

BLACK ECONOMY ADVISORY BOARD MINUTES

2.30 – 4.30 pm, 13 February 2019, Melbourne

PRESENT

Members

Michael Andrew, AO (Chair)

Maryanne Mrakovcic, Deputy Secretary, Revenue Group, Treasury

Jeremy Hirschhorn, Acting Second Commissioner, Client Engagement Group ATO

Matthew Duckworth, Assistant Secretary, Customs and Border Revenue, Department of Home Affairs, *(for Paul Grigson)*

Peter Calleja, Australian Tax Leader, PwC

Charles Cameron, CEO, Recruitment, Consulting & Staffing Association

Michael Croker, Australian Tax Leader, Chartered Accountants Australia and New Zealand

Juliana Payne, CEO, Restaurant and Catering Industry Association

Peter Strong, CEO, Council of Small Business Organisations of Australia

Guest speaker:

Sandra Parker, Fair Work Ombudsman

Government Advisors

Patrick Boneham, Division Head, Black Economy Division, Treasury

Peter Holt, Assistant Commissioner, Small Business, ATO

Apologies

Tania Chapman, Horticulture industry expert

Secretariat: Kathleen de Kleuver and Loretta Cheung, Black Economy Division, Treasury

Welcome

The Chair welcomed the members to the second meeting of the Black Economy Advisory Board.

Members endorsed the meeting minutes for 13 September 2018.

Sham contracting

Guest speaker, the Fair Work Ombudsman (FWO) Sandra Parker provided insights on sham contracting cases and strategies employed by FWO to detect sham contracting. The FWO noted the distinction between an employee and a contractor is based on common law, can be confusing and may differ between FWO purposes and tax and superannuation purposes.

The FWO noted that sham contracting and the sharing economy are often conflated but are considered separate issues.

The FWO noted for most sham contracting cases, the misclassification of workers are often inadvertent and unintentional. The FWO will work with the business and the worker to resolve issues and maintain the employment relationship where possible. The FWO is

concerned when sham contracting is systemic and accepted as part of doing business, particularly when involving vulnerable workers.

In some cases workers know they are being underpaid but accept it. This further disadvantages businesses doing the right thing. Prosecuting sham contracting can take a very long time.

Members noted difficulties due to different distinctions between contractors and employees for different purposes and level of governments. This was discussed at a recent forum hosted by the Council of Small Business Organisations of Australia (COSBOA).

Members discussed the complex interactions between sham contracting and the movement towards entrepreneurship. Workers might accept or seek contractor status because they perceive themselves as 'independent' and 'mini-entrepreneurs'. However, many of these individuals do not fully understand the consequences of being classified as a contractor. Individuals need to be educated about what is and what is not sham contracting.

Members noted that black economy behaviour, including to failure to comply with employment obligations can 'spread' to other industries. Sham contracting is common in some industries. It is important to also focus efforts on particular industries/sectors where sham contracting has not yet become prevalent.

Members noted that some large companies are shifting away from engaging contractors due to ongoing action in the sham contracting space.

Engaging with small business

Members shared insights into the effective ways to engage with small business on the black economy. It was noted that it would be impossible to engage with small business across all industries in a meaningful way. Instead, engagement should be targeted to the industries that are most at risk or affected by black economy behaviour. Members also advised the importance of educating professionals and providing them time to educate their clients.

Members supported using industry associations and local networks to disseminate information to small business. In regional areas, local networks, such as local chambers of commerce, are particularly effective forums to engage with small business.

Members said that social media has a wider reach and impact than websites. Traditional media is still effective.

Members suggested including messages about the black economy as part of existing business interactions with government, for example, including messages about the black economy when an incorporated entity completes their annual return with ASIC.

Another suggestion raised was using state and territory government communication channels to engage with industries that are heavily regulated under the state and territories, such as road freight and surveillance.

Members felt that businesses are responding to news about ATO activity and new initiatives. For example, the ATO media release on the taxable payments reporting system (TPRS) protecting \$2.7 billion of revenue received significant interest. Members suggested

messages should be informed by behavioural insight techniques and tested with focus groups.

The Department of Home Affairs outlined the benefits of its Trusted Trader programme, which offers benefits to trading businesses that undergo a supply chain and compliance certification check. Approximately a quarter of trusted traders are small business.

Sharing economy - reporting regime

The Board discussed issues canvassed in the Treasury consultation paper open for submissions until 22 February 2019. The paper responds to a recommendation by the Black Economy Taskforce that sharing economy platforms should be required to report payments made to users to the ATO and other departments, similar to reporting that occurs in more traditional industries.

Members discussed how this was a natural evolution for a maturing market but also who should bear the administrative burden, how to minimise this, data accuracy and how nudge theory could be incorporated into the approach. It was noted that a reporting regime would not be just about compliance but about helping people comply with their tax obligations by pre-populating their tax return with data. The benefits of innovation should be understood, such as how the sharing economy has increased the market reach of the restaurant sector.

Private sector feedback on new and emerging trends

Members focused on how recent announcements and developments had increased awareness of risks in engaging in the black economy and helped cultural change.

Large businesses have shown a lot of interest in the draft Procurement Connected Policy guidelines requiring a satisfactory tax record when for tendering for government contracts over \$4 million. Business were positive about the consultation paper on the sharing economy noting different perspectives of stakeholders and that the paper has increased awareness among businesses.

The recent ATO media on the success of the TPRS has raised awareness of black economy issues and there was a positive reaction to the recent action taken on tax agents not meeting their obligations.

The small business concierge service run by the Small Business Ombudsman could be an effective tool to support small business and resolve disputes more easily. Demand for the service may increase as small business become aware of, and work to comply with new measures to tackle black economy behaviour.

While there are opportunities to work with business to build, increase take up of, and improve technological solutions to support Government initiatives to reduce black economy activity (for example e-invoicing and modernisation of business registers) it is important that professional advisers are across developments.

The Chair commented on the Government's response to the Wood inquiry into illegal gambling.

Implementation Update

government members provided updates on the progress of the cross agency implementation of the recommendations of the Black Economy Taskforce final report:

Treasury advised over half of the recommendations Treasury is responsible for have been completed, have undergone or are undergoing consultation. Treasury released a number of papers for consultation including guidelines on government procurement, the sharing economy and offences.

Treasury has started to consider how to use behavioural insights to communicate to business and the community about the black economy and to reward people for doing the right thing.

The **ATO** summarised its recent actions on tackling black economy behaviour. The mobile strikes teams have visited or spoken to over 5,200 businesses in 14 locations. The ATO is finding fewer cash only businesses and a steady stream of cases for follow up action are being profiled. The ATO is actively considering how to measure ongoing performance and wider and sustained compliance effects from announcing a mobile strike team visit.

Other ATO activities that have received a positive response include speaking to businesses that supply road freight, security, investigation, or IT services to help them prepare to comply with their new taxable payments reporting system (TPRS) obligations and using the Tax Practitioner's Board to remind agents they need to up to date on their obligations.

The ATO is continuing with the Small Business random enquiry program to estimate the tax gap and early findings indicate that there are 4 categories of small businesses:

- 1) Compliant
- 2) Making unintentional mistakes
- 3) Mostly compliant but occasionally operating in the black economy and not reporting all income
- 4) Those intentionally avoiding obligations and operating in the black economy

The ATO is expecting single touch payroll and superannuation reporting to provide much more real time information, which will inhibit phoenix behaviour. The ATO has developed a Digital Cash Flow Kit targeted at professionals and small businesses and is interested to hear feedback from industry associations.

The **Department of Home Affairs** updated the meeting on its continuing law reform and operational action in relation to illicit tobacco, noting its focus on cutting off avenues for diversion of tobacco by organised crime operatives. The Illicit Tobacco Taskforce led by the Australian Border Force was undertaking seven active investigations and considering more.

The Department of Home Affairs, working with the ATO and Treasury, advised it would launch a communications campaign on the new tobacco import measures as part of the Black Economy Tackling Illicit Tobacco package in the lead up to their commencement on 1 July 2019.

The Department of Home Affairs also advised at the meeting that it would review current measures in place to detect counterfeit goods at the border, to ensure these were effective for addressing black economy risks.