

Senate Economics Legislation Committee Inquiry into Currency (Restrictions on the Use of Cash) Bill 2019 [Provisions]

ANSWERS TO QUESTIONS ON NOTICE

The Treasury

30 January 2020

Department/Agency: The Treasury

Topic: Cash payment limit

Question a)

Senator Kitching: The chartered accountants who were in just before you said that in their submission they note that there are some industries that are particularly acute for cash payments, such as building and construction, motor vehicle sales and repairs, gaming, fruit and vegetables, antiques, and second-hand goods. In your consultation with businesses, have you gone to those industries? Are they covered? Have you consulted with those industries?

Mr Boneham: I'll take it on notice and provide you with a full list of who we've spoken to.

Answer a)

On 24 May 2018 the Government released a consultation paper to seek the views of stakeholders to identify issues for consideration in implementing this measure. The following organisations were consulted:

- Master Builders Australia; Australian Automotive Dealers Association; Australian Remittance and Currency Providers Association, Australian Federation of Travel Agents; Star Casino; Crown Casino; Victoria Police; and Australian Charities and Not-For-Profit Commission.

On 26 August 2019, the Government released an exposure draft of the Currency (Restrictions on the Use of Cash) Bill 2019. Following the release, targeted consultation was undertaken with the following organisations:

- Housing Industry Organisation; NSW Bookmakers' Co-operative Ltd; Victoria Police; Crown Casino; ABC Bullion; Australian Banking Association; Australian Payments Network; Commonwealth Bank; Independent Reserve (Bitcoin Exchange); ING; Macquarie Bank; Tabcorp; Accentuate Data; Australian Small and Family Enterprises Ombudsman; Australian Remittance and Currency Providers; Flight Centre Travel Group; The Australian Federation of Travel Agents; The Law Society of New South Wales; The Tax Institute; Australian Automotive Dealer Association; and Star Casino

Further targeted consultation ahead of introduction of the Bill into Parliament was undertaken on 7 November 2019 with:

- Macquarie Bank; Commonwealth Bank; Australian Banking Association; ANZ; Westpac; Flight Centre Travel Group; Australian Federation of Travel Agents; and the Jewellers Association of Australia.

A key stakeholder list was used to contact all identified stakeholders that were kept up-to-date and received information regarding key developments via email. This included: Australian Chamber of Commerce and Industry; Australian Financial Crimes Exchange Ltd;

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Australian Financial Markets Association, Australian Industry Group; Australian Livestock and Rural Transport Association; Bendigo Bank; Business Council of Australia; Chartered Accountants of Australia and New Zealand; Clubs NSW; Commander Security; COSBOA; FinTech Australia; Heinemann Duty Free; HSBC; Independent Reserve Australia; KPMG; Law Society; Master Builders; Motor Trades Association of Australia; MYOB; National Retail Association; NSW Farmers; Perth Mint; Property Council; Queensland Law Society; Real Estate Institute of Australia; Tax Institute; Toyota dealership; Uniting Church; and Young Lawyers.

Question b)

Senator Kitching: I accept that some businesses might update their MYOB every year or whatever, but they may have to do a specific update at that point. So that is a cost that is possible to quantify.

Mr Boneham: Yes. As to the European Union—and I'll get the relevant extracts from the European Union paper—I think they said that they did not expect there'd be much cost to business. I'm not sure what their assumptions were in coming to that conclusion, but that's what they found.

Senator KITCHING: So you'll re-send the committee—

Mr Boneham: We'll pull the relevant extracts from that report.

Answer b)

The report provided to the European Commission in 2018¹ found that the effects on compliance costs can be expected to be minimal for the majority of businesses, as not many cash transactions are being conducted at the various threshold levels and are to a large extent already digitalised. For the group of cash transactions that would be affected, the consequences for compliance costs would depend heavily on the type of measure that would be instituted, the threshold level and the industry sector.

The report notes, that while there is anecdotal evidence of the beneficial impact of cash thresholds in curtailing financial crime, there is little in the way of hard data to prove their efficacy as cash transactions cannot be directly measured.

Estimating or measuring the black economy is a difficult and challenging task because the activities take place outside the tax and regulatory systems and are therefore not visible. This point is echoed by the European report which notes the difficulty in measuring criminal

¹ See ECORYS (2018). Report available at: https://ec.europa.eu/info/sites/info/files/economy-finance/final_report_study_on_an_eu_initiative_ecorys_180206.pdf.

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activity which is, by nature, hidden. Regardless of the difficulty in measuring the effect of cash limits on the black economy, the report outlines four key reasons in favour of cash thresholds:

1. There appear to be very limited downsides to imposing cash thresholds.
2. There is a compelling argument that imposing cash thresholds will disrupt money laundering and tax evasion.
3. Cash thresholds can complement other measures to curb the illicit use of cash.
4. Cash thresholds can be initially calibrated to minimise any perceived downside risk, then reduce over time.

The relevant extract (page 114) from the EU report is below:

Option 1: Prohibition

In the case of the introduction of cash payment prohibition for the cash intensive industry, no significant increase of compliance costs is to be expected. On the contrary, compliance costs would decrease in the form of less reporting being necessary. Although limited systematic data is available, in most countries high value goods are not being paid in cash. The only difficulties might expected in explaining to customers why cash is not accepted. Even in the case of Germany as a country with one of the highest cash usages in Europe, only 2 % of the population is paying goods over 100 EUR in cash.²⁰²

This is consistent with the evidence given to the Committee by the Reserve Bank of Australia (RBA). At the Committee hearing on 12 December 2019, the RBA referred to their Consumer Payments Survey that found that there was only one instance where cash was used to purchase a product between \$5,000 and \$10,000. Overall, 20 transactions were reported for amounts more than \$10,000 but none of those transactions were paid for in cash.

Question c)

Senator McAllister: This is a question on notice for Treasury. Quite a number of the written submissions to the committee have made reference to research which, it's argued, demonstrates that there's no correlation between the size and scale—or trend, in terms of the size and scale—of the black economy and a cash ban, and they look at European economies in this regard. One such bit of research was written by a pair called Schneider and Medina; it comes up routinely in the written submissions. On notice, can you just provide a short response to the committee about how you evaluate that particular line of analysis and the reasons why Treasury believes that a cash ban will work? I'd explore it here in the room but we are running out of time.

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Answer c)

The 2018 working paper by Medina and Schneider² discusses methodologies used to estimate the size of the ‘shadow economy’ in addition to attempting to estimate the size of the shadow economy in 158 countries over the 1991 to 2015 period.

However, in a separate paper, Professor Schneider has expressed scepticism over the connection between a cash limit and the black economy. A paper titled “Limiting the Use of Cash for Big Purchases” by Peter Sands, Haylea Campbell, Tom Keatinge and Ben Wesiman published in 2017³, critiqued Professor Schneiders’s work.

Professor Schneider acknowledges the difficulty in measuring and interpreting figures on the criminal usage of cash and thus his own projections on the effects of a cash limit⁴ and states that cash plays a highly important role in criminal activities such as money laundering⁵ but suggests that placing limitations on the usage of cash will not prevent criminal activity occurring by electronic means⁴.

However, the Europol Police Office’s 2015 *Why is cash still king? A strategic Report on the use of cash by criminal groups as a facilitator for money laundering* notes that ‘while not all use of cash is criminal, almost all criminals use cash at some stage during the money laundering process. Cash is an entirely legal facilitator which enables criminals to inject illegal proceeds into the legal economy with far fewer risks of detection than other systems.’

The German Financial Intelligence Unit⁶ revealed that cash derived from illegal transactions is brought to Germany (where there is no cash payment restriction) from other countries that have cash limits. This was due to a lack of harmonized cash restrictions across the EU, whereby illicit cash from countries with cash restrictions are regularly transported by cash couriers to countries without a cash restriction and used for cash purchases of high-value goods.

² Paper available at: <https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583>

³ Paper available at: https://rusi.org/sites/default/files/201709_rusi_limiting_the_use_of_cash_for_big_purchases_sands.campbell.keatinge.weisman_web.pdf

⁴ Paper available at: <https://www.econstor.eu/bitstream/10419/162914/1/Schneider.pdf>

⁵ See Friedrich Schneider (2015), Slides available at: http://www.suerf.org/docx/1_a5bfc9e07964f8dddeb95fc584cd965d_2807_suerf.pdf

⁶ See Financial Intelligence Unit (2016), Jahresbericht 2015, at: https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/FIU/Jahresbericht_e/fiuJahresbericht2015.pdf?__blob=publicationFile&v=5.

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Professor Schneider has also expressed scepticism over the impact of cash thresholds on tax evasion, however this view is inconsistent with evidence from multiple countries that suggest that cash-based tax evasion is a major source of tax evasion.⁷ The EU has also found that abovementioned diverging national cash restrictions have led to businesses relocating across borders, in particular for some sectors, such as car and jewellery dealers thereby creating loopholes allowing the bypassing of national cash payment limits and therefore decreasing their efficiency.

Question d)

Senator KITCHING: I don't know whether you were here when I asked some questions, right at the end, of the chartered accountants. What happens if I pay \$11,000 for a service in cash—the example I gave was putting a deck on. Is that contract unenforceable, because it's actually illegal?

Mr Leggett: The contract itself is still valid. All we're limiting is the payment methods that are available to you to make the payment. We don't affect the underlying transactions. The underlying transactions are unimpacted.

Senator KITCHING: So the tax office isn't going to take the \$11,000?

Mr Leggett: No.

Senator KITCHING: And it won't go to proceeds of crime, for example?

Mr Leggett: No. I don't think it passes the relevant thresholds for proceeds of crime to be triggered. The offence penalties aren't high enough.

Senator KITCHING: Mr Hardy looks like he wants to add something.

Mr Hardy: No. I'm just looking to see whether Mr Leggett needs assistance. My understanding of the draft bill is that \$11,000 for a deck—my Treasury colleagues say obviously the contract is a valid contract. The payment mechanism may be in breach of this particular proposed bill. But, of itself, if there's nothing else involved, no, it's not a proceeds-of-crime matter.

Senator KITCHING: What's the threshold for proceeds of crime?

⁷ See, European Commission, 'Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report'; Morse, Karlinsky and Bankman, 'Cash Businesses and Tax Evasion'; Kedir, Duygun Fethi and Williams, 'Evaluating Tax Evasion in the European Union: A Case Study of the Prevalence and Character of "Envelope Wage" Payments'.

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Mr Hardy: It's about the criminality of the offences. I don't believe this particular offence is one that falls within that scope.

Mr Leggett: We can take on notice what the statutory threshold is.

CHAIR: And clarification of the interaction of those two things.

Senator KITCHING: Yes, that would be good.

Answer d)

The *Proceeds of Crime Act 2002* (POC Act) provides for the restraint and forfeiture of property that is connected with criminal activity.

The POC Act does not have a single threshold for the application of all the provisions of the Act. Instead, different requirements apply in different circumstances, in order to ensure the seriousness of the consequences of the application of a provision is matched to the severity of the offence. The severity of an offence is relevantly determined based on the size of the penalty for the offence.

The most severe provisions of the POC Act, broadly providing for wide restrictions on the use of property if a person is suspected to have been involved in an offence (section 17), allowing a court to make a forfeiture order for any restrained property without conviction (section 47) and providing for automatic forfeiture on conviction (subject to certain powers of the court) (section 92) apply to only to 'serious offences'. 'Serious offences' are, relevantly, indictable offences that, among other things, must be punishable by imprisonment for 3 or more years (see the definition of 'serious offence' in section 338 of the POC Act). As mentioned in the hearing, none of the proposed offences in the Currency (Restrictions on the Use of Cash) Bill 2019 (the Bill) satisfy the definition of a 'serious offence'.

There are other provisions of the POC Act that provide more limited restrictions and forfeiture orders for less serious indictable offences (see sections 17, 19, 48 and 49).

The proposed offences set out in section 12 of the Bill (the less serious 'strict liability' offences) are not indictable offences as they do not provide for imprisonment for more than 12 months (see the definition of indictable offence in section 4G of the *Crimes Act 1914*). As a result, restraining and forfeiture orders under the POC Act would not be available in relation to these offences.

The proposed offences set out in section 13 of the Bill (the more serious 'recklessness' or 'mental element' offences) are indictable offences. This means that a restraining order could potentially be sought in relation to these more serious offences and a forfeiture order may be sought in relation to property that is the proceeds of these offences or, in more limited circumstances, which is used in the commission of the offences.

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Please note that the POC Act is not administered by Treasury. While we have prepared this response to elaborate on the matters raised in the hearing, the Department of Home Affairs and the Attorney General's Department are better placed to provide further guidance on the operation of the POC Act.