

Black Economy Report Punishing and Restrictive

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I have compiled a list of some of the more disturbing suggestions in the Black Economy report that are especially punishing and restrictive, such as removing consumer protections for people who use cash, cancelling welfare if people do not declare income, mandating that non-compliant businesses cannot accept or make cash payments at all, greater powers for the government to freeze bank accounts of longer periods of time without restraining orders, public punishment through media to deter people, strict liability- proving that someone committed the act that constitutes the offence **is enough to prove that someone committed the offence.**

For small businesses: P172 Breaches of these rules should be designed so that there is a scaled set of administrative sanctions. For example (and noting that these sanctions could be applied as appropriate to the circumstances of the non-compliant business, not necessarily in step order):

1. Infringement notice.
2. Requiring them to obtain electronic/up to date POS.
3. Requiring them to obtain and use business/accounting software.
4. Requiring **them to obtain and accept payment through merchant facilities.**
5. Requiring a 'black box'⁸ linked to the ATO.
6. Mandating **that they cannot accept or make cash payments.**
7. Monetary penalties of varying sizes that can apply for failing to meet the terms of sanctions² through to 6.

P148 We are not arguing that policy settings must in every case be revisited. It is well beyond the scope of our terms of reference to do so. We also **think that wrong-doers should face consequences: welfare recipients should lose benefits** if they do not declare their income and visa holders should have their visa cancelled for serious breaches of conditions.

Note from me: But how about KPMG's history of wrongdoing? The report excludes actions which would affect KPMG, and their history of taxation and accounting fraud and financial crime:

P210 Companies that have been convicted of bribery or corruption should be debarred from Commonwealth Government contracts for a 2-year period. This **should not apply** where individuals within companies have been convicted, but not the company itself.

P185 We considered recommending that a **register be established to publish the**

details of deliberate tax evaders. This exists in the UK. Naming and shaming can be an effective behavioural tool as the risk of public exposure is a deterrent to those willing to engage in significant tax evasion. A register would also allow companies, consumer and employees to make better judgements when decision who they should conduct business with. **However, we consider that with increased visibility of enforcement through other means,** as recommended in this Report, **name and shame is not necessary at this stage.**

P154 We believe that the **behaviour of consumers who deliberately transact in cash** to avoid tax and other obligations is not socially acceptable and considered introducing a **deterrent** such as **removing or reducing consumer protections.**

P154 These options may also apply even when a consumer does not obtain valid proof of purchase by dealing in cash.

While removing consumer protections would send a message that goods and services need to be obtained in the formal economy, we also recognise that consumers are often not aware of their rights and protections when making purchases.

P154 As a result we do not recommend this action. However, consumers should be encouraged through education to request a valid invoice and be made aware **of the potential consequences of paying for goods and services in cash,** for example, making it more difficult to enforce their consumer rights, such as by taking a matter to court, and **risk of liability.**

P154 **We considered whether penalties should be applied where consumers do not obtain a valid receipt for purchases above \$75** (the current threshold ex GST for compulsory receipts under Australian Consumer Law). This would make it very clear to consumers that they are **implicated in black economy transactions** between businesses and consumers. However, such an approach is seen by many as too drastic: the emphasis should initially be to educate and inform consumers rather than to punish them. As a result we are not recommending that the Government implement penalties **at this stage.** (Not yet anyway...)

P299 The PoCa allows for **the freezing of bank accounts.** A bank account at a financial institution can be frozen if a magistrate is satisfied that there are reasonable grounds to suspect that the account balance reflects proceeds or an instrument of a particular offence.

- Freezing orders are intended to mitigate the risk that the account balance will be reduced. However, a freezing order can only be granted for a short period of up to three days and can only be extended **if an application for a restraining order has been made.** To obtain a restraining order, **a greater amount of evidence is required.**

- P300 To remedy this issue, we recommend that the Government consider **extending the maximum freezing order** duration to 14 days, and the introduction of a test **to extend the freezing order until the financial institution has replied** to the authorities' notice.

Further, we note that PoCa only allows for the complete freezing of an account. This can cause significant disruption to a legitimate business or charity that is under investigation.

We recommend that the Government **consider widening the existing provisions so that the authorities have the option** of freezing the complete bank account or part of an account or specific transactions in relation to an account or person. Such partial freezing arrangements would enable enforcement agencies to secure the proceeds of crime while reducing disruption for businesses at the early stages of a prosecution (where it has not yet been proven that they have committed) (Is this holding money ransom for good behaviour?)

P183 Joint raids already occur and often gain wide media publicity. As they are costly and time-consuming they are generally used to tackle the most egregious behaviour. **This should continue as the raids and the publicity they gain are an important part** of addressing black economy behaviours.

P183 Behavioural research indicates that people **not only need to see that the worst behaviour is addressed** (such as joint raids for the most egregious behaviour), but they also need to see **that people behaving like them are also affected**. For example, tradespeople doing cash jobs need to see that other tradespeople doing cash jobs **get caught and dealt with**. (Does this mean they suggest the AFP raids the houses of tradespeople and publicises in the media??)

P191 An offence is one of **strict liability where it allows people to be punished** for doing something, or failing to do something, **irrespective of their motivation**. Put simply, proving that someone committed the act that constitutes the offence **is enough to prove that someone committed the offence**. The prosecutor **does not have to prove** that they intended to commit the action, had knowledge of their actions, were reckless, or negligent. The only defence available to a person charged with a strict liability offence is a mistake of fact...However, there would also likely be a need to include some statutory defences to ensure onerous penalties weren't applied to one-off mistakes or simple human errors. Strict liability offences are efficient for regulators and professionals **and save time and money**. Again, the use of default assessments should be considered here.

P191 Some areas where the introduction of **strict liability offences** and an infringement notice regime could be considered are:

- The quotation of a false ABN or another entity's ABN, such as on invoices.

- Applying for an ABN on behalf of an individual, associate or an individual with an ABN entity, without the individual's consent.
- Sale of illicit tobacco, or possession of significant quantities.
- **Paying wages in cash (see Recommendation 3.2).**
- **Exceeding the cash payment limit of \$10,000 (see Recommendation 3.1).**
- Failure to keep proper books and records.
- Betting with illegal operators (state and territory).

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.**