

**From:** Eli Braggins  
**Sent:** Wednesday, 20 June 2018 12:25 PM  
**To:** RG - Black Economy  
**Subject:** Submission - Property Council of Australia - Improving the integrity of the Commonwealth procurement process

Good afternoon Kathleen,

Thank you for the opportunity to participate in the consultation process for “**Improving the integrity of the Commonwealth procurement process**”. The Property Council also appreciates the additional time provided to canvass our members and provide a measured response.

The Property Council is the peak body for owners, and investors in Australia’s \$670 billion property investment industry. We represent owners, fund managers, developers and investors across all quadrants of property investment: debt, equity, public and private. The property industry now employs more people than any other sector. Creating more than 1.4 million jobs, property is the biggest direct contributor to employment in Australia by industry. The industry contributes some \$87.8 billion annually in combined Australian, state, territory and local government tax revenues.

The property industry supports the introduction of measures to limit black economy behaviour and provide a level playing field in respect of the procurement of government projects through requiring a satisfactory tax record. In particular, we support the use of targeted and objective set of criteria proposed to assess an entity's tax record which focuses on meeting income tax and GST lodgement and payment obligations on time.

However, it is critical that there is clarity on how this measure will apply to ensure there are not adverse implications for the tendering processes for large-scale property and construction projects. We have outlined below areas which should be considered further prior to finalisation of these measures.

Issue description		Recommendation
<b>1. General</b>		
<b>1.1</b>	It is unclear whether these measures will apply to state and territory government contracts where there is Federal funding provided.	Clarity should be provided as to when the Statement of Tax Record (“Statement”) is required (if at all) for state and territory government contracts.
<b>1.2</b>	It is currently unclear whether this measure is required to be satisfied at the time the prime contractor and sub-contractors are engaged for the contract, or whether there is an ongoing requirement for updated statements throughout the project term (which can be several years for large-scale projects).	Given this is a procurement measure, the final design of the measure should confirm that the Statement is only required to be provided at the time the prime contractor and sub-contractors are engaged. There should be no ongoing requirement to obtain updated statements from sub-contractors. Further, if the sub-contractor subsequently no longer has a satisfactory tax record or if their Statement expires, this will not adversely impact the project or the ability for the prime contractor to continue using the sub-contractor.
<b>2. Sub-contractors certification</b>		

2.1	The Treasury paper acknowledges that sub-contractors may not be known at the time of tendering for a project, and that the Statement may be obtained at the time the prime contractor engages them. However, it is common for sub-contractors to themselves have their own sub-contractors who may be engaged after/at this time.	It is submitted that the proposed measures should only apply at the prime-contractor and sub-contractor level, as it will not always be practical to trace through multiple levels of sub-contractors, especially given that there will not be a direct contractual relationship with the prime contractor at all levels. Alternatively, it should be sufficient for the prime-contractor to obtain a declaration from their immediate sub-contractor that the sub-contractor has either obtained Statements from their own sub-contractors or that they will only engage with sub-contractors who have a 'satisfactory tax record' (i.e. compliant sub-contractors).
<b>3. Statement of tax record details</b>		
3.1	Information contained on the Statement should allow governments/business to know that the taxpayer has a satisfactory tax record, however if more information is contained about the nature of any non-compliance, payments etc this may result in commercially sensitive information being released.	The Statement should simply address whether or not the taxpayer has a satisfactory tax record – any further information beyond identification of the taxpayer should not be provided.
3.2	Taxation is a complex area of law and interpretation disputes do arise. Where there is a current difference of interpretation between the taxpayer and the ATO this should not adversely impact whether the taxpayer has a satisfactory tax record.	Active reviews or disputes should not be considered when determining whether a taxpayer has a satisfactory tax record for the purpose of tax compliance as these may be ruled in the taxpayer's favour and compliance has occurred.
3.3	Taxpayers may be in the process of addressing non-compliant tax issue in agreement with the ATO and working towards full compliance. It would seem unfair to disadvantage these entities from the tender process.	In determining whether a taxpayer has a satisfactory tax record if a taxpayer is in an agreed procedure with the ATO to correct deficiencies this should not result in a taxpayer being identified as non-compliant.
3.4	The discussion paper seeks views on whether the Statement should include details on whether the taxpayer has adopted the Tax Transparency Code. This is a voluntary code, and therefore whether it has been adopted or not does not reflect the tax compliance status of the entity.	The status of the adoption of the Tax Transparency Code should not be included as it has no relevance to whether the taxpayer has complied with tax obligations, a choice not to sign up to this initiative should not provide the inference of wrong doing.
<b>4. Discretionary procurement issues</b>		
	Remote or regional areas may only have one or two large sub-contractors in the area that are capable of completing the work to the required technical and safety standards.	A discretion should be provided to allow tenders where there is insufficient expertise within particular remote or regional areas and sub-contractors are unable to obtain a compliant tax certificate. This will ensure

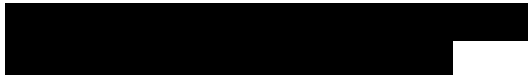
	If those large sub-contractors do not have a satisfactory tax record and there are no other qualified sub-contractors in the remote or regional area, it is unclear whether the new procurement policy would allow bidding in this situation.	remote and regional areas are not disadvantaged by the measure.
<b>5. Resolution of non-compliant statements</b>		
<b>5.1</b>	There should be avenues to quickly understand the reasons for the issuance of a non-compliant statement. Without this, factual errors or incorrect information may inadvertently impact the tender process.	The measure should include an avenue to discuss and appeal any non-compliant statements in a timely manner to limit the disruption to the procurement process.

If you have any questions in respect of the above please do not hesitate to contact myself or Belinda Ngo [REDACTED].


Regards  
Eli

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**Property Council of Australia**



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