

Will Australia Get A Cash Transaction Limit?

Michelle Bradshaw, Special Counsel at Ash St. Legal & Advisory provides her views on the Currency (Restrictions On The Use Of Cash) Bill 2019, what it means and its potential implications both socially and for the Australian economy.

The Commonwealth Government recently released the Currency (Restrictions on the Use of Cash) bill 2019 for consultation, as its response to the Black Economy Taskforce's Final Report. The bill would implement a cash transaction limit which would ban transactions valued at \$10,000 or more from being carried out in cash, unless an exemption applies.

The bill has received little mainstream media coverage over the last month despite being a significant change in the way people will be able to use physical currency within the Australian economy. Few people seem aware that cash transaction limits in Europe can be as low as €1000 within the union¹ and, for those who question whether that could happen in Australia, calls for the cash limit to be lowered to \$5000 or \$2000 have already started even before the bill has passed into law.²

A number of concerns have been raised about the cash transaction limit including an individual's right to privacy, the personal freedom aspect of being able to transact in legal tender, the susceptibility of electronic transactions to IT outages and aging IT infrastructure as previously acknowledged by APRA and the combined impact of a cash transaction limit and negative interest rates.³ Many argue cash is an important safety switch for the Australian economy.

In terms of the drafting of the bill, serious questions remain:

- Why implement a cash payment limit when there is a lack of empirical evidence that the approach will be effective?⁴
- Why hasn't a cost benefit analysis been provided with the draft bill?
- Why has the Commonwealth Government used the heavy-handed penalty of imprisonment which is possibly inconsistent with similar legislation in Europe?
- Why hasn't the Commonwealth Government addressed transaction costs and fees on digital transactions at the same time, an issue also raised in the Black Economy Taskforce's Final Report?

A particularly concerning aspect of the bill relates to its practical application. In an example detailed in the explanatory memorandum, an individual selling a car in what they believed to be a private transaction would still need to search the ABN register to assure themselves that the person purchasing the car was not purchasing it for use in a business. Failing to take such due diligence steps would mean the individual would be unable to avail themselves of the private transaction exemption.⁵ This requirement does not seem like a practical or workable outcome for the general public.

¹ p 55 Chapter 3, *Black Economy Taskforce Final Report* (October 2017), <https://www.evz.de/en/consumer-topics/buying-goods-and-services/shopping-in-the-eu/cash-payment-limitations/>;

² <https://www.afr.com/politics/cash-payment-limits-of-5000-or-2000-proposed-in-black-economy-crackdown-20180629-h121r0>

³ *Report on the debate regarding EU cash payment limitations*, Passas N, *Journal of Financial Crime* 2018 Vol 25 No 1 pp 5-27; <https://www.afr.com/business/banking-and-finance/apra-warns-banks-on-it-underinvestment-and-messy-data-20180924-h15rh8>; <https://wolfstreet.com/2018/09/07/credit-cardholders-bank-customers-british-airways-lloyds-tsb/> <https://www.youtube.com/watch?v=WqXUbKl75x4>

⁴ https://ec.europa.eu/info/sites/info/files/economy-finance/com_2018_483_f1_report_from_commission_en_v4_p1_981536.pdf; <https://wolfstreet.com/2018/07/30/the-eu-backs-off-its-war-on-cash-heres-why/>; Passas N, *Report on the debate regarding EU cash payment limitations*, *Journal of Financial Crime* 2018 Vol 25 No 1 pp 5-27

⁵ p4, *Exposure Draft Explanatory Materials*.

Alternative approach

It is unclear why the Commonwealth Government did not instead opt for a UK style high value dealers regime⁶, where businesses wishing to accept more than \$10,000 in cash could be required to register with AUSTRAC or another government entity. This type of requirement could be built into the existing AML/CTF regime and utilise the extensive powers already available to AUSTRAC. In fact, reporting entities are already required to report unusual activity relating to potential evasion of tax law to AUSTRAC under the suspicious matter reporting requirements in the AML/CTF legislation. The information is then available to the Commissioner of Taxation through the information sharing arrangements in that legislation.⁷

Why now?

Some commentators are also very concerned at the timing of the Government's move. An IMF blog and working paper both issued in 2019 claim that the use of cash in an economy is a direct impediment to negative interest rates.⁸

"In a cashless world, there would be no lower bound on interest rates. A central bank could reduce the policy rate from, say 2 per cent to minus 4 percent to counter a severe recession. The interest rate cut would transmit to bank deposits, loans and bonds. Without cash depositors would have to pay the negative interest rate to keep their money with the bank, making consumption and investment more attractive."

In the last two weeks the Reserve Bank of Australia has acknowledged that all options are on the table to deal with a financial downturn including negative interests⁹ and the ASX is currently preparing its systems for trading in products with negative interest rates.¹⁰ It is timely to remember that there are many socially beneficial reasons for saving including for retirement, the loss of employment, education and for unexpected expenses.

Next steps

Although the consultation period has now closed, those with strong views either way on the proposed bill can still contact their Members of Parliament ahead of the vote on the bill expected to be in early September.

⁶ <https://www.gov.uk/guidance/money-laundering-regulations-high-value-dealer-registration>

⁷ Section 41, AML/CTF Act 2006.

⁸ <https://blogs.imf.org/2019/02/05/cashing-in-how-to-make-negative-interest-rates-work/>

⁹ <https://www.abc.net.au/news/2019-08-09/reserve-bank-cuts-economic-forecasts-again/11399576>

¹⁰ <https://www.msn.com/en-my/finance/topstories/australia-e2-80-99s-asx-preparing-for-negative-interest-rate-trading/ar-AAEn9ly>, www.bloomberg.com/amp/news/articles/2019-07-15/australia-s-asx-prepares-for-negative-interest-rate-trading

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Michelle is a governance, compliance and regulation expert who has worked in both the private sector for banking institutions and in the public sector for start-up government entities setting up and leading legal and compliance functions.

She has extensive experience in AML/CTF compliance including working on the implementation of AML/CTF programs in organisations of various sizes and complexity.

In various roles, Michelle has accrued a considerable amount of experience managing engagement with regulators and other government and non-government stakeholders. She also has significant experience advising on and negotiating complex finance transactions including 11 years' experience as a lawyer and consultant for a leading international law firm. Michelle is a Fellow of the Governance Institute of Australia.