13 August 2019

Manager - Black Economy Division
Treasury
Langton Crescent
Parkes ACT 2600

Attention: Mr Patrick Boneham
Email: Patrick.Boneham@treasury.gov.au

Dear Patrick

Currency (Restrictions on the Use of Cash) Bill 2019

Chartered Accountants Australia and New Zealand (CAANZ) welcomes the opportunity to comment upon the exposure draft legislation and accompanying explanatory material to implement the economy-wide cash payment limit.

CAANZ strongly supports measures that effectively restrict the ability of people to participate in the black economy. We have received no adverse feedback from our members.

Our main comments are as follows:

1. Ideally, the proposed legislation could be improved by applying the $10,000 cash payment limit to **all** payments not just payments made to or by businesses. Taking such an approach would make the law easier to enforce, make it harder for black economy participants to operate and reduce red tape. We appreciate the practical difficulties involved however in educating a broader segment of the population.

2. The $10,000 cash payment limit is high. This limit was initially chosen to provide consistency with anti-money laundering legislation. CAANZ is supportive of a lower cash payment limit in the near future given community and business uptake of non-cash payments.

3. Crypto currency is an obvious substitute for cash and can also offer the same anonymity. Numerous government websites[1] already offer warnings that crypto currency is increasingly being used by black economy participants. Excluding cryptocurrency from these reforms will only supercharge its use by the black economy. Ideally, crypto currency should be subject to these provisions as well and work should begin towards that goal.

[1] For example - https://www.moneysmart.gov.au/investing/investment-warnings/virtual-currencies

If you wish to discuss our comments, please contact Susan Franks on 0401 997 342 or via email at susan.franks@charteredaccountantsanz.com

Yours sincerely

Michael Croker
Tax Leader - Australia
Chartered Accountants Australia and New Zealand

Appendix A

Detailed submission

Background

This legislation has arisen from the acceptance by the government of recommendation 3.1 of the Black Economy Taskforce's final report. Recommendation 3.1 was that:

> "The Government should introduce a cash payment limit that removes the ability of any individual or business to make a single transaction in cash in excess of $10,000. The limit should apply to all payments made to businesses for goods and services. Transactions in excess of this amount would need to be made through the banking system."

The government agreed to introduce a cash payment limit of $10,000 on payments made to businesses and undertook to consult regarding the most effective way to implement this measure and on the need for exemptions.

Restricting cash payments is an important initiative as it makes it more difficult for participants in the black economy to benefit from their activities. Black economy participants generally prefer the use of cash due to its anonymity. Cash allows them to both conduct their operations and to convert their proceeds into other assets, for example luxury cars, boats and homes. Restricting the amount of cash that can be used for payment will not eliminate the black economy, no one measure will ever do that, but it does make the life of enforcement agencies just that little bit easier as it should force black economy participants to interact with systems that have greater levels of scrutiny.

In considering this measure it is important to consider how it fits into the package of other black economy recommendations that were largely accepted by the government and are in the process of being implemented. Consideration also needs to be given to a number of developments since the release of the final report of the black economy taskforce.

Use of cash as a store of value

The interim report of the black economy taskforce noted, at page 20, that "while the use of cash as a means of payment has been declining, overall demand for cash in Australia has been rising, particularly for high denomination notes. Combined, the hundred-and fifty-dollar bills accounted for 92 per cent of the value of bank notes in circulation as at the end of November 2016. There is limited data on the use of cash for transactions and other purposes, including as a store of value and to facilitate illegal activity."

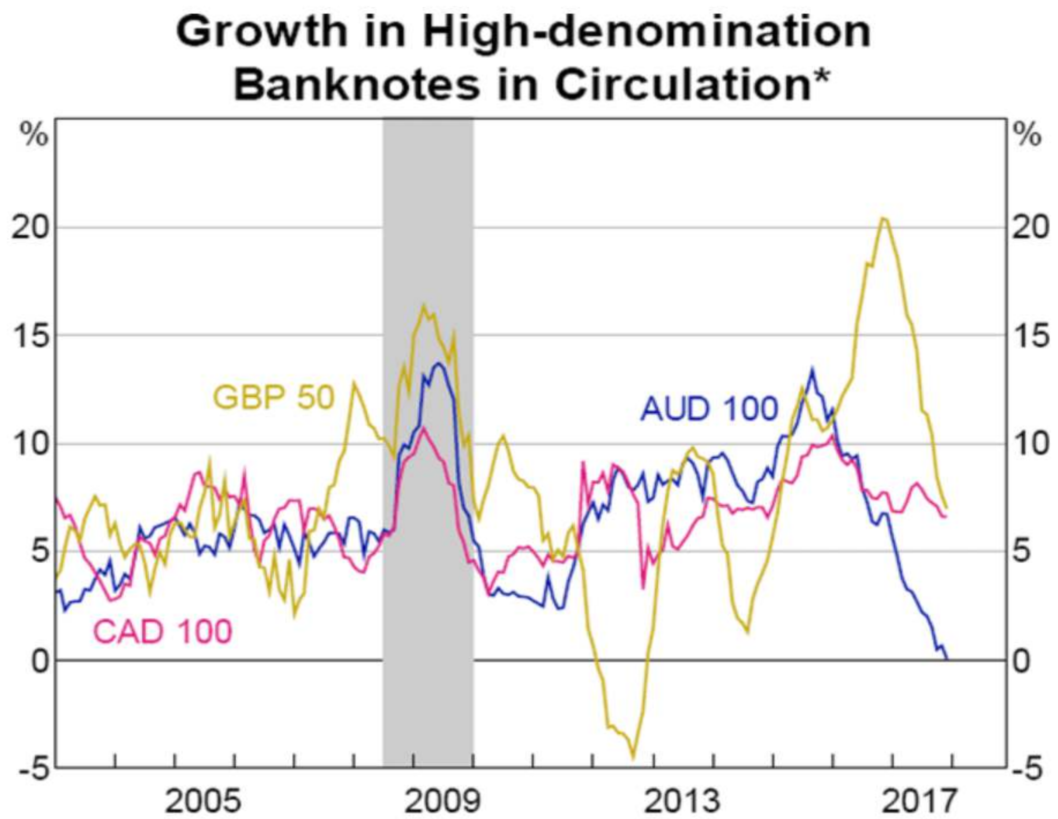
The concern that cash was being used to operate and store value for black market activities resulted in the taskforce making recommendation 3.6 that "the RBA [Reserve Bank of Australia] should undertake research, in conjunction with government agencies, financial intermediaries and others, to develop a better understanding of the use, role and location of the $50 and $100 notes." The government supported this recommendation.

In December 2018, the RBA released an [article](#) about its review of how bank notes are used. Using very conservative estimates the RBA stated:

> "Our estimates suggest that between roughly $3½ and $6 billion worth of Australian banknotes are used in the shadow economy, split between underground production ($2½ - $4 billion), purchases of illegal drugs (around $1 billion), and storing the profits of criminal activity (up to $1 billion). This represents between 4 and 8 per cent of all banknotes on issue."
>
> "The hoarding of profits from criminal activity may also be higher than suggested by the estimation techniques that we employ."

The black economy taskforce also floated, but did not endorse, the idea of eliminating $100 notes. It is interesting to note that the [RBA](#) observed a considerable decline in the growth of demand for $100 as a result of the black economy taskforce's consideration.

Anecdotal evidence suggests the $100 note is still commonly seen in a few industries such as fruit and vegetable markets, building and construction and gambling.



New payments platform

When the Black Economy Taskforce recommended that the cash payment limit apply only to business transactions the new payment platform (NPP) had not been implemented. The final report of the Taskforce had noted that the NPP was a game changer and that the limit could be extended to consumers once the NPP had appropriate coverage.

> "*The New Payments Platform (NPP) will take time to bed down and develop, but is a potential game changer. When operational it will replicate some of the features of cash, including the capacity for peer-to-peer transfer of value and instantaneous settlement. Depending on how it is used, it could also put downward pressure on card interchange fees and other card costs."*

Australians have been rapidly moving away from cash. RBA figures that were produced before implementation of the NPP demonstrate this movement[2]. We can only expect that this movement would have increased further given the launch of the NPP.

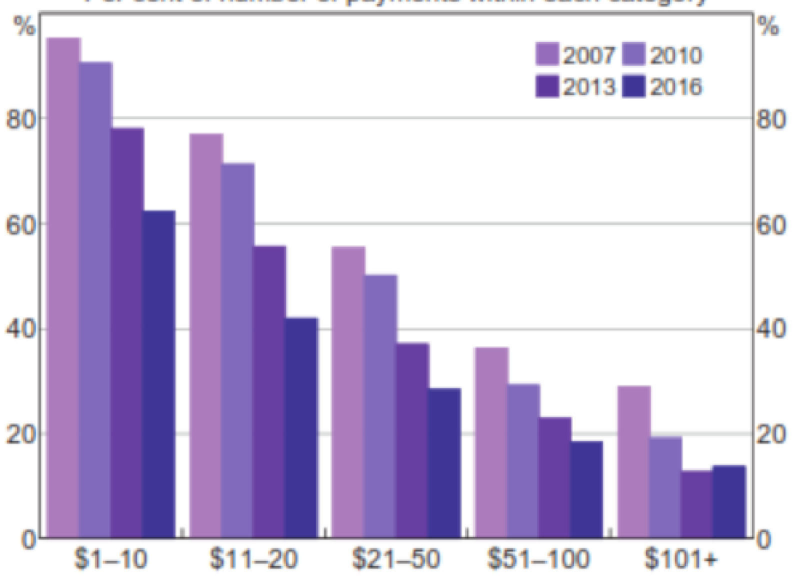
Table 1: Consumer Payment Methods[a]
Per cent of number of payments

	2007	2010	2013	2016
Cash	69	62	47	37
Debit, credit/charge cards	26	31	43	52
BPAY	2	3	3	2
Internet/phone banking	na	2	2	1
PayPal	na	1	3	3
Cheque	1	1	0.4	0.2
Other[b]	1	1	2	4

(a) Excluding payments over $9 999
(b) 'Other' methods would include prepaid, gift and welfare cards, bank cheques, money orders, Cabcharge, and other online payment methods apart from PayPal (e.g. POLi)
Sources: Colmar Brunton; Ipsos; RBA; Roy Morgan Research

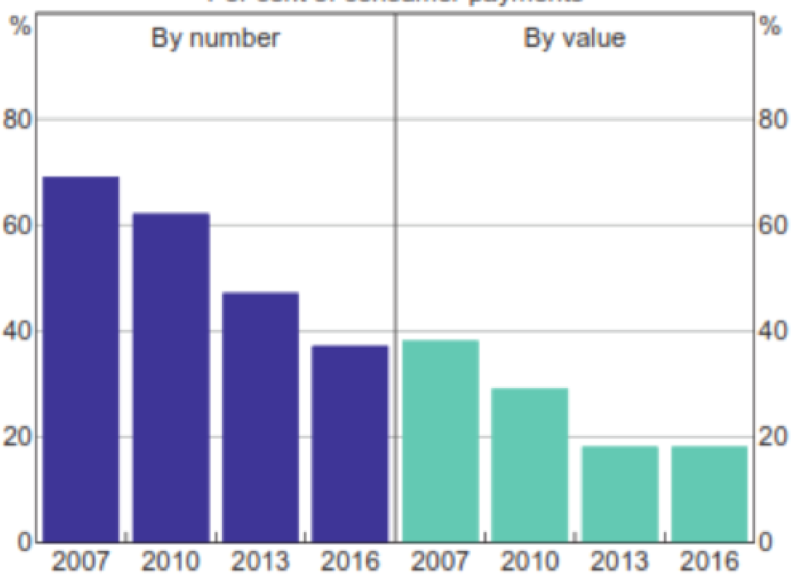
[2] It should be noted that these are for amounts under $9,999. It would be reasonable to expect that cash is used even less for amounts over $9,999.

Graph 2
Cash Payments by Size
Per cent of number of payments within each category



Sources: Colmar Brunton; Ipsos; RBA; Roy Morgan Research

Graph 1
Cash Payments
Per cent of consumer payments



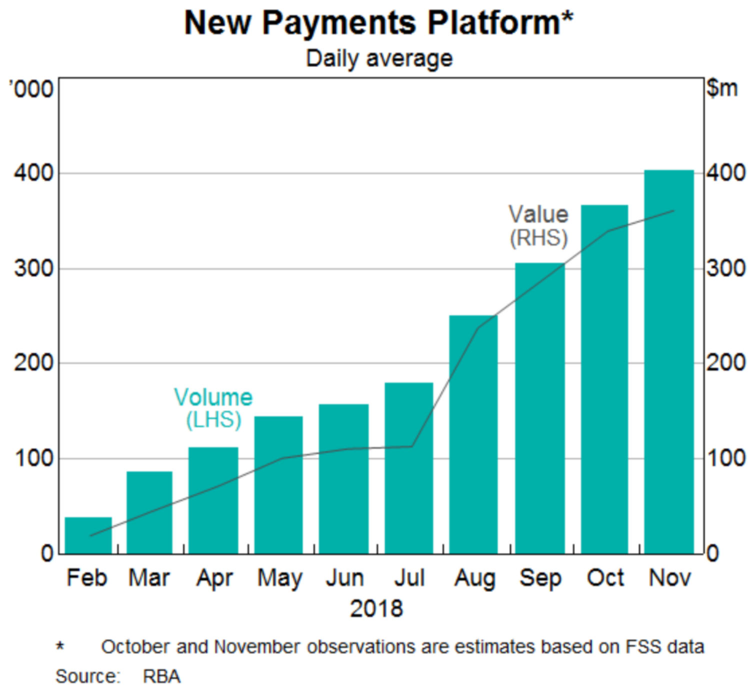
Sources: Colmar Brunton; Ipsos; RBA; Roy Morgan Research

RBA numbers also indicate that the value of cash payments is even less and that the most common type of cash payment is for less than $101.

Most small transactions can be made by electronic transfer these days, even for what might be described as private purposes. For example, class collections for a year end school teachers present are no longer need to be generated by cash contributions but involve electronic payments and an app to send a personalised message to the teacher on a card. Churches also accept electronic donation for regular contributions and also irregular ones. Businesses that have been traditionally cash only (such as growers markets) are now accepting electronic payment[3]. Latest available data for Australia is that 98.86 per cent of Australians aged 15 and over have an account at a formal financial institution[4].

Since its launch, the take up of the NPP has been rapidly increasing. This is despite some of the big 4 banks being slow in taking up the NPP. As the major banks come on board, these numbers can only increase.

Graph 5



3 Participants often use square which can be bought for under $60 and charges 1.9% per transaction.
4 World Bank, Global Financial Development Database, 2017.

Business payments

Given the changes in consumer preferences and the increasing relative prices of cash transactions governments should be embracing rather than resisting the prospect of a near cash-free world. This will ensure that those who seek to use cash as a means to operate in the black economy, in part because of the anonymity it provides due to the lack of a clear audit trail, will find it more expensive and difficult to do so. The move away from cash will also capture the efficiency and integrity improvements provided by non-cash transactions.

The advantage of having an economy wide, rather than a business wide, cash payment limit includes:

- Reduction in red tape – The current legislation only applies to those that have an Australian Business Number. By applying the same rules to everyone, the legislation can be simpler, easier to understand and reduce uncertainty about when it applies. It would also be easier for the Government to communicate this law change.
- Easier to enforce – By having a blanket ban, there will be less elements to prove and make it easier for law enforcement agencies to apply the law.
- Make it harder for black economy participants to operate – Black economy participants can convert their cash to other assets through consumer to consumer transactions as well as consumer to business or business to consumer.

Arguments against an economy wide cash payment limit have been that there are segments of the population that have a strong preference for cash. RBA analysis of the use of cash in Australia indicates that those that have a strong preference for cash are the poor, elderly and regional Australians. The RBA analysis of cash payments indicates that the vast majority of cash payments are used for less $100 which is substantially less than $10,000. It is unlikely that a $10,000 limit would affect the poor or the elderly although we appreciate the additional efforts that would be required to educate the community.

There may also be broader benefits in discouraging vulnerable members of the community from hoarding cash in circumstances which expose them to theft and the attendant personal harm which may occur. It is noted that the legislation has exemptions for exceptional circumstances which has the potential to cover lack of internet coverage in regional areas to engage in digital transfers.

$10,000 limit

The Black Economy Taskforce clearly articulated that the $10,000 limit:

- Was a starting point and that such a high amount was chosen so that there would be alignment between the limit on cash transactions and the anti-money laundering and counter terrorism financing provisions.

- Should be reduced along with the reporting requirements of and the anti-money laundering and counter terrorism financing provisions.

Transacting by cash involves costs and Australians are substantially reducing their use of cash quickly. CAANZ is supportive of a lower cash payment limit in the near future

Cryptocurrencies

Common sense would indicate that if there are limitations on the use of cash then those participating in the black economy will look for other currency substitutes that have little documentation. Cryptocurrency would be a reasonable substitute.

The exposure draft legislation does not extend to cryptocurrencies. The exposure draft states that this position has been adopted as:

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

Cryptocurrency and the black economy

Despite the draft explanatory materials stating that there is little evidence that digital currency is presently being used in Australia to facilitates black economy activities, a number of government websites contain statements to the contrary. For example, ASIC's web site recognises the role of cyptocurrency in the black economy. It states:

> *"The relatively anonymous nature of digital currencies has made them very attractive to criminals, who may use them for money laundering and other illegal activities. Digital currencies are a popular choice of payment for transactions conducted on the dark web."*

Similar warnings are issued globally. For example:

- The US Library of Congress has conducted a survey of the legal and policy landscape of cryptocurrencies in 130 countries. The report states that:

  "Many of the warnings issued by various countries also note the opportunities that cryptocurrencies create for illegal activities, such as money laundering and terrorism. Some of the countries surveyed go beyond simply warning the public and have expanded their laws on

money laundering, counterterrorism, and organized crimes to include cryptocurrency markets, and require banks and other financial institutions that facilitate such markets to conduct all the due diligence requirements imposed under such laws. For instance, Australia, Canada, and the Isle of Man recently enacted laws to bring cryptocurrency transactions and institutions that facilitate them under the ambit of money laundering and counter-terrorist financing laws."

- The Financial Action Task Force has stated that "the threat of criminal and terrorist misuse of virtual assets is serious and urgent, and the FATF expects all countries to take prompt action to implement the FATF Recommendations in the context of virtual asset activities and service providers."[5]

There have also been reports[6] of crypto currency businesses being shut down by AUSTRAC due to alleged links to organised crime.

Regulation

The argument that there is not a firmly established regulatory framework does not mean that it cannot, or should not, be regulated. Nor does it mean that regulation will necessarily stifle innovation.
On 3 April 2018 AUSTRAC commenced regulation of digital currency exchanges[7]. A digital currency exchange is any service that involves the exchange of cash to cryptocurrency or cryptocurrency to cash.

A PwC article[8] considered the impact of this regulation and made the following comments:

- Within the first fortnight of implementation four of the seven DCEs operating in Australia received licences

- "Even crypto-to-crypto exchanges which are excluded from the new laws are likely to be impacted as it would still be possible to track a user's information on a crypto-to-crypto exchange if the initial fiat-to-currency transaction occurred on an AML/CTF regulated exchange."

- "Whilst some jurisdictions pose more minimum regulatory requirements on cryptocurrency platforms, the overall global landscape is changing. Under the European Union's Fourth Anti-Money Laundering Directive (4AMLD) passed in June 2107, member states will have 18 months to begin AML/CTF regulatory oversight for cryptocurrency transactions. The US, Taiwan, Vietnam, India and many other jurisdictions have also passed, or are in the process of passing, laws that implement AML/CTF regulations for DECs. Some jurisdictions are taking an even harder stance. In January 2018, South Korea banned all anonymous cryptocurrency trading. China has seen the mass exodus of DCEs and in February 2018 released an AML regulatory framework that will apply not just to DCEs but also to cryptocurrency miners and wallets."

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[5] https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html
6 https://www.itnews.com.au/news/austrac-suspends-two-crypto-exchanges-after-arrest-520295
[7] Anti-Money Laundering and Counter-Terrorism Financing Act 2016 amendments
[8] https://www.pwc.com.au/legal/assets/legaltalk/new-amlctf-regulations-cryptocurrency-exchanges-23apr18.pdf

It does not seem appropriate to ignore cryptocurrency until it becomes a significant issue. It would be appropriate to regulate it now in line with global trends and work should commence towards that end. Prohibiting cash transactions above $10,000 but permitting those using digital currency creates a displacement risk – where criminal activity moves to less regulated areas.

Appendix B

Chartered Accountants Australia and New Zealand

CA ANZ is made up of over 120,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.
Members of CA ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.