

Government Procurement

ACTU submission to the Treasury review process.

The role of Procurement

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. There are currently 43 ACTU affiliates with approximately 2 million members engaged across a broad spectrum of industries and occupations in the public and private sector. The ACTU welcomes the opportunity to make a submission to this review arising from the Shadow Economy¹ Inquiry conducted in 2017.

Australian unions are concerned that the Commonwealth Procurement rules' narrow focus on cheapest price rather than the broader economic benefits of procurement, and the current Government's agenda to attack procurement policies that support local business, is disadvantaging local industry, costing jobs and resulting in exploitation of workers and breaches of industrial, superannuation and taxation law. Even worse, this attitude squanders the opportunity to use government expenditure of taxpayer's money to actually raise standards for Australian workers.

While we believe that some of the measures preventing companies with poor tax records from participating in government procurement, as outlined in the Treasury discussion paper, would represent good first steps, the future of Australian industry requires government procurement that goes beyond this and implements a procurement system that supports local content and good quality local jobs. The Government must use their procurement decisions, and other contractual arrangements with the private sector (such as grants), to achieve broader policy objectives and support local industry and employment. To maximise the benefit to Australia and Australian working people from government procurement the system's priorities must be reconsidered. The new approach should include robust conditions of participation with a focus on ethical procurement and labour standards, full, fair and reasonable access and a clear and transparent assessment that delivers local benefits. Companies selected for Commonwealth procurement should have good tax records (including information from company tax, relevant royalty payments and incorporating information from systems like the Taxable Payments Reporting System (TPRS) where applicable) as well exemplary industrial relations, environmental and social records.

¹ The ACTU prefers the term 'Shadow Economy' to 'Black Economy' as we believe the conflation of 'blackness' with negative attributes contributes to the perpetuation of negative stereotypes about Indigenous Australians and other people of colour. We call on the government to be mindful of how the terminology it uses may be interpreted and ask that it cease to use this potentially discriminatory and offensive phrase."

Australian unions are concerned that local business who use ethical and responsible practises are disadvantaged against international or local competitors that do not. We must focus on ethical and responsible procurement, including clear government mandated obligations on suppliers to commit to environmental, social and governance (ESG) standards to ensure that Australian producers and providers who do the right thing are not disadvantaged against international or local competitors that do not. Government should also commit to avoiding the most negative labour practices which have undermined job stability and wage growth in private-sector workplaces, including excessive use of casual employees, temporary and irregular hours, unpaid internships, sham contracting arrangements, and others. We believe that the integration of these standards into the Commonwealth Procurement Rules is the next logical step to the measures outlined in the discussion paper. The *Code for the Tendering and Performance of Building Work 2016* has already shown that procurement rules can be used to undermine legislated rights for Australian workers. We believe that far from following this poor example, these rules should be used to support, and raise the standards of, Australian industry.

The ACTU has recently released the *Jobs You Can Count On* strategy which outlines these points in greater detail. We have included a copy of the report as an attachment to this short submission. We would also like to commend to the Treasury the submissions made to this review by our affiliated unions. We also draw Treasury's attention to the recent report commissioned by the Transport Workers Unions and released by the Centre for Future Work, *Raising the Bar: Government Spending Power and Labour Standards*² which considers some of the matters raised in the discussion paper as well as in the *Jobs You Can Count On* strategy.

The ACTU looks forward to the outcome of this review and the future steps that will be taken to improve the outcomes achieved for the Australian economy by the Commonwealth Procurement Rules.

Response to specific consultation questions

What should be taken into account in determining what is a 'satisfactory tax record'?

The Discussion Paper makes clear that the information included in the statement will be based on information held in ATO systems including declarations provided by the businesses in question. In that event full use of that information should be made. For example, where the business has been a respondent in ATO initiated proceedings relating to alleged tax

² Available at the Centre for Future Work's website - https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/2770/attachments/original/1526880027/Raising_the_Bar_Formatted_Final.pdf?1526880027

contraventions or where court orders have been made against the business in relation to tax – related contraventions, this information should be included. This will allow the relevant Government agency to interrogate the information further in order to satisfy themselves that these proceedings do not present a commercial risk or do not otherwise render the business unsuitable for Commonwealth funded work. ATO enforcement activities such as non-compliance with a direction notice, repeated instances of direction notices, administrative penalties, prosecution and conviction on tax matters would all render a business’s tax record unsatisfactory. Other matters such as non-payment or underpayment of employee wages and entitlements should also disqualify an entity from being considered to have a satisfactory tax record. Additionally, and noting the success of the system in those industries in which the Taxable Reporting Payments System operates, information held by the ATO in relation to the tax history of the business as disclosed by the TPRS should be fully utilised in assessing the ‘satisfactory’ nature of the business’s tax record. That might include verified under-declaration of income disclosed through the TPRS, failure to register and disclose reportable payments and re-assessments and back-payments made as a result of the operation of the TPRS.

What could objectively be considered to be a ‘satisfactory’ tax record and an ‘unsatisfactory’ tax record?

Factors that indicate an unsatisfactory tax record could include adverse orders in tax –related proceedings, director disqualifications, garnishee notices, non-compliance with or repeated directions notices, failure to register for relevant tax obligations, timeliness of remittances, failure to remit, filing of false or misleading information, misuse of ABNs either by the business itself or employees misclassified as contractors and improperly using ABNs, whether the business has entered into undertakings with the ATO, whether director penalty notices have been issued, whether directors have been associated with a company that has experienced an insolvency event and is the subject of an adverse administrator’s report arising from that event. Non-compliance with monitoring systems such as SuperStream, Single Touch Payroll and the TPRS should also be considered to render a business’ tax record unsatisfactory.

What things should be taken into account if the tax history is not perfect but should not prevent a satisfactory tax record statement being issued?

Rather than a satisfactory statement being issued for those with ‘imperfect’ tax records, a qualified statement could be issued which identifies the nature of and the reason for the qualification which would allow the tendering agency to require the business to provide further information to allow them to be satisfied that the business was in fact a suitable tenderer or potential beneficiary of a government contract. Transparency around previous non-compliance, repayment of all taxes and employee entitlements from previous incursions, and evidence of proactive engagement with the ATO and the relevant union to ensure that all tax and employee

liabilities are being met should all be considered as factors in allowing even a qualified statement.

What length of time should be taken into account in the Statement of Tax Record?

At least the minimum 5-year period for which businesses are required to retain tax records.

Should large businesses with a turnover of \$100 million or more be required to show evidence that they have adopted the Tax Transparency Code?

Yes. As it now stands a significant number of large corporations, many of whom appear (based on ATO Tax Transparency reports) to regularly pay zero corporate tax year on year, have failed to sign up to the Tax Transparency Code. In order to ensure that the public can be confident that major contracts are only awarded to companies with a demonstrable commitment to tax transparency, the adoption of the TTC by large companies should be a prerequisite for Commonwealth procurement.

What arrangements should apply to sub-contractors?

Smaller sub-contractors often pose an even greater risk than those in a direct contractual relationship with the government tendering agency. For this reason there needs to be stringent application of the Statement of Tax Record measures to those further down the supply chain. There should be a time limit imposed on those directly tendering or contracting with the Commonwealth to provide Statements from those further down the supply chain to the procurement officer of the government agency. Procurement agencies should retain a register of contractors in the supply chain and periodically audit their contractors to ensure that Statements have been provided for all contractors in the supply chain. Additionally, companies' Statements of Tax Record should include serious incidences of tax fraud by any sub-contractors engaged during the past five years. This will compel companies that receive public funds to assume responsibility for their own supply chains. In addition, tax avoidance that occurs on a Government contract by a sub-contractor that is not directly contracted to the Government should appear on the Statement of Tax Record of the lead contractor.

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