**From:** Charles Herdy <cherdy@bigpond.net.au>   
**Sent:** Sunday, 11 August 2019 8:30 PM  
**To:** RG - Black Economy <Blackeconomy@treasury.gov.au>  
**Subject:** Submission: Exposure Draft - Currency (Restrictions on the Use of Cash) Bill 2019

Hello,

Please find below a response for Treasury’s consultation process regarding the *Currency (Restrictions on the Use of Cash) Bill 2019* and associated instruments.

I hold several reservations regarding this Bill, outlined (1) to (8) below, and would appreciate these being taken into consideration.

**(1) “Financialisation" of the Australian Economy**

The effect of the legislation is to force Australians transacting above the “cash payment limit” to involve the services of a third party, in order to access a legal method of exchange.  These include financial services and other electronic means of exchange.

This has the potential to amplify systemic risks to the Australian economy:

a. increases the cost of transaction, expressed as financial services fees of all types

b. forces Australians to use retail financial services, amplifying the risk of both

     (i) exposure of Australians to financial institution failure

     (ii) subsequently, exposure to amended “bail-in” provisions of the *Banking Act 1959*

c. forces Australians to transact using electronic infrastructure, amplifying the risk of infrastructure failure.

Forcing more Australians to use financial services as intermediaries places that industry in a favourable position to seek greater rents from the Australian economy more broadly.  Increasing the cost of cash transactions would have a similar effect to a tax on cash transactions, reducing national economic efficiency and productivity.

In Instrument itself acknowledges that the cash economy is more resilient to infrastructure failure, in comparison to the financial services that the Bill forces Australians to use more heavily.  The Instrument provides an example of infrastructure failure in a flooded rural township, a scenario in which cash is the only operational means of exchange.  The weakness of this example is that it presumes Australians would still have significant cash resources at hand during episodes of infrastructure failure after the Bill has sought to criminalise larger cash transactions, as the Bill is an explicit assault on the existence of a substantive cash economy.

**(2) Lack of Parliamentary Oversight**

The Minister, through a “legislative instrument” has the capacity to include or exclude any part of the Australian economy from the cash transaction limit.

In effect, this means that a Minister has the power to make any part of the Australian cash economy a criminal act, by including or excluding any given kind or circumstances for a "series of payments” as falling under this Bill.

This gives excessive power to the sitting government, without Parliamentary or public accountability.

**(3) Gross Breach of Civil Liberties**

Forcing Australians to use a third party financial services in order to conduct normal economic transactions is a breach of civil liberties for all Australians, and entirely fails to target those using cash for criminal purposes.

The Bill gives the executive government the power to criminalise any cash-based economic activity in Australia.  This represents a gross breach of civil liberties and an excessive expansion of Commonwealth power.

The excessively broad scope of the legislation is dangerous to civil liberties and the free functioning of civil society in Australia.

**(4) Governments Unimpaired**

In spite of imposing such a gross breach on the civil liberties of Australians, the Instrument virtually gives *carte blanche* to public officials to use high-valued cash transactions as they see fit.

In doing so, the Commonwealth seeks to preserves its own freedoms to transact in cash, while grossly impairing the capacity of private citizens to do so.

This represents a subtle but definite enhancement of central state power at the expense of a free civil society.

**(5) Ambiguous Exceptions**

There are several points of ambiguity in the legislation, which create the risk of criminalising legitimate economic activity:

a. When does a "series of payments" constitute a single transaction for the purposes of the “cash payment limit”?  Is paying $10,001 in cash for a pallet of computers a criminal act potentially attracting a jail term, yet paying $50 for each of 20 computers a legal act?  When are ten consecutive gifts considered to be a single gift?  Is gifting $10,001 in cash to a charity in 20 payments over two years legal, yet gifting the same amount over 20 days criminal? 20 hours?

b. Exactly which private transactions are legal?  Is selling a used motor vehicle for $10,001 to become a criminal act?

c. "Physical currencies” are an ill-defined group.  Are gold bullion coins to be considered at $AUD legal tender face value, or at bullion value?

d. Foreign currencies are to be valued in Australian dollar terms, a floating market price that varies from moment to moment.  The effect is that a foreign physical currency transaction that may be valued under AUD$10,000 on one day and so legal, could be valued above AUD$10,000 the following day and so become a criminal act.

Notwithstanding the provisions of the Instrument as it is currently drafted, what is to guarantee that a Minister would not alter the Instrument unilaterally in the future, making small private cash transactions a criminal act?

**(6) Cash Payment Limit not Indexed**

The Bill states that the cash payment limit is $10,000, yet fails to describe any mechanism to index this limit.  Indeed, it seems that modifying the cash payment limit would require amendment of the subsequent Act by Parliament.

The effect of this is to naturally decrease the real value of the cash payment limit over time, gradually increasing the scope of the limit to transactions of lower and lower real value.

The Bill as drafted is thus hostile to the use of cash for *any* transaction in the long term, structurally locking Australians into the use of the financial services system and further limiting civil liberties in the medium-to-long term.

This will be particularly true should Australia enter into a period of monetary instability, such as “quantitative easing” and hyperinflation, in the current global economic context.

**(7) Mechanism to Employ Exotic Monetary Policies**

In an environment of impending global recession, trade war, and a bond market “bubble” with trillions of dollars in negative-yielding bonds globally, central banks are considering exotic monetary policies, such as negative cash interest rates.

These are likely to be highly destruction of wealth, and represent a significant risk to the stability of national currency as they destroy the intrinsic time value of capital.

The International Monetary Fund (IMF) has explicitly explored the mechanics of implementing exotic monetary policy such as negative interest rates.  These methods include penalties on the use of cash transactions outside of the commercial banking system, similar to the legislation currently being considered here in the context of the “black economy”.

There is little doubt that, should the Reserve Bank of Australia impose deeply negative interest rates contrary to the intrinsic time value of capital, that the Bills currently under consideration would provide a framework to criminalise cash transactions of any value and so enable such exotic monetary policies.

This would be a significant imposition on the civil freedom of Australians to seek legitimate shelter from the destructive wealth effects of such exotic monetary policies.

**(8) Prelude to Criminalising Precious Metals**

Whether in bar or legal tender (coin) forms, gold and silver bullion function as money: they are stores of wealth and a medium of exchange.  As already noted above, bullion coins meet the definition fo “physical currency” under the *Anti-money Laundering and Counter-Terrorism Financing Act 200*6, upon whose definitions the current Bill relies.

Bullion has all the properties, and historically has served as, physical money even when not in legal tender coin form.

The stated intention of the Bill is to counter cash transactions that are not transparent to government.  An identical argument could be made for precious metal bullion in *all* forms.

In this way, the Government’s stated intention to criminalise high value "physical currency" transactions implies a parallel intention to criminalise transactions in bullion that is not formed as legal tender.

The effect of this would be to lock Australians into the debt-based, fiat monetary system that after 48 years of monetary expansion is now entering a period of crisis globally.  That is not in the best interests of Australians or the national interest, as it deprives Australians of a systemic monetary reserve asset.

**Conclusion**

In summary, the proposed policy to limit cash transactions is deeply flawed in both conception and execution.  It represents a significant violation of civil freedoms for little realistic benefit.

The only parties likely to benefit from the policy and draft legislation are the financial services industry, who will be able to seek greater economic rents from Australians more broadly.

Thank you for your consideration of these comments.

Yours sincerely,

Charles Herdy

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