

THE ROLE OF THE EXECUTIVE, LEGISLATURE AND JUDICIARY IN THE MINERALS RESOURCE RENT TAX ACT 2012 YEAR 11 & 12 STUDENT RESOURCE

PART ONE: Development of the Minerals Resource Rent Tax Act 2012 (MRRT)

There are three arms of the Australian Government:

- The **legislature** is the Federal Parliament which consists of the Queen, a Senate, and a House of Representatives. The Parliament is responsible for debating and voting on new laws introduced under the power of s51 of the Australian Constitution.
- The **executive** is responsible for the execution and maintenance of the Constitution, and of the laws created by the legislature. “The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative.”¹ The Federal Executive Council is an advisory council to the Governor General and is made up of the senior ministers from the legislature (the Cabinet of Australia).
- “The **judiciary** is the legal arm of the Australian Government. It is independent of the other two arms, and is responsible for enforcing the laws and deciding whether the other two arms are acting within their powers.”²

See [The Australian Government](#) for more information on the role and structure of the Australian Government.

1. Click on the link to the Timeline: [TimeRime](#). Search for the timeline entitled *Minerals Resource Rent Tax* (Author: FBLEP / Category: Politics). Scroll down the page and click on the *Minerals Resource Rent Tax* timeline link. If you hover your mouse over a date, it will give a brief outline of the events on that date. Double click on the date to get a more detailed explanation. Using the information from the Minerals Resource Rent Tax Timeline, complete the following table and answer the questions below.

DATE	EVENT
2 July 2010	
	The MRRT Bill was read and debated in the House of Representatives
7 February 2012 to 19 March 2012	

¹ Commonwealth of Australia Constitution Act (1900) http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/ s61.

² Australian Government, *Our Government* (2013) <http://australia.gov.au/about-australia/our-government>

19 March 2012	
	The MRRT Act was assented to
22 June 2012	
	Commencement of the MRRT Act
2 August 2012 to 5 November 2011	
	Written submissions to the High Court by the Plaintiffs, Interveners and Defendant
6 March 2013 to 8 March 2013	
7 August 2013	
13 November 2013 to 20 November 2013	MRRT Repeal and Other Measures Bill 2013 introduced, read and debated in the House of Representatives and third reading agreed to
	MRRT Repeal and Other Measures Bill 2013 introduced, read and debated in the Senate and second reading negatived
1 September 2014	MRRT Repeal and Other Measures Bill 2014 was introduced read and debated in the House of Representatives
1 September 2014 to 2 September 2014	
	The House of Representatives considers the message from the Senate and agreed to Senate amendments
2 September 2014	MRRT and Other Measures Bill 2014 passed in both Houses
5 September 2014	

The Role of the Three Arms of Government in the MRRT

2. Which of the three arms of government proposed the MRRT and who had it drafted?
Explain your answer.

3. Which of the three arms of government was responsible for debating and approving the MRRT Bill?

4. Which of the three arms of government was responsible for enacting this Act of Parliament?

5. Which of the three arms of government is responsible for interpreting the validity of the MRRT Act if required to do so?

6. Did Fortescue Metals Group appeal to the High Court or initiate proceedings in the High Court? Explain why.

7. What claims did FMG make in its High Court proceedings against the MRRT?

**Fortescue Metals Group Limited v The Commonwealth [2013] HCA
34 (7 August 2013)**

PART TWO: Judicial Review of the MRRT and its Constitutional Validity

Whenever there is a dispute about the meaning of legislation, the third arm of government, the judiciary, has the role of interpreting and clarifying the legislation. Fortescue Metals' challenge about the validity of the MRRT had its foundation in three different sections of the Commonwealth of Australia Constitution Act (1900):

s51

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation; but so as not to discriminate between States or parts of States;

S99

The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

S91

Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.³

DISCUSSION

8. Using the link [Arguments for and against the challenge](#), what were the grounds for Fortescue Metals Group seeking clarification of the Commonwealth of Australia Constitution Act (1900) from the High Court?

³ Commonwealth of Australia Constitution Act (1900) http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/

Minerals Resource Rent Tax Repeal and Other Measures Act 2014

PART THREE: The Repeal of the Minerals Resource Rent Tax

In 2013 the Abbott Government introduced the Minerals Resource Rent Tax Repeal and other Measures Bill in the House of Representatives to repeal the MRRT. This was to fulfil an election promise and was outlined in the [Explanatory Memorandum](#) that accompanied the Bill in Parliament. The Bill was passed and sent to the Senate for reading and debate.⁴

The Senate did not pass the Bill in 2013 and it was introduced a second time in 2014

12. The repeal of the Minerals Resource Rent Tax was combined with a number of other amendments as one Bill: The Minerals Resource Rent Tax and Other Measures Bill 2014. Click on the following link and name at least three other Acts that were combined with the MRRT Act as part of the new Bill. [Details of the MRRT Repeal and Other Measures Bill 2014](#)

13. On 2 September 2014 the MRRT Repeal and Other Measures Bill was passed in both Houses of Parliament. In order to achieve a successful vote in the Senate, the Prime Minister had to make a deal with a number of Senators. Using the news report [Mining Tax Repeal Passes Senate](#), who was the main influencing senator that reached an agreement with the Prime Minister.

⁴ Minerals Resource Rent Tax Repeal and other Measures Bill (2013).
http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5142

16. In Australia's history, has the Governor General ever exercised this power? If so, what happened, when did it occur and who was the Prime Minister?

17. Once the Bill had been passed through both Houses of Parliament, what was the final step that had to be completed before the Bill could become an Act of Parliament and therefore, law and when was this completed?



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)