

Australian Government
Productivity Commission
Zone Tax Offset
Response to
Productivity Commission Draft Report
August 2019

Dr A R (Lex) Fullarton

Adjunct Professor, Curtin Law School, Curtin University; Proprietor Solex Project
Carnarvon; Retired Tax Practitioner and Resident of the Shire of Carnarvon Western
Australia

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I thank the Commissioners, and their staff, for the dedication and hard work they have demonstrated in the research and compilation of the Draft Report into the Remote Area Tax Concessions and Payments of August 2019.

It is noted that 98 submissions and 12 commentary notes were contributed during the initial public consultation period. Given around half a million taxpayers are affected by this avenue to relieve their tax burden, that contribution rate appears insignificant.

However rather than considering this an apparent lack of interest, there may be a raft of factors which have influenced the overt apathy:

- The review, initiated on 28 November 2018, came at a time when people were pre-occupied with the Christmas period, school holidays and the like;
- During the consultation period there were a number of significant weather events such as droughts, tropical cyclones, and floods which may have distracted a good third of the population of rural and remote Australia;
- There have been so many fruitless submissions in the past 22 years that taxpayers feel frustrated at what may be yet another worthless exercise; and
- As a result they may feel that the zone tax offset (ZTO) become is so insignificant to their overall social, environmental and economic plight that it is simply not worth the effort to address it and have simply given up.

When those factors are considered, those who have responded have demonstrated considerable commitment to this issue. As one of the few remote tax practitioners and legal academics, who have been actively committed to the review of the ZTO since November 2002, I sincerely thank them for their support.

OVERVIEW

This response is to specific matters addressing the current review of the ZTO (s 79A(1) of the *Income Tax Assessment Act 1936* (Cth)) and is based on the Draft Report of the Productivity Commission August 2019.

The response rebuts the Commissioners' findings that '[t]he Australian Government should abolish the zone tax offset and the overseas tax offset.'¹ It agrees that the zone tax offset (ZTO) is flawed and outdated,² but suggests rather than abolishing the ZTO its boundaries should be redrawn to more accurately reflect social and economic amenities currently existing in some cities in 'the prescribed area', and significantly increased to reflect the current comparative values of incomes and taxation rates between residents of 'the prescribed area' compared to residents in other parts of Australia.

To do so it examines s 79A and compares the legislation to the recommendations of the Commissioners' draft report.

1 Australian Government, Productivity Commission, 'Remote Area Tax Concessions and Payments: Productivity Commission Draft Report (August 2019) 39 <<https://www.pc.gov.au/inquiries/current/remote-tax/draft/remote-tax-draft.pdf>> at 19 Sept 2019.

2 Ibid 38.

For convenience, s 79A(1) of the *Income Tax Assessment Act 1936* (Cth) rebates for residents of isolated areas is reproduced here:

For the purpose of granting to residents of the prescribed area an income tax concession in recognition of the disadvantages to which they are subject because of the uncongenial climatic conditions, isolation and high cost of living in Zone A and, to a lesser extent, in Zone B, in comparison with parts of Australia not included in the prescribed area, a taxpayer (not being a company or a taxpayer in the capacity of a trustee) who is a resident of the prescribed area in the year of income is entitled, in the taxpayer's assessment in respect of income of that year of income, to a rebate of tax ascertained in accordance with this section.³

Despite the clear construction of s 79A, the report relies on a statement in the Explanatory Memorandum of the Bill⁴ to state that '[t]he primary purpose of the concessions was, therefore, a response to the economic circumstances of the time [1945].'⁵ The report states [t]he Government considered it in Australia's economic and strategic interests to encourage people to settle in remote areas.⁶

While explanatory memoranda, and speeches delivered in Parliament during the second reading of a bill, are persuasive, and may be used by a court in determining the purpose of legislation,⁷ the conclusion and reliance on it to focus on purely economic factors for the findings of this report might be problematic.

The examination focuses on the stated disadvantages that the purpose of the income tax concession is intended to address: uncongenial climatic conditions; isolation; and the higher cost of living in the prescribed zones in comparison with parts of Australia not included in the prescribed area.

UNCONGENIAL CLIMATIC CONDITIONS

The effort that the Commissioners and their staff contributed in driving from Broome, in the Kimberley region of Western Australia, to Port Hedland, in the Pilbara region, just over 600km in a small vehicle on, an autumn day, is noted, and very much appreciated. It is important to note that in Pilbara terms the weather was 'cooling down' to 37C° at around 5:00pm.

By comparison, on the same day the author had covered 870km from Carnarvon to Port Hedland under similar conditions.⁸ However as residents of north Western Australia we are used to the vast distances of north Western Australia. It was assumed that at least the factor of 'compensation for 'uncongenial climatic conditions' had been addressed at that point.

3 *Income Tax Assessment Act 1936* (Cth) s 79A.

4 Joseph Benedict Chifley, Explanatory Memorandum, *Income Tax Assessment Act 1945*, <<https://www.ato.gov.au/law/view/document?docid=EXM/EMEITAB45/COM/ATO/00001>> at 9 July 2019.

5 Australian Government, above n 1, 124.

6 Australian Government, Productivity Commission, 'Remote Area Tax Concessions and Payments: Productivity Commission Issues Paper (March 2019) 2 <<https://www.pc.gov.au/inquiries/current/remote-tax/issues/remote-tax-issues.pdf>> at 19 Sept 2019.

7 *Acts Interpretation Act 1901* (Cth) s 15AA.

8 The meeting of 6 May is noted in the Australian Government, above n ,1 263.

The first tranche of s 79A of the *Income Tax Assessment Act 1936* (Cth), being ‘an income tax concession in recognition of the uncongenial climatic conditions in comparison with parts of Australia not included in the prescribed area’⁹ is covered in detail by Fullarton’s paper on this matter.¹⁰ That paper is attached to submission 1 of this inquiry.¹¹

However, to iterate the point of uncongenial climatic conditions, the impact of climate change which appears to be further increasing the harshness of the climate of remote Australia. To illustrate the impact of rising temperatures, figure 1 depicts the record maximum temperatures experienced in Australia on 26 December 2018.

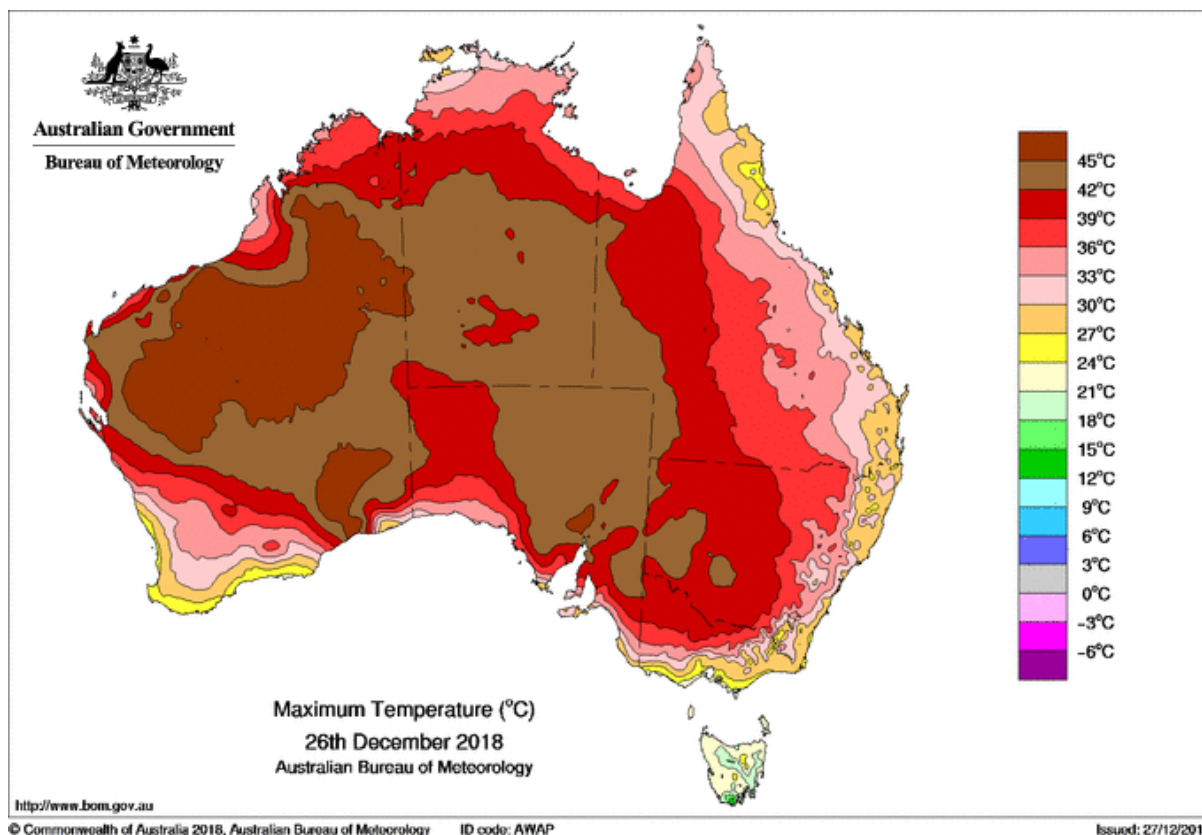


Figure 1: Australian tax rebate zones in 1945

Source: Australian Bureau of Meteorology

These maxima were rarely, if ever, experienced in the Past. Note the comparison of high temperatures between the ‘cooler’ urbanised coastal regions with those extreme temperatures recorded in the ‘prescribed areas’.

It appears that, for the people of ‘the Bush’, a bad thing is about to get worse. It is likely that the impact of the increasing temperatures will result in increased building costs for housing, and other habitable buildings, and increased energy costs in air-conditioning in the future.

9 *Income Tax Assessment Act 1936* (Cth) s 79A.

10 Alexander Robert Fullarton, ‘Are You Still Here, Mr Haase? A Study Of Australia’s Tax Rebates For Residents In Isolated Areas’ (2014) 9 *Journal of the Australasian Tax Teachers Association* 24, 26-8.

11 Australian Government, Productivity Commission, ‘Remote Area Tax Concessions and Payments: Productivity Commission View submissions and brief comments’, <<https://www.pc.gov.au/inquiries/current/remote-tax/submissions>> at 19 September 2019.

Therefore the report's findings that '[t]here is no compelling justification for a zone tax offset in contemporary Australia'¹² and that the '[h]igher living costs or other aspects of life in remote areas do not warrant compensation from other taxpayers'¹³ contradict the first tranche of s 79A.¹⁴

Further, it also appears to contradict the statement made in the Inquiry's Issue Paper: 'In 1945, the Australian Government introduced income tax deductions for inhabitants of remote areas. The main justification was to compensate people for the relatively high living costs, isolation and *uncongenial climate* in remote Australia (Chifley 1945) (emphasis added).'¹⁵

The report considers that reference to the Public Inquiry into Income Tax Zone Allowances [Cox Inquiry]¹⁶ is largely of little relevance. They suggest that as that review was published in 1981, and is based on the social and economic factors of nearly half a century ago, it does not accurately reflect the prevailing social and economic factors in 2019.

It is noted that while social and economic factors are two of the three pillars of the sustainability development framework (the triple bottom line (TBL)) the third pillar – environmental factors, have been ignored by them. This paper considers that climatic factors are environmental influences. It suggests that the influence of the natural environment and the geographic considerations as which effect climate in 'the prescribed areas' have largely remain unaltered in the period 1981 – 2019.

As climatic factors have remained largely unchanged since 1945, or even likely deteriorated further, and are more likely to deteriorate even further due to the impacts of climate change, the concession of 1945 should be increased to reflect that climatic deterioration, if it is to maintain that element of the purpose of the concession.

Further, as to the social influences which prevailed in 1981, this paper considers that of the *comparative disparities* of population density, amenities and services available to the urbanised population centres of the coastal regions to those experienced by residents of the remote regions remains consistent, despite social conditions improving since 1981, and most certainly since 1945.

To examine some of those social factors this paper moves to examine the next factor stated in s 79A – isolation.

12 Australian Government, above n 1, 39.

13 Ibid.

14 'an income tax concession in recognition of the uncongenial climatic conditions . . . in comparison with parts of Australia not included in the prescribed area.'

15 Australian Government, above n 6, 2.

16 Public Inquiry into Income Tax Zone Allowances (Australia) 1981, *Report*, AGPS, Canberra, <<https://trove.nla.gov.au/work/26520553?q=creator%3A%22Public+Inquiry+into+Income+Tax+Zone+Allowances+%28Australia%29%22&c=book&versionId=31941278>> AT 26 March 2019.

ISOLATION

The recommendation that ‘The Australian Government should abolish the zone tax offset and the overseas tax offset’¹⁷ appears to be influenced by the finding that

Australians face a range of advantages and disadvantages in where they live, and will typically locate in the area they value most highly. Communities likewise grow or shrink based on their advantages and disadvantages. Attempts by governments to artificially create an advantage for a remote community, or attract people to live in high cost areas through tax concessions, typically result in net losses to the broader Australian community.¹⁸

The statement appears to be based solely on economic principles. Given the background of the Commissioners of the Productivity Commission is that of economists, that economic focus is reasonable. However as with the environmental factors of climatic conditions, it ignores the social aspects of the TBL.

It also appears to ignore the considerable economic support given by many government agencies to the establishment of remote communities in the Pilbara Region to support the burgeoning mining industry in the 1970s and 1980s. The mining industry of the Pilbara Region of Western Australia is often referred to by parliamentarians, commentators and academics as the ‘economic powerhouse’ of Western Australia, if not Australia generally.

It might be that attempt by governments to artificially create an advantage for remote communities, or to attract people to live in high cost areas through government expenditures such as the construction of social infrastructure and personal tax concessions, is an exception.

Further, Fullarton’s research found that high personal income tax rates coupled with harsh working and living conditions, contributed significantly to the high rates of participation in the mass-marketed tax avoidance schemes in the Pilbara Region in the 1990s.¹⁹ He found that insignificant ZTO rebates were blamed by research interviewees for their participation in the schemes.²⁰

There are many reasons, other than economic influences why people live where they live. Further, one’s abode may have little or nothing to do with personal choice.

In section 2 of the report it is acknowledged that there is a raft of social and cultural influences on living in remote regions, yet it concludes most residents are there from their own rational choice.

Life in remote Australia is beset with challenge and yet full of opportunity. Difficulties in accessing services, dealing with the high cost of living (in some areas) and coping with the ‘tyranny of distance’ are stark for many residents. But most residents are there by choice —²¹

17 Australian Government, above n 1, 39.

18 Ibid.

19 Alexander Robert Fullarton, *Heat, Dust and Taxes: A story of tax schemes in Australia’s outback*, (Ibidem Press 2015).

20 Ibid 176.

21 Australian Government, above n 1, 100.

That assumption may not be accurate. An in-depth examination of social and individual health and welfare issues is beyond the scope of this examination, but a focus on suicide prevention and depression in remote regions might indicate that residents are not euphoric about their social and environmental circumstances.

Many of the submissions reflect on the acceptance of their home rather than a choice by free will. One post draft submission details a circumstance of economic compulsion to live remotely rather than the person's preference to be in an urban environment. Despite that evidence the report states that 'the lifestyle appeals to those who prefer to live far from cities.'²²

In fairness, it could be that the Commissioners are simply unaware of the complexities of moving residence in rural and remote areas. The decision to move from Glenelg to Fullarton, in Adelaide, might not require an entire change of occupation, employment, schools, clubs and societies and social group.

Alternatively a decision to move from Carnarvon to Mt Hawthorn might require a family upheaval of great magnitude. Even if employment is pre-arranged, within a government department or large corporation, the impact on the taxpayer, her spouse, her children, her immediate and possibly even her extended family is incalculable.

The children of 'transient' employees in rural and remote communities such as police, teachers and medical practitioners are somewhat akin to the term 'Army Brats'. Such children are never allowed to settle and establish permanent relationships as they never know which school they might be at next year, or even later in the same year.

Recruitment of such personnel is an ongoing problem for government agencies and a plethora of career incentives are provided to induce such people to 'do Bush service'. Therefore the term choice, implying free-will, may be problematic. Often given the 'choice' those people return to the cities as soon as possible. The issue of marital breakdowns caused by imposed 'Bush service' is legendary in the 'prescribed areas'. Removing the 'insignificant' tax concession might impose even further difficulties for recruiters.

It is noted that the concept of HELP discounts for professionals proposed by Fullarton²³ has been ignored in this report, yet it noted that the concept of was adopted for school teachers by

[t]he Australian Government [when it] announced in February 2019 that, subject to the passage of legislation, it would remit all or part of an individual's Higher Education Loan Program debt after they have been engaged as a teacher for four years at a school in a very remote location.²⁴

If tax concessions are ineffective in attracting people to high cost areas, then according to the suggestions of the report, the measure to attract school teachers to very remote locations will fail.

For small business owners the difficulties of disposing of businesses at a reasonable sale price to enable the move becomes overwhelming and they simply stay on as it is simply too difficult to move. Often 'moving-on' is left to permanent retirement, with further

22 Ibid 95.

23 Fullarton, above n 10.

24 Australian Government, above n 1, 116.

consequences of family upheavals. The concept of ‘choosing to live remotely’ might undoubtedly strike a humorous chord with some readers of ‘the Bush’.

The report also considers many aspects of isolation such as transport difficulties, lack of education and employment opportunities and poorer health outcomes²⁵ and in part uses those reasons to support its recommendation to increase the remote area allowance (RAA) paid under s 14 of the *Social Security Act 1991* (Cth).²⁶

The recommendation to abolish the ZTO despite recognising the impacts of isolation and challenges of living in remote regions appears convoluted. Section 79A expressly states a key purpose of ‘the income tax concession [is] in recognition of the disadvantages to which they are subject because of the isolation and high cost of living.’ To abolish s79A is to ignore that the disadvantages exist, yet the report makes it clear that they do.

HIGH COST OF LIVING

As to the disparity in the costs of living between remote areas and cities

The Commission has found that the cost of living is (on average) higher in *remote* areas than in capital cities — and higher still in *very remote* areas.²⁷ It states a near-universal view in submissions to this study was that the rates of the ZTO are inadequate in light of the higher cost of living and other disadvantages of life in remote areas. Many participants made reference to specific costs — including freight, travel costs (such as fuel and flights), higher costs of insurance, lack of choice, and poor access to services — which (they contended) vastly outweighed the value of the ZTO.

As to the effectiveness of the ZTO to act as a concession the report refers to

One Kalgoorlie-based submitter in Zone B noted:

The rebate is a joke. Its barely worth ticking the box. Given the [higher] cost of living here is in the thousands, the rebate is a token amount. (James Potter, sub. 25, p. 2)²⁸

Despite noting there is a higher cost of living in the remote zones and conceding that the ZTO has lost its relevance, the report then concludes

There is no compelling justification for a zone tax offset in contemporary Australia. Higher living costs or other aspects of life in remote areas do not warrant compensation from other taxpayers. Australians face a range of advantages and disadvantages in where they live, and will typically locate in the area they value most highly. Communities likewise grow or shrink based on their advantages and disadvantages. Attempts by governments to artificially create an advantage for a remote community, or attract people to live in high cost areas through tax concessions, typically result in net losses to the broader Australian community.²⁹

Despite statements in the Explanatory Memorandum, s 79A specifically states that it is not an economic driver to attract people to the remote areas, but rather an ‘income tax concession [is] in recognition of the disadvantages to which they are subject because of the isolation and high cost of living.’ It appears the conclusion is mistaken or based on the wrong premise.

25 Ibid 77.

26 Ibid 197.

27 Ibid 150.

28 Ibid 153.

29 Ibid 169.

A further contradiction of the recommendations of the report is that it recommends the RAA paid under the provisions of the *Social Security Act 1991* (Cth) be increased to address the very same issue of higher costs of living in remote areas.

The report states:

The RAA has a legitimate role in addressing cost of living differences in remote areas, given that most recipients are from areas with the greatest socio-economic disadvantage, and (unlike most ZTO recipients) face barriers to mobility and do not benefit from remote area wage premiums.

The report appears to assume that all taxpayers in remote areas ‘are on mining money’. It is acknowledged that some mining employees receive considerably higher than their urban counterparts, but there are thousands who do not. The generalisation is too broad and in taxation terms, inequitable.

As to the RAA the report states that:

RAA boundaries are outdated and should be aligned with ABS *remote* and *very remote* areas.
– This would increase the (yearly) number of RAA recipients by 43 000, although current recipients in Darwin (which is classified as *outer regional*) would no longer be eligible for the RAA.
– If current rates of payment were maintained, this would increase the cost of the RAA by \$17 million a year.
RAA payment rates have not increased in 20 years, and have declined in real value. The Australian Government should revise the payment rates following the completion of this study.

The Department of Social Services should review the RAA periodically. These reviews should be made public and focus on payment rates, reporting of data, and any issues associated with administering the RAA.³⁰

The Department of Social Security study (Beattie and McLoughlin 1983) on food prices in remote areas was based on an experimental ABS index of relative food prices in cities and towns throughout Australia. The study found that:

- 1981 food prices in Zone A were consistently clustered within a range of 13 to 24 per cent above those in cities (Sydney, Melbourne, Brisbane, Perth, Adelaide, and Hobart)
- food prices in Zone B were between 4 and 9 per cent higher than those in cities.³¹

Those statements follow the review of ZTO values fairly closely yet the recommendation in the case of the ZTO is to abolish it as it is no longer effective, in the review of the RAA, using identical rationale, the recommendation is to increase it.

Effectively that means an unemployed person, receiving social security payments, is paid an additional payment as a concession for enduring ‘uncongenial climatic condition, isolation and higher cost of living’, but an employed person, who does not receive the additional benefits of health care cards and the like, does not.

In a region trying to get people into gainful employment, and as noted in the report particularly remote indigenous communities where alcohol abuse is of considerable concern to all. Many of those have imposed liquor bans on the entire community to combat the problem. The increase in the RAA, particular at the expense of those seeking employment and self-determination, sends a very poor social message indeed.

30 Ibid 177.

31 Ibid 179.

CONSTITUTIONAL VALIDITY

It is also noted that two of the respondents are opposed to the concept of relief by way of this tax offset. They suggested that such relief may be in breach of Commonwealth powers granted to it under the Constitution and therefore ZTO rebates are invalid. One of those also suggested that s 99 of the Constitution may also make drought relief payments and other similar payments invalid.

The issue of Constitutional validity was addressed in 1945 by Parliament and specifically Sir Robert Menzies.³² The issue is addressed in further detail by Fullarton who suggests that the provisions of s 79A do not breach *the Constitution* and that ‘the Zone Rebate is therefore outside the scope of sub-s 51(ii), hence its 70-year existence.’³³

It appears the respondents do not suggest that s 79A is unconstitutional but rather ‘ask the Commission to engage senior counsel for a formal opinion, and to publish that opinion with the study.’³⁴

After seeking the advice of the Attorney-General’s Department on the constitutional validity of the ZTO, the Cox Review (1981, p. 5) noted that:

... there was doubt about the issue and that [the members of the Cox Review] could have no assurance that the provision was constitutionally sound, notwithstanding that the arrangements had been in existence since 1945.

The arrangements, however, have never been directly tested by the High Court. As did the Cox review, the Commission has sought and received legal advice and has considered the associated constitutional risk when examining different reform options.³⁵

The report states that the commission received legal advice but the opinion and specific reference was not found in the report. Instead the report appears to avoid the issue and suggests ‘[r]epealing the ZTO would also put to bed the risk that the offset may be invalid under the Australian Constitution.’³⁶

The issue remains untested. In the event that the ZTO does not breach *the Constitution* then the concession to taxpayers has been denied without recourse to the courts. The recommendation on the grounds of a *possible*, but unascertained, breach of the Law appears hardly equitable to those taxpayers denied the right to a rebate of tax to which they might, quite rightly, be entitled.

32 Commonwealth, *Parliamentary Debates*, House of Representatives, 4 May 1945, 1389 (Sir Robert Gordon Menzies, Leader of the Opposition).

33 Fullarton, above n 10, 34.

34 Simon Kerr, Submission 3 Australian Government, Productivity Commission, ‘Remote Area Tax Concessions and Payments: Initial Submissions (20 February 2019) 1 <<https://www.pc.gov.au/inquiries/current/remote-tax/submissions#initial>> at 19 Sept 2019.

35 Australian Government, above n 1, 6.

36 Ibid 171.

CONCLUSION

It appears that the recommendation to abolish the ZTO as it

is flawed and outdated.

- Eligibility has not kept up with change in remote Australia, and nearly half of ZTO claimants live in large coastal regional centres.
- Inflation and growth in wages have substantially eroded the value of the ZTO. The economic and employment impacts of the concession are likely to be small, and there is no evidence to suggest that the ZTO currently affects where people choose to live and work.³⁷

Is based on the economic premise that ‘[t]he primary purpose of the concessions was, therefore, a response to the economic circumstances of the time [1945],’³⁸ and further, that [t]he Government considered it in Australia’s economic and strategic interests to encourage people to settle in remote areas.³⁹

This paper suggests that s 79A does not reflect that suggested overarching purpose, but rather it clearly states, s 79A is

For the purpose of granting to residents of the prescribed area an income tax concession in recognition of the disadvantages to which they are subject because of the uncongenial climatic conditions, isolation and high cost of living in Zone A and, to a lesser extent, in Zone B, in comparison with parts of Australia not included in the prescribed area.⁴⁰

While explanatory memoranda, and speeches delivered in Parliament during the second reading of a bill may be used by a court in determining the purpose of legislation,⁴¹ the conclusion and reliance on it to focus on purely economic factors for the findings of this report might be problematic.

The recommendation to abolish the ZTO is based on a misunderstanding that economic factors are the key and only basis for its purpose. That effectiveness of that economic purpose has been eroded over the efflux of time. The ZTO must be reviewed to restore its stated purposes not abolished.

It is suggested that a fair point of reference for economic relevance should be 1975, when the ZTO was adjusted to reflect concessions made to residents of the ‘prescribed areas’ through other means, such as adjustments to the manner in which ‘child endowment’ was paid directly to parents rather than through personal income tax concessions.

Further the recommendation to increase the RAA based on the same factors as the findings of the review of the ZTO ignores a raft of social issues that may exacerbate social problems being faced in remote communities and in particular as the report notes as communities become more remote they are likely to become indigenous communities.

37 Ibid 38.

38 Australian Government, above n 1, 124.

39 Australian Government, above n 6, 2.

40 *Income Tax Assessment Act 1936* (Cth) s 79A.

41 *Acts Interpretation Act 1901* (Cth) s 15AA.

The indigenous people of Australia are struggling to find self-determination and identity in the face of isolation and indifference. They should be applauded and assisted, not face further obstruction and difficulties for economic convenience.

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Acts Interpretation Act 1901 (Cth) s 15AA.

Income Tax Assessment Act 1936 (Cth) s 79A.