The Senate

Economics Legislation Committee

Currency (Restrictions on the Use of Cash)
Bill 2019 [Provisions]

February 2020
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List of Recommendations

Recommendation 1
2.106 The committee recommends, noting the evidence from CPA Australia and others, the government review existing powers and trends in the digital economy to assess whether the bill is the most effective response to the black economy.

Recommendation 2
2.107 The committee recommends the government review the penalty provisions, particularly in relation to one-off breaches as opposed to repeated offences, which are more likely to be money laundering and tax evasion, to ensure they are not overly harsh.

Recommendation 3
2.108 The committee recommends the government respond to concerns raised by the Australian Small Business and Family Enterprise Ombudsman, and others, regarding the availability of electronic banking services (ATMs and internet banking) in remote and regional Australia, including during natural disasters, and whether there will be a detrimental economic impact on those areas.

Recommendation 4
2.109 The committee recommends the government assess the impact of the bill on particular migrant communities, particularly in relation to funerals, to determine if there are potential negative impacts.

Recommendation 5
2.110 The committee recommends the commencement date of the bill be extended, and that a final agreed date be informed through consultation with business to allow sufficient time for businesses to implement system changes and undertake training, as required.

Recommendation 6
2.111 The committee recommends the government develop a communications strategy to assist in dispelling some of the unsubstantiated claims regarding the bill. The strategy needs to be in place before the commencement of the bill to allow sufficient time to inform the public and businesses of their responsibilities.
Recommendation 7

2.112 The committee recommends the exemption for payments relating to personal and private transactions be provided for directly in the bill.

Recommendation 8

2.113 Contingent on the above recommendations, the committee recommends the bill be passed.
Chapter 1
Introduction

Referral of the inquiry
1.1 The Currency (Restrictions on the Use of Cash) Bill 2019 (the bill) was introduced in the House of Representatives and read a first time on 19 September 2019.¹

1.2 On 19 September 2019, the Senate referred the provisions of the bill to the Senate Economics Legislation Committee (the committee) for inquiry and report by 7 February 2020.²

1.3 On 6 February 2020, the Senate agreed to extend the inquiry reporting date to 28 February 2020.³

Purpose of the bill
1.4 The bill will create new offences from 1 January 2020 that apply if an entity⁴ makes, or accepts, cash payments with a value that equals or exceeds a cash payment limit of $10,000.⁵

1.5 The Explanatory Memorandum (EM) states that these offences will protect the integrity of the taxation law, and other Commonwealth laws, by ensuring that entities cannot avoid scrutiny and facilitate their participation in the black economy by making large payments in cash.⁶

1.6 The EM notes that the offences will not apply if the payment is either of a kind specified in the rules under the bill,⁷ or made or accepted in circumstances of a kind specified in such rules.⁸ The EM also notes that the Treasurer may specify how to convert an amount of foreign or digital currency into Australian dollars in the rules made under the bill.⁹

¹ Votes and Proceedings, No. 19, 19 September 2019, p. 286.
² Journals of the Senate, No. 19, 19 September 2019, p. 566.
³ Journals of the Senate, No. 38, 6 February 2020, p. 1251.
⁴ The term ‘entity’ has the meaning given in subsection 960-100(1) of the Income Tax Assessment Act 1997.
⁵ Explanatory Memorandum, p. 3.
⁶ Explanatory Memorandum, p. 3.
⁷ The Treasury has released an exposure draft of the Currency (Restrictions on the Use of Cash) Rules 2019 which is available on the department's website at www.treasury.gov.au.
⁸ Explanatory Memorandum, p. 7.
⁹ Explanatory Memorandum, p. 7.
1.7 In his second reading speech, the Hon. Michael Sukkar MP, Assistant Treasurer, stated:

The Black Economy Taskforce final report found that large cash payments can be anonymous and untraceable allowing businesses to under-report their income and to offer consumers discounts for transactions that reflect the businesses’ avoided obligations.

This practice has a profound negative impact on businesses that do the right thing. The vast majority of businesses that diligently pay their tax and meet their other obligations are not able to offer the same unfairly discounted price for their goods or services.

The cash payment limit sends a strong signal to the community that the government will protect the rights of honest businesses and their families from unfair competition from those who want to avoid their obligations.10

1.8 The EM notes that cash is increasingly being replaced with various forms of electronic non-cash payments.11 These most commonly involve the use of debt or credit arrangements facilitated by banks and other payment system providers which, whilst generally designated in Australian currency, are forms of contractual arrangement between parties.12

1.9 It is argued that such alternative payment methods are often more convenient for consumers and businesses, and increasingly involve lower costs as they simplify record keeping and avoid the security, insurance, and other costs associated with handling and holding large amounts of cash.13 They also offer significant regulatory benefits, as they typically create clearer records of transactions.14 As a result, the EM states there are economic benefits arising from the growing use of these alternative payment methods.15

1.10 The EM, however, does note that, while these forms of payment are different, some forms of electronic payments are similar to physical currency; mainly crypto-currencies and other digital currencies, which are, on the whole, unregulated, and do not create clear records of transactions that can easily be used to identify the parties to a transaction.16

1.11 The EM states the bill complements the arrangements already in place under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF

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10 The Hon. Michael Sukkar MP, Minister for Housing and Assistant Treasurer, House of Representatives Hansard, 19 September 2019, p. 3600.

11 Explanatory Memorandum, p. 5.

12 Explanatory Memorandum, p. 5.

13 Explanatory Memorandum, p. 5.

14 Explanatory Memorandum, pp. 5–6.

15 Explanatory Memorandum, p. 6.

16 Explanatory Memorandum, p. 6.
Act) for mitigating the risk of large, anonymous cash payments being used to facilitate money laundering and terrorism financing. These arrangements include the reporting of cash payments for goods and services of $10,000 or more by businesses that provide certain high-risk services.17

Background

Black Economy Taskforce Report

1.12 Following an initial investigation by the Board of Taxation, supported by the Department of the Treasury (the Treasury) and the Australian Taxation Office, the Turnbull government, in December 2016, established the Black Economy Taskforce (the taskforce) led by Mr Michael Andrew AO, to develop a whole-of-government strategy to combat the black economy.18

1.13 In establishing the taskforce, the then Minister for Revenue and Financial Services, the Hon. Kelly O’Dwyer MP, noted that:

The government established the Black Economy Taskforce in December 2016 following an initial investigation by the Board of Tax which showed that a concerted effort was needed to halt or reverse growth in the black economy.19

1.14 The taskforce’s final report, released in October 2017, provided 80 recommendations to government (including a number of supplementary recommendations) spanning the whole economy.20

1.15 In measuring the size of the black economy, the final report referenced an Australian Bureau of Statistics figure which estimated it to equal approximately 1.5 per cent of gross domestic product (GDP) in 2012, with the illicit drug industry representing a further 0.4 per cent. Based on subsequent trends, the taskforce estimated the black economy to be as large as 3 per cent of GDP in 2017, representing $50 billion.21

1.16 The final report also noted that the use of cash is falling around the globe, including in Australia, and advances in technology and financial innovation are revolutionising the ways in which transactions take place.22 Innovations such as the growth of e-commerce, electronic transfers, debit and credit cards,

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17 Explanatory Memorandum, p. 6.
22 Department of the Treasury, Black Economy Taskforce Final Report, October 2017, p. 44.
digital wallets and cryptocurrencies have all played a part in the reduced use of cash.\textsuperscript{23}

1.17 To illustrate this changing environment, the taskforce referenced a 2017 Reserve Bank of Australia (RBA) discussion paper, titled \textit{How Australians Pay: Evidence from the 2016 Consumer Payments Survey}, which showed the decline in Australia’s use of cash over the period 2007 to 2016.\textsuperscript{24} Overall, the RBA found in 2016 the number of transactions made in cash (under $9,999) had declined by 33 per cent, from 69 per cent of all transactions to 37 per cent.\textsuperscript{25} This contrasted with credit and debits cards, which increased their share from approximately 26 per cent to 52 per cent over the same period.\textsuperscript{26}

1.18 The RBA, in giving evidence to the committee, noted that in its most recent survey, undertaken in 2019, the use of cash had further decreased to around 25 per cent of all transactions.\textsuperscript{27}

1.19 The taskforce believed that the market-led move away from cash is a positive development, and one worth embracing, as it has made Australia’s payment system more competitive and innovative; reduced its cost; and improved the quality and range of alternatives on offer.\textsuperscript{28} It has also brought into sharper focus the costs of cash, such as storage, transportation, and monitoring.\textsuperscript{29}

1.20 The report also noted that a lower reliance on cash transactions has the potential to help reduce the size of the black economy.\textsuperscript{30} For example, activities that can be facilitated by large cash payments include tax evasion, money laundering, fraud, bribery, and obtaining financial advantage by deception.\textsuperscript{31} Specifically, the taskforce stated that:

\begin{quote}
… an economy less reliant on cash could help counter the black economy. Electronic payments leave a footprint that cash transactions do not. That is why the latter are so attractive to criminals and those operating in the black economy. Not only is cash anonymous, but it can be used without leaving an obvious audit trail. In contrast, the more we move people into the digital payment world, the more visible, traceable and reportable their
\end{quote}

\textsuperscript{23} Department of the Treasury, \textit{Black Economy Taskforce Final Report}, October 2017, p. 44.
\textsuperscript{24} Department of the Treasury, \textit{Black Economy Taskforce Final Report}, October 2017, p. 46.
\textsuperscript{27} Mr Anthony Richards, \textit{Committee Hansard}, 12 December 2019, p. 32.
\textsuperscript{28} Department of the Treasury, \textit{Black Economy Taskforce Final Report}, October 2017, p. 48.
\textsuperscript{29} Department of the Treasury, \textit{Black Economy Taskforce Final Report}, October 2017, p. 48.
\textsuperscript{30} Department of the Treasury, \textit{Black Economy Taskforce Final Report}, October 2017, p. 49.
\textsuperscript{31} Currency (Restrictions on the Use of Cash) Bill 2019, p. 2.
transactions can be. Digital payment can also be linked to identity, both individuals and businesses, which cash cannot.\textsuperscript{32}

We are not saying that digital payment methods are risk or fraud free. Payment system fraud will always be a risk, regardless of the means selected. The vulnerabilities will still be there, but change in nature.\textsuperscript{33}

1.21 A key recommendation of the final report to the government was the introduction of a $10,000 cash payment limit for transactions between businesses and individuals.\textsuperscript{34}

1.22 Although recommending a cash payment limit in its report, the taskforce observed that there was a continuing role for cash within the economy:

While cash facilitates under-reporting income and facilitates criminal transactions, getting rid of cash would not get rid of crime or of under-reporting of income: illicit operators would move to some other form of payment, probably more than one form.

Rather than ban cash, which after all is a key part of our payment system and convenient and accessible for many, it is more important to constrain the use of cash in the areas where it is most abused, such as high-value transactions.

This narrows the scope for dishonest people to hide transactions and to hide what their real income is.\textsuperscript{35}

**Government’s response to the taskforce’s report**

1.23 In response to the taskforce’s final report, the Turnbull government announced in the 2018-19 Budget that it would introduce a cash payment limit with effect from 1 July 2019; however, this commencement date was subsequently amended to 1 January 2020 in the 2018-19 Mid-Year Economic and Fiscal Outlook.\textsuperscript{36}

1.24 The Turnbull government also implemented a number of additional measures in response to the other recommendations of the taskforce’s report. These included establishing the Black Economy Standing Taskforce as a cross-agency body to address the challenges of the black economy, and setting up a hotline for individuals and business to report black economy and phoenix activity.\textsuperscript{37}

1.25 On 23 May 2018, the Treasury released a consultation paper on the cash payment limit which sought the views of stakeholders, and asked that they identify issues for consideration in implementing the cash payment limit.

\textsuperscript{32} Department of the Treasury, *Black Economy Taskforce Final Report*, October 2017, p. 49.

\textsuperscript{33} Department of the Treasury, *Black Economy Taskforce Final Report*, October 2017, p. 49.

\textsuperscript{34} Department of the Treasury, *Black Economy Taskforce Final Report*, October 2017, p. 6.


\textsuperscript{36} Explanatory Memorandum, p. 6.

\textsuperscript{37} Explanatory Memorandum, p. 6.
measure; including views on reporting obligations, integrity measures, and whether any exemptions should apply.\(^{38}\)

1.26 Following the discussion paper, the Treasury undertook a consultation process from 26 July 2019 until 12 August 2019 on the exposure draft legislation and accompanying explanatory material to implement the economy-wide cash payment limit. The Treasury received 3,620 submissions to the consultation.\(^ {39}\)

1.27 On 19 September 2019, the bill was introduced in the House of Representatives by the Hon. Michael Sukkar MP, Assistant Treasurer, and read a first time.\(^ {40}\)

**Provisions of the bill**

1.28 The bill is set out in three parts:

- Part 1—Preliminary: this part sets out the bill’s commencement date, objects, application to the Crown, key definitions, approach to determining the value of foreign currencies and digital currencies, arrangement to determine periodic supplies, and extension to external territories.
- Part 2—Offences: this part creates criminal offences for making or accepting certain cash payments which exceed the payment limit.
- Part 3—Miscellaneous: this part sets out the treatment of entities other than individuals, bodies corporate, and bodies politic; vicarious criminal liability; and the rules which the minister may, by legislative instrument, make.

**Part 1—Objects**

1.29 The principal object of the bill is to protect the integrity of the Commonwealth taxation system, by preventing the use of cash in order to avoid scrutiny by the Commissioner of Taxation (the Commissioner) seeking to enforce the taxation law. A secondary object of the bill is to protect the integrity of other laws.\(^ {41}\)

1.30 The bill states that these objects are achieved by making it an offence for an entity to make or accept cash payments that are equal to, or exceed, the cash payment limit, unless the payment is expressly exempted. Entities will need to use other payment methods for payments that equal or exceed the cash payment limit.\(^ {42}\)

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\(^{38}\) Department of the Treasury, *Introducing an Economy-Wide Cash Payment Limit*, p. 4.


\(^{40}\) *Votes and Proceedings*, No. 19, 19 September 2019, p. 286.

\(^{41}\) Currency (Restrictions on the Use of Cash) Bill 2019, p. 2.

\(^{42}\) Currency (Restrictions on the Use of Cash) Bill 2019, p. 2.
Part 2—Offences

1.31 The EM explains that, to give effect to the cash payment limit, the bill establishes four new offences for entities that make or accept cash payments that equal or exceed the cash payment limit. Specifically it states:

The use of criminal sanctions reflects the harm to the wider community that was identified in the Final Report of the Black Economy Taskforce. The use of an effective deterrent is required to change existing practices that have facilitated participation in black economy and particularly the use of cash payments to conceal income and criminal activity.43

1.32 Importantly, the EM also notes that, although the bill makes it an offence to make or accept cash payments in excess of the cash payment limit, it does not make it an offence to be in possession of cash, regardless of the amount.44 The EM also states that the offences 'extend to all external territories and to some conduct that occurs outside Australia'.45

1.33 Clause 12 sets out the first two main offences which apply if an entity makes or accepts a single cash payment or a series of payments. Strict liability applies to the circumstances of the payment, or payments, under these two offences. Per the EM, effectively, once an entity intentionally makes or accepts a payment, the entity commits the offence if the payment includes cash of an amount equal to or in excess of the cash payment limit. This applies whether or not the entity was aware that the payment included this amount of cash. [Subclauses 12(2) and (4) of the Bill]46

1.34 The EM states under 'Fault elements' that:

To commit these two offences the entity must have intended to make or accept a payment. If an entity inadvertently makes or accepts a payment, without knowing or being aware of what they are doing, then they have not committed the offence. For the second offence, [a series of payments] the entity must also have intended that this payment is a payment for a supply or made as a gift. [Subclauses 12(1) and (3) of the bill]47

1.35 For a natural person, the maximum penalty for both strict liability offences is 60 penalty units; however, the maximum penalty for body corporates is five times this amount, or 300 penalty units.48

43 Explanatory Memorandum, p. 7.
44 Explanatory Memorandum, p. 8.
45 Explanatory Memorandum, p. 8.
46 Explanatory Memorandum, pp. 10–11.
47 Explanatory Memorandum, p. 10.
48 Explanatory Memorandum, p. 12.
Clause 13 covers the two more serious offences which come into effect if an entity is reckless about making or accepting such a payment, or a series of payments. These offences reflect the greater level of culpability involved in deliberately, or recklessly, breaching the cash payment limit. They apply when an entity knew that there was at least a real risk that the payment would result in the total amount of cash paid or received equalling or exceeding the cash payment limit.

Unlike the strict liability offences, which operate to ensure compliance with the limit, the recklessness offences apply to penalise entities that have consciously and deliberately decided to risk violating the cash payment limit.

The maximum penalty for these offences is 120 penalty units or 2 years imprisonment, or both.

Part 3—Miscellaneous—Rules

Subclauses 12(5) and 13(3) of the bill provides the minister with the power to make rules to prescribe matters where permitted by the bill. All of the offence clauses provide that, if a payment is one that the Treasurer has specified in the rules, the offence does not apply to that payment.

The EM notes that the bill provides for rules which are consistent to those that apply in the context of the taxation law and under the AML/CTF Act about the consequences when an offence is committed by an entity that is not a legal person.

The EM explains that 'allowing kinds of transactions to be made exempt from the cash payment limit by legislative instrument ensures that there is flexibility in the regulatory regime to accommodate new kinds of transactions'. As such, the EM acknowledges that there is an expectation that exceptions will be created for payments related to transactions in which neither party is acting in

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49 Explanatory Memorandum, p. 8.
50 Explanatory Memorandum, p. 12.
52 Explanatory Memorandum, p. 12.
53 The legislative instrument containing the rules is called the Currency (Restrictions on the Use of Cash) Rules 2019. This instrument is discussed in greater detail later in this chapter under the heading 'Provisions of the exposure draft rules'.
54 Explanatory Memorandum, p. 13.
55 Explanatory Memorandum, p. 7.
56 Explanatory Memorandum, p. 13.
the course of a business or other enterprise, as well as for certain payments that are subject to reporting obligations under the AML/CTF Act.57

**Provisions of the exposure draft rules**

1.43 To complement the introduction of the bill, the Treasury developed and published an exposure draft of the rules.58 The rules are made under clause 20 of the bill, and are disallowable by the Parliament in accordance with the *Legislation Act 2003*.59

1.44 The rules are set out in three parts:

- Part 1—Preliminary: this part sets out the name of the rules, arrangements for commencement, authority, and key definitions.
- Part 2—Value of cash – foreign currency and digital currency: this part sets out how to work out the value of foreign and digital currencies in Australian currency.
- Part 3—Payments not subject to the cash payment limit: this part sets out the payments not subject to the cash payment limit.

**Part 1—Preliminary**

1.45 Per clauses 2 and 3, the rules are made under the *Currency (Restrictions on the Use of Cash) Act 2019* (the Act), and, in alignment with the bill’s commencement date, also commence on 1 January 2020.60

**Part 2—Value of Cash—foreign currency and digital currency**

1.46 Clauses 5 and 6 state that, for the purposes of the Act, the value in Australian currency of an amount of cash paid in a foreign currency or digital currency is to be worked out in the same manner as the manner determined by the Commissioner under the *A New Tax System (Goods and Services) Tax Act 1999*.61

**Part 3—Payments not subject to the cash payment limit**

1.47 Part 3 specifies the circumstances in which payments are not subject to the cash payment limit.62 These are listed below:

- Clause 7 excludes payments relating to personal or private transactions.

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61 Currency (Restrictions on the Use of Cash Bill) Rules 2019, p. 3.

• Clause 8 excludes certain payments involving reporting entities under the AML/CTF Act.
• Clause 9 excludes certain payments involving reporting entities under the Financial Transaction Reports Act 1988.
• Clause 10 excludes certain payments involving public officials in the performance of their duties.
• Clause 11 excludes payments involving cash in transit providers.
• Clause 12 excludes payments of digital currency.
• Clause 13 excludes payments where no non-cash payment method is reasonably available.

Government consultation
1.48 Following the delivery of the final report by the taskforce, the Treasury, on 23 May 2018, issued a consultation paper seeking the views of stakeholders to identify issues for consideration in implementing this measure, including views on reporting obligations, integrity measures and whether any exemptions should apply. Submissions were open until 24 June 2018.63

1.49 The government undertook public consultation on the exposure draft legislation from 26 July 2019 to 12 August 2019.64

Commencement of the bill
1.50 The cash payment limit applies to payments made or received from 1 January 2020.65

1.51 Subsequent to the establishment of this inquiry, the Assistant Treasurer, the Hon. Mr Michael Sukkar MP, advised the committee that the government does not intend for the bill, if passed by the Parliament, to be retrospective.66

Financial impact
1.52 The EM states that the bill is estimated to have an unquantifiable impact on revenue over the forward estimates.67

Regulatory impact
1.53 Per the EM, regulatory costs are estimated to be minor, as the cash payment limit does not introduce any additional reporting requirement on business.

63 Department of the Treasury, Introducing an Economy-Wide Cash Payment Limit, pp. 3–4.
64 Explanatory Memorandum, p. 6.
65 Explanatory Memorandum, p. 3.
66 The Hon. Mr Michael Sukkar MP, Letter to the Chair of the Senate Economics Legislation Committee, correspondence received 26 November 2019. See Appendix 1.
67 Explanatory Memorandum, p. 3.
Further, the government considers that payments which exceed the limit are likely to be infrequent and most businesses use banks accounts.\(^{68}\)

### Legislative scrutiny

1.54 In its digest dated 16 October 2019, the Senate Standing Committee for the Scrutiny of Bills (scrutiny committee) made a number of observations and requests regarding the bill.\(^{69}\)

### Exemptions

1.55 The scrutiny committee’s view was that significant matters, such as the kinds of transactions that will be exempted from offences, should be included in primary legislation unless a sound justification is provided. Given this, the scrutiny committee requested the Assistant Treasurer provide more detailed advice as to:

- why it was considered necessary and appropriate to leave all of the exceptions to the offences to delegated legislation; and
- whether it would be appropriate for the bill to be amended to include a non-exhaustive list of the currently known kinds of transactions that would be exempt, with further kinds of exempt transactions able to be specified by the rules.\(^{70}\)

### Offences

1.56 The scrutiny committee’s expectation is that a detailed justification for the imposition of significant penalties, especially if those penalties involve imprisonment, be fully outlined in a bill’s EM. In this instance, however, the scrutiny committee noted that the EM to the bill did not provide any specific justification for the proposed imposition of significant penalties.\(^{71}\)

1.57 Noting the lack of detail in the EM, it was not apparent to the scrutiny committee that the penalties in clause 13 of the bill are appropriate by reference to comparable Commonwealth offences and the requirements in the Guide to Framing Commonwealth Offences.\(^{72}\)

1.58 Hence, the scrutiny committee requested the Assistant Treasurer’s more detailed advice as to the justification for the significant custodial penalty proposed in clause 13. In particular, the scrutiny committee requested advice

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\(^{68}\) Explanatory Memorandum, p. 3.

\(^{69}\) Standing Committee for the Scrutiny of Bills, Scrutiny Digest 7 of 2019, pp. 18–20.

\(^{70}\) Standing Committee for the Scrutiny of Bills, Scrutiny Digest 7 of 2019, p. 19.

\(^{71}\) Standing Committee for the Scrutiny of Bills, Scrutiny Digest 7 of 2019, p. 19.

\(^{72}\) Standing Committee for the Scrutiny of Bills, Scrutiny Digest 7 of 2019, p. 20.
as to specific examples of applicable penalties for comparable Commonwealth
goal offence provisions.73

1.59 As required under the Human Rights (Parliamentary Scrutiny) Act 2011, the
government assessed the bill’s compatibility with human rights and freedoms
recognised or declared in the international instruments listed in section 3 of
that Act.

1.60 Per the EM, the bill engages with two rights and freedoms:

- The right to the presumption of innocence under Article 14(2) of the
  International Covenant on Civil and Political Rights (ICCPR); and
- the right to privacy and reputation under Article 17 of the ICCPR.74

1.61 The government considers that, although the bill engages the right to the
presumption of innocence and the right to privacy, the measures it contains are
consistent with those rights and, hence, the bill is compatible.75

**Conduct of the inquiry**

1.62 The committee advertised the inquiry on its website and wrote to relevant
stakeholders and other interested parties inviting submissions by close of

1.63 Following the call for submissions to the inquiry, the committee received 2,659
emails, letters, and documents from interested stakeholders. A significant
number of these were from organised email campaigns that raised recurring
themes and did not directly address the provisions of the bill.

1.64 Given this, the committee resolved to receive and publish a sample of these
items and accept the balance as correspondence to the committee. Accordingly,
the committee published 147 submissions which are listed at Appendix 2.

1.65 The committee undertook two public hearings for the inquiry. The names of
witnesses who appeared at each hearing can be found at Appendix 3.

**Acknowledgements**

1.66 The committee thanks all individuals and organisations who assisted with the
inquiry, especially those who made written submissions and attended public
hearings to provide evidence.

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74 Explanatory Memorandum, p. 19.
75 Explanatory Memorandum, p. 22.
Chapter 2
Views on the bill

Views on the bill

2.1 This chapter summarises the views held by stakeholders on the provisions of the bill. The chapter is intended to provide an indicative, though not exhaustive, account of the issues examined during the committee's inquiry.

2.2 Following a call for submissions, the committee received 2,659 emails, letters, and documents from interested stakeholders. The committee notes that the Treasury also sought opinions on the bill's exposure draft and, during this consultation process, received 3,620 submissions.¹

2.3 The majority of these items raised a number of recurring themes and indirectly addressed the provisions of the bill. Given this, the committee resolved to receive and publish a sample of these items and accept the balance as correspondence to the committee.

2.4 Although expressed to stakeholders throughout the inquiry, the committee reiterates that various views and concerns represented across submissions and all other correspondence were duly considered during its deliberations, the preparation of this report, and its subsequent recommendations.

2.5 The committee recognises that the majority of submitters raised objections to the bill; however, the committee notes that a number of the arguments raised within these submissions were based on hypothetical scenarios, such as a negative domestic interest rate environment coupled with a cashless society, and future choices the Parliament may or may not make, such as reducing the cash payment limit below the proposed legislated amount of $10,000. The committee considered these objections to the extent that they related to the provisions of the bill. The committee acknowledges the bill has raised concerns with sections of the community; however, the committee rejects the conspiracy inherent in some of the contributions on the bill. In particular, the committee rejects the 'cash ban' nomenclature.

2.6 The committee notes that, contrary to a number of inquiry participants’ claims, cash will remain legal tender within Australia if the bill is passed by the Parliament and the cash payment limit comes into effect. Hence, cash will remain a legal store of value and transaction payment method for all Australians to utilise.

2.7 The committee also notes that, contrary to evidence provided to it, the cash payment limit does not, in any way, reduce the capacity of individuals and businesses to withdraw money, in any denomination, from their bank accounts and hold it outside the financial system. Likewise, the bill does not affect the ability to deposit cash with a financial institution.

Comments in support of the bill

2.8 In its submission, the Department of the Treasury (the Treasury) noted that the Black Economy Taskforce (the taskforce) found growing frustration within the community about the unfairness of the black economy, and stated that this illegal activity not only harms competition, but also limits the resources available to the government to provide essential public services, such as education and health care.2

2.9 The Treasury outlined that, as part of a broader suite of measures to reduce money laundering and tax evasion, a cash payment limit would, due to the offence provisions created, reduce the likelihood of firms accepting and making cash payments equal to or exceeding $10,000, hence improving audit trails and reducing anonymity.3

2.10 Citing the beneficial impacts resulting from the introduction of cash payment limits in other jurisdictions, Mr Patrick Boneham of the Treasury stated:

The central Bank of Italy found that it has had a positive impact on illicit cash in Italy. Greece, France and I think Bulgaria have found that it's had a positive impact on tax evasion.4

2.11 The anonymity that cash provides was also a concern for Chartered Accountants Australia and New Zealand (CAANZ), which stated that it can be exploited by those who participate in the black economy and undertake other criminal activities.5 Expanding upon this, in her evidence to the committee, Ms Susan Franks of CAANZ noted the following:

Black economy participants often use cash as it's untraceable. The Australian Criminal Intelligence Commission says that the ability to use cash to purchase high-value assets such as luxury cars, boats, homes and jewellery is a key enabler of financial crime. It allows black-economy participants to realise the benefits of their illicit operations and to store value. The proposal to restrict large cash payments makes it much more difficult for participants in the black economy to do this.6

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2 Department of the Treasury, Submission 70, p. 2.
3 Department of the Treasury, Submission 70, pp. 2–3.
4 Mr Patrick Boneham, Committee Hansard, 30 January 2020, p. 33.
5 Chartered Accountants Australia and New Zealand, Submission 80, p. 2.
6 Ms Susan Franks, Committee Hansard, 30 January 2020, p. 21.
2.12 CAANZ indicated that their members frequently report that clients struggle due to competitors not playing by the rules, especially in high value sectors where cash transactions are common and encouraged, such as building and construction, and motor vehicle sales.7 In her evidence, Ms Franks articulated this negative impact as follows:

Participants in the hidden economy can destroy the viability of law-abiding businesses and force others to cut corners to survive. Our members have told us about numerous businesses struggling to compete against those that offer mates rates for cash or pay workers cash under the table. These unfair practices can have devastating impacts both financially and emotionally on honest businesses. There needs to be a strong, coordinated approach to reduce the size of the black economy, as not only is the size of the black economy substantial, at three per cent of GDP, or $50 billion; it is also growing.8

2.13 The Uniting Church in Australia (UCA) shared the government’s concern that large cash payments facilitate money laundering in Australia and expressed its support for the bill.9 In its submission, the UCA referred to an evaluation undertaken by the Harvard Kennedy School in the United States of America, which drew the following conclusions:

Criminals like to use cash because it is so widely accepted, anonymous and virtually impossible to track. Cash thresholds make it harder to move large volumes of money into or out of the legal economy.10

Cash thresholds are likely to have most impact on tax evasion and money laundering connected to organised crime, but relatively limited impact on terrorist finance or petty crime.11

2.14 In his evidence to the committee, Mr Chris Douglas of Malkara Consulting indicated that major criminals commonly still rely on cash to settle transactions as alternatives, such as digital currencies, are volatile and can be traced.12 Given this, Malkara Consulting was supportive of the bill, and stated that the measures in the bill are generally sound and consistent with measures implemented by other countries to combat tax evasion, corruption, money laundering, and terrorism financing.13

2.15 Flight Centre provided qualified support for the bill, stating that the black economy harms honest businesses and the broader community by penalising

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7 Chartered Accountants Australia and New Zealand, Submission 80, pp. 1–2.
8 Ms Susan Franks, Committee Hansard, 30 January 2020, p. 21.
9 Uniting Church in Australia, Submission 142, [p. 1].
10 Uniting Church in Australia, Submission 142, p. 2.
11 Uniting Church in Australia, Submission 142, p. 2.
12 Mr Chris Douglas, Committee Hansard, 30 January 2020, p. 15.
13 Malkara Consulting, Submission 147, p. 7.
compliant taxpayers and undermines the integrity of Australia’s tax and transfer system.14

2.16 Both the UCA and CAANZ indicated that, in their opinion, cash transactions in excess of $10,000 are uncommon and unnecessary for the general public:

There appear to be minimal reasons why a person engaged in a lawful transaction would do so with a large amount of cash.15

…with cash usage in rapid decline, examples of situations where the cash payment limit will cause actual difficulty in day-to-day transactions are hard to find.16

2.17 In support of its position, UCA further quoted the evaluation undertaken by the Harvard Kennedy Business School in the United States of America, which stated:

There appear to be limited downsides to implementing cash thresholds in terms of impact on legitimate economic activity or concerns about individual privacy. The overwhelming majority of legitimate cash transactions are below the levels at which cash thresholds would be imposed. High-value cash transactions that are not motivated by illegal purpose appear to be rare and only relevant to a small, wealthy proportion of the population.17

2.18 In evidence provided to the committee, the Reserve Bank of Australia (RBA) noted that, based on surveys it undertook between 2007 and 2019, the number of household payments made in cash has materially reduced over this period, from two in every three transactions in 2007 to one in every four in 2019, or, expressed as a percentage, a reduction from 66 per cent to 25 per cent.18 The RBA believes this reflects a range of factors, such as advances in digital technology and households realising that electronic payments may be a more efficient method to transact.19

2.19 The RBA also noted that its 2016 survey showed the average size of cash transactions to be only $28, and that cash was primarily used for low-value transactions, accounting for two in every three transactions below $10.20

2.20 The RBA highlighted the fact that, across the five household surveys it has undertaken since 2007, comprising 82,000 consumer payments made by 5,700 individuals, only 20 transactions were over $10,000; none of which used cash

14 Flight Centre, Submission 106, [p. 1].
15 Uniting Church in Australia, Submission 142, [p. 1].
16 Chartered Accountants Australia and New Zealand, Submission 80, p. 3.
17 Uniting Church in Australia, Submission 142, p. 2.
18 Mr Anthony Richards, Committee Hansard, 12 December 2019, p. 32.
19 Mr Anthony Richards, Committee Hansard, 12 December 2019, p. 32.
20 Mr Anthony Richards, Committee Hansard, 12 December 2019, p. 32.
as a means of payment.\textsuperscript{21} Although acknowledging that there may be reporting bias due to a reluctance by individuals to report all their spending behaviour, the RBA concluded that:

\ldots our survey suggests that very large transactions by households are very infrequent and, when they occur, they use electronic payment methods or occasionally cheques.\textsuperscript{22}

\textbf{Comments raising potential issues with the bill}

2.21 The committee received a large number of emails, letters, and documents from across the community which raised a number of recurring issues, concerns, and common themes. These issues, concerns, and themes, as well as those examined during the inquiry’s public hearings, are discussed in further detail below.

\textbf{Commencement date and implementation complexities}

2.22 A number of organisations raised the issue that the bill’s commencement date only provides them a few months to upgrade their systems and train their staff. For example, Flight Centre said that it would be unable to implement effective systems and training to ensure compliance with the aggregation requirements for payments related to individual bookings by 1 January 2020.\textsuperscript{23}

2.23 In his evidence to the committee, Mr Brett Anderson from Flight Centre highlighted this difficulty in the context of the travel industry. He gave the following example:

If someone comes in, they see a great deal on flights and they book those flights—that’s a transaction. If they come in three months later, when they’ve actually thought about where they’re going and what they want to do, and they go to book accommodation, the question we get is, ‘Is that one transaction, or is that two transactions?’ They’ve already invoiced and settled the first; now they’re going to embark on another. It’s part of the same booking and part of the same trip, but are they different transactions or are they the same transaction when it comes to this cash limit?\textsuperscript{24}

2.24 The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) also noted that:

The proposed commencement date of 1 January 2020 allows less than two months to educate small businesses, let alone the community at large.\textsuperscript{25}

2.25 Mr Andrew Ham from the Law Council of Australia, in responding to questioning by the committee, touched on this issue and stated:

\begin{itemize}
  \item Mr Anthony Richards, \textit{Committee Hansard}, 12 December 2019, p. 33.
  \item Mr Anthony Richards, \textit{Committee Hansard}, 12 December 2019, p. 33.
  \item Flight Centre, \textit{Submission 106}, [p. 1].
  \item Mr Brett Anderson, \textit{Committee Hansard}, 30 January 2020, p. 2.
  \item Australian Small Business and Family Enterprise Ombudsman, \textit{Submission 143}, [p. 1].
\end{itemize}
My other major concern is the impact on business. In order for businesses to be able to track instalment payments, which would be captured by this ban, and to be able to defend themselves if there was ever an accusation against the business itself, they are going to need to potentially rebuild their whole finance system in order to identify when they are in receipt of cash as payment, or indeed paid cash, or when it’s some other form of payment. That is a ground-up, potentially enormous IT exercise.26

2.26 Given their concerns around the offence provisions and implementation complexities, both Flight Centre and the ASBFEO recommended the bill’s commencement date be postponed until no earlier than 1 January 2021.27

2.27 Further, both the ASBFEO and the UCA recommended that a resourced communications strategy be developed, and delivered, prior to the bill’s commencement to ensure the community is aware of the obligations and offences that are created. Specifically, the ASBFEO stated:

As criminal offences are involved, and people are likely to be unaware that a series of apparently separate transactions may be linked together as a ‘supply’, especially where a small business can unknowingly be in breach, the government owes a duty to the population to ensure a comprehensive media campaign is undertaken before implementation.28

Retrospective legislation

2.28 The committee, as well as a number of submitters, recognised that the committee’s reporting date post-dates the bill’s commencement date of 1 January 2020, potentially giving rise to retrospective legislation containing significant offence provisions.

2.29 The committee sought clarity from the government on this issue, and was assured, via written correspondence from the Assistant Treasurer, the Hon. Mr Michael Sukkar MP, that the government does not intend for the bill, if passed by the Parliament, to be retrospective. The Assistant Treasurer stated that a new commencement date would be determined following consideration of the committee’s report.29

Rules determined by the minister

2.30 The bill provides the minister with the power to make rules and prescribe matters where permitted by the bill. Amongst other things, this allows the minister to prescribe exemptions from cash payment limit offences.30

26 Mr Andrew Ham, Committee Hansard, 12 December 2019, p. 30.
28 Australian Small Business and Family Enterprise Ombudsman, Submission 143, [p. 1].
29 The Hon. Mr Michael Sukkar MP, Letter to the Chair of the Senate Economics Legislation Committee, correspondence received 26 November 2019. See Appendix 1.
30 Explanatory Memorandum, p. 17.
2.31 Per the EM, rules made by the minister are a legislative instrument and, hence, are subject to tabling, disallowance, and all the other requirements set out in the *Legislation Act 2003*.31

2.32 Notwithstanding the above requirements for rules made by the minister, a large number of inquiry participants were concerned with this power, and argued that it provides the minister with too much discretion to determine which transactions are exempted from the cash payment limit, and to amend the exemptions whenever he or she chooses.

2.33 Although recognising the need to ensure flexibility within the regulatory regime, CPA Australia stated that the parliamentary process is critical to ensure adequate oversight of exceptions and modifications. It believes that, at a minimum, the currently identifiable exceptions should be included directly in the bill.32 To support this, it refers to the views expressed by the Standing Committee for the Scrutiny of Bills, which recommended a similar approach:

> The committee’s view is that significant matters, such as the kinds of transactions that will be exempt from offences, should be included in the primary legislation unless a sound justification for the use of delegated legislation is provided.33

2.34 Further, CPA Australia also recommended that, to avoid unintended consequences with respect to the use of legislative instruments, the government should reconsider allowing the minister to add additional exemptions through their use.34

2.35 In response to these concerns raised by the Standing Committee for the Scrutiny of Bills, and echoed by CPA Australia, the Assistant Treasurer advised that, as he expects future changes to involve expanding or reducing the scope of existing exceptions, it would be cumbersome, and unnecessarily complex, to have the currently known exemptions in primary legislation, with additional and amending exemptions in delegated legislation.35 He also stated that it is important for the legislative framework to provide adequate flexibility to ensure that new transactions and practices are not inappropriately affected by the cash payment limit.36

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31 *Explanatory Memorandum*, p. 17.

32 CPA Australia, *Submission 67*, p. 5.


34 CPA Australia, *Submission 67*, p. 5.


2.36 The Assistant Treasurer also noted in his advice that placing all exceptions in
delegated legislation would reduce compliance costs and red tape for business,
as the rules would be easier to find, and simpler to understand and apply.37

**The effects of inflation**

2.37 Given the static nature of the $10,000 cash payment limit, the effect of inflation
was raised as an issue by submitters and witnesses. For example, the Chief
Executive Officer of Freelancer, Mr Matt Barrie, highlighted that:

> Based on the past performance of the Australian dollar since inception, in
10 years from now the $10,000 threshold will have the buying power of a
little over $8000 and in 50 years less than $770 in today’s money.38

2.38 This issue was also raised during the committee’s public hearing on
12 December 2019, where Ms Emilie Dye of the Australian Taxpayers’ Alliance
stated:

> Some may argue that only a few people regularly withdraw $10,000 in
cash, so, supposedly, only a few people would be impacted by a $10,000
cash threshold. But, because of inflation, this threshold would encroach on
all Australians. In one year, assuming inflation remains consistent, the
threshold would effectively drop to $9,800. In 10 years the threshold would
be approximately $2,000 lower than what is currently being proposed.39

2.39 A potential solution to this issue was proposed by the UCA, which
recommended that a legislative requirement be added to the bill requiring the
government to undertake a review in three years’ time.40 Such a requirement
could serve a number of functions, such as to allow for the assessment of the
impacts of the cash payment limit and whether arrangements have been
developed in an attempt to circumvent it.

**Vulnerable groups and migrant communities**

2.40 There was recognition among some submitters and witnesses that the bill may
adversely affect vulnerable groups and migrant communities.

2.41 In his opening remarks, Mr Andrew Pinder, the National President of the
Australian Funeral Directors’ Association, spoke about this issue and stated
that the bill misses the mark on the funerals sector and would operate harshly
on elderly and migrant communities.41

2.42 In explaining this assertion, and how it related to the funerals sector, Mr Pinder stated that:

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38 Freelancer, *Submission 42*, [p. 12].
40 Uniting Church in Australia, *Submission 142*, p. 9.
41 Mr Andrew Pinder, *Committee Hansard*, 12 December 2019, p. 17.
Those who are elderly are often not technologically savvy. Some are but most aren’t. For those who do have credit cards or debit cards, their limits are generally nowhere near $10,000; they’re around $1,000 or $2,000.42

A number of people wish to avoid bank cheque fees—they may have mobility issues in getting to banks, avoiding the queues, there are fewer branches these days and personal cheques are being phased out.43

Migrant funerals are more likely to be above $10,000. Many migrant communities have burial rather than cremation, and burial is more expensive than cremation. The cost of burial sites for migrant communities—for example, Christian Orthodox communities in metropolitan cities—has doubled or trebled in the last five to seven years in some areas. It’s not hard to get over $10,000 for a funeral when it involves a burial and a monumental grave.44

2.43 To provide the committee with an appreciation of those communities potentially impacted by the bill, Mr Pinder listed a number of religious groups which he believed would be impacted by the bill:

The Christian Orthodox community is extensive. It includes Greek Orthodox; Macedonian; Serbian; Ukrainian; Russian; Bulgarian; Coptic, which is Egyptian; and Antiochian, which is Lebanese. It’s a very widespread religion. It also impacts European Catholic communities such as Polish and Croatian, and Buddhist communities have a preference for paying cash in Vietnamese and Chinese communities. Those are the communities that will be impacted by this bill most profoundly.45

2.44 In his evidence to the committee, Mr Anthony Richards, the head of payments policy within the RBA, noted the importance of cash to various groups. Specifically he stated that:

…cash is still a very important payment method for a significant portion of the population, especially for older and lower-income households, those living in regional and remote areas and those with disabilities.46

2.45 Notwithstanding this, Dr Richard Finlay of the RBA noted that, although cash remains important to various groups, cash transactions above $10,000 are incredibly rare.47

2.46 Mr Andrew Ham from the Law Council of Australia, spoke about this issue and stated that:

The ban in particular is likely to have a significant practical impact on day-to-day business transactions and imposes a substantial burden on

42 Mr Andrew Pinder, Committee Hansard, 12 December 2019, p. 18.
43 Mr Andrew Pinder, Committee Hansard, 12 December 2019, p. 17.
44 Mr Andrew Pinder, Committee Hansard, 12 December 2019, p. 17.
45 Mr Andrew Pinder, Committee Hansard, 12 December 2019, p. 18.
46 Mr Anthony Richards, Committee Hansard, 12 December 2019, p. 32.
47 Dr Richard Finlay, Committee Hansard, 12 December 2019, p. 35.
business and criminal liability on a large and potentially vulnerable proportion of the population.48

2.47 In light of these concerns, the UCA recommended the government:

...establish support for vulnerable groups, such as people with mental health problems and older people, who have trouble navigating the financial system and therefore still make large payments in cash.49

2.48 In contrast to the above, Malkara Consulting stated in its submission that the general argument that older and poorer people, or those living in remote locations, will be unable to utilise digital technologies are too broad and, hence, should be discounted. In support of this, it stated that modern technologies are easy to utilise and believes that the arguments put forward give these community groups little credit for their ability to adapt.50

Regulatory costs and the allocation of responsibilities

2.49 The government estimates that regulatory costs incurred by the community will be minor, stating that the bill does not introduce additional reporting requirements on businesses, and payments exceeding the limit are likely to be infrequent with most businesses utilising the banking system.51

2.50 Although the EM states the cash payment limit is estimated to have an unquantifiable impact on revenue over the forward estimates, it does not provide guidance on the additional expenditure required to enforce the provisions of the bill through additional investigations and prosecutions of the offences it creates.52

2.51 This omission was raised as a concern by Adams Economics, which stated that it is unclear how the government intends to enforce the cash payment limit.53 Malkara Consulting also raised this in its submission, stating that:

The explanatory memorandum (EM) states that the regulatory costs are estimated to be minor.54

What the EM is referring to in relation to business is compliance cost not regulatory cost which must be borne by Government authorities. As is frequently the case, the Federal Government introduces new laws and fails

48 Mr Andrew Ham, Committee Hansard, 12 December 2019, p. 28.
49 Uniting Church in Australia, Submission 142, p. 2.
50 Malkara Consulting, Submission 147, p. 9.
51 Explanatory Memorandum, p. 3.
52 Explanatory Memorandum, p. 3.
53 Adams Economics, Submission 57, [p. 9].
54 Malkara Consulting, Submission 147, p. 8.
to equip the agencies responsible for enforcing them with the necessary resources.\footnote{Malkara Consulting, \textit{Submission 147}, p. 8.}

2.52 Notwithstanding this omission, Malkara Consulting suggests that the Australian Taxation Office be provided with adequate resources to educate the public and to implement the cash payment limit effectively.\footnote{Malkara Consulting, \textit{Submission 147}, p. 9.}

2.53 In answering questions asked by the committee, Mr Patrick Boneham of the Treasury stated:

In relation to who is responsible for the bill, Treasury are responsible for the policy and we will also be doing the guidance, so that is different to other tax measures. Once a tax measure is passed, generally, responsibility for implementation will move on to the ATO—that is, both enforcement and guidance. In this case, guidance will be done by us. Enforcement is probably going to be an amalgam. There is no one agency responsible for this.\footnote{Mr Patrick Boneham, \textit{Committee Hansard}, 12 December 2019, p. 49.}

2.54 In its submission, Flight Centre indicated that such a model of enforcement may create issues. Specifically it stated that:

...multiple bodies providing input and oversight will be an unsatisfactory regulatory approach.\footnote{Flight Centre, \textit{Submission 106}, [p. 2].} Without a single regulator, the measures are unlikely to be properly enforced and cause regulatory challenges complying with the legislation.\footnote{Flight Centre, \textit{Submission 106}, [p. 2].}

2.55 Given this, Flight Centre recommended that a single regulator provide supervision and oversight to ensure compliance with the cash payment limit.\footnote{Flight Centre, \textit{Submission 106}, [p. 2].}

**Privacy and civil liberties**

2.56 A number of submitters and witnesses indicated that they believed the bill would adversely impact their privacy and civil liberties. For example, Dr David Korchok stated in his submission that governments and private entities, such as banks, should not be able to monitor purchases and transactions.\footnote{Dr David Korchok, \textit{Submission 94}, p. 6.} He argued that the use of cash allows individuals to effectively avoid this unwanted monitoring. Similarly, Ms Lina Zielinski stated that:

We have the right to privacy and not have our every financial transaction tracked.\footnote{Ms Lina Zielinski, \textit{Submission 55}, [p. 4].}
2.57 Further, in evidence provided to the committee, Mr Peter Wilson of the New South Wales Farmers’ Association indicated that, in his opinion, the bill’s costs would outweigh its benefits, and that existing measures are already in place. Specifically, he stated:

What we object to is simply the extra regulation and the extra infringement on civil liberties without, in our view, any significant benefit or benefits that could not otherwise be achieved through existing means or beefed-up existing means. You’ve already got your cash-reporting legislation.\(^{63}\)

2.58 In contrast to the above evidence, in its submission, Malkara Consulting did not see privacy as an issue, stating:

The proposed restriction on the use of cash by the Federal Government is insignificant compared to the already extensive use of private information collected and held by non-government entities.\(^{64}\)

**Digital infrastructure failure and access in remote locations**

2.59 A large number of submitters raised the issue around the reliability and security of electronic payment systems, and questioned how dependable they are for conducting business in remote regions. In her submission, Ms Melissa Harrison noted that multiple outages in 2019 adversely impacted a number of prominent Australian companies and their customers.\(^{65}\) Based on this, she concluded:

…these digital platforms cannot be relied upon to be always available and failure of electronic systems can be disruptive to our economy and daily lives.\(^{66}\)

2.60 Ms Lina Zielinski also pointed out that, in contrast to cash, which is physical and reliable, Australia’s digital systems are susceptible to outages and potential sabotage, resulting in costs to businesses through lost revenues, time, and inconvenience.\(^{67}\)

2.61 Given that many of its members operate in Australia’s remote regions, the Opal Association (the OA) believes the bill is poorly thought out and would harm small businesses and miners.\(^{68}\) They state that their members prefer cash payments for their immediacy, as buyers are commonly unknown to sellers and cheques and bank transfers take time to clear.\(^{69}\) The OA indicated that, as a

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\(^{63}\) Mr Peter Wilson, *Committee Hansard*, 12 December 2019, p. 15.

\(^{64}\) Malkara Consulting, *Submission 147*, p. 2.

\(^{65}\) Ms Melissa Harrison, *Submission 141*, p. 19.

\(^{66}\) Ms Melissa Harrison, *Submission 141*, p. 19.

\(^{67}\) Ms Lina Zielinski, *Submission 55*, [p. 3].

\(^{68}\) Opal Association, *Submission 84*, [p. 1].

\(^{69}\) Opal Association, *Submission 84*, [p. 1].
result of this bill, miners may withhold their stock from domestic sale and instead market them overseas where buyers can continue to pay cash.70

2.62 The ASFBEO and Dr Wilson Sy also raised this as an issue with the bill, stating in their respective submissions that:

Regional and remote small businesses and pastoral family enterprises in rural Australia do not have reliable access to the internet and electronic banking facilities; often even land line and mobile telephone services are intermittent.71

…there are real risks of unintended consequences ignored by the Bill. Banks and technology are not reliable enough and that their failures could cause serious economic damage.72

For risk mitigation, Australians need all available options for payment because more than elsewhere in the world, Australia has great diversity in culture, geography and economic situations.73

2.63 In its submission, CAANZ noted the concerns of other submitters on this issue, but highlighted that the proposed rules, currently available in exposure draft form,74 make provisions for situations where non-cash payments are unavailable.75

Necessity and effectiveness

2.64 A number of submissions disputed the taskforce’s estimation of the scale of Australia’s black economy and, hence, the necessity of the bill. For example, in their respective submissions, the Citizens Party and Adams Economics referenced studies undertaken by the International Monetary Fund which, in their opinion, indicate that Australia does not have a serious problem.76

2.65 In his evidence to the committee, Mr John Adams from Adams Economics further articulated this point stating that:

The leading international expert on the black economy, Professor Schneider from Austria…suggests that the black economy in Australia has actually been shrinking over the last 20 to 25 years; it has not been growing.77

70 Opal Association, Submission 84, [p. 1].
71 Australian Small Business and Family Enterprise Ombudsman, Submission 143, [p. 1].
72 Dr Wilson Sy, Submission 69, p. 2.
73 Dr Wilson Sy, Submission 69, p. 2.
74 Please see the Department of the Treasury’s website (www.treasury.gov.au) for its exposure draft of the Currency (Restrictions on the Use of Cash) Rules 2019.
75 Chartered Accountants Australia and New Zealand, Submission 80, pp. 2–3.
76 See: Citizens Party Submission 136, [p. 3]; and Adams Economics, Submission 57, [pp. 2–4].
77 Mr John Adams, Committee Hansard, 30 January 2020, p. 9.
If you go to the size of the Australian black economy in 2015, it was, according to Professor Schneider’s estimates, basically the fifth smallest in the OECD.\textsuperscript{78}

2.66 In its submission, Adams Economics also noted its concern that the government has not conducted a cost-benefit analysis for the cash payment limit, and hence, has not demonstrated the proposal will deliver quantifiable net benefits for Australia.\textsuperscript{79}

2.67 In her evidence to the committee, Ms Emilie Dye of the Australian Taxpayers’ Alliance raised doubts about the costs of the bill and its effectiveness in reducing crime. She stated:

Many will argue undermining criminals and illegal behaviour is worth the cost of these restrictions. But, in reality, cash restrictions will do little to reduce crime and instead treat law-abiding citizens like criminals that cannot be trusted with privacy. Businesses are already required to disclose large cash transactions to the Australian Transaction Reports and Analysis Centre, or AUSTRAC. Criminals who are already breaking the law to launder money or avoid taxes will just as readily break this law. Money launderers already use untraceable cash and would be undeterred by this new law.\textsuperscript{80}

2.68 CPA Australia expressed that existing powers and offences are sufficient to address the black economy. Specifically, it stated in its submission that:

Neither the Black Economy Taskforce Report, the consultation paper nor the Explanatory Memorandum satisfactorily addresses the question of why the significant range of existing powers and information available to government is insufficient to address the black economy, and why the criminalisation of cash transactions is the appropriate solution.\textsuperscript{81}

2.69 Given this, CPA Australia suggested that:

...better enforcement using existing powers and ongoing government support of the digital economy will, in the longer term, better resolve these issues without encroaching on legitimate business operations or the use of legal tender. The reporting of suspicious matters under the AML/CTF and the ATO’s newly established Tax Integrity Centre could also be improved and be more effectively actioned by government agencies.\textsuperscript{82}

2.70 Mr Chris Douglas of Malkara Consulting, in his evidence to the committee, asserted that the proposed limit was, in his opinion, too high, and that a lower limit would be more effective in reducing tax evasion and money laundering. Specifically, he stated:

\textsuperscript{78} Mr John Adams, Committee Hansard, 30 January 2020, p. 9.

\textsuperscript{79} Adams Economics, Submission 57, [p. 9].

\textsuperscript{80} Ms Emilie Dye, Committee Hansard, 12 December 2019, p. 7.

\textsuperscript{81} CPA Australia, Submission 67, p. 7.

\textsuperscript{82} CPA Australia, Submission 67, p. 7.
...while it [the $10,000 cash payment limit] would have an impact on tax evasion and money laundering, a top limit of $2,000 would be more effective in achieving the objectives of the bill. It has been my experience that the majority of cash purchases that occur above $2,000 are for whitegoods, electrical goods, second-hand cars and motorbikes, furniture, jewellery, gold, boat engines, carpets, tiles et cetera.\(^{83}\)

### Promotion of the privately-owned banking system

2.71 A number of submitters raised concerns that the cash payment limit will push people into the privately-owned banking system, which serves private interests, charges high fees, and is not required to offer services to all within the community. For example, Mr Jordan Ralph stated that:

> This Bill risks locking Australians into a banking system dominated by 4 major companies serving private interests, companies which have already been proven to treat their customers and broader public with contempt. Companies which have demonstrated that profit making is elevated above all other moral imperatives.\(^{84}\)

2.72 In his submission to the committee, Mr David Korchok also raised his concerns regarding this, stating:

> People use cash to avoid transacting within the banking system. In doing so, businesses avoid high transaction fees charged by banks, credit card fees, suspension/cancellation of accounts, power outage failures that disable account access or rural inaccessibility, and scrutiny of purchases by private banks which can deny home loans based on consumption patterns. In short, people can avoid a middle party in order to avoid all of the above things, and it is there right to do so. It does not mean that they are doing anything illegal. They are within their rights to maintain privacy and freedoms.\(^{85}\)

2.73 This was also discussed by Ms Emilie Dye of the Australian Taxpayers’ Alliance in her opening remarks to the committee, where she stated:

> In addition to the invasion of privacy, this policy would gift the big four banks a whole new customer base...The banks could then charge more fees, lower interest rates, provide poorer service and neglect to innovate, because demand for their service has been forced to increase while supply has remained constant. Monopolies and oligopolies always harm consumers, especially when the corporations involved are propped up by protectionist legislation. Australia’s royal commission has revealed a long backlog of dubious behaviour, such as banks charging for advisory services they never intended to provide and knowingly charging fees to dead customers.\(^{86}\)

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84 Mr Jordan Ralph, *Submission 27*, [p. 1].

85 Mr David Korchok, *Submission 94*, [p. 3].

In contrast to the above, Malkara Consulting noted in its submission that:

...while there were serious forms of misbehaviour identified during the banking royal commission, the Australian banking system is still one of the most reliable, efficient and safest systems in the world.\(^87\)

The push by the Australian Government and most world governments to get people using the banking system is not new. In Australia, the process gained significant momentum about 30 years ago when the Australian Government introduced direct credit payments to bank accounts for all welfare recipients.\(^88\)

Primarily designed to reduce fraud and the cost in providing payments to welfare recipients, the move increased the participation rate or financial inclusion, of Australians in the formal banking sector. It was a sensible policy initiative at the time and continues to this day.\(^89\)

**Fees and charges**

There was widespread concern by submitters regarding various fees charged by the banks, either directly or indirectly, when using their services to transact. In responding to questioning by the committee regarding the size of merchant fees, which are commonly passed on to customers, the RBA noted that policy action has exerted downward pressure on fees paid by these merchants and, as a result, these fees are 'significantly lower' than those charged in other countries.\(^90\) Specifically, the head of payments policy, Mr Anthony Richards, stated in his evidence to the committee:

> The cost of payments in Australia is actually low by international standards—that’s the cost of accepting payments by card. The cost of debit cards is around, on average, 50 basis points, or half a per cent; and the cost of receiving credit cards is in the order of about 80 basis points, or 0.8 per cent. That’s low by international standards.\(^91\)

Mr Richards also noted that since various reforms were implemented in 2016:

> The merchant may not pass on an additional cost that is any larger than their cost of acceptance that they are being charged by their bank.\(^92\)

I think we can be confident that any surcharges charged by merchants for card acceptance are no more than their cost of acceptance that they have to pay their provider of financial services.\(^93\)

\(^{87}\) Malkara Consulting, *Submission 147*, p. 2.


\(^{89}\) Malkara Consulting, *Submission 147*, p. 2.

\(^{90}\) Mr Anthony Richards, *Committee Hansard*, 12 December 2019, p. 37.

\(^{91}\) Mr Anthony Richards, *Committee Hansard*, 12 December 2019, p. 33.

\(^{92}\) Mr Anthony Richards, *Committee Hansard*, 12 December 2019, p. 37.

\(^{93}\) Mr Anthony Richards, *Committee Hansard*, 12 December 2019, p. 37.
2.77 Mr Michael Croker of CAANZ also highlighted the fact that holding cash outside the banking system is not necessarily cost-free, and commonly incurs insurance costs and the bearing of additional security risk.94

Inability to hold a bank account

2.78 mHITs Limited (mHITs), in its submission to the inquiry, raised the issue that banks do not necessarily provide their services to everyone in the community. mHITs states that some firms operating within the remittance industry are currently unable to hold a bank account due to the banking industry’s concerns regarding its obligations under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Hence, these firms, which currently utilise cash to conduct their business, will be unable to legally continue; potentially forcing them into the black economy.95

2.79 Given this, and the fact that registered remittance businesses are already subjected to regulatory oversight by AUSTRAC, mHITs recommends that these entities be exempted from the cash payment limit.96

2.80 This issue was also raised by Mr Brian Marlow of the Australian Taxpayers’ Alliance who stated that various legitimate businesses would be adversely impacted by ‘banks not wanting to allow them to use their payment processing services and having to rely on cash transactions or even cryptocurrency’.97

2.81 Reinforcing Mr Marlow’s evidence, Mr Adams of Adams Economics stated:

…the phenomena of debanking—which was mentioned at the last public hearing—also means that the proposed law may result in the closure of legitimate businesses who are denied access to banking services.98

Cash as a store of value

2.82 In contrast to the declining use of cash as a payment method, research undertaken by the RBA indicates that the use of cash as a store of value has been increasing over recent years.99 Upon questioning by the committee, the RBA referenced this prior research stating that it indicated only one in four outstanding bank notes are used to transact; two in three are held as a store of wealth by Australian residents and foreigners; and the balance are used in the black economy, or have been lost.100

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95 mHITs Limited, Submission 31, p. 2.
96 mHITs Limited, Submission 31, p. 2.
97 Mr Brian Marlow, Committee Hansard, 12 December 2019, p. 8.
98 Mr John Adams, Committee Hansard, 30 January 2020, p. 7.
100 Mr Anthony Richards, Committee Hansard, 12 December 2019, pp. 32–33.
2.83 CAANZ also identifies this alternative use for cash, and noted that, in accordance with the EM, the cash payment limit will not impact a person or entity’s ability to retain wealth, in cash, outside of the banking system.

Significant offence provisions and penalties

2.84 To give effect to the cash payment limit, the bill establishes new offences for entities that make or accept cash payments that equal or exceed the cash payment limit. The EM states:

The use of criminal sanctions reflects the harm to the wider community that was identified in the Final Report of the Black Economy Taskforce. The use of an effective deterrent is required to change existing practices that have facilitated participation in black economy and particularly the use of cash payments to conceal income and criminal activity.

2.85 A number of submitters raised concerns regarding these offences and the severity of their penalties. For example, Ms Melissa Harrison took particular issue with the two strict liability offences [clause 12], stating that the penalties are disproportionate and unjust.

2.86 CPA Australia is concerned that the bill introduces vicarious criminal liability, noting that, while the attribution of liability through agency and joint and several liability is acceptable in civil law, in criminal law it may well be without precedent.

2.87 In their submission, Flight Centre raised concerns regarding the offence provisions and recommended the government consider providing a defence for corporations which can demonstrate that adequate procedures, designed to prevent misconduct, were in place at the time the offence was committed. Mr Brett Anderson articulated Flight Centre’s concerns as follows:

While you can have all the processes, procedures, policies, monitoring, compliance, regulation and governance in the world in place, we are all human in the end. Errors will be made, not necessarily intentionally. They could be just general mistakes. There could be multiple reasons. A customer may have started a transaction with a particular consultant. That consultant may be on leave or may have left. Another consultant will then take over the transaction. They may not be aware of the history of that customer. They might end up receiving cash more than the limit, and we would have a breach. Those sorts of things are very challenging. If there is absolutely no defence for a corporate who shows that they’ve done

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102 Chartered Accountants Australia and New Zealand, *Submission 80*, p. 2.
103 *Explanatory Memorandum*, p. 7.
104 Ms Melissa Harrison, *Submission 141*, pp. 20–21.
105 CPA Australia, *Submission 67*, p. 5.
everything that they possibly can to manage the risk of a breach in their business, I think it’s a really severe approach.\textsuperscript{107}

2.88 As highlighted in chapter 1, the Standing Committee for the Scrutiny of Bills also raised the imposition of significant penalties within clause 13 as a concern, stating:

Noting the lack of detail in the explanatory memorandum, it is not apparent to the committee that the penalties in clause 13 of the bill are appropriate by reference to comparable Commonwealth offences and the requirements in the Guide to Framing Commonwealth Offences.\textsuperscript{108}

The committee therefore requests the minister’s more detailed advice as to the justification for the significant custodial penalty proposed in clause 13. In particular, the committee requests the minister’s advice as to specific examples of applicable penalties for comparable Commonwealth offence provisions.\textsuperscript{109}

2.89 In responding to the concerns raised regarding clause 13 by the Standing Committee for the Scrutiny of Bills, the Assistant Treasurer advised that:

…it was identified that the existing offences to which they were most closely comparable were the offences relating to dealing in the proceeds of crime in Division 400 of the Criminal Code as these offences similarly involve conduct that facilitates or enables other criminal activity.\textsuperscript{110}

2.90 The Assistant Treasurer also made the more general point regarding criminal penalties:

…I consider that it is important that an appropriate period of imprisonment be available to the courts as a maximum penalty for entities that recklessly flout the cash payment limit. Criminal activity associated with the black economy is a serious problem for Australia. The use of large cash payment is key in facilitating activity in the black economy and a substantial deterrent is required to change existing practices and behaviours that enable this conduct.\textsuperscript{111}

\textbf{Committee view}

2.91 The committee thanks all inquiry participants who took the time to prepare and lodge a written submission and attend public hearings. It has reviewed each and every submission, and taken into account the issues, concerns, and suggestions raised.

2.92 The committee acknowledges the growing frustration within the community regarding the black economy and the negative impacts it has on law-abiding

\begin{footnotesize}
\begin{enumerate}
\item Mr Brett Anderson, \textit{Committee Hansard}, 30 January 2020, p. 3.
\item Standing Committee for the Scrutiny of Bills, \textit{Scrutiny Digest 7 of 2019}, p. 20.
\item Standing Committee for the Scrutiny of Bills, \textit{Scrutiny Digest 7 of 2019}, p. 20.
\item Standing Committee for the Scrutiny of Bills, \textit{Scrutiny Digest 8 of 2019}, p. 64.
\item Standing Committee for the Scrutiny of Bills, \textit{Scrutiny Digest 8 of 2019}, p. 65.
\end{enumerate}
\end{footnotesize}
businesses and individuals, and agrees that the government must act to reduce these impacts. The committee also acknowledges the importance of cash as legal tender both for transactions and as a store of value. It is important that the government strikes the correct balance in this regard.

2.93 The committee also acknowledges the concerns raised by a number of inquiry participants regarding the bill’s impact on privacy and civil liberties. Once again, this must be balanced against the concerns raised by other stakeholders who described the negative impacts of criminal activity and tax evasion.

2.94 The committee notes the legitimate concerns of stakeholders regarding the potential retrospective application of the cash payment limit. The committee thanks the Assistant Treasurer for his assurance that, if the bill is passed by the Parliament, the government does not intend for it to be retrospective, and that a new commencement date will be determined.

2.95 Based on the evidence provided, the committee agrees that non-cash payment methods create clearer records; are usually more convenient for consumers and businesses; and increasingly involve lower costs, as they simplify record keeping and avoid the security, insurance, and other costs associated with handling and holding cash. In one sense, people are voting with their behaviour in moving away from cash to electronic transactions.

2.96 Nevertheless, it is not clear to the committee that the penalty provisions are appropriate. Given the advice to the Standing Committee for the Scrutiny of Bills from the Assistant Treasurer, the committee is concerned that a disproportionate penalty could be applied to a small or medium-sized business, whose processes and procedures may not be as sophisticated as larger businesses.

2.97 The committee notes the evidence from some submitters that particular migrant communities may be adversely impacted, as some cultures may have a preference to transact in cash. This may be due to a lack of trust in institutions resulting from their past experiences in other countries.

2.98 Whilst sympathetic to this as a possibility, the committee is of the view that that these communities and individuals are as capable as the broader population in complying with the law. However, special consideration may need to be given in relation to particular cultural activities, such as funerals. This is difficult to assess on the information before the committee.

2.99 Although sympathetic to the argument that the real value (i.e. inflation-adjusted value) of the cash payment limit will likely decline due to inflation, the committee does not believe that an inflation-indexed cash payment limit would be practical to implement.

2.100 The committee is satisfied that the government, through publishing its exposure draft of the rules, adequately provides for situations where non-cash
payment methods are unavailable. Such situations may occur due to geographical remoteness; natural disasters, such as bushfires and flooding; and general hardware failures and outages. The Committee however, remains concerned about the responsiveness of those provisions and the ability to communicate any exemption during natural disasters.

2.101 The committee is concerned for those individuals and businesses that, due to various reasons, are unable to hold a bank account. The committee seeks guidance from the government on how it proposes these individuals cost-effectively undertake transactions which equal, or exceed, the cash payment limit.

2.102 The committee acknowledges that there is confusion within the community regarding how the cash payment limit would work at a practical level within certain industries. Given this, and acknowledging the Assistant Treasurer’s letter to the Chair,112 the committee recommends the commencement date of the bill be extended, and that a final agreed date be informed through consultation with business to allow sufficient time to implement system changes and undertake training, as required.

2.103 The committee is also concerned about the numerous unsubstantiated claims regarding the bill’s impact that have accompanied its introduction. Given the potential impact on individuals and businesses, the committee believes the government needs to implement a comprehensive communications strategy to inform the public and business of their responsibilities.

2.104 The committee reiterates that, contrary to a number of inquiry participants’ claims, cash will remain legal tender within Australia if the cash payment limit comes into effect, and individuals and businesses will continue to be able to withdraw money, in any denomination, from their bank accounts and hold it outside the financial system. Similarly, the committee notes the cash payment limit will have no effect on the ability to deposit cash with a financial institution.

2.105 The committee recommends that the exemption for payments relating to personal and private transactions be placed in the primary legislation (this exemption is currently contained within clause 7 of the exposure draft rules113 published by the Treasury). This approach provides certainty to the community, whilst also allowing the government to act quickly if there are unintended consequences resulting from the broader exemptions. Importantly, the committee notes that all remaining exemptions contained within the rules can be disallowed by the Parliament, if necessary.

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112 The Hon. Mr Michael Sukkar MP, Letter to the Chair of the Senate Economics Legislation Committee, correspondence received 26 November 2019. See Appendix 1.

Recommendation 1
2.106 The committee recommends, noting the evidence from CPA Australia and others, the government review existing powers and trends in the digital economy to assess whether the bill is the most effective response to the black economy.

Recommendation 2
2.107 The committee recommends the government review the penalty provisions, particularly in relation to one-off breaches as opposed to repeated offences, which are more likely to be money laundering and tax evasion, to ensure they are not overly harsh.

Recommendation 3
2.108 The committee recommends the government respond to concerns raised by the Australian Small Business and Family Enterprise Ombudsman, and others, regarding the availability of electronic banking services (ATMs and internet banking) in remote and regional Australia, including during natural disasters, and whether there will be a detrimental economic impact on those areas.

Recommendation 4
2.109 The committee recommends the government assess the impact of the bill on particular migrant communities, particularly in relation to funerals, to determine if there are potential negative impacts.

Recommendation 5
2.110 The committee recommends the commencement date of the bill be extended, and that a final agreed date be informed through consultation with business to allow sufficient time for businesses to implement system changes and undertake training, as required.

Recommendation 6
2.111 The committee recommends the government develop a communications strategy to assist in dispelling some of the unsubstantiated claims regarding the bill. The strategy needs to be in place before the commencement of the bill to allow sufficient time to inform the public and businesses of their responsibilities.

Recommendation 7
2.112 The committee recommends the exemption for payments relating to personal and private transactions be provided for directly in the bill.
Recommendation 8

2.113 Contingent on the above recommendations, the committee recommends the bill be passed.

Senator Slade Brockman
Chair
Australian Greens - Dissenting report

The cure is worse than the cash

Surveillance capitalism

1.1 A fundamental characteristic of most market economies is the ability to use hard currency to buy and sell goods and services. In Australia, it’s written on the notes: 'This Australian note is legal tender throughout Australia and its Territories'.

1.2 This bill challenges the primacy of cash and, in doing so, the freedoms that come with it. Cash provides people with the ability to transact without trace and outside of the banking system, if they so choose. Mr Guy Rundle—hardly a raging capitalist—well explained why this is important:

...there’s the crucial link between cash—utterly impersonal—and a basic form of freedom. Simply put, there should always be a way to be untraceable to some degree in contemporary society, and the existence of cash money is crucial to that. I should be able to create a gap between a withdrawal—which can be traced—and a purchase.

Why should I want to do that? Well that’s not a pertinent question where individual freedoms are concerned. It’s simply enough that I should want to do that, and it should be possible to do so.

Money is the means of life, as things stand. To be untraceable in everyday life is a necessary separation between the public sphere and the state.1

1.3 Former Credit Suisse Director, Mr Ian Love, also explained the inherent freedoms provided by hard currency:

A peer-to-peer cash transaction holds within it a number of freedoms, these include: freedom from the need to trust the counterparty as it is an open exchange between the parties; freedom from the need for permission to trade/deal with each other; freedom from the possibility of censorship and the freedom of privacy.2

1.4 This bill chips away at these personal liberties, and it is being put forward with scant examination of the implications of doing so. The bill is being advanced on the back of the technocratic examinations of the Black Economy Taskforce. The taskforce report fails to make mention of the relationship between hard currency and personal freedoms, let alone give it any deeper consideration. Instead, it adopts a utopic view of a fully digital financial world:

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1 Guy Rundle, Why cash is still king, Crikey, 22 July 2019.
2 Blockchain Assets, Submission 41, p. 3.
Not only is cash anonymous, but it can be used without leaving an obvious audit trail. In contrast, the more we move people into the digital payment world, the more visible, traceable and reportable their transactions can be. Digital payment can also be linked to identity, both individuals and businesses, which cash cannot.³

1.5 Such sanguine views of a transparent market place are naïve and irresponsible, and are helping pave the way for surveillance capitalism. Any move towards such further scrutiny of individual transactions must be accompanied by a thorough examination of the implications for individual privacy and the impact of broader societal norms, both of which the taskforce has failed to do.

The zero lower bound

1.6 This bill cannot be viewed in isolation from two profound phenomena that are occurring within the financial world, namely: the uptake of digital payments and corresponding decrease in the use of cash; and the persistence of historically low interest rates.

1.7 Cash acts as a floor on interest rates: if people lose money by putting it in the bank, then they will keep cash instead. In response to the failure of ultra-low interest rates to stimulate demand, serious consideration is being given to abolishing cash altogether in order to facilitate negative (nominal) interest rates.

1.8 The advent of electronic banking has made this idea possible. For example, a 2018 International Monetary Fund Working Paper considered:

…the practical feasibility of recent proposals for decoupling cash from electronic money to achieve a negative yield on cash which would remove the lower bound constraint on monetary policy.⁴

1.9 Negative interest rates are a seriously radical policy, and are the dead end of a broken capitalist system designed to perpetuate a debt crisis created by banks pumping cheap money into asset speculation. Banning cash to prop up the bubbles is not the answer to ongoing economic malaise.

1.10 The Black Economy Taskforce report states that ‘we are not yet calling for the abolition of cash’, but does suggest:

The Government could consider lowering the cash payment limit of $10,000 once it has been in operation for a while to ensure that smaller cash payments are also restricted.⁵

1.11 In other words: ‘We like the idea and here’s the next step towards it.’

³ Department of the Treasury, Black Economy Taskforce Final Report, October 2017, p. 49.


⁵ Department of the Treasury, Black Economy Taskforce Final Report, October 2017, p. 55.
1.12 Again, such an untroubled and carefree perspective provides little reassurance that the full raft of the potential consequences of this bill—and forecast future changes—has been considered.

**Cash never crashes**

1.13 Another underexplored aspect of this bill, and any furtherance on it, are the access implications of restriction on the use of cash.

1.14 In the immediate term, this bill presents a problem for many elderly and for migrant communities, some of whom hoard cash rather than use banks. The Australian Funeral Directors Association have given a particularly vivid account of the impact that this bill could have on such people at a particularly upsetting and saddening moment in their lives:

> …our role is to make it easier for client families when they have suffered a loss, when they are numb and when they are feeling the helplessness associated with the loss of a loved one, probably the most difficult time in their life. Our role as funeral directors is to help people. It’s to say yes rather than no to requests. It’s to provide flexibility to people who need flexibility at that vulnerable time.⁶

1.15 It’s easy to conjure up a scenario: An elderly migrant man dies. His wife, who has no bank account of her own, goes to pay for his funeral in cash. Instead, she is told by the funeral director: ‘Sorry. You’ll have to make an electronic payment.’

1.16 Again, the Black Economy Taskforce, in their techno-utopic rapture, gave no examination to this issue in their report.

1.17 In the long term, the access issues associated with the abolition—or nearabolition—of cash are much bigger. The adoption of a fully electronic financial system cannot be blind to the fact that computers can crash and that systems can be hacked. To the extent that this bill is a further step towards a fully electronic banking system, this issue needs more examination.

**If you’re actually interested in tax avoidance and money laundering...**

1.18 Undoubtedly, many cash transactions of $10,000 or more are designed to avoid tax and a lesser number are designed to launder money. It follows that banning large cash transactions will have the effect of curbing this end of the black economy, although the government has failed to provide much by way of quantification of the likely benefit.

1.19 But it is worth noting that, as a general rule, the adoption of digital payment platforms has not stopped—and has in fact turbocharged some—nefarious financial transactions the world over. From facilitating payment to paedophiles to shifting wealth into offshore tax havens, digital payment

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⁶ Mr Andrew Pinder, National President, *Committee Hansard*, 12 December 2019, p. 17.
platforms have been an enabler rather than a preventer of the movement of illicit money.

1.20 If this government was actually serious about tax avoidance and money laundering, then there’s plenty it could do to demonstrate this, including by better regulating digital financial transactions. It’s hard to escape the idea that by chasing the small stuff, this government is trying to hide the fact that they have allowed the big-end of town to continue to avoid tax and launder money on a wholesale scale.

1.21 On tax avoidance, this government has:

• repealed the requirement for the largest private companies to undertake the most basic public reporting;
• opposed the requirement for some of the oldest private companies to undertake the most basic public reporting;
• abandoned a commitment to establish a public register of beneficial owners for companies;
• failed to introduce a worldwide gearing ratio that would eliminate the practice of multinationals artificially inflating their deductions through thin capitalisation;
• continued to award contracts to companies who are involved in egregious acts of tax avoidance;
• continued to keep secret the details of settlements between the ATO and companies challenging their tax bill; and
• continued to allow discretionary trusts to undertake income splitting so that high income earners can reduce their tax bill.

1.22 On money laundering, this government has failed to act on what is universally understood to be the big problem: the exemption for real estate agents, accountants and lawyers from having to report under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Australia is now one of only six countries in the world not to have closed this loophole, alongside the United States, China, Mongolia, Madagascar and Mauritius.7

1.23 This government has failed to close the property loophole despite:

• the Explanatory Memorandum to the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 forecasting a ‘second tranche’ of legislation that would include real estate agents, accountants and lawyers as designated services under the Act;
• in April 2016, the Government releasing the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 which

recommended that the Government develop options to regulate real estate agents, accountants and lawyers under the Act;

- the Financial Action Task Force’s April 2015 *Mutual Evaluation Report* on Australia’s progress in combatting money laundering and terrorist financing stating that Australia is an attractive destination for foreign proceeds of crime, particularly corruption-related proceeds flowing into real estate; and

- the December 2017 OECD Phase 4 Report on Australia’s implementation of the OECD Anti-Bribery Convention recommending that Australia address the risk that the real estate sector could be used to launder the proceeds of foreign bribery.

1.24 Austrac estimates that $1 billion in suspicious transactions flowed through the Australian property market from just one country, China, in just one year, 2016. But Austrac is hamstrung because it has little oversight of the three professions that most facilitate this activity.

Strict liability

1.25 Beyond the problems with the substantive policy in this bill, the proposal to establish strict liability offences for the use of cash is extraordinarily heavy-handed. The Law Council of Australia explains:

> This ban exposes front line staff of retail and wholesale business operations, potentially including large numbers of low paid and unskilled employees, to criminal consequences for conduct within the scope of their employment and which they may have no control over, without regard to the ML/TF [money laundering and terrorism financing] risk and other circumstances of the transaction underlying the offence, or the individual’s role in it.8

1.26 The establishment of a strict liability offence effectively reverses the onus of proof. In the case of restrictions on cash transactions, CPA Australia explains why a strict liability offence is particularly problematic:

> For the strict liability offence, the defence of ‘honest and reasonable mistake of fact’ is challenging to argue given that cash ... cannot be mistaken for anything else.9

Conclusion

1.27 This bill is a classic case of the cure being worse than the disease. By criminalising the use of legal tender, and by taking a rose-coloured view of a world without cash, this government is blithe to the fundamental freedoms provided by hard currency, and is instead laying down a path towards surveillance capitalism and negative interest rates.

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9 CPA Australia, *Submission 67*, p. 4.
1.28 This government should drop this bill and start doing what is needed to tackle the wholesale tax avoidance and money laundering that makes anything that this bill might stop look like child’s play.

Recommendation 1

1.29 This bill should be opposed

Senator Peter Whish-Wilson
Senator for Tasmania
Appendix 1
Letter from the Assistant Treasurer

THE HON MICHAEL SUKKAR MP
Minister for Housing and Assistant Treasurer

Ref: MSI 9-002928

Chair Senate Economics
Legislation Committee
Parliament House

Dear Chair,

I am writing in relation to the Currency (Restrictions on the Use of Cash) Bill 2019 which has been referred to the Senate Economics Legislation Committee with a report date of 7 February 2020.

As you are aware the Bill introduces a cash payment limit for making or accepting cash payments of $10,000 or more from 1 January 2020. As the Committee is due to report on the Bill after the commencement date of 1 January 2020, I can advise there is no intention for the cash payment limit to apply retrospectively.

A new commencement date for the cash payment limit will be determined following consideration of the Senate Committee’s report.

I have copied this letter to the Prime Minister and the Treasurer.

Yours sincerely,

The Hon Michael Sukkar MP
Appendix 2
Submissions, tabled documents and additional information

Submissions
1  Mr Frank Bernabei
2  Name Withheld
3  Mr David Campbell
4  Mr Glenn Seymon
5  Mr John Olle
6  Name Withheld
7  Name Withheld
8  Mr Colin Herbertson
9  Name Withheld
10 Name Withheld
11 Name Withheld
12 Mr Daniel Burgess
13 Mr Simon Brownbridge
14 Mr Tony Brett
15 Name Withheld
16 Ms Debra Drinan
17 Mr Carolus Broers
18 Civil Liberties Party
19 Ms Poh Lim
20 Mr Martin Honzatko
21 Ms Lyn Manson
22 Mr Robert Johnson
23 Mr Owen Riddy
24 Name Withheld
25 Name Withheld
26 Mr Robert Ardill
27 Mr Jordan Ralph
28 Mr James McPhillips
29 Dr Susan Robinson
30 Mr Phil Collins
31 mHITs Limited
32 Ms Carla Harvey and Ms Leslie Harvey
33 Mr Allan Clark
34 Name Withheld
35 Australian Taxpayers' Alliance
36 Mr Patrick Russell
Mr David Patterson
Name Withheld
Mr Mustafa Al Assadi
Australian Funeral Directors Association Limited
Blockchain Assets
Freelancer.com
Name Withheld
Mr Michael Stanmore
Mr Timothy Box
Digital Finance Analytics
Mr Graeme Drew
Dr Gal Strasberg
Mr Angus Thompson
Ms Cynthia Hannam
Mr Graeme Plant
Ms Marie Baring
Ms Leone Lelliott
Ms Joyce Oerlemans
Ms Lina Zielinski
Mr Ian Lloyd
Adams Economics
NSW Farmers' Association
Ms Evy Massis
Ms Jennifer Mary Dowd
Name Withheld
Mr Adam Cooksley
Ms Deborah Kerr
Mr Ayrton Evans
Ms Penelope Bjorksten
Gumtree
CPA Australia
Confidential
Dr Wilson Sy
The Treasury
Democratic Labour Party
Professor Louis de Koker
Housing Industry Australia Ltd
Mr Hugh Nguyen-Mallen
Mr Thomas Nash
Name Withheld
Name Withheld
Mr Michael Pillifeant
Dr Hazel Moir
Chartered Accountants Australia and New Zealand
Michael Knight
Mr Ross and Mrs Elizabeth Fuller
Bianca Ciconte
Opals Association Incorporated
Mr Carl Agar
Name Withheld
Mr Gary Tofts
Mr Ralph Berry
Mr Peter Cribbett
Mr Timothy Musson
Mr Glenn Cash
Mr Robert Dring
Ms Margaret McTavish
Dr David Korchok
Mr Stephen Currie
Mr Trent Visser
Mr Neil Gravenall
Ms Debbie Gravenall
Shayne Whitehouse
Name Withheld
Name Withheld
Mr Ken Ross
Mr David Palmer
Mr Peter Seiffert
Mr Phil Robeson
Flight Centre
Ms Cheryl Padovani
Mr Steven Jones
Toni Culph
Ms Elizabeth Brett
Ms Joan James
Mr Simon Hrabe
Confidential
Ms Simone Moran
Confidential
Mr Craig Harwood
Ms Dianne West
Mr Allan Flynn
Mr Guy Bennett
Name Withheld
Name Withheld
Mr Eoin Connors
Dr Helen Stace
Answers to Questions on Notice

1. Australian Funeral Directors Association: Answer to a question taken on notice at a public hearing in Canberra on 12 December 2019 (received 17 January 2020)

2. Australian Taxpayers’ Alliance: Answer to a question taken on notice at a public hearing in Canberra on 12 December 2019 (received 20 January 2020)

3. Australian Transaction Reports and Analysis Centre (AUSTRAC): Answers to questions taken on notice at a public hearing in Canberra on 12 December 2019 (received 23 January 2020)

4. The Treasury: Answers to questions taken on notice at a public hearing in Canberra on 12 December 2019 (received 24 January 2020)

5. Adams Economics: Answer to a question taken on notice at a public hearing in Sydney on 30 January 2020 (received 3 February 2020)

6. The Treasury: Answer to a question taken on notice at a public hearing in Sydney on 30 January 2020 (received 3 February 2020)

7. The Treasury: Answer to a question taken on notice at a public hearing in Sydney on 30 January 2020 (received 25 February 2020)
Tabled Documents

1  Tabled document: Reserve Bank of Australia - Opening Statement by Tony Richards from a public hearing on 12 December 2019

2  Tabled document: Adams Economics - Additional documents provided by John Adams from a public hearing on 30 January 2020
Appendix 3
Public hearings

Thursday, 12 December 2019
Committee Room 2S1
Parliament House
Canberra

Australian Small Business and Family Enterprise Ombudsman
  • Dr Craig Latham, Deputy Ombudsman
  • Ms Alexandra Hordern, Director, Advocacy

Australian Taxpayers’ Alliance
  • Ms Emilie Dye, Policy Director
  • Mr Brian Marlow, Executive Director

NSW Farmers’ Association
  • Ms Kathy Rankin, Policy Director—Rural Affairs & Business Economics & Trade
  • Mr Peter Wilson, Chair, Business, Economics and Trade Committee

Australian Funeral Directors Association Limited
  • Mr Andrew Pinder, President

Uniting Church in Australia
  • Dr Mark Zirnsak, Senior Social Justice Advocate

Law Council of Australia
  • Mr Andrew Ham, Member, Financial Services Committee

Reserve Bank of Australia
  • Mr Anthony Richards, Head of Payments Policy
  • Mr Richard Finlay, Senior Manager, Analysis and Policy, Note Issue Department

AUSTRAC
  • Ms Kathryn Haigh, National Manager Legal and Policy (General Counsel)
  • Mr Richard Chin, National Manager Intelligence

The Treasury
  • Mr Chris Leggett, Principal Adviser, Law Design Office
  • Mr Patrick Boneham, Division Head, Black Economy Division
Australian Taxation Office
- Mr Michael Hardy, Assistant Commissioner, Intelligence and Assessment Centre, Integrated Compliance
- Mr Peter Holt, Assistant Commissioner, Program Lead—Black Economy, Small Business

Thursday, 30 January 2020
Portside Centre
207 Kent Street
Sydney

Flight Centre
- Mr Brett Anderson, Enterprise Risk General Manager

Adams Economics
- Mr John Adams, Principal Economic Analyst

Malkara Consulting
- Mr Chris Douglas, Director

Chartered Accountants Australia and New Zealand
- Ms Susan Franks, Senior Tax Advocate
- Mr Michael Croker, Tax Leader—Australia

The Treasury
- Mr Chris Leggett, Principal Adviser, Law Design Office
- Mr Patrick Boneham, Division Head, Black Economy Division

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