

TOWARDS TRANSPARENCY OF THE EXTRACTIVE INDUSTRIES

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PUBLISH WHAT
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AUSTRALIA

An independent analysis of
the potential impacts
of the ALP's mandatory
disclosure policy



2018

ABBREVIATIONS

ACTU	Australian Council of Trade Unions
ALP	Australian Labor Party
ASX	Australian Stock Exchange
AUD	Australian dollars
BEPS	Base Erosion and Profit Shifting
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
EITI	Extractive industries Transparency Initiative
ESTMA	Extractives Sector Transparency Measures Act
EU	European Union
FPIC	Free, Prior and Informed Consent
ICMM	International Council on Mining and Metals
IFF	Illicit financial Flows
LSE	London Stock Exchange
MSG	Multi-Stakeholder Group
NAP	National Action Plan
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
PEPS	Politically exposed persons
PWYP	Publish What You Pay
TSX	Toronto Stock Exchange
TTC	Voluntary Tax Transparency Code
UK	United Kingdom
UN	United Nations
US	United States
USD	United States dollars

Front Cover

A woman collecting coal from the MNS informal settlement in Witbank, Mpumalanga
Photo: Oupa Nkosi / ActionAid

EXECUTIVE SUMMARY

Australia has a large global extractives presence for the size of our economy. Research from Publish What You Pay (PWYP) Australia released in 2017 showed that Australian mining, oil and gas companies had projects in 106 countries globally.¹

However while Australia is a leader in terms of the size of our extractive industries, we do not lead in transparency. Australia is not yet implementing the Extractive Industries Transparency Initiative (EITI), a global voluntary initiative that requires payment-to-government information for domestic extractive operations. We also do not have a mandatory disclosure law that would require extractives companies to publicly and annually disclose all payments made to governments on a country-by-country and project-by-project basis.

PWYP Australia and ActionAid Australia are strong supporters of the introduction of a mandatory disclosure policy in Australia. Such a policy would make Australian extractive operations domestically and abroad more transparent, and the companies that operate them more accountable to citizens. This could potentially increase tax revenue in low income countries to fund public services that are essential for achieving gender equality and poverty reduction.

In October 2017, the Australian Labor Party (ALP) announced a mandatory disclosure policy for the extractive industries in Australia. This policy would cover large Australian Stock Exchange (ASX) listed and large unlisted mining, oil, and gas companies, and require them to publish their payments to government at a country-by-country and project-by-project level. This report looks

at what the proposed ALP policy would cover and the potential impacts of the introduction of this legislation in Australia.

This report finds that the proposed ALP mandatory disclosure policy would capture 67 ASX listed companies and lead to substantial new disclosures in 43 countries in which they operate, including Australia. Expanding the policy to meet the full scope of EU and Canadian laws would lead to even greater levels of transparency; if it is assumed that every ASX listed company reporting revenue was captured, the number of companies required to report would increase from 67 to 109, an increase of over 60 per cent.

Based on these findings, PWYP Australia and ActionAid Australia recommend that the Australian government:

- Introduces a mandatory disclosure reporting system that is aligned to the EU Directives and Canadian ESTMA law;
- Requires that information under an Australian mandatory disclosure law be published in an open format, free to the public;
- Ensures civil society, particularly organisations from mining-affected communities, are consulted and included in the development of an Australian mandatory disclosure law.

PWYP Australia and ActionAid Australia also recommend that Australian companies:

- Work with and support the government, civil society, and mining-affected communities to introduce a mandatory disclosure law in Australia.

¹ Publish What You Pay Australia, *Abundant Resources, Absent Data: Measuring the Openness of Australian Listed Mining, Oil and Gas Companies on the African Continent, 2017*, <http://www.publishwhatyoupay.org/pwyp-resources/abundant-resources-absent-data/>

KEY

FINDINGS

01

There are 802 ASX listed companies involved in commercial production in the extractive industries, of which 67 would be captured by the ALP mandatory disclosure policy

02

Only six of these companies currently report their payments to the level of disaggregation required by mandatory disclosure laws for other countries, meaning that the ALP's policy would result in reporting by an additional 61 publicly listed companies

03

18 of these 43 countries currently have no project-level disclosure required for extractive companies

04

These 67 companies have a combined market capitalisation of approximately AUD\$320 billion

05

Continental Africa would benefit the most from an Australian mandatory disclosure policy. 17 of the 43 countries that would have access to new information on payments to government are African nations, and 31 of the companies captured collectively have 48 projects in continental Africa

06

This includes Australia, where 49 of the 67 companies have operations

07

Approximately 150 projects in 43 countries would be in scope for project-level reporting

08

Expanding the policy to meet the full scope of EU and Canadian laws would lead to even greater levels of transparency; if it is assumed that every ASX listed company reporting revenue was captured, the number of companies required to report would increase from 67 to 109, an increase of over 60 per cent



For resource rich countries, the extractives sector is generally considered a pivotal industry for economic and social development. There is also increasing recognition that the potential benefits of extractive industries projects must be balanced against environmental and social costs, particularly for mining-affected communities where women face exclusion from decision-making, as well as increased risk of food insecurity, unpaid labour, demand for sex work, gender-based violence, and HIV infection rates.²

The development opportunities presented by extractive industries projects relate to the increase in government revenues that corporate tax and royalty payments offer. However the extractives sector is acknowledged to be one of the sectors most likely to be mismanaged and co-opted for the benefit and enrichment of companies and government officials, rather than for the sustainable development of the state. The Organisation for Economic Co-operation and Development (OECD) has identified the extractive industries as the world's most corrupt economic sector.³ The sector is also associated with tax minimisation and avoidance practices. The UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows (IFF) identified the extractive industries as the sector with the highest concentration of IFF out of Africa due to mispricing.⁴ IFF due to tax minimisation practices and corruption is acknowledged as having a greater impact on women and girls, who are more reliant on the provision of public services to meet their basic needs and the redistribution of unpaid labour.⁵

Internationally there has been recognition from governments, industry, and civil society organisations that one of the strongest ways to address corruption and tax minimisation practices across the sector is by increasing the transparency of the financial flows of extractive operations.⁶ Globally, significant steps have been taken to make extractive industries payments to governments more open and transparent so that countries and their citizens are benefiting from the extraction of their finite natural resources. This happens primarily through two mechanisms: the Extractive Industries Transparency Initiative (EITI), and mandatory disclosure laws. The EITI is a voluntary and domestic reporting mechanism for countries, where extractive companies operating in EITI-implementing countries must disclose payments. Mandatory disclosure reporting requirements differ in that these laws require mining, oil, and gas companies listed on the host country's stock exchange, or large unlisted companies, to make public their payments to government annually down to the project level.

Australia has a large global extractives presence for the size of our economy. Research by Publish What You Pay (PWYP) Australia, released in 2017, showed that Australian Stock Exchange (ASX) listed mining, oil and gas companies had projects in 106 countries globally. These extractive projects were most heavily concentrated in continental Africa, where, as of April 2017, 139 of 717 (19.4%) ASX listed extractive companies had 312 projects in 34 countries: one in five ASX extractive companies are operating in African nations.⁷

While Australia may lead in extractives projects, we do not lead in transparency. Australia is not an EITI-implementing country, and we have no mandatory disclosure law for the extractives sector. In fact, Australia is fast becoming an outlier as we continue to allow ASX listed companies to operate domestically and internationally under levels of secrecy that other countries have acknowledged are detrimental to the sector and its investors, and to countries and their citizens. This is particularly concerning given that Australian companies and mine sites overseas have faced allegations of breaching workplace safety standards resulting in injuries and fatalities, breaking the host country's environmental laws, and pursuing projects without a social licence to operate.⁸

The lack of EITI and mandatory disclosure policies in Australia also means that there is a domestic deficit of fiscal data, particularly at the project level, available to government and the Australian community. Project-level disaggregation is important because it is only at this level that a community can realistically see if they are benefiting from extractive operations. Evidence given by PWYP Australia and Jubilee Australia to the Australia Senate Inquiry into Corporate Tax Avoidance, and submissions from ActionAid Australia, the Tax Justice Network Australia, GetUp!, the Australia Institute and the Australian Council of Trade Unions, show that many extractive companies operating domestically and internationally are not paying their fair share for the extraction of natural resources, nor publishing payment information in a transparent manner.⁹

Research by ActionAid Australia has shown that ASX companies operating overseas have been involved in tax avoidance practices in low income countries. A 2015 report, for example, found that the Malawi Government lost out on USD\$43 million in revenue over six years due to tax avoidance by the ASX listed company Paladin.¹⁰ In 2016, Oxfam Australia released a report that estimated that tax avoidance by Australian multinational companies would cost low income countries up to USD\$4.1 billion over five years.¹¹

The Australian Government has undertaken steps to begin addressing these issues. The *Tax Laws Amendment (Combating Multinational Tax Avoidance) Act 2015*, for example, introduced country-by-country reporting as outlined in Action 13 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Plan, and the introduction of the Voluntary Tax Transparency Code (TTC) encourages companies to increase their fiscal transparency.

The Australian Government is also signatory to numerous conventions that are relevant to operations of extractive industries, including the United Nations (UN) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Sustainable Development Goals and the Paris Agreement on climate change. Introducing mandatory disclosure supports the Australian Government to meet its obligation to ensure that our corporations operating overseas act responsibly and in line with international law and agreements. This is referenced in the UN Guiding Principles on Business and Human Rights, and a number of UN General Recommendations by the CEDAW Committee.¹² These require that the Australian Government takes responsibility for the actions of non-state actors under its effective control, including when they operate extra-territorially. While the Australian Government's commitments to international conventions and agreements are encouraging, there is currently a lack of domestic policies to implement these commitments, including a robust mandatory disclosure policy.

“Before we had trust in the Australian Government as the champion for good governance practices and so we would want to see that continue, like supporting the mandatory disclosure policy.”

Wallis Yakam as a representative for the Papua New Guinea Resource Governance Coalition (PNGRGC).

² Christina Hill and Lucy Manne, Women's vision for reform: an agenda for corporate accountability in Australia's mining sector, 2018.

³ OECD, OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, 2014, <http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.htm>

⁴ UN Economic Commission for Africa, Illicit financial flows: why Africa needs to “track it, stop it and get it”, 2015.

⁵ Christina Hill and Lucy Manne, Women's vision for reform, 2018.

⁶ UK Department for Business, Energy and Industrial Strategy, Post implementation review: the Reports on Payments to Governments Regulations, 2018, http://www.legislation.gov.uk/uksi/2014/3209/pdfs/ukiod.20143209_en.pdf; Mining Association of Canada, “Media release: Mining industry welcomes enactment of transparency legislation”, 2015, <http://mining.ca/news-events/press-releases/mining-industry-welcomes-enactment-transparency-legislation>; Andrew Mackenzie, speech to the Minerals Council of Australia, June 2015, <https://www.bhp.com/media-and-insights/reports-and-presentations/2015/06/andrew-mackenzie-presents-at-minerals-council-of-australia>; <http://www.publishwhatyoupay.org/our-work/mandatory-disclosures/>

⁷ Publish What You Pay Australia, Abundant Resources, Absent Data, 2017.

⁸ International Consortium of Investigative Journalists, Fatal extraction: Australian mining's damaging push into Africa, 2015, <https://www.icij.org/investigations/fatal-extraction/>; Sydney Morning Herald, “The Australian Companies Mining \$40 billion out of Africa”, September 2017, <https://www.smh.com.au/politics/federal/the-australian-companies-mining-40-billion-out-of-africa-20170906-gyc6t0.html>

⁹ Sydney Morning Herald, “Exxon won't pay tax until 2021, hasn't paid any for years, inquiry hears”, March 2018, <https://www.smh.com.au/politics/federal/exxon-won-t-pay-tax-until-2021-hasn-t-paid-any-for-years-inquiry-hears-20180314-p4z4ba.html>; Jessie Cato, Economics References Committee Senate committee Corporate Tax Avoidance Wednesday, 14 March 2018 <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22committees%2Fcommsen%2Fa935426a-8343-42eb-a137-9323d930503a%2F0000%22>; Submissions to the Senate Inquiry into Corporate Tax Avoidance, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporatetax45th/Submissions

¹⁰ ActionAid, An Extractive Affair: How one Australian mining company's tax dealings are costing the world's poorest country millions, 2015, <http://www.actionaid.org/publications/extractive-affair-how-one-australian-mining-companys-tax-dealings-are-costing-worlds-po>

¹¹ Oxfam Australia, The Hidden Billions: How tax havens impact lives at home and abroad, 2016, <https://www.oxfam.org.au/wp-content/uploads/2016/06/OXF003-Tax-Havens-Report-FA2-WEB.pdf>

¹² Office of the High Commissioner on Human Rights, Guiding Principles on Business and Human Rights, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; Committee on the Elimination of all forms of Discrimination Against Women, <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>.

Alongside the promotion of a transparent extractives sector, mandatory reporting makes the sector more accountable. Public and disaggregated reporting helps citizens identify how revenues flow directly to different government entities at the local, state and federal level, and empowers citizens with the information they need to monitor the extractive revenues to their government's budget and subsequent public finance expenditure. Fiscal transparency can also result in greater accountability to the human rights and environmental issues described above.

In October 2017, the Australian Labor Party (ALP) announced a mandatory disclosure policy for the extractives sector.¹³ This report looks at the potential impact of the proposed ALP mandatory disclosure law for Australia and the numerous countries in which ASX listed companies operate. In-depth case studies exploring the community impacts at the project level will be released in late 2018.

What is the Extractive Industries Transparency Initiative?

The EITI was launched in 2003 and is an international standard of governance for the extractives sector.¹⁴ 51 countries are currently EITI-implementing countries. There are similarities and differences between the EITI and mandatory disclosure, and the information released through each mechanism is complementary. The EITI is a voluntary initiative that countries sign up to that requires payment-to-government information for domestic extractive operations only. The EITI requires project-level reporting and will require implementing countries to publicly report beneficial ownership information from 2020. Internationally, the EITI has proved valuable as a country-based reconciliation process and, by giving civil society a seat at the table with industry and government. One of the main requirements for countries who are implementing the EITI is to establish a Multi-Stakeholder Group (MSG) of representatives from civil society, government and industry to guide implementation. Nine ASX listed companies are official 'supporting companies' of the EITI.¹⁵ There are expectations that supporting companies should meet, which includes public disclosure of their taxes and other payments, and public disclosure of their beneficial owners, however there are no consequences for companies if they do not meet these expectations.

In Australia

Australia has been an official supporting country since 2006 and the Australian Government is one of the largest financial sponsors of the EITI, committing more than AUD\$20 million to the program since 2007.¹⁶ Despite this, implementation of the EITI in Australia has been significantly delayed. Australia undertook a pilot of the EITI in 2013 and the pilot MSG produced a report to Government in 2015 encouraging Australia to move ahead with implementation. In 2016, the Australian Government publicly committed to implementing the EITI in Australia, and this commitment was included in Australia's first National Action Plan (NAP) under the Open Government Partnership (OGP).¹⁷ An Australian MSG has been established, however, despite promising initial progress, two years after announcing Australia's implementation a candidacy application to the EITI has still not been submitted. The commitment is marked as 'delayed' under Australia's OGP NAP. The Australian Government decided in mid-2018 to conduct an 'independent gap analysis' on Australian EITI implementation. There is no further publicly available information at the time of writing.¹⁸

¹³ The Guardian, "Labor plans to force Australian mining companies to disclose taxes paid overseas", 31 October 2017, <https://www.theguardian.com/australia-news/2017/oct/31/labor-plans-to-force-australian-mining-companies-to-disclose-taxes-paid-overseas>

¹⁴ Extractive Industries Transparency Initiative, <https://eiti.org/>

¹⁵ AngloGold Ashanti, BHP Billiton, FAR Limited, MMG, Newcrest Mining Limited, Oil Search, South32, and Woodside. <https://eiti.org/supporters/companies>

¹⁶ <https://archive.industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/default.aspx>

¹⁷ Ministers for the Department of Industry, Innovation and Science, "Media Release: Increasing transparency in the global resources sector," 6 May 2016, <http://www.minister.industry.gov.au/ministers/frydenberg/media-releases/increasing-transparency-global-resources-sector>; Open Government Partnership commitment 1.3, <https://ogpau.pmc.gov.au/commitment/13-extractive-industries-transparency>

¹⁸ Open Government Partnership, <https://www.opengovpartnership.org/>

What are mandatory disclosure laws?

Mandatory disclosure laws require extractive companies listed on an implementing country's stock exchange, plus large unlisted companies, to publicly and annually disclose all payments made to governments on a country-by-country and project-by-project basis. These laws currently exist in 30 countries: the 28 European Union (EU) member states covered by the EU Accounting and Transparency Directives (EU Directives), Norway, and Canada through the Extractives Sector Transparency Measures Act (ESTMA). Equivalent legislation, Section 1504 of the Dodd Frank Act, also known as the Cardin-Lugar Provision, awaits implementation in the United States (US) and similar laws have been drafted and proposed in Switzerland and Ukraine.

The EU Directives were adopted in 2013 with a deadline for all EU countries to transpose them into national law by 2015. The EU Directives currently cover 130 companies across the EU, with 90 oil, gas and mining companies incorporated in the UK or listed on the London Stock Exchange (LSE).¹⁹ When the UK transposed the EU Directives into domestic law, they also included a requirement that UK-incorporated companies were required to report not just publicly but in an open format. Outside the EU, a further eight companies are reporting in Norway.²⁰ The Canadian mandatory disclosure law, ESTMA, was enacted in 2014 and came into effect in 2015. 700 companies have now reported under ESTMA.²¹

As mandatory disclosure reports are required annually, they produce more timely data than the EITI. Mandatory disclosure laws have also resulted in payment transparency within countries that have indicated that they are unlikely to join the EITI, such as Angola and Russia. In fact, the Natural Resource Governance Institute estimated that, in 2015, 80 per cent of payments disclosed by companies reporting under UK regulations went to country governments that were not EITI member countries, resulting in new levels of transparency in these countries.²²

In Australia

The Australian Government currently does not have a policy for mandatory disclosure reporting in Australia.

The Greens introduced a private mandatory disclosure bill to Parliament in 2014, which lapsed following the 2016 Federal election. The ALP is the first major political party to announce a mandatory disclosure policy for Australia.

¹⁹ Companies House extractives service, <https://extractives.companieshouse.gov.uk/>

²⁰ Publish What You Pay UK, "Accessing and using UK-based extractive company reports on payments to governments data", 25 June 2018, <http://www.publishwhatyoupay.org/accessing-using-uk-based-extractive-company-reports-payments-governments-data/>

²¹ Natural Resources Canada, ESTMA reports, <https://www.nrcan.gc.ca/mining-materials/estma/18198>

²² Publish What You Pay UK, Submission to the UK Review of the Reports on Payments to Government Regulations 2014, 2017, <http://www.publishwhatyoupay.org/wp-content/uploads/2017/11/2017-11-PWYP-submission-to-UK-review-final.pdf>



Coal burning underneath abandoned Golfview Mine in Ermelo in Mpumalanga. Photo: Oupa Nkosi / ActionAid

METHODOLOGY

Extractives companies listed on the ASX are split between two sector groups: 'Energy' and 'Materials'. A list of companies by group is available to download from the ASX website. The list compiled for this report was taken from the ASX website on May 8, 2018.

This report focuses on companies that would be captured by a mandatory disclosure law in Australia, as proposed by the ALP. Internationally, mandatory disclosure laws apply only to companies that are involved in 'commercial extraction'. Under Canadian law, the "commercial development of oil, gas or minerals comprises exploration and extraction, as well as obtaining or holding a permit, lease or licence or other authorisation for these activities. This includes the production of crude oil, bitumen and shale oil; natural gas and its by-products; and all naturally occurring metals and non-metallic minerals. The definition does not include support services like construction or equipment manufacturing, or post-extraction activities like refining, smelting, marketing, distribution or export."²³ This definition was applied across the data collection to determine which companies were in scope for analysis. 82 companies that did not meet this definition were removed from the data set. Companies that were suspended at the time of the data collection were included, as the policy proposed by the ALP would apply to unlisted companies defined as 'large'. This left 802 ASX listed companies, which formed the data set for analysis.

The proposed ALP definition of a 'large' company is based on the UK 'Reports on Payments to Governments Regulations 2014' definition with conversion to Australian

dollars (AUD) and then rounded up to the nearest 50 or 100 million.²⁴ The employee figure threshold is the same as stated in the EU and Canada. Companies must meet two of these three criteria to be classified as large:

- Total assets exceeding \$50 million;
- Annual turnover exceeding \$100 million;
- Average number of employees exceeding 250.

Data for all applicable companies on assets, turnover,²⁵ and employee figures were used to determine a company's eligibility and were sourced from Morningstar Australia. Morningstar publishes balance sheet information as provided by the companies, which is available for a fee under 'Premium Morningstar'.²⁶ All financial information available on Morningstar is displayed as reported in the company's financial statements with no conversion into AUD. Company figures in a currency other than AUD were checked during the data collection to ensure they fit the definition of 'large'. Project information was taken from the most recent Annual Reports as filed by the companies to Morningstar on May 8, 2018.

In accordance with international law, the ASX policy will also cover large private companies. This report, however, focuses specifically on ASX listed companies. This is because the scope of publicly-listed companies captured is the primary way that the ALP policy differs from the EU and Canadian laws. Secondly, private company information in Australia is difficult to locate and often not public. It is this absence of data that mandatory disclosure laws set out to address.

²³ Natural Resources Canada, <https://www.nrcan.gc.ca/mining-materials/estma/18198>

²⁴ UK Companies House, Guidance for the Companies House extractives service, 2016, <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service>

²⁵ The term 'revenue' is more commonly used in Australia than turnover.

²⁶ <https://www.morningstar.com.au/Home>



KEY FINDINGS AND ANALYSIS

Women collecting coal at the MNS informal settlement in Witbank, Mpumalanga.
Photo: Oupa Nkasi / ActionAid

The ALP's proposed mandatory disclosure policy is based on the UK Payments to Government regulations, as per the EU Directives, and is similar to Canadian mandatory disclosure law.²⁷ While opposition party policy announcements can be limited in detail, we know that the primary difference between the proposed ALP law and the EU and Canadian laws is that the ALP policy would cover only large companies, stock exchange-listed or unlisted. In both the UK and Canada, the law applies to all stock exchange listed companies, regardless of size, and large unlisted companies. The definition of 'large' as given by the ALP has three criteria:

- Total assets exceeding \$50 million;
- Annual turnover exceeding \$100 million;
- Average number of employees exceeding 250.

Companies must meet two of these three criteria and be involved in commercial production to report. The ALP proposes payment disclosure on:

- Taxes on income, production, or profits;
- Royalties;
- Production entitlements;
- Payments for infrastructure improvements;
- Dividends (except where the dividend is paid to a government as an ordinary shareholder);
- Fees including licence fees, rental and entry fees; and
- Signature, discovery and production bonuses.

The threshold for disclosure is AUD \$150,000 and can be a single payment or a series of payments. Aside from the smaller coverage of companies, the minimum payment

threshold and payment categories required to be disclosed would align Australian law to the UK and Canada.

Harmonisation of mandatory disclosures laws globally is important for a number of reasons. Firstly, making the Australian law equivalent to the EU and Canadian requirements supports the emerging global standard and would be part of a global reporting instrument that produces timely, disaggregated tax payment data that is comparable across jurisdictions. Secondly, harmonising the laws to the existing standards would mean Australia could insert an equivalency provision so that companies who are already required to report in another jurisdiction due to stock exchange listing or size, such as Rio Tinto, would only need to submit one report, minimising the reporting requirements on companies. Both the UK and Canadian laws have equivalency provisions.

The ALP has stated that it intends for the Australian policy to be equivalent to the UK laws, however, the current ALP policy differs by imposing reporting requirements on 'large' companies only. The definition of a 'large' company, as announced by the ALP, captures 67 of the 802 companies listed on the ASX under 'energy' or 'materials'.²⁸ In their media statements, the ALP estimated that approximately 80-100 companies would be captured, and this figure appears reasonable with the inclusion of private companies.²⁹ This report does not look at the private companies captured, however it is likely that these laws would apply to large private Australian companies such as Hancock Prospecting Pty Limited, and large multinationals such as Glencore, which report already under the UK law.

²⁷ The Guardian, "Labor plans to force Australian mining companies to disclose taxes paid overseas", 31 October 2017 <https://www.theguardian.com/australia-news/2017/oct/31/labor-plans-to-force-australian-mining-companies-to-disclose-taxes-paid-overseas>

²⁸ Alumina Limited has been removed from the analysis as it is a holding company with only a 40% owned subsidiary in commercial production, and it is unclear if they would be captured by the ALP policy.

²⁹ The Guardian, "Labor plans to force Australian mining companies to disclose taxes paid overseas", 31 October 2017, <https://www.theguardian.com/australia-news/2017/oct/31/labor-plans-to-force-australian-mining-companies-to-disclose-taxes-paid-overseas>

The 67 ASX listed companies captured through the ALP definition had a combined market capitalisation of approximately AUD\$320 billion as at May 2018. These 67 companies operate in 43 countries³⁰ and would cover payment information from approximately 150 separate projects. Australia is the most represented 'host' country with 49 companies reporting operations, followed by the US, where seven companies report having operations. Indonesia, Canada, South Africa, and Brazil all have five companies who would be required to report their payments to government.

Of the 43 countries that would benefit from this increased transparency, five jurisdictions (Canada, Ireland, Norway, Serbia, and the UK), have already introduced mandatory disclosures laws, and 22 are EITI implementing countries.

This leaves a group of 18 countries who currently have no EITI or mandatory disclosure laws where this level of disclosure would be the first of its kind by Australian companies: Australia, US, Brazil, New Zealand, South Africa, Argentina,³¹ Chile, Algeria,³² China, Gabon, Kenya, Laos, Morocco, Namibia, Romania, Turkey, Vietnam, and Zimbabwe. This new disclosure law will provide citizens in these countries the right to access public and disaggregated financial information on extractive projects operating in their communities.

At the regional level, continental Africa hosts the greatest number of companies. 17 (39.5%) of the 43 countries that would have payments to government information reported are African countries.³³ Further, 31 (46.3%) of the 67 companies captured have a project in continental Africa. This covers 48 separate projects from exploration through to producing operations, many of which include multiple mine sites but are counted by the company as one project.

Six of the 67 companies already report under a mandatory disclosure law, as they are listed on either the LSE or the Toronto Stock Exchange (TSX). BHP Billiton, Rio Tinto, and South32 all report due to their listings on the LSE. Alacer Gold Corp, OceanaGold Corporation, and Perseus Mining are all TSX listed and report under ESTMA. Some companies, such as Iluka Resources, self-report using Australia's Voluntary Tax Code as a guide, however while these disclosures are a step in the right direction, these companies have not been included in this report as they do not include the disaggregated project information and payment categories as required by mandatory disclosure.

Eight companies listed on the ASX and the TSX are captured by ESTMA but would not be required to report in Australia under the ALP policy as they do not fit the definition of a large company.³⁴ This is another reason why laws must be harmonised to other jurisdictions as much as possible, as it can otherwise result in different reporting standards for the same company. The lack of harmony between laws also creates an uneven reporting environment for the extractive industries with larger companies being held more accountable than small to mid-sized companies, who are still making material payments to governments. These payments should be as transparent as those made by large companies. The ALP policy's emphasis on large companies will result in some ASX listed companies reporting with greater transparency in a country other than Australia.

It is difficult to know how many companies would be captured if mandatory disclosure applied to all ASX listed companies, as companies do not currently provide this level of disaggregated payment data. If we assume that every ASX listed company that reported revenue was captured, another 42 ASX listed companies would be required to report, changing the number of companies required to report from 67 to 109 of 802 companies, an increase of over 60 per cent.

It is worth noting that companies can and do report minimal or zero revenue and still make payments to governments of the size that would be within the scope of a mandatory disclosure law. An example of this is the ASX and TSX listed company, Kirkland Lake Gold Ltd (Kirkland). Kirkland is an Australian incorporated company with projects in both Australia and Canada. As they are listed on the TSX they are required to report to ESTMA any material payments made in both Canada and host countries at the project level. Kirkland would not be required to report under the ALP policy as they record total assets of AUD\$1.7 million and revenue of AUD\$0.7 million. However, their 2017 ESTMA report reveals that Kirkland reports tax payments in both the Northern Territory and Victoria.³⁵ Two tax payments are reported to the Victorian State Revenue Office, one of AUD\$1.5 Million and one of AUD\$0.7 million. As this level of information is not required in Australia, the payments recorded in their ESTMA report to the Victorian Government are not found in their consolidated financial statement published in Australia.³⁶ This inconsistency demonstrates why this level of disaggregation is so important in being able to follow financial flows. It also shows how project-level reporting can provide the simple yet enormous benefit of tracking which countries and regions that companies are operating in, allowing citizens to map and monitor the locations of projects and explorations that impact them.

The Kirkland example demonstrates the additional benefits of ensuring that ALP mandatory disclosure policy aligns completely with EU and Canada, ensuring harmonisation of reporting requirements, accessibility of payment reporting across countries, and a standard reporting

³⁰ Algeria, Argentina, Australia, Brazil, Canada, Chile, China, Columbia, Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Ghana, Guinea, Guyana, Indonesia, Ireland, Kenya, Laos, Malawi, Mali, Mongolia, Morocco, Mozambique, Myanmar, Namibia, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Romania, Senegal, Serbia, Sierra Leone, South Africa, Tanzania, Timor Leste, Trinidad and Tobago, Turkey, United Kingdom, United States, Vietnam, Zimbabwe.

³¹ Argentina has made a commitment to join the EITI: <https://eiti.org/news/argentina-makes-public-its-commitment-to-adhere-to-eiti>

³² The Algerian project is owned by BHP Billiton who already reports their payments on this project.

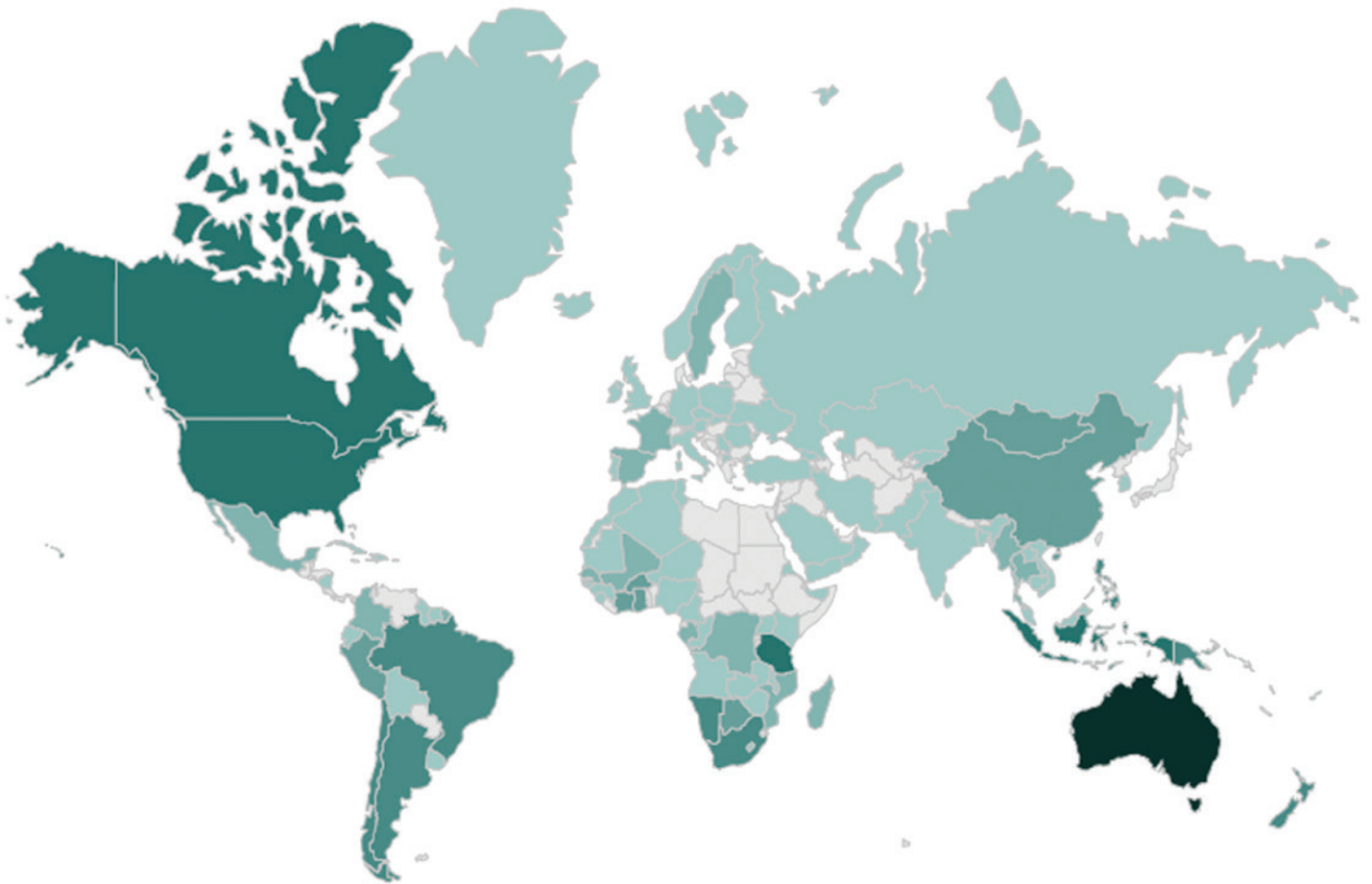
³³ Algeria, Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Ghana, Guinea, Kenya, Madagascar, Malawi, Mali, Mozambique, Namibia, Senegal, Sierra Leone, South Africa, Tanzania, and Zimbabwe.

³⁴ Cardinal Resources Limited, Chalice Gold Mines Limited, Champion Iron Limited, Laramide Resources Ltd, RTG Mining Inc., Kirkland Lake Gold Ltd, West African Resources Limited, Orocobre Limited.

³⁵ <https://www.nrcan.gc.ca/mining-materials/estma/18198>

³⁶ Kirkland Gold, Consolidated financial statements, December 31 2016 and 2017, http://s21.q4cdn.com/967674075/files/doc_financials/2017/Quarterly/q4/KLG-LTD-FS-Q4-2017-Final-Clean.pdf

CONCENTRATION OF ASX COMPANIES CAPTURED BY ALP POLICY



0 Companies

40+ Companies



WHAT WOULD THE IMPACT BE?

As a primary economic driver of development for many nations, responsible governance of natural resources is of vital importance so that countries not only capture the fiscal benefits of extraction, but can use these to ensure the development of vital public services through increased public expenditure while also balancing the positive benefits of extraction against the potential social and environmental impacts. However, ensuring that this occurs in practice can be challenging, especially in low income countries. This is due to the information and power asymmetry between governments, communities, and companies, the secrecy in which contracts are negotiated and licenses awarded, and the lack of financial transparency once payments start being made. Research shows that women, in particular, can be excluded from decision-making in mining-affected communities, and can suffer a loss of power and authority as a result of these projects.³⁷

13 of the 18 countries identified in this report, where Australian company payment reporting would be the first of its kind, are classified as low income countries.³⁸ Transparency is crucial to support these countries to ensure that financial flows are going to public services such as health and education and not flowing back out of the country through IFF. Lost and forgone revenue due to tax minimisation practices and corruption has a disproportionate impact on women and girls in low income countries.³⁹ The ALP's policy on mandatory disclosure would therefore likely have a positive contribution to the Australian Government's goal to promote gender equality.

PWYP Australia research has indicated that there are more Australian extractive companies present in continental Africa than companies from any other country.⁴⁰ This report shows that the region most impacted by the ALP mandatory disclosure policy disclosure would be Africa. The High Level Panel on Illicit Financial Flows from Africa found a clear relationship between countries that are highly dependent on extractive industries and the incidence of IFF, estimating that the African continent loses over USD\$50 billion per annum through IFF.⁴¹ Although corruption and tax avoidance is not endemic to a specific country or region, it is endemic to the extractive industries and is enabled and perpetuated by jurisdictions that allow companies to operate in secrecy. Along with allegations that Australian companies operating abroad continue to participate in corruption and bribery internationally,⁴² we have seen politically exposed persons (PEPS) engage in corrupt behaviour in the awarding of extractive licenses in Australia.⁴³ Research from Transparency International Australia has also shown that risks ranging from minor through to very high have been identified in the mining approvals system in Western Australia and Queensland, which creates an enabling environment for corruption.⁴⁴

As a heavyweight in resource extraction, Australia has an obligation to be a global leader in good practice when it comes to the transparency and accountability of our companies. The need for legislative change becomes more urgent as Australia's global extractive footprint continues to grow. In 2017, the ASX floated more junior mining companies and raised more overall mining finance than the TSX, yet we continue to operate without the transparency requirements of Canada.⁴⁵

³⁷ Christina Hill and Lucy Manne, *Women's vision for reform*, 2018.

³⁸ This report considers Low, Lower Middle, and Upper Middle Income Countries according to World Bank classification to be "low income." The 2018 World Bank classifications can be accessed from: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

³⁹ Christina Hill and Lucy Manne, *Women's vision for reform*, 2018.

⁴⁰ Publish What You Pay Australia, *Abundant Resources, Absent Data*, 2017.

⁴¹ High Level Panel on Illicit Financial Flows from Africa, *Track it, stop it, get it: Illicit financial flows*, https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

⁴² Sydney Morning Herald, "Australian miner Sundance Resources faces fresh bribery allegations in Congo," 3 October 2016, <https://www.smh.com.au/business/companies/bribery-scandal-enveloping-listed-australian-miner-sundance-resources-widens-20161001-grt199.html>

⁴³ Sydney Morning Herald, "NSW government cancels mining licences tainted by Eddie Obeid, Ian Macdonald corruption scandals," 20 January 2015, <https://www.smh.com.au/national/nsw/nsw-government-cancels-mining-licences-tainted-by-eddie-obeid-ian-macdonald-corruption-scandals-20140120-314iv.html>

⁴⁴ Transparency International Australia, *Corruption risks: Mining approvals in Australia, 2017*, https://transparency.org.au/tia/wp-content/uploads/2017/09/M45D-Australia-Report_Final_Web.pdf

⁴⁵ ABC, "ASX outperforms traditional rival Toronto Stock Exchange in mining investment as junior miners shine," 16 January 2018, <http://www.abc.net.au/news/rural/2018-01-16/asx-lords-it-over-traditional-mining-investment-rival-tsx/9321054>

IKWEZI MINING LIMITED (ASX: IKW) – CASE STUDY

Junior to mid-level ASX listed extractive companies are prolific on the African continent, particularly in the rich coal fields of Southern Africa.⁴⁶ There is a strong basis for including these companies within the scope of mandatory reporting, as evidenced by the case of Ikwezi Mining Limited (Ikwezi).

Ikwezi is an ASX listed coal exploration and development company incorporated in Bermuda. They have one project, the Ntendeka Colliery, located in KwaZulu Natal Province of South Africa. Their ownership is 70 per cent with the remaining 30 per cent held by a Black Economic Empowerment (BEE) company, as required under South African law.⁴⁷ Under the ALP policy, Ikwezi is not large enough to be in scope for mandatory payment reporting.

Ikwezi was established in 2011 and granted mining rights for what is now the Ntendeka Colliery in 2012. Since establishment the company has been incorporated in Bermuda. Bermuda is a known 'tax haven',⁴⁸ and while incorporation in a tax haven is not an indicator that a company is engaged in illegal activities, it is reasonable to question the rationale for an ASX listed company operating solely in South Africa to be incorporated in Bermuda for anything other than tax minimisation reasons.

Tax havens require limited financial information from a company to be published. The listed address of Ikwezi in Bermuda is Clarendon House, 2 Church Street, Hamilton, Bermuda. This is the address of Conyers Dill & Pearman, an offshore law firm. Data from the OpenCorporates website lists Conyers, Dill & Pearman as both the Agent and Officer of Ikwezi.⁴⁹ A Google street view search reveals this address is a small four-storey building and yet according to data leaked through the Panama Papers by the International Consortium of Investigative Journalists, Clarendon House in Bermuda, is also the listed address of 23 other companies incorporated in Bermuda.⁵⁰

The ownership structure of Ikwezi does not get any less complex from there. As listed in their 2011 Prospectus, Ikwezi as the parent company has a 100 per cent owned subsidiary called Naledi Holdings, incorporated in another known tax haven: Mauritius.⁵¹ Naledi Holdings owns 100 per cent of another company called Naledi Investments, also incorporated in Mauritius. Naledi Investments owns 70 per cent of two companies, Ikwezi Mining Pty Ltd. and Ikwezi Management Services Pty Ltd. Both of these companies are incorporated in South

Africa. The remaining 30 per cent of these companies are held by a private, South African-incorporated company called Ikwezi Mining Holdings (pty) Ltd. It seems likely that Ikwezi Mining Holdings (pty) Ltd is the BEE company. No further information on Ikwezi Mining Holdings (pty) Ltd is available in reporting from Ikwezi or online, meaning the ownership and structure of the BEE company is unknown.

With the mine not yet in production, Ikwezi's Annual Reports indicate that the company has paid no corporate income tax in Australia or South Africa; no royalties or reported payments of land fees or rent. And while they state in their 2017 Annual Report, "to date Ikwezi has spent ZAR\$30 million in conjunction with local authorities' on roads and river crossings,"⁵² there is insufficient information to verify this expenditure and the community's ownership of and access to infrastructure.

While PWYP Australia and ActionAid Australia are not suggesting that Ikwezi has not been making these payments, or suggesting any wrongdoing by the company, it is clear that the data required to verify the company's claims regarding these local payments are not available under their current reporting. South Africa is not an EITI member country and does not currently have mandatory reporting, so no other reporting except for the ASX filings is available for the company.

Production at the Ntendeka Colliery will likely commence soon, and with it the start of material tax and royalty payments. However it is likely that even at full production, Ikwezi is unlikely to ever meet the classification of large company as defined by the ALP, and therefore would not be subject to mandatory disclosure rules as they are currently proposed. If mandatory disclosure laws were expanded to cover all ASX companies reporting revenue, on the other hand, financial flows from the Ntendeka Colliery to local and national governments would be reported once the project became operational.

⁴⁶ Publish What You Pay Australia, Abundant Resources, Absent Data, 2017.

⁴⁷ http://www.dti.gov.za/economic_empowerment/bee.jsp

⁴⁸ <https://www.investopedia.com/terms/t/taxhaven.asp>

⁴⁹ Open Corporates database, <https://opencorporates.com/companies/bm/45349>

⁵⁰ International Consortium of Investigative Journalists, Offshore leaks database, <https://offshoreleaks.icij.org/nodes/14036192>

⁵¹ Ikwezi 2011 Prospectus, <http://ikwezimining.com/investors/pressreleases.php>

⁵² Ikwezi Mining, Annual Report 2017, 2017, <http://ikwezimining.com/assets/downloads/announcements/20171031-Annual%20report%20to%20Shareholders.pdf>

Globally, 47 per cent of oil and gas companies are currently reporting under mandatory disclosure legislation, 40 per cent are awaiting implementation of legislation that will require them to report and 13 per cent are not currently required to report.⁵³ According to PWYP research, Australian companies make up almost a third (30.77%) of the mining, oil and gas companies not currently required to report. This report has found that eight of the 67 companies captured by the ALP policy are oil and gas companies. This includes BHP Billiton, who already report under the UK laws. Were the ALP to extend the scope of reporting to cover the 109 companies identified as reporting revenue, an additional 11 oil and gas companies would be required to report. This would result in 16.5% of all new disclosures coming from oil and gas companies.

⁵³ <http://www.pwypusa.org/pwyp-resources/fact-sheet-mandatory-disclosure-company-coverage/>

⁵⁴ OECD, Corruption in the extractive value chain, 2016, <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>

While mandatory disclosure itself cannot solve all of the issues outlined in this report, transparency of financial payments and access to this information is a crucial part of empowering communities with the information they need to hold governments and companies to account. The OECD recommends that governments who wish to address IFF in their domestic extractives sector should “require the public disclosure and reconciliation of disaggregated information on payments made by extractive companies to the government and on revenues collected by the government from extractive companies... (and) promote the adoption of a standardised payment reporting process for all companies operating in the country.”⁵⁴ The findings of this report show that the ALP mandatory disclosure policy would result in the largest number of new disclosures being made domestically in Australia. It also sets a good example of standardised reporting and a benchmark to follow in the other 42 countries in which payments would be reported.





Complementary policies

As demonstrated in the Ikwezi case study, mandatory disclosure reporting is complemented and strengthened by other policies that work to make the extractives sector more transparent. ActionAid Australia has been a leading advocate for a public beneficial ownership register in Australia,⁵⁵ acknowledging that the links between shell companies and hidden owners is a primary way in which tax avoidance occurs, robbing countries of their wealth and disproportionately impacting women and girls. This has been recognised by the EITI which has made beneficial ownership information mandatory for EITI implementing countries by 2020, and the UK, which has introduced the first public beneficial ownership register. Contract transparency is another pillar of opening up the extractives sector, and is recognised by the International Council on Mining and Metals (ICMM) as going ‘hand in hand’ with revenue transparency.⁵⁶ In June 2018, Rio Tinto announced that they will disclose contracts and licences in all countries they operate.⁵⁷ The ALP has announced they would introduce a public beneficial ownership register should they be elected at the next federal election.⁵⁸ The Australian government has also committed to investigating a beneficial ownership register in Australia’s OGP NAP, however the scope of their consultation was based on a register that would not be publicly available. Rio Tinto is the only Australian extractives company that has publicly supported contract transparency thus far.

It is no longer enough for Australia to stand on the sidelines as the rest of the world moves towards transparency of the extractive industries. The Australian government must now do its part to help end the opacity of the extractives sector, which is contributing to countries and citizens losing out to aggressive tax dodging and minimisation, and to ensure that ASX listed company operations are in line with the commitments Australia has made to uphold women’s rights internationally. Citizens can only benefit equally when the extractives sector is transparent and accountable.

⁵⁵ <http://www.actionaid.org/australia/take-action-beneficial-ownership>

⁵⁶ International Council on Mining and Metals, “Contract Transparency,” <https://www.icmm.com/en-gb/society-and-the-economy/governance-and-transparency/contract-transparency>

⁵⁷ EITI, “Q&A with Rio Tinto,” 28 June 2018, <https://eiti.org/blog/qa-with-rio-tinto>

⁵⁸ Australian Labor Party, <http://www.theirfairshare.org.au/>



CONCLUSION AND RECOMMENDATIONS

An Australian mandatory disclosure policy, as proposed by the ALP, would result in disclosures from 67 ASX listed mining, oil and gas companies. Importantly, 61 of these companies are not currently required to report under any mandatory disclosure requirement, leading to substantial new disclosures in the 43 countries they operate in, including Australia. Corruption, bribery, and tax avoidance are all issues that plague the sector and these issues are exacerbated by a lack of transparency around financial payments. Expanding the policy to meet the full scope of EU and Canadian law would require a significant additional number of ASX listed companies to report, leading to even greater levels of transparency.

Australia has a responsibility as global leader in the extractives sector to ensure that Australian companies operating abroad are doing so ethically, transparently, and to the benefit of the local communities. This is especially important when Australian extractives companies operate in low income countries, where tax and royalty revenues allow for public service expenditure necessary for eradicating poverty and gender inequality. The Australian government should also ensure that Australian companies uphold obligations under international human rights law and supporting gender equality and human rights. The

government is further responsible for ensuring that all Australian citizens are benefiting from the extraction of our finite natural resources, and that domestic and foreign extractives companies operating in Australia are paying their fair share of tax to the Australian community. The ALP mandatory disclosure policy is an encouraging commitment to addressing these concerns, and bipartisan support is critical.

PWYP Australia and ActionAid Australia recommend that the Australian government:

- Introduces a mandatory disclosure reporting system that is aligned to the EU Directives and Canadian ESTMA law;
- Requires that information under an Australian mandatory disclosure law be published in an open format, free to the public;
- Ensures civil society, particularly organisations from mining-affected communities, are consulted and included in the development of an Australian mandatory disclosure law.

PWYP Australia and ActionAid Australia recommends that Australian companies:

- Work with and support the government, civil society, and mining-affected communities to introduce a mandatory disclosure law in Australia.

ABOUT PUBLISH WHAT YOU PAY AUSTRALIA

Publish What You Pay is a global campaign for transparency and accountability in the mining and oil and gas industries. In Australia, the campaign is supported by a coalition of 25 organisations, including ActionAid Australia, that are committed to promoting good governance in resource-rich countries to ensure that citizens benefit equitably from their natural wealth. This includes through advocacy for the mandatory disclosure of all payments made between extractive industry companies and governments on a country-by-country and project-by-project basis.

ABOUT ACTIONAID AUSTRALIA

ActionAid is a global women's rights organisation working to achieve social justice, gender equality and poverty eradication across 45 countries. ActionAid works to address a broad range of socio-economic, political and environmental issues that have a disproportionate impact on women. ActionAid Australia focuses on economic and climate justice for women and their rights in emergencies. ActionAid Australia works with women across the African continent that are impacted by Australian mining projects, to help ensure that the Australian Government and Australian companies are making a positive contribution to women's empowerment and gender equality.

PHOTO CREDITS

Front Cover

A woman collecting coal from the MNS informal settlement in Witbank, Mpumalanga
Photo: Oupa Nkosi / ActionAid

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Photo: Oupa Nkosi / ActionAid

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Coal burning underneath abandoned Golfview Mine in Ermelo in Mpumalanga.
Photo: Oupa Nkosi / ActionAid

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Women collecting coal at the MNS informal settlement in Witbank, Mpumalanga.
Photo: Oupa Nkosi / ActionAid

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A protest held by Women Affected by Mining United in Action (WAMUA) in South Africa
Photo: ActionAid

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