



choice



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**Submitted online:** <https://consult.treasury.gov.au/tax-framework-division/black-economy-taskforce/consultation/intro/>

The Black Economy Taskforce Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam,

### **Black Economy Taskforce Interim Report**

Thank you for the opportunity to comment on the Black Economy Taskforce (**the Taskforce**) Interim Report (**the Interim Report**). We have limited our response to the Interim Report to consumer-related issues.

Contributors to this submission have supported and represented thousands of consumers over many years. We support the overall intention of the Taskforce, which is to develop an 'innovative, forward-looking whole-of-government policy response to combat the black economy in Australia', particularly given that many of the consumers we have assisted have been victims of the black economy.<sup>1</sup>

However, we believe a number of the consumer-related recommendations in the Interim Report are unlikely to achieve the Taskforce's stated objective. Recommendation 23 in particular, if implemented, would significantly harm consumers and provide incentives to businesses to operate outside the regulated economy.

We have provided further comments on the following recommendations in our submission:

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<sup>1</sup> The Treasury, *Black Economy Taskforce*, accessed 31 July 2017, available at: <http://www.treasury.gov.au/blackeconomy>.

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- Recommendation 23: Consumer-focused action
- Recommendation 6: Business registration integrity and modernisation
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- Recommendation 22: Social norms/changing the social contract

## **About the contributors**

### *Consumer Action Law Centre*

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

### *CHOICE*

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

### *Financial Counselling Australia*

Financial Counselling Australia (**FCA**) is the peak body for financial counsellors. Financial counsellors provide information, support and advocacy for people in financial difficulty. They work in not-for-profit community organisations and their services are free, independent and confidential. FCA is the national voice for the financial counselling profession, providing resources and support for financial counsellors and advocating for people who are financially vulnerable.

## **Recommendation 23: Consumer-focused action**

We are very concerned by the Interim Report's proposal to examine consumer-focused sanctions, including the loss of consumer protections, warranties and legal rights for people who make cash payments without obtaining a valid receipt. The Interim Report suggests that punishing in this way consumers would be 'part of a wider cultural change agenda'.

We strongly oppose consumer-focused sanctions for people who make cash payments without obtaining a valid receipt. If implemented, this proposal would cause significant consumer harm,

and have serious economic consequences. We also do not believe this would have any significant impact on reducing the black economy. We are concerned that this proposal would provide a strong incentive for businesses to only accept cash payments for goods and services, in order to avoid regulation under the Australian Consumer Law. This would in fact encourage businesses to operate outside the regulated economy by only accepting cash payments.

We also consider the failure of businesses to declare taxable income is essentially a compliance and enforcement issue for business, rather than consumers. Businesses are also already required under the Australian Consumer Law to provide receipts for purchases of more than \$75.<sup>2</sup> Consumers would essentially be punished for businesses failing to comply with their taxation and Australian Consumer Law obligations.

This proposal would remove important consumer protections that have a real impact on people's day-to-day lives. We predict that this proposal, if implemented, would increase non-compliance with the Australian Consumer Law by businesses, as they would be able to easily circumvent responsibility by requiring consumers to pay with cash and not issuing receipts. Providing such a significant loophole for business would also be contrary to the intention of legislators for the Australian Consumer Law to be applied economy-wide.<sup>3</sup>

We also question the effectiveness of this proposal in changing consumer behaviour, having regard to the EAST principles referred to in our response to Recommendation 22 below (page 10). In addition, it is widely accepted that consumers do not have a good understanding of their consumer rights.<sup>4</sup> Consumers can't make rational payment decisions based on keeping rights that they aren't aware exist. We refer the Taskforce to Britain's Institute of Economic Affairs report on the shadow economy, which argued that policymakers cannot assume that all participants in the black economy are 'rational economic actors seeking to make or save money'. The report found that the black economy cannot simply be tackled by changing the cost-benefit ratio. As noted on page 10 of this submission, policy that is based on the notion that a consumer will make payment decisions based on rational concepts sets an unrealistically high bar which most consumers should not be expected to reach.

The proposal would also have significant economic impacts. It is widely recognised that the consumer rights provided by the Australian Consumer Law have improved consumer confidence, has helped provide clearer standards for traders, and improved outcomes for both consumers and traders.<sup>5</sup> Arguably, significant exemptions such as those proposed would reduce consumer confidence and give non-compliant businesses an unfair advantage over their competitors.

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<sup>2</sup> *Competition and Consumer Act 2010* (Cth), Schedule 2, s 100.

<sup>3</sup> Consumer Affairs Australian and New Zealand, *Australian Consumer Law Review – Final Report*, March 2017, p. 8, available at: <http://consumerlaw.gov.au/review-of-the-australian-consumer-law/final-report/>.

<sup>4</sup> The most recent Australian Consumer Survey found that the proportion of business respondents that provide their customers with information about the Australian Consumer Law has decreased from 55% in 2011 to 43% in 2016 – The Treasury on behalf of Consumer Affairs Australian and New Zealand, *Australian Consumer Survey 2016*, 5 May 2016, p. 9, available at: <http://consumerlaw.gov.au/files/2016/05/Consumer-Survey-2016.pdf>.

<sup>5</sup> Consumer Affairs Australian and New Zealand, *Australian Consumer Law Review – Final Report*, March 2017, p. 16, available at: <http://consumerlaw.gov.au/review-of-the-australian-consumer-law/final-report/>.

Moreover, vulnerable groups are the victims of the black economy, and the most likely to use cash. It is inappropriate for them to be punished for the non-compliance of traders.

We also note that we have been unable to locate any international precedent or research that suggests this proposal would be effective in tackling the black economy. This is both in terms of assisting enforcement agencies, and changing consumer or business behaviour. On the contrary, there is research that indicates measures such as this would reduce tax morality and overall tax compliance.<sup>6</sup> Consumer-focused measures proposed by organisations such as the International Monetary Fund have instead generally suggested consumer incentives, rather than sanctions.<sup>7</sup>

Some international jurisdictions<sup>8</sup> have implemented receipt lotteries as a way to reduce the passive shadow economy by limiting unreported transactions through the increased issue of receipts in business-to-consumer transactions. Specifically, consumers are provided with an incentive to ask for a receipt, as it may also serve as a free-of-charge ticket in VAT lotteries, therefore giving its holder a chance to win attractive prizes. This measure aims to get consumers used to asking for fiscal receipts. However, there is insufficient evidence to conclude whether this idea has been effective in combatting the black economy.<sup>9</sup>

Many international jurisdictions have instead focused receipt requirements on business. For example, some jurisdictions have required mandatory use of certified cash registers in high risk industries which have a high incidence of relatively small value cash sales (e.g. restaurants). Business operators are required to use cash registers that have been certified by the manufacturer that they are connected to a tamper proof control unit (or 'black box') and it is mandatory for the business operator to provide receipts to customers for all purchases.<sup>10</sup>

## **Recommendation 6: Business registration integrity and modernisation**

The Interim Report has suggested that there needs to be a rationalisation and modernisation of the multiple business registers that currently exist so that governments, businesses and the public can confirm the identity of the firm they are dealing with. We understand that the Taskforce will consult on ways to house business registries in one place and strengthen business registration and verification arrangements.

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<sup>6</sup> Britain's Institute of Economic Affairs argued in its report on the shadow economy that 'Harsh penalties and tax morality are not comfortable bedfellows'. Instead, the Institute suggested that a tax system is needed that is widely regarded as fair: The Institute of Economic Affairs, *The Shadow Economy*, 2013, available at: <https://iea.org.uk/wp-content/uploads/2016/07/IEA%20Shadow%20Economy%20web%20rev%207.6.13.pdf>.

<sup>7</sup> Barrie Russell, International Monetary Fund, *Revenue Administration: Managing the Shadow Economy*, June 2010, available at: <https://www.imf.org/external/pubs/ft/tnm/2010/tnm1014.pdf>.

<sup>8</sup> This reform been implemented in Bulgaria, Slovakia, Croatia, Poland, South Korea, Brazil, Taiwan, Malta, Portugal: Ernst & Young, *Reducing the Shadow Economy through Electronic Payments*, 2016, available at: [http://www.ey.com/Publication/vwLUAssets/Report\\_Shadow\\_Economy/\\$FILE/REPORT\\_ShadowEconomy\\_FINAL\\_17.pdf](http://www.ey.com/Publication/vwLUAssets/Report_Shadow_Economy/$FILE/REPORT_ShadowEconomy_FINAL_17.pdf).

<sup>9</sup> Ibid.

<sup>10</sup> This reform been implemented in Sweden, Canada and Greece: Barrie Russell, International Monetary Fund, *Revenue Administration: Managing the Shadow Economy*, June 2010, available at: <https://www.imf.org/external/pubs/ft/tnm/2010/tnm1014.pdf>.

We agree that this would represent an important hardwiring reform, and would potentially lead to more efficient and effective administration. From a consumer perspective, we believe that it is important that a person is able to confirm the identity of the firm they are dealing with in real time. As a general principle, we also support the idea of a ‘one-stop-shop’ for consumers that makes accessing important business information as simple and efficient as possible.

We also recommend that more information about companies be made available to the public free of charge, as suggested by a recent report by the University of Melbourne on phoenix activity.<sup>11</sup> We believe Australia should follow the lead set in the United Kingdom by allowing free searches of lodged company and director information. Exemptions should also be made to the *Privacy Act 1988* (Cth) to allow easy searching and location of directors’ corporate histories.

The University of Melbourne report also suggested a number of improvements to the Australian Securities and Investments Commissions’ (**ASIC**) companies register, which would make it easier to identify directors and make the process for incorporating companies more transparent. We are broadly supportive of these recommendations.

### **Recommendation 9: Regulatory burdens affecting small business**

The Interim Report suggests that high tax and regulatory burdens are the most significant contributors to black economy activity. The Interim Report outlines two types of regulatory burdens: the regulatory obligations themselves, and the costs and inconvenience of dealing with government.

The contributors to this submission are wary of reducing regulatory obligations, given that many of these regulatory provisions achieve important policy objectives. Given that our focus is consumer-related issues, we are particularly concerned about weakening consumer protections. Too narrow focus on ‘cutting red tape’ can lead to significant other costs which arise from allowing poor business practices to flourish, including serious harm to consumers and loss of consumer confidence. A lack of proper regulation also creates an uneven playing field for businesses that choose to operate fairly.

In our view, consumer protection legislation in particular must be adequate for the purpose of protecting consumers—and should not necessarily be viewed as a regulatory burden. Confident, empowered consumers are essential to the efficient and productive functioning of a healthy consumer economy. Consumer protection is not a cost—but should instead be viewed as a facilitating mechanism to encourage economic activity and growth. As Ron Bannerman (the first Chairman of the Trade Practices Commission) said:

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<sup>11</sup> Prof Ian Ramsey et. al., *Phoenix Activity: Recommendations on Detection, Disruption and Enforcement*, February 2017, p. 8, available at: [http://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0020/2274131/Phoenix-Activity-Recommendations-on-Detection-Disruption-and-Enforcement.pdf](http://law.unimelb.edu.au/_data/assets/pdf_file/0020/2274131/Phoenix-Activity-Recommendations-on-Detection-Disruption-and-Enforcement.pdf).

“...consumers not only benefit from competition, they activate it, and one of the purposes of consumer protection law is to ensure that they are in a position to do so”.<sup>12</sup>

There are significant economic benefits of fashioning consumer protections for their primary purpose—without limiting protections on the basis they create a “regulatory burden”. Appropriate regulation is itself a powerful mechanism to promote economic efficiency based on fair, ethical business practices.

However, we agree that the costs and inconvenience of dealing with government could be reduced. We support a ‘systems’ approach, whereby governments develop systems to make interaction easier and less costly for both businesses and the public. The Interim Report noted the complexity of our welfare system, which is a prime example of inconvenience and inefficiency creating a barrier to meaningful engagement.

For example, making complaints about businesses with access to Centrepay, Centrelink’s bill paying service, is very difficult. The Centrepay homepage on the Department’s website is quite difficult to find and navigate, particularly for consumers and community organisations seeking to make a complaint about a Centrepay business. Information about complaints and feedback is located in the ‘Resources’ tab on the homepage,<sup>13</sup> which then takes you to a separate general complaints page for the Department.<sup>14</sup> Online complaints are made on another separate page,<sup>15</sup> but when we clicked through the online complaints service was offline at the time (despite a message saying that system maintenance would be completed the day before).

The difficulties associated with engaging with Centrelink have been well publicised. Extremely long call waiting times, engaged dial tones, problems with accessing the MyGov website are to name just a few.<sup>16</sup> We agree that interaction with government should be made as easy and efficient as possible in order to minimise barriers to engagement, with one-stop-shop access where appropriate.

## **Recommendation 16: Whole-of-Government use of data/privacy**

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<sup>12</sup> Trade Practices Commission Annual Report, 1983/84 as quoted by Australian Competition and Consumer Commission, *Speech: Activating Competition*, University of South Australia Trade Practices Workshop, 29 October 2004, available at:

<https://www.accc.gov.au/system/files/20041029%20SA%20Uni%20Trade%20Practices%20Workshop.pdf>.

<sup>13</sup> Department of Human Services, *Centrepay*, accessed 20 March 2017. Available at:

<https://www.humanservices.gov.au/customer/services/centrelink/centrepay>.

<sup>14</sup> Department of Human Services, *Complaints and feedback*, accessed 20 March 2017. Available at:

<https://www.humanservices.gov.au/customer/contact-us/complaints-and-feedback>.

<sup>15</sup> Department of Human Services, *Submit a complaint or provide feedback online*, accessed 20 March 2017.

Available at: <https://www.humanservices.gov.au/customer/contact-us/submit-complaint-or-provide-feedback-online>.

<sup>16</sup> Dan McCulloch, News.com.au, *Centrelink phones ‘busy’ 28 million times*, 2 March 2017, available at:

<http://www.news.com.au/national/breaking-news/centrelink-call-wait-time-quirk-explained/news-story/4608578867b497367951264b4406f10e>; The Conversation, *Infographic: the truth behind Centrelink’s call waiting times*, 21 March 2017, available at: <https://theconversation.com/infographic-the-truth-behind-centrelinks-waiting-times-74700>; Noel Towell, The Canberra Times, *Centrelink made it easier to complain and 114,000 took them up*, 31 March 2017, available at: <http://www.canberratimes.com.au/national/public-service/centrelink-made-it-easier-to-complain-and-114000-took-them-up-20170331-gvaxms.html>.



The Interim Report supports improving the use of data across government while ensuring privacy and other rights are protected. The Interim Report notes that there is likely to be considerable scope to improve the use of data within government under the existing privacy legal framework. While there is some merit in having a less fragmented government system from a consumer perspective, we currently have serious privacy concerns about whole-of-Government use of data. Given the recent scandals involving the Centrelink robo-debt fiasco and hacking of MyGov<sup>17</sup> and Medicare<sup>18</sup> databases, we believe that current privacy safeguards and practices are inadequate to support the expansion of whole-of-Government use of data.

The Interim Report suggested that more sophisticated use of analytics by government agencies would allow potential linking of data ‘from welfare, immigration, policy and tax authorities’. However, the Centrelink and Australian Tax Office experience of data linking should act as a word of warning to policymakers. Since the introduction of the Government’s automated debt recovery system in July 2016, there has been severe public backlash against the inaccurate system of data-matching between Centrelink and the Australian Tax Office. In January 2017, it was estimated that 170,000 debt notices had been issued with thousands of Australians incorrectly told they owe money.<sup>19</sup>

The impact of the Government’s automated debt collection processes, and the actions of its private debt collection agencies, has been profound. There have been over 550 stories submitted to the #NotMyDebt website,<sup>20</sup> each explaining the negative impact that the Government’s automated debt collection processes have had. Centrelink has enlisted private debt collectors, including Dun & Bradstreet, to recover alleged debts. There have been multiple news reports of Centrelink’s debt collectors making misleading statements, harassing debtors and misusing personal information.<sup>21</sup> A Senate Inquiry recently called for Centrelink’s controversial automated debt recovery system to be suspended until its many flaws can be resolved. The Inquiry said that all debts calculated using the error-prone “income averaging” process to be reassessed. It also called for a redesign of the system with a robust risk assessment process.

We have seen numerous examples of our government information technology systems not being up to the task of dealing with mass amounts of data. For example, a Senate Committee inquiry

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<sup>17</sup> Ben Grubb, Sydney Morning Herald, *Revealed: serious flaws in MyGov site exposed millions of Australians’ private information*, 15 May 2014, available at: <http://www.smh.com.au/it-pro/security-it/revealed-serious-flaws-in-mygov-site-exposed-millions-of-australians-private-information-20140514-zrczw.html>.

<sup>18</sup> <http://www.news.com.au/technology/online/security/hackers-are-offering-to-sell-the-medicare-details-of-australians-on-the-dark-web-government-confirms/news-story/c475b1cbc963648c191a1eaceba4b12b>

<sup>19</sup> Henry Belot, ABC News, ‘*Centrelink’s controversial data matching program to target pensioners and disabled, Labor calls for suspension*’, 2017, available at: <http://www.abc.net.au/news/2017-01-17/labor-calls-for-suspension-of-centrelink-debt-recovery-program/8187934>.

<sup>20</sup> Various authors, #NotMyDebt – *confused and concerned about your Centrelink debt?*, accessed 31 July 2017, available at: <https://www.notmydebt.com.au/stories/notmydebt-stories>.

<sup>21</sup> Conor Hickey, Hawkesbury Gazette, *Shannon Hounded for \$2500 Debt*, 20 January 2017, available at: <http://www.hawkesburygazette.com.au/story/4411092/shannon-hounded-for-2500-debt/>; Martin McKenzie-Murray, The Saturday Paper, *Centrelink’s Debt Collection ‘Pushed Him Over the Edge*, 18 February 2017, available at: <https://www.thesaturdaypaper.com.au/2017/02/18/centrelinks-debt-collection-pushed-him-over-the-edge/14873364004249>; Triple J Hack, *Centrelink’s outsourced debt collection accused of claiming to be Aus.Gov.*, 21 February 2017, available at: <http://www.abc.net.au/triplej/programs/hack/private-debt-collector-accused-of-claiming-to-be-government/8291050>.

found the Australian Bureau of Statistics' 2016 Census was a failed online project with inadequate protection against even a 'minor attack' with serious privacy implications.<sup>22</sup> Serious data breaches have obvious impacts on community trust in government institutions and record-keeping, which can take many years to rebuild. The importance of community trust in government data use cannot be understated.

In our view, whole-of-Government use of data should not be expanded until appropriate safeguards are in place that can ensure data matching is accurate and that people's data is adequately protected from interference.

### **Recommendation 17: Phoenix taskforce**

The Interim Report supported the continuing work of the Phoenix Taskforce and considered that strong penalties are required for those engaging phoenixing, together with measures to prevent such behaviour in the first place. We agree with the Interim Report's conclusion that phoenixing undermines the community's confidence in corporate and wider regulation and reduces revenues. Phoenixing also has significant detrimental impact on consumers, who may lose their employment entitlements or ability to seek redress for inadequate goods or services. We therefore support the Taskforce's goal of reducing phoenix activity.

We note that the University of Melbourne recently released its research report into the detection, disruption and enforcement of phoenix activity.<sup>23</sup> The report recommended, among other things:

- making information about companies public and free-of-charge;
- establishing a register of restricted and disqualified directors;
- improving data collection and business registration;
- increasing maximum penalties;
- introducing restricted directorships;
- improving public reporting of enforcement activity; and
- addressing the role of advisors.

We believe many of the recommendations in the University of Melbourne report are practical, common sense solutions that are likely to have a significant impact on reducing phoenix activity.

### **Recommendation 19: Support for non-cash payment methods (New Payments Platform and payment card fees)**

The Interim Report supports the Reserve Bank of Australia's (**RBA**) efforts to improve efficiency and competition in the payments system, including increasing access to non-cash payment

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<sup>22</sup> Senate Economics References Committee, *Report: 2016 Census: issues of trust*, 24 November 2016, available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/2016Census/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/2016Census/Report).

<sup>23</sup> Prof Ian Ramsey et. al., *Phoenix Activity: Recommendations on Detection, Disruption and Enforcement*, February 2017, p. 8, available at: [http://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0020/2274131/Phoenix-Activity-Recommendations-on-Detection-Disruption-and-Enforcement.pdf](http://law.unimelb.edu.au/_data/assets/pdf_file/0020/2274131/Phoenix-Activity-Recommendations-on-Detection-Disruption-and-Enforcement.pdf).



methods and lowering payment card interchange fees. The Taskforce intends to examine whether there is any reason for businesses to operate on a cash only basis given the availability and increasingly low cost of non-cash payment methods.

We have supported the RBA's efforts to improve efficiency and competition in the payments system.<sup>24</sup> In particular, we have consistently advocated for tighter controls on credit card surcharging, which in certain industries have been used excessively and effectively amounted to price gouging. We also supported reductions of interchange fees. Creeping interchange fees have been detrimental for consumers, as they generally lead to an increase in retail prices, as merchants pass on the cost, but without transparency to consumers about the drivers of those costs. We believe high interchange fees also provide incentive for business to use cash rather than electronic payment methods.

In relation to the New Payments Platform, we agree that this technology offers new opportunities for consumers and businesses to move further away from cash use. We recognise that the payments system will continue to innovate and develop, and there is the potential for significant consumer benefit from this. It appears likely that payments and communications technologies will further converge, with consumers increasingly making payments using smart phones or similar technology. However, with innovation often comes more complexity. We believe that industry should be looking to better assist users with complexity, so that users can make more informed decisions and choose payments to suit their needs. We note that assisting users with complexity does not necessarily mean relying on disclosure to provide users with more information.

There are also significant benefits for consumers for using non-cash payment methods, particularly the chargeback rights offered by card schemes (i.e. Visa and MasterCard). Chargebacks occur when a cardholder disputes a transaction on their credit or debit card, or through a direct debit, and asks for the charge to be reversed.<sup>25</sup>

While there are benefits to non-cash payment methods, we believe that consumers should still have the choice to use cash as a payment method. The RBA's 2016 Consumer Payments Survey showed that Australian consumers are increasingly using their debit or credit cards instead of paying cash, but that some members of the community still make a substantial share of their payments in cash. This group includes older Australians and low-income households. The survey found that people continue to use cash at the point of sale for a variety of reasons. The most common reason for using cash was that merchants did not accept alternative payment methods or had minimum spend requirements (19 per cent of respondents). A further 16 per cent of respondents cited a desire to avoid card surcharges. Respondents also indicated a preference for using cash in small transactions.

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<sup>24</sup> See Consumer Action Law Centre, *Submission to Review of Card Payments Regulation*, 3 February 2016, available at: <https://www.rba.gov.au/payments-and-infrastructure/submissions/standards-for-card-payments-systems/pdf/consumer-action-law-centre.pdf>.

<sup>25</sup> Financial Ombudsman Service, *Merchant chargebacks*, accessed 31 July 2017, available at: <https://www.fos.org.au/small-business/merchant-chargebacks/#id=common-scenarios>.

We note that cash may also be used for privacy reasons. We know that banks are using and selling insights from consumer spending onto other businesses.<sup>26</sup> Consumers should have the right to opt-out of that monitoring, and cash is the only way they can do that currently. Similarly, for shared accounts, some partners need the privacy that cash provides. For example, women seeking medical treatment in cases of domestic violence, or being able to make purchases without being tracked.

Fourteen per cent of respondents to the RBA survey also indicated a preference for using their own funds and to use cash as a budgeting tool. It is important to note that currently the only guaranteed default fee-free way to make payments is by cash. If we are to push people to electronic payment mechanisms, there needs to be a fee-free default way of making payments.

### **Recommendation 22: Social norms/changing the social contract**

The Interim Report suggests that cultural change is needed to address the black economy. It concludes that black economy behaviours are powerfully influenced by social norms. The Taskforce intends to outline elements of an effective, anti-black economy campaign in the Final Report.

In our view, any consumer-directed campaign must take into account behavioral economic principles. We refer the Taskforce to research completed by Which? in the United Kingdom, which recommends the 'EAST' approach to changing consumer behaviour.<sup>27</sup> These are that interventions should aim to make such change Easy, Attractive, Social and Timely. Many of the changes made to demand-side remedies in the period since 2010 reflect these sorts of intuitions. The research discusses in particular the idea of harnessing 'people power'. The Which? report suggests that public awareness and attitudes can change over time and that this can have a big impact on the behaviour of both consumers and firms.

This suggests that publicity and increased consumer awareness are important drivers of changing behaviour. Which? says that it is also clear that "consumer understanding and behaviour can be strongly influenced by family and friends. Again, there may be creative ways to harness this to drive behaviour change more effectively".

However, in embracing behavioural economics in pursuing changes in consumer behaviour, there is a need to move away from the false notion of the "rational consumer". This conceptual bias has

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<sup>26</sup> For example, Commonwealth Bank Bespoke Analytics service webpage says: 'We utilise the large volume of transactions flowing through CommBank's systems as a unique and highly granular source of data as well as industry, catchment and economic data to find insights about your end-customer demographics and behaviour... CommBank takes insights from having visibility of 40 per cent of all card-based transactions in Australia and this allows us to give you more insights than anyone in the market bar none, and by tailoring insights to your corporation we can identify unique and powerful growth opportunities.' Available at: <https://www.commbank.com.au/corporate/solutions/working-capital/analytics-and-consulting-services/bespoke-analytics.html>.

<sup>27</sup> Prof. Amelia Fletcher, *The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?* 7 November 2016, available at: <http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf>.

historically led to poor policy outcomes. Any steps to fight the black economy need to take into account the complexities and limitations of human behaviour in commercial activity. To base policy on the notion that a consumer will make payment decisions based on rational concepts sets an unrealistically high bar which most consumers should not be expected to reach. Consumer choices are made in the context of increasingly busy and stressful lives, under an increasing bombardment of information which tends towards information overload.

Often, consumer choices are made for emotional reasons and then rationalised after the fact. They are not arrived at through a careful and objective assessment of all available options, but are made on the basis of 'gut instinct', usually arrived at through one or a number of decision making short-cuts or biases, known as heuristics, which themselves may have little basis in rationality. These biases must be taken into account when developing policy, and information campaigns, designed to shift consumer behaviour.

While we agree that consumer education about the black economy is important, we respectfully submit that information campaigns on this topic should be primarily directed towards business. The Interim Reports states that current anti-black economy laws focus on businesses, indicating that perhaps the growth in the black economy has been a failure of business to comply with regulations intended to stamp out this behaviour.

Please contact Katherine Temple on 03 9670 5088 or at [katherine@consumeraction.org.au](mailto:katherine@consumeraction.org.au) if you have any questions about this submission.

Yours sincerely



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