

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry Portfolio
Supplementary Budget Estimates
21 November 2013

AGENCY/DEPARTMENT: THE DEPARTMENT OF INDUSTRY

TOPIC: Australian Extractive Industry Transparency

REFERENCE: Written Question – Senator Rhiannon

QUESTION No.: SI-156

1. The Australian Extractive Industry Transparency Initiative pilot program started in Nov 2011 to "test the application of EITI principles to Australia's financial reporting regime" for the resources sector. I understand the pilot is in the final stages of the Pilot, with the website making a statement about the initial results highlighting the strength of Australia's domestic governance and transparency regimes:
 - a) Can I have an update on where the Pilot is up to now, and what sort of recommendations are on the table regarding Australia's commitment to the Initiative?
 - b) What specific challenges and problems have been identified in the regarding:
 - i. domestic governance and transparency regimes?
 - ii. What about international governance and transparency regimes of Australian resource companies overseas?
 - c) What actions is DFAT taking to ensure Australian companies are adhering to EITI principles to stamp out corruption in the sector?
 - d) When is the final report due and may I have a copy please?
 - e) May I have a list of the companies involved in this Pilot please, and the details of their sizes, and resources/jurisdictions please?
2. I understand France, UK and the US have committed to joining the 39 EITI Implementing countries, and that Canada, the US and the EU have announced mandatory disclosing requirements.
 - a) Where is this up to, and what other developments are happening internationally?
 - b) How does this implementation of mandatory disclosure affect Australian companies?
 - c) Does the US' commitment affect Australia's intentions to sign up to the EITI?
 - d) To what extent has the new Minister been briefed on these developments, and what changes to funding for the Pilot and further alignment with the EITI have been foreshadowed?
3. BHP Billiton, Rio Tinto and other ASX listed companies will be covered by the new regulations as they are also listed in the United States, European Union and Canada.
 - a) What discussion have been had with these companies regarding the alignment Australia's legislation with rules in other nations?
 - b) Can DFAT provide the details please?
4. The Chair of the Extractive Industry Transparency Initiative (EITI), former UK Secretary of State for International Development, Clare Short has argued that the EITI is not a substitute for mandatory reporting, stating that the, *'SEC and EU transparency requirements are complementary to, and not in conflict with, the EITI transparency requirements. Let us be clear, the extraction of oil, gas, and minerals is still failing to bring the benefits to ordinary citizens that it should, particularly in the poorer countries. Implementation of the EITI*

*standard does not achieve enough in isolation. We need a range of different transparency, accountability and governance reforms.*¹

- a) What is DFAT's response to her statement?
5. Does the Dept think the principles of the EITI are a good idea? That is: transparency and accountability in the resources sector; the right of a country to sovereign control of its own natural resources, and that aim that the sustainable development of those resources should be of benefit and not destruction of civil society?
 - a) Is Australia committed to these principles of transparency and accountability?
6. What steps is the Department taking to encourage and ensure Australian companies support and adhere to the Principles of the EITI both domestically and especially in developing countries?

ANSWER

- 1 a. The Multi-Stakeholder Group (MSG) for the Australian Pilot is finalising its report to government. This will be based on outcomes of MSG work programs and analysis undertaken by Deloitte. Deloitte's was engaged in 2012 as an independent Administrator for the Pilot to: undertake data reconciliation between participating governments and companies; and to conduct a systems analysis on revenue collection to test the strength of these systems and how transparency and accountability principles are already applied. Based on Pilot results the MSG is considering its recommendation to government on Australia's implementation and is expected to reach a position early next year.
 - b (i) Privacy restrictions have been a challenge for Pilot reconciliation. Privacy laws limit the disclosure of taxation revenue data solely to the entity responsible for the payment. This presented a key challenge to the efficient collection and reconciliation of payments data during the Pilot. However, the Pilot has managed this by allowing the ATO to provide corresponding data to the company for release, but using a password locked system to provide confidence in figures.

This issue may partially be resolved by the Tax Laws Amendment (2013 Measures no.2) Act 2013. The Act requires the Commissioner of Taxation to make public the tax payable by corporate taxpayers with accounting incomes of \$100 million or more per year; and all corporate taxpayers subject to the Mineral Resource Rent Tax (MRRT) or the Petroleum Resource Rent Tax (PRRT). This measure is not limited to the resources sector (except for MRRT and PRRT reporting companies). The first publication of information under the Act is expected to occur in late 2015, with respect to the 2013-14 income year.
 - b (ii) Australian resources companies are subject to a number of international governance and transparency initiatives, notably the: APEC Code of Conduct for Business; OECD Guidelines for Multinational Enterprises; UN Convention against Corruption; G20 Anti-Corruption Working Group; OECD Convention Against the Bribery of Foreign Public Officials; and the UN Global Compact.
 - c. Australian companies are subject to a robust legislative regime supporting anti-corruption, transparency and accountability principles. Several Australian companies are participating in Australia's Pilot to test how EITI application will add to existing frameworks.

¹ http://eiti.org/news-events/clare-short-disclosure-requirements-complement-eiti?utm_source=EITI+Newsletter&utm_campaign=30d1fb4650-EITI_Newsletter_October&utm_medium=email

- d. The report is expected to be finalised by April next year and will be considered by government.
- e. Please see **Attachment A** for a list of membership. For further company details please refer to individual company websites, the Australian Stock Exchange and reports published by the Bureau of Resources and Energy Economics (BREE).
2. The Government is aware of the efforts by some countries to implement new rules for the mandatory disclosure of payments, including efforts by the US and Canada. Following the European Parliament amendments to the EU Transparency and Accounting Directives, EU countries have up to two years to enact similar legislation to enforce mandatory reporting. This will apply to Australian companies also listed in the US or Europe. While the Department is aware of these laws/proposals its involvement has been limited to a watching brief as its focus is on undertaking a domestic pilot of the EITI. The Department stays informed of international EITI developments, but a decision on Australia's EITI implementation will be a matter for government consideration. The Minister has been briefed on the EITI and the Australian Pilot.
3. The Department of Industry has not discussed with ASX-listed companies any alignment of Australia's legislation.
4. The Government is aware of the statement by Ms Short and is applying various approaches to transparency in the extractive industries sector, including through Australia's broader transparency framework. The Government is aware that internationally there is a divergence of view whether the two approaches are complementary. The MSG will outline mandatory disclosure developments in their report to Government.
- 5-6. The Australian Government is committed to transparency, accountability and good governance, including for the extractives sector. Australia joined the EITI as a supporting country in 2007 and has provided \$18.1 million in financial support to the World Bank's Multi-donor trust fund on EITI and the EITI Secretariat. Australia considers it is consistent with EITI principles and has undertaken a Pilot of the EITI to test this assumption. Initial results indicate that Australian financial and government frameworks are robust and effective.

The Department considers transparency and governance as critical elements supporting sustainable development principles. In Australia, the extractives industries sector has a strong reputation for applying sustainable development principles in its operations; the Minerals Council of Australia's Enduring Values code of conduct provides an example of industry's guiding principles.

Application of EITI principles by Australian companies are being tested through Australia's Pilot. While Australian companies operating abroad are expected to undertake operations according to Australian standards, they are subject to the regulations and requirements of the relevant jurisdiction. Many Australian companies already report under the EITI as part of their international operations, particularly through their engagement in developing countries.

Australian EITI Multi-Stakeholder Group (MSG) Members

Government Representatives

- Department of Industry (non-voting *Chair*),
- Department of Industry (*member*)
- Treasury
- Australian Taxation Office
- DFAT
- 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
- Mandalay Resources,
- BHP Billiton (reporting company)
- Rio Tinto (reporting company)
- ExxonMobil Australia (reporting company)
- Shell Australia, (reporting company)
- BP Australia (reporting company)

Additional Reporting Companies (non-MSG members)

- MMG
- OzMinerals
- ERA

Civil Society Representatives

- Oxfam
- Jubilee Australia
- National Native Title Council
- CFMEU
- Transparency International Australia
- Corporate Analysis Enhanced Responsibility
- National Congress Australia's First Nations Peoples