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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Corporations Amendment (Publish What You Pay) Bill 2014

No. , 2014

(Senator Milne)

**A Bill for an Act to require reporting of certain
payments to governments in relation to resource
extraction activities, and for related purposes**

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1 **A Bill for an Act to require reporting of certain**
2 **payments to governments in relation to resource**
3 **extraction activities, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Corporations Amendment (Publish*
7 *What You Pay) Act 2014*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Schedule 1—Amendments

Corporations Act 2001

1 Section 9

Insert:

government entity means any of the following:

- (a) the Commonwealth;
- (b) the government of a State or Territory;
- (c) the government of a foreign country;
- (d) the government of part of a foreign country;
- (e) an authority of a government referred to in any of paragraphs (a) to (d);
- (f) a company owned by a government referred to in any of paragraphs (a) to (d).

primary forest means a forest of native species where there is no clearly visible indication of human activities and ecological processes are not significantly disturbed.

publish what you pay report has the meaning given by section 323F.

reportable payment has the meaning given by section 323G.

reporting company has the meaning given by section 323F.

resource extraction activity means:

- (a) any of the following activities in relation to minerals, oil, natural gas or similar materials:
 - (i) exploration;
 - (ii) prospecting;
 - (iii) discovery;
 - (iv) development;
 - (v) extraction; or
- (b) logging of primary forests.

resource extraction project means one or more resource extraction activities governed by a single contract, licence, lease, concession

1 or similar arrangement in relation to which payments (including
2 payments in kind) are made to a government entity.

3 **2 At the end of Part 2M.3**

4 Add:

5 **Division 9—Publish what you pay**

6 **323E Application of Division**

7 This Division applies to a public company or a large proprietary
8 company in relation to:

- 9 (a) resource extraction activities and resource extraction projects
10 anywhere in the world; and
11 (b) payments (including payments in kind) made anywhere in the
12 world; and
13 (c) subsidiaries of the company, whether or not they are
14 incorporated in Australia.

15 **323F Reporting by companies involved in resource extraction**
16 **projects**

- 17 (1) If a public company or a large proprietary company (the **reporting**
18 **company**) that is required to prepare a financial report for a
19 financial year under section 292:

- 20 (a) engages in one or more resource extraction activities; or
21 (b) is a holding company of a body corporate that engages in one
22 or more resource extraction activities;

23 during the financial year, then the reporting company must include
24 a report under section 323G (a **publish what you pay report**) for
25 the financial year in the financial statements referred to in
26 paragraph 295(1)(a).

27 Note: A publish what you pay report that is included in financial statements
28 is subject to requirements that apply to the financial statements or the
29 financial report in general, such as those in subsections 295(3) to (5)
30 (notes and directors' declaration), section 296 (compliance with
31 accounting standards and regulations) and section 301 (audit of annual
32 financial report).

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- 1 (2) If the reporting company does not lodge the financial report with
 2 ASIC under section 319, the reporting company must lodge the
 3 publish what you pay report with ASIC:
 4 (a) if the reporting company is required to lodge the financial
 5 report with another body in accordance with an exemption or
 6 modification under Part 2M.6—on the same day as it lodges
 7 the financial report; or
 8 (b) otherwise—as soon as practicable after the publish what you
 9 pay report is prepared.

10 **323G Contents of publish what you pay report**

- 11 (1) The publish what you pay report must set out each reportable
 12 payment made during the financial year by:
 13 (a) the reporting company; or
 14 (b) a subsidiary of the reporting company.
- 15 (2) A **reportable payment** is a payment (including a payment in kind)
 16 to a government entity in relation to a resource extraction activity,
 17 in respect of any of the following:
 18 (a) production entitlements;
 19 (b) taxes levied on the income, production or profits of a
 20 company (not including taxes levied on the personal income
 21 of individuals or on consumption or sales);
 22 (c) royalties;
 23 (d) dividends;
 24 (e) signature, discovery or production bonuses;
 25 (f) licence fees, rental fees, entry fees or other consideration for
 26 licences or concessions;
 27 (g) infrastructure improvements;
 28 (h) social payments;
 29 (i) security services.
- 30 (3) However, a payment is not a reportable payment if the total value
 31 of:
 32 (a) the payment; and
 33 (b) any other payments that, together with the payment, make up
 34 a series of related payments;
 35 is less than \$100,000.

1 *Disaggregated reporting*

- 2 (4) The publish what you pay report must, for each resource extraction
3 project engaged in by the reporting company or a subsidiary of the
4 reporting company, set out:
- 5 (a) for each kind of reportable payment referred to in a
6 paragraph of subsection (2)—the total amount of that kind of
7 reportable payment made in relation to the project; and
8 (b) the total amount of all reportable payments made in relation
9 to the project.
- 10 (5) The publish what you pay report must, for each government entity
11 to which the reporting company or a subsidiary of the reporting
12 company makes a reportable payment, set out:
- 13 (a) for each kind of reportable payment referred to in a
14 paragraph of subsection (2)—the total amount of that kind of
15 reportable payment made to the government entity; and
16 (b) the total amount of all reportable payments made to the
17 government entity.
- 18 (6) The publish what you pay report must not artificially aggregate
19 payments in a way that conceals the details of a particular payment.

20 **323H Reporting on payments made by joint ventures and other**
21 **arrangements**

- 22 (1) This section applies in relation to a public company or a large
23 proprietary company (the *participating company*) that:
- 24 (a) participates in a joint venture, or similar arrangement, that
25 engages in one or more resource extraction activities; or
26 (b) is a holding company of a body corporate (the *participating*
27 *company's subsidiary*) that participates in a joint venture, or
28 similar arrangement, that engages in one or more resource
29 extraction activities.
- 30 (2) The regulations may prescribe circumstances in which the
31 participating company or the participating company's subsidiary is
32 taken, for the purposes of this Division:
- 33 (a) to engage in the resource extraction activities; or
34 (b) to engage in a resource extraction project that relates to the
35 resource extraction activities; or

1 (c) to have made a payment that was made by the joint venture
 2 or arrangement in relation to the resource extraction
 3 activities.

4 Note 1: This may result in the participating company being required to make a
 5 publish what you pay report setting out reportable payments made by
 6 the joint venture or arrangement.

7 Note 2: The regulations may require the value of a reportable payment to be
 8 worked out in a particular manner (see section 323J). For example, the
 9 regulations may require the value of a reportable payment to be
 10 apportioned to participants in a joint venture according to the value of
 11 each participant's interest in the joint venture.

12 **323J Form of publish what you pay report**

- 13 (1) The regulations may prescribe the manner in which:
 14 (a) a reportable payment is to be reported; and
 15 (b) the value of a reportable payment is to be worked out.
- 16 (2) If a publish what you pay report sets out a reportable payment that
 17 was made in kind, or in a currency other than Australian dollars,
 18 the report must state how the value of the payment was worked
 19 out.

20 **323K Publication of report**

- 21 (1) ASIC must publish a publish what you pay report on its website, in
 22 an open and machine-readable format, as soon as reasonably
 23 practicable after receiving the report, and in any case not longer
 24 than 28 days after receiving it.
- 25 (2) ASIC must not charge a fee for providing access to a report
 26 published in accordance with subsection (1).

27 **3 At the end of section 342**

28 Add:

29 *Publish what you pay provisions*

- 30 (4) Subject to subsection (5), ASIC must not make an order under
 31 section 340 or 341 in respect of a requirement of Division 9 of
 32 Part 2M.3.

- 1 (5) Subsection (4) does not prevent ASIC making an order for the
2 purpose of relieving a holding company from a requirement in
3 respect of a subsidiary if:
4 (a) any of the following apply:
5 (i) severe long-term restrictions substantially hinder the
6 holding company in the exercise of its rights over the
7 assets or management of the subsidiary;
8 (ii) the information necessary to comply with the
9 requirement cannot be obtained without
10 disproportionate expense or undue delay;
11 (iii) the subsidiary is a subsidiary of the holding company
12 only because the holding company holds shares in the
13 subsidiary for the sole purpose of selling them; and
14 (b) because of a matter referred to in paragraph (a), the holding
15 company does not include any other financial information
16 relating to the subsidiary in consolidated financial statements.

17 **4 Application of amendments**

18 The amendments made by this Act apply in relation to reportable
19 payments made in the financial year during which this item commences
20 and each later financial year.