Blockchain Assets
· Cryptoasset Managers · Est. 2017 ·

Currency (Restrictions on the Use of Cash) Bill 2019

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Submission to Australian Treasury Department

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Introduction and Summary

My submission considers three aspects of the restrictions on Cash use in Australian society.

1. Human Rights and the importance of Cash to freedom and liberty.

2. The exemption for 'Digital Currency' and Australia's position in the world relative to the development of peer-to-peer transactional technology for asset registration.

3. The juxtaposition of the privacy of individuals and the surveillance State and surveillance capitalism.

In my readings of the Black Economy Taskforce Report (October 2017) I did not see any significant consideration of the human rights aspects of the use of Cash. Part 1 of our submission sets out the case for the use of Cash as an instrument of freedom and that as a free society we need to consider freedom as a priority because once freedoms are lost they are seldom recovered.

Part 2 recognises the exemption for 'Digital Currency'. This exception demonstrates an intention by the Government to find a balance in legislation which counters the black economy without stifling innovation. However, there are two issues of concern with the exception. First is the way the exception if given, which is by Legislative Instrument, which means the exception can be removed by the Treasurer without having to go through the full rigour of the parliamentary process. Secondly, this uncertainty will make the whole blockchain/cryptoasset sector uninvestable for Australian based ventures. I put forward the case that Digital Currency should be excluded from the Bill altogether.

In Part 3 I set out a vision for a future where the privacy of individuals is the paramount consideration and where lite touch artificial intelligent surveillance systems can do what they need to do to counter black economy activity without compromising the freedom of individuals.

Part 1 - Cash as Freedom

When referring to Cash here I mean Physical Currency and Digital Currency. Much of what I set out below is a summary of an excellent report [1] prepared by Washington DC based non-for-profit advocacy group, Coin Center. [2]

Cash is Essential to a Free and Open Society

The Coin Center argues that '*Cash is more than a method of payment. It is a fundamental tool for individual privacy and autonomy, and it is necessary for an open society*.' A Cashless economy is a surveillance economy. Removing the option for individuals to freely transact without intermediation greatly limits individual economic self-determination and places societies economic lives in the hands of financial institutions and governments.

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 a 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.

The Coin Center argue that '*Cash is also necessary to retain agency and autonomy. Autonomy can be understood as the power to make decisions for oneself without interference from others. It's the ability to try things one's way, to succeed and be*

[1] https://coincenter.org/entry/e-cash-dex-constitution?source=post_page----------
[2] https://coincenter.org/entry/the-case-for-electronic-cash

rewarded, or to make mistakes and learn from them. As with personal privacy, without individual autonomy there can be no meaningful open society.'

In a world with no Cash all transactions must be intermediated by financial institutions. In this trusted position intermediaries become the owners of the most private information of individuals — this can and has lead to abuse and fraud. If there is no way to avoid intermediation there is no way to preserve privacy and without privacy there can be no freedom. Cash is an ancient technology that allows us to avoid intermediation and thus preserve individual liberty and human dignity, without cash there is no exit — no chance for the kind of dignity-preserving privacy that undergirds an open society. Cash is essential to an open society.

There are a number of uses for money that are legal but unpopular or unprofitable. For example, money is used to fund political rallies, religious lobby groups and all sorts of unpopular or controversial activities like hunting, live animal export and prostitution. It is quite possible for banks and other third party intermediaries to refuse to open accounts or process transactions if those transactions do not fit within their ethics or code of operation. Or it could just be that dealing with a country, such as Myanmar, for example, could be sufficient for refusal of service. In addition, financial institutions will only do business with those individuals from who they can make profit. In Australia we have fairly good 'financial inclusion', yet even here we have seen bank branches closure in many country towns where it is no longer considered profitable to maintain a physical presence. There are many examples where services are provided only to those who have assets and/or income over certain threshold levels. It is clear, from the Royal Commission into the Banks that they have abused their power and have failed Australia society at many levels. Indeed the Commonwealth Bank has failed to comply with the most basic of Cash reporting requirements.

The Banks failures as set out in the Report of the Banking Royal Commission, and in particular the Commonwealth Bank's failure to report Cash transactions should not then result in depriving Australia citizens of the basic freedoms afforded to them by the use of Cash.

At one level human rights is a very academic, theoretical and abstract discussion. At another it is the most basic need of every human being on the planet. Notions of freedom, liberty and democracy are not to be taken for granted and taking away the ability to transact in Cash is a significant erosion to these notions. If as a society we become 100% dependent on financial institutions to pursue lawful activities between each other, we surrender significant autonomy as individuals. Banning Cash transactions is an anathema to a free society.

The Emergence of the Cashless Society

The use of Cash is diminishing (at least in the first world) for example:

1. Nordic countries such as Sweden, Iceland and Finland use cash for less than 2% of transactions;
2. South Korea targets 2020 for phasing out paper notes and coins; and
3. China's Wechat and AliPay account for 92% of cashless transactions and overall China has gone 85% cashless (think about the data these two companies collect on their clients and then think about what they do with that data…).

The report of the Black Economy Taskforce spoke in glowing terms of the use of cashless transaction in China.

OBSERVATION: MOBILE PAYMENTS IN CHINA

Apps like WeChat, which incorporate social media and mobile payment technology, have revolutionised the way people transact in China.

People do not need to carry cash or wallets. They can use WeChat to easily and quickly pay using their mobile phone at restaurants, for street food at roadside stalls, at local fruit and vegetable markets, for petrol (without even leaving the car), to pay bills, to send mail or for a cab.

In China's largest cities, approximately 93 per cent of the population use WeChat.[2]

When considering that all such cashless transaction pass through 2-3 centralised organisation and that those organisation have backdoors to Chinese Government, far from something to be enthusiastic about, we should be making sure that the same thing does not happen in Australia. Becoming a Cashless (but third party intermediated) society is nothing to be proud of as it means that as individuals we have given up the important freedoms outlined above.

I completely understand The Reserve Bank of Australia being a fan of a cashless society, but they are a fan only so long as all transactions go through a centralised monitoring agency. In December 2018 RBA Governor Philip Lowe stated that (moving to a cashless society) ' makes a lot of sense…and is in our national interest.' I will give Governor Lowe the benefit of the doubt and assume he was talking only from a payments efficiency point of view and that he has not considered the human rights aspects of a Cashless society, they certainly do not seem to have been considered in the report on the Black Economy Taskforce. I do not think it is our national interest to give over to others our individual autonomy and I do not think it is for the Reserve Bank to say what is or is not in our national interest.

I would urge the Government, even via the Treasure Department, to seek input from Human Rights organisations relative to this topic as the treasury only view of this will naturally only consider control and compliance aspects of money and payment systems. The discussion on this seems very one sided at the moment and the decisions made now will impact the freedom and liberty of many generations to come. The below is just one of many reactions by citizens around the world, do we

really want Australia to be known as a place where freedom is not considered of paramount importance.

Part 2 - Exception for Digital Cash

The legislation is drafted specifically to include Digital Currency. However it is then carved out as an exception. The reason for the exception being :

'*The fifth exception is for payments that only exceed the cash payment limit because the transaction involves a payment that is or includes an amount of digital currency.*

The exception means that only the amount of physical currency in the payment is relevant for working out if the payment exceeds the cash payment limit.

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 in light of the current use of digital currency in the Australian economy.'

By drafting the legislation in this manner (make it illegal and then give an exception) the Government have deferred a decision on whether or not to ban cryptocurrencies, they have done this to allow themselves time to develop a position on cryptocurrencies as the technology evolves.

While I support the sentiment behind the exclusion I do not support the way it has been done. The issue I have with the way the exception is achieved is that it is done by 'Legislative Instrument'. It is possible with such instruments for the exception to be removed by the delegated party, in this case the Treasurer. That is to say that the Treasurer is able to remove the exception without having to pass any new law or amendment through the houses of parliament.

This approach is a very shallow and harmful. It is shallow because it essentially makes cryptocurrencies illegal but then gives and exception, which can be taken away at any time without going through the rigour of full parliamentary process. It is harmful to the development of the blockchain/cryptoasset industry in Australia because the threat of removing the exception hangs over the head of every entrepreneur in this space. It is quite possible that after years of development work the axe could fall with no compensation to investors and others working in the blockchain/cryptoasset space. No business person or venture backer would invest in an industry with such uncertainty. With this approach Australia runs the risk of being geofenced, excluded from the blockchain/cryptoasset industry. Already we have seen reports in Forbes magazine referring to this proposed law as *'...extreme limitation on technology and financial freedom...'* [3]

[3] https://www.forbes.com/sites/ktorpey/2019/07/30/us-lawmakers-are-realizing-they-cant-ban-bitcoin/#1d53d5513e31

It would be far better if a more proactive approach was adopted. There as a number of precedents for this, including Singapore, Switzerland, Japan, Malta, Gibraltar and the State of Wyoming in the US where they have enacted several crypto friendly acts.

It is unlike Australia to field a half baked team in an international competition yet this is what we have with this 'illegal but then excepted approach'. A better approach would be to exclude Digital Currency entirely from the *Currency (Restrictions on the Use of Cash) Bill 2019*, this would be more a positive signalling to the market. Of course it is always possible, if needed, to change legislation later, but it is slightly more difficult to amend legislation than it is to remove an exception. This subtle difference is significant and important.

Part 3 - Privacy of the Individual vs Surveillance Capitalism and the Surveillance State

Privacy Generally

The privacy system we had before the internet was as simple as a locked draw, we had no way of accessing data on a macro-scale and we held on tightly to our privacy. When the internet came we began to store our data on the internet, but the internet was not designed for privacy, it was the opposite, it was designed a system to share information and data. To combat this, data privacy laws were introduced, but such laws have exemptions for situations which are '...in the interest of national security...' furthermore corporations traded our data for a free service and build mega

enterprises based on selling our data. So called surveillance capitalism [4] has become a significant social issue which we are only just starting to comprehend.

Individuals are now in the situation where the State (for national security reasons) want access to our data and Corporations want our data (for revenue reasons). Privacy laws offer no protection from hackers and *it is not possible to overlay privacy on a inherently unprivate system, which is what we now have.*

Some people may view taking action to preserve one's privacy to be an offensive act against the State who are trying to protect citizens against harm from terrorist. This '...in the interest of national security...' argument for weakening privacy is actually the opposite.

There are a number of projects in the Blockchain Technology space that are seeking to return privacy to individuals, indeed within a few years the technology will be able to make the whole world dark again, private messaging, private electronic Cash and private records. Blockchain Technology offers possibly the last opportunity that individuals have to recapture the ownership of their private data. It cannot be overstated how important it is from a human rights perspective that this opportunity is ceased.

Privacy in Australia

In Australia we have very little privacy protection enshrined in law. Our Constitution does not specifically provide us with a right to privacy. *The Privacy Act 1988* stipulates a number of privacy rights known as the Information Privacy Principles. The principles govern when and how personal information can be collected by various government agencies. Broadly speaking State and Federal Police are not able

[4] The term Surveillance Capitalism, coined by Shoshana Zuboff, refers to the social media business model that was natively enabled by the internet, Facebook, Twitter etc. The social contract (lower case c) we have as a society is we give up our data for a free service, again this has been written about elsewhere, but this has created the largest and most valuable corporations in the world (the FANGS).

to enter and search private premises unless they have a search warrant issued by the relevant authorities. These laws protect the fundamental human right of the privacy of the individual but they are coming under stress as new technology is making access potentially more available and as threats against the security of the community are seemingly increased.

Most laws today which seek to compel the release of private data as a matter of course (without a specific warrant) relate to Know-Your-Client anti-money laundering law such as the *Cash Transaction Reports Act 1988*. Under these laws a third party (usually a bank) is required to report to the Government certain transactions.

In the world of surveillance capitalism we click to release our private data free of charge for a free of charge service.

Potential Solutions to this Conundrum

There is no question that properly authorised, transparent and accountable Government organisations should have visibility into the financial system to ensure that it does not facilitate the financing of nefarious activities. What is not clear yet, I think to anyone, is how this will be achieved in the new decentralised financial world that will be ushered in with blockchain technology. But just because we do not know yet how it will be achieved does not mean that it cannot be achieved. Many good people are working on this complex issue and it is possible a combination of machine learning, artificial intelligence and permissioned API access to data will be part of the solution. But the fundamental change has to be privacy first, permissioned access second.

One Australian providing global thought leadership in this area is New York based Michael Casey. In his recent article on this topic he provides an excellent overview of challenges and opportunities that regulators and entrepreneurs have to work

together to address the seeminging opposite objectives of privacy and visibility in the new financial world that is being built. The article can be found here [5] and I am sure Michael would be happy to elaborate further if that would help.

Conclusion

In my submission I make three requests/suggestions/comments.

1. The human rights, freedom and liberty aspects of moving to a third party intermediated cashless society do not appear to have been considered in any depth by the Block Economy Taskforce Report. Even if citizens have not pressed for inclusion of such considerations in the report and in this draft legislation, it should be on the Government's list of matters to consider. It is not a trivial matter but one of national importance because decisions made now will impact the quality of freedom and liberty that will be enjoyed by generations to come. The entire Bill should be dropped and other methods considered to counter the financing of nefarious activities.

2. The exception for Digital Currency will kill the blockchain industry in Australia, funding will be impossible with such an overhang of doubt. No industry would proceed with the knowledge that what they are doing could be made illegal at the discretion of a public servant (the Treasurer in this case), or even if it was by an act of parliament. The recommendation, as a minimum, is that Digital Currencies be excluded from the Bill. At a maximin it is recommended that pro-active legislation (like that in the State of Wyoming in the US) be adopted at national level in Australia.

3. A task force be developed to work jointly with industry on initiatives which allow for personal privacy at base level with only properly justified, authorised,

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5 https://www.coindesk.com/perverse-outcomes-fatf-bitcoin-and-financial-exclusion?utm_source=twitter&utm_medium=coindesk&utm_term=&utm_content=&utm_campaign=Organic%20

transparent and accountable Government organisations having visibility into the new financial system.

There are many individuals and projects which could help the Australian Government with the regulatory challenges of this evolving technology and it needs to be recognised that some of these leaders are not based in Australia, this is a global technology and global issue. I would be happy to provide a list of people who I believe are leading the developments in this area and could form part of a task force.

- END -