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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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# MINERALS RESOURCE RENT TAX REPEAL AND OTHER MEASURES BILL 2014

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## EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon J. B. Hockey MP)

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# Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

| *Abbreviation* | *Definition* |
|---|---|
| ATI | adjusted taxable income |
| CGT | capital gains tax |
| Commissioner | Commissioner of Taxation |
| ISB | income support bonus |
| ITAA 1997 | *Income Tax Assessment Act 1997* |
| IT(TP) Act 1997 | *Income Tax (Transitional Provisions) Act 1997* |
| LISC | low income superannuation contribution |
| MRRT Imposition Acts | *Minerals Resource Rent Tax (Imposition—Customs) Act 2012, Minerals Resource Rent Tax (Imposition—Excise) Act 2012* and the *Minerals Resource Rent Tax (Imposition—General) Act 2012* |
| MRRT | Minerals Resource Rent Tax |
| MRRTA 2012 | *Minerals Resource Rent Tax Act 2012* |
| PRRT | Petroleum Resource Rent Tax |
| PRRTAA 1987 | *Petroleum Resource Rent Tax Assessment Act 1987* |
| SG | superannuation guarantee |
| SGAA 1992 | *Superannuation Guarantee (Administration) Act 1992* |
| SGLIA | *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* |
| SKB | schoolkids bonus |
| TAA 1953 | *Taxation Administration Act 1953* |

# Financial impact

## Repeal of the Minerals Resource Rent Tax and repeal and rephasing of related measures

The estimated financial impact over the forward estimates period from the repeal of the Minerals Resource Rent Tax (MRRT) and the repeal or revision of MRRT-related measures contained in this Bill is[1]:

| ***Measure*** | 2014-15 ***$m*** | 2015-16 ***$m*** | 2016-17 ***$m*** | 2017-18 ***$m*** | Total ***$m*** |
|---|---|---|---|---|---|
| Repeal of MRRT[2] | –130.9 | –180.2 | –178.7 | –178.7 | –668.5 |
| Discontinuing company loss carry‑back | 350.0 | 300.0 | 300.0 | 350.0 | 1,300.0 |
| Reduction of instant asset write-off threshold from $5,000 to $1,000[3] | 500.0 | 900.0 | 900.0 | 900.0 | 3,200.0 |
| Discontinuing vehicle accelerated depreciation | 100.0 | 200.0 | 150.0 | 100.0 | 550.0 |
| Amending geothermal exploration treatment | – | 5.0 | 5.0 | 5.0 | 15.0 |
| Rephasing the superannuation guarantee increase[4] | – | 385.0 | 845.0 | 1,370.0 | 2,600.0 |
| Abolishing the low income superannuation contribution | 836.1 | 941.1 | 923.3 | 915.4 | 3,615.9 |
| Abolishing the income support bonus | 323.8 | 314.3 | 316.4 | 324.0 | 1,278.5 |
| Abolishing the school kids bonus | 655.4 | 1,322.1 | 1,342.0 | 1,375.6 | 4,695.1 |
| **Net impact** | **2,634.4** | **4,187.3** | **4,603.0** | **5,161.3** | **16,586.0** |

1 The estimated financial impact assumes proclamation occurs by the end of 2014 except in relation to the MRRT which does not include any revenue that may be received between 1 July 2014 and proclamation.

2 Forgone MRRT revenue has been re-costed to reflect the latest estimate, which takes into account recent instalment data and the current forward estimates period. This change represents a downward revision normally captured as an estimates variation.

3 The increase in the instant asset write-off threshold from $5,000 to $6,500 was intended to be funded by revenue expected from the carbon tax. The financial impact of the reduction of the part of the threshold associated with the carbon tax from $6,500 to $5,000 results in a gain to revenue of $350m over the forward estimates period, comprising $50m in 2014-15, $150m in 2015-16, $100m in 2016-17 and $50m in 2017-18.

4 The costing for this measure includes the changes as announced in the 2013-14 MYEFO and the 2014-15 Budget.

# General outline

## Repeal of the Minerals Resource Rent Tax

Schedule 1 to this Bill repeals the Minerals Resource Rent Tax (MRRT) by repealing the:

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

The Schedule also makes consequential amendments to other legislation, including the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*, required as a result of the repeal of the MRRT.

***Date of effect***: As a result of the repeal, taxpayers do not incur liabilities for MRRT from the day to be fixed by proclamation. The amendments do not affect the rights, powers and obligations of taxpayers and the Commissioner of Taxation (Commissioner) in respect of MRRT liabilities that arise before the repeal.

***Proposal announced***: In a joint media release dated 24 October 2013, the Treasurer, together with the Minister for Industry and the Minister for Finance, released draft legislation to repeal the MRRT that gives effect to an election commitment of the Government.

In a joint press release dated 18 July 2014, the Treasurer and the Minister for Finance announced that the Government was committed to the repeal of the MRRT and the related spending measures.

***Human rights implications***: Schedule 1 is compatible with human rights. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.1 to 4.7.

***Compliance cost impact***: The repeal of the MRRT removes significant regulatory and compliance costs imposed on the iron ore and coal mining industries.

The regulation impact statement and supplementary regulation impact statement are included in this explanatory memorandum in the forms in which they were approved and consulted on. As a result, they do not reflect the impact of subsequent policy or technical changes contained in this Bill as a result of the delay in the expected enactment of the measures

from when both statements were prepared in the context of the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013.

## Summary of regulation impact statement

### Regulation impact on business

***Impact***: Medium

***Main points***:

- Repealing the MRRT results in a reduced tax burden for some iron ore and coal miners.
- It also removes the significant compliance and administrative burden imposed by the complex MRRT legislation. There are approximately 300 companies registered or required to register for the MRRT but only a very small number of companies have an MRRT liability.
- The one-off adjustment costs are estimated at $800 per company ($243,000 in total for the industry) to adjust record systems, and the ongoing compliance savings are estimated as $35,000 per annum per company ($10.5 million per annum for the industry).

## Repeal and rephasing of MRRT-related measures

This Bill repeals or revises MRRT-related measures. The Bill repeals the following measures:

- loss-carry back (Schedule 2);
- geothermal expenditure deduction (Schedule 5);
- low income superannuation contribution (Schedule 7);
- the income support bonus (Schedule 8); and
- schoolkids bonus (Schedule 9).

This Bill also revises the following MRRT-related measures:

- capital allowances for small business entities (Schedules 3 and 4); and
- the superannuation guarantee (SG) charge percentage increase (Schedule 6).

***Date of effect***: Schedules 2 to 5 and 7 to 9 commence on a day or days to be fixed by proclamation. Schedule 6 commences on Royal Assent. Additional details on the date of effect of each Schedule, and associated transitional rules, is set out in paragraphs 2.75 to 2.112.

***Proposal announced***: In a joint media release dated 24 October 2013, the Treasurer, together with the Minister for Industry and the Minister for Finance, announced the release of draft legislation to repeal or revise a number of spending measures linked to the MRRT. The repeal and revisions give effect to an election commitment of the Government.

In a joint press release dated 18 July 2014, the Treasurer and the Minister for Finance announced that the Government was committed to the repeal of the MRRT and the related spending measures. In the 2014-15 Budget, the Government announced changes to the schedule for increasing the SG charge percentage.

***Human rights implications***: Schedules 2 to 9 are compatible with human rights. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.8 to 4.104.

***Compliance cost impact***: Overall, Schedules 2 to 9 result in a negligible impact on compliance costs.

The regulation impact statement and supplementary regulation impact statement are included with this explanatory memorandum in the form that they were approved and consulted on. As a result, they do not reflect the impact of subsequent policy or technical changes made to this Bill as a result of the delay in the enactment of the measures contained therein.

## Summary of regulation impact statement

### Regulation impact on business

***Impact***: Low

***Main points***:

- The superannuation measures impose negligible compliance costs on businesses. Employers face a change in the SG rate only. The termination of low income superannuation contributions results in superannuation funds having to receive and process fewer payments.
- Reducing the instant asset write-off threshold and discontinuing the accelerated depreciation arrangements for motor vehicles may have a small temporary compliance cost to businesses but in later years, this will be offset by the marginal simplification of the motor vehicle depreciation, the loss carry-back and the geothermal legislation. The net

impact on compliance costs has been estimated to be negligible.

- Abolishing the income support bonus and the schoolkids bonus will have no regulatory impact on business activity, the not-for-profit sector, or individuals.

# Chapter 1
# Repeal of the Minerals Resource Rent Tax

## Outline of chapter

1.1 Schedule 1 to this Bill repeals the Minerals Resource Rent Tax (MRRT), by repealing the:

- *Minerals Resource Rent Tax Act 2012* (MRRTA 2012); and
- *Minerals Resource Rent Tax (Imposition—Customs) Act 2012*, *Minerals Resource Rent Tax (Imposition—Excise) Act 2012* and the *Minerals Resource Rent Tax (Imposition—General) Act 2012* (collectively the MRRT Imposition Acts).

1.2 The Schedule also makes consequential amendments to other legislation, including the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953), required as a result of the repeal of the MRRT.

## Context of amendments

### Background to the MRRT

1.3 The MRRT applied from 1 July 2012 to taxable resources (broadly iron ore and coal) after they were extracted from the ground but before they underwent any significant processing or value adding. Coal seam gas produced as a necessary incident of coal mining was also included as a taxable resource to avoid unnecessary compliance and administration costs, and changes were made to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA 1987) to ensure that the Petroleum Resource Rent Tax (PRRT) did not also apply to those resources.

1.4 The MRRT imposed a significant regulatory and compliance burden on the iron ore and coal mining industries, which was exacerbated by its complex design. Prior to the introduction of the MRRT, iron ore and coal miners were already subject to the relevant State royalty arrangements as well as to Commonwealth income tax.

1.5 The MRRT did not replace State royalties, as originally envisaged by the Australia's Future Tax System Review, but instead imposed an additional layer of taxation. The revenue expected to be raised by the MRRT has been progressively revised down since its announcement, in part because the States increased their royalties (which are credited against MRRT).

1.6 Repealing the MRRT restores confidence and promotes activity in the mining industry, allowing it to thrive, create jobs and contribute to the prosperity of all Australians.

## Summary of new law

1.7 Schedule 1 to the Bill repeals the MRRTA 2012 and the MRRT Imposition Acts.

1.8 Schedule 1 also contains a large number of consequential amendments to other Commonwealth legislation. These amendments principally remove provisions that are no longer required because of the repeal of the MRRT.

1.9 In some cases, repealing the MRRT requires more significant amendments. In the PRRTAA 1987, the definition of 'petroleum' is amended to remove references to MRRT. Amendments are also made to other provisions in the PRRTAA 1987 to exclude coal seam gas recovered under licences that do not permit the commercial use or development of coal seam gas resources, and to clarify that only exploration expenditure for the purpose of finding and commercially developing petroleum resources is deductible exploration expenditure.

1.10 These amendments apply from the date of commencement, which is to be fixed by proclamation. As a result, taxpayers do not accrue any further MRRT liabilities from this date. It also means that rehabilitation tax offsets are only available in relation to MRRT years ending on or before the date of commencement.

1.11 However, the general and special transitional provisions in Schedule 1 ensure that the repeal of the MRRT does not affect taxpayers' existing rights and obligations or the ability of the Commissioner of Taxation (Commissioner) to administer and exercise powers under the law in relation to the period for which the MRRT applied.

## Comparison of key features of new law and current law

| *New law* | *Current law* |
|---|---|
| ***Imposition of tax*** | |
| Taxpayers are not subject to MRRT from the date of commencement, which is to be fixed by proclamation. | Taxpayers must pay MRRT at a rate of 22.5 per cent on their mining profit, less MRRT allowances, from coal and iron ore mining projects reduced by their offsets. |
| ***Treatment of coal seam gas*** | |
| The definition of 'petroleum' under the PRRT includes all coal seam gas.<br>Rights or licences that only allow incidental and non-commercial activities in relation to coal seam gas are not production licences, exploration permits and retention leases.<br>As a result, incidental coal seam gas recovered under those licences is not subject to MRRT or PRRT. Similarly, exploration that only incidentally relates to coal seam gas is not deductible exploration expenditure under the PRRT. | The definition of 'petroleum' under the PRRT does not include coal seam gas that is incidentally recovered in the course of coal mining operations. Instead, it is subject to MRRT. |

## Detailed explanation of new law

### Repeal of the MRRT

1.12 The MRRTA 2012 and the MRRT Imposition Acts are repealed with effect from the date of commencement, which is to be fixed by proclamation. Taxpayers do not accrue any further MRRT liabilities on or after this date and rehabilitation tax offsets are only available in relation to the period before this date. ***[Schedule 1, items 1 to 4]***

### PRRT changes

***Definition of petroleum and production licence***

1.13 As a result of the repeal of the MRRT, the definition of 'petroleum' in the PRRTAA 1987 is amended to remove the exclusion for 'taxable resources' within the meaning of the MRRTA 2012. ***[Schedule 1, item 48, definition of 'petroleum' in section 2 of the PRRTAA 1987]***

1.14 As a result of this amendment, all petroleum (including all coal seam gas) would be subject to PRRT. However, some entities only

recover coal seam gas as an unavoidable incident of coal mining activities. Imposing PRRT on these entities would result in excessive compliance costs for no real benefit.

1.15 To exclude these incidental activities, a further amendment has been made to the definition of 'production licence'.

1.16 Generally, any authority or right under Australian law that permits the recovery of petroleum will be a production licence and hence any recovery of petroleum under the right or licence will be subject to tax.

1.17 The amendments to the definition of production licence mean that a right or authority will *not* be a production licence if coal seam gas is only recovered under the licence:

- as a necessary result of coal mining carried out by the licence holder;
- as required in order to maintain a safe working environment on the mine site; or
- as required to prevent fugitive emissions of methane or similar gases.

***[Schedule 1, item 51, section 2AB of the PRRTAA 1987]***

1.18 The recovery of coal seam gas is a necessary result of mining for coal where the gas must be removed on an ongoing basis in order for it to be practical (and safe) for mining to proceed. The extraction of coal seam gas as part of a commercial operation before coal mining commences is generally not a necessary result of coal mining.

1.19 To come within the exclusion, the recovery of the gas must also be a necessary result of coal mining carried out by or on behalf of the licence holder under the authority or right. The provision has no application to licence holders that are not themselves carrying out coal mining. For example, an entity that is not engaged in mining coal in an area would be subject to PRRT on all coal seam gas recovered from the area, even though the recovery of the gas might make it easier for another entity that mines for coal in the area in the future.

1.20 The test examines the activity that is carried out under the licence rather than the terms of the licence itself — that is, provided petroleum is only recovered under the licence as detailed in paragraph 1.17 above, the licence will not be a production licence. However, if at any point this test is not satisfied, the right or authority will become a production licence and remain a production licence until it ceases to exist.

1.21 Additional explanatory material has also been included to assist taxpayers in identifying the consequences of the change. ***[Schedule 1, item 49, note at the end of paragraph (c) of the definition of 'production licence' in section 2 of the PRRTAA 1987]***

### *Treatment of exploration*

1.22 To ensure that only profits from the recovery of petroleum are taxed, the PRRT allows entities to offset the expenditure they incur in exploration and development against the assessable receipts they receive from the recovery of the petroleum.

1.23 Coal and coal seam gas are almost inevitably found together in varying quantities. Coal seam gas is often discovered when exploring for coal and vice versa. Previously, identifying whether exploration expenditure related to coal or coal seam gas was necessary to determine whether exploration expenditure was deductible for MRRT or PRRT purposes. However, with the repeal of the MRRT, this distinction is more significant as the different types of exploration activity are now subject to different tax treatments.

1.24 These different tax treatments could result in inappropriate outcomes if an entity that is licensed to explore for both coal and coal seam gas could treat the entire amount of exploration expenditure as PRRT exploration expenditure. In particular, it would be inappropriate if exploration expenditure for coal and incidental coal seam gas was deductible for PRRT purposes and also able to be transferred and used to offset other PRRT liabilities when these resources are not subject to PRRT.

1.25 This situation is unlikely to arise. Expenditure in relation to coal and incidental coal seam gas does not satisfy the existing test to qualify as exploration expenditure in the PRRTAA 1987. However, given the complex arrangements that can exist, the amending provisions make changes to the law to ensure that there are no unanticipated situations in which doubt may arise.

1.26 The amendments achieve this outcome in two ways. Firstly, rights and licences that only permit the incidental discovery and recovery of petroleum, including coal seam gas, are not 'exploration permits' or 'retention leases' for the purposes of the PRRTAA 1987. Expenditure in relation to these permits would be outside the scope of the PRRT and not deductible. ***[Schedule 1, item 51, section 2AC of the PRRTAA 1987]***

1.27 Secondly, the amendments deal with situations where an entity holds a right or licence that permits it to explore for both petroleum and other resources, or a combination of rights and/or licences that have the same effect. In such situations, even if payments the entity makes satisfy the existing test to be exploration expenditure, the payments are only exploration expenditure *to the extent* that the objective purpose of the payment is finding and commercially exploiting coal seam gas or another form of petroleum. ***[Schedule 1, item 52, subsections 37(2A) and (2B) of the PRRTAA 1987]***

1.28 This additional requirement differs from the existing requirements set out in the PRRTAA 1987 to determine if payments are exploration expenditure. Broadly, to satisfy the existing exploration expenditure requirements (see subsection 37(1) of the PRRTAA 1987); payments must be made in carrying on or providing facilities or operations involved or in connection with exploration for petroleum in the relevant area (as well as certain related activities). To satisfy the additional requirement, payments must also be for the *purpose* of exploring for petroleum. However, in practice these tests will almost always give rise to the same outcome. Given the complexity of arrangements it is not possible to rule out the existences of cases where ambiguity might exist. As a result, the amendments include the purpose test as a supplement to the existing test for the avoidance of doubt.

1.29 Where a payment only partially satisfies the requirements set out in subsection 37(1) of the PRRTAA 1987, it is only the purpose of that portion of the payment that is exploration expenditure that is relevant in determining if the additional requirement is satisfied. For example, if only half of a payment satisfies the requirement in subsection 37(1) to be exploration expenditure, it is only the purpose of this part of the payment that is relevant to determining if the additional requirement to be exploration expenditure is met.

1.30 The overlap between subsection 37(1) of the PRRTAA 1987 and the additional requirement is intended. To ensure that this intention is clear, the amendments specifically provide that the additional requirement is included to avoid doubt and should not be taken to imply a wider view of the existing law. ***[Schedule 1, item 52, subsection 37(2C) of the PRRTAA 1987]***

1.31 Additional explanatory material has also been included to assist taxpayers identify the consequences of these changes. ***[Schedule 1, items 47 and 50, notes at the end of paragraph (b) of the definition of 'exploration permit' and 'retention lease' in section 2 of the PRRTAA 1987]***

1.32 The purpose of a payment is determined objectively based on what a reasonable person would conclude given the available evidence — the subjective intent of the entity is not relevant. Determining purpose generally requires an examination of the nature of the exploration and the activities of the entity. A wide range of factors can be relevant, including:

- the terms of the right or licence allowing exploration;
- the characteristics and location of the area being explored;
- the nature of the exploration activities;
- any agreement or understanding entered into with other entities about the exploration or development of the area being explored;
- prospectuses or other contemporaneous documents identifying the entity's proposed future activities; and

- the entity's other activities and available expertise.

1.33 An entity's objective purpose for payments made in carrying on exploration activities may change over time. The purpose of a payment, and the proportion that can be included as exploration expenditure, are determined as at the time the payment is incurred. The identified purpose of a payment incurred at one stage of exploration is generally not relevant to the purpose of earlier or later payments.

**Example 1.1: Change in purpose over the course of exploration**

Coal Co holds an authority under an Australian law that permits it to explore Area A for both coal and coal seam gas. Coal Co makes a payment in carrying on exploration activities in March 2015 (assuming the provisions have commenced by that time). All of the available evidence, including Coal Co's exploration plan that it lodged when obtaining the permit, as well as the nature of the exploration conducted and the expertise of the personnel employed demonstrates that the sole purpose of Coal Co in undertaking this exploration is finding coal. None of the payment relates to exploration for petroleum.

It is found that no part of the March payment qualifies as exploration expenditure under subsection 37(1) of the PRRTAA 1987. The additional requirement added by the amendments does not have any application as it only applies to amounts that would otherwise be exploration expenditure under subsection 37(1).

Coal Co's March exploration does not identify any commercially viable coal deposits but does indicate the area may contain significant coal seam gas reserves.

Coal Co subsequently undertakes further exploration of the area in July 2015. Unlike the March exploration, all of the objective evidence in relation to this exploration indicates it is undertaken solely for the purpose of identifying coal seam gas. This evidence includes Coal Co having varied its exploration plan, changed the nature of its exploration activities and arranged for the exploration to be conducted by experts in coal seam gas exploration.

Assuming the expenditure meets the test in subsection 37(1), payments made in relation to Coal Co's July exploration will not be prevented from qualifying as exploration expenditure under the additional requirement. However, the purpose of the July payment does not affect the character of the March payment.

**Example 1.2: Relationship between subsections 37(1) and 37(2A) of the PRRTAA 1987**

In April 2015 (assuming the provisions have commenced by that time), Coal Co undertakes exploration activity in Area B. Coal Co's exploration permit allows it to look for both coal and coal seam gas and its exploration plan, as well as other evidence, makes it clear that Coal Co is equally interested in finding both coal and coal seam gas.

In applying subsection 37(1) of the PRRTAA 1987, it is determined that only half of the payment Coal Co made in connection with this exploration qualifies as exploration expenditure as the other portion of the payment is in connection with exploration for coal, not coal seam gas.

The additional requirement added by the amendments then applies to the amount that would otherwise be exploration expenditure under subsection 37(1) but does not result in any reduction in the amount that is included as exploration expenditure. The purpose of the payment by Coal Co is equally for exploring for coal seam gas and coal. The purpose of the remaining portion of the payment is solely to find and obtain a commercial return from coal seam gas.

As a result, 50 per cent of the payment made by Coal Co is exploration expenditure.

## Consequential amendments

1.34 Consequential amendments are made to other Commonwealth laws (including taxation laws) to give effect to the repeal of the MRRT. These provisions remove references to MRRT or to MRRT-related provisions that are redundant with the repeal of the MRRTA 2012. ***[Schedule 1, items 5 to 46, 53 to 88, and 91 to 121, paragraph (e) of Schedule 1 to the Administrative Decisions (Judicial Review) Act 1977; paragraphs 177-12(4)(h) and (i) of the A New Tax System (Goods and Services Tax) Act 1999; subsection 3(1) and Parts II and XI of the Crimes (Taxation Offences) Act 1980; sections 10-5, 12-5, 15-85, 40-725 and 40-751, subsections 703-50(1), 719-50(1), 721-10(2), (4) and (6), and 721-25(1AA), (1B), (2) and (3), section 960-265 and subsection 995-1(1) of the ITAA 1997; Schedule 4 of the Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012; item 169 of Schedule 7 to the Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013; section 3D, subsection 8AAB(4), subparagraph 8AAZLG(1)(b)(ii), paragraph 8AAZLH(1)(b), section 14ZQ and subsections 14ZW(1AB) and (1AC) of the TAA 1953; paragraphs 11-1(g), 12-330(1)(b), and 12-335(2)(a), subsection 18-10(3), section 18-49, Part 3-15, paragraph 155-5(2)(e), subsections 155-15(1) and 155-30(3), sections 155-55, 155-57 and 155-90, subsection 250-10(2), sections 280-1, 280-50 and 280-101, paragraph 280-105(1)(a), subsection 280-110(1), sections 280-170, 284-30 and 284-35, paragraphs 284-75(2)(a) and (2)(b), subsections 284-80(1) and 286-75(2AA), paragraph 286-80(2)(a), section 352-1, Subdivision 352-B, section 353-17, subsection 355-50(1), paragraph 357-55(faa), subsection 360-5(1), subsections 444-5(1), (1A), (1B) and (2), subsections 444-10(1), (2), (3) and (5), section 444-15, subsections 444-30(1), (2) and (3), subsections 444-70(1) and (2) and Subdivision 444-F in Schedule 1 to the TAA 1953; subsections 3(1), 3C(1) and 3C(2), sections 12AA, 12AB, 12AC and 12AF of the Taxation (Interest on Overpayments and Early Payments) Act 1983]***

1.35 As part of repealing references to the MRRT in the administrative penalty provisions (section 284-90 of Schedule 1 to the TAA 1953), these amendments consolidate the existing threshold requirements relating to income tax and the PRRT. They consolidate thresholds currently located in subsection 284-90(1) and subsection 284-90(3) into the central threshold provisions in subsection 284-90(3). These changes do not change the operation of the

provisions. ***[Schedule 1, items 89 and 90, subsection 284-90(1) and paragraph 284-90(3)(a) in Schedule 1 to the TAA 1953]***

## Application and transitional provisions

1.36 The amendments in Schedule 1 apply on and from the date it commences, which is a date fixed by proclamation. This means that taxpayers do not accrue any further MRRT liabilities from this date. It also means that rehabilitation tax offsets are only available in relation to the period before this day. ***[Item 2 of the table in clause 2]***

1.37 Due to the delays in the passage of the legislation, the repeal is no longer proposed to commence from a fixed date. This ensures that further delays will not result in the legislation applying retrospectively and imposing unnecessary compliance burdens on taxpayers.

1.38 However, this flexibility also means that it is difficult for both taxpayers and the Commissioner of Taxation to predict the date from which the repeal will have effect.

1.39 Providing for the date of commencement to be fixed by proclamation allows the Government to minimise compliance burdens for taxpayers. The Bill specifies that if a date is not fixed within 12 months of Royal Assent, the Schedule will commence on that day. While it more usual to provide that legislation will commence within six rather than twelve months, in this case it was important that it be possible to specify a date in the next financial year rather than the current financial year, in order to avoid significant compliance implications for taxpayers and administrative problems for the Commissioner.

### Transitional provisions

1.40 The transitional provisions ensure that the administration, collection and recovery of MRRT relating to MRRT years ending on or before commencement can still occur despite the repeal of the MRRTA 2012. They also preserve the rights and obligations of taxpayers relating to MRRT years ending on or before the day of commencement. ***[Schedule 1, Part 3]***

**Example 1.3: Taxpayer complying with MRRT obligations**

Weiss & Yim Limited (WYL) is a large iron ore and coal miner. It is required to lodge its MRRT return and pay the MRRT for the year ended 30 June 2014 (2013-14 MRRT year) on 1 December 2014. Even though this obligation may arise after the repeal has commenced, the obligation is preserved by the general transitional provision as it relates to MRRT years ending prior to the repeal. WYL complies with this obligation by lodging its 2013-14 MRRT return.

On 1 August 2015 WYL discovers that it omitted to include an amount of mining expenditure in its 2013-14 MRRT return. The transitional provisions enable:

- WYL to request that the Commissioner amend its MRRT assessment for the 2013-14 MRRT year; and
- the Commissioner to consider the request and make an amended assessment and refund any overpaid MRRT to WYL.

### Example 1.4: Ongoing administration of the MRRT

Huge Iron and Coal Limited (HIC), a large iron ore and coal miner, paid its MRRT and lodged its MRRT return for the year ended 30 June 2013 (2012-13 MRRT year) on 1 March 2014. The general transitional provision preserves anything that was done before the repeal of the MRRT, which includes HIC's payment of its MRRT and lodgment of its 2012-13 MRRT return.

The transitional provisions mean that:

- The Commissioner is able to undertake compliance activities on or after the day of the repeal in the same manner the Commissioner would have if the MRRT had not been repealed. The Commissioner does so by undertaking a risk review and then an audit of HIC's affairs in connection with its 2012-13 MRRT return in November 2014.
- HIC is obliged to comply with requests made by the Commissioner that were provided for in the MRRT law. This includes providing information in accordance with a notification given under section 353-10 of Schedule 1 to the TAA 1953.
- If the Commissioner finds that HIC has entered into a scheme for the dominant purpose of getting an MRRT benefit, the Commissioner is able to:
  - make and issue a determination that HIC has entered into a scheme for the dominant purpose of getting an MRRT benefit;
  - amend HIC's 2012-13 MRRT assessment;
  - notify HIC that a shortfall interest charge applies; and
  - impose an administrative penalty relating to the tax shortfall amount.
- HIC must pay any additional MRRT, any shortfall interest charge, and any administrative penalty that is imposed on it by the Commissioner.
- If HIC disagrees with the amended assessment, (for example if it believes that the amendment is excessive), HIC has the right to object to the amended assessment and have this objection considered by the Commissioner. If the objection is not allowed in full, HIC also has the right to appeal to the Administrative Appeals Tribunal or to the Federal Court.

1.41 Through the operation of the transitional provisions, the Commissioner can continue to use the existing MRRT anti-avoidance provisions on or after the date the repeal commences in relation to MRRT years ending on or before the date of the repeal. This includes using the anti-avoidance provisions to address the inappropriate bringing forward of expenditure, including expenditure that would not normally have been incurred by taxpayers before the date of the repeal. Therefore, a specific integrity rule to address the inappropriate bringing forward of expenditure, which would impose additional compliance costs on taxpayers, is not required.

1.42 The transitional provisions set out special rules for the treatment of taxpayers with an MRRT year that would not have ended on the date of the repeal.

1.43 The MRRT year for all taxpayers will end on the date the repeal commences. Whilst this means that most taxpayers are likely to have a 'short' final MRRT year, this approach is necessary to ensure that the MRRT is repealed as soon as possible without creating uncertainty by requiring taxpayers to revisit past MRRT years. ***[Schedule 1, item 123]***

1.44 Where a taxpayer has a 'short' final MRRT year, the full-year threshold amounts applying under the MRRTA 2012 are proportionately adjusted to take into account that the taxpayer's final MRRT year is less than a full year. This ensures that taxpayers are neither advantaged nor disadvantaged if they have a 'short' final MRRT year. ***[Schedule 1, item 123, note 1]***

1.45 Taxpayers with a 'short' final MRRT year may also have a reduced number of instalment quarters and a final instalment quarter of less than the usual three months for their final MRRT year. ***[Schedule 1, item 123, note 2]***

### Example 1.5: Taxpayers with a short final MRRT year

Boutique Iron and Coal Limited (BIC) is a large iron ore and coal miner that is an early balancing entity with an MRRT year that ends on 1 July 2014.

Assuming the repeal commences from 1 January 2015, due to the application of the short final MRRT year provision, BIC would have a shortened 2014-15 MRRT year that would commence on 1 July 2014 and end on 1 January 2015.

As its 2014-15 MRRT year is for less than 12 months, BIC will need to adjust its threshold amounts in working out relevant MRRT amounts. During its 2014-15 MRRT year, it had a group production of 5 million tonnes of taxable resources. As the adjusted amount of 10.1 million tonnes (5×365/181) is in excess of 10 million tonnes, it is not eligible to use the alternative valuation method to work out its mining revenue for the 2014-15 MRRT year.

Due to the shortened MRRT year, BIC will only have two instalment quarters in its 2014-15 MRRT year, being those ending 31 September 2014 and 31 December 2014.

## Continuation of Commissioner's power to make certain legislative instruments

1.46 The Commissioner may continue to make legislative instruments to provide a class of entities with an extension of time to provide their MRRT return for an MRRT year or to exempt a class of entities from having to provide an MRRT return for an MRRT year. This ensures that the Commissioner retains the flexibility to exempt taxpayers from, or give taxpayers an extension of time for, lodging their MRRT returns for MRRT years ending on or before the date of the repeal. This specific transitional provision does not limit the extent of the Commissioner's powers under the general transitional provisions.
***[Schedule 1, item 124]***

# *Chapter 2*
# *Repeal and rephasing of MRRT-related measures*

## Outline of chapter

2.1 This chapter explains the treatment of the measures that were related to the enactment of the Minerals Resource Rent Tax (MRRT) given the repeal of that tax. Most of those measures are repealed. The gradual increase in the superannuation guarantee (SG) charge percentage to 12 per cent is to proceed but the timetable for the increase will be rephased.

2.2 Legislative references in this chapter are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise specified.

## Context of amendments

2.3 The Government made an election commitment to repeal the MRRT and its related measures.

2.4 The revenue expected from the MRRT was intended to fund a number of other tax and social security measures, including changes to the capital allowances for small business entities, the creation of a loss carry-back regime for companies and the payment of a superannuation co-contribution to low income individuals. With the repeal of the MRRT, these measures are also repealed.

2.5 The gradual increase in the minimum percentage of wages, salary and other earnings that must be paid as superannuation contributions for the purposes of the SG charge was also related to the enactment of the MRRT. With mining investment at or near its peak, a transition to new sources of economic growth is needed. However, the 2013 June quarter National Accounts and other recent data releases show that the transition to broader based growth has been slow, with the economy growing below trend. Businesses are contending with high operating costs and current challenging economic conditions, which is placing pressures on their viability and their ability to employ people.

2.6 Given that increases in the SG are funded largely from reductions in take-home wages or business profits, rephasing the SG is expected to boost near-term economic activity. Any reductions in businesses' overall wages bills would lower their operating costs, while employees could also receive more take-home pay in the near term.

## Summary of new law

2.7 The measures that were intended to be funded by the revenue expected from the MRRT are either being repealed or rephased.

## Comparison of key features of new law and current law

| *New law* | *Current law* |
|---|---|
| ***Repeal of loss carry back*** | |
| Companies can only carry their tax losses forward to use as a deduction for a future year. | Companies can either carry their tax losses forward to use as a deduction for a future income year or carry up to $1 million back to an earlier year (in which they paid tax) to obtain a tax offset for the current year. |
| ***Changes to the capital allowances for small business entities*** | |
| Small business entities can claim a deduction for the value of a depreciating asset that costs less than $1,000 in the income year the asset is first used or installed ready for use.<br>Small business entities can claim a deduction for an amount included in the second element of the cost of a depreciating asset that was first used or installed ready for use in a previous income year. The amount must be less than $1,000.<br>Small business entities can allocate depreciating assets that cost $1,000 or more to their general small business pool and claim a deduction for the depreciation of the assets in the pool.<br>Assets allocated to the general small business pool depreciate at a rate of 15 per cent in the year they are allocated, and a rate of 30 per cent in subsequent income years.<br>If the value of a small business entity's general small business pool is less than $1,000 at the end of the income year, the small business entity can claim a deduction for the entire value of the pool.<br>Motor vehicles are subject to the same rules as other depreciating assets. | Small business entities can claim a deduction for the value of a depreciating asset that costs less than $6,500 in the income year the asset is first used or installed ready for use.<br>Small business entities can claim a deduction for an amount included in the second element of the cost of a depreciating asset that was first used or installed ready for use in a previous income year. The amount must be less than $6,500.<br>Small business entities can allocate depreciating assets that cost $6,500 or more to their general small business pool and claim a deduction for the depreciation of the assets in that pool.<br>Assets allocated to the general small business pool depreciate at a rate of 15 per cent in the year they are allocated, and a rate of 30 per cent in subsequent income years.<br>If the value of a small business entity's general small business pool is less than $6,500 at the end of the income year, the small business entity can claim a deduction for the entire value of the pool.<br>Special rules apply to depreciating assets that are motor vehicles. A small business entity can deduct the first $5,000 of the cost of a motor |

| *New law* | *Current law* |
|---|---|
| | vehicle, plus 15 per cent of any remaining cost, in the income year that it is first used or installed ready for use.<br>The motor vehicle is then added to the small business entity's general small business pool, and depreciated as part of the pool at a rate of 30 per cent in subsequent income years. |
| ***Repeal of the geothermal exploration deduction*** | |
| Geothermal energy exploration and prospecting expenditure is not immediately deductible.<br>If a geothermal exploration right is exchanged for a geothermal energy extraction right relating to the same, or a similar area, then a capital gains tax (CGT) roll-over applies to defer the liability until the sale of the extraction right. | Geothermal energy exploration and prospecting expenditure is deductible in the income year that the asset is first used or expenditure is incurred.<br>No CGT roll-over is provided for geothermal explorers when an exploration right is exchanged for a geothermal energy extraction right as the geothermal exploration right is a depreciating asset, not a CGT asset. However, there is relief from income tax liability upon disposal of a geothermal exploration right. |
| ***Rephasing of the SG charge percentage increase*** | |
| The Treasurer will be able to vary the SG charge percentage by legislative instrument, subject to a number of conditions. | The SG charge percentage will increase from 9.25 per cent to 9.5 per cent for the year starting on 1 July 2014, and gradually increase by half a percentage point each year until it reaches 12 per cent for years starting on or after 1 July 2019. |
| ***Repeal of the LISC*** | |
| The low income superannuation contribution (LISC) is not payable in respect of concessional contributions made for the financial year before the financial year in which the amendments commence, the financial year in which the Schedule commences or later financial years. | The LISC is payable each year in respect of concessional contributions made in each income year. |

| *New law* | *Current law* |
|---|---|
| ***Repeal of the income support bonus*** | |
| The income support bonus is repealed.<br>Saving provisions apply to preserve the law with respect to the income support bonus in relation to taxpayers' entitlements to payments of income support bonus for the period before the repeal, whether payments are made before, on or after the commencement of the amendments. | The income support bonus is an income tax exempt, indexed, non-means tested payment paid twice annually to eligible social security recipients. |
| ***Repeal of the schoolkids bonus*** | |
| The schoolkids bonus is repealed.<br>Saving provisions apply to preserve the law with respect to schoolkids bonus in relation to eligibility on a bonus test day occurring before commencement and in relation to payments of schoolkids bonus made before, on or after the commencement of the amendments. | The schoolkids bonus is an income tax exempt, indexed family assistance payment that is available to eligible families receiving Family Tax Benefit Part A and young people in school receiving youth allowance or certain other income support or veterans' payments on two test dates each year. |

## Detailed explanation of new law

### Background

2.8 The expected revenue from the MRRT was intended to fund a number of related measures that each had a cost to revenue.

2.9 This Bill repeals the MRRT. In accordance with the Government's election commitment, most of the related measures are also repealed.

### Loss carry-back

***What is loss carry-back?***

2.10 Loss carry-back was added to the income tax law by the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013*.

2.11 It allows a company to choose to use its tax losses in a way other than carrying them forward as a deduction for a future income year. Instead, companies can choose to carry their losses back to one of the previous two income years. The amount carried back is then multiplied by the corporate tax rate to produce a tax offset that is refundable to the company in the current income year.

2.12 The offset is limited to the least of the amount of tax paid in the year the loss is carried back to, the amount in the company's franking account, and $300,000 (at current corporate tax rates).

### *Loss carry-back repealed*

2.13 Schedule 2 repeals the loss carry-back provisions. ***[Schedule 2, item 1, Division 160]***

2.14 Schedule 2 also repeals the transitional provisions related to the introduction of the loss carry-back measure. ***[Schedule 2, item 2, Division 160 of the Income Tax (Transitional Provisions) Act 1997 (IT(TP) Act 1997)]***

### *Repeal of consequential amendments*

2.15 The consequential amendments that were made to the tax laws as a result the introduction of loss carry-back are largely reversed to reflect the fact that the loss carry-back measure are also repealed by Schedule 2.

2.16 The amendments remove references to loss carry-back, and to loss carry-back provisions, that were previously added to the law. ***[Schedule 2, items 3 to 13, subsections 6(1), 92A(3), 177C(1), (2) and (3), 177CB(1) and 177F(1) and (3) of the Income Tax Assessment Act 1936; items 14 to 40, sections 13-1, 36-25, 67-23, 195-37 and 195-72 and subsections 36-17(1), 195-15(5), 205-35(1), 320-149(2), 830-65(3), 960-20(2) and (4) and 995-1(1) ; and item 41, section 45-340 in Schedule 1 to the TAA 1953]***

### *General tax law improvements not repealed*

2.17 Some general improvements to the income tax law that were made as part of the loss carry-back measure are not repealed. These are:

- The inclusion of the amount of a taxpayer's refund from refundable tax offsets in the taxpayer's income tax assessment. This ensures that the amount of the refund can be contested using the normal objection and appeal procedures. This inclusion was made by Part 2 of Schedule 5 to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013*.
- The wider use of the term 'utilise' in relation to tax losses. However, the part of the definition of that term that refers to utilisation through carrying back a tax loss to an earlier year is repealed.
- The changes to the franking account debit rules to ensure that any franking account that a foreign resident company might have is debited when it receives a tax offset refund in the same way an Australian resident company's franking account would be debited.

## Changes to the capital allowances for small business entities

2.18 The $6,500 threshold for depreciating assets, costs incurred in relation to depreciating assets, and low pool values under the small business entity capital allowance rules is reduced to $1,000 (returning it to the level it was prior to the changes made by the *Tax Laws Amendment (Stronger, Fairer, Simpler and Other Measures) Act 2012).*

2.19 The special rules for certain motor vehicles are also repealed.

***Deductions for depreciating assets***

2.20 Under the existing arrangements, a small business entity that elects to use the capital allowance rules may deduct the taxable purpose proportion of the value of (or 'write-off') an asset that cost less than $6,500 in the income year in which it was first used or installed ready for use. These amendments reduce the threshold for writing-off depreciating assets from $6,500 to $1,000. ***[Schedule 3, item 3, paragraph 328-180(1)(b)]***

2.21 Following the amendments, depreciating assets that cost $1,000 or more are allocated to the small business entity's general small business pool, depreciated at a rate of 15 per cent in the income year in which they are first used or installed ready for use, and then depreciated as part of that pool at an ongoing rate of 30 per cent in later income years.

2.22 The existing arrangements simplified the pooling arrangements available for small business entities by consolidating what were previously the 'general small business pool' (for assets with an effective life of less than 25 years) and the 'long life small business pool' (for assets with an effective life of 25 years or more). The amendments do not affect those simplified pooling arrangements.

***Deductions for amounts included in the second element of the cost of depreciating assets***

2.23 Under the existing arrangements, a small business entity can also deduct an amount included in the second element of a depreciating asset's cost (for example, an amount spent on improving or transporting a depreciating asset), provided the amount is under $6,500, the amount is the first such amount to be deducted in respect of the asset, and the asset was written-off in a previous income year. These amendments reduce the threshold for writing-off amounts included in the second element of an asset's cost from $6,500 to $1,000. ***[Schedule 3, item 4, paragraphs 328-180(2)(a) and (3)(a)]***

2.24 Following the amendments, where an amount of $1,000 or more is included in the second element of a depreciating asset's cost, and the depreciating asset has been written-off in a previous income year, the asset is treated as having a value equal to the amount and is allocated to the small business entity's general small business pool. The asset is

depreciated at a rate of 15 per cent in the income year in which the amount was incurred, and 30 per cent in subsequent income years.

### *Deductions for low pool values*

2.25 Under the existing arrangements, a small business entity can also deduct the value of its general small business pool at the end of an income year if the value of the pool at the end of the year is less than $6,500 (this value is determined prior to applying any applicable rates of depreciation to the pool). These amendments reduce this 'low pool value' threshold to $1,000, meaning that a small business entity can deduct the entire value of its general small business pool at the end of an income year if the value of the pool at the end of the year is less than $1,000. ***[Schedule 3, item 5, subsection 328-210(1)]***

### *Consequential amendments*

2.26 Other amendments are made to provisions that reference the deductions for depreciating assets, amounts incurred in respect of depreciating assets, and low pool values to reflect the reduction of the $6,500 threshold to $1,000. ***[Schedule 3, items 1, 2, and 6 to 10, heading in sections 328-170 and 328-180, example in subsections 328-210(3), 328-215(4), 328-250(1), and heading 328-250(4), and heading in 328-253(4)]***

### *Special rules for certain motor vehicles*

2.27 Under the existing arrangements, a small business entity can claim a special deduction in respect of a depreciating asset that was a motor vehicle in the income year in which the vehicle was first used or installed ready for use. That deduction is equal to the taxable purpose proportion of the first $5,000 value of the motor vehicle plus 15 per cent of any additional value. The remaining value of the motor vehicle is then allocated to the small business entity's general small business pool and depreciated as part of that pool at an ongoing rate of 30 per cent in later income years. These rules only apply where the motor vehicle cost $6,500 or more (as motor vehicles that cost less than $6,500 are written-off under the general instant asset write-off rule).

2.28 These amendments repeal the special rules for certain motor vehicles. ***[Schedule 4, items 3 and 4, section 328-237 and the group heading before that section]***

2.29 In the absence of the special rules for certain motor vehicles, the general capital allowance provisions apply to depreciating assets that are motor vehicles in the same way they do to all other depreciating assets.

2.30 Minor amendments are also made to a number of other provisions to remove references to the special rules for certain motor vehicles. ***[Schedule 4, items 1, 2 and 5 to 7, subsection 328-190(2A), section 328-200, subsections 328-250(1) and (2) and paragraph 328-250(3)(b)]***

## Repeal of geothermal energy exploration deduction

***What is the geothermal energy exploration deduction?***

2.31 Currently, there are two ways that the capital allowance provisions may provide an immediate deduction for geothermal energy exploration expenditure.

*Assets first used in geothermal energy exploration*

2.32 Under the capital allowance provisions, geothermal energy exploration rights are depreciating assets. The provisions apply to depreciating assets first used for exploration or prospecting for geothermal energy resources from which geothermal energy can be extracted. They also provide that in certain circumstances an asset's decline in value is equal to the amount of its cost, which has the consequence that an immediate deduction of this amount may be available. A depreciating asset starts to decline in value when it is used or installed ready for use for any purpose by the taxpayer.

2.33 An immediate deduction is not available if, when the asset is first used, it is used for development drilling for geothermal energy resources or for operations in the course of working a property containing geothermal energy resources. This ensures that the immediate deduction is only available for the cost of depreciating assets first used for exploration or prospecting, and not for the costs of depreciating assets used in the development or extraction of a geothermal energy resource.

*Immediate deduction for expenditure on exploration or prospecting for geothermal energy resources*

2.34 Expenditure on exploration or prospecting which does not form part of the cost of a depreciating asset may also qualify for an immediate deduction under another part of the capital allowance provisions (section 40-730). An immediate deduction is available for expenditure incurred in exploration or prospecting for geothermal energy resources which is not part of the cost of a depreciating asset.

2.35 To be entitled to this deduction, expenditure must be incurred on exploration or prospecting for geothermal energy resources from which energy can be extracted and the geothermal energy extraction must be carried on by the entity claiming the deduction. Otherwise, the entity must be carrying on a business of exploration or prospecting for geothermal energy resources from which energy can be extracted and that expenditure was necessarily incurred in carrying on that business.

2.36 Like the deduction available for assets first used in geothermal energy exploration, an entity is not entitled to an immediate deduction for other expenditure on exploration or prospecting for geothermal energy resources if the expenditure was on development drilling for geothermal

energy resources, or on operations in the course of working a property containing geothermal energy resources.

### *Repeal of the geothermal energy exploration deduction*

2.37 The amendments repeal the two ways in which geothermal exploration or prospecting expenditure can be immediately deducted. Firstly, geothermal exploration rights and information are no longer defined as a depreciating asset. Secondly, expenditure on exploration or prospecting for geothermal energy resources is no longer immediately deductible under the capital allowance provisions. ***[Schedule 5, items 5 to 8, 16 to 19, 21 and 22, paragraphs 40-30(2)(ba) and (bb), table item 9A in section 40-40, subsections 40-80(1A), 40-290(5), 40-730(2A) and (2B) and 40-730(3), paragraphs 40-730(4)(b), (c), (d) and (e) and subsections 40-730(7A), (7B) and (9)]***

### *Repeal of exclusion of certain types of deductions*

2.38 Deductions are currently not available for certain types of expenditure relating to geothermal energy extraction, including expenditure for landcare, electricity, phone lines and construction.

2.39 This ensures consistency between the treatment of mining operations and geothermal energy extraction, and denies taxpayers the opportunity to deduct the same capital expenditure more than once.

2.40 The amendments remove the provisions denying deductions for landcare, electricity, phone lines and construction expenditure in relation to geothermal energy extraction. Geothermal explorers can therefore deduct these expenditures under the capital allowance provisions, which are available to any taxpayer other than a miner who uses land for carrying on a business for a taxable purpose. ***[Schedule 5, items 10 to 14 and 23, paragraph 40-630(1)(b), note in subsection 40-630(1), paragraphs 40-630(1A)(b), (1B)(b) and (3)(b), paragraphs 40-650(3)(a) and (b) and subparagraph 43-70(2)(fa)(iv)]***

### *CGT roll-over*

2.41 The amendments prevent a tax liability from arising from the conversion of a geothermal exploration right to a geothermal extraction right in relation to the same (or a similar) area. This is achieved by extending the existing CGT roll-over in Subdivision 124-L that applies to prospecting and mining entitlements. This ensures that the roll-over includes the conversion, exchange or replacement of exploration or mining rights held by geothermal energy explorers.

2.42 The broadening of the scope of the existing CGT roll-over is achieved by providing that geothermal exploration rights are treated in the same way as prospecting entitlements and geothermal extraction rights are treated in the same way as mining entitlements, for the purpose of the CGT roll-over. However, an authority, licence, permit or entitlement to prospect for, or extract, geothermal energy resources only include those issued under an Australian law. ***[Schedule 5, items 25 to 29, paragraphs 124-710(1)(a), (b) and (c) and 124-710(2)(a), (b) and (c)]***

2.43 Under the existing arrangements, the termination value of the geothermal exploration right is zero. This ensures that there is no immediate tax liability when the geothermal energy explorer stops holding a geothermal exploration right and acquires a geothermal extraction right relating to the same, or a similar area.

2.44 As the geothermal energy extraction right that is acquired is a CGT asset, changes are also made to the CGT cost base rules in Division 110 to ensure that the appropriate capital gains tax outcome arises. Specifically, the first element of the cost base of the geothermal extraction right is set to zero.

2.45 As geothermal exploration rights cease to be depreciating assets as a result of the amendments, rules concerning their termination value in Division 40 become redundant and are repealed. ***[Schedule 5, item 9, table item 12 in subsection 40-300(2)]***

2.46 Similarly, as geothermal exploration rights are no longer depreciating assets, the CGT rules would result in a CGT gain arising upon disposal. Therefore, the amendments repeal the special cost base rules for geothermal extraction rights so that the gain from the disposal of the geothermal energy extraction right is the same as it would otherwise be under the normal CGT rules. CGT roll-over relief ensures that no income tax liability arises on the exchange of a geothermal exploration right for a geothermal extraction right. ***[Schedule 5, item 24, section 112-38]***

***Assessable income — amounts received for geothermal exploration information***

2.47 Consideration received for dealing with or disclosing geothermal exploration information is ordinary income assessable under section 6-5 if the information is:

- disclosed for the purpose of profit-making, or
- dealt with or disclosed under an agreement for the provision of a service that involves sharing the information with another person and has no adverse effect on the profit-making structure of the business.

2.48 However, there are circumstances where the consideration received for dealing with or disclosing information does not give rise to ordinary income (for example, the amount received is not assessable income under 6-5). Therefore, under the existing arrangements, such amounts are included as statutory income in part by reference to their status as a depreciating asset.

2.49 This removes any doubt that the dealing with or sharing of such information is assessable income. As the amendments in Schedule 5 provide that geothermal exploration information is no longer a depreciating asset, amendments are made to maintain the scope of

amounts included in statutory income. ***[Schedule 5, items 2, 3 and 4, section 15-40]***

2.50 The amendments ensure that amounts received by taxpayers for geothermal exploration information are statutory income if:

- the taxpayer continues to hold the information;
- the information is relevant to geothermal energy extraction or a business carried on relating to geothermal energy prospecting or extraction; and
- the amount received is not assessable income under section 6-5.

***[Schedule 5, items 2, 3 and 4, section 15-40]***

### *Consequential amendments*

2.51 A number of consequential amendments to headings, notes and other things are made to reflect the repeal of the geothermal energy exploration deduction. The redundant definitions of 'geothermal exploration right' and 'geothermal energy extraction right' are repealed. ***[Schedule 5, items 1, 15 and 31 to 38, table item headed 'capital allowances' in section 12-5, subsection 40-730(1), paragraphs 165-55(2)(ba) and 716-300(1)(b) and (c), note in subsections 716-300(1) and subsection 995-1(1)]***

## Superannuation guarantee charge percentage

### *SG charge percentage*

2.52 Under the SG legislation, employers are required to make a prescribed minimum level of superannuation contributions to a complying superannuation fund or a retirement savings account on behalf of their eligible employees.

2.53 The minimum level of employer superannuation contributions is calculated with reference to the SG 'charge percentage' (as defined in subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* (SGAA 1992)) and each eligible employee's ordinary time earnings, salary or wages.

2.54 The *Superannuation Guarantee Charge Act 1992* imposes the SG charge on any employer who has an SG shortfall in respect of a quarter. An employer who does not contribute the minimum level of required employer superannuation contributions on time is liable to pay a charge based on the SG shortfall. The SG shortfall for a quarter is calculated under section 17 of the SGAA 1992 and consists of the total of the employer's individual SG shortfalls for that quarter, a nominal interest component, and an administration component.

***Rephasing of the SG charge percentage increase***

2.55 The SG charge percentage is currently legislated to gradually increase to reach 12 per cent for quarters in years starting on or after 1 July 2019.

2.56 The passage of legislation to repeal the MRRT and make amendments to related spending measures (including the SG charge percentage) was delayed prior to the 2014-15 Budget, creating uncertainty for businesses. To provide certainty, the Government announced in the 2014-15 Budget changes to the schedule for increasing the SG charge percentage to 12 per cent. In order to provide businesses and the community with appropriate notice about changes to the SG charge percentage should the passage of the repeal legislation be further delayed, the amendments allow the Treasurer (as the responsible Minister) to vary the SG charge percentage for a particular year starting on 1 July, subject to a number of strict conditions. These conditions reflect the Government's policy as announced in the 2014-15 Budget in relation to the increase to the SG charge percentage. ***[Schedule 6, item 1, subsection 19(2) of the Superannuation Guarantee (Administration) Act 1992]***

2.57 The Minister may, by legislative instrument, vary the SG charge percentage for quarters in a particular year commencing on 1 July, or for two or more years starting on a particular 1 July. Pursuant to item 39 in the table in subsection 44(2) of the *Legislative Instruments Act 2003*, the legislative instrument is not subject to disallowance, being an instrument relating to superannuation. ***[Schedule 6, items 2, subsection 19(2AA) of the Superannuation Guarantee (Administration) Act 1992]***

2.58 However, the exercise of this power is subject to the following strict conditions:

- the Minister must not make a determination for a period starting before or during the financial year in which it is made. That is, the determination must be made prospectively;
- the Minister must not vary the SG charge percentage so that the percentage is less than the percentage that applied for the previous year commencing on 1 July (whether that be the percentage as set out in the legislation or the percentage varied by legislative instrument);
- the Minister must not vary the SG charge percentage so that it is the same number for more than 4 years (apart from when it reaches 12 per cent);
- the Minister must not vary the SG charge percentage to more than 12; and
- the Minister must specify a number that is a multiple of 0.5.

***[Schedule 6, item 2, subsection 19(2AB) of the Superannuation Guarantee (Administration) Act 1992]***

2.59 If the Act receives the Royal Assent in the 2014-15 financial year, the Government's policy is that the schedule for increasing the SG charge percentage, as announced in the 2014-15 Budget, will be as follows:

**Table 2.1: Rephasing of the SG charge percentage — current law compared to the 2014-15 Budget announcement**

| *Year* | *SG charge percentage* | |
|---|---|---|
| | *2014-15 Budget* | *Current law* |
| Year starting on 1 July 2014 | 9.5 | 9.5 |
| Year starting on 1 July 2015 | 9.5 | 10 |
| Year starting on 1 July 2016 | 9.5 | 10.5 |
| Year starting on 1 July 2017 | 9.5 | 11 |
| Year starting on 1 July 2018 | 10 | 11.5 |
| Year starting on 1 July 2019 | 10.5 | 12 |
| Year starting on 1 July 2020 | 11 | 12 |
| Year starting on 1 July 2021 | 11.5 | 12 |
| Years starting on or after 1 July 2022 | 12 | 12 |

## Low income superannuation contribution

2.60 The low income superannuation contribution (LISC) is a superannuation contribution made on behalf of individuals with an adjusted taxable income (ATI) of $37,000 or less in an income year. The maximum contribution amount payable is $500. The contribution is designed to effectively return the tax paid on concessional contributions by an individual's superannuation fund.

2.61 The LISC was funded with the expected revenue from the MRRT, and is being repealed with the removal of the MRRT. The Government will revisit incentives in superannuation for low income earners once the Budget is back in a strong surplus.

2.62 The amendments repeal the framework for the LISC contained in Part 2A of the *Superannuation Government (Co-contribution for Low*

*Income Earners) Act 2003* (SGLIA), and make consequential amendments to other areas of that Act to reflect the repeal of the LISC. ***[Schedule 7, items 1 to 6, subsection 5(2), Part 2A, subsection 49(1), section 55 (note), section 56 (definitions of concessional contributions and low income superannuation contribution]***

## Repeal of income support bonus

2.63 The income support bonus (ISB) is an indexed, non-means tested payment that is paid twice annually to eligible social security recipients. The ISB was intended to provide additional support for eligible income support payment recipients to manage unanticipated expenses. It is exempt from income tax.

2.64 ISB instalment rates are $107.80 for single people or $89.90 for most people who are an eligible member of a couple. Eligible members of a couple separated by illness, or couples where a partner is in respite care or in goal, receive the single rate of $107.80.

2.65 To be eligible to receive the ISB, a person must be a recipient of Newstart Allowance, Sickness Allowance, Youth Allowance, Austudy, ABSTUDY Living Allowance, Special Benefit, Parenting Payment, Transitional Farm Family Payment, or Exceptional Circumstances Relief Payment. The ISB is also paid to eligible recipients under the Veterans' Children Education Scheme prepared under Part VII of the *Veteran's Entitlement Act 1986* and under the Military Rehabilitation and Compensation Act Education and Training Scheme established under the *Military Rehabilitation and Compensation Act 2004*.

2.66 People on these payments receiving more than the basic amount of Pension Supplement are not eligible for the ISB.

2.67 The ISB is repealed with the removal of the MRRT. ***[Schedule 8, items 1 to 11, Part 2.18B, table item 71 section 1190, subsection 23(1) (definitions of 'income support bonus' and 'income support bonus test day'), 1191(1) (table item 43) and 1192(10), and paragraph 23(4AA)(ac) of the Social Security Act 1991; and sections 12L and 47DAB and subsection 47(1) (definition of 'lump sum benefit'), of the Social Security (Administration) Act 1999]***

### *Consequential amendments*

2.68 Consequential amendments have been made to the *Farm Household Support Act 1992*, the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* as a result of the repeal of the ISB, which have repealed or updated a number of cross-referenced provisions. ***[Schedule 8, items 12 to 14 and items 23 to 25, subsections 24A(8A), 24AA(10A) and 24B(6) of the Farm Household Support Act 1992; paragraph 1231(1AA)(b) of the Social Security Act 1991; and section 123TC (definitions of 'category I welfare payment' and 'category Q welfare payment') of the Social Security (Administration) Act 1999]***

2.69 Provisions that were inserted into the ITAA 1997 to provide for income tax exemptions for ISB payments are also repealed as they are no longer required. ***[Schedule 8, items 15 to 22, sections 11-15, 52-75 (table item 5D) and 52-114 (table item 16A), subsections 52-10(1M) and 52-65(1K), and paragraphs 52-10(1)(zb) and (zc) and 52-65(1)(c)]***

## Repeal of the schoolkids bonus

2.70 The schoolkids bonus (SKB) is an indexed payment that is available to eligible families receiving Family Tax Benefit Part A and young people in school receiving Youth Allowance or certain other income support or payments (such as the Veterans' Children Education Scheme). The SKB is paid twice annually, with instalments generally paid in January and June each year. The payment was designed to provide assistance to families in meeting education expenses. It is exempt from income tax.

2.71 Currently, an instalment of the primary school amount for the SKB is $211 while an instalment of the secondary school amount for the SKB is $421.

2.72 The SKB is repealed with the repeal of the MRRT. ***[Schedule 9, items 1 to 20, Divisions 1A of Part 3 and 1A of Part 4, subsection 3(1) (definitions of 'bonus test day', 'current education period', 'family assistance', 'FTB child', 'previous education period', 'primary school amount', 'relevant schoolkids bonus child', 'schoolkids bonus' and 'secondary school amount'), and clause 2 (table items 17AB and 17AC) and subclause 3(1) (table items 17AB and 17AC) of Schedule 4 to the A New Tax System (Family Assistance) Act 1999; and Division 2A of Part 3, section 219TA (definition of 'relevant benefit'), subsections 93A(6) (definition of 'family assistance payment') and 221(5), and paragraphs 66(1)(ba) and 71(1)(a) of the A New Tax System (Family Assistance) (Administration) Act 1999]***

### *Consequential amendments*

2.73 A consequential amendment has been made to the *Social Security (Administration) Act 1999* as a result of the repeal of the SKB which has repealed the provision relating to deductions from SKB payments. ***[Schedule 9, item 23, Subdivision DG of Division 5 of Part 3B of the Social Security (Administration) Act 1999]***

2.74 Consequential amendments are made to the ITAA 1997 to repeal the income tax exemptions for the SKB as they are no longer required. ***[Schedule 9, items 21 and 22, sections 11-15 and 52-150]***

## Application and transitional provisions

### Commencement

2.75 All of the repeals and amendments of the MRRT-related measures, with the exception of Schedule 6 (SG charge percentage), commence on the earlier of a day or days to be fixed by proclamation or twelve months after Royal Assent.

2.76 Providing flexibility for the day of commencement ensures that further delays will not result in the legislation applying retrospectively over a lengthy period, or imposing excessive uncertainty and risk on taxpayers.

2.77 However, this flexibility also means that it is difficult for both taxpayers and the Commissioner of Taxation to predict the date from which the repeal will have effect.

2.78 Providing for the day of commencement to be fixed by proclamation allows the Government to minimise any compliance costs and uncertainty for taxpayers about the date of commencement of the Bill. The Bill specifies that if a day is not fixed within 12 months of Royal Assent, the Schedule will commence on that day. While it more usual to provide that legislation will commence within six rather than twelve months, in this case it was important for it be possible to specify a day in the next financial year rather than the current financial year, so as to minimise significant risks and compliance costs for taxpayers (particularly for some of the related spending measures).

### Loss carry-back

2.79 Loss carry-back is repealed with effect from the start of the income year before the income year in which Schedule 2 commences. For companies with normal accounting periods, the repeal applies from 1 July of the preceding income year. For taxpayers with substituted accounting periods, the repeal applies from the start of the period before the accounting period in which the repeal commences. ***[Schedule 2, item 42]***

2.80 For example, if Schedule 2 commences in the 2014-15 income year, the repeal of loss carry back would have effect from the start of the 2013-14 income year.

2.81 The operation of the loss carry-back provisions for prior years is preserved, including for the purposes of any future action that relates to their operation for that year. For example, a choice to carry-back a loss for the 2012-13 income year can still be made or changed to the extent that it could have been made or changed had the provisions not been repealed. Similarly, assessments for that year can still be made or amended within the normal time limits to take into account a loss being

carried back, and can still be subject to an objection in relation to a loss being carried back. ***[Schedule 2, subitem 43(1)]***

**Example 2.1: Amending loss carry-back assessments**

For the 2012-13 income year, Black & Boyd Pty Ltd had a $1 million loss, which it chose to carry back to its 2011-12 income year. In 2016, the Commissioner concluded that Black & Boyd had $400,000 in unreturned assessable income for its 2012-13 income year; reducing to $600,000 the loss it had available to carry back.

The Commissioner can amend Black & Boyd's 2012-13 assessment to reduce its loss carry-back tax offset even though, by 2016, the loss carry-back provisions were repealed. Black & Boyd can also object to the amended assessment even though the relevant provisions no longer exist.

2.82 The similar preservation effect provided for by section 7 of the *Acts Interpretation Act 1901* is not limited by the Bill's specific savings provision so it could also operate to preserve the 2012-13 operation of the repealed provisions. ***[Schedule 2, subitem 43(2)]***

2.83 A tax loss cannot be utilised by being carried back for income years after the repeal. However, a loss that was carried back for prior years continues to be treated as having been utilised. This ensures that losses cannot be used more than once. ***[Schedule 2, item 44, subsection 960-20(1) of the IT(TP) Act 1997]***

2.84 Net exempt income that was utilised to reduce the amount of a loss that was carried back also continues to be treated as having been utilised. ***[Schedule 2, item 44, subsection 960-20(2) of the IT(TP) Act 1997]***

## Changes to the capital allowances for small business entities

2.85 With the exception of the amendments in relation to low pool values, the amendments made by Schedules 3 and 4 apply on and after 1 January of the income year before the income year in which Schedules 3 and 4 commence and in later income years (including the income year in which the Schedules commence). These amendments include the changes in relation to depreciating assets that are first used or installed ready for use at a particular time, changes in relation to amounts included in the second element of the cost of a depreciating asset that has been written-off in an earlier income year, the repeal of the special rules for certain motor vehicles, as well as the consequential amendments to other provisions. ***[Schedule 3, subitems 11(1), (2) and (4); and Schedule 4, item 8]***

2.86 For example, if Schedule 3 commences in the 2014-15 income year, the reduction in the instant asset write-off threshold would apply for assets that are first used and installed on or after 1 January 2014.

***Depreciating assets***

2.87 Depreciating assets that are first used or installed ready for use in the part of the income year falling on or after 1 January in the income year in which the repeal commences or in later income years (including the income year in which the Schedule commences) are subject to the $1,000 threshold.

2.88 The requirements that the asset be first used or installed ready for use are alternative requirements. Where a depreciating asset meets one but not the other for an income year or part of an income year prior to the period for which the repeal applies, the $6,500 threshold nonetheless continues to apply to the asset.

***Amounts included in the second element of the cost of depreciating assets***

2.89 The changes in respect of amounts included in the second element of a depreciating asset's cost apply to amounts that are incurred on or after 1 January of the income year before the income year in which the repeal commences or in later income years (including the income year in which the Schedule commences).

***Low pool values***

2.90 The amendments in relation to low pool values apply on and after 1 January of the income year before the income year in which the repeal commences and subsequent income years (including the income year in which the Schedule commences). ***[Schedule 3, subitem 11(3)]***

2.91 The reference to the income year in which the repeal commences means that the changes will apply from 1 January of the preceding financial year for most affected small business entities. In the event that a small business entity has a substituted accounting period, in some cases it is possible it will apply from the prior 1 January.

***Special rules for certain motor vehicles***

2.92 As with the other changes for depreciating assets and amounts included in the second element of the cost of such assets, the repeal of the special rules for certain motor vehicles apply to motor vehicles that are first used or installed ready for use on or after 1 January of the income year before the income year in which the repeal commences or in subsequent income years (including the income year in which the Schedule commences). ***[Schedule 4, item 8]***

## Repeal of geothermal energy exploration deduction

2.93 The repeal of the capital allowance deduction for geothermal energy exploration expenditure and the repeal of the denial of deductions relating to expenditure for landcare operations, electricity and telephone

lines, apply to expenditure incurred in the income year in which the repeal commences and subsequent income years. ***[Schedule 5, subitem 39(2)]***

2.94 The repeal of the modification to the cost base rules applies to geothermal energy extraction rights held at any time after the start of the income year in which the repeal commences. ***[Schedule 5, subitem 39(3)]***

2.95 The amendments allowing geothermal energy explorers to use a CGT roll-over in relation to the disposal of a geothermal exploration right where they acquire a geothermal energy extraction right covering the same (or a similar) area, applies to CGT events that occur after the start of the income year in which the repeal commences. ***[Schedule 5, subitem 39(3)]***

2.96 The amendments also insert transitional provisions so that deductions or balancing adjustments for geothermal exploration rights or geothermal exploration information which were held, or started to be held, before the start of the income year in which the repeal commences are not adversely affected by the repeal of the immediate deductibility of geothermal exploration expenditure. ***[Schedule 5, subitem 39(1)]***

## Superannuation guarantee charge percentage

2.97 The Treasurer will have the power to amend the SG charge percentage from the date of Royal Assent, in respect of the following year starting on 1 July. ***[Section 2, commencement provisions]***

## Low income superannuation contribution

2.98 The repeal of the LISC applies to concessional contributions for the financial year before the financial year in which Schedule 7 commences, concessional contributions for the financial year in which Schedule 7 commences and concessional contributions for later financial years. ***[Schedule 7, subitems 7(1) and 7(3)]***

***For example, if Schedule 7 commences in the 2014-15 financial year, the LISC is repealed for concessional contributions made for the 2013-14 financial year and later financial years.***

2.99

***Reporting***

2.100 Section 12G of the SGLIA requires the Commissioner to give a Treasury Minister a report for presentation to Parliament on the working of the LISC during the quarter.

2.101 The reporting obligation under section 12G continues until the commencement of Schedule 7 (the day fixed by proclamation), after which time no further reporting in respect of any quarter or financial year is required. ***[Schedule 7, subitem 7(2)]***

***Notification where the Commissioner receives new information***

2.102 Where an individual does not lodge an income tax return, the Commissioner may estimate the individual's ATI to determine their eligibility for the LISC. The Commissioner is not required to notify the individual when, based on the information available to the Commissioner at that time, it is determined that a person is eligible for the LISC.

2.103 Subsection 12F(2) of the SGLIA provides that if the Commissioner obtains further information after estimating an individual's ATI and, as a result of that information, decides that the LISC is not payable, the Commissioner must give written notice of the decision to the person. As the individual is not notified of the first decision to pay the LISC, the notification of the subsequent decision has the potential to cause confusion. From the commencement of Schedule 7 (the day fixed by proclamation), written notification under section 12F is no longer required. Individuals continue to receive information from their superannuation fund regarding all transactions on their account in their annual member statement. ***[Schedule 7, subitems 8(1) and 8(2)]***

***Transitional — deadlines for the financial year for a LISC***

2.104 The deadline for determining that a LISC is payable or determining that an underpaid amount of LISC is payable is the first day of the second financial year after the financial year in which Schedule 7 commences. For example, if Schedule 7 commences in the 2014-15 financial year, the deadline is 1 July 2016.

2.105 This provides certainty regarding eligibility for the LISC and enables the Commissioner to streamline administrative systems 2 years following the end of the last financial year for which the LISC is payable, reducing the administrative compliance burden. ***[Schedule 7, subitems 9(1), 9(2) and 9(3)]***

## Repeal of the income support bonus

***Application***

2.106 The repeal of the ISB applies to new instalments of the bonus after Schedule 8 commences.

***Savings***

2.107 The law with respect to the ISB is preserved in relation to payments of the ISB to individuals who were entitled to payment in relation to the period prior to the repeal for ISB payments made before, on or after the commencement of the amendments. Parts of the social security law relating to a person's qualification for the ISB in force prior to the commencement of the amendments continue to apply in relation to that qualification. ***[Schedule 8, subitems 26(1),(2) and (6)]***

2.108 The provisions of the ITAA 1997 which relate to the ISB also continue to operate in respect of payments made to recipients before, on or after the commencement of the amendments to those provisions. ***[Schedule 8, subitems 26(3) to (5)]***

## Repeal of the schoolkids bonus

### *Application*

2.109 The repeal of the SKB applies to new instalments of the bonus after Schedule 9 commences.

### *Savings*

2.110 The law with respect to the SKB is preserved in relation to individuals who are eligible for SKB on a bonus test day occurring before commencement of the amendments. This would allow the SKB to be paid after commencement in relation to that eligibility. ***[Schedule 9, subitems 24(1) and (4)]***

2.111 Provisions of the ITAA 1997 which relate to the SKB also continue to operate in respect of SKB payments made before, on or after commencement. ***[Schedule 9, subitem 24(2)]***

2.112 Provisions in the *Social Security (Administration) Act 1999* providing for the income management of SKB payments are preserved so that any payments made before, on or after commencement are subject to the provisions. ***[Schedule 9, subitem 24(3)]***

# Chapter 3
# Regulation impact statements

## Context

3.1 The regulation impact statement and supplementary regulation impact statement are included in this explanatory memorandum in the forms in which they were approved and consulted on. As a result, they do not reflect the impact of subsequent policy or technical changes contained in this Bill as a result of the delay in the expected enactment of the measures from when both statements were prepared in the context of the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013.

## Regulation Impact Statement

## Policy objective

### Context

3.2 The Minerals Resource Rent Tax (MRRT) commenced operation on 1 July 2012 following the announcement of resource tax reforms by the then Government on 2 May 2010.

3.3 The MRRT is a profits tax which is levied at an effective rate of 22.5 per cent of the mining profit of coal and mining projects within Australia. Miners with an annual mining profit of less than $75 million are exempted from paying MRRT.

3.4 The former Government also introduced a number of measures following the 2010 announcement the funding for which, while not hypothecated, was tied to the forecast MRRT revenues. These included:

- company tax loss carry-back arrangements, which enable companies making a tax loss of up to $1 million to recoup taxes paid on an equivalent income amount earned in the previous two years;
- increasing the instant asset write-off threshold from $1,000 to $5,000 as part of the MRRT and subsequently from $5,000 to $6,500 as part of the carbon tax package commencing from the 2012-13 income year. This allows small businesses to immediately claim a deduction for depreciating assets costing less than $6,500;

- accelerated depreciation arrangements for motor vehicles from the 2012-13 income year, allowing small businesses to claim a $5,000 immediate deduction for a motor vehicle;
- the inclusion of geothermal exploration within the wider definition of exploration;
- the phased increase in the Superannuation Guarantee from 9 per cent to 12 per cent by 2019;
- the Low Income Superannuation Contribution (LISC) for contributions made from 2012-13, equal to 15 per cent of the concessional contributions (up to a $500 maximum) made by or for individuals with taxable income not exceeding $37,000;
- the Income Support Bonus, which provides an annual income tax exempt payment to certain income support recipients; and
- the Schoolkids bonus, which commenced on January 2013 and is payable to parents who have dependent children in primary or secondary education; and to students receiving certain Government payments;
- the phase down of Interest Withholding Tax from 2014-15, which currently applies to financial institutions; and
- the Regional Infrastructure Fund (RIF) which provides funding to support infrastructure investments, particularly in regional areas associated with mining.

## Problem

3.5 The Government has an election commitment to repeal the MRRT, which it has consistently opposed on the grounds that it undermines confidence in Australia as an investment destination and as a secure supplier of resources.

3.6 It is difficult to substantiate the impact the introduction the MRRT may have had on the level of mining investment in Australia in the absence of a counter-factual. However, evidence provided by mining stakeholders to the recent Senate Economics Committee inquiry into the development and operation of the Minerals Resource Rent Tax in March 2013, and submissions made in relation to the Bill, support the Government's concerns regarding the relative attractiveness of Australia as an investment destination.

3.7 The Chief Executive Officer of a small mining company, Golden West Resources, provided evidence to the Senate Committee that the MRRT had had a negative impact on international perceptions of Australia as an investment destination.

3.8 'As the CFO of other iron ore explorers and producers in previous roles, and now as CEO of Golden West, I can attest to the fact that I have been frequently reminded by investors that Australia is not considered as attractive for foreign capital as it once was'.

3.9 'While there can be debate as to the extent to which [investment] decisions…are directly attributable to the additional costs and risks impose by the MRRT, it would be naïve to believe that such considerations did not form part of the decision-making process'.

3.10 Similarly, both the Minerals Council of Australia and the Association of Mining and Exploration Companies (AMEC), provided evidence to the Committee that the introduction of the MRRT had negatively impacted on Australia's reputation as an investment destination.

3.11 In its submission on the draft repeal legislation, the Minerals Council of Australia noted in relation to the MRRT that, 'additional taxes impact investment decisions and make Australian projects less attractive relative to projects in competitor nations'. In its submission on the draft legislation, the Association of Mining and Exploration Companies noted that the MRRT has 'detrimentally affected the risk profile of small Australian iron ore and coal miners and junior exploration companies, making raising equity and debt capital extremely difficult over the past three years'.

3.12 The MRRT imposes a regulatory and compliance burden on the mining industry. Under the MRRT, both coal and iron ore miners are required to maintain separate accounts and prepare and submit starting base, quarterly instalment, and annual MRRT returns. These reporting obligations are in addition to the obligations already imposed in relation to Commonwealth income tax and State royalty payments.

3.13 The regulatory burden is exacerbated by the complex design of the tax. Unlike other taxes applicable to the mining industry, the MRRT operates on a cash-flow basis, and involves the immediate deduction of all expenditures; the application of variable uplift factors to un-deducted expenditures and allowances each year; and the use of transfer pricing methods to determine taxable revenue. The MRRT also applies on a project interest, rather than entity basis, which further increases the complexity of the tax. In its submission to the recent Senate Economics Committee inquiry into the development and operation of the MRRT, Fortescue metals noted:

> *'The [MRRT] has introduced a new layer of administrative complexity into an already highly regulated industry. Taxing at a 'project' level rather than a corporate level has further complicated matters and is significantly increasing the cost of overall tax compliance … The MRRT imposes an additional layer of taxation on top of the existing State and Territory based royalty systems and the Federal income tax*

*regime in a manner that does not simplify taxation, nor make the taxation process more efficient. In fact, since it is an entirely new tax impost all it has done is to increase the complexity of the compliance burden and necessarily acts as an investment deterrent to the extent that it reduces forecast project returns'.*

3.14 The failure of the MRRT to generate sufficient revenue in comparison with the additional expense of the measures associated with its introduction, poses a risk to the fiscal position. The cost of the MRRT associated measures will significantly exceed the MRRT revenue over the forward estimates and beyond.

3.15 The revenue expected to be raised by the MRRT has been progressively revised down since its announcement, with the 2013 Pre-Election Economic and Fiscal Outlook (PEFO) estimate being $4.4 billion in net terms (that is, after company tax deductions for MRRT paid) for the 2013-14 to 2016-17 period. To date, MRRT instalment collections have totalled around $400 million in net terms.

3.16 Resource rent taxes such as the MRRT are, by their nature, volatile due to the number of exogenous factors that may affect mining profitability. These include commodity price and exchange rate movements, cost pressures, and the level of activity.

3.17 The volatility of resource rent taxes is further exacerbated relative to income tax due to them being cash-flow taxes, which allow all expenditures to be immediately deducted against taxable revenue rather than depreciated over time, and the fact that they tax only a portion of an entity's profit — that being the 'resource rent'. This volatility may, in part, explain some of the variation between forecasts and actual collections to date.

3.18 However, in relation to the MRRT specifically, design features such as deductible mining allowances provided to companies, including starting base allowances and State royalty deductions, and that the MRRT is determined on the value of the commodity and not the sale value, requiring transfer pricing methods to be used, may also affect the level of MRRT that is ultimately paid.

3.19 Under the MRRT, miners holding a project interest on 2 May 2010 receive an additional 'starting base' allowance which is normally determined as the market value of the project interest as at 2 May 2010. This starting base amount is depreciated over the life of the relevant project asset in order to provide a partial tax shield to miners in recognition of historic investments.

3.20 Differences between the assumptions underpinning the revenue forecasts and the approach taken by miners regarding the value of starting base assets and the time over which those amounts are depreciated may be a factor in the ongoing variation between revenue forecasts and outcomes.

Miners are not required to submit their starting base returns to the ATO until after the end of their first MRRT year.

3.21 The MRRT also provides a credit-equivalent deduction for royalties paid to States and Territories. State royalty increases that occurred after the announcement of the MRRT also contributed to the downward revision of revenue forecasts.

3.22 Finally, the MRRT is levied only on the proportion of sales revenue attributable to the commodity at the valuation point (the point prior to 'downstream' activities being undertaken) which is not directly observable and hence difficult to forecast accurately. The MRRT Act does not require a particular method to be used in determining the revenue attributable to the valuation point, except to the extent that the method used is that which produces the most appropriate and reliable amount.

3.23 By comparison, many of the expense measures introduced in association with the MRRT are relatively stable and expected to grow over time.

### Objective

3.24 The MRRT legislation package will meet the Government's election commitment to repeal the MRRT and associated measures and by so doing:

- reduce the compliance cost on industry and promote activity in the mining sector by abolishing the MRRT; and
- secure a structural improvement in the Budget by discontinuing or re-phasing those measures introduced in association with the MRRT, the costs of which were intended to be met by MRRT revenues.

## Implementation options

3.25 The Government has committed to the abolition of the Minerals Resource Rent Tax from 1 July 2014. The repeal of the MRRT will also require consequential amendments to the Petroleum Resource Rent Tax (PRRT) to remove references to the MRRT that would otherwise extend the application of the PRRT.

3.26 In addition, the Government has committed to discontinuing those expense measures associated with the MRRT, with the exception of the phased increase in the Superannuation Guarantee in relation to which it committed to delay the scheduled ramp-up of the superannuation rate by two years, to recommence on 1 July 2016.

## Assessment of impacts

### (a) Repeal the Minerals Resource Rent Tax from 1 July 2014

3.27 The Minerals Resource Rent Tax will be repealed, effective from 1 July 2014. *The Petroleum Resource Rent Tax Assessment Act 1987* (the PRRT Act) currently excludes gas that is produced incidental to coal mining (as opposed to a commercial gas operation), from the Petroleum Resource Rent Tax (PRRT), which is instead captured by the MRRT. Consequential amendments will be made to the PRRT Act so as to continue to exclude such incidental gas from the PRRT's scope following the repeal of the MRRT, noting that most coal mines release some gas and that applying the PRRT in such circumstances would impose considerable compliance burdens on industry for little, if any, revenue.

3.28 Repealing the MRRT will result in a reduced tax burden for those iron ore and coal miners who would otherwise be liable to pay MRRT.

3.29 As noted, a key concern of the Government which is supported by submissions from industry, is the impact that the introduction of the MRRT has had on investor confidence and the relative competitiveness of Australia as an attractive mining investment destination. The repeal of the MRRT is expected to restore industry confidence and will reduce the effective tax rate that coal and iron ore projects may be subject to. It is reasonable to expect that this will have a positive impact on the level of mining investment in Australia going forward relative to a scenario where the MRRT continues to apply.

3.30 The repeal will also remove the significant compliance and administrative burden imposed by the complex MRRT legislation. The abolition of the MRRT will result in the repeal of approximately 360 pages of legislation.

***MRRT Administration Costs***

3.31 The cost of administering the MRRT is significant. The 2010-11 Budget included nearly $92 million for the administration of the MRRT and extended Petroleum Resource Rent Tax, with the majority (~$20 million per year) directed to the MRRT. While the significant administration cost reflect, in part, the fact the MRRT is a new tax and could be expected to decline somewhat once the MRRT became established, it also reflects the relative complexity of the tax notwithstanding the relatively small number of taxpayers.

3.32 The cost of collecting MRRT revenue is significantly higher than that for other taxes. The cost of administering the MRRT for the 2012-13 year was around $20 million, or around eight per cent of the $245 million net MRRT revenue collected for the 2012-13 year. This compares to the ATO's average cost (including GST) of 0.91 per cent of

revenue collected in 2012-13. The repeal of the MRRT will deliver a saving in administrative costs of $82 million over the period 2013-14 to 2016-17 alone.

***MRRT Compliance Costs***

3.33 Under the MRRT, any entity holding a mining interest or a pre-mining interest (that is, an interest in an exploration permit) in a coal or iron ore project is required to register and complete quarterly instalment, starting base and annual MRRT tax returns. This means that, barring the limited exceptions noted below, all entities subject to the MRRT are required to prepare and submit returns, and incur the associated compliance costs, even if the entity will not be liable to pay MRRT in a given year, or has not generated any mining revenue from their interest(s).

3.34 One exception to the reporting requirements is where an entity has elected to use the simplified MRRT method for a given year. The simplified MRRT method allows small miners with an annual group profit of less than $75 million, (or where royalty liabilities are at least 25 per cent of profits, and those profits are less than $250 million) to not lodge an MRRT return for that year.

3.35 While the simplified method was intended to allow those entities who were unlikely to have an MRRT liability in a given year to avoid incurring compliance costs, the method has largely not been adopted to date due to the fact that, by doing so, the deductible allowances relating to the entity's interest for that year, including the starting base allowances, are extinguished.

3.36 A second exception is where an exemption from some reporting requirements is provided by the Tax Commissioner via legislative instrument for a given MRRT year.

3.37 To date there are approximately 235 companies registered for MRRT with only a very small number of companies having an actual MRRT liability. The ATO advise that a further 65 companies have not registered yet due to an extension being granted, but would be required to register should the MRRT repeal not proceed.

3.38 In 2012-13, only around 10 large miners (total annual business income > $250 million), less than five small or medium sized miners ($2 million to $250 million total annual business income), and less than five 'micro' miners (less than $2 million total annual business income) made (net) MRRT payments.

3.39 Around 105 large miners, 35 small or medium miners and 5 micro miners have submitted MRRT instalment notices while making no net payments. The difference between the number of companies registered for MRRT and those lodging instalment notices is due to the Australian Taxation Office providing an exemption to certain categories of miners (those holding only mining exploration licences) from lodging

instalment returns for the 2012-13 MRRT year. However, these miners will still need to lodge a 2013 MRRT return.

3.40 While there will be some once off adjustment cost estimated at $800 per company ($243,000 in total for the industry (represented in the table as a 10 year average of $24,300)) to adjust their systems for the repeal of the MRRT, the ongoing compliance savings are estimated as $35,000 per company p/a, or $10.5 million p/a for the industry.

3.41 By way of comparison a 2012 ATAX study of compliance costs based on a survey of small businesses (50 or less full time employees equivalent) found that the average gross compliance costs (that is, excluding potential benefits that may accrue from record keeping etc) incurred by small businesses in relation to income tax was approximately $4,500 in 2010.

### Regulatory Burden and Cost Offset Estimate Table

| **Average Annual Compliance Costs (from Business as usual)** | | | | |
|---|---|---|---|---|
| **Sector/Cost Categories** | **Business** | **Not-for-profit** | **Individuals** | **Total by cost category** |
| Administrative Costs | –$10.5 million | $0 | $0 | –$10.5 million |
| Substantive Compliance Costs | $24,300 | $0 | $0 | $24,300 |
| Delay Costs | $0 | $0 | $0 | $0 |
| **Total by Sector** | –$10.5million | $0 | $0 | –$10.5million |
| **Annual Cost Offset** | | | | |
| | **Agency** | **Within portfolio** | **Outside portfolio** | **Total** |
| Business | $0 | $0 | $0 | $0 |
| Not-for-profit | $0 | $0 | $0 | $0 |
| Individuals | $0 | $0 | $0 | $0 |
| Total | $0 | $0 | $0 | $0 |
| Proposal is cost neutral? | no | | | |
| Proposal is deregulatory | yes | | | |
| Balance of cost offsets | $0 | | | |

### (b) Repealing the loss carry-back arrangements

3.42 The loss carry-back provisions enable companies making a tax loss of up to $1 million in the 2012-13 and subsequent income years to recoup taxes paid on an equivalent amount of taxable income in a recent income year.

3.43 The repeal of loss carry-back will have a negligible effect on the compliance burden on companies. To the extent that loss carry-back is an additional means by which companies may elect to utilise losses to reduce their tax liability, it currently is adding a marginal additional layer of complexity to the taxation interface with which companies interact. Removing it therefore represents a marginal simplification of the law regarding company taxation.

3.44 On the other hand, small companies whose profitability is volatile may face a higher effective tax rate (since they may not be able to readily write-off their losses against their profits). The repeal of loss carry-back may impact such companies' flexibility and their ability to take risks and invest.

3.45 This option will take effect for the 2013-14 income year and later income years. Having the repeal take effect from the 2013-14 income year will avoid 'clawing back' monies already paid to full year balancing companies under the arrangements, and companies will receive substantial notice before the end of the year to take account of the removal of the arrangements.

3.46 There will be some minor transitional compliance costs for small business entities in adjusting to the new arrangement. The total transitional compliance costs have been assessed as $734,400 (represented in the table as a 10 year average of $73,440).

3.47 As the repeal of loss carry-back provisions represents a marginal simplification of the law regarding company taxation, it is likely that the ongoing compliance cost effect will marginally positive. However, it is not possible to meaningfully assess this marginal simplification of the legislation with an hourly figure for compliance time saved. The ongoing compliance cost saving has therefor been conservatively assessed as zero.

### Regulatory Burden and Cost Offset Estimate Table

| **Transitional Compliance Costs (from Business as usual)** | | | | |
|---|---|---|---|---|
| **Sector/Cost Categories** | **Business** | **Not-for-profit** | **Individuals** | **Total by cost category** |
| Administrative Costs | $73,440 | $0 | $0 | $73,440 |
| Substantive Compliance Costs | $0 | $0 | $0 | $0 |
| Delay Costs | $0 | $0 | $0 | $0 |
| **Total by Sector** | $73,440 | $0 | $0 | $73,440 |
| **Annual Cost Offset** | | | | |
| | **Agency** | **Within portfolio** | **Outside portfolio** | **Total** |
| Business | $0 | $0 | $0 | $0 |
| Not-for-profit | $0 | $0 | $0 | $0 |
| Individuals | $0 | $0 | $0 | $0 |
| Total | $0 | $0 | $0 | $0 |
| Proposal is cost neutral? no | | | | |
| Proposal is deregulatory yes | | | | |
| Balance of cost offsets $0 | | | | |

### (c) Reducing the instant asset write-off to $1000 from 1 January 2014

3.48 The threshold for the value of assets below which small business entities can claim an immediate deduction through Subdivision 328-D of the *Income Tax Assessment Act 1997* (ITAA 1997) will be reduced from assets costing less than $6,500 to assets costing less than $1,000, consistent with threshold that applied prior to the introduction of the MRRT and carbon tax. The reduction in the instant asset write-off threshold will apply to assets that are first used or installed ready for use on or after 1 January 2014.

3.49 The reduced value threshold will also apply to further expenditure incurred on or after 1 January 2014 in respect of assets that have already been used or installed ready for use. This will include those assets that were previously immediately deducted under the $6,500 instant asset write off.

3.50 The reduction in this concessional capital allowance will result in some small businesses depreciating some of their assets over a longer timeframe, with a resulting negative impact on cash flow. It will not, however, reduce the overall quantum of deductions.

3.51 The small business single pool arrangements currently contained in Subdivision 328-D of the ITAA 1997 will be retained and will apply to assets costing $1,000 or more. Prior to the 2012-13 income year, small business entities could only claim an immediate deduction for assets costing less than $1,000. Assets costing $1,000 or more were allocated to either the 'general small business pool' or the 'long life small business pool' depending on their effective life, and depreciated at different rates.

3.52 Retaining the single pooling arrangements will avoid requiring small businesses having some long life assets in the single pool and others in a long life pool, thus providing greater certainty. Small business will also continue to benefit from the simpler administration the single pool arrangement provides.

3.53 There will be some transitional compliance costs to small business entities as they adjust to the new threshold. A few entities may face some additional complexity due to the change occurring part way through an income year, resulting in assets and expenses being treated differently depending on the time that they are first used or installed ready for use, or incurred. The total transitional compliance costs have been assessed as $924,800 (represented in the table as a 10 year average of $92,480).

3.54 The retention of the single pool arrangements however will minimise the ongoing compliance cost and ongoing compliance costs have been assessed as zero.

### Regulatory Burden and Cost Offset Estimate Table

| **Transitional Compliance Costs (from Business as usual)** | | | | |
|---|---|---|---|---|
| **Sector/Cost Categories** | **Business** | **Not-for-profit** | **Individuals** | **Total by cost category** |
| Administrative Costs | $92,480 | $0 | $0 | $92,480 |
| Substantive Compliance Costs | $0 | $0 | $0 | $0 |
| Delay Costs | $0 | $0 | $0 | $0 |
| **Total by Sector** | $92,480 | $0 | $0 | $92,480 |
| **Annual Cost Offset** | | | | |
| | **Agency** | **Within portfolio** | **Outside portfolio** | **Total** |
| Business | $0 | $0 | $0 | $0 |
| Not-for-profit | $0 | $0 | $0 | $0 |
| Individuals | $0 | $0 | $0 | $0 |
| Total | $0 | $0 | $0 | $0 |
| Proposal is cost neutral? no | | | | |
| Proposal is deregulatory yes | | | | |
| Balance of cost offsets $0 | | | | |

### (d) Discontinuing the accelerated depreciation arrangements for motor vehicles from 1 January 2014

3.55 From 1 January 2014, the accelerated depreciation arrangements for motor vehicles under section 328-237 of ITAA 1997 will no longer apply. Under those arrangements, a small business entity can claim an immediate deduction for the first $5,000 of value of a motor vehicle it uses or has installed ready for use. The remaining value of the motor vehicle is then allocated to the entity's small business asset pool and depreciated at a rate of 15 per cent in the entity's first income year and then 30 per cent in later years.

3.56 Under the new arrangements, motor vehicles that are first used or installed ready for use on or after 1 January 2014 will instead be treated as normal business assets under the concessional capital arrangements under Subdivision 328-D of the ITAA 1997 and depreciated at a rate of

15 per cent in the year which the asset is first used or installed for use and then 30 per cent for all subsequent years.

3.57 The removal of this concessional capital allowance will have a negative impact on the cash flow of small business entities that use motor vehicles, due to those vehicles being depreciated over a longer timeframe.

3.58 There will be some minor transitional compliance costs for small business entities in adjusting to the new arrangement and some entities may face additional complexity due to the change occurring part way through an income year. The total transitional compliance costs have been assessed as $462,400 (represented in the table as a 10 year average of $46,240).

3.59 However, aligning the start date with that for the changes to the instant asset write off threshold will reduce complexity by bringing all depreciating assets back under the one concessional arrangement. Therefore the ongoing compliance cost savings may be expected to be slightly positive over time but have been conservatively estimated as zero.

**Regulatory Burden and Cost Offset Estimate Table**

| **Transitional Compliance Costs (from Business as usual)** | | | | |
|---|---|---|---|---|
| **Sector/Cost Categories** | **Business** | **Not-for-profit** | **Individuals** | **Total by cost category** |
| Administrative Costs | $46,240 | $0 | $0 | $46,240 |
| Substantive Compliance Costs | $0 | $0 | $0 | $0 |
| Delay Costs | $0 | $0 | $0 | $0 |
| **Total by Sector** | $46,240 | $0 | $0 | $46,240 |
| **Annual Cost Offset** | | | | |
| | **Agency** | **Within portfolio** | **Outside portfolio** | **Total** |
| Business | $0 | $0 | $0 | $0 |
| Not-for-profit | $0 | $0 | $0 | $0 |
| Individuals | $0 | $0 | $0 | $0 |
| Total | $0 | $0 | $0 | $0 |
| Proposal is cost neutral? | no | | | |
| Proposal is deregulatory | yes | | | |
| Balance of cost offsets | $0 | | | |

### (e) Discontinuing the inclusion of geothermal exploration within the wider definition of exploration

3.60 What constitutes exploration under tax law was expanded to include geothermal exploration with effect from 1 July 2012. This inclusion enables companies engaged in exploration for geothermal resources to immediately write off the asset expense of those assets first used for geothermal exploration.

3.61 Under this option, the inclusion of geothermal exploration within the wider tax definition of exploration will be discontinued with effect from 1 July 2014.

3.62 Discontinuing the inclusion of geothermal exploration will not have a significant effect on the compliance burden on companies. While requiring geothermal companies to depreciate relevant assets over time, rather than providing an immediate write-off, will negatively impact on the cash flow of some geothermal explorers, this depreciation treatment is consistent with that generally applicable to non-exploration assets.

3.63 Moreover, to the extent the immediate write off of assets first used in geothermal exploration represents an additional concession by which companies can utilise expenses to reduce their tax liability, it adds an additional layer of complexity to the taxation interface with which companies interact. Removing it would therefore result in a marginal simplification of the tax law.

3.64 Given the small number of geothermal explorers the compliance costs on the industry will be very small. The transitional compliance cost has been assessed as $192 (represented in the table as a 10 year average of $19.20). As the measure represents a marginal simplification of the tax law it is likely that the ongoing compliance cost saving will be marginally positive but has been conservatively assessed as zero.

### Regulatory Burden and Cost Offset Estimate Table

| *Transitional Compliance Costs (from Business as usual)* | | | | |
|---|---|---|---|---|
| **Sector/Cost Categories** | **Business** | **Not-for-profit** | **Individuals** | **Total by cost category** |
| Administrative Costs | $19.20 | $0 | $0 | $19.20 |
| Substantive Compliance Costs | $0 | $0 | $0 | $0 |
| Delay Costs | $0 | $0 | $0 | $0 |
| **Total by Sector** | $19.20 | $0 | $0 | $19.20 |
| **Annual Cost Offset** | | | | |
| | **Agency** | **Within portfolio** | **Outside portfolio** | **Total** |
| Business | $0 | $0 | $0 | $0 |
| Not-for-profit | $0 | $0 | $0 | $0 |
| Individuals | $0 | $0 | $0 | $0 |
| Total | $0 | $0 | $0 | $0 |
| Proposal is cost neutral? | no | | | |
| Proposal is deregulatory | yes | | | |
| Balance of cost offsets | $0 | | | |

## (f) Re-phasing the Superannuation Guarantee

3.65 Compulsory employer-funded superannuation (Superannuation Guarantee (SG)) contributions are currently scheduled to increase from 9 per cent to 12 per cent. The increase in SG contribution is a stepped process, which commenced from 1 July 2013 with a 0.25 per cent increase to 9.25 per cent, with a further 0.25 per cent increase scheduled on 1 July 2014. It then increases in increments of half a per cent each year until it reaches 12 per cent on 1 July 2019.

3.66 Under this option the ramp-up in the Superannuation Guarantee contributions rate will be delayed by two years. The SG will remain at 9.25 per cent until 30 June 2016, increase to 9.5 per cent on 1 July 2016 and then increase in increments of half a per cent each subsequent year until it reaches 12 per cent on 1 July 2021 (instead of 1 July 2019). The currently legislated increases and the increases proposed under this option are set out in the table below.

| ***Financial Year*** | ***13-14*** | ***14-15*** | ***15-16*** | ***16-17*** | ***17-18*** | ***18-19*** | ***19-20*** | ***20-21*** | ***21-22*** |
|---|---|---|---|---|---|---|---|---|---|
| Current | 9.25 | 9.5 | 10 | 10.5 | 11 | 11.5 | 12 | 12 | 12 |
| Proposed | 9.25 | 9.25 | 9.25 | 9.5 | 10 | 10.5 | 11 | 11.5 | 12 |

3.67 This option involves the current SG rate of 9.25 per cent being retained for two years longer than currently legislated. Given that increases in the SG are funded largely from reductions in take-home wages or business profits, re-phasing the SG could boost near-term economic activity. Any reductions in businesses' overall wages bills would lower their operating costs, while employees could also receive more take-home pay in the near term.

3.68 Wages may have already been negotiated for some employees beyond 1 July 2014 on the basis of the legislated increases in SG. In this case, the employer could benefit from lower employment costs, which could increase their short term viability and ability to employ or retain people.

3.69 Delaying the increase in the SG rate for two years is not expected to have a significant impact on individuals' retirement incomes as the increase in contributions in the absence of the delay and the period the increase is postponed are not significant. The SG rate will still gradually increase over time to 12 per cent enabling individuals to achieve a higher retirement income than if the increase were repealed altogether.

3.70 Moreover, the change will not impact on those employees who already receive superannuation contributions at a rate above the prescribed minimum. In addition, individuals who wish to save more for their retirement can continue to do so by making additional salary sacrifice contributions or after-tax contributions.

3.71 Given that the magnitude of the increase being delayed is small and the period over which the increase is being delayed is only two years, the net impact of the delay in the increase in the SG on national savings, if any, is expected to be small.

3.72 The magnitude and length of the delay reflects the trade-off between seeking to provide a benefit to business through reduced business

costs and repairing the budget position versus increasing individuals' incomes in retirement. Further postponements in the increase in the SG or abolishing the increase could be expected to result in continued positive impact on business costs, although over time the impact of lower superannuation contributions would be expected to be reflected in higher wages. However, this would come at the cost of more significant reductions in individual's retirement savings.

3.73 As the change applies to the SG rate only and employer procedures should essentially remain the same, the hours required for businesses to adjust to the rate change was assessed as zero and therefore the effective compliance cost has been assessed as zero. By way of verification a quantitative assessment of the measure's compliance cost was undertaken using the ATO's Business Compliance Cost Assessment which found the compliance cost too small to meaningfully measure.

### (g) Abolish the Low Income Superannuation Contribution (LISC) on eligible contributions from 1 July 2013

3.74 The low income superannuation contribution (LISC) is a payment designed to effectively refund the 15 per cent tax on concessional contributions (such as superannuation guarantee contributions) for eligible individuals with incomes of $37,000 or less. The maximum LISC payment in any year is $500. The LISC commenced for contributions made in the 2012-13 income year.

3.75 As a result of this payment, most low income earners who receive the LISC effectively pay no tax on their concessional superannuation contributions.

3.76 This proposal seeks to abolish the LISC being paid for eligible concessional contributions made on or after 1 July 2013. Hence, only payments relating to the 2012-13 income year will be made. However, regardless of the year an income tax return is lodged, determinations for payment of the LISC (including underpayments) will not be made after 30 June 2015.

3.77 As a result of this option, eligible individuals would receive up to $500 less each year in contributions from the Government and ultimately have lower superannuation savings upon retirement. It is unlikely to significantly change the amount of concessional superannuation contributions received by superannuation funds. The Government has publicly committed to revisit superannuation incentives for low income earners once the Budget is back in a strong surplus.

3.78 The LISC is administered by the Australian Taxation Office (ATO). Typically payments are made by the ATO to superannuation funds or the individual where no superannuation fund exists. This option would have no impact on employers and superannuation funds would be required to receive and process fewer payments each year.

3.79 The net impact on compliance time, and therefore the effective compliance cost, has been assessed as zero. By way of verification a quantitative assessment of the measure's compliance cost was undertaken using the ATO's Business Compliance Cost Assessment which found the compliance cost too small to meaningfully measure.

### (h) Abolishing the Income Support Bonus

3.80 The proposal to abolish the Income Support Bonus is an election commitment and is part of a broader package to remove the Minerals Resources Rent Tax and associated expenditure.

3.81 This proposal will abolish all future payments of the Income Support Bonus from Royal Assent of the legislation.

3.82 There will be no regulatory impact on business activity, the not-for-profit sector or individuals resulting from the cessation of the Income Support Bonus.

### (i) Abolishing the Schoolkids Bonus

3.83 From 1 January 2014, this measure will abolish the Schoolkids Bonus, an annual payment of $410 for each qualifying child in primary school, and $820 for each qualifying child in secondary education, payable over two instalments.

3.84 There will be no regulatory impact on business activity, the not-for-profit sector or individuals resulting from the cessation of the Schoolkids bonus.

### Other measures

3.85 The measure to phase down Interest Withholding Tax from 2014-15, which applies to financial institutions was not enacted and will not be proceeded with. Discontinuing the Regional Infrastructure Fund (RIF) does not require legislation.

3.86 There will be no regulatory impact on business activity, the not-for-profit sector or individuals resulting from the cessation of the RIF or from not proceeding with the phase-down of interest withholding tax.

## Consultation

3.87 The draft Minerals Resource Rent Tax and Other Measures Bill was released by the Government for public consultation on 24 October 2013 with a joint press release from the Treasurer, Minister Cormann and Minister Macfarlane, calling for submissions by 31 October 2013. 61 submissions were received in total.

3.88 The draft Bill was placed on the Treasury website and relevant industry associations were invited by Treasury to engage in direct dialogue on the Bill in addition to making a submission if the association so chose.

3.89 Treasury invited the associations to comment on the legislation itself, on the impact of the legislation on the association's members, on the legislation's effect on investment and compliance costs, and on the broader costs/benefits to the community.

3.90 For the resources industry, the industry associations contacted were the Association of Mining and Exploration Companies, the Minerals Council of Australia, and the Australian Petroleum Production and Exploration Association.

3.91 The estimates of compliance cost savings for mining and exploration companies resulting from the repeal of the MRRT were informed through direct consultation with the Minerals Council of Australia (MCA) and the Association of Mining and Exploration Companies (AMEC).

3.92 The MCA's written submission supported the repeal of the MRRT Act and MRRT Imposition Acts. In addition, the MCA submission raised issues in relation to Schedule 1 of the exposure draft Bill. These issues related to the potential for the PRRT to apply to incidental gas produced from discrete coal mining operations, and the compliance burden associated with specific transitional provisions. Amendments were made to the final Bill to address these concerns.

3.93 The ACTU opposed the MRRT repeal, noting in its submission its support for the MRRT's predecessor the Resource Super Profits Tax, and that: 'while the subsequent MRRT arrangements were flawed in some important respects, they nevertheless acted to secure some of the return that the Henry review panel had thought fair and legitimate for the community to expect'. The Australia Institute also opposed the MRRT repeal, noting that the mining industry is one of the most profitable in Australia and argued that it is appropriate that the Australian community receive an appropriate return for resources extracted.

3.94 Submissions were received in relation to the changes to superannuation, welfare support, infrastructure funding, and business tax concessions.

3.95 Although the measures are expected to have a negligible compliance or regulatory impact on industry and households, consistent with expectations, submissions generally focus on the direct rather than the regulatory impact of the proposals

3.96 For the superannuation industry, the industry associations contacted were the Australian Council of Social Services, the Australian Institute of Superannuation Trustees, the Financial Services Council, the

Industry super Network, the Association of Superannuation Funds of Australia Limited, Mercer and the Financial Planning Association of Australia.

3.97 The Council of Small Business Australia was invited to present views for small businesses and for business generally, the Australian Chamber of Commerce and Industry, the Australian Industry Group, the Institute of Public Accountants, the Institute of Chartered Accountants Australia, CPA Australia and the Tax Institute of Australia were contacted.

3.98 The Association of Superannuation Funds Australia, Women in Super and some community groups and unions expressed concerns that delaying the increase in the SG rate will reduce the adequacy of Australia's retirement income savings. The Financial Services Council and the Australian Institute of Superannuation Trustees understood the need to delay the SG increase in the near term but supported the rate reaching 12 per cent by 1 July 2021.

3.99 Superannuation industry bodies universally opposed the abolition of the LISC, but suggested that, if the LISC was to be repealed it should be from 1 July 2014 or, in one case a 'pause' instead be introduced, by amending the date from which fund members can accrue an entitlement to a LISC payment to 1 July 2017 to allow the Budget position to first strengthen.

3.100 The cessation of the low income superannuation contribution was generally not supported by industry bodies.

3.101 Business organisations generally were not supportive of measures to reduce the instant asset write-off to assets costing less than $1,000, removing the accelerated depreciation arrangements available to small businesses for motor vehicle purchases, and repealing the company loss carry-back provisions. Some submissions did note, however, the Government's stated intention to have a more comprehensive review.

3.102 Ai Group did not support the repeal of the loss carry-back provisions and the reduction in the small business asset write off threshold. Its submission claimed that these measures 'have a strong policy rationale and their retention would boost investment and cash flow to the particular benefit of smaller businesses; to the general benefit of the broader economy; and the commensurate growth of the tax base over the medium term'.

3.103 Submissions made by welfare, community groups and unions, including the United Sole Parents of Australia, the Future Party, Uniting Care, and the NSW Nurses and Midwives' association expressed concern at the termination of the LISC, the Income Support Bonus and the Schoolkids Bonus. A large number of individual submissions were also made critical of the cessation of these payments.

## Conclusion and recommended option

3.104 The MRRT repeal legislation package will meet the Government's election commitment to repeal the MRRT and to discontinue or re-phase the superannuation, tax and spending measures that were intended by the former Government to have been funded by revenue from the MRRT.

3.105 The package will reduce the compliance cost on industry and promote activity in the mining sector by abolishing the MRRT and it will secure a structural improvement in the Budget by discontinuing or re-phasing those programs introduced in association with the MRRT, the costs of which were intended to be met via MRRT revenues.

## Implementation and review

3.106 The repealing legislation will be introduced in the Spring 2013 Sittings.

3.107 As the MRRT repeal has been assessed by the OBPR as a 'B' category measure, a review of the measure will be required within five years.

### Repeal the Minerals Resource Rent Tax on and from 1 July 2014

3.108 The proposal will require the *Minerals Resource Rent Tax Act 2012*, *Minerals Resource Rent Tax (Imposition General) Act 2012*, *Minerals Resource Rent Tax (Imposition—Customs) Act 2012*, and the *Minerals Resource Rent Tax (Imposition—Excise) Act 2012* to be repealed. The proposal will also require part of the *Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012* to be repealed.

3.109 The repeal of the MRRT will also require consequential amendments to the *Petroleum Resource Rent Tax Assessment Act 1987* to remove references to the MRRT that would otherwise extend the application of the PRRT.

3.110 As many taxpayers are due to lodge their first MRRT returns on 1 December 2013, the Australian Tax Office will implement administrative arrangements to minimise compliance costs in the interim period prior to the repeal of the MRRT.

### Repealing the loss carry-back arrangements

3.111 Amendments to the ITAA 1997 will be required. The repeal of loss carry-back will take effect from the 2013-14 income year onwards (for most companies, this means 1 July 2013 onwards).

3.112 Repealing loss carry-back from the 2013-14 and later income years will mean that the first year of revenue impact will be in 2014-15.

3.113 If the repeal is not enacted by 30 June, taxpayers will be able to claim the offset in 2013-14 tax return and be subject to an amended assessment after enactment.

### Reducing the instant asset write-off threshold to $1000 from 1 January 2014

3.114 The reduction in the value of the instant asset write-off threshold will require amendments to *the Income Tax Assessment Act 1997* (ITAA 1997).

3.115 The ATO will issue additional guidance material for small business entities so they are aware of the changed arrangements. The ATO will also implement risk mitigation strategies so that assets are given the correct tax treatment and fraudulent claims are minimised.

3.116 Should the amending legislation not secure passage before 31 December 2013 then the change to the instant asset write-off will have some retrospective application. However, given that this policy has been clearly communicated to the public, any retrospective application is unlikely to have severe negative consequences for small businesses.

3.117 The repeal needs to be enacted by 30 June 2014 otherwise taxpayers will be able to claim the current instant asset write-off amount in their 2013 14 tax return and be subject to an amended assessment after enactment.

### Discontinuing the accelerated depreciation arrangements for motor vehicle from 1 January 2014

3.118 The removal of the accelerated depreciation arrangements for motor vehicles will require amendments to the ITAA 1997.

3.119 The 1 January 2014 commencement date will involve some minor transitional compliance costs for small business entities as they adjust to the new arrangements.

3.120 The ATO will issue additional guidance material for small business entities so they are aware of the changed arrangements. The ATO will also implement risk mitigation strategies so that assets are given the correct tax treatment and fraudulent claims are minimised.

3.121 Should the amending legislation not be given royal assent before 31 December 2013 then the removal of the accelerated depreciation arrangements for motor vehicles will have some retrospective application. However, given that this policy has been clearly communicated to the public, any retrospective application is unlikely to have severe negative consequences for small businesses.

3.122 The repeal needs to be enacted by 30 June 2014 otherwise taxpayers will be able to claim the current accelerated depreciation amount in their 2013 14 tax return and be subject to an amended assessment after enactment.

### Discontinuing the inclusion of geothermal exploration within the wider definition of exploration

3.123 Implementing this measure will involve repealing amendments made to the *Income Tax Assessment Act 1997*.

3.124 Legislation will need to be introduced in the Spring 2013 Sittings to meet the Government's 100 day commitment.

### Re-phasing the Superannuation Guarantee by two years

3.125 The proposal would be delivered by amending the *Superannuation Guarantee (Administration) Act 1992* to modify the SG charge in each year. The SG charge applies where employers have not made the minimum prescribed superannuation contribution for their eligible employees on time.

3.126 If this change is not passed before 1 July 2014, employers will be required under existing law to pay their eligible employees a SG contribution of 9.5 per cent or incur penalties.

3.127 To reduce this risk, it is intended to introduce the legislation into Parliament in the Spring 2013 Sittings to change the currently legislated increases in the SG. The earlier legislation is passed the sooner businesses and employees will have certainty over future employment costs, which will be good for confidence, business viability and employment.

### Abolish the Low Income Superannuation Contribution (LISC) on eligible contributions from 1 July 2013

3.128 The Australian Taxation Office (ATO) currently administers the LISC. The ATO makes the payments to superannuation funds for eligible individuals, and where a superannuation account no longer exists directly to individuals.

3.129 Legislative amendments will be required to the *Superannuation (Government Co contribution for Low Income Earners) Act 2003* to abolish the LISC.

3.130 As a result of these changes, the LISC will not be payable in relation to eligible contributions made on or after 1 July 2013. As the LISC is typically made in the year or so after the contribution is made, the ATO will not have made payments for 2013 14.

3.131 The ATO will not make LISC determinations after 30 June 2015. By this time, almost all individuals eligible for LISC payments would have been paid.

3.132 The Commissioner of Taxation is also required to give the Minister quarterly and annual reports to be tabled in Parliament with details about the beneficiaries and amount of LISC paid. Under the proposed changes, these reporting obligations will cease (in respect of all LISC payments, even those in relation to the 2012 13 income year) once the bill receives Royal Assent.

### Abolishing the Income Support Bonus

3.133 Abolishing the Mining Tax Supplementary Allowance (Income Support Bonus) will require legislative amendment to the *Social Security Act 1991*, *the Social Security (Administration) Act 1999*, *the Farm Household Support Act 1992* and the Education and Training Scheme and the *Income Tax Assessment Act 1997*.

3.134 The Department of Veterans Affairs (DVA) also needs to amend legislative instruments that sit under the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004* and will progress this separately.

3.135 The Department of Social Services (DSS) and Department of Agriculture are jointly responsible for the Income Support Bonus. DSS, in conjunction with policy agencies, will be responsible for leading the implementation of the measure.

3.136 The Department of Human Services (DHS) and DVA, as service delivery agencies, in conjunction with the relevant policy departments, will be responsible for developing a communication strategy for affected recipients. Existing DHS-DSS governance arrangements for the administration of working age payments would be utilised to implement and monitor this proposal. In addition, existing stakeholder relationships between DHS and DVA will be utilised to manage implementation across affected service delivery agencies.

### Abolishing the Schoolkids Bonus

3.137 This measure will be subject to the ongoing review processes that are already in place to monitor any issues that may impact family assistance. These include program management information reports submitted by DHS as well as Ministerial correspondence and public enquiries through the Government's websites.

3.138 The key performance indicator for assessing the success of this proposal is the realisation of savings by a reduction in expenses and better targeting of assistance to those most in need.

3.139 DHS' post-implementation delivery of the proposal would be monitored through the Bilateral Management Arrangement between DHS and DSS. A review is not required.

## Supplementary Regulation Impact Statement

## Changing the schedule for increasing the superannuation guarantee

### Context

3.140 Since 1992, employers have been required to pay a minimum prescribed superannuation contribution for their eligible employees, otherwise known as the superannuation guarantee (SG) rate. The SG rate must be applied to eligible employee's ordinary time earnings or a higher amount.

3.141 The objective of the SG is to enable employees to achieve a higher standard of living in retirement than is possible from relying on the age pension alone.

3.142 Compulsory superannuation is intended to address myopia — the tendency of people to not save adequately for retirement because it is too far into their future for them to make adequate provision for their needs.

3.143 Under existing law, the SG is scheduled to increase from 9 to 12 per cent in a stepped process which commenced from 1 July 2013 with a 0.25 per cent increase to 9.25 per cent, with a further 0.25 per cent increase scheduled on 1 July 2014. It is then legislated to increase in increments of half a per cent each year until it reaches 12 per cent on 1 July 2019.

3.144 The Government has an election commitment to repeal the Minerals Resource Rent Tax (MRRT) and repeal or rephase the other related measures associated with its introduction. As part of this commitment, the Government announced that it would pause the increase in the SG rate for two years.

3.145 The MRRT commenced operation on 1 July 2012 following the announcement of resource tax reforms by the then Government on 2 May 2010. The revenue collected from the MRRT was to fund, among others, an increase in the SG rate gradually from 9 per cent to 12 per cent.

3.146 While the MRRT was originally expected to raise $26.5 billion by 2016-17, in the first 18 months of operation, the MRRT raised around $435 million on a net basis. As the MRRT has not raised the

revenue expected and is proposed to be abolished, it is appropriate that the timing of the SG increase is adjusted.

3.147 The SG rate will also apply to the proposed new paid parental leave (PPL) scheme, expected to commence on 1 July 2015. Under the PPL scheme, women will receive superannuation contributions at the SG rate.

3.148 With mining investment at or near its peak, a transition to a new source of economic growth is needed. While the transition to broader based growth has begun, GDP growth is expected to be below trend. As competitive pressures continue, businesses are looking to maintain their margins with the costs of doing business a constant consideration. This factor is placing pressure on their ability to retain and employ people.

## Problem

3.149 Under the Minerals Resource Rent Tax Repeal and Other Measures Bill (the MRRT Repeal Bill) the already legislated increase in the SG rate to 9.5 per cent on 1 July 2014 would be delayed by two years.

3.150 As the MRRT Repeal Bill was negatived in the Senate, employers will be uncertain around whether, from 1 July 2014, they should pay SG at the rate that applies under the Government's announced policy as contained in the MRRT Repeal Bill (9.25 per cent), or at the rate currently legislated to apply from 1 July 2014 (9.5 per cent).

- Under the Government's announced policy, the SG rate will pause at 9.25 per cent for two years until 30 June 2016 after which it will then gradually increase until it reaches 12 per cent for years starting on or after 1 July 2021.

- Under existing legislation, the SG rate will increase to 9.5 per cent from 1 July 2014 and then by 0.5 per cent a year until it reaches 12 per cent from 1 July 2019.

3.151 Whilst the legal obligation to pay superannuation is quarterly, employers often make their payments on an ongoing basis. Employers are unlikely to be willing to risk paying superannuation at a rate below what is legislated as there are significant consequences if minimum superannuation payments are not paid on time.

3.152 Employers and employees need certainty about the SG that will apply well ahead of 1 July 2014 to make the necessary system changes to their payroll systems and inform wage negotiations.

3.153 A change in the SG rate will also have fiscal implications. Increasing the SG rate comes at a cost to revenue. This is because when an employer makes superannuation contributions, the fund pays

15 per cent in tax. In contrast, a person on average weekly earnings will typically pay 32.5 per cent in income tax (excluding the Medicare levy) if they had received the money in wages.

## Objective

3.154 The failure of the MRRT Repeal Bill to pass the Senate means that a decision is now needed on the future SG rate to provide certainty for employers and prevent the fiscal position from deteriorating.

## Options

3.155 Three options are considered below. Option A involves retaining the existing legislated schedule for increasing the SG rate to 12 per cent. Option B involves retaining the Government's announced schedule as set out in the MRRT Repeal Bill. Option C involves postponing the pause in the increase in the SG rate until 1 July 2015 and then extending the pause from 2 to 3 years. These options are summarised in the following table.

**Table 3.1: Options for phasing in the SG rate increase (%)**

| *Option* | *2013-14* | *2014-15* | *2015-16* | *2016-17* | *2017-18* | *2018-19* | *2019-20* | *2020-21* | *2021-22* | *2022-23* |
|---|---|---|---|---|---|---|---|---|---|---|
| ***Option A: Currently legislated schedule*** | 9.25 | 9.50 | 10.0 | 10.5 | 11.0 | 11.5 | 12.0 | 12.0 | 12.0 | 12.0 |
| ***Option B: MRRT Repeal Bill proposal (pause at 9.25% for additional 2 years, starting 1/7/14)*** | 9.25 | 9.25 | 9.25 | 9.50 | 10.0 | 10.50 | 11.0 | 11.50 | 12.0 | 12.0 |
| ***Option C: Pause at 9.5% for additional 3 years, starting 1/7/15*** | 9.25 | 9.50 | 9.50 | 9.50 | 9.50 | 10.0 | 10.5 | 11.0 | 11.5 | 12.0 |

3.156 The Government previously decided to move from Option A to Option B, that is, to introduce a 2 year pause from 1 July 2014. This was an election commitment that was formally announced, costed and included in the budget in the 2013-14 MYEFO. A RIS for that policy measure was done at the time.

3.157 The Government is now making a decision whether to move from Option B to Option C. That is to delay the 2 year pause by one year, to provide certainty to business, and extend it to 3 years to avoid a fiscal cost. The possibility of going back to Option A is not being considered. So this RIS focuses on the impact of moving from Option B to Option C.

***Option A: Retain the currently legislated schedule for increasing the SG rate***

3.158 Under this option the existing legislated schedule for increasing the SG rate would be retained. This involves the SG rate increasing from its current level of 9.25 per cent to 9.5 per cent on 1 July 2014 and then increasing by 0.5 per cent per annum until it reaches 12 per cent in 2019-20.

3.159 The compliance cost impact on businesses of this option would depend on the extent to which they have already made changes to their payroll systems based on the Government's announced policy. By 1 July 2014, employers would be required to change the SG rate in their payroll systems from 9.25 to 9.5 per cent. In general, this will require employers to enter manually the appropriate rate into their payroll systems or receive a payroll system update, which is typically undertaken around six weeks prior to the start of the financial year.

3.160 There is also a question of whether wage negotiations have been based on the existing legislated SG rate schedule or on the Government's announced policy. As the SG rate increase was announced in May 2010, employers and employees have had a significant period to factor the SG increases into wage negotiations, noting that the SG rate is only a legislated minimum.

3.161 As any increase in the SG rate is funded from business profits and/or take-home pay, this option may not help businesses contending with high operating costs and current challenging economic conditions, which could be placing pressure on their viability and their ability to employ people.

3.162 This option would not, however, meet the Government's election commitment to delay the increase in the SG rate.

3.163 Given that the increase in the SG rate was to be funded by revenues from the MRRT and the Government's intention to repeal this tax, the budget is estimated to be around $1.6 billion worse off compared to Option B by 2016-17 if the SG rate were increased as currently legislated.

3.164 The revenue costing for this option assumed in general that total remuneration remains unchanged, that is, any SG rate increase is fully and immediately offset by lower growth in cash wages. Note the costing is sensitive to the assumption about the trade-off between wages and SG.

3.165 While this option would provide employers and employees with certainty over future SG increases, it would come at a significant fiscal cost.

***Option B: Retain the Government's announced schedule for increasing the SG rate***

3.166 This option would involve retaining the Government's currently announced schedule for increasing the SG rate. That is, pausing the SG rate at the current rate of 9.25 per cent until 30 June 2017 and then increasing it by 0.5 per cent a year until it reaches 12 per cent in 2021-22.

3.167 This option would meet the Government's election commitment to delay the increase in the SG rate and protect the fiscal position.

3.168 This option would not, however, address the uncertainty faced by employers. The current Senate has rejected this option. It is anticipated that the new Senate after 1 July 2014 will reconsider the MRRT Repeal Bill. However, there is no certainty as to how long the new Senate will take to deal with this issue and this would involve the legislation applying retrospectively (from 1 July 2014).

3.169 Unless changes to the SG schedule are legislated prior to 1 July 2014, employers are likely to factor in and pay SG at the increased rate of 9.5 per cent as there are heavy penalties applied and additional compliance obligations for under-paying SG. Employers who do not pay enough superannuation have to lodge a SG charge statement. Additionally, the business loses the tax deduction that they would normally get for their SG contributions and may incur penalties of up to 200 per cent.

3.170 While businesses are not legally required to pay their SG until 28 October, many businesses make superannuation contributions more frequently, such as fortnightly or monthly. As such, retrospective legislation would impose a large degree of uncertainty and may not reduce superannuation contributions paid by employers, especially in the short-term.

3.171 Under the *Fair Work Act 2009*, pay slips must contain details of superannuation contributions for each pay period. As a result, employers cannot reduce superannuation contributions retrospectively as Fair Work Inspectors may issue an employer with an infringement notice for failing to meet their pay slip obligations.

3.172 Continued uncertainty over the rate to apply from 1 July 2014 would create difficulties for employers and software providers, especially as employers may be subject to obligations under their awards and enterprise agreements which may limit their ability to adjust the SG rate quickly.

3.173 Mercer in its submission to the Senate Inquiry into the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 has argued employers need at minimum 3 months' notice between the passage of the law and the effective date of the pause. One large software provider has

indicated that at a minimum 6 weeks' notice prior to the start of the financial year is needed to make system changes.

3.174 Some employers may be subject to employment conditions through awards, agreement or contracts which may specify a set rate of superannuation to be paid and hence limit their ability to adjust the SG rate quickly. In this case, these employers will be required to pay superannuation at a higher rate until a new award or enterprise agreement is negotiated, which could be for several years.

3.175 Where employees are employed under a fixed remuneration arrangement then any reduction in the SG rate is likely to automatically increase employee take-home wages in the near term from 1 July 2014. Employees could then use extra wages to purchase more goods and services, reduce debt and/or save more, inside or outside super.

3.176 Under the Government's announced policy to pause the increase in the SG rate for two years, the net gain of tax by 2016-17 is estimated to be $1.6 billion, due to the decrease in the level of concessionally taxed contributions. Without the revenues from the MRRT the budget will be worse off if the SG rate were increased as currently legislated.

3.177 Employees receiving employer contributions above the SG rate are assumed not to be affected by changes in the SG rate.

3.178 This option would not provide employers and employees with certainty.

***Option C: Postpone the pause in increasing the SG rate***

3.179 Under this option, the SG rate would be allowed to increase to 9.5 per cent from 1 July 2014, but then be held at that rate until 30 June 2018 after which it would increase by 0.5 per cent each year until it reaches 12 per cent in 2022-23, one-year later than proposed under the Government's announced policy.

3.180 So, the start date of the pause would be delayed by one year, from 1 July 2014 to 1 July 2015, but the length of the pause would be increased from an additional 2 years to an additional 3 years.

3.181 This option would remove uncertainty for business now as they would pay SG at the rate currently legislated to apply from 1 July 2014. Announcing this measure in the Budget would enable business and software providers to make changes to their payroll systems in a timely manner.

3.182 Under this option most employees would receive higher superannuation contributions from 1 July 2014 until 30 June 2016 (9.5 per cent compared to the current policy of 9.25 per cent) but lower contributions from 1 July 2017 until 30 June 2022. In this case, employers may initially have higher wage costs and hence lower profits to

the extent that they don't pass on the change in lower wages however this may be offset in later years by lower contributions.

3.183 Some employers may be subject to employment conditions through awards, agreement or contracts which may specify a set rate of superannuation to be paid and hence limit their ability to adjust the SG rate quickly.

3.184 Where employees are employed under a fixed remuneration arrangement then any change in the SG rate is likely to automatically change employee take-home wages in the near term from 1 July 2014. Employees could receive lower wages until 2016-17 which may reduce their demand for goods and services, increase debt and/or reduce other savings, inside or outside superannuation.

3.185 This option would protect the fiscal position. Relative to the Government's announced policy to delay the increase in the SG rate by two years from 1 July 2014, this option would result in a net revenue gain over the forward estimates period of $90 million. If the pause at 9.5 per cent was only for an additional 2 years, from 1 July 2015 to 30 June 2017, there would be an estimated cost to the Budget of $350 million over the forward estimates. That is, extending the pause is necessary to avoid a fiscal cost.

3.186 Extending the pause may raise questions as to whether this change contradicts the Government's election commitment to not make any unexpected detrimental changes to superannuation. However, given the Senate's refusal to pass the current Bill and the imperative to protect the Budget position, deviating from the commitment is unavoidable.

3.187 Option C is the only option that meets the objectives of providing certainty for employers and employees and protecting the fiscal position.

## Consultation

3.188 As this proposal is to be included in the Budget, it is not proposed to undertake a separate consultation process. The Treasury has previously undertaken targeted consultation around the impact on employers of changing the SG rate. Consultation on delaying the SG increase was also undertaken in the context of the Senate Economic Legislation Committee Inquiry into the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013. In their submissions to the Senate Committee, the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AIG) supported pausing the SG increase given the SG imposes an additional cost on business. However, they are opposed to the SG rate increasing beyond its current level as it imposes costs on business and/or detracts from disposable incomes. ACCI noted that it was vitally important that any change commence prior to the next phased increase in the SG rate on 1 July 2014. Mercer noted

that it expected that many payroll systems would already have been amended to incorporate the 9.5 per cent rate from 1 July 2014.

3.189 In their submissions, superannuation funds either opposed the rephasing or supported the Government's commitment to increase the rate to 12 per cent (albeit on a delayed schedule) because of the impact on retirement incomes. The Association of Superannuation Funds of Australia, the Financial Service Council (FSC), Industry Super Australia and Australian Institute of Superannuation Trustees consider a 12 per cent rate is required to provide adequate retirement incomes for many Australians. FSC noted that the existing SG schedule was designed to allow employers to take the increased SG rate into account in wage negotiations, ensuring the incidence will largely fall on individuals.

3.190 These same views outlined above are likely to apply to Option C.

3.191 In addition, the Treasury has been provided with similar unprompted feedback on pausing the SG in the course of consultations on small business superannuation compliance costs. Employers and software providers have reiterated that they require certainty in law well in advance of any new SG rate applying.

### Impact Analysis

3.192 Compared to the Government's announced policy, as set out in the 2013-14 Mid-Year Economic and Fiscal Outlook, Option C involves the SG rate being slightly higher than the currently legislated rate for the period 1 July 2014 until 30 June 2016 and then slightly lower for the period 1 July 2017 until 30 June 2022.

3.193 Given that increases in the SG are funded largely from reductions in take-home wages or business growth, postponing the pause in the SG could reduce economic activity in 2014-15 and 2015-16 and boost economic activity from 2017-18 to 2021-22 relative to the Government's announced policy.

3.194 Wages may have already been negotiated for some employees beyond 1 July 2014 on the basis of the legislated increases in SG. Hence, the employers could face higher employment costs from 1 July 2014 until 30 June 2016, which could decrease their short-term viability and ability to employ or retain people. However, as many employers would have paid superannuation at a 9.5 per cent rate in 2014-15 the impact may be smaller. Over time, employees and employers would renegotiate wages in light of the revised SG schedule.

3.195 Postponing and extending the pause as proposed under this option would in aggregate be expected to have only a small impact on individuals' retirement incomes.

3.196 The change will not impact on those employees who already receive superannuation contributions at a rate above the prescribed minimum. In addition, individuals who wish to save more for their retirement can continue to do so by making additional salary sacrifice contributions or after-tax contributions. Older individuals are more likely to make additional superannuation contributions.

3.197 Superannuation funds will receive higher superannuation contributions in 2014-15 and 2015-16 but lower superannuation contributions from 2017-18 until the SG rate reaches 12 per cent in 2022-23. As many superannuation fees are based on a proportion of funds under management, it will lower their income from fees. However, fees collected from superannuation will still be significant given the value of funds under management is currently around $1.8 trillion and will continue to grow over time. The net impact on the flow of contributions into superannuation funds is expected to be small.

3.198 Some individuals may save part of their increased take-home pay, either by making voluntary contributions to superannuation or saving outside of superannuation. The net impact of the postponement of the pause in the SG compared to the Government's announced policy on national savings is expected to be small given the small magnitude and length of the delay and the fact that increases in superannuation savings have been estimated to be offset by a 30 per cent reduction in other forms of private savings[5]. Moreover, in an open economy, the Australian economy can access global capital markets to finance its investment at the lowest cost.

3.199 The timing and length of the delay reflects the trade-off between seeking to provide certainty to businesses, while protecting the budget position.

3.200 Employer procedures should essentially remain the same. Under the preferred option employers will have to change the SG rate in their payroll systems six times, the same number as under the current policy. Hence, no additional compliance burden relative to the Government's announced policy is anticipated.

3.201 A quantitative assessment of the compliance costs of delaying the increase in the SG was undertaken using the ATO's Business Compliance Cost Assessment. It was assessed that the compliance costs effect was zero.

5 Connelly, E. 2007, 'The Effect of the Australian Superannuation Guarantee on Household Saving Behaviour', Research Discussion Paper 2007-08, Reserve Bank of Australia.

**Table 3.2: Regulatory burden and cost offset estimate**

| *Average Annual Compliance Costs (from Business as usual)* | | | | |
|---|---|---|---|---|
| ***Sector/Cost Categories*** | ***Business*** | ***Not-for-profit*** | ***Individuals*** | ***Total by cost category*** |
| ***Administrative Costs*** | $0 | $0 | $0 | $0 |
| ***Substantive Compliance Costs*** | $0 | $0 | $0 | $0 |
| ***Delay Costs*** | $0 | $0 | $0 | $0 |
| ***Total by Sector*** | $0 | $0 | $0 | $0 |
| ***Annual Cost Offset*** | | | | |
| | ***Agency*** | ***Within portfolio*** | ***Outside portfolio*** | ***Total*** |
| ***Business*** | $0 | $0 | $0 | $0 |
| ***Not-for-profit*** | $0 | $0 | $0 | $0 |
| ***Individuals*** | $0 | $0 | $0 | $0 |
| ***Total*** | $0 | $0 | $0 | $0 |
| ***Proposal is cost neutral?:*** ***yes*** <br> ***Proposal is deregulatory:*** ***no*** <br> ***Balance of cost offsets:*** ***$0*** | | | | |

## Implementation

3.202 Option C could be implemented by way of Senate Parliamentary amendments when a reintroduced Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 comes before the Senate for consideration.

# Chapter 4
# Statement of Compatibility with Human Rights

## Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### *Minerals Resource Rent Tax Repeal and Other Measures Bill 2014*

***Schedule 1 — Repeal of the Minerals Resource Rent Tax***

4.1 Schedule 1 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.2 The MRRT applied from 1 July 2012 to taxable resources (broadly iron ore and coal) after they were extracted from the ground but before they underwent any significant processing or value adding. Coal seam gas produced as a necessary incident of coal mining was also included as a taxable resource to avoid unnecessary compliance and administration costs, and changes were made to the *Petroleum Resource Rent Tax Assessment Act 1987* to ensure that the Petroleum Resource Rent Tax (PRRT) did not also apply to those resources.

4.3 The MRRT imposed a significant regulatory and compliance burden on the iron ore and coal mining industries, which was exacerbated by its complex design. Prior to the introduction of the MRRT, iron ore and coal miners were already subject to the relevant State royalty arrangements as well as to Commonwealth income tax.

4.4 The MRRT did not replace State royalties as originally envisaged by the Australia's Future Tax System Review, but instead imposed an additional layer of taxation. The revenue expected to be raised by the MRRT has been progressively revised down since its announcement, in part because the States increased their royalties (which are credited against MRRT).

4.5 Repealing the MRRT restores confidence and promotes activity in the mining industry, allowing it to thrive, create jobs and contribute to the prosperity of all Australians.

*Human rights implications*

4.6 Schedule 1 does not engage any applicable rights or freedoms.

*Conclusion*

4.7 Schedule 1 is compatible with human rights as it does not raise any human rights issues.

***Schedule 2 — Repeal of loss carry-back***

4.8 Schedule 2 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.9 Loss carry-back was one of the measures funded by the revenue expected from the minerals resource rent tax. Loss carry-back is being repealed as part of the repeal of the Minerals Resource Rent Tax (MRRT).

4.10 Loss carry-back is a concession that departs from Australia's standard income tax arrangements (as identified for the Tax Expenditures Statement 2012[6]), which only allow taxpayers to carry their tax losses forward as deductions for later income years. Loss carry-back, which is only available to corporate tax entities, instead allows tax losses to be carried back to one of the two most recent income years to produce a refundable tax offset for the current year.

4.11 Carrying a loss back is a choice a corporate tax entity can make, not a requirement. The amount it can carry back is limited by its tax liability in the year it carries the loss back to and by the current balance in its franking account. Further, an entity can only carry back enough tax losses to produce an offset of $300,000 (at current corporate tax rates).

4.12 Repealing the loss carry-back measure restores corporate tax entities to the standard income tax treatment of tax losses; it does not mean they cannot use their losses at all. The repeal does affect when they can use those losses but, over time, they will be able to use all their tax losses in the same way they have always been able to, and in the only way currently available for all other taxpayers.

*Human rights implications*

4.13 Schedule 2 does not engage any applicable rights or freedoms.

*Conclusion*

4.14 Schedule 2 is compatible with human rights as it does not raise any human rights issues.

6 See tax expenditure B109 in *Tax Expenditures Statement 2012* (published in January 2013).

***Schedules 3 and 4 — Changes to the capital allowances for small business entities***

4.15 Schedules 3 and 4 are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.16 The previous increases to the threshold for the small business capital allowance rules from $1,000 to $6,500 were funded by the revenue expected from the MRRT and the clean energy package. This threshold is reduced to its original level as part of the repeal of those packages.

4.17 The special rules for certain motor vehicles form part of the small business capital allowance rules and were a measure funded by the revenue expected from the MRRT. These special rules are being repealed as part of the repeal of the MRRT.

4.18 Small business entities can choose to apply the small business capital allowance rules for an income year. If they choose to apply the rules, they must do so in respect of all of the depreciating assets that they hold; they cannot apply the rules for some assets but not others. If a small business entity chooses not to apply the small business capital allowance rules for an income year, the ordinary rules for depreciating assets continue to apply.

4.19 Where the cost of a depreciating asset is less than the threshold, a small business entity can deduct the full cost of the asset (or 'write-off' the asset) in the income year in which it is first used or installed ready for use. Depreciating assets that cost more than that are allocated to the small business entity's general small business pool. Assets allocated to this pool give rise to a deduction for 15 per cent of their value in the first income year, and 30 per cent (as part of the pool) in subsequent income years.

4.20 The threshold also applies to additional costs incurred in respect of depreciating assets that were written-off by a small business entity in a previous income year. Where a cost of this kind is less than the threshold, a small business entity can deduct the full amount of the additional cost in the income year in which it is incurred. For an additional cost of a larger amount, the depreciating asset to which it relates is treated as having a value equal to the amount of the cost and is allocated to the small business entity's general small business pool. Assets of this kind are then treated in the same way as other assets that are allocated to the pool.

4.21 The threshold also applies to the value of a small business entity's general small business pool. Where the value of the pool at the end of the small business entity's income year is less than the threshold, the entity can claim a deduction for that income year for the value of the pool (the value of the pool is determined prior to applying any applicable rates of depreciation).

4.22 The special rules for certain motor vehicles provide a more generous deduction for depreciating assets that are motor vehicles in the income year in which the vehicle is first used or installed ready for use than is available for other depreciating assets. The special rules only apply to motor vehicles that cost more than $6,500 because the full value of any depreciating asset that costs less than that amount can be deducted in the income year that it is first used or installed ready for use.

4.23 The special rules for certain motor vehicles allow a small business entity to deduct the first $5,000 of the cost of a motor vehicle, plus 15 per cent of any remaining cost, in the income year that it is first used or installed ready for use. The motor vehicle is then added to the small business entity's general small business pool and depreciated as part of the pool at a rate of 30 per cent in subsequent income years.

4.24 The changes return small business entities to the position they were in prior to the enactment of the MRRT and clean energy packages; they reduce, but do not remove, the concessional tax treatment for depreciating assets available to small business entities.

4.25 The reductions to the thresholds change the time frames over which deductions may be claimed for certain depreciating assets and related costs. Assets and costs that can no longer be written-off in the income year that they are first used, installed ready for use, or incurred, can be allocated to a small business entity's general small business pool and depreciated at the applicable rates.

4.26 Similarly, motor vehicles to which the special rules for certain motor vehicles can no longer be applied can be allocated to a small business entity's general small business pool and treated in the same way as all other depreciating assets.

4.27 To the extent the small business capital allowance rules are applied, it is expected that they will result in a more favourable tax outcome for small business entities than would be the case under the general rules for depreciating assets. Where a small business entity has a more favourable tax outcome for an income year under the general rules, the small business entity remains free to choose to apply the general rules.

*Human rights implications*

4.28 Schedules 3 and 4 do not engage any applicable rights or freedoms.

*Conclusion*

4.29 Schedules 3 and 4 are compatible with human rights as they do not raise any human rights issues.

***Schedule 5 — Repeal of the geothermal energy exploration deduction***

4.30 Schedule 5 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.31 Schedule 5 amends the *Income Tax Assessment Act 1997* (ITAA 1997) to repeal the immediate deductibility of geothermal exploration or prospecting expenditure. Prior to the amendments in this Schedule, Division 40 of the ITAA 1997 provided that geothermal energy exploration rights were a depreciating asset. The immediate deductibility of geothermal energy expenditure related to the cost of depreciating assets first used for exploration or prospecting for geothermal energy resources.

4.32 These immediate deductions were limited to geothermal exploration or prospecting expenditures and not that expenditure related to geothermal development or extraction.

4.33 The geothermal deduction was funded with the expected revenue from the MRRT package, which is being repealed. As such, the deduction is also being repealed.

4.34 This measure does not affect a taxpayer's ability to claim a deduction for expenditure that relates to geothermal exploration assets which are tangible depreciating assets which are used for taxable purposes. That is, such assets will still be able to be written off over their effective lives, provided that they are used for a taxable purpose.

4.35 The amendments in this Schedule also extend the existing CGT roll-over in Division 124-L (prospecting and mining entitlements) to geothermal energy prospecting and extraction, ensuring that no tax liability arises from the exchange of a geothermal exploration right for an extraction right.

*Human rights implications*

4.36 This Schedule does not engage any of the applicable rights or freedoms.

*Conclusion*

4.37 This Schedule is compatible with human rights as it does not raise any human rights issues.

***Schedule 6 — Rephasing of the SG charge percentage increase***

4.38 Schedule 6 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.39 Under the Superannuation Guarantee (SG) scheme, all employers are required to make a prescribed minimum level of superannuation contributions to a superannuation fund or a retirement savings account on behalf of their eligible employees.

4.40 The minimum level of employer superannuation contributions is calculated with reference to the SG 'charge percentage' (which is 9.5 per cent for the year starting on 1 July 2014) and each eligible employee's ordinary time earnings, salary or wages. The SG charge percentage is currently legislated to gradually increase to 12 per cent for years starting on or after 1 July 2019.

4.41 The passage of legislation to repeal the MRRT and make amendments to related spending measures (including the SG charge percentage) was delayed prior to the 2014-15 Budget, creating uncertainty for business. To provide certainty, the Government announced in the 2014-15 Budget changes to the schedule for increasing the SG charge percentage to 12 per cent.

4.42 In order to provide businesses and the community with appropriate notice about change to the SG charge percentage should the passage of the repeal legislation be further delayed, the amendments allow the Treasurer (as the responsible Minister) to vary the SG charge percentage for a particular year starting on 1 July, subject to a number of strict conditions. These conditions reflect the Government's policy as announced in the 2014-15 Budget in relation to the increase to the SG charge percentage.

4.43 The conditions are as follows: the determination must be made prospectively, the variation must not be less than the percentage that applied for the previous year, it must not be the same number for more than four years (apart from when it reaches 12 percent), and the Minister must specify a number that is a multiple of 0.5.

4.44 Given the SG is funded largely from business profits and wages, rephasing the SG could boost economic activity. Businesses, especially small businesses, will get some respite from higher operating costs and current challenging economic conditions, while workers could also receive more take home pay to ease cost of living pressures in the near term.

4.45 This measure does not affect an individual's eligibility for the social security safety net of the Age Pension (funded from Government revenue), which continues to be a fundamental part of Australia's retirement income system to ensure people unable to support themselves can have an adequate standard of living. In addition to providing a range of direct financial assistance, the Government also provides a number of concessions, such as access for older Australians to subsidised health care.

*Human rights implications*

4.46 This Schedule does not engage any of the applicable rights or freedoms.

4.47 However, the Parliamentary Joint Committee on Human Rights (Committee) sought clarification in its 1st report of the 44th Parliament[7] on the previous version of this Bill (the Mineral Resource Rent Tax Repeal and Other Measure Bill 2013) as to whether the measure was consistent with the right to an adequate standard of living and the right to social security.

4.48 The Parliamentary Secretary to the Treasurer, on behalf of the Treasurer, responded to the Committee's request by letter, which was published in the 8th report of the 44th Parliament.[8]

4.49 The Committee noted that in their view, the response did not provide a detailed and evidence based explanation for the measures.

4.50 In respect of the content of the right to social security contained in article 9 of International Covenant on Economic, Social and Cultural Rights (ICESCR) , the UN Committee on Economic Social and Cultural Rights (UN Committee) General Comment 19 states the right to social security includes contributory or insurance based schemes such as social insurance, non-contributory schemes such as universal schemes or targeted social assistance schemes, and other forms of social security such as privately run schemes and self help or other measures, for example community based or mutual schemes. The UN Committee states '[w]hichever system is chosen, it must conform to the essential elements of the right to social security and to that extent should be viewed as contributing to the right to social security and be protected by States parties in accordance with this general comment'.

4.51 The UN Committee notes in General Comment 19, Part II, Normative Content of the Right to Social Security, that the essential elements of the right to social security are the availability and accessibility of a system or systems in place to provide adequately for nine principal branches of social security: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans. In respect of availability, the UN Committee states that the system should be established under domestic law and 'sustainable, including those concerning provision of pensions, in order to ensure that the right can be realised for present and future generations' (emphasis added).

7 Pages 35-40.

8 The response was published at Appendix 2 to the report. and the Committee commented at pages 51-53.

In respect of old age, the UN Committee notes:

> States parties should take appropriate measures to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law. The Committee stresses that States parties should establish a retirement age that is appropriate to national circumstances which take account of, inter alia, the nature of the occupation, in particular work in hazardous occupations and the working ability of older persons. States parties should, within the limits of available resources, *provide non-contributory old-age benefits*, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income (footnotes omitted, emphasis added).

4.52 In respect of the right to an adequate standard of living contained in article 11(1) of the ICESCR, specifically:

> 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent',

the UN Committee has also issued guidance on the scope of the right, specifically relating to housing, food and water (see UN Committee General Comments Nos 4, 12 and 15).

4.53 These General Comments discuss the scope of this right as relating to adequate shelter (meaning adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities), the physical and economic access to adequate food and the sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

4.54 The SG is a mandatory contributory private scheme for the provision of retirement income. The Age Pension, as 'non-contributory old-age benefits', are a fundamental part of Australia's retirement income system.

4.55 The SG measure amends the timetable for implementing an increase to the SG charge percentage from 9.5 per cent to 12 per cent; however the Government has committed to increasing the SG charge percentage. The original timetable for the SG rephase was linked to the failed Minerals Resource Rent Tax with the Government borrowing money to pay for this commitment. As noted in the Parliamentary Secretary to the Treasurer's response previously provided to the Committee, rephasing the SG needs to be seen in this context and will assist in repairing the damage to the nation's finances.

4.56 Further, as noted above, the SG measure does not affect an individual's eligibility for the Age Pension which is a fundamental part of Australia's retirement income system. Whilst the cumulative effect of the SG measure may mean that some individuals have fewer savings in retirement, retirement savings (over and above the social security net of the Age Pension) are accumulated over a working lifetime of approximately 40 years, and depend on a range of factors such as investment decisions and returns.

4.57 Given this, the Government is comfortable that the SG measure is compatible with human rights.

*Conclusion*

4.58 This Schedule is compatible with human rights as it does not raise any human rights issues.

***Schedule 7 — Repeal of the low income superannuation contribution***

4.59 Schedule 7 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.60 Schedule 7 amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to repeal the low income superannuation contribution (LISC) for contributions made for the financial year before the financial year in which Schedule 7 commences (linked to a day fixed by Proclamation), the financial year in which the Schedule commences and later financial years. The LISC is a payment for an individual who has concessional contributions (such as SG payments, and salary scarified amounts) and an annual adjusted taxable income of $37,000 or less. The maximum amount payable is $500. The contribution is designed to effectively return the 15 per cent tax paid on concessional contributions by an individual's superannuation fund.

4.61 Similar to the SG measure noted above, the LISC was funded with the expected revenue from the MRRT. In order to ensure that the concessions in the superannuation system are sustainable for present and future generations, the LISC is being repealed.

4.62 This measure does not affect an individual's eligibility for the social security safety net of the Age Pension, which continues to be a fundamental part of Australia's retirement income system to ensure people unable to support themselves can have an adequate standard of living. In addition to providing a range of direct financial assistance, the Government also provides a number of concessions, such as access for older Australians to subsidised health care.

4.63 The Government will continue to provide the superannuation co-contribution, which is a payment designed as an incentive to low and middle-income earners to make additional voluntary contributions over and above any compulsory contributions made on their behalf.

*Human rights implications*

4.64 This Schedule does not engage any of the applicable rights or freedoms.

4.65 However, the Parliament Joint Committee on Human Rights raised the same concerns in its 1st report of the 44th Parliament on the previous version of this Bill (the *Mineral Resource Rent Tax Repeal and Other Measure Bill 2013*) as noted above in relation to the right to an adequate standard of living and the right to social security, as it raised in the context of the SG measure in Schedule 6.

4.66 For the same reasons as set out in relation to Schedule 6 above, the Government is comfortable that the measures set out in Schedule 7 of the MRRT Repeal Bill are compatible with human rights. In addition, The Government will continue to provide the superannuation co-contribution, which is a payment designed as an incentive to low and middle-income earners to make additional voluntary contributions over and above any compulsory contributions made on their behalf.

*Conclusion*

4.67 This Schedule is compatible with human rights as it does not raise any human rights issues.

***Schedule 8 — Repeal of the income support bonus***

4.68 Schedule 8 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.69 Schedule 8 repeals the income support bonus (ISB) payment introduced into the social security law by the *Social Security and Other Legislation Amendment (Income Support Bonus) Act 2013*.

4.70 The ISB was intended to provide payments to eligible recipients to help them plan expenditure and provide a buffer against unexpected costs. The eligible recipients are those receiving ABSTUDY Living Allowance, Austudy, Newstart Allowance, Parenting Payment, Sickness Allowance, Special Benefit, Youth Allowance, Transitional Farm Family Payment, and Exceptional Circumstances Relief Payment.

4.71 ISB is also paid to eligible recipients under the Veterans' Children Education Scheme prepared under Part VII of the *Veteran's Entitlement Act 1986* and under the Military Rehabilitation and Compensation Act Education and Training Scheme determined under the *Military Rehabilitation and Compensation Act 2004*.

4.72 People on any of the above payments receiving more than the basic amount of Pension Supplement are not eligible for the ISB.

4.73 Eligible recipients receive an indexed, twice yearly non-means tested bonus of $107.80 for single people or $89.90 for most people who are an eligible member of a couple. Eligible members of a couple separated by illness, or couples where a partner is in respite care or in gaol, receive the single rate of $107.80. The ISB is exempt from income tax.

4.74 ISB payments were made to eligible recipients in March and September of each year.

4.75 This measure affects persons who would have been eligible to receive the ISB as at the relevant test day. This does not mean that all persons who have previously qualified for the ISB or compensation payment would be eligible for the bonus as a significant number of people move on and off payments or are only paid for a short period of time.

4.76 Schedule 8 repeals provisions relating to the ISB in the *Social Security Act 1991 and Social Security (Administration) Act 1999*. Consequential amendments are also made to the *Farm Household Support Act 1992* and the ITAA 1997.

*Human rights implications*

4.77 Schedule 8 interacts with the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the right to an adequate standard of living in Article 11 of the ICESCR, in that the affected social security recipients no longer receive the ISB. However, persons affected by these amendments retain rights to social security benefits as recognised by Article 9 and maintain the right to an adequate standard of living as recognised in Article 11.

4.78 The rights to social security and an adequate standard of living are not absolute and may be subject to permissible limitations. Article 4 of the ICESCR provides that the rights in the Covenant may be subject to limitations that are determined by law which are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a democratic society.

4.79 According to the Committee on Economic, Social and Cultural Rights, the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.[9] Any removal of entitlements must be justified in line with Article 4 in the context of the full use of the maximum available resources of the State party.[10]

9 Committee on Economic, Social and Cultural Rights, General Comment No. 19, 'The right to social security (art 9)', paragraph 9.

10 Ibid, paragraph 42.

4.80 The revenue expected from the MRRT was intended to fund a number of measures. With the repeal of the MRRT, these other measures are also repealed.

4.81 The repeal of the ISB is a non-arbitrary measure that is reasonable, necessary and proportionate for the following reasons:

- the removal of the ISB does not result in payments being reduced to below the minimum level necessary for recipients to meet their basic needs in relation to essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education — the ISB was intended to provide additional support above the minimum necessary level;
- Australia meets its obligations under Articles 9 and 11 of the ICESCR through the provision of a range of other payments or assistance to recipients of income support in addition to the basic payments such as Newstart Allowance and Parenting Payment. The additional payments and assistance includes Family Tax Benefit, Rent Assistance, Education Entry Payment and other allowances and supplements, and various concession cards which result in reductions to various expenses such as for public transport fares, electricity bills, council rates and motor vehicle registration charges;
- obligations under Articles 9 and 11 are also met by the provision of a range of programs and other services by Commonwealth, and State and Territory governments including employment services and services in relation to health and education;
- the Government considers that these other payments or assistance allow people to realise their right to an adequate standard of living and provide an appropriate balance between support for welfare recipients and providing appropriate incentives for people to re-engage in work and other activities to provide greater financial security for themselves and their families;
- the effect of removing the ISB will be a reduction in an eligible recipient's entitlements of approximately only $4.00 per week. Bi-annual increases in the basic rate of the qualifying income support payments as a result of indexation are likely to exceed that amount;
- in addition to indexation, from 20 March 2014 recipients of Newstart Allowance, Widow Allowance, Partner Allowance, Parenting Payment Partnered and Sickness Allowance attract a higher Income Free Area that enables them to earn more

ordinary income in a fortnight before their payment is affected. The income free area will be increased for recipients of these payments from its present level of $62 per fortnight to $100 per fortnight; and

- the measure removes the entitlement to the ISB from all income support recipients as a group and does not differentiate between recipients.

4.82 Accordingly, the measure to repeal the ISB is reasonable, necessary and proportionate to achieving a legitimate aim and is therefore a justifiable and permissible limitation on the relevant rights.

4.83 The Government will continue to review the adequacy of all welfare payments. Senate Inquiries into the adequacy of the welfare payment system and the impact of legislative amendments moving certain Parenting Payment recipients onto Newstart Allowance were undertaken in 2012.[11] The Government recently announced that it will undertake a further review of the welfare system.

*Conclusion*

4.84 This Schedule is compatible with human rights. To the extent that it interacts with human rights, those interactions are reasonable, necessary and proportionate to achieving a legitimate aim.

***Schedule 9 — Repeal of the School kids bonus***

4.85 Schedule 9 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Overview*

4.86 Schedule 9 repeals the schoolkids bonus (SKB) payment.

4.87 The SKB is an indexed family assistance payment that is available to eligible families receiving Family Tax Benefit (FTB) Part A for a child in primary or secondary school. It is exempt from income tax.

4.88 Young people in school receiving Youth Allowance or certain other income support or veterans' payments may also qualify for the SKB.

11 Senate Education, Employment and Workplace Relations References Committee, 'The adequacy of the allowance payment system for jobseekers and others, the appropriateness of the allowance payment system as a support into work and the impact of the changing nature of the labour market', November 2012; Joint Parliamentary Committee on Human Rights inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012.

4.89 The annual value of the SKB is $422 for each primary school child and $842 for each high school child, paid in equal instalments in January and July.

4.90 SKB payments were made to eligible recipients in January and July of each year.

4.91 This measure affects those families and individuals who would have been eligible to receive the SKB as at the relevant test day.

4.92 Schedule 9 repeals provisions relating to the SKB in the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999*. Consequential amendments are also made to the ITAA 1997 and the *Social Security (Administration) Act 1999*.

*Human rights implications*

4.93 This Schedule interacts with the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 26 of the Convention on the Rights of the Child (CRC). This Schedule also interacts with the right to an adequate standard of living in Article 11 of the ICESCR, and Article 27 of the CRC.

4.94 Article 9 of the ICESCR requires a social security system to be established and states that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

4.95 Article 11 of ICESCR recognises the right to an adequate standard of living. Article 27 of CRC recognises the right for every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

4.96 The rights to social security and an adequate standard of living are not absolute and may be subject to permissible limitations. Article 4 of the ICESCR provides that the rights in the Covenant may be subject to limitations that are determined by law which are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a democratic society.

4.97 Any removals in entitlement must be justified in line with Article 4 in the context of the full use of the maximum available resource of the State party.

4.98 The repeal of the SKB is a non-arbitrary measure that is reasonable, necessary and proportionate.

4.99 Fortnightly rates of family assistance and income and veterans' support payments have the primary purpose of meeting the costs associated with raising a child. The SKB is a supplementary payment designed to provide additional assistance for education expenses.

4.100 This proposal does not affect an individual's or child's right or access to family tax benefit or income support and veterans' payments. This support will continue to provide families with children at school with assistance to ensure children have access to an acceptable standard of living. In addition, teenagers at school receiving income support or veterans' payments will continue to be eligible for their fortnightly rate of income support or veterans' payments.

4.101 Obligations under Articles 9 and 11 are also met through the provision of a range of programs and other services by the Commonwealth, States and Territories, including health and education.

4.102 The Government considers that these other payments or assistance allow people and children to realise their right to an adequate standard of living, and provide an appropriate level of support for families with children, or children in receipt of an income support or veterans' payment.

4.103 This measure removes the entitlement to the SKB from all eligibility families or individuals and does not differentiate between recipients.

*Conclusion*

4.104 This Schedule is compatible with human rights. To the extent that the changes interact with human rights, those limitations are reasonable, necessary and proportionate.

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