Senate Standing Committee on Economics Inquiry into the *Currency (Restrictions on the Use of Cash) Bill 2019*

Adams Economics Response to Question Taken on Notice
3 February 2020

Question:

On 30 January 2020, Senator Rex Patrick posed the following question which was taken on notice:

> ***"****What's the threshold for making a regulatory impact statement—or, rather, why would this have been carved out in that respect?"*

Answer:

- According to *'The Australian Government Guide to Regulation'*[1] (the Guide), which was endorsed by the then Parliamentary Secretary to the Prime Minister, the Hon. Josh Frydenberg MP (Member for Kooyong) in March 2014, all Cabinet submissions require a Regulation Impact Statement (RIS).

- Moreover, according to the Guide, policy or regulatory decisions which are not going to Cabinet still require a RIS:

> *"where the policy proposal is likely to have a measurable impact on business, community organisations or individuals. This includes new regulations, amendments to existing regulations and, in some cases, sunsetted regulations being remade."*

- No standalone RIS document was produced for the Government's proposed $10,000 Cash Payment Limit policy.

- However, on 5 March 2019, Revenue Group Deputy Secretary of the Department of the Treasury (Treasury), Ms Maryanne Mrakovic, wrote to Mr Jason Lange, the Executive Director, of the Office of Best Practice Regulation (OBPR) within the Department of the Prime Minister and Cabinet[2] to certify that the Black Economy Taskforce Final Report:

> *"has now adequately addressed all seven RIS questions"*

- Deputy Secretary Mrakovic also stated:

> *"Accordingly, I am satisfied that the attached report meets best practice consistent with the Australian Government Guide to Regulation."*

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[1] https://pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation

[2] The RIS certification letter can be found at the following link: https://ris.pmc.gov.au/sites/default/files/posts/2019/12/190305_ris_certification_letter_-_signed_-_cash_payment_limit.pdf

- Moreover, the Treasury calculated that the *Currency (Restrictions on the Use of Cash) Bill 2019* imposed an average annual regulatory cost (regulatory costs includes direct financial costs as well as indirect financial and non-financial costs (e.g. opportunity cost)) of:

    - $14,000 to individual businesses; and
    - $3,000 to individual Australians.

- On 17 December 2019, the OBPR published its assessment of whether the Treasury was in compliance with the requirements of *'The Australian Government Guide to Regulation'*. The OBPR stated[3]:

  "The Treasury was compliant with the Australian Government RIS requirements, but the Treasury was not consistent with best practice at the transparency stage. This is because a copy or a hyperlink to the Taskforce report was not included in the explanatory memorandum of the bill."

- However, the OBPR also stated:

  "The Department of the Treasury certified that the Black Economy Taskforce Final Report met the requirements of a Regulation Impact Statement (RIS). ***The Office of Best Practice Regulation does not assess the quality of independent reviews and RIS-like processes used in lieu of a RIS."***

- This statement is materially significant given that:

    - principle 2 from the *'Ten Principles for Australian Government Policy Makers'* which is contained within the *'The Australian Government Guide to Regulation'.* This principle states:

      "Regulation should be imposed only when it can be shown to offer an overall net benefit."

    - question 4 of the RIS requires policy makers to answer the following question:

      "What is the likely net benefit of each option?"

- During the Senate Economics Committee inquiry into the *Currency (Restrictions on the Use of Cash) Bill 2019,* several businesses and industry groups made representations indicating that the proposed $10,000 cash payment limit will impose significant regulatory costs. Moreover, these organisations indicated that the proposed law will create legal uncertainty and a series of unintended consequences.

- For example:

    - Flight Centre testified on 30 January 2020 that the proposed law would require changes to computer software and operational procedures as well as require the installation of a new compliance regime and new training for front line staff. Flight Centre also testified that the proposed law creates legal uncertainty as to who within their corporate structure would be criminally liable for a breach and that the risk for criminal sanctions has caused fear and concern among front line staff.

    - The Australian Small Business and Family Enterprise Ombudsman and the Australian Taxpayers' Alliance testified on 12 December 2019 that the proposed law may result in enterprises operating lawfully in Australia being forced out of business due to the phenomena of 'de-banking' (i.e. the denial of access to financial products and services (e.g. access to a bank account, EFTPOS payment terminal and other transaction and payment options)), given that they won't be able to operate lawfully if they are restricted in being able to use cash.

[3] https://ris.pmc.gov.au/2019/12/17/economy-wide-cash-payment-limit

- Moreover, during the 30 January 2020 Senate Economics Committee public hearing, Mr Boneham, the Division Head of the Black Economy Division from within Treasury confirmed that neither Treasury or the Black Economy Taskforce were able to undertake a cost-benefit analysis of the proposed legislation given that:

  "A benchmark is very difficult to do. That's what they found in Europe as well."

- It was the lack of a detailed cost-benefit analysis of the proposed legislation which led to an ensuing debate at the 30 January 2020 public hearing between Senators McAllister and Kitching and officials from the Treasury as to whether a formal and appropriately robust RIS was prepared as part of the development of the $10,000 cash payment limit and whether Treasury fully considered the costs and potential impacts of the proposed legislation (The full record of this debate is detailed at Attachment A).

- For example, during the public hearing, the following statements were made:

  Senator McAllister: *Mr Boneham, it's not a regulatory impact statement. A regulatory impact statement is a prescribed form and is a very particular form of analysis. We can have a debate about whether it's always appropriate, but in this case you can't argue that it was undertaken in the report. It really wasn't.*

  Senator Kitching: *So where, in chapter 3, is the detailed cost-benefit analysis which is one of the headings you'd normally get in a RIS?*

  Mr Boneham: "*'Costs and benefits' is on page 54""*

  Senator Kitching: *But this is four paragraphs, and the last one is one sentence. That doesn't seem to me to be very detailed. When you look at a RIS, usually it's more detailed than that. With this, I can see the whole bit on my screen.*

- The described costs and benefits analysis from Page 54 of the Black Economy Taskforce Final Report is at Attachment B. In this section, the Black Economy Taskforce failed to provide any quantitative analysis as to what the costs and benefits may be resulting from the enactment of the proposed legislation.

- Given the evidence submitted to the inquiry to date, it is highly likely that the average regulatory cost estimates to business and individuals, as spelled out in Treasury's certification letter (as mentioned above), may significantly and materially underestimate the full regulatory costs resulting from the proposed legislation.

- From the available evidence, the OBPR failed to provide any scrutiny over Treasury's regulatory cost estimates. Given this fact, it is likely that Treasury has violated principle 3 of the 'Ten principles for Australian Government policy makers' contained in the Guide which states:

  "The cost burden of new regulation must be fully offset by reductions in existing regulatory burden."

Conclusions

- Several submissions to the inquiry examining the *Currency (Restrictions on the Use of Cash) Bill 2019* as well as the testimony of:
  - Flight Centre at the 20 January 2020 public hearing; and
  - the Small Business Ombudsman and the Australian Taxpayers Alliance at the 12 December 2019 public hearing

show that the Government's $10,000 cash payment limit will impose significant direct and indirect costs on individual businesses as well as the Australian economy more than any potential benefits which may result from the proposed legislation.

- Moreover, the proposed legislation is likely to result in materially significant unintended consequences as highlighted by the phenomena of 'de-banking' which was highlighted by the 12 December 2019 public hearing.

- By their own admission, Treasury was unable to demonstrate that the *Currency (Restrictions on the Use of Cash) Bill 2019* will generate a <u>net benefit</u> for the Australian Economy.

- The Government has therefore failed one of the core principles which underpins best practice under its regulatory management framework. Moreover, the inability to provide robust estimates of regulatory costs and potential benefits means that Treasury is likely to have also violated principle 3 from the 'Ten principles for Australian Government policy makers' contain in the Guide.

- The multiple core principle failures were not detected and corrected by the OBPR given that they do not assess the quality of RISs which are part of formal government reviews.

- The *Currency (Restrictions on the Use of Cash) Bill 2019* therefore demonstrates an instance of poor regulatory practice within the Federal Government.

- The proposed legislation in all likelihood will impose a net cost on the Australian economy and detract from economic growth and therefore is inconsistent with the Morrison Government's deregulation and broader economic agenda.

Attachment A

Debate at the 30 January 2020 Public Hearing between Committee members and Treasury regarding whether a Regulation Impact Statement was properly prepared during the development of the *Currency (Restrictions on the Use of Cash) Bill 2019*

Senator PATRICK: Flight Centre raised in evidence this morning that they will have to go through a process of modifying software, modifying processes, training personnel and looking at their own compliance measures in order to comply with the law. There is no regulatory impact statement in relation to this legislation and it would appear that there are costs associated with it. Why is there no RIS?

Mr Boneham: The regulatory impact statement is in the report itself. The report went through a robust and thorough consideration of the measure before they made a recommendation. The report also puts down—

CHAIR: The black economy report?

Mr Boneham: Yes, the black economy report.

Senator PATRICK: Does it spell out what the cost of implementation is?

Mr Boneham: It says that there will be costs.

Senator PATRICK: But it doesn't tell you what they are?

Mr Boneham: It doesn't spell those out.

Senator McALLISTER: Mr Boneham, it's not a regulatory impact statement. A regulatory impact statement is a prescribed form and is a very particular form of analysis. We can have a debate about whether it's always appropriate, but in this case you can't argue that it was undertaken in the report. It really wasn't.

Mr Boneham: The report being used as a regulatory impact statement meets the requirements in that it considered and consulted on the measure. It also looked at alternatives to the proposal. It considered banning $100 notes, and it said no. It looked at having potentially a $2,000 limit on tradesmen, and it said no. It also looked at the potential to track money, and it did not come up with that recommendation either. So from that point of view it met the requirements of the RIS. We have done some assessments and, as we get more and more information on that, we will look at what those assessments will be. I understand that Flight Centre will go off and look at that. I think also Flight Centre mentioned that they want to know what the implications are. They don't know what the costs will be until we actually tell them what transactions would be affected, so we will consider it at that point in time as well as whether those costs—

Senator KITCHING: Can you point me to the specific pages in the Black Economy Taskforce report that deal with the detailed cost-benefit analysis that's required under a normal RIS?

Mr Boneham: It's in chapter 3.

Senator KITCHING: Thank you

Senator KITCHING: Mr Boneham, I'm in chapter 3 of the final report of the Black Economy Taskforce. That chapter is entitled 'Moving to a near non-cash world'. It goes through 'How we transact is evolving'; there's a graph comparing us with other countries; there's 'Why the move away from cash is a good thing'—blah, blah, blah—and 'supply chain effects'. So where, in chapter 3, is the detailed cost-benefit analysis which is one of the headings you'd normally get in a RIS?

Mr Boneham: 'Costs and benefits' is on page 54, and it gets back to a response to one of your earlier questions, which was that we don't necessarily have a benchmark on which to do the cost-benefit analysis, because it's all hidden.

Senator KITCHING: But this is four paragraphs, and the last one is one sentence. That doesn't seem to me to be very detailed. When you look at a RIS, usually it's more detailed than that. With this, I can see the whole bit on my screen.

Mr Boneham: As I said, it gets back to: what is our baseline? By its nature, it's a part of the economy where you don't have that much data on how much is working because it is deliberately hidden. It's deliberately hidden from enforcement agencies and it's deliberately hidden from other agencies as well.

Senator KITCHING: So you're saying it's not possible to do a detailed cost-benefit—

Mr Boneham: A benchmark is very difficult to do. That's what they found in Europe as well.

Senator KITCHING: So you couldn't really rely on this as a detailed cost-benefit analysis, as you might in a normal RIS?

Mr Boneham: It's not like another measure in which we would say, 'Every business has to do'—for example, a tax measure. We would have a good idea of what the potential impact of that tax would be, what the potential cost issues would be and what potential revenue would be returned from that measure, because we actually have a benchmark on which to base it. The work which was done for the European Union also found that it was very difficult to do a cost-benefit analysis on it, for the very reason that the data is not there. That would be the same for Australia.

Senator KITCHING: But in the example I gave you before, which was around MYOB, for example, having to update the software, or whatever you might do as a business, that's a cost. Have you spoken with the software providers, in terms of—

Attachment B

Black Economy Taskforce Final Report
Described Costs and Benefits of the Cash Payment Limit (p54)[4]

Costs and Benefits

A cash payment limit is consistent with broader trends in the economy, reflecting a broad-based trend away from cash. This was evident in the overwhelming support for this proposal in submissions made to us. While some consumers will retain a preference for cash, consultations suggest that the majority of legitimate transactions would be unaffected by the recommendation. The $10,000 threshold aligns with, and supports, the Government's efforts in other areas such as AML/CTF.

Currently, the market provides a wide range of solutions for electronic transactions. Internet banking is a widely used, fast and simple way to pay electronically. The market is continuing to evolve: the NPP will give Australian customers, businesses and government access to a fast, versatile and data-rich payments system for making their everyday payments.

A cash payment limit would also support businesses to decline high-volume cash payments: currently, honest business may find it difficult to decline large cash payments even where they suspect such payments are being made in the course of money laundering. This emerged as a concern for some traders in high-value goods in our consultations.

Depending on how it is implemented, a cash payment limit may involve some increase in government expenditure, for example, establishing systems relating to enforcement and penalties.

[4] https://treasury.gov.au/sites/default/files/2019-03/Black-Economy-Taskforce_Final-Report.pdf