



Australian Government

The Treasury

Senate Economics Legislation Committee

Submission to the inquiry into the Currency
(Restrictions on the Use of Cash) Bill 2019 [Provisions]

14 November 2019

CONTENTS

Introduction.....	1
Consultations.....	1
Why is the cash payment limit necessary?	2
How does the cash payment limit work?	3
Legislative framework	4
Penalties	4
Attachment A – Factsheet.....	6
Attachment B – Series of payments	7

INTRODUCTION

The Department of the Treasury (the Treasury) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee regarding the Currency (Restrictions on the Use of Cash) Bill 2019.

In the 2018-19 Budget, the Australian Government (the Government) announced it would introduce an economy-wide cash payment limit of \$10,000 (the cash payment limit) as part of its response to the Black Economy Taskforce Final Report (the Final Report).

The introduction of the Bill follows consultation on the policy design of the cash payment limit which occurred from 24 May 2018 to 1 July 2018 and included targeted consultations with stakeholders. Feedback from stakeholders on the policy was largely favourable. 22 non-confidential submissions were received and can be accessed at <https://treasury.gov.au/consultation/c2018-287474>

Draft legislation was released from 26 July 2019 to 12 August 2019 for consultation and roundtables were held with key stakeholders in Canberra, Sydney and Melbourne. Over 3,500 submissions were received. Around 30 of the submissions were from industry associations, advisory services and entities that report to Australian Transaction and Analysis Reporting Centre (AUSTRAC). The majority of the remaining submissions discussed common themes, such as the cash payment limit reducing civic freedoms, concerns with negative interest rates and bank-bail-ins and unduly restricting the way cash can be used and stored outside of banks.

Non-confidential submissions that do not contain offensive material or make unsupported accusations are available online at <https://treasury.gov.au/consultation/c2019-t395788>

Treasury has issued a factsheet that addresses common misconceptions raised in the submissions which is available at Attachment A. In implementing the cash payment limit, Treasury will work closely with stakeholders to ensure information on the cash payment limit and how it works is widely disseminated in the community and with business.

CONSULTATIONS

The Black Economy Taskforce (the Taskforce) consulted extensively on the introduction of an economy-wide cash payment limit from December 2016 to 2017.

The Taskforce announced it would examine the idea of an economy-wide cash payment limit in The Black Economy Taskforce Interim Report of March 2017 (the Interim Report). The decision was informed by particular themes which emerged from stakeholder consultations that included close to 40 bilateral meetings with members from the private, public and community sector.

The Taskforce conducted further consultation on the cash payment limit for the Final Report, which included a public submission process. The Taskforce received nine submissions that supported and one submission that disagreed with the proposal.

Since the release of the Final Report, the Treasury has consulted with stakeholders on both the design of the cash payment limit and exposure draft legislation.

The Government publicly released a discussion paper seeking stakeholder views on the design of a cash payment limit from 24 May 2018 to 1 July 2018. During the consultation period Treasury held targeted consultations with relevant stakeholders. 25 submissions were received (including 22

non-confidential submissions) and were broadly supportive of the cash payment limit. Exposure draft legislation was released for public consultation from 26 July 2019 to 12 August 2019. During this period, Treasury held roundtables with industry associations, banks, gambling operators and remittance providers in Sydney, Melbourne and Canberra.

Stakeholder and community consultation on the draft legislation raised a range of issues. A large number of submissions were received from the community. Key concerns raised in consultations included:

- education for the broader Australian community and businesses;
- use of criminal offences;
- limiting the right to transact using legal tender; and
- restricting the ability to store and access personal funds.

Treasury is aware that there is community concern about how the cash payment limit applies and has published a factsheet addressing common misconceptions. Common misconceptions Treasury has sought to address include that the cash payment limit will mean people are unable to take \$10,000 or more cash out of a bank or keep \$10,000 or more cash outside of a bank.

In implementing the cash payment limit, Treasury will be working closely with industry bodies and associations such as community associations to raise awareness of the cash payment limit including how it works and where it does not apply.

WHY IS THE CASH PAYMENT LIMIT NECESSARY?

In speaking with the public and businesses in developing the Final Report, the Taskforce found that there is growing frustration in the community about the unfairness of the black economy. Black economy activity harms society and limits the resources available for governments to provide essential services such as schools and hospitals. The Final Report highlighted how the black economy is harming those doing the right thing by meeting their obligations.

The Taskforce also highlighted the need for a multi-pronged approach that targets the black economy in its many forms. This was in recognition that no single action in isolation can achieve the desired outcome of reducing the black economy. Only a concerted effort will result in meaningful change.

For these reasons, the Taskforce proposed a cash payment limit to target dishonest businesses who are unfairly obtaining an advantage over honest businesses doing the right thing. The Taskforce heard from businesses that competitors were providing consumers a cash price and a higher non-cash price as a way to get their business. These discounts generally were set at an amount equivalent to the GST. The Taskforce found that these practices are a source of growing frustration for honest businesses.

Where market participants operate in the black economy, they frequently do so by using cash given the anonymity it provides by not leaving a clear audit trail making it easier for businesses to under-report their income. Honest businesses are not able to compete on the same playing field without being forced to cut their margins or by also breaching the law. The Taskforce also heard

through consultations of large undocumented cash payments being made for houses, cars, yachts, agricultural crops and commodities in excess of \$10,000.

The Taskforce found that the cash payment limit will make it more difficult to under-report income or charge lower prices reflecting avoided obligations. It also sends a strong message to the community that it is not acceptable to avoid tax and other obligations by using cash as means of payment. The cash payment limit will also make it harder for organised crime syndicates and criminal gangs to wash the cash from the proceeds of manufacturing and selling drugs and other serious crimes through the legitimate economy.

The Taskforce recommended aligning the cash payment limit to the threshold of \$10,000 used for the Anti-Money Laundering and Counter-Terrorism Financing framework for reasons of simplicity and interoperability.

HOW DOES THE CASH PAYMENT LIMIT WORK?

The cash payment limit is designed to broadly apply to payments of cash that occur in the course of running a business or an enterprise. This is in keeping with the purpose of the cash payment limit to restrict the ability of parties to avoid their obligations by transacting in high sums of cash.

The cash payment limit applies to a single payment of cash of \$10,000 or more.

The cash payment limit also applies to a series of payments made for the one supply or as a single gift that includes \$10,000 or more of cash. The total cash payments made towards the final price paid must remain under \$10,000. The remainder of the payments must be made in a form other than cash, such as electronically or by cheque or money order. Refer to Attachment B for further information.

Exemptions

The cash payment limit **does not** apply to the following kinds of transactions:

Cash deposits, transfers and withdrawals with financial institutions are not subject to the cash payment limit. As announced in the 2018-19 Budget, transactions with financial institutions or consumer to consumer non-business transactions will not be affected by the cash payment limit. Cash deposits and withdrawals of \$10,000 or more will continue to be reported to AUSTRAC as threshold transaction reports.

Private and personal transactions. A private transaction occurs where both parties are acting in a wholly personal capacity. Examples of private transactions include the private sales of assets such as sale of a car, and the private transfer of funds to family members or inheritances.

The only kind of private transaction that is not exempt from the cash payment limit is for the sale of real property. The cash payment limit will make it more difficult for individuals who buy houses with cash and seek to obscure the ultimate source of their funds.

Transactions that only exceed the cash payment limit because they include digital currency. Digital currency does not yet have an established industry structure, making it difficult to apply the cash payment limit in a way that would not stifle innovation and growth of the sector. The exemption for digital currency payments will remain under ongoing consideration and will be informed by the use and regulation of digital currency in the Australian economy.

Transactions where no alternative method of payment is available. This exemption addresses circumstances involving significant and prolonged disruptions to communications and transport infrastructure that are unforeseen.

The transport of physical currency by specialised courier services. Where a transaction involves the transport of physical cash, the component of cash that is being moved is exempt from the cash payment limit.

Transactions involving public officials in the performance of their duties. Examples this exemption covers include the distribution of notes or the sale of coins as an employee of the Reserve Bank of Australia or the Royal Australian Mint.

Transactions that must be reported to AUSTRAC as part of a threshold transaction report. Under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or the *Financial Transaction Reports Act 1988* payments that are part of transactions involving \$10,000 or more cash for certain services must be reported to AUSTRAC. Threshold transaction reports are a long standing feature of Australia's anti-money laundering and counter terrorist-financing regime.

LEGISLATIVE FRAMEWORK

The legislative package to give effect to the cash payment limit consists of:

- the Currency (Restrictions on the Use of Cash) Bill 2019 (the Bill); and
- the Currency (Restrictions on the Use of Cash) Rules 2019 (the Rules)

The cash payment limit legislative framework balances the need to provide the public with certainty about how the cash payment limit operates and the need to ensure flexibility to quickly address the potential of new kinds of transactions or business practices that could be inappropriately affected by the cash payment limit.

The Bill creates an offence to make or accept a payment of \$10,000 or more and defines what cash is for the purposes of the measure. Changes to the value of the limit, the definition of cash, how the offences apply would require passage of legislation.

The Rules sets out the kinds of transactions that the cash payment limit will not apply to (referred to as exemptions or defences) and how to convert digital currency and foreign currency into domestic currency for the purposes of the cash payment limit.

The Rules are subordinate legislation, which allows for the exemptions to the cash payment limit and conversion methodologies to be amended quickly. While the scope of any future changes to the exemptions is unknown, it is likely to involve expanding the scope of the current proposed exemptions to accommodate new kinds of transactions that quickly warrant an exemption to provide businesses certainty against prosecution. Changes to the Rules are still subject to Parliamentary review and scrutiny during the disallowance period.

PENALTIES

The potential penalties for breaches of the cash payment limit include both monetary penalties and, for serious breaches in which an individual recklessly flouts the cash payment limit, imprisonment. Consistent with general practice, the Bill only sets out the maximum penalties the court can impose.

The courts have the discretion to determine the appropriate penalty based on the circumstances of a breach.

Criminal activity associated with the black economy is a serious problem for Australia. The use of large cash payments is key in facilitating activity in the black economy and an adequate deterrent is required to change existing practices and behaviours that enable this conduct.

The Bill introduces offences with strict liability elements as well as offences where a mental element is required for all parts of the offence. The penalties are designed to cover a broad spectrum of behaviours including from an individual inadvertently breaching the cash payment limit, to a repeat offender seeking to launder criminal funds. This provides courts with the discretion to impose a range of penalty units up to a maximum of 120 penalty units reflecting the circumstances of the behaviour.

For the **strict liability offences**, strict liability will apply in relation to whether the amount of cash included in a payment is \$10,000 or more. It does not matter what a person knew or was reckless about whether the payment included any amount of cash. However, to commit these offences, a person must still have intended to make or accept the payment.

The application of strict liability in relation to the amount of cash included in a payment ensures that businesses must implement systems to ensure that a customer is not using \$10,000 or more of cash to pay for a supply and the business is not accepting payments or a series of payments in breach of the limit. Currently, businesses and individuals are often not in a position to refuse to make or accept cash payments even where the payment may well facilitate black economy or other criminal behaviour.

Intentional (recklessness) offences are more serious offences. For these offences to apply, an entity must enter or attempt to enter into a transaction knowing there is a real potential the amount of cash included in a payment is \$10,000 or more.

A common misconception is that the minimum penalty for recklessly breaching the cash payment limit is imprisonment. The penalties set out in primary law are the maximum available to the court. It is up to the courts to determine what the appropriate penalties are on a case-by-case basis up to the thresholds set out in the primary law.

A summary of the maximum penalties established under the Bill is set out below.

Table 1: Summary of maximum penalties

Offence types	Entity type	
	Individuals	Body corporate ^b
Strict liability, max penalty	60 penalty units ^a (\$12,600)	300 penalty units (\$63,000)
Recklessness, max penalty	120 penalty units (\$25,200) and/or two years imprisonment	600 penalty units (\$126,000)

Note (a): A penalty unit is currently \$210.

Note (b): Under section 4B of the *Crimes Act 1914*, the maximum financial penalty for a corporation is increased to five times the amount for a natural person.

ATTACHMENT A – FACTSHEET



\$10,000 cash payment limit

The Australian Government introduced the Currency (Restrictions on the Use of Cash) Bill 2019 on 19 September 2019. The Bill gives effect to an economy-wide cash payment limit.

The Bill will become law once it is passed by the Parliament and receives Royal Assent.

This factsheet addresses common myths about the cash payment limit.

Myth

Fact



Cash cannot be used for everyday transactions.



Cash can be used to pay for a transaction up to the limit.



Family members cannot give cash gifts.



The cash limit does not affect cash gifts to family members.



Private individuals cannot buy or sell second-hand goods using cash.



The cash limit does not affect the sale of second-hand goods between private individuals.



People are required to store money in the bank.



You will still be able to store \$10,000 or more cash outside of a bank.



People are no longer able to deposit or withdraw cash from their bank account.



You will still be able to deposit and withdraw \$10,000 or more cash into and from your accounts.



The Government can amend the Bill for the cash limit without scrutiny by the Senate.



Any changes to the Bill are subject to full Parliamentary scrutiny.

ATTACHMENT B – SERIES OF PAYMENTS

Examples of transactions where the total price is split into a series of payments

Repayments related to the purchase of a supply of goods or services (e.g. a car). Under the cash payment limit the cash component of the total funds paid must remain under \$10,000.

Progressive payments for the completion of a project (e.g. a pool, house extension). Where a contract requires payments to be made when key components of the project are delivered, under the cash payment limit the cash component of the total funds paid must remain under \$10,000.

Examples of transactions that are not considered a series of payments

Goods and services that are provided and paid for periodically (e.g. rental payments, leasing and subscription agreements). Special rules apply to cases where something is supplied and paid for on a periodic basis under a longer term agreement. In these cases, each periodic component of the supply is treated as a separate supply for the purposes of the cash payment limit and so the cash payment limit applies separately to each periodic payment.