



united
voice



UNITED VOICE SUBMISSION

INCREASING THE INTEGRITY OF THE COMMONWEALTH PROCUREMENT PROCESS

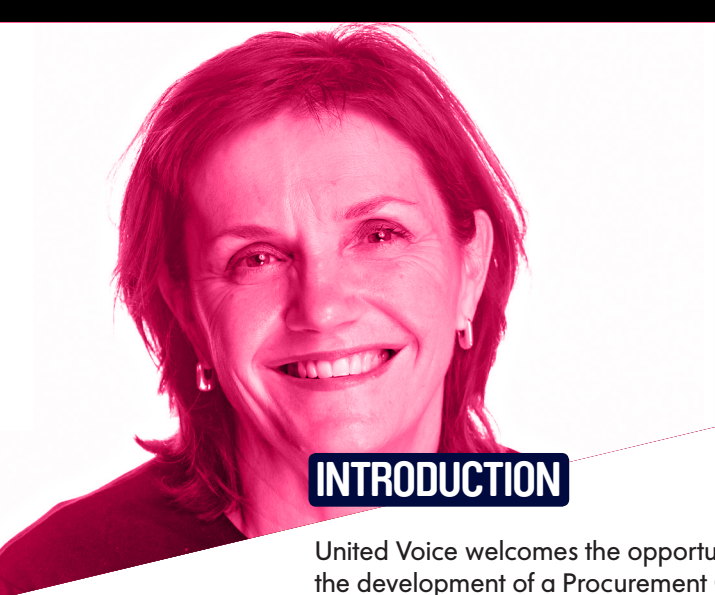
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ABOUT UNITED VOICE

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Members of United Voice work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

United Voice is uniquely placed to offer insights on the pernicious effects of the black economy on the workforce. We represent workers in the industries that bear the highest incidence of black economy tax and employment practices, namely cleaning, security and hospitality.

A quarter of our members work in contracted industries such as cleaning and security, and an increasing number of them are employed in workplaces characterised by high levels of pyramid contracting and sham contracting. Government-owned buildings and sites are no exception.



INTRODUCTION

United Voice welcomes the opportunity to make a submission to The Treasury consultation on the development of a Procurement Connected Policy (PCP) to require businesses to provide a Statement of Tax Record from the Australian Tax Office (ATO) when tendering for Commonwealth contracts valued at over \$4 million (inclusive of GST).¹

Commonwealth agencies procure goods and services valued at around \$56.9 billion annually. Services, which include cleaning and security, account for 57% of this.² Each year, the Australian government awards billions of dollars in contracts to companies that do not comply with Australian tax regulations. This practice has corrosive effects on the Australian economy:

- It uses taxpayer money to undermine Australian industries, giving non-compliant companies a competitive advantage over those who pay their fair share of tax and do not withhold their employees' entitlements.
- It erodes the Australian revenue base.

It is in the strong public interest that where the Government procures goods and services from the private sector, it only strikes contracts with companies that pay their fair share of tax. The Commonwealth must take responsibility for ensuring that public funds do not get distributed to black economy operators who commit tax fraud and wage theft.

The Government's commitment to exclude suppliers from obtaining procurement contracts where they have not fulfilled their tax obligations has precedent in the UK, which updated its procurement policy to this effect in 2014.³

United Voice supports the Government's efforts to reduce the risk of public procurement funds being awarded to companies that do not have a satisfactory tax record. We encourage the Government to be bold in its development of a Procurement Connected Policy (PCP) that excludes non-compliant contractors throughout public procurement supply chains.

Jo-anne Schofield
National Secretary

For more information on this submission, please contact Dr Miriam Thompson via [REDACTED].

1 <https://static.treasury.gov.au/uploads/sites/1/2018/05/Improving-the-integrity-of-the-Commonwealth-procurement-process.pdf>

2 For the 2015-16 financial year. Parliament of The Commonwealth of Australia (2017) Buying into our Future: Review of amendments to the Commonwealth Procurement Rules, p. 5.

3 Action Note 03/14 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278135/PPN_0314_Measures_to_Promote_Tax_Compliance_Feb.pdf



UNITED VOICE RESPONSES TO THE TERMS OF REFERENCE

1. WHAT SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHAT IS A 'SATISFACTORY TAX RECORD'?

United Voice recommends that compliance with Australia's tax legislation and regulation be the benchmark in determining what is a 'satisfactory tax record'.

We are concerned about the lack of ambition in the criteria initially proposed in the Treasury consultation, i.e. in respect of the businesses' history of:

- Registering for their tax obligations
- Lodging tax returns and business activity statements etc. on time
- Tax liabilities being paid on time or as agreed with the ATO under a payment plan

These criteria do not explicitly account for any enforcement activities the ATO has undertaken in relation to a given company, or for other legislation and regulation relating to tax behaviour.

United Voice considers that a satisfactory tax record should be defined as one that does not have any of the following ATO enforcement activities:

- Non-compliance with a direction notice
- Repeated instances of direction notices
- Administrative penalties
- Prosecution
- Conviction

We recommend that any instance of non-payment or underpayment of employee wages and entitlements disqualify an entity from being considered to have a satisfactory tax record.

We also recommend that a satisfactory tax record should be determined by compliance with the following:

- The ATO's Tax Transparency Code (TTC) for companies with an aggregate annual income over \$100 million
- Tier 1 Australian Accounting Standards

Another key measure used to determine a satisfactory tax record should consist in the satisfactoriness of tax behaviour throughout a company's own supply chain. Evidence of systemic black economy activity of a company's sub-contractor(s) should not result in a tax record being deemed satisfactory.

Ultimately, we also consider that compliance with the tax laws of other jurisdictions should inform the appraisal of a company's tax record as being satisfactory. In the first instance, a conviction for a serious tax offence in a comparable foreign jurisdiction (e.g. the UK, the US, Canada, New Zealand) should not result in a company being determined to have a satisfactory tax record.



2. WHAT COULD OBJECTIVELY BE CONSIDERED TO BE A 'SATISFACTORY' TAX RECORD AND AN 'UNSATISFACTORY' TAX RECORD?

SATISFACTORY

- Compliance with tax legislation and regulation, including SuperStream, Single Touch Payroll, and the Taxable Payment Reporting System (TPRS) (for cleaning and security contracts).

UNSATISFACTORY

- Non-compliance with a Direction Notice
- Repeated instances of Direction Notices
- Having received a Director Penalty Notice
- Having received a Garnishee Notice
- Administrative penalties
- Prosecution
- Conviction
- Having been identified by the ATO as not complying with SuperStream obligations
- Having been identified as not complying with Single Touch Payroll requirements
- Having been identified as not complying with the Taxable Payment Reporting System (cleaning and security industries)

3. WHAT THINGS SHOULD BE TAKEN INTO ACCOUNT IF THE TAX HISTORY IS NOT PERFECT BUT SHOULD NOT PREVENT A SATISFACTORY TAX RECORD STATEMENT BEING ISSUED?

As a general principle, United Voice does not support companies with a less than perfect tax history being awarded public procurement funds.

At a minimum, we would consider that for the purposes of the issuance of a Statement of Tax Record, a company and its directors with a less than perfect tax record would need to demonstrate transparency around previous non-compliance, repayment of all taxes and employee entitlements from previous incursions, and evidence of proactive engagement with the ATO and the relevant union to ensure that all tax and employee liabilities are being met.



4. WHAT LENGTH OF TIME SHOULD BE TAKEN INTO ACCOUNT IN THE STATEMENT OF TAX RECORD?

We recommend the Statement of Tax Record cover the past five years.

5. SHOULD LARGE BUSINESSES WITH A TURNOVER OF \$100 MILLION OR MORE BE REQUIRED TO SHOW EVIDENCE THAT THEY HAVE ADOPTED THE TAX TRANSPARENCY CODE?

Yes, as recommended by the Black Economy Taskforce's final report.

6. WHAT SHOULD BE THE APPROACH FOR NEW AND INTERNATIONAL BUSINESSES?

New businesses are not always new, and can actually be the product of phoenix activity – “the evasion of tax and other liabilities, such as employee entitlements, through the deliberate, systematic and sometimes cyclic liquidation of related corporate trading entities.” Phoenix activity typically involves non-payment of PAYG group tax, state payroll tax, superannuation contributions, long service leave contributions and workers' compensation premiums.

In order to ensure the effectiveness of the Treasury's proposed PCP in the context of significant phoenix activity in the cleaning and security industries, United Voice proposes that the Statement of Tax Record include an assessment of the tax record of the company's directors. The implementation of the Government's proposed Director Identification Number (DIN) should assist in this process. The Statement of Tax Record for a company tendering for a Government contract should account for any relevant compliance issues during the relevant period for any companies with which these directors have been associated.

The satisfactoriness of an international business's tax record should consider prosecution and conviction for serious tax avoidance in other comparable jurisdictions, for instance OECD member countries.

7. HOW SHOULD THE STATEMENT OF TAX RECORD BE OBTAINED FROM THE ATO?

We make no submission on this matter.



8. IT IS ANTICIPATED THAT THE STATEMENT WILL TAKE BETWEEN 2–4 DAYS TO PRODUCE – HOW WILL THIS AFFECT THE PROCUREMENT PROCESS?

We make no submission on this matter.

9. THE STATEMENT WILL INCLUDE AN EXPIRY DATE. HOW LONG SHOULD THE STATEMENT BE VALID FOR?

Two years is a reasonable period for a statement to be valid. It ensures that businesses with a history of non-compliance and who reform their tax behaviour are not excluded from public procurement indefinitely. And it ensures that currently non-compliant businesses are excluded from public procurement opportunities in a timely manner.

10. HOW SHOULD BUSINESSES BE ABLE TO MAKE ENQUIRIES ABOUT THEIR STATEMENTS?

We make no submission on this matter.

11. WHAT ARRANGEMENTS SHOULD APPLY TO SUB-CONTRACTORS?

Sub-contracting must not be able to be used by companies to undermine this PCP. Given that black economy tax evasion and worker exploitation occurs particularly in sub-contracting arrangements in the cleaning and security industries, United Voice strongly recommends that this PCP should capture the tax behaviour of companies that sub-contract from companies tendering for public procurement funds.

If the value of the sub-contracting work being undertaken meets the threshold for the Statement of Tax Record PCP (\$4 million), the sub-contractor should be required to obtain their own Statement of Tax Record demonstrating a satisfactory tax record. The sub-contractor's Statement of Tax Record should be submitted to both the government procurement officer and the lead contractor.

In order to ensure satisfactory tax behaviour throughout the supply chain of public procurement, companies' Statements of Tax Record should include serious incidences of tax fraud by any sub-contractors engaged during the past five years. This will compel companies that receive public funds to assume responsibility for their own supply chains. In addition, tax avoidance that occurs on a Government contract by a sub-contractor that is not directly contracted to the Government should appear on the Statement of Tax Record of the lead contractor.



12. WOULD THE INFORMATION PROVIDED IN A STATEMENT OF TAX RECORD BE USEFUL TO BUSINESSES TAKING ON A SUB-CONTRACTOR?

Yes – transparency is the first step towards achieving good tax behaviour throughout public procurement supply chains.

13. WHAT INFORMATION SHOULD BE CONTAINED ON THE STATEMENT REGARDING THE TAX HISTORY OF THE BUSINESS?

The Statement of Tax Record should contain information about types of tax (including Superannuation) breaches, number of tax (including Superannuation) breaches, and ATO enforcement activities.

The kind of information contained on a Statement of Tax Record should be updated as new legislation and regulation pertaining to tax compliance comes into effect.

14. WHAT ARE THE LIMITATIONS ON USE OF THE STATEMENT THAT SHOULD TO BE NOTED ON THE STATEMENT?

The statement should contain information about the period and scope of the assessment of the company's tax record. It should assist, rather than replace, procurement officers' due diligence in assessing a company's compliance with tax legislation and regulation. Procurement officers' exclusion of companies engaged directly or accessorially in worker underpayment, sham contracting and phoenix activity cannot be achieved solely through consideration of a Statement of satisfactory Tax Record.