

## AUSTRALIA: AN UNLEVEL PLAYING FIELD

### Extractive industry transparency on the ASX 200

#### **INTRODUCTION**

The increased transparency of payments made by extractive companies provides a wide range of benefits. It mitigates the risk of corruption and enables populations to hold their governments to account over the exploitation of non-renewable natural resources. It empowers policymakers and citizens to ensure that the wealth generated by extractive industries is used to fund sustainable development and reduce aid dependency in resource-rich countries. Increased transparency also enables investors to better assess the financial and political risks to which extractive companies are often exposed, while fostering more stable operating environments that enhance prospects for investment returns. Indeed, there is now the possibility that Australian extractive companies will lose out on investment to competitors on markets that are introducing transparency requirements.

In this period of intense competition for access to natural resources in Africa, the Asia Pacific region and elsewhere across the globe, the tax affairs of multinational extractive companies are coming under ever greater scrutiny. The transparency of payments to governments provides extractive companies with the means to demonstrate the economic contributions they make in the countries where they operate.

This briefing gives an overview of payment disclosure listing rules for mining, oil and gas companies and reviews the survey responses of sixteen investors and investment analysts on introducing country-by-country and project-by-project reporting requirements for Australian-listed extractive companies. It provides an analysis of the current level of disclosure exhibited by the top ASX 200 extractive companies and makes a recommendation to the Australian Government that such requirements be introduced.

Publish What You Pay (PWYP) Australia is a coalition of humanitarian, faith-based, environmental, anti-corruption, research and union organisations campaigning for greater transparency and accountability in the extractive industries that enjoy broad support across the Australian community. PWYP Australia works with the international PWYP network of over 700 civil society organisations to ensure that mining and oil and gas revenues are used for economic development and poverty reduction in resource-rich countries, including Australia.

PWYP Australia member organisation, CAER is an independent, staff and not-for-profit owned research organisation. CAER assists investors seeking to apply environmental, social and governance criteria to their Australian and international investments. CAER was established in 2000 and, through the EIRIS Global Platform, is able to provide consistent sustainability data on almost 3,000 of the world's leading companies.

This briefing is an update to PWYP Australia's 2011 report, *The Australian Securities Exchange: extractive industry companies and payment disclosure*. The investor survey and ASX analysis criteria were adapted from Global Witness' January 2013 report, *Transparency Matters: Disclosure of payments to governments by Chinese extractive companies*.

## **THE EMERGENCE OF A GLOBAL STANDARD**

On 9 April 2013, a global transparency standard for the extractive industries emerged when the European Union reached agreement on legislation requiring EU-listed and large unlisted companies to disclose their payments to governments for mining, oil and gas projects.<sup>i</sup> This legislation will be formally voted on by the European Parliament in June 2013 and is expected to extend to all EU-listed companies, including those registered outside the EU, with the forthcoming Transparency Directive. It follows the passing of a similar provision in the United States Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 which is now in force via implementing regulations issued last August.<sup>ii</sup> Together, the US and EU laws will cover about 65 per cent of the value of the global extractives market, and over 3,000 companies, including most of the international mining and oil and gas majors, as well as Chinese, Russian, Brazilian and other state-owned companies. Companies listed in the US and EU that operate in Australia will be required to disclose payments they make to the Commonwealth, State and Territory governments.

Norway has also committed to introducing, from 1 January 2014, rules that will at least align with the EU requirements,<sup>iii</sup> and in Canada an industry-civil society working group is currently developing a framework for the disclosure of payments to governments by Canadian mining companies. The Canadian Government will make policy recommendations for the adoption of extractive industry disclosure requirements in June 2013 following the completion of this work.<sup>iv</sup>

Further, extractive companies seeking to raise capital on the Hong Kong and London AIM stock exchanges are already mandated to disclose payments to governments as part of their initial listing requirements.

**Table 1. Extractive companies listed on the ASX 200 with exposure to the United States legislation, European Union legislation and/or listed on the Toronto Stock Exchange**

#	ASX Code	Company	ASX Market Cap (AUD million)	US Legislation (NYSE listed)	EU Legislation (LSE listed)	TSX listed
1	BHP	BHP Billiton	174,283	x	x	
2	RIO	Rio Tinto Limited	105,820	x	x	
3	NCM	Newcrest Mining Limited	15,351			x
4	AAI	Alcoa Inc	8,506	x		
5	AWC	Alumina Limited	3,119	x		
6	AUT	Aurora Oil & Gas Limited	1,478			x
7	AQG	Alacer Gold Corp.	1,124			x
8	PDN	Paladin Energy Limited	828			x
9	PRU	Perseus Mining Limited	820			x
10	MML	Medusa Mining Limited	812		x	
11	OGC	Oceana Gold Corporation	798			x
12	WSA	Western Areas Limited	658			x
14	CPL	Coalspur Mines Limited	317			x
15	MBN	Mirabela Nickel Limited	245			x
16	TRY	Troy Resources Limited	198			x

## **MANDATORY REPORTING COMPLEMENTS THE EITI**

The Extractive Industry Transparency Initiative (EITI) is a voluntary initiative which requires governments that sign up to it to publish what they receive from extractive companies and those companies to publish what they pay to governments. This process is overseen by a multi-stakeholder group of government, industry and civil society representatives. The Australian Government is the EITI's largest donor and is currently undertaking a pilot of the initiative.

It was the US and EU legislators' intention for their disclosure rules to complement and strengthen the EITI by codifying its best practices.<sup>v</sup> Payment disclosure requirements will lead to the generation of timely, disaggregated and easily comparable data and will apply to those countries that remain outside the voluntary system. This will not only help raise the bar for EITI reports but will also provide multi-stakeholder groups with a higher level of data to inform their discussions. As the EITI Chair, Clare Short, has stated "The EITI is not only about publishing the numbers: countries implementing the EITI have a platform for dialogue about all aspects of the use of their country's natural resources. The EITI multi-stakeholder groups will, if anything, be more important following listings requirements."<sup>vi</sup>

The United States Government has acknowledged the complementary relationship between the two mechanisms by committing to implement the EITI in addition to introducing legislation. The British and French Governments have also signalled their intentions to implement the EITI.

**Table 2. Extractive companies listed on the ASX 200 with operations in EITI compliant and EITI candidate countries**

#	ASX Code	Company	ASX Market Cap (AUD Million)	Operations in EITI compliant countries	Operations in EITI candidate countries
1	BHP	BHP Billiton Limited	174,283	Liberia, Mozambique, Peru	Guinea, Indonesia, Trinidad and Tobabgo
2	RIO	Rio Tinto Limited	105,820	Mongolia, Mozambique, Norway	Cameroon, Guinea, Indonesia, Madagascar *
3	WPL	Woodside Petroleum Limited	29,512	Peru, Timor-Leste	
4	NCM	Newcrest Mining Limited	15,351		Cote d'Ivoire, Indonesia
5	STO	Santos Limited	11,947	Krygyzstan	Indonesia
6	OSH	Oil Search Limited	9,882	Iraq	Yemen *
7	AAI	Alcoa Inc	8,506	Norway	Guinea, Indonesia, Trinidad and Tobabgo
8	AWC	Alumina Limited	3,119		Guinea
9	BPT	Beach Energy Limited	1,777	Tanzania	
10	KAR	Karoon Gas Australia Limited	1,134	Peru	
11	ASL	Ausdrill Limited	888	Burkina Faso, Ghana, Tanzania, Zambia	Cote d'Ivoire
12	RSG	Resolute Mining Limited	855	Mali, Tanzania	
13	PDN	Paladin Energy Limited	828	Niger	
14	PRU	Perseus Mining Limited	820	Ghana	Cote d'Ivoire
15	SDL	Sundance Resources Limited	675	Republic of Congo	Cameroon
16	AWE	AWE Limited	673		Indonesia, Yemen *
17	KCN	Kingsgate Consolidated Limited	589	Peru	
18	GRY	Gryphon Minerals Limited	140	Burkina Faso, Liberia	Cote d'Ivoire, Mauritania*

\* Currently suspended

## **WHY PROJECT LEVEL REPORTING?**

Project level reporting is vital in order to identify and prevent corruption and to help ensure that revenues benefit communities impacted by resource extraction activities. Project-by-project reporting will be of great assistance to parliaments, local governments and citizens as they monitor the extent to which intergovernmental transfers adhere to distribution rules that determine how much of a company's total project payment is distributed to local governments or communities. In countries that have fiscally decentralised or are undergoing fiscal decentralisation – such as Indonesia, the Philippines, Cambodia and others of strategic interest to companies listed in Australia – there is little public information to monitor the large flow of revenue to local governments, providing incentive for government corruption. The data produced by project reporting will not only produce the evidence needed to address corruption risks but will reduce the incentive for corruption in fiscal transfers.

## **COMPLIANCE COSTS**

In terms of compliance costs, companies already collect and track the data that would need to be disclosed. They keep books and records for themselves and their subsidiaries under existing securities laws, to comply with national anti-bribery statutes and for their internal accounts.

Extractive companies also keep records of project-level payment data. Australian listed companies that operate in the US already report on a lease level to the US Department of Interior, others publicly report payment information by lease/license voluntarily or do so as required by the World Bank, other national laws or EITI framework. Australian listed companies cross-listed in the US and/or the EU will be required to report at project level from October 2013 in the US and, within the next two years, in the EU.

Estimates of the cost of project-level reporting, in the low millions of dollars, are put in perspective by the record profits enjoyed by the large mining companies: for the last financial year BHP Billiton and Rio Tinto made profits of USD 15.4 billion and USD 5.8 billion respectively.

The European Commission has estimated the cost of project-level reporting for 171 companies to be 0.05% of annual revenues in the first year and less thereafter.<sup>vii</sup>

In its final rules for the US legislation, the Securities and Exchange Commission, using Barrick Gold's estimate of time required to comply with the legislation and its own estimate of USD 400 per hour costs, stated the following:

*Barrick Gold estimated that it would require 500 hours for initial changes to internal books and records and processes, and 500 hours for ongoing compliance costs. At an hourly rate of \$400, this amounts to \$400,000 (1,000 hours x \$400) for hourly compliance costs. Barrick Gold also estimated that it would cost \$100,000 for initial IT/consulting and travel costs for a total initial compliance cost of \$500,000. As a measure of size, Barrick Gold's total assets as of the end of fiscal year 2009 were approximately \$25 billion. As a percentage of Barrick Gold's total assets, initial compliance costs are estimated to be 0.002% (\$500,000/\$25,075,000,000).<sup>viii</sup>*

## **WHY TRANSPARENCY MATTERS TO INVESTORS**

Improved payment disclosure detailing the size and nature of financial relationships between extractive companies and governments would not only aid efforts to end corruption and enable citizens of resource-rich developing countries to hold their governments to account, but also help mitigate the financial and political risks for industry and investors alike. Indeed, if ASX-listed extractive companies were required to disclose their payments to governments where they operate, investors would be able to account for these risks and improve their investment decision-making in relation to such companies. Investors would also then be able to make comparisons and evaluations as to potential risks faced by ASX-listed companies with those on competing global markets that already have, or are set to bring in, such requirements.

With around 65 per cent of the global extractive market covered by country and project level payment disclosure requirements, including companies that represent just under \$300 billion in market capitalisation on the Australian Securities Exchange, there is in fact the risk in the near term, as data from these requirements begin to flow, that Australian issuers will attract less investment if they do not disclose comparable data. Payment disclosure is required in all major extractive markets in order to level the playing field and to protect those companies that act within the law from unfair competition and potential accusations of corruption that could lead to reputational damage.

## **INVESTOR SURVEY FINDINGS**

As part of this research PWYP Australia and CAER surveyed investors and investment analysts for their views on disclosure requirements for extractive companies listed in Australia. Sixteen respondents from a range of investment and financial organisations answered the survey (the organisations that participated in the survey are listed on page 12). Several re-emerging themes are apparent from an analysis of the responses and provide an insight into the investor perspective on this issue. These themes, plus some of the more unique views, are summarised in the following sections.

### **1. Benefits of disclosure**

When asked about potential benefits, if any, from the disclosure of payments to governments by Australian listed extractive companies, one of the main benefits investors identified was improved governance in resource-rich countries leading to more stable operating environments and therefore safer investments. The statement below from an investment research organisation summed up the general view of investors:

*[We see] financial transparency as critical to enable investors to assess risk, make decisions about capital allocations, and protect long-term shareholder value. Extractive industries often operate in areas of the world that are politically unstable, and are required to build close relationships with host governments. Yet there is surprisingly poor disclosure to investors about the size and nature of the financial relationships such companies have with their host governments.*

Adding to this, a senior investment analyst wrote ‘increased transparency can help to address corruption, poverty, and thus an unstable operating environment for companies’.

Several investors stated transparency could help improve a company’s ‘social license’ to operate by revealing the economic contribution it makes in host countries. A representative from a leading corporate consulting firm stated that ‘we are seeing business wanting to report more information on

what is paid to show positive outcomes of their operations in response to a view that extractive industries do not contribute sufficiently in reference to the mineral price.' Another investor thought greater transparency of payments could help 'combat tax dodging practices, such as companies artificially manipulating internal transactions across borders.'

Improved ability to better assess company risk was another major benefit recognised by investors. A senior responsible investment analyst of a global asset management firm stated that 'greater transparency will allow investors to identify risks associated with taxation, for example projects with very low tax rates may be at risk of having taxes increased. Also payments made in countries with a high prevalence of corruption will be of significant interest as differences in taxes paid between companies or projects may point to corruption risks.' Greater certainty with regard to capital allocation and projected investment returns from increased financial transparency was also cited as being of assistance to investors when making investment decisions.

Some of the respondents put forward the view that disclosure could prevent bribery occurring in the first place. The Chief Investment Officer of an Australian fund manager stated that 'transparency provides a disincentive for government employees to ask for inappropriate payments.' Another fund manager made the point that 'the disclosure of payments to governments would also assist companies in defending accusations of bribery and corruption, which is occurring more frequently and presenting a distraction for the management of these companies.'

Bringing Australia into line with other leading global economies was seen as another key benefit for introducing disclosure requirements. This would enable investors to compare Australian issuers with those listed in the US and EU. It was stated that the introduction of rules 'consistent with those covering the majority of the global extractives market [would correct] any information asymmetry around Australian companies for global investors.' Indeed, inconsistency in disclosure requirements was seen by one investor as itself being a risk for companies and investors. An asset manager stated that a 'decent [level of] detail on what the payments are for' should be required and another investor added that 'project-specific disclosure is increasingly being considered as the best practice standard for payments disclosure.'

## **2. Disadvantages of mandating disclosure**

Some investors did not perceive any disadvantage to bringing in disclosure requirements. Several respondents, however, raised the issue of compliance costs. A responsible investment analyst for example noted that 'smaller companies transitioning to increased reporting requirements may experience a period of increased costs associated with enhanced compliance. In most cases this increased cost is likely to diminish as the company refines its disclosure processes.'

A couple of investors raised the issue of competitiveness. One stated that companies that disclose payments could be put at 'a competitive disadvantage compared to companies whose payments are never made transparent' but reasoned that this could be remedied 'by ensuring that similar disclosure rules become more and more universal in coverage [as] this will ultimately create a uniform and level playing field.'

A couple of technical challenges were also identified, including 'how do you address disclosure by JV partners, especially operating partners; how do you address payments to quasi government bodies which may be used to circumvent disclosure requirements?' Another respondent thought the benefit could 'be limited where a regime does not provide the ability to reconcile such amounts to those received by the related government. That is, if the regime does not also have a requirement on the government to publish what they receive.'

One investor stated that increased disclosure ‘provides a point of weakness for NGOs to further target mining companies for criticism.’ Taking a different perspective, one investment manager thought that the ‘only disadvantage [would be] if others do not also disclose and become preferred by “corrupt” regimes.’ Another investor put forward the possibility that greater transparency of payments to governments ‘may drive down the price of royalties paid to host countries by initiating a race to the bottom.’

Overall though, the general consensus was that Australia should introduce payment disclosure requirements consistent with those coming into force in the US and EU. The general consensus with regards to disadvantages, however, was that there are ‘none that outweigh the benefits.’

### **3. Introducing requirements for Australian companies to align with US and EU requirements**

No respondent stated that they thought introducing similar listing requirements in Australia would be unfeasible. It was stated that ‘if the European Union and US exchanges are in a position to implement the proposed listing requirements we can see no reason why the ASX should not be able to do so.’ Another investment adviser added that ‘the ASX has already aligned itself with extractive reporting guidelines in Canada and South Africa with regards to reserve and resource reporting so it should be feasible to do in this aspect.’

Several investors outlined two options for bringing in legislation. The preferred option was for the Australian Government to enact legislation requiring disclosure from extractive companies in line with existing requirements in the US and the EU. A responsible investment analyst stated that ‘this new legislation or amendment to existing legislation could foreseeably be administered by the Australian Securities and Investments Commission. In this way disclosure requirements for Australian extractives companies would be consistent with those of the US and EU.’

The second option put forward, was for the ASX to revise its Chapter 5 Listing Rules to require country-by-country and project-by-project disclosure. Should the ASX do so, it was for example advised that it:

*Work with other governments to develop and adopt a consistent and comparable global standard for reporting to:*

- *Improve consistency and remove variation and enable harmonisation of the disclosures*
- *Reduce confusion*
- *Reduce the likelihood of errors*
- *Reduce the administrative burden*

### **4. Participation by companies in the Extractive Industry Transparency Initiative (EITI) and the data generated**

Those that commented viewed EITI participation favourably and encouraged companies to support the initiative. An investor stated, ‘we view [supporter companies] leadership on this issue favourably and their implementation of the EITI would further support the statements made in their sustainability reports.’ In contrast, another investor raised the possibility that ‘some companies view participation as a necessity due to their size and public profile rather than having a genuine desire to improve transparency or combat corruption’.

It was evident from a number of responses to this question that data from EITI reports was of limited use to investors. A representative of a superannuation fund stated that the initiative ‘is no substitute

for mandated disclosure' and a further respondent wrote that 'while EITI is considered useful, it is not as specific in terms of requirements as to exactly what is to be reported and hence this leaves room for interpretation and potentially diversity.' A responsible investment analyst added that 'because the EITI scheme operates differently in different jurisdictions, the impact on companies varies depending on where their operations are located. It was also noted that 'communities are often more concerned with payments to their local government than with those made at the national level.'

Overall investors perceived that there was limited payment disclosure by Australian listed extractive companies and that data disclosed was inconsistent. These perceptions are in line with the finding of research undertaken of the top extractive companies on the ASX as discussed below.

### **ASX 200 RESEARCH FINDINGS**

An analysis of the level of payment disclosure in official company reports, for fiscal and calendar years 2012, published by the 54 extractive companies listed on the ASX 200, revealed the following overarching reporting trends.

#### **1. Fragmented reporting**

The data provided on payments to governments at country level were found to be fragmented. Companies sometimes reported payments at country level, sub-national level or by business unit. A few companies reported on major operations. Disaggregation of payments was equally fragmented, with companies disclosing different combinations of payment items.

Companies currently exhibiting leading disclosure practices were Rio Tinto and Newcrest Mining which reported payments for some individual projects. However, as none provide payment disclosure across all projects, none would yet be found compliant with the US and EU legislation.

#### **2. Limited support for the EITI**

Eighteen of the top extractive companies listed on the ASX operate in EITI compliant or candidate countries, yet only seven of these are EITI supporting companies as listed on the EITI website and acknowledge this in their company communications. Some companies that are not listed as 'official' EITI supporters, such as Newcrest Mining, PanAust Limited and Paladin Energy, state their support for the EITI in their corporate communications. These companies have also published tax payments by country and/or by major operations.

Conversely, the research showed that some companies, while being official supporters of the EITI, do not publicly provide details of payments to governments, including for those operations located in countries implementing the EITI.

Among the companies supporting the EITI, only three have their names – or the names of subsidiaries – in EITI country reports. Some reports detail government payments by these companies or the names of the companies are mentioned in the reports because they are major extractive companies in the region. Ten companies operating in either EITI compliant or candidate countries do not have their names in the EITI country reports, which leaves it unclear to stakeholders outside of each specific EITI process whether their payments to governments are included in EITI reconciliation or not.

Table 3 : Payments disclosed by ASX 200 extractive companies that support the EITI and/or with operations in EITI compliant and EITI candidate countries									
#	ASX Code	Company	ASX Market Cap (AUD Million)	EITI Supporter - official	EITI Supporter - unofficial*	Operating in EITI compliant and/or candidate countries	Company /subsidiaries named in EITI reports**	Payments disclosed by company /subsidiaries in EITI reports***	Some level of payment disclosure by country/operation in company's annual/sustainability reports
1	BHP	BHP Billiton Limited	174,283	x		x	x	x	x
2	RIO	Rio Tinto Limited	105,820	x		x	x	x	x
3	WPL	Woodside Petroleum Limited	29,512	x		x	x	x	
4	NCM	Newcrest Mining Limited	15,351		x	x			x
5	STO	Santos Limited	11,947	x		x			
6	OSH	Oil Search Limited	9,882	x		x			x
7	AAI	Alcoa Inc	8,506	x		x			
8	AWC	Alumina Limited	3,119			x			
9	BPT	Beach Energy Limited	1,777			x	x		
10	OZL	OZ Minerals Limited	1,615	x					x
11	PNA	PanAust limited	1,472		x				x
12	KAR	Karoon Gas Australia Limited	1,134			x			
13	ASL	Ausdrill Limited	888			x			
14	RSG	Resolute Mining Limited	855			x	x	x	x
15	PDN	Paladin Energy Limited	828		x	x	x	x	x
16	PRU	Perseus Mining Limited	820			x			
17	SDL	Sundance Resources Limited	675			x	x		
18	AWE	AWE Limited	673			x			
19	KCN	Kingsgate Consolidated Limited	589			x			
20	GRY	Gryphon Minerals Limited	140			x	x		

\*These companies are not 'official supporters' of EITI (as per the EITI Website), yet they state their support for the initiative in their respective corporate communications

\*\* This column only tracks the company names and/or subsidiary names published in EITI country reports.

\*\*\* This column tracks the payments disclosed by companies and/or its subsidiaries in EITI country reports.

### **3. Improved reporting practices and overseas listings**

No relationship was observed between companies' payment disclosure reporting practices and being listed overseas. Five companies examined as part of this research have exposure to the US or EU transparency legislation. While they make up a low percentage of the 54 extractive companies on the ASX 200, these five companies represent a market value of just under \$300 billion. Three of these – Alcoa Inc, Alumina Limited and Medusa Mining – do not, as yet, disclose government payments at a country level. The other two – BHP Billiton and Rio Tinto – have started to disclose a breakdown of payments at minimum on a country-by-country level. Rio Tinto's tax disclosure report also provides detailed information on regional and municipal payments and business divisions, which leads to a better understanding on payment flows at project level.

Ten companies in the dataset were found to be listed on the Toronto Stock Exchange but only two of these were observed to be disclosing government payment information.

### **4. A lack of comparable data**

Almost all companies reported on some payment items such as income tax and deferred tax but on other items such as royalties, production bonuses, license fees and custom duties the reporting was inconsistent. Ten companies reported on total tax paid in all countries of operation. Eight of these provided disaggregated payments by country. A further two companies published their tax payments to governments of countries where they have major operations. Royalty related payments were disclosed by 35 companies but disaggregation of royalties at a country or project level was not observed in the majority of companies' reports. Generally it was found that the reporting of disaggregated payments varied from company to company which makes the data difficult to compare.

It was also found that the terms used to identify tax items varied across reporting companies. Inconsistent terms for payments, again, make it difficult for stakeholders to use data reported. The lack of standardisation was a common phenomenon, resulting in incomparability of data.

### **5. Sustainability reports and payment disclosure**

There was no link observed between the publication of a sustainability report and the publication of payment information. 29 companies were found to publish a separate sustainability report or a section on sustainability in their annual reports.<sup>ix</sup>

Eight out of ten companies reporting on total tax payments to government did so in their sustainability reports or in a sustainability section of their annual reports. Two companies, namely Rio Tinto and Oil Search, published this information in separate 'transparency reports'.

#### ***STAND-OUT COMPANIES***

**Rio Tinto** is currently a leader in terms of payment disclosure. It provides this data in a separate document dedicated to government payments.<sup>x</sup> Tax payments in totality, by country and at sub-national levels of governments for some of its major operations are published. Payments were also reported as per type including corporate income tax, royalties, employer payroll tax, employee payroll tax and other taxes which constitute custom duties, property taxes etc. Rio Tinto, however, does not yet disclose payments made to governments for all of its projects.

**Oil Search Limited** published its first transparency report in 2012. Payments are reported in totality, by country and by payment type, covering a comprehensive spectrum of government payments.

**PanAust Limited<sup>3</sup>, Paladin Energy and Newcrest Mining** stand out in the group, as they are not EITI official supporters (as per the EITI website) yet they state their support for EITI in their corporate communications. PanAust Limited and Newcrest Mining disclose their total payments and payments to governments by country, and Newcrest also at project level for its ‘active mines’ (i.e. excluding exploration and proposed developments). Paladin reports country-level tax payments where it has major operations. While Newcrest Mining and Paladin Energy operate in EITI candidate and compliant countries, PanAust does not. PanAust states in its sustainability report that it ‘is supportive of the Extractive Industries Transparency Initiative (EITI) including its use as an important risk management tool.’<sup>xii</sup> This is particularly positive to note as this may encourage the governments in the countries where PanAust operates to implement the EITI.<sup>xiii</sup>

### **CONCLUSION AND RECOMMENDATIONS**

The findings of this research show that investors increasingly view financial transparency as a critical tool to assess risk and make investment decisions. While this may be the case, the analysis of extractive companies listed on the ASX 200 shows that disclosure of data concerning payments to governments is generally limited and, where there is disclosure, the data is not provided in a form that makes it comparable – and therefore useful for investors. The research also shows that support for or participation in the EITI does not necessarily lead to improved payment disclosure in a company’s corporate communications.

As a major extractives market and as the next chair of the G20 – which has transparency in the extractive industries as a central item on its Anti-Corruption Working Group agenda – Australia has the opportunity to show leadership in the region by adopting a country-by-country and project-by-project reporting requirement for extractive companies.

#### **PWYP Australia recommends:**

1. **The Australian Government** introduces rules that require extractive companies listed and based in Australia to disclose all payments, including taxes, royalties, fees and bonuses, made to governments in all countries of operation on a country-by-country and project-by-project basis, consistent with US and EU legislation.<sup>xiii</sup>
2. **The Australian Securities Exchange** supports the introduction of payment disclosure requirements for extractive companies issuing shares on the exchange.
3. **Extractive companies** disclose payments to governments in line with methodologies applied by the SEC in the US and through EU legislation. Not only will this help with building a company’s social license to operate, it will help attract investment by providing investors with comparable data to that provided by competitors on other markets.
4. **Investors** call on the Government to introduce mandatory disclosure rules for extractive companies and encourage companies to disclose the payments they make to governments.

## **THANK YOU**

PWYP Australia and CAER thank the following organisations for their participation in the survey:

AMP Capital Investors  
Australian Council of Superannuation Investors  
Australian Ethical Investment  
Christian Super  
Citi Research  
Colonial First State Global Asset Management  
Ernst & Young  
First Super  
HESTA  
Industry Funds Management  
Lion Manager Pty Ltd  
Northward Capital  
Platypus Asset Management  
PPB Advisory  
Regnan Governance Research & Engagement  
Solaris Investment Management

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<sup>i</sup> Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings:  
[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0684:EN:NOT](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0684:EN:NOT)

<sup>ii</sup> United States Dodd-Frank Bill Section 1504, 2010. For the SEC's final rules, adopted 22 August 2012, please visit:  
[www.sec.gov/rules/final/2012/34-67717.pdf](http://www.sec.gov/rules/final/2012/34-67717.pdf)

<sup>iii</sup> [www.regjeringen.no/en/dep/ud/campaigns/dialog\\_forseite/johnsen\\_llr.html?id=697043](http://www.regjeringen.no/en/dep/ud/campaigns/dialog_forseite/johnsen_llr.html?id=697043)  
<sup>iv</sup> Canadian Government Response: Sixth Report of the Standing Committee on Foreign Affairs and International Development Recommendation 10: [www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6030574&Language=E&Mode=1&Parl=41&Ses=1](http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6030574&Language=E&Mode=1&Parl=41&Ses=1)  
<sup>v</sup> See United States Dodd-Frank Bill Section 1504, 2010 and Proposal for a Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

<sup>vi</sup> [www.eiti.org/blog/false-dilemma-complementarity-new-disclosure-requirements-and-eiti#](http://www.eiti.org/blog/false-dilemma-complementarity-new-disclosure-requirements-and-eiti#)

<sup>vii</sup> European Commission, Commission Staff Working Paper Part II, Impact Assessment for financial disclosures on a country by country basis, 24 October, 2011, page 35:  
[www.ec.europa.eu/internal\\_market/accounting/docs/sme\\_accounting/review\\_directives/SEC\\_2011\\_1289\\_2\\_en.pdf](http://www.ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/SEC_2011_1289_2_en.pdf)

<sup>viii</sup> Page 184: [www.sec.gov/rules/final/2012/34-67717.pdf](http://www.sec.gov/rules/final/2012/34-67717.pdf). The SEC notes that the figure of USD 400 'is the rate we use to estimate outside professional costs for purposes of the PRA. Although we believe actual internal costs may be less in many instances, we are using this rate to arrive at a conservative estimate of hourly compliance costs.'

<sup>ix</sup> Sustainability sections on company websites were not taken into consideration. However separate 'transparency reports' are included.

<sup>x</sup> [www.riotinto.com/taxespaidin2012](http://www.riotinto.com/taxespaidin2012)

<sup>xi</sup> PanAust Sustainability Report 2011

<sup>xii</sup> PanAust operates in Chile, Laos, and Thailand. None of which as at May 2013 are EITI candidate or compliant countries

<sup>xiii</sup> Under the US rules, extractive companies are required to report any payment or series of payments that equal or exceed USD 100,000 in a fiscal year. In the EU the threshold is EUR 100,000.