

2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**Corporations Amendment (Publish What You Pay) Bill 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator C Milne)

## **Corporations Amendment (Publish What You Pay) Bill 2014**

*This bill was introduced by the Australian Greens in the 44<sup>th</sup> Parliament.*

### **OUTLINE**

The intention of the Corporations Amendment (Publish What You Pay) Bill 2014 is to establish mandatory reporting of payments made by Australian based extractive companies to foreign governments. The bill requires that companies must disclose these payments on a country-by-country and project-by-project basis.

This will apply to all Australian companies involved in extractive industries, including oil, gas, mining and native forest logging. It will apply to both Australian public and large proprietary companies.

The overall aim of the Bill is to improve transparency and accountability of Australian extractive companies. The Bill aims to deter corruption by requiring payments to be made public.

Under the legislation, these companies and their subsidiaries would be required to submit a financial report detailing all payments made to government entities overseas over \$100,000. This threshold would bring Australia in line with the standards set by the US, EU and UK in their legislation and directives. The legislation sets out that these reports must be in an open and machine-readable format, and would be published by ASIC, to ensure public accessibility and accountability. Misleading reporting will be dealt with under the rules that currently exist relating to financial statements.

This legislation intends to align Australia's legislative response to extractive industry transparency with that that is being pursued around the world, including in the United States, the United Kingdom and Canada.

## NOTES ON CLAUSES

### Part 1

**Clause 1** provides that the Act may be cited as the *Corporations Amendment (Publish What You Pay) Act 2014*.

**Clause 2** provides for the Commencement of the Bill. Sections 1 to 3 of the Bill will commence on the day the Act receives Royal Assent. Schedule 1 will commence the day after 12 months after the Act receives Royal Assent. Commencement is delayed for 12 months to ensure that companies to which this legislation applies will have time to comply with its provisions.

**Clause 3** provides for the Schedule to the Bill to have effect.

### Schedule 1 – Amendments

Schedule 1 contains amendments to the *Corporations Act 2001*.

**Item 1** sets out definitions relevant to the legislation.

The definition of ‘government entity’ sets out the different levels of government that, if a payment has been made to one of these entities, would have to be specifically listed and disaggregated in a Publish What You Pay report.

The definitions of ‘primary forest’, ‘resource extraction activity’ and ‘resource extraction project’ are based on the European Union Directive 2013/34/EU. This would align Australian legislation with that which is currently being implemented in the United Kingdom and across the EU.

### Item 2

**Division 9** of Part 2M.3 sets out the operation of the Publish What You Pay requirements

**Section 323E** provides that this legislation will apply to public companies and large proprietary companies, and their subsidiaries, in relation to resource extraction projects anywhere in the world, and payments (financial and in kind) made anywhere in the world.

**Section 323F** sets out the requirements for reporting payments by companies involved in resource extraction

**Subsection (1)** sets out the activities that will require a company that prepares a financial report under Section 292 of the Act to include a Publish What You Pay report in the financial report. This subsection also notes that a Publish What You Pay report is subject to the same requirements that apply to financial statements and reports generally in the Act.

**Subsection (2)** sets out the time when a company that is required to prepare a financial report under section 292 but is not required to lodge the financial report with ASIC must lodge a Publish What You Pay report with ASIC.

**Section 323G** sets out what must be included in the Publish What You Pay report.

**Subsection (1)** requires the report to set out reportable payments made by either the reporting company or a subsidiary of the reporting company.

**Subsection (2)** sets out what kinds of payments must be reported, including standard financial payments like royalties, dividends, bonuses, licence fees and production entitlements.

Other payments that are listed include:

- 'infrastructure improvements', which is intended to cover payments related to the building of roads, bridges, dams, or other projects relating to the physical environment
- 'social payments', which is intended to cover payments related to payments given for community projects, or for the social welfare of the community, such as the building of hospitals or schools
- 'security services', which is intended to cover payments related to the security of projects, the company and their interests, and their employees, including to government defence and police bodies

**Subsection (3)** sets out a threshold of \$100,000 for reportable payments, which is consistent with reporting requirements in other jurisdictions. A series of related payments that together meet the threshold is treated as a single payment, to avoid payments being split to avoid the threshold.

**Subsection (4)** requires payments to be reported on a project-by-project basis. Each type of payment referred to in subsection (2) must also be reported separately

**Subsection (5)** requires payments to be reported on a country-by-country basis, and separately for each government entity to which they are made.

**Subsection (6)** prevents falsely combining payments in order to conceal particular payments.

**Section 323H** sets out the requirements for reporting payments by companies, or their subsidiaries, that are involved in joint ventures that engage in extractive activities

**Subsection (1)** sets out the kinds of companies involved in joint ventures the Act applies to

**Subsection (2)** provides for regulations to extend reporting requirements to joint ventures and similar arrangements. This will allow the detail of these reporting obligations to be set out in regulations. This is necessary because the rules for joint ventures and similar arrangements are likely to be complex and detailed, and may need to be changed frequently to keep up to date with changes in accounting standards and international corporate practices.

**Section 323J** sets out what form the Publish What You Pay report must take

**Subsection (1)** provides for regulations to prescribe the manner in which payments are reported, and the way in which the value of a payment is calculated. This will allow the detail of these reporting obligations to be set out in regulations. This is necessary because the rules for reporting and publication are likely to be complex and detailed, and may need to be changed

frequently to keep up to date with changes in accounting standards and international corporate practices.

**Subsection (2)** provides that if payments were made in kind, or in a currency other than Australian dollars, the report must explain how the payment value was calculated.

**Section 323K** sets out how Publish What You Pay reports are published

**Subsection (1)** provides that ASIC must publish Publish What You Pay reports on their website and establishes a timeframe in which this must occur. This also provides that reports must be ‘machine-readable’, which means it must be well structured to allow automated processing and access with minimal numbers of file downloads, as set out in the best practices of the G8 Open Data Charter and Technical Annex. As set out in the G8 Open Data Charter, requiring machine-readable formats promotes greater transparency and innovation, as the more people and organisations that have access to data, the greater the social and economic benefits that will flow from its use.

**Subsection (2)** provides that ASIC cannot charge people for access to Publish What You Pay reports.

### **Item 3**

**Section 342**, adds:

**Subsection (4)** prevents ASIC creating exemptions from the publish what you pay provisions, except in particular circumstances

**Subsection (5)** sets out the circumstances in which ASIC can relieve a holding company from the reporting requirements set out in this Act. This subsection is based on European Union Directive 2013/34/EU.

### **Item 4**

Sets out the timeframe in which the amendments to the Corporations Act made in this bill will apply.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Corporations Amendment (Publish What You Pay) Bill 2014**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011*.

#### ***Overview of the Bill:***

The purpose of this Bill is to require Australian based extractive companies to report the payments they make to foreign governments on a country-by-country and project-by-project basis.

#### ***Human Rights Implications:***

This Bill does not engage any of the applicable rights or freedoms.

#### ***Conclusion:***

This Bill is compatible with human rights as it does not raise any human rights issues.