

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

Multi-Stakeholder Group Report to Government

Extractive Industries Transparency Initiative Multi-Stakeholder Group Report to Government

MAY 2015

ISBN 978-1-925092-55-4 (online)

Any material protected by a trade mark, unless otherwise noted, this copyright work is licensed under a Creative Commons Attribution 3.0 Australia licence.
To view the full legal terms of this licence, visit:
<http://creativecommons.org/licenses/by/3.0/au/legalcode>



Please attribute the work to the author and abide by the other licence terms.

Contents

Chairman's foreword.....	v
Executive summary	vi
Overviewvii	
Outcomes.....	xi
Chapter 1 – Introduction	1
Highlights	1
Global Transparency Agenda	1
The extractive industry and the transparency agenda	2
EITI in an international context.....	4
EITI rules, principles and validation.....	5
Summary of key changes in the new EITI Standard	6
EITI stakeholders.....	7
International trends in mandatory extractives sector disclosure	8
Benefits of the EITI.....	10
Benefits of the EITI for Australia.....	11
Chapter 2 – Australia's transparency system	13
Highlights	13
Background	13
Transparency principles in Australia.....	14
Australia's legal framework	15
Transparency and accountability in practice.....	16
Anti-corruption framework.....	17
Tax reporting requirements.....	21
International initiatives	22
The private sector's commitment to transparency and integrity.....	24
Chapter 3 – EITI in the Australian context.....	28
Highlights	28
The Australian resources sector.....	28
Developing the Pilot.....	35
Chapter 4 – Regulation and taxation of Australia's extractive industries	42
Highlights	42
Relationship between federal and state and territory regimes.....	42
Regulation of extractive industries	43
Taxation and revenue systems within the extractive industries	46
Chapter 5 – Functions of the Multi-Stakeholder Group	49
Highlights	49
Scope of the Pilot	49
Establishment and representation.....	49
Decision-making arrangements	50
Sample of Pilot coverage	52
Delegations of responsibility	52

Multi-Stakeholder Group's sub-groups	53
Administrator	54
Evaluation	55
EITI Multi-Stakeholder Group representatives	57
Chapter 6 – Materiality	58
Highlights	58
Materiality for the EITI	58
Materiality in Australia	59
Materiality by size and structure of Australian extractive companies	59
Materiality by revenue stream	60
Other payments governments make to businesses – materiality consideration	61
Materiality by jurisdiction	62
Payments threshold	63
Payments to non-government stakeholders – Payments to First Peoples	64
Difficulties in reporting government payment types	67
Appendix 1	69
Appendix 2	81
Appendix 3	100
Glossary	114
References	115

Figures

Figure 1: Voluntary EITI model proposed for Australia	xii
Figure 2: Global transparency agenda	1
Figure 3: Australia's multi-agency approach to combating corruption	18
Figure 4: Contribution to Australian exports of goods and services, by sector, 2012–13 on a balance of payments basis	29
Figure 5: Stylised supply chain for oil and natural gas in Australia	34
Figure 6: Voluntary EITI model proposed for Australia	39
Figure A1: Annual petroleum royalties in Queensland (\$m), 2008–2012	85
Figure A2: Net mineral industry value, mineral production and offsite refining combined; \$5.913 billion, 2010–11, by commodity	90
Figure A3: Revenue from mineral royalties, 2002–2012	97

Tables

Table A1: Petroleum resource rent tax, 2010–11 and 2011–12	71
Table A2: Minerals Queensland produces	81
Table A3: Common commodity types, rates applicable	82
Table A4: Royalty rates differ between mineral commodities	91
Table A5: Summary of Australian carbon pricing mechanism in clean energy legislation	105
Table A6: Fuel tax credit rates for taxable liquid fuels, from 1 July 2013	106
Table A7: Registrants for the R&D Tax Concession, by Australian and New Zealand Standard Industry Classification (ANZSIC), as at 30 June 2012	109
Table A8: Annual depreciation rates	111

Maps

Map 1: Major Australian mineral resources and infrastructure	31
Map 2: Major crude oil, condensate and conventional gas resources and infrastructure	32
Map 3: Major gas resources and infrastructure	33

Chairman's foreword

Increased transparency in tax systems and financial markets is a growing trend internationally. Such transparency aims to support better economic stability, revenue management and financial outcomes, both for industry and for governments. Considering the significant revenue the extractives industries can contribute, this sector is receiving particular attention.

In 2011 the Australian Government announced it would pilot the Extractive Industries Transparency Initiative (EITI). Australia is keenly aware of the contribution a strong and well-managed resources sector provides a nation's economy, particularly if the sector is enabled to develop and thrive through effective governance regulations and frameworks. The Pilot provided Australia the opportunity to test the compatibility of its systems with international benchmarks.

An Australian Multi-Stakeholder Group (equally representing industry, civil society and government) was formed to deliver this objective. The Group agreed the most relevant revenues to include in the Pilot were:

- Petroleum Resource Rent Tax
- Company Tax
- North West Shelf Petroleum Royalties
- North West Shelf Petroleum Excises
- Northern Territory Uranium Royalty
- state royalties.

Three states (Queensland, South Australia and Tasmania), the Australian Government, and eight companies volunteered to report under these revenue streams, representing both the onshore mining sector and the onshore and offshore oil and gas sector. The companies were BHP Billiton, Rio Tinto, ExxonMobil Australia, Shell Australia, BP Australia, MMG, ERA and OzMinerals. The Pilot would not have been possible without the contribution, effort and goodwill of all participants.

As well, the Minerals Council of Australia and Mandalay Resources were represented on the Multi-Stakeholder Group, and the Australian Petroleum Production and Exploration Association and the Western Australian Government participated as observers to provide a broader perspective on issues facing the sector and governments. Australia civil society was also represented as members.

Under the Group's guidance the Pilot set out to determine the costs and benefits of EITI application, reconcile a sample of financial flows between companies and governments, and determined how applying EITI principles could be suited to Australian circumstances. The Multi-Stakeholder Group's Report to Government outlines the findings and key issues from this process to inform a government decision on Australian EITI implementation.

The Pilot has demonstrated the strength of Australia's governance frameworks. The Multi-Stakeholder Group has developed an innovative approach to applying the EITI principles in Australia. It has also allowed Australia to continue to influence international debate on how to maximise the benefits from extracting mineral resources throughout the world.

A clear strength of the Pilot and the broader EITI framework is its emphasis on collaboration. It is the Group's view that any future implementation of the EITI in Australia should maintain the active support and participation of state and territory governments, industry and civil society.

Bruce Wilson
Head of Resources Division
Department of Industry

Executive summary

Transparency is fundamental to economic stability as it provides more information, access and accountability. It reduces opportunity for corruption and mismanagement of public funds and recognises the relationship between capital-intensive investments and long-term stability to generate returns. However, a consistent approach to corruption and poor governance is needed, that still allows systemic, practical and flexible application of transparency principles.

For this reason, Australia's resources sector is supportive of the Extractive Industries Transparency Initiative (EITI) and advocates for its implementation. Many Australian companies, or companies operating in Australia, are listed as EITI supporting companies and are already participating in EITI reporting overseas. Industry supports a consistent global reporting standard to produce better opportunities for the sector, and more returns for Australian companies and countries with extractive industries interests. Better information also supports an efficient marketplace and provides signals to investors and international financial institutions that Australia provides a transparent, stable and effective environment in which to do business.

The revenue that extractives industries generate is receiving increased attention from Australian and international communities. Domestically, debate around resource taxation has intensified public scrutiny of how extractives revenues are managed and their contribution to the economy. Internationally, a lack of transparency reduces investment opportunities, development of the sector and establishment of a level playing field for Australian companies competing in the global market. There is significant international pressure on Australia to demonstrate leadership in this area given its large resource economy and confidence in the governance and frameworks that supports it.

In response, representatives of Australian industry, civil society and governments united to consider these issues through an Australian EITI Pilot. The Pilot tested the practical application of EITI principles in Australia, recognising and accommodating the strengths of existing systems. It successfully demonstrated the effectiveness and transparency of Australia's governance systems and frameworks; it reconciled a sample of Australian companies and taxes and found an unexplained difference of only 0.03 per cent. However, it also found that while Australia has strong governance and financial controls, its transparency of tested figures was not as strong due to restrictions on public release of this data.

To allow the benefits of EITI to be highlighted, at negligible cost and effort to business, the Pilot produced a methodology for EITI implementation that would suit Australian circumstances. It proposes application of a voluntary annual sample of data between companies and government, with opportunity to explain or further investigate discrepancies. This approach focuses on providing confidence in the strength of governance frameworks, financial systems and anti-corruption measures in operations in Australia.

Australian EITI implementation would be consistent with international developments, including in the G8 and the G20. It would align with the 2014 G20 agenda during Australia's presidency as global leaders turn their attention to reforming global financial systems and institutions, empowering development, strengthening tax systems, market resilience and fighting corruption.

The Multi-Stakeholder Group recommends that moving to implementation of the adapted EITI model, as developed through the domestic Pilot, would be appropriate in the Australian context.

Overview

Background

The [Extractive Industries Transparency Initiative](#) (EITI) provides a global standard for extractive industry companies to publish what they pay to governments, and for governments to disclose what they receive. This largely includes taxes, royalties and other statutory payments. The EITI expects that improving financial transparency in these transactions will assist with the minimisation of corruption, and better accountability in resource economies. Australia is one of the longest serving and largest donors to the EITI, committing \$18.45 million towards the initiative between 2006 and 2015.

In 2011 the Australian Government announced it would Pilot the EITI. The Australian Pilot is a collective effort to examine EITI principles in Australia and develop a unified recommendation on the potential for Australia to adopt the EITI Standard. The Multi-Stakeholder Group (MSG) was established to guide and deliver the Pilot. Under the EITI Rules, an MSG determines how each candidate country would implement the EITI, and what material payments are in scope.

The MSG is recommending to government that it implement the EITI Standard in Australia. It proposed a model for companies to report material payments to governments and for a statistically valid sample of these payments to be reconciled. The model represents a minimal cost approach to EITI implementation underpinned by voluntary participation from companies and from governments. The model would be assessed against the EITI Standard (Figure 1).

Global transparency agenda

Transparency is expected to provide a significant improvement in accountability and governance. The quality of governance is a significant factor in determining whether natural resource wealth brings long-term sustainable benefit. In recognition of the value transparency provides, the United Nations, the Organisation for Economic Co-operation and Development (OECD), the Asia-Pacific Economic Cooperation (APEC), the G8 and G20 are providing institutional support to the principles. Domestic transparency initiatives are also being adopted in the United States and the European Union.

The EITI aims to minimise corruption and to maximise accountability of oil, gas and mining companies at national and local levels. It provides a voluntary standard that promotes and supports improved governance in resource-rich countries through full publication and verification of company payments and government revenues resulting from oil, gas and mining operations. It is supported by a robust and flexible methodology to ensure the standard is maintained in all implementing countries. It is expected to result in improved management of resource revenue.

Benefits for implementing countries include mitigation of political risk. The EITI improves the investment climate by providing confidence and clear signals to investors and international financial institutions. The EITI demonstrates commitment to reform, anti-corruption and good governance, leading to improvements in tax collection and international standing, and enhanced trust and stability. Further potential benefits for Australia of implementing the EITI may include: improved global leadership and reputation; shared knowledge and networking; informed decision-making; and improved anti-corruption measures.

Australia's transparency system

The Australian Government's approach to ensuring transparency and preventing corruption is based on the idea that no single body or piece of legislation should be held responsible for tackling corruption. Instead, a range of bodies and government initiatives that promote accountability and transparency in both the private and public sectors enhances a strong constitutional foundation.

Australia has developed a number of principles that define its transparency and information management practices. These include open access to information; engaging the community; effective information governance; robust information asset management; discoverable and useable information; and subject to transparent review, enquiry and complaints processes.

Australia has a comprehensive system of administrative law (at the federal and state and territory levels) that allows the public to scrutinise government decisions and holds government decision makers accountable for their decisions. Consequently, Australian courts may review government decisions to determine whether they were made in accordance with the law. To support these laws, democratic institutions in Australia play an important role in promoting a fair and transparent society and combating corruption. Among these institutions are a free media, civil society and commissions of inquiry (statutory, royal and judicial).

The Australian Taxation Office (ATO) acts as the principle revenue collection body for the Australian Government. Governance frameworks that oversee ATO functions include: the Audit Committee (responsible for risk control and compliance frameworks, external accountability requirements, legislative compliance and internal and external audit) and the scrutiny of external organisations, including the Australian National Audit Office (ANAO). Treasuries or responsible departments in each state and territory manage collection of state and territory royalties.

The *Taxation Administration Act 1953* prevents the ATO disclosing information on tax revenues from individual entities to third parties. However, in June 2013 the Commonwealth Parliament passed the *Tax Laws Amendment (2013 Measures no.2) Act 2013*, which requires the tax payable by corporate taxpayers with accounting incomes of \$100 million or more a year and all corporate taxpayers subject to the Mineral Resource Rent Tax (MRRT) or the Petroleum Resource Rent Tax (PRRT) to be made public.

EITI in the Australian context

Australia has an abundant supply of natural resources and is a major producer of a range of mineral and energy commodities including bauxite, coal (black and brown), copper, diamond, gold, iron ore, lead, lithium, manganese, nickel, silver, tantalum, titanium minerals, uranium, zinc and zircon. There are roughly 300 mines across the country. More than 95 per cent of Australia's oil reserves are offshore, primarily in the Bass Strait of Victoria, the Carnarvon and Browse basins of Western Australia and the Bonaparte Basin of Northern Australia. Australia's conventional demonstrable gas resources are located across 15 basins, in 10 super-giant fields, but the bulk of this resource (92 per cent) lies in the offshore basins in northwest Australia (North West Shelf). Large unconventional gas resources lie in the coal basins of Queensland, and New South Wales, with further potential resources in South Australia. The largest reserves of unconventional gas are in Queensland's Surat and Bowen basins.

Over the period 2013–14 to 2018–19, the Bureau of Resources and Energy Economics (BREE) projects that Australian export revenues will grow at an annual average rate of 8 per cent to total \$284 billion in 2018–19 (BREE 2014a). Mineral and energy export earnings are projected to total \$151 billion and \$133 billion in 2018–19, respectively.

The resource industries recognise the need to operate in a manner consistent with the three pillars of sustainable development (economic, social and environmental). Australia undertook a pilot of the EITI in recognition of the global transparency agenda. The Pilot provided the opportunity to test the strength and transparency of Australia's existing revenue systems and governance arrangements, and the compatibility of these with EITI principles. It recognised that Australia has established data collection and reporting mechanisms for extractive industries and robust governance and compliance arrangements to support these mechanisms.

Regulation and taxation of Australia's extractive industries

Australia's federal system of government has three tiers; the Australian Government, six state governments and two territory governments, and local governments (which are recognised in state and territory legislation). According to Australian law, mineral and petroleum resources (which include oil and gas) are owned either by the Australian or state and territory governments. The Australian Government's jurisdiction is mainly limited to resources found outside the first three nautical miles of the territorial waters ('offshore'), with the exception of uranium mining in the Northern Territory.

The states and territories have jurisdiction over and responsibility for resources found within their boundaries, including inside the first three nautical miles of the territorial waters ('onshore'). They manage and allocate mineral and petroleum property rights, have primary responsibility for land administration, regulate operations and collect royalties on the minerals produced.

The Australian Constitution delineates the powers of the Australian Government and state and territory governments with respect to taxation and revenue. Section 51(ii) allows the Commonwealth to enact laws implementing taxation. It also has the power to impose 'duties of customs and of excise', which it exercises in the form of several petroleum and mineral payments, such as the Petroleum Resource Rent Tax and the North West Shelf Royalty.

The states and territories, each with its own royalty arrangements and legislation, collect royalties on mineral production (as opposed to taxation of company income). Royalty systems and rates vary between states and mineral commodities.

Function of the Multi-Stakeholder Group

Early in the Pilot's development it was agreed that industry, civil society and government (including three state governments) would be equally represented on the MSG; and seven members from each constituency were nominated. It was also proposed that the Pilot sample eight companies ranging in size, commodities produced and operating across Australian jurisdictions, to best test the EITI model in an Australian context and examine the costs and benefits of moving to full implementation.

In aligning with EITI arrangements and applying the robust EITI methodology and Rules, the MSG agreed that the Pilot be governed by terms of reference to guide decision-making and delivery of the Pilot. Importantly, the MSG intended operating on a consensus basis to support the spirit of collaboration, as advocated by the EITI.

A key deliverable for Australia's EITI Pilot is this report. Completion of the report relied on a coordinated approach from all members; observers also had an opportunity to assist. The Administrator (Deloitte Touche Tohmatsu) and relevant government agencies informed the report's narrative on six Pilot payments. This included reconciled figures from Deloitte Touche Tohmatsu and findings from the University of Queensland (the Evaluator).

The states were initially concerned with how EITI principles might be applied in Australia and suggested an alternative model to the one the government and MSG proposed. The states suggested that a systems analysis of current governance and reporting arrangements would provide a better fit for EITI for economies with well-developed and complex systems and would focus on highlighting gaps where transparency and accountability could be improved. The MSG accepted the model with modifications. The systems analysis approach became a fundamental principle in undertaking the Pilot and in producing this report.

As a result of its design, the Australian Pilot constitutes a scoping exercise that limits the number of companies, revenues and payments and the reporting requirements involved. To some extent, it focuses more on the story and issues surrounding the payments and Australia's governance arrangements, than on reconciliation of figures.

Materiality

The MSG was responsible for defining 'materiality' for the Australian EITI Pilot. In reference to EITI guidelines, the MSG considered materiality by top companies, jurisdiction, type of payment, threshold and reporting government entity.

Following MSG analysis and review by civil society, corporate and government tax experts the MSG agreed to include six payments in the Pilot. These comprise:

- Petroleum Resource Rent Tax (PRRT)
- Company Tax
- North West Shelf petroleum royalties
- North West Shelf Petroleum Excise
- Northern Territory Uranium Royalty
- state royalties.

The Mineral Resource Rent Tax (MRRT) was initially voted in as a Pilot payment, however reporting timeframes prevented its full inclusion. As a practical alternative, this payment was considered as part of the systems analysis, but was not part of the data reconciliation.

The state royalties include royalty payments from Queensland, South Australia and Tasmania.

During MSG discussion, it was agreed that a narrative would accompany all Pilot revenues, and the revenues and payments that were excluded during MSG discussions. This allows these 'other payments' to be examined in detail in all areas except data reconciliation. These payments include the carbon price, Fuel Tax Credits, R&D Concessions and Payments to First Peoples.

A fundamental issue for the MSG and difficulty for the Pilot was legislative barriers to releasing government and company financial records to the Administrator. The *Taxation Administration Act 1953* prevents the ATO disclosing tax revenue information from individual entities to third parties.

As a compromise, the MSG agreed that:

- the reporting company first provide its revenue and payment data to the Administrator
- the reporting company write to the ATO requesting its financial data. When the information is received the company forwards it to the Administrator for reconciliation. This allows companies to release their own data, while providing confidence in figures.

Outcomes

Evaluation

The University of Queensland conducted an [independent evaluation](#) of the Australian EITI Pilot. It found that the Pilot delivered a comprehensive analysis of the impacts of EITI candidature, around data capture and around existing revenue collection, compliance and governance controls. Notwithstanding some identified limitations, the Pilot is sufficient to inform a recommendation to government on Australia's EITI candidature.

Data reconciliation

The Administrator completed the [Pilot's reconciliation](#) and found an unexplained difference of 0.03 per cent, indicating that payments from extractive industry and receipting agencies could be reconciled to a high degree of accuracy. The total amount of receipts across the eight payments scoped into the Pilot was \$12.84 billion.

Governance framework

The results of the Pilot reconciliation, including the negligible unexplained differences, indicate that the existing frameworks and controls (as they relate to the Pilot payments and broader resource section payments) that govern Australia's extractives industries are sound and reliable. The frameworks in place also enable provision of reliable information for reconciliation. A review of relevant governance arrangements also confirms that frameworks are comprehensive and subject to significant review, scrutiny and audit.

Cost–benefit analysis

The Pilot is supported by a cost–benefit analysis, including for potential EITI implementation. The cost–benefit analysis estimated that the total Pilot cost was approximately \$2.04 million (across industry and governments). Likely annual implementation costs (assuming no broadening from the payments or reporting entities covered in the Pilot) are in the region of \$1.2 million to \$6.3 million. However, some members of the MSG believe these figures to be conservative. The broad range is attributable to three costed scenarios for implementation:

- all 4,500 extractive companies are required to report (higher end of the range)
- the top 155 companies are required to report (lower end of the range based on number of Australian extractive industry companies that pay \$100 million or more in income tax as measured by the ATO (ATO 2013a))
- a statistical sample of large Australian extractive industry paying entities report (lower end of the range based on voluntarily participating companies, through the Australian EITI Reporting and Reconciliation Model or Hybrid Model).

The cost of implementation depends on the scope of payments and methodology adopted by a future MSG. Should a sample within the top 155 companies be used, the total cost could be at the bottom of the estimate range. The analysis indicated that the cost to industry is largely in-kind.

EITI for Australia

The MSG is recommending a preferred model for implementing the EITI in Australia (Figure 1).

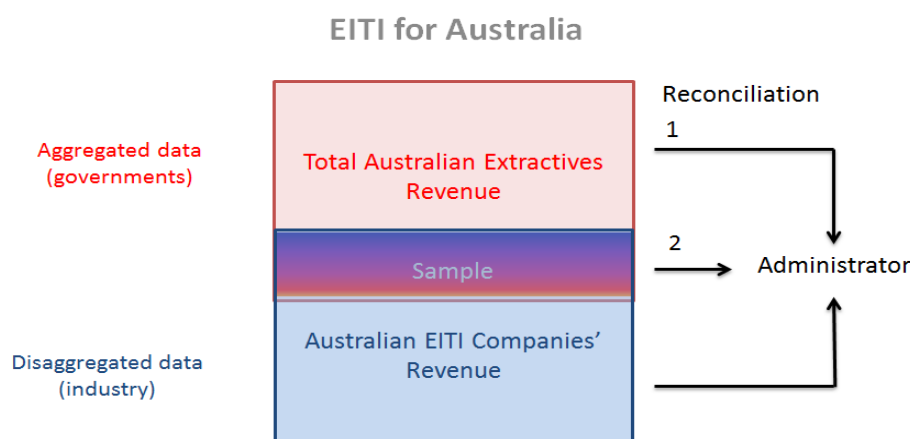
Step 1

1. Each year participating EITI companies/entities report their **disaggregated** tax payments to the Administrator, and governments report their **aggregate** tax receipts, from the extractives sector, to the Administrator.
2. The Administrator consolidates these two returns, and confirms and reports the aggregated value for the taxes reported (and the level of variance, noting the limited number of companies reporting).

Step 2

1. Using the **disaggregated** tax payments (previously reported to the Administrator), each year the Administrator takes a sample of tax payments for the participating companies (a statistically significant number) and requests the corresponding tax receipts from government (either in total by both reporting companies and government bodies or all reporting companies and a statistical sample provided by government bodies; that is, two slightly different scenarios) for EITI reconciliation. The Administrator selects the companies, and may resample.
3. For the sampled tax payments, governments report **disaggregated** tax receipts to the Administrator.
4. The Administrator reconciles the payments and receipts, seeks clarification where appropriate, and reports its findings at an aggregated level.

Figure 1: Voluntary EITI model proposed for Australia



Assumptions

- Voluntary participation by governments and companies, with strong industry support that would allow coverage of all material payments.
- Total Australian extractives revenue includes federal, state and territory figures.
- The Administrator would request corresponding disaggregated data from relevant governments to ensure sound reconciliation.
- The focus of the sample for specific payment reconciliation would change each year, but the reporting burden on companies would remain the same (that is, internal reporting systems would be established in the first year to produce the same types of information each year).
- Government will set an aspirational target to be reached for EITI companies' revenue (for example, participating companies represent 90 per cent of total extractives revenue).

- Each year government may report whether the EITI has reached this target; if it improved on the previous year, any steps taken to improve reporting and the names of participating companies.
- The information in the model is drawn only from the payment and revenue streams used for the Pilot (being company tax, PRRT, North West Shelf Royalty and Excise, the Northern Territory Uranium Royalty and state royalties).
- The model relates to mining, oil and gas sector only (not construction, fisheries and forestry).

Chapter 1 – Introduction

Highlights

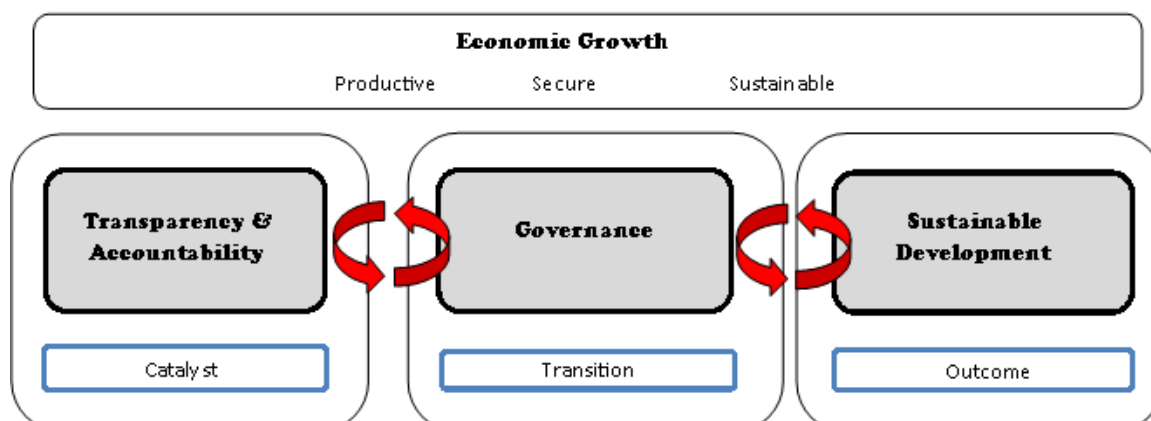
- Transparency is expected to provide significant improvement in accountability and governance.
- In recognition of the value transparency provides to both developed and developing countries various global initiatives have been established to provide institutional support to its principles.
- The EITI provides a voluntary standard that promotes and supports improved governance in resource-rich countries through full publication and verification of company payments and government revenues resulting from oil, gas and mining operations.
- The EITI is supported by a robust flexible methodology to ensure the standard is maintained in all implementing countries.
- A benefit for implementing countries and companies includes mitigation of political risk. The EITI:
 - *improves the investment climate by providing confidence and clear signals to investors and international financial institutions*
 - *demonstrates commitment to reform, anti-corruption and good governance, leading to improvements in tax collection and international standing*
 - *enhances trust and stability*
 - *improves global leadership and reputation, networking and knowledge sharing, informing decision making and mitigation of corruption.*

Global Transparency Agenda

Corruption and lack of transparency in governments and companies are recognised as major impediments to stability, economic growth and poverty reduction. The World Economic Forum estimates that the cost of corruption amounts to more than 5 per cent of global gross domestic product (GDP) (US\$2.6 trillion) with more than US\$1 trillion paid in bribes each year (World Economic Forum 2013); funds that could otherwise be spent on essential services and investment.

Transparency and good governance are considered necessary conditions for sustainable development, providing opportunity for improved innovation and technology, economic performance, social security and environmental preservation. This provides confidence in financial systems and sends important signals to investors. Figure 2 illustrates the link between the transparency agenda and a national framework for economic growth.

Figure 2: Global transparency agenda



It is expected that greater transparency will lead to greater accountability. Accountability ensures decisions, actions, products and policies (and their impacts) are answerable; and that the burden of responsibility is clear. Principles and practices of accountability aim to improve standards of individuals, group conduct and organisational outcomes and strategies.

Governments can instigate change through introducing clear, transparent and defensible decision-making processes enforced by qualified and trained officials and judiciary. These measures should be reinforced through an effective multi-layered verification system, with information published and disseminated in a way that generates public confidence. This applies equally to corporations.

In recognition of the value transparency provides to both developed and developing countries, and its role in creating stronger nations, a range of global initiatives has been established to provide institutional support to the principles of transparency. The United Nations (UN), the Organisation for Economic Co-operation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) are advocates for better financial transparency. The UK Prime Minister, David Cameron, has been campaigning for improved transparency in taxation systems and revenue. These issues were successfully brought to the G8 Summit in 2013. In 2014 the G20 is also working to enhance the transparency of tax payments globally and help governments collect the tax revenue necessary to finance essential services and infrastructure. The G8 emphasised its commitment to better transparency in government and private reporting, particularly for tax and extractive industries. David Cameron also wrote an open letter to fellow G8 nations encouraging adoption of more transparent government information and reporting standards.

Medium and large national and multinational corporations are seeking to partner with governments in developed, transitional and developing countries and through a number of fora to build solutions and a coordinated approach to addressing corruption and improving transparency. Governments are also conscious of the role of civil society in supporting these solutions and are integrating civil society organisations into their planning.

With the appropriate conditions, transparency is expected to provide a significant improvement in accountability and governance. The quality of governance is often the decisive factor in determining whether natural resource wealth brings long-term sustainable benefits. In the extractives sector, increased transparency helps reduce corruption, enables civil society to better hold governments to account for their management of extractives revenue and helps build investor confidence and attract additional capital to the sector. In this regard, increased transparency has the potential to alleviate poverty in some of the world's poorest nations, particularly those that depend on minerals.

The extractive industry and the transparency agenda

The ability of the extractive industry to adapt to global signals for greater transparency is essential to its success, regardless of the commodity and jurisdictions of operation. Response to social or environmental concerns is part of the industry's reputation and demonstrates its social license to operate. Over recent decades, catalysts that have influenced the industry include:

- the rise of increased environmental impact mitigation
- Indigenous rights and land access
- international standards and increasing regulation (such as health and safety)
- diversification of supply and emergence of new economies
- technological advancement
- global governance and national security
- corporate social responsibility.

Extractive industries can have an essential role to play in alleviating poverty, if good governance and transparency exists. Extractive industries offer resource-rich developing countries an opportunity to rapidly reduce poverty, improve physical infrastructure and basic service delivery and promote inclusive development, if revenues are well managed. When managed effectively, the benefits of extractive industries can be considerable through generation of sizeable additional revenues for governments in the form of taxation and royalties and economic activities that stimulate broader development.

However, lack of transparency and accountability in these revenues can exacerbate poor governance and support corruption, conflict and poverty. In fact, many countries rich in mineral deposits and petroleum reserves are the most afflicted by poverty. As a result, industry and governments are being subjected to greater public scrutiny to provide better access and transparency in government decision-making and revenue collection from extractive resources.

For example, the extractive sector's contribution to GDP in Liberia has tripled (from 3.7 per cent in 2011 to 10.4 per cent in 2012), mainly due to increased iron ore production. Other key mineral commodities being produced in the country include gold and diamonds. However, the country's largely untapped mineral resources include base metals, such as cobalt, lead, manganese, nickel and tin and industrial minerals, such as dolerite, granite, ilmenite, kyanite, phosphate rock, rutile, silica sand and sulphur. Despite the extractive sector providing a relatively small contribution to GDP, it has potential for greater contribution to future economic development.

While Liberia is one of the least developed countries, ranking 174 out of 187 countries in the United Nations Development Programme's [Human Development Indicators](#), it has experienced some improvement over the last eight years (UNDP 2013). Since the return of more stable government, earnings from the extractive industries have increased considerably ([AfDB 2013](#)); mining and quarrying, which contributed around 7 per cent to GDP in 2011 and employed around 2 per cent of the labour force, are expected to rise to more than 15 per cent of GDP by 2015, as significant iron ore deposits are extracted. Milestone improvements in anti-corruption efforts over the last 10 years, including establishment of the Liberian Anti-Corruption Commission and passage of the landmark Liberian Extractive Industry Transparency Initiative Law in 2009 demonstrate necessary steps in the right direction. Liberia's current rating of 75 out of 176 on Transparency International's Corruption Perception Index is well above the Sub-Saharan Africa average.

Increased transparency, anti-corruption and accountability principles have great potential to further improve economic standing in nations such as Liberia, as the extractives sector's contribution to overall economic growth continues to expand. If managed effectively, trade in resources potentially has more capacity to increase standards of living than does foreign aid. This underlines the principle that transparency is a driver for economic development, in alignment with social and environmental goals. A country's ability to prevent corruption and encourage accountability is critical to supporting good governance and regulatory systems. Governments at all levels need to demonstrate these principles to ensure a fair distribution of benefits.

In contrast, Australia is keenly aware of the critical contribution a strong and well-managed mining sector provides a nation's economy if enabled to develop and thrive. Australia has an abundance of mineral and petroleum resources. The resources sector is the nation's largest single export sector. In 2012–13 the Australian mining industry accounted for 10.1 per cent of Australia's GDP, outpacing Australia's 2.6 per cent GDP growth rate (throughout the year) (ABS 2013a). Australia's exports of resource commodities were \$177 billion in 2012–13 and are forecast to increase to \$199 billion in 2013–14 (BREE 2014a). In its [Resources and Energy Major Projects April 2014](#) report, the Bureau of Resources and Energy Economics (BREE) identified 48 committed projects (that have received a

positive final investment decision); with a combined capital expenditure spend over their lifetime of \$229 billion (BREE 2014b).

The economic benefits of mining could not have happened if Australia did not have an effective governance framework. Further, the Australian system was well positioned to realise this success because it was underpinned by a foundation of transparency. Australia currently holds a Triple A Financial Rating and the United Nations Development Programme ranks Australia second out of 187 on its Human Development Indicators. Further, Transparency International ranks Australia ninth out of 177 on the Corruption Perceptions Index, placing it in the 96th percentile (Transparency International 2013; UNDP 2013). However, it should be noted that Australia has slipped from seventh to ninth in the past 12 months on the Corruption Perceptions Index so efforts should be made to ensure Australia maintains a high ranking and continuously improves upon these good governance frameworks.

Providing a global benchmark for accountability and governance frameworks in the extractives sector encourages a collective incentive for transformation, and increases the benefits of mining to areas previously avoided due to lack of security and certainty. It also provides better understanding of the relationship between industry revenue and effective government public spending. Given the considerable benefit that could be realised from developing extractive resources in a sustainable and accountable manner, global and national campaigns are focusing on this area.

EITI in an international context

The [Extractives Industry Transparency Initiative](#) (EITI) is part of an international agenda on transparency, with a focus on the natural resources sectors. The EITI was announced in September 2002 by then UK Prime Minister, Tony Blair, at the World Summit on Sustainable Development in Johannesburg. For several years before the launch of the EITI, civil society and company representatives alike had been lobbying for a global remedy to the lack of transparency around the vast government revenues obtained from natural resources. Despite expectations, extraction of natural resources, specifically minerals and petroleum, often resulted in less economic growth and worse development outcomes.

The EITI provides a voluntary standard that promotes and supports improved governance in resource-rich countries through full publication and verification of company payments and government revenues resulting from oil, gas and mining operations. It provides a mechanism for companies to publish what they pay to governments, and for governments to disclose what they receive from companies in the form of royalties, taxes and other statutory payments. The EITI aims to minimise corruption and maximise accountability of oil, gas and mining companies at both national and local levels. It is supported by a robust yet flexible methodology to ensure the standard is maintained throughout all implementing countries. It is expected to result in improved management of resource revenue.

Since 2003, as part of the global transparency agenda, G8 leaders have encouraged support of the EITI and broader transparency principles. The G8 Communiqué confirms that the 'G8 will take action to raise global standards for extractives transparency and make progress towards common global reporting standards'. G20 leaders at the Pittsburgh Summit in 2009 indicated their support for members' voluntary participation in the EITI process. Many implementing and supporting countries, multinational corporations and civil society have pushed to include transparency initiatives, including the EITI, on future G8 and G20 agendas. EITI received official endorsement from the World Bank in December 2003. The International Monetary Fund, the European Commission, the African Union, the Asian Development Bank and the OECD also support the EITI.

Forty-four countries have now signed up to the EITI, mostly developing countries; a number are in Africa and the Asia-Pacific (including Papua New Guinea, Indonesia, Timor Leste, Myanmar and the Philippines). The United States announced in 2011 that it would implement the EITI (covering federal lands) as part of that country's National Action Plan for the Open Government Partnership. The United States was accepted as a candidate country in March 2014 on the basis of an adapted implementation approach. The United Kingdom and France announced in the 2013 G8 Summit Communiqué that they would seek candidacy status for the new EITI Standard by 2014, Canada plans to introduce a mandatory reporting regime, Italy indicated it would seek candidacy for the new EITI standard but did not specify a timeframe, and Germany announced it was planning to test EITI implementation in a pilot region.

In some candidate countries extension of the EITI has moved into areas other than mining, such as fisheries, forestry, agriculture and manufacturing; a trend that may continue.

EITI rules, principles and validation

A board and small international secretariat direct and guide the EITI, but individual countries are responsible for domestic implementation. The EITI Board meets three times a year to review countries' progress and to discuss broader policy issues.

A defining feature of the EITI is its requirement for the government to establish a Multi-Stakeholder Group (MSG) in collaboration with industry and civil society. The MSG is responsible for developing and endorsing an EITI work plan that outlines national objectives, actions, sequencing, timetable, responsible party, costs, communications and funding sources. Specifically, the MSG determines reporting and publishing details, including:

- what information to publish, including the types of payment and revenue streams
- the 'materiality' level or threshold of company or payment size for the EITI report
- whether any legal or contractual barriers, such as privacy or commercial-in-confidence issues, need to be overcome
- whether information is provided on an aggregated or disaggregated basis
- the role and appointment of the Administrator.

The MSG will also be responsible for:

- designing reporting templates based on the country's fiscal and contractual arrangements, with reference to EITI guidance and standards
- providing guidelines to support companies in completing the reporting templates (including reporting requirements for joint venture or other multi-company operations)
- establishing a reporting timeframe
- developing a communication plan to ensure wide publication and distribution of the report (the EITI requires that reports are publicly accessible, comprehensive and comprehensible).

The EITI is transitioning from the EITI Rules (agreed in 2011) to the EITI Standard (adopted in May 2013). The Standard is more prescriptive while maintaining flexibility for countries to adapt to their circumstances. The EITI has established a methodology countries need to follow to become fully compliant with EITI requirements. Countries must first become an EITI candidate, and comply with four sign up steps in order to apply; the steps are:

- The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- The government is required to appoint a senior individual to lead on implementing the EITI.
- The government is required to commit to working with civil society and companies and establish a multi-stakeholder group to oversee implementation of the EITI.

- The multi-stakeholder group must maintain a current work plan, fully costed and aligned with the reporting and validation deadlines established by the EITI Board.

EITI implementation involves a range of activities to strengthen resource revenue transparency, which are documented in country work plans. When the EITI Board admits a country as an EITI candidate, it establishes deadlines for publishing the first report and undertaking validation. The first report must be published within 18 months from the date the country was admitted as a candidate. Candidate countries are required to commence validation within two and a half years of becoming a candidate.

Validation, as carried out by an independent validator, is an essential element of the EITI. It provides an assessment of EITI implementation and makes recommendations for strengthening the process. The EITI Board oversees the validation process, reviews all validation reports, and if it considers the country meets all EITI requirements, will deem the country EITI compliant. In adopting the EITI Standard, the EITI Board agreed that compliant countries must undergo validation every three years. Where a validation report shows that a country has made progress but does not meet all EITI requirements, the country will remain a candidate (with time limits on the maximum candidacy period). Where validation shows no meaningful progress has been achieved, or where the maximum candidacy period has been exceeded, the EITI Board may revoke candidate status.

Summary of key changes in the new EITI Standard

The new EITI Standard encourages more relevant, more reliable and more usable information, as well as better linkages to wider reforms.

- **Each country's EITI sets its own objectives.** All EITI implementing countries develop a work plan. The MSG is required to set its own implementation objectives. This is to ensure the EITI is well grounded in the national dialogue about how natural resources are governed.
- **Presenting the context.** To make EITI reports easier to understand and use, the EITI Standard introduces a new requirement that reports must contain basic contextual information about the extractives sector including:
 - *ensuring disclosure of production figures*
 - *ensuring disclosure of ownership of license holders, with disclosure of ultimate beneficial ownership being encouraged*
 - *a description of revenue allocations into state, local or other accounts*
 - *a description of the fiscal regime, with disclosure of production contracts being encouraged.*
- **New disclosure requirements.** Several reporting requirements in the EITI Rules have been strengthened and the EITI Standard introduces new reporting requirements:
 - *Comprehensive and accurate disclosures. The EITI report must contain full government disclosure of all revenues received from extractive industries. The reporting procedures have been strengthened, requiring the independent administrator and the MSG to assess prevailing auditing practices and agree procedures for assuring the data to be disclosed in the EITI report. These changes seek to ensure the EITI report provides a complete picture of revenues received and more clearly addresses the reliability of the data.*
 - *Disaggregated reporting. The data in the EITI report must be presented by individual payment type, company and government agency and by project. Project level reporting is to be consistent with requirements in the United States and the European Union.*
 - *State-owned companies. The revised EITI Standard requires more transparency of state-owned company activities. State-owned companies must now report on financial transfers between such companies and government entities, revenues collected on behalf of the*

government, including revenues from sale of the state's share of production, and any expenditure on social services, public infrastructure or fuel subsidies executed by the state-owned company. State-owned companies are also required to disclose their level of ownership in any extractive companies operating in the country.

- Subnational transfers. In many countries, most revenues from natural resources accruing at subnational levels are not derived from company payments to local government entities, but from transfers from the central government. Depending on the revenue distribution frameworks in place, these transfers can be a considerably larger source of revenue for subnational entities than taxes and fees collected at local levels. The EITI Standard requires that such transfers be reported where mandated by law and where material.*
- Social expenditures by companies. Where companies are legally or contractually required to make social contributions, these must be disclosed.*
- Payments from transit. Where countries collect significant revenues from transportation of oil, gas and minerals, such as through pipelines, the government is required to disclose the revenues received.*
- **Annual activity reports.** The requirement to publish annual activity reports is no longer limited to compliant countries, but is now a requirement for all implementing countries.
- **Improved EITI validation procedures.** Changes to the EITI quality assurance process aim to improve the quality, efficiency and consistency of validation assessments. Validation will now be procured and managed by the EITI International Secretariat rather than by implementing countries. Countries will undertake validation more frequently, with compliant countries being revalidated every three years as opposed to every five years.
- **Making the data machine-readable.** With the wealth of new data expected to be collected in future EITI reports as well as through the new disclosure rules to be implemented in the United States and the European Union, the data will be of little use unless it is made available in open and accessible formats. The EITI Standard encourages countries to make their data available in machine-readable formats so citizens, journalists and analysts can use it to analyse, visualise and compare with other data sources.

EITI stakeholders

The EITI is a [coalition of governments, companies, civil society groups, investors and international organisations](#). This is reflected in the EITI processes in the countries implementing the EITI as well as on the international level as the EITI Board equally consists of governments, companies and civil society representation. Members are appointed at each biennial EITI Global Conference. The EITI International Secretariat supports the board and provides administrative and policy assistance. It also assists in advocacy and outreach activities.

The EITI relies on effective and sustained participation of governments from supporting countries (those countries that provide assistance but may not necessarily be implementing the EITI Standard). The World Bank's multi-donor trust fund provides technical assistance to countries implementing the EITI. Through the multi-donor trust fund, the World Bank supports the EITI by administering the funds to provide technical and financial assistance to countries implementing or considering implementing the EITI. The support includes making EITI advisers and consultants available to governments to assist them in implementation, sharing international best practices and providing grants to governments to help support EITI implementation. The multi-donor trust fund receives funding and support from Australia, Belgium, Canada, Denmark, the European Union, Finland, France, Germany, Japan, the Netherlands, Norway, Spain, Switzerland, the United Kingdom and the United States. The Australian Government is one of the longest and largest supporters of the EITI, committing \$18.45

million towards the initiative. Of the supporting countries, only Norway has implemented the EITI at this time.

Civil society groups are collectively and increasingly advocating for EITI adoption and for broader transparency initiatives in the extractives sector, including mandatory models. This includes investment groups and superannuation funds that believe the EITI and mandatory approaches provide greater investment confidence. International organisations and civil society groups are increasingly approaching national governments, including Australia's, on domestic EITI implementation and project reporting. This is being reflected in national and international media, and covers high-level champions of the transparency agenda, such as the British Prime Minister.

Industry has largely indicated its support for the EITI and has supported its application in its countries of operation and in discussion with governments, often including a preference for the EITI over mandatory approaches, or at least consistency between approaches. Industry is particularly sensitive to ad hoc or inconsistent application of transparency standards as this can provide a competitive advantage to countries that are not participating in the EITI or domestic mandatory approaches and can mean communities do not have access to reliable and accessible information. A number of countries, including China and India, have indicated their support of the EITI, but have indicated they will not implement it.

International trends in mandatory extractives sector disclosure

The international agenda for extractive transparency parallels a focus for improved transparency in financial markets, and efforts to reduce tax minimisation and profit shifting for multinational entities. This is recognised by international and national reforms, and a growing cooperation between governments to ensure monitoring of multinationals' corporate conduct across borders. For Australia, in addition to participating in coordinated monitoring efforts, it includes amendments to the *Taxation Administration Act 1953* to reduce privacy protections for entities (specifically for company tax over the \$100 million threshold). Other significant national initiatives have also been developed to support the global transparency agenda. One of the most significant is the United States' *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) passed into law in July 2010.

Section 1504 of the Dodd-Frank Act requires full annual disclosure of payments companies made to foreign governments, revealing details of financial liabilities relative to foreign projects. This Act makes specific mention of the EITI and was developed in line with EITI objectives. The United States Securities and Exchange Commission (SEC) was required to develop rules to implement the Act.

The Act stipulates that companies in the extractive industries listed in US security exchanges that engage in development of oil, natural gas or minerals are required to report payments made to governments of operation. These payments include money for production licenses, taxes, royalties and other aspects of energy and mineral projects made to governments (including subnational) around the world; and includes payments made by a subsidiary or another entity controlled by the company.

Companies were expected to report from November 2012; a resource extraction issuer was required to comply with the new rules for fiscal years ending after 30 September 2013. The form was to be filed with the SEC no later than 150 days after the end of its fiscal year. However, the proposed SEC rule for Section 1504 was appealed and subsequently vacated by the US District Court in July 2013. The court ruled that the SEC 'had misread the statute to mandate public disclosure of the reports, and its decision to deny any exemption was, given the limited explanation provided, arbitrary and capricious'.

The court noted that the SEC had failed to recognise that this public disclosure could compromise US contracts in countries where such public disclosure is prohibited. However, the court made no finding

on whether the rule would create competitive disadvantage. The court ruling was procedural; it did not rule on the merits of the law or the rules.

The SEC has a statutory obligation to revise the rule, but a clear schedule has not yet been set. This is not a ruling about the project merit; it is simply part of a rule-making process. United States senators, civil society groups and investment funds (44 international investment funds with US\$5.6 trillion under management) are encouraging the SEC to reiterate the requirement for full disclosure in the new rule to ensure alignment with new European Union laws and ensure harmonisation. Industry – notably BHP – has contacted the SEC stating it endorses extra-territorial disclosure frameworks, and seeks a definition of control that is aligned with international accounting standards and the EU Accounting and Transparency Directives.

Section 1504 is expected to affect around 1,100 resource extraction companies headquartered in the United States or publicly listed on US security exchanges (whose project based payments exceed the threshold of US\$100,000), capturing most of world's publicly listed natural resource companies, including subsidiaries or another entity controlled by the company. The SEC anticipates that these companies will be obliged to spend an aggregate of US\$1 billion on initial compliance efforts, with annual costs in the US\$200 million to US\$400 million range per annum thereafter.

Before the US District Court's decision on the Dodd-Frank rules, and in response to the European Union's consideration of reporting by companies operating in the extractive resources sector under the Dodd-Frank legislation, in April 2013 the European Parliament agreed to changes to the EU Accounting and Transparency Directives. The new agreement establishes rules ensuring that resource companies (including forestry) disclose payments to governments (such as taxes on profits, royalties and licence fees) at a country and project level. As opposed to Dodd-Frank, it includes both publicly and non-publicly listed companies. To be required to report under the Directives, companies must pay more than €100,000 in total payments to government. The text requires the European Commission to review the possibility of extending the disclosure requirements to other sectors.

Under the directives, the definition of project remains broad and interpretative, being defined as 'operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government'. EU Member States are required to transpose the directives into national law within two years of their entry into force (which follows publication in the Official Journal of the European Union). The EU Accounting Directive (2013/34/EU) has been published and EU Member States have until July 2015 to incorporate the rules into their national law. The EU has also set a precedent on project definition in its [Directive 2013/50/EU](#) (EU 2013).

Data suggest that the US Dodd-Frank Act and EU Directives combined will cover 73 per cent of the world's major extractive companies (Revenue Watch Institute 2012). Key differences with the EITI include that these initiatives 1) require that reporting is mandatory, 2) only require companies to report, and 3) prescribe definitions of project-level and country-level reporting, although government and industry are examining a precedent for 'project' to provide a better idea of how reporting will be delivered in practice. While the new EITI Standard aligns with these initiatives, in that it requires project reporting, it will align its definition with Dodd-Frank and EU Directives usages rather than attempt its own description.

The EU Directives and Dodd-Frank Act were developed in reference to and with the intention of complementing the EITI, providing opportunity for both to be nationally implemented alongside one another. However, views diverge on the complementary nature of the initiatives. There is concern that reporting initiatives may require duplicative reporting requirements, particularly for industry (as governments are not required to report under the EU Directives and Dodd-Frank). This is particularly evident for multinational businesses listed on multiple stock exchanges and already reporting through

one of the disclosure regimes. The European Commission is addressing the benefits of avoiding duplication through consistent mandatory reporting.

Industry and governments are looking for consistency in reporting, with suggestions to establish one reporting framework (however, mutual recognition of equivalency between country/regional frameworks may be more likely) gaining increasing support to reduce reporting burdens on business, help fight corruption, and encourage more effective and efficient investment, including in developing countries (UK Prime Minister's Office 2013 Lough Erne G8 Leaders' Communiqué 2013). Inconsistent reporting, coverage and participation could pose a threat to transparency and competitiveness (for example, given the diverse and often inconsistent information available), as such requirements should be universally applied. If EITI gained global traction it could provide this consistency. However, a limiting factor for the EITI – inherent in its voluntary nature – is that not all countries and governments sign up to it. Consistency in mandatory disclosure and reporting requirements is also needed.

Other international activity on mandatory disclosure:

- On 12 June 2013 Prime Minister Stephen Harper announced that Canada would establish mandatory reporting standards for extractive companies that are consistent with existing international standards. On 16 January 2014 Canadian exploration and mining associations, the Prospectors & Developers Association of Canada and the Mining Association of Canada in collaboration with civil society organisations, Publish What You Pay-Canada and the Revenue Watch Institute, released recommendations for development of a [payment transparency standard](#) for all publicly traded mining companies in Canada. The recommendations provide Canada's federal and provincial governments, alongside provincial securities commissions, with a blueprint for a payment reporting framework and aim to bring Canada into line with emerging global reporting standards such as those recently passed into law in the United States and the European Union. The Canadian Government has welcomed the recommendations and will review the proposed framework as it develops a new mandatory reporting system. Canada is also a supporting country of the EITI.
- Payment disclosure legislation for extractive industry companies came into force in Norway on 1 January 2014.
- On 11 June 2013 the Swiss Parliament adopted a resolution calling on the Federal Council to draft transparency rules that are in line with the United States and European Union laws for private and publicly traded companies, and to include commodities traders as well as extractive companies.
- Since 2010 the Hong Kong Stock Exchange has required prospective mining and oil and gas companies to disclose payments to governments in their listing applications.

Benefits of the EITI

The EITI is assisting emerging economies and opening markets across the globe. Application of the EITI Standard and Principles has proved a valuable platform that has supported a unique collaboration between industry, civil society and government. These parties have contributed insight and expertise in relation to the extractives sector.

The EITI can provide a country, its people and investors confidence that money generated from resources is accounted for and dealt with in a transparent and responsible manner. Further, it is able to do so in some of the world's most fragile states. The voluntary nature of the EITI allows nations that may be excluded from other initiatives to participate. The EITI has the potential to capture all material payments in the country, not just from listed companies headquartered elsewhere, and applies transparency principles to both government and company reporting. In some cases, the EITI model has proved valuable enough that countries have applied its principles to other sectors; for example,

Liberia's inclusion of forestry and agriculture in EITI Reports and Nigeria's inclusion of physical and process audits, as well as financial audits.

Benefits for implementing countries and companies include mitigation of political risk. The EITI improves the investment climate by providing confidence and clear signals to investors and international financial institutions. The EITI demonstrates commitment to reform, anti-corruption and good governance, leading to improvements in tax collection and international standing, and enhanced trust and stability. This can, in turn, contribute to preventing conflict around the oil, mining and gas sectors.

The EITI provides a flexible approach that countries can adapt to their individual circumstances. The EITI allows each country to deem what comprises meaningful and workable EITI implementation. Further, it does not expect that EITI requirements breach national laws. A national MSG, in attempting to achieve the confidence of civil society and the community, agrees materiality and reporting requirements. Where complications arise, the EITI model provides for context and explanation of the issues that are then considered in validation decisions. It also provides capacity building and financial assistance to governments, as necessary.

A major benefit for companies and investors is the mitigation of investment risks. In the extractive industries investments are often capital intensive and dependent on long-term stability to generate returns. The EITI can provide assurances and increased stability, increasing confidence in investment opportunities. Transparency of industry revenue also highlights industry contributions to a country. However, industry interest in the EITI extends beyond this as it values the benefits of transparency systems and governance to support its operations. Greater adoption of the EITI Standard supports a level playing field by requiring all companies to disclose the same information. The collaborative nature of the EITI offers increased engagement with citizens and civil society, supporting the principles of a social licence to operate.

Benefits to civil society include increasing the amount of information in the public domain about revenues, and government management of those revenues. It improves access to information, influence in government decision-making and improves confidence of communities, Indigenous groups and civil society and lobby groups. The EITI supports delivery of a fair return for the extraction and trade of a nation's resources and provides increased accountability of governments and companies.

Benefits of the EITI for Australia

Global leadership and reputation

Implementation of the EITI would highlight the Australian Government's commitment to transparency and anti-corruption. Australian leadership in this area would improve its international reputation and strengthen its partnerships with key resource nations. It would encourage improved transparency and better governance in emerging nations, and could develop investment opportunities in areas previously considered high risk. A decision not to implement may be interpreted as Australia falling behind international peers and practice. Recent decisions from the United States, the United Kingdom, Canada, France, Italy, Germany and Norway to adopt strengthened transparency measures increases pressure on Australia to participate in the developing transparency agenda.

Regional leadership

Australian leadership in the EITI is particularly pertinent for creating regional benefits. It encourages regional efforts to improve transparency, as seen by recent EITI efforts in Burma, the Solomon

Islands, Indonesia and Papua New Guinea, to name a few. A commitment from Australia to the EITI would demonstrate to resource rich but poor countries in the Asia-Pacific that the Australian Government and Australian oil, gas and mining companies support initiatives to combat corruption, promote shared value in the resources sector, and foster meaningful dialogue with industry, government and civil society.

Opportunity to influence

A commitment from Australia to the EITI would provide an opportunity to contribute to development of the emerging global reporting standard, including EITI, in alignment with its domestic and international policies. Australia could more credibly advocate for consistent and efficient reporting for its companies that are already subject to reporting requirements across various jurisdictions, which is likely to increase in coming years as evidenced by recent activities in the United States and Europe. This would help level the playing field for Australia's companies when operating in other economies and competing on the global market.

Informing decision making

Implementation of the EITI would provide opportunity for the extractives sector to demonstrate its contribution to the economy. It would provide confidence, context and better understanding of Australia's reporting regimes and more information to investors. The EITI's demonstrated commitment to transparency would give companies (and supporting governments) a greater social licence to operate, which may be attractive to investors; and there should be reduced risk of disruption and improved potential for expansion. This would be particularly important to operations currently subject to high levels of public debate, such as the coal seam gas sector.

Mitigation of corruption

The prevalence of corruption in Australia is not considered high or widespread, but Australia's domestic resources sector may not be entirely free of it. Adoption of the EITI would provide confidence that the government is responding to public concerns, and addressing indications of corruption, mismanagement of public funds or decisions not made in the public interest.

Networking and knowledge sharing

The EITI would continue to facilitate greater understanding of the range, complexity and nature of payments in Australia's extractives sector, as well as its legislation and revenue systems. This could lead to greater cooperation between government, industry and civil society with respect to policy negotiations in EITI and other policy areas. This would be particularly useful in the lead-up to G20 discussions.

Trade and economic stability

Transparency is essential to a successful framework for corporate accountability and management of investment risks. Transparency reduces the incidence of bribery and corruption and encourages more equitable allocation of natural resource revenues. It supports a level playing field for companies looking to invest and operate in resource markets, which is particularly important for Australian companies seeking opportunities overseas. Increased information better informs investment decisions as well as financial, political and reputational risks. It encourages improved stability and security in countries, which in turn supports better returns. Importantly, a consistent approach to transparency principles better allows these benefits to be realised.

Chapter 2 – Australia's transparency system

Highlights

- Australia defines transparency through the principles of:

- *open access to information*
- *engaging the community*
- *effective information governance*
- *robust information asset management*
- *discoverable and useable information*

that is subject to transparent review, enquiry and complaints processes.

- Australia does not have a single body or piece of legislation responsible for ensuring these principles are upheld, or for anti-corruption, accountability and transparency measures. Responsibility is shared across government, with some agencies focusing on this role.
- Democratic institutions in Australia also uphold and promote transparency principles, including a free media, civil society, and statutory, royal and judicial commissions of inquiry.
- The ATO, which acts as the Australian Government's principle revenue collection body, is subject to a number of internal and external audit and compliance bodies. State and territory treasuries or responsible departments manage collection of state and territory royalties.
- The *Taxation Administration Act 1953* prevents the ATO disclosing information on tax revenues from individual entities to third parties. However, in June 2013 the Commonwealth Parliament passed the *Tax Laws Amendment (2013 Measures no.2) Act 2013* that requires corporate taxpayers with accounting incomes of \$100 million or more a year (or are subject to the Mineral Resource Rent Tax (MRRT) or the Petroleum Resource Rent Tax (PRRT)) to be made public.

Background

Australia's EITI Pilot took place within the context of Australia's legislative, regulatory and administrative system. That system and its institutions are underpinned by a commitment to transparency to ensure government accountability to citizens as taxpayers and electors, investors and workers, to companies and to organised civil society.

The EITI has set an international standard to ensure more transparency around countries' oil, gas and mineral resources. It was developed and is overseen by a coalition of governments, companies and civil society. When implemented, the EITI ensures more transparency in how natural resources are managed and disclosure of revenues from the extractives sector to governments. This provides opportunity to improve accountability, reduce corruption and improve revenue management.

EITI principles state that natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, benefiting the citizens of the country. It aims to improve public understanding and debate on government revenue and expenditure and improve public financial accountability. The EITI recognises that all stakeholders, including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations, have important and relevant contributions to make.

Australia is one of the longest standing and largest donors to the EITI. Between 2006 and 2015 it committed \$18.45 million to the initiative. Australia's support is directed to the EITI Multi-donor Trust Fund (administered by the World Bank) as well as to the EITI Secretariat.

Australia also provides EITI-related assistance to developing countries. For example, Australia funds the Natural Resource Governance Institute to implement a two-year program that focuses on supporting local society organisations to participate in the EITI and monitoring the improvement of extractives governance in Burma.

Australia has established systems that attempt to reflect transparency and accountability principles that arguably align with the EITI. Australia recognises the value of sustainable development, effective revenue management and the need to reduce corruption.

In the past 50 years business and government thinking on sustainability and environmental management has evolved significantly in Australia, as in the rest of the world. Policy has moved toward transparent and integrated approaches based on scientific evidence and risk management. Australians are more environmentally and socially conscious, requiring higher standards for environmental management, to ensure sustainable development and expecting transparency and accountability. These expectations apply equally to Australian governments and the business community; both sectors are responding in domestic settings, in line with international developments.

The MSG overseeing the Pilot recognises Australia's robust legislative and regulatory regime supported by strong administrative processes and institutions at federal and state levels. Consistent with EITI requirements this chapter provides an overview of the domestic legal framework and fiscal regime and Australia's government, company and civil society engagement with, and commitment to, international laws and standards. It will conclude with a brief assessment of the added value of Australian implementation of the EITI.

Australia's implementation of the EITI would take place within the context of Australia's legislative, regulatory and administrative system. That system and its institutions are underpinned by a commitment to transparency to ensure the accountability of governments to citizens as taxpayers and electors, investors and workers, to companies and to organised civil society.

Transparency principles in Australia

Transparency principles establish the democratic premise that public sector information is a national resource that should be available for community access and use. Information sharing better enables the community to contribute to policy formulation and government regulation, participate in program administration, provide evidence to support decision making and evaluate service delivery performance. A free flow of information between government, business and the community can also stimulate innovation, to the economic and social advantage of the nation.

Defining transparency and how it is reflected in systems differs between countries, agencies and organisations. Australia has developed a number of principles that draw on work in Australia and from overseas that define its transparency and information management practices for the public sector and provide guidance to the private sector. These include:

- **Open access to information** – Information Australian Government agencies hold is a valuable national resource. If there is no legal need to protect the information it should be open to public access. Information publication enhances public access.
- **Engaging the community** – Australian Government policy requires agencies to engage the community in policy design and service delivery. Government decisions must also be open to scrutiny and challenge.

- **Effective information governance** – Responsibility for information management should be clear, and strong leadership should be demonstrated to ensure compliance, integrity, security and accessibility, as well as strategic planning.
- **Robust information asset management** – Effective information management requires agencies to maintain an inventory of information; establish clear procedures for decisions on information publication; document known limitations on data quality; identify data that requires protection of personal information, intellectual property, business confidentiality and legal professional privilege; protect information against inappropriate or unauthorised use; and preserve information for an appropriate period of time.
- **Discoverable and useable information** – The economic and social value of public sector information can be enhanced by publication and information sharing. This requires that information can be easily accessed and used by the community and other stakeholders.
- **Transparent review, enquiry and complaints processes** – Agency decision making about information publication should be transparent and include a complaints procedure for the public to raise issues about agency publication and access decisions. For some decisions, judicial and merits review may also be available. All procedures relating to complaints, enquiries and review mechanisms should be published and explain how applications or complaints will be handled.

Australia's legal framework

The Commonwealth of Australia is a constitutional monarchy formed in 1901. It is governed by the Australian Constitution that defines how the Australian Government operates and what it can legislate. Australia is a federated system where powers are divided between the Australian Government; state and territory governments; and local governments (which have powers delegated to them by the respective state or territory government).

Australian Government

The Australian Parliament passes laws that affect the national interest. The Constitution does not grant power to the Commonwealth Parliament to make laws on all subjects. Rather, section 51 of the Constitution lists subjects on which the Australian Government can legislate. This comprises 40 specific areas including currency; tax; postal and telephone services; relations with other countries, foreign affairs and international treaties; immigration; quarantine; and the operation of a defence force. The Australian Government can also assume a coordination role when there is a national interest in aligning legislation or initiatives between state and territory governments.

The Australian Constitution establishes a federal system in which legislative, executive and judicial powers are separated. The three arms of the Australian Government are:

- **Legislature** (or parliament) – responsible for debating and voting on new laws to be introduced under the power of section 51.
- **Executive** – responsible for enacting and upholding the laws established by the legislature.
- **Judiciary** – the legal arm of the Australian Government responsible for enforcing the laws and deciding whether the other two arms are acting within their powers.

While the powers given to the Commonwealth Parliament do not expressly include corruption, the Commonwealth can rely on various heads of power to support laws designed to prevent and punish corrupt conduct across a wide range of Commonwealth regulated activities. The Australian Government has also established committees to scrutinise government activity and proposed laws:

- **Parliamentary committees** play an important role in scrutinising government activity and proposed laws. For example, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity was established in 2007 to examine trends and changes in law enforcement that relate to corruption. The committee is also empowered to examine corruption in

Australian Government agencies with a law enforcement function, as well as the integrity of staff members of those agencies.

State and territory governments

States and territories also have legislative, executive and judiciary arms of government and, with the exception of matters that specifically fall under Commonwealth jurisdiction, a state parliament can make laws on any subject of relevance to that state. While each state government has its own constitution these must be read as subject to the Australian Constitution. Accordingly, state parliaments can pass laws on a wider range of subjects than the Commonwealth Parliament. These laws usually cover issues like education, health, the environment, the operation of emergency services (police, fire and ambulance services), mining and agriculture. Also, much of the responsibility to enact and enforce anti-corruption measures rests with these governments.

Transparency and accountability in practice

The Australian Government's approach to ensuring transparency and preventing corruption is based on the idea that no single body or legislation should be responsible for tackling corruption. Instead, the strong constitutional foundation is enhanced by a range of bodies and government initiatives that promote accountability and transparency in both the private and public sectors according to the aforementioned transparency principles. The separation of powers is a great strength in Australia's approach because it creates a robust system of checks and balances. It is relevant to ensure transparency as an action of government. The negative aspect of this approach must also be recognised as a multi-agency approach can result in 'integrity gaps' if not guided by an overall plan.

One of Australia's key strategies in promoting transparency and accountability is the requirement that public officials behave appropriately and are held accountable for their actions. Each state and territory, as well as the Australian Government, has its own public service with its own code of conduct.

Australia has a comprehensive system of administrative law that allows the public to scrutinise government decisions and holds government decision makers accountable for their decisions. The basis of administrative law in Australia is derived from the constitutional doctrines of separation of powers and rule of law. Consequently, Australian courts may review government decisions to determine whether they were made in accordance with the law. In addition, some government decisions are also subject to merits review, where a person or body other than the original decision maker reconsiders the facts, law and policy aspects of the original decision and determines the correct or preferable decision. Such merits review can be conducted internally within the relevant government department or by an external and independent body such as the Administrative Appeals Tribunal. The states and territories also have bodies to review decisions made by their government officials. Some of these bodies are specialised and deal with a limited range of decisions, while others have a more general jurisdiction.

Specific Acts that govern protection, release and accessibility of government-held information include:

- **Public Governance, Performance and Accountability Act** – The Australian Government has established financial frameworks and governance systems to ensure transparency and accountability in managing, spending and using public money and property. Through the Australian Government's *Financial Management and Accountability Act 1997* (FMA Act) and *Commonwealth Authorities and Companies Act 1997* (CAC Act) Commonwealth authorities (and companies established under the CAC Act) are regulated and must report on matters such as banking, investment and officers' conduct.

The *Public Governance, Performance and Accountability Act 2013* will replace these Acts on 1 July 2014 to bring the fundamental elements of the Commonwealth financial framework together under one piece of legislation.

- **Privacy Act** – The *Privacy Act 1988* gives the Australian Information Commissioner the power to regulate the way Australian Government agencies (11 Information Privacy Principles [IPPs], Section 14) and many private sector organisations (10 National Privacy Principles [NPPs], Schedule 3) collect, use, disclose and secure personal information. Both the IPPs and NPPs provide that when an agency or organisation wishes to disclose personal information to someone else, for example another agency or organisation, it can only be done in special circumstances, such as with the individual's consent or for some health and safety or law enforcement reasons. The Privacy Act allows for Public Interest Determinations (the Information Commissioner has the power to issue such determinations, declaring when disclosure of information that may constitute a breach of an IPP, an NPP or an approved privacy code, shall not be regarded as a breach for the purposes of the Privacy Act (Public Interest); Privacy Codes (for companies and industries); and Privacy Audits (by the Office of the Australian Information Commissioner).

The Privacy Act is being revised through the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (which received Royal Assent on 12 December 2013 and will commence on 12 March 2014) through which existing IPPs and NPPs will be replaced by 13 new Australian Privacy Principles (APPs). The APPs will generally apply to Australian Government agencies and to private sector organisations (referred to collectively as APP entities). The Office of the Australian Information Commissioner investigates complaints about alleged infringements.

Anti-corruption framework

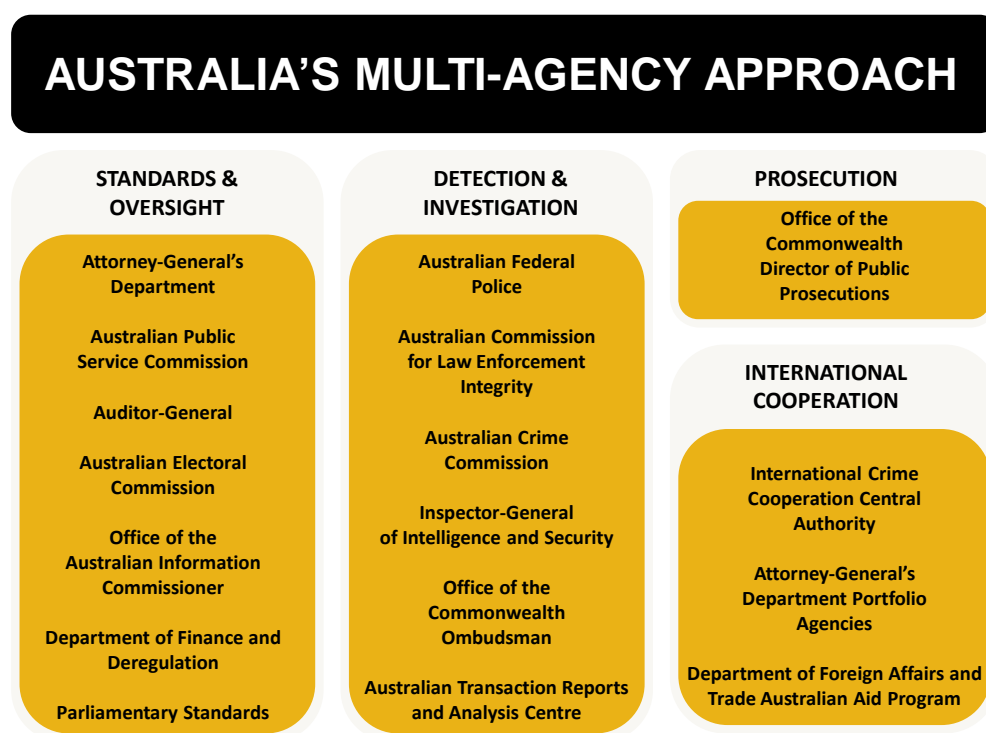
In accordance with Australia's multi-agency approach to combating corruption, a number of Australian Government agencies play a role through promoting accountability, transparency and effective enforcement (Figure 3).

The Attorney-General's Department is responsible for a number of domestic criminal laws critical to combating corruption, such as bribery of a Commonwealth official, foreign bribery, organised crime, money laundering and proceeds of crime and leads whole-of-government anti-corruption policy. The department is Australia's central authority for extradition and mutual assistance in criminal matters. The International Crime Cooperation Central Authority facilitates international legal cooperation with foreign countries, including corruption. The department also leads Australia's active engagement in regional and international fora aimed at combating corruption, including the Conference of States Parties to the United Nations Convention Against Corruption, the G20 Anti-Corruption Working Group, the Asia-Pacific Economic Cooperation Anti-Corruption and Transparency Working Group and the OECD Anti-Bribery Convention.

The Attorney-General's Department has policy responsibility for Commonwealth fraud control, including administration of the Commonwealth Fraud Control Guidelines. The guidelines are a binding legislative instrument that set out a risk-based fraud control framework for Commonwealth agencies, including mandatory requirements for prevention, detection, investigation, response to and reporting of fraud. The department heads the Commonwealth Inter-Departmental Committee on Anti-corruption, which meets regularly to discuss coordination and management of anti-corruption initiatives.

Australian Commission for Law Enforcement Integrity detects, disrupts and deters possible corrupt conduct in prescribed Commonwealth law enforcement agencies. The *Law Enforcement Integrity Commissioner Act 2006* established the Office of the [Integrity Commissioner](#) and the Commission.

Figure 3: Australia's multi-agency approach to combating corruption



Source: AGD 2011, 'The Commonwealth's approach to anti-corruption: discussion paper' Attorney-General's Department, Canberra.

The Australian Federal Police investigate serious or complex crimes against Commonwealth laws, its revenue, expenditure and property under the *Crimes Act 1914*; and bribery, including bribery of a foreign public official, and abuse of public office under the *Criminal Code Act 1995*.

The Australian Crime Commission was established under the *Australian Crime Commission Act 2002* as a statutory authority to combat serious and organised crime.

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecuting agency established under the *Director of Public Prosecutions Act 1983* to prosecute (among other things) offences against corporate law, fraud on the Commonwealth and money laundering.

The Australian Public Service Commission (APSC) supports administration of the *Public Service Act 1999*. The Act sets out the APS Values and Code of Conduct, which among other things, require all agency employees to act honestly, with integrity, and not use their employment improperly.

The Office of the Commonwealth Ombudsman receives complaints and enquiries from members of the public about government administrative action, and investigates those complaints and other systemic problems. The Commonwealth Ombudsman also conducts compliance audits of law enforcement and regulatory agency use of covert information gathering powers. The Commonwealth Ombudsman cooperates internationally to prevent corruption and improve government integrity and accountability, particularly in the Asia-Pacific. The Ombudsman has responsibility to oversee the APS Whistleblowing Scheme which was established by the *Public Interest Disclosure Act 2013* (Commonwealth Ombudsman 2013).

The Auditor-General, assisted by the Australian National Audit Office (ANAO), provides independent assurance about use of public sector resources.

The Australian Electoral Commission's role is to ensure safe, fair and impartial conduct of parliamentary elections in accordance with the Constitution and the *Commonwealth Electoral Act 1918*.

The Office of the Australian Information Commissioner is an independent statutory agency established under the *Australian Information Commissioner Act 2010* as part of major changes to federal freedom of information laws in 2010. The Office of the Privacy Commissioner, which was the national privacy regulator, was integrated into the Office of the Australian Information Commissioner on 1 November 2010.

State and territory government

Coordination on anti-corruption measures between the states and territories is pursued through a number of forums. Those relevant to potential implementation of the EITI are the:

- Australian Anti-Corruption Commissions Forum. At this time there is no overarching independent anti-corruption agency at the Commonwealth level. The absence of such an agency is not consistent with Australia's treaty obligations under the UN Convention against Corruption. Such an agency would ensure effective coordination between all integrity agencies at the Commonwealth level.

The Australian Anti-Corruption Commissions Forum comprises the heads of Australian anti-corruption agencies. It provides the means for these agencies to interact; exchange information, knowledge and ideas; work cooperatively; share training and resources; and promote common areas of interest. Under this umbrella, the Australian Commission for Law Enforcement Integrity and state counterparts participate in operational forums, including legal, intelligence, research and communication subgroups. The Integrity Commissioner chairs the forum.

- Council of Australian Governments (COAG) is Australia's peak intergovernmental forum, comprising the Prime Minister, state premiers, territory chief ministers and the President of the Australian Local Government Association. COAG's role is to initiate, develop and monitor implementation of policy reforms of national significance that require cooperative action by Australian governments.

Criminal law

Australia has a strong legislative regime criminalising corrupt behaviour. Australia's corruption offences cover a broad range of crimes, including bribery, embezzlement, nepotism and extortion. For this reason, Australia's corruption offences are not contained in any single Act of Parliament and are found in both Commonwealth and state and territory legislation.

The Commonwealth Parliament does not have specific powers relating to criminal law. However, the Commonwealth can enact criminal laws relying on other powers expressly provided for under the Constitution. Commonwealth criminal legislation is primarily restricted to criminal activity against Commonwealth interests, officers or property, or is directed at crimes with an international element, such as bribery of foreign officials. Key legislation containing corruption-related offences includes:

- *Criminal Code Act 1995*
- *Proceeds of Crime Act 2002*
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- *Commonwealth Authorities and Companies Act 1997* in addition to the requirements of the *Corporations Act 2001*
- *Australian Federal Police Act 1979* Part V

- Australia's administrative law system, including the *Judiciary Act 1903*, the *Administrative Appeals Tribunal Act 1975*, the *Administrative Decisions (Judicial Review) Act 1977* and the *Legislative Instruments Act 2003*.

All other criminal activity is governed by the laws of the states and territories including offences of corruption, fraud and bribery. For example, in addition to regimes at the Commonwealth level, the states and territories have their own domestic fraud and bribery offences, and supporting regimes such as proceeds of crime legislation. The overlap between federal and state and territory criminal law does not cause difficulties in practice, as the Commonwealth Parliament has vested state and territory courts with extensive jurisdiction to hear matters arising under federal law.

Conduct of the private sector

Many aspects of the private sector are regulated at the federal level. Key legislation includes the *Corporations Act 2001*, which governs the way in which corporations can operate. The Act regulates the conduct of directors and officers of companies and includes offences such as failure to act in good faith, and fraud by company officers. In addition, corporate criminal responsibility has been established for all offences contained in the *Criminal Code Act 1995*, meaning corporations may be found guilty of any offence contained in the code, including those punishable by imprisonment.

Other measures include the *Australian Securities and Investments Commission Act 2001*, which established the Australian Securities and Investments Commission (ASIC). ASIC is an independent government body specifically tasked with enforcing and regulating company laws. The *Australian Prudential Regulation Authority Act 1998* establishes the Australian Prudential Regulation Authority (APRA), which oversees the Australian financial services industry. The ATO also plays an important role in regulating the private sector. The Australian Stock Exchange (ASX) imposes the Corporate Governance Council's *Corporate Governance Principles and Recommendations* as well as individual corporate codes of conduct.

Australia adheres to the *OECD Guidelines for Multinational Enterprises*, which provide guidance on responsible business conduct, including how the private sector can help combat bribery.

Domestically, the agencies that investigate or provide intelligence about corruption in the private sector are:

- Australian Competition and Consumer Commission (ACCC)
- Australian Prudential Regulation Authority (APRA)
- Australian Securities and Investment Commission (ASIC)
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Export Finance and Insurance Corporation (EFIC).

Democratic institutions

Democratic institutions play an important part in promoting a fair and transparent society and combating corruption. These institutions include:

- **A free media**—Australia has a free and independent media, which can report on allegations of corrupt behaviour by public officials and the private sector. The particular contribution of investigative journalists in exposing mismanagement, fraud and corruption in public and private sectors in Australia is well recognised.
- **Civil society**—private sector organisations, professional associations, non-government organisations, trade unions and academia play an important role in raising awareness of current and emerging corruption risks through their contribution to public debate and analysis.

- **Statutory, royal and judicial commissions**—In addition to a number of statutory commissions, from time to time, Australian governments also establish royal or judicial commissions to inquire into and report on matters of public concern, including allegations of systemic corruption.

Tax reporting requirements

Australian Taxation Office

The ATO acts as the principle revenue collection body for the Australian Government. It is a key part of the Treasurer's portfolio and manages the tax (such as income, company and goods and services), excise and superannuation systems that fund services for Australians.

The ATO acts to ensure the community has confidence in the administration of Australia's taxation and superannuation systems as taxation and superannuation systems are a vital part of Australia's social and economic infrastructure. The validity and accuracy of this information is driven by the control framework and systems and processes within the ATO, including around receiving, processing, managing and reporting data. Governance mechanisms in the form of established work processes and systems are subject to assurance processes and information technology controls. Areas in the ATO monitor data for accuracy and make enquiries and amendments where discrepancies exist. Key aspects of the overarching governance framework that oversee the functionality of these systems and processes include the Audit Committee (responsible for risk, control and compliance frameworks, external accountability requirements, legislative compliance, and internal and external audit) and the scrutiny of external organisations, including the ANAO.

Each year the ATO appears before numerous parliamentary committees to provide information and assistance to improve understanding of ATO systems. For example, it appears regularly before the Joint Committee of Public Accounts and Audit, the Senate Standing Committee on Economics and, each year, appears before the Senate Estimates hearings with the Treasury's Revenue Group. ATO annual reports inform parliament, stakeholders and the community about its performance for the past financial year.

Privacy restrictions

The *Taxation Administration Act 1953* prevents the ATO disclosing information on tax revenues from individual entities to third parties. The ATO works with companies to reconcile payments made to government, but this is a bilateral process and does not involve disclosure of information to third parties. The ATO also publishes amounts of revenue, but this is aggregated across the sector and does not identify individual entities. The Act provides that:

a taxation officer commits an offence if he or she makes a record of information or discloses information to another entity and the information is protected information. 'Protected information' means information that was obtained under a taxation law, relates to the affairs of an entity and identifies, or is reasonably capable of identifying, the entity (section 355-25).

Issues with Australian tax legislation arise with the EITI requirement as the EITI requires a third party to reconcile payments made by companies with the payments received by the government. Australian taxation law frustrates this process. Consequently disaggregation of company tax information is problematic for Australia.

Tax laws amendment

In June 2013 the Commonwealth Parliament passed the *Tax Laws Amendment (2013 Measures no.2) Act 2013*, which requires the Commissioner of Taxation to make public the tax payable by corporate taxpayers with accounting incomes of \$100 million or more per year and all corporate taxpayers subject to the MRRT or the PRRT. Based on this legislation, the Commissioner will publish

the Australian Business Number (ABN), name, reported total income, taxable income and income tax payable for these corporate tax entities but those with total income of less than \$100 million will not have these details published. New reporting arrangements will start from 1 July 2014.

Regarding potential implementation of the EITI, this legislation will resolve some of the federal level issues of confidentiality outlined above but not for payments at the state level. Also, only a limited number of companies pay the MRRT or PRRT. The Australian Government has indicated this reporting obligation may be repealed in the future.

Department of Industry

The Department of Industry (previously the Department of Resources, Energy and Tourism) is responsible for administering Commonwealth petroleum royalties and the Northern Territory Uranium Royalty. The Northern Territory Uranium Royalty is payable to the Australian Government as a percentage of the mine's profits under the *Uranium Royalty (Northern Territory) Act 2009*. Petroleum royalties are payable to the Australian Government for all petroleum (including gas) production from the North West Shelf project area. The royalties are shared with Western Australia as prescribed by section 75 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The Department of Industry has an established process for collecting, paying and reconciling uranium royalties for the Northern Territory and offshore petroleum royalties and fees in accordance with regulatory requirements. The department reports these figures in its annual report.

States and territories

State and territory treasuries or specific agencies responsible for administration of the revenue generally collect the revenues. States and territories are required to report according to the requirements and legislation established by each jurisdiction; however, common assurance arrangements, such as financial management acts or audits performed by the Auditor-Generals' departments, exist in each jurisdiction. The responsibility to prepare and present those financial statements for audit rests with senior management of each agency. Management is also responsible for maintaining accounting systems that provide a high level of assurance over the accuracy of the financial records maintained and the safeguarding of the agency's assets. An essential element to enable that high level of assurance to be given is implementation and maintenance of a sound internal control system.

State governments are also required to produce annual reports and budget information:

- [New South Wales](#)
- [Victoria](#)
- [Queensland](#)
- [South Australia](#)
- [Western Australia](#)
- [Tasmania](#)
- [Northern Territory](#).

International initiatives

As part of Australia's commitment to the global agenda its governments, companies and civil society actively participate in developing and implementing multilateral conventions and mechanisms to prevent corruption, enhance transparency and promote accountability. This is achieved through encouraging government to introduce and enforce appropriate measures to prevent domestic and international corruption, and to promote openness and transparency through appropriate release of

information. The initiatives also encourage industry to implement best practice approaches, standards and guidelines to effectively combat corruption through transparent, accountable and ethical business practices. Collectively these international initiatives reinforce a zero tolerance approach to corruption.

Australia and Australian companies are long-standing contributors to, participants in and/or supporters of the following international transparency and anti-corruption standard setting initiatives:

- APEC Anti-Corruption and Transparency Working Group: Australia supports the working group; it led development of the *APEC Code of Conduct for Business* in 2007 and is leading the *APEC Guide to Mutual Legal Assistance* to strengthen regional cooperation against corruption.
- Egmont Group of Financial Intelligence Units: Australia is an active participant in the 127 member group of countries that work together to improve cooperation in the fight against money laundering and financing of terrorism.
- Financial Action Task Force: Australia is closely engaged with the task force in developing international anti-money laundering and counter terrorism financing standards.
- G20 Anti-Corruption Working Group: Australia is an active member of the Working Group and contributed to development of the comprehensive *2013–14 G20 Anti-Corruption Action Plan*, which guides the G20 anti-corruption agenda. The Action Plan includes commitments by G20 members to take stronger measures to prevent corruption-related money laundering, strengthen international legal cooperation against corruption, and deny visas and safe haven to corrupt leaders as well as affirming the importance of the EITI and other multi-stakeholder initiatives. As part of its G20 host year, Australia is co-chairing the Working Group in 2014 and is responsible for leading implementation of the G20's anti-corruption commitments in 2014 and beyond, including by leading development of the *2014–15 G20 Anti-Corruption Action Plan*.
- Global Reporting Initiative: Many Australian companies, including many in the resources sector, report under this framework, which includes anti-Corruption standards consistent with the UN Global Compact Tenth Principle. The Australian Government has provided \$2.59 million (over four years) in funding to the St James Ethics Centre to become the focal point in Australia for the Global Reporting Initiative.
- Open Government Partnership: the Australian Government announced its commitment to join this partnership in May 2013.
- Organisation for Economic Co-operation and Development: Australia ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1999. The OECD also developed its Good Practice Guidance on Internal Controls, Ethics and Compliance and Guidelines for Multinational Enterprises. The government promotes these to industry.
- UN Convention against Corruption sets the global framework for fighting corruption. Australia ratified the convention in 2005; there are 170 parties to the convention. Australia actively supports global implementation of the convention and its Conference of States Parties and subsidiary working groups. Australia also participates in the convention implementation review mechanism. The first review of Australia's compliance with the convention was conducted in 2012. Australia's self-assessment and full report has not yet been made publicly available.
- UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with 10 universally accepted principles in the areas of human rights, labour, environment and anti-corruption. The Global Compact Network Australia was formally launched on 28 May 2009.
- UN Principles for Responsible Investment is an international network of investors working together to put the six Principles for Responsible Investment into practice.
- World Economic Forum: Partnering Against Corruption Initiative is a global, multi-industry, multi-stakeholder anti-corruption initiative set up to raise business standards and contribute to a competitive, transparent, accountable and ethical business society. The initiative helps foster a high-level dialogue between business and government.

Other international initiatives through which practical steps are taken to enhance transparency as a tool to building effective governance in a range of sectors include the International Budget Partnership (enabling civil society participation in budget analysis and advocacy) and Open Contracting (a multi-stakeholder initiative supporting strengthening of national level norms and practices in contracts with funding from public, private and donor sources).

The private sector's commitment to transparency and integrity

Australian companies and their international peers continue to deepen and strengthen their commitment to transparency. Global initiatives, such as the UN Global Compact and the Global Reporting Initiative, enhance the quality of corporate reporting. The drive for transparency and commitments to working with integrity are driven by increased expectations of investors and citizens as well as governments for companies to work with integrity.

Such commitments by companies is partly to assure investors they will behave appropriately in their international operations, thus reducing the chance of a government or national backlash against the project, which could hamper development, reduce production or lead to closure of the facility. Business integrity is also about managing the business, corporate and investment position, especially in today's era of heightened monitoring and global connections by civil society organisations. Companies are seeking a level playing field in resource development; they are promoting transparency as a mechanism through which to avoid corruption and its economic and reputational risk.

While this issue applies across sectors, the mining sector evokes greatest public interest. This is due to its potentially large environmental and social footprint and potential for negative impacts, with massive ramifications for development of entire nations. Mining is seen as a promising vehicle for development yet frequently it turns out not to be the case. Due to the non-renewable nature of mineral endowments, if a nation misses benefits as a result of poor governance, corruption or mismanagement it cannot retrospectively reclaim the benefit.

Members of the International Council on Mining & Metals endorsed the [Ten Principles of Sustainable Development](#) in 2003, which includes an anti-corruption principle (Principle 1). Signatories to the OECD Anti-Bribery Convention, the World Bank and the UN Global Compact are all committed to combating corruption. This extends to all large corporations including banks, energy suppliers, oil and gas miners, diversified companies, heavy industry and agriculture. As a consequence, large multinational companies as well as smaller operator are committed to anti-corruption as part of their commitment to working with integrity through all business operations.

In Australia, members of minerals councils and associations have voluntarily adopted principles or codes of conduct that commit them to implementing and maintaining ethical and responsible business practices and governance systems to support their sustainability in the communities and countries in which they operate. Specifically:

- **The Minerals Council of Australia** – Enduring Value – The Australian Minerals Industry Framework for Sustainable Development provides critical guidance on the International Council on Mining & Metals' [Ten Principles of Sustainable Development](#) and their application at the operational level. A compulsory requirement for membership of the Minerals Council of Australia, the first principle requires companies to implement and maintain ethical business practices and sound systems of corporate governance. Specifically in relation to transparency, Minerals Council of Australia members are required to implement policies and practices that seek to prevent bribery and corruption. They should implement a no-bribery policy; develop systems that record and report decisions and transactions related to political contributions, facilitation payments, charitable contributions and sponsorships and payments made to comply with particular statutes; and train employees to apply the policy, and use systems to ensure relevant issues are

recognised, recorded and managed and reported transparently. Companies are required to report their operational performance in line with the Enduring Value principles in their annual reports or in separate Health, Safety, Environment and Compliance reports.

- **The Australian Petroleum Production and Exploration Association** and its member companies agreed a set of nine Principles of Conduct to provide the basis for achieving the association's mission of a legislative, administrative, economic and social framework which efficiently and effectively facilitates safe, environmentally responsible, socially responsible and profitable oil and gas exploration, development and production. The Principles of Conduct aim to influence values and behaviour of members and are voluntary, flexible and adaptive. The first principle for association members requires members to conduct their businesses ethically and make good corporate governance a pervasive feature of company operations. This includes complying with the requirements of all applicable laws and regulations, and applying responsible standards where laws and regulations do not exist.
- **The Association of Mining & Exploration Companies** and its members commit to Fundamental Principles in conducting their business operations as part of their voluntary membership of the association. The core Principles provide the framework upon which the association and its members conduct their operations and, like the Australian Petroleum Production and Exploration Association's Principles of Conduct, they are flexible and adaptive. The first Principle for members is to implement and maintain ethical business practices and sound systems of risk management and corporate governance. Members also strive for continual improvement, sound corporate governance and optimal commercial, environmental and social development.

In addition to their commitments under association memberships, most resource companies have embedded corporate social responsibility and triple-bottom-line reporting in their operations, to maintain their social licence to operate with governments and communities, and importantly with their personnel and shareholders.

Australian multinationals are often leaders in financial transparency, social responsibility and ethical behaviour. MSG member organisations and most large to multinational corporations in Australia report annually on their performance, including income, taxation and importantly their commitment to managing corruption. Many MSG members or their parent organisations also report or will report through the EITI or mandatory reporting initiatives internationally. For example:

- **BHP Billiton's 2013 Global Sustainability Report** notes its business charter and Code of Business Conduct and Anti-corruption group level document on its commitment to upholding ethical business practices, with its employees and suppliers, contractors and partners accountable for acting in accordance with its code. Its procedures require appropriate due diligence in selecting and engaging third parties, maintenance of accurate and reasonably detailed records of expenditures and implementation and maintenance of specific approval requirements for corruption-sensitive transactions. BHP Billiton prohibits the making of facilitation payments, which are payments involving small sums to low-level government officials to obtain routine services to which BHP Billiton is otherwise legally entitled.
- **BP's 2013 Sustainability Report** highlights that company's commitment to transparency and integrity. BP works with governments, non-government organisations and international agencies to improve transparency in revenue flows and eliminate corruption in resource-rich countries. BP views good governance, the rule of law and positive relations with its local stakeholders as vital to ensuring it can deliver a return on investment for shareholders. As a founding member of EITI, BP continues its support through contributions made by its representatives on the EITI board and in local multi-stakeholder groups. BP's code of conduct explicitly forbids its personnel engaging in any form of bribery or corruption. The standard requires annual bribery and corruption risk assessments, risk-based due diligence on all parties with whom BP does business, appropriate anti-bribery and corruption clauses in contracts, and training of personnel in anti-bribery and corruption measures.

- **ExxonMobil's 2012 Corporate Citizenship Report** highlights its commitment to the EITI and revenue transparency to fight corruption, improve government accountability and promote greater economic stability in developing and developed countries around the world. ExxonMobil states its policy is to comply with all governmental laws, rules and regulations applicable to its business, noting its interest in reasonable approaches to business reporting in Europe and North America. It is supported by its Standards of Business Conduct, which define the global ethical conduct of the corporation and its majority owned subsidiaries on human rights, labour, the environment and anti-corruption. Regular internal audits and self-assessments help ensure rigorous implementation of its control systems and Standards of Business Conduct.
- **Rio Tinto's 2012 Sustainable Development Report** highlights its commitment to integrity and compliance, with Rio Tinto launching new standards in anti-corruption and conflicts of interest, and introducing new compliance training modules for its employees. Rio Tinto's report gathers information on payments made to governments in the main countries in which it operates, as well as the taxes and net earnings of business units and other group tax information. Rio Tinto's Integrity and Compliance standards and program include the anti-trust standard, the anti-corruption standard, the fraud standard, the conflicts of interest standard and the data privacy standard. Rio Tinto is also committed to maximum transparency consistent with good governance and commercial confidentiality. Rio Tinto participated in preparing the *Business Principles for Countering Bribery* and supports the World Economic Forum's *Partnering against Corruption Initiative*. As part of its commitment to showing leadership in tax transparency, Rio Tinto publishes this report voluntarily because it believes that transparency makes good business sense.
- **Shell's 2012 Sustainability Report** highlights its commitment to high standards and behaviours. Shell was a founding member of the UN Global Compact and supports its principles in human rights, labour, environment and anti-corruption. Shell's General Business Principles and Code of Conduct and compliance program encourages employees and contractors to meet and maintain appropriate standards to fight corrupt practices (including facilitation payments and gifts) and combat anti-competitive behaviour, through mandatory training and appropriate engagements with suppliers worldwide.

Many Australian companies report under the EITI framework in the countries in which they operate, including prominent companies. Many Australian listed companies are required to report worldwide.

EITI in Australia

The resources industry widely regards the EITI as an effective transparency mechanism that brings governments, civil society and petroleum and minerals industry companies to the table. The independently reconciled reporting of payments made by companies and payments received by governments, is critical to enabling communities to hold governments to account for use of extensive funds received from resource development.

Implementation of the EITI in Australia – a resource rich country in which extractive industries contribute much to national, regional and local economies – would greatly strengthen Australia's transparency system, enhance its reputation and support the increasing number of Australian extractive companies operating in resource rich developing countries.

Australia's transparency system is comprehensive and rigorous. The system operates with integrity most of the time but gaps periodically occur; implementation of the EITI would potentially address such gaps. For example, possible political corruption in New South Wales led to revocation of coal licences in December 2013. It is important to recognise that all domestic and international initiatives to which Australia has signed on to partly or wholly align with EITI principles. Australian companies – through their compliance with and respect for the rule of law and with environmental, social and corporate governance standards to which many subscribe – complement official commitments.

The EITI's requirement for an MSG enables building of trust between governments, companies and civil society in assuring transparency of revenue and company payments. As noted, many (but not all) companies operating in Australia are committed to full voluntary disclosure of profits, taxes and other payments to government. Implementation of the EITI would create a level playing field by ensuring all companies make such commitments.

Implementing the EITI, as well as continuing donor and international policy support for the initiative through the Department of Foreign Affairs and Trade, would be in Australia's national interest. In supporting the EITI in these ways Australia, as a resource rich country, would lead by example thereby enhancing its international reputation. Implementation and support would also directly benefit the many Australian companies operating overseas, including in countries where the EITI is being implemented or where mandatory disclosure of royalties, taxes and corporate structures is expected.

Chapter 3 – EITI in the Australian context

Highlights

- Australia has an abundant supply of natural resources and is a major producer of a range of mineral and energy commodities including bauxite, coal (black and brown), copper, diamond, gold, iron ore, lead, lithium, manganese, nickel, silver, tantalum, titanium minerals, uranium, zinc and zircon.
- Australian export revenues are expected to grow at an annual average rate of 8 per cent to \$284 billion in 2018–19. Mineral and energy export earnings are projected to total \$151 billion and \$133 billion, respectively, in 2018–19 (BREE 2014a).
- Australia has strong investment in the resources sector with 48 committed projects (valued at \$229 billion); 78 publicly announced projects (valued up to \$122 billion); and 146 projects at the feasibility stage (valued at \$169 billion), as at April 2014 (BREE 2014b).
- Australia's resource industries recognise the need to operate in a manner consistent with sustainable development principles.
- Australia undertook the Pilot of the EITI to align with the global transparency agenda. It provided an opportunity to test the strength and transparency of Australia's existing systems and their compatibility with EITI principles.

The Australian resources sector

Minerals and petroleum and the Australian economy

The resources sector (petroleum and minerals industries) in Australia makes a significant contribution to the Australian economy. Australia is an attractive destination for global investment given its abundant natural resources, relative stability and economic strength, closeness to growing Asian markets and human and intellectual capital.

The Australian resource industry is diverse in terms of its commodities and the nature of resource ownership. The resource industries recognise the need to operate in a manner consistent with the three pillars of sustainable development (economic, social and environmental).

This chapter provides an overview of the Australian resources industry as a context for joint industry, government and civil society consideration of revenue transparency measures. It does not cover coal seam gas extensively as this was considered an emerging industry at the time of writing.

Resources sector a major contributor to Australia's exports

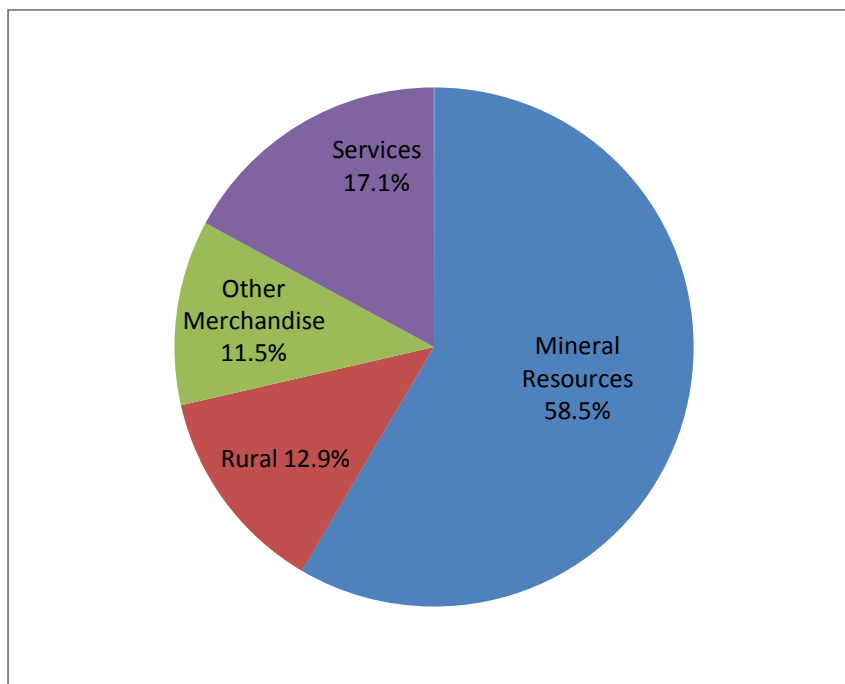
Resources are the nation's largest single export. In 2012–13 the resource industry accounted for 10.1 per cent of GDP (ABS 2013a). This figure would increase significantly if downstream mining related activities in industries such as manufacturing, construction, transport and storage, property and business services and electricity and gas were included.

Key economic statistics for the sector include:

- In 2012–13 Australian resource commodities exports were \$176 billion and are forecast to increase to \$199 billion in 2013–14.
- Mineral commodity export earnings were \$107 billion in 2012–13 and are forecast to increase to \$125 billion in 2013–14, and \$151 billion by 2018–19.
- Energy commodity export earnings were \$69 billion in 2012–13 and are forecast to increase to \$74 billion in 2013–14, and \$133 billion by 2018–19. (BREE 2013a; BREE 2014a).

- In 2012–13 more than 80 per cent of the resource sector's output was exported, accounting for around 60 per cent of Australia's total exports of goods and services (Figure 4).
- In 2012–13 the Australian resource sector employed 26,000 people in minerals and petroleum exploration, extraction and associated services roles; around 2 per cent of Australia's total workforce (ABS 2013a).

Figure 4: Contribution to Australian exports of goods and services, by sector, 2012–13 on a balance of payments basis



Source: BREE 2013a, *Resources and Energy Quarterly, December Quarter 2013*, Bureau of Resources and Energy Economics, Canberra.

The outlook for Australia's mineral and energy exports remains positive. Although prices for most commodities are expected to moderate over the outlook period, the projected substantial growth in export volumes of Australia's key commodities (including coal, iron ore and LNG) will support growth in export earnings. Export earnings in 2013–14 are expected to increase reflecting increased export volumes of coal, iron ore and LNG and an assumed depreciation of the Australian–US dollar exchange rate.

Over the period 2013–14 to 2018–19 BREE estimates Australian export revenues will grow at an annual average rate of 8 per cent to total \$284 billion in 2018–19 (BREE 2014a). Mineral and energy export earnings are projected to total \$151 billion and \$133 billion, respectively, in 2018–19.

Growth in export revenue will be driven by two main factors: substantial growth in bulk commodity export volumes, particularly for LNG and iron ore, and a lower Australian dollar exchange rate. In nominal terms, the value of LNG exports is projected to increase by around 340 per cent over the outlook period as the large investments in new facilities over the past three years start production.

However, in real terms, export earnings from resources commodities are projected to peak in 2016–17 and energy commodity exports will become the principal driver of export earnings.

Australia is the world's largest exporter of iron ore, accounting for 43 per cent of world trade and the second largest exporter of coal by volume, accounting for around 30 per cent of world trade. Australia is currently the world's third largest exporter of LNG and is on track to become the largest before the end of this decade. Australia is also a major exporter of aluminium, copper, gold, uranium and zinc.

Industry investment rates – a significant contributor to Australia's economy

The ability of Australia's minerals and energy sector to sustain its growth and expand its contribution to national economic performance in the medium and longer terms depends critically on the amount of investment in minerals and petroleum (including gas) exploration. Most of the strong growth in the minerals and energy sector in recent years is underpinned by past minerals exploration expenditure.

In 2013 total Australian minerals and petroleum exploration expenditure decreased by 8 per cent (relative to 2012) to \$7.1 billion, with falls in mineral exploration of 31 per cent and an increase of 13 per cent in petroleum exploration (onshore and offshore) of \$4.5 billion.

In its *Resources and Energy Major Projects April 2014* report, (BREE 2014b) identified 48 committed projects (those that have received a positive final investment decision); with a combined capital expenditure spend over their lifetime of \$229 billion. This compares with 63 projects with a combined value of \$240 billion in October 2013. The fall in both the number of projects and value is the result of more projects moving to the Completed Stage. 8 'mega projects', valued at more than \$5 billion each, accounted for 88 per cent of the value of all committed projects, with 7 being LNG projects.

In addition to the committed resource projects, in April 2014 BREE identified an additional 224 projects that were either publicly announced or undergoing feasibility studies, with the value of these projects estimated between \$265 billion and \$291 billion. Projects at the Publicly Announced Stage and the Feasibility Stage have not been committed to and are only potential investments that may occur under the appropriate conditions. Specifically:

- 78 projects are at the Publicly Announced Stage with a combined value of between \$96 billion and \$122 billion:
 - 26 energy projects at an estimated value of \$45.1 to \$50.1 billion
 - 40 minerals mining and processing projects at an estimated value of \$30.7 and 46.5 billion
 - 12 infrastructure projects at an estimated value of \$20.7 to 25.9 billion.
- 146 projects are at the Feasibility Stage (planned capital expenditure is estimated at \$169 billion).

Australia has experienced an unparalleled increase in investment in the resources and energy sector since 2009. While BREE considers the investment cycle in Australian resources has now peaked, Australia is transitioning from a period of high capital investment to one where the projects start and deliver a significant increase in production of resources and energy commodities. Many projects will have long operating lives. In the 12 months to April 2014 production capacity increased by 215 million tonnes for iron ore, 43 million tonnes for coal, and more than 1100 petajoules for gas.

BREE has projected that further investment in Australia's resources and energy sector will remain weak in the short-term due to increased competition from other countries coming on line to supply China, and a softening of commodity prices. A number of companies that have delayed or cancelled projects are re-evaluating and changing the scope of their projects to develop less capital-intensive solutions and more efficient designs to reduce operating costs.

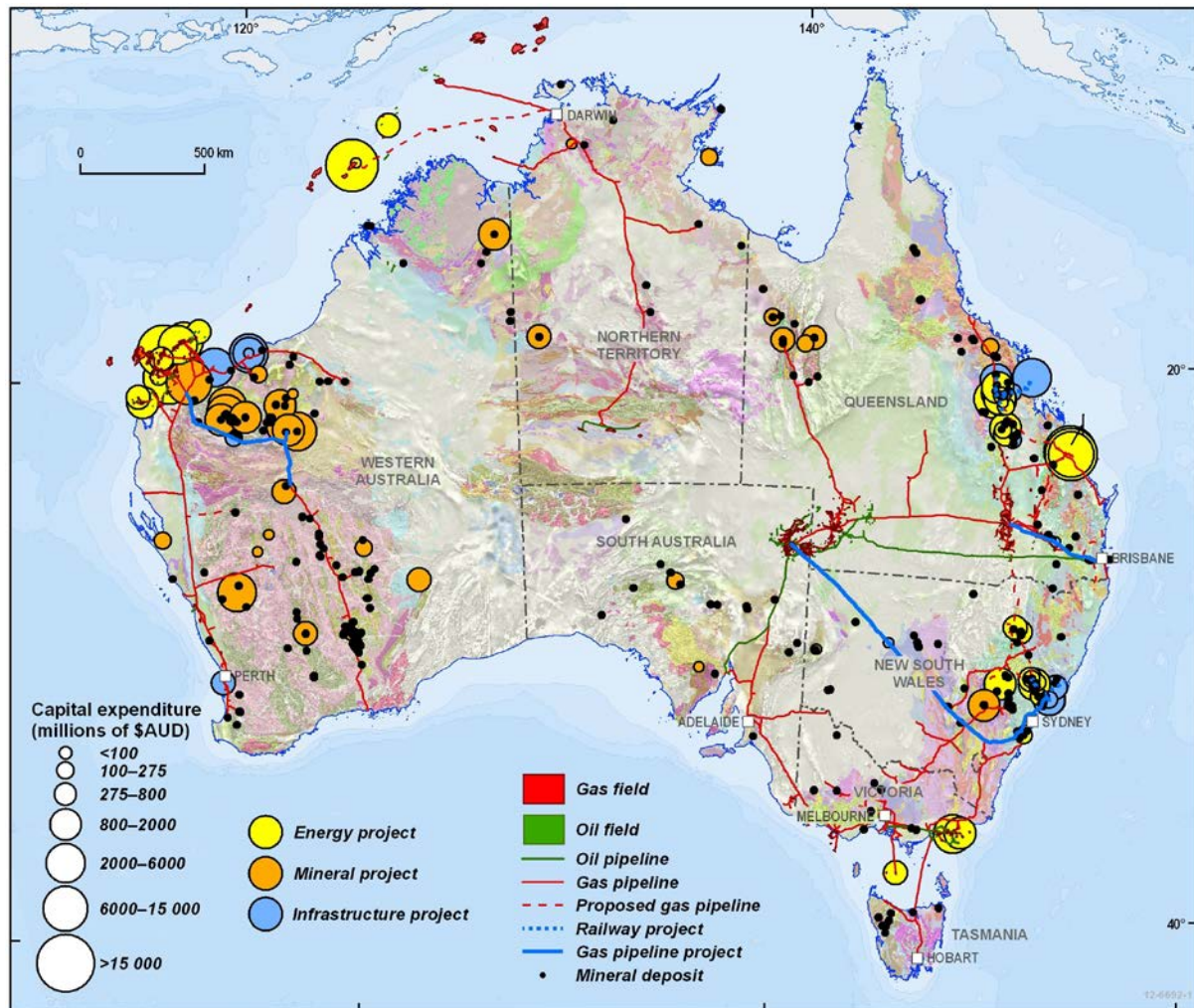
Resources sector geographically dispersed

Australia's key mining regions

Australia has an abundant supply of natural resources and is a major producer of a range of mineral and energy commodities including bauxite, coal (black and brown), copper, diamond, gold, iron ore, lead, lithium, manganese, nickel, silver, tantalum, titanium minerals, uranium, zinc and zircon.

There are roughly 300 mines across the country, of which almost half are in Western Australia and many underpin remote and regional economies (Map 1).

Map 1: Major Australian mineral resources and infrastructure

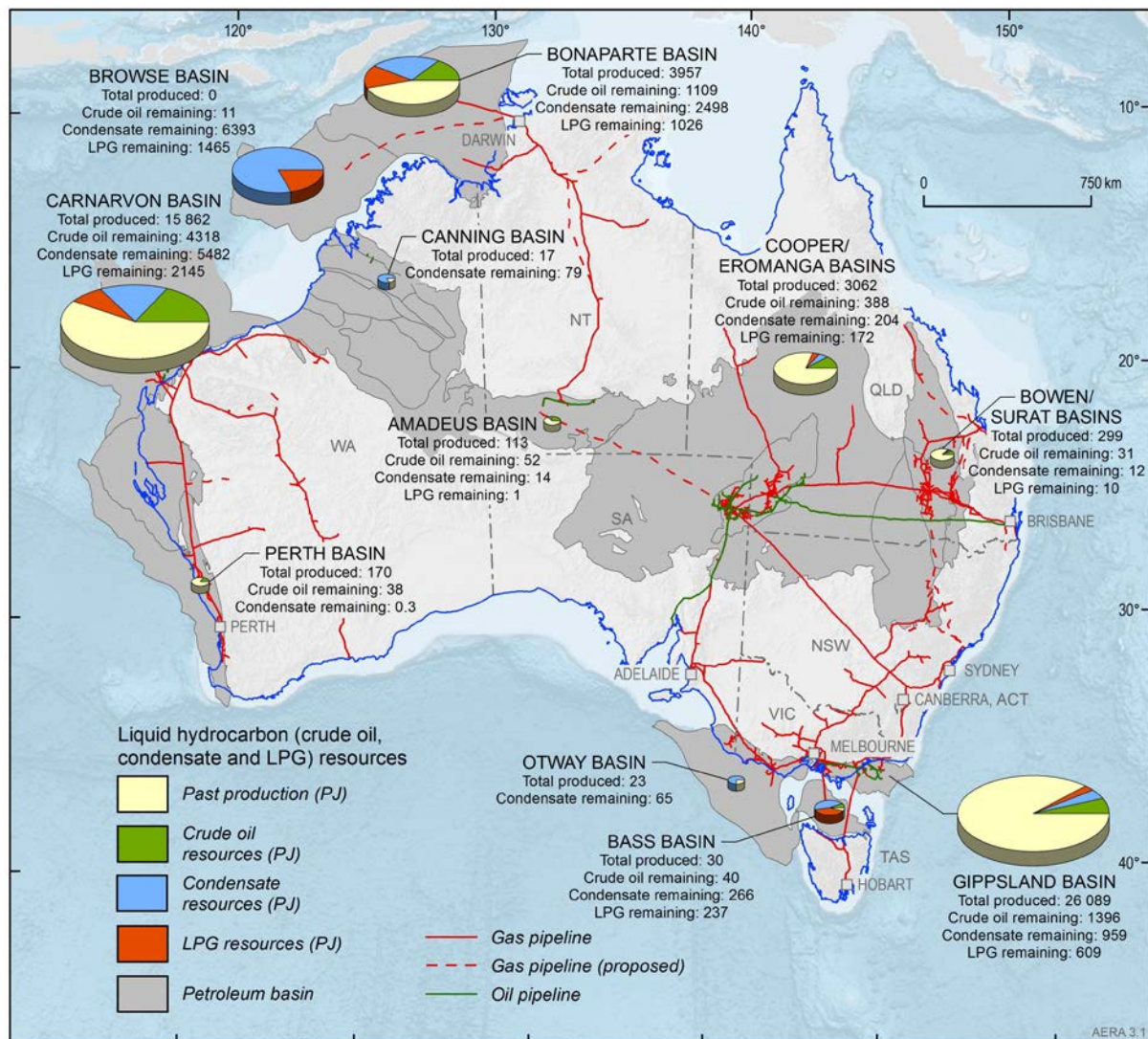


Source: Geoscience Australia 2013, Australia's Mineral Resource Assessment

Australia's key petroleum regions

The primary areas of petroleum activity are in offshore Australia: in the Bass Strait of Victoria (Gippsland Basin); the Carnarvon Basin and the Browse Basin of Western Australia; and the Bonaparte Basin (Timor Sea) of Northern Australia. More than 95 per cent of oil reserves are offshore. Most of Australia's oil and conventional gas reserves (78 per cent of crude oil and 92 per cent of natural gas) are located in offshore Western Australia (Map 2).

Map 2: Major crude oil, condensate and conventional gas resources and infrastructure



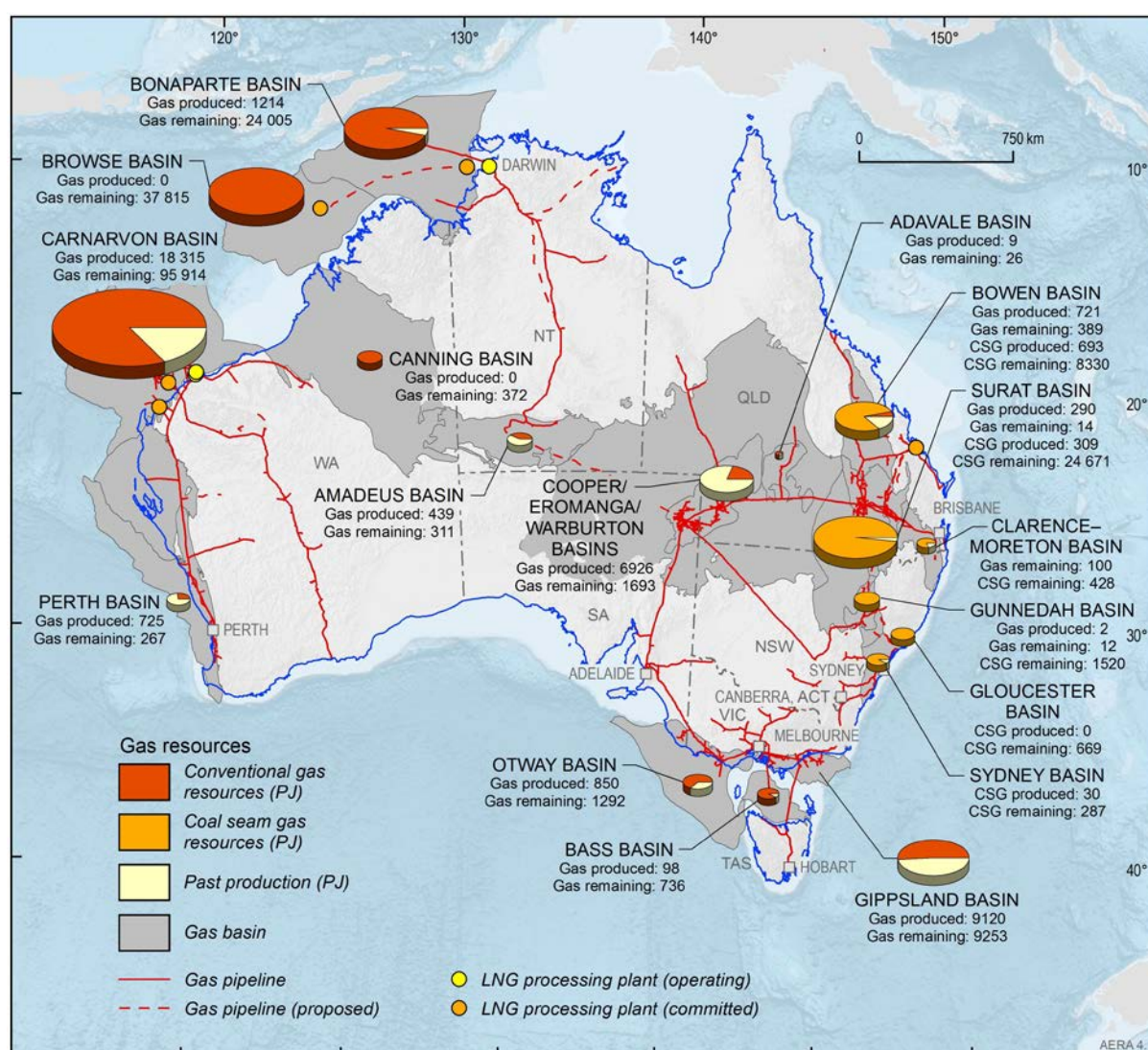
Source: Geoscience Australia 2014, Australian Energy Resource Assessment, second edition

Australia's conventional demonstrable gas resources are located across 15 basins, but the bulk of this resource (92 per cent) lies in the offshore basins in north-west Australia (North West Shelf) – the Bonaparte, Browse and Carnarvon basins (GA & BREE 2012). The bulk of this amount is in 10 super-giant fields.

South-west, south-east and central Australia also have resources. Most of Australia's conventional gas exploration occurs in the offshore basins, sometimes in water depths greater than 1,000 metres and with target depths from about 2,000 to more than 4,000 metres below the sea floor.

Major gas projects are planned for the Browse Basin, off the coast of north-west Australia. Onshore, the Cooper Basin in Central Australia is the primary project area for petroleum and gas. Coal seam gas production is currently occurring and will increase in Surat Basin and Bowen Basin in Queensland (Map 3).

Map 3: Major gas resources and infrastructure



Source: Geoscience Australia 2014, Australian Energy Resource Assessment, second edition

Australia's key gas regions

Australia is endowed with significant gas resources: around 3.8 trillion cubic metres of economic demonstrated gas resources (BREE 2013b). Large coal seam gas resources exist in the coal basins of Queensland and New South Wales, with further potential resources in South Australia. The largest reserves of coal seam gas are in Queensland's Surat and Bowen basins.

Coal seam gas economic demonstrated resource values are now approximately one-third of the conventional gas economic demonstrated resource values. However, the total identified resources for coal seam gas are significantly larger than the economic demonstrated resources and now surpass estimates of total identified conventional gas. The potential in-ground coal seam gas resource is more than double the economic demonstrated resource value.

Australia's identified coal seam gas reserves have grown substantially in recent years. As at January 2012 the economic demonstrated resource value of coal seam gas in Australia was 35,905 petajoules. In 2011 coal seam gas accounted for about 24 per cent of the total gas economic demonstrated resource value in Australia. Queensland has 33,001 petajoules (92 per cent) of the reserves, with the remaining 2,904 petajoules in New South Wales. Most current reserves are

contained in the Surat (69 per cent) and Bowen (23 per cent) basins with small amounts in the Clarence–Moreton (1 per cent), Gunnedah (4 per cent), Gloucester and Sydney basins (GA & BREE 2012).

Over the past five to 10 years, coal seam gas exploration has increased substantially in Queensland and New South Wales as a result of successful development of coal seam gas production in Queensland. These successes have also stimulated exploration for coal seam gas in South Australia, Tasmania, Victoria and Western Australia. Nonetheless, coal seam gas exploration in Australia as a whole is still relatively immature. The current high levels of exploration have significantly increased known resources: in mid-2011 proved and probable reserves were more than three times higher than they were in mid-2008.

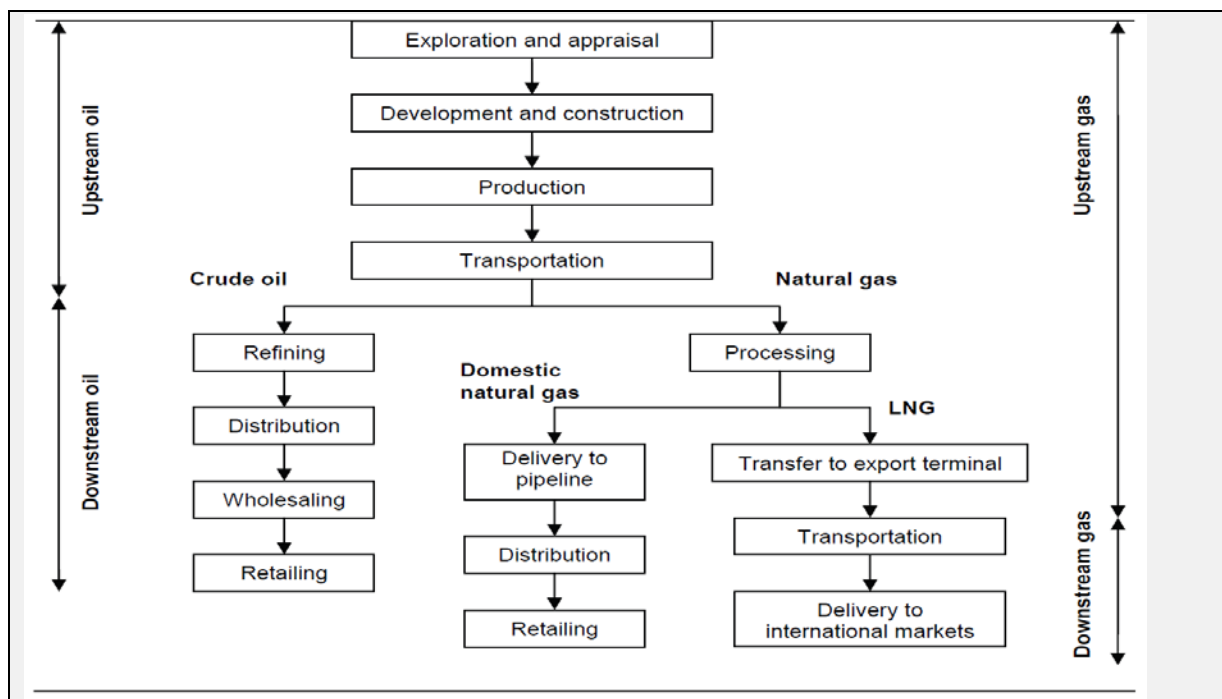
The search for coal seam gas, tight gas and shale gas is restricted to onshore basins; target depths range from a few hundred metres to about 1,200 metres for coal seam gas and down to depths of 4,000 metre or greater for tight and shale gas.

Upstream and downstream

The oil and gas supply chains in Australia contain a number of distinct stages. This is important in terms of understanding which segments of the sector are involved in resource production (upon which taxes and royalties are ordinarily payable, as distinct from exploration or other processing activities which do not attract such taxes and royalties) and would therefore be covered by any EITI reporting.

The upstream sector encompasses exploration and appraisal, development and construction and production. Downstream activities usually comprise refining, distributing, wholesaling and retailing. For natural gas (including LNG), upstream includes processing and delivery to export terminals or to domestic gas transmission pipeline intake (Figure 5).

Figure 5: Stylised supply chain for oil and natural gas in Australia



Source: Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* (Chapter 2), Productivity Commission, Canberra.

Australia's global leadership in supporting emerging resource-based economies

A number of countries provide financial support to the EITI, including Australia, the United States, the United Kingdom and France. Australia is one of the longest and largest supporters of the EITI, committing \$18.45 million towards the initiative between 2006 and 2015, and actively participates in Board discussions.

The Australian Government, in partnership with industry and state and territory governments, has sought to position Australia as a leader in responsible minerals development. This is evidenced by:

- Australia's Mining for Development (M4D) Initiative, launched in 2011 to help resource rich developing countries use their resource wealth to reduce poverty and ultimately their dependence on aid. Bilateral assistance has been provided to Papua New Guinea, Indonesia, Burma, Mongolia and Afghanistan. Targeted assistance has also been provided in Africa and Latin America.
- The Department of Industry manages the Leading Practice Sustainable Development in Mining Program, which draws on leading industry practice in addressing key sustainable development issues.

Developing the Pilot

Australia undertook the Pilot of the EITI in recognition of the global transparency agenda. It provided an opportunity to test the strength and transparency of Australia's existing revenue systems and governance arrangements, and the compatibility of these with EITI principles. The Pilot will enable Australia to participate in global debate on extractives industry transparency, including the potential to develop a global reporting standard.

Pilot design

Development and design of Australia's Pilot evolved significantly since its initial conception, being shaped by the specific circumstances of the Australian system and through the considered expertise of Australia's MSG.

An early issue for the MSG was to establish a clear and common understanding of the Pilot's objectives, design and scope. Understandably, the MSG membership and its three constituencies had varied expectations of Pilot deliverables, costs and benefits. As the MSG gained a better collective understanding of the extractive industry and revenue and governance arrangements in an Australian context, the Pilot evolved. It moved away from seeking to provide a reconciled statement of all material industry and government payments and receipts, to focus on identifying gaps in existing revenue reporting and governance arrangements, supported by sampling of payments and receipts. While the MSG adopted this approach to the Pilot, some members would have preferred the dual reporting approach, acknowledging concomitant practical limitations.

Other limitations and parameters of the Pilot included:

- Australia can only provide its experiences in establishing and delivering the Pilot, which does not fall within the jurisdiction of the EITI Board or its criteria.
- The Pilot constitutes a scoping exercise that limits the number of companies involved, with a focus on validating and determining any gaps in existing revenue and governance arrangements, supported by reconciliation of a limited sample of payments and receipts, rather than reconciliation of all material payments and receipts.
- The sample component of the Pilot included eight reporting companies. However, if Australia implemented the EITI it would need to expand the sample to apply to a population of about 4,500 extractive companies operating in Australia, as measured by the ATO (2013a).

- The limited scope of payments and reporting requirements involved, which does not allow for extrapolation of the economic contribution of the whole industry.
- Limited Indigenous engagement in the Pilot.
- The Pilot did not include all state and territory governments; three states (Queensland, Tasmania and South Australia) agreed to participate. States and territories are responsible for mining and petroleum (ordinarily onshore) royalties.

EITI in the Australian context and systems analysis

Applying the EITI in Australia needs to be considered in the context of its large and diverse extractives sector and its complex tax, royalties and governance systems and arrangements. Importantly, any future application of the EITI should provide reference to Pilot results, which have found that Australia's revenue reporting and governance systems and arrangements are robust, while noting that certain areas of complexity and opportunity for improvement are now better understood.

Comprehensive laws and regulations are applicable to governments and corporations and their activities in Australia. A strong institutional and governance framework is also subject to internal and external controls and review, supplemented by voluntary industry reporting.

The Administrator's report provides more information on Australia's governance framework.

Model adopted in the Pilot

An important consideration in developing the Pilot was the best approach to test EITI principles in the Australian context. The participating state governments provided an alternative model for the Pilot that after some modification the MSG adopted. The alternative model recognises that Australia is a relatively large and multi-jurisdictional country, which has established data collection and reporting mechanisms for the extractive industries and robust governance and compliance arrangements to support these mechanisms.

The alternative model builds on these existing and proposed mechanisms and arrangements. Initially this involved a 'systems analysis' of relevant government revenue datasets and reporting mechanisms. Governance and compliance arrangements supporting such mechanisms were also analysed. For example, in respect to royalty revenue, the Administrator identified and collated the sources and basis of published royalty revenue data from participating jurisdictions. Details of each participating jurisdiction's governance and compliance arrangements were collated to determine the mechanisms used to obtain and verify revenue data. The analysis of governance frameworks sought to identify any material deficiencies in existing mechanisms and arrangements in comparison with EITI requirements.

This alternative model was proposed to illustrate that focusing the Pilot on data collection and reconciliation alone does not provide a complete picture of established financial and governance frameworks in Australia that support transparency and accountability. Any decision on EITI implementation should take existing arrangements into account. The alternative model proposes that examination of current systems and focus on gaps and/or opportunities for enhanced transparency is most appropriate in an Australian context. This analysis has been undertaken alongside data sampling and reconciliation to verify such analysis. The expectation is that recognising existing systems and arrangements will provide a better examination of the costs and benefits of full EITI implementation.

While initially considered supplementary to the Pilot's data reconciliation requirements, the 'systems analysis' evolved to be the primary element of the Pilot's methodology, providing opportunity to consider Australia's circumstances by highlighting the components of its established and often complex industry, revenue and regulatory environment. This complexity was recognised in MSG working groups and broader discussions, and underlies the premise of this report.

The report reflects a balanced and informed analysis of the impacts of EITI candidature (costs and benefits), moving beyond a focus on data capture alone to consider a broader narrative around the size and complexity of the sector, existing revenue reporting, governance and disclosure mechanisms for (all) material revenues and payments; and value and effectiveness that EITI principles could add to existing arrangements and systems.

On 22 May 2013 (during the course of the Pilot) the international EITI Board adopted a revised EITI Standard, which involved significant amendment to existing rules. Due to the timing of these changes relative to the advanced stage of the Pilot, the MSG decided to complete the Pilot under the previous Standard and Rules. Accordingly, this report does not consider the extent to which the Pilot would comply with the new EITI Standard. However, it should be noted that the adapted implementation arrangements of the new EITI Standard were substantially informed by the Australian experience in conducting a Pilot of the EITI in a country with three tiers of government, a highly diversified minerals industry and an existing robust regime for tax disclosure by government.

Australian EITI Reporting and Reconciliation Model

In conducting the Pilot the MSG agreed on and applied an alternative reporting model that suited Australian conditions. The model recognised the strength of Australia's existing federal and state government and corporate governance structures. It sought to build on these processes, rather than duplicate them, so as to ensure the Pilot was cost effective in its delivery.

The MSG recognised that the Australian Government and state and territory governments would not consider implementing the EITI in Australia without a clear understanding of the likely costs and benefits and the impact on government agencies and policies, and on participating companies.

In response, members developed a reporting model that builds on an administrative and reporting mechanism established during the Pilot. The MSG sought to take an approach that balanced the administrative burden and costs with reconciliation of an appropriate sample of participating companies. The MSG considered it important to find a balance between the number of reporting entities and the level of reconciliation of the revenue types to be collected. A sampling approach provided this coverage, if a suitable number of companies participated in the process.

The MSG developed a reporting mechanism aimed at providing:

- clarity to participating companies of the financial information (revenues and payments types) they would be required to provide annually, and which would be established in the first year of operation
- a statistically sound model that would sample the financial information against a known and definable methodology and criteria, and would minimise the level of corresponding data required from participating governments
- clarity in the range of annual costs participating companies and governments would incur
- joint-venture operations that would be able to secure agreement from all partners, once.

The new Australian EITI Reporting and Reconciliation model proposes a two-stage approach to reporting by participating companies and governments. It allows for both disaggregated data to be reconciled by the Administrator (based on a statistical sampling approach), and aggregated financial data (that puts company–government revenues and payments into context) to be publicly released.

The model and key assumptions are shown in Figure 6. An analytical description of how the new model can be applied is also outlined here.

The Administrator costed the model in its Administrator's Report. Scenario 3 sought to balance the Administrator's statistical sampling, data collection and reconciliation costs.

The MSG considers this model is in the spirit of the new EITI standard in supporting transparency in a cost effective and practical way that does not require duplication of existing reporting mechanisms. Its practicality and cost effectiveness has been tested with industry.

While the MSG recommends the model, the MSG recognises that if governments agree to implement the EITI in Australia, a new MSG will be established to oversee implementation and may define materiality and a reporting framework differently. However, members expect the model to guide the final mechanism that would be established.

EITI for Australia

The MSG is recommending a preferred model for implementing the EITI in Australia (Figure 6).

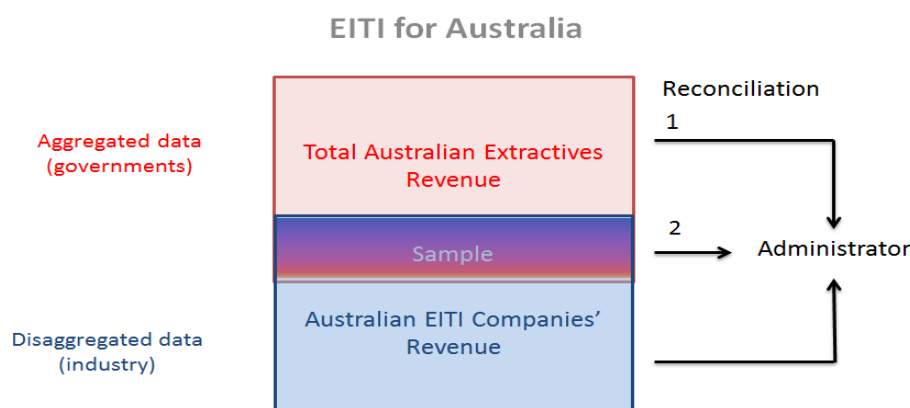
Step 1

1. Each year participating EITI companies/entities report their **disaggregated** tax payments to the Administrator, and governments report their **aggregate** tax receipts, from the extractives sector, to the Administrator.
2. The Administrator consolidates these two returns, and confirms and reports the aggregated value for the taxes reported (and the level of variance, noting the limited number of companies reporting).

Step 2

1. Using the **disaggregated** tax payments (previously reported to the Administrator), each year the Administrator takes a sample of tax payments for the participating companies (a statistically significant number) and requests the corresponding tax receipts from government (either in total by both reporting companies and government bodies or all reporting companies and a statistical sample provided by government bodies; that is, two slightly different scenarios) for EITI reconciliation. The Administrator selects the companies, and may resample.
2. For the sampled tax payments, governments report **disaggregated** tax receipts to the Administrator.
3. The Administrator reconciles the payments and receipts, seeks clarification where appropriate, and reports its findings at an aggregated level.

Figure 6: Voluntary EITI model proposed for Australia



Assumptions

- Voluntary participation by governments and companies, with strong industry support that would allow coverage of all material payments.
- Total Australian extractives revenue includes federal, state and territory figures.
- The Administrator would request corresponding disaggregated data from relevant governments to ensure sound reconciliation.
- The focus of the sample for specific payment reconciliation would change each year, but the reporting burden on companies would remain the same (that is, internal reporting systems would be established in the first year to produce the same types of information each year).
- Government will set an aspirational target to be reached for EITI companies' revenue (for example, participating companies represent 90 per cent of total extractives revenue).

Each year government may report whether the EITI has reached this target; if it improved on the previous year, any steps taken to improve reporting and the names of participating companies.

Applying the Australian EITI Reporting and Reconciliation Model

Each year there are two parts to the EITI story. The first part is about telling how much the Australian and participating state and territory governments receive in revenue from entities that classify themselves as operating in the mining, oil and gas sectors (collectively the extractives sector) in Australia. The second part is about how the Administrator tests a sample of payments made by these entities to ensure their figures reconcile with government receipts; and if they do not, to identify the reason.

In the first part of the model:

- Each year participating extractive sector entities would report to the Administrator their material payments. They would set up their systems in the first reporting year so that each year thereafter the relevant data would be automatically captured and forwarded to the Administrator in a way that should minimise overall costs to the entity. The data would come to the Administrator in a disaggregated form from each entity and for each material revenue type.
- In the corresponding year (allowing for when the collected financial data records are available) the Australian and state and territory governments would report their total receipts from the extractive sector to the Administrator, at the aggregate level.

- The Administrator would then assess this information and report the aggregate financial return to Australia from the extractive sector (for example, reporting \$13.4 billion for 2012–13) and the aggregate value of the returns from the entities that reported (for example, \$12 billion for 2012–13).

Note: This information is in part about putting the value of the Australian extractive sector into context and could form part of the overall discussion on this sector in Australia. It is also about highlighting the aggregate 'material' revenues participating entities paid to Australian governments. Using the numbers above it is expected that the second number would be smaller than the first number reported: if the total revenue that government reports receiving from the whole extractive sector is \$13.4 billion, yet the total value of revenues reported by say 50 entities is \$13.4 billion (or greater) then by deduction the remaining 4,500 companies (as identified by the ATO in its Taxation Statistics report under the ANZSIC 'mining' classification) in Australia either pay no revenues or government is not collecting, assessing and reporting these correctly.

In the second part of the model:

- Using the disaggregated information the reporting companies provided to the Administrator as outlined in the first part of the model, the Administrator (with MSG approval) would determine a sample of payments to be reconciled using an appropriate statistically acceptable sampling methodology. The MSG would agree the inputs into the sampling methodology before implementation.
- The Administrator would request the relevant corresponding data from the federal, state and territory governments for the entities selected through the sampling methodology. (To comply with privacy constraints and legislation governing release of taxpayer information, the ATO and state and territory government agencies would report in a similar manner to the password protected reporting arrangement used during the Pilot, with companies requesting their financial information from these agencies.) The Administrator would then fully reconcile this data to identify any errors, and seek clarification with the entities and government agencies.
- Finally the Administrator would report the variance rate and their view on whether any variance is significant from a statistical perspective. If there were a significant variance the Administrator would advise the MSG of any further work that may be needed. For the Pilot, the Administrator identified a 0.03 per cent variance in the revenues (\$4 million from \$12.84 billion in revenues sampled).

In accordance with the MSG work plan a public report would be produced that is acceptable to the EITI Board.

The assumption here is that Australia has rigorous and multi-tiered governance structures in place (as examined in the MSG Report to Government and the Administrator's report), and that these already ensure transparency. This is complemented by ASX reports and respected auditor reports on company accounts; while Treasury and relevant audit offices examine government accounts.

The Australian EITI Reporting and Reconciliation Model would be applied to the revenues and payments that the MSG considered material during the Pilot. The revenues for this model consist of company tax, PRRT, North West Shelf Royalty and Excise, Northern Territory Uranium Royalty and state royalties.

The entities likely to be sampled annually are multinational companies with many locations, significant size and revenue impact for Australian governments. Other reporting companies will drop in and out of yearly assessment and will not know if or when they will be sampled or for what payments they will

be sampled (for instance they could be sampled for PRRT this year and company tax and Queensland royalties next year).

The MSG expects that an increasing number of entities would report each year. In the first year it could be that the entities are drawn from existing EITI corporate stakeholders (around 21 have operations in Australia), including members of the Minerals Council of Australia (either all or some) who are likely to be those entities with an annual turnover of \$100 million or more. In the next year the number of reporting companies may increase to 50. The year after the number of reporting companies may increase to 75, and so on.

Companies that do not have an annual turnover of \$100 million or greater but still wish to report would be encouraged to do so.

The aspirational goal is that enough companies to represent 90 to 95 per cent of material revenues report each year, against which the Administrator would continue to run its statistical sampling model.

Chapter 4 – Regulation and taxation of Australia's extractive industries

Highlights

- Australia has three levels of government – federal, state and territory, and local.
- The Australian Government (federal level) owns the mineral and petroleum resources found outside the first three nautical miles of the territorial waters.
- The states and territories have jurisdiction for resources within their boundaries, including inside the first three nautical miles of the territorial waters.
- The Australian Constitution allows the Commonwealth to enact laws implementing taxation and impose duties of customs and of excise. For example, the Petroleum Resource Rent Tax and the North West Shelf Petroleum Excise.
- The states and territories, each with its own royalty arrangements and legislation, collect royalties on mineral production. Royalty systems and rates vary between states and mineral commodities.

Relationship between federal and state and territory regimes

Australia's federal system of government has three levels – the Australian Government (that is, federal), six state governments and two territory governments and local governments. According to Australian law, mineral and petroleum (which includes both oil and gas) resources are owned either by the Australian Government or by the state and territory governments. Australian governments do not undertake any commercial exploration and development of these resources, but instead regulate the private sector's activities.

Australian Government involvement

The Australian Government's jurisdictional involvement is mainly limited to resources found outside territorial waters ('offshore'), with the exception of uranium mining in the Northern Territory.

The Australian Government is also able to exercise control through its Constitutional power, when there is an environmental impact of national significance, over mining, exports, trading corporations and external affairs.

In relation to the minerals and petroleum sectors (and broader economy), the Australian Government is responsible for:

- establishing the macro-economic environment and setting national policy, including fiscal, monetary and taxation policy, foreign investment guidelines, immigration, competition policy, trade and customs, company law, international agreements and native title
- looking for ways to remove or reduce impediments to industry competitiveness
- reducing commercial risk in exploration by generating and disseminating geoscientific information at reasonable cost
- providing a regulatory framework for exploration, development, project approval, safety and environmental assessment.

Where appropriate, the Australian Government coordinates with state and territory governments to streamline regulation or achieve common objectives across the jurisdictions.

State and territory government involvement

The states and territories have jurisdiction and responsibility for resources found within their boundaries, including inside the first three nautical miles of the territorial waters ('onshore'), and are responsible for day-to-day administration. They manage and allocate mineral and petroleum property rights, have primary responsibility for land administration, regulate operations and collect royalties on the minerals produced.

The states and territories are responsible for regulating much of the environmental and health and safety activities of mining.

States and territories facilitate access to land and resources in accordance with relevant legislation and government policy concerning native title, Aboriginal heritage and land access planning for exploration, mining and development.

Where issues require national involvement, the states and territories work with the Australian Government to coordinate administration and avoid duplication. For example, if mining might affect an area of national environmental significance the Australian Government's power is limited to this area, with other environmental issues the responsibility of the state or territory.

Local government involvement

Local governments are not recognised in the Constitution. They are established by state and territory governments to delegate responsibility for a number of community services, including waste management, town planning, building approvals and inspections, local roads, collection of rates, and land and coast care programs. Local governments have a legislature and an executive but no judiciary; the state or territory government that established them defines their powers.

Regulation of extractive industries

Offshore

Offshore petroleum legislation and regulatory arrangements

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth) (OPGGS Act) and associated regulations govern offshore petroleum activities beyond designated state and territory coastal waters. The legislation provides for orderly exploration for, and recovery of, offshore petroleum resources. It sets out a basic framework of rights, entitlements and responsibilities of governments and industry.

The Commonwealth and relevant state and the Northern Territory governments jointly administer the regulatory regime for offshore petroleum exploration in Commonwealth waters through a Joint Authority arrangement. The National Offshore Petroleum Titles Administrator (NOPTA) and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) perform regulatory functions related to offshore petroleum activities under the jurisdiction of a Joint Authority. NOPTA and NOPSEMA operate on a full cost recovery basis; cost recovery is accomplished through a system of fees and levies on title holders/duty holders.

Joint Authority

The Joint Authority for each state and the Northern Territory comprises the responsible Commonwealth minister and the responsible state and Northern Territory minister. Joint Authorities make major policy decisions under the OPGGS Act concerning granting petroleum titles, imposing title conditions and cancelling titles, as well as core decisions about resource management and resource security. Other key functions and powers of the Joint Authority include releasing offshore petroleum exploration areas and assessing bids for these areas.

National Offshore Petroleum Titles Administrator

NOPTA is responsible for day-to-day administration of petroleum titles, including exploration permits, in all offshore areas. NOPTA acts as a single point of contact for all matters relating to offshore titles administration in Australian waters. Key functions include:

- providing information, assessments, analysis, reports and advice to members of the Offshore Petroleum Joint Authorities
- managing collection, administration and release of data
- facilitating life of title administration, including Joint Authority consideration of changes to permit conditions, and approval and registration of transfers and dealings associated with offshore petroleum permits
- maintaining registers of petroleum and greenhouse gas storage titles in accordance with legislation.

National Offshore Petroleum Safety and Environmental Management Authority

NOPSEMA has regulatory responsibility under the OPGGS Act for occupational health and safety, structural integrity of facilities, wells and well-related equipment, environmental management and day-to-day operations of offshore petroleum facilities in Commonwealth waters; and in coastal waters where state and Northern Territory powers have been conferred. All petroleum operations require specific approvals from NOPSEMA before the activity commences (for example, acceptance of an environment plan), and may also require further environmental approval under the *Environment Protection and Biodiversity Conservation Act 1999*.

Offshore environment management

Under the OPGGS Environment Regulations, titleholders must have an Environment Plan accepted by NOPSEMA prior to commencement of a petroleum activity. The Environment Plan must detail environmental impacts and risks for the activity, and demonstrate that those risks are reduced to as low as reasonably practicable, and that there will be acceptable environmental outcomes. The Environment Plan must also contain an Oil Spill Contingency Plan. Under the OPGGS Act, titleholders must also hold adequate insurance to cover the costs of response and remediation in the event of an incident involving hydrocarbon release.

Additional Commonwealth legislation relevant to environmental management of offshore petroleum exploration and development activities includes:

- *Environment Protection and Biodiversity Conservation Act 1999*
- *Environment Protection (Sea Dumping) Act 1981*
- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
- *Historic Shipwrecks Act 1976*.

Under the *Environment Protection and Biodiversity Conservation Act 1999*, any action likely to have a significant impact on a matter of national environmental significance needs to be considered for environmental assessment and approval by the Australian Government.

The department maintains an [electronic compendium](#) of all current legislation, regulations and guidelines governing the offshore petroleum industry.

Offshore minerals exploration and mining legislation

The *Offshore Minerals Act 1994 (Cwlth)* provides the statutory framework for the exploration for, and the production of, minerals other than petroleum in the area that is under Australian Government jurisdiction; that is, the area beyond the coastal waters of the states and the Northern Territory to the outer limits of Australia's continental shelf.

The authorisations the *Offshore Minerals Act 1994* establishes are:

- exploration licences
- retention licences
- mining licences
- works licences
- special purpose consents.

The Australian Government, and the state and Northern Territory governments jointly administer the *Offshore Minerals Act 1994*. Two regulatory entities – the Designated Authority and the Joint Authority – administer the Act. Each state and the Northern Territory have a separate Designated Authority and Joint Authority.

All applicants and licence holders deal directly with the relevant Designated Authority for all matters involving day-to-day administration of Commonwealth legislation. The Joint Authority for the offshore area of each external territory is the responsible Commonwealth Minister. The Joint Authority makes major decisions relating to licences, such as grant and refusal, and the Designated Authority carries out those decisions. In the event of a disagreement between the Commonwealth and state or territory members of the Joint Authority, the decision of the Commonwealth Minister prevails.

State and Northern Territory legislation governing offshore mineral resources

The states and the Northern Territory are developing respective complementary offshore minerals legislation using the *Offshore Minerals Act 1994* as a model, in accordance with states and the Northern Territory legislative priorities. This legislation will apply to the mineral resources of the seabed within the first three nautical miles of territorial waters.

Onshore

Individual state regimes are discussed in Appendix 2.

Onshore mineral exploration and mining

Onshore mineral exploration and mining in Australia's states and the Northern Territory are administered by an agency of the state or territory government in the jurisdiction. While all states and the Northern Territory have their own laws governing mineral activities, they are similar in content and administration. In Australia, the three basic stages to developing a mine are:

- initial exploration
- further detailed exploration and assessment (possibly under a retention licence)
- mining.

Each state and the Northern Territory have requirements relating to closing and rehabilitating a mine site on completion of mining. Information about reporting requirements attached to exploration licences and current tenements is available at:

- [New South Wales](#)
- [Victoria](#)
- [Queensland](#)
- [South Australia](#)
- [Western Australia](#)
- [Tasmania](#)
- [Northern Territory](#).

Taxation and revenue systems within the extractive industries

Specific powers under the Australian Constitution

The Australian Constitution delineates the powers of the Australian Government and state and territory governments with respect to taxation and revenue. Section 51 of the Australian Constitution defines around 40 'nationhood' Commonwealth powers, and while in some cases these powers operate concurrently with state powers, under section 109 of the Constitution, Commonwealth law prevails in circumstances of inconsistency.

Section 51(ii) allows the Commonwealth to enact laws implementing taxation, but not to discriminate between states or parts of states, and subject to the Constitution. Further, section 90 gives the Commonwealth exclusive power (as opposed to concurrent with the states) to impose duties of customs and of excise. Any state taxing law on this power will be unconstitutional.

As such, the Commonwealth collects:

- company and income tax for all companies operating in Australia, including extractive industries
- resource taxes, such as the MRRT and the PRRT
- excises and royalties from extraction of petroleum outside state and territory jurisdictional waters, but within Australia's territorial waters, such as crude oil excise and a royalty on the North West Shelf (revenue from excise and royalties on extraction is small compared with revenue from excise on petroleum products, which relate to downstream operations and is not in scope for the EITI).
- royalties on uranium mining in the Northern Territory.

Revenue collected goes into consolidated revenue and is not directly linked to a return to the communities where the mining occurred.

Petroleum taxation reflects the constitutional division of responsibility between the Commonwealth and the states. Offshore projects are located outside the three nautical mile boundary and so fall within Commonwealth jurisdiction. Offshore projects incur either the PRRT or crude oil excise and royalties. The PRRT applies to offshore projects (principally Bass Strait) except the North West Shelf. However, from 1 July 2012, the PRRT became a compulsory tax applied to all Australian onshore and offshore oil and gas projects, including the North West Shelf, oil shale and coal seam gas projects. The Commonwealth levies crude oil excise and a royalty on the North West Shelf; it shares the royalty with Western Australia.

Coastal water projects lie between the low tide watermark and the three nautical mile boundary; they are subject to the crude oil excise and state royalties, which the state shares with the Commonwealth. Onshore projects are land-based and are subject to the crude oil excise and state royalties.

The Commonwealth generally does not receive royalties from onshore projects because mineral rights are vested in the states. But under the Offshore Constitutional Settlement, the Commonwealth receives four percentage points of the royalty revenue Western Australia receives from a number of developments located in coastal waters.

State mining royalties – onshore

Royalties on mineral production (as opposed to taxation of company income) are collected by the states and territory, each with its own [royalty arrangements and legislation](#). Royalty systems and rates vary between states and mineral commodities. The systems can be any one of the following:

- a specific rate royalty (a fixed dollar amount per unit of mass; for example, per tonne)
- an ad valorem royalty, a fixed percentage of the value of production
- a profit-related royalty (also referred to as a resource rent tax), or
- a hybrid royalty with a flat ad valorem combined with a profit component.

Typical royalty rates encompass a range:

- for minerals – 1.5 to 7.5 per cent ad valorem or up to 22.5 per cent of profits, subject to certain concessions
- for coal – 2.5 to 10 per cent ad valorem, up to 20 per cent of profits, or fixed royalty varying widely from \$0.04 to \$2.34 a tonne
- for industrial minerals – \$0.10 cents to \$1 per tonne, or 2.75 per cent of value.

Overall, Australia does not provide any preferential tax arrangements to individual mining companies; all companies are subject to the same fiscal arrangements as they apply in each state and territory jurisdiction. However, in some cases, state royalty regimes may be varied for individual projects (or consortia) through negotiation of State Agreement Acts. These Acts contain specific royalty clauses or simply refer to the state's Mining Act royalty sections or clauses.

Different resource taxes, royalties and payment arrangements apply across a number of resource commodities. Most jurisdictions apply production-based rather than profit-based royalty regimes. Royalties are generally levied at the 'mine mouth' or on a 'free-on-board' basis.

Profit-related royalty regimes also vary across state and territory jurisdictions and the minerals extracted. Where profit-based royalties do apply, they may incorporate elements of both ad valorem and profits-based regimes.

Royalty systems are project-based and profit is calculated by deducting allowable project costs from all project revenues. Project costs may include:

- operating costs
- depreciation on project capital assets
- inventory adjustments
- interest on borrowings
- pre-development and exploration costs.

A number of differences exist between jurisdictions with regard to allowable deductions for mining tenement holders for royalty calculation purposes.

Royalties are different from taxation of company income and are a deduction for company income tax purposes. Royalties collected go into consolidated revenue and are not directly linked to a return to the communities where the mining occurred.

State mineral royalties – offshore

The Australian and state governments have adopted a common mining code for all offshore minerals and agreed arrangements for sharing offshore minerals royalties 60:40 in favour of the states. The *Offshore Minerals Act 1994* provides that 60 per cent of royalty revenue is to be paid to the relevant adjacent states or Northern Territory. The states and Northern Territory include in their legislation a provision to share with the Commonwealth 40 per cent of their respective offshore minerals royalties.

Chapter 5 – Functions of the Multi-Stakeholder Group

Highlights

- A systems analysis approach was a fundamental principle in undertaking the Pilot. It examines current governance and reporting arrangements and focuses on highlighting gaps where transparency and accountability could be improved.
- To test the EITI reconciliation in Australia the Pilot sampled eight companies ranging in size, commodities and operating across Australia's jurisdictions.
- In keeping aligned with EITI principles it was the intention of Australia's MSG to operate on a consensus basis; however, the Terms of Reference allowed for protocols should consensus be unachievable.
- Key deliverables for the MSG included the narrative on the six Pilot payments, a cost–benefit analysis and data reconciliation. This was supported by reconciled figures from the Administrator (Deloitte Touche Tohmatsu) and findings from the Evaluator (the University of Queensland).

Scope of the Pilot

Australia's Pilot to test EITI principles in the domestic context has two important distinctions from the implementation and candidacy requirements of the International EITI.

First, the Pilot is neither bound by the operation of the international EITI nor does it come under the jurisdiction of the EITI Board; however, a commitment was made to adhere, as much as possible, to the EITI principles and criteria. After the Pilot commenced, a new EITI Standard was launched which altered the previous rules. The MSG agreed that it would continue to administer the Pilot according to the previous rules but with consideration of the new standard in its final recommendation to government.

Second, Australia can only outline its experiences in establishing and delivering the Pilot. The Pilot constitutes a scoping exercise that limits the number of companies, revenues and payments and the reporting requirements involved, and to some extent, focused more on the story or issues around payments and Australia's governance arrangements, than on reconciliation of figures. Should Australia decide to move to EITI candidacy, it is expected that the methodology, approach and reporting could be significantly different; as informed by the findings of the Pilot, experiences and lessons learned and decisions by a newly formed MSG. For example, the Pilot had only eight reporting companies. Should implementation be sought significantly more reporting entities would be involved as there are about 4,500 extractive industry companies operating in Australia, ranging from multinational to small or exploration companies. Similarly, agreement on materiality and reporting would not be limited by what was included in the Pilot.

Establishment and representation

The Department of Industry (previously the Department of Resources, Energy and Tourism) the Minerals Council of Australia and civil society – particularly Transparency International Australia and Oxfam – pursued a proposal to undertake the Pilot. As part of the Australian Government's consideration of whether to undertake a Pilot, a series of inter-departmental committee meetings was held to develop an Australian Government approach, and an engagement plan for a multi-stakeholder group. Initially, the inter-departmental committee considered a 5/5/5 model representing government, industry and civil society, with the government constituency representing both Commonwealth and three to four state and territory governments. This model was later changed to a 7/7/7 split in

membership. It was also proposed that the Pilot sample between seven and nine companies ranging in size and commodities and operating across Australia's jurisdictions, to test the EITI model in an Australian context and examine the costs and benefits of moving to full implementation.

On 27 October 2011, as part of the Commonwealth Heads of Government Meeting, the Australian Government announced that:

Australia will assess the transparency of its financial reporting arrangements for the resources sector against EITI principles, considered a global benchmark for natural resource revenue management. Commencing on 1 July 2012, the \$500,000 EITI pilot will be funded by the Department of Resources, Energy and Tourism and will be overseen by a steering committee of federal and state government representatives, industry and non-government organisations.

Around this time, broader consultations with state and territory governments, industry and civil society on their involvement and representation commenced. In some cases (Transparency International Australia and Oxfam) discussions were already well under way. Recognising the independent nature of the Pilot and in consideration of EITI principles, each constituency group self-nominated to participate. The Minerals Council of Australia and the Australian Petroleum Production and Exploration Association coordinated industry participation; Transparency International Australia coordinated civil society participation; and the Department of Industry engaged Commonwealth agencies and the states and territories.

As a result of this approach to the Pilot, peak industry bodies and a mix of mining, oil and gas companies ranging in size from multinational companies to small operations represented industry. Indigenous peoples, a union representative and non-government organisations with expertise in corporate accountability, community engagement and social justice and corruption and transparency represented civil society.

The Department of Foreign Affairs and Trade, Treasury, the ATO, the Department of Industry and the states represented government; the Department of the Prime Minister and Cabinet participated as an observer. Queensland, Tasmania and South Australia were participating states, and Western Australia operated and attended as an observer. The Department of Industry provided the Chair of the MSG, which as agreed at initial stakeholder meetings would be a non-voting position. The department also held a voting seat (a separate officer to the Chair). In addition to the official MSG members, observers attended and participated in discussions reflecting the value and expertise they could contribute (but were unable to vote). A [list of representatives](#) is at the end of this chapter.

Decision-making arrangements

During development of the Pilot, the MSG established sub-groups to advise the broader MSG on specific components of its work program. It was recognised that a consensus-based decision-making arrangement would be desirable in achieving an efficient and operational MSG; however, given the tripartite nature of the group this may not always be possible.

In keeping with the open arrangements to which the Pilot aspired and applying the robust EITI methodology and Rules, the MSG agreed that Terms of Reference crafted with guidance from the International EITI Secretariat would govern the Pilot. Importantly, the MSG intended to operate on a consensus basis to support the spirit of collaboration, as advocated by the Terms of Reference for the MSG to guide the operation of the Pilot were developed as one of the first initiatives of the Pilot and agreed by the MSG membership.

In mid-2012 the MSG operated successfully under its initial Terms of Reference throughout the early phase of the Pilot; however as more conflicted issues arose (such as the carbon price and fuel tax credits), it became apparent that the Terms of Reference would benefit from review. During discussions on potential revenues and payments to include in the Pilot, it became apparent that

individual members were interpreting wording in the Terms of Reference around voting rules differently.

The Terms of Reference recognised:

- the role of the Pilot
- the guidance provided by the three constituencies
- the established the role and membership of the MSG (including voting parameters).

Included in this role was defining the scope of the Pilot and the materiality of payment types, drawing on expert advice from member and observer organisations.

To provide greater clarity and confidence in decisions, a Terms of Reference Sub-group was formed to revise existing voting arrangements and advise the MSG on a better approach. The group brought recommendations to the September 2012 meeting where they were unanimously accepted. The revised Terms of Reference provided greater clarity of decision-making process, and emphasised consensus largely reflected in a hierarchical voting protocol that activates if every effort to build consensus is not achieved. The MSG recognised that consensus was an important aspect for the Australian Pilot and transparent voting.

The Pilot evolved during its establishment as participants provided their insights on the operation of Australia's revenue collection and payments distribution systems. This was evident in the use of case studies to support the Pilot, and in the shift to systems analysis rather than a gap analysis.

The new arrangement emphasised a preference to achieve general agreement on all decisions, but when this could not be reached a formal vote was taken at the discretion of the Chair and voting rules were applied in the following order:

- **Consensus:** The Chair sought to achieve consensus for all decisions. If this was not achieved, modified consensus was sought.
- **Modified consensus:** Consisted of a two-thirds or greater majority of exercised votes (that is, minus abstentions) and included a minimum of two representatives from each constituency. If this was not achieved, a working group was formed comprising equal representation from each constituency, to discuss and negotiate a recommendation to proceed to the MSG. This may occur at the meeting; post meeting (with the intention to provide a recommendation by the next MSG meeting); or be considered out-of-session. Once the sub-group provided its recommendation, the MSG sought to make a decision based on consensus or modified consensus.
- **Simple majority:** If modified consensus was still not achieved, the motion was passed by simple majority (that is, greater than 50 per cent) in favour. Decisions made by simple majority were identified in the minutes as such, with recognition that simple majority decision-making was the least desirable and lowest grade of decision, reflecting substantial dissent by MSG members.

Another important change was introduction of a better-defined proxy arrangement. The revisions comprised a system where all 21 votes would be counted for each motion. Where a member was unable to attend a meeting, that member would appoint another person to act as proxy at that meeting, and advise the Secretariat of the appointment in advance of the meeting. Conditions were made that no person (except the Chair) could hold more than two proxy votes for MSG members at a time. In exceptional circumstances and at the Chair's discretion, when no advice on a proxy was given and a member was absent from a meeting, the proxy defaulted to the Chair. If the Chair held a significant number of unallocated proxies they had discretion to decide if votes were to be ratified out-of-session.

While defining a workable voting arrangement was a significant process for the MSG, other methods of reaching consensus and compromise evolved during the Pilot's development, such as inclusion of the case studies and narrative.

Sample of Pilot coverage

Case studies became a valuable part of the Pilot as a means of exploring payments, or to further investigate issues to inform MSG decisions. For example, to overcome the time lag before data from the current financial (2012–13) year could be made available, the MSG decided to shift the reporting period to be covered to the previous year (2011–12) to ensure sufficient historical data for more efficient collection and reconciliation. This data had excluded both the MRRT and the carbon price. The decision was made following lengthy debate and when the reporting period had been decided. Case studies were used to ensure payments were comprehensively examined despite the limited reporting period.

The Reporting Sub-group first used a Rio Tinto Ltd case study that undertook an internal examination of the costs versus benefits of including local government payments in the Pilot. Results indicated a high cost and resource burden given the number of local governments in Australia affected by mining operations and non-material revenue compared to other revenues collected. Thus, the MSG agreed to exclude local government payments as a Pilot payment. While the payments to local government may not be material for a global corporation, they can be quite material for the local government and the local community (see also Chapter 6 [Materiality](#)).

To better understand the implications of applying the EITI in Australia and to satisfy concerns about MSG division on inclusion (that is, payments that were agreed – but not unanimously – to be excluded from Pilot reconciliation), the Chair proposed a narrative accompany all Pilot revenues and payments, including those excluded during MSG discussions. This allowed ‘other payments’ to be examined in all areas except data reconciliation. These payments included the carbon price, fuel tax credits, R&D Concessions and Payments to First Peoples. Some payments brought to the MSG were unanimously voted to be excluded from reconciliation; these were accelerated depreciation and concessional loans and grants. These payments would, however, be covered at a higher level under income tax and still considered in the final report (see also Chapter 6 [Materiality](#)).

The participating states were initially concerned about how applying EITI principles might affect their jurisdictions and proposed an alternative model to the one the government and the MSG had proposed. The states suggested that a systems analysis of current governance and reporting arrangements would provide a better fit for EITI for economies with well-developed and complex systems; and focus on highlighting gaps where transparency and accountability could be improved. The MSG accepted the model, with modifications, but members maintained that reconciliation was still needed to support the analysis and better inform stakeholders on how EITI implementation would affect Australia’s relevant fiscal systems. The discussion around this debate was an important phase in establishing the MSG and Pilot. It added value to the previously understood design of the Pilot by exploring the context and domestic systems within which the Pilot would be operating and helped confirm participation from all 21 members, particularly the states.

Delegations of responsibility

The MSG was tasked with delegating responsibilities to its membership to ensure views of all stakeholders are effectively garnered and considered during the Pilot. Under the EITI Rules, a national MSG plays the central role in determining how each candidate country implements EITI. Overseeing the pilot through an MSG aimed to identify and anticipate issues that would need to be addressed were Australia to implement the EITI, and to establish consensus on how to proceed. The intention of the process, referring to the initial work the MSG undertook, should inform a future work program on the most effective delivery model, should Australia move to implementation. It should also provide information to international governments on the issues, workarounds and compromises Australia considered.

The MSG provided direction to the Pilot to ensure the Pilot met its objectives. It was responsible for developing and endorsing an EITI work program, scope of the Pilot, actions, sequencing, timetabling, tasking responsible parties, costings and communications.

To guide operation of the group, members designed and approved an MSG Terms of Reference early in the Pilot's establishment phase. This document specified that the MSG was responsible for:

- developing and applying a work plan and communications plan for the term of the Pilot
- establishing and supporting sub-groups to examine specific issues, including engaging an Administrator, preparing reporting templates and evaluation methodology, and appointing an Evaluator
- agreeing on an appropriate definition of 'extractive industries' and 'materiality' for the purpose of the Pilot
- defining and assessing the scope of revenues and payments to be covered by the Pilot
- working within Australian laws and regulations
- setting measurable targets, forming a timetable for implementation, and monitoring and responding to capacity constraints (based on EITI criteria)
- analysing and mapping established data collection and reporting mechanisms, and governance and compliance arrangements operating in the Commonwealth and state stakeholder jurisdictions, using appropriate aggregated revenue and payment datasets
- identifying, assessing and reporting through a gap analysis, any material deficiencies in existing reporting and reconciliation mechanisms and arrangements in comparison with EITI requirements
- developing Terms of Reference for and selecting an independent Administrator to provide guidance and advice to the MSG
- developing and agreeing upon the format of the final report
- developing the Terms of Reference for and selecting an independent Evaluator
- developing recommendations to government on whether moving to full EITI implementation is appropriate in the Australian context
- implementing decision-making protocols to help manage the Pilot process.

A key deliverable for Australia's Pilot is this report. Completion of this report relied on a coordinated approach from all members; observers also had an opportunity to help. While the Administrator (Deloitte Touche Tohmatsu) developed the narrative on the six Pilot payments, MSG members and Secretariat developed the remainder of the report. The report includes reconciliation figures from the Administrator and findings from the Evaluator. A draft table of contents was distributed to the group and development of the report began in early 2013.

Multi-Stakeholder Group's sub-groups

The MSG sub-groups were a key element of the Pilot's design and delivery. Much of the responsibility to complete Pilot deliverables was delegated to the sub-groups that existed as either a fixed group throughout the life of the Pilot or as a short-term group to satisfy a specific purpose.

Use of sub-groups was agreed at initial MSG meetings to assist in the Pilot's implementation. The first sub-groups included:

- the Administrator Sub-group
- the Evaluation Sub-group
- the Reporting Template Sub-group
- the Communications Sub-group.

Each sub-group included at least one representative from each constituency who represented their constituency. The MSG Secretariat was involved in all areas of sub-group discussion, provided secretariat support and assisted in delivery of work streams. In addition to the work streams, the sub-groups were responsible for examining particular issues in more detail and providing recommendations and explanations back to the MSG for decision.

The Reporting Template Sub-group, comprising business tax or accountancy experts, was heavily relied upon in the initial stages to evaluate the benefits of potential revenues and payments, and to provide recommendations about which revenues and payments would be material and appropriate for inclusion in the Pilot. Through the life of the Pilot the sub-group was also asked to provide feedback on technical documents and discussion from the Administrator, and report to the MSG.

The Communications Sub-group and the Evaluation Sub-group were established for the life of the Pilot. The Communications Sub-group prepared the MSG communications strategy and media protocols, and was consistently tasked with reviewing relevant communications issues including development of this report. The Evaluation Sub-group helped define the scope and desired outcomes of engaging an Evaluator and represented the MSG on progress of this project.

Examples of more short-term sub-groups included:

- the Terms of Reference Sub-group that revised voting arrangements and recommended changes to the MSG
- the Administrator Sub-group that was responsible for engaging a suitable Administrator (once procured, the Administrator continued to work closely with the Reporting Sub-group).

Sub-groups were a highly effective tool in delivering Pilot outcomes, providing clear boundaries of responsibility and an efficient mechanism to manage the Pilot's extensive work program. Operation of the sub-groups has highlighted the interest of MSG members to support a collaborative and cooperative manner in Pilot design and delivery, allowing all interests to be heard and explored in more detail out-of-session.

Administrator

Administrator was a key function of the Pilot. The Administrator's role was to engage directly with the Commonwealth and participating state and territory governments and with companies operating in the Australian mining sector. It was to acquire and reconcile revenue and payment datasets and to report to government, the broader MSG and the community, on the outcomes of the Pilot.

The Reporting Template Sub-group guided the MSG in its appointment of the Administrator.

Throughout the Pilot, the Administrator participated in the Reporting Template Sub-group, presented at MSG meetings, regularly providing members with clarification and case studies when appropriate.

The Administrator's Terms of Reference were:

- As the first stage, at the commencement of work the Administrator shall conduct a comprehensive gap analysis to examine and map established data collection and reporting mechanisms, and governance and compliance arrangements operating in the Commonwealth and state and territory stakeholder jurisdictions, utilising appropriate aggregated revenue and payment datasets. The gap analysis should identify, assess and report any material deficiencies in existing reporting and reconciliation mechanisms and arrangements in comparison with EITI requirements.
- At the direction of the MSG, identify material revenues and payments in the Australian mining sector and report to the MSG on the cost and benefit of collecting, assessing and reconciling these and other agreed items (such as subsidies and concessions) as part of the Pilot.
- Prepare formats for the reporting templates and documents necessary to report data from both the participating extractive resources sector companies and the Commonwealth and state and territory governments and their entities.
- Develop and agree on the format of the Administrator's report.
- Finalise the initial collection of all material payments by participating companies operating in the extractive industries and revenues and payments collected by the Commonwealth and state and territory government and their entities.
- Do an initial reconciliation of these material revenues and payments, and consider and report to the MSG on the cost and benefit of collecting, assessing and reconciling other agreed items (such as subsidies, concessions and as agreed with the MSG) as part of the Pilot.
- Provide progress reports, including on the methodology, to the MSG.
- Submit a final report to the MSG.

The Administrator was Deloitte Touche Tohmatsu.

Evaluation

The MSG sought to achieve an overall independent evaluation, expressly aimed at documenting, analysing and assessing the processes and outcomes of the Pilot. They were drawn largely from desktop research, engagement with MSG members and interviews.

A key objective for the Pilot evaluation was to help stakeholders assess the benefits of implementing EITI and the degree to which the Pilot achieved its objectives, namely:

- its applicability in the Australian context
- its costs and benefits to all stakeholder groups
- its international benefits
- the degree to which the Pilot improved knowledge and transparency of resource payments and revenues
- its alignment with existing resource revenue disclosure practices.

An evaluation contributed to informing the MSG's recommendation to Australian governments on whether moving to full implementation is appropriate. Holistically this process, could help the Australian Government decide if it should consider EITI candidature.

The key questions posed during evaluation were:

- Did the Pilot meet its objectives?
- Was the Pilot effective, transparent and inclusive?
- Does the EITI add value in an Australian context?
- What challenges and benefits were identified?
- What are the implications for EITI implementation?

Opportunity also arose for the evaluation to consider:

- The level of compliance of the Australian EITI Pilot with EITI principles and criteria.
- The capacity for the extractive industries, the Australian Government, the states and territories, and the ATO and state counterparts in particular, to provide and collect the data required by the EITI, including identification of any relevant legal or commercial considerations.
- The costs, timing, and complexities of EITI implementation for the extractive industries, the Australian Government, the states and territories and the ATO.
- The challenges of implementing EITI in a federal structure with reporting at three levels of government.
- An analysis of the benefits and costs of pursuing EITI implementation.
- Identifying actions and wider reforms needed to improve the understanding of the sector, particularly revenue and expenditure management.
- Identifying possible implications for existing EITI rules and opportunities to enhance the international effectiveness of the EITI. An assessment of the Pilot reporting templates, Terms of Reference, and materiality as the basis of a national EITI methodology if the government decides to proceed to full EITI candidature.

The University of Queensland's Sustainable Minerals Institute undertook the evaluation.

Having engaged with the Evaluator in developing the evaluation methodology and in informing the findings of the evaluation, the MSG considers this process to have been valuable in terms of:

- providing independent validation of the structure and functioning of the MSG and related governance processes
- highlighting the extent of consistency of the Australian Pilot with the EITI Rules in place at the Pilot's commencement, and those aspects that need further consideration in view of the 2013 revision of the EITI Standard
- confirming that the Pilot met its objectives and provides useful guidance to Australia and other nations considering or progressing EITI implementation.

EITI Multi-Stakeholder Group representatives

Government representatives

Australian Taxation Office	Domenic Vetere
Department of Foreign Affairs and Trade	Bronwen Burfitt
Department of Industry (member)	Kathy Harman
Department of Industry (non-voting Chair)	Bruce Wilson
Department of Infrastructure, Energy and Resources (Tas.)	Matthew Fitzgerald
Department for State Development (SA)	Nick Panagopoulos
Queensland Treasury	Simon McKee
Treasury	Alix Gallo

Extractive industry representatives

BHP Billiton	Ian Wood
BP Australia	Maria Soares
ExxonMobil Australia	Richard Ellis
Mandalay Resources	Andrew Mattiske
Minerals Council of Australia	Melanie Stutsel
Rio Tinto	Richard Atkinson
Shell Australia	Andrea Laing

Civil society representatives

Construction, Forestry, Mining and Energy Union	Peter Colley
Corporate Analysis. Enhanced Responsibility. (CAER)	Julia Leske
National Congress Australia's First Nations Peoples	Les Malezer
National Native Title Council	Rhonda Jacobson
Oxfam	Serena Lillywhite
Transparency International Australia	Greg Thompson
University of Melbourne	Kate McDonald

Observers

Australian Petroleum Production and Exploration Association	Adam Welch
Department of Mines and Petroleum (WA)	Michelle Andrews
International EITI Secretariat	Sam Bartlett
MMG Limited (formerly Minerals and Metals Group)	Troy Hey
Publish What you Pay	Claire Spoors

The MSG also acknowledges previous members' contributions to developing the Pilot. These include:

- Tania Constable, former Chair, Department of Industry
- Chris Welberry, former member representing ExxonMobil
- Jon Richardson, Lorraine Fietz and Katherine Twomey, former members representing the Department of Foreign Affairs and Trade
- Carmelan Polce, former member representing Jubilee Australia
- Bruce Donald and Scott Rogers, former members representing Treasury
- Brian Wyatt, former member representing the National Native Title Council
- John Hall, former member representing Rio Tinto.

Chapter 6 – Materiality

Highlights

- With reference to the EITI guidelines, the MSG considered materiality by top company, jurisdiction, type of payment, threshold and reporting government entity.
- Following MSG analysis and civil society, corporate and government tax expert review, the MSG agreed to include six payments in the Pilot. These were:
 - *Mineral Resource Rent Tax (MRRT)*
 - *Petroleum Resource Rent Tax (PRRT)*
 - *company tax*
 - *North West Shelf petroleum royalties and excises*
 - *Northern Territory Uranium Royalty*
 - *state royalties.*
- The state royalties include those from Queensland, South Australia and Tasmania.
- The Pilot examined 'Other payments' ultimately excluded from reconciliation in all areas except data analysis, allowing any potential issues to still be considered should Australia implement the EITI. These payments included the carbon price, fuel tax credits, accelerated depreciation, R&D Concessions and Payments to First Peoples.
- The *Taxation Administration Act 1953* prevents the ATO disclosing information on tax revenues from individual entities to third parties. As a compromise, the MSG agreed that:
 - *the reporting company first provide its revenue and payment data to the Administrator*
 - *the ATO would release corresponding financial data to the company for them to release but using a password locked system to provide confidence to figures.*

Materiality for the EITI

The issue of the 'materiality' of revenues and payments to government is a key consideration for countries that implement the EITI. The EITI does not provide a clear definition of 'materiality', other than to say that 'a revenue stream is material if its omission or misstatement could materially affect the final EITI Report'. Instead it provides guiding principles for candidate countries so they can determine what revenues and payments from companies operating in their extractive resources sector are relevant to their country. The MSGs in response set materiality for their countries, which the EITI Board will review as part of its candidacy considerations. In practice, the EITI Board will provide a reality check that the governments, revenues, thresholds, and companies covered are reasonable in the context of that country's extractives sector.

The EITI Rules 2011, Criterion 1 states that:

Regular publication of all material oil, gas and mining payments by companies to governments ('payments') and all material revenues received by governments from oil, gas and mining companies ('revenues') to a wide audience in a publicly assessable, comprehensive and comprehensible manner (page 12).

The EITI Rules 2011 note that the EITI is a robust and flexible standard that should be adapted to local needs and contexts and therefore guidance is limited to the minimum requirements necessary. Countries are encouraged to go beyond these minimum standards, and MSGs are encouraged to

explore opportunities to include additional information in their EITI reports that will increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business. The MSG took this on board in developing a robust and contextual report to government.

Even though the MSG sets what is material, it still needs to be reasonable and that is set by the Board of the EITI.

The most commonly reported revenues from compliant countries, as reported in their EITI reports for 2010 and 2011, are available on the [EITI Countries site](#).

Materiality in Australia

A fundamental component of the Pilot was for the MSG to set materiality and the scope and threshold of revenues and payments, and the government and resource sector coverage for the Pilot. The MSG was guided by the EITI Rules 2011 Requirement 9 that states that 'a revenue stream is material if its omission or misstatement could materially affect the final EITI Report'. Further, the MSG noted that should Australia agree to implement the EITI, Australia would need to receive EITI Board endorsement of its scope for materiality.

In defining materiality for the Pilot the MSG considered the revenues material to the federal, state and territory, and local governments; and the scope of revenues and other forms of payments applied in other implementing countries. The MSG also reviewed the ATO's *Taxation Statistics 2008–09* (ATO 2011) and other statistics from state and territory Budget Papers.

In reaching agreement on materiality the MSG considered:

- the types of revenue streams that companies pay to government and non-government organisations and their significance relative to total revenues collected
- the Australian extractive resources sector coverage
- the jurisdictions that collect revenue from the resources sector
- the revenue and payment threshold
- the degree of aggregation or disaggregation of data in the EITI Report
- the administrative cost and appropriateness of including a broad selection of state and territory government and company revenue and payment types in the pilot.

Materiality by size and structure of Australian extractive companies

The MSG agreed to adopt the definition of 'mining' from the Australian and New Zealand Standard Industry Classification (ANZSIC) to ensure consistency with the definition revenue agencies such as the ATO use for reporting purposes.

For the Pilot, the MSG also agreed to reconcile revenues and payments from a sample of small to multinational companies operating across Australia's jurisdictions and commodity types.

The ATO's *Taxation Statistics 2010–11* (ATO 2013a) separates income by industry, including for the mining industry. It advises that when considered against company profits, the Top 155 mining companies represent 94.3 per cent of total income and 97.6 per cent of net company tax for the sector.

Reporting companies participating in the Pilot were BHP Billiton Limited, Rio Tinto Limited, Energy Resources Australia Limited, Oz Minerals Limited, BP Australia, Shell Australia, ExxonMobil Australia and MMG Limited.

Materiality by revenue stream

In early 2012 the MSG identified the types of payments the extractives sector makes to jurisdictions to determine their relevance to the Pilot. Payments selected were drawn from a broad list of direct payments to federal and state agencies (although Fringe Benefits Tax is levied on extractive industries the MSG agreed to exclude it because it is levied on most non-cash benefits that an employer provides to an employee 'in respect of employment'). The payments included were:

- types of Commonwealth payments:
 - *Company tax (Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997)*
 - *Petroleum Resource Rent Tax (Petroleum Resource Rent Tax Assessment Act 1987)*
 - *Minerals Resource Rents Tax (Minerals Resources Rent Tax Act 2012)*
 - *excise (Excise Tariff Act 1921 and Petroleum Excise (Prices) Act 1997)*
 - *uranium (Uranium Loyalty (Northern Territory) Act 2009)*
 - *profit tax*
 - *bonuses (such as signature, discovery or production).*
- types of state and territory payments:
 - *royalties, land rent, land tax, payroll tax and transfer duty.*
- types of local government payments:
 - *waste management, local roads, rates and land and coast care programs.*

In March 2012 the MSG decided to exclude land rent, land tax, payroll tax and transfer duty as they cannot be reported in all jurisdictions and were impractical to include and reconcile.

Where revenues and payments were excluded from the Pilot reconciliation and where there was still interest in providing more information on these revenues and payments (as part of a holistic review of the Australian resources sector) the MSG agreed to incorporate the information into its Report to Government (see the narrative discussion later in this report).

Pilot revenue streams

The MSG decided which revenues and payments were material and would be reconciled through the Pilot by the Administrator; which revenues and payments were of interest for further examination through the Pilot, but would not be reconciled by the Administrator; and which revenues and payments were immaterial. Following MSG analysis and civil society, corporate and government tax expert review the MSG agreed to include six payments in the Pilot. They were:

- Minerals Resource Rent Tax (initially included as a Pilot payment but MRRT reporting timeframes prevented its full inclusion; a participating company agreed to conduct a six-month case study to facilitate reconciliation for part of the financial year)
- Petroleum Resource Rent Tax
- Company tax
- upstream excise paid by the North West Shelf Joint Venture (the MSG later agreed to more accurately separate revenues from the North West Shelf project into upstream excise and upstream royalties)
- Northern Territory Uranium Royalty
- state royalties.

The payments selected were significant in terms of their contributions to both federal and state and territory revenue, as they were selected for their diversity. MRRT was a new tax that had yet to contribute revenue to the Commonwealth and was sensitive for many onshore industry members. The PRRT had recently been modified and raised significant revenues for the Commonwealth. Company tax provided significant Commonwealth revenue and also allowed for coverage of a range of payments and grants that are deducted from corporate income. Upstream excise and royalties paid by the North West Shelf Joint Venture incorporated reporting by joint venture corporations, a complexity from normal reporting by individual companies, and is revenue that transfers through the Commonwealth back to the state. The Northern Territory uranium royalty was also chosen as revenue the Commonwealth collects due to its jurisdictional powers in the territory, despite being a royalty that the territory would otherwise collect. State royalties were included due to their size and relevance to state revenues.

Other payments governments make to businesses – materiality consideration

Around the world, EITI countries have examined the materiality of 'other payments', which are often not otherwise listed by the EITI Rules. Australian companies receive a range of grants, payments and rebates that assist their bottom lines and offset costs incurred in doing business, and could be categorised as other payments. Most are not industry specific or cannot be readily identified as primarily benefitting the resources sector; for example, government grants, biodiversity payments and excise rebates. Limited data exist to determine whether industry received any material non-traditional payments.

Company income tax returns require reporting of assessable government industry payments, which include accelerated depreciation and depreciating assets; bounties; concessional loans; cleaner fuels grants; drought relief; employee subsidies; export incentive grants; fuel grants under the energy grants credits scheme; fuel tax credits; industry assistance grants including grants relating to research and development; product stewardship for oil program benefit; remote assistance; and wine producer rebate (wine equalisation tax). However, the ATO advised that the amount reported in a tax return cannot be disaggregated, and many of these industry payments are not unique to the extractives sector or are deductions against a company's income tax and therefore cannot be separated or individually reconciled.

A quick survey by the ATO of a few taxpayers showed assessable government industry payments of about \$400 million, which indicates that the amounts contemplated for a larger population could be quite material. However, the bulk of these government agency payments could be elsewhere offset by tax payments to government.

In June 2012 the MSG agreed to further examine the materiality of a range of payments in the 'other payments' category in all aspects except financial reconciliation by the Administrator. These payments included fuel tax credits, research and development allowances or concessions, accelerated depreciation, the carbon tax and the Mineral Resources Rent Tax. The decisions taken were that:

- loans and grants received were an immaterial payment type
- fuel tax credits were excluded and would be investigated as part of the narrative
- accelerated depreciation was excluded because the ATO cannot separate for reconciliation
- research and development allowances were excluded and would be investigated as part of the narrative
- Minerals Resource Rent Tax was excluded because of its reporting timeframes
- carbon price was excluded and would be investigated as part of the narrative.

The MSG, by general consensus, excluded loans and grants, accelerated depreciation and the Minerals Resource Rent Tax following advice from the Reporting Sub-group. An MSG vote excluded the fuel tax credits, research and development allowances and the carbon price but unanimous agreement or consensus was not reached and in some cases the decision was close. The MSG's voting structure was subsequently amended to introduce a consensus and arbitration mechanism, through modification of the Terms of Reference. These payments are further examined in [Appendix 3](#). Should the government decide to move to full implementation of the EITI the MSG may re-examine a number of these 'other payments'. The MSG noted that many of these payments were acquitted under the annual company tax or income tax assessment.

Mineral Resources Rent Tax

While the Administrator did not reconcile MRRT revenues and the Australian Government has declared its intention to repeal the legislation, at the start of the Pilot the tax was considered important. The 2010–11 Resources Super Profits Tax and Minerals Resources Rent Tax debate highlighted the difference in revenue contribution assumptions between governments and the extractives sector, as they were unable to collectively articulate mining sector revenues at the federal and state and territory levels. It suggested that government and company revenue data was disconnected and may either understate or overstate the payments made by companies operating in Australia's resources sector to government, the revenues collected by governments and deductions provided to companies.

Social payments

Social payments identified by many other EITI countries were not included as part of the Pilot as there were no identifiable and agreed measures. The decision did not mean these payments could not have an economic value, rather that this information was not collected by government and could not be subjected to dual reconciliation as a way to measure it for the Pilot.

However, on 18 November 2013 the Minerals Council of Australia reported that:

A survey of 25 Australian mining companies, explorers and resources contractors by Corporate Social Responsibility consultants, Banarra, found that \$34.7 billion was spent on community infrastructure, Indigenous contractors, local suppliers and other activities in 2011–12.

It also exceeds the industry's 2011–12 company tax and royalty payments, which Deloitte Access Economics have estimated at \$21 billion (Minerals Council of Australia 2013).

In contrast, on 26 November 2013 the Construction, Forestry, Mining and Energy Union [reported](#) that revenues from the sector were concentrated, and Australia and Australians generally had not benefitted from the recent mining boom. The union considered that the \$35 billion the sector spent was mostly spent on local contractors and suppliers of services to the mines.

Materiality by jurisdiction

Chapter 4 discusses the range of taxes, excises, royalties and duties levied on the extractives sector and overseen by federal and state regulators. While the Australian Government captures a significant number of revenues and payments, agreement from state and territory governments to participate in the EITI was vital to providing a complete picture of revenue collection in Australia's extractive industries as onshore mineral royalties largely reside with these governments.

Reporting jurisdictions were the Commonwealth, Queensland, South Australia and Tasmania. While the Pilot was run across three state jurisdictions, should Australia decide to implement the EITI it would be necessary to engage all state and territory governments.

Payments to local government

The MSG considered payments made at the local government level and whether they were material enough to be included in EITI reporting. The Australian Local Government Association was unable to supply statistical or numerical evidence on the value of payments to local government from the resources sector, nor participate on the MSG. The MSG decided that, while possibly important in some regions, when assessed against overall payments to government and the administrative burden of collecting data at this level, these payments were likely to be immaterial for the Pilot.

Initial MSG analysis of a single company's payments showed local taxes paid amounted to less than 0.3 per cent of total taxes paid. This was analysed within one business of that company, which showed \$6 million in total paid to seven separate councils in 129 individual transactions; when extrapolated across the whole business this would equate to more than 20 councils and many hundreds of transactions. If this were representative across the pilot group, to include payments to local government would greatly increase the number of governments involved (probably by greater than a factor of 10) with only a small increase in total taxes paid.

Unless there were data in conflict with the single company example above the MSG agreed to exclude local government level payments from the Pilot.

Payments threshold

The MSG examined other countries' EITI experience of defining materiality and found examples where certain payments were excluded because they were immaterial and comprised only 0.1 per cent of total revenue payments made.

The MSG concluded that a test for immateriality could be based on a lower threshold amount, such as 1 per cent, although it found that 1 per cent would still be significant given the total tax payment base which in Australia would range from \$25 billion to \$30 billion (for example, 2008–09 produced a tax base of approximately \$25 billion; 1 per cent of that would be \$250 million).

In early 2012 the MSG reviewed options for threshold levels in Australia; including having variable threshold levels by jurisdiction and payment type (the issue was not resolved until December 2013, with completion of the Administrator's report). For example:

- Types of payment for the Commonwealth would be the Petroleum Resource Rent Tax (greater than \$100,000), the Mineral Resource Rent Tax (greater than \$100,000), company tax (greater than \$100,000), crude oil excise (greater than \$500,000) and the Northern Territory Uranium Royalty (greater than \$500,000).
- Types of payment for the states and territories would be royalties (greater than \$100,000)

In December 2013 the MSG was advised that a reporting option could be the Top 155 mining companies (companies with a turnover of more than \$100 million per annum) that represent 94.3 per cent of total income for the sector and 97.6 per cent of net company tax for the sector. A second threshold the MSG considered was \$1 million per company for royalties paid to government. However, the MSG agreed this threshold might need to be flexible and adjusted on a state-by-state basis, as most royalty payments in big mining states may come from smaller companies and an arbitrary threshold may be inappropriate.

Payments to non-government stakeholders – Payments to First Peoples

In determining which industry payments were material to government, the MSG considered which payments were material to other non-government groups and whether these payments fit within the scope of the Pilot. This revealed that there was a range of circumstances that give rise to dealings between extractive industry companies and First Peoples resulting in payments being made to the First Peoples under various arrangements that:

- provide access to lands
- provide identification and protection of First People's cultural heritage
- secure a social licence to operate, and/or
- fulfil legislative requirements.

It must be noted that with the exception of arrangements under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) and a few unique negotiated (non-legislative) arrangements, payments made to First Peoples are made, in the main, to the particular group or groups affected by the proposed activities of the extractive industry company. Specifically, payments to a group are not 'universal' payments distributed beyond that group which has negotiated and receives the payments.

While it is widely recognised that resource payments extractive industry companies make to First People groups are extensive, there is no reliable independent estimate of the total value of such payments.

The Minerals Council of Australia provided an estimate of approximately \$3 billion as the total value of benefits paid to First People groups in 2011–12 (Commonwealth of Australia 2013, page 13). This estimate included cash payments, native title land access payments, mining royalty equivalents, Indigenous heritage payments, payments under other land access regimes, and payments under benefit/impact agreements. Future Act agreements (such as agreements driven by the future acts process of the Native Title Act) provide the main source of native title income.

Although the Minerals Council of Australia estimates provide guidance as to the diversity and structures of payments, investigation into the kinds of payments that may be made to First Peoples has largely been confined to the context of payments arising under the provisions of the *Aboriginal Land Rights (Northern Territory) Act* and more specifically under the *Native Title Act 1993* (Cwlth). In these circumstances, the MSG has confined its considerations to payments made under the *Aboriginal Land Rights (Northern Territory) Act* and the *Native Title Act* legislative instruments.

Transparency of payments of interest to stakeholders

Neither the Courts nor the relevant statutes, the *Native Title Act* or the Arbitral Body provide published guidance on what a reasonable compensation arrangement looks like for temporary impairment of native title rights (such as hunting, fishing, undertaking culture and ceremony) that occurs as a result of development of mining projects on traditional lands. Many existing agreements provide for compensation and benefit packages but the terms of the agreements are often protected by confidentiality provisions. This is similar to other payments made for land development, including with private landholders such as farmers or other developers.

The desire for confidentiality by the parties can generally be attributed to:

- legislative regimes do not mandate or encourage disclosure
- the view by some or all parties to agreements (as well as regulators) that the agreements are private law relationships, 'confidential' or commercial contracts that should not be subject to public regulation or scrutiny (beyond normal accountability requirements for various entities), similar to agreements with private landholders.

For First Peoples groups this can include:

- a need to protect traditional or 'intensely personal' information, especially when it relates to their stories, their individual and communal rights, and their responsibilities and connections to country and to observe cultural sensitivities about who has access to culturally significant knowledge (Kingham & Bauman 2005)
- their view that the arrangement is a confidential one, private to the relevant group, as is the case with any other landholder related agreement.

Confidentiality provisions therefore preclude analysis of negotiated terms and compensation packages by external stakeholders and such constraints have resulted in:

- Frustration to the research community that wants to be able to research and assess such arrangements.
- Scarcity of 'best practice' models and templates that could be used by negotiating parties. While many agreements are available through the [Melbourne University's Agreements, Treaties and Negotiated Settlements Database](#), the quantum of funds is often extracted from documents.
- Frustration to governments that may not be aware of the full amount of monies flowing to First People groups. Lack of such knowledge makes government unable to see where community money could contribute to critical infrastructure and service delivery, and poses difficulties in ensuring proper treatment of such monies for taxation and welfare purposes.
- Concern that compensation and benefits packages may not be appropriate for the scale of effect, exacerbated by asymmetry of information and perceived, and in some cases actual, power imbalances between extractive industry companies and First People groups.
- Complexities in ensuring that funds received are managed and expended consistent with the expectations of the First People group.

Not relevant for the purposes of EITI Pilot reporting

The EITI was established as a framework for transparency of payments between extractive industry companies and governments. The 2011 Standard (and revised 2013 Standard) promotes and supports improved governance in resource-rich countries and provides a mechanism for companies to publish what they pay to governments, and for governments to disclose what they receive from companies in the form of royalties, taxes and other statutory payments.

As noted, in Australia payments to First Peoples are not made to governments and are not limited to the extractives industry, though the mining sector is the largest contributor. Payments to First Peoples are usually bilateral either between a company and a specific group, or between government and a traditional owner group.

The exception is the Aboriginals Benefit Account established under the *Aboriginal Land Rights (Northern Territory) Act 1976* to receive and distribute royalty equivalent monies generated from mining on Aboriginal land in the Northern Territory. The money is used for the benefit of Aboriginal people living in the Northern Territory. This includes payments for:

- initiatives of benefit to Aboriginal people living in the Northern Territory (beneficial payments)
- distribution to traditional land owners (Royalty Associations) affected by mining operations on their land
- support for administration of the Northern Territory Land Councils
- support for acquisition and administration of land leases through the Office of Township Leasing
- support for administration of the Aboriginals Benefit Account.

The federal minister responsible for operating the Aboriginals Benefit Account can direct money to be withdrawn from the Aboriginals Benefit Account to be used for the benefit of Aboriginal people living in the Northern Territory. The [Aboriginals Benefit Account Advisory Committee](#) advises the minister in relation to these payments.

While some payments to First Peoples may be catalysed by statutory requirements, such as the *Native Title Act 1993* or the *Aboriginal Land Rights (Northern Territory) Act 1976*, payments may similarly be made without any statutory basis. In the minerals industry, these are commonly referred to as 'As if' agreements, as they are negotiated with First Peoples 'as if' they had their full statutory rights, even where these have been extinguished or not otherwise determined in law.

As the quantum of payments is most usually confidential they are therefore unable to be confirmed by government, industry or First People groups or be subject to dual reconciliation, a principle fundamental to the EITI.

In the first half of 2012 the MSG examined the issue of whether to include Payments to First Peoples in the Pilot. The MSG recognised that it is a complex issue and, for the reasons discussed, considered that Payments to First Peoples were not material payments in the Pilot. The considerations of the MSG were aided by an internal scoping paper provided by academics from Melbourne University in addition to expertise within the MSG membership.

Future considerations

The MSG notes that under the [revised EITI Standard](#) (11 July 2013) Criterion 4.1 provides that:

- e) Social expenditures: Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, the EITI Report must disclose and, where possible, reconcile these transactions.

Where such benefits are provided in-kind, it is required that the EITI Report discloses the nature and the deemed value of the in-kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed.

Where reconciliation is not feasible, the EITI Report should include unilateral company and/or government disclosures of these transactions.

Where the multi-stakeholder group agrees that discretionary social expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenue streams to government entities. Where reconciliation of key transactions is not possible, e.g. where company payments are in-kind or to a non-governmental third party, the multi-stakeholder group may wish to agree an approach for voluntary unilateral company and/or government disclosures to be included in the EITI Report.

Noting the Revised EITI Standard (2013) and that payments may be material for many First People groups and organisations, the MSG considers that payments to First Peoples will need to be further addressed in any domestic implementation of the EITI.

Difficulties in reporting government payment types

While not essential to defining materiality, the MSG did consider any difficulties or complications in collecting data. These issues help clarify the resource requirements of undertaking EITI reconciliation. It influenced how data were collected and managed, and the design of the Pilot.

Company income tax

Company income tax returns report total amount of net tax payable or refundable after taking into consideration total income, deductions, credits and rebates/tax offsets (taxes already paid in Pay-As-You-Go [PAYG] instalments are also taken into account to determine net tax payable).

Companies are required to lodge their income tax returns on a consolidated basis, meaning that one entity lodges a combined tax return on behalf of all members of the consolidated group. This method of lodgement creates an issue from an EITI reporting perspective because income and deductions from all business activities conducted are combined. Many entities conduct a diverse range of business activities; some are related to mining but distinct from resource extraction (such as downstream activities like refining, selling and distributing a natural resource) while others are separate and distinct to mining. If a consolidated group conducts business activities outside of mining, total income and deductions reported in the income tax return will not give a true reflection of the tax paid in relation to mining and in particular revenue streams from 'resource extraction' as per the EITI principles and criteria.

The ATO is not provided with enough information or data in tax returns to be able to disaggregate the data to activities solely relating to mining. From a data collection perspective, the ATO is able to determine the type of business activity of the consolidated group from the Australian and New Zealand Industry classification (ANZIC) code supplied on the tax return. However, only the ANZIC code of the main business activity from which the company derived the most gross income is sought. In certain circumstances the main business activity described could be separate to and distinct from mining, leading to an overstatement in taxes paid in relation to mining. In other cases, while mining may be the main business activity, other business activities may be less profitable or in a loss position potentially understating total taxes paid in relation to mining.

Privacy

A fundamental issue for the MSG and difficulty for the Pilot was legislative barriers to releasing government and company financial records to the Administrator. The *Taxation Administration Act 1953* prevents the ATO disclosing information on tax revenues from individual entities to third parties, and any information the ATO publishes is highly aggregated across the sector and does not identify individual companies. Similar constraints existed within state legislation covering royalty payments.

It was initially proposed that participating companies sign a waiver to allow the ATO to disclose relevant information for the purpose of the Pilot, but even if consent had been given, it would not have overridden the legislation that prevents release of information. MSG members also signed deeds of confidentiality to protect the commerciality of any financial information they might see.

As a compromise, the MSG agreed that:

- the reporting company first provide its revenue and payment data to the Administrator (to ensure it could not adjust its books retrospectively)
- the reporting company write to the ATO requesting its financial data. When this information was received it would then forward it on to the Administrator for reconciliation.

This mechanism was later modified from a paper-based form to an electronic system where governments and companies provide information through a password locked reporting template that ensured integrity of data. Each template has a unique password and cannot be opened by a third party without the password. This mechanism enabled highly disaggregated data to be provided to the Administrator for reconciliation during the Pilot.

Disaggregated information was important, as aggregated information would have prevented the Administrator from scrutinising the financial records and identifying precisely where any errors had occurred. However, in order to comply with the privacy provisions, the Administrator presented the financial data in its report, aggregated to two revenue streams – company tax and other payments (Chapter 4 of the Administrator's report).

The MSG considered this mechanism still within the intent of the EITI Rules, which is to create a process for independent verification of the reconciliation between monies a company pays to the government to the amount the government declares it receives.

Appendix 1

This appendix discusses the Petroleum Resources Rent Tax, the Northern Territory Uranium Royalty, the North West Shelf Royalty, upstream excise paid by the North West Shelf Joint Venture and company tax.

Petroleum Resources Rent Tax

Overview

The [Petroleum Resource Rent Tax](#) (PRRT) applies to recovery of petroleum and production of marketable petroleum commodities, such as stabilised crude oil, condensate, sales (natural) gas, liquefied petroleum gas (LPG) and ethane.

Since its inception in 1987 the PRRT had applied only to recovery of all petroleum products from Australian Government waters (including crude oil, natural gas, LPG condensate and ethane), with the exception of petroleum products extracted from the North West Shelf project and the Joint Petroleum Development Area. However, since 1 July 2012 the PRRT became a compulsory tax applied to all Australian onshore and offshore oil and gas projects, including the North West Shelf, oil shale and coal seam gas projects.

The PRRT is a profit-based tax, which is applied on a project basis. A project consists of facilities in the project title area, and any facilities outside that area necessary for production and initial storage of marketable petroleum commodities, such as stabilised crude oil, condensate, natural gas, liquefied petroleum gas and ethane. Value added products, such as LNG, are excluded). Each entity with an interest in a PRRT liable project will be liable for that PRRT.

The tax is levied at a flat rate of 40 per cent of a project's upstream taxable profit (that profit being calculated for PRRT purposes), which is the project's income assessable receipts less deductible expenditure and project exploration expenditure transferred in from other associated PRRT projects. Deductible expenditure is the sum of exploration, general project and closing down expenditure for the petroleum project interest. Any unused deductible expenditure is uplifted and carried forward and will be deducted against assessable receipts derived in later years.

After all project and 'other' exploration expenditures (including a compounded amount for carried forward expenditures) have been deducted from all assessable receipts.

The enabling legislation for the PRRT is the *Petroleum Resource Rent Tax Assessment Act 1987*. Whilst the policy control for the PRRT sits within the Australian Treasury, the tax is administered by the Australian Tax Office (ATO).

In 2011–12 the amount of PRRT paid by all companies was \$1.58 billion (ATO 2013b) as shown in Table A1, compared with nearly \$2 billion in 2005–06 (includes data processed up to 31 October 2006). PRRT payments are levied before and are deductible for company income tax purposes.

Deductions and exemptions

The taxable profit in relation to a petroleum project is the assessable receipts, less deductible expenditure and transferred exploration expenditure in respect to the PRRT is the project's income after all eligible project and 'other' exploration expenditures have been recovered. Deductible expenditures include:

- exploration expenditure
- all project development and operating expenditures
- closing-down expenditures, including offshore platform removal and environmental restoration (deductible in the year in which they are incurred)
- resource tax expenditure
- acquired exploration expenditure
- starting base expenditure.

Petroleum projects are also entitled to deduct exploration expenditure transferred from related projects when the following conditions are satisfied:

- The exploration expenditure must have been incurred after 1 July 1990.
- The receiving project must be making a taxable PRRT profit.
- The taxpayer must have held an interest in the transferring project and the receiving project from the time the expenditure was incurred until the time of the transfer (an interest is defined as the entitlement to receive receipts from the sale of petroleum recovered in relation to the project).
- The transfer must be made to the project that has the most recent production licence.

Certain un-deducted exploration expenditures are transferable between projects. The company must have held an interest in both the transferring project and the receiving project in the year the expenditure was incurred, at the end of the transfer year and in the intervening period.

Since 1 July 2012, to avoid doubt, expenditure incurred for an environmental purpose in relation to carrying on or providing the operations, facilities and other things comprising a petroleum project, is specifically deductible as either exploration or general project expenditure. Costs incurred in environmental restoration of a project site are deductible as closing-down expenditure.

If assessable receipts during the year the project is closed down are less than the closing-down expenditures (sections 46 and 47 of the PRRTA Act), a credit in respect of closing down is available. The credit is whichever is the lesser of 40 per cent of the excess of closing-down expenditure and the amount of PRRT paid in respect of the petroleum project less previously received credits. The credit may either be (depending on whether the project has previously paid PRRT) for offset against other liabilities owed to the ATO or refunded to the taxpayer.

Payment process

The year of tax for PRRT purposes is the Australian financial year. The PRRT makes no allowance for substitute accounting periods. PRRT quarterly instalment payments and statements for the September, December and March quarters are due (section 95 of the PRRT Assessment Act) on 21 October, 21 January and 21 April, respectively. A taxpayer is liable to pay PRRT instalments and lodge PRRT instalment statements for every instalment quarter including and following the first quarter for which the taxpayer is liable to pay a PRRT instalment.

Companies lodging PRRT returns are obliged to make quarterly instalments towards their expected PRRT liability, which is worked out at the end of each income year (1 July to 30 June). A project participant must lodge an instalment statement in respect of each project from which they derive a taxable profit for the respective instalment period. PRRT instalment and payment due dates are:

21 October, 21 January and 21 April, for the preceding period; a fourth payment is required (where applicable) at the completion of the relevant income tax period (30 June).

Furthermore, each project participant in a petroleum project is required to lodge a PRRT return in respect of each project in which it holds an interest for every year of tax commencing with and following the first year in which the project (section 60 of the PRRT Assessment Act) from which they derived assessable receipts during a year of tax. The PRRT return must be lodged and final payment paid no later than 28 August following the end of the year of tax. The final payment is the actual PRRT liability for the year of tax less the amount of the 60 days after the end of the tax year (this final payment is based on actual liability for the year minus the three earlier instalments paid).

PRRT forms, including instalment statements and PRRT returns, are currently lodged with the ATO in paper format. After 1 July 2014 taxpayers will be able to lodge PRRT forms electronically.

Lodgements can be made through a secure website for managing business tax affairs (the Business Portal). PRRT quarterly instalments and other payments are mostly paid electronically to the ATO.

Table A1: Petroleum resource rent tax, 2010–11 and 2011–12

	2010–11	2011–12
Number of taxpayers	71	75
	\$m	\$m
Assessable receipts	12,049	12,709
Expenditure – class 2 general a	15,063	21,515
Expenditure – class 2 exploration b	1,649	2,170
Expenditure – other	506	925
Expenditure – total	17,217	24,610
Transferred expenditure – section 45a c	845	855
Transferred expenditure – section 45b d	731	1,659
Transferred expenditure – total	1,576	2,514
Taxable profit	2,618	3,961
Carry forward expenditure	9,362	18,376
Total PRRT paid on taxable profit	1,047	1,584

Notes: **a** General project operating expenditure (drilling plant and equipment, pipelines and wage costs) incurred on or after 1 July 1990. **b** Project exploration expenditure (exploration and appraisal drilling) incurred on or after 1 July 1990. **c** Exploration expenditure incurred on or after 1 July 1990 transferred from other petroleum projects of a taxpayer. **d** Exploration expenditure incurred on or after 1 July 1990 transferred from other petroleum projects within a wholly owned group of companies.

Source: ATO 2013, *Taxation Statistics 2010-11 Table 10: Company tax – Petroleum resource rent tax*, Australian Taxation Office, Canberra.

Reporting and verification

All lodgements are processed through the ATO information technology systems and must pass various system checks to validate the information received. Payment amounts from the forms lodged are usually automatically matched to client accounts. If an imbalance occurs an exception report is generated and followed up with the taxpayer. The ATO also undertakes compliance action, including audits and reviews. Data verification can occur with the taxpayer checking details on a secure website (the taxpayer can check their statement of account on the Business Portal). As well, tax payments are subject to various ATO compliance programs to ensure taxpayers have complied with PRRT obligations.

An Australian National Audit Office study tabled in 2009 found that although the PRRT is administered based on voluntary compliance by taxpayers, most PRRT payments are paid promptly and the ATO has generally administered the tax effectively. This led the ANAO to conclude that the self-assessment and voluntary compliance system is sufficiently supported. As well, amounts on instalment notices or annual statements in all 49 cases in 2007–08 matched amounts actually paid to the ATO, posted to the ATO computerised financial system and recorded in PRRT operational spread sheets (ANAO 2009).

The ATO takes a line management approach, which includes the energy and resource rent tax segment, large business and international public groups and internationals business lines. In addition, the PRRT compliance program is being integrated more generally with the broader ATO's corporate compliance program.

The Department of Finance reports revenues from resource rent taxes (including MRRT and PRRT) in its Australian Monthly Financial Statements. However, Resource Rent Taxes include PRRT and MRRT because aggregating this data minimises the risk of breaching the secrecy provisions of the *Taxation Administration Act 1953*.

The Treasury also reports annual PRRT revenue received in the Final Budget Outcome, Table 3: Australian Government general government sector receipts; and the ATO publishes revenue statistics, disaggregated by industry, in its annual [Taxation Statistics](#).

Public disclosure

Under Schedule 5, Part 1, Item 3E, of the *Tax Laws Amendment (2013 Measures No.2) Act 2013* the Commissioner of Taxation must, as soon as practicable after the end of the year of tax, for any entity lodging a PRRT return, make publicly available the company's Australian Business Number and name, as well as the amount of PRRT payable, as reported in its return.

The Commissioner is implementing this measure, including how this information will be released. He has yet to provide guidance on how the information will be released. However, any entity assessed as having a PRRT liability in respect of one or more petroleum project for the year of tax will have its details published (noting that only PRRT payable as assessed in respect of the end of the tax assessment is disclosed) irrespective of company profit earned or tax paid.

Some amendments in the Act also create exceptions to the taxpayer confidentiality offence provisions for disclosure or on-disclosure of periodic aggregate tax information. The objective of these amendments is to enable better public disclosure of aggregate tax revenue collections, even when the identity of particular entities is apparent or could potentially be deduced.

Managing errors

To ensure accuracy in the data itself and to monitor data quality, governance mechanisms are in place in the form of established work processes and systems that are subject to extensive assurance processes and information technology controls. There are various stage and gate processes from data capture, processing and storage of data. There are also areas in the ATO that monitor the data for its accuracy and will make enquiries and amendments where any discrepancies exist. The processes can be automated and will depend on whether lodgement is made on the prescribed forms or via electronic lodgement.

The ATO is required to make available to the public, [accountability information about its management and operation](#). It is also subject to extensive [recording keeping requirements](#) subject to legislation and also complying with the relevant Australian Standard.

Northern Territory Uranium Royalty

Overview

Australia's known uranium resources are the world's largest, with 33 per cent of the world's economically recoverable resources at costs of less than \$130 per kilogram. Australia is the third largest producer of uranium, exporting around 12 per cent of global demand in 2012. Australian Government policy is that Australian uranium can only be sold to countries with which Australia has a nuclear cooperation agreement, and can only be used for peaceful nuclear power generation purposes. The countries must also have safeguard agreements with the International Atomic Energy Agency, including an Additional Protocol.

The *Uranium Royalty (Northern Territory) Act 2009* imposes a royalty on uranium recovered in the Northern Territory, and will cover future uranium operations in the territory.

The only operating uranium mine in the Northern Territory is the Ranger mine, operated by Energy Resources of Australia Ltd (a subsidiary of Rio Tinto). Due to an historical arrangement that pre-dates the *Uranium Royalty (Northern Territory) Act 2009*, Ranger does not fall within the scope of this legislation.

The Ranger mine operates under an imposed 'ad valorem royalty', meaning there is a fixed percentage imposed on the value of production (or net sales revenue). The Ranger mine's royalty of 5.5 per cent ad valorem consists of:

- 2.5 per cent collected by the Commonwealth for payment to the Aboriginals Benefit Account
- 1.25 per cent collected by the Commonwealth for payment to the Northern Territory as a grant in lieu of royalty under the terms of a 1978 memorandum of understanding between the Commonwealth and Northern Territory governments
- 1.75 per cent payable to the Northern Land Council or an entity representing the Mirarr Traditional Owners, as directed by the Northern Land Council.

The 1.25 per cent paid to the Northern Territory Government equates to the royalty rate for minerals under the Northern Territory Mining Ordinance at the time of self-government in 1978 [Uranium Royalty (Northern Territory) Bill 2009 – Explanatory Memorandum].

Royalties and potential investment

In the case of the Ranger mine, ad valorem royalties are relatively stable and predictable and are consequently relatively easy to administer. They are based on net sales revenue only, and are payable from project commencement to close down. This royalty framework allows for regulatory certainty for investors in uranium exploration and mining projects, as the applicable royalty arrangements are known upfront. From a government perspective, the benefits of an ad valorem royalty include a more predictable royalty revenue flow for the Australian Government, and thus to the Northern Territory Government and Aboriginals Benefit Account from project commencement to close down.

For all future uranium mines in the Northern Territory, the *Uranium Royalty (Northern Territory) Act 2009* will impose a profit-based royalty regime at a rate of 20 per cent. A profit-based royalty is when the tax base is an accounting concept of profit. A percentage rate is applied to a measure of accounting profit realised by the project. The accounting profit base is computed at the project level and may not be consistent with the contribution the project makes to the consolidated profit of the holding entity on which corporate income tax is levied. An accounting profit-based tax has greater economic allocative efficiency, but results in unstable government revenue and higher compliance costs for both government and industry (Guj 2012).

Payment process

For payment of royalties, Energy Resources of Australia Ltd pays amounts to the Commonwealth equal to the sums payable by the Commonwealth to the Aboriginals Benefit Account and the Northern Territory. The Commonwealth then distributes those amounts.

Reporting and verification

Given uranium royalties in the Northern Territory are currently not de-identifiable, the Commonwealth does not make payments from Energy Resources of Australia Ltd, including forecasted royalty over the forward estimates, publicly available. However, Energy Resources of Australia Ltd does publish details of its royalty payments for the relevant calendar year in its annual report. Royalty payments are verified through two annual audits conducted by the Territory Revenue Office and Australian National Audit Office, respectively.

North West Shelf Royalty

Basis for payments

The OPGGS Act covers production from fields originating from the North West Shelf project areas covered by permits WA-1-P and WA-28-P. This is an area of Commonwealth jurisdiction in which a wellhead value royalty system is used.

A registered holder of permits is liable to pay a royalty on all petroleum. Part 6.7 of the OPGGS Act details when royalty is payable under the *Offshore Petroleum (Royalty) Act 2006*. Section 5 of Royalty Act imposes royalty on the registered holder of:

- a North West Shelf exploration permit (10 per cent)
- a North West Shelf retention lease (10 per cent), or
- a North West Shelf production licence (10 per cent to 12.5 per cent).

The royalty rate for a production licence holder is set at between 10 per cent and 12.5 per cent of the wellhead value depending on whether it is a primary or secondary production licence, or a combination.

Royalty is levied as a percentage of the wellhead value, which is calculated by subtracting from sales receipts:

- excise
- allowances for post-wellhead capital assets and depreciation
- operating costs, such as processing and transportation.

Royalty payable to the Australian Government from the North West Shelf project area is shared with Western Australia as prescribed by section 75 of the OPGGS Act. The sharing ratios are about one-third to the Commonwealth and two-thirds to Western Australia.

Frequency of payments

North West Shelf participants lodge a monthly return advising of their royalty liability for the previous month's production; for example, February royalty payment represents royalty payable for January production. These are generally lodged every month unless production did not occur (which is unlikely).

Payment collection

North West Shelf participants pay their royalty liability to the Department of Industry account three to five days before the last working day of the month. Each participant makes the payment to a specified account.

The Department of Industry's Uranium Industry and Nuclear (UIN) section then advises the Commonwealth Treasury of the amount payable to Western Australia under section 75 of the OPGGS Act. UIN also notifies the Department of Industry's Corporate Division (CD) of the anticipated payment amounts due in the Department of Industry's account by the last day of the month so the CD can provide a receipt and ensure correct allocation of receipted amounts to the appropriate cost centre. The Commonwealth Treasury makes the payment to Western Australia by the twenty-first day of the following month.

What the collecting agency does on receipt of payment

The CD advises UIN once the amounts have been received. UIN notifies the Western Australian Department of Mines and Petroleum (DMP) by email that they have advised the Commonwealth Treasury to make payment to the Western Australian Treasury. The Department of Industry would only contact a North West Shelf participant if an amount was not received or was received late.

There are no recorded instances of payments not being received at all. Where a payment is not received from a North West Shelf participant by the last working day of the month, it is deemed a late payment. Under section 633 of the OPGGS Act, a late payment penalty may be incurred. Should a North West Shelf participant make a late payment, the Department of Industry would ask the participant to submit a written explanation of the circumstances. The Department of Industry will consider the circumstances as to whether the late payment was beyond the participant's control, taking into account factors such as timing of the payment and the company's timeliness of payments over 12 months. The Department of Industry will consult the Western Australian DMP (also entitled to a share of any late payment penalty) to make a determination to issue either a late payment penalty or a formal warning, noting that the current breach is likely to be taken into account for any future breach.

How powers are prescribed to the collecting government agency

Under section 56 of the OPGGS Act there is a joint authority for each offshore area that is constituted by the responsible state minister and the responsible federal minister. The Minister for Industry is the responsible federal minister. Administration of the North West Shelf royalty is delegated to UIN.

Reporting and verification

UIN advise CD of the amounts received and payment amounts Treasury made to Western Australia. The Australian Government Treasury no longer reports royalty revenue in the Budget statements. The Department of Industry publishes revenue collection in its annual report including royalties for federal, state and territory jurisdictions.

The Western Australia DMP calculates the monthly royalty payable, which UIN then verifies. UIN performs an annual verification audit and compliance review in the offices of the Western Australia DMP in Perth and on site at Woodside's plant on the Burrup Peninsula in support of administering the Commonwealth petroleum royalty. Its purpose is to satisfy Commonwealth concerns that Western Australia DMP is following due process to reach the agreed financial outcomes in the years concerned for royalties collected and shared by the Commonwealth and Western Australia. By verifying Western Australia DMP's due process, and signature, the Commonwealth's level of confidence in the financial outcome is satisfied. The audit also provides surety to the Australian National Audit Office that reviews the audit and its findings annually.

Managing errors

Errors are unlikely to occur. UIN, Western Australia DMP and the North West Shelf participants maintain fastidious records relating to administering the North West Shelf for the exact purpose of

minimising errors. However, if an error was detected the Department of Industry would work with the Western Australia DMP to reach an agreed position on any shortfall or overpayment, and either serve the relevant participant with a notice of assessment or organise a refund to that participant. The Department of Industry has similar arrangements in place for the Barrow Island Resource Rent Royalty.

Upstream excise paid by the North West Shelf Joint Venture

Overview

The [North West Shelf project](#) is Australia's largest oil and gas resource development, representing an investment of more than \$27 billion. It accounts for more than 40 per cent of Australia's oil and gas production. The venture has six company participants including BHP Billiton Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Pty Ltd, Chevron Australian Pty Ltd, Japan Australia LNG (MIMI) Pty Ltd, Shell Development (Australia) Pty Ltd and Woodside Energy Ltd, which is also Operator of the North West Shelf project's facilities. The North West Shelf project supplies oil and gas to domestic and international markets from the Carnarvon Basin on Australia's north-west continental shelf, and has been doing so since 1989.

The Australian Government imposes a tax, in the form of a crude oil excise, on eligible crude oil and condensate production from coastal waters, onshore areas, and the North West Shelf project area in Australian waters. The *Excise Tariff Act 1921* covers production of crude oil excise and the *Petroleum Excise (Prices) Act 1997* contains provisions for determining the volume-weighted average of realised free-on-board prices, upon which the percentage of excise is calculated. The two Acts are required to be read together.

Excise on production in the North West Shelf, is paid under Item 10 in the Schedule to the *Excise Tariff Act 1921*. The Schedule levies a tariff for petroleum products such as:

- petroleum condensate
- stabilised crude petroleum oil
- topped crude petroleum oil
- gasoline (other than for use in an aircraft)

Under Part II of the *Petroleum Excise (Prices) Act 1997*, the excise liability rate is determined by applying the relevant crude oil excise rate to the volume-weighted average of realised free-on-board price (VOLWARE).

VOLWARE prices

VOLWARE prices are determined each month and are used to calculate the excise duty payable on production from a prescribed production area.

The process for determining the VOLWARE price is contained in the *Petroleum Excise (Prices) Act 1987* and it requires the Minister, or person authorised by the Minister, to determine interim and final prices within a specified time frame. Section 8 of the *Petroleum Excise (Prices) Act 1987* requires that 'written notices setting out the terms of the VOLWARE determination be provided to the relevant producers. The Act does not prescribe a timeframe within which this notice must occur.'

In addition to the North West Shelf Excise to be paid under the *Excise Tariff Act 1921*, on 1 July 2012 new arrangements came into effect and the Petroleum Resource Rent Tax (PRRT) was extended to encompass all Australian onshore and offshore oil and gas projects, including the North West Shelf. This tax is a profit-based tax levied at 40 per cent of net revenues (sales receipts less eligible expenditures) from a project.

The North West Shelf is also liable for royalties paid under the *Offshore Petroleum (Royalties) Act 2006*, where under section 6 – Rate of royalty, royalties are 10 to 12.5 per cent, depending on the status of the producer's licence.

Notable deductions, discounts and/or exemptions

For production in the North West Shelf, [excise is paid](#) under Item 10 in the Schedule to the *Excise Tariff Act 1921*, on all production, whether excisable or not, unless stabilised crude or condensate is used in recovery, production, pipeline transportation or refining of condensate or stabilised crude oil, or as feedstock at a refinery licensed under the *Excise Act 1901*.

Any stabilised crude or condensate for use in recovery or production of stabilised crude oil or condensate is free of excise. The first 4767.3 mega litres (30 million barrels) of stabilised crude and/or condensate from a particular field and a subsequent quantity of annual production is free of excise. Once the field has produced the initial excise-free quantity and the rate of production exceeds the annual excise-free limit, excise is payable in accordance with Item 20 (stabilised crude oil) and Item 21 (condensate) in the *Schedule to the Excise Tariff Act*.

Payment process

An excise licence holder, in most circumstances must lodge an excise return and pay duty for goods delivered for domestic (Australian) consumption. Companies may generate their own version of the excise return (such as a spreadsheet), provided it is approved by the ATO and lodged in the same way. As with all payments to the ATO, companies are expected to keep records up to the required Australian accountancy standards.

Reporting and verification

All payments are subject to the ATO's various systemic audit and quality assurance procedures. Companies registered with the ATO are expected to keep up-to-date and up-to-standard records and are subject to audit from time to time, with heavy penalties applying in cases of misreporting.

The *Petroleum Excise (Prices) Act 1997* contains provisions for the ministers, or persons authorised by the minister, to seek information from companies and their chief executive officers. Again, penalties apply when the appropriate information is not received.

The ATO publishes the total value of excise payments for each income year in its [annual taxation statistics](#).

Company tax

Overview

Australia's federal company income tax is levied on the taxable income of a company. The two principal Commonwealth Acts that deal with income tax are the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

Income tax is imposed by the *Income Tax Act 1986* at rates specified in the *Income Tax Rates Act 1986*. A company's income tax is generally calculated on assessable income less any allowable deductions. Assessable income is generally income a company earns – it does not include GST payable on sales made or GST credits. Allowable deductions are for certain expenses that a company necessarily incurs in relation to its business.

Companies pay a flat rate of tax to the Commonwealth, without a tax-free threshold. As from, and including, the 2001–02 income year, that tax rate for public and private companies is 30 per cent.

Other companies, such as retirement savings account providers, pooled development funds, non-profit companies and life insurance and friendly society companies, have various other tax rates.

A wholly owned group of resident companies, trusts or partnerships can choose to consolidate and be treated as a single entity for income tax purposes. The income, expenses and other income tax attributes of the group members are treated as belonging to the head company of the group.

In statistics it collated for 2010–11 (sourced from 2011 company income tax returns process up to 31 October 2012, therefore not necessarily complete), the ATO reported that 4,550 mining companies operating in Australia paid \$14.25 billion in income tax from a total income of \$204.21 billion; a taxable income of \$50.98 billion (ATO 2013a).

Australian Taxation Office

The Commissioner of Taxation, a statutory official appointed under provisions of the *Taxation Administration Act 1953*, heads the ATO. The Commissioner has general administration of this Act. The *Taxation Administration Act 1953* also contains provisions relating to the PAYG system that deals with tax collection, administration and recovery of tax payments.

Deductions and exemptions

Most expenses that companies incur in running a business can be claimed as deductions to reduce assessable income. The rules vary depending on the business structure and the nature of the expense.

The ATO expects a certain standard of records to be maintained for business transactions, including expense claims, for five years after they are prepared or obtained, or the transactions completed, whichever occurs later.

Deductions, depending on the type of expenses claimed, may be either claimed in the year in which they were incurred, or over time. Some common items for which companies claim deductions are motor vehicles, business travel, capital allowances and depreciating assets, salary, wage and superannuation, losses and repairs, maintenance and replacement expenses.

Payment process

Companies pay income tax in instalments (PAYG), some of which are paid during the income year in which the income is derived, or in a single lump sum paid during the subsequent year. For the majority of companies, the income year is the same as the financial year (1 July to 30 June). However, some companies use a substituted accounting period.

A company that is liable to pay a PAYG instalment for a period must notify the Commissioner of the amount of instalment income for that period before the date the instalment is due. This notification must be in an approved form such as an activity statement. Lodgements can be made through a secure website for managing business tax affairs, the Business Portal. PAYG instalments and other payments are mostly paid electronically to the ATO.

PAYG instalments are used to collect amounts toward an entity's expected income tax liability on its business and investment income during the income year. Coupled with a self-assessment regime, actual tax liability is worked out at the end of the income year when the ATO assesses a company's annual income tax return. PAYG instalments are credited against a company's assessment to work out if the company owes more tax or is owed a refund of some tax already paid.

Generally, PAYG instalments are paid either four times per year or twice a year, but certain entities may be eligible to pay one annual instalment per year. All taxpayers are quarterly payers unless they qualify and choose to be annual or biannual payers. Payment dates for a quarterly payer will be

21 days after the end of the quarter. For an entity with a 30 June balance date this will be the twenty-first day of October, January, April and July.

Most entities pay their instalments quarterly; however, in the 2012–13 Mid-Year Economic and Fiscal Outlook, the government announced that some large entities would move to monthly payments. The law in relation to this new measure received royal assent on 29 June 2013.

A company may also make a 'wash-up' payment before lodging its tax return if it estimates it should have paid more in its PAYG instalments. This usually takes place in the month before a tax return is lodged.

At the end of the income year a company generally lodges its company tax return by 15 January (for a company with a financial year ending on 30 June). However, lodgement date may vary depending on whether the company has one or more prior year returns outstanding or if the taxpayer is in a non-taxable position. In addition, companies that adopt a substituted accounting period will have different lodgement and payment due dates.

Once the tax return is lodged at the end of the period, an assessment is done in which the estimated income tax liability is compared to the actual tax liability. This assessment may result in the company being entitled to a tax refund or a tax liability.

Reporting and verification

All lodgements are processed through ATO information technology systems and must pass various system checks to validate the information received; if system checks are correct the information is processed, if they are incorrect exceptions are raised to an exceptions team where manual intervention is needed. Such intervention may involve contacting the taxpayer. Postings to various accounts are made to reflect information from lodgements and payments.

The ATO publishes revenue statistics that are disaggregated by industry in its annual [taxation statistics](#). Industry groups are based on the ANZSIC 2006 codes on the Australian Business Register.

Under Schedule 5 – Tax secrecy and transparency, Part 1, Item 3C of the *Tax Laws Amendment (2013 Measures No.2) Act 2013* the Commissioner of Taxation must, as soon as practicable after the end of the year of tax, for any company with an annual income of more than \$100 million, make publicly available the company's Australian Business Number and name, as well as its reported total income, taxable income and income tax payable.

Other amendments create exceptions to the taxpayer confidentiality offence provisions for disclosure or on-disclosure of periodic aggregate tax information. The objective of this proposal is to enable better public disclosure of aggregate tax revenue collections, even when the identity of particular entities is apparent or could potentially be deduced. This may arise, for example, where the number of taxpayers paying tax under a particular published head of revenue is small, so one taxpayer may be able to deduce information about another from an aggregate figure. However, this exception does not apply to aggregate information that is capable of identifying an individual (natural person) taxpayer.

The Commissioner of Taxation is yet to publish guidelines on how information will be released.

Data verification depends on the form lodged (that is, PAYG or income tax return) and whether it was electronically lodged. Payment amounts from forms lodged are usually automatically matched to client accounts, if an imbalance occurs an exception report is generated and followed up in the ATO and with the taxpayer. Data verification can also occur with the taxpayer checking details on a secure website (that is, they can check their statement of account on the ATO Business Portal).

Tax payments are also subject to the various ATO compliance programs to ensure compliance with tax obligations.

Managing errors

Governance mechanisms are in place in the form of established work processes and systems that are subject to extensive assurance processes and information technology controls. There are various stage and gate processes from data capture, processing and storage of data. Areas in the ATO also monitor data for accuracy and make enquiries and amendments where discrepancies are found. The processes can be automated and will depend on whether lodgement is made on the prescribed forms or through electronic lodgement.

The ATO is required to make available to the public, [accountability and reporting information](#) about its management and operations. As well, it is subject to extensive [recording keeping requirements](#) that comply with Australian standards.

Appendix 2

This appendix discusses mineral, petroleum and geothermal royalties in Queensland, South Australia and Tasmania.

Queensland mineral, petroleum and geothermal royalties

Mineral royalties

Overview

Queensland represents one of Australia's most productive extractive industry sectors. Along with Western Australia, the state has experienced notable growth since 2001. Queensland is rich in copper, lead, silver, zinc, bauxite, phosphate rock, magnesite and silica sand. It is also the world's largest seaborne coal exporter. Queensland has a proven record in exploration and development of significant mineral and energy resources and many areas of the state are still highly prospective, with opportunities for further exploration ([Department of Natural Resources and Mines](#)). Mineral royalties payable increased by \$66.7 million from 2010–11 to \$2712.79 million in 2011–12.

Table A2: Minerals Queensland produces

Type of mineral	% of Australian production
Copper	29.2
Silver	77.2
Lead	72.0
Zinc	65.7
Gold	6.3
Bauxite	29.6

Source: Bureau of Resources and Energy Economics data, 2011–12 and British Geological Survey data.

Legislation and ownership

Royalty on minerals is payable under the *Mineral Resources Act 1989*. Although a number of 'special agreement' Acts exist in relation to certain tenure holders and operations (for example, the *Thiess Peabody Coal Pty Ltd Agreement Act 1962* and the *Mount Isa Mines Limited Agreement Act 1985*), all royalty-related aspects of those Acts are covered by the *Mineral Resources Act 1989*.

Since 1 July 2011 the Treasurer and Minister for Trade is the responsible minister for the royalty-related aspects of the *Mineral Resources Act 1989*. The Office of State Revenue, part of Queensland Treasury and Trade, administers royalties.

The Crown generally owns minerals located on or below the land in Queensland, even when the land has been alienated. Royalty on such minerals is therefore payable to the Crown. In the limited circumstances in which the Crown does not own the minerals, royalty is payable to the mineral owner at the same rate, and at the same time, as royalty in relation to Crown owned minerals.

Royalty assessment principles

Chapter 11 of the *Mineral Resources Act 1989* (and Chapter 3 of the Mineral Resources Regulation 2013) imposes royalty on minerals sold, disposed of or used in a royalty return period (quarterly or annual), and requires lodgement of a royalty return in certain circumstances.

Royalty obligations are imposed on the tenure holder (a statutory right granted under the *Mineral Resources Act 1989* to perform certain activities in a certain geographic area), even where another entity operates the tenure on behalf of the holder. For royalty purposes, tenures held by the same or related holders may be grouped together to form an operation, and in such cases the holder's royalty obligations are determined by reference to that operation. For example, a single royalty return must be lodged in respect of the operation, rather than a separate royalty return being required for each tenure in that operation.

The Regulation prescribes different royalty rates for different commodities. Generally, royalty is calculated either as a percentage of the value of the mineral (that is, an ad valorem basis) or as a set amount per tonne. The rates applicable to common commodity types are outlined in Table A3.

Table A3: Common commodity types, rates applicable

Commodity	Rate
Base and precious metals	Variable rate between 2.5 per cent and 5.0 per cent.
Bauxite	Non-domestic – higher of 10 per cent of the value of the bauxite or \$2.00 per tonne. Domestic – higher of 75 per cent of the calculated rate per tonne for non-domestic bauxite or \$1.50 per tonne.
Coal	7 per cent of average value for period up to \$100 per tonne, 12.5 per cent of value from \$100 to \$150 per tonne, then 15 per cent thereafter.
Industrial minerals	Flat rate per tonne, depending on type of mineral
Iron ore	\$1.25 per tonne – where average price per tonne is \$100 or less. If average price per tonne is more than \$100 – \$1.25 per tonne plus 2.5 per cent of value above \$100 per tonne.
Other	Generally, a percentage of value

Where royalty is imposed on an ad valorem basis, the Regulation provides that the value to which the rate is applied is determined by deducting certain amounts from the gross value of the mineral. Generally, where an arms-length sale occurs, the gross value will be the amount for which the mineral is sold. In other cases (including where mineral is sold to a related entity which resells the mineral or produces a commodity using the mineral), the gross value will be as determined by the minister in a gross value royalty decision.

Notable deductions, discounts and/or exemptions

Deductions

The value of a mineral (other than coal seam gas) is worked out by deducting from the gross value of the mineral:

- freight and insurance costs relating to transporting the mineral by water to a port outside Queensland
- an amount determined by the minister on account of the loss of metal content in the processing of the mineral (only for certain minerals)
- any other cost the minister determines on reasonable grounds. This power is exercised on a commodity-by-commodity, rather than producer-by-producer, basis.

Royalty discount

Where certain base metals are processed in Queensland to a certain minimum metal content, the royalty payable is discount by between 20 and 35 per cent (depending on the type of metal).

Royalty free threshold

No royalty is payable on the first \$100,000 of the total aggregate value of certain minerals sold, disposed of or used in a financial year. Minerals that attract exemption include corundum, gemstones, precious stones, copper, gold, lead, nickel and zinc.

Domestic and export rates

All minerals, apart from coal and bauxite, attract royalty at the same rate irrespective of whether the mineral is sold inside (domestic sales) or outside (export sales) Queensland.

For coal, although the same formula is used to calculate the royalty rate applying to domestic coal sales and export coal sales for the return period, that formula must be applied separately in relation to each such class of sales.

For bauxite, where domestic sales and export sales occur in the same period, the royalty rate in relation to domestic sales is 75 per cent of the rate applying to the export sales.

Payment process

Lodgement and payment requirements for a particular tenure holder depend on, among other things, the nature of the holder's tenures and the level of production from those tenures.

Large mineral producers are required to lodge royalty returns quarterly, and to pay royalty monthly (unless permitted by the minister to pay when the royalty return is due; that is, quarterly). Typically, the minister's power to permit quarterly payment is exercised where the anticipated royalty payable in relation to the particular operation is less than \$50 million per annum.

A quarterly royalty return must be lodged on or before the last business day of the month following the end of the calendar quarter to which the return relates.

Small mineral producers are only required to lodge a return and pay royalties annually, with the royalty return and payment both being due within three months of the end of the financial year to which the return and payment relate.

Generally, a royalty return must be lodged in respect of an operation even where no royalty is payable for the relevant period. However, where an operation consists solely of mining claims (a form of tenure which entitles the holder to prospect and hand-mine for specified minerals other than coal), a royalty return need only be lodged for a period in which royalty is payable.

A late lodgement fee is automatically imposed (subject to remission by the minister) where a royalty return is not lodged on time. Where royalty is not paid by the due date, interest is automatically imposed (again, subject to remission by the minister).

Royalty returns can be lodged electronically using OSRconnect (the Office of State Revenue's award winning e-lodgement system) by mail, email, or fax or in person. Royalty payments can be remitted through electronic funds transfer, cheque, credit card or cash.

Verification

The OSRconnect versions of the royalty return forms incorporate context-sensitive help text to help clients understand their obligations, and perform automatic calculations of royalty liability. Data validation and reasonableness checks have been built into OSRconnect. Where royalty returns are lodged other than through OSRconnect, the Office of State Revenue reviews the return for reasonableness.

As part of submitting a royalty return a tenure holder (or, in the case of a corporate tenure holder, a person authorised to represent the tenure holder) is required to declare the information provided is true and correct.

Royalty is not self-assessed. Although the total amount of royalty reflected in a particular return is required to be paid by the due date for lodgement of the return, the Mineral Resources Regulation 2013 requires the minister to assess the amount of royalty payable based on the information contained in the return.

If a return is not lodged, or is lodged but does not contain all relevant information, the minister is empowered to make a determination of the necessary information and assess royalty on that basis.

The Office of State Revenue conducts audits in accordance with a comprehensive risk-based audit program, with specific sub-programs for coal, base and precious metals and other minerals. Commodity and client-specific risk analysis is carried out in developing audit plans. The Office of State Revenue uses computer-assisted verification techniques in conducting royalty audits.

The Office of State Revenue's audit program is in turn externally audited, and the Queensland Treasury Audit Committee reviews audit performance. In addition, the Queensland Auditor-General performs an oversight function.

Royalty payments are reconciled with royalty returns. Any discrepancies are followed-up immediately upon identification.

Reporting

The Office of State Revenue publishes aggregate totals of royalty payments for coal, base and precious metals, and other minerals annually. The aggregated data does not allow for identification of any royalty information concerning individual holders.

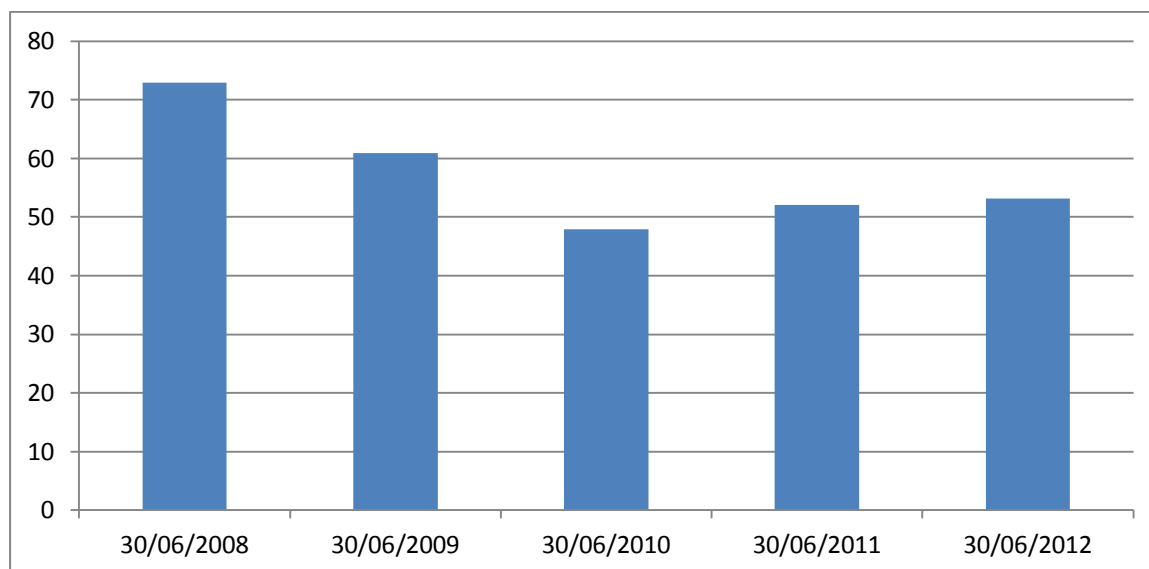
Consolidated royalty revenue is reported as part of the Queensland State Budget and Mid-Year Fiscal and Economic Review statements.

Petroleum royalties

Overview

The total production value of Queensland's petroleum sector remained steady in 2010–11 at around \$913 million, although the return to government through royalty payments has come down from a peak in 2007–08 (Figure A1).

Figure A1: Annual petroleum royalties in Queensland (\$m), 2008–2012



Source: Office of State Revenue 2014, Royalty Statistics, Queensland Government, Brisbane.

Royalty revenue is expected to increase once LNG projects in Gladstone begin production in 2014.

Petroleum extraction and market-based activities are conducted under the *Petroleum and Gas (Production and Safety) Act 2004* and the Petroleum and Gas (Production and Safety) Regulation 2004.

Legislation and ownership

Royalty on petroleum is payable under the *Petroleum and Gas (Production and Safety) Act 2004*. The Act defines 'petroleum' as including, among other things, natural gas, oil, condensate, LPG and coal seam gas.

The Treasurer and Minister for Trade have been responsible for royalty-related aspects of the *Petroleum and Gas (Production and Safety) Act 2004* since 1 July 2011, and the Office of State Revenue administers petroleum royalties.

The state owns all petroleum located on the land surface, or in natural underground reservoirs, in Queensland, even when the land has been alienated. Accordingly, royalties on petroleum are payable to the Crown.

Royalty assessment principles

Chapter 6 of the *Petroleum and Gas (Production and Safety) Act 2004* (and Chapter 6, Part 2, Division 4 of the Petroleum and Gas (Production and Safety) Regulation 2004) imposes royalty on all petroleum disposed of by the producer in any fashion (such as supply to a third party, flaring or venting) during a quarterly or annual royalty return period.

As with mining royalties, royalty obligations are imposed on the tenure holder (referred to in the Act and Regulation as the petroleum producer), and tenures are grouped into operations for royalty purposes.

Petroleum royalty is payable at the rate of **10 per cent of the wellhead value** of the petroleum disposed of during the return period. The wellhead value of petroleum is the amount that the petroleum could reasonably be expected to realise if it were sold on a commercial basis, less certain deductions. Where petroleum is disposed of to a related party, or a deductible expense is paid to a related party, the minister may make a petroleum royalty decision to determine the appropriate amount of the revenue or expense (as the case may be) for royalty purposes.

Notable deductions, discounts and/or exemptions

Deductions

The wellhead value of petroleum is worked out by deducting from the gross value of the petroleum the costs for:

- a pipeline tariff or other charge paid to a third party for transporting the petroleum to its point of disposal
- a processing plant toll or other charge paid to a third party for processing the petroleum before its disposal
- depreciation of capital expenditure on a petroleum facility or pipeline used for processing the petroleum or transporting it from the wellhead to the point of disposal, allocated over 10 years or such shorter period as the minister determines
- an operating cost that directly relates to treating, processing or refining the petroleum before its disposal, or transporting the petroleum to the point of its disposal
- another expense relating to operating the site at which the petroleum was produced, as approved by the minister.

The Petroleum and Gas (Production and Safety) Regulation 2004 explicitly states that expenses incurred in producing the petroleum (such as, lifting costs) may not be claimed as a deduction.

Where allowable deductions for a quarterly return period exceed the value of the petroleum disposed of, the excess (a negative wellhead value) may be carried forward to the next quarterly return period (by being claimable as a deduction in that subsequent period). Any negative wellhead value existing at the end of the fourth quarter in a producer's annual return period cannot be carried forward to the first quarter of the next annual return period.

Production testing exemption

Where a tenure holder carries out production testing of coal seam gas or natural gas from a particular well, and as part of that testing flares or vents gas, royalty is only payable on the amount of petroleum flared or vented in excess of 3,000,000 cubic metres during a relevant period. The relevant period is the shorter of 13 months, or the sum of all periods in which production testing is permitted by the terms of the relevant tenure.

Other exemptions

Petroleum is exempt from royalty if the minister is satisfied:

- the petroleum was unavoidably lost before it could be measured
- the petroleum was used in the production of petroleum from the tenure (or, for coal seam gas, for mining the coal that produced the gas)
- before the petroleum was produced in Queensland, it was produced outside Queensland and injected or reinjected into a natural underground reservoir in Queensland
- the petroleum is petroleum on which petroleum royalty has already been paid, or
- the petroleum was flared or vented as part of testing for the presence of petroleum during the drilling of a well.

Payment process

Under the *Petroleum and Gas (Production and Safety) Act 2004*, a petroleum producer is required to lodge a royalty return in respect of any quarter in which:

- the producer produces petroleum, or
- petroleum that has been produced by the producer at any time is either disposed of by the producer in any fashion (such as, supply to a third party, flaring or venting) or is stored for the producer in a natural underground reservoir.

The royalty return in respect of a particular quarter must be lodged by the producer on or before the last business day of the month immediately following the quarter.

A petroleum producer is required to pay royalty monthly, unless permitted by the minister to pay at the time the royalty return is due (that is, quarterly). Typically, the minister's power to permit quarterly payment is exercised where the anticipated royalty payable in relation to the particular operation is less than \$50 million per annum.

A quarterly royalty return must be lodged on or before the last business day of the month following the end of the calendar quarter to which the return relates.

In addition to quarterly returns, an annual return must be lodged within three months after the end of the year to which the return relates (either the year ended 30 June, or the year ended 31 December, depending on the determination made by the minister in relation to the particular producer). The annual return contains the same information as the quarterly returns, but the overall liability for the annual return period may be different to the sum of the liability for the four quarters due to such things as depreciation or negative wellhead values. Any additional royalty payable (compared to the total royalty previously paid in relation to the four quarters in the annual return period) must be paid by the due date of the annual return.

As with mining royalties:

- late lodgement fees and interest are automatically imposed (subject to remission by the minister) where a royalty return is not lodged, or royalty is not paid, by the due date
- royalty returns may be lodged electronically using OSRconnect, mail, email or fax or in person
- royalty may be paid by electronic funds transfer, cheque, credit card or cash.

Verification

The OSRconnect versions of the royalty return forms incorporate context-sensitive text to help clients understand their obligations and perform automatic calculations of royalty liability. Data validation and reasonableness checks have also been built into OSRconnect.

Where royalty returns are lodged, other than through OSRconnect, the Office of State Revenue reviews the return for reasonableness.

As part of submitting a royalty return a tenure holder (or, in the case of a corporate tenure holder, a person authorised to represent the tenure holder) is required to declare that the information provided in the return is true and correct.

If a return is either not lodged, or is lodged but does not contain all relevant information, the minister is empowered to make a determination of the necessary information and assess royalty on that basis.

The Office of State Revenue conducts audits in accordance with a comprehensive risk-based audit program. Commodity and client-specific risk analysis is carried out in developing audit plans. The Office of State Revenue uses computer-assisted verification techniques in conducting royalty audits.

The Office of State Revenue's audit program is, in turn, externally audited, and the Queensland Treasury Audit Committee reviews audit performance. In addition, the Queensland Auditor-General performs an oversight function.

Royalty payments are reconciled with royalty returns. Any discrepancies are followed up immediately upon identification.

Reporting

The Office of State Revenue publishes [aggregate totals of royalty payments](#) for petroleum annually. The aggregated data does not allow for identification of any royalty information concerning individual holders.

Consolidated royalty revenue is reported as part of the Queensland State Budget and Mid-Year Fiscal and Economic Review statements.

Geothermal

Overview

In 2004 Queensland introduced legislation that enabled commencement of exploration for geothermal energy. The *Geothermal Exploration Act 2004* was introduced as interim legislation to allow exploration to commence while legislation to facilitate production was developed.

The Act incorporates an exploration framework that will allow proponents to explore for geothermal energy under a geothermal exploration permit. Importantly, where the holder of a geothermal exploration permit has discovered a geothermal resource, the Act permits the holder to apply for a geothermal production lease. When granted, it permits the holder to commence large-scale production of geothermal energy.

Legislation and ownership

Queensland Parliament passed legislation in August 2010 introducing a geothermal framework designed to encourage and facilitate safe production of geothermal energy that is virtually free of carbon dioxide emissions. The *Geothermal Energy Act 2010* enables the licensing of a proponent to explore for, or produce, geothermal energy.

The *Geothermal Energy Act 2010* recognises existing resource tenures (under the *Mineral Resources Act 1989*, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas and Storage Act 2009*) and provides a mechanism to ensure efficient use of the state's resources by allowing overlapping authorities for exploration or production.

Although the *Geothermal Exploration Act 2004* and the Geothermal Energy Regulation 2012 contain a framework for imposing and collecting royalty, no royalty will be imposed in relation to geothermal energy produced by or for a producer before 1 July 2020.

South Australian mineral, petroleum and geothermal royalties

Mineral royalties

Overview

The 2011–12 net mineral industry value of South Australia's minerals production and processing was \$6.274 billion. This compares with \$5.913 billion in 2010–11 (Figure A2) and a government aspirational target of \$10 billion by 2020 (DSD 2012a).

South Australia continues to be highly regarded as a globally significant destination to explore for and invest in copper, uranium, iron ore, gold, heavy minerals, base metals and industrial minerals. Furthermore, South Australia continues to attract the attentions of some of the industry's most prominent companies. New capital expenditure for 2011–12 has primarily been associated with construction of new mines or mine expansions:

- Kanmantoo (Hillgrove Resources) – \$144 million copper–gold mine
- Honeymoon (Uranium One) – \$118 million uranium mine
- Ankata (OZ Minerals) – \$135 million expansion of Prominent Hill copper–gold mine
- Beverley North (Heathgate Resources) – \$50 million uranium mine
- Hematite Expansion Project (Arrium) – \$390 million expansion of hematite iron ore in the Middleback Ranges Peculiar Knob (Arrium) – \$86 million iron ore mine, including accommodation camp.

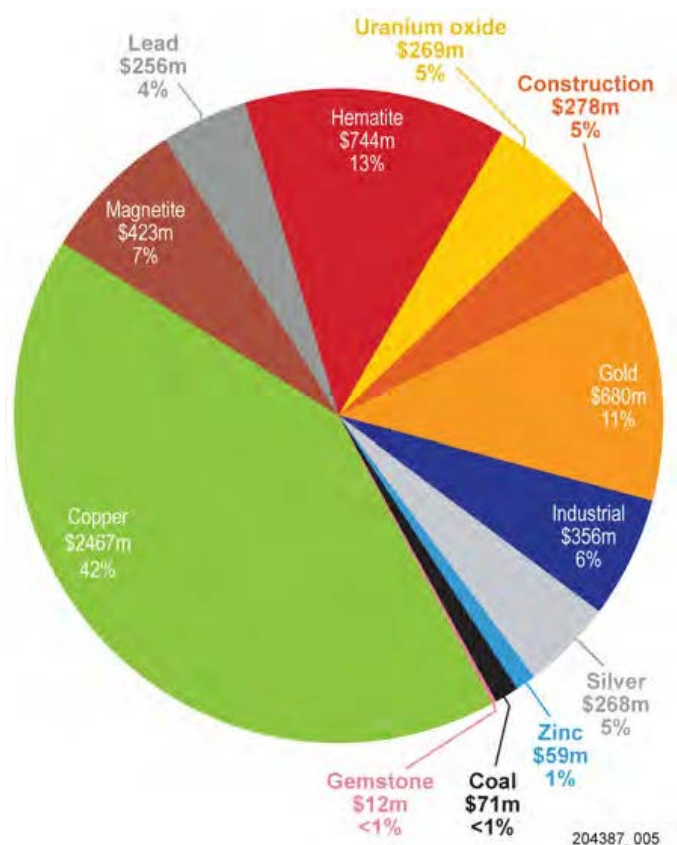
Mineral royalties payable increased from \$119.4 million in 2010–11 by \$0.52 million (0.4 per cent) to \$119.9 million in 2011–12. In 2012–13 royalties amounted to \$107.5 million largely reflective of the higher Australian dollar and a softening in world commodity pricing. Overall any increases in mineral royalties over the last several years directly correlates to increases in mineral production as a result of increased volumes and values across new and existing mines.

Minerals are owned by the Crown in South Australia and are managed on behalf of all South Australians. The South Australian Department for State Development (DSD), previously the Department for Manufacturing, Innovation, Trade, Resources and Energy administers legislation on behalf of the Minister for Mineral Resources and Energy. Access to the minerals is controlled through the *Mining Act 1971* and the Mining Regulations 2011 that establish a strict regulatory framework for access to land, environmental management and payment of fees and mineral royalty (DSD 2013a).

More generally, the legislation in South Australia:

recognises the importance of our resources sector in growing the state's future economic prosperity and opportunities for employment and skilling, balanced against key environmental and social objectives (DSD 2012b).

Figure A2: Net mineral industry value, mineral production and offsite refining combined; \$5.913 billion, 2010–11, by commodity



Source: Department for State Development 2012, South Australia's Minerals Scorecard 2010–11, Government of South Australia.

Legislation and ownership

In general, South Australia's mining legislation reflects the policy view that development of the state's mineral resources has an overwhelmingly positive effect on economic development. Moreover, best practice management of South Australia's mineral assets, including streamlined regulation of exploration and mining activities, attracts investment that delivers outcomes of sustainable benefit and prosperity (DSD 2012b).

Plan for accelerating exploration

The South Australian Government committed \$22.5 million in funding for 2004–09 to attract further mineral and petroleum exploration investment in a program called Plan for Accelerating Exploration (PACE). The initiative included funding of \$2 million per year available for collaborative drilling over the full five years. PACE collaborative drilling has provided a significant boost to exploration in South Australia when considering that, as part of the initiative, industry will match this, taking the total to \$20 million over five years. PACE 2020, is an expansion of the initiative with a focus on:

- unlocking new areas for exploration
- leveraging research partnerships through the resource value chain to drive performance

- further streamlining the process from exploration to mine development
- providing better data delivery services to the resources industry.

PACE 2020 has supported South Australia's world leading online resource application, South Australian Resources Information Geoserver, which enables users to view and download information about the resource value chain from exploration to production and has incorporated more than 35 spatial layers over the last year. In its 2013 Budget the state government announced expansion of the PACE initiative with monies allocated over the next two years to a frontier exploration program to stimulate industry activity.

The South Australian Government also has a strong focus on community and environmental outcomes alongside economic prosperity, with its Regulatory Framework and Policy Statement website stating, 'Exploration and mining companies may need to achieve a social licence to operate from the community as part of establishing effective long term working relationships with all stakeholders'.

According to the South Australian Government, key features of that state's mining regulation are:

- fair and equitable – the interests of all stakeholders will be considered
- timely – decisions will be made in the minimum possible time
- transparent – public release of information on the processes and decisions will be timely and appropriate
- predictable – processes will be consistent leading to clearly identifiable, environmental, and economic outcomes
- practical – outcomes will be achievable in a practical sense
- flexible – alternative and innovative approaches that take account of changing circumstances (such as, in technology and community expectations over the life of a mine) will be enabled
- efficient – red tape will be minimised and regulatory processes simplified and made 'fit for purpose' to achieve timely decision-making
- objective – decisions will be based on sound scientific and technical information
- inclusive – stakeholders will be engaged and informed and their views will be taken into account.

The *Roxby Downs (Indenture Ratification) Act 1982* was established to govern BHP Billiton's operation of the Olympic Dam copper/uranium mine and specifies BHP Billiton's obligations with respect to state legislation, such as the *Aboriginal Heritage Act 1988*.

Royalty assessment principles

The royalty regime that applies in South Australia is one of self-assessment. Therefore responsibility for calculating the amount to be paid and prompt lodgement of royalty returns and payment rests with the titleholder. Royalty rates differ between mineral commodities (Table A4).

Table A4: Royalty rates differ between mineral commodities

Mineral type	Applicable royalty rate
Refined mineral products	3.5 per cent of the value of the mineral
Mineral ores and concentrates	5 per cent of the value of the mineral
Industrial minerals	3.5 per cent of the value of the mineral
Extractive minerals	35 cents per tonne

Note: The [South Australian Government Gazette published on 30 June 2011](#) provides additional clarification as to declared mineral ores, concentrates, refined mineral products and industrial and construction materials.

In determining the correct value of the mineral for royalty purposes, the market value of the minerals must be ascertained through applying the appropriate section of the Roxby Downs Act. For example, to help determine market value, see [South Australian Government Gazette published on 12 July 2012](#).

Section 17(6) of the *Mining Act 1971* provides the sequential approach to be applied when determining the market value of particular minerals. In addition, where the mineral has not been sold to an arms-length purchaser (such as a subsidiary of the organisation) section 17(6)(c) applies in which the producer will be required to source an arms-length sale price in the relevant six-month period, from a third-party producer in the industry.

Payment process

The *Mining Act 1971* requires tenement holders to make royalty payments on a six-monthly basis, no later than 31 January and 31 July each year on the minerals recovered and sold or disposed of during the previous six months finishing on 31 December and 30 June, respectively. In November 2013 the legislation was amended to introduce monthly payments of royalties for those producers anticipated to pay at least \$100,000 in royalties during the course of a financial year (based on the previous year's returns).

The *Roxby Downs (Indenture Ratification) Act 1982* requires the company to calculate and pay mining royalties on a monthly basis, one month in arrears. Moreover, tenement holders may pay royalty liabilities by cash, cheque, credit card or electronic funds transfer.

Upon payment of the royalty, the return form becomes a tax invoice. DSD reconciles the payment receipts to the royalty declared in the return form. DSD follows up late payments and issues penalties by default.

Notable deductions, discounts and/or exemptions

Reduced royalty for new mines – Section 17A of the *Mining Act 1971* provides for a reduced rate of royalty payments where an application has been made and subsequently assessed as being a new mine for the purposes of royalty by the Minister. Declaration of a new mine will, for five years (commencing on the date the first royalty is due and payable), also be subject to a discounted royalty rate of 2.0 per cent, noting:

Declarations made prior to 1 July 2011 continue to be subject to the reduced rate of 1.5 per cent. The reduced royalty rate for new mines is not available for extractive mineral production.

Prescribed costs (allowable deductions) – Pursuant to section 17(8) of the *Mining Act 1971* certain prescribed costs are not to be included in the market value of a particular mineral at the gate of the relevant tenement. The regulations provide guidance as to the types of costs that may be excluded in the value of the mineral:

- (costs (including GST) genuinely incurred in transporting the minerals from the relevant tenement to a point of sale (including packaging, storage, loading, permit, fees and insurance)
- costs genuinely incurred in shipping the minerals to a genuine purchaser in a sale at arms length
- any other costs determined by the Minister to be a cost of a prescribed kind for the purposes of that section.

Reporting and verification

Royalty payments are checked for accuracy upon receipt by reconciling against the mining return submitted. Since the royalty regime that applies in South Australia is one of self-assessment, verification of the figures principally occurs through conduct of royalty investigations. Audits are completed on selected returns to validate the accuracy of sales values and production volumes

reported and in effect, the calculated royalty. DSD's audit plan requires that royalty investigations of mineral producers occur on a four to five-year cycle. These investigations provide assurance to the state government that it is receiving the correct amount of royalty payments. The investigations also create a dialogue between DSD and the mineral producers, enabling feedback to be garnished in relation to better educating industry about their royalty obligations and other issues such as red tape reduction measures.

The company subject to the *Roxby Downs (Indenture Ratification) Act 1982* is required to engage an external auditor to conduct an annual independent audit of the royalty payments; DSD is provided a copy of the audit report. The reports provide assurance to DSD as to the existence of appropriate systems and processes associated with calculating royalties.

Ensuring accuracy

Royalty payments are verified upon receipt by reconciling with the mining return submitted. At this stage errors are addressed through immediate communication with the payee.

Reconciliation of the consolidated royalty receipts to the consolidated mining return data is prepared and separately reviewed (segregation of duties and oversight) to ensure accurate royalty revenue collection. Any input errors identified in the reconciliation process are remedied or noted for further investigation.

In addition, the sales values and production volume data on which royalty is calculated is reconciled using available market data (such as the London Metal Exchange). Where available, sales revenues are also reconciled to audited company reports (released to ASIC).

The department undertakes royalty investigations to identify under or over payments and address any interpretation issues. Tax invoices are issued to tenement holders to recover any underpaid royalty variances identified, with the exception of immaterial variances.

Reporting

The consolidated royalty revenue is reported in the South Australian state budget statements and DSD publishes royalty revenue collection in the Minerals and Energy South Australia (MESA) Annual Review Journal.

Petroleum and geothermal royalties

Overview – petroleum

Though largely under-explored, by world standards, it is thought that South Australia's energy resources wealth could be world class, particularly given the potential of unconventional gas discoveries. The Cooper and Eromanga basins, which span northeast South Australia and southwest Queensland, comprise Australia's largest onshore petroleum province.

In 2011–12 South Australian petroleum sales were \$1.134 billion (in 2012 dollars), compared with \$943.8 million in 2010–11 and \$1.034 billion in 2009–10 (DSD 2012c). There has been a significant resurgence in petroleum exploration; private exploration figures the ABS published in March 2013 show a doubling in exploration dollars spent to that over the previous 12 months. Exploration is expected to grow as focus converges on unconventional gas reserves estimated to be more than 200,000 petajoules of gas – more than 30 times the production, to date, from unconventional shale, siltstones, tight sandstones and coals.

In December 2012 South Australia was the first state to finalise a comprehensive approach to develop unconventional gas projects through release of the Roadmap for Unconventional Gas. Development of the roadmap involved thorough consultations with more than 270 participants, including peak

representative bodies, companies, universities, government agencies from all states and the Commonwealth, individuals and landowners. The roadmap produced 125 recommendations covering the full life cycle of unconventional gas projects as well as related supply chains and infrastructure. Five working groups are working on the highest priority recommendations to facilitate industry development and address innovative approaches to community.

Royalties in 2012–13 from petroleum were \$81.2 million up from \$56.2 million in 2011–12 (DSD 2012d).

Overview – geothermal

South Australia has significant potential for geothermal energy and the state government is a leader in providing an effective regulatory and approvals framework.

Legislation and ownership

In South Australia royalties in respect of petroleum and geothermal energy are payable under the *Petroleum and Geothermal Energy Act 2000* for onshore activities, which is administered by DSD. The Act requires licence holders to pay royalty on a percentage of the value at the wellhead of a regulated resource (section 4 of the Act defines a ‘regulated resource’). The Crown retains ownership of petroleum and other regulated resources contained onshore in the ground in South Australia.

Ownership of the regulated substance transfers to a licensee upon recovery of the regulated substance on which a royalty is levied. This royalty is in addition to the Commonwealth, state and local government taxation regimes to which all companies and individuals are subject.

Royalty provisions

Regulated substance – The royalty rate (percentage of wellhead value) is 10 per cent for a regulated substance. The wellhead value is calculated by subtracting from the price (ex GST) from a genuine arms length sale, all reasonable expenses (ex GST) reasonably incurred by the producer of a regulated substance, in treating, processing or refining the substance and in transporting the substance from the wellhead to point of delivery.

Geothermal energy – The royalty rate (percentage of wellhead value) is 2.5 per cent for geothermal energy. The wellhead value is calculated by subtracting from the price (ex GST) from a genuine arms length sale, all reasonable expenses (ex GST) reasonably incurred by the producer of geothermal energy, in getting the energy to the point of delivery to the purchaser. In regard to both regulated substances and geothermal energy:

The value at the wellhead of a regulated substance or geothermal energy is to be assessed by the minister. The minister may, on application by the producer, or on the minister’s own initiative, review and revise an earlier assessment of the value at the wellhead of a regulated substance or geothermal energy (DSD 2013b).

Offshore royalties

Details about royalties and fees for petroleum and other regulated substances recovered from offshore South Australia can be found on the [Department of Industry and Science site](#).

Payment process

Within 30 days after the end of each month, licensees must provide the minister with a return and royalty payment for the relevant month; for example, the February royalty payment represents royalty payable for January production. Payment must accompany the returns, one month in arrears. Credits carry forward to future periods and licensees pay their royalty liabilities by electronic funds transfer.

DSD reconciles the payment receipts to the royalty declared in the return data. Licensees create a recipient created tax invoice for their monthly royalty payments.

Summary of deductions, discounts and/or exemptions

Royalties are only calculated as a proportion of the net sales value of regulated substance at the actual point of sale to an arms-length purchaser after deduction from the gross sale value of certain expenses. Deductible expenses are those directly relating to treating, processing or refining the regulated substance post-wellhead, or in conveying the regulated substance to the point of delivery to the purchaser (the wellhead value). Pre-wellhead costs, such as those incurred in exploration, drilling or recovery activities, cannot be claimed for the purposes of determining royalty.

This type of royalty system is widely accepted in the petroleum industry and is reasonably easy to administer for both companies and government.

Reporting and verification

The South Australian Government checks royalty payments for accuracy upon receipt by reconciling against return data submitted. Since the royalty regime that applies in South Australia is one of self-assessment, verification of figures principally occurs through conduct of royalty investigations.

DSD's audit plan requires that royalty investigations of petroleum/geothermal producers occur on a two to three-year cycle. The purpose of these investigations is to assure the state government it is receiving the correct royalty payments. The investigations also create a dialogue between DSD and petroleum/geothermal producers, enabling feedback relating to better educating industry about their royalty obligations and other issues, such as red tape reduction.

Where external market data is available (such as Australian Stock Exchange releases) this information is analysed. Reconciliations to ASX releases are possible; however, due to amalgamated reporting of other market segments or jurisdictions (for example, production in the Cooper Basis includes reporting to Queensland) the outcome will generally only be a test of reasonableness.

Each petroleum producer is required to engage an external auditor to conduct an annual independent audit. DSD is provided a copy of these reports. The reports provide assurance to DSD as to the existence of appropriate systems and processes relating to calculation of royalty. They also assist with DSD's audit planning for future royalty investigations.

Error reconciliation

Royalty payments are verified upon receipt by reconciling against return data submitted. Errors at this stage are addressed through immediate communication with the payee.

Reconciliation of consolidated royalty receipts against consolidated petroleum return data is prepared and separately reviewed (segregation of duties and oversight) to ensure an accurate royalty revenue collection. Any input errors identified during reconciliation are remedied.

Royalty investigations are undertaken to identify under or over payments and address any interpretation issues that may exist. In the month following an identified royalty variance, the licensee makes an adjustment to the royalty payable for that period. DSD monitors adjustments in its review of petroleum returns and royalty payments.

Reporting

The consolidated royalty revenue is reported in the South Australian state budget statements.

Tasmanian mineral, petroleum and geothermal royalties

Minerals

Tasmania has remarkable geological diversity and more than a century's history as a significant minerals producer. The state exports ores and concentrates of iron, copper, lead, zinc, tin, high-grade silica and tungsten. The total value of mining and metallurgical production in Tasmania was estimated as \$1.66 billion in 2012–13. The mineral extraction and processing sector is Tasmania's largest export industry and accounts for more than 50 per cent of mercantile exports, in 2012–13 (Figure A3).

Tasmania has six large operating mines, including long-term producers Mount Lyell (copper, gold, silver), Rosebery (zinc, lead, gold, copper, silver) and Savage River (magnetite, which is converted into iron ore pellets at Port Latta). A number of proposed projects are also in various stages of development.

Tasmania's operating mines are:

- Mt Lyell Mine: copper mining at Queenstown
- Rosebery Mine: silver, lead, zinc mining
- Renison Mine: tin mining
- Savage River Mine: magnetite (iron ore) mine
- Henty Mine: gold mining
- Kara Mine: magnetite coal wash at Hampshire
- Cornwall Coal: coal mining in northeast Tasmania
- Shree: iron ore mining at Nelson Bay

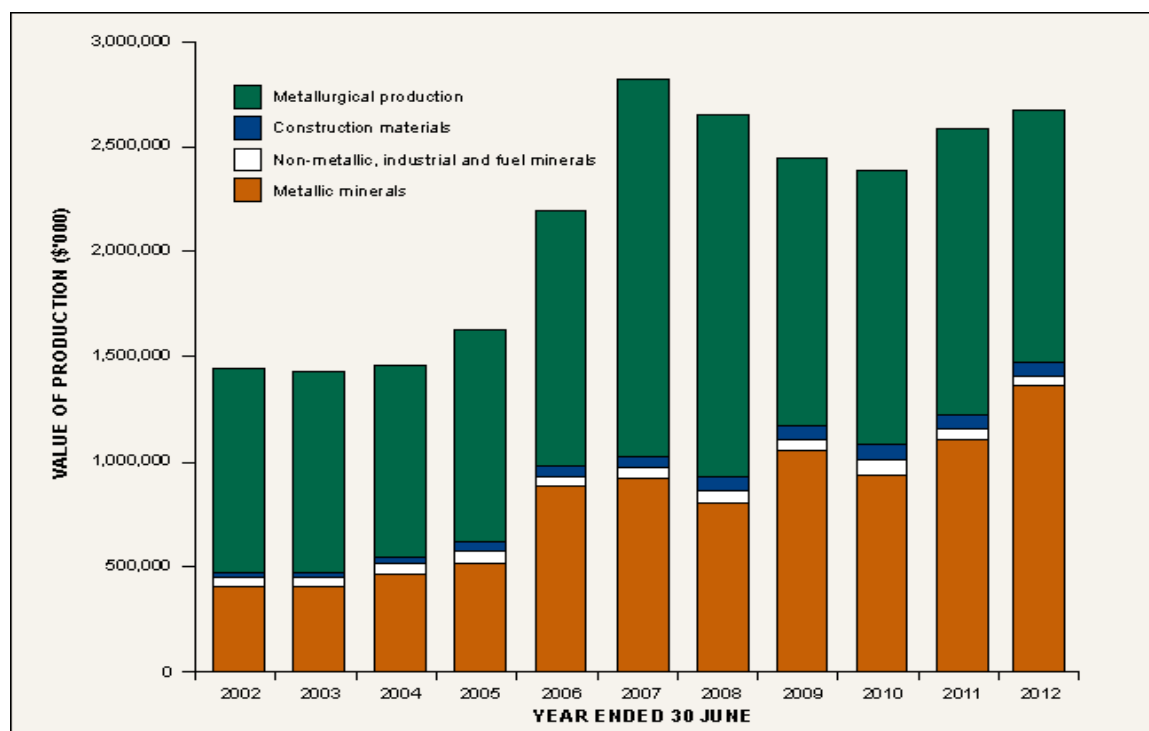
Proposed projects include:

- Avebury Mine: nickel at Zeehan
- ABx4 Pty Ltd mines: bauxite (various locations)
- Venture Mine: iron and iron-tungsten at Mount Lindsay
- King Island: scheelite.

Value of production

Revenue from mineral royalties for 2012–13 was \$29.5 million, affected by production difficulties at two major mines coupled with lower commodity prices. In 2011–12 the Tasmanian Government collected \$50.3 million in royalties.

Figure A3: Revenue from mineral royalties, 2002–2012



Source: Mineral Resources Tasmania

Legislation and ownership

Ownership of [minerals in Tasmania](#) varies from title to title:

- under common law the Crown always owns gold and silver
- the Crown owns oil (which includes mineral oil, natural gas and solid bitumen), helium, atomic substances and geothermal substances
- ownership of other minerals depends on the date of original land grant and the Act under which the land was granted
- owners of land granted before 1 July 1996 always own sand and stone.

In Tasmania, royalty is payable under section 102 of the *Mineral Resources Development Act 1995* in accordance with Part 3 of the Mineral Resources Regulations 2006. [Mineral Resources Tasmania](#), a division of the Department of Infrastructure, Energy and Resources, administers both the Act and the regulations.

The Tasmanian Government is committed to delivering infrastructure and investment conditions to encourage industry to take up opportunities for further multiple-stage processing of resources within the state. The Tasmanian Government's industry development strategy aims to create optimum conditions for such investments to take place, through:

- micro-economic reform
- clear establishment of development priorities
- streamlining of approval processes.

Royalty assessment principles

Tasmania has in place prescriptive legislation, which identifies when a royalty obligation arises and how that obligation is assessed. A number of policies and procedures govern the way royalty payments are reconciled and audited. Under section 102 of the *Mineral Resources Development Act 1995*, royalty is payable at a prescribed rate once a mineral is sold under a lease. A royalty is payable to the minister administering the legislation. The leaseholder is required to complete a quarterly return showing the quantity sold and the royalty due. A lessee is also required to keep certain supporting documentation relating to information provided in a royalty and production return.

Schedule 1 – Minerals non-metallic minerals/construction materials, oil and coal seam gas

Rates of royalty for coal seam gas, oil and non-metallic minerals are set out in Schedule 1 of the Regulations. Apart from coal seam gas and oil, these rates are on a 'per tonne' or 'per cubic metre' basis. Minerals not listed in Schedule 1 (metallic minerals) are assessed under the ad valorem and profits based regime.

All detail relating to calculation of royalty is contained within the *Mineral Resources Development Act 1995* and the Mineral Resources Regulations 2006.

Tasmania operates under a two-tiered system where royalty is paid as a percentage of net sales and of profit. The formula for payment of royalty is specified in Regulation 7 of the Mineral Resources Regulations 2006. Royalty is payable at the rate of 1.9 per cent of net sales, plus profit. A rebate of up to 20 per cent is available for production of a metal within the state. The maximum royalty payable is 5.35 per cent of net sales.

Royalty is payable on an annual basis in quarterly instalments, with the quarters being determined in accordance with the mine's financial year. No prior year losses are carried forward for the calculation. The royalty and production return is due within 30 days of the end of the quarter.

Notable deductions, discounts and/or exemptions

Royalties are based on a company's yearly accounting profit. Calculation of yearly profit is adjusted for interest, hedging gains and losses, exploration expenditure, financing costs, rehabilitation expense and royalties.

The minister has certain powers to waive all or part of the royalty payable, vary the rate of royalty payable or defer payment of all or part of royalty payable in respect of any mineral produced, only if:

- the mineral produced vests in the Crown
- the minister is satisfied that the mineral recovered, or the energy produced is being used for a community purpose approved by the minister.

Royalty deferral provisions in the legislation dictate that only after the Treasurer and the minister agree may a royalty deferral be granted. Royalty deferral is for short-term cash flow issues only. The minister may also waive interest accrued on late payments.

Payment process

Royalty liability is determined initially by self-assessment with the tenement holder completing the Royalty and Production Return, which is due with the royalty payment within 30 days of the end of the quarter. Payments can be by cheque, direct deposit or through Service Tasmania. Returns received without payment trigger an invoice to be raised. Interest at the rate of twice the 30-day bank bill reference rate can be charged for late payment.

Procedures are in place for follow-up of late royalty and production returns. The tenement management system produces reports outlining non-returns and unpaid royalty. Internal auditors periodically verify the system and procedures.

Payment is entered into the state's tenement management system as well as the agency's financial system. Receipts are only sent when requested.

Verification

Metallic mine royalty returns are verified against supporting documentation, usually an Income Statement. Annual audit certificates are required from the tenement holder's auditors. Mineral Resources Tasmania periodically undertakes onsite audits.

Non-metallic royalty is verified by reconciling production reported with royalty paid. Mines inspectors will look at reported production when onsite. Ad hoc audits are undertaken of non-metallic leases. Any errors detected are reported to the tenement holder and the royalty assessment is adjusted accordingly.

Reporting

Royalty receipts are reported under consolidated revenue as a single aggregated line item. Through the Department of Treasury and Finance's [Annual Budget Papers](#) (Budget Paper No. 1), the Tasmanian Government publishes its revenues and forward estimates. Aggregated information is also provided to the Australian Bureau of Statistics.

Petroleum and geothermal

Initial investigations indicate Tasmania has significant geothermal energy reserves. For example, KUTh Energy Ltd undertook an extensive geothermal resource exploration program and identified promising sites in a number of regions in eastern Tasmania.

Tasmania has an advantage that any geothermal developments are likely to be relatively close to a high voltage transmission line relevant to the costs of connecting to the Tasmanian electricity grid.

Geothermal royalties

A royalty on Tasmania's geothermal energy is levied in the same way as for mineral production; however, in accordance with the *Mineral Resources Development Act 1995* the [calculation is based on energy produced](#).

Appendix 3

This appendix examines carbon price, fuel tax credits, research and development tax and loans and grants.

Carbon price

Overview

On 10 July 2011 the government released *Securing a clean energy future: The Australian Government's climate change plan* and successively enacted its legislative package later in 2011. It was the first step in realising an ambitious plan for Australia to tackle the issue of mitigating greenhouse gas emissions through market-based trading, but follows a long history of national policy debate and development.

The Clean Energy Future plan includes initiatives in carbon pricing, renewable energy, energy efficiency and land management. This narrative will focus on the carbon pricing mechanism and describe the mechanics and high-level boundaries of the scheme. Legislation to give effect to the Clean Energy Future Plan was enacted on 8 November 2011, and the carbon pricing mechanism commenced on 1 July 2012.

Basics of emissions trading

After an initial three-year fixed price period, the Australian carbon pricing mechanism will transition to an emissions trading scheme with a flexible price. An emissions trading scheme is a market-based trading mechanism that allows acquisition and sale of carbon dioxide equivalent (CO₂-e) trading units by market participants governed by a market regulator, the Clean Energy Regulator.

The basic unit of an emissions trading scheme is a permit to emit carbon dioxide (CO₂) or another greenhouse gas in an amount equal to one tonne of CO₂ equivalent (t CO₂-e). Other greenhouse gases are converted to CO₂ based on the global warming potential as determined by the Intergovernmental Panel on Climate Change. The carbon pricing mechanism will cover four of the six greenhouse gases counted under the Kyoto Protocol – carbon dioxide, methane, nitrous oxide and perfluorocarbons.

The Clean Energy Regulator is a government body with the authority to mandate participation. A limited number of companies and institutions have direct obligations to acquire and acquit carbon units under a typical emissions trading scheme. The scope of an emissions trading scheme can vary from a single industry sector (such as electricity generation) to a broad range of industry sectors in a single region, state or country or across multiple countries. Regardless of scale, each market participant is expected to hold and acquit to the regulator a number of carbon units corresponding to the amount of CO₂-e they emit into the atmosphere each year. They can acquire units by purchasing them from the regulator (such as at auction), from other participants or through a trading platform. By creating a shortage of available units, the regulator sets a cap on the amount of CO₂-e that can be emitted. This establishes scarcity and encourages market participants to pursue emissions reductions to cover the shortfall of permits. Furthermore, a price signal is established that encourages market participants to pursue emissions reductions where the cost of those reductions is cheaper than the market price of carbon units. The market participants then trade by bidding for units at a price that would enable the economy to efficiently allocate responsibility for reducing emissions; this is also called a cap and trade scheme.

Australia's carbon pricing mechanism

Australia's carbon pricing mechanism consists of two phases: a fixed price period (financial years 2013–14 and 2014–15) and a flexible pricing period (from 2015–16 onwards). The fixed price period commences with a fixed carbon price of \$23/t CO₂-e and escalates at 2.5 per cent in real terms allowing for 2.5 per cent inflation per year. Participants will be able to purchase carbon units from the government at the fixed price, up to the number of their emissions for the compliance year. The government will freely allocate some carbon units and these may either be surrendered or traded until the final compliance date for the year in which they were issued. After 1 July 2015 a flexible price phase will begin in which the price will be determined through a cap and trade emissions trading scheme. A summary of the scheme's design elements is provided in Table A5.

Assistance will be provided to emissions-intensive, trade-exposed industry through free allocation of permits based on industry average emissions, using eligibility thresholds previously established for the Carbon Pollution Reduction Scheme and the existing national Renewable Energy Target. Emissions-intensive trade-exposed industries will receive assistance because they will be somewhat constrained in their ability to pass on carbon costs if they are price takers in global markets or face competition in domestic markets from importers that source supplies from countries that have not imposed carbon constraints. Australian businesses that export their products to countries that do not have a carbon price or compete with imported products from these same countries will face higher operating costs due to carbon pricing and will be at a competitive disadvantage. This can lead to the 'carbon-leakage' effect, whereby emissions-intensive industries move to alternative markets in an effort to minimise operating costs. The Jobs and Competitiveness Program will support jobs in industries that generate a high level of emissions where their trade competitors do not yet face similar carbon costs. The Jobs and Competitiveness Program is ongoing and will provide around \$8.6 billion in assistance in the first three years to support local jobs, and encourage industry to invest in cleaner technologies and avoid carbon leakage offshore (see Case study 1: Why trade exposed Industries need carbon pricing assistance).

The Australian Government will also provide transitional assistance to coal-fired generation businesses strongly affected by introduction of the carbon pricing mechanism, through the Energy Security Fund. The Energy Security Fund provides for \$5.5 billion of transitional assistance over six years in the form of cash payments and allocation of free carbon units. Assistance is available to eligible coal-fired generators with emissions intensity greater than 1.0 tonne of CO₂-e per megawatt hour.

Case study 1: Why trade-exposed industries need carbon assistance

In Australia's carbon pricing mechanism, emissions-intensive trade-exposed companies receive assistance in the form of free carbon units. This is important as it supports local jobs and the international competitiveness of value-adding economic activity in Australia. It is important to recognise that many of these manufacturing products, like steel, glass and cement, will remain essential in a clean energy economy. This case study demonstrates how carbon leakage might occur if assistance from the government's Jobs and Competitiveness Program did not exist.

The fictitious ABC Co. produces aluminium in Victoria. Assume current aluminium spot prices average \$2,000 per tonne, and Australian costs of labour and plant approximately \$1,500 per tonne with energy costs of \$50 per megawatt hour electricity with nine per megawatt hours needed per tonne of production. With these numbers and before the carbon price, ABC Co. is only earning a profit of \$50 per tonne.

Australia's carbon price commences at \$23 per tonne of CO₂-e. Victoria's grid is dominated by emissions intensive coal-fired electricity with an approximate emissions intensity of 1.2 t CO₂-e per megawatt hour. Without assistance ABC Co. can expect energy costs to rise by almost \$250 per tonne. In which case it faces losses of almost \$200 per tonne. However, with Australia's 94.5 per cent assistance, it will receive around \$235 per tonne in free carbon units if it is in line with industry average energy usage. This enables the company to continue operating, but with a reduced margin of profit as a result of the carbon price. While the assistance will shield some industries from the full impact of the carbon pricing mechanism, it will be structured to ensure it still rewards those businesses that reduce their pollution in the future.

International linking

On 28 August 2012 the Australian Government announced it would link the carbon pricing mechanism to the European Union's Emissions Trading Scheme. This means Australian participants may now use European Union Allowances to meet up to 50 per cent of their obligation once linking is in effect from 2015–16. It also introduced a limit on use of accredited international offsets of 12.5 per cent of a participant's liability.

International linking supports development of a global carbon market. With a global carbon price and a correspondingly larger market, participants are expected to be able to access lower cost abatement options and therefore increase the scheme's efficiency.

Revenue and flows

Revenue and flows from the Australian carbon pricing mechanism are difficult to forecast, particularly after the fixed price period ends. The initial revenue from the fixed price period of the Australian carbon pricing mechanism will accrue to government when participants purchase their 2012–13 permit obligations. Revenues from the carbon pricing mechanism will be used to help households (such as to reduce their energy bills), provide industry assistance and pursue low carbon investment.

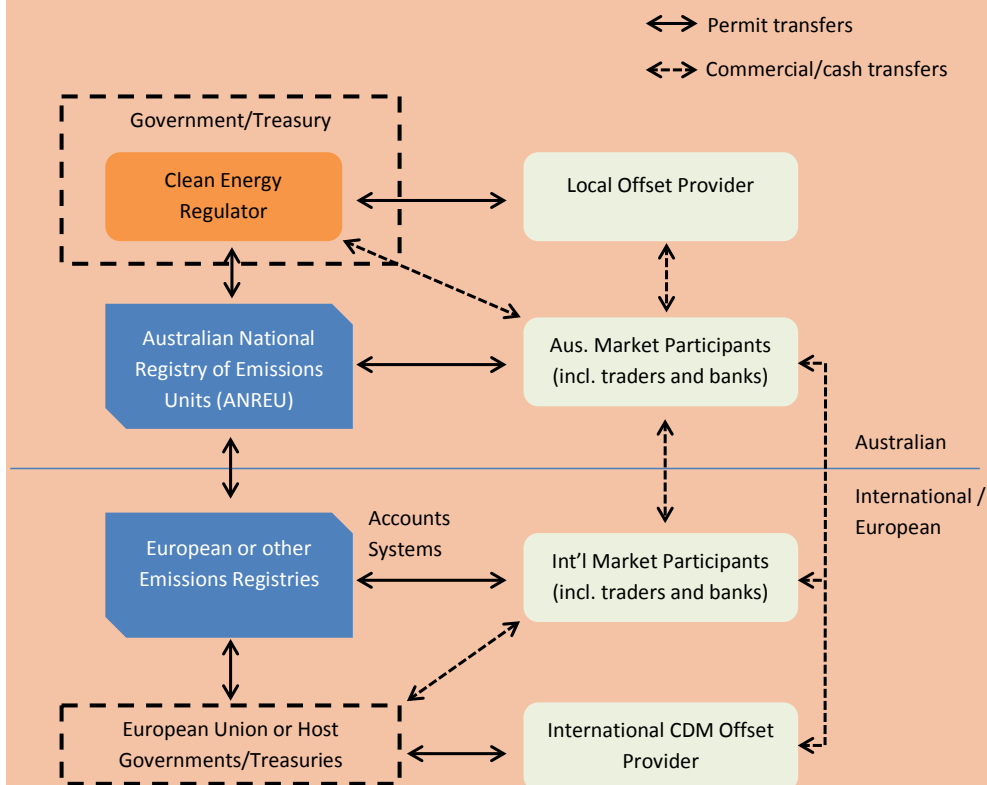
The flows in the flexible price period of the emissions trading scheme are more complex. The government will receive some revenues from the initial sale of carbon units, but this will be shared or replaced by payments from Australian market participants into the European market and other international offset providers. As a result, it will be difficult to accurately forecast how much total revenue either the Australian or European market will receive, or whether this can be attributed to local or international activity (see Case study 2: Flows in carbon markets).

The complexities of the links between schemes means the Australian carbon pricing mechanism is unlike any national royalty or tax. The obligation to collect revenue from market participants occurs as a consequence of the mechanism to reduce emissions, rather than as a consequence of the derivation of income.

Furthermore, much of the revenue from the scheme is earmarked for a number of aligned government initiatives. These include household assistance (direct cash payments and low income tax cuts), a Clean Energy Finance Corporation (\$10 billion commitment), emissions-intensive trade-exposed industry assistance (Jobs and Competitiveness Program), and other coal sector and steel industry assistance.

Case study 2: Flows in carbon markets

The diagram shows the complexity in tracing flows between participants in the Australian carbon pricing mechanism. The simple example following illustrates how participants could be involved with multiple flows.



The fictitious Hot Iron Co. produces iron ore and pellets in Australia. Its total greenhouse gas emissions are 200,000 t CO₂-e/year: half as indirect emissions from electricity provided by Coal Energy Co. and half as direct emissions from diesel. Hot Iron Co. owns vast stretches of land that could be used to generate offsets under the Australian Carbon Farming Initiative estimated at about 20,000 t CO₂-e/year.

Several key observations:

- Hot Iron Co. is not a liable entity under the carbon pricing mechanism as its covered direct emissions are zero, but indirect impacts as a result of increases in diesel and electricity may be up to \$4.6 million (assuming \$23/t CO₂-e).
- The Australian Government is not receiving any revenue from Hot Iron Co., but gains by not paying \$2.3 million in diesel rebate to the company. However, Hot Iron Co. may choose to opt into the scheme after 2014, and buy permits directly, which will not change the net flows to government but will increase revenue from the scheme on paper.
- Even though the fictitious Coal Energy Co. is a coal electricity provider and a liable entity, it is unlikely to be directly affected by the scheme. It will probably pay \$2.3 million to the Clean Energy Regulator and charge \$2.3 million to Hot Iron Co. for pass-through.
- Hot Iron Co. could claim the Carbon Farming Initiative offsets, and sell these to other market participants for up to \$460,000.
- In the flexible period, Hot Iron Co. could also buy 200,000 European units or International Clean Development Mechanism offsets if the price is lower. If Hot Iron Co. also provides them directly to

Coal Energy Co. the government may receive no revenue. This could also happen if Coal Energy Co. contracts to buy international units rather than domestic permits.

In any of these cases, it would be difficult for Hot Iron Co. to determine how much revenue it has given to government bodies and in what form.

Table A5: Summary of Australian carbon pricing mechanism in clean energy legislation

Design element	Fixed price period	Flexible price period (emissions trading scheme)
Type of scheme	Financial years 2012–13 and 2013–14 and 2014–15 – unrestricted number of permits for fixed price	Financial year 2014–15 onwards – Capped number of permits
Price	\$23/t CO ₂ -e in financial year 2012–13, rising by 5 per cent nominally each year	Determined by domestic auctions and inter-market trade
Coverage	<p>Broad coverage from commencement, encompassing the stationary energy sector, transport, industrial processes, fugitive emissions (other than from decommissioned coal mines) and non-legacy waste.</p> <p>Transport fuels are impacted by an equivalent carbon price through changes in fuel tax credits or excise to domestic aviation, domestic shipping, rail transport, and non-transport use of fuels. Carbon price will not apply to household transport fuels, light vehicle business transport and off-road fuel use by the agriculture, forestry and fishing industries.</p> <p>Total coverage estimated at around 60 per cent of Australian emissions.</p>	
Market participants	<p>Emissions trading scheme direct participants – entities with operational control of facilities with more than 25,000 t CO₂-e and selected entities with natural gas arrangements.</p> <p>Indirect diesel participants – any entities impacted by transport fuels rebate reductions can opt to become participants from financial year 2013–14.</p>	
Types of permits allowed	Australian carbon units – 100 per cent permitted	Australian carbon units – 100 per cent permitted
	Australian carbon credit units – offsets linked to the Australian Carbon Farming	Australian carbon credit units – 100 per cent permitted
	Initiative and restricted at 5 per cent No international units allowed	<p>International units – restricted to 50 per cent</p> <p>International offsets like certified emissions reductions – restricted to 12.5 per cent in flexible price period.</p> <p>European Union allowances – 37.5 to 50 per cent depending on international offsets used</p>
Industry assistance for energy-intensive trade-exposed entities	<p>94.5 per cent and 66 per cent assistance depending on industry average emissions intensity of the emissions-intensive trade-exposed activity</p> <p>Assistance declines at 1.3 per cent each year, and is reviewed by the Productivity Commission as the scheme progresses</p>	
Other industry assistance	Additional transitional assistance exists for the coal sector, steel industry and coal-fired generation sector	

Fuel tax credits

Overview

The **fuel tax credit (FTC) system** (ATO 2014) commenced on 1 July 2006 with the primary aim of minimising fuel tax (that is, excise or excise-equivalent customs duty) on business inputs while applying in a consistent and transparent way to all fuels and fuel users, in a competitively neutral way.

Petrol and diesel and most gaseous fuels bear fuel tax when they enter the Australian market. This tax is significantly reduced by the FTC system for fuel used by businesses off-road, or on-road in heavy vehicles. FTCs are not available for fuel used in private vehicles and light commercial vehicles on public roads. Because the carbon charge is imposed on off-road use of these fuels by reductions in FTC entitlements, FTC rates vary depending on the fuel used and the activity in which it is used.

The legislation governing FTCs is primarily the *Fuel Tax Act 2006* and the Fuel Tax Regulations 2006, and various Clean Energy Acts and Regulations.

The ATO administers the FTC Scheme; it is the largest transfer payment it administers. FTC payments are counted as assessable income for recipients. Aspects such as registration and accounting periods are similar to those applying for GST with FTCs claimed on Business Activity Statements in a similar way to input tax credits.

The number of FTC claims has increased substantially since its commencement, from just over 653,000 to just over 668,000 claims in 2011–12. This resulted in an increase in the cost of the FTC Scheme from \$4.9 billion in 2006–07 to \$5.5 billion in 2011–12.

Of the major industries claiming the tax credit in Australia in 2011–12, the mining sector was the largest, with FTC payments of more than \$2.3 billion (ATO 2013d), *Taxation Statistics 2011–12*, Table 14.2: **Fuel tax credits paid by industry**, 2010–11 and 2011–12 financial years). This reflects the size of the Australian mining industry and its heavy use of fuels in remote areas.

Table A6 (an extract from the ATO website) shows examples of FTC rates for certain fuel usages. The maximum available FTC entitlement for any fuel is 38.143 cents per litre of fuel.

Table A6: Fuel tax credit rates for taxable liquid fuels, from 1 July 2013

Business use	Eligible liquid fuel	Rate for fuel acquired from 1 July 2013
Other off-road activities where the fuel is combusted – for example:	Petrol	32.347***
• mining	Diesel and other liquid fuels	31.622***
• marine or rail transport (including emergency vessels)	Opt-in liquid fuels – only for use by a designated opt-in person under the opt-in scheme.	38.143#
• nursing and medical	Aviation gasoline	5.313#
• burner applications		
• electricity generation by a commercial generation plant, stationary generator or a portable generator		
• construction		
• manufacturing		
• wholesale/retail		
• property management		
• landscaping		

Notes: All rates are in cents per litre unless otherwise stated. ***The rates for these activities account for the carbon charge, which changes annually until 1 July 2015, then six-monthly thereafter due to changes in the

carbon price. # To use this rate, you must be declared by the Clean Energy Regulator as a designated opt-in person under the opt-in scheme.

Source: ATO 2014, *Fuel tax credit rates and eligible fuels*, Table 1.

Payment process

The ATO provides [online tools](#) for companies to assess eligibility and calculate entitlement.

Taxpayers can claim FTCs once they have tested their eligibility and completed their Business Activity Statement.

Taxpayers are provided with guidance material to promote voluntary compliance, and claims are risk assessed at the pre-issue payment stage. This forms part of the ATO's risk management strategy.

Reporting and verification

An Australian National Audit Office audit found the ATO effectively administers the Fuel Scheme at both the strategic and operational levels (ANAO 2011).

- Strategic institutions include well informed governance bodies such as:
 - *the Excise Product Committee*
 - *the Excise Compliance Risk Forum*
- Operational level governance is carried out through processes around:
 - *decision making*
 - *reviewing*
 - *quality assurance.*

The recent ANAO audit found that the ATO undertook 15,053 reviews and nearly 12,000 audits of fuel tax claims over the four years since July 2006. This is part of the ATO's active compliance program, into which the compliance program regarding fuel tax credits is well integrated.

The ATO publishes annual statistics on payments and transfers, Chapter 14 of which concerns Fuel Schemes. The figures are reported at an aggregate level, broken down under the classifications of company, trust, partnership, government, individual and superannuation fund.

Partnerships is the classification with the largest number of entities and superannuation funds the smallest. However, in terms of payments, the largest amount by far is paid to companies.

Key issues

The mining industry does not consider the Fuel tax Credit to be an industry tax subsidy or a payment, but a refund to companies for tax that has already been paid on fuel purchased, which they need not have paid. This is also the opinion of Treasury and the Productivity Commission, which consider the fuel tax credit scheme is not that of government assistance or a tax subsidy.

Others regard the scheme as representing a large amount of revenue foregone by the government that has the effect of lowering the operating costs of the industry.

Of the Australian industries receiving the most tax credits for fuel use, the mining industry is by far the biggest receiver of credits – with more than \$2.3 billion received in 2011–12. Therefore, in terms of 'other payments' in EITI, the Fuel Tax Credit is considered to be material.

Research and development tax

Overview

The R&D Tax Concession was replaced by the R&D Tax Incentive from 1 July 2011. The mining sector was a substantial recipient of R&D Tax Concessions until its closure (see Table A7).

The object of the R&D Tax Incentive, as stated in the legislation, is to encourage industry to conduct research and development activities that might otherwise not be conducted because of an uncertain return. The R&D Tax Incentive consists of:

- A 45 per cent refundable tax offset (equivalent to a 150 per cent deduction) to eligible entities with an aggregated turnover of less than \$20 million per annum provided they are not controlled by income tax exempt entities. Where the amount of this offset exceeds the amount of tax that the company would otherwise have had to pay, then the excess may be refundable.
- A non-refundable 40 per cent tax offset (equivalent to a 133 per cent deduction) to all entities with an annual aggregate turnover of \$20 million or more per annum. For this category, unused offset amounts may be able to be carried forward for use in future income years.

The R&D Tax Incentive provides more generous benefits for eligible activities than the previous concession and is better targeted toward research and development that benefits Australia. It is a broad based, market driven, program that aims to boost competitiveness and improve productivity across the Australian economy.

The R&D Tax Concession applied to income years prior to 1 July 2011. Key elements of the R&D Tax Concession were:

- a 125 per cent tax concession (for investment in research and development which is Australian-owned)
- an R&D Tax Offset for small companies, enabling them to cash out any tax losses (in relation to Australian-owned research and development only)
- an R&D Incremental (175 per cent premium) tax concession for additional investment in Australian-owned research and development
- a 175 per cent international premium incremental tax concession for additional investment in foreign-owned research and development.

The R&D Tax Incentive is available to:

- a company incorporated under an Australian law
- a company incorporated under a foreign law that is an Australian resident for tax purposes, or
- a company incorporated under a foreign law that is a resident of a foreign country with a double tax agreement with Australia and that carries on business through permanent establishment of the body corporate in Australia.

Trusts are generally not eligible for tax benefits under the R&D Tax Incentive. The one exception is a body corporate acting as trustee of a public trading trust. If there is doubt as to eligibility for an entity, Innovation Australia provides advance findings and the ATO provides private binding rulings about offset entitlements.

Payment process

The R&D Tax Incentive provides eligible entities with a refundable or non-refundable tax offset. The offset reduces the gross tax amount and thus reduces the amount of tax that would be paid.

Reporting and verification

AusIndustry (on behalf of Innovation Australia) and the ATO administer the R&D Tax Incentive.

Companies initially self-assess their eligibility to take part in the R&D Tax Incentive program. AusIndustry controls the process for registering research and development activities, registering research service providers, and managing program integrity through education and compliance activities. The ATO determines whether expenditure relating to or assets used for eligible research and development activities are eligible for the tax incentive.

According to the latest statistics available from the ATO, mining is a heavy user of the research and development allowance. Economist, Nicholas Gruen, reports that the industry spent \$5.3 billion on research and development in 2008–09, and has been able to make use of a tax concession that is far more generous than applies in the oft-compared Canadian mining industry (*The Age*, 6 May 2011, page 5). Assuming a concession at 125 per cent, this equates to an economic benefit of approximately \$300 million (\$5.3 billion x 25/125 x 30 per cent). Based on 2009–10 ATO Tax Statistics (Table 9) total research and development claimed amounted to \$2.6 billion, assuming a concession at 125 per cent this equates to an economic benefit of approximately \$150 million (\$2.6 billion x 25/125 x 30 per cent).

Table A7: Registrants for the R&D Tax Concession, by Australian and New Zealand Standard Industry Classification (ANZSIC), as at 30 June 2012

Group Code	ANZSIC Description	2008–09 no. of companies	2008–09 expenditure (\$m)	2009–10 no. of companies	2009–10 expenditure (\$m)	2010–11 no. of companies	2010–11 expenditure (\$m)
A	Agriculture, Forestry and Fishing	331	287.4	309	307.5	295	339.17
B	Mining	747	5,292.00	821	4,542.80	885	4,367.31
C	Manufacturing	3,458	5,246.80	3,472	5,279.90	3,504	5,169.49
D	Electricity, Gas, Water and Waste Services	245	374.2	261	449.5	282	539.70
E	Construction	248	1,043.00	264	1,266.30	277	1,002.60
F	Wholesale Trade	101	193.7	98	186.1	97	104.76
G	Retail Trade	74	136.1	60	140.3	82	168.75
H	Accommodation and Food Services	12	9.5	14	13.1	11	16.20
I	Transport, Postal and Warehousing	135	452.1	128	359.6	127	365.67
J	Information Media and Telecommunications	1,118	1,269.70	1,158	1,082.50	1,265	1,193.48
K	Financial and Insurance Services	189	1,693.80	196	2,034.60	174	1,271.73
L	Rental, Hiring and Real Estate Services	34	70.6	33	21.2	37	82.68
M	Professional, Scientific and Technical Services	1,502	1,523.40	1,537	1,430.70	1,667	1,598.45
N	Administrative and Support Services	57	87.8	60	53.5	54	69.86
O	Public Administration and Safety	30	171.7	25	197.6	22	215.10
P	Education and Training	37	13	50	25	52	37.67
Q	Health Care and Social Assistance	179	111.7	169	117.1	175	113.71

Group Code	ANZSIC Description b	2008–09 no. of companies	2008–09 expenditure (\$m)	2009–10 no. of companies	2009–10 expenditure (\$m)	2010–11 no. of companies	2010–11 expenditure (\$m)
R	Arts and Recreation Services	33	71.4	36	61.8	39	77.45
S	Other Services	45	35.6	65	64.3	73	60.24
Totals		8,575	18,083.68	8,756	17,633.49	9,118	16,794.02

Notes: **a** This table derives from available data as at 30 June 2012. The data may vary with receipt of further applications for registration or amendments to applications allowed under the legislation. **b** Registration by four digit Australian New Zealand Standard Industry Classification.

Source: AusIndustry 2013, *Innovation Australia Annual Report 2011–12*, Department of Industry Innovation, Science, Research and Tertiary Education, Canberra, Table E5.

Looking at the same numbers under the new R&D Tax Offset rules (bearing in mind the new rules have tightened the definition of eligible research and development expenditure, hence the claimable amounts are likely to reduce) comparable amounts would be approximately \$420 million (\$5.3 billion x 100/125 x .33 x 30 per cent) in 2008–09 and \$200 million (\$2.6 billion x 100/125 x .33 x 30 per cent) in 2009–10.

Key issues

- The media has asserted that the mining industry is a significant user of the tax incentives provided for research and development expenditure.
- Inclusion in the EITI would require a high level of communication between AusIndustry and the ATO to ensure an acceptable level of transparency.
- The R&D Tax Incentive is calculated based on amounts reported in a company's income tax return. It is not a payment received directly from government; rather it is part of the calculation to determine a company's tax liability.

Accelerated depreciation

Overview

Companies commonly invest in assets they believe will increase their future revenue. However, the value of these assets may decline over time. In Australia, businesses have long been allowed to claim some level of [depreciation for certain assets](#), against their income tax liability. Recognising the benefits to business of this mechanism, flexibility has been provided whereby companies can claim an accelerated rate of depreciation as a tax incentive; enabling companies to defer the overall amount of their corporate income tax by reducing taxable income in the short-term, in exchange for increased taxable income in future years. By accelerating the rate of depreciation on assets, businesses can essentially boost their near-term revenue (by deferring taxation payments) on the assumption that the depreciating asset will, over its lifetime, result in increased revenue (termed the 'effective life' of the asset).

The Australian Government's rationale for allowing companies to claim accelerated rates of depreciation is based on an assumption that companies purchasing assets that boost revenue for the company will also boost economic growth for the economy. Although it is widely described as the equivalent of the government providing an interest-free loan to the taxpayer (as revenue collections are lower in the early years) this is entirely offset in later years through higher tax revenues, flowing to government from the higher growth (The Treasury 1999, [The Case for Accelerated Depreciation](#), page 117).

Tax laws with respect to accelerated depreciation have been amended many times, most notably in 2001 as a result of the Treasurer's appointment (in August 1998) of Mr John Ralph AO to chair a review of business taxation, which was intended to form the basis of a comprehensive new business tax regime under a new tax system (the Ralph Review).

Since 1 July 2001 the [Uniform Capital Allowance rules](#) (Division 40 of the *Income Tax Assessment Act 1997*) have applied to most depreciating assets, including plant, software, mining and quarrying, intellectual property, forestry roads and timber mill buildings, and spectrum licences.

The *Income Tax (Transitional Provisions) Act 1997* (ITTPA), maintains the pre-1 July 2001 accelerated depreciation treatment of some depreciating assets and capital expenditure, such as certain primary production depreciating assets and capital expenditure. These transitional laws generally apply to depreciating assets held and capital expenditure made before 1 July 2001.

Uniform capital allowances

Under the Uniform Capital Allowance rules, companies can depreciate most business assets using either the prime cost method or the diminishing value method. Both calculation methods are based on the asset's effective life and give the same total deduction for depreciation over the life of a depreciating asset. However, the prime cost method does so over a shorter time. Companies can use either method to work out how much a business asset has depreciated but once a method is chosen for a particular asset, they cannot change to the other method for that asset.

In order to use either depreciation method, businesses have to work out the asset's effective life, that is, how long the asset can be used to produce income.

Accelerated depreciation rates

Under the transitional arrangements for those depreciating assets held or expenditure made after 1 July 2001, the ITTPA defines both methods for calculating the decline in value of assets in the eligible categories. The decline in value of the plant (asset) under the Uniform Capital Allowance rules continues to be calculated on the basis of the accelerated rate, rather than effective life (ITTPA section 40-10). The accelerated annual depreciation rates (both prime cost and diminishing value) for plant generally are listed in a table in ITAA97 former section 42-125(1) (Table A8). These rates are based on effective life adjusted by a 20 per cent loading and broadbanded into one of seven rates.

Table A8: Annual depreciation rates

Effective life in years	Prime cost method (%)	Diminishing value method (%)
Fewer than 3	100	100
3 to fewer than 5	40	60
5 to fewer than 62/3	27	40
62/3 to fewer than 10	20	30
10 to fewer than 13	17	25
13 to fewer than 30	13	20
30 or more	7	10

A taxpayer could choose a lower depreciation rate than those shown in the table (ITAA97 former section 42-120). A choice to use a lower rate had to be made for the income year in which the plant first became depreciable.

Reporting and verification

Depreciation in the value of eligible assets is not separately disclosed from standard depreciation in company tax returns, and therefore the ATO cannot verify corresponding individual figures. Companies claiming under the Uniform Capital Allowance rules are subject to normal ATO compliance activities including reviews and audits. However, due to privacy laws the results and frequency of these audits are not available to the public.

Key issues

As companies do not report claims of accelerated rates of depreciation for assets held to the ATO separately, the ATO would have to administer significant changes to the company tax procedures in order to satisfactorily include this payment in the EITI. Furthermore, given that accelerated depreciation applies to depreciating assets held or expenditure made before 1 July 2001, accelerated depreciation rates may have limited application or may no longer be applicable.

Without sufficient and readily available data on depreciating assets in companies (being pre and post 1 July 2001), it is difficult to ascertain whether benefits conferred from accelerated depreciation are material for the purposes of the EITI. Furthermore, it is debateable whether claims of accelerated depreciation, as defined under the income tax laws, are genuine payments to or from companies, or merely a function of calculation of tax liability.

Loans and grants

Overview

Grants and other funding programs are available for businesses in Australia from the Commonwealth, state and territory governments, and in some cases from local councils. The bulk of Australian Government assistance is directed at small businesses, individuals, enterprises, innovations and the community. These may be provided by a number of different Commonwealth and state agencies or departments.

Grants from the Commonwealth currently fall under the *Financial Management and Accountability Act 1997* (FMA Act) and associated Financial Management and Accountability Regulations 1997 (FMA Regulations). FMA Regulation 3A(1) specifically defines a grant as an arrangement for provision of financial assistance by the Commonwealth:

- under which public money is to be paid to a recipient other than the Commonwealth
- which is intended to assist the recipient achieve its goals
- which is intended to promote one or more of the Australian Government's policy objectives
- under which the recipient is required to act in accordance with any terms and conditions specified in the arrangement (ANAO 2013, page 13).

From 1 July 2014 the FMA Act and Regulations will be replaced by the *Public Governance, Performance and Accountability Act 2013* and associated rules, which are still being developed. The ANAO stated in its Implementing Better Practice Grants Administration [report](#) in 2010 (ANAO 2010) that the aims of 'efficient, effective and ethical grants administration' include a strong transparency component with special regard to representing the best value for money in achieving the Australian Government's policy objectives.

Grants are also generally called and applied for on a project basis from the company perspective; and funded by the respective government agency on that basis while aligning with the government's strategic goals. Grant audits undertaken by the ANAO are common across all departments administering grants and loans, and a strategic review of all grant administration was commissioned in 2008 (Grant 2008). The review found that Australia's financial management framework, and in particular the FMA Act, was robust.

Although there is no central grants data source across either the Commonwealth or state and territory governments, the strategic review conducted in 2008 found there was a massive increase in the use of grants between 2000 and 2007; from fewer than 4,000 with a total value of about \$580 million, to around 49,000 with a total value of more than \$4.5 billion (Grant 2008). However, the impact of this growth is expected to have had minimal application to the extractive industry sector, although any grants in this sector would reasonably be expected to be material.

Whether a loan or grant is included as total income in calculating net tax will depend on their nature and type. A number of examples show where loans and grants of a similar nature are treated differently for tax purposes, which has led to some uncertainty for companies receiving the funds.

Payment process

A broad range of Commonwealth, state and territory government departments administer loans and grants. Each department and each jurisdiction has their own unique (but likely similar) approach to assessing and managing grants, under the FMA Regulations. In 2008, the Australian Government commissioned a strategic review of the administration of the Australian Government grant programs and found that the 'Commonwealth's financial management framework is strong.'

Reporting and verification

There is no central or comprehensive collection of data on Australian Government grants. Even the commissioned strategic review in 2008 found that 'data need to be compiled from a number of different sources, and even then a significant element of estimation is necessary' (Grant 2008). The same review also found considerable uncertainty between the classifications of grants and procurements and grants and loans.

Each government agency is required to have its own internal review mechanisms with respect to grants and loans, in addition to audit from the ANAO being relatively common.

Key issues

Due

to the number of agencies and the project-based nature of Australian Government grants and loans, verification and disclosure of the payments under any arrangement adds a significant complexity to the EITI process and implementation.

Notwithstanding the project-based nature of the government grant system, the payments themselves may nevertheless be material in terms of the EITI.

Confusion over classifying tens of thousands of 'grants' as either grants, loans or procurements, means a disproportionate amount of time may be needed to verify and report on loans and grants to the extractives sector.

Glossary

ACCC	Australian Competition and Consumer Commission
ANAO	Australian National Audit Office
ANZIC	Australian and New Zealand Industry classification
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BREE	Bureau of Resources and Energy Economics
CD	Corporate Division (Department of Industry), Australian Government
DSD	Department for State Development (South Australia)
DMP	Department of Mines and Petroleum (Western Australia)
EFIC	Export Finance and Insurance Corporation
EITI	Extractive Industries Transparency Initiative
FMA	Financial Management and Accountability
FTC	fuel tax credit
G20	Group of Twenty
G8	Group of Eight
GDP	gross domestic product
LNG	liquefied natural gas
MRRT	Mineral Resource Rent Tax
MSG	Multi-Stakeholder Group
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPTA	National Offshore Petroleum Titles Administrator
OECD	Organisation for Economic Co-operation and Development
OPGGS	Offshore Petroleum and Greenhouse Gas Storage
PACE	Plan for Accelerating Exploration
PAYG	Pay-As-You-Go
PRRT	Petroleum Resource Rent Tax
R&D	research and development
RET	Department of Resources, Energy and Tourism (Australian Government)
SEC	Securities and Exchange Commission (United States)
UIN	Uranium Industry and Nuclear section (Department of Industry)
UN	United Nations

References

ABS 2013a, *Australian National Accounts: National Income, Expenditure and Product*, cat. no. 5206.0, Australian Bureau of Statistics, June 2013, Canberra, available at abs.gov.au/ausstats/abs@.nsf/mf/5206.0.

ABS 2013b, *Industry Gross Value Added, Chain volume measures, Annual*, cat. no. 5206.0 Table 33, latest issue released 11.30 am Canberra time 04/09/2013, Australian Bureau of Statistics, Canberra, available at abs.gov.au/ausstats/abs@.nsf/mf/5206.0.

AfDB 2013, *Liberia Country Strategy Paper 2013–2017*, African Development Bank Group, available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Liberia%20-%202013-2017%20-%20Country%20Strategy%20Paper.pdf>

AGD 2011, 'The Commonwealth's approach to anti-corruption: discussion paper' Attorney-General's Department, Canberra.

ANAO 2013, *Implementing Better Practice Grants Administration*, Australian National Audit Office, Canberra, available at anao.gov.au/Publications/Better-Practice-Guides.

ANAO 2011, *Fuel Tax Credits Scheme, Australian Taxation Office*, Australian National Audit Office, Canberra, available at anao.gov.au/~media/Uploads/Audit_Reports/2010_11/201011_Audit_Report_No_49.PDF.

ANAO 2010, *Implementing Better Practice Grants Administration*, available at anao.gov.au/bpg-grantsadmin2010/pdf/Implementing_Better_Practice_Grants_Administration_June2010.PDF.

ANAO 2009, *Administration of the Petroleum Resource Rent Tax*, Australian National Audit Office, Canberra, available at anao.gov.au/Publications/Audit-Reports/2008-2009/Administration-of-the-Petroleum-Resource-Rent-Tax/Audit-brochure.

ATO 2014, *Fuel tax credit rates and eligible fuels*, Australian Taxation Office, Canberra, available at ato.gov.au/Business/Fuel-schemes/In-detail/Fuel-tax-credits---for-GST-registered-businesses/Calculating-and-record-keeping/Fuel-tax-credit-rates-and-eligible-fuels/.

ATO 2013a, *Taxation Statistics 2010–11*, Table 7, Australian Taxation Office, Canberra, available at ato.gov.au/uploadedFiles/Content/CR/Research_and_statistics/In_detail/Downloads/cor00345977_2011COM7.pdf.

ATO 2013b, *Taxation Statistics 2010–11*, Table 3.14, Australian Taxation Office, Canberra, available at ato.gov.au/uploadedFiles/Content/CR/Research_and_statistics/In_detail/Downloads/cor00345977_2011TAXSTATS.pdf.

ATO 2013c, *Taxation Statistics 2010–11*, Table 10: *Company tax – Petroleum resource rent tax*, Australian Taxation Office, Canberra, available at ato.gov.au/uploadedFiles/Content/CR/Research_and_statistics/In_detail/Downloads/cor00345977_2011COM10.pdf.

ATO 2013d, *Taxation Statistics 2010–11*, Table 14.2: Fuel tax credits paid by industry, 2010–11 and 2011–12 financial years, Australian Taxation Office, Canberra, available at ato.gov.au/uploadedFiles/Content/CR/Research_and_statistics/In_detail/Downloads/cor00345977_2011TAXSTATS.pdf.

www.ato.gov.au/uploadedFiles/Content/CR/Research_and_statistics/In_detail/Downloads/cor00345977_2011TAXSTATS.pdf

ATO 2011, *Taxation Statistics 2008–09*, Australian Taxation Office, Canberra, available at ato.gov.au/About-ATO/Research-and-statistics/Previous-years/Tax-statistics/Taxation-statistics-2008-09/.

AusIndustry 2013, *Innovation Australia Annual Report 2011–12*, Department of Industry Innovation, Science, Research and Tertiary Education, Canberra, available at ausindustry.gov.au/INNOVATIONAUSTRALIA/IA-ANNUALREPORT2011TO2012/Pages/default.aspx.

GA & BREE 2012, *Australian Gas Resources Assessment 2012*, Geoscience Australia and Bureau of Resources and Energy Economics, Canberra, available at ga.gov.au/corporate_data/74032/AustralianGasResourceAssessment2012.pdf.

Kingham, F & Bauman, T 2005, *Native title mediation: issues identified, lessons learnt: proceedings and findings of IFaMP workshops with native title mediators February and March 2005*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, available at aiatsis.gov.au/_files/ntru/FinaloverviewreportOct2006toNTRU_000.pdf.

BREE 2014a, *Resources and Energy Quarterly, March Quarter 2014*, Bureau of Resources and Energy Economics, Canberra, available at <http://www.industry.gov.au/industry/Office-of-the-Chief-Economist/Pages/default.aspx>

BREE 2014b, *Resources and Energy Major Projects April 2014*, Bureau of Resources and Energy Economics, Canberra, available at <http://www.industry.gov.au/industry/Office-of-the-Chief-Economist/Pages/default.aspx>

BREE 2013a, *Resources and Energy Quarterly, December Quarter 2013*, Bureau of Resources and Energy Economics, Canberra, available at <http://www.industry.gov.au/industry/Office-of-the-Chief-Economist/Pages/default.aspx>

BREE 2013b, *Gas Market Report, October 2013*, Bureau of Resources and Energy Economics, Canberra available at <http://www.industry.gov.au/industry/Office-of-the-Chief-Economist/Pages/default.aspx>

Commonwealth of Australia 2014, *Minerals and Petroleum in Australia: A guide for investors*, Geoscience Australia, Canberra, available at ga.gov.au/corporate_data/78942/78942_Investors_Guide_Publication_2013.pdf.

Commonwealth of Australia 2013, *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group Report to Government*, available at treasury.gov.au/Policy-Topics/Taxation/Native-Title-Working-Group.

Commonwealth Ombudsman 2013, *Public Interest Disclosure Scheme*, Commonwealth Ombudsman, Canberra, available at ombudsman.gov.au/pages/pid/.

DSD 2013a, *Landowner frequently asked questions about mineral exploration in South Australia*, Department for State Development, Adelaide, available at sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/ISM54.pdf

DSD 2013b, *Petroleum Royalties and Fees*, Department for State Development, Adelaide, available at petroleum.dmitre.sa.gov.au/licensing/resource_royalties/royalties_and_fees.

DSD 2012a, *South Australia's Minerals ScoreCard 2011–12*, Department for State Development, Adelaide, available at minerals.dmitre.sa.gov.au/__data/assets/pdf_file/0007/181708/ScoreCard_2011-12.pdf.

DSD 2012b, *Regulating mineral exploration and mining in South Australia: Setting the framework for best practice regulation*, Department for State Development, Adelaide, available at sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/BROCH005.pdf.

DSD 2012c, *SA Petroleum Sales 2012*, Department for State Development, Adelaide, available at petroleum.dmitre.sa.gov.au/__data/assets/pdf_file/0015/27204/income_2012.pdf.

DSD 2012d, *SA Petroleum Royalties 2012*, Department for State Development Adelaide, available at petroleum.dmitre.sa.gov.au/__data/assets/pdf_file/0019/27208/royalties_2012.pdf.

EU 2013, 'Directive 2013/50/EU of the European Parliament and of the Council', *Official Journal of the European Union*, European Union, available at eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=oj:JOL_2013_294_R_0013_01&from=EN.

Grant, P 2008, *Strategic Review of the Administration of Australian Government Grant Programs*, Department of Finance and Deregulation, Canberra, available at finance.gov.au/publications/strategic-reviews/grants.html.

Guj, P 2012, *Mineral Royalties and other mining-specific taxes*, Mining for Development: Guide to Australian Practice, International Mining for Development Centre, Crawley WA, available at im4dc.org/wp-content/uploads/2012/01/UWA_1698_Paper-01_-Mineral-royalties-other-mining-specific-taxes1.pdf.

UK Prime Minister's Office 2013, *2013 Lough Erne G8 Leaders' Communique*, available at gov.uk/government/publications/2013-lough-erne-g8-leaders-communique.

Minerals Council of Australia 2014, *Enduring Value – The Australian Minerals Industry Framework for Sustainable Development*, Minerals Council of Australia, Canberra, available at minerals.org.au/focus/sustainable_development/enduring_value.

Minerals Council of Australia 2013, 'Minerals industry's community spending exceeds \$34 billion', Minerals Council of Australia, Canberra, available at minerals.org.au/news/minerals_industrys_community_spending_exceeds_34_billion.

Office of State Revenue 2014, *Royalty Statistics*, Office of State Revenue, Queensland Government, Brisbane, available at osr.qld.gov.au/royalties/statistics.shtml.

Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* (Chapter 2), Productivity Commission, Canberra, available at pc.gov.au/projects/study/upstream-petroleum/report.

Revenue Watch Institute 2012, *Oil and mining companies on global stock exchanges*, Revenue Watch Institute, New York, available at data.revenuewatch.org/listings/index.php.

The Treasury 1999, A Platform for Consultation, Chapter 2: *The case for accelerated depreciation*, Canberra, available at rbt.treasury.gov.au/publications/paper3/

Transparency International 2013, *Corruption by country/territory*, Transparency International, Germany, available at transparency.org/country.

UNDP 2013, *Human Development Indicators*, United Nations Development Programme, Geneva, available at hdr.undp.org/en/countries/profiles/gjn.html.

World Economic Forum 2013, *Global Agenda Council on Anti-Corruption and Transparency 2012–2014*, Geneva, available at http://www3.weforum.org/docs/GAC/2013/Connect/WEF_GAC_Anticorruption_Transparency_2012-2014_Connect.pdf

Corporate reports

BHP Billiton's 2013 Global Sustainability Report

ExxonMobil's 2012 Corporate Citizenship Report

Rio Tinto's 2012 Sustainable Development Report

Shell's 2012 Sustainability Report

Australian government web addresses

Attorney-General's Department

Auditor-General

Australian Commission for Law Enforcement Integrity

Australian Crime Commission

Australian Electoral Commission

Australian Federal Police

Australian Public Service Commission

National Offshore Petroleum Safety and Environmental Management Authority

Office of the Australian Information Commissioner

Office of the Commonwealth Director of Public Prosecutions

Office of the Commonwealth Ombudsman

State and territory government web addresses

Australian Anti-Corruption Commissions Forum

Council of Australian Governments

South Australia – royalty provisions, geothermal energy

Legislation

Administrative Appeals Tribunal Act 1975

Administrative Decisions (Judicial Review) Act 1977

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Australian Federal Police Act 1979

Commonwealth Authorities and Companies Act 1997

Commonwealth Authorities and Companies Act 1997

Corporations Act 2001

Criminal Code Act 1995

Financial Management and Accountability Act 1997

Judiciary Act 1903

Legislative Instruments Act 2003

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Privacy Act 1988

Privacy Amendment (Enhancing Privacy Protection) Act 2012

Proceeds of Crime Act 2002

Public Governance, Performance and Accountability Act 2013

Public Interest Disclosure Act 2013

Tax Laws Amendment (2013 Measures no.2) Act 2013

Taxation Administration Act 1953

Uranium Royalty (Northern Territory) Act 2009

Private sector regulation

Australian Competition and Consumer Commission

Australian Prudential Regulation Authority

Australian Prudential Regulation Authority Act 1998

Australian Securities and Investment Commission

Australian Securities and Investments Commission Act 2001

Australian Transaction Reports and Analysis Centre

Export Finance and Insurance Corporation

The private sector's commitment to transparency and integrity

Enduring Value – The Australian Minerals Industry Framework for Sustainable Development

International initiatives

APEC Anti-Corruption and Transparency Working Group

Egmont Group

Financial Action Task Force

G20 Anti-Corruption Working Group

Global Compact Network Australia

Global Reporting Initiative

Guidelines for Multinational Enterprises

International Budget Partnership

Open Contracting

Open Government Partnership

Organisation for Economic Co-operation and Development

Partnering Against Corruption Initiative

UN Convention against Corruption

UN Global Compact

UN Principles for Responsible Investment

