

BLACK ECONOMY TASKFORCE: ADDITIONAL POLICY IDEAS

Set out below are additional policy ideas which have been developed since the Interim Report was completed. They draw on views put to us in our recent consultations, including the national road show conducted in June. Many ideas are new, but others pick up (and further develop) themes canvassed in the Interim Report. We are interested in feedback on these, positive and negative. Are the proposals practicable? Would they entail costs and difficulties we may not be aware of? Are they inconsistent with existing policy and regulatory settings? We emphasise that these ideas are not formal recommendations.

HARD WIRING GOVERNMENT

1. *Individual identity*

In a world where tax, welfare, immigration and commercial fraud is made easier by the use of false identities (there are 150 million identities in various databases in Australia) a more robust, reliable and efficient identity system is urgently needed. Our Interim Report noted that the Australian Business Number (ABN) system should be the backbone of business registration, but argued it needs strengthening, rationalisation and modernisation. But behind every commercial entity (and straw-man director) is an individual or group of people. In light of our subsequent consultations, including with law enforcement leaders, it is clear the question of individual identity needs to be revisited. This is as much about the black economy as it is national security. While privacy concerns should always be paramount, new and emerging technologies may offer a way forward.

A simple biometric marker is a possible solution, but there are others. A question is whether identity information would be held by each individual or centrally. In the non-government arena, biometrics could be used on payment cards or non-biometric personal identifiers might be developed. It is worth pointing out that our digital interactions with others can also be a tool in verifying individual identities and preventing identity fraud. These establish a particular virtual footprint (circle of regular contacts), which can be used to protect against identity theft.

We are interested in views on a national individual identity system. We are aware of proposals for a company director ID number. In our view, any initiative in this area should be consistent with (rather than adding another layer to) a broader community ID scheme.

2. *Know Your Client (KYC) Integrity*

We have been told that criminals and others easily satisfy current Know Your Client (KYC) tests using false documents. Some claim drivers' licences are a particular vulnerability in this regard. We are

interested in ideas on how these tests can be strengthened, including the possibility of better linking them to birth records and upgrading photo IDs they rely on.

3. *ABN reform: the Australian Business Licence*

Perhaps the strongest single message that we have received in our consultations is that ABNs are not valued by holders. They too often view them as something they own (and can use as they wish) rather than as a licence which carries both rights and responsibilities. A second criticism is that ABN holders are not required to know what running a business entails, including the tax and regulatory obligations they must comply with. Furthermore, in the absence of proper identity checks, there are many fraudulent ABN holders (including those on tourist or education visas who may not be entitled to use them). It is important, therefore, to clean up the existing ASIC register (which holds ABNs).

In light of these observations, we would welcome views on the following: (a) the ABN should be renamed the Australian Business Licence (ABL), (b) that while obtaining a 'provisional' ABL should be easy to do, the holder would have to complete a simple business literacy test (say, within 6 months) for this to convert into a full licence, and (c) access to ABLs should be barred for people with student, tourist and other visas.

Provisional ABL holders could prepare for the test in a range of ways, including web-based modules and privately-run courses. Under a possible strict liability offence regime (see below), ABL holders could have licences suspended (on a sliding scale, depending on the offence) for a period or permanently revoked. People with suspended licences would be required to periodically report to the ATO (to show what they are doing to become compliant) to ensure they do not simply go underground.

4. *ABN reform: fit and proper person test*

We are interested in stakeholder views on additional ABN reform ideas. Should, for example, there be a requirement that ABN holders be fit and proper persons, meeting the same requirements that apply to those seeking to be superannuation fund trustees? If so, how do we make sure such a requirement does not act as a barrier to emerging entrepreneurs? One option might be to only apply the test to directors of companies above a certain size. We are interested in views on the nature of any test. Involvement in previous phoenixing exercises, for example, should bar anyone from being a director. An alternative to a test would be to add to the existing ASIC criteria which disqualify people from being directors.

5. *ABN reform: displaying ABNs*

Should all businesses be required to display a valid ABN? We note that the value of this would depend on steps taken to improve the integrity of the ABN system, including allowing far easier real time verification of these by customers and other businesses.

6. *TPRS extension to government and other payments*

As our labour market changes, it is important that our reporting systems keep pace. In recent decades, we have witnessed an increase in contracting and other forms of non-traditional employment. Sharing economy platforms are making it easier for people to freelance, bypassing traditional intermediaries. The Taxable Payment Reporting System (TPRS), which requires contractor

payments to be reported in some sectors, could be seen as an underutilised reporting tool for our more fragmented, non-traditional labour market.

In our Interim Report we said we would consult on the idea of expanding the TPRS further. We note that a similar scheme in Canada includes payments made by government bodies to contractors. The TPRS was initially intended as a business-to-business reporting arrangement. From 1 July 2017 certain Government entities at the federal, state and local levels need to report to the ATO on the payments they make to businesses for providing services. There are a range of government entities (for example, schools, sporting facilities and art galleries) that are at least partially excluded from the requirement to report. We are interested in views on extending these third party reporting obligations further to all government entities including all Commonwealth Government payments to contractors and applying this also at the state and local level?

We also welcome views on extending the TPRS to other private sector activities. While the TPRS applies to the building and construction sector, owner-builders and home improvement activities are excluded. (We appreciate that its expansion to these activities will involve challenges. We understand, for example, that for many building projects, final instalments are settled in cash. We would be interested in ideas on how this might be countered.) In the 2017-18 Budget, the Government announced that couriers and cleaners would be included in the TPRS. Are there other sectors, for example security, which should also be covered?

We note also that the Inspector-General of Taxation has recommended that the TPRS be applied to all contractor payments in the economy. As mentioned in our Interim Report, a case can be made for the TPRS to apply to sharing economy operators, both on-shore and off-shore. This could be a condition of them being able to operate in Australia (we appreciate that this will require cooperation with state authorities who typically issue licences to them). Under this approach, sharing economy firms could not avoid this obligation by arguing they were merely 'tech platforms'. If the required reporting was not forthcoming, they would be closed down.

7. An alternative to the TPRS: payroll tax reporting

Firms are required to report payments to contractors when filling out payroll tax returns. An alternative to expanding the TPRS might be for this information to be provided to the ATO. While it is true that states define contractors (for payroll tax purposes) in different ways and not all contractor payments are subject to payroll tax, the reporting might nevertheless have some value.

8. A new class of strict liability offences

It is clear that there is a gap in the current tax offence regime. At one end of the spectrum, serious offences like tax fraud exist. At the other, there are a range of minimal offences, including making false and misleading statements. What is lacking, perhaps, is a set of mid-range, black economy-focussed offences. These could take the form of strict liability violations, as we have for traffic infringements or littering. Graduated sanctions could be applied depending on the nature of the violation, with significant penalties set down for offences like phoenixing or ignoring any cash payment limit that might be introduced (in our Interim Report, we canvassed a \$10,000 cash limit). Contractors who do not provide (or misquote) ABNs, for example, could be warned in the first instance, but risk having their ABN suspended or revoked entirely for repeat offences.

9. *A specialist tax tribunal*

A system of specialist tax tribunals (either stand alone or using the federal circuit court) could be a valuable addition to our enforcement armoury. It would potentially improve both the timeliness and quality of decisions, allowing for more prosecutions to be pursued and sending a strong message to the broader community that this behaviour would not be tolerated. The tribunals would also complement a new offence regime, which could be expected to result in an increased volume of cases. Research shows that if there is a risk of conviction (as opposed to financial sanctions), people are less likely to take compliance risks. Related to this point is the notion that the more visible enforcement actions are, the greater their effect on behaviour will be.

10. *Tax privacy provisions*

In some instances, tax privacy provisions prevent reasonable sharing of information between the ATO and other departments. If, for example, some sharing economy operators report contractor payments to the ATO, this information should be able to be shared with the Department of Social Services to identify cases of welfare fraud. We appreciate that taxpayer privacy needs to be protected, but welcome views on whether the right balance is currently being struck.

11. *Reverse onus of proof for some offences*

Should consideration be given to reversing the onus of proof for a small number of serious offences? For example, when someone is caught seeking to smuggle a large amount of cash out of the country, should they be required to demonstrate that it was legally earned? Should the same requirement be applied to those with unexplained wealth (personal asset holdings which bear no relationship to their income)? What other offences might fall into this category? When the onus of proof is reversed, the authorities are able to act more quickly (for example, freezing bank accounts) when suspicious behaviour is detected.

12. *Using encrypted phones*

We understand that most criminals use encrypted mobile phones (and apps) to avoid monitoring by the authorities. Should possession of these phones be made an offence, regardless of what use has been made of them? In effect, they would be treated as contraband. We are aware that the authorities are looking at alternative approaches, including strengthening search warrant powers.

13. *Working across borders*

We have been told that 70 per cent of Australia's criminal fraternity are either offshore or have very strong links offshore. Our law enforcement authorities work closely with their foreign counterparts (on national security, immigration and some serious criminal fronts), but do particular black economy risks warrant an expansion of this into new areas?

From our consultations, gaps have been identified in the following three areas.

- a) Cash. We understand that there is no requirement to advise other countries' border authorities of large cash bundles seized from people leaving the country. Two-way exchange of this information could bring significant law enforcement benefits.

- b) Beneficial ownership. This is another area where international cooperation is lacking. Under current arrangements, Australian authorities have limited scope to establish beneficial owners who are based overseas.
- c) Payrolls. We have been told that some businesses split their payrolls into two: an Australian one which pays the minimum wage and an undeclared one held offshore which transfers funds into foreign accounts. While we do not discount the difficulty of obtaining this information, there may be scope for greater cross-border cooperation in this area.

Where international cooperation is not feasible, there may be other enforcement options open to the authorities. Proceeds of crime laws, for example, may be used to seize the Australian assets of overseas 'kingpins'.

14. *Cooperation with states and territories*

Our Interim Report emphasised the importance of working with the states and territories. Licencing, fair trading and education were identified as possible priorities in this regard, as was the need for greater policy and regulatory harmonisation. In some areas, state governments have set a good enforcement example. South Australia's workers compensation agency (*ReturnToWorkSA*) has been praised for cracking down on labour hire operators, for example.

We welcome stakeholder views on specific, cross-jurisdictional initiatives which would be of value to them. Are there innovative ways to lower small business compliance burdens, for example by reducing or eliminating regulatory duplication (which the NSW Small Business Commissioner and some Sydney Councils are working on)? This might include, but not be limited to, rationalising reporting requirements. Other possible initiatives might focus on award simplification or harmonisation of payroll (and other) tax obligations, although we are conscious that progress in these areas will not be easy. Stakeholders have strongly supported the idea of a 'one stop shop' for small business registration, licencing and reporting obligations.

15. *Enforcement/Visible action*

Stakeholders have told us that policies and regulatory requirements are not properly enforced in some areas. Immigration (visa compliance) and workplace relations have been highlighted in this regard, although other examples have been cited. We welcome other stakeholder perspectives on enforcement, including suggestions for improvement. A strong message from our national consultations has been the need for a more visible enforcement presence. Regional stakeholders have called for more ATO shopfronts in their communities. Others have highlighted the need for better publicised enforcement action, including raids, in problematic localities and industries. The application of the TPRS (or GST) to parts of the building and construction sector, for example, has generated substantial additional revenues for the government. Stakeholders in this sector have told us this success story has not been publicised.

An important point should be made about enforcement. Given the links between certain criminal manifestations of the black economy and terrorism financing, successful enforcement action in the former area will have payoffs for the latter.

16. *Whistle-blower hotline/incentives*

In our Interim Report, we argued that existing agency hotlines should be better targeted, relaunched and rebranded. We referred to a multiagency hotline as a possible option. In light of our recent consultations, we want to explore this in more detail. The strong message from stakeholders and the public is that current whistle-blower services are ineffective, in part because they do not offer confidentiality. Some are offered only in English. Secrecy provisions can prevent reporting to whistle-blowers on follow-up actions taken. We note the Joint Parliamentary Committee on Corporations and Financial Services inquiry on whistle-blower protections which was due to report on 30 June.

We are interested in views on the idea of establishing a single point of contact for serious black economy-related allegations (not just tax related, but including immigration and welfare fraud, suspected phoenixing, links to organised crime, illegal tobacco and gambling). To be effective, such a hotline would: (a) need to triage incoming calls (to focus on serious cases), (b) report publicly on follow-up actions taken (for example, by publishing numbers of cases pursued, convictions secured and monies recovered) and (c) be linked to a more agile, multi-agency response capability (see below). A Black Economy Ombudsman might be appointed to ensure complaints are properly responded to.

We are also interested in views on whether stronger incentives should be offered to whistle-blowers (including compensation for lifetime earnings lost or a share of monies recovered).

17. *ATO industry and union partnerships*

While the ATO works with some industry associations, a number of industry groups have told us that this could usefully be expanded. Industry associations know more about potential misconduct or non-compliance with tax laws in their sector than anyone else. They are generally well placed to educate their members and encourage better compliance in their sector. There will be other groups, for example, business brokers and regional bankers, who can provide insights for the ATO. Unions also have an incentive to ensure black economy activity is stamped out. If done well, these third party partnerships would be a force multiplier for ATO auditing, education and general taxpayer engagement. We welcome views on this idea, including specific suggestions for its design and implementation. Cautionary observations would also be appreciated.

18. *Tax agent behaviour*

Greater attention needs to be paid to sanctioning unethical agents and the role that the Tax Practitioners' Board should be playing in this. We welcome suggestions how best this can be done, including legislative and other factors which may need to be addressed (for example, increasing the onus of proof on agents suspected of acting illegally or unethically). There may be a role for a public campaign in support of these measures. The message to the professional accounting bodies would be that it is no longer acceptable for tax accountants to cast a blind eye on their clients' tax affairs or help them break the law.

19. *Name and shame*

We are interested in views on returning to the practice of naming and shaming proven tax evaders. We would expect the risk of exposure (in addition to fines and other penalties) to act as a deterrent.

The criteria for public listing of offenders would need to be carefully considered. If the bar is set too low, it is likely to be viewed as excessive and unfair. If, on the other hand, it is set too high, it may fail as a genuine deterrent.

20. *Corrupt officials*

Some forms of black economy activity, both in Australia and overseas, are facilitated by corrupt public officials. We are interested in views on this question. Are there particular public corruption hot spots? How effective are current anti-corruption efforts? How might these be strengthened or added to?

21. *Analytics/Smart technologies*

In our Interim Report we draw attention to the role that emerging analytic tools ('smart technologies') can play in combatting the black economy. The ATO and other tax authorities are making increasing use of these tools, which can be both more efficient and effective than traditional labour intensive audit techniques. We cited Germany's use of internet scraping technology to identify suspicious 'patterns' of on-line activity.

The analysis of data sets, big data tools, predictive modelling and other functions are being revolutionised with the aid of specialised algorithms. Are there other tools which we should be looking at in this regard? We are conscious that leading edge techniques employed in commercial or research settings might not have been adopted within the public sector.

We suspect that existing ATO and other data and technology platforms can be better leveraged. We appreciate, however, that analytical tools will only be as good as the raw data they rely on ('garbage in, garbage out'). For that reason, reforms in other areas, including basic identity (business or individual) and reporting, are also critical. Better access to banking industry databases (for example, on credit risks) will also help the ATO.

22. *A national criminal database*

Our Interim Report argued strongly for better data sharing between Commonwealth departments and across different levels of government. We understand that while law enforcement and intelligence authorities are working more closely than ever, we lack a single national criminal database. Constructing such a database will inevitably entail some cost and take time, but if done well this would be an invaluable resource. While agencies possess a great deal of relevant data, it is often held in different silos so it cannot be accessed in real time. We welcome views on this idea.

23. *Use of proxies to value businesses and transactions*

When investigating transfer pricing cases, tax authorities make use of proxies to estimate the size of complex, hard-to-value transactions. This might include bonuses paid to those who facilitate, advise on or execute such transactions. Is there scope for similar techniques to be applied in black economy cases? For example, a \$1 million bonus payment to a phoenixing adviser could be used to impute an assumed value (evaded taxes and employee entitlements) of the phoenixing operation (applying a 10 per cent bonus rate, the latter would be deemed to be \$10 million). An alternative proxy would be the value of personal assets purchased by phoenixers. This may require a lower value threshold for action to be taken in cases of unexplained wealth.

MODERNISING THE PAYMENT SYSTEM

24. *Requiring non-cash payment of wages*

In our Interim Report, we raised the idea of not allowing deductions to be claimed for undocumented wages (no PAYG withholding payments, no payment summaries issues or no superannuation contributions reported). We are interested in views on taking this one step further by requiring all wages to be paid electronically. We note that the law already requires superannuation contributions to be paid this way. Under this approach no tax deductions could be claimed for cash wages, regardless of whether they were documented or not. In assessing such a requirement, any estimated integrity benefit would have to be weighed against costs imposed on some businesses and employees (for example, those without ready access to e-payment facilities). Action against cash wages might also, in the absence of other measures (which would bar cash for contractor payments, for example), encourage sham contracting. Complementary steps addressing the latter would be necessary.

25. *The \$100 note*

While the use of cash is declining, it remains and will continue to be an important part of our payment system. Cash, in contrast to its electronic alternatives, offers anonymity for those who use it. This is exploited by criminals. Attention has focussed on high denomination notes in this regard. According to the RBA's latest figures, the \$100 accounts for 46 per cent (in value terms) of all local currency on issue. We have 335 million of these in circulation, which amounts to approximately 14 for every Australian. Our knowledge of how these notes are being used is limited, prompting some to highlight the need to gain a better understanding of where they are.

Would there be merit in taking some kind of action targeting the \$100 note? While an outright ban is unlikely to be effective, an organised changeover (requiring all holders of \$100 notes to exchange them for new ones) might be considered. A possible option might be to use tracking technology for a subset of these notes. The argument against a \$100 note focus is that, according to RBA liaison with law enforcement authorities, \$50 notes are more likely to be used by criminals. We recognise that action targeting a single denomination, regardless of the value, would prompt greater use of substitute means of payment. In the area of currency reform, compliance burdens for the community and other policy considerations would have to be taken into account.

26. *Non-cash wagering*

Clubs and casinos are required by their governing legislation to accept and payout bets in cash. They have told us that this is expensive (given associated security expenses), inconvenient and potentially unsafe for their customers and has no problem gambling justification. Should clubs and casinos be allowed to deal in electronic payments as well as cash? Electronic wallets could be issued to customers, providing them with greater security but at the same time including bet limits and other controls.

27. *PayPass and PayWave ('Tap-and-go') defaults*

If cash use is to continue to decline, non-cash alternative means of payment must be as inexpensive and accessible as possible. Tap-and-go is an attractive and convenient option for many consumers,

but for some cardholders it defaults to credit accounts (technically, the relevant electronic chip is only linked to credit). Credit, of course, is a more expensive source of funds for them than either savings or cheque accounts. Once the technology and supporting infrastructure are sufficiently advanced, would there be merit in providing consumers with a choice of tap-and-go options (debit card or credit card)? Are there drawbacks to this option we should be aware of?

28. *Broadening the anti-money laundering reporting regime*

Australia's current anti-money laundering (AML) regime applies to high-risk sectors of the economy, including business that provide financial, gambling, remittance and bullion services. There is evidence that laundering is increasingly taking place in other, currently-unregulated sectors. The question is whether our AML regime should be broadened to include these, acknowledging the compliance burden this would entail. Lawyers and real estate agents acting as trustees, dealers in used and vintage cars and even some private schools have been identified as possible candidates in this regard, but other activities could be considered. The Attorney-General's Department and AUSTRAC are currently conducting a cost benefit analysis of some of these options. In our Interim Report, we canvassed the idea of an economy-wide \$10,000 cash payment limit. This might be an alternative to broadening the sectoral scope of the AML reporting regime.

29. *Encouraging no-frills debit cards: an Australian Octopus card*

A number of overseas jurisdictions (including Hong Kong, with its Octopus Card) have introduced low-cost debit cards for small, everyday transactions. Debit card use has been growing strongly in Australia and low-cost, no-frills cards are already available for consumers. We are interested in views on whether further steps, if any, are needed to improve access to these cards.

INCENTIVES AND DETERRENTS

30. *Government procurement: A good tax record*

In our Interim Report, we recommended that Commonwealth Government procurement should be limited to firms with a good tax record. The Government has asked the Taskforce and the Department of Finance to develop a proposal for consideration later this year. We welcome views on how best to define a good tax record. The following might be included: (a) no tax evasion or bribery conviction (not including decisions under appeal), (b) tax reporting and payment obligations have been fulfilled on time (over the past five years), (c) no directors found to have been involved with phoenix operations, and (d) for businesses with a turnover above \$100m, disclosure of tax information under the Tax Transparency Code. We recognise that newly-established firms will not be able to point to a tax track record (positive or otherwise). Care will need to be taken to ensure they are not disadvantaged. Any definition of a good tax record should not exclude firms in genuine dispute with the ATO, but who otherwise meet the criteria.

31. *Supply chain integrity: a certification framework*

Supply chain risks are a major and growing problem. Commercial pressure to cut costs (such as from big supermarket chains, car insurance companies and government procurement officers) is strong in our low-margin economic environment. While purchasers can often vouch for their immediate

suppliers, they cannot do the same with those downstream. The latter can be involved in money laundering, exploitation, immigration fraud and organised crime. As supply chains lengthen, these integrity risks escalate, threatening major reputational damage for firms further up the chain.

Ethical sourcing is emerging as a major commercial priority overseas, where firms engage specialist supply chain auditors. In our Interim Report, we suggested stronger accountabilities for procurement officers and public reporting of serious supply chain abuses. We now favour taking more ambitious action. In particular, we are interested in views on the idea of a national framework which sets minimum standards for ethical sourcing. Industry-developed certification schemes would have to comply with these. In the future, block chain and other forms of distributed ledger could be used as efficient supply chain integrity tools (see below).

32. Linking payment terms initiatives to responsible behaviour

The Business Council of Australia (BCA) is developing national voluntary industry code to speed up payments to small business suppliers. The BCA is working with small business groups and the Small Business and Family Enterprise Ombudsman on this, which may obviate the need for a costly regulatory approach to the payment term problem. This code could be broadened to require firms (both purchasers and suppliers) to engage in responsible supply chain behaviour (for example, quoting verified ABNs, a commitment to use industry-verified suppliers and not dealing with firms with a poor tax payment record).

33. Trade discounts

We have been told that tradespeople use discount cards to purchase tools and furnish proof for deduction claims, but that part of the income earned with them is never declared. These cards could be a valuable resource for the tax authorities (looking for mismatches between deductions and income), but also play a role in ethical supply chain behaviour (for example, limiting access to them to tradespeople with verified ABNs). Steps should also be taken to prevent abuse of these cards, if it is occurring.

34. Supply chain integrity: distributed ledger pilots

Distributed ledger (and block chain) technology remains at a formative stage. It will be some years before its full commercial potential will be understood, much less realised. Already though, cutting edge firms are developing possible applications in the areas of finance, supply chain management and logistics. For supply chain management, for example, a distributed ledger solution could provide both integrity and efficiency benefits. All supply chain participants would have to satisfy identity checks. And payment and transfer protocols (mandating what payments down the supply chain can be used for) could be built into the ledger's operating rules. Once these protections are in place, transactions (using virtual tokens, convertible into currency) could take place rapidly and seamlessly. In other words, distributed ledger technology could provide a secure, yet efficient 'commercial eco-system' for firms and financial institutions. We think in the next few years, a major procurement actor might be in a position to pilot such a system.

35. *Alerting firms to possible supply chain misconduct*

Criminal authorities are sometimes unable to alert businesses about possible misconduct or illegality in their extended supply chains. They have to clear a high evidentiary threshold before they can do so. The idea would be to lower this threshold in some cases, allowing purchasers further up the supply chain to be alerted to possible problems.

36. *Vendor reporting requirements and incentives*

Home renovations and repair work (for example, plumbing and electrical services) are perennial black economy hot spots. People selling their homes are required to attest that all rates and taxes have been paid on the property. If this is not the case, the selling price will be lower. A possible idea would be to require (undocumented) cash-paid renovations to be included in these disclosures. While enforcing this requirement will be difficult, it could have a positive behavioural effect.

We welcome other suggested incentives for homeowners to avoid cash payments. One idea suggested to us is a capped tax deduction for renovations backed by a valid receipt and ABN. Another is that homeowners be required to report renovation payments to the ATO, including them in the scope of the TPRS. Local governments, who provide permits for renovations, could help enforce any reporting regime.

37. *Employee deterrents*

We have been told that workers' compensation payouts are not linked to the amount of income reported for tax. If workers' compensation payouts were calculated based on income reported for tax purposes, that could act as a disincentive for employees to ask for, and accept, cash in hand wages. We welcome views on this, together with other possible employee deterrents. It is important to bear in mind, however, that in many cases it is the employer, not the employee, who insists on underpaying (through sham contracting) wages. Deterrents should not have the effect of penalising employees twice.

38. *Minimum tax assessments for high risk businesses*

In some other jurisdictions, high risk businesses may be subject to 'rule of thumb' tax assessments. These set a floor under the tax they pay. We understand that in Spain, for example, restaurants are taxed according to the number of employees they have. While we do not support this particular approach for Australia, does the idea of an alternative minimum tax for high risk sectors have merit? Businesses affected by any such tax would be able to claim a refund if they could demonstrate they should be paying a lower rate. A less radical alternative would be to make greater use of withholding arrangements for problematic sectors.

39. *Market sellers*

Market sellers' compliance with the tax laws is likely to be uneven. One possible option would be to require them to display a valid ABN. Another would be to require the market owner to maintain a register of these. Is there scope for other measures focussed on market owners? Some markets, for example, already operate on a no cash basis. Could other owners be required to, or be offered incentives to, follow suit? Should alternative market fee regimes be considered? If market owners

charged stall-holders on the basis of their sales (rather than a fixed rental) they would have an incentive to record these accurately.

40. *Visa changes*

Under current rules, student visa holders are barred from working more than 40 hours per fortnight while their courses are in session. A number of stakeholders and members of the public have identified this as a major contributor to the black economy. They point out that foreign students who cannot afford to comply with this work restriction have no choice but to go underground. As a result, a sizeable and rapidly growing pool of vulnerable employees is created. It is no surprise, in these circumstances, that cases of exploitation, bordering on slavery, have come to light.

A range of possible remedies might be considered, including: (a) relaxation or elimination of the 40 hour restriction, (b) not allowing foreign students to work at all, or (c) or better enforcement of the existing rules. We have been in contact with the Migrant Workers Taskforce on this matter and will continue to liaise with them. Policy decisions in this area will need to bear in mind possible impacts on our educational exports, the costs of credible enforcement of existing rules, and effects on rural labour supply.

A number of stakeholders have highlighted the situation of those awaiting decisions on their refugee status. Their visas do not allow them to work at all, forcing many into the black economy. On the other hand, should tougher visa rules be applied in other instances? Should it be easier to revoke student visas from those engaged in criminal (for example, drug trade) activities?

41. *Receipts*

We understand that vendors have an obligation to issue receipts for purchases of \$75 and above. This obligation is not widely appreciated. We would be interested in views on how to further encourage or otherwise require receipts being issued. Should it be mandatory for receipts to be issued above the \$75 limit? Any such initiative would have to address the following questions: (a) who would be held responsible if no receipt can be produced: the vendor, the consumer or both, (b) how would you credibly enforce this requirement, and (c) where would you draw the line (small transactions, informal arrangements)?

42. *High effective marginal tax rates*

In our Interim Report we argued that high tax and regulatory burdens are a key contributor to the black economy. We highlighted in particular the punitive (up to 80 per cent) effective marginal tax rates faced by people moving from welfare to work. The negative effect these have on labour supply are well documented, but black economy impacts should not be ignored. We accept that lowering effective marginal tax rates is not a straightforward proposition. Indeed, they can be seen as a by-product of basic design features of our tax and transfer system: means tested welfare combined with a progressive personal income tax schedule. That said, we welcome views on ways to counter the black economy effects of high effective marginal tax rates.

SOCIAL NORMS/EDUCATION

43. *Other educational and behavioural channels*

Our Interim Report proposed dedicated tax literacy courses for vocational education and business students. Stakeholders have since suggested other possible approaches, including: (a) strengthened tax awareness education at the school level, (b) the use of web-based educational tools, (c) making better use of tax agents, bookkeepers and accountants as educational conduits. We remain interested in views on the use of behavioural economics ('nudge'). Stakeholders have commended an innovative New Zealand scheme targeting newly-established businesses. Under this scheme, tailored messages are sent to clients at important junctures, including real time reminders of upcoming tax reporting deadlines. Other proposals on how better to engage with start-ups, including when they obtain local and other government licences to operate, are welcome.

44. *The cultural challenge*

In our consultations, stakeholders and members of the public have highlighted the cultural challenge confronting any counter black economy strategy: the variety of beliefs, assumptions and suppositions which people draw on to excuse, defend or justify operating in the shadows. Particular ethnic, demographic and occupational groups may be reluctant to depart from established practices. Peer pressure may also play into this. There is broad agreement that cultural change is required, but recognition that this is not something that governments, acting alone, can decree.

We are interested in views on how business, professional bodies and community leaders can help reshape our cultural norms. We are conscious that some ethnic groups are pre-disposed to deal in cash and welcome suggestions on how best to influence this behaviour. Ethnic community leaders will probably have a strong role to play in this regard. It is worth noting that the establishment of the Taskforce has had an effect, according to some. There is now greater awareness of the black economy as a problem, some signs of better compliance and people have approached us with specific allegations. The question is how we can sustain this once the Taskforce has completed its work.

45. *Social Media*

Social media is arguably an underutilised tool in combatting the black economy. Contact with potential whistle-blowers, for example, could be made through social media channels. Social media can be used for communication and educative purposes, particularly for otherwise difficult-to-reach parts of the community. We would welcome suggestions on how social media can be better employed to combat the black economy.

SPECIAL CASES

46. *Labour hire/Workforce Services*

The labour hire sector of the economy is growing strongly. Labour hire (or workforce services) is a valuable source of flexible, short-term employees for businesses. This sector is extraordinarily diverse, including high-end professionals, skilled office workers and, at the other end of the

spectrum, various forms of unskilled labour. Most workforce services firms are legitimate. However, parts of the labour hire industry, including in the horticulture, security and perhaps even aged care sectors, are operating in the black economy. Some of these have links to crime, money laundering, immigration fraud and other abuses.

The labour hire industry association recognises this is a problem as is developing its own certification code. Under this, an external auditor would be engaged to certify providers, including their compliance with tax, employment and other laws. At the same time, some state governments (including Victoria) are considering, or putting in place, licencing or registration regimes. There have also been calls for a national licencing regime. In the UK, a dedicated authority (the Gangmasters and Labour Abuse Authority) administers that country's licencing system.

We are interested in stakeholder views on these options. Based on our consultations to date, we favour an industry-led accreditation approach to licencing, which if framed poorly will penalise legitimate labour hire firms, impose high compliance costs and stifle workplace innovation and productivity. Industry accreditation requirements could pick up other parts of our agenda, including identity reforms (need to hold a valid ABN), reporting (under TPRS or other initiatives) and procurement initiatives. We recognise that stronger enforcement of existing laws is needed to stamp out the worst abuses in this area.

47. Sham contracting

We are interested in stakeholder views on how best to counter sham contracting. This occurs when a standard employment relationship is wrongly classified as an independent contracting one, resulting in the non-payment of tax and superannuation obligations. Vulnerable workers can sometimes be pressured into these arrangements. We are also aware that some popular job-matching websites encourage sham contracting (acting as an introduction service for parties who wish to operate outside the tax system).

A broader point needs to be made: there is evidence that sham contracting thrives in sectors where new commercial opportunities are emerging. In this connection, a number of stakeholders have expressed concern about the National Disability Insurance Scheme (NDIS) which is funding the rapid growth of contracting work in relatively unregulated sectors (for example, house cleaning and gardening). We have been told that under the NDIS' design, clients have little choice but to engage contractors. Would-be contractors who access the NDIS website are not informed of the tax and other responsibilities contractors should be aware of.

A range of views have been put to us on the sham contracting problem. Some argue that the current legal test (the personal services income (PSI) provisions) needs to be tightened. Others say the problem is a lack of enforcement of the current test. Some stakeholders have proposed measures to make contracting less attractive, including requiring contractors (regardless of their nature) to make superannuation contributions. The UK's approach to sham contracting has been cited by some. In that country, if a contractor is deemed to be a disguised employee, employee tax and social insurance contributions are deducted from the fees they receive. In other countries, employers are held to be liable for avoided taxes in sham contracting arrangements.

We are conscious that there will be no simple, risk-free way to distinguish between employees and contractors. This is a perennial, much-examined problem. As many have argued before, however, a good place to start would be achieving greater consistency in how contractors are defined by jurisdictions in Australia. It is important that our responses do not penalise genuinely independent contractors who play an important role in our economy and are a source of entrepreneurship and innovation.

48. *Phoenixing*

We are supportive of the work being done by the Phoenixing Taskforce the Government has set up. A number of reforms canvassed in our Interim Report (and in this document), if implemented, will help counter this problem. Identity related initiatives, whether targeted at individuals or businesses, would help expose potential culprits. Restrictions on who can become a director (a 'fit and proper person test') would also help, as would government procurement and beneficial ownership reforms. We are conscious that state governments have introduced measures to counter phoenixing in some areas (for example, multiple residence property developments).

Stakeholders have proposed a number of other ideas, including:

- an early detection system, including making better use of the information that banks have on potential phoenixing activity (for example, recalibration of banks' AUSTRAC reporting) or monitoring other warning signs (non-payment of contributions to super funds)
- promoter penalties (which target the 'guiding minds' and advisers behind phoenixing operations)
- personal liability for phoenixers
- incentives for liquidators and regulators to pursue assets (disposed of before phoenixing occurs)
- asset clawbacks (for assets sold before phoenixing occurs)
- barring convicted developer-phoenixers from receiving future planning approvals
- a name and shame sanction for phoenixers
- the courts utilising insolvency sector expertise in their deliberations (based on the Takeover Panel example), and
- more aggressive ATO action to protect at-risk tax liabilities before phoenixing occurs.

We welcome views on these and other possible anti-phoenixing measures. We will continue to work with the Phoenixing Taskforce.

49. *Illegal tobacco*

Stakeholders have told us that there has been a significant increase in the production, importation, dealing and use of illegal tobacco. Industry sources say that one-in-seven cigarettes consumed in the country are illegal. Cigarette packs can be purchased overseas for \$3 and sold here for \$23.

Smugglers can reap as much as \$4 million in profits from a single imported container. If 25 or 26 containers are seized, the operation will still turn a profit.

A number of possible measures have been proposed to deal with the growing illegal tobacco problem. These include:

- more effective enforcement to detect, disrupt and deter operators at all levels, including importation, growing, distribution and retail
- setting a minimum price on cigarettes (which could be used to calculate financial penalties for those selling illegal cigarettes at lower prices)
- significantly strengthened penalties (particularly those which apply to growing tobacco, which are far lower than those for importing illegal cigarettes)
- the use of internet tracking ('scraping') technology to monitor imports (of cigarette paper, tobacco seeds and other inputs)
- the use of satellite technology to identify illegal crops, and
- removing tax anomalies (for example, applying to shisha smoking).

50. *Illegal gambling*

We have been told that illegal offshore gambling is growing rapidly and is being exploited as a money laundering opportunity. The local industry (including racing organisations) are prepared to help authorities expose and prosecute unregistered betting agencies. Recent and expected changes in tax laws (including the Diverted Profits Tax, the GST on imported services and changes to Permanent Establishment rules) could create large liabilities for offshore operators. We would welcome expert and broader stakeholder views on possible policy responses.

51. *Charities*

In our consultations, some have expressed concerns about the use of charities as a front for black economy activity. Charities are regulated by the Australian Charities and Not-for-profits Commission (ACNC). We are interested in views on whether there are specific black economy risks in this sector which are not being addressed. We are aware that the ATO, AUSTRAC and the ACNC are drafting an anti-terrorism financing paper which will be completed later this year. The ACNC currently shares some data with AUSTRAC.

52. *Horticulture*

Our consultations indicate that horticulture sector is a focus for black economy activity. We have been told that growers are not in a position to confirm the credentials of labour hire operators who may be using illegal labour (but who have ABNs). In recent years, foreign buyers have increasingly used cash to purchase produce (even entire crops) directly from farmers. Cash exports result in taxes and industry levies not being paid, the latter directly penalising farmers doing the right thing. We are interested in views on a possible horticulture strategy. Better ABN and visa system integrity, together with a commitment to ethical supply chain sourcing, will help, but other more tailored

approaches could also be considered. Given the regulation of exports, there may be scope to link export permits with tax and other information.

53. *Security services*

We have been made aware of sham contracting abuses in the security sector. There have been cases where large firms win security contracts with major government and private sector clients only to then sub-contract the work to others employing sham contractors. This arrangement allows the lead contractor to win the contract (with a quote that undercuts competitors paying award wages) while being at 'arms-length' from the associated fraud.

INSTITUTIONAL LEGACY

54. *Combatting thriving pockets of crime and illegality*

The black economy does not exist in isolation from other social ills. Indeed, organised crime and other forms of illegal activity are at its very core. This problem knows no jurisdictional or departmental boundaries, yet in some cases our responses are siloed, fragmented and reactive. What is the institutional and operational answer to this problem? Since 9/11, steps have been made to better coordinate and focus our counter terrorism efforts. The same paradigm shift may be needed for the illegal component of the black economy. We would be interested in views on how this might best be achieved. The options range from better coordination between existing agencies (federal and state, including coordinated raids), a standing taskforce (along the lines of the Serious Financial Crimes Taskforce) and an entirely new agency (the experience of UK's Serious Fraud Office, which investigates and prosecutes serious fraud, bribery and corruption cases, may be instructive in some respects).