

# PREVENTING CORRUPTION IN MINING

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## PURPOSE

To reduce the risk and incidence of corruption in the mining sector in Australia and internationally, by improving:

- transparency of decision-making about granting of mining exploration and extraction licences in Australia
- public and stakeholder access to mining revenue information, including where companies are based and where they operate, and
- public disclosure of the payment and application of mining revenues, as a vital control on the ability of individuals, companies and governments to engage in corruption.

## THE PROBLEM

In too many resource-rich countries, mining fails to contribute to equitable and sustainable economic and social development, due to especially high risks of corruption.<sup>1</sup> Effective governance and corruption control are key to successfully ensuring that a country can sustainably benefit from the extraction of its natural resources. Progress has also been made in the establishment and/or improvement of governance and accountability policies and practices in the mining sector, including:

- revenue and contract transparency are on the rise;
- there are encouraging efforts by governments to improve regulatory frameworks and the creation of voluntary frameworks;
- disclosure listing rules are on the increase; and
- enforcement of foreign bribery laws is being strengthened.

However, a lack of transparency and accountability continues to pose a significant challenge for the mining sector, with wider consequences.

Within the mining value chain, transparency in the award of permits, licences and contracts is particularly critical. Processes tainted by corruption and cronyism in the allocation of exploration permits and mining licenses can seriously affect society as a whole. Transparent contractual agreements between governments and mining companies, along with early involvement of civil society and local and indigenous communities, are key to the success of any mining venture as a contributor to development.

Australia has directly experienced serious political corruption in the granting of mining licences – such as revealed by the NSW Independent Commission Against Corruption, which recommended prosecutions for misconduct in public office (now underway) against former senior State politicians and the relevant Minister for favouritism in the granting of coal licences.<sup>2</sup>

As well as not being immune from corruption itself, Australia is home to many companies working internationally in mining exploration or operations, including in developing countries. As communities everywhere demand greater integrity from governments and companies, and a greater commitment to corruption-free practice, Australia and Australian-based stakeholders have an opportunity to become a global leader in anti-corruption efforts in mining.

## HISTORY AND PREVIOUS RECOMMENDATIONS

### ***Global initiative for integrity in extractives***

The **Extractives Industries Transparency Initiative (EITI)** is a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society working together.

As at June 2015, 48 countries were implementing the EITI, and 31 countries are compliant with EITI requirements. Thirty-nine countries have published revenues in accordance with EITI requirements, identifying USD\$1.568 trillion in government revenues from oil, gas and mining.<sup>3</sup> The Federal government undertook a pilot of this initiative in 2013, in which TI Australia was a civil society member of the multi-stakeholder steering group. The Australian EITI Pilot report has now recommended full implementation across Australia.

### ***Mandatory reporting legislation***

Complementing the EITI, the European Union, United Kingdom, Canada, United States and other governments have introduced **'mandatory reporting' legislation** that compels all extractives companies listed within each jurisdiction to disclose the payments they make to governments around the world. A large percentage of the world's extractives companies are covered by these laws, including Australia's largest mining companies and all dual listed Australian companies.

However, Australia is yet to pass its own laws to this effect, even though legislation aligned with the Canadian and European requirements would ensure a de-facto global standard and ease of reporting for companies. A *Corporations Amendment (Publish What You Pay) Bill* was introduced as a private member's bill in the Australian Senate in October 2014, which would require Australian companies involved in extractive industries to disclose any payments made to foreign countries over \$100,000 on a country-by-country and project-by-project basis, and publication of these within 28 days, but the Bill has never been debated.

### ***Transparency of decision-making***

Valuable work undertaken by the Extractive Industries Transparency Initiative (EITI), Publish What You Pay (PWYP), and the Natural Resource Governance Institute has been instrumental in achieving this kind of revenue transparency, but to date there has been little attention to another root of the mining corruption problem: lack of transparency and accountability in granting the original permits and licences for exploration and extraction, negotiating contracts and reaching agreement on financial terms and regulatory obligations.

TI Australia is leading a global **'Mining and Corruption' program** to fill this gap, planned to commence in 2016 in multiple countries, including Australia. Progress on all three initiatives would allow Australia to contribute to extractives governance globally, as befits a leader in mining.

## TI AUSTRALIA'S POSITION

- The Australian Government should **fully implement the Extractive Industries Transparency Initiative** in Australia, continue support and engagement with the EITI Board, and invest in funding and support for EITI in developing countries, particularly in the Asia Pacific region.
- The Australian Government should follow the United States, European Union, United Kingdom and Canada in **legislating for mandatory reporting requirements** for all Australian-listed mining, oil and gas companies.
- TI Australia welcomes partners in its **new TI Global Centre of Expertise, leading the Mining and Corruption program** as a new mechanism for mapping and reducing corruption risks in mining licencing in multiple countries.
- TI Australia supports the work of **anti-corruption agencies** such as the NSW Independent Commission Against Corruption, and **improved transparency in other relevant areas such as political finance and donations**, in order to tackle the proven risk of major corruption in official mining licencing processes within Australia.

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<sup>1</sup> While Transparency International Australia is especially committed to helping combat corruption in the mining sector, we also remain committed to working towards greater transparency in other 'extractive industries' (EI) sectors, including oil and gas, which have the potential to produce enormous national wealth. Global oil exports alone generate over US\$ 900 billion in revenue, equivalent to slightly more than half of the national income recorded for the poorest 53 countries. We are also committed to transparency and anti-corruption across other industries.

<sup>2</sup> See e.g. <http://www.smh.com.au/federal-politics/political-news/premier-targets-eddie-obeids-millions-made-in-corrupt-coal-deal-20140121-3165z.html>

<sup>3</sup> <https://eiti.org/countries>.