

14 March 2019

Black Economy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Our ref: KS:GA

By email: blackeconomy@treasury.gov.au

Dear Madam/Sir

Tackling the black economy, a sharing economy reporting regime, a consultation paper in response to the Black Economy taskforce Final Report

Thank you for the opportunity to provide comments on 'A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final Report' (**the Consultation paper**). Queensland Law Society appreciates the opportunity to provide a submission on this issue.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Summary of key issues

The Black Economy Taskforce (**the Taskforce**) released their final report in October 2017 (**the Taskforce report**) and described the 'risk that people selling their services through sharing platforms are not paying the right amount of tax as there is no reporting and withholding and many users may not be aware of or understand their obligations'.¹

¹ Black Economy Taskforce Final Report, October 2017, p 138.

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In reviewing the consultation paper, the key issues which we have identified for further discussion relate to:

1. The broad definition of 'black economy';
2. Concerns about the imposition and potential cost of additional regulatory compliance for private entities; and
3. Privacy issues with respect to collection and sharing of information between other unrelated departments.

The definition

QLS supports the creation of 'good law' which is evidence-based and not reactionary. The Treasury definition of 'black economy' *'refers to people who operate entirely outside the tax and regulatory system or who are known to the authorities but do not correctly report their tax obligations.'* The proposed reporting regime is directed to 'sellers (participants selling goods and services via sharing economy platforms)' who 'may not be paying the right amount of tax'.² In our view, this goes beyond the scope of illegal activities to which the policy intention was intended to apply.

Given the breadth of the base definition, some form of materiality threshold needs to be applied to ensure the initiative does not descend into a Government data collection exercise rather than being directed towards a beneficial community focused policy outcome.

We note for example that there is no 'universally accepted definition of the sharing economy, and understanding its scope is a key objective of this consultation process'.³ We submit that this definition is necessary to provide clarity surrounding the entities or matters which are to be specifically targeted (and why) and to determine the appropriate reporting regime.

Privacy

In seeking to require sharing economy providers to report payments made to users to the ATO, the issue of privacy is significant. The TaskForce report proposed that information collected by the 'Operators of sharing economy platforms...should also be available to other agencies such as DSS' [Department of Social Services].⁴ However QLS submits that the use of any data should be limited to the disclosed purpose.

² Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 2.

³ Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 3.

⁴ Black Economy Taskforce Final Report, October 2017, p 136.

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The issues with the definition outlined above create a risk of reporting of large amounts of private and unnecessary data, of sellers and potentially consumers. The consultation paper argues that 'existing reporting regimes such as the taxable payment reporting system (TPRS), Single Touch Payroll (STP), and the general information gathering powers of the Commissioner under section 353-10 of Schedule 1 to the TAA 1953, are unlikely to be suitable models for the reporting of robust data on sharing economy activities'.⁵ However, it may be that the relevant threshold requirements for these regimes, such as contractors who hold ABNs, assists in maintaining the balance between 'fostering growth' of start-ups and new businesses and regulatory compliance to meet taxation obligations.

Considering a 'business' or materiality threshold

We agree with the positions asserted in the consultation paper that any reporting regime for sharing platforms 'should impose the least amount of costs on targeted entities' and 'should not discriminate against platforms of various sizes, locations, or different business models...The reporting regime should also result in a level playing field when compared to traditional businesses that have existing reporting obligations'.⁶

There is a need to limit any unnecessary burden on the private sector by considering thresholds as to when a seller is a 'business' and reporting requirements are activated. This may be a 'materiality threshold' of quarterly earnings which triggers the platform provider to report the seller who must then satisfy the ATO as to whether the activities undertaken are properly characterised as a business or a hobby. In this regard, it is noted that the Taskforce report 'considered but did not recommend' a 'Bright-line test for business-hobby distinction' for sharing platform providers.⁷ However it appears that the prevailing view is that most platform activities are business activities and 'give rise to taxable income'.⁸

If this is the case then it would seem to apply that the relevant income tax thresholds should also be applicable to reporting obligations in this space. QLS supports the role of greater community education in having an awareness of and complying with ATO reporting obligations. In this regard, we note the success of 'developing education and awareness campaigns' in the ride sharing and accommodation platforms identified in the consultation paper.⁹

⁵ Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 8.

⁶ Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 7.

⁷ Black Economy Taskforce Final Report, October 2017, p 138.

⁸ Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 11.

⁹ Tackling the black economy, A sharing economy reporting regime, A consultation paper in response to the Black Economy Taskforce Final report, January 2019, p 3.

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The importance of community understanding and awareness also necessitates the need for transitional periods if new reporting regimes are implemented to allow businesses to meet additional obligations and to exit platforms if required.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kerryn Sampson by phone on (07) 3842 5851 or by email to k.sampson@qls.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Potts', with a long horizontal flourish extending to the right.

Bill Potts
President