



11 May 2020

Secretary
Senate Finance and Public Administration Legislation Committee
Parliament House
Canberra ACT Australia

Submitted via fpa.sen@aph.gov.au

[Submission to the Public Governance, Performance and Accountability Amendment \(Tax Transparency in Procurement and Grants\) Bill 2019](#)

Dear Secretary,

Nook Studios welcomes the opportunity to make a submission to the inquiry into Tax Transparency in Procurement and Grants Bill 2019.

Nook Studios is an Australian based social enterprise of local and global open government advocates and service designers. Nook works to progress transparency initiatives such as open process, open contracting, and beneficial ownership, across procurement supply chains, natural resources, energy and infrastructure projects. Mel Flanagan of Nook Studios is a steering committee member of Publish What You Pay Australia.

Nook also advocates for procurement transformation and public participation in policy and service design and delivery, government commissioning, budgeting and investment decisions - especially at a place based local community level.

Essential ingredients to make government procurement fairer, easier and inclusive for small businesses and social enterprises to engage and compete are:

- trust in the system
- openness
- demystification of complex procurement processes
- participatory design and an 'agile approach to procurement' to ensure communities needs are understood and met
- collaborative contracts (large and small businesses working together)

Our submission supports tax haven disclosure and reporting for government agencies and Commonwealth entities entering into contracts with companies or providing grants to persons or companies that are, are based or have related entities in tax havens. We also recommend the Government extend the tax transparency to land use licences and leases (primary and natural resources, energy, and extractive industries) as well as entities involved in public and private partnerships.

Tax haven entities have an unfair advantage of not paying tax. This undermines the notion of a 'fair competitive market' especially for small businesses. The opaque nature of ownership of many tax haven entities should also be a concern and procurement red flag.



The heart of tax transparency and any tax haven discussion is beneficial ownership transparency. They are inextricably linked. Beneficial ownership is an important aspect of the global financial transparency movement and initiatives such as open contracting and the Extractive Industries Transparency Initiative (EITI).

Federal, state, territory and local governments, departments, and public servants are expected to have integrity. They need to do due diligence on companies, contractors, grantees, lease and licence applicants. At the moment this is not as easy as it should be for them. There is considerable expense and it's difficult to access to quality relevant information in a timely way. It is also difficult for people to navigate complex company structures to determine if they are tax haven suppliers or grantees for legitimate reasons, or who purposefully do not want to pay tax.

Tax transparency is not just a government concern. Private sector, big industry, small companies and not for profit organisations equally want to be able to know who they are doing business with to protect their supply chain integrity, reputations, and adhere to the Modern Slavery Act.

Companies, business owners and investors are interested in the ethical stance of business partners and want to know whether they are good corporate citizens and paying a fair share of taxes in places they operate.

Through our research, engagement and advocacy work with many Australian government departments and private sector, there is a great deal of support for access to free, open, public data.

There is a growing global 'know your contractor' movement - similar to the financial industry 'know your customer'.

The ability to access and share data to expose potential conflicts of interests and politically exposed persons is an extremely important aspect of due diligence. Anonymous company ownership is especially prevalent in tax havens.

Departments have small business and social procurement mandates. Without free, open and public data about beneficial ownership and tax records, they find it very difficult and expensive to check whether companies are being truthful. Everyone sees the benefit to understand exactly who they are doing business with and know where they are located.

A system to proactively publish beneficial ownership and tax payment location information would be of public benefit and also reduce the administrative burden for companies and government.

Australia could be a leader in creating a service to provide access to information to assist governments, the private sector and communities across the nation, as well as international trading partners.

The Australian Government committed to explore Beneficial Ownership Transparency as part of Australia's 2016-2018 First Open Government Partnership National Action Plan in 2015.

<https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency>



The commitment was delayed, and its current status is "under Government consideration". Very little information about its prospects has been published.

Many members of civil society continue to advocate for a free, public, open beneficial ownership register. Beneficial ownership was a reoccurring theme in the latest call for commitments ideas for the 2020-2022 Third Australian Open Government Partnership National Action Plan currently being developed.

At the last Open Government Partnership Summit in Canada over 10 countries committed to introducing Beneficial Ownership transparency in their countries.

OpenOwnership, is an international NGO funded by UK Aid. They work with partners worldwide in governments, businesses, civil society organisations, academia, and the media to bring ownership information into the open. They have developed a data standard and a global register.

Nook collaborated with OpenOwnership on their Guide to Implementing Beneficial Ownership transparency, launched at the Ottawa Summit last year.

<https://www.openownership.org/guide/>

A global community of governments and organisations are working on tax transparency and procurement reform. When considering this bill and how to design the system, laws and mechanisms required to create a sustainable, effective and efficient system, we recommend the committee take a holistic approach and consider these initiatives in tandem.

Echoing the submission by CPA Australia, we recommend codesigning the law with stakeholders and all levels of government. This will help map unintended consequences that may disadvantage small businesses and make things harder for public servants.

This Bill is an excellent opportunity to embody the spirit of open government to take an 'open legislation' and participatory approach so we end up with a fit for purpose, well designed law that will lead to better outcomes for everyone.

Yours sincerely,

Mel Flanagan
Nook Studios