



Construction, Forestry, Maritime, Mining and Energy Union
submission into:

**Government Response to the Black Economy
Taskforce Report**

Introduction

1. The Construction, Forestry, Maritime, Mining and Energy Union (**CFMEU**) represents over 120,000 people in a range of industries including construction, mining, forestry, maritime, furniture and building products and power generation. Our membership includes many self-employed people and small business operators, as well as tens of thousands of wage earners / PAYG taxpayers. All of our members have a direct interest in the economic impact of the 'black economy', and measures that might be taken to address associated problems.
2. The CFMEU has previously made a submission, dated August 2017, to the 'Black Economy Taskforce', which focussed on the impact of the 'black economy' on the construction industry (**the CFMEU's August 2017 submission**).
3. The CFMEU's August 2017 submission identified a number of central concerns which contextualise the problems rife within the construction industry which contribute to the 'black economy':
 - a. the use of 'sham contracting' (the practice of disguising an employment relationship as one of principle and independent contractor) is an ongoing, widespread and acute problem in the construction industry;
 - b. abuse of the ABN system is a central feature of the sham contracting problem, including through the use of multiple ABN holders and completely 'inactive' ABNs;
 - c. the use of companies or other entities to disguise the fact that services are being provided by an individual worker in an employee-like fashion allows for reduced or deferred tax liabilities through income-splitting, work-related deductions not available to employees and the retention of income in the entity to take advantage of lower tax rates; and
 - d. deliberate and pre-meditated corporate insolvencies in the construction industry are routinely used to defeat creditors and avoid the remittance of tax.
4. The CFMEU's August 2017 submission made a number of recommendations we believe require urgent and sustained attention from regulators and law-makers in order to address the problems described above.
5. This submission is in response to the Issues Paper issued by Treasury on 15 May 2018. That paper requests feedback on the development of a Procurement Connected Policy (**PCP**) which would require businesses, from 1 July 2019, to provide a Statement of Tax Record from the ATO in order to tender for commonwealth contracts valued at over \$4 million. We comment on this proposal below, however note that the introduction of 'Statements of Tax Record' is a very narrow and limited response to the concerns identified by the Taskforce. Any significant reform must include a broader, inter-agency approach to the underlying features of the black economy. To this end, we repeat the recommendations contained in the CFMEU's August 2017 submission.

A 'satisfactory tax record'

6. For the purposes of government procurement, any consideration of a 'satisfactory tax record' should:
 - a. incorporate consideration of reportable payments details from the taxable payments reporting system (TPRS), introduced by the ATO in the 2012-2013 tax year for the construction industry;
 - b. set appropriate ongoing requirements relating to contractors and sub-contractors engaged further down the supply chain, including those who may not be identifiable at the time of a tender; and
 - c. ensure mechanisms are in place to exclude known phoenix operators, including by screening directorships of new companies where the director has been the subject of an adverse administrator's report following an insolvency event by a previous company.

The TPRS and ensuring integrity down the supply chain

7. The Issues Paper distributed by Treasury suggests that statements from sub-contractors could be obtained at a later time, possibly at the time they are engaged and provided to the head contractor that engaged them. The paper further suggests that this would need to be done in a way that imposes minimum burdens on the business involved, while still improving integrity in the supply chain.
8. Head contractors have a responsibility to ensure that the contractors and sub-contractors engaged by it are operating within the taxation system; this ought to be a key component in any assessment of a satisfactory tax record. Given the breadth of the problems identified in the CFMEU's August 2017 submission, the importance of this responsibility should not be subservient to the concept of minimising burden on business.
9. The TPRS requires businesses in the building and construction industry to report to the ATO payments they make to other businesses, including contractors, for building and construction services. The exchange of data between the ATO and various agencies, including the scrutiny of data received under the TPRS, is a critical component to the identification of businesses operating outside the system.
10. Any business seeking to tender to any commonwealth project - and any contractor or sub-contractor engaged down the supply chain - should be required to demonstrate on an on-going basis, at the end of each tax year, that they have complied with the TPRS.
11. Any assessment of a 'satisfactory tax record', as it applies to a contractor or sub-contractor, should include careful scrutiny of:
 - a. any mismatches in data provided under the TPRS, which may identify contractors who appear to have omitted income from their tax returns;

- b. the validity of indicators such as 'return not necessary' in data provided by a contractor or sub-contractor who is reported to be in receipt of business income; and
 - c. any TPRS data which indicates that a missing or invalid ABN has been reported.
12. If TPRS data indicates any potential non-compliance, there is no reason why this data should not mitigate against an assessment of a 'satisfactory tax record'. Any business that tenders for Commonwealth Projects should take reasonable steps to satisfy itself that it has engaged contractors and sub-contractors who operate lawfully and within the taxation system.
13. Indeed, as we have previously recommended, further improvements can be made by utilising the reporting data from the TPRS to determine the extent to which taxpayers to whom amounts are paid as contractors are in fact deriving all or most of their income from a single source over extended periods. This would make significant inroads into the problem of sham contracting and disguised personal services income.

Exclusion of known Phoenix Operators

14. As recommended in the CFMEU's August 2017 submission, known phoenix operators – and any business for which they act as a director - should be automatically disqualified from Commonwealth government tender lists. This ought to include a mechanism - for the purposes of Statements of Tax Record required by contractors and sub-contractors - to screen directorships of new companies where those directors have been the subject of an adverse administrators report following an insolvency event by a previous company.

Other important considerations

15. The proposed PCP should not be limited to procurement processes involving construction projects valued at over \$4 million. The features of the black economy within the construction industry are not confined to large scale projects; they appear on projects ranging from small household renovations to projects worth billions of dollars. More concerted action is needed to reign in the 'black economy', and government procurement policy should reflect this.
16. Further, any business engaging in the tender process should be required to disclose any prior proceedings which have resulted in a contravention relating to tax evasion, bribery or corruption being made out against a business, a director or a related corporate entity. Such disclosures should automatically result in exclusion from the procurement process.

15 June 2018