

TREASURY MINISTERIAL SUBMISSION

16 August 2019

PDR No. MS19-001766

Minister for Housing and Assistant Treasurer

cc: Treasurer

**ECONOMY WIDE CASH PAYMENT LIMIT (CPL) – EXPOSURE DRAFT
LEGISLATION CONSULTATION OUTCOMES**

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Signature: /...../2019

- Consultation on draft legislation for the introduction of the CPL has concluded. The following key issues were raised in targeted stakeholder consultations and submissions (refer to **Attachment A**):
 - Commencement date: Businesses are concerned a 1 January 2020 commencement date provides insufficient time to ensure processes, point of sale systems and staff training are in place and updated to be compliant with the CPL.
 - Criminal offence: Stakeholders expressed concern about the inclusion of a strict liability offence and the criminalisation of contraventions of the CPL.
 - Responsible gambling laws: Gambling entities are subject to state and territory responsible gambling laws that heavily restrict the use of electronic payments making it difficult for these entities to comply with CPL.
 - Structuring of payments: Concerns were raised around the ability of individuals and businesses to structure transactions to circumvent the CPL, rendering it less effective than the current AUSTRAC rules.

Addressing concerns

- Stakeholders are concerned they are unable to meet the 1 January 2020 commencement date. Without an accompanying government campaign to raise community awareness of the change, businesses would also be required to educate their customers in respect of the new laws.

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- Contravention of the CPL includes a strict liability offence (as well as a recklessness offence) and carries with it a criminal penalty. The strict liability offence is necessary to ensure that businesses take steps to make themselves compliant with the CPL. To reduce the regulatory burden there will be no reporting regime accompanying the CPL which removes any ability to impose an administrative or civil offence. The value of imposing a criminal sanction is largely in its deterrent value.
 - Prosecutions for breaching the CPL will likely only occur as part of a broader investigation. For example, where a person is prosecuted for tax fraud and investigations discover breaches to the CPL, a prosecution may arise.
- Treasury recommends maintaining the strict liability offence. It is the only means available to ensure the necessary behavioural and cultural change to give effect to the announced policy. Treasury will work with industry to develop appropriate guidance material to assist businesses to be compliant with the CPL.

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- Subject to your approval, Treasury will amend the draft legislation and seek your final approval of the Bill ahead of its introduction on 19 September 2019.
 - Treasury has received over 3,500 submissions during the two week public consultation period. Over 3,400 of these submissions are part of a campaign by the Citizens Electoral Council. We are liaising with your office on these submissions.

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Consultation: Law Design Office, Department of Home Affairs, Department of the Prime Minister and Cabinet and Tax Analysis Division

ADDITIONAL INFORMATION

Background

- On 28 July 2019, the Government released Exposure Draft legislation consisting of the Currency (Restrictions of the Use of Cash) Bill 2019, the Currency (Restrictions on the Use of Cash) (Consequential Amendments and Transition Provisions) Bill 2019, and the Currency (Restrictions on the Use of Cash – Excepted Transactions) Instrument 2019 for public consultation.

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- Treasury, together with a representative from DHA, conducted targeted stakeholder consultations in Canberra, Melbourne and Sydney where AUSTRAC reporting entities raised the majority of concerns while other businesses indicated broad support but said the current commencement date of 1 January 2020 is too ambitious.

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ATTACHMENT A – SUMMARY OF CONSULTATION

Treasury has received over 3,500 submissions during the two week public consultation period on the exposure draft legislation for the cash payment limit (CPL). Treasury held roundtables with stakeholders in Canberra, Sydney and Melbourne and conducted targeted confidential consultations with key stakeholders, including with the casinos.

A breakdown of submissions received

- 17 submissions from industry associations, businesses, advisory services and a charity.
 - Hai Ha Money Transfer (remittance provider), Chartered Accountants Australia and New Zealand, Australian Remittance and Currency Providers Association, Star Entertainment Group, Australian Dental Association, FinTech Australia, Accentuate Data, La Trobe Law School, Uniting Church in Australia § 47E(d) CPA Australia, the Law Society of NSW, NSW Young Lawyers, Australian Banking Association, KPMG, Housing Industry Association and Australian Bookmakers Association.
- Around 30 submissions from individuals.
- Around 3,500 campaign related submissions that disagree with the CPL. The general theme from the campaign is the CPL will restrict the storage and use of cash and reduce civic freedoms.

The table below summarises key issues raised by submissions.

Table 1 Summary of consultation outcomes by key issue

Key issues	Stakeholder views
1. 1 January 2020 commencement date	<p>Delay the start date by at least 12 months. Time is necessary to educate the community that transacting with \$10,000 or more in cash will become a criminal activity. Raised by business, law experts, advisory services, industry associations and banks.</p> <p>Businesses need more time to make necessary IT system changes and train staff to implement the CPL particularly in the absence of a government funded information campaign.</p> <p>One business noted they would need to update processes and</p>

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	<p>train over 7,000 employees across Australia.</p>
<p>2. Strict liability and criminal offence</p>	<p>Concerns that businesses and individuals could be charged with a criminal offence for an activity that is currently legitimate. Stakeholders consider that only cash being used for criminal purposes should be criminalised.</p> <p>s 47E(d)</p>
<p>3. Responsible gambling laws that restrict the use of electronic payments and access to cash</p>	<p>Exempt casinos and other gambling operators from the CPL. Instead, allow them to continue to report \$10,000 or more cash transactions to AUSTRAC as threshold transaction reports (TTRs).</p> <p>Responsible gambling laws in states and territories restrict the use of electronic payment systems to purchase casino chips and</p>

	<p>gambling credits and to provide winnings. These laws also restrict cash out facilities in casinos.</p> <p>In NSW and Victorian casinos, non-premium players can pay for chips either by electronic bank transfer to a player account or cash. It is not possible to pay for chips using EFTPOS or credit facilities. Unlike cash, bank transfers are not always instantaneous and cannot be directly deposited into a player's account.</p>
<p>4. Structuring</p>	<p>Stakeholders are concerned that the CPL will make it easier for individuals and businesses to structure payments when using the services of AUSTRAC reporting entities.</p> <p>Customers who currently purchase goods with a total value of \$10,000 or more would be captured by TTR reporting to AUSTRAC.</p> <p>Under the draft Bill, a customer could break up the transaction into single cash payments for each separate good. Consequently, the CPL would have not stopped a customer from paying cash for goods and AUSTRAC would have not received intelligence.</p> <p>Some AUSTRAC reporting entities have mechanisms in place to stop customers from structuring their transactions to avoid TTR reporting. s 47E(d)</p>
<p>5. Applying the CPL on a final supply of goods and services</p>	<p>Businesses sought detailed guidance on what constitutes a supply of goods and services. Consistently raised by business, law</p>

	<p>experts, advisory services, industry associations and banks.</p> <p>Stakeholders would like industry specific guidance on what constitutes a supply of goods and services. For example, the Housing Industry Association asked for guidance to clarify whether the CPL would apply to the total contract amount or apply separately on payments tied to delivery milestones outlined in a building contract.</p> <p>Casinos consider that casino chips are vouchers rather than a good. On this basis, casinos suggest the CPL would not apply to the purchase of casino chips.</p>	
<p>6. Interaction between the CPL and reporting to AUSTRAC</p>	<p>Banks are seeking guidance on whether they will need to lodge suspicious matter reports (SMRs) if they suspect a person is structuring payments to avoid the CPL.</p> <p>AUSTRAC reporting entities are required to lodge SMRs if they suspect a person is breaking the law.</p>	
<p>7. Clarify when the exemption for transactions where no alternative payment methods applies</p>	<p>Disruption to EFTPOS, banking services and Telstra network may not allow for other payment methods to be temporarily viable.</p> <p>Bookmakers and the casinos asked whether this exemption was relevant to them as responsible gambling laws restrict the use of electronic payments.</p>	<p>Treasury will include additional examples where the exemption would apply in the explanatory memorandum.</p> <p>Treasury will clarify in the draft Instrument that the exemption will not apply in situations where entities are prevented from transacting with cash because of laws and regulations, for example in casinos where cashless payment methods are restricted because of state and territory responsible gambling laws.</p>

<p>8. Enforcement and how to report breaches of the CPL</p>	<p>There will be limited ability to enforce the CPL. The collection and provision of sufficient evidence may be difficult to allow the Commonwealth Department of Public Prosecutions (CDPP) to successfully prosecute parties who have breached the CPL.</p>
<p>9. Privacy</p>	<p>The Government will increasingly monitor transactions that impede on individuals' right to privacy. Some submissions were received from individuals who submit that they should have a right to purchase a car in cash.</p>
<p>10. Transaction costs and access to electronic</p>	<p>s 47E(d)</p>

<p>payment methods</p>	<p>s 47E(d) have advised they avoid electronic payments that attract a surcharge. Some individuals</p>
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Other concerns outside of scope

<p>Key issues</p>	<p>Stakeholder views</p>
<p>11. Cashless society</p>	<p>Money management and financial literacy would be impacted by the reduction in transactions that are able to be made in cash. Further, the CPL will be lowered and high value notes will be phased out, resulting in a cashless society that is susceptible to hacking, down-time and other risks.</p>
<p>12. Lack of time for public consultation</p>	<p>The Bill requires a referendum, postal plebiscite and/or more time for public consultation.</p>
<p>13. Negative interest rates and hoarding of cash</p>	<p>This is a preventative measure designed to restrict the hoarding and use of cash once the RBA implements a negative interest rate policy.</p>

