

7 August 2019

Manager Black Economy Division The Treasury Langton Crescent  
PARKES ACT 2600

Dear Manager,

**Re: *Currency (Restrictions on the Use of Cash) Bill 2019***

I am writing to express my strong opposition to the draft:

- *Currency (Restrictions on the Use of Cash) Bill 2019*;
- *Currency (Restrictions on the Use of Cash – Expected Transactions) Instrument 2019*; and
- *Currency (Restrictions on the Use of Cash) (Consequential Amendments and Transitional Provisions) Bill 2019*.

The proposed bill (and associated instrument) are a major affront and assault to economic freedom in Australia and represents a significant curtailment to Australian civil liberties. The proposed laws would punish individual Australians as to how they wish to spend their private wealth, including whether:

- **They wish to conduct transactions independent of Australia's commercial banking system; and**
- **They wish to conduct their economic affairs in private.**

Moreover, the proposed laws are anti-competitive in nature given that cash transactions (irrespective if they include physical or digital forms of currency) are an alternative to using Australia's commercial banking sector.

From an economic regulatory perspective, it is highly improper for the Commonwealth to be implementing anti-competitive laws which would effectively force citizens to consume a particular good or service offered by a particular industry which, given the recent Royal Commission into Banking, has a dubious record in servicing customer interests. The proposed law breaches the principles which have underpinned Australian competition policy in recent decades without sufficient justification.

***Impact on the Black Economy***

With respect to the so-called black economy, the Commonwealth and the Black Economy Taskforce, have failed to provide sufficient evidence that the proposed laws would have any material impact on the black economy whether from the tax leakage or illicit activities perspective.

An independent 2017 study by Friedrich Schneider, '*Restricting or Abolishing Cash: An Effective Instrument for Fighting the Shadow Economy, Crime and Terrorism*'<sup>[1]</sup> states that:

*“Cash has a minor influence on the shadow economy, crime and terrorism, but potentially has a major influence on civil liberties.”*

Moreover, Schneider notes that countries such as Sweden, still have sizeable shadow economies even though cash payments have become rare.

Finally, Schneider concludes:

*“Cash reflects the fundamental relation between citizens or taxpayers and state authorities. Using cash means freedom, independence and personal fulfillment for a citizen who doesn’t want a state intervention when using cash. The “voices” calling for the limitation or abolishment of cash argue that tighter and more comprehensive state control over individuals’ financial flows and funds will effectively fight crime, shadow economy and terrorism. But in my opinion we have weak empirical evidence.”*

### **Imposition of Negative Nominal Interest Rates**

From an economic freedom and wealth preservation perspective, I am concerned that the proposed laws would curtail the abilities of Australians to escape negative nominal interest rates if such a regime were to be imposed by the Reserve Bank of Australia (RBA).

In recent years, there have been a series of international calls from academic and institutional economists as well as elements of the global banking industry for the role of cash to either be significantly reduced or eliminated, given that the use of physical cash or digital cash outside of the government’s control undermines the policy of negative nominal interest rates.

For example, the following papers and blog posts by economic authors at the International Monetary Fund (IMF) have argued that the elimination of cash from an economy would enhance the effectiveness of negative nominal interest rates:

- August 2018: *Monetary Policy with Negative Interest Rates: Decoupling Cash from Electronic Money*[\[2\]](#)
- February 2019: *Cashing In: How to Make Negative Interest Rates Work*[\[3\]](#); and
- April 2019: *Enabling Deep Negative Rates to Fight Recessions: A Guide*[\[4\]](#)

Moreover, the IMF have argued that:

- during an economic recession, interest rates need to be lowered between 3% - 6% in order to stabilise the economy and to allow economic growth to recover; and
- given that official interest rates are already very low around the world, deep negative interest rates of approximately -4% may be required if a global economic recession or global economic shock were to eventuate.

Given that the RBA’s official cash rate currently sits at 1%, there is an increasing likelihood that the RBA maybe motivated to implement negative nominal official interest rates if the Australian economy were to fall into recession or if a global shock were to eventuate.

Under such a policy stance, Australians should have the fundamental economic and civil right to protect their private wealth independent of the commercial banking sector that would strip them of their wealth from the imposition of negative nominal interest rates.

## **Concerns with the Proposed Laws**

I have a number of specific concerns in relation to the proposed bill and associated legislative instrument including:

**Concern 1:** The proposed legislation and associated instrument may only be the first step in a series of escalating measures from the Commonwealth which seeks to infringe on the rights on individual Australians and Australian businesses to engage in commerce independent of the commercial banking sector and the RBA's monetary policy regime (especially if a policy of negative nominal interest rates are pursued).

**Concern 2:** Given that the exemptions to the cash transaction ban are defined in a legislative instrument and not in the proposed bill, this gives the Executive Government via the Assistant Treasurer significant flexibility to remove the exemptions without the robust scrutiny of Parliament.

**Concern 3:** Division 2 of Part 2 (relating to offences) is missing from the draft exposure version of the bill. It is grossly disappointing that concerned citizens have not been able to see the full version of the bill during the current Treasury consultation round.

Given the high interest in this matter, Treasury should consider launching a new consultation round if substantive elements are introduced to the draft bill (or associated legislative instrument) prior to the bill being introduced into Parliament.

**Concern 4:** The bill as drafted creates uncertainty in relation to physical gold and silver bullion. As currently drafted, the cash ban covers physical currency as defined as *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. This definition refers to currency which is 'legal tender'.

Given this definition, it is uncertain what precisely the Commonwealth considers 'legal tender' as it relates to physical gold and silver bullion products. For example, are minted coins issued by the Perth Mint that displays the Queen's head the only form of domestic gold and silver bullion that is considered to be legal tender?

Would a domestic commercial transaction above \$AUD 10,000 between an individual Australian and an enterprise, which involved physical gold and silver bullion not issued by the Perth Mint (for example, a physical gold or silver bullion bar or coin of 99.9% purity minted by a private commercial bullion dealership) be considered in breach of the proposed law or not?

Unfortunately, neither the proposed bill, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or the *Currency Act 1965* provides any clear guidance on this question and hence this issue needs to be clarified.

**Concern 5:** It is unclear how the Commonwealth intends to enforce this proposed cash transaction ban. Prior to the introduction of the bill into Parliament, the Government needs to provide clarity as to:

- which Commonwealth institution will be charged with enforcing this law?
- what enforcement techniques will the Commonwealth be expecting to use to monitor whether prohibited cash transactions above \$AUD 10,000 are not entered into?
- what operational resources will the Commonwealth be spending (including the dollar amount) in enforcing the proposed law?

## Conclusion

In conclusion:

- the proposed bill and associated legislative instrument are wrong given that they are a gross abuse of Australian economic and civil rights;
- the Commonwealth and the Black Economy Taskforce have failed to establish robust empirical evidence that the proposed cash transaction ban will have any material impact on diminishing the so-called black economy;
- the proposed bill and associated legislative instrument make it increasingly difficult for Australians to escape the economic burdens that an official policy of negative nominal interest rates would carry (especially if the proposed exceptions were reversed);
- there are several legitimate concerns with the proposed bill and associated legislative instrument that need to be rectified before the proposed bill is introduced into Parliament by the Government.

Yours Sincerely,



Colin Illingworth

[1] <http://www.econ.jku.at/papers/2017/wp1708.pdf>

[2] <https://www.imf.org/en/Publications/WP/Issues/2018/08/27/Monetary-Policy-with-Negative-Interest-Rates-Decoupling-Cash-from-Electronic-Money-46076>

[3] <https://blogs.imf.org/2019/02/05/cashing-in-how-to-make-negative-interest-rates-work/>

[4] <https://www.imf.org/en/Publications/WP/Issues/2019/04/29/Enabling-Deep-Negative-Rates-A-Guide-46598>