax only one aspect of international competitiveness?

**Mr O'Neill**—It is indeed. There are other key elements, including labour costs and input costs of all sorts, but tax is a very important issue.

**Senator CAMERON**—What about skills?

**Mr O'Neill**—Skills are another important issue.

**Senator CAMERON**—Logistics?

**Mr O'Neill**—Logistics are crucial.

**Senator CAMERON**—The quality of the ore and the coal?

**Mr O'Neill**—Correct.

**Senator CAMERON**—The available infrastructure?

**Mr O'Neill**—Indeed.

**Senator CAMERON**—So tax is one aspect of a very complex mix. Are there other areas that I may have missed?

**Mr O'Neill**—That sounds like a reasonable list, off the top of my head, but, of course, because tax does impact on a significant proportion of your so-called revenue and your after-cost earnings, it is a very, very major issue. It is a key determinant, and I have to say that, in some of those other areas that we have outlined, Australia is not necessarily at the forefront of competitiveness, so tax becomes one of those things that you look at. Energy costs might be another one, and so on. It is a complex equation, but I can assure you that tax is a critical issue.

**Senator CAMERON**—You indicated to me before the hearing commenced that you understand the triple bottom line and that Rio Tinto have been engaged in the triple bottom line. Do you then accept that government has to look at the social aspects of mining in terms of its impact on the government's capacity to provide resources generally?

**Mr O'Neill**—I absolutely accept that, yes.

**Senator CAMERON**—Are you aware of the recent report by, I think, the University of Newcastle on some of the social problems associated with mining activities in regional areas?

**Mr O'Neill**—I am not aware of that particular report, no.

**Senator CAMERON**—I do not have the details, but I read at the weekend that a report suggests that the effects of mining on some regional communities around the country are quite huge—for instance, health issues, alcoholism and violence. Are they issues that you are aware of as part of your triple bottom line approach?

**Mr O'Neill**—I think we take a great interest in issues within all of the communities that we operate in. I would have to say that negative social outcomes such as you describe are also a feature of many Australian regional communities where there is an absence of mining. So I would be interested in any data that indicates that mining communities have a particular problem in any of those respects, and we would take that very seriously.



**Senator CAMERON**—I am sure I can get the details of that report—I do not have all the details now. If we provide you a copy of the report could you inform us on notice of the implications for government in terms of costs associated with the mining industry? I will do the same for BHP.

**Mr O'Neill**—Sure, happy to.

**Senator CAMERON**—There are costs; it is not all just one way where you go in and mine, hand money over to government and everything is fine. It is more complex than that, isn't it?

**Mr O'Neill**—Indeed. We have community agreements and agreements with Indigenous groups right across Australia. For example, at Argyle, the Argyle agreement which we have with the Indigenous community in that region is regarded as the model for Australia. In fact, internationally, it is regarded as a model of best practice for engagement with Indigenous communities.

**Senator CAMERON**—I thought Twiggy Forrest told us he was the best.

**Mr O'Neill**—I will not comment on that, but I would say with—

**Senator CAMERON**—He did not say that he was the best, but he made much of the engagement with the Aboriginal community.

**Mr O'Neill**—Rio Tinto has been doing this for many years. I think I did mention in my opening remarks that we are the largest private sector employer of Indigenous Australians. We are extremely proud of that and we are working very hard to improve that, and that goes right back to training, community support, community development and so on.

**Senator CAMERON**—It was a long time coming, wasn't it?

**Mr O'Neill**—I think it is fair to say that, over many decades, not just the mining industry but all industries that have operated in this country have had a less than glorious record. But in recent decades and, in particular, over the last 20 or so years, I think huge strides have been made in that area. I am very proud to say that Rio Tinto has been at the forefront of that, and I think that is actually quite widely recognised.

**Senator CAMERON**—I am not diminishing what you have done. I was in Weipa around that time, which could have been a decade ago, and it was not best practice then, was it?

**Mr O'Neill**—The same could be said, for example, of the Gove operations prior to Rio Tinto taking them over.

**Senator CAMERON**—Yes.

**Mr O'Neill**—I think you will see fairly soon that very significant progress has been made there. We are very aware of that. We take it extremely seriously. It does go to our licence to operate, and we do try to foster very positive community relations.

**Senator CAMERON**—To some extent that is the micro response on the triple bottom line, but there is a macro element as well and that macro element, I suppose, is the government being able to manage what is being described as Dutch disease or two-speed economies or patchwork economies. It costs money to handle that, doesn't it?

**Mr O'Neill**—Sure. Whenever economies go through a major structural shift and whenever there is a dramatic change in the terms of trade, you are going to have those issues arising. Australia is very fortunate in that the strength of the mining industry ultimately meant that we emerged from the GFC much faster than many comparable economies.

**CHAIR**—And a strong economy going into it.

**Mr O'Neill**—So there is certainly an upside to the strength of mining in this country.

**Senator CAMERON**—The MRRT as proposed is trying to deal with part of this patchwork economy by providing a reduction in company tax to help productivity in the private sector. Is that a legitimate and reasonable approach?

**Mr O'Neill**—We would maintain that corporate tax receipts from the mining industry in the past decade have gone through the roof. They will significantly boost Commonwealth revenues and appear set to do so over the next few years as well. The argument about what is the appropriate level of taxation in particular industries will continue, but we are focusing on our overall effective tax rate and, as a consequence of the MRRT, as we have said before, we are very near the top globally.

That is a significant contribution. We do not have any problem with reductions in company tax for Australian companies, including small and medium enterprises, obviously. Whether or not that should be funded by increasing the tax take in another sector is a long, philosophical argument. Rio Tinto accepts the right of government to make tax policy and clearly government has a responsibility to the broad Australia economy, not just for individual sectors.

**Senator CAMERON**—You have indicated that your tax income has gone 'through the roof'?

**Mr O'Neill**—I think they are the words I used.

**Senator CAMERON**—Is that commensurate with profitability?

**Mr O'Neill**—Absolutely in line with it.

**Senator CAMERON**—Through the roof?

**Mr O'Neill**—No—profitability is very good. When profitability increases, that is really good news for government revenue—

**Senator CAMERON**—Let us be clear on this.

**Mr O'Neill**—That is good news all round.

**Senator CAMERON**—I am just trying to clarify this point. You say that tax has gone ‘through the roof’, and when we come to profitability you are saying it has not gone through the roof. You are not using the same description.

**Mr O’Neill**—Profitability obviously increases as the prices you receive from your products outstrip the rise in your costs. Profitability has improved on average over the past decade, but, as a consequence of that, tax payments have also increased in line with that. You could say that the more profitable the companies are the better news it is for taxpayers automatically.

**Senator CAMERON**—It could be even better news if you moved from an inefficient royalties approach to a profits based tax, couldn’t it, as the Minerals Council indicated was an approach they supported?

**Mr O’Neill**—We are not opposed to profits based taxes. We have made that point. What we are focused on is the effective rate of taxation. That is the critical thing to us rather than whether or not it is a profits based tax or a royalty arrangement.

**Senator CAMERON**—I read somewhere—in fact, it might be in one of the briefing documents for this committee—that we have something like 80 years of iron ore availability. That is, recoverable iron ore.

**Mr Lyons**—Are we only talking about Australia?

**Senator CAMERON**—Yes.

**Mr Lyons**—That may well be right.

**Senator CAMERON**—So you would not argue that that is roughly where it is at. I think it was 70 years. Children will be born this year and they could still be healthy and living a very good life in Australia, but there would be no iron ore to mine in 70 years. Is that correct?

**Mr O’Neill**—I think there is a difference between proven reserves and possible reserves. I do not think we know what the last number is at this point. A lot of Australia is yet to be explored. The term ‘recoverable reserves’ relates to technology that is available at the time, and you can mine lower grade ore as time moves on. But, of course, it is a finite resource. I accept that proposition.

**Senator CAMERON**—So government has to make sure that it plans for when the finite resource is exhausted, doesn’t it?

**Mr O’Neill**—I would except that that is something that would need to be taken into account. As I said, it is very difficult to determine exactly when that will be and, of course, it also depends on the demand for the product over a very long period of time. We know that there is a very healthy market for iron ore now as we are seeing the historic move of people out of poverty taking place in various parts of the world, like China and India. What kind of demand for iron ore there will be in 30, 40 or 50 years time is difficult to say. This could well be the window of opportunity for us to maximise the value of those resources. That opportunity may not be there in 30 or 40 years time. It may not be there well before the iron ore physically runs out.

**Senator CAMERON**—On that point, if you want to maximise the opportunity for the resources, is it not legitimate for the government then to maximise its opportunity for a tax return to build for the future?

**Mr O'Neill**—I think that that is absolutely a valid point that you make. As we said and as the industry said over several months, that is all very good and that is a perfectly legitimate objective of government, as long as you do not actually kill the goose that laid the golden egg on the way through. There are judgments to be made about that. I would accept your general proposition that it is a valid outcome for government.

**Senator CAMERON**—Australia is not the only government looking at trying to maximise its returns. Rio Tinto would be engaged in discussions with the governments of Chile and elsewhere.

**Mr O'Neill**—I have no doubt that we would be. I am not aware of those discussions. I am aware however that a number of governments around the world have countenanced the possibility of reducing taxes to attract more investment. So I think both things are happening. It is hard to say what the balance of those things are.

**Senator CAMERON**—That is the sort of short-term thing that we are trying to move away from here, though, is it not? Just reducing taxes to get investment in can be counterproductive, can it not?

**Mr O'Neill**—The government recently announced a reduction in the company tax. So I would imagine that the connection between taxation and investment and profitability is recognised. As we said, there are judgments to be made about the effective rates. Of course, if they are too high, you stifle investment and if they are too low then governments may not get an adequate return and no-one would want that. These things are always finely balanced.

The important thing from our point of view—and this was, I think, critical through what we regard as an inadequate policy process through to the announcement of the RSPT—is that people listen to the points of view of stakeholders. We listen very carefully to government and respect the government's mandate and priorities. We would hope that, as a major taxpayer and as a major income earner for Australia, our views would also be listened to and respected. That is really what we have ever sought through the tax reform process.

**Senator CAMERON**—Do you think that the PTG process that is being undertaken now is a process that is respecting your views? Are you getting your views held in that process?

**Mr O'Neill**—I believe so. We have had very good engagement with the PTG and the secretariat of the PTG. That is not to say that all the details that will emerge with the PTG reports will be as we would want them to be, but we cannot—

**CHAIR**—But you are on the inside of the main discussions.

**Mr O'Neill**—We cannot complain about the process.

**Senator CAMERON**—In relation to royalties, I think you were here when BHP gave evidence in relation to the Western Australian government. Did you also have discussions with the Western Australian government on royalties?

**Mr O'Neill**—We have had an ongoing discussion with the Western Australian government about royalties for about 30 years. The most recent discussions with the WA government about royalties that I am aware of were in relation to the concessional royalty that applied to those early investors in the Pilbara, like Rio Tinto and BHP, where the government was very keen that the concessional royalty be moved to the standard royalty rate. That was a discussion that went on for a considerable length of time and in the end was agreed. I think that was announced in June actually.

**CHAIR**—Can you be more specific? When you say ‘considerable period of time’, is that like 12 months?

**Mr Lyons**—It was the previous Carpenter government and the current Barnett government.

**CHAIR**—So it went over a number of years?

**Mr Lyons**—Yes.

**Senator CAMERON**—Who led those discussions for Rio Tinto?

**Mr O'Neill**—They went on for a very long time, so it was probably a change in the cast of characters, but clearly Sam Walsh runs our iron ore business, and Sam and/or his nominees would at various times have been involved in discussions with the WA government about royalties.

**Senator CAMERON**—At what level was that engagement with the WA government?

**Mr O'Neill**—I am just not aware.

**Senator CAMERON**—Can you take that on notice?

**Mr O'Neill**—Sure.

**Senator CAMERON**—You may have to also take this on notice. Did the discussions in relation to the royalties in Western Australia involve the proposed MRRT?

**Mr O'Neill**—I do not believe so, but I am just not aware. I would have to check. I do not believe that we had any discussions with the WA government about the MRRT.

**Senator CAMERON**—What about the RSPT?

**Mr O'Neill**—I am not aware of any discussions with respect to that either.

**Senator CAMERON**—Can you take it on notice? In case there have been discussions I would like to be aware. Rio Tinto have an international department, have you?

**Mr O'Neill**—We have operations around the world. We are divided according to different product groups. For example, we have the iron ore product group and its global headquarters is in Perth. We have the energy product group and its global headquarters is in Brisbane. We have other product groups headquartered in different parts of the world, often reflecting the most logical location for those headquarters to be. We do not have, if you like, a department of foreign affairs, but we do have people within each of those product groups who are very familiar with the operations.

**Senator CAMERON**—Do you have operations in Africa?

**Mr O'Neill**—We do.

**Senator CAMERON**—Whereabouts?

**Mr O'Neill**—Namibia, South Africa and Guinea.

**Senator CAMERON**—Namibia and Guinea would not have huge resources in terms of negotiating with BHP or Rio Tinto. They would be pretty much stretched, wouldn't they?

**Mr O'Neill**—I have not visited either of those countries, but it is important to say that, because we are a global company, we apply global standards to all of our operations. We observe the laws of the jurisdictions in which we operate.

**Senator CAMERON**—The Nike defence.

**Mr O'Neill**—No, it is not the Nike defence. I am certainly not reflecting on Nike, and we move beyond mention of that company to say that we apply international labour standards, we apply the best international health and safety standards in all of our operations regardless of where those operations are.

**Senator CAMERON**—I am not arguing those points at the moment. What I am trying to establish is that you have argued about international competitiveness in terms of tax. Is Namibia one of your lower tax countries?

**Mr O'Neill**—I would have to take that on notice. I am not sure.

**Senator CAMERON**—Could you take it on notice and tell me what your lowest tax countries are in Africa? The argument that you are internationally competitive can also mean that you have actually screwed a country somewhere. And that is a fair and reasonable ask.

**Mr Lyons**—Our lowest tax country is Singapore. Would you suggest that we screw the Singapore—

**Senator CAMERON**—I do not think you are mining too much in Singapore.

**Mr Lyons**—We do a lot of business in Singapore.

**Senator CAMERON**—I am not saying you are mining too much in Singapore. Come on.

**Mr Lyons**—It is a very big business.

**Senator CAMERON**—That is not one of your best responses. I would like to get an idea what your tax is, because countries are screaming to get more revenue from mining, aren't they?

**Mr O'Neill**—What we see is companies screaming for mining investment.

**Senator CAMERON**—Countries.

**Mr O'Neill**—There is a lot of global competition for foreign investment.

**Senator CAMERON**—You have the whip hand, have you?

**Mr O'Neill**—No. Most countries would see the tax revenue as a company's investment. The primary interest of many of the countries that are out there with resources is to actually attract that investment.

**Senator CAMERON**—So it is an investment; it is not a tax outcome?

**Mr O'Neill**—It is investment, and tax outcomes flow from that investment. Without that investment and without profits there is no tax.

**Senator CAMERON**—But the tax outcomes can be artificially low in terms of start-up in some of these countries, can't they?

**Mr O'Neill**—I will not comment on that. I do not believe it is an automatic fact that start-up costs are low in any particular country. We would probably find that start-up costs are high in countries that may have a lower tax rate. So I just do not know. It would be misleading for me to try to speculate on that. I think you will find that it is a very interesting mosaic and there are different outcomes in different places.

**Mr Lyons**—The effective tax rate in Australia is higher than our global average. In other words, we pay an effective rate in Australia that exceeds the average rate we pay—

**Senator CAMERON**—But you would agree with Mr O'Neill that the tax rate is only one aspect of your operation?

**Mr Lyons**—I agree, but you are talking about international competitiveness. In countries like Canada, where we have large operations, the effective tax rate is well below the Australian rate.

**Senator WILLIAMS**—Correct me if I am wrong, but with respect to Rio Tinto's international and global mining industry, when you look to start up a new operation in a country it will be graded on points. For example, Exploration Australia may find a huge deposit of iron

ore and you are graded on access to the port. You may get 8.1. Then in Brazil another project may be graded 7.9. You may have one in Africa at 7.8. That will go to London where they will tick off the approval of which project goes ahead. Is that correct?

**Mr O'Neill**—I think that approximates the process. The way we, like many companies, assess projects is on net present value. We do a calculation based on that. That involves estimating, for example, long-term average prices and so on. It is all factored into the model and, given that we have a pipeline of projects, we tend to invest in the ones with the best NPV outcomes.

**Senator WILLIAMS**—Exactly. The point I make is that the MRRT will obviously downgrade those points when it comes to investing in Australia. Is that correct?

**Senator CAMERON**—It does not seem like a major problem.

**Senator WILLIAMS**—I am not asking you, Senator Cameron. Will you be quiet while he answers the question.

**Mr O'Neill**—The tax rate is clearly an important part of calculating NPV. While we are investing heavily in Australia we are also investing elsewhere. When the RSPT was originally proposed it had a significant effect on the NPV of projects in our Australian pipeline. I will not go into what those projects may have been and what decisions may ultimately have been made. But it has a very material impact on NPV calculations and those calculations are critical in deciding which projects anywhere in the world get prioritised. There is a finite amount of capital for undertaking projects.

**Senator WILLIAMS**—The RSPT was a disaster for future investments in Australia. What effect will the MRRT have? Can you take that on notice?

**Mr O'Neill**—I think we will take that on notice because—

**Senator WILLIAMS**—I ask the question on the ground that, in the last 10 years up to now, you have been paying about 35 per cent tax. This tax will take you to 45 per cent. Correct.

**Mr O'Neill**—Correct.

**Senator WILLIAMS**—You are saying that, at the moment, Australia is a higher taxing country, compared to the average tax rate for the rest of the world. When you get that 10 per cent effective tax on with the MRRT that will take us to obviously one of the highest, if not the highest, taxing country in the world, with respect to the resources industry—iron ore and coal of course? You said that a stable, predictable and safe place to invest is one of the key 'ticks of approval' titles that Australia has had for many years. Do you think this new tax will blemish that record?

**Mr O'Neill**—I think the process has done damage. There is no doubt that the announcement of the RSPT did come as a major shock to international investors. Many went on the record and said as much. We can certainly say that large unexpected shifts in taxation policy are going to make it very difficult to make investment decisions. It creates uncertainty.



**Senator WILLIAMS**—Going back to the heads of agreement and that all royalties future increases will not be credited—

**Senator CAMERON**—That is not what the agreement says.

**Senator WILLIAMS**—Senator Cameron, I am talking to the butcher not the block.

**Senator CAMERON**—You just quoted inaccurately. Quote the agreement.

**Senator WILLIAMS**—Here is the quote:

All State and Territory royalties will be credible against resources tax liability ...

And you shook hands on the agreement and you have signed the agreement—okay? You signed it, you shook hands with the Prime Minister, the Treasurer, et cetera. To me that should be binding. Not only the signing of the agreement but the shaking of the hands, that is the Australian way. What reaction will Rio Tinto have if the government reneges on that agreement?

**Mr O'Neill**—I have to say that is hypothetical. It is a bridge we will cross when we come to it. I have said earlier that we are confident that the agreement will be honoured and that is about all I will say.

**Senator WILLIAMS**—During the discussions over this period between Ms Gillard becoming Prime Minister and the election did Treasury show you modelling of the MRRT when this new version of the tax was put forward to Treasury? Did you have discussions with Treasury?

**Mr O'Neill**—We had discussions but we were not shown Treasury's modelling.

**Senator WILLIAMS**—Treasury had modelling I would imagine.

**Mr O'Neill**—They must have modelled something in order to make revenue projections.

**Senator WILLIAMS**—Exactly, and you were never given a copy of those modelling figures?

**Mr O'Neill**—No.

**CHAIR**—Picking up on this issue of state royalties once more. In your opening statement, and I am just reading from it now, you talk about a number of significant investment decisions made by Rio Tinto post 2 July reflecting your expectation that the terms of the heads of the agreement entered into with the government would be honoured in full including the crediting of all state and territory royalties including future increases. That is what you agreed with the government, that is what you expect would be implemented by the government. You made investment decisions on that basis. If the understanding at the time you made those investment decisions had been as Minister Ferguson has outlined to the Policy Transition Group in Perth and in Brisbane what would the impact have been on those investment decisions?

**Mr O'Neill**—It really is very difficult to say.

**CHAIR**—You made the point in your opening statement and so it is obviously an important point for you. You made these investment decisions on the basis that all state royalties would be credited including future increases. That must have been part of your assessment process in the context of these investment decisions. If it were important, presumably, it stands to reason that if all future increases of state royalties were not credited, that would have had an impact on your investment decision. That is just a matter of logic.

**Mr O'Neill**—I think so; yes, it would have had an impact on our investment decisions. What that impact would be in each case is difficult to say. I go back to what I said originally which is that we would have been reluctant to sign that heads of agreement unless we believed that that issue had been resolved.

**CHAIR**—If the issue is not resolved then the 45 per cent overall effective tax rate would increase in the future, wouldn't it, if state and territory governments—

**Mr O'Neill**—The potential would be there for that to be the case, yes.

**CHAIR**—Obviously in making your investment decision—and I assume that is the reason for the passage in your opening statement—you would have taken into account the risk of state and territory increases being added to your effective tax base. You would have taken that risk into account in making your investment decision?

**Mr O'Neill**—Yes, that is correct.

**CHAIR**—The only way to read that is that you may either have delayed or not have gone ahead. It may have changed your judgment as to whether Rio Tinto should go ahead—

**Mr O'Neill**—That is possible. I just cannot say.

**CHAIR**—I guess I am trying to understand the reason for your statement which links your investment decision to the fact that it reflects your expectation that the terms of the heads of agreement entered into with the government would be honoured in full. Of course, the government signed on the dotted line before the election to say that all state royalties would be creditable and then after the election it became 'some state royalties would be creditable'.

I have one final question. In terms of ensuring that we have appropriate long-term investment for the exploration of non-renewable resources, the government has been talking about its infrastructure fund. You are aware of the infrastructure fund I assume.

**Mr O'Neill**—Yes.

**CHAIR**—So you are aware that that is expected to involve about \$6 billion over a 10-year period?

**Mr O'Neill**—Yes.

**Senator CAMERON**—Chair, are you extending this session?

**CHAIR**—We are finishing in a minute. How does that \$6 billion compare with the revenue that would be raised by the government over a 10-year period?

**Mr O'Neill**—We would hope that commodity prices are robustly buoyant and therefore it would be a very small proportion, but it is difficult to say.

**CHAIR**—Thank you very much, Mr O'Neill and Mr Lyons. I have to advise the committee and visitors to this hearing that the Commonwealth Grants Commission has been held up in Canberra because of weather conditions at Melbourne airport. I hope those weather conditions are not going to prevent us from making our own way back to the great city of Canberra. We will be deferring the questions for the Commonwealth Grants Commission, hopefully, till tomorrow morning. So the Senate Select Committee on Scrutiny of New Taxes now stands adjourned.

**Committee adjourned at 12.03 pm**