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**Submission to the consultationon *Currency (Restrictions on the Use of Cash) Bill 2019***

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Dear Manager

Thank you for enabling me to make this submission to the consultation. In my submission, I am taking the opportunity to:

1. express dissatisfaction with the timing and process of the consultation
2. question the fundamental policy purpose of the Bill
3. question and object to the non-inclusion of Division 2
4. object most strongly to the proposal to rely on ‘legislative instruments’ for exceptions and other prospective changes in whatever circumstances the Minister might determine.

***About the author***

I have ‘retired from active service’ in public policy – from a career based on economics and science training up to post-graduate level that then spanned fifty years – in federal government agencies up to Senior Executive, in Parliament House as a policy adviser to a Cabinet Minister, and in the not-for-profit sector as a senior policy leader and then CEO of a national industry association.

My experience in these senior roles gave me considerable insight into the functioning of the Federal Government and the Parliament and into the preparation, passage and implementation of primary and secondary legislation.

In my ‘outsider’ role, I was fortunate to have spent several years as an appointed member of consultative committees and working groups of the ATO and ASIC, working closely with officers of those agencies and of the Treasury – on taxation and corporations law and administration, and on aspects of the operations of the ‘financial economy’. I was also closely involved in the many months of consultations leading to the *Anti-Money Laundering and Counter-Terrorism Financing Act* *2006* and its subsequent Technical Amendments and Rules.

In the decade since the global financial crisis, and my later ‘retirement’, I have continued to read and study widely on the subject of banking and finance in Australia and internationally. I am far from unfamiliar with the underpinnings of this Bill, including the politics surrounding it and the pressure from international financial institutions and Australian banks.

1. ***Timing of the consultation***

At the relevant times in the past two years, I was aware of but not very engaged with the Black Economy Taskforce project and Final Report (2017), with the Government’s Budget announcement of its intention to introduce a cash payment limit, and with the Treasury Consultation Paper and process in mid-2018. The mainstream media gave all of these steps reasonable coverage.

The same doesn’t appear to have been the case with consultation on the draft legislation. It was released on a Friday afternoon, renowned as the time of the week that governments

choose for ‘putting out the trash’ – i.e. when it is a matter that the government of the day would prefer not to draw attention to. This is a well-established practice of all governments. To add to the suspicion (whether justified or not), the time allowed for considered comment – once the populace had been alerted to the existence of the draft Bill via whatever media ran the item the following week – was a maximum of 10–11 working days.

For a subject that is potentially so disruptive and contentious, as will surely become apparent as more citizens learn of its consequences, such a consultation period is much shorter than reasonable. Although the Bill itself is not long, its potential impact could be dramatic, uneven and long-lasting (generations?), and deserves much more consideration and discussion than allowed by such a short period for comment. It certainly raises questions about motive and intention – and also about what the public is not supposed to notice.

1. ***Fundamental policy purpose of the legislation***

Although it may be regarded as past the time to be raising questions as listed below, I believe they deserve to be asked … almost certainly not for the first time. (And lest the reader think “Oh, most of this has been taken care of by the $10,000 limit and the exemptions”, please turn to the discussion in Section 4.)

1. Will the cash payment limit achieve what is touted for it? (That is, to reduce the prevalence of the so-called ’black economy’ and to discourage tax avoidance or even evasion and criminal behaviour, such as money-laundering.) Is it the best policy solution for that purpose?
2. Are there other purposes the legislation is intended for that are not being put before us and openly discussed?
3. Who stands to benefit the most? Who is driving the push to pass this law? Who is not in favour of it, and who stands to lose? What is the justification for such harsh penalties?
4. When will we have a proper, genuine opportunity to publicly debate all aspects of this proposal, including unintended consequences and impacts (not least being on privacy and the personal preferences and freedoms of law-abiding citizens)?

I’m sure other submissions will have been received from individuals and organisations much more deeply immersed in this subject than I. And they may well have provided their own answers to these and other questions. I will confine my input to having asked the questions and offering some general observations. I can’t imagine that Treasury will not already be familiar with every one of these observations.

**a)** I have read some learned viewpoints asserting that the touted reduction in the ‘black economy’ (a.k.a. ‘shadow economy’ and ‘underground economy’) from mandating a cash payment limit are substantially overstated, i.e. that ‘cash’ is actually not the problem. By contrast, they assert (referring to evidence from other countries) that the black economy tends to flourish where otherwise law-abiding citizens and businesses are driven by other public policies (e.g. unnecessarily/unfair high taxes and excessive regulation) to seek ways to minimise their hardships and impositions.

A related question is – where can the public see a justifying analysis of the scale and scope of the black economy and its cost to government revenue? This could be extended to a comparison with other lost revenue such as through the taxes avoided by multinational corporations through transfer pricing and numerous other clever accounting mechanisms – as revealed in the published investigations by Michael West.

To these can be added other informed views in numerous investigative non-mainstream media sources that successful international money-laundering and trafficking and related criminal behaviour is often facilitated by financial institutions, whether wittingly or otherwise, whether involving cash only or ‘other’ bank accounts and identities. What are we to make of these assertions? And how will the proposed law discourage and minimise such institutional behaviour to the extent that it is practised in Australia? Just asking.

Cash is legal tender, it is not harmful or immoral, and it is used by millions of law-abiding Australian citizens. This usage should not be undermined by a federal law with harsh penalties. Who do we imagine is most likely to be caught out and penalised?

**b**) In the draft Bill and supporting documents, no connection appears to be have been drawn between the cash payment limit – which will pressure citizens into much greater use of and dependence on the financial sector and institutions – and any policy targets other than the black economy and criminal behaviour.

Yet the Government and the financial sector and media are talking openly about the prospect of a future need to introduce negative interest rates (to help prevent financial collapse). If this were seriously being countenanced, it could be effective only if the bulk of the population was more deeply embedded in and dependent on the banking sector. But the prospect alone of negative interest rates would certainly tempt many to withdraw their deposits and store their own cash, rather than pay the banks and then watch it lose value. Solution? Make it legally difficult for citizens to escape the net of the financial sector – the outcome that this Bill is intended to achieve.

Why isn’t this connection between a cash payments limit and negative interest rates a central element of the Government’s proposal and the public conversation, especially given that there are numerous IMF and official documents that cover this cross-dependence?

In similar vein, the provision in the *Financial Sector Legislation Amendments (Crisis Resolution Powers and Other Measures) Act 2018* to ‘bail in’ depositors’ savings to save a failing bank – if invoked – would be far less effective if these funds were withdrawn from the bank. The prospect of this invocation has been consistently denied officially. But it should nonetheless be part of the public and Parliamentary consideration of this draft Bill as another unspoken motive driving it.

**c**) Who stands to benefit most? And who will lose? It is not surprising that the financial sector is at the forefront of advocacy for this legislation – not just the banks (as made clear in the Australian Banking Association’s submission to the 2018 Consultation Paper), but also the major accounting profession representatives, and at least one of the law societies (from the handful of 2018 submissions I have found and read). I won’t be so indelicate as to write down what appears as most obvious reason – especially about the national and international financial sector. But the terms ‘self-interest’ and ‘control’ might be worth considering. On a very large scale.

Who stands to lose? To hazard a guess, let’s suggest most citizens and small businesses, especially those in remote regions and others who have spent their lives relying on cash as their means of exchange, and maybe also not having the skills or the physical means to interact with the digital economy. The older generations, perhaps. And anyone who has no desire for their every transaction to be digitally surveilled and recorded. To what end should this be mandated as standard operating procedure in our society, one might ask? And for whose benefit?

In the contemporary political environment, both inside and outside Australia, with the apparently relentless expansion of state surveillance and the concentration of financial and political power, the mythical phrase ‘follow the money’ should be accompanied by some other appropriate phrase. Perhaps one first coined by the author George Orwell?

**d)** I offer no answer to the fourth question. So let me simply ask it again:   
‘When will we have a proper, genuine opportunity to publicly debate all aspects of this proposal, including unintended consequence and impacts (not least being on privacy and the personal preferences and freedoms of law-abiding citizens)?

***3. Division 2 ?***

The absence of Division 2 in draft legislation of such significance for which public comment is expected does nothing to ease suspicion. Suspicion about what the Government is not saying – particularly since it is within Part 2: Offences.

Since the intention is for it “To be inserted”, Treasury should incorporate changes emerging from this consultation, insert Division 2, and conduct another proper consultation round before the Bill is introduced into Parliament.

***4. Legislative Instruments***

Assuming for the moment that the Government decides it won’t be dissuaded from introducing the Bill, I believe the most objectionable elements are those where the exceptions themselves are not contained within the primary legislation – see Sections 10(5) and 11(3) and their accompanying Notes 1 to 3. These exceptions are “of a kind”, or “made in circumstances”, or “accepted in circumstances” “specified by the Minister by legislative instrument”.

This means that the $10,000 cash payment limit is not safe. And the exception offered to withdrawal of deposits is not safe. Nor is the exception for consumer-to-consumer transactions.

The Explanatory Memorandum paragraphs 1.25 and 1.46 assert that using a legislative instrument is necessary to provide certainty in some circumstances, and to allow flexibility in others, within the regulatory regime. Both these assertions may be true, and legislative instruments are widely and appropriately used in the legislative chain, with good effect. But this particular legislation is of such potentially momentous significance that it should be unacceptable for any substantial change in the law to not be scrutinised by the Parliament first (rather than be presented for disallowance later).

One might imagine occasions where the Minister (Assistant Treasurer) could need to rapidly make an exception for a particular unremarkable circumstance that probably shouldn’t have to go through the full parliamentary process.

However, a ‘substantial change’ could, for example, be a reduction in the value of the cash payment limit – from the intended $10,000 to, say, $5,000, or even $2,000, which has already been proposed. Such a reduction was argued as “justified” in KPMG’s submission on the 2018 Consultation Paper.

The Minister could reduce this limit by legislative instrument without referring the matter to Parliament. The Minister could decide to remove the exception of depositing and withdrawing cash in banks or impose a limit, thereby preventing bank customers from withdrawing their savings when they decide to – without referring the matter to Parliament.

These ‘legislative instrument’ provisions in the Bill warrant serious revision to require full and proper Parliamentary scrutiny for substantial change. Properly embodying the provisions within the primary legislation is an obvious solution.

***Finally …***

As drafted, this Bill is fraught with danger – as described above, and almost certainly in numerous other submissions.

In my view, the Bill should be withdrawn altogether. The predictable downsides for society at large far outweigh the benefits claimed by the proponents – except for the transfer of economic power to the already powerful and the gifting to government of another means of surveillance of our citizenry. And without reducing the shadow economy and criminal behaviour to anywhere like the degree asserted.

If the Government cannot be persuaded to take this fairer and more sensible path, Treasury should at least (a) insert Division 2, (b) incorporate workable changes recommended in submissions (especially embodying Exceptions in the primary legislation), and (c) release a revised draft Bill for another – and longer – consultation round.

If and when the Bill is finally introduced into Parliament, is must be scheduled for full and robust debate in both Houses, referred to Committee for genuine and thorough scrutiny with public hearings, and then not be slipped through the chambers late at night with few Members present.

The Australian people deserve no less.

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