



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

PO Box A147
Sydney South
NSW 1235
DX 585 Sydney
alhr@alhr.asn.au
www.alhr.asn.au

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The Manager
Business Tax Division
Resource Tax Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Email: resourcetax@treasury.gov.au

Dear Sir/Madam

Submission on Minerals Resource Rent Tax Bill 2011

Thank you for inviting comment on the proposed mineral tax bill. Australian Lawyers for Human Rights (ALHR) recently issued a statement commending the Government's consultation process.

One of the ALHR's committee members has recently published an article on the implications of human rights for minerals taxation, which is **attached**. Extracts from the introduction and conclusion of this article provide an appropriate submission to the Government in relation to the proposed mineral tax bill.

Governments collect and use revenues produced by mining. Human rights requires that governments apply maximum available resources for citizen's welfare. What relevance do these have for each other? There are many areas of interaction between mining and human rights in relation to poverty reduction, energy provision, population relocation, employment, or contribution to conflict. This article, however, focuses only on the question: what are the implications of human rights for a government's taxation of minerals revenue? This focus does not dismiss these broader interactions around mining but the focus responds to the acknowledgement that mining's main contribution to a government/economy is through revenue (eg. taxes, royalties) not through provision of employment, training, infrastructure or

business development. Accordingly, it is useful to know what guidance exists on the government's capture of mineral revenues. Human rights considerations provide one source of guidance on a state's management of resources and, therefore, should be examined to see what, if anything, those considerations require of mineral taxation.

Human rights make no specific requirement of states in respect of mineral tax extent or structure. However, the International Covenant on Economic, Social and Cultural Rights (ICESCR) does impose obligations in relation to how a nation determines its mineral tax extent or structure:

- the nation needs to make effective and equitable use of its resources in meeting ICESCR's requirements, including collating information about the extent of ESC needs in the country and formulating a plan to address these;
- in formulating the plan, if various levels of government have responsibility for ESC rights or control over the resources that can be applied thereto, those governments must consult and allocate responsibilities and resources relative to their obligations;
- the needs of people most disadvantaged must be prioritised - the nation must ensure core ESC rights are met through the use of all resources in the state; and
- decisions should not be conceived of as being simply a trade-off of one form of capital over others but, instead, to find the way to best optimise the outcome for each.

This process would not countenance the determination of a country's mineral taxation structures and rates simply through the power-politics negotiation between a government department and the mining company/industry. Human rights obligations under ICESCR require that taxation decisions be informed by determining what resources the nation's population needs and that all relevant levels of government are involved, including with public participation.

If you have any questions regarding issue of human rights and mineral tax, please contact John Southalan <Southalan@gmail.com>. If you have questions about ALHR more generally, please contact ALHR's secretary, Natasha Case <alhrsecretary@gmail.com>.

Best regards,

A handwritten signature in blue ink, appearing to read "Stephen Keim", with a long horizontal flourish extending to the right.

Stephen Keim SC
President
Australian Lawyers for Human Rights
0433 846 518
s.keim@higginschambers.com.au

