



**Australian Government**  
**Department of Industry,  
Innovation and Science**

# **Regulation Impact Statement**

Implementation of the Extractive Industries  
Transparency Initiative (EITI)

15 March 2016

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## OVERVIEW

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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 includes taxes, royalties and other statutory payments. The EITI is supported by a robust but flexible methodology to ensure the standard is maintained in all implementing countries, allowing each country to determine what payments to report. The standard seeks to promote improved governance and accountability in resource-rich countries.

In 2011, the Australian Government announced it would pilot the EITI to examine the potential impacts of implementation, and inform a recommendation to government on Australia's adoption. In accordance with EITI Rules, a Multi-Stakeholder Group (MSG) equally representing governments, industry and civil society, was established to guide and deliver the pilot. The extensive stakeholder consultation process undertaken as part of the pilot ran through to 2014. The Department of Industry, Innovation and Science ('the Department') chaired the pilot's MSG, provided the Secretariat, and coordinated the consolidation of findings from the pilot exercise. Outcomes from the pilot were extensively documented in an administrator's (audit) report and in the MSG report to government, both released in 2014. A detailed cost-benefit analysis was undertaken by the administrator on the basis of the actual costs observed during the pilot exercise.

On completion of the pilot, the MSG unanimously recommended that Australia should implement the EITI, noting that the pilot demonstrated Australia's capacity to implement the EITI standard at a low cost for industry and governments. The recommendation was for a payment reporting model developed under the pilot that relies on a sampling method to test data integrity. The model represents an 'adapted' approach to EITI implementation, based on the premise of voluntary reporting and minimal compliance burden for companies and governments.

This RIS is largely informed by the findings and practical lessons that arose from the pilot. In particular, the RIS leverages the pilot's actual costing data and stakeholder feedback for the recommended policy option. The option proposed in this RIS includes a payment reporting threshold, met by about 155 large extractive companies and covering an estimated 98 per cent of all government payments. This threshold, along with the voluntary basis of EITI reporting, means the regulatory cost burden of EITI implementation is minimal for industry. The cost of reporting for industry is estimated at around \$120,000 per annum (assuming all companies called to report payments choose to participate in the EITI).

## STANDARD FORM RIS

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### Element 1 – Problem

#### Global and domestic context of increased transparency

If Australia does not implement the EITI, there is a substantial risk that it will lag behind its international partners in a growing transparency and anti-corruption agenda, thus damaging its reputation and credibility.

International and domestic efforts to improve transparency, address tax avoidance and profit shifting by multi-national corporations are increasing. Given Australia's large natural resource base and the high level of confidence placed in the governance frameworks that support resource development, there is significant international pressure to demonstrate leadership in this area.

Fifty-one countries have now signed up to the EITI, including Germany, Norway, the United Kingdom and the United States. Both France and the Netherlands have announced their commitment to joining the EITI, and are expected to formalise their candidacy imminently. EITI received official endorsement from the World Bank in December 2003. The International Monetary Fund, the European Commission, OECD, G7, G20, the African Union and the Asian Development Bank also support the EITI. Many of Australia's largest resources companies are official EITI members, including BHP Billiton, Oz Minerals, Rio Tinto, Santos and Woodside.

The EITI needs to be considered in the context of an increasing number of domestic and global initiatives towards greater transparency and accountability for governments, particularly with respect to the utilisation of national non-renewable resources. A decision by Australia not to implement the EITI may be interpreted as falling behind international peers and practice, and as incongruous with a number of collective efforts as outlined below. Institutions including the United Nations (UN), the Organisation for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC), through its Transparency and Anti-corruption Working Group, are increasingly advocating for better financial transparency. The UK Prime Minister, David Cameron, has been campaigning for improved transparency and disclosure in taxation systems and revenue, successfully bringing these issues to the G8 with a particular focus on tax and extractive industries. The G20 is also working to enhance the transparency of tax payments globally and to help governments collect the revenue necessary to finance essential services and infrastructure. Major initiatives are outlined in **Table 1** overleaf, along with their relevance to EITI implementation in Australia.

**Table 1 – Major transparency initiatives relevant to EITI**

<b>Initiative</b>	<b>Description</b>	<b>Relevance to EITI</b>
<i>In Australia</i>		
<b>Amendments to the Income Tax Assessment Taxation Act 1997— Tax Laws Amendment (2013 Measures No. 2) Act 2013</b>	The bill mandates the reporting of revenue and tax information for around 1,500 private companies with an income of \$100 million or more.	The December 2015 release of the ATO's Tax Transparency report for FY 2013-14, which discloses the revenues earned and tax paid by such entities in Australia, attracted considerable media and public interest.
<b>Drafting of the Open Government Partnership (OGP) national action plan</b>	Australia applied in 2011 to join the OGP, through which 69 participating countries have formally endorsed an Open Government Declaration and committed to sharing the progress of their reforms on the OGP platform, operating on two-year national planning cycles. Most participating countries are undertaking their second action plan cycle, with Australia currently developing its initial national action plan.	Implementing EITI would be a key feature of Australia's OGP action plan. There are significant synergies possible between EITI implementation and proposed initiatives under the OGP plan, reducing the cost of reporting.
<i>Overseas</i>		
<b>United States: Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)</b>	The Dodd-Frank Act passed into law in July 2010. Section 1504 of the Act requires full annual disclosure of payments companies made to foreign governments and details of financial liabilities relative to foreign projects. Redrafted rules are due to be released in 2016.	Dodd-Frank refers to the EITI as a compatible initiative that can operate alongside its reporting requirements. It involves mandatory reporting (as opposed to the EITI's voluntary basis) but only captures company payments, i.e. it does not reconcile these with government receipts.
<b>Canada: Extractive Sector Transparency Measures Act</b>	The mandatory reporting regime was enacted in December 2014. Large, publicly-traded private oil, gas and mining companies must publicly disclose payments made to governments in Canada and in other countries.	This Act operates in a similar way to Dodd-Frank and includes contract disclosure. When introduced it was promoted as being compatible with EITI reporting.
<b>European Union: Accounting and Transparency Directive</b>	Passed in April 2013, the new Directive mandates that resource companies (including forestry) disclose payments to governments (such as taxes on profits, royalties and licence fees) at a country and project level.	The European Commission noted that the Directive "responded to international developments in this field" and was designed to align with EITI standards, with the explicit objective of strengthening the EITI by effectively extending its scope to all resource-rich countries in the EU.

## **Influencing against corruption: ensuring a level playing field for Australian companies operating overseas**

Corruption and lack of transparency in governments and companies are a major impediment to economic growth and poverty reduction across the globe. 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 annually). More than US\$1 trillion are paid in bribes each year<sup>1</sup>—funds that could otherwise be spent on essential services and investment. Transparency is fundamental to economic stability as it provides free and fair market access and greater accountability of government and industry towards communities. It reduces opportunity for corruption and mismanagement of public funds and encourages capital-intensive investments by guaranteeing the long-term stability required to generate returns.

Australia's anti-corruption systems rank relatively well by international comparison, being listed as 11<sup>th</sup> (out of 174 countries) on Transparency International's Corruption Perception Index—however it has dropped from its 7<sup>th</sup> rank obtained in 2012. Any perceived lack of transparency or failure to demonstrate a commitment to transparency and anti-corruption principles by Australia puts at risk our reputation and efforts to improve global investment and public confidence.

Australia has provided significant monetary and in-kind contributions to international EITI efforts, and has used its influence to encourage countries to join the EITI. Australia's reluctance to implement the EITI may thus been interpreted as being at odds with its influencing efforts, particularly as a growing number of developed nations with strong governance frameworks are doing so. This is particularly pertinent for encouraging regional efforts to improve transparency, as seen by recent EITI support in Burma, the Solomon Islands, Indonesia, Papua New Guinea and the Philippines.

The EITI has brought remarkable results in many of the world's most resource rich, but unstable countries where lack of effective anti-corruption and governance frameworks reduces investment opportunities and fosters uncompetitive markets, with mining rights tending to be allocated according to corrupt practices, such as bribery. While it does not mandate investigating into bribery and misallocation of funds, the EITI allowed the emergence of a strong public debate on the management of national resources, by questioning the adequacy of governance systems and highlighting major discrepancies.

Australian extractive companies have commercial interests beyond Australia's borders, exposing them to different practices. The EITI is important in levelling the playing field for Australian extractives operating or seeking to operate overseas. Australia's resources sector largely supports EITI implementation—with many Australian companies already participating in EITI reporting overseas—with the view that a consistent, global reporting standard creates better opportunities for the sector. Australia joining the EITI would ensure that domestic policy is consistent with international trends.

## **Strengthening the extractive sector's social licence to operate**

Australia overall has well established and effective anti-corruption measures. These are supported by a strong constitutional foundation and further enhanced by a range of bodies and government initiatives that promote accountability in the private and public sectors. The EITI provides an opportunity to demonstrate the effectiveness of Australia's governance system, as an extra layer of assurance to transparency and anti-corruption performance. Implementing the EITI would strengthen confidence and understanding of Australia's reporting regimes for both investors and community.

Tax revenues from extractive activities are receiving increasing attention from Australian and international communities. Domestically, debate about resource taxation has intensified, questioning

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<sup>1</sup> World Economic Forum 2013

how these revenues are managed and whether contributions from extractives are fair. This was demonstrated by the Resources Super Profits Tax debate, which became a major political issue across Australia, including in the States and Territories. This debate highlights the need for the extractive sector to explain its contributions, better inform public discussion on the benefits of mining, and provide reassurance that extractive operations occur within an effective and accountable governance regime.

Transparency of extractives industries' fiscal contributions to government revenue will play a significant part in gaining public acceptance. In this context, the EITI provides an opportunity for the extractive sector to demonstrate its contribution to the economy and its commitment to responsible development. As such, EITI adoption would strengthen the sector's social licence to operate, which in turn may be attractive to investors. This would be particularly beneficial to operations currently subject to high levels of public debate, such as coal seam gas and coal mining developments.

In Australia, governments and the mining industry are well aware of the importance of engaging with communities to gain support for resource development. Community engagement and acceptance is a crucial component of successful resource projects. The EITI provides an ongoing, structured opportunity for civil society to actively participate in the debate. It also demonstrates a government commitment to responsible development (including environmental sustainability), thus improving public confidence in governance processes.



## Element 2 – Justification of government action

The participation of the Australian Government in the reporting of payment data is essential to meeting the reporting and reconciliation requirements specified by the EITI standard. The Australian Government holds substantial amounts of data on payments relevant to the EITI standard, including company tax, the Petroleum Resource Rent Tax and the North West Shelf Petroleum Excise.

Similarly, participation from State and Territory governments is paramount, since they have jurisdiction for the regulation and collection of revenue from resources extraction within their boundaries. As such, the participation of all governments (where mining operations occur) is necessary to ensuring the exhaustiveness and meaningfulness of payment reconciliation under the EITI. The magnitude of Western Australian and Queensland royalties (respectively \$4.2 billion and \$2.7 billion) illustrates the importance of State and Territory governments' participation in any EITI implementation scenario.

Given the scope and requirements of the EITI standard, it is imperative that implementation in any country is supported by a central government. Alternatives to government involvement are extremely limited, given that:

1. the EITI requires government-led ratification for a country to be accepted as a candidate;
2. as the collector of taxation and royalty streams, and overall regulator of mining, oil and gas extraction, government is integral to the successful delivery of the EITI model.

The implementation of the EITI standard in Australia requires taking into consideration the prevailing fiscal environment as well as the broader context of Australia's large and diverse extractive sector. As the Australian Government has authority on regulatory and governance frameworks relevant to the collection of revenue taxation, it is best placed to lead EITI implementation in Australia and provide a national perspective. Finally, the mandated structure of EITI country reports goes beyond the simple reporting of payment data, and includes descriptions of how governments and companies are accountable. Should the EITI expose any regulation or administration inefficiencies, the Australian Government has the authority to intervene.

### Capacity for successful intervention

The EITI pilot exercise demonstrated the Australian Government has the capacity to implement the EITI standard. In particular, it demonstrated the strong expertise of the Australian Government and State and Territory governments in regulating extractive activities within their respective jurisdiction, and in reporting the revenues collected from these activities. During the pilot, the Australian Government successfully completed the full EITI programme (including a comprehensive analysis of current systems and reporting requirements), and managed the diverse range stakeholders in the pilot's MSG to deliver a unanimous recommendation.

The lessons and findings from the Australian EITI pilot provide a strong basis to move to full implementation of the EITI standard. The pilot proved that EITI implementation was not only acceptable but desirable to industry, civil community and government stakeholders. The Australian Tax Office (ATO), the Department and representatives from the respective resources department of each State and Territory have confirmed that they have the capacity to participate in the MSG and to provide the data required for reconciliation.

### Meeting EITI requirements

According to EITI specifications, Government-led implementation may be initiated after the following steps are completed:

1. Government must issue an unequivocal public statement of its intention to implement the EITI, including committing to work with civil society and companies.

3. Government must formally appoint a high level government official to lead the implementation of the EITI.
4. A Multi-Stakeholder Group (MSG) must be established to oversee the implementation of the EITI (following the same rules of equitable representation of government, industry and civil society that were used for Australia's pilot MSG).
5. The MSG is required to develop and maintain a work plan, fully costed and aligned with reporting and validation deadlines established by the EITI Board.

When a country considers it has met these four requirements, it may submit a Candidature Application to the EITI Board. If the Board finds that the requirements have been successfully met, the country will become an EITI Candidate country. Once a country's candidacy is accepted, compliance with the EITI standard needs to be demonstrated to the Board within the following 18 months to receive the status of EITI compliant country. Compliant countries are then required to have their compliance status independently assessed by the EITI Board (with the cost borne by the International EITI Board) at least every two years, using an independent validator who will gather information on that country's EITI process, interview key stakeholders and measure the country against a set of validation indicators.

Pursuing the objective to seek compliance with the EITI Standard will require the Australian Government to achieve the milestones outlined in **Table 2** below.

**Table 2 – Milestones for EITI implementation**

Initiative	Description	Responsibility
<b>Mar. 2016</b>	Seek approval from the Prime Minister to announce candidacy and make a formal announcement to EITI to seek candidacy.	Department (with Departments of Foreign Affairs/Prime Minister and Cabinet)
<b>May. 2016</b>	Submit candidature application and establish the MSG.	Department
<b>Jun. 2016</b>	First meeting of the MSG: approval of Terms of Reference and approval of costed work plan.	MSG
<b>Jul. 2016</b>	Engage an independent administrator.	Department
<b>Aug. 2016</b>	Contact companies to participate in reporting.	Administrator
<b>Sept. 2016</b>	Commence reporting and reconciling activities.	Administrator / MSG
<b>Sept. 2017</b>	Administrator's report submitted to MSG.	Administrator
<b>Oct. 2017</b>	Submit Australia's MSG Report and application for Compliance to EITI Board.	Department
<b>Mar. 2017</b>	Validation: EITI Board reviews Australia's MSG report and assesses Australia's compliance status.	EITI
<b>Ongoing</b>	Submit annual update reports and full MSG reports every third year.	Department/MSG/ Administrator

## Constraints and barriers to implementation

The successful implementation of the EITI standard in Australia is subject to three major constraints, which principally relate to membership and voting protocols of the MSG, and anticipated levels of company participation. These constraints are outlined below:

1. It is an EITI requirement that MSG membership for industry and the civil society is determined within these groups, independently of government. Under the proposed model, each constituency will have seven seats available on the MSG. The Australian Government cannot elect representations from industry and civil society but can do so for government representatives in consultation with the States and Territories.
6. EITI principles stipulate that voting will take place by consensus wherever possible. It is likely that the diverse perspectives within the MSG mean it will take time to reach some decisions. During the pilot, once voting protocols were finalised all decisions were unanimous largely due to the strength of the Chair and the willingness of members to work together.
7. It is expected that payment thresholds under the proposed, 'adapted' EITI model will capture approximately the largest 155 extractive companies in Australia on a voluntary basis, covering an expected 98 per cent of total industry revenue. Given the voluntary nature of this initiative, some companies may elect not to report payments. However, a reduction in coverage would not pose a significant threat to the meaningfulness of results from the model, which focuses on testing governance and reporting frameworks from available data. Findings from the pilot exercise showed that significant non-participation was unlikely given the support expressed by industry during the pilot.

## Element 3 – Options

To comply with EITI implementation rules, business entities and government bodies are required to complete a reporting template respectively setting out the payments made and received. There are a large number of possible permutations of entities, payments and levels of disaggregation, resulting in a wide array of potential EITI models which could be implemented. As such, total data reporting costs are largely dependent on the chosen implementation model.

To determine the costs, a definition of participating companies or paying entities was required. 'Paying Entities' are defined as companies, consolidated entities or other corporate bodies making a payment within the reporting period. 'Paying Entities' are inclusive of 'Operations'. 'Operations' are defined as individual extractive projects required to report and pay state-based royalties on an individual basis under relevant state legislation. 'Payments' are where a Paying Entity or Operation has made a payment to a Government Body within the reporting period. It should be noted that a wider Economic Group (for example, Rio Tinto or BHP) may consist of numerous 'Paying Entities' depending on the group's structure.

The principal options evaluated by the Department are summarised in **Table 3** below and further defined in the following pages.

**Table 3 – Policy options summary**

Option	Description
<b>Option one (status quo)</b>	No EITI implementation. Existing regulatory and governance arrangements applicable to the extractive industry sector are maintained.
<b>Option two (all in)</b>	All Paying Entities report payments, which would include about 4,500 entities. Governments report all payments received. Industry coverage is 100 per cent.
<b>Option three (top companies)</b>	Only 'Large Paying Entities' as defined by a pre-determined payment threshold need to report. Governments report payments received above the same threshold.
<b>Option four (hybrid model)</b>	A number of Large Paying Entities report payments but government bodies report all payments received. A statistical sample of payments reported by Large Paying Entities is reconciled to information provided by government bodies.

### Option one - 'status quo'

The existing regulatory and governance arrangements which hold to account Australia's corporate sector, including the extractive industry, are considered to be among the world's best. An analysis by Governance Metrics International<sup>2</sup> ranked large Australian companies as fourth among companies from 38 countries across a range of criteria, including financial disclosure and internal controls.

These arrangements have created an environment in which business entities face high levels of transparency and accountability to investors, regulators and governments. For instance, the Australian Securities and Investments Commission requires that all large proprietary companies (as

<sup>2</sup> Productivity Commission (2009) Executive Remuneration in Australia, p.126, December 2009.

measured by employee count, revenue and asset value) prepare and lodge audited financial statements for each financial year (in most circumstances).

This regulatory and governance framework largely contributes to Australia being considered one of the least corrupt countries in the world. According to Transparency International's 2012 Corruption Perceptions Index, Australia is the world's 11<sup>th</sup> 'cleanest' country in terms of corruption. Australia's position is further strengthened by the wealth of information routinely released by governments on revenue sources (e.g. budget papers and taxation statistics publications).

### **Option two – 'all in'**

Under this option, all extractive companies report payments to governments and governments report all payments received. This 'all in' model constitutes the most literal and most stringent application of the EITI Standard. It allows for the publication of the total contribution of extractives to government revenues.

Based on available company tax and royalty information, the exhaustive model would include about 4,500 Paying Entities (100 per cent industry coverage). Due to the large number of participating entities and individual payments reported under this model, Option Two will be the most costly to both industry (including small operators such as junior explorers) and governments.

Option Two is the most comprehensive model of the three proposed implementation options. However, many EITI countries have had historically poor anti-corruption safeguards. In contrast, developed countries with strong governance frameworks and countries with complex, multi-layered payment systems have implemented adapted versions of the EITI standard tailored to national circumstances. In this context, the exhaustive model does not take into consideration Australia's well established and effective fiscal governance.

### **Option three – 'top companies'**

Option Three is for a limited reporting model where only 'Large Paying Entities' participate in payment reporting. Large Paying Entities are defined as those that meet or exceed a pre-determined payment threshold for any payment included in the scope of EITI reporting. Large Paying Entities thus report disaggregated payment data above the relevant payment thresholds, and governments report the payments received above the same thresholds. The number of entities that participate will depend on whether thresholds are met, and may change each year depending on company earnings. The thresholds used for cost estimates are as listed below:

- (a) All Paying Entities with turnover exceeding \$100 million to report all significant payments and/or Commonwealth payments (for example Company Tax);
- (b) All Paying Entities making payments of \$1 million or more for smaller payment streams or state Government payments (e.g. royalty payments) in SA, TAS, VIC, NT and NSW; and
- (c) All Paying Entities making payments of \$50 million or more for smaller payment streams or state Government payments (e.g. royalty payments) in QLD and WA (larger resource jurisdictions).

Applying these thresholds, Option Three would include:

- (a) Approximately 155 Paying Entities for Company Tax reporting<sup>3</sup>;
- (b) Approximately 137 Paying Entities for all other payments<sup>4</sup>; and

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<sup>3</sup> Taxation statistics 2010–11, [Table 7: Company tax, Selected items, by broad industry and total income, 2010–11 income year](#), last accessed 11 December 2013.

<sup>4</sup> Refer to section 4.6 for the assumptions used to estimate this figure.

- (c) Approximately 9 Government Bodies reporting Payments to be reconciled to the amounts reported by the Paying Entities (in (a) and (b)).

**Notes on estimates:**

- There will be some overlap between the Paying Entities reporting for company tax and other payments. In addition, some larger organisations would contain multiple underlying Paying Entities, further reducing the actual number of individual organisations required to perform reconciliations.

Option Three therefore imposes far lower costs on the extractive sector and government bodies, yet may provide a similar outcome in terms of industry coverage, estimated at 98 per cent. It recognises the strength of existing governance frameworks in that it does not seek to track and reconcile every single payment made by extractives to governments. However, this option does not allow for the publication of the total contribution of the extractive sector to government revenue.

The specified threshold for reporting may change over time if the terms set out by the MSG during implementation allow for a flexible threshold. This would have the benefit of ensuring a minimum industry coverage is maintained.

### **Option four - 'hybrid model'**

Under this hybrid model, a number of Large Paying Entities report payments above a pre-determined payment threshold, with industry coverage varying in inverse proportion to the threshold (similar to Option Three). However, government bodies report all aggregated payments received.

In this model, governance frameworks are tested via a sampling method:

1. The Administrator selects a statistical sample of payments reported by Large Paying Entities.
2. Governments provide disaggregated data relevant to the sample.
3. The Administrator reconciles both sets of payment data, and reports on any discrepancy.

As with Option Three, the hybrid model recognises that Australia has robust reporting mechanisms and compliance arrangements that apply to extractive industries. As such, it seeks not to burden smaller paying entities with the cost of reporting. It proposes that focusing on gaps and localised opportunities for enhanced transparency and effectiveness is more appropriate than examining and reconciling all individual payment data, given Australia's particular circumstances. By requiring that governments report all payments received from extractives, this model allows for the publication of the total contribution of the extractive sector to government revenue, addressing some of the key issues outlined above in **Element 1 – Problem**.

## Element 4 – Cost-benefit analysis

### Costs of EITI implementation

The costs associated with EITI implementation are largely time-based administration costs. These include time spent performing activities such as:

- Attending and preparing for MSG and subgroup meetings;
- Drafting documents, including meeting agendas and minutes, communiqués and papers;
- Acting as liaison between Paying Entities (extractive companies reporting payments), the Department and the Administrator (and the EITI Board at times); and
- Reporting and reconciling payment data.

Summary cost estimates for the four policy options are provided in **Table 4** below, with a breakdown by cost group. A detailed summary of compliance costs is provided for reference at **Attachment A** and **Attachment B**.

**Table 4 – Estimated annual costs of EITI implementation by cost group**

	Option one (status quo)	Option two (all in)	Option three (top companies)	Option four (hybrid model)
<b>Total Costs</b>	<b>N/A</b>	<b>\$6,258,524</b>	<b>\$1,186,344</b>	<b>\$1,186,344</b>
MSG meetings	N/A	\$178,715	\$178,715	\$178,715
Data reporting	N/A	\$3,374,803	\$172,623	\$172,623
Administrator	N/A	\$2,250,000	\$380,000	\$380,000
Secretariat	N/A	\$455,006	\$455,006	\$455,006

Under Option Two ('all in' model), it is estimated that the total annual cost of maintaining the EITI standard would be around \$6.3 million. Most of this cost is attributable to data reporting (54 per cent) and Administrator remuneration (36 per cent), due to a large number of Paying Entities reporting a very large number of payments under this model.

The implementation of Options Three and Four is expected to come at about 20 per cent of the cost of Option Two (around \$1.2 million), due to the much lower number of companies reporting payments. The total costs for Options Three and Four are estimated to be equivalent on the basis that:

1. Costs borne by Paying Entities will be the same under both models (same payment threshold).
2. Administrator costs are expected to decrease under Option Four as the number of Paying Entities requiring reconciliation is reduced (due to the sample basis of payment reconciliation).
3. Under Option Four, the addition of aggregate payment reporting costs to Government costs is expected to be broadly offset by the reduced number of disaggregated payment data provided by government (only individual receipts associated with the payment sample are provided).

Across all policy options, the greater cost sensitivity observed for EITI implementation is in relation to the number of payments included in the scope of reporting, for example if an additional payment is included, and/or in the absence of a substantial payment threshold. Cost increases associated with a greater number of payments are disproportionately borne by industry (cf. **Table 5** overleaf). However,

as EITI reporting operates on a voluntary basis, companies may elect not to participate in payment reporting.

**Notes on cost estimates:**

- Cost estimates assume the following six payments are included in the scope of reporting (as occurred during the pilot):
  1. Company tax
  2. Petroleum Resources Rent Tax
  3. North West Shelf Petroleum Royalties
  4. Upstream Excise paid by the North West Shelf
  5. Uranium Royalty
  6. State and Territory royalties
- Actual costs may be higher if other types of payments are included (e.g. Native Title payments), particularly for Option Two which does not have a payment threshold.
- Costs for Options Three and Four were calculated on the basis of a \$100 million payment threshold for reporting company tax. With this threshold, it is estimated that approximately 155 Paying Entities will report company tax payments, and 137 Paying Entities will report other payments.
- Actual costs may be higher if additional compliance requirements are added by the new MSG when implementing EITI compared to the pilot's operations (e.g. costs of acquiring and maintaining reporting software).
- Cost estimates for data reporting assume that all Paying Entities called to report payments are participating in payment reporting. As the EITI operates on a voluntary basis, actual costs to industry may be lower if some companies elect not to report payments.

The Australian Government bears the majority of the implementation cost burden in each policy option (60-76 per cent), followed by industry (15-36 per cent).

While the estimated cost burden of Option Two to the Australian Government is about four times higher than that of Options Three and Four, it is more than 10 times higher for industry. This is due to the fact that a much larger number of Paying Entities are participating under Option Two, and implementation costs borne by industry are mostly attributable to data reporting.

There is a minimal cost burden for state governments and civil society across all policy options. The costs incurred by state governments are mostly attributable to MSG meetings attendance (Options Three and Four), and to the reporting of royalty payments (Option Two). The costs to civil society are not expected to vary between each option, as this group's contribution will be limited to participating in MSG meetings in any EITI implementation option.

**Table 5** overleaf shows how the annual costs of EITI implementation will be distributed between governments, industry and civil society. These include the costs of attending MSG meetings for participating stakeholders.



**Table 5 – Estimated annual costs of EITI implementation by stakeholder group**

	Option two (all in)		Option three (top companies)		Option four (hybrid model)	
	Cost	%	Cost	%	Cost	%
<b>Total</b>	<b>\$6,258,524</b>	<b>100%</b>	<b>\$1,186,344</b>	<b>100%</b>	<b>\$1,186,344</b>	<b>100%</b>
Australian Government	\$3,725,152	60%	\$903,047	75%	\$901,912	75%
State Governments	\$201,031	3%	\$44,721	4%	\$45,856	4%
Extractive Industry	\$2,272,770	36%	\$179,005	16%	\$179,005	16%
Civil society	\$59,572	1%	\$59,572	5%	\$59,572	5%

**Data reporting costs**

Estimated costs of reporting payments for industry (Paying Entities) and governments (Government Bodies) are provided in **Table 6** overleaf for each of the four policy options. This table highlights the sensitivity of the costs of EITI implementation associated with the number of payments included in the scope of reporting.

Under Option Two, more than 4,500 Paying Entities would report payments, resulting in total data reporting costs of around \$3.4 million per annum. Company tax costs account for a large proportion of data reporting costs (77 per cent) due to the large number of Paying Entities liable for this payment. In comparison, data reporting costs fall to around \$173,000 under Options Three and Four (5 per cent of the costs of Option Two) due to the significantly lower number of Paying Entities participating in payment reporting.

The combined cost of reporting an additional payment (and, by extent, the cost of an additional Paying Entity reporting a payment), is estimated to be approximately \$614 per payment—\$469 for industry and \$145 for governments. For example, a change in the reporting payment threshold or a change in economic circumstances that would result in 20 additional entities reporting payments would increase the total cost of data reporting by about \$12,000 annually (excluding any additional Administrator costs).

**Table 6 – Estimated annual costs of payment reporting**

		<b>Option One (status quo)</b>	<b>Option Two (all in)</b>	<b>Option Three (top companies)</b>	<b>Option Four (hybrid)</b>
<b>Paying Entities</b>	Company tax	N/A	\$1,619,444	\$55,180	\$55,180
	Other payments	N/A	\$593,754	\$64,253	\$64,253
	<b>Sub-total</b>	<b>N/A</b>	<b>\$2,213,198</b>	<b>\$119,433</b>	<b>\$119,433</b>
<b>Government Bodies</b>	Company tax	N/A	\$978,035	\$33,325	\$3,440
	Other payments	N/A	\$183,570	\$19,865	\$2,320
	Aggregated data	N/A	N/A	N/A	\$47,430
	<b>Sub-total</b>	<b>N/A</b>	<b>\$1,161,605</b>	<b>\$53,190</b>	<b>\$53,190</b>
<b>Total</b>		<b>N/A</b>	<b>\$3,374,803</b>	<b>\$172,623</b>	<b>\$172,623</b>

### **MSG meeting and sub-group costs**

The establishment of an MSG to oversee the implementation and management of the EITI is a cornerstone requirement of the EITI standard. Accordingly, a new MSG would be established under any EITI implementation option in Australia. The composition and size of the new MSG will be very similar to that of the pilot’s MSG, due to the EITI Board’s requirement that the MSG comprises representatives from government, extractive industry sector and civil society.

MSG meeting costs are expected to be the same across Options Two, Three and Four, as the MSG meetings are conducted in accordance with EITI governance guidelines. **Table 7** below provides the estimated annual cost of MSG meetings for each policy option, assuming an average of 28 participants per meeting (including non-voting observers and the Chair) and four meetings per year. Annual MSG meeting costs are estimated to be about \$179,000, or \$44,700 per meeting. The costs are evenly split between government, industry and civil society groups, due to the equal representation of these groups in the MSG.

**Table 7 – Estimated MSG meeting costs for Options Two, Three and Four**

	<b>Annual Cost</b>	<b>Cost per meeting</b>	<b>Share of total costs</b>
<b>Australian Government</b>	\$29,786	\$7,447	17%
<b>State governments</b>	\$29,786	\$7,447	17%
<b>Extractive industry</b>	\$59,572	\$14,893	33%
<b>Civil society</b>	\$59,572	\$14,893	33%
<b>Total</b>	<b>\$178,715</b>	<b>\$44,679</b>	<b>100%</b>

Additional costing assumptions underpinning these estimated MSG meeting costs are listed for reference in **Table 8** below.

**Table 8 – Costing assumptions for MSG meetings**

Assumption	Value
Attendees per meeting	28
Average meeting duration (hours)	6
Preparation time per person per meeting (hours)	3
Average meeting duration (hours)	3
Average travel time per person per meeting (hours)	3
Average travel cost per person per meeting (\$)	\$250
Meeting facilitation costs per meeting (\$)	\$1,500

While not a mandatory requirement for EITI implementation, additional sub-group meetings may occur to allow for important aspects of the EITI to be explored in greater depth than would be possible during general MSG meetings. Sub-group meetings are most likely to be confined to the implementation phase of the EITI standard (i.e. these costs will not be incurred on an ongoing basis beyond the first year).

Sub-group meeting costs are estimated to be around \$54,000 in the first year of implementation. A breakdown of estimated costs associated with potential sub-group meetings is provided in **Table 9** below.

**Table 9 – Estimated costs of sub-group meetings (optional)**

Item	Number of meetings	Cost per meeting	Cost per subgroup
Administrator	4	\$1,735	\$6,941
Reporting template	4	\$7,307	\$29,230
Communications	4	\$2,704	\$10,817
Terms of reference	4	\$1,735	\$6,941
<b>Total</b>	<b>16</b>	<b>-</b>	<b>\$53,928</b>

### **Administrator costs**

The appointment of an independent Administrator is a key requirement under the EITI standard. The Administrator is responsible for reconciling data, producing an annual report which sets out payments and receipts, and explaining discrepancies where they arise.

Estimated annual Administrator costs are repeated in **Table 10** below. The cost of reconciling individual payments is based on actual costs observed during the Australian EITI pilot (conservative estimates). Under Options Three and Four, the cost of reconciling the six payments is around \$380,000, or \$32,000 per payment. Administrator costs are about six times higher under Option Two, again due to the much larger number of Paying Entities and payments to be reconciled.

**Table 10 – Estimated annual Administrator costs**

<b>Option One (status quo)</b>	<b>Option Two (all in)</b>	<b>Option Three (top companies)</b>	<b>Option Four (hybrid model)</b>
N/A	\$2,250,000	\$380,000	\$380,000

#### **Notes on cost estimates:**

- Actual data reconciliation costs beyond the initial implementation phase are likely to be lower than the conservative \$32,000 per payment estimated here. The higher initial costs are due to the manual reconciliation method that was employed during the pilot and is likely to be employed during implementation. It is expected that improved information systems and processes will reduce the Administrator cost of payment reconciliation when maintaining the EITI standard.

### **Secretariat costs**

It is proposed that secretariat costs and responsibilities will be borne by the Department on behalf of the Australian Government. These would include:

- Defining the implementation model/parameters;
- Stakeholder engagement ;
- Establishment of a new MSG and Terms of Reference;
- Providing the Chair and secretariat services to the MSG; and
- Engaging an Administrator.

Secretariat costs under full EITI implementation are expected to be roughly equivalent to the costs incurred during the pilot. As such they are estimated to amount to approximately \$455,000 per annum, representing staffing costs of approximately three full-time equivalent staff.

## Benefits of EITI implementation

To determine and evaluate the benefits of EITI implementation in Australia, the following process was undertaken:

- Consultation with participants in the pilot's MSG to ascertain their views with respect to how:
  - Participation in the EITI pilot has benefited their individual organisation; and
  - Government, reporting entities and civil society may have benefited from the pilot.
- Consideration of the findings of the interviews conducted by the Sustainable Minerals Institute with the participants in the pilot's MSG; and
- Desktop research and literature review to validate the views of participants in the pilot's MSG and to identify any additional benefits.

The benefits of the EITI tend to be qualitative in nature, as they are mostly associated with intangible attributes such as transparency, reputation, international leadership, and the extractive industry's social licence to operate. The identified benefits of EITI implementation in Australia are estimated to be largely the same across the costed implementation scenarios discussed in this RIS. In other words, the benefits are not expected to substantially increase if the higher-cost option is implemented.

### *Literature review of EITI benefits*

A number of studies have explored the benefits of the EITI on a country's economic prosperity. Rainbow Insight<sup>5</sup> found that the EITI contributes to good governance by:

- establishing an emerging standard for the reporting of natural resource revenues by both corporations and governments;
- providing a model of multi-stakeholder dialogue; and
- forging a global network whose members share a commitment promoting economic development and poverty reduction through greater revenue transparency.

Limited attempts have been made to quantify these benefits. In 2013, Schmalhjoann<sup>6</sup> found that joining the EITI increases the ratio of foreign direct investment inflows to GDP on average by around two percentage points. This result was based on panel data collected for 81 developing countries, such as Albania, Ghana, Liberia and Mongolia. Therefore, actual foreign direct investment benefits are likely to be quantitatively modest (if not negligible) in Australia, whose established fiscal governance is already well recognised by investors around the world.

A number of other organisations have conducted broader research into the link between transparency and investment decisions. In May 2013, Publish What You Pay Australia and Corporate Analysis Enhanced Responsibility (PWYPA/CAER)<sup>7</sup> surveyed 16 investment analysts regarding their views on disclosure requirements for extractive companies listed in Australia. Through this survey, PWYPA/CAER found that some investors viewed financial transparency as critical to enable investors to assess risk, make decisions about capital allocations, and protect long-term shareholder value. One of the investment analysts surveyed notably remarked that bringing Australia into line with other leading global economies would enable investors to compare Australian listed companies with those listed in the US and EU, thereby correcting any information asymmetry about Australian companies for global investors.

### *Domestic impact of increased transparency*

Implementing the EITI would provide an opportunity for the extractive industries to demonstrate their contribution to the economy through an independently verified report. As well as clarifying the value of

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<sup>5</sup> Rainbow Insight (2009) Evaluating the EITI's Impact on the Transparency of Natural Resources, p.1, February 2009

<sup>6</sup> <http://archiv.ub.uni-heidelberg.de/volltextserver/14368/>, last accessed 10 September 2013

<sup>7</sup> Publish What You Pay Australia and Corporate Analysis Enhanced Responsibility (2013) Australia: An Unlevel Playing Field, p.5, May 2013

reported payments, this additional piece of information may provide a sound basis for legislative debate around new taxes.

The EITI report would provide significantly more detailed and granular information (e.g. project-specific payments) than is currently available to investors, allowing for better-informed investment decisions to be made. This heightened level of disclosure is likely to become increasingly important in light of the global trend towards increased transparency and accountability. In particular, institutional investors are continuing to have an increasing regard to transparency metrics when assessing potential investments. While substantial foreign direct investment benefits of increased transparency associated with EITI implementation have been quantified in the literature, such benefits are likely to be modest given the strong reputation of Australia's existing governance frameworks.

The EITI is anticipated to improve the industry's social licence to operate due to the demonstration of transparent contributions to the tax base. This in turn may benefit investors, with less disruption of operations and an improved chance to gain support for potential expansions. As such, EITI implementation may be particularly beneficial for Australian extractive operations which have recently been subject to high levels of public debate, such as the coal seam gas sector. We note that these benefits are largely dependent on the granularity of reporting under the EITI, with project-level reporting likely to yield the greatest social licence improvements.

Finally, any efforts to increase transparency will contribute to strengthen a fully functional and fair resources market. Although the prevalence of corruption and bribery in Australia is considered extremely low (as demonstrated by the negligible amount of unexplained discrepancies during the pilot), EITI implementation would provide an additional check and balance of the payments made by the sector, thus improving the likelihood that corrupt activities, if they exist, can be identified and mitigated. Accordingly, implementing the EITI would create a very low (but perhaps non-zero) probability of finding an instance of revenue-related corruption, which, once mitigated, would result in increased government revenues for public expenditure.

### ***Reputational benefits***

As described in **Element 1 – Problem** above, a decision not to proceed with EITI implementation may be interpreted as Australia falling behind its international peers. In particular, the decisions made by the US, UK, French, German and Norwegian Governments to implement the EITI indicate that the global transparency agenda is gaining traction among developed countries.

While the EITI pilot demonstrated Australia's commitment to transparency, and signalled its intentions to show leadership in this space, this position would be strengthened if the EITI were fully implemented, and further enhance Australia's reputation as a good global citizen.

### ***Leadership benefits and indirect benefits of international impact***

EITI implementation would improve Australia's ability to show leadership and influence developing countries to implement the EITI, encouraging transparency of payment flows in other countries. If successful, this lobbying effort would improve the prospects of projects being considered in countries that may otherwise be too risky for operations due to poor governance. Previous EITI implementation efforts have been proven to lead to positive social impacts on foreign communities by reducing corruption and bribery, and in time reducing the risk of political instability.

Demonstration of leadership is particularly important given the resource-rich countries located within close proximity to Australia in the Asia-Pacific region. For instance, Papua New Guinea and Myanmar have indicated interest in pursuing EITI implementation. Australian leadership may influence future decisions with respect to implementation, which may create benefits for local communities in these countries along with substantial economic opportunities for Australian companies.

More generally, an Australian decision to implement the EITI standard may also contribute to improving the degree of global consistency in reporting standards. Such developments are likely to

provide substantial project opportunities for the many Australian extractive companies operating the world, and to allow for more cost-effective reporting.

### Cost-benefit analysis conclusion

The benefits of the EITI, if it were implemented in Australia, are as follows:

- Demonstrating Australia's continual leadership with respect to transparency.
- Keeping step with Australia's developed peers that are implementing the EITI, thereby allowing Australia to more credibly lobby other countries to implement the EITI.
- Providing an opportunity for the extractive industry to demonstrate its contribution to the economy through an independently verified report. This was identified as a major benefit by industry participants in the Australian EITI pilot.
- Contributing to improving investment opportunities and level the playing field for Australian companies looking to invest overseas.
- Strengthening relationships between industry and their stakeholders, and facilitating knowledge sharing with respect to existing payments.
- Creating a very low probability of finding an instance of corruption or bribes, which, once mitigated, would result in increased revenues for public expenditure.

The identified benefits of EITI implementation in Australia were found to be largely applicable to all of the costed implementation scenarios. As the benefits associated with EITI implementation are mostly intangible and associated with increased transparency, the Department set out to identify possible avenues to lower the costs of delivering the benefits of transparency.

The highest costs of implementation are under Option Two (exhaustive model), where all extractive companies report payments, with an estimated total annual cost of \$6.3 million. Under Option Two, the cost of reporting to industry would be around \$2.2 million annually. Options Three and Four, which include a payment threshold for reporting, are estimated to cost about \$1.2 million per annum, with the cost of reporting to industry dropping to under \$120,000 due to the small number of companies included in the scope of payment reporting.

The greater cost sensitivity observed for EITI implementation is in relation to the number of payments included in the scope of reporting, for example if an additional payment is included, and/or in the absence of a substantial payment threshold. Cost increases associated with a greater number of payments are disproportionately borne by industry. However, as payment reporting under the EITI standard operates on a voluntary basis, a company may elect not to participate in reporting.

**Table 11** overleaf provides a summarised comparison of the total costs of each implementation option, along with a comparison of the value and percentage of payments covered. It shows that Options Three and Four cover at least 98 per cent of the value of payments that would be captured under Option One, at about 20 per cent of the cost of implementing Option One. Detailed cost estimates are provided for reference at **Attachment B**.

**Table 11 – Total cost and payment coverage by policy option**

	Total cost		Payment coverage	
	\$	% total	\$million	% total
<b>Option one (status quo)</b>	N/A	N/A	N/A	N/A
<b>Option two (all in)</b>	\$6,258,524	100% (reference)	\$23,794	100%
<b>Option three (top companies)</b>	\$1,186,344	20%	\$23,257	98%
<b>Option four (hybrid model)</b>	\$1,186,344	20%	\$23,257	98% (payments) 100% (receipts)

Overall, the Department considers that the short-, medium- and long-term benefits of implementing the EITI—although largely intangible—would far outweigh the cost commitment. This finding is corroborated by the strong support expressed by industry during the Australian EITI pilot. The voluntary basis of EITI reporting means that companies will be able to decide whether to incur the costs of reporting payments, thus limiting the regulatory burden placed on industry. The inclusion of a payment threshold structurally limiting the cost burden of implementation to industry and governments is recommended to allow for the delivery of the benefits of EITI implementation at a lower cost to the Australian Government, industry, and State and Territory governments.

The proposed payment reporting threshold, along with the voluntary basis of EITI reporting, will ensure that the regulatory cost burden of EITI implementation remains minimal for industry (as estimated at around \$120,000 per annum, assuming all companies called to report payments choose to participate in the EITI).



## Element 5 – Consultation

Extensive consultation on EITI implementation was undertaken as part of the EITI pilot, which was aligned with the standards for stakeholder engagement set by the EITI Board. The Australian pilot aimed to test the EITI model in an Australian context and examine the costs and benefits of moving to full implementation. Planned consultation to support the full implementation of the EITI in Australia will be conducted along the same principles as the consultation exercise undertaken for the EITI pilot.

### Establishment of a representative MSG under the EITI pilot

As part of the Australian Government's initial consideration of whether to undertake an EITI pilot, a series of inter-departmental committee meetings were held in mid-2011 to develop an agreed approach within the Australian Government. The committee decided to establish an MSG to steer the pilot exercise, mirroring the requirements of the EITI standard. To ensure all stakeholder views were equally represented, it was proposed that MSG membership would be split evenly between governments, industry and civil society, including:

- seven government representatives (Australian Government and State and Territory governments);
- seven representatives from extractive companies of various sizes, types of commodities, and operating in a number of Australia's jurisdictions; and
- seven representatives from civil society groups.

On 27 October 2011, as part of the Commonwealth Heads of Government Meeting, the Australian Government announced that it would undertake the pilot. The Department then commenced consultation with State and Territory governments, industry and civil society. Each constituency group nominated its own representatives:

- The peak industry bodies coordinated industry participation, resulting in participation from:
  - The Minerals Council of Australia (MCA)
  - A mix of mining, oil and gas companies ranging in size from multinational companies to small operations represented industry
- Transparency International Australia coordinated civil society participation:
  - Representatives from non-government organisations with expertise in corporate accountability, community engagement, social justice, corruption and transparency
  - Representatives of Indigenous peoples
  - A union representative
- The Department engaged Commonwealth agencies and the States and Territories, with State and Territory governments nominating their respective senior representatives, including:
  - The Department, which participated as non-voting Chair, and held a separate voting seat
  - The Department of Foreign Affairs and Trade (DFAT)
  - Treasury
  - Australian Tax Office (ATO)
  - Queensland, Tasmania and South Australia

A number of entities and organisations elected to participate in the pilot's MSG as observers, including the state of Western Australia, the Department of the Prime Minister and Cabinet, the Australian Petroleum Production and Exploration Association (APPEA), Publish What you Pay, and the International EITI Secretariat.

A complete list of the organisations represented in the pilot's MSG membership is provided at **Attachment C**.

## MSG Governance

An early issue for the pilot's MSG was to establish a clear and common understanding of the pilot's objectives, design and scope. As was expected, MSG members had varied expectations for the pilot's deliverables, costs and benefits. In keeping with open arrangements aspired to under the Pilot, the MSG agreed that Terms of Reference would be guided by the International EITI Secretariat. This decision provided assurance to all MSG members that the pilot's scoping would be impartial and equitable, and saved considerable negotiation time by leveraging the well-established EITI methodology and Rules, which had been refined over a decade of implementation in many countries.

The complete Terms of Reference for Australia's EITI pilot are provided for reference at **Attachment D**. The Terms of Reference outlined the pilot MSG's responsibilities and objectives, which are expected to be very similar to the Terms of Reference that would be drafted for a new MSG under full EITI implementation. In particular, this document established that the MSG should operate on a consensus basis to support the spirit of collaboration. The Terms of Reference for the pilot's MSG specified the following key tasks:

- Development and endorsement of an EITI work program (scope of the pilot)
- Voting arrangements
- Communications plan
- Final report to government.

The MSG delegated consultation responsibilities to its members to ensure the views of all stakeholders were effectively garnered and considered during the pilot. MSG sub-groups were established as a key element of the pilot's design, and were responsible for much of the pilot's deliverables. Each sub-group included at least one representative from their respective constituency. In addition to delivering on the work streams, the sub-groups were responsible for examining relevant issues in more detail and providing recommendations and explanations back to the MSG for decision. The following sub-groups were established:

- The **Reporting Template** sub-group, comprising business tax or accountancy experts, was heavily relied upon for technical points of discussion.
- The **Communications** sub-group prepared the pilot MSG's communications strategy that set out the principles of engagement between MSG members and media protocols, and was regularly tasked with reviewing relevant communications issues.
- The **Evaluation** sub-group helped define the scope of how the Pilot would be managed in a fair and open manner and evaluated in terms of meetings its initial objectives as defined in the Terms of Reference.

The Administrator was a key function of the pilot and its engagement strategy. The Administrator engaged directly with reporting governments and companies to acquire and reconcile revenue and payment datasets. The Administrator also participated in the Reporting Template Sub-group, presented at MSG meetings, and regularly provided members with explanations, clarification and case studies when appropriate.

As part of the MSG's communications strategy, a webpage was included on the Department's website to provide public information on the pilot's progress and provide a point of contact for general inquiries. MSG meetings were also open to observers who were free to contribute to discussions, but unable to vote.

## Endorsements of EITI pilot findings

Upon completion of the Australian EITI pilot, the MSG's final Report to Government was submitted, and the (then) Minister for Industry, Innovation and Science consulted his Cabinet Ministers and relevant State and Territory counterparts.

A number of Government Ministers wrote to the Minister for Industry, Innovation and Science in support of EITI implementation. This included The Hon Julie Bishop MP, Minister for Foreign Affairs

and Trade; the Hon Andrew Robb AO MP, Minister for Trade and Investment; the former Treasurer; the Hon Joe Hockey MP; and Senator the Hon George Brandis QC the Attorney General. State and Territory Ministers have also written in support of Australia's candidacy.

Minister Bishop has stated that EITI adoption would improve our credibility when advocating adoption to other countries (note the Department of Foreign Affairs and Trade has provided \$18.5 million in support of the EITI since 2006). Minister Robb stated it was important that Australia lead by example, and that the EITI promotes economic development and open and accountable management of resources.

The pilot's final report was reviewed by the EITI Board, which provided in-principle support for the implementation model recommended by the pilot's MSG in the report.

### **Planned consultation for EITI implementation**

Given the Australian EITI pilot was successfully planned and delivered in accordance with the EITI standard and rules for stakeholder engagement, it is proposed that future consultation for full implementation would follow similar methods.

This would include establishment of a new MSG (as required by the EITI standard). Follow-up discussions with stakeholders after the pilot indicated that each constituency was satisfied and willing to continue with the seven seats approach used for the pilot. The EITI MSG will be responsible for identifying and anticipating issues that need to be addressed to implement the chosen EITI standard in Australia, and to establish consensus on how to proceed.

A dedicated website or webpage will be launched as the public interface for Australia's EITI implementation process. Public enquiries will be encouraged, and responding to these will form part of the Department's secretariat responsibilities.

## Element 6 – What is the best option from those you have considered?

### Findings and solutions from initial consultations

Stakeholder consultation undertaken during the pilot produced the view that focusing EITI implementation on detailed data collection and reconciliation alone did not provide a complete picture of the established financial and governance frameworks in Australia that successfully underpin transparency and accountability. There was a unanimous view that any decision on EITI implementation should take these prevailing (and effective) arrangements into account.

This issue was examined in depth through a ‘systems analysis’ of relevant government revenue datasets and reporting mechanisms. Governance and compliance arrangements supporting such mechanisms were also analysed. For example, for royalty revenues, the pilot’s 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 compared to EITI requirements.

While initially considered supplementary to the pilot’s data reconciliation requirements, this ‘systems analysis’ evolved to be the primary element of the pilot’s methodology. The EITI implementation model recommended in this RIS was progressively developed by the pilot’s MSG members as a result of this systems evaluation process. This model was put forward and refined by the EITI pilot’s MSG with the explicit objective of being tailored to the Australian context and of minimising the reporting burden to governments and industry, while allowing the key benefits to be released. As such, most of the information required for the annual EITI reconciliation under the proposed model will be drawn from currently available data sources from the Department, the Australian Bureau of Statistics (ABS) and the ATO. The model has received in-principle support from the International EITI Secretariat.

### Recommended option: hybrid model

Option Four (hybrid model) is proposed as the best option, following the recommendation issued by the pilot’s MSG upon completion of the pilot exercise.

The hybrid model recognises that Australia is a relatively large and multi-jurisdictional country, which has established data collection and reporting mechanisms for the extractive industries, as well as robust governance and compliance arrangements to support these mechanisms. It proposes that examining current systems and focusing on gaps and/or opportunities for enhanced transparency and effectiveness is more appropriate for Australia than examining and reconciling all individual payment data.

The recommended hybrid model is proposed to follow the two-step method outlined below.

#### Step 1

1. Each year, companies (Paying Entities) participating in the EITI report their **disaggregated** tax payments to the Administrator, while participating governments (Australian Government and participating States and Territories) report their **aggregate** tax receipts from the extractive sector to the Administrator.
8. The Administrator consolidates these two datasets, and confirms and reports the **aggregated** value for the payments reported (including any variance or discrepancy, noting the limited number of companies reporting).

#### Step 2

2. Using the **disaggregated** tax payments provided by companies, each year the Administrator selects a statistically significant sample of tax payments from the participating companies and requests the corresponding tax receipts from governments for reconciliation. The Administrator may resample to ensure the meaningfulness of reconciliation results (and compliance with the EITI standard) in any given year.
3. For the sampled tax payments, governments report **disaggregated** tax receipts to the Administrator.
4. The Administrator reconciles the **disaggregated** payments and receipts and seeks clarification where appropriate. Findings are reported at an **aggregated** level, in accordance with Australian legislation pertaining to the disclosure of tax information.

## Assumptions

The full functioning of the hybrid model recommend in this RIS is subject to a number of assumptions as listed below.

- Scoping assumptions:
  - EITI implementation in Australia will operate on the basis of voluntary participation by governments and companies.
  - The sample for detailed payment reconciliation would change each year (no baseline sample will be retained across reporting periods).
  - The reporting burden on companies remains unchanged across reporting periods (i.e. internal reporting systems are established in the first year of EITI implementation and the same information is produced ever year).
- Materiality assumptions:
  - It is expected the Australian Government will set an aspirational target for EITI companies' reported tax payments (for example, participating companies should represent at least 90 per cent of total government revenues from extractives). A materiality clause may be included in the EITI implementation plan to this effect.
  - It is assumed the strong industry support expressed during the pilot will allow coverage of all material payments.

## Element 7 – How will you implement and evaluate your chosen option?

No major decisions were made that require a RIS for early assessment.

It is expected the implementation of the proposed EITI hybrid model will follow a similar process to that used for the EITI pilot, thereby leveraging the lessons learnt from the pilot exercise. This would include establishment of a new MSG (as required by the EITI standard), which will confirm the scope of the final model and oversee its implementation. The Department will chair the MSG and provide secretariat services.

### Major issues associated with EITI implementation in Australia

#### *Delegation of authority to the Multi-Stakeholder Group (MSG)*

The delegation of authority for implementing and maintaining the EITI standard to the MSG is a cornerstone of the EITI principles. This delegation of authority may pose a constraint for implementation. However, this did not negatively affect the successful and timely delivery of Australia's pilot exercise. In particular, all decisions made by the MSG during the pilot were unanimous, largely due to the strength of the Chair and the willingness of members to work together.

The Department expects that the new MSG will continue to strive to reach decisions by consensus wherever possible, and that it will establish a fair process to move forward if consensus is unattainable. An effective method to accomplish this is to delegate significant issues to relevant sub-groups (out of session) for more detailed investigation and discussion before a final agreement is made by the group.

It is most likely that MSG membership for EITI implementation will be split along the same principles set out for the pilot's MSG. Members of the pilot's MSG consulted as part of the pilot's review indicated that each constituency group was satisfied and willing to continue with the seven seats approach used for the pilot. The Department expects that government seats on the MSG will include the same agencies that participated in the pilot. However, State and Territory representation may rotate. It is also anticipated that the MCA and APPEA will reprise their industry coordination role from the pilot, while Transparency International will do so for civil society. This will allow for the most appropriate stakeholders to be included and reduce the risk of the determination of the MSG's membership to be delayed because of contention. It is intended that the MSG will continue to allow for interested observers to attend meetings and contribute to the discussion.

MSG members will be asked to fill their seats once Australia's candidacy has been formally announced (expected to occur by end of March 2016). Since the relevant contacts are already established with all stakeholder groups, the Department estimates that membership for the new MSG would be finalised by April 2016.

Once established, the MSG will review and agree on new Terms of Reference and voting rules. It will then prepare a candidacy application, which activates an 18 months' timeframe to deliver its report to the EITI Board for approval. It is expected Australia's first report to the EITI Board will be submitted by the end of 2017. The new EITI MSG will remain in regular contact with the International EITI Secretariat through Australia's MSG Secretariat within the Department.

The MSG will need to confirm the materiality of payments for inclusion (which payments to include in reporting and above what thresholds). This is expected to be similar to the payments reported under the pilot. It will also need to decide on the level of disaggregation that will be publically reported, and how explanation of governance arrangements will be included in the report. Other areas for agreement will include:

- Engagement of an administrator to collect and reconcile payments
- Reporting and collection methods
- Potential inclusion of social payments

- Drafting and maintenance of a communications plan (including website updates)
- Delivery of Australia's first report to the EITI Board

One of the key motivations of the Australian Government for undertaking the EITI pilot was to inform a future work program on the most effective delivery model. Lessons learnt from the pilot mean that a future MSG has an excellent information base to draw from when seeking compliance.

### ***Aligning company income tax data and EITI requirements***

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 a challenge from an EITI reporting perspective because income and deductions from all business activities conducted are combined. However, many entities conduct a diverse range of business activities—some entities will conduct activities that are related to mining but distinct from resource extraction (e.g. downstream activities like refining, selling and distributing a natural resource), and others will conduct activities that are entirely separate and distinct to mining. As a result, if a consolidated group conducts business activities outside of mining, then total income and deductions reported in the income tax return will not give a true reflection of the tax paid in relation to mining. This issue must be addressed to satisfy requirements under the EITI standard to quantify, and report on, revenue streams from 'resource extraction' as defined by EITI criteria.

The ATO itself does not possess enough relevant information or data in tax returns 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 Standard Industrial Classification (ANZSIC) code supplied on the tax return. However, the ANZSIC code is provided only for the main business activity from which the company derived the most of its gross income. 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.

This issue was successfully managed by the Administrator during the EITI pilot, largely through ensuring the most appropriate figures were reported by participating companies at the data collection point. This cross-checking exercise was underpinned by the establishment by the MSG of clear definition of the 'extractive industry' for the purpose of scoping the Paying Entities to be included in EITI reporting. An explicit scope for the taxation amounts to be reported (as some entities will make a single payment to the receipting agency for multiple matters) also contributed to the successful management of this issue.

The principles and processes established to address this issue during the pilot will need to be re-evaluated in the EITI implementation phase, in consideration of the broader range of entities that will be participating in payment reporting.

### ***Legislative barriers to releasing financial records***

Legislative barriers to releasing government and company financial records to the Administrator emerged as a major hurdle during the EITI pilot. The *Taxation Administration Act 1953* prevents the ATO from disclosing information on tax revenues from individual entities to third parties. In addition to this, any information the ATO publishes is highly aggregated across industry sectors and does not identify individual companies. Similar constraints were found within State and Territory legislations covering royalty payments.

The availability of disaggregated tax information is essential to the full functioning of the EITI standard, as aggregated information only cannot allow the Administrator to scrutinise the payment information provided by companies and identify precisely where errors may have occurred. During the pilot, it was initially proposed that participating companies sign a waiver to allow the ATO to disclose

relevant information for the purpose of the pilot. However, even if consent had been given, it could not have overridden the legislation that prevents release of information.

To resolve this issue, the pilot's MSG agreed that:

- the reporting company would first provide its revenue and payment data to the Administrator (to ensure it could not adjust its books retrospectively); and
- the reporting company would then write to the ATO requesting its financial data. When this information was received the reporting company 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 the integrity of the data collected. This mechanism enabled highly disaggregated data to be provided to the Administrator for reconciliation during the pilot. For the implementation of the full EITI standard, it is planned that different options for data protection will be considered by the MSG.

In order to comply with the privacy provisions under the *Taxation Administration Act 1953*, the Administrator's report presented the financial data aggregated to two revenue streams—company tax and other payments. In addition to this, members of the pilot's MSG signed deeds of confidentiality to protect the commercially sensitive aspects of any financial information they might see.

The MSG considered this mechanism to be in line with 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.

## Risks applicable to EITI implementation

Risks of implementation are limited both in terms of likelihood and impact. A detailed table outlining the major risks (and relevant mitigating efforts) associated with EITI implementation in Australia is provided at **Attachment E**.

The most significant risk in terms of potential impact involves the States and Territories reconsidering or withdrawing their support for EITI implementation. Given that royalties are under the jurisdiction of the States and Territories, the withdrawal of any state or territory from the EITI would significantly reduce the coverage of Australia's resources sector, thus jeopardising the validity of Australia model. However, three states participated in the pilot and all relevant ministers of the States and Territories (excluding ACT) have written to the Minister for Resources and Energy confirming their support for full implementation and their intention to participate in EITI implementation. In the worst-case scenario of one or several states withdrawing from the EITI, Australia would still be able to implement a restricted EITI model. For example, only Commonwealth payments would be reconciled and published in detail, while, and Australia's reports would refer to publically available information on State and Territory royalties. Such an approach would be similar to the US model that was accepted by the EITI Board in 2014, given the difficulty in reporting and reconciling state payments in the US.

## Post-implementation evaluation

The EITI has established a stringent methodology that countries need to follow to obtain compliance status with the EITI standard, and later to be re-validated as EITI compliant countries (at least every three years). As such, Australia obtaining and maintaining the status of EITI compliant country will in itself be a key measure of the success of EITI implementation.

Validation of country's compliance with respect to the EITI standard is carried out by an independent validator (funded and delivered by the International EITI Secretariat). It is an essential feature of the EITI, and will provide the Australian Government with valuable and impartial feedback on the status of EITI implementation, along with recommendations for strengthening the process.

In addition to evaluation from the EITI Board, the candidacy and compliance development will be continually reviewed by the MSG, and the Department who will chair the group and manage the



policy. Post-implementation evaluation of the EITI by the Department and the MSG will be particularly focused on the following elements:

- Actual costs of implementation (particularly data reporting costs) will be compiled and compared with previous estimates on a regular basis, to ensure EITI implementation remains a cost-effective proposition.
- Industry payment coverage will be a key measure of success for EITI implementation, both for aggregated and disaggregated payment reconciliation. It is expected that a minimum goal for industry coverage will be set by the MSG (for example, the total value of disaggregated payments reconciled must amount to 90 per cent of all government revenues from extractives).
- The cost-benefit analysis included in the RIS will be updated with the above information from time to time, to test the continued justification for Australia's participation in the EITI.
- Feedback will be sought regularly from the constituency groups represented in the MSG, seeking to identify any improvement opportunities to the reporting, reconciliation and consultation processes. Public commentary and enquiries will be encouraged, and responded to, on an ongoing basis. Notable ideas or issues that arise from stakeholder feedback will form an integral part of the Department's evaluation of EITI implementation.

## ATTACHMENTS

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### ATTACHMENT A – EITI compliance costs

#### EITI costs

The costs associated with EITI implementation are largely time-based administration costs. These include time spent performing activities such as:

- Attending and preparing for MSG and subgroup meetings;
- Drafting documents including meeting agendas and minutes, communiques and papers;
- Liaison between EITI Participating Entities, the Department and the Administrator; and
- Reporting and reconciling payment data.

Estimating the administrative costs for complying entities therefore comprises the following elements:

- The labour tariffs (including on-costs) paid to the employees performing activities relating to the EITI (e.g. finance and accounting staff);
- The time spent by employees on activities relating to EITI (e.g. extracting data, completing data templates, attending meetings);
- The number of entities complying with the EITI (i.e. seven during the pilot, potentially thousands during implementation); and
- The frequency at which EITI activities occur (i.e. once per year).

The costs of the Administrator and Evaluator were taken to be equal to the value of the respective contracts, rather than built up in the same manner as the costs of other organisations.

In order to develop meaningful estimates of these costs using cost data obtained from the Australian EITI pilot, it was necessary to identify:

- Pilot costs which would continue to be incurred under implementation (e.g. data reporting, MSG meetings and Administrator appointment) and to what extent these costs might differ under different implementation scenarios;
- Pilot costs which would not be incurred under implementation (e.g. ongoing sub-group meetings and some Secretariat policy development costs); and
- New costs which were not incurred in the pilot but would be under implementation (e.g. changes to privacy laws, data collection systems and communications materials to raise the profile of the EITI).

For the purposes of estimating the data reporting costs of implementation scenarios, we have assumed the same payments and level of disaggregation reported by entities during the pilot. This approach was taken due to the fact that data exists around the cost incurred by entities in reporting these payments during the pilot.

## ATTACHMENT B – Compliance cost summary

		Total	Share	Data reporting	MSG meetings	Administrator	Secretariat
<b>Option two</b> <b>(‘all in’ model)</b>	Australian Government	\$3,725,152	60%	\$990,360	\$29,786	\$2,250,000	\$455,006
	State Governments	\$201,031	3%	\$171,245	\$29,786	N/A	N/A
	Extractive Industry	\$2,272,770	36%	\$2,213,198	\$59,572	N/A	N/A
	Civil society	\$59,572	1%	N/A	\$59,572	N/A	N/A
	<b>Total</b>	<b>\$6,258,524</b>	<b>100%</b>	<b>\$3,374,803</b>	<b>\$178,715</b>	<b>\$2,250,000</b>	<b>\$455,006</b>
<b>Option three</b> <b>(top companies)</b>	Australian Government	\$903,047	76%	\$38,255	\$29,786	\$380,000	\$455,006
	State Governments	\$44,721	4%	\$14,935	\$29,786	N/A	N/A
	Extractive Industry	\$179,005	15%	\$119,433	\$59,572	N/A	N/A
	Civil society	\$59,572	5%	N/A	\$59,572	N/A	N/A
	<b>Total</b>	<b>\$1,186,344</b>	<b>100%</b>	<b>\$172,623</b>	<b>\$178,715</b>	<b>\$380,000</b>	<b>\$455,006</b>
<b>Option four</b> <b>(hybrid model)</b>	Australian Government	\$901,912	76%	\$37,120	\$29,786	\$380,000	\$455,006
	State Governments	\$48,856	4%	\$16,070	\$29,786	N/A	N/A
	Extractive Industry	\$179,005	15%	\$119,433	\$59,572	N/A	N/A
	Civil society	\$59,572	5%	N/A	\$59,572	N/A	N/A
	<b>Total</b>	<b>\$1,186,344</b>	<b>100%</b>	<b>\$172,623</b>	<b>\$178,715</b>	<b>\$380,000</b>	<b>\$455,006</b>

## **ATTACHMENT C – Australian EITI Pilot Multi-Stakeholder Group (MSG) Members**

### **Government Representatives**

Department of Industry, Innovation and Science (non-voting *Chair*)  
Department of Industry, Innovation and Science (*member*)  
Treasury  
Australian Taxation Office  
Department of Foreign Affairs and Trade  
South Australian Department of Manufacturing, Innovation, Trade, Resources and Energy  
Tasmanian Department of Infrastructure, Energy and Resources  
Queensland Treasury

### **Extractive Industry Representatives**

Minerals Council of Australia (MCA)  
Mandalay Resources (reporting company)  
BHP Billiton (reporting company)  
Rio Tinto (reporting company)  
ExxonMobil Australia (reporting company)  
Shell Australia (reporting company)  
BP Australia (reporting company)  
(ERA, MMG and Oz Minerals reported under the Pilot but were not MSG members)

### **Civil Society Representatives**

Oxfam  
University of Melbourne  
National Native Title Council  
CFMEU  
Transparency International Australia  
Corporate Analysis Enhanced Responsibility  
National Congress Australia's First Nations Peoples

### **Observers**

Department of Prime Minister and Cabinet  
Western Australian, Department of Mines and Petroleum  
Australian Petroleum Production and Exploration Association (APPEA)  
Publish What you Pay  
MMG  
International EITI Secretariat  
ENI Australia

## ATTACHMENT D – EITI Pilot MSG Terms of Reference

(July 2012)

### Purpose

To define the scope and function of the Multi-Stakeholder Group (MSG) formed to direct Australia's pilot for the Extractive Industries Transparency Initiative (EITI).

### Objectives of the Australian Pilot of the EITI

The aim of the Australian domestic pilot of the EITI is to test the applicability of EITI principles and criteria (attached at **Annex I**) in the Australian context and inform the Government's decision on whether Australia should move to full implementation of the EITI.

The outcomes of the pilot will be presented in an Administrator's report to the MSG (the report). The report will also disclose all material revenues and payments within the scope of the pilot. The pilot will be guided by the MSG with advice of the MSG sub-groups.

The pilot's objectives are therefore to:

- test the applicability of EITI rules and principles to existing governance and transparency arrangements for revenues and payments across the Commonwealth and State and Territory governments and the Australian extractive resources sector, and whether there are any possible enhancements of the EITI methodology that might be appropriate for Australia;
- identify the costs, benefits and challenges of domestic implementation of the EITI, particularly for industry, community and Commonwealth and State and Territory government stakeholders, to inform any decision by the Commonwealth Government on whether Australia should move to full implementation;
- identify any knowledge and transparency gaps with respect to extractive industry revenues and payments and assess the costs and benefits of the reporting process and outcomes; and
- assess the potential implications and benefits, internationally, of Australian EITI implementation, including increased engagement with EITI implementing and support countries.

### Role of the MSG

The MSG is established in order to ensure that views of key stakeholders are taken into account in the direction and conduct of the pilot. Under EITI rules, national MSG play the central role in determining how each candidate country implements EITI. Overseeing the pilot through an MSG will therefore help identify and anticipate issues that would need to be addressed were Australia to implement EITI, as well as in establishing a degree of consensus on how implementation might proceed. It could also save time and resources at the implementation stage insofar as much of the initial work undertaken by the MSG might not need to be repeated.

The MSG will provide direction to the Australian pilot of the EITI to ensure that the pilot meets its objectives. It will be responsible for developing and endorsing an EITI work program, scope of pilot, actions, sequencing, timetable, responsible parties, costs, communications and funding sources. Specifically, the MSG will:

- develop and apply a work plan and communications plan for the term of the pilot;
- establish and support any sub-groups to examine specific issues, which may include the engagement of an Administrator, and preparation of reporting templates and evaluation methodology;

- agree on an appropriate definition of “extractive industries” and “materiality” for the purpose of the pilot;
- define and assess the scope of revenues and payments to be covered by the pilot;
- work within Australian laws and regulations;
- analyse 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;
- identify, assess and report, through a GAP analysis any material deficiencies in existing reporting and reconciliation mechanisms and arrangements in comparison with EITI requirements;
- develop the Terms of Reference for and select an independent Administrator to provide advice to the MSG;
- develop and agree on the format of the report;
- develop the Terms of Reference for and select an independent Evaluator; and
- develop recommendations to Government on whether moving to full EITI implementation is appropriate in the Australian context.

It is recognised that the MSG has flexibility to adapt EITI principles to Australian circumstances when developing and implementing the EITI pilot. These adaptations will be disclosed in EITI pilot related reporting as appropriate. The MSG may engage in other tasks it considers appropriate, consistent with the stated objectives and its Terms of Reference.

## **Membership**

The MSG will be chaired by the Commonwealth Department of Resources, Energy and Tourism. The EITI MSG shall consist of a 7/7/7 split of industry, government (Commonwealth and up to 4 States and Territories) and civil society. Industry, in consultation with their peak representative bodies will select its membership and will represent both the onshore and offshore extractive industries sector and different company profiles. Civil society membership will be self-elected and cover a broad range of civil society interests. Government will select its Members through an Inter-Departmental Committee (IDC) and direct engagement with participating States and Territory governments, and possibly local government.

## **Term of Membership**

Members shall be appointed for the duration of the pilot. While the tripartite nature of the group must be maintained (i.e. government, extractive industry companies, and civil society must always be represented), the group may agree by broad consensus at any time to change, add, or reduce the number of Members. The MSG shall exist only for the duration of the pilot and will be disbanded once the Australian government has accepting the reported finding of the MSG. Should the decision be made to pursue full EITI implementation, a process will be established which could include formation of a new MSG with its own Terms of Reference.

## **Meetings**

The MSG shall meet monthly or as otherwise agreed until the pilot is completed and its findings published.

The Chair will set the agenda for meetings. The meeting announcement, agenda, and any background documents shall be circulated to MSG Members a minimum of one week before the meeting date. The Chair and MSG shall be supported by the Department of Resources, Energy and Tourism acting as Secretariat. The Secretariat shall conduct all coordination and administrative functions necessary to support the MSG and ensure the fulfilment of its outlined responsibilities. If

there are any necessary or urgent issues which need to be discussed and decided, the Chair will call an extraordinary meeting.

The Chatham House Rule<sup>8</sup> will apply to meetings and to the minutes of meeting discussions to be kept by the Secretariat. Minutes of meetings (respecting the Chatham House Rule) will be circulated to the MSG and will be made publicly available after agreement among the Members. Members and observers should respect that differences of opinion may arise during the development of a final work plan and should refrain from engaging in public discourse which would be disruptive to the development of a draft work plan prior to release for public review and commentary.

All MSG members and observers shall respect and not discuss outside of MSG meetings any sensitive information that may become available at any point during the period of the EITI pilot, and will sign confidentiality agreements on or before the second MSG meeting. All instances of failure to adhere with this confidentiality agreement would be reviewed by the MSG and may result in dismissal from any further participation in MSG meetings.

### **Decision-Making/Voting**

The MSG will make decisions on the basis of consensus wherever possible. Where consensus is not possible the decision-making principles and voting rules will be applied.

The Decision-Making Protocol for the EITI Multi-Stakeholder Group is set out in Schedule I. This Protocol identifies:

- how decisions will be made, including consensus requirements and a 3 tiered decision-making hierarchy that applies if consensus cannot be reached;
- how members can be represented in decision-making if they are not able to be present at a meeting; and
- how abstentions will be managed.

## **Schedule I: Decision–Making Protocol for the EITI Pilot’s Multi-Stakeholder Group (MSG)**

### **Principles**

#### **1. *Decision–Making Principles***

- a. The MSG is committed to operating in the spirit of collaboration and cooperation with the aim of reaching general agreement amongst all members on all decisions.
- b. In cases when general agreement cannot be reached, a formal vote will be taken at the discretion of the Chair and voting rules will be applied. While consensus is not always possible, decision-making principles are designed to build the greatest possible consensus.
- c. All 21 MSG members will be represented in decision-making.
- d. Simple majority voting is the least desirable preference and will only occur as a last resort.

#### **2. *Decision-making Rules***

Decision-making will occur by a three tiered hierarchical system as follows:

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<sup>8</sup> See Chatham House Rule on the [Chatham House website](#).

- a. *Consensus*. The Chair will seek to achieve consensus for all decisions. If this is not achieved then modified consensus will be sought.
- b. *Modified Consensus*. Consists of a two thirds or greater majority of exercised votes (i.e. minus abstentions) and includes a minimum of 2 representatives from each constituency. If this is not achieved, a working group will be 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 has provided its recommendation, the MSG will seek to make a decision on the basis of consensus or modified consensus.
- c. *Simple Majority*. If modified consensus is still not achieved the motion will be passed by simple majority i.e. greater than 50 % in favour. Decisions made by simple majority will be identified in the minutes as such, with recognition that simple majority decision-making is the least-desirable and lowest grade of decision, reflecting substantial dissent by MSG members
- d. One vote will be recorded per member, and abstentions will be recorded.
- e. All 21 MSG members will be represented for each vote. The number of votes required to pass a motion will adjust according to any abstentions to maintain a two-thirds or simple majority of participating votes.

### **3. Proxy Arrangements**

- a. All 21 MSG members will be counted for each motion. Where a member is unable to be present at a meeting, that member will appoint another person to act as proxy at that meeting, and advise the EITI MSG Secretariat of the appointment in advance of the meeting.
- b. All proxy appointees will be required to sign confidentiality and conflict of interest forms where necessary.
- c. An MSG member may appoint any other person as their proxy for a specific meeting.
- d. No person may hold more than two proxy votes for MSG members at a time with the exception of the Chair
- e. In exceptional circumstances and at the Chair's discretion, when no advice on a proxy has been given and a member is absent from a meeting, the proxy will default to the Chair. The Chair may allocate the vote, abstain or use the vote as she sees fit.
- f. Should the Chair hold a significant number of unallocated proxies they have the discretion to decide if votes are to be ratified out-of-session.

### **4. Abstention**

- a. Where a member intentionally abstains from a decision-making process, their vote will not be counted for or against the decision. Their vote will be discounted from the number of eligible votes.



- b. To ensure abstention by a member is intentional, a member will notify the Secretariat of this intention, where possible in advance, and ensure that the abstention is recorded in the minutes of the meeting, or the record of decision for an out-of-session purpose.
- c. Should the Chair determine that a significant number of abstentions are being exercised they have the discretion to decide if votes need to be ratified out-of-session.

## Annex i – EITI Principles

The EITI Principles, agreed at the Lancaster House Conference in June 2003, provide the cornerstone of the initiative. They are:

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.

## Annex ii – EITI Criteria

Implementation of EITI must be consistent with the criteria below:

1. 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 accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

For more information on EITI requirements, refer to the complete [EITI Rules](#).

## ATTACHMENT E – Implementation risks

Risk level	Risk description	Mitigating factors / efforts
<p><b>Low likelihood</b></p> <p><b>Low / medium impact</b></p>	<p><b>State and Territory governments might reconsider or withdraw their support.</b> If a government decides to withdraw from the initiative, Australia's candidate position may be weakened. However, this is unlikely to seriously jeopardise Australia's candidacy, as proven by the precedent of the EITI Board approving the US proposal, which does not include any state payments.</p>	<ul style="list-style-type: none"> <li>State and Territory governments were closely involved in the Pilot and recommended implementation. Continuing with the option endorsed by the Pilot's MSG will reduce the risk of State and Territory government withdrawing support for the EITI.</li> </ul>
<p><b>Medium likelihood</b></p> <p><b>Medium / high impact</b></p>	<p><b>Change of government may compromise candidacy and implementation efforts.</b> Government priorities may be re-evaluated and EITI participation questioned. The withdrawal of Australia from the EITI at any stage would have reputational consequences.</p>	<ul style="list-style-type: none"> <li>It is expected that candidacy will be secured prior to the election. This may still affect compliance efforts. However, the opposition government initially proposed Australia's EITI participation when they were in power and would be likely to maintain this position.</li> <li>The appointment of a senior official (most likely the Head of the Resources Division) to supervise implementation will contribute to ensuring the visibility of the project at the ministerial level.</li> </ul>
<p><b>Low likelihood</b></p> <p><b>Medium impact</b></p>	<p><b>Current market conditions may reduce the number of companies reporting payments.</b> Businesses have started to restructure their operations and fewer companies are likely to meet the payment threshold set for reporting. Some businesses may withdraw their support for EITI reporting payments to reduce administrative burden.</p>	<ul style="list-style-type: none"> <li>As the proposed 'adapted' model focuses on testing governance and reporting frameworks, its validity is not threatened by a reduction in coverage.</li> <li>The payment threshold is designed to only capture top companies who continue to have capacity to participate given the low reporting burden of Australia EITI model.</li> <li>The MCA and its membership are strongly supportive of EITI implementation and are unlikely to withdraw support.</li> </ul>
<p><b>Low likelihood</b></p> <p><b>Medium impact</b></p>	<p><b>The selection process for MSG membership may be contested,</b> due to the large number of stakeholders affected or interested. This could lead to significant delays in establishing the MSG and obtaining consensus on a work plan, with potentially lasting conflicts arising between or within stakeholder groups.</p>	<ul style="list-style-type: none"> <li>The MCA and the APPEA (for industry) and Transparency International (for civil society) have been identified as coordinators for MSG selection. They have a strong track record in similar exercises, as demonstrated by their contribution to the EITI Pilot.</li> <li>It is recommended that adequate time contingency for negotiation and arbitration is included in the candidacy and implementation work plans.</li> </ul>
<p><b>Medium likelihood</b></p> <p><b>Low impact</b></p>	<p><b>Australia's candidacy may be perceived as inconsistent with federal and state governments' de-regulation agendas.</b></p>	<ul style="list-style-type: none"> <li>Continuing with the adapted option endorsed by the pilot's MSG will add minimal administrative burden and no regulatory burden (given the voluntary nature of payment reporting), while allowing the benefits of adoption to be</li> </ul>

realised.

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<b>Medium likelihood</b> <b>Low impact</b>	<b>Australia’s model may be seen as too ‘light touch’</b> and there may be calls for more comprehensive reporting under EITI Standard. Such reactions may create negative publicity surrounding Australia's candidacy and delay consultation processes.	<ul style="list-style-type: none"><li>• The model is consistent with the EITI Standard and is more comprehensive and includes more coverage than EITI models submitted by some other developed countries, such as the United States, which do not reconcile state payments.</li><li>• Again, continuing with the option endorsed by the pilot’s MSG will reduce the risk of community opposition.</li></ul>
<b>Medium likelihood</b> <b>Low / medium impact</b>	<b>The inclusion of an additional payment (e.g. Native Title) in the scope of reporting would increase the costs of implementation.</b> Industry is likely to bear the majority of these additional costs, especially in the absence of a payment threshold. Costs borne by the Australian Government may also significantly increase, both due to the increased scope of data reporting and to greater Administrator costs.	<ul style="list-style-type: none"><li>• Any proposed new payments introduced during the implementation must be rigorously costed, and unanimously approved by all stakeholder groups after thorough consultation.</li><li>• A substantial payment threshold for reporting (as included in the recommended Option Four) will provide a safeguard against cost escalation.</li></ul>
<b>High likelihood</b> <b>Low / positive impact</b>	<b>The EITI Standard may evolve to require more comprehensive reporting</b> , increasing the burden on government and industry. The EITI Board is considering small-scale revisions to the Standard that may increase the scope and cost of implementation. The most significant upcoming change is the inclusion of beneficial ownership disclosure in the 2016 EITI Standard, which was endorsed at the EITI Global Conference in February 2016.	<ul style="list-style-type: none"><li>• The Board has stated in 2015 that no significant changes to the current Standard are expected. Most of the revisions being considered are seeking to reduce the reporting burden and take advantage of existing mainstreaming reforms.</li><li>• The Australian Government has a wealth of information available regarding the extractive industries (including beneficial ownership information), which can continue to be utilised to reduce the cost of reporting.</li></ul>

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