

Ms Natalie James
Chair
Inquiry into the Victorian On-Demand Workforce
By email: ondemandinquiry@ecodev.vic.gov.au

Dear Ms James,

Response to the Inquiry into the Victorian On-demand Workforce Background Paper

Thank you for the opportunity to provide a submission to the Inquiry into the Victorian On-demand Workforce.

The face of the Australian economy has fundamentally changed in recent decades. We have seen a shift away from traditional employment arrangements towards contracting, self-employment and use of labour hire firms. We have become a more services-based economy, parts of which have high levels of involvement from contractors. And in recent years, the sharing economy has risen to prominence and alongside a rise in freelancing. These changes are set to continue as independent contracting and the sharing economy present attractive working arrangements to many. They can offer flexibility, independence and the prospect of rewards which traditional forms of employment may lack.

Workforce contracting is expanding to new parts of the economy, particularly in personal and domestic services. Sharing economy platforms based on online applications have carved out a new way of conducting business. As governments remove or scale back regulatory barriers which limit their growth, they are expected to continue to increase their presence in the marketplace. As chair of the Black Economy Taskforce we considered how these changes to the economy were affecting trends within the black economy. I provided my final report ('the Report') to the Government in October 2017.¹

The Report presents my findings on the size of the black economy in Australia, the drivers and risks underpinning it, and an innovative, forward looking blueprint for tackling it. The Report made 80 recommendations covering a wide range of issues seen in the black economy that I believe are of interest to your Inquiry, such as phoenixing, sham contracting, visa abuse, vulnerable workers and ABN reforms. The Government released its response to the Report as part of the 2018-19 Budget in which it agreed to the majority of the Taskforce's recommendations.²

As part of its response the Government has asked me to be the Chair of the Black Economy Advisory Board which will provide advice to Government on the latest trends in the black economy.

The research and consultation to prepare the Report was extensive. I partnered with 20 Commonwealth agencies and 14 private sector representatives, to share information, test ideas and

¹ Black Economy Taskforce Final Report – October 2017, <<https://treasury.gov.au/review/black-economy-taskforce/final-report/>>.

² Australian Government response to the Black Economy Taskforce Final Report – May 2018, <<https://treasury.gov.au/publication/p2018-287474/>>.

build consensus on our findings and the recommendations. I also held an extensive series of bilateral meetings with business leaders, professional and community organisations, engaging with hundreds of people in public hearings and industry round-table discussions across the country. I received 149 submissions from businesses, unions, community organisations, state and territory governments and members of the public.

I encourage you to consider my recommendations in the context of your Inquiry. The Treasury has also recently or is currently conducting consultations of relevance to your inquiry, including:

- Improving black economy enforcement and offences³
- Designing a modern Australian Business Number system⁴
- A reporting regime for sharing economy platforms⁵, and
- The digital economy and the corporate tax system⁶.

Further background on the relevant findings of Black Economy Taskforce is in *Attachment A*.

I look forward to the findings of your Inquiry and I am happy to discuss these issues with you.

Yours sincerely



Michael Andrew, AO
Chair
Black Economy Advisory Board

³ Treasury, Improving Black Economy Enforcement and Offences <<https://treasury.gov.au/consultation/c2018-343865/>>.

⁴ Treasury, Designing a modern Australian Business Number system <<https://treasury.gov.au/consultation/c2018-t311320/>>.

⁵ Treasury, Implementing a reporting regime for sharing economy platform providers <<https://treasury.gov.au/consultation/c2018-t350194/>>.

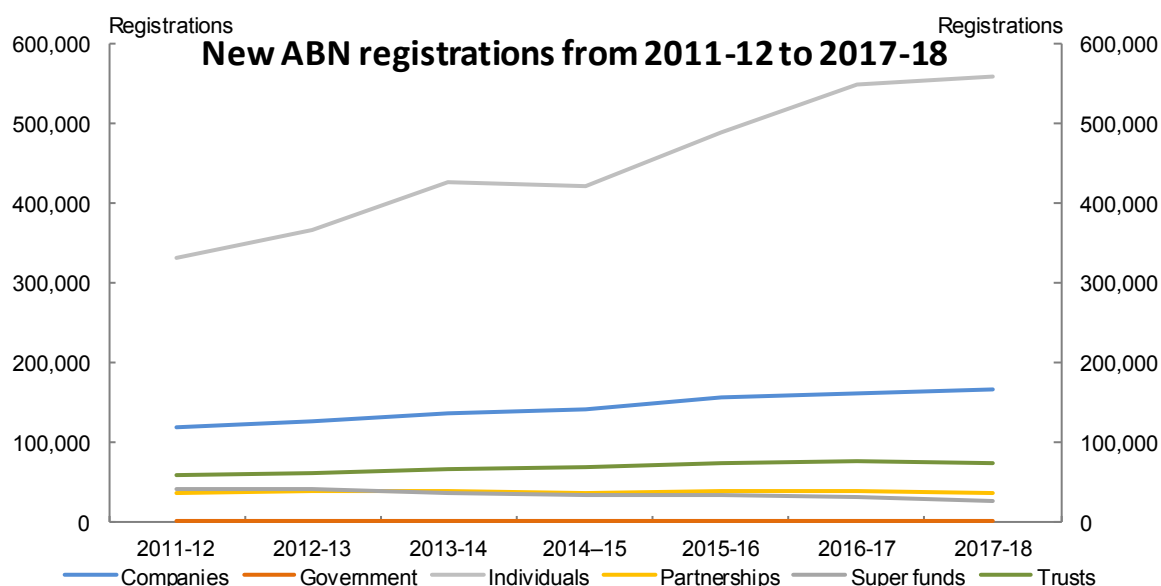
⁶ Treasury, The digital economy and Australia's corporate tax system <<https://treasury.gov.au/consultation/c2018-t306182/>>.

Attachment A: Relevant findings of the Black Economy Taskforce Final Report

Employment issues: sham contracting and visa holders – Chapter 10, pages 231 - 246

The Report noted that there is a level of ambiguity amongst workers in determining their employment status; be it employee or a contractor. Recommendation 10.3 of the Report states that the Government should implement the Productivity Commission’s recommended changes to the sham contracting provisions of the *Fair Work Act 2009* (page 236). Treasury has recently consulted on this – see their consultation paper *Improving Black Economy Enforcement and Offences* (part 3.7).⁷

We have seen sham-contract agreements become increasingly common throughout the economy, as unscrupulous businesses shirk their obligations to employees by declaring them ‘contractors’. Australian Business Register data shows a large increase in individuals applying for an ABN (see chart below). It is possible that flexible work preferences and increased entrepreneurship, including the rise of the sharing or gig economy, have played some part in this increase.



Source: ABR

The increase in sham agreements, where an employer deliberately structures an agreement to avoid employee obligations such as award wages, superannuation contributions, and Pay As You Go obligations, constitutes black economy activity. Sham-contracting also allows employers to avoid the minimum employment standards set out in the *Fair Work Act*, superannuation and work cover obligations and some payroll tax obligations.

In response to the Report, the Australian Taxation Office (ATO) is preparing updated guidance on the application of the alienation of personal services income (APSI) rules. The APSI rules prevent the alienation of income by individuals who are running a small business through an interposed entity, who may be disregarding their withholding obligations.

⁷ Treasury, *Improving Black Economy Enforcement and Offences* <<https://treasury.gov.au/consultation/c2018-343865/>>.

The Report also found that temporary visa holders are particularly likely to be involved in black economy activities. Generally, visa holders are permitted to work up to 40 hours per fortnight for economic reasons. Some student visa holders may be particularly vulnerable to exploitation as they risk visa cancellation if they are found breaching the working limit. In these circumstances, they may have no choice but to ask for, or accept, cash-in-hand work, often below minimum and award wages.

In the 2018-19 Budget, the Government provided \$318.5 million over four years to the ATO to deliver a new approach to enforcement. This will include new mobile strike teams targeting black economy behaviours supported by an audit force with broader coverage and reach into all areas of Australia. This will be complemented by contemporary tax and business education programs.

Sharing economy and taxation obligations – Chapter 6, pages 136 - 140

The Inquiry's Background Paper requested stakeholder views on how on-demand workers can ensure that their tax obligations are met. In response to the Taskforce's recommendation for a reporting regime for sharing economy platform providers (Recommendation 6.2), on 23 January 2019 the Treasury released a consultation paper on how a proposed reporting regime could be implemented.⁸ The consultation paper proposes two options: implementing a requirement for sharing economy platforms to report transaction details of users of their platforms to the ATO; or seeking similar transaction details through financial institutions. The proposed reporting regime is aimed at making it easier for sharing economy participants to comply with their taxation obligations, where reported information can be pre-filled into the tax returns of individual sharing economy participants. Public submissions will be published on the Treasury website in due course.

Improving co operation between state and federal authorities in information exchange – Chapter 5, pages 113 - 118

The Taskforce heard support during its consultation for the need to increase the efficiency and scope of inter-Government co-ordination and information sharing to identify and address black economy activity, which would contribute to better outcomes for the on-demand workforce. The Taskforce recommended better information sharing between states and territories and the Commonwealth (recommendation 5.1) and documented examples, such as 'ReturntoWorkSA' (page 134).

ReturntoWorkSA is the South Australian state authority responsible for work injury insurance. It promotes best practice reporting where all employers supply information about workforce numbers (including self-employed contractors) to make provision for workplace insurance. ReturntoWorkSA also closely scrutinises labour-hire supply chains in cases where it is suspected that phoenixing is likely to occur, particularly in circumstances of complex and multi-layered supply chains with no apparent commercial reason. It is also in regular contact with the ATO to share its information.

By fostering and encouraging data sharing arrangements between state and Commonwealth agencies, this often results in increased protection for workers. I believe there is a great deal to be gained by the Commonwealth in continuing discussions with best practice state agencies such as

⁸ Treasury, Implementing a reporting regime for sharing economy platform providers <<https://treasury.gov.au/consultation/c2018-t350194/>>.

ReturntoWorkSA and other state worker's compensation schemes to explore the sharing of data and intelligence to better combat black economy activity. My hope is that sharing of data and intelligence leads to widespread best practice across the states and territories that contributes to reducing the size of the black economy.

I also believe that there are further opportunities for the ATO, Fair Work Australia, Work Cover and the State Revenue Offices to work together.

State Harmonisation – Chapter 10, pages 247 - 250

The Report noted that a number of states have recently implemented or are planning to implement licensing schemes for the labour hire industry and there have been calls for the Commonwealth government to implement a national scheme. In my view having multiple state-based licensing schemes will likely create a regulatory burden for labour hire organisations that operate in more than one jurisdiction and harmonisation would be beneficial in the absence of a national scheme.

Government Supply Chain responsibility – Chapter 9, pages 203 - 218

The Report highlights supply chain price pressures in respect of labour hire operators and the impact that this can have on workers. The report contains two recommendations to improve the integrity of Government and private supply chains which the government is currently implementing. Improved standards will seek to promote ethical behaviour along supply chains, and encourage all stakeholders along supply chains to assume greater responsibility for adhering to and driving all businesses to be compliant with their tax and other regulatory obligations.

Digital technology – Chapter 4, pages 81 - 104

In the Report, I recommended that the Government should introduce a standardised identity framework that enables businesses and individuals to prove their digital identity quickly and securely. A natural extension would be to allow the credential to be used in interactions with private sector and state agencies. It could also be used to approve or demonstrate that a person holds a particular license. This will improve data holdings across governments, remove points of friction for individuals and combat identity theft.

We have also seen that workers frequently turn to their industry association or representative body as a source of trusted information. As a result, the Government funded the headline recommendations of the Small Business Digital Taskforce in 2018-19 MYEFO, with dedicated funding to increase the capability of industry associations to train their members in how to adopt and use digital technology that is beneficial for their business. The Government also funded the creation of a non-government entity with the overarching goal to increase digital capability of small businesses. The new non-government entity will remove the duplication of education and awareness initiatives from local, state and Commonwealth initiatives by having the one vehicle to deliver digital capability resources from government to small businesses nationally.

It is also important that the Commonwealth continues to digitise its functions that provide services to the public. The Government is working on modernising its business registers which includes combining the Australian Business Register (ABR) and 31 ASIC registers. Integrating business registers will assist regulators detect and deter instances of fraud and misconduct by enabling real-

time verification of business data and improve identification of business operators to help curb sham contracting arrangements.

In addition to this, the implementation of Director Identification Numbers (DINs) will allow regulators to confirm the identity of company directors, trace their corporate history and ultimately assist in identifying those who may be involved in illegal phoenixing activity.

Education – Chapter 11, pages 261 - 283

The Report looked at changing societal norms and identified benefits of incorporating tax literacy into educational curriculums and through industry associations. The ATO is developing appropriate tax literacy education and basic business skills with a focus on industries where black economy activity or a lack of tax literacy has been identified.