



21 September, 2018
File ID: 23531

Mr Chris Toyne
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Dear Mr Toyne

**CERTIFICATION OF INDEPENDENT REVIEW: THE BLACK ECONOMY TASKFORCE FINAL REPORT
EQUIVALENT TO A REGULATORY IMPACT STATEMENT (RIS)**

I am writing to you regarding the Regulatory Impact Statement (RIS) requirements for the Increasing the Integrity of Commonwealth Procurement measure announced in the 2018-19 Budget in response to the Black Economy Taskforce Final Report.

I certify that the Black Economy Taskforce undertook a process and analysis equivalent to a Regulatory Impact Statement (RIS) in the preparation of the Black Economy Taskforce Final Report (attached) and wish to submit the report to meet the RIS requirements for these measures.

Treasury previously agreed regulatory costs for the budget measure with your office (ref. ID 23531, see details below). In my correspondence to you of 13 March 2018, I also certified that the Taskforce's final report adequately addressed the first four RIS questions for an Early Assessment RIS. Specifically, the Taskforce's report has:

- Identified that the black economy creates a growing negative economic and social impact with supply chain integrity being undermined due to illegal supplier practices. This can mean suppliers can be outbid by other suppliers that have saved costs by not complying with their regulatory obligations;
- Stated that the objectives of Government intervention is to target factors that drive black economy participation by ensuring those suppliers that do not meet their regulatory obligations are not rewarded at the expense of those that do;
- Provided a list of 80 recommendations, with Taskforce recommendation 9.1 providing that the Government should lead by example, by excluding businesses with an unsatisfactory tax record from its procurement processes;
- Given thorough consideration to efficiency gains through ensuring that the statements of tax record can be provided in a streamlined, timely and secure manner in order to limit compliance costs for businesses or procuring agencies.

In regards to the three remaining RIS questions for this measure, I again wish to certify that the Taskforce's report adequately addresses these questions.

Question 5 asks who was consulted about the options and how was the consultation conducted. The report initiated broad-scale consultations including:

- a dedicated reference group sourced from major industry associations across Australia which supported a policy to exclude businesses that have an unsatisfactory tax record from government procurement;
- a national roadshow to all capital cities and some major regional centres for collecting sufficient information on issues around complex and competitive supply chains;
- 144 bilateral meetings with companies and associations from a range of industries gathering feedback on the Taskforce's recommended action in respect of current procurement policies;
- An open submissions process, eliciting 149 submissions from individuals and organisations of which 12 specifically address this particular initiative;
- Close engagement across Australian Government agencies on including a tax clause in all Commonwealth contracts over \$4 million and providing a tax compliance certificate at the time of tendering for a contract.

Note that further consultation on this measure is also being conducted with relevant stakeholders on the implementation details. This has included the release of a public consultation paper 'Increasing the Integrity of the Commonwealth Procurement process' on 15 May 2018. Consultation closed on 15 June 2018 in which we received 21 submissions from the public and a further 6 submissions from government agencies. The consultation sought views on how to implement the recommendation, in particular what constitutes a satisfactory tax record, and what information should be included in the statements in order to design a system that is fair, not onerous and doesn't penalise businesses that have made genuine mistakes. Submissions were generally favourable to the positions put forward in the consultation paper.

Question 6 asks what was the best option from those that were considered. The report drew on consultations and submissions to consider the best option on how to increase the integrity of Commonwealth Procurement process. Government action draws directly from this work.

The Taskforce consulted on and discounted other options identified:

- Requiring procuring agencies to verify the tenderer's satisfactory tax record with the ATO
- Self-certification by tenderers
- Application to all contracts rather than to just large contracts.

The Taskforce's reasons for ruling these options out were that making Government agencies responsible for checking if there is a satisfactory tax record would mean that most of the action takes place behind the scenes without involvement from the tenderer and is less likely to change black economy behaviours. It would also require changes to tax secrecy provisions which would be a significant barrier. The self-certification option would be unlikely to improve the current procurement processes due to the lack of appropriate checks. Applying the new rules to large contracts only minimises the impact on small businesses.

To increase the integrity of Commonwealth Procurement process, a Procurement Connected Policy (PCP) is being developed which would require businesses from 1 July 2019 to provide a Statement of Tax Record from the ATO when tendering for government contracts. This would apply to Commonwealth contracts through a procurement processes valued over \$4 million (inclusive of GST). The ATO will build an online

system that will enable businesses to request and receive these statements in a short time frame and with minimum regulatory burden.

Question 7 asks about the implementation and evaluation conducted for the chosen option. As mentioned above, the measure is largely being implemented in line with the Black Economy Taskforce Final Report's recommendation 9.1 – Increasing the integrity of Government procurement. This measure will not require legislation, although it will require an agreement between the Assistant Treasurer and Finance Minister. Evaluation of the PCP will occur annually and notified the Department of Finance of the outcome while it will expire after five-year term, however extension can be requested to the Cabinet for a further defined period.

I certify that the Taskforce's report has now adequately addressed all seven RIS questions.

I also note that the regulatory burden to business, community organisations or individuals has been quantified using the Australian Government's *Regulatory Burden Measurement* framework. These have been agreed with your office and are provided below.

Average annual regulatory costs (from business as usual)				
Change in costs	Business	Community organisations	Individuals	Total change in cost
Increasing the Integrity of Commonwealth Procurement	\$5,850,000	\$0	\$0	\$5,850,000
Total, by sector	\$5,850,000	\$0	\$0	\$5,850,000

Regulatory offsets are yet to be identified and Treasury will seek to pursue net reductions in compliance costs by working with affected stakeholders and across Government to identify regulatory burden reductions where appropriate in the implementation of policy proposals.

Accordingly, I am satisfied that the attached report meets best practice consistent with the *Australian Government Guide to Regulation*.

Yours sincerely



Maryanne Mrakovcic
Deputy Secretary
Revenue Group