Australian Government
The Treasury

TSY/AU

Improving black economy enforcement and offences

Consultation paper

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Consultation Process

Request for feedback and comments

Interested parties are invited to comment on the questions raised in this consultation paper.

Electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

If you would like part of your submission to remain in confidence, you should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Cth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Closing date for submissions: 21 December 2018

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The principles outlined in this consultation paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

PART I: CONTEXT

1.1 Introduction

The **black economy** covers a range of activities that fall outside of the visibility of regulators, and is constantly evolving.

The black economy harms those less able to protect themselves (e.g. migrant workers) and penalises those doing the right thing (e.g. businesses complying with regulations). These people bear the cost of the individuals and businesses dishonestly participating in the black economy. While the financial costs for individuals and businesses are significant, it is the societal costs that can cause the most harm. The black economy undermines trust and creates an uneven playing field.

In response to this, the Government established the Black Economy Taskforce (the Taskforce) in December 2016 following an initial investigation by the Board of Taxation which showed that a concerted effort was needed to halt or reverse growth in the black economy. The Black Economy Taskforce Final report (the Taskforce's Report) illustrated the complexity of the problem, with 80 recommendations (including supplementary recommendations) spanning the whole economy.

1.2 A more targeted, stronger and more visible approach to enforcement

The Government responded with a whole of government strategy, including funding to educate the public and greater enforcement (including visibility of enforcement) to combat black economy activities, as well as a commitment to a more targeted, stronger and more visible approach to enforcement. This consultation paper seeks views on a number of proposed amendments to black economy offences and penalties, and a proposal to streamline prosecution processes, as part of that commitment.

In particular, the Taskforce's Report recommendations relevant to this consultation include:

Recommendation	**What is the problem**	**Consultation paper**
Introduce new black economy offences and penalties, and changing existing offences to address the gap in the existing black economy offence and penalties regime. ***(Recommendation 8.4)***	Current black economy offences and penalties are not effective at capturing mid-range offenders, are limited to financial penalties and criminal offences, and are not optimally scaled to focus on egregious offenders. These together create an ineffective enforcement regime that can be exploited by those participating in the black economy.	*Part II* and *Part III*
Reverse the onus of proof for some black economy offences to reduce barriers to prosecuting such offences. ***(Recommendation 8.3)***	The prosecution bears the legal onus of proof in criminal proceedings for certain black economy offences. The Taskforce found that gathering proof to the criminal standard can be difficult and resource intensive for prosecutors, leading to lower rate of successful prosecution against aggressive black economy offences.	*Part III*

Recommendation	What is the problem	Consultation paper
Prevent gambling (and gifts) being used to shelter tax evasion by requiring taxpayers to keep records of their gambling activities once winnings, or gifts, exceed a threshold per year. ***(Recommendation 14.5)***	Cash which is the product of gambling winnings or gifts is tax free. Without electronic records and the requirement to produce records of the source of the winnings or gifts, some individuals claim taxable and/or black economy income is gambling winnings and therefore tax free. These individuals avoid paying tax at the expense of others.	*Part III*
Reduce the use of sham contracting arrangements by bolstering the sham contracting penalty provisions. ***(Recommendation 10.3)***	Sham contracting occurs where an employer knowingly or recklessly misrepresents an employment relationship as an independent contracting arrangement. This may be done to avoid statutory obligations, such as having to pay award wages, pay as you go withholding (PAYGW), payroll taxes, and superannuation contributions. Sham contracting can disproportionately affect vulnerable workers who are pressured into these arrangements.	*Part III*
More effective prosecution processes, including designating the Australian Taxation Office (the ATO) as a criminal law enforcement agency, and providing the ATO access to telecommunications metadata. ***(Recommendations 8.2 and 12.4)***	The ATO currently may only seek telecommunications data through the Australian Federal Police (AFP) as part of joint investigations, and this process takes several weeks. It is often impractical to seek to undertake joint investigations with the AFP, especially for low to mid-range black economy conduct. These delays allow black economy participants to operate for longer periods of time and, in some instances, avoid detection altogether.	*Part IV*
Reform proceeds of crime laws to extend the period for freezing orders from 3 days to 14 days and giving courts the discretion to freeze only specific transactions in relation to a bank account or person. ***(Recommendation 12.7)***	The *Proceeds of Crime Act 2002* (PoCa) allows for complete freezing of bank accounts for up to three days. Obtaining the restraining order by enforcement agencies to extend freezing order requires providing additional evidence which takes more than three days, leading to the expiration of an existing freezing order. The complete freeze of bank accounts can also cause significant disruption in operation of the businesses/charities under investigation, and seeking variation on frozen accounts to allow	*Part IV*

Recommendation	What is the problem	Consultation paper
	reasonable transactions can be a consuming process.	
Provide the ATO with powers to compel information from third parties, such as powers to obtain bank information. ***(Recommendations 8.2 and 12.4)***	Gathering evidence to determine the culpability of possible black economy criminals is significantly diminished where key evidence is difficult to obtain. This allows those abusing the tax system to evade the authorities for longer, and sometimes, avoid detection altogether.	*Part IV*
Evaluate the possible expansion of the jurisdiction of the federal courts to hear more black economy offences. ***(Recommendation 8.2)***	Changes to existing black economy offences, the introduction of new offences and a rapidly changing black economy landscape creates a need for sound and coherent court processes to be dynamic and responsive.	*Part V*

1.3 Consultation

This consultation seeks your views on:

Part II A new framework for developing offences and penalties for black economy activities now and in the future.

Part III New administrative penalties, and changes to existing regulations and offences that address behaviours and transactions observed in the black economy.

Part IV Improving the enforcement regime that addresses black economy offences, including changes to the ATO enforcement powers.

Part V Expanding the jurisdiction of Federal Circuit Court of Australia to cover black economy civil penalties and criminal offences.

PART II: A NEW FRAMEWORK

2.1 Why is an effective offences regime important?

A strong and coherent set of laws and regulations are important to ensure individuals understand the rules they are expected to follow and, in turn, can expect others to follow. Tax laws both reflect and perpetuate certain important social values that underpin society, such as the raising of revenue to fund important programs for all, guaranteeing the rights of employers and employees, and protecting taxpayers who do the right thing.

Ensuring compliance with the tax system and minimising black economy activity requires the use of effective behavioural interventions. Behavioural interventions are effective when they are proportionate to the spectrum of behaviours we see (as opposed to one-size-fits-all), and do not cause unintended outcomes—such as driving more people into the black economy. As the Taskforce's Report notes, more needs to be done to change the current balance of incentives and deterrents in the present enforcement regime.

In addition to considering targeted new offences for black economy activities that fill the gaps in the existing enforcement regime, there is a need for a new approach to guide the development of new offences. This recognises that the black economy landscape is constantly changing, and a need for a framework for new offences that can be applied dynamically to quickly respond to these activities.

Table I below provides a summary of characteristics important in developing black economy offences and penalties and, in turn, responding to black economy activities. It is a set of hallmarks to measure the effectiveness of existing offences, as well as a framework for evaluating the potential for new offences.

Table I. Framework for black economy offences and penalties and enforcement powers	
Proportionate and fair	Penalties should operate fairly, be seen to do so, and be proportionate to the degree of non-compliance. Penalties perceived to be disproportionate undermine the community's sense of fairness. Overly severe penalties alienate tax offenders from both the tax system and the authorities enforcing the law, which in turn can have a negative long-term effect on compliance behaviour. Penalties seen as too "soft" will not work as an effective signalling mechanism to the broader community.
Swift	Evidence indicates one reason why potential tax evaders are not deterred by penalties is because of the significant delay between the offence and the potential punishment.[1] Any introduction of offences should contemplate the ability for swift prosecution to determine guilt or innocence, and sentencing.
Clear and certain	Certainty is a fundamental element of the rule of law. Offences and penalties themselves can be uncertain, for example where they rely on a discretion that is rarely exercised, or are difficult to understand without

[1] Australian National University, 'Detect and deter or catch and release: Are financial penalties an effective way to penalise deliberate tax evaders?' (2018) <https://taxpolicy.crawford.anu.edu.au/sites/default/files/publication/taxstudies_crawford_anu_edu_au/2018-04/complete_zzz_20180404_ttpi_penalty_paper_draft_amended_-5_april_2018.docx_.pdf>.

	supporting information. For example, serious criminal penalties can be uncertain due to the discretionary decision on whether to refer the matter for criminal investigation. By contrast, administrative penalties that arise automatically by law upon the Commissioner's decision as to the behaviour are far more certain.[2]
Cost effective	Due to the high costs of instigating civil penalties and criminal proceedings, consideration should be given as to whether the law will be unduly costly. For example, imposing administrative penalties on a non-compliant taxpayer are less costly than indictable criminal offences that usually involve significant costs associated with prosecution.
Incentivises engagement with the tax system	Offences and penalties, where possible, should foster willing compliance and engagement with the tax system. If possible, a tax penalty should provide some kind of incentive or pathway for the penalised taxpayer to re-engage with the tax system. All penalties run the risk of stigmatising those being penalised and pushing them further away from voluntarily complying with their tax obligations, particularly when the person being penalised feels they have been treated unfairly.

In evaluating the proposals presented throughout this consultation paper, especially under Part III: Offences and Penalties, you may wish to consider whether the proposals align with the above framework.

Question:

1. *Are there any other key hallmarks you think should be considered when developing new, or amending existing black economy offences and penalties?*

[2] Ibid.

PART III: OFFENCES AND PENALTIES

3.1 Problems with the existing regime

A comprehensive range of offences and penalties, coupled with an appropriate enforcement regime, is crucial in addressing the black economy. The Taskforce in researching the enforcement arrangements concluded that while the current regime addresses black economy activities, there are areas for improvements. In particular, making it clear there are high risks and damaging consequences in engaging with the black economy. The key areas the Taskforce highlighted were:[3]

- **There are significant gaps in the offence profile available to law enforcement agencies**. Too often agencies have little choice between applying low-level sanctions, or taking expensive and high-risk litigation or prosecution action.

- **There is a need for offences that are suited to the mid-range of behaviours that are common in the black economy;** with a lower level of criminal culpability, or the more egregious of non-criminal behaviours, or criminal behaviours of lower order. This can be done by introducing new offences or civil penalties targeted at mid-range behaviour, as well as enhancing the tiered approach to enforcement (with escalating consequences commensurate with escalating non-compliant conduct).

- Consideration of whether **the onus of proof should be reversed for some or all elements of a small number of serious black economy offences**. This could potentially improve the likelihood of aggressive and serious black economy offences being successfully prosecuted and act as an effective deterrent.

- There is a need for **offences and civil penalties more appropriate for addressing the contemporary problems arising in the black economy**, such as failure to keep proper books and records in the context of gambling winnings and wealth arising from gifts.

- **A broader range of sanctions should be adopted, going beyond monetary penalties or criminal sanctions** (for example, visa forfeiture for individuals and preclusion from bidding on Government procurement contracts for companies).

In response to these issues, this consultation paper sets out the following proposals to effectively target black economy activities:

3.2 improving administrative penalties including for egregious tax offenders

3.3 amending s8ZE of the *Tax Administration Act 1953* (TAA 1953) – civil penalty withdrawn where criminal prosecution is undertaken

3.4 examining the feasibility and implications of reversing the legal onus of proof for some element of black economy offences

3.5 investigating non-financial penalties

3.6 enhanced record keeping requirements for gambling winnings and wealth arising from gifts

3.7 review of civil penalties associated with sham contracting

[3] Black Economy Taskforce Final Report (2018) <https://static.treasury.gov.au/uploads/sites/1/2018/05/Black-Economy-Taskforce_Final-Report.pdf> at p 192.

3.2 Improving administrative penalties

Background

In addition to civil penalties and criminal offences for engaging in black economy behaviour, the tax law also imposes administrative penalties for misconduct related to the black economy. Administrative penalties are the most commonly applied tax penalties.[4] The purpose of the penalty provisions is to encourage taxpayers to take reasonable care to comply with their obligations. The comparison of procedures associated with administrative penalties, civil penalties and criminal offences, is outlined in Annexure.

As referenced at section 3.1, it is important to target mid-range black economy behaviour, introducing new tiers of penalties and offences that are commensurate with the severity of the act.

Mid-range offences need to target and deter those which demonstrate an intention to deceive the system, but which falls short of serious criminal offences. An example could be an individual who regularly over claims expenses for relatively small amounts (discussed below), or that an individual has a record for a variety of low level, systematic black economy activities, such as wrongly allocating income as unexplained gift wealth and engaging in offshore gambling. There may also be gaps in the current penalty regime for certain types of behaviour. For example, offences which fall between statements that are false or misleading and those which are fraudulent.

This consultation paper seeks feedback on options to amend and introduce several financial and non-financial administrative penalties that aim to tackle mid-range black economy behaviour. We are interested in understanding how these changes would influence you, your business and your community, as well as any other considerations you may find relevant.

Enhancing administrative penalties to target egregious tax offenders

The current administrative penalty system operates by imposing penalties on taxpayers commensurate with the severity of their act. Repeat offenders, and those offenders who perform particularly flagrant acts, such as engaging in multi-million dollar tax fraud, would be amongst the worst offenders.

For example, an individual found to have made a false or misleading statement has an automatic penalty imposed of between 25% - 75% of their shortfall owing depending on the severity of the offence, with an additional 20% loading where the individual has offended in a similar manner before.[5]

While this system has a strong foundation of tiering penalties with the level of black economy or related behaviour, it may not target offenders who continually seek to avoid paying tax through false or misleading statements. An individual who makes a false or misleading statement five years in a row will be liable to the same penalty percentage that an individual making a similar statement two years in a row would be (e.g. a maximum of 90%). This does not appear to be **proportionate and fair.**

Additionally, as the maximum penalty for repeat offenders does not change over an individual's lifetime, there is no **incentive to subsequently engage with the system.** Subsequent good behaviour by the individual will garner no benefit. This is unlikely to result in positive behaviours on the part of the individual.

To improve the tiered system, one possible solution would be to introduce a third tier of administrative penalty that targets taxpayers who are repeat offenders. For example, the individual could be made liable for up to double the amount of the shortfall where the individual has made a

[4] Above, n 1.
[5] ATO, 'Statements and positions that are not reasonably arguable' (2018) <https://www.ato.gov.au/general/interest-and-penalties/penalties/statements-and-positions-that-are-not-reasonably-arguable/>.

false or misleading statement on a tax return, and has had a penalty imposed for that conduct three or more times in the previous seven year period, and no penalties in that period have been subsequently revoked or wholly remitted.

This would create a regime that is more targeted at a particular range of behaviour, and is hence more proportionate and fair. By introducing a seven year cap on the penalty period, there is also an incentive for taxpayers to comply with the law.

Questions:

2. *Should the existing administrative penalties for repeat or serious tax offences be further scaled? If so, how and in what circumstances?*

    2a. *What are your views on introducing other tiers of administrative penalties? Is it consistent with the framework introduced in Part II?*

3. *Are there other gaps in existing enforcement regimes, such as tax evasion offences under the Tax Administration Act or elsewhere, where new mid-range offences could be introduced?*

3.3 Amending section 8ZE of the TAA 1953- civil penalty withdrawn where criminal prosecution is undertaken

Section 8ZE of the TAA 1953 (reproduced below) ensures that taxpayers are not subject to both administrative penalties and criminal prosecution for the same action. This results in any administrative penalty an individual is liable for to be voided where criminal proceedings are undertaken, regardless of whether the criminal proceedings result in a conviction or not. This concept is usually referred to as "double punishment" or "double jeopardy".

TAXATION ADMINISTRATION ACT 1953 - SECT 8ZE

Civil penalty not payable if prosecution instituted

…If:

(a) a person is liable to pay a penalty (other than for an offence) an amount under a taxation law because of an act or omission of the person; and

(b) a prosecution is instituted against the person for a taxation offence constituted by the act or omission;

then (whether or not the prosecution is withdrawn):

(c) the person is not liable to pay the amount…

As the Taskforce's Report noted, while avoiding double punishment is sound policy, section 8ZE goes a step further. The section provides that once a criminal prosecution is commenced, the taxpayer is no longer liable to pay the administrative penalty, regardless of whether the criminal prosecution results in a conviction or not.

In effect, the administrative penalty must be withdrawn by the Commissioner, and cannot be re-imposed – even where the criminal prosecution is withdrawn or the charges dismissed. Where the criminal prosecution is withdrawn or dismissed, the taxpayer is no longer liable for the administrative penalty either. Therefore, enforcement agencies must factor in the potential loss of the administrative penalty into the decision on whether to proceed to trial. This is contrary to the ordinary approach to administering justice. If someone is found not guilty in a criminal case, which

has a high standard of proof ('beyond reasonable doubt'), that does not *necessarily* imply that they did not commit the act, but rather the evidence was not sufficient to determine guilt. It is possible in a number of other areas of law (e.g. law of trespass, assault, breach of director duties, etc.) for an individual to be found guilty of a civil wrong (where the standard is 'the balance of probabilities', or 'more likely than not') and *at the same time* found not guilty of a criminal wrong. A finding in one does not negate a finding in the other.

The Taskforce's Report found section 8ZE should be amended so that the administrative penalty stands, and administrative penalties should only be remitted in the event of the taxpayer being proven guilty in criminal proceedings. Using a similar approach, this consultation paper seeks views on amending section 8ZE to provide for the *suspension* of an administrative penalty pending the outcome of the prosecution. This would mean the taxpayer does not need to pay the administrative penalty until the outcome of prosecution has been determined. If the taxpayer is found not guilty of criminal proceedings, the administrative penalty is unsuspended and must be paid.

Question:

4. *Should the requirement under section 8ZE of TAA1953, for all administrative penalties to be withdrawn where criminal proceedings are commenced against a taxpayer, be amended to* ***suspend*** *all administrative penalties pending the outcome of criminal proceedings?*

3.4 Reversing the onus of proof for some elements of black economy offences

Background

Currently, in criminal proceedings the onus of proof rests on the prosecution to prove that an offence has been committed. If an offence is proven, the defendant bears the onus of proof to provide the evidence for the defences they raise in response. However, should the defendant provide sufficient and relevant evidence to support their defences, it is then up to the prosecution to disprove the existence of the defences. This aligns with the core principle of common law where a party is presumed to be innocent until proven guilty.

For some serious offences relating to terrorism, drugs and child sex offences, the laws 'reverse the onus of proof' requiring the defendant to disprove an element of the offence. Such requirements are imposed where it can be difficult for prosecution to secure proof and the matter is peculiarly within the knowledge of the defendant, or where it has been considered in the public interest to reverse the onus of proof.

A situation where a defendant faces an evidential burden of proof arises in the context of when a defendant fails to comply with requirements in section 8C of the TAA 1953. It is a defence to this offence if the person is not capable of complying with the relevant paragraph of this section. In raising this defence, the burden is on the defendant to provide evidence suggesting this is the case, therefore discharging the evidential onus. However, once this has been shown, the prosecution must prove beyond reasonable doubt that the defence does not apply.

A situation where a defendant faces a legal burden of proof arises in the context of an 'unexplained wealth order' under the *Proceeds of Crime Act 2002* (Cth). A person who is the subject of an unexplained wealth order must, broadly, pay to the Commonwealth an amount equal to the part of the person's wealth if a court is not satisfied that the wealth was not derived or realised from certain criminal offences. The burden of proving that some or all of a person's wealth is not derived or realised from one of these offences lies on the defendant.

Issue

The Taskforce's Report identified that gathering proof for black economy offences to the criminal standard can be difficult and resource intensive for prosecution, as this knowledge is only privy to the defendant.

The Taskforce's Report recommendation 8.3 recommends reversing the onus of proof for some elements of black economy offences. The Taskforce noted that reversal of the onus of proof can adversely affect individuals' right and liberties, and should be considered carefully and only in regards to a few elements of serious black economy offences. The Taskforce's Report argues this would provide a good balance between the competing objectives of protecting individual's rights and reducing the burden on prosecution to prove the offence. Additionally, reversing the onus of proof for certain offences may also improve the likelihood of successful prosecution, due to a reduced burden on the prosecution which will act as a deterrent for black economy offenders, and may lead to a more cost effective enforcement regime.

Questions:

5. *Which elements of serious black economy offences should reversing the onus of proof apply to?*
6. *Should the onus of proof for some elements of black economy offences be reversed and borne by the defendant instead of prosecution as recommended by the Taskforce?*
7. *What are the issues in reversing the onus of proof for some black economy offences?*

3.5 Investigating non-financial penalties

Background

As mentioned under Section 3.1, there is currently a strong penalties and offences regime which covers a wide range of behaviour in the black economy. In practice this system operates in tiers, starting with administrative penalties for low-range behaviour, through to offences under the *Criminal Code* for the more serious offences.

However, as noted in the Taskforce's Report, there are few alternatives to financial penalties or criminal proceedings for black economy behaviour, and new kinds of penalties that span outside of financial penalties and criminal proceedings are needed in order for a fully functional deterrent regime to operate.

Issue

The Taskforce's Report noted that while financial penalties and criminal proceedings can be adequate incentives to comply with the tax system, they may not be effective for the entire population. Some taxpayers will not engage with the tax system, and refuse or avoid facing authorities when it comes to paying their fair share of tax, causing lengthy action by authorities at significant cost to the Government, and ultimately, Australians.

A bankruptcy proceeding against an individual for outstanding tax debt is one existing example of an approach that currently exists, which involves non-financial non-criminal implications, including being placed on a permanent list of bankrupts that can be researched by third parties. This approach has benefits and drawbacks, the benefit being it acts as a strong non-financial deterrent and the drawback being the permanency of the sanction, which may act as a **disincentive to re-engage with the tax system**.

Another possibility is to expand travel bans to individuals who engage in black economy and related tax avoidance behaviour. Unlike bankruptcy proceedings, such a ban could be lifted when the individual subsequently engages with the tax system, **incentivising re-engagement**.

Travel bans

One way to incentivise repayment of financial penalties and compliance with the tax system is the implementation of a travel ban.

A similar approach has been in place for parents or carers who consistently fail to meet their child support liability commitments. Under these arrangements, a person can be stopped from travelling overseas unless their debts have been settled or they have entered into a satisfactory payment arrangement.

Currently the Commissioner has the power to issue a Departure Prohibition Order (DPO) which aims to ensure that Australian tax liabilities are paid by preventing a person from leaving Australia. However, DPOs are typically only used as a targeted tool aimed at serious high net worth offenders. The ATO has stated that "DPOs are rarely issued and usually only where significant revenue is at risk".[6]

In the United States (the U.S.), Congress passed a law that revokes the passports of what they term 'delinquent taxpayers' who have failed to pay tax debts of more than $51,000 (indexed annually). The US Joint Committee on Taxation forecasted that this would lead to $188 million in savings from 2016 – 2019.[7]

Key components of the law are contained in Table II. Important aspects of the law also include:

Table II: Key components of U.S. Passport Revocation Law

Criteria – only 'delinquents'	Taxpayers who are in active communication with the United States tax authority, whether they can or cannot actually meet their tax debts, are excluded from the law – the law is only focused on those not addressing their tax debts ('delinquents').
Right to notification and appeal	The tax authority has stringent requirements for advising taxpayers where a certification for passport revocation is to be issued. Taxpayers have the right to appeal a passport revocation in court.
Criteria – significant debt	The law focuses on significant tax debts ($51,000 or more). It is not focused on minor tax debts. Further, taxpayers facing financial hardship may be discretionarily excluded from the law.
Non-discriminatory	• The passport revocation is systematic. • After a notice of lien has been filed and the taxpayer has not engaged the tax authority over the maximum period allotted for a response (minimum 16 weeks total), the process for certification of revocation commences. • The relevant heads of the respective agencies administering passports are required to revoke passports pursuant to law.

[6] ATO Submission, 'Inquiry into penalties for white collar crime' dated 1 April 2016 (Submission no. 29) (2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/White_collar_crime/Submissions>

[7] The Joint Committee on Taxation, 'JCX-140-15: Estimated Revenue Effects Of The Revenue Provisions Contained In The Conference Agreement For H.R. 22, The "Fixing America's Surface Transportation ('Fast') Act" (accessed 2018) < https://www.jct.gov/publications.html?func=startdown&id=4854>.

The U.S. is not the only country to have implemented travel restrictions as means of improving tax compliance. New Zealand imposes travel restrictions on people who have accrued large amounts of outstanding fines and a warrant has been issued. There is evidence that in New Zealand, the application of travel bans has resulted in prompt payment of fines and penalties.[8]

This consultation paper seeks feedback on non-financial penalties, and what form or type of such penalties could be effective to encourage compliance with tax law and act as a sufficient deterrent.

In particular, this consultation seeks feedback on:

Questions:

8. *What non-financial penalties could be considered to enhance compliance with tax law?*
9. *Are there any limitations, risks or unintended consequences that may result from implementing non-financial penalties?*
10. *In what circumstances should a travel ban scheme apply to Australian taxpayers?*
11. *Would the introduction of arrangements in Australia to prevent travel by taxpayers with large tax debts improve compliance with Australia's tax law?*

3.6 Introduction of enhanced record keeping requirements – gambling winnings and wealth arising from gifts

Background

The ATO's role is to administer Australia's taxation law, including ensuring all taxpayers comply with their tax obligations.

When conducting audits, the ATO examines the facts and seeks substantiation of expenses and income. Most income sources can be substantiated by the ATO, for example bank interest income is routinely provided by banks directly to the ATO. Where income details are not routinely sent to the ATO from a third party, such as a bank, any evidence to substantiate income generally must be obtained from the taxpayer involved in the audit, or through the use of the Commissioner's powers to obtain information from third parties.

Some taxpayers attempt to avoid tax by falsely claiming that amounts they have received were not assessable income, for example, by falsely stating that assessable income was gambling winnings or a gift. Such claims are commonly used as gambling winnings or gifts are not required to be reported directly to the ATO, by the gambling provider or gift donor. While such activities are not necessarily associated with the black economy, they may provide a vehicle to hide criminal activity or evade tax for black economy participants.

Minimal supporting evidence is provided by some taxpayers to substantiate the source of the gambling winnings and wealth arising from gifts. As the taxpayer may have an incentive to hide the true source of the amount, it is a challenge for enforcement agencies to obtain sufficient proof of the origin of the income to refer cases to prosecution.

Issue

This consultation paper is seeking to examine whether it may be appropriate to have increased record keeping requirements for substantial gambling winnings or large gifts received either in relation to the winnings or gift, or once notified by the Commissioner.

[8] Sentencing Advisory Council, 'Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria' (2014) <https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>.

For example, the Taskforce's Report suggested that where a person has gambling or lottery income greater than $50,000 per year, they could be required to keep records of wagers and winnings. This could start from every dollar over $50,000, so taxpayers only need to keep records *over* the threshold. In the absence of records substantiating the purported gambling activities, a penalty would apply for the failure to keep records. To incentivise compliance, this penalty could be set at a level that would more than negate any tax benefit.

Questions:

12. *Is it appropriate to require additional recording keeping in relation to substantial gambling winnings or gifts?*

13. *Alternatively, should the Commissioner be able to request taxpayers with substantial winnings to undertake further record keeping in relation to their gambling activities going forward (e.g. by way of written notice)?*

3.7 Review of penalties for sham contracting

Background

Sham contracting refers to the unlawful practice of knowingly or recklessly disguising an employment relationship as an independent contracting arrangement, taking advantage of the differential in workplace relations and tax obligations.

As noted in the Taskforce's Report, 'unscrupulous employers engaged in this practice get an unfair commercial advantage through reduced labour costs, both over law-abiding employers and those engaged in genuine independent contracting arrangements. In some circumstances, they exploit workers who have very little bargaining power, denying them their lawful workplace entitlements'.

Correct classification of workers, as either employees or independent contractors, has important implications. Contractors do not receive some of the entitlements and protections of the *Fair Work Act 2009* (the Fair Work Act), such as minimum wages, unfair dismissal, paid leave or casual loading in lieu. Contractors also generally miss out on superannuation and worker's compensation.

The sham arrangements provisions of the Fair Work Act provide civil penalties for the following conduct:

- knowingly or recklessly misrepresenting an employment relationship as an independent contracting arrangement (section 357)
- dismissing an employee to engage them as an independent contractor (section 358)
- knowingly making a false statement to influence an employee to become an independent contractor (section 359)

Current penalties for sham contracting under the Fair Work Act are up to 60 penalty units or $12,600 for an individual and 300 penalty units or $63,000 for a body corporate.

Under section 357 of the Fair Work Act, a 'recklessness' test applies in circumstances where an employer is found to have misrepresented to an employee a contract for employment as a contract for services. Employers are able to escape penalty by demonstrating that they did not know and were not reckless as to whether the contract was a contract of employment rather than a contract for services. The recommendation seeks to amend the Fair Work Act to reflect this shift to a 'reasonableness' test to address the weaker incentives under the current 'recklessness' test and remove the high burden of proof required to establish 'recklessness'.

It should also be noted that many sham contracting cases do not make it to court and are instead settled between the parties.

Issue 1: increasing penalties

While it is difficult to estimate the size of the issue around sham contracting, evidence from the Taskforce's Report suggest sham contracting spans across multiple sectors, may be increasing, and has the propensity to target those most vulnerable. It also reflects the worst kind of black economy activity: activity clearly in defiance of the law.

In order to respond to this issue, the Government agreed in principle to amend the Fair Work Act to increase the penalties for breaches of the sham contracting provisions. The higher penalties would act as a deterrent to sham contracting arrangements.

Issue 2: 'recklessness' test

Currently there is no clear definition of the term 'reckless', and the onus of proving the employer knew or was reckless rests with the person alleging the breach.

The Taskforce's Report recommendation 10.3 suggested lowering the legal threshold for prosecuting employers involved in sham contracting arrangements, from a 'recklessness' test to a 'reasonableness' test, which would remove the high burden of proof required to establish 'recklessness'.

For example, employers could be required to show that at the time the representation was made they *could not reasonably be expected to have known* that the contract was a contract for employment rather than a contract for services.[9]

This consultation paper is seeking feedback on the level of increase in the sham contracting penalties that will deter such arrangements, and the appropriateness of lowering the 'recklessness' threshold for prosecuting employers for sham contracting arrangements.

Questions:

14. *What level of increase to the civil penalties would serve as an appropriate deterrent to stop employers from engaging in sham contracting arrangements?*

15. *Is the existing 'reckless' threshold for prosecuting employers involved in sham contracting appropriate? Should this legal threshold be lowered to a 'reasonableness' test?*

[9] Refer *Fair Work Ombudsman v Ecosway Pty Ltd* [2016] FCA 296 at [199], per White J.

PART IV: IMPROVING THE ENFORCEMENT REGIME

The Taskforce's Report identified that to improve the enforcement regime in relation to black economy offences, access to third party information; in particular, bank and telecommunications data is critical.

The Taskforce found that the Commissioner does not have the optimal balance of capabilities with respect to gathering evidence in relation to black economy offences. As a result, there are prolonged investigation periods and additional resources required, and in some instances, an inability to proceed with actions.

These areas of focus identified by the Taskforce are:

4.1 Third party data: Third party information, especially data from banks, is fundamental evidence to prove most low to mid-range black economy criminal offences. For all criminal matters the ATO currently has to rely on the AFP to issue and execute search warrants[10] on banks and other third party institutions to gather information on behalf of the ATO. Improved data analytical tools also can assist in identifying internet/social media based black economy activities.

4.2 Reforms to freezing orders: The *Proceeds of Crime Act 2002* (PoCa) allows for complete freezing of bank accounts for up to three days. A restraining order is required to extend freezing order beyond three days, and obtaining restraining order requires further evidence such as information from financial institutions.

4.3 Telecommunications data: Telecommunications data such as telephone numbers, name and address details, and itemised call records are vital to criminal investigations conducted by regulators such as the ATO. Telecommunications data can be used to identify connections between contacts within syndicates and their controllers, to understand the full picture of criminality.

Providing access to telecommunications data could impact on the privacy of individuals and businesses subject to criminal investigation, as the Commissioner would have the powers to review data not linked to joint AFP investigations. The proposal seeks to strike a balance between recognising the limits enforcement agencies outside the AFP should have in accessing data, and recognising that black economy participants should not be able to leverage privacy as a vehicle to protect their black economy activity.

4.1 Access to third party information

Background

Prompt prosecution of black economy activities relies on timely collection and corroboration of evidence which, in many cases, is held by third parties. This information is often critical to building prosecution cases with a reasonable prospect of conviction.

As highlighted in Recommendation 8.2 of the Taskforce's Report, the power to obtain bank information is important to address most low to mid-range black economy criminal offences. Account and transaction information from banks and financial institutions is critical to investigations into black economy activities as the information assists in identifying the movement of funds to and from suspects. Other third party institutions who receive warrants for tax-related criminal

[10] Search warrants are issued under Section 3E of the *Crimes Act 1914 (Cth)*.

investigations also include state and federal government agencies, insurance companies, liquidators and businesses.

Issue

The Commissioner's powers[11] to obtain information and evidence are wide. However, they do not extend to offences under the Criminal Code.[12] To acquire third party information for criminal investigations, the ATO must engage the AFP to prepare and execute a search warrant issued under section 3E of the *Crimes Act 1914*. While this is successful in obtaining the additional information, it leads to delays in investigations[13] and diverts AFP resources away from the investigation of other criminal activities.

Around half of the warrants issued in tax-related criminal investigations are to gather bank account information. Increasingly, suspects are using a greater number of accounts to disguise transactions and investigators are limited in their ability to obtain information within a reasonable timeframe. Generally, it will take up to 12 weeks for the AFP to execute a warrant on banks which is then compounded by the time taken for the banks to respond.

To improve this process, the Commissioner could be provided with powers to gather third party information in a more efficient manner. For example, if powers similar to the civil information gathering powers exist, the timeframe to receive information could be reduced to 28 days which is the standard timeframe to comply with notices under section 353-10 of Schedule 1 to the TAA1953.

The Taskforce also recommended that the Government should consider using tools such as internet scraping to gather data and improve its data analytics to monitor black economy activity. The 'internet scraping' technology monitors internet traffic such as publically available or subscription based data to identify transactions indicating potential black economy behaviour. This data can be used by the ATO and other enforcement agencies for enhanced data matching with income reported to authorities. The Taskforce noted that the 'internet scaping' is currently used by German tax authorities on a systematic basis to identify potentially high-risk transactions.

This consultation paper seeks feedback on the potential to provide the Commissioner with powers to access third party information, including financial information. The powers would not change the types of information the ATO may access, but rather the mechanism and analytical tools by which it is obtained.

In particular, this consultation seeks feedback on:

Questions:

16. *Are there any issues with providing the Commissioner with powers to access third party information for the purposes of investigating tax-related criminal offences?*

17. *What safeguards would need to be in place to protect privacy concerns and ensure that there are appropriate checks and balances?*

18. *Are there any issues with government agencies using web data tools, such as internet scraping to monitor black economy behaviours?*

[11] Section 353-10 of Schedule 1 to the *Taxation Administration Act 1953*.
[12] Division 353 – Powers to obtain information and evidence *Taxation Administration Act 1953*.
[13] This process to obtain bank information can be contrasted with that used by ATO auditors who have access to compulsory information-gathering notice powers. When these notices are served on the banks electronically they often result in the information being provided within 10 days or alternatively 28 days for paper-based responses.

4.2 Reform proceeds of crime laws in relation to freezing orders

Background

A freezing order can be made against a bank account if there are reasonable grounds to suspect the balance reflects proceeds of certain offences, and the magistrate is satisfied that there is a risk that the account balance will be reduced.

PoCa allows for complete freezing of bank accounts for up to three days. A restraining order is required to extend freezing order beyond three days.

Issue

Obtaining the restraining order to extend freezing order requires providing additional evidence such as information from financial institutions. Enforcement agencies are not able to obtain the restraining order in time, as financial institutions usually have three to 14 days to provide the requested information, leading to expiration of an existing freezing order.

The Taskforce's Report recommended that the Government should consider extending the period of PoCa issued freezing order from three days to 14 days, or until the relevant financial institution has provided data sought by enforcement authorities.

The Taskforce also noted that the complete freeze of bank accounts can also cause significant disruption in the operation of the businesses/charities under investigation. Currently under the PoCa, a magistrate may vary a freezing order to allow withdrawals from the frozen account to meet certain reasonable expenses such as living expense for the person and their dependents, business expenses and to service specified debt. However, this requires a person to apply for a variation and only comes into effect through a written notice given to the financial institution.

Questions:

19. *Should the period of freezing orders under PoCa be extended from three days to 14 days? Are there any impediments to granting this extension?*

20. *Should the period of a freezing order under PoCa allow for a further extension beyond 14 days until the relevant financial institution has provided data sought by enforcement authorities? Are there any impediments to granting this extension?*

21. *Are there any impediments in giving discretion to courts to freeze only specific transactions or funds in relation to a bank account or person?*

4.3 Access to telecommunications data

Background

ATO criminal investigators rely upon telecommunications data for many of their investigations, particularly those involving identity and refund fraud. It is estimated that more than 80% of ATO criminal investigations in financial years 2012-13 and 2013-14 referred for prosecution contained telecommunications data in the criminal brief of evidence or relied on derivative use of telecommunications data to progress the investigation.

Telecommunications data includes information such as telephone numbers, name and address details, itemised call records, information on ID records supplied by clients when applying for telecommunications services and subscriber information relating to internet address searches.

In particular, there are three types of telecommunications data:

- telecommunications interception (live stream of the content of communications)
- telecommunications data (including subscriber details, call time and location details)
- stored communications (historical text messages, voicemails and emails)

Telecommunications data is used by criminal investigators to identify connections between contacts within syndicates and their controllers, and it is often through this type of information that the full picture of criminality can be understood. Investigations into black economy activities often involve uncovering the true identity of those involved. Telecommunications data also assists in verifying the location of suspects at the time of key actions; for example the lodgement of fraudulent returns and transfers of money.

Issue

Currently ATO criminal investigators and other ATO officers do not have the ability to access historical telecommunications data. Instead, telecommunications data can only be accessed through joint investigations with the AFP. This means that certain individuals may avoid detection for criminal activities, because the ATO is unable to gather telecommunications data if it does not involve an AFP joint investigation.

The Taskforce's Report indicated that "it is impractical for all criminal investigations of these agencies to become joint investigations with the AFP. Designating the ATO as a criminal law enforcement agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* will allow the ATO to access to appropriate telecommunications data in a timely manner."

This consultation seeks feedback on:

Questions:

22. *Should the ATO be able to access historical telecommunications data? If so, what type of telecommunications data should be able to be accessed?*

23. *How should access to telecommunications data be obtained by the ATO and what safeguards should apply?*

24. *Would there need to be any specific limitations to address particular circumstances or specific concerns?*

PART V: EXPANDING THE JURISDICTION OF THE FEDERAL CIRCUIT COURT OF AUSTRALIA

Part of an effective prosecution process is having in place a fit for purpose court system where black economy matters can be dealt with efficiently and fairly. Recommendation 8.2 of the Taskforce's Report calls for more effective prosecution processes, including making use of a specialist tax tribunal to deal with black economy offences.

The recommendation relates to introducing trial processes which address community perceptions that operating in the black economy is a victimless crime, with the ultimate goal of changing behaviour over time through increased enforcement activity. Escalating and distinguishing black economy offences out of traditional court regimes would also allow for a more expedient process for taxpayers.

Background

The Federal Circuit Court of Australia (FCC) is an independent federal court under the Australian Constitution. The Court was established in 1999 as the Federal Magistrates Court of Australia. In 2013, the Court was renamed the Federal Circuit Court of Australia to recognise and reflect the Court's role as an intermediate court servicing regional centres as well as capital cities throughout Australia. The *Federal Circuit Court of Australia Act 1999* (the Act) continues the existence of the Federal Magistrates Court.

The FCC has registries across all capital cities, and an expansive regional network that reflects the FCC's commitment to providing access to justice to the people of Australia. Judges travel regularly to regional areas to hear matters which means in many cases, litigants don't need to travel to the major cities to have their matters dealt with. It is the only federal court that regularly conducts regional circuits, mainly to hear family law matters.[14]

The FCC was established to provide a simple and accessible alternative to litigation in the FCA and Family Court of Australia (Family Court) and to relieve the workload of those courts. Section 3 of the Act provides that the FCC is to operate as informally as possible and to use streamlined procedures.

The Government has separately announced that the Attorney-General's Department (AGD) is conducting a review of whether the Federal Court's criminal jurisdiction should be expanded to include corporate crime. This review is being conducted in the context of additional funding being provided to the Australian Securities and Investments Commission and the Commonwealth Director of Public Prosecutions to undertake enforcement action in relation to financial sector crimes. Currently criminal prosecutions for misconduct by banks and other financial institutions are heard in state courts and therefore have to compete with state cases for resources and scheduling. The AGD will consult with relevant stakeholders including the states in undertaking the review and provide its report to the Government in January 2019.

Jurisdiction

The FCC was intended to partly replace the federal jurisdiction with which state courts have been invested under the *Judiciary Act 1903*. The jurisdiction of the FCC has grown to include family law and child support, migration, administrative law, admiralty law, bankruptcy, copyright, human rights,

[14] Federal Circuit Court's website at: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/about-fcc/>.

industrial law, privacy and trade practices. The FCC shares those jurisdictions with the FCA and Family Court, with some work in the above jurisdictions also heard in State and Territory courts.[15]

Issue

The Taskforce's Report notes the increasing convergence of issues relating to workplace relations, duty and tax, immigration, welfare and corporate regulation matters,[16] which further supports the need for agencies and State governments to be multi-skilled to deal with multiple offences more efficiently and effectively.

The Taskforce in their consultations in regional areas noted that due to lack of visible presence of major regulators, individuals and businesses do not expect to be subject to enforcement proceedings. This validates the need for stronger regional presence to deal with certain black economy matters.

Options

This consultation paper seeks feedback on the proposal to broaden the jurisdiction of the FCC to hear civil penalty proceedings and criminal offences for black economy matters. The FCA currently has exclusive jurisdiction over taxation matters. The FCC shares some jurisdictions with the FCA, and may be equipped to address taxation matters, including existing and new black economy matters. The FCC's rules and procedures are simpler and less formal than the FCA to deal with a new category of mid-range offences. As a federal court, the FCC may be well placed to provide national consistency in the application of a penalty, particularly where there is a convergence of issues.

Currently, criminal matters are predominantly heard in State and Territory Courts, which exercise conferred federal jurisdiction to hear and determine such matters. The FCA has limited criminal jurisdiction and the FCC currently has no criminal jurisdiction. Expansion of jurisdiction to FCC may also provide an opportunity to consider conferring criminal jurisdiction on the FCC to deal with more serious black economy offences. This would require legislative and procedural reform, similar to the reforms made to the FCA in relation to cartel matters.

Questions:

25. *What are the benefits of, or any impediments to conferring a tax jurisdiction on the Federal Circuit Court of Australia to hear and determine taxation matters?*

26. *What are the benefits of, or any impediments to, conferring a jurisdiction on the Federal Circuit Court of Australia to hear criminal matters relating to black economy activities?*

[15] Ibid.
[16] Above, n 3 at p 177-8.

Table III. Consolidated list of questions

List of questions
Question 1: Are there any other key hallmarks you think should be considered when developing new, or amending existing black economy offences and penalties?
Question 2: Should the existing administrative penalties for repeat or serious tax offences be further scaled? If so, how and in what circumstances?
Question 2A: What are your views on introducing other tier of administrative penalties? Is it consistent with the framework introduced in Part II?
Question 3: Are there other gaps in existing enforcement regimes, such as tax evasion offences under the Tax Administration Act or elsewhere, where new mid-range offences could be introduced?
Question 4: Should the requirement under section 8ZE of TAA1953, for all administrative penalties to be withdrawn where criminal proceedings are commenced against a taxpayer, be amended to suspend all administrative penalties pending the outcome of criminal proceedings?
Question 5: Which elements of serious black economy offences should reversing the onus of proof apply to?
Question 6: Should the onus of proof for some elements of black economy offences be reversed and borne by the defendant instead of prosecution as recommended by the Taskforce?
Question 7: What are the issues in reversing the onus of proof for some black economy offences?
Question 8: What non-financial penalties could be considered to enhance compliance with tax law?
Question 9: Are there any limitations, risks or unintended consequences that may result from implementing non-financial penalties?
Question 10: In what circumstances should a travel ban scheme apply to Australian taxpayers?
Question 11: Would the introduction of arrangements in Australia to prevent travel by taxpayers with large tax debts improve compliance with Australia's tax law?
Question 12: Is it appropriate to require additional recording keeping in relation to substantial gambling winnings or gifts?
Question 13: Alternatively, should the Commissioner be able to request taxpayers with substantial winnings to undertake further record keeping in relation to their gambling activities going forward (e.g. by way of written notice)?
Question 14: What level of increase to the civil penalties would serve as an appropriate deterrent to stop employers from engaging in sham contracting arrangements?
Question 15: Is the existing 'reckless' threshold for prosecuting employers involved in sham contracting appropriate? Should this legal threshold be lowered to 'reasonableness' test?

Question 16: Are there any issues with providing the Commissioner with powers to access third party information for the purposes of investigating tax-related criminal offences?
Question 17: What safeguards would need to be in place to protect privacy concerns and ensure that there are appropriate checks and balances?
Question 18: Are there any issues with government agencies using web data tools, such as internet scraping to monitor black economy behaviours?
Question 19: Should the period of freezing orders under PoCa be extended from three days to 14 days? Are there any impediments to granting this extension?
Question 20: Should the period of freezing order under PoCa allow for further extension beyond 14 days until the relevant financial institution has provided data sought by enforcement authorities? Are there any impediments to granting this extension?
Question 21: Are there any impediments in giving discretion to courts to freeze only specific transactions or funds in relation to a bank account or person?
Question 22: Should the ATO be able to access historical telecommunications data? If so, what type of telecommunications data should be able to be accessed?
Question 23: How should access to telecommunications data be obtained by the ATO and what safeguards should apply?
Question 24: Would there need to be any specific limitations to address particular circumstances or specific concerns?
Question 25: What are the benefits of, or any impediments to conferring a tax jurisdiction on the Federal Circuit Court of Australia to hear and determine taxation matters?
Question 26: What are the benefits of, or any impediments to conferring a jurisdiction on the Federal Circuit Court of Australia to hear criminal matters relating to the black economy activities?

Annexure: The Government's taxation enforcement regime

	Administrative penalty	Civil penalty	Criminal offence
Burden of proof	Individual or company.	Government.	Government.
Standard of proof	Balance of probabilities (i.e. greater than 50%).	Balance of probabilities.	Beyond reasonable doubt.
Punishment remit	Financial.	Financial and other (e.g. not able to leave country).	Financial, custodial (i.e. jail), reputational (e.g. conviction recorded), other (e.g. not able to leave country).

As shown in Annexure, administrative penalties are automatically imposed on a default basis. This means that, if an individual disagrees with the administrative penalty, they must raise their objection with the ATO. If the individual remains dissatisfied, that individual must then seek redress through making an application to the Administrative Appeals Tribunal.[17]

Where criminal proceedings are commenced against an individual or business, that individual or business is not liable for any administrative penalty, regardless of the outcome of the criminal proceedings (section 8ZE of the TAA 1953).

[17] ATO, *Remission of Penalties* (2018) <https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Request-remission-of-interest-or-penalties/Remission-of-penalties/>.

Glossary

Terms	Definition
Black economy offences and penalties	Offences and penalties broadly relatable, or perceived to be relatable, to the black economy. Where reference is made only to 'black economy offences', this refers exclusively to criminal black economy activities. See 'Criminal offences' below.
Taxpayers	Include both natural persons and legal persons (e.g. companies).
Onus of proof	The legal or evidential burden of proving the existence of a matter.
Civil penalty	A punitive sanction, often financial in nature, which does not involve criminal liability and is imposed by courts applying civil rather than criminal court processes (e.g. applying a civil standard of proof).
Administrative penalty	A sanction imposed by the regulator, or by the regulator's enforcement of legislation without intervention by a court or tribunal. It is issued upon discovery of an unlawful event, and is due and payable subject only to any rights of review that may be available under the applicable scheme. In other words, the regulator does not need to prove the contravention to a third party before the penalty is imposed.
Criminal offence	A sanction which involves criminal liability and is imposed by courts applying criminal rather than civil court processes (e.g. applying a criminal standard of proof). Criminal offences may include custodial sentences, such as imprisonment.
Prosecution	The lawyer/s representing the Crown in criminal cases before a court.
Travel ban schemes	Schemes restricting individuals from departing or arriving in certain countries, especially their own country.
Criminal code	Contains several core criminal offences, and general principles of criminal responsibility that apply default to all criminal offences, unless specifically excluded by legislation.
Federal Circuit Court of Australia (FCC)	An independent federal court under the Australian Constitution. It is a federal court of record and a court of law and equity.
Sham contracting	Arrangements whereby an employer or employee attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done to avoid financial obligations, such as the employer's responsibility to pay employee entitlements.