

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Currency (Restrictions on the Use of Cash) Bill 2019

No. , 2019

(Treasury)

**A Bill for an Act to restrict the use of cash in
transactions, and for related purposes**

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1 **A Bill for an Act to restrict the use of cash in**
2 **transactions, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act is the *Currency (Restrictions on the Use of Cash) Act*
8 *2019*.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2020.	1 January 2020

- 7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

- 10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Object**

- 14 (1) The object of this Act is to prevent the use of cash in economic
15 activities in order to avoid the scrutiny of regulatory authorities.

16 Note: Examples of illicit activities that can be facilitated by large cash
17 payments include money laundering, fraud, bribery, obtaining
18 financial advantage by deception, and tax evasion.

- 19 (2) This object is to be achieved by making it an offence for an entity
20 to make or accept cash payments that are equal to or that exceed
21 the cash payment limit, unless the transaction is expressly
22 exempted under this Act. Instead, for such cash payments, entities
23 will need to make use of more transparent payment methods.

24 **4 This Act binds the Crown**

- 25 (1) This Act binds the Crown in each of its capacities.
-

1 (2) This Act does not make the Crown liable to be prosecuted for an
2 offence.

3 **5 Extension to external territories**

4 This Act extends to every external territory.

5 **6 Definitions**

6 In this Act:

7 **cash** means either or both of the following:

- 8 (a) digital currency;
9 (b) physical currency.

10 **cash payment limit**: see section 7.

11 **digital currency** has the meaning given by the *Anti-Money*
12 *Laundering and Counter-Terrorism Financing Act 2006*.

13 **entity** has the meaning given by the *Income Tax Assessment Act*
14 *1997*.

15 Note: Subsection 960-100(1) of the *Income Tax Assessment Act 1997*
16 provides that entity means any of the following:

- 17 (a) an individual;
18 (b) a body corporate;
19 (c) a body politic;
20 (d) a partnership;
21 (e) any other unincorporated association or body of persons;
22 (f) a trust;
23 (g) a *superannuation fund;
24 (h) an *approved deposit fund.

25 Asterisked terms are further defined in the *Income Tax Assessment Act*
26 *1997*.

27 **physical currency** has the meaning given by the *Anti-Money*
28 *Laundering and Counter-Terrorism Financing Act 2006*.

29 **supply** has the meaning given by section 9-10 of the *A New Tax*
30 *System (Goods and Services Tax) Act 1999*.

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Part 1 Preliminary

Section 7

1 *value*, in relation to cash, has a meaning affected by section 8.

2 **7 Meaning of *cash payment limit***

3 For this Act, the *cash payment limit* is \$10,000.

4 **8 Value of cash—foreign currency and digital currency**

5 For the purposes of this Act, the value in Australian currency of an
6 amount of cash paid in foreign currency or digital currency is to be
7 worked out in accordance with the method prescribed, by
8 legislative instrument, by the Minister.

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1 **Part 2—Offences**

2 **Division 1—Offences in relation to cash payments**

3 **9 Simplified outline of this Division**

4 This Division creates offences for making or accepting certain cash
5 payments for supplies.

6 **10 Offence—Cash payments in excess of cash payment limit (strict
7 liability)**

8 *Single payment that exceeds cash payment limit*

- 9 (1) An entity commits an offence if:
10 (a) the entity:
11 (i) makes a payment to another entity; or
12 (ii) accepts a payment from another entity; and
13 (b) the payment is or includes an amount of cash; and
14 (c) the value of the cash equals or exceeds the cash payment
15 limit.

16 Penalty: 60 penalty units.

- 17 (2) Strict liability applies to paragraphs (1)(b) and (c).

18 Note: For strict liability, see section 6.1 of the *Criminal Code*.

19 *Series of payments that exceeds cash payment limit*

- 20 (3) An entity commits an offence if:
21 (a) the entity:
22 (i) makes a payment to another entity; or
23 (ii) accepts a payment from another entity; and
24 (b) the payment is part of a series of payments that are made for
25 a supply or as a gift; and
-

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Part 2 Offences

Division 1 Offences in relation to cash payments

Section 11

- 1 (c) the payment is or includes an amount of cash; and
2 (d) as a result of the payment, the total value of all amounts of
3 cash included in the payments in the series equals or exceeds
4 the cash payment limit.

5 Penalty: 60 penalty units.

- 6 (4) Strict liability applies to paragraphs (3)(c) and (d).

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

8 *Exception—kinds of transactions to which this section does not*
9 *apply*

- 10 (5) Subsections (1) and (3) do not apply to a payment that is:

- 11 (a) of a kind specified by the Minister by legislative instrument;
12 or
13 (b) made in circumstances specified by the Minister by
14 legislative instrument; or
15 (c) accepted in circumstances specified by the Minister by
16 legislative instrument.

17 Note 1: A defendant bears an evidential burden in relation to the matters in
18 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

19 Note 2: The Minister may specify different circumstances for paragraphs (b)
20 and (c). For example, a circumstance might relate to the state of mind
21 of the person who accepts the payment and be specified for
22 paragraph (c).

23 Note 3: The Minister may specify different matters for the purposes of this
24 section and section 11.

25 *Jurisdiction*

- 26 (6) Section 15.2 (extended jurisdiction—category B) of the *Criminal*
27 *Code* applies to an offence against subsection (1) or (3).

28 **11 Offence—Cash payments in excess of cash payment limit**

29 *Single payment that exceeds cash payment limit*

- 30 (1) An entity commits an offence if:
-

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- 1 (a) the entity:
2 (i) makes a payment to another entity; or
3 (ii) accepts a payment from another entity; and
4 (b) the payment is or includes an amount of cash; and
5 (c) the value of the cash equals or exceeds the cash payment
6 limit.

7 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

8 *Series of payments that exceeds the cash payment limit*

- 9 (2) An entity commits an offence if:
10 (a) the entity:
11 (i) makes a payment to another entity; or
12 (ii) accepts a payment from another entity; and
13 (b) the payment is part of a series of payments that are made for
14 a supply or as a gift; and
15 (c) the payment is or includes an amount of cash; and
16 (d) as a result of the payment, the total value of all amounts of
17 cash included in the payments in the series equals or exceeds
18 the cash payment limit.

19 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

20 *Exception—kinds of transactions to which this section does not*
21 *apply*

- 22 (3) Subsections (1) and (2) do not apply to a payment that is:
23 (a) of a kind specified by the Minister by legislative instrument;
24 or
25 (b) made in circumstances specified by the Minister by
26 legislative instrument; or
27 (c) accepted in circumstances specified by the Minister by
28 legislative instrument.

29 Note 1: A defendant bears an evidential burden in relation to the matters in
30 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

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Part 2 Offences

Division 1 Offences in relation to cash payments

Section 11

1 Note 2: The Minister may specify different circumstances for paragraphs (b)
2 and (c). For example, a circumstance might relate to the state of mind
3 of the person who accepts the payment and be specified for
4 paragraph (c).

5 Note 3: The Minister may specify different matters for the purposes of
6 section 10 and this section.

7 *Jurisdiction*

8 (4) Section 15.2 (extended jurisdiction—category B) of the *Criminal*
9 *Code* applies to an offence against subsection (1) or (3).

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Offences **Part 2**
[To be inserted] **Division 2**

Section 11

1 **Division 2—[To be inserted]**
2
3

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Part 3 Miscellaneous

Section 12

Part 3—Miscellaneous

12 Treatment of entities other than individuals, bodies corporate and bodies politic

- (1) This Act applies to an entity that is not a person as if it were a body corporate, but with the changes set out in this Part.

Application of the Criminal Code

- (2) Division 12 of the *Criminal Code* applies as if references in that Division to a body corporate were instead to the entity.
- (3) For the purposes of the application of Division 12 of the *Criminal Code* under subsection (2), an entity (the **first entity**) is taken to be an agent, employee or officer of another entity (the **second entity**) if:
- (a) the first entity is acting on behalf of the second entity; or
 - (b) both of the following apply:
 - (i) the first entity is carrying on activities that have duties, powers or authority that are similar to those of an agent, employee or officer of a body corporate;
 - (ii) if the second entity were a body corporate, a reasonable person would consider that, the first entity was an agent, employee or officer of the second entity.

13 Vicarious criminal liability

- (1) Subject to subsection (2), an offence that would otherwise be committed by an entity listed in column 1 of the table to this subsection, including by reason of this subsection, is taken to have been committed by the entity, or each entity, listed in column 2.

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Vicarious criminal liability

Item	Column 1	Column 2
1	a partnership	each partner
2	an unincorporated association or body of persons other than a partnership	each member of the association's or body's committee of management
3	a trust	(a) if the trust has a single trustee—the trustee; and (b) if the trust has 2 or more trustees—each trustee
4	a superannuation fund	(a) if the fund has a single trustee—the trustee; and (b) if the fund has 2 or more trustees—each trustee; and (c) if the fund does not have a trustee—the entity or entities that manage the fund

1 *Defence to vicarious criminal liability*

- 2 (2) A person does not commit an offence because of subsection (1) if
3 the person:
4 (a) did not aid, abet, counsel or procure the relevant act or
5 omission; and
6 (b) was not in any way knowingly concerned in, or party to, the
7 relevant act or omission (whether directly or indirectly and
8 whether by any act or omission of the entity).

9 Note: A defendant bears an evidential burden in relation to the matters in
10 subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

11 **14 Enforcement of fines**

- 12 (1) This section applies in relation to a person who has been convicted
13 of an offence under this Act as a result of the operation of
14 section 13.
15 (2) The penalty may be enforced against the assets of the relevant
16 entity referred to in column 1 of the table to subsection 13(1).

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Part 3 Miscellaneous

Section 15

- 1 Note: See section 15A of the *Crimes Act 1914* for the enforcement of fines.
- 2 (3) Subject to subsection (4), before imposing a fine on a person for an
3 offence under this Act that can be enforced against the assets of an
4 entity mentioned in column 1 of the table in subsection 13(1), a
5 court must take into account the financial circumstances of the
6 entity, including its assets, in addition to any other matters that the
7 court is required or permitted to take into account.
- 8 (4) Nothing in subsection (3) prevents a court from imposing a fine on
9 a person because the financial circumstances of the entity cannot
10 be ascertained by the court.
- 11 (5) Subsection (3) does not affect subsection 16C(1) of the *Crimes Act*
12 *1914*.

13 **15 Saving of other laws**

14 This Act is not intended to exclude or limit the operation of any
15 other law of the Commonwealth or any law of a State or Territory.