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GST Distribution Review
The Treasury
Langton Crescent
PARKES ACT 2600

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By email: gstdistributionreview@treasury.gov.au

GST Distribution Review – Supplementary Issues Paper

NSW Minerals Council (NSWMC) is a peak industry association representing NSW's \$20 billion minerals industry. NSWMC welcomes the opportunity to make a submission to The Treasury's GST Distribution Review (the Review) – Supplementary Issues Paper (the Paper).

NSWMC does not intend to enter the debate regarding the relative fairness of the current GST distribution. NSWMC does not make any observation on the relative merits or otherwise of the current formulations and derivations that are used to calculate the GST share, or possible alternatives.

However, NSWMC expresses deep concern over the Commonwealth Government's attempts to use the Review process itself to penalise the State of NSW for exercising its sovereign rights.

This issue is of direct relevance to our industry because of the inter-relation of the Commonwealth Government's Mineral Resources Rent Tax (MRRT) and the rebate of State royalties under that tax.

Specifically NSWMC holds the following concerns in relation to the Review:

1. The motivation behind the issuing of the Supplementary Issues Paper
2. The potential manipulation of the GST by the Commonwealth to force the hands of the States, and the subsequent undermining of the sovereign rights of the State
3. The threat of reduced Commonwealth infrastructure funding to the deserving people and communities of the national significant mining regions of NSW.



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An overview of NSW revenues

NSWMC notes that in 2011-12, the Commonwealth Government will provide States with a total of \$95 billion in payments for specific purposes and general revenue assistance¹, or which \$48.4 billion is made up of GST transfers².

Commonwealth payments are estimated to constitute 46 per cent of NSW total revenue in 2011-12³, including tied and untied funding. After Commonwealth payments, the composition of total revenue for NSW in 2011-12, in descending order, is: taxation (35 per cent); Sale of goods and services (8 per cent); Fines, fees, interest and other revenue (4 per cent); Dividends and income tax equivalents (4 per cent); Royalties (3 per cent); and other Grants and Contributions (1 per cent)⁴. That being the case, it is important to note that 97 per cent of NSW revenues come from a wide range of sources, and that 3 per cent is from Royalty payments. In 2010-11 royalties totalled \$1.24 billion.

Further, on 24 February 2012 the Commonwealth Grants Commission (CGC) released advice on how GST revenue should be distributed amongst the States and Territories in 2012-12. The share of GST to flow to NSW is 30.7 per cent, which is down from 30.9 per cent in 2011-12 – a reduction of about \$150 million to the NSW budget.

Timeline: taxes, infrastructure fund, royalty increase and reviews

- i. **2 May 2010 – Australia's Future Tax System**
The Final Report of *Australia's Future Tax System* was released. Chapter 6 of that report addressed Land and Resources Tax, specifically: *The current resource charging arrangements should be replaced with a uniform resource rent tax administered by the Australian government...The allocation of revenue and risks from the new tax should be negotiated between the Australian and State governments*⁵.
- ii. **2 May 2010 – Resources Super Profits Tax (RSPT) and infrastructure funding**
The Commonwealth Government also announced the intention to apply a Resource Super Profits Tax and *will also rebate State royalties paid by resource companies, and the Government will consult with the States on the implementation of this*⁶.
- iii. **9 June 2010 – Regional Infrastructure Fund**
The Commonwealth Government announced the establishment of the new \$6 billion Regional Infrastructure Fund to address the pressing public infrastructure requirements in mining communities and communities which support the mining sector.
- iv. **2 July 2010 – Mineral Resource Rent Tax (MRRT) and infrastructure funding**
The MRRT maintained the rebate for State royalties⁷ and also the \$6 billion Regional Infrastructure Fund. To date, \$2 million has been allocated to New South Wales.



¹ Commonwealth Treasury, *2011-12 Budget*, Budget Paper 3, p1

² *ibid.*, p103

³ NSW Budget Papers 2011-12, *Budget Overview*, p19

⁴ *ibid.*

⁵ *Australia's Future Tax System*, Final Report, Chapter 6

⁶ Joint Media Release, Prime Minister and Federal Treasurer, *Stronger, Fairer, Simpler: A tax plan for our future*

⁷ The Parliament of the Commonwealth of Australia, *Explanatory material: Minerals Resource Rent Tax*, Exposure Draft, 2011, p6

- v. *30 March 2011 – GST Distribution Review*
Original terms of reference issued.
- vi. *1 July 2011 – GST Distribution Review*
Issues Paper released. Submissions due 14 October 2011.
- vii. *6 September 2012 – NSW Budget and royalties increase*
The NSW Government handed down its 2011-12 Budget, including an announcement of an increase to coal royalties to offset the cost of the Commonwealth Government's carbon tax on the NSW Budget. That increase in royalties of \$944 million over four years will apply only to those entities with a MRRT liability.
- viii. *17 November 2011 – GST Distribution Review*
Additional terms of reference (6a and 6b) issued.
- ix. *22 December 2011 – GST Distribution Review*
Supplementary Issues Paper released. Submissions due 9 March 2012.

NSWMC concerns

1. The Supplementary Issues Paper and Supplementary Terms of Reference

The Supplementary Terms of Reference issued on 17 November 2011:

6A: The Review should examine and make recommendations on possible changes to the form of equalisation to achieve the following objectives:

- a) ensure that HFR does not provide a disincentive to State tax reform
- b) utilise HFE to provide incentives and disincentives to promote future State policy decisions which improve the efficiency of State taxes and mineral royalties
- c) examine the incentives for States to reduce Minerals Resource Rent Tax or Petroleum Resource Rent Tax revenue through increasing State mineral royalties

6B: In considering this issue, the Review will be guided by the following:

- a) the findings of the Australia's Future Tax System relating to existing State taxes and mineral royalties,
- b) the Minerals Resource Rent Tax and Petroleum Resource Rent Tax provide a more efficient approach to charging for Australia's non-renewable resources than mineral royalties, and
- c) State tax reform will not be financed by the Australian Government.

NSWMC holds serious concerns regarding the issuing of these Supplementary Terms of Reference in and of itself.

It is most unusual for supplementary terms of reference to be issued during the course of a policy review – and even more so for such to be issued following the closure of an initial review process. This raises serious concerns regarding the processes of the Review, and the potential outcomes resulting from this process.



NSWMC is concerned that the release of the Supplementary Issues Paper is a step towards the Commonwealth Government breaching its undertakings in relation to the design of the MRRT.

The original Commonwealth Government commitment to rebate State royalties to those organisations with MRRT liabilities was made on 2 May 2010 without qualification and without reference to any penalties that may subsequently accrue to State Governments who increase their royalty rates. To now seek to change this arrangement is a clear breach of this undertaking.

NSWMC is not advocating for increased taxes and royalties. However, the decision of the NSW State Government to exercise its sovereign right to increase state royalties in the 2011-12 Budget should not be used as the basis for a belated Commonwealth Government response that seeks to penalise mining communities in this State.

2. Undermining the sovereign rights of the State by stealth

2.1 NSWMC supports the right of the State to set State taxes, including royalties

Relevant key questions:

Q7: Do States have an incentive to reduce MRRT or PRRT revenue through increasing State mineral royalties?

Q8: if there are such incentives, should they be removed, and if so, how?

Q9: What factors influence the structure of States' royalty regimes?



The Crown, and therefore the people of NSW, owns the majority of mineral assets in NSW. A royalty is the price charged by the Crown for the transfer of the right to extract a mineral resource. The revenue generated by royalties is retained within the State.

As previously stated, NSWMC is not advocating for increased taxes and royalties. However, given the ownership of the majority of mineral assets by the State on behalf of the people of NSW, and in the absence of any agreement between the Commonwealth and the States to reform these arrangements, it remains the right of the States to charge for the transfer of the right to extract a mineral resource, and set the price for that charge.

The Commonwealth Government's threat to interfere in this process undermines the State's autonomy and flexibility in setting State taxes, fees and charges to meet its own set of circumstances, and moreover it undermines the sovereign rights of the State.

2.2 NSWMC opposes manipulation of GST distribution to affect outcomes

Relevant key questions:

Q1: Does HFE provide a disincentive for States to undertake State tax reform?

Q2: If so, how could an alternative form of GST distribution be designed that would remove (or at least reduce) this effect?

Q4: How should the GST distribution be designed in order to provide incentives and disincentives for certain State policy decisions?

Q5: If the method of GST distribution was utilised to provide incentives to promote the efficiency of State taxes and mineral royalties, what specific policy decisions should be targeted?

NSWMC opposes GST distribution being used as a weapon in a battle to make States undertake the Commonwealths desired policy reforms, including State tax reforms, by intervention and force.

NSWMC notes that in considering how Australia can best structure its tax and transfer system into this century and enhance its economic and social outcomes, the Australia's Future Tax System Review recommended a range of measures. However, the Supplementary Issues Paper takes a much narrower focus, and focuses on ways in which GST distribution can be used to affect behaviours – provide incentives or disincentives – for State policy decisions, particularly tax reform.

The Commonwealth Government must acknowledge that in the absence of a negotiated agreement it remains the right of States and Territories to set a range of taxes to be levied at that level, including the application of mineral royalties. The need to achieve agreement may seem an inconvenience when Governments seek to introduce wide-ranging reform, but attempts by the Commonwealth Government to reform State taxes by stealth serve only to agitate Commonwealth/State relations and will ultimately deliver substandard outcomes for the people of NSW.



3. The Commonwealth threat to NSW infrastructure funding

The Commonwealth Government's threat to withhold infrastructure funding available to NSW under the \$6 billion Regional Infrastructure Fund inflicts the hardest blow to the individuals, families and communities of key mining regions across NSW. This compounds the many years of inadequate and insufficient investment in publicly funded infrastructure in NSW.

The Commonwealth has an important role to play in ensuring the proper funding of infrastructure that meets the needs of mining communities across the country, including in NSW. These communities are making a significant contribution to the economic future of our nation and it is wrong for the Commonwealth to impose a penalty in this manner.

The Commonwealth's threat is even more regrettable considering it has been made as a result of what appears to be the Commonwealth's failure to secure agreement with the States to give up their sovereign rights and to also anticipate that in the absence of such an agreement the State Governments would continue to exercise these rights from time to time.

Again, NSWMC appreciates the opportunity to provide this response to the Supplementary Issues Paper.

Yours sincerely

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CHIEF EXECUTIVE OFFICER