The Senate

Economics Legislation Committee

Treasury Laws Amendment (2021 Measures No. 7) Bill 2021 [Provisions]

October 2021

ISBN 978-1-76093-304-3 (Printed Version)

ISBN 978-1-76093-304-3 (HTML Version)

Printed by the Senate Printing Unit, Parliament House

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PO Box 6100
Parliament House
Canberra, ACT 2600

Phone: 02 6277 3540
Fax: 02 6277 5719
Email: economics.sen@aph.gov.au

Chapter 1
Introduction

Referral of the inquiry

1.1 On Wednesday 25 August 2021, the Treasury Laws Amendment (2021 Measures No. 7) Bill 2021 (the bill) was introduced into the House of Representatives and read a first time.[1]

1.2 On Thursday, 26 August 2021, the Senate referred the provisions of the bill to the Economics Legislation Committee for inquiry and report by 14 October 2021.[2]

Background

The Black Economy Taskforce

1.3 Treasury's *Black Economy Taskforce* (the Taskforce) was established in 2016 to develop an innovative, forward-looking, multi-pronged policy response to combat the black economy in Australia, recognising that these issues cannot be tackled by traditional law enforcement measures alone.[3]

1.4 To combat the tax compliance risks posed by the sharing economy, the Taskforce's final report (the Report), published on 8 May 2017,[4] recommended that a compulsory reporting regime be implemented. A regime where the operators of electronic platforms are required to report payments made to their users, to the Australian Taxation Office (ATO) and other government agencies as appropriate.[5]

1.5 The Report found that without a reporting regime in place, it would be difficult for the ATO to gain information on compliance of sharing economy participants unless targeted audits were used. It found that formalising reporting requirements would also send a clear signal to sharing economy participants that in most cases payments would be taxable. It also found that this would align Australia with international best practice, as working with sharing economy electronic platforms operating across multiple jurisdictions

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1 House of Representatives, *Hansard*, Wednesday 25 August 2021, p. 10.

2 Journals of the Senate, No. 117—26 August 2021, p. 4001.

3 *Explanatory Memorandum*, p. 10. Further details can be found on the Treasury website: https://treasury.gov.au/review/black-economy-taskforce, (accessed 7 September 2021).

4 The Report can be found here: https://treasury.gov.au/review/black-economy-taskforce/final-report, (accessed 7 September 2021).

5 *Explanatory Memorandum*, p. 10.

to bring them into domestic tax and regulatory frameworks was identified as a matter of international cooperation.[6]

1.6 In response to the Report, the government agreed to implement measures to ensure the integrity of the tax system, including introducing a third-party reporting regime requiring electronic platforms to report information to the ATO for data-matching purposes. The measure Black Economy – introducing a sharing economy reporting regime was included in the 2019-20 mid-year financial outlook MYEFO.[7]

Superannuation Complaints Tribunal (SCT)

1.7 The SCT is a statutory tribunal established under the *Superannuation (Resolutions of Complaints) Act 1993* (the 'Superannuation Complaints Act') which considers complaints about superannuation.[8]

1.8 In 2017, the Ramsay Review[9] found that the existence of multiple financial services external dispute resolution schemes with overlapping jurisdictions means resulted in difficulties in achieving comparable outcomes for consumers with similar complaints. The Ramsay Review also found long-standing problems with the arrangements for resolving superannuation complaints in the SCT.[10]

1.9 In the government's response to the Ramsay Review, it announced the creation of a new framework for dispute resolution with the establishment of a 'one stop shop' external dispute resolution scheme known as Australian Financial Complaints Authority (AFCA). The purpose of AFCA is to improve outcomes for consumers in the financial system.[11]

1.10 With the introduction of the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*, (the 'AFCA Act'), AFCA replaced the SCT, as well as other bodies such as the Financial Ombudsman Service (FOS), and the Credit and Investments Ombudsman. Since 1 November 2018, AFCA has been the external dispute resolution body for complaints against financial firms, as well as superannuation disputes. It is a company limited by guarantee. The AFCA Act received Royal Assent on 5 March 2018.[12]

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6 *Explanatory Memorandum*, p. 10.

7 *Explanatory Memorandum*, p. 10.

8 *Explanatory Memorandum*, p. 17.

9 The Final Report can be found here: https://treasury.gov.au/sites/default/files/2019-03/R2016-002_EDR-Review-Final-report.pdf, (accessed 7 September 2021).

10 *Explanatory Memorandum*, p. 17.

11 *Explanatory Memorandum*, p. 17.

12 *Explanatory Memorandum*, p. 17.

1.11 Under Schedule 3 of the AFCA Act, the Superannuation Complaints Act, along with consequential amendments, are to be repealed following a proclamation by the Treasurer or the day after four years of the commencement of the AFCA Act. This latter date is the 5 March 2022.[13]

Removing the self-education expenses threshold

1.12 In December 2020, the government consulted on the removal of the $250 non-deductible self-education expenses threshold as part of a discussion paper, *Education and training expense deductions for individuals*.[14]

1.13 According to the EM, stakeholders unanimously supported the removal of the $250 threshold as it no longer serves its original purpose and adds regulatory costs and complexity for individuals. Accordingly, the government announced the removal of the $250 work related self-education expense threshold in the 2021-22 Budget.[15]

Purpose of the bill

1.14 The bill contains three schedules:

Schedule 1–Sharing economy reporting regime

Schedule 2–Transitional provisions relating to the repeal of the *Superannuation (Resolution of Complaints) Act 1993*

Schedule 3–Removing the self-education expenses threshold

1.15 Schedule 1 to the bill amends Schedule 1 to the *Taxation Administration Act 1953* to require electronic platform operators to provide information on transactions made through the platform to the Australian Taxation Office (ATO). This measure implements a recommendation of the report of the Black Economy Taskforce.[16]

1.16 Schedule 2 to the bill:

- amends the AFCA Act to facilitate the closure and any transitional arrangements associated with AFCA replacing the SCT; and
- provides for the transfer of records and documents from the SCT to ASIC, the remittal of matters on appeal by the Federal Court, and introduces a rule-making power to allow the Minister to prescribe other matters of a transitional nature.[17]

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13 *Explanatory Memorandum*, p. 18.

14 *Explanatory Memorandum*, p. 23.

15 *Explanatory Memorandum*, p. 23.

16 *Explanatory Memorandum*, p. 3.

17 *Explanatory Memorandum*, p. 4.

1.17 Schedule 3 to the bill removes the $250 non-deductible threshold for work-related self-education expenses by repealing section 82A of the *Income Tax Assessment Act 1936*. Removing the $250 non-deductible threshold reduces compliance costs for individuals claiming self-education expense deductions and simplifies the tax return process.[18]

Summary of the provisions

1.18 The Hon Mr Dan Tehan MP, Minister for Trade, Tourism and Investment, provided a summary of the bill's provisions:

> The Treasury Laws Amendment (2021 Measures No. 7) Bill 2021 implements a number of streamlining and integrity measures.
>
> Schedule 1 to the bill extends existing third-party reporting requirements to operators of electronic platforms.
>
> Platform operators will be required to report to the ATO information regarding certain transactions that occur on their platforms, such as seller identification and payment details. This information will assist the ATO in its administration of the tax system and ensure sellers on these platforms are meeting their tax obligations.
>
> These platforms are commonly used in what is known as the sharing or gig economy and provide a range of innovative opportunities for earning an income. As Australia's sharing economy continues to grow, a transparency gap has emerged as existing tax reporting requirements do not adequately capture information about transactions in this part of the economy.
>
> Schedule 2 to the bill amends the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act to facilitate the closure of the Superannuation Complaints Tribunal and transitional arrangements associated with AFCA replacing the Superannuation Complaints Tribunal (SCT).
>
> The AFCA Act will be amended to allow for the transfer of SCT records and documents to the Australian Securities and Investments Commission for ongoing records management, and will also allow the Federal Court to remit appealed cases back to AFCA, where previously these had been remitted to the SCT.
>
> Schedule 2 also introduces a rule-making power to the AFCA Act, to allow the minister to prescribe matters of a transitional nature that may be required to facilitate the closure of the SCT.
>
> Schedule 3 to the bill amends the *Income Tax Assessment Act 1936* and makes consequential amendments to the *Fringe Benefits Tax Assessment Act 1986*, to remove the exclusion of the first $250 of deductions for prescribed courses of education.
>
> These amendments will reduce compliance costs for individuals claiming self-education expense deductions.

[18] *Explanatory Memorandum*, p. 6.

The changes will apply to assessments for the 2022-23 income year and later income years, following royal assent.[19]

Summary of new laws

Schedule 1

1.19 Schedule 1 makes amendments to Subdivision 396-B so that the Taxable Payments Reporting System (TPRS) applies to electronic platforms that facilitate supplies from an entity to another entity.[20]

1.20 Generally, if an electronic platform facilitates a supply connected to Australia for consideration between two entities, then the operator of the platform is required to report information about the transaction to the ATO. The requirement will generally not apply if the transaction only relates to a supply of goods where ownership of the goods permanently changed, where title to real property is transferred, or the supply is a financial supply. The requirement will also not apply if the transaction occurs within the same consolidated or Multiple Entry Consolidated Group (MEC) group. Platforms will also not be required to report transactions subject to another reporting or withholding obligation where those transactions are reported to the ATO.[21]

Schedule 1: Comparison of old and new laws

New law	Current law
Entities that operate electronic distribution platforms are required to report details about transactions relating to supplies made through those platforms to the ATO.	No equivalent.

Explanatory Memorandum, p. 11.

Schedule 2

1.21 Schedule 2:

- amends the AFCA Act to assist in the closure of the SCT and to efficiently facilitate any transitional arrangements associated with moving the handling of superannuation complaints from the SCT to AFCA;
- amends the AFCA Act to insert a provision dealing with the transfer of records and documents from the SCT to ASIC following the commencement

[19] The Hon Mr Dan Tehan MP, Minister for Trade, Tourism and Investment, *House of Representatives Hansard*, 25 August 2021, p. 10.

[20] *Explanatory Memorandum*, p. 11.

[21] *Explanatory Memorandum*, p. 11.

of the Schedule 3 to the AFCA Act. These records and documents are taken to be protected information for the purposes of section 127 of the ASIC Act;
- includes a power for the Federal Court to remit cases back to AFCA, where ordinarily, these would be remitted to the SCT; and
- introduces a rule-making power to the AFCA Act to allow the Minister to prescribe matters of a transitional nature.[22]

Schedule 2: Comparison of old and new laws

New law	Current law
The AFCA Act includes a rule-making power for prescribing matters of a transitional nature relating to the closure of the SCT.	No equivalent
Records and document previously held by the SCT and transferred to ASIC. Such records and documents are protected information.	No equivalent
In making an appeal determination, the Federal Court may remit cases back to AFCA to remake a decision, where originally, these would be remitted back to SCT.	No equivalent

Explanatory Memorandum, pp. 18–19.

Schedule 3

1.22 Schedule 3 removes the $250 non-deductible threshold for work-related self-education expenses. Individuals must determine the deductibility of their self-education expenses by reference to section 8-1 of the ITAA 1997, as affected by other general deduction limitations and any relevant specific deductions.[23]

Financial impact

1.23 According to the EM:

- Schedule 1 is estimated to have a cost to the budget of $5.1 million, in fiscal balance terms, over the forward estimates period at the time of the 2019-20 MYEFO, with a $7.2 million loss during 2021-22, and a $2.1 million gain during 2022-23;[24]

[22] *Explanatory Memorandum*, p. 18.

[23] *Explanatory Memorandum*, p. 25.

[24] *Explanatory Memorandum*, p. 3.

- Schedule 2 will have nil impact;[25] and
- Schedule 3 is estimated to have a negligible impact on receipts over the forward estimates period – effectively nil.[26]

Regulation Impact Statements

1.24 With regard to Schedule 1, the EM states that the measure is estimated to result in a total average annual regulatory cost of $0.022 million.[27] Treasury has stated that, rather than provide a dedicated regulation impact statement (RIS) consistent with the regulation impact statement requirements, Treasury has nominated the *Black Economy Taskforce Final Report* as meeting the requirements of a RIS.[28]

1.25 With regard to Schedule 2, the EM states that on 9 May 2017, the government announced its response to the Ramsay Review, which was the first comprehensive review of the financial system's EDR framework.[29] The Ramsay Review was commissioned by the Government in April 2016 and led by an independent, expert panel comprising Professor Ian Ramsay, Ms Julie Abramson and Mr Alan Kirkland.[30]

1.26 The EM explains that Treasury has also certified the Ramsay Review and subsequent consultation as a process and analysis equivalent to a RIS.[31]

1.27 With regard to Schedule 3, the EM offers no discussion about a RIS for this measure.

Commencement

1.28 The various schedules of the bill come into effect as outlined in the table below:

Commencement information

Provisions	Commencement
Sections 1 to 3 and anything in this Act not elsewhere covered by	The day this Act receives the Royal Assent.

[25] *Explanatory Memorandum*, p. 4.

[26] *Explanatory Memorandum*, p. 6.

[27] *Explanatory Memorandum*, p. 3.

[28] *Explanatory Memorandum*, p. 4. The report can be found at: https://treasury.gov.au/review/black-economy-taskforce/final-report, (accessed at 30 September 2021).

[29] The Ramsay Review and the final report are available at: https://treasury.gov.au/review/review-into-dispute-resolution-and-complaints-framework/, (accessed at 30 September 2021).

[30] *Explanatory Memorandum*, p. 50.

[31] *Explanatory Memorandum*, p. 50.

this table.	
Schedule 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.
Schedule 2	The day after this Act receives the Royal Assent.
Schedule 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.

Source: Treasury Laws Amendment (2021 Measures No. 7) Bill 2021, p. 2.

This table only relates to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendment of this Act.

Compatibility with human rights

Schedule 1

1.29 The EM explained that Schedule 1, engage the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights (ICCPR), as operators of electronic platforms will need to provide a range of personal information to the Commissioner about individuals that they collect in the course of their business.[32]

1.30 The EM explained that the obligation for operators to report this information is compatible with the prohibition as it is neither arbitrary nor unlawful. Taxpayer information held by the ATO is subject to strict confidentiality rules that prohibit tax officials from making records or disclosing this information unless a specific legislative exemption rule applies.[33]

1.31 The EM argued that this Schedule is consistent with Article 17 of the ICCPR on the basis that its engagement of the right to privacy will neither be unlawful nor arbitrary. To this extent, the EM concluded that this Schedule complies with the provisions, aims and objectives of the ICCPR.

Schedule 2

1.32 The EM explained that Schedule 2 engages, or may engage, the right to privacy which is contained in Article 17 of the ICCPR which contains the right to protection from arbitrary or unlawful interference with privacy and

[32] *Explanatory Memorandum*, p. 29.

[33] *Explanatory Memorandum*, p. 29.

reputation. The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary.[34]

1.33 Where records and documents are transferred to ASIC following the closure of the SCT, these records and documents may contain personal or sensitive information relating to individuals who bought complaints to the SCT. This information is received as 'protected information' under section 127 of the *Australian Securities and Investments Act 2001* which prohibits disclosure and unauthorised use unless in specified circumstances. Furthermore, where the request for information would have previously gone to the SCT, it will now be directed to ASIC for information relating to the original determination.[35]

1.34 Where ASIC does disclose this information, either to AFCA or the Federal Court, ASIC must comply with disclosure and retention principles contained in the *Privacy Act 1988* and section 127 of the *Australian Securities and Investments Act 2001*. Under this section, disclosure to AFCA and the Federal Court for the purposes of their role and function is considered an 'authorised disclosure'.[36]

1.35 Based on the above factors, if there is interference with the right to privacy this is considered to be permissible as it is reasonable, proportionate and necessary to achieve the legitimate objective of maintaining consumer confidence in the financial services and consumer credit industry. Therefore, to the extent that Schedule 2 engages the right to privacy, it is consistent with Article 17 of the ICCPR as it subject to limitations that are authorised by law and are not arbitrary. [37]

1.36 The EM concluded that Schedule 2 is compatible with human rights as it does not raise any human rights issues.[38]

Schedule 3

1.37 The EM argued that Schedule 3 does not engage any of the applicable rights or freedom and is thus does not raise any human rights issues.[39]

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[34] *Explanatory Memorandum*, pp. 30–31.

[35] *Explanatory Memorandum*, p. 31.

[36] *Explanatory Memorandum*, p. 31.

[37] *Explanatory Memorandum*, p. 31.

[38] *Explanatory Memorandum*, p. 32.

[39] *Explanatory Memorandum*, p. 32.

Legislative scrutiny

Human rights committee

1.38 As of Thursday 30 September 2021, the Joint Standing Committee on Human Rights has made no comment on this bill.

Scrutiny of bills committee

1.39 As of Thursday 30 September 2021, the Senate Standing for the Scrutiny of Bills has made no comment on this bill.

Conduct of the inquiry

1.40 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions by Friday, 10 September 2021.

1.41 The committee received 10 submissions which are listed at Appendix 1.

1.42 The committee held one public hearing for the inquiry on Wednesday 6 October 2021 at Parliament House, Canberra. The names of witnesses who appeared at the hearing can be found at Appendix 2.

Acknowledgments

1.43 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who made written submissions and appeared at the public hearing.

Chapter 2
Views on the bill

Introduction

2.1 The committee received ten submissions which were published on the committee's inquiry website.

2.2 Those submissions that commented on Schedules 2 and 3 were in agreement with the proposed changes and no major concerns were expressed.[1]

2.3 Schedule 1 received the most comment. Although there was general agreement from most submitters, there was a concern about definitional questions and the potential bureaucratic burden that would be incurred by business by the new legislation.

2.4 Accordingly, this chapter will focus on the concerns raised about Schedule 1 with subsequent committee comment.

Schedule 1

2.5 Schedule 1, which requires entities that operate electronic distribution platforms to report details about transactions relating to supplies made through their platforms to the Australian Taxation Office (ATO), received the most attention from submitters.

2.6 The concerns expressed about Schedule 1 essentially revolved around definitional questions and the extra bureaucratic requirements and how this may hinder business operations.

2.7 Uber was supportive of the amendments, but felt further streamlining of the process was necessary:

> Uber supports the introduction of a formal statutory reporting regime in Australia, which builds on the existing ride-sourcing data-matching protocol that has been in place since October 2015. It is appropriate that this is codified as part of the statutory reporting framework in Schedule 1 of the *Taxation Administration Act 1953* (the Act).
>
> …However, there has been no progress on the recommendation to support Australians who earn using digital platforms through pre-fill of tax returns using data collected by the ATO under these regimes.[2]

2.8 Airtasker supported the legislation in-principle, but noted:

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[1] Association of Superannuation Funds of Australia, *Submission 2*; Group of Eight Universities. *Submission 3*; The Tax Institute, *Submission 4*; and Mable Technologies, *Submission 5* supported Schedules 2 and 3.

[2] Uber, *Submission 6*, p. 1.

> Airtasker's platform is able to create new Australian job opportunities because of the ease with which users can access the platform and its services. We refer to this ease of access as a 'frictionless' platform experience.
>
> Anything which adds friction to the registration process makes it less likely that a customer will list a job, or a tasker will register to bid for a job listed. Requiring data from users during the registration process adds friction. Collection of data beyond what is already collected, or requiring it to be collected earlier in the process, adds friction. This inevitably reduces the number of job opportunities created on the platform.[3]

2.9 During the public hearing Airtasker reiterated their concerns and added that privacy was also an issue:

> We also believe strongly in user privacy. We believe that personal information about users should be safeguarded, and that we have a responsibility as a platform to respect our users' privacy. We also believe that government surveillance of user data should be minimised unless there is an explicit rationale provided. When we deal with police, regulators or the ATO, we are very much inclined to help when there are situations in which a specific case calls for gathering that data. But we are not inclined to be supportive of actions in which that data is shared liberally and over a long period of time with a backdoor type approach.
>
> We really want to support this initiative that has been put forth. We are supportive of the proposed legislation, but we want to make sure the way Airtasker helps the ATO achieve its goals is also aligned with the goals of minimising unnecessary friction and respecting user privacy.[4]

2.10 Mable Technologies supported the amendments in-principle but welcomed clarity on how they were to function:

> …we are supportive of the intent of the Schedule 1 in so far as it further ensures ongoing transparency and compliance with those earning an income. Further we support information sharing where information held by government agencies is kept secure in accordance with privacy law and the Australian Privacy Principles. We will continue to prepare for the mandatory reporting expected to commence for 2023 and welcome further clarity on how the reporting regime will operate for small businesses and platforms such as Mable to ensure there is a level playing field with a light touch regulatory approach…[5]

2.11 Hireup also supported the amendments, but felt further issues also needed to be addressed:

> Hireup supports the proposed amendments contained within Schedule 1 of the bill… This bill takes a small but meaningful step towards ensuring

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3 Airtasker, *Submission 1*, p. 3.

4 Mr Timothy Hung, Co-founder and Chief Executive Officer, Airtasker, *Proof Committee Hansard*, 6 October 2021, p. 2.

5 Mable Technologies, *Submission 5*, p. 3.

> platforms that operate within the NDIS are taking responsibility for their legal obligations and workforce. There is still a long way to go…
>
> While Schedule 1 of the bill is supported, consideration should be given by the government to further safeguarding the integrity of the sector by applying stronger auditing and compliance mechanisms to other aspects of the operations of such organisations.[6]

2.12 Deliveroo expressed concerns about the definitions of sharing and gig economies and felt that clarification was necessary so that they, and perhaps other businesses like them, would not be unnecessarily required to participate in the reporting regime:

> In reviewing the draft legislation on introducing a third-party reporting regime which would require us to provide data on the revenue earned by our restaurant partners, we have strong concerns about whether: 1) we are covered under the definitions and 2) if we were to be included, the onerous cost and resourcing requirements to do so…
>
> We believe these issues have not been properly considered by the committee and members may not be aware of the burden the proposed legislation will have on the restaurant sector in general and the small business hospitality sector. We urge the committee and Treasury to work closely in consultation with food delivery platforms and the restaurant sector to ensure the legislation meets the government's agenda, yet includes amendments to eliminate the burden on restaurants.[7]

2.13 Menulog supported Schedule 1 in-principle, but felt it was cumbersome in its present form.

> There is an extremely high volume of data that would potentially be required to be reported by on-demand delivery platforms like Menulog under Schedule 1 Item 15 of the bill. This would be operationally cumbersome, require additional resources diverted to reporting from other crucial areas of the business servicing restaurants and couriers and, would require a review and analysis on how it might be extracted from global Enterprise Resource Planning platforms.[8]

2.14 Menulog concluded their submission with recommended amendments which they believed would made the legislation more workable.

2.15 Similarly, the Tech Council also supported Schedule 1 in-principle, but felt that further refinements were necessary to make it more workable:

> TCA members appreciate the need for greater transparency of legal income generated via sharing economy platforms and look forward to working constructively with the government on the design and introduction of the reporting regime.

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6 Hireup, *Submission 7*, pp. 1–2.

7 Deliveroo, *Submission 8*, p. 1 & p. 4.

8 Menulog, *Submission 9*, p. 2.

> …we believe the definition of an electronic platform may need further clarification and possibly further exemptions before it is expanded in 2023. This is because many different types of platforms could be caught by the very broad definition in the legislation, even where they do not raise concerns about individuals earning taxable income. In these cases, the reporting may be disproportionate to the tax risk. Data collection and reporting obligations imposed on online sharing platform providers should also be targeted and tested before full-scale introduction in 2023 to ensure they are efficient, proportionate and responsible.[9]

2.16 At the public hearing, Ms Kate Pounder, CEO of the Tech Council, strengthened the argument that a pilot phase was needed to ensure the new amendments function as they should:

> …we think it would be beneficial to allow some more time for industry and the ATO to make sure that the right data is being collected for the right purpose and that there are the appropriate safeguards around that to make sure that it's accurate for its use. We're therefore recommending considering deferring the start date of the full reporting scheme beyond 2023 to instead enable a pilot phase first. That would allow industry and the ATO to work together to make sure that the right platforms are being caught and to make sure that data can be sampled and tested, and we can make sure that it can be appropriately captured and also make sure that it's being targeted to the right purposes and that the cost of the collection doesn't start to exceed the value of the revenue that might be captured.[10]

2.17 The Tax Institute suggested that the legislation as it stands, coupled with the discretionary powers of the ATO, is sufficient to achieve the stated goals:

> The Tax Institute broadly supports the measures in the Treasury Laws Amendment (2021 Measures No. 7) Bill 2021.... Protecting the integrity of our tax system from those who do not willingly participate in it is crucial. Increasing transparency goes a long way to achieving this. We consider Schedule 1 of the bill enhances the transparency of the tax system and facilitates increased tax compliance. The reporting requirements should also assist the ATO to understand the level of compliance by sharing-economy participants and to optimally apply its resources accordingly.
>
> Transparency goes a long way to building trust. However, to build trust we need transparency not only over taxpayer information but also in respect of our regulators—for example, in relation to how they are performing and how they are using data to achieve relevant outcomes. We trust there will be enduring and heightened transparency of the ATO's performance commensurate with the increased data being made available to it by the operation of this measure.
>
> Sharing-economy platforms are inherently digital. Accordingly, in our opinion, they are well equipped to collect, store and report the data

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[9] Tech Council, *Submission 10*, p. 2.

[10] Ms Kate Pounder, Chief Executive Officer, Tech Council of Australia, *Proof Committee Hansard*, 6 October 2021, p. 11.

> required under the TPRS. We acknowledge that some operators may have to collect additional information from participants on their platforms which they do not already collect. However, when balanced against the need for integrity in the tax system, we consider this an appropriate step…
>
> In discussions with our members, industry and other professional associations, we have heard requests for specific exemptions to be included in the provisions. It is our opinion that the broad drafting of the provisions contained in the bill is appropriate to reduce complexity in the system. It also reduces the incidence of loopholes which can be managed or manipulated over time as technologies evolve and as the way in which we deliver goods and services adapts. Any carve-out can be provided by the ATO where it can be demonstrated that the inclusion was inconsistent with the policy intent and the data collected was not useful in the administration of the tax rules. We do not consider exemptions for certain providers should be contained within the law itself. We are of the view this would add complexity to the system and create opportunities for platform providers to structure their arrangements to circumvent reporting obligations.
>
> We acknowledge that if data is reported elsewhere in the system it is not necessary to be captured twice. We consider the law adequately addresses this. However, to provide an exemption based on size, either of the operator or the participant, creates undue risk in the system. This risk can arise by way of structuring and/or operation. Thresholds invite manipulation, which ensures that one can remain safely out of scope. The existing TPRS rules provide the ATO scope to exclude particular entities or groups of entities which are impacted by the rules where they are not otherwise intended to be captured. This discretion is a key power for the commissioner as the administrator and custodian of our system.[11]

Committee comment

2.18 The committee notes the broad support for Schedules 2 and 3 and is satisfied that these amendments be passed without further comment. The committee also notes that Schedule 1 is also broadly supported. Ongoing efforts to address the black economy have been welcomed and Schedule 1 is an important first step in addressing tax discrepancies in the online marketplace.

2.19 The committee recognises the issues raised by submitters about Schedule 1 as part of this inquiry. As indicted by the Tax Institute, there would appear to be enough discretion within the arrangements to accommodate the concerns expressed. Nonetheless there is utility in the Treasury and the ATO maintaining a dialogue with stakeholders and interested parties to ascertain if further fine tuning is necessary during implementation.

2.20 The committee is satisfied that the bill will deliver on its intent with regard to providing information to the ATO on transactions made through electronic

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[11] Mr Scott Treatt, General Manager, Tax Policy and Advocacy, The Tax Institute, *Proof Committee Hansard*, 6 October 2021, p. 14.

platform operators as required by Schedule 1, as well as the intent of Schedules 2 and 3. Accordingly, the committee recommends the bill be passed.

Recommendation 1

2.21 The committee recommends that the bill be passed.

Senator Slade Brockman
Chair
Liberal Senator for Western Australia

Additional comments—Labor Senators

1.1 Labor supports the intentions of the bill and will support it; however, Schedule 1 is a missed opportunity and highlights the government's failure in priorities.

1.2 Labor agrees that everyone should be paying their fair share of tax, however, this legislation does see that burden placed on the workers, rather than these multinational tech companies. It also shows that the government is happy to pursue these workers for more tax but does very little to ensure they have secure fair wages and safe conditions.

1.3 If the government is willing to take steps to regulate the gig economy when it comes to tax, they need to do the same for worker pay and conditions. It's not good enough to allow these workers to be relegated to substandard pay and conditions in an unsafe work environment.

1.4 During the hearing, we heard from the Transport Workers Union (TWU) who described the bill as a "kick in the guts":

> I regret to say this bill, unfortunately, is like a kick in the guts to the thousands of workers in the food delivery, rideshare and parcel delivery sectors of the gig economy. It does nothing to rein in the exploitative and inhumane business practices of companies…
>
> This bill does nothing to limit the ability of companies to evade tax responsibilities in our country. What it does do is set a tragic double standard…
>
> We're here to implore this committee, and the government, to urgently and drastically broaden its focus. Yes, we need laws in this country to ensure everyone pays their fair share of tax; absolutely we do. But to do so while continuing to remain silent on the corporate tax avoidance and exploitation that is leading workers in this emerging sector to die is shameful.[1]

1.5 The committee heard from the Australian Services Union (ASU) who shared this view, saying the bill fell short on delivering wages and conditions:

> We are supportive of the taxation law amendments being proposed to create greater regulation and transparency of the gig economy and platform apps in the human services sector. We just wish that there was similar regulation and transparency about minimum wages and conditions in these platforms.[2]

1.6 When asked if this bill would do anything to improve the pay and conditions, ASU Branch Secretary, Ms Natalie Lang, said:

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[1] Mr Michael Kaine, National Secretary, Transport Workers Union of Australia, *Proof Committee Hansard*, 6 October 2021, p. 5.

[2] Ms Natalie Lang, Branch Secretary, Australian Services Union, *Proof Committee Hansard*, 6 October 2021, p. 4.

> No, I believe it absolutely falls short. It doesn't deliver anything in terms of wages and conditions, but it does show that platform providers keep the records necessary—and are capable of keeping the records necessary—to have a very clear picture of the earnings of workers who use their gig platforms, so they can equally use that data to ensure that workers are being paid minimum wages.[3]

1.7 Workers who use these platforms were asked their views on the bill and if they thought it was fair that it appears the government's priority isn't legislating safe pay and conditions for gig and share economy workers. Ms Rosalina Pirozzi, who is a rideshare driver, described the lack of action as "heartbreaking".

> I don't think it's fair, no. I think it's very unfair… Workers' rights are not being addressed at the moment. And it's heartbreaking, to be honest.[4]

1.8 Ms Pirozzil described her working conditions:

> I've got no super, no sick pay and no workers comp, after working with Uber for six years. I can't afford to pay for my own super. I can't afford to even pay my GST. I have to take it from one of my other enterprises, from my online shop that I've started. I'm looking for other avenues. The low earnings are horrible.[5]

1.9 The committee also heard from food delivery rider, Mr Ashley Moreland, who talked about his experiences, highlighting the high-pressure environment caused by these platforms' monitoring of performance, which led to him being injured on the job:

> I had assumed that any company operating in Australia would have certain minimum standards. I found quickly that there were times when I would be sitting in a park, literally earning zero dollars an hour when there was no business…
>
> This facade of flexibility and low levels of control is a bit of a farce…
>
> I actually found myself in an accident—I sustained an injury—only 2½ years ago I can honestly say that it was because of the extraordinarily high feelings of pressure that you're under to make these deliveries as quickly as possible, knowing that every single step of the way—from the time you accept the trip on the app to the time when you race into the restaurant, making do with traffic rules if you can—is monitored and noted against your profile and recorded. It then begs the question about why, if they can record all this data, they're not also being given the responsibility for reporting earnings for all the people who work on the platform.[6]

1.10 It's clear that more needs to be done to ensure these workers are protected, and as the TWU Secretary, Mr Michael Kaine, said:

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3 Ms Natalie Lang, *Proof Committee Hansard*, 6 October 2021, p. 8.

4 Ms Rosalina Pirozzi, Private capacity, *Proof Committee Hansard*, 6 October 2021, p. 7.

5 Ms Rosalina Pirozzi, *Proof Committee Hansard*, 6 October 2021, p. 6.

6 Mr Ashley Moreland, Private capacity, *Proof Committee Hansard*, 6 October 2021, p. 6.

> This bill shows that the government is willing to regulate the gig economy. The gig economy needs to be regulated so that workers aren't exploited and that good employers, a core constituency of the coalition government, are protected as well.[7]

1.11 The committee also heard from Mr Jason Ward, from Centre for International Corporate Tax Accountability and Research, who suggested that while supportive of the concept of the legislation, they think it is misguided:

> While CICTAR supports the concept of this legislation, there are concerns that the reporting requirements will be unfairly passed on to workers. In many cases, so-called 'gig workers' are already struggling to make a decent income. As is already the case in several jurisdictions, the Australian Government needs to take a closer look at regulating platform companies to ensure basic labour standards and increased transparency of multinational transactions.[8]

> I think the focus of the bill is very much on the workers and not on the corporate structures. Obviously, I fully support making sure that information is collected on workers' income, but it seems to be a little bit of a misguided focus when you're talking about thousands of workers with very small incomes while there's clear evidence that Uber and most likely other multinational companies operating similar platforms are using offshore structures to avoid tax payments in Australia. This legislation is looking at the workers rather than at the corporate structures behind those operators.[9]

1.12 When asked to make what changes they would suggest for the legislation:

> I think transparency on the companies that are providing the platform is essential. It must make sure that the burden of reporting is placed on the companies that operate the platforms, not on the workers providing those services; that is a fundamental first step. Then it should ensure fair tax payment from the operators of those platforms.[10]

1.13 Labor supports this legislation but it is clear that the Government needs to do more to ensure that these workers are provided with fair pay and conditions. If the Government is happy to regulate tax, they should be happy to regulate fair pay and conditions.

Senator Anthony Chisholm
Deputy Chair
Labor Senator for Queensland

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7 Mr Michael Kaine, *Proof Committee Hansard*, 6 October 2021, pp. 8–9.

8 Mr Jason Ward, Principal Analyst, Centre for International Corporate Tax Accountability and Research, *Proof Committee Hansard*, 6 October 2021, p. 21.

9 Mr Jason Ward, *Proof Committee Hansard*, 6 October 2021, p. 22.

10 Mr Jason Ward, *Proof Committee Hansard*, 6 October 2021, p. 23.

Appendix 1
Submissions and additional information

1 Airtasker Ltd
2 Association of Superannuation Funds of Australia
3 Group of Eight Universities
4 The Tax Institute
5 Mable Technologies
6 Uber
7 Hireup Pty Ltd
8 Deliveroo
9 Menulog
10 Tech Council Australia

Answer to Question on Notice

1 Deliveroo: Answers to questions on notice from a public hearing in Canberra Wednesday, 6 October 2021.

Tabled Documents

1 The Tax Institute: Opening statement from the public hearing in Canberra, Wednesday 6 October 2021.
2 Mable: Opening statement from the public hearing in Canberra, Wednesday 6 October 2021.
3 Deliveroo: Opening statement from the public hearing in Canberra, Wednesday 6 October 2021.
4 Centre for International Corporate Tax Accountability and Research (CICTAR): Opening statement from the public hearing in Canberra, Wednesday 6 October 2021.

Appendix 2
Public hearings

Wednesday, 6 October 2021
Committee room 2S3
Parliament House
Canberra

Airtasker Ltd

- Mr Tim Fung, Chief Executive Officer

Transport Workers Union (TWU)

- Mr Michael Kaine, National Secretary
- Mr Ashley Moreland, Food delivery driver
- Ms Rosalina Pirozzi, Rise sharing driver

Australian Services Union (ASU)

- Ms Natalie Lang, Branch Secretary
- Mr Angus McFarland, Assistant Secretary

Tech Council Australia

- Ms Kate Pounder, Chief Executive Officer

The Tax Institute

- Mr Scott Treatt, General Manager—Tax Policy & Advocacy
- Ms Julie Abdalla, Tax Counsel

Mable Technologies

- Mr Peter Scutt, Chief Executive Officer & Co-founder

Centre for International Corporate Tax Accountability and Research (CICTAR)

- Mr Jason Ward, Principal Analyst

Deliveroo

- Ms Libby Hay, Head of Corporate Affairs
- Ms Ossie Osman, Tax Director

The Treasury

- Ms Sam Reinhardt, First Assistant Secretary—Corporate and International Tax Division
- Mr Chris Leggett, Assistant Secretary—Law Division
- Ms Victoria Henry, Senior Advisor—Corporate and International Tax Division
- Ms Johanna Travis, Director—Personal and Small Business Tax Branch