

Master Builders Australia

SUBMISSION TO TREASURY

***CONSULTATION DRAFT PROCUREMENT
CONNECTED POLICY GUIDELINES (STATEMENT
OF TAXATION RECORD)***

21 December 2018



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Introduction

1. This submission is made on behalf of Master Builders Australia Ltd.
2. Master Builders Australia (**'Master Builders'**) is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations. Over 127 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
3. The building and construction industry (**'BCI'**) is an extremely important part of, and contributor to, the Australian economy and community. It is the second largest industry in Australia, accounting for 8.1 per cent of gross domestic product, and over 9 per cent of employment in Australia. The cumulative building and construction task over the next decade will require work done to the value of \$2.6 trillion and for the number of people employed in the industry to rise to 1.3 million.
4. The building and construction industry:
 - Consists of over 370,000 business entities, almost all of which (99%) employ fewer than 20 people and over half (59%) having no employees;
 - Employs over 1.1 million people (almost 1 in 10 workers) representing the third largest employing industry behind retail and health services, and the largest industry for full time employment;
 - Represents over 8% of GDP, with contributing \$142 billion Gross Value Added activity to the economy - the second largest sector in the economy;
 - Trains more than half of the total number of trades based apprentices every year, being well over 50,000 apprentices; and
 - Performs construction work each year to a value of over \$220 billion.

Summary

5. Master Builders is pleased that Government is focussed on measures to improve the efficiency and transparency of Government procurement processes. Construction work and related services form a significant part of total Government procurement related expenditure and, combined with funding from other levels of Government, represents around half of the total value of building work performed by the industry in Australia each year – approximately \$100 billion.
6. This submission deals with the draft Procurement Connected Policy Guidelines (**'PCP'**) and details a number of areas through which we submit the proposed framework could be improved. These improvements are canvassed below and relate broadly to implementation procedures. In general terms, the improvements we advance are intended to:
 - Allow Government to pursue its stated policy objective more effectively;
 - Reduce compliance obligations by minimising overlap with other existing obligations; and
 - Draw attention to other obligations relevant to procurement that ought to be more comprehensively considered by Government in this process.
7. We recommend these improvements so as to ensure the adoption of a framework that improves the efficacy of the government tendering process; particularly where the framework would ensure that government funding is directed towards businesses with a history of positive and productive commercial conduct and legislative compliance.

8. With respect to the Statement of Tax Record proposal (**'STAR'**), it is also our recommendation that the government consider both delay in implementation, and minor amendments to its function. Specifically, we consider that the government should:
 - Delay the STAR roll out until a methodology for concurrent implementation with the Director Identification Number (**'DIN'**) framework is considered; and
 - Consider amending the function of STAR in light of other pertinent reforms that have been proposed in response to the Final Report of the Black Economy Taskforce
9. The Government has a number of policy initiatives that are the subject of current consultation with respect to implementation. It is Master Builders' view that there is much benefit to both industry and Government if the implementation of these multiple measures is done in a more holistic way so as to minimise compliance difficulties and to facilitate implementation of multiple initiatives more effectively. We recommend that the Government utilise the opportunity to deal with these issues in a measured and methodical way, to promote efficiency and reduce administrative burden on business and government into the future.

Background

10. The Black Economy Taskforce handed down its final report in October 2017 (**'the Report'**). The Report totals some 361 pages, being 16 chapters and 5 appendices - culminating in 80 recommendations.
11. Master Builders opposes any endeavour to engage in commercial practices that are considered to be 'black economy' conduct/offences and supports methods to reduce such instances. Black economy conduct undermines the business operation and competitiveness of Master Builders' members who are always concerned to ensure they meet their existing compliance obligations.
12. However, it is vital that the policy intent of reducing instances of 'black economy' offences is carefully balanced against the need to ensure that business is not overly, or unnecessarily, burdened with ineffective or inefficient compliance requirements.

The STAR - Improvements Proposed

13. The PCPs provide for the provision of a STAR as a pre-requisite to being eligible for consideration to supply or provide services to Government. In its current form, the onus is on the tenderer to obtain a STAR. The business must then maintain the STARs currency and provide this to departments when tendering.
14. In considering improvements we outline later herein, Master Builders notes that businesses in the BCI are already faced with a range of requirements that have a similar policy purpose. These include:
 - The *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (**'the BCIIP Act'**), and the associated *National Code for Tendering and Performance of Building Work 2016* (**'The 2016 Building Code'**) – which include obligations to:
 - Mandate subcontractor compliance with the BCIIP Act and 2016 Building Code;
 - Report any disputed or delayed payments to subcontractors;
 - Provide detailed industrial relations management plans with respect to direct employees and engaged subcontractors;
 - Undertake to comply with all Commonwealth Laws and industrial instruments, which includes (specifically mentioned) laws relating to the payment of employees and subcontractors and remittance of tax, work health and safety, and contracting arrangements;
 - Avoid 'sham contracting' arrangements;

- Meet all state based Security of Payment requirements, including by contracting into compliant dispute resolution procedures with subcontractors; and
- Report on all aspects of the proposed work to be undertaken relating to sourcing and compliance of materials, projected whole of life costs of the project, the impact the project will have on jobs and the development of a skilled workforce.
- State based Security of Payment Laws – many of which require head contractors to provide monthly (or more regular) statutory declarations that they have met all payment obligations to subcontractors before their rights to enforce payment become enforceable at law;
- The Taxable Payments Reporting Obligation ('TPAR') requiring a report on payments made to subcontractors;
- Federal obligations to undertake quarterly taxation remittance, TFN and ABN assessments; and
- Single touch payroll, superannuation and associated reporting obligations - including remittance of payments to worker entitlement and redundancy funds.

15. Master Builders also note that there are a number of other measures and Government activity underway that is relevant to Government Procurement. These include:

- The 'Review of Security of Payment Laws', conducted by Mr John Murray AM on behalf of the Department of Jobs and Small Business¹.
- Changes to the structure, remittance, and obligations arising for business under the Treasury Laws – including:
 - the 'Improving the Integrity of GST on property transactions' reforms to the Taxation Administration Act 1953, passed in March 2018²;
 - Changes to Corporations Act relating to 'Receivers, and other controllers, or property of corporations' also passed in March 2018³;
 - Introduction of the Single Touch Payroll reporting requirements, as of July 2018⁴;
- Changes to the Fair Work Act which increase employer obligations relating to the remittance of superannuation and redundancy payments⁵;
- Other measures proposed to combat 'illegal phoenix activity', including:
 - The 2017 amendments to the Corporations Act to provide 'director safe harbour' against charges of wrong doing, where their activity is in the best interest of the company⁶;
 - The creation of a DIN; and
- The multi-faceted proposed 'Reforms to strengthen penalties for corporate and financial sector misconduct', proposed by the Treasury⁷ and to be administered by ASIC.

16. In light of the above, Master Builders makes the following series of recommendations to improve the proposed PCP arrangements and STAR obligations.

Reverse Onus

17. The current onus is on a tenderer to obtain, maintain and submit a STAR. This process is somewhat counterintuitive and less effective than it should be, as it requires the tenderer to facilitate the timely and efficient transfer of this information between government departments. Fundamentally, this would be better achieved through interagency communication channels.

¹ "Review of Security of Payment Laws: Final Report", Mr John Murray AM For the final report and recommendations, see [here](#)

² See <https://www.ato.gov.au/General/New-legislation/In-detail/Indirect-taxes/GST/Improving-the-integrity-of-GST-on-property-transactions/>

³ *Ibid*

⁴ <https://www.ato.gov.au/business/single-touch-payroll/about-single-touch-payroll/>

⁵ Particularly the [Superannuation Guarantee Integrity Package](#), however there have been a suite of amendments introduced throughout 2017 and 2018

⁶ The Director Safe Harbour amendments are located [here](#)

⁷ Located [here](#)

18. We therefore recommend Government reverse the onus to obtain and provide a STAR. Instead of requiring a tenderer to seek, maintain, and provide a STAR, the government should instead associate the STAR with the DIN, and manage this through appropriate interagency communication.
19. We have invited the government to consider and have noted a similar proposal with respect to the DIN rollout⁸ We consider that there is opportunity for the Government to utilise DIN to establish a system that stores, and appropriately facilitates the communication of relevant business and compliance information amongst agencies.
20. Notably it is the government who is both the holder, and final recipient of the information – as well as the beneficiary of an effective, efficient and attractive tender process. Where a system has been proposed that could facilitate this function (as is the case with DIN), it is logical that this system be used to achieve efficiencies wherever possible.

Allow similar existing obligations to satisfy STAR

21. We recommend that where existing obligations require the same or similar provision of information, that this be considered as being deemed compliant with STAR. We refer in particular to the abovementioned initiatives related to compliance with the 2016 Building Code and TPAR.

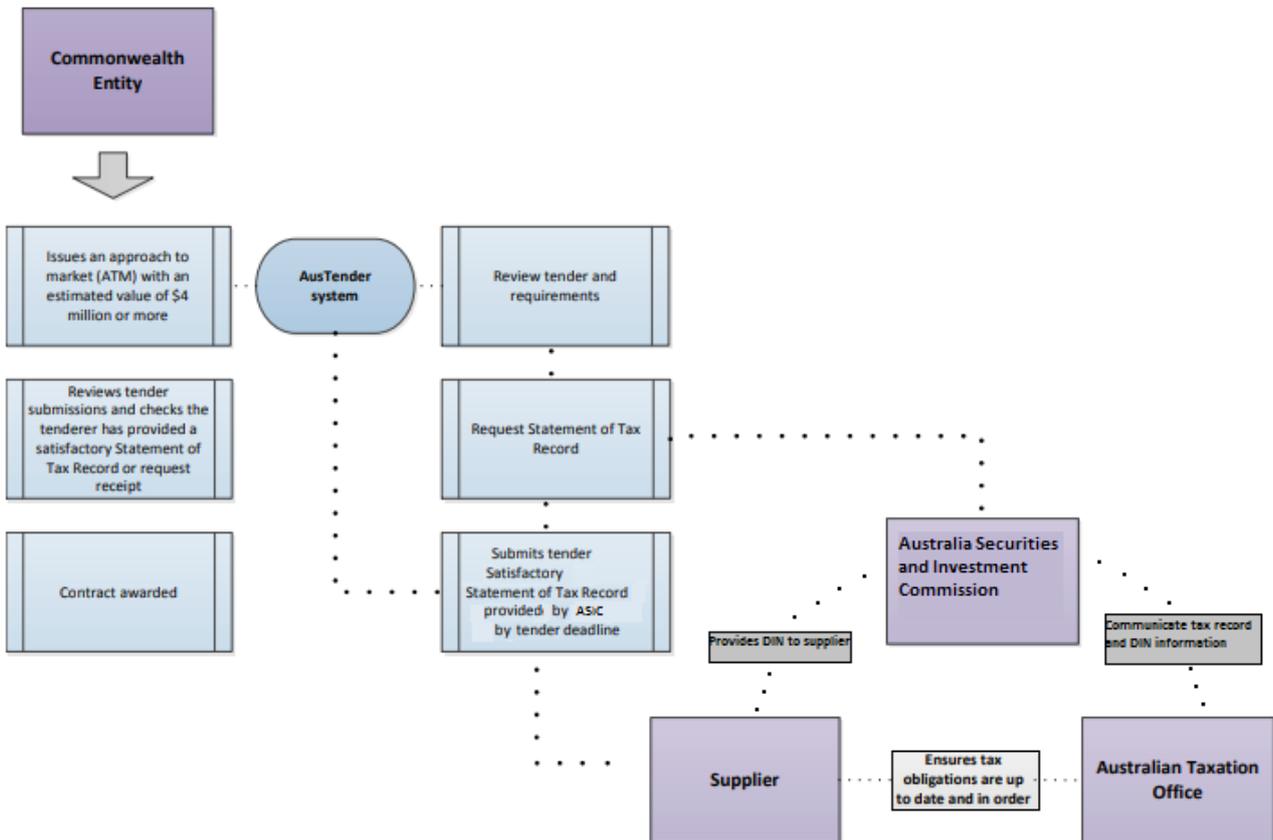
Requirement to hold STARS for subcontractors

22. The obligation stated at section 13.a.iii of the consultation paper that requires 'tenderers and suppliers' to 'require, collect and maintain STARS of relevant sub-contractors engaged by the tenderer according to the contract terms and during the course of the contract with the Commonwealth Government' is extremely onerous when considered in the context of the construction industry. Where a head contractor is engaged for a large Commonwealth project, there is every likelihood that 100s of subcontractors may be engaged to complete the project.
23. This one obligation in itself would have a measurable effect on the cost of government funded work. As has been advised during consultation on other similar matters (such as, for example the Modern Slavery Reporting obligations), where a cost, or administrative procedure can be delegated down a supply chain, it often will be. The end result of this is that a cost burden is borne by subcontractors and end-users of the contract works, rather than being borne by the head contractor. This perverse outcome has one of two effects – contractors determine that working on Commonwealth funded work requires unnecessary administrative burden or reduces the profitability of working on these projects. Both effects lead to a reduced pool of contractors, and ultimately increased costs of government funded work. It is Master Builders recommendations that:
 - The requirement to provide a STAR is limited to direct tenderer for Commonwealth funded work; and
 - Issues relating to the subcontractor taxation compliance be limited to, for example, the provision of an undertaking that all subcontractors engaged on a project contract obtain their own STAR.
24. Further, should the government develop an interagency communication system as discussed above, this obligation would again be made redundant.
25. In the alternative, should the Government consider this obligation necessary and elect not to reverse the onus to obtain a STAR, all contracts for Commonwealth funded construction work

⁸ See Master Builders Submission to Treasury on the Director Identification Number framework, attached at **Appendix A**

should be carved out from this obligation, noting that similar obligations currently exist under the 2016 Building Code (and other mechanisms, noted above).

26. We have amended the flowchart diagram included in the consultation paper to reflect the above recommendations to highlight the benefit of Master Builders’ position to pursue a more appropriate and effective method of utilising the STAR proposal.



27. It is Master Builders’ view that this process, rather than that which has been proposed, would not only streamline the process for businesses by minimising administrative burden, including the need to establish, store, and maintain currency of a STAR – but it would facilitate efficiency in tendering processes. Where efficiency in tendering process can be achieved, tangible benefits in both speed and cost can be achieved by government.

Other measures and reviews to combat similar matters

28. In making our submission to Treasury on the DIN proposal in October of this year, Master Builders recommended that Government should (immediately upon the passage of the DIN legislation) commence a thorough review of all existing measures implemented to achieve the same policy outcome as stated to be achieved by the DIN.
29. We restate the above recommendation. As far as Master Builders can ascertain, there have been more than a dozen measures introduced or implemented by Government over a period of less than two years. Taken collectively, these all have the stated policy aim of seeking to tackle capricious and unfair commercial practices and reduce instances of black economy conduct (such as phoenixing, sham contracting and non-payment to subcontractors).

30. While Government efforts in this respect are admirable, Master Builders submits there has been a notable absence of any effort or interest in reviewing all of the existing compliance measures to determine whether or not they remain necessary and effective, and are not redundant or outmoded. There are many reviews and work underway within Government to 'tackle' growing policy problems and 'identify' any 'regulatory gaps to be filled' there is **no** work underway to appropriately assess the effect of new initiatives on existing obligations.
31. Government should be more focussed on ensuring that additional compliance obligations it requires of industry is accompanied by an equally rigorous concurrent assessment of areas in which existing related compliance obligations can be reduced.
32. We maintain and reiterate our view that the Government should determine if there is utility in retaining or pursuing measures such as those above, in light of the STAR proposal and the ability for the government to roll out this proposal at the same time, or as a result of the DIN proposal.
33. Further, we maintain and reiterate our view that in the event it cannot be clearly demonstrated such measures are not obsolete, redundant or unreasonably burdensome, the legislative source or amendment proposal should be repealed or appropriately modified so as to reduce the associated compliance burden.

Commencement timeframes

34. We note that the STAR policy is set to commence 1 July 2019. In light of the proposal noted above, we consider it more appropriate that the Government halt implementation of the STAR requirement until the DIN register is implemented.

Broader policy considerations

35. One final point that must be noted is that ability for the STAR proposal to impact the ability for small, and new businesses to tender for government funded work.
36. We acknowledge that the proposal has made concession for small and new businesses and believe that this aspect of the proposal is strong and should be maintained.
37. We do note, however, that this should be the most fundamentally important consideration for the government in establishing this, and other proposals designed to address those matters raised in the Report. We note that starting a small business is a difficult, costly, and often stressful endeavour; it is of vital importance that the government focusses on alleviating administrative and compliance burden to new entrants, with a view to increasing entry numbers to our sector, and minimising exits. Accordingly, the benefits for small business of simplifying this proposal in such a way as proposed above cannot be overstated.

Conclusion

38. Master Builders appreciates the opportunity to make a submission to the Department with respect to the proposed PCP changes.
39. Any further information relevant to this submission can be obtained by contacting Mr Shaun Schmitke, Deputy CEO, on [REDACTED] or [REDACTED].
