

RULE OF LAW

INSTITUTE OF AUSTRALIA

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RoLIA calls for removal of retrospectivity of Resources Super Profits Tax

The Rule of Law Institute of Australia (RoLIA) encourages the new Government under Prime Minister Julia Gillard to reconsider the retrospectivity of any new Resources Tax.

A statute is retrospective if it operates or purports to operate prior to the time of its enactment. The rule against retrospectivity means that prima facie a statute must not, by express words or implication, be construed so as to change the legal character, or the legal consequences, of past events and transactions (see generally *Ku-ring-gai Municipal Council v Attorney-General (NSW)* 99 CLR 251, 269 per Fullagar J). Where a new resources project has commenced by the physical extraction of any part of the land for the removal of any mineral (or otherwise) any new tax enacted after that date should not apply to the project.

Retrospectivity is undesirable in Australia if we want to uphold the rule of law. Any new Resources Tax should not be retrospective.

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