



PUBLISH WHAT
YOU PAY
AUSTRALIA



Lifting the veil on the companies that stand to benefit from Morrison's 'gas led' recovery

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About Publish What You Pay Australia

Publish What You Pay Australia (PWYP Australia) is a civil society coalition of 30 anti-corruption, human rights, environmental, transparency and faith-based organisations united in their call for greater transparency and accountability of the mining, gas and oil sectors. Publish What You Pay Australia is a member of the Publish What You Pay movement globally which consists of over 700 organisations and 50 national coalitions working to ensure that revenues from oil, gas and mining help improve people's lives. PWYP Australia is hosted by ActionAid Australia which is an Australian public company and registered with the ACNC. Whilst PWYP has 30 organisational members, any liability for PWYP Australia is with ActionAid Australia.

About Tax Justice Network Australia

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels. In Australia, TJN-Aus has 39 organisational members. Tax Justice Network Australia is a business name owned by the UCA Property Trust (Vic) which is a statutory corporation, registered with the ACNC. Whilst it has "39 Organisational Members", any liability for TJN ultimately is with UCAPT. V.

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Executive Summary

Issues of Concern

Government **subsidies going to companies using secrecy or low tax jurisdictions** including Delaware USA, Cayman Islands and Ireland.

Government **subsidies going to companies with opaque and hidden ownership structures** making it hard to know who the ultimate owners and financial beneficiaries are. This includes the involvement of a Russian Oligarch, Viktor Vekselberg.

Jemena possibly receiving government revenue whilst it might be **under audit from the ATO around transfer pricing** which one organisation estimated could cost \$500 million to government revenue.

Foreign **State-Owned Enterprises standing to receive government revenue** when workers from similar companies were excluded from JobKeeper payments.

A PO Box in the Cayman Islands. A Russian Oligarch, an allegation of bribery and corruption, use of secrecy jurisdictions and hidden company ownership. These are some of the concerning business practices of a handful the companies that stand to benefit from the recent Commonwealth Government announcements and National COVID-19 Coordination Commission (NCCC) recommendations for a 'gas led' recovery.

The use of government revenue – essentially public money – to subsidise companies with questionable business practices should raise alarm bells for policy makers, governments, investors and the Australian public. Any company that receives valuable government revenue must be transparent about their affairs, pay their taxes and comply with the intention of relevant laws in all the places they operate.

This research focuses on 13 companies involved in the Beetaloo Basin, Northern Territory pipelines, Narrabri pipeline and Hunter Gas Pipeline. This report uncovers that four of the companies have subsidiaries, without sufficient explanation, incorporated in known secrecy jurisdictions which can often be used to hide company ownership and avoid tax contributions and regulations in other jurisdictions.

One of these companies is Sweetpea Petroleum Pty Ltd which is involved in the Beetaloo Basin. Sweetpea appears to be owned by a US investment firm controlled by US citizens and has a recently created shell company, Longview Petroleum LLC in Delaware, USA. Delaware is a known secrecy jurisdiction.

There are also concerns about who are the ultimate owners and controllers of Falcon Oil & Gas Australia Limited. A Russian Oligarch and ally of Vladimir Putin, Viktor Vekselberg, who was sanctioned in 2018 over a number of matters including Russia's invasion of Ukraine, has a 16% stake in the Canadian listed parent Falcon Oil and Gas. The company also has a subsidiary in the secrecy jurisdiction of Delaware. The Australian subsidiary appears to be controlled from Ireland. The Irish Government has previously facilitated cross border tax avoidance by corporations, so any structure involving Ireland raises legitimate concerns about the company's tax arrangements. In January 2019, Falcon Oil & Gas Holdings Ireland was also accused at a hearing of the South African Commission of Inquiry into State Capture of having been associated in corruption and bribery. The CEO in Ireland has publicly refuted the allegation. The Commission of Inquiry has not made its findings into the matter public.

APA Group, involved in the Narrabri pipeline has more than 15,000 kms of gas pipelines and owns or operates \$22billion in energy infrastructure, chose to establish a subsidiary in the secrecy jurisdiction of Delaware. This occurred at the very time when Delaware's role in facilitating cross border money-laundering, tax evasion and tax avoidance was being very publicly exposed.

Many of the publicly listed gas companies have shareholders that are concealed by bank nominee companies, making it impossible to do a true analysis of the ownership and people who would benefit from government subsidies or financial support.

Jemena (trading as SGSP Ltd), which plans to build and operate the Hunter Gas pipeline, is owned by State Grid Corp. of China and Singapore Power, both which are foreign government owned enterprises. Jemena is also subject to an audit by the Australian Taxation Office regarding some of its transfer pricing arrangements.¹ PWYP Australia and TJN-Aus believe that companies that are under investigation by the ATO regarding allegations of profit shifting or tax avoidance should not be receiving Commonwealth Government subsidies or assistance. The Australian Gas Infrastructure Group is ultimately owned through CK Hutchinson Holdings Ltd., a Hong Kong based multinational conglomerate incorporated, via PO Box, in the Cayman Islands.

In addition to these revelations, economists have also raised concerns with government revenue being used to underwrite or subsidising gas projects.² There is also significant community opposition, including from Traditional Owners,³ to the development of new gas extraction and pipelines, particularly in relation to the Beetaloo Basin and Narrabri projects.⁴

¹ SGSP (Australia) Assets Pty Ltd, (2018), *Tax Transparency Report 2017*, p1

² Tony Wood, (19/9/2020), Lots of energy plans but still no cohesive strategy, <https://grattan.edu.au/news/lots-of-energy-plans-but-still-no-cohesive-strategy/>

³ Brooke Fryer, (10/16/2020), *NT Traditional Owners Protest Against Fracking*, <https://www.sbs.com.au/nity/article/2019/10/16/nt-traditional-owners-protest-against-fracking-origin-energys-agm>

⁴ Narrabri Courier, (18/5,2020), *Overwhelming opposition to Narrabri Gas Project*, <https://narrabricourier.com.au/2020/05/18/overwhelming-opposition-to-narrabri-gas-project-people-for-the-plains/>

Recommendations

- 1.** Governments must rule out using government revenue to subsidise or financially support companies that have significant entities incorporated in know secrecy jurisdictions, have a record of avoiding tax contributions in Australia or are in dispute with the ATO.
- 2.** Governments must rule out using government revenue to subsidise or financially support companies where the ultimate beneficial ownership of these companies remains unknown.
- 3.** The Federal Government must implement a free public beneficial ownership register which lists who are the ultimate owners or controllers of companies.
- 4.** The Federal Government must keep its promise to implement the Extractive Industries Transparency Initiative (EITI) including re-starting the multi-stakeholder group in 2020.

Introduction

In response to the Commonwealth Government's announcement of a new gas plan⁵ and the recent recommendations of the National COVID-19 Coordination Commission (NCCC), this new investigation by Publish What You Pay Australia and Tax Justice Network Australia shines a light on some of the companies who stand to benefit from public subsidies and other support promised as part of the Commonwealth Government's 'gas led' recovery.

The government's new gas plan includes developing strategic plans to develop five new gas basins starting with the Beetaloo Basin in the Northern Territory, North Bowen and Galilee Basins in Queensland.⁶ The government has also outlined a policy to potentially use public money to underwrite projects and pipelines. This includes the \$1.2 billion Hunter Gas Pipeline and potentially a \$6 billion trans-Australian pipeline between the east and west. The government would either take an equity position, minority share or underwrite investments.⁷ The Northern Territory (NT) Government has also underwritten gas projects in the past and might do so in the future.⁸

In March 2020, PM Scott Morrison established the NCCC chaired by a Nev Power former who is currently a director of gas company Strike Energy and the former head of Fortescue Metals. The NCCC also included Catherine Tanna, Managing Director of EnergyAustralia and former executive of oil and gas companies, BG Group and Shell.⁹ An associated Manufacturing Taskforce was also established with close ties to the gas and petrochemical industry, headed up by Andrew Liveris, presently director of Saudi Aramco and a special advisor to the Public Investment Fund (PIF) and the Crown Prince of Saudi Arabia and former chair of President Trump's American Manufacturing Council. APA Group director James Fazzino was also part of the Manufacturing Taskforce.

The leaked interim report of the Manufacturing Taskforce of the then NCCC set out measures that would see public funding subsidise the gas industry including¹⁰:

⁵ Hon. Scott Morrison (15/9/2020), *Gas Fired Recovery*, <https://www.pm.gov.au/media/gas-fired-recovery>

⁶ Hon. Scott Morrison (15/9/2020), *Gas Fired Recovery*, <https://www.pm.gov.au/media/gas-fired-recovery>

⁷ Angela Macdonald-Smith (19/5/2020), *AFR \$6b trans-Australia gas pipeline gets fresh legs*, <https://www.afr.com/companies/energy/trans-australian-6b-gas-pipeline-gets-fresh-legs-20200518-p54u4z>

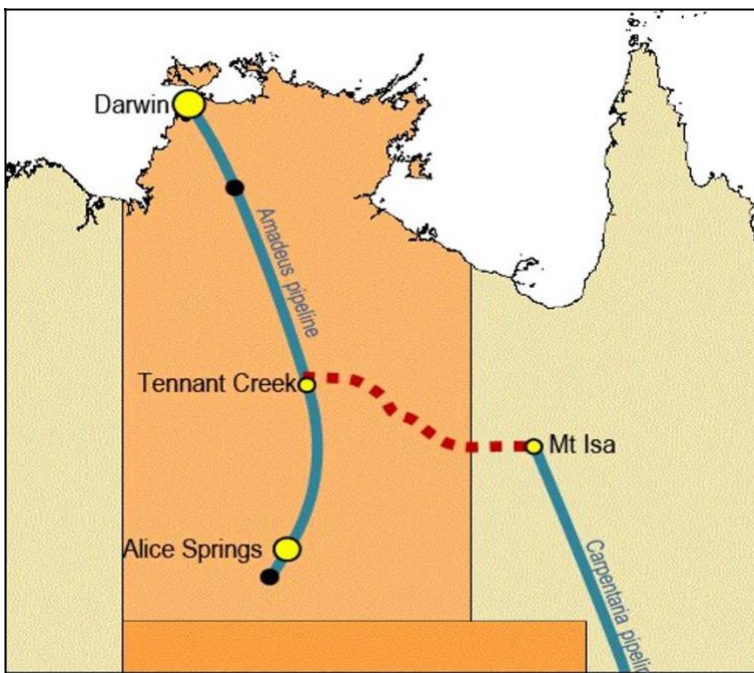
⁸ ABC News (7/9/2020), *Economists Caution Commonwealth Underwriting Gas Pipeline*, <https://www.abc.net.au/radio/programs/pm/economists-caution-commonwealth-on-underwriting-gas-pipeline/12638360>

⁹ Business Council, (2020), https://www.bca.com.au/catherine_tanna.

¹⁰ Emma Young (20/5/20), *West-East pipeline back on the agenda as Government looks to save Australia*, <https://www.smh.com.au/national/west-east-pipeline-back-on-agenda-as-government-looks-to-gas-to-save-australia-20200520-p54uwd.html>

- 1. Government revenue for gas pipelines:** the government could ensure there are fixed returns to pipeline companies by underwriting volumes in gas pipelines.
- 2. Underwriting gas supply:** the government could be the buyer of the gas at a fixed price under a long-term contract and then sell it on to smaller customers.
- 3. Loans to small and mid-cap companies:** the government could provide “low cost capital” to promote gas field development.

Map 1. Amadeus and proposed Tennant Creek pipeline¹¹



The government announcements, NCCC recommendations and likely use of government revenue to financially support specific companies requires further scrutiny. If governments decide to use government revenue to subsidise the gas industry, it is important to know who owns the companies and who stands to profit. Transparency in government decision-making and company ownership is key to accountable policy making.

This report focuses on 13 companies involved in Beetaloo Basin, Northern Territory pipelines, Narrabri pipeline and Hunter Gas Pipeline.¹² The research relied on publicly available information including company extracts, media reports, financial databases, and government websites.

¹¹ Source: Jemena website, www.jemena.com.au

¹² See Table 1 for a list of companies.

Table 1. Ownership of gas companies involved in proposed pipelines and Beetaloo Basin

Company	Ownership	Project
APA Group	ASX listed	Narrabri Gas Pipeline
Australian Gas Infrastructure Group	ASX listed, significant foreign ownership	Moomba Gas Pipeline
Central Petroleum	ASX listed	Moomba Gas Pipeline
Blue Energy Limited	ASX Listed	Narrabri Pipeline
Falcon Oil and Gas	TSXVE (Canada) , AIM (London), and ESM (Ireland) listed	Beetaloo Basin
Hunter Gas Pipeline Pty Ltd	Private Company	Hunter Gas Pipeline
Hancock Prospecting Pty Ltd	Private Company	Beetaloo Basin
Imperial Oil and Gas/Empire Energy	ASX listed, parent company based in the US	Tenant Creek Pipeline
Jemena (Trading as SGSP)	Foreign Owned / State-Owned Enterprise	Hunter Gas Pipeline
Santos	ASX listed	Beetaloo Basin
Senex	ASX listed	Beetaloo Basin
Sweetpea Petroleum	Private Company/suspected US beneficiaries	Beetaloo Basin
Origin Energy	ASX listed	Beetaloo Basin

Offshore Secrecy Costs Communities

The OECD has identified the mining, gas and oil industries as the world’s most corrupt economic sectors.¹³ Research by Publish What You Pay (PWYP) member Oxfam estimated that in 2014, the Australian Government lost between \$5 – 6 billion in revenue through ‘off-shoring’ by corporations operating in Australia across all business sectors.¹⁴ Tax avoidance, offshore secrecy and government tax breaks to attract investment all result in less financial returns for governments and communities.

There is no generally agreed definition of what tax havens or secrecy jurisdictions are. The TJN uses the following working definition: *A secrecy jurisdiction provides facilities that enable people or entities*

¹³ OECD, (2014), *Foreign Bribery Report*, <http://www.oecd.org/daf/anti-bribery/scale-of-international-bribery-laid-bare-by-new-oecd-report.html>

¹⁴ Oxfam Australia, (2016) *The Hidden Billions: How Tax Havens impact lives at home and abroad*, accessed at: <https://www.oxfam.org.au/wp-content/uploads/2016/06/OXF003-Tax-Havens-Report-FA2-WEB.pdf>

*escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool.*¹⁵ Publishing information about companies' "beneficial owners"—that is, the individuals that ultimately control or profit from a company—can help to deter such practices. Australia does not yet have free public beneficial ownership register which can help uncover the real owners of the corporation who may be involved in deals or benefits from projects.

The findings uncovered by this investigation outline questionable business practices, examples of offshore secrecy, and an allegation of bribery and corruption. Some of the companies researched have traditional corporate structures with entities and subsidiaries in Australia and overseas. Origin Energy for instance publicly discloses group entities based in Panama, Bermuda and Singapore and accompanying rationale. Origin states that it does not support activities that seek to aggressively structure the company's tax position.¹⁶ Senex is listed as having thirteen subsidiaries incorporated in Australia stating that it has no international-related party dealings and all taxes are paid in Australia.¹⁷

APA Group Subsidiary Incorporated in Known Secrecy Jurisdiction

The APA Group, involved in the Narrabri pipeline, is a stapled structure comprising of the Australian Pipeline Trust and the APT Investment Trust. Stapled structures are often used to minimise tax though PWYP and TJN-Aus do not suggest any legal wrongdoing. The APA Group's disclosed subsidiaries are all incorporated in Australia, except one, APA Services (Int) Inc which is registered in Delaware, USA. There appears to be no public explanation as to what the function of this subsidiary is. It was incorporated on 11 August 2016, so is a relatively recent creation. It is registered through the notorious Corporate Trust Centre at 1209 Orange Street, Wilmington, Delaware, USA. The Corporate Trust Centre was home to 285,000 companies in 2012, making it the address of the greatest number of companies at one location in the world.¹⁸ By 2017, the number of companies registered at the address had grown to over 300,000, with the APA Group adding one to help swell the ranks.¹⁹ The

¹⁵ Financial Secrecy Index, (2020) *What is a Secrecy Jurisdiction*, <https://fsi.taxjustice.net/en/faq/what-is-a-secrecy-jurisdiction>.

¹⁶ Origin Energy, (2018), *Tax Contribution Report 2018*.

¹⁷ Senex Energy, (2019), *Senex Tax Transparency Report 2019*, <https://www.senexenergy.com.au/wp-content/uploads/2019/08/SEN4255-Senex-Tax-Transparency-Report-2019-WEB.pdf>

¹⁸ AtlasObscura, (2020), <https://www.atlasobscura.com/places/corporation-trust-center>

¹⁹ Business Insider, (2017), *Wilmington Delaware Largest Companies*. <https://www.businessinsider.com.au/building-wilmington-delaware-largest-companies-ct-corporation-2017-4?r=US&IR=T>

authors of this report are concerned that, in our view, the APA Group was willing to thumb its nose at very public concerns about jurisdictions that facilitate money-laundering and tax evasion and create a subsidiary in such a jurisdiction, Delaware. The decision to create the subsidiary in Delaware was done at a time when there had been extensive public reporting about the role Delaware and other US states were playing in assisting money-launderers and tax evaders.

How the Corporation Trust Centre helps shift profits and avoid tax

The Corporation Trust Centre, which seems to be the address of the parent company of Sweetpea Petroleum and where APA Group has a subsidiary, is a yellow brick office building in downtown Wilmington, Delaware, United States. Falcon Oil & Gas, which is involved in the Beetaloo Basin, also has a subsidiary in Delaware.

This is reportedly the registered address of approximately 300,000 companies by 2016²⁰. That's more than any other known address in the world, and 15 times more than the 18,000 registered in Uglend House, a five-storey building in the Cayman Islands that Barack Obama called "either the biggest building in the world, or the biggest tax scam on record"²¹. Officially, 1209 North Orange is home to Apple, American Airlines, Coca-Cola, Walmart and dozens of the world's biggest companies.

Being registered in Delaware lets companies take advantage of strict corporate secrecy rules, business-friendly courts and the "Delaware loophole", which can allow companies to legally shift earnings from other states to Delaware, where they are not taxed on non-physical incomes generated outside of the state. The loophole is said to have cost other US states more than \$9bn in lost taxes over the period 2005 - 2015 and led to Delaware being described as one of the world's biggest havens for tax avoidance and evasion²². It is reported to be easier to set up a company in Delaware than get a library card²³.

²⁰ Rupert Neate, (2016), *Trump and Clinton share Delaware tax 'loophole' address with 285,000 firms*, www.theguardian.com/business/2016/apr/25/delaware-tax-loophole-1209-north-orange-trump-clinton.

²¹ Ibid.

²² Institute Tax and Economic Policy, (2015), *Delaware: An Onshore Tax Haven*, <https://itep.org/delaware-an-onshore-tax-haven/#.VxgDu5MrLBI>.

²³ Discreet Delaware: Why Corporate Secrecy and Money Laundering Have Thrived in the US', Trulioo, 5 March 2019, <https://www.trulioo.com/blog/corporate-secrecy>

Delaware allows companies to disclose little trace of their owners or directors²⁴. Instead of disclosing their own identities, the owners of companies can pay as little as \$50 to hire a registered agent to represent the company on their behalf.²⁵

One of APA Group's directors in James Fazzino who was part of the NCCC Manufacturing Working Group which recommended government underwrite gas supply and use public money for gas pipelines.²⁶ This further highlights the conflict of interest and integrity issues surrounding the establishment of NCCC and its influence on government policy and decisions.

A closer investigation into two companies – Falcon Oil & Gas and Sweetpea Petroleum - both involved in the Beetaloo Basin with Origin Energy, highlights the use of secrecy jurisdictions, opaque company structures and an allegation of bribery and corruption. The Federal Government should rule out providing government subsidies to companies who knowingly use secrecy jurisdictions and tax havens that could conceal business activities.

Sweetpea Petroleum's Secret and Opaque Ownership

Sweetpea Petroleum provides exploration and production services and is a private company that is registered in Australia. Its beneficiaries appear to be US citizens. However, the lack of public reporting by the company and its structure make it impossible to be certain who the ultimate beneficiaries behind the company are. The complex and opaque corporate structure of Sweetpea Petroleum detailed below raises serious questions as to the motivations of such secrecy.

ASIC filings shows that the company registered with ASIC in 1996²⁷, registered an ABN in 1999 and has its business address as Wardell Nominees Pty Ltd NT House, Level 7, 22 Mitchell Street, Darwin.²⁸ Sweetpea Petroleum is currently owned by Longview Petroleum LLC based in Texas.²⁹ The Texas

²⁴ Spencer Woodman, 'Michael Cohen scandal a reminder that the U.S. is a tax secrecy paradise', International Consortium of Investigative Journalists, 21 May 2018.

²⁵ 'Discreet Delaware: Why Corporate Secrecy and Money Laundering Have Thrived in the US', Trulioo, 5 March 2019, <https://www.trulioo.com/blog/corporate-secrecy>

²⁶ Prime Minister and Cabinet, (2020), *Commission starts work with manufacturers to supply essential products*, <https://www.pmc.gov.au/ncc/news/commission-starts-work-manufacturers-supply-essential-products>.

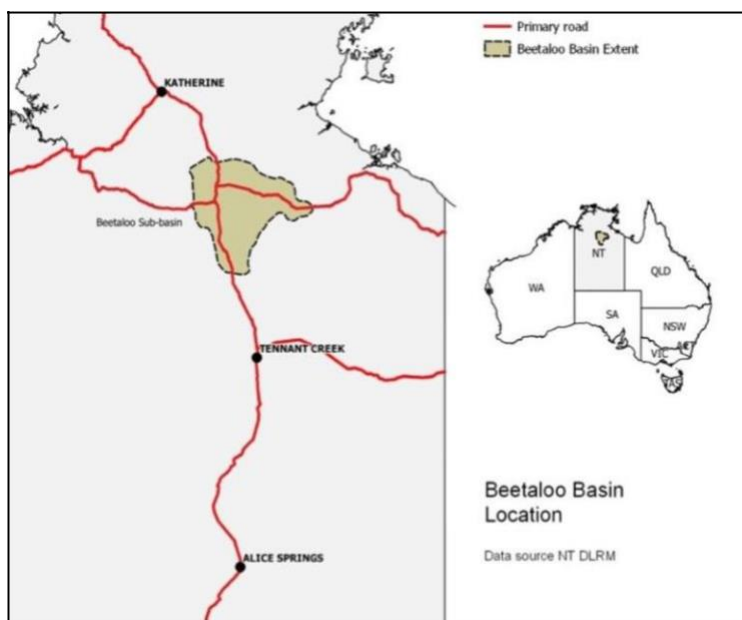
²⁷ ASIC Certificate of Registration for Sweetpea Petroleum Pty Ltd.

²⁸ ASIC Current and Historical Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020.

²⁹ ASIC Current and Historical Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020.

subsidiary was only registered in January 2020.³⁰ Longview Petroleum LLC is a subsidiary of Longview Petroleum LLC (Delaware), registered at the notorious Corporation Trust Centre located at 1209 N Orange Street, Wilmington Delaware.³¹

Map 2. Location of Beetaloo Basin Northern Territory



The Delaware company was only registered on 14 June 2019 and has failed to pay its taxes in Delaware on time according to the publicly available listing

Maintained by the Delaware Government.³² PWYP Australia and TJN-Aus take the view that a company whose parent company appears not able to pay the few hundred dollars it needs to for it to remain in good standing in Delaware should not be receiving valuable Australian Government revenue. An

analysis of the Sweetpea's directors and parent company also raises questions on the identity and ultimate owners and beneficiaries of the company. Based on the publicly available information, which is limited, it would appear to us the likely ultimate beneficiaries of Sweetpea Petroleum Pty Ltd are US residents. Thus, Australia Government subsidies going to assist Sweetpea Petroleum Pty Ltd seem likely to be largely for the benefit of its foreign US owners.

Sweetpea's Beneficiaries Likely to be US Citizens

There are five directors as of 13 September 2020 according to the ASIC business registry:

- **Matthew Rubin Silverman**, born in the USA and registered address in Colorado USA;
- **David Neil Siegel**, born in the USA and registered address in Arizona USA;
- **Robert Luciano Telles Jr**, born and lives in California USA;

³⁰ Bizapedia (2020), *Longview Petroleum LLC*, <https://www.bizapedia.com/us/longview-petroleum-llc.html>

³¹ Filing for Longview Petroleum LLC, File Number 7468068, State of Delaware, accessed 13 September 2020, and OpenCorporates.com, https://opencorporates.com/companies/us_ca/201920410448

³² Filing for Longview Petroleum LLC, File Number 7468068, State of Delaware, accessed 13 September 2020.

- **Andrew Mark Logan**, the current CEO born in Malaysia and whose registered address is in Naremburn NSW; and
- **Kevin Royce Stephens**, who is the company secretary and resides in the NT.

Matthew Silverman, the longest serving director in Sweetpea Petroleum, was appointed on 25 February 2009 and David Neil Siegel is a relatively recent director, having been appointed on 28 June 2019.³³ The third US director, Robert Telles Jr, is a California lawyer with the law firm Telles Walker et al LLP.³⁴ Mr Telles registered the Californian subsidiary of Longview Petroleum LLC owned by the Delaware shell company Longview Petroleum LLC.³⁵ The Californian subsidiary was only registered on 23 July 2019. Mr Telles became a director of Sweetpea Petroleum Pty Ltd on 27 June 2019.³⁶

Finding who the ultimate owners and controllers of Sweetpea Petroleum Pty Ltd highlights the complex strings of opaque ownership stretching across jurisdictions. Documents obtained from the US Bankruptcy Court for the District of Colorado from 2019 show Sweetpea Petroleum Pty Ltd being bought by a private investment company, TS Capital Partners, LLC owned equally by Mr Telles and David Siege.³⁷

Andrew Logan is the current CEO of Sweetpea Petroleum Pty Ltd., appointed as a director on 24 July 2019, according to the ASIC database. Given his relatively recent appointment as a director, it is our hypothesis that Mr Logan is not a significant ultimate beneficiary in the structure of Sweetpea Petroleum Pty Ltd. Kevin Royce Stephens is the company secretary, appointed as a director of Seetpea Petroleum Pty Ltd on 31 May 2018, and is also a partner in the Darwin law firm, Ward Keller.³⁸ Further, Mr Stephens also holds the post of the Honorary Consul of Estonia in Darwin.³⁹ Ward Keller and Sweetpea Petroleum Pty Ltd share the same nominee company as their registered business address on the ASIC database.⁴⁰ The address is also the physical address of the offices of Ward Keller. A nominee company is formed by a financial institution or another organisation which operates an account that holds assets and securities on behalf of the actual owner under the terms of a custodial

³³ ASIC Current and Historical Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020.

³⁴ The State Bar of California, Attorney Licensee Profile <http://members.calbar.ca.gov/fal/Licensee/Detail/121588>

³⁵ Filing with the California Secretary of State, Application to Register a Foreign Limited Liability Company, 201920410448, filed on 23 July 2019.

³⁶ ASIC Current and Historical Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020.

³⁷ ¹ Petro Hunter Energy Corporation, (2019), Case No. 16-20197 KHT Doc#:367, p.3

³⁸ <https://www.wardkeller.com.au/our-team/partners/>

³⁹ List of Consulates via DFAT website: <https://protocol.dfat.gov.au/Public/Consulates/65/State/3>.

⁴⁰ ASIC Current and Historical Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020; and ASIC Current and historical business name extract for Ward Keller accessed 13 September 2020.

agreement. Nominee companies are often used to hide the ultimate owners and beneficiaries of companies.⁴¹

In this case, our hypothesis is that Mr Stephens was engaged by the controllers of Sweetpea Petroleum Pty Ltd to act as the company secretary. The registered business address for Sweetpea Petroleum Pty Ltd was made the same as Ward Keller so that correspondence would go to Mr Stephens. Such arrangements for foreign owners of a company to engage an Australian lawyer to act as a company secretary are not unusual.

The other piece of information that in our view points the key beneficiaries behind Sweetpea Petroleum Pty Ltd are likely to be US residents is that Sweetpea Petroleum previously held the address Sweetpea Corporation, PO Box 420 Farmington, New Mexico, USA.⁴²

Falcon Oil & Gas Ltd Use of Low Tax and Secrecy Jurisdiction Raises Concerns

Falcon Oil & Gas, another player in the Beetaloo Basin and part of a joint venture with Origin Energy, have projects in Hungary, South Africa and Australia. They have listed subsidiaries in Delaware USA, Ireland, and British Columbia Canada. Delaware is a secrecy jurisdiction⁴³. Concerns exist about the tax arrangements that the Irish Government offers foreign companies to set up in Ireland.⁴⁴ Their annual report for the calendar year ending 31 December 2020 states a loss before tax of US\$1.74 million and that they state they paid no tax in that year and having only three employees in their Ireland office.⁴⁵ Of the four directors listed for the Australian arm of Falcon Oil & Gas Australia Limited, two reside in Ireland.⁴⁶ The two Irish directors are listed as the only directors

⁴¹ Tax Justice Network, (2020) *True Beneficial Ownership*, <https://www.taxjustice.net/true-beneficial-ownership/>.

⁴² ASIC Relational Company Extract for Sweetpea Petroleum Pty Ltd, accessed 13 September 2020.

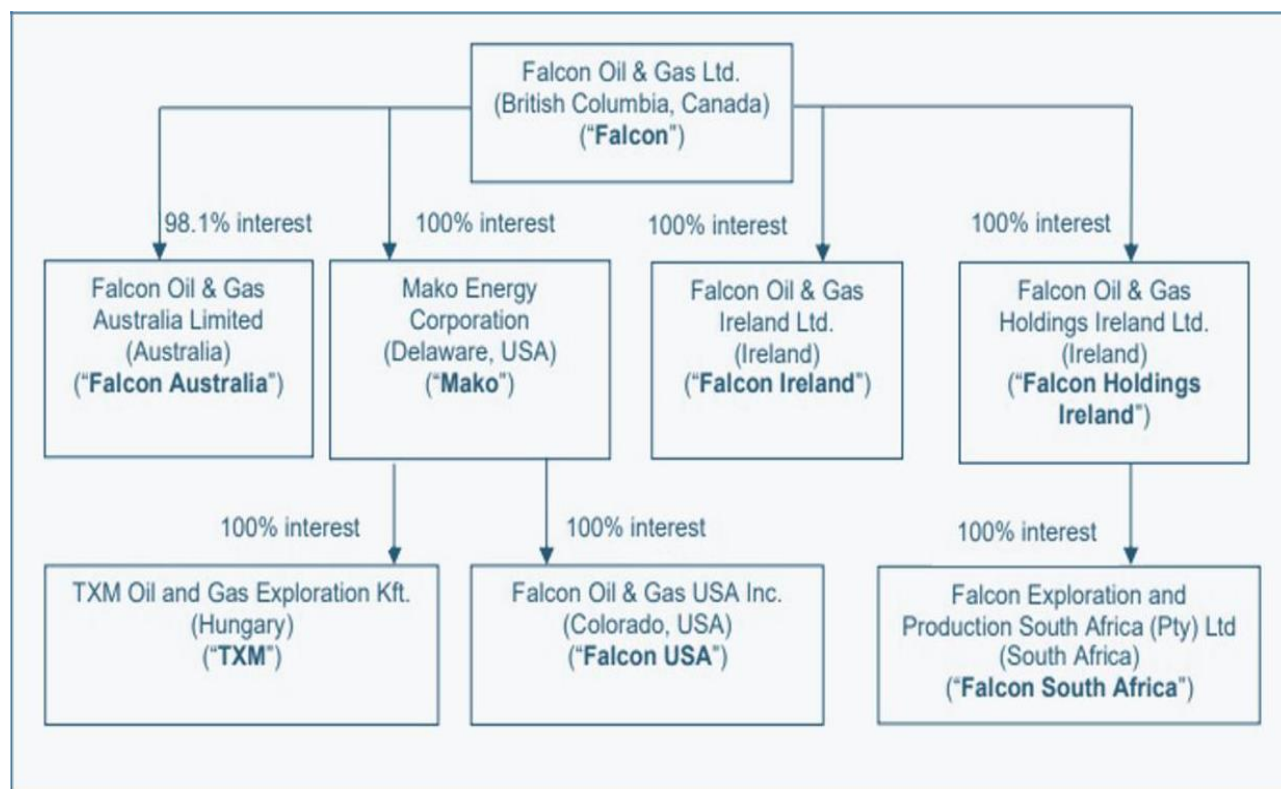
⁴³ Falcon Oil and Gas website: <https://falconoilandgas.com/overview/> <https://falconoilandgas.com/download/aif-31-december-2019/?wpdmdl=2412&refresh=5f56df212cf601599528737> and see the 2020 Financial Secrecy Index,⁴⁴ Financial Secrecy Index, (2020), *Ireland*, <https://fsi.taxjustice.net/PDF/Ireland.pdf>

⁴⁵ Falcon Oil and Gas, (2020), *Annual Information Form*, p24. <https://falconoilandgas.com/download/aif-31-december-2019/?wpdmdl=2412&refresh=5f56f1e360ac01599533539>

⁴⁶ ASIC Current & Historical Company Extract Falcon Oil & Gas Australia Limited, accessed 19 September 2020.

of the two Irish based companies, Falcon Oil & Gas Ireland Limited and Falcon Oil & Gas Holdings Ireland Limited, based on the Irish company filings.⁴⁷ The ultimate beneficiaries of Falcon Oil & Gas Australia Limited would appear to be foreign residents. A Russian Oligarch, Viktor Vekselberg, who was sanctioned in 2018 over a number of matters including Russia’s invasion of Ukraine, has a 16% stake in the parent company Falcon Oil and Gas Ltd listed on Toronto Securities Exchange.

Figure 1. Ownership Structure of Falcon Oil and Gas Ltd



The company states that it is listed on the London Stock Exchange (AIM), the Toronto based TSX Venture Exchange and the Irish Stock Exchange (ESM).⁴⁸ We attempted to locate a Canadian *Extractive Sector Transparency Measure Act* report for Falcon Oil & Gas Ltd, given their Canadian presence. The Canadian law requires Canadian listed extractive companies report their payments to governments on a country-by-country, project-by-project basis. No such report exists elsewhere and it is unclear to us why Falcon Oil & Gas Ltd was not required to produce said report. In 2013 it was reported that in a £14million deal, Sweetpea took a 10.7% stake in Falcon Oil and Gas in exchange for their previous 24.2% interest in Falcon Australia. The move gave Falcon a 96.9% stake in the Australian subsidiary, which owns four exploration permits in the Beetaloo Basin of Australia’s Northern Territory.⁴⁹

⁴⁷ Ireland Companies Registration Office, Company Printouts for Falcon Oil & Gas Ireland Limited and Falcon Oil & Gas Holdings Ireland Limited, accessed 24 September 2020.

⁴⁸ Falcon Oil and Gas, (2020), *AIM Rule 26*, <https://falconoilandgas.com/rule-26/>.

⁴⁹ Energy Voice, (2013) *Falcon Completes Sweetpea Australian Buyout*, <https://www.energyvoice.com/marketinfo/40181/falcon-completes-sweetpea-australian-buyout/>

Allegations of Bribery and Corruption involving Falcon Oil & Gas

At the hearings of the South African Commission of Inquiry into State Capture on 28 January 2019, Angelo Agrizzi, a former chief operating officer of the company Bosasa, claimed Falcon Oil & Gas approached the corporation and offered its facilities management contracts in return for help to get restrictive fracking legislation in South Africa amended through the intervention of the then President of South Africa.⁵⁰ Mr Agrizzi alleged that as a result the President of South Africa intervened and the advisors of the Minister of Mineral Resources were instructed to meet with Lizel Oberholzer to make the amendments that Falcon Oil & Gas wanted.⁵¹ Lizel Oberholzer was the Falcon Oil & Gas solicitor in South Africa.⁵² Mr Agrizzi admitted he was not at the meeting between Falcon Oil & Gas CEO Philip O'Quigley, Lizel Oberholzer and the then President of South Africa and that he was relying on the reports of those at the meeting.⁵³

In response to the allegations made by Mr Agrizzi, *The Irish Times* reported that Mr O'Quigley confirmed that he and Mrs Oberholzer had met with the then President of South Africa, Jacob Zuma, in 2014. The meeting was facilitated by Bosasa. He denied that Falcon Oil & Gas had offered Bosasa contracts in return for setting the meeting up.⁵⁴ The South African Government introduced new fracking regulations in 2015 under the *Minerals and Resources Development Act* which are friendlier to fracking.⁵⁵ The South African Commission of Inquiry into State Capture does not appear to have yet made its findings into the matter public. The Australian Government should communicate directly with the current South African Government regarding the matter before granting any Australian Government assistance or subsidies to Falcon Oil & Gas Australia Limited.

⁵⁰ South African Commission of Inquiry into State Capture, Parktown, Johannesburg, 28 January 2019, 64-67.

⁵¹ South African Commission of Inquiry into State Capture, Parktown, Johannesburg, 28 January 2019, 67.

⁵² Bill Corcoran, (31/1/2019), *Dublin-based firm drawn into South African corruption scandal*, *The Irish Times*, <https://www.irishtimes.com/business/energy-and-resources/dublin-based-firm-drawn-into-south-african-corruption-scandal-1.3776344/>

⁵³ South African Commission of Inquiry into State Capture, Parktown, Johannesburg, 28 January 2019, 67.

⁵⁴ Bill Corcoran, (31/1/2019), *Dublin-based firm drawn into South African corruption scandal*, *The Irish Times*, <https://www.irishtimes.com/business/energy-and-resources/dublin-based-firm-drawn-into-south-african-corruption-scandal-1.3776344/>

⁵⁵ Bill Corcoran, (31/1/2019), *Dublin-based firm drawn into South African corruption scandal*, *The Irish Times*, <https://www.irishtimes.com/business/energy-and-resources/dublin-based-firm-drawn-into-south-african-corruption-scandal-1.3776344/>

Governments Should Not Subsidise or Support Private or State-Owned Enterprises

Eight of the companies researched are listed on the ASX. Their owners comprise custodian banks, state-owned investment houses, superannuation funds and individual shareholders. The job of custodian banks such as HSBC Custodian Holdings, JP Morgan, CitiGroup and BNP Paribas is to hold the financial assets of “institutional investors” such as superannuation funds, insurance companies and fund managers. As such, it is difficult to ascertain the true identity of these shareholders.

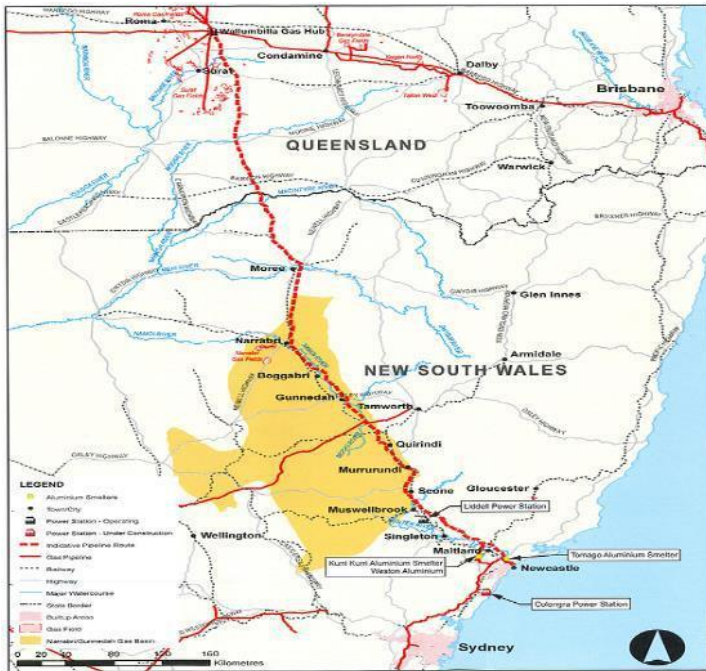
As outlined in the Table 1. five companies are either private owned companies or owned by government state-owned enterprises (SOEs). This includes Hancock Prospecting Pty Ltd which is ultimately owned by Gina Rinehart and had a reported turnover of \$8.4billion and profit of \$1.75billion in 2018/19 financial year.⁵⁶ Jemena (Trading as SGSP Ltd) whose ownership is detailed in below is split 60/40 between State Grid Corp. of China and Singapore Power which are both SOEs.

Figure 2. Ownership of Jemena (SGSPAA)



The State Grid Corporation of China (SGCC), the Chinese state-owned electric utility monopoly is largest utility company in the world. The Chinese-Singaporean-owned company has also been accused of exerting undue influence on the Northern Territory Government over its Northern Gas

⁵⁶ ORBIS Company Extracts accessed 14 September 2020.



Map 3. Hunter Gas Pipeline

Pipeline to Queensland.⁵⁷ Despite calls from trade unions and opposition parties, the Commonwealth Government specifically excluded at least 5,500 workers from receiving the JobKeeper payment as they were employed by companies owned by foreign governments.⁵⁸

A Commonwealth Government decision to subsidise companies that are ultimately owned by state-owned enterprises would seem to favour the profits of these companies over income support payments for workers employed by companies owned other state-owned enterprises.

The CK Group – The Ultimate Owner of Australian Gas Infrastructure Group

Australian Gas Infrastructure Group (AGIG), involved in the Moomba pipeline, comprises Australian Gas Networks, Multinet Gas Networks and Dampier Bunbury Pipeline. AGIG is owned by various consortia of private sector entities listed on the Hong Kong Stock Exchange whose ultimate global owner is CK Hutchison Holdings Ltd (CKH.) In 2018 CK Group tried to purchase competitor APA Group but though Treasurer Josh Frydenberg rejected the \$13 billion offer as it was 'contrary to national interest'. At the time, CK Group refuted claims by coalition backbenchers that it answers to China's ruling Communist Party.⁵⁹

CK Hutchinson Holdings Ltd is a Hong-Kong based multinational conglomerate and the global ultimate owner of Australian Gas Infrastructure Group. CK Hutchinson Holdings LTD have 1,452 companies in

⁵⁷ Energy News Bulletin (2018), *Jemena Faces Scrutiny on Pipeline Deals*, <https://www.energynewsbulletin.net/pipelines/news/1339004/jemena-faces-scrutiny-on-pipeline-deals>.

⁵⁸ Michael Coghlan, (17/6/2020), *Airport Workers Wage Subsidy Dashed*, <https://www.canberratimes.com.au/story/6796162/airport-workers-wage-subsidy-hopes-dashed/?cs=14231>.

⁵⁹ Michael Smit & Andrew Tillett, (2018) *CK Group Rejects Critics of APA bid as naive*. <https://www.afr.com/companies/ck-group-rejects-critics-of-apa-bid-as-naive-20180920-h15mjim>.

the group and is incorporated, via PB Box, in the Cayman Islands⁶⁰. The CK Group is comprised of entities listed on the Hong Kong Stock Exchange though arguably controlled by Li Ka-shing – former chairman and now advisor of CK Group.⁶¹ As of September 2020, Li Ka-shing was Hong Kong’s second richest man and the world’s 35th richest.⁶² Li was a client of the law firm at the centre of the Panama Papers scandal, and an image of the tycoon’s Hong Kong identity card was found in the firm’s leaked files, according to reports by the ABC.⁶³ The leaked data showed that Cheung Kong Infrastructure, the Cheung Kong group’s infrastructure arm, used Panamanian law firm Mossack Fonseca’s Hong Kong office to “organise” a string of related subsidiaries in Panama and the British Virgin Islands. His son Viktor Liz Tzar-Kui is now the chairman of CK Group. TJN-Aus and PWYP Australia do not suggest any legal wrongdoing.

A Beneficial Ownership Register is Needed

Understanding who the beneficial owners of companies is important for governments, investors, companies and the public. A public list of who owns, controls or ultimately financially benefits from a company plays an important role in deterring corruption, terrorism financing and money laundering. A commitment by the Federal Government to examine a beneficial ownership register was included in the Australian Open Government Partnership National Action Plan (NAP) 2016 to 2018 though was not implemented.

In recent discussions around the Open Government Partnership between civil society and government, which is run out of the office of Prime Minister and Cabinet, the Federal government specifically ruled out committing to a beneficial ownership register despite strong interest from civil society.⁶⁴ A free public beneficial ownership register has been established in the UK. Significant progress has been made in Canada with several provincial jurisdictions adopting publicly accessible beneficial ownership registries – Quebec implementing a free registry and British Columbia, implementing a paywalled registry. Norway and the Netherlands are currently implementing public registers in their countries.

⁶⁰ See U.S.A Securities and Exchange Commission report: <https://sec.report/CIK/0001696588>.

⁶¹ Financial databases show Li Ka-Shing maintaining 30.15% of total ownership of CK Hutchinson Holdings Ltd.

⁶² Forbes (2020), *Profile: Li Ka-Shing*, <https://www.forbes.com/profile/li-ka-shing/#6c7814c9523f>.

⁶³ ABC Four Corners (2016), *Panama Papers*, <https://www.abc.net.au/4corners/the-secrets-of-the-super-rich-promo/7289660>.

⁶⁴ Prime Minister and Cabinet, (2020), <https://ogpau.pmc.gov.au/consultations/phase-2b-deliberation-drafting>, accessed 18 September.

Tax Transparency

The research looked at publicly available ATO corporate income tax data from the five-year period 2013/14 to 2017/18. Significantly, the companies whose main business is gas extraction – Santos and Senex – paid very little corporate income tax during this period. Origin Energy had an effective corporate income tax rate of 16.9% based on its percentage of tax paid against taxable income. Three companies, Australian Gas Infrastructure Group, Hancock Prospecting and Jemena had effective corporate income tax rates at or very near the corporate income tax rate of 30%. Jemena was also under audit by the Australian Tax Office (ATO) for its transfer pricing arrangements related to convertible instruments. Environmental Justice Australia has alleged that Jemena may have engaged in tax avoidance that could cost government revenue of \$500 million in unpaid taxes.⁶⁵

The Federal Government should rule out using government revenue to subsidise companies avoiding their tax responsibilities or companies that are currently in dispute with the ATO. Significantly of the big ASX listed gas companies – Santos, Origin, Senex – only Origin has a policy to renounce the use of any artificial arrangements made primarily for tax optimization purposes.⁶⁶

Table 2. ATO Corporate Income Tax Data from 2013/14 to 2017/18⁶⁷

Company	Income	Taxable Income	Tax Paid	% rate
APA Group (Australian Pipeline Trust)	9,708,759,241	397,035,813	100,736,108	25.4%
Australian Gas Infrastructure	1,950,049,626	382,046	114,614	30%
Hancock Prospecting	11,802,552,785	5,779,289,501	1,724,648,844	29.8%
Jemena	9,028,529,211	621,502,183	184,447,787	29.7%
Origin Energy	67,006,290,213	1,080,286,132	182,225,976	16.9%
Santos	18,436,190,420	27,340,938	3,147,975	11.5%
Senex	630,432,807	0	0	0%

⁶⁵ Environmental Justice Australia, (2018), *Fracking the Northern Territory*, pp.7-8, https://www.envirojustice.org.au/wp-content/uploads/2018/05/EJA_NT_fracking_report_May-2018.pdf.

⁶⁶ PWYP Australia (2020), *Leaders or Laggards? Tax and Revenue Transparency of ASX listed mining, gas and oil companies*. <https://www.pwyp.org.au/publications/leaders-or-laggards-asx-mining-gas-oil-transparency>.

⁶⁷ ATO (2020), *Corporate Income Tax Data*, <https://data.gov.au/data/dataset/corporate-transparency>.

While Australia is a leader in terms of the size of our extractives sector, we are falling behind in terms of financial transparency. Australia has not yet implemented the Extractive Industries Transparency Initiative (EITI), a global voluntary initiative that requires payment-to-government information (income tax, royalties, fees, bonuses and other payments) for domestic extractive operations. There is significant support within the mining and oil and gas industry for implementing the EITI though the Federal Government has chosen to delay any meaningful action and progress. Australia is also yet to legislate a mandatory disclosure law that would require extractives companies to publicly and annually disclose all payments made to governments on a country-by-country and project-by-project basis. These laws already exist in the UK, across the EU, Canada, Norway, Switzerland and are awaiting implementation in the US.

The starting point for tackling corruption, poor governance and tax non-compliance in the extractives sector is transparency. Transparency can help build public trust in industry and demonstrate their economic contribution to communities where they do business. Greater transparency in decisions around the energy transition and building back better from COVID-19 will also enable investors, policy makers and citizens to make informed and evidenced based decisions.

Recommendations

- 1.** Governments must rule out using government revenue to subsidise or financially support companies that have significant entities incorporated in know secrecy jurisdictions, have a record of avoiding tax contributions in Australia or are in dispute with the ATO.
- 2.** Governments must rule out using government revenue to subsidise or financially support companies where the ultimate beneficial ownership of these companies remains unknown.
- 3.** The Federal Government must implement a free public beneficial ownership register which lists who are the ultimate owners or controllers of companies.
- 4.** The Federal Government must keep its promise to implement the Extractive Industries Transparency Initiative (EITI) including re-starting the multi-stakeholder group in 2020.



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