

Public Data Branch
Department of the Prime Minister and Cabinet

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Formal submission from Publish What You Pay Australia on inclusions to Australia's National Action Plan for the Open Government Partnership.

Publish What You Pay (PWYP) Australia welcomes the opportunity to provide this submission to the Department of Prime Minister and Cabinet (PMC) on the proposed commitments to the National Action Plan (NAP) under the Open Government Partnership (OGP).

PWYP Australia is a coalition of humanitarian, faith-based, environmental, anti-corruption, research and union organisations campaigning for greater transparency and accountability in the extractive industries. PWYP Australia works with the global Publish What You Pay coalition, a network of over 800 member organisations in more than 60 countries around the world, united in their call for an open and accountable extractive sector, so that oil, gas and mining revenues improve the lives of women, men and youth in resource-rich countries.

PWYP Australia endorses the three commitments as outlined in section one 'Transparency and Accountability in Business' of the proposed National Action Plan. We fully support our Coalition partners in their work on Commitment 1.1 Improve Whistle-Blower Protections in the Tax and Corporate Sector, however this submission only speaks in detail to the two most aligned to PWYP Australia's advocacy aims; Commitment 1.2 Beneficial Ownership, and Commitment 1.3 Natural Resource Transparency. PWYP Australia believes that robust implementation of commitment 1.2 and 1.3 also support section 2 of the proposed NAP 'Open Data and Digital Information'.

PWYP Australia has the support of its Coalition members in endorsing these suggested actions and welcomes this submission being made public.

Commitment 1.2: Beneficial Ownership

PWYP Australia has concerns that the language for this commitment has been watered down and would encourage stronger wording, particularly given that disclosure of beneficial ownership of the extractives sector is a requirement of the EITI standard. Firstly, the language of the commitment should make it clear that the government is committed to having a registry of beneficial ownership and that the consultation to be held is for the purposes of determining the best way to set up such a registry and make it effective. Secondly, the wording of the ambition of the commitment appears to limit access to the data released through a registry to ‘competent authorities’ without defining who these may be. If a commitment cannot be made to make this information public, it must at a minimum have a commitment to making this available to civil society organisations. A beneficial ownership registry that is not freely accessible will do little to increase transparency or accountability, and would amount to nothing more than a box ticking exercise.

PWYP Australia believes that the ambition of this commitment must be increased for it to have any impact on improving anti-corruption or transparency measures in Australia. We support the ambition in its aim to strengthen current provisions, but strongly advocate that these must be open. A beneficial ownership registry that is not open will not advance the values of OGP values as stated in the current wording of Australia’s commitment; it would be in opposition to the spirit of the OGP.

PWYP Australia strongly recommends that this commitment be re-worded in line with the UK commitment of ‘...creating a publicly accessible central registry of company beneficial ownership information.’¹ PWYP Australia would welcome the opportunity to work with Australian Government to increase the ambition of this commitment.

Commitment 1.3 Natural Resource Transparency

The Australian EITI Multi Stakeholder Group (MSG) has been recently formalised. PWYP Australia worked with Transparency International Australia (TIA) to coordinate the nomination processes for civil society representatives to the MSG. The nominations were handled by the Uniting Church of

¹ <http://www.opengovpartnership.org/country/united-kingdom/commitment/27-beneficial-ownership>

Australia Synod of Australia and PWYP Australia is pleased to have been selected as a Civil Society representative to this group.

PWYP Australia endorses placing EITI within the NAP to ensure that there is accountability in the implementation timelines. The benefits of having OGP and EITI operate collaboratively has been highlighted by both the OGP and EITI Secretariats and they, with strong support from the Natural Resource Government Institute (NRGI), have worked together to advocate for this over the years². PWYP Australia is pleased to see that the Australian Government has seen that it is not only important, but common sense, that the EITI be included in the OGP NAP.

We believe working towards compliancy to the EITI standard is an ambitious yet achievable goal. However, we are concerned with the lack of connection being made by the Australian Government between commitment 1.2 and commitment 1.3. As stated on the EITI website *'As a first step, countries will publish roadmaps outlining the activities and preparations that are considered necessary in order to ensure full implementation of the beneficial ownership requirements by 2020. By this date, implementing countries have to ensure that all oil, gas and mining companies that bid for, operate or invest in extractive projects in the country disclose who their real owners are. This should include the identity of the owner, i.e. the name, nationality and country of interest. In addition, any politically exposed persons holding ownership rights must be identified. It is recommended that the beneficial ownership information is made available through a public registers. At a minimum, the information must be included in the country's EITI Report.'*³

The linkages between these two commitments must be more clearly defined within the final NAP. With that in mind, we believe the timeframes for both commitments need to be examined to ensure that they are supporting the smooth implementation of both commitments. It is welcome that the Government has put a date on validation for the EITI; however it should be acknowledged within the final NAP that countries are generally chosen for validation by the EITI Secretariat, rather than by their own timeframe. If the implementation progresses as outlined, Australia can request early validation from the Secretariat.

² <http://www.opengovpartnership.org/blog/erica-westenberg/2014/08/08/ogp-and-eiti-whole-greater-sum-its-parts>.

³ <https://eiti.org/node/4924>

PWYP Australia welcomes the commitments outlined for Australia's first NAP but believes that mandatory disclosure legislation, requires extractive companies listed or based in Australia to disclose all payments made to governments on a country-by-country and project-by-project basis, must be the next ambitious step for natural resource transparency in the second NAP. This would bring Australia in line with the numerous jurisdictions who have introduced this legislation the European Union and Governments in Canada, Norway and the United States.

Finally, PWYP Australia would welcome more detail of how the NAP links with other global forums, such as the recent UK Anti-Corruption Summit, and conventions such as the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public officials in International Business Transactions (OECD Convention); and the United Nations Convention Against Corruption (UNCAC) that Australia is signatory to.

PWYP Australia believes that transparency and corruption in extractives industries is still fundamentally an issue not being adequately addressed by current Australian policy initiatives or legislation. The NAP is the perfect opportunity for Australia to address this. We commend the Government for moving forward with the OGP and look forward to working together to implement these commitments.

Yours sincerely



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Background to Publish What You Pay Australia

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

The current members of Publish What You Pay Australia are:

- Action Aid Australia
- Aid Watch
- Australian Conservation Foundation
- Australian Council for International Development
- A Billion Little Stones
- Burma Campaign Australia
- Caritas Australia
- Catholic Mission
- ChildFund Australia
- Columban Mission Institute
- Conservation Council of Western Australia
- CFMEU – Mining and Energy
- CAER – Corporate Analysis. Enhanced Responsibility
- Economists at Large
- Friends of the Earth Australia
- Global Poverty Project
- Greenpeace Australia Pacific
- Human Rights Law Centre
- Jubilee Australia
- Mineral Policy Institute
- Oaktree Foundation
- Oxfam Australia
- Search Foundation
- SJ Around The Bay
- Tear Australia
- Transparency International Australia
- Union Aid Abroad – APHEDA
- Uniting Church in Australia – Synod of Victoria and Tasmania
- World Vision Australia