

Objection to Treasury Draft Legislation for an Economy – Wide Cash Limit of \$10,000.

Proposed Bill: Currency (Restrictions on the Use of Cash) Bill 2019.

1. Background

In the 2018-19 Budget, the Government announced it would introduce an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods and services.

Transactions equal to, or in excess of this amount would need to be made using the electronic payment system or by cheque.

The Black Economy Taskforce recommended this action to tackle tax evasion and other criminal activities.

The Government has released for public consultation exposure draft legislation and accompanying explanatory material to implement the economy-wide cash payment limit from 1 January 2020 and for certain AUSTRAC reporting entities from 1 January 2021.

Submissions to the consultation are open until Monday 12 August 2019.

Interesting enough this Treasury Release was on 26 July 2019 giving a short consultation period of approx. 2.5 weeks which is not very long for such an important issue which has wide ranging effects on an economy that is already wobbling to eventually collapsing.

The writer cannot recall anybody from the LNP Federal Govt / Politicians / Reporters or the mainstream media advising this intended policy to the Voters during the election campaign in May 2019. One can deduce from this silence that the Govt does not want the Voters to know that a Cashless Society is in its plans for the near future because the Voters may not agree with this decision.

Surely a National Referendum or an Independent Parliamentary Enquiry is needed so that the Australian Public can make an informed decision. Should the majority of Australians want a Cashless Society then so be it.

Persons whom the writer has spoken with have not even heard of this proposed Legislation and are asking why the LNP Govt hasn't been honest and upfront about it before and during the Election Campaign – a transparency and integrity issue.

Given that it was in the 2018-19 Budget the only persons who might be acquainted with it would be the larger accountancy firms such as KPMG, EY and others.

2. Summary Comments on Treasury Exposure Draft (Refer Attached 14 Pages.)

- **Cash** means either or both of the following: -
 - (a) Digital currency
 - (b) Physical currency

As defined by the Anti-Money Laundering and Counter- Terrorism Financing , Act 2016.

- Cash payment limit is \$10,000.
- Value if Cash – Foreign Currency and Digital Currency

The value in Australian currency of an amount paid in foreign currency is to be worked out in accordance with the method prescribed, by the legislative instrument, by the Minister.

- Penalties in relation to cash payments.

Page 5 (10 Offence) and Pages 6,7,8 (11 Offence) have differing penalties for offences committed. In the 10 Offence section the penalty is 60 penalty points whilst in the 11 Offence section the penalty is 2 years imprisonment or 120 penalty points. This requires further transparent explanation.

- **The Minister's Authority**

Page 6 (item 5) and page 7 (item 3) outlines the authority that the Minister holds. So, the Minister can adjudicate and accept or deny cases.

Given that there is no oversight, no checks and balances this opens the door to corruption with offenders being given favourable treatment, depending on who or what they are, at the expense of others.

Therefore, this legislation needs to be debated in the Public Square where the Voters can understand fully what the pros and cons are to make an informed decision.

3. General Comments

- This Bill is for Legislation to restrict the use of cash in transactions and for related purposes;
- This will ensure that anyone who participates in the economy will have to operate electronically / cheque with all payments being able to be tracked.
- Separate transactions can be assessed over a 12-month period as pertaining to belonging to one transaction thus an offence is committed.
- The Bill is Draconian and demonstrates a Totalitarianism which is Un-Democratic and certainly Un-Australian.
- This Bill and all related materials need to be debated publicly as it clearly is in the National Public Interest as it has ongoing repercussions as well as moving us one step closer to a Cashless Society.
- One could argue that this is a good thing to restrict/ eliminate cash and address the 'Cash Economy' as well as money laundering, avoiding tax and this is the sales pitch.

However, our Economy is in dire straits as its weak economic pillars of Immigration, Construction and Finance, in conjunction with systematically destroying our industries such as Manufacturing, Agriculture and Mining over the past 20- 30 years has led us into a disastrous position. For the past 50 years our proven strengths have been Manufacturing, Agriculture and Mining all of which we need to return to for prosperity.

This legislation is no doubt seen by Treasury as its urgent priority as our flailing economy is akin to a giant boulder rolling down behind us and soon, we will be crushed. So, let's push this through to protect the Global Banking Cartels and not worry about the Economy or Australians.

- Our urgent economic priorities, ahead of this Bill, are as follows;
 - 1) cheaper energy / electricity costs by building HELE coal fired powers stations and nuclear power as a matter of urgency;

2) jobs for unemployed and underemployed. Current unemployment/under-employment rate is approx. 25% plus, not the mischievous 5%-6% advised by the Govt;

3) substantially reducing immigration numbers to address congestion in Melbourne, Sydney and Brisbane;

4) building "" catch up"" infrastructure to overcome congestion in capital cities;

5) water security with new dams being built and the Bradfield Water Storage & Irrigation Scheme Mk2 constructed immediately for agriculture;

6) expansion of Agriculture in North & Western Queensland to feed Asia/ World and to generate export income;

7) new coal mines to be opened for export markets to India and China and to secure royalties for Govt Budget;

8) State and Federal Laws to be overturned to allow uranium mining and the establishment of a nuclear industry for power and to build nuclear submarines here in due course;

7) and much more.

So, you see the Economic Priorities are not about the Cash Economy at this point in time. Perhaps if we were ahead of our Economic Woes the Bill might serve a useful purpose for Australia and us..... but it doesn't as it interferes with trade and other urgent projects.

- The writer understands that the original limit discussed was \$2,500 not \$10,000 which is considered by the architects to be too high.

It is fair to say that once this is Legislated the limit can then be reduced to \$2,500 and then to zero, or direct to zero, which will eliminate cash altogether from the financial system as any cash held will be worthless.

A good example of this was when the German Govt changed the currency from the Reichsmark to the Deutschmark. It was done on a weekend when the Banks were closed. On the Monday citizens were advised that a new Bank account had been opened with a small number of Deutschmarks. There was no conversion value for the Reichsmark to the Deutschmark.

The Reichsmark was replaced in June 1948 by the Deutsche Mark in the Trizone (three western occupation zones) and (in the Soviet occupation zone) later in the same year by the East German Mark (colloquially also "Ostmark", since 1968 officially "Mark der DDR") in East Germany.

- This legislation does not benefit the Australian Economy or us as Citizens as its purpose is to shore up the Global Financial System / Global Banking Cartels.
- In 2016 the Federal Govt passed "Bail-In" Laws which allows the Banks to own and use Customers Deposit moneys to help bail them out when they collapse due to mismanagement, greed, lax lending policies, and significant bad debts together with other issues.
- When the Australian Banks fall over after using the "Bail -In Depositors Moneys" the Federal Govt will use the "Bail Out Laws" to use Taxpayers Moneys to completely rescue the Banks from their own self-made disaster.

4. Questions that Require Answers.

- When was this Bill first mooted with the Federal Govt and Reserve Bank?
- Who is the architect of this (name of the person/s)? Given the amount of detail clearly this has been in the formulation stage for quite some time just waiting for the right opportunity to introduce it.
- Where was it outlined in the 2018-2019 Budget Papers?
- What other Country has already implemented this and what have been the results/ unintended consequences?
- Is this something that the United Nations/ IMF/ BIS (Bank of International Settlements which controls all Central Banks) has requested the Morrison Govt to implement and to what end?
- Why only a short period of 2.5 weeks to object to the Bill it is of National Public Interest and at a time when the Voters are bereft of confidence in Politicians, Beaurocrats and Governments?

- Will a separate Govt Dept be established to police transactions and what will be the cost to the Taxpayers?

5. Closing Remarks

Q. Given that this proposed legislation has not been advised by the mainstream media how many voters would be calling up the Treasury's Website to learn about it?

A. Very few, if any, because the average Australian is struggling with the Cost of Living Expenses (high power bills, food costs, education etc) as well as job security to feed their families.

Given that the Voters are distracted with other issues, for mine, it is an opportune time to quietly pass this legislation which is one large step to creating a Cashless Society in Australia at a time when it is not required.

In closing I am encouraging others to object to this Bill and have forwarded this information to several politicians and political parties as a matter of course as well as for information purposes.

Yours faithfully



Mark Grace

07 August 2019

Exposure draft legislation for an economy-wide cash payment limit of \$10,000

Quick Facts

Rationale: The introduction of an economy-wide cash payment limit is a recommendation from the Black Economy Taskforce and sends a strong signal to the community that it is not acceptable to avoid tax and other obligations by paying with cash.

Start date: 1 January 2020 and for certain AUSTRAC reporting entities from 1 January 2021.

What transactions are covered by the cash payment limit?

The limit applies to all cash transactions equal to or in excess of \$10,000, except for those that meet the conditions specified in the draft Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019.

What are examples of exempt transactions?

All cash deposits and withdrawals from your bank account with an authorised deposit-taking institution (ADI), exchanging foreign currency and all consumer to consumer transactions such as selling a second-hand car but excluding real property transactions.

Are there any new reporting requirements?

This will not impose additional reporting requirements on businesses and consumers.

What happens if you break the limit?

From 1 January 2020 it will be a criminal offence to make or accept a payment from businesses that includes \$10,000 or more of cash. It is also offence to make or accept a cash donation equal to or in excess of \$10,000. The maximum penalty is up to two years imprisonment and/or 120 penalty units (\$25,200).

How does the cash payment limit apply to payment plans?

The cash payment limit will apply to the total price of a single supply of goods or services, regardless of whether the price is split into a series of payments over time. The total cash payments made towards the final price paid must not equal to or exceed \$10,000. The remainder of the payments must be made electronically or by cheque.

Email your questions to Blackeconomy@treasury.gov.au

Proposed changes to Threshold Transaction Reporting for AUSTRAC reporting entities

The proposed change: From 1 January 2021 many AUSTRAC reporting entities will no longer need to report threshold transactions to AUSTRAC. Instead they will be subject to the cash payment limit like all other businesses in the economy.

Note: Certain transactions for services provided by ADIs and foreign currency exchanges will continue to be subject to threshold transaction reporting obligations and will therefore be exempt from the cash payment limit.

Questions on AUSTRAC reporting obligations can be directed to:
antimoneylaundering@homeaffairs.gov.au

Next steps and key milestones for implementation

Following public consultation the Government will consider feedback and introduce the Bill to Parliament.

The cash payment limit will start 1 January 2020 and for certain AUSTRAC reporting entities from 1 January 2021.

How to make a submission

Submissions are due by Monday 12 August.

You can access the exposure draft legislation and accompanying explanatory materials at

<https://www.treasury.gov.au/consultation/c2019-1395788>

Send your submission to Blackeconomy@treasury.gov.au

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Currency (Restrictions on the Use of Cash) Bill 2019

No. , 2019

(Treasury)

**A Bill for an Act to restrict the use of cash in
transactions, and for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	2
3 Object.....	2
4 This Act binds the Crown.....	2
5 Extension to external territories.....	3
6 Definitions.....	3
7 Meaning of <i>cash payment limit</i>	4
8 Value of cash—foreign currency and digital currency.....	4
Part 2—Offences	5
Division 1—Offences in relation to cash payments	5
9 Simplified outline of this Division.....	5
10 Offence—Cash payments in excess of cash payment limit.....	5
11 Offence—Cash payments recklessly in excess of cash payment limit.....	6
Division 2—[To be inserted]	9
Part 3—Miscellaneous	10
12 Treatment of entities other than individuals, bodies corporate and bodies politic.....	10
13 Vicarious criminal liability.....	10
14 Enforcement of fines.....	11
15 Saving of other laws.....	12

EXPOSURE DRAFT

1 **A Bill for an Act to restrict the use of cash in**
2 **transactions, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act is the *Currency (Restrictions on the Use of Cash) Act*
8 2019.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 1 Preliminary

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2020.	1 January 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object

- (1) The object of this Act is to prevent the use of cash in economic activities in order to avoid the scrutiny of regulatory authorities.

Note: Examples of illicit activities that can be facilitated by large cash payments include money laundering, fraud, bribery, obtaining financial advantage by deception, and tax evasion.

- (2) This object is to be achieved by making it an offence for an entity to make or accept cash payments that are equal to or that exceed the cash payment limit, unless the transaction is expressly exempted under this Act. Instead, for such cash payments, entities will need to make use of more transparent payment methods.

4 This Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.

- 1 (2) This Act does not make the Crown liable to be prosecuted for an
2 offence.

3 5 Extension to external territories

4 This Act extends to every external territory.

5 6 Definitions

6 In this Act:

7 **cash** means either or both of the following:

- 8 (a) digital currency;
9 (b) physical currency.

10 **cash payment limit**: see section 7.

11 **digital currency** has the meaning given by the *Anti-Money*
12 *Laundering and Counter-Terrorism Financing Act 2006*.

13 **entity** has the meaning given by the *Income Tax Assessment Act*
14 *1997*.

15 Note: Subsection 960-100(1) of the *Income Tax Assessment Act 1997*
16 provides that entity means any of the following:

- 17 (a) an individual;
18 (b) a body corporate;
19 (c) a body politic;
20 (d) a partnership;
21 (e) any other unincorporated association or body of persons;
22 (f) a trust;
23 (g) a *superannuation fund;
24 (h) an *approved deposit fund.

25 Asterisked terms are further defined in the *Income Tax Assessment Act*
26 *1997*.

27 **physical currency** has the meaning given by the *Anti-Money*
28 *Laundering and Counter-Terrorism Financing Act 2006*.

29 **supply** has the meaning given by section 9-10 of the *A New Tax*
30 *System (Goods and Services Tax) Act 1999*.

EXPOSURE DRAFT

Part 1 Preliminary

Section 7

1 *value*, in relation to cash, has a meaning affected by section 8.

2 **7 Meaning of *cash payment limit***

3 For this Act, the *cash payment limit* is \$10,000.

4 **8 Value of cash—foreign currency and digital currency**

5 For the purposes of this Act, the value in Australian currency of an
6 amount of cash paid in foreign currency or digital currency is to be
7 worked out in accordance with the method prescribed, by
8 legislative instrument, by the Minister.

Part 2—Offences

Division 1—Offences in relation to cash payments

9 Simplified outline of this Division

This Division creates offences for making or accepting certain cash payments for supplies.

10 Offence—Cash payments in excess of cash payment limit (strict liability)

Single payment that exceeds cash payment limit

(1) An entity commits an offence if:

(a) the entity:

(i) makes a payment to another entity; or

(ii) accepts a payment from another entity; and

(b) the payment is or includes an amount of cash; and

(c) the value of the cash equals or exceeds the cash payment limit.

Penalty: 60 penalty units.

(2) Strict liability applies to paragraphs (1)(b) and (c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Series of payments that exceeds cash payment limit

(3) An entity commits an offence if:

(a) the entity:

(i) makes a payment to another entity; or

(ii) accepts a payment from another entity; and

(b) the payment is part of a series of payments that are made for a supply or as a gift; and

EXPOSURE DRAFT

Part 2 Offences

Division 1 Offences in relation to cash payments

Section 11

- 1 (c) the payment is or includes an amount of cash; and
2 (d) as a result of the payment, the total value of all amounts of
3 cash included in the payments in the series equals or exceeds
4 the cash payment limit.

5 Penalty: 60 penalty units.

- 6 (4) Strict liability applies to paragraphs (3)(c) and (d).

7 Note: For strict liability, see section 6.1 of the *Criminal Code*

8 *Exception—kinds of transactions to which this section does not*
9 *apply*

- 10 (5) Subsections (1) and (3) do not apply to a payment that is:
11 (a) of a kind specified by the Minister by legislative instrument;
12 or
13 (b) made in circumstances specified by the Minister by
14 legislative instrument; or
15 (c) accepted in circumstances specified by the Minister by
16 legislative instrument.

17 Note 1: A defendant bears an evidential burden in relation to the matters in
18 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

19 Note 2: The Minister may specify different circumstances for paragraphs (b)
20 and (c). For example, a circumstance might relate to the state of mind
21 of the person who accepts the payment and be specified for
22 paragraph (c).

23 Note 3: The Minister may specify different matters for the purposes of this
24 section and section 11.

25 *Jurisdiction*

- 26 (6) Section 15.2 (extended jurisdiction—category B) of the *Criminal*
27 *Code* applies to an offence against subsection (1) or (3).

28 **11 Offence—Cash payments in excess of cash payment limit**

29 *Single payment that exceeds cash payment limit*

- 30 (1) An entity commits an offence if:
-

EXPOSURE DRAFT

Offences Part 2
Offences in relation to cash payments Division 1

Section 11

- 1 (a) the entity:
2 (i) makes a payment to another entity; or
3 (ii) accepts a payment from another entity; and
4 (b) the payment is or includes an amount of cash; and
5 (c) the value of the cash equals or exceeds the cash payment
6 limit.

7 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

8 *Series of payments that exceeds the cash payment limit*

- 9 (2) An entity commits an offence if:
10 (a) the entity:
11 (i) makes a payment to another entity; or
12 (ii) accepts a payment from another entity; and
13 (b) the payment is part of a series of payments that are made for
14 a supply or as a gift; and
15 (c) the payment is or includes an amount of cash; and
16 (d) as a result of the payment, the total value of all amounts of
17 cash included in the payments in the series equals or exceeds
18 the cash payment limit.

19 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

20 *Exception—kinds of transactions to which this section does not* 21 *apply*

- 22 (3) Subsections (1) and (2) do not apply to a payment that is:
23 (a) of a kind specified by the Minister by legislative instrument;
24 or
25 (b) made in circumstances specified by the Minister by
26 legislative instrument; or
27 (c) accepted in circumstances specified by the Minister by
28 legislative instrument.

29 Note 1: A defendant bears an evidential burden in relation to the matters in
30 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

EXPOSURE DRAFT

Part 2 Offences

Division 1 Offences in relation to cash payments

Section 11

1 Note 2: The Minister may specify different circumstances for paragraphs (b)
2 and (c). For example, a circumstance might relate to the state of mind
3 of the person who accepts the payment and be specified for
4 paragraph (c).

5 Note 3: The Minister may specify different matters for the purposes of
6 section 10 and this section.

7 *Jurisdiction*

(4) Section 15.2 (extended jurisdiction—category B) of the *Criminal Code* applies to an offence against subsection (1) or (3).

EXPOSURE DRAFT

Offences **Part 2**
[To be inserted] **Division 2**

Section 11

1 **Division 2—[To be inserted]**

2

3

9

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 3 Miscellaneous

Section 12

Part 3—Miscellaneous

12 Treatment of entities other than individuals, bodies corporate and bodies politic

- (1) This Act applies to an entity that is not a person as if it were a body corporate, but with the changes set out in this Part.

Application of the Criminal Code

- (2) Division 12 of the *Criminal Code* applies as if references in that Division to a body corporate were instead to the entity.

- (3) For the purposes of the application of Division 12 of the *Criminal Code* under subsection (2), an entity (the **first entity**) is taken to be an agent, employee or officer of another entity (the **second entity**) if:

(a) the first entity is acting on behalf of the second entity; or

(b) both of the following apply:

(i) the first entity is carrying on activities that have duties, powers or authority that are similar to those of an agent, employee or officer of a body corporate;

(ii) if the second entity were a body corporate, a reasonable person would consider that, the first entity was an agent, employee or officer of the second entity.

13 Vicarious criminal liability

- (1) Subject to subsection (2), an offence that would otherwise be committed by an entity listed in column 1 of the table to this subsection, including by reason of this subsection, is taken to have been committed by the entity, or each entity, listed in column 2.

Section 14

Vicarious criminal liability		
Item	Column 1	Column 2
1	a partnership	each partner
2	an unincorporated association or body of persons other than a partnership	each member of the association's or body's committee of management
3	a trust	(a) if the trust has a single trustee—the trustee; and (b) if the trust has 2 or more trustees—each trustee
4	a superannuation fund	(a) if the fund has a single trustee—the trustee; and (b) if the fund has 2 or more trustees—each trustee; and (c) if the fund does not have a trustee—the entity or entities that manage the fund

Defence to vicarious criminal liability

- (2) A person does not commit an offence because of subsection (1) if the person:
- (a) did not aid, abet, counsel or procure the relevant act or omission; and
 - (b) was not in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

14 Enforcement of fines

- (1) This section applies in relation to a person who has been convicted of an offence under this Act as a result of the operation of section 13.
- (2) The penalty may be enforced against the assets of the relevant entity referred to in column 1 of the table to subsection 13(1).

EXPOSURE DRAFT

Part 3 Miscellaneous

Section 15

- 1 Note: See section 15A of the *Crimes Act 1914* for the enforcement of fines.
- 2 (3) Subject to subsection (4), before imposing a fine on a person for an
- 3 offence under this Act that can be enforced against the assets of an
- 4 entity mentioned in column 1 of the table in subsection 13(1), a
- 5 court must take into account the financial circumstances of the
- 6 entity, including its assets, in addition to any other matters that the
- 7 court is required or permitted to take into account.
- 8 (4) Nothing in subsection (3) prevents a court from imposing a fine on
- 9 a person because the financial circumstances of the entity cannot
- 10 be ascertained by the court.
- 11 (5) Subsection (3) does not affect subsection 16C(1) of the *Crimes Act*
- 12 1914.

13 **15 Saving of other laws**

- 14 This Act is not intended to exclude or limit the operation of any
- 15 other law of the Commonwealth or any law of a State or Territory.

EXPOSURE DRAFT EXPLANATORY MATERIALS

Currency (Restrictions of the Use of Cash) Act 2019

Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019

The *Currency (Restrictions of the Use of Cash) Act 2019* (the Act) establishes the cash payment limit and makes it an offence to make or accept a payment or series of connected payments in cash in excess of this limit.

Subsections 10(5) and 11(3) of the Act provide that the offences for breaching the cash payment limit do not apply to payments of a kind specified by the Treasurer by legislative instrument, or payments made or accepted in circumstances specified by the Treasurer by legislative instrument. As a result, it is a defence to these offences should it be shown that such the payment is of a kind specified or occurred in circumstances that have been specified.

The purpose of the *Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019* (the Instrument) is to specify kinds of payments and circumstances in which certain payments are made or accepted for the purposes of subsections 10(5) and 11(3).

Broadly, the payments not subject to the cash payment limit are:

- payments related to personal or private transactions (other than transactions involving real property);
- payments that must be reported by an entity under anti-money laundering and counter-terrorism legislation, provided, broadly, the entity with a reporting obligation complies (or is reasonably believed to have complied) with their obligations under that legislation;
- payments made or accepted by a public official in which the public official is legally required to make or accept a cash payment in the course of their duties;
- payments that only exceed the cash payment limit because the payment is part of a transaction involving collecting, holding or delivering cash and this is undertaken in the course of an enterprise of collecting or delivering cash (i.e., providing cash-in-transit services);
- payments that only exceed the cash payment limit because payment is or includes an amount of digital currency; and
- payments that occur in situations where no alternative method of payment could reasonably be used.

Further details of the instrument are set out in Attachment A.

There are no conditions specified in the Act that need to be satisfied before the power to make the instrument may be exercised.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

This instrument commences on 1 January 2020 – the day when the offences in the Act also commence.

ATTACHMENT A

Details of the *Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019*

This attachment sets out further details of the *Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019* (the Instrument).

Preliminary

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019*.

Section 2 - Commencement

This section provides that the instrument commences on 1 January 2020.

Section 3 - Authority

This section provides that the instrument is made under the *Currency (Restrictions on the Use of Cash) Act 2019* (the Act).

Section 4 - Definitions

This section defines the meaning of a number of the terms used in the instrument.

These terms are discussed further in the context of the relevant exceptions.

Excepted transactions

Section 5 – Personal or private transactions

The first exception to the cash payment limit is for payments for personal or private transactions. This includes:

- payments solely for supplies or acquisitions that are *not* made in the course of an enterprise; and
- payments that are made or received by an entity in circumstances where that entity reasonably believes that the payment is solely for supplies or acquisitions that are *not* made in the course of an enterprise.

Enterprise has the same broad meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*. An entity will be undertaking an enterprise if, for example, it carries on a business (or in the form of a business), offers real property for rent, is a charity or other recipient of gifts that are deductible for income tax, operates a superannuation fund or is the Commonwealth, a State or a Territory or an entity established for public purposes under an Australian law.

Effectively, the only circumstances in which an entity will not be carrying on an enterprise is where the entity is acting in a wholly private or personal capacity. The purpose of this exception is to exclude these private activities occurring outside a commercial or regulatory context, such as private gifts (but not donations to charities), inheritances and occasional private sales of assets (for example, the private sale of a used car).

The first case in which this exception applies is based on the actual nature of a payment. In this case the exception applies based on the objective nature of a payment and protects both the entity making the payment and the entity accepting the payment.

The second exception is based on the reasonable belief of the entity about the circumstances of the payment. This means that if an entity reasonably, but incorrectly believes, that the other party to a transaction is not acting in the course of an enterprise then the exception to the cash payment limit will apply to the payment for that entity, and that entity only.

For example, if an individual sells their car to another individual reasonably believing the other individual has acquired the car for private use after undertaking reasonable inquiries such as searching the Australian Business Register, then the exception applies, even if this belief is incorrect as the other individual in fact acquired the car for use in a business they are carrying on.

In general, whether a belief is reasonable will depend on the circumstances of the transaction and the parties. However, a reasonable belief must be a belief about facts – it does not protect an entity ignorant of the law or of the legal implications of facts.

As this exception is connected to the belief of the relevant entity about the other party the exception may apply to a party making the payment, but not the entity accepting the payment, or vice versa. While a party may be reasonably unaware about the circumstances of another entity, it is unlikely that it would ever be reasonable for an entity to be unaware that the entity is acting the course of an enterprise.

Section 6 – AML/CTF reporting entities

The second exception to the cash payment limit is for payments made or accepted in circumstances in which an AML/CTF entity is required to provide a threshold transaction report under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*).

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, among other things, establishes a reporting regime under which AML/CTF reporting entities that provide designated services must report details about cash payments they receive of \$10,000 or more in what is referred to as a threshold transaction report. Significant civil and criminal penalties apply to entities that fail to correctly report transactions.

Designated services under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* are listed in section 6 of that Act. Among other things, designated services broadly include financial services such as accepting deposits, payments made as a withdrawal and foreign currency exchange.

From 1 January 2021, the scope of reporting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* will change – see the exposure draft of the

Currency (Restrictions on the Use of Cash) (Consequential Amendments and Transitional Provisions) Act 2019 at www.treasury.gov.au/consultation. These changes will mean that threshold transaction reports are only required for certain designated services – the acceptance of deposits by approved deposit taking institutions, payments of amounts withdrawn from bank accounts with approved deposit taking institutions and certain foreign currency exchange transactions. As a result, only transactions involving those kinds of services would be covered by this exemption from this time.

However, this exception does not apply to a payment made or accepted by an entity if the relevant AML/CTF reporting entity was required to be enrolled on the Reporting Entities Roll and the entity knew, reasonably suspected or reasonably should have known that the AML/CTF reporting entity involved in the transaction was not so enrolled.

As this requirement is connected to the knowledge or suspicion of the relevant entity about the other party, it may result in a transaction being a specified transaction for only one of the parties to the transaction. Again, it is unlikely to ever be reasonable for an entity to be unaware that the entity itself is required to be enrolled and not so enrolled.

This ensures that this exception does not apply in relation to entities that are not complying with their obligations under the AML/CTF law, while at the same time ensuring that entities that deal with such entities in good faith are not penalised.

The purpose of the cash payment limit is to prevent the use of cash to avoid creating records about economic activity. To the extent the transaction is subject to the rigorous AML/CTF reporting regime, it does not give rise to these concerns. This exception recognises this, and effectively permits the use of cash in context where appropriate records are generated.

Section 7 – Public officials

The third exception to the cash payment limit is for payments made or accepted by public officials where the public official reasonably believes that making or accepting a payment or payments involving cash is necessary for the performance of their duties under an Australian law (but not merely to satisfy a debt owed to a Government).

Public official is used with its ordinary meaning, consistent with its use in the *Public Governance, Performance and Accountability Act 2013* and elsewhere in Commonwealth law. It includes officials of the Commonwealth, State, Territory and local governments.

For the exception to apply, the official must reasonably believe that it is necessary to make or accept the payment as cash to fulfil their duties as required by law. It is not sufficient that a payment needs to be made—there must be a legal requirement that the payment involve cash or cash must be the only reasonable payment method in the circumstances.

This requirement will be satisfied if, for example, the official's function involves the distribution of notes or the sale of coins as an employee of the Reserve Bank of Australia or the Royal Australian Mint – the function of these entities requires the distribution of cash. It would also be satisfied if the official was a police officer making the payment in the course of an undercover operation where using an alternate payment method would compromise the effectiveness of the operation.

The requirement cannot be satisfied if an official merely made or accepted a payment of cash for a debt owed to a government even if the payment was legally required. While such payments may be required, it is not necessary that the payment be made in cash.

In general, whether a belief is reasonable will depend on the circumstances of the transaction and the parties. However, a reasonable belief must be a belief about facts – it does not protect an entity ignorant of the law or of the legal implications of facts.

This exception ensures that the public officials undertaking functions requiring the making or accepting cash payments are not guilty of an offence in situations where there may otherwise be a conflict of law.

Section 8 – Cash in transit

The fourth exception is for payments that only exceed the cash payment limit because of a payment that occurs in the course of the movement or delivery of an amount of cash, where the payment is an incident of the transport of the cash rather than consideration or a gift.

It is not clear that the movement of physical currency involves a payment. However, as it is not possible to confirm this for all potential arrangements for the transport of physical currency, this exception has been included for the avoidance of doubt.

Effectively, the exception ensures that the offences relating to the cash payment limit do not apply to transactions merely because the transactions involve the movement of physical currency. These sorts of payments that may occur when physically moving cash are not relevant to the black economy as they do not involve use of cash as consideration.

This exception does not apply to the extent that the transaction would be in breach of the cash payment limit for other reasons, such as the consideration for the transport being a cash payment of more than \$10,000.

Section 9 – Digital currency

The fifth exception is for payments that only exceed the cash payment limit because the transaction involves a payment that is or includes an amount of digital currency.

The exception means that only the amount of physical currency in the payment is relevant for working out if the payment exceeds the cash payment limit.

Digital currency is a new and developing area in the Australian economy. Unlike physical currency, it does not have a firmly established regulatory framework or industry structure. This makes it difficult to apply the cash payment limit in a way that would not largely prevent the use of digital currency in Australia or significantly stifle innovation in the sector. At the same time, there is little current evidence that digital currency is presently being used in Australia to facilitate black economy activities. Given this, the Government has decided at the present time to effectively carve digital currency out from the cash payment limit.

This position will remain under ongoing scrutiny to ensure that the exemption for digital currency payments remains appropriate in light of the current use of digital currency in the Australian economy.

Section 10– No alternative payment method

The final exception is for payments that form part of a transaction for which cash is the only payment method available for reasons beyond the reasonable control of any of the parties to the transaction and for which it not reasonable to delay payment.

This exemption is only expected to apply in exceptional circumstances. It is increasingly unusual for no other payment method to be available, where this is not the result of a choice by one of the parties. It is also increasingly unusual for no other payment method to be available without involving unreasonable costs (noting the costs associated with dealing with large amounts of cash).

It is even more unlikely that it would not be reasonable for the parties to agree to delay payment of such a significant amount until a reasonable non-cash payment method was available, noting that the value of the transaction must equal or exceed \$10,000.

For a delay in payment to be unreasonable it must be necessary for the transaction to proceed before an alternative payment method could be made available. In most cases, the timing of payment is not critical for reasons beyond the control of both parties to the transaction. A delay does not become unreasonable merely because it may result in one of the parties to the transaction changing their mind about proceeding with the transaction or choosing instead to enter into a similar transaction with someone else.

The circumstances in which this exception can apply are effectively limited to the purchase of supplies for isolated areas following natural disaster and other urgent transactions occurring after significant and prolonged disruptions to communications and transport infrastructure.