

# Black Economy Report - Increase ATO's power

## Increase ATO's power

The report recommends increasing the ATO's power significantly. This is particularly concerning because whistleblowers have historically been punished, and who will report abuse of these increased powers?

The report recommends serious suggestions for increasing the ATO's powers: that the ATO should not have to go through the AFP for a warrant to access telecommunications info, use covert listening devices, to compel information from banks, access to metadata, peoples locations at particular times, websites they own and operate, be given power to issue search warrants, access to data held by online social media providers, metadata that discloses peoples digital identities.

The report specifically mentions whistleblowers:

P155 We considered whether there could be **greater action in response to concerns** raised by whistleblowers. For example, follow up correspondence from the ATO which notes that the matter was reviewed, and seeking further information. At this time, we are not making a recommendation along these lines. There has **been mixed success with whistleblower arrangements in Australia**. This would also come at some cost, which could divert resources away from other serious black economy matters. (What could be more serious than reporting on corruption in the ATO!?)

Greater powers of the ATO:

P171 The Commonwealth Director of Public Prosecutions (CDPP) informed us: 'In relation to offences in the *Taxation Administration Act 1953* (TAA) involving allegedly false records in many instances **the prosecution is required to prove** beyond reasonable doubt that the records held or produced by the defendant do not accurately record the true state of affairs. There may be significant **evidentiary difficulties** faced in prosecuting these matters which rely heavily upon accurate records being available or insider information being obtained during the investigation.

The CDPP **considers that proposals to enable ATO officers to access third-party information such as bank account information and other increases in the ATO's coercive information gathering powers** may assist in addressing these evidentiary difficulties.'

P297 Another **challenge is that the ATO has limited powers**. For example, **unlike the AFP and others**, the ATO is not **allowed to use covert listening devices, nor is it able to compel information from banks** as part of a criminal investigation (it must rely on the AFP to do so on its behalf). Similarly the ATO **does not have access to metadata which could disclose people's digital identities, their locations at particular times and the websites they own or operate**. If the ATO is to be in the front line of tackling organised crime, **it should have powers similar** to those provided to other enforcement agencies.

P180 We also recommend a specialist tax tribunal to speed up prosecutions. This could be established as part of the Federal Court given the Court's expertise in Commonwealth law. The ATO, for its part, should be prepared **to take serious cases to court rather than pursue financial settlements before that stage**.

P181 This strategy needs to make better use of prosecution powers (particularly in high-profile cases) and utilise default assessments more often and earlier in the process. Other

recommendations in this report, **such as the reverse onus of proof**, better targeted mid-range offences, more strict liability offences and specialist tax tribunals should also be utilised to increase the efficiency of enforcement activities.

P186 Expanding the number of criminal law enforcement agencies: The ATO and AUSTRAC **should be designated as criminal law enforcement agency** for the purpose of the *Telecommunications (Interception and Access) Act* **so that they can access stored communications and telecommunications metadata**.

P186 Powers to obtain bank information: For criminal offences under tax legislation, **the ATO should be given the powers to issue search warrants to source bank data directly from banks, rather than burdening the AFP**.

Reviewing evidence gathering powers: The evidence gathering powers of other regulators should also be reviewed to assess **whether they have appropriate and timely access to bank data and telecommunications metadata**. The ability of regulators to **access data held by online social media providers** should also be explored.

P186 Improve the ability of the ATO and other regulatory agencies to obtain necessary evidence **including bank account information and telecommunications data** to support investigations and enforcement.

P187 Bank data: **Bank information is a staple of most low to mid-range black economy criminal offences**. For all criminal matters **the ATO has to rely on the AFP to issue and execute friendly search warrants** on banks to gather information on their behalf.

P187 The ATO **currently has the coercive powers to gather information from banks for only administrative investigations**, not for criminal investigations. In our view, **there is no valid reason** why the process of gathering bank information for criminal investigations should differ from administrative investigations.

Telecommunications data: **Telecommunications data such as telephone numbers, name and address details, itemised call records** are vital to criminal investigations conducted by regulators such as the ATO.

Recent amendments to the *Telecommunications (Interception and Access) Act* in October 2015 **meant that regulators such as the ATO, which previously had direct access to telecommunications data, lost it**. These regulators are currently restricted to receiving this data **only as part of joint investigations** with the AFP.

**It is impractical** for all criminal investigations of these agencies to become joint investigations with the AFP.

Designating the ATO and AUSTRAC as a criminal law enforcement agency for the purposes of the *Telecommunications (Interception and Access) Act* will allow the ATO to access to appropriate telecommunications data in a timely manner.

P193 Easily enforceable legislative provisions act as strong deterrents that adjust a black economy participant's cost benefit assessment of committing an offence. Strict liability

offences allow law enforcement agencies to deal with offences in a timely manner, and reduce the cost of doing so. These offences provide for people to be punished for doing something, or failing to do something, irrespective of whether the defendant intended to commit the offence.