

# EXPOSURE DRAFT



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## Currency (Restrictions on the Use of Cash— Excepted Transactions) Instrument 2019

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I, Michael Sukkar, Assistant Treasurer, make the following legislative instrument.

Dated 2019

Michael Sukkar [DRAFT ONLY—NOT FOR SIGNATURE]  
Assistant Treasurer

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## Part 1—Preliminary

### 1 Name

This instrument is the *Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019*.

### 2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

### 3 Authority

This instrument is made under the *Currency (Restrictions on the Use of Cash) Act 2019*.

### 4 Definitions

In this instrument:

**acquire** has the same meaning as in the *A New Tax System (Goods and Services) Tax Act 1999*.

**AML/CTF reporting entity** means a reporting entity within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**carry on** has the same meaning as in the *A New Tax System (Goods and Services) Tax Act 1999*.

**enterprise** has the same meaning as in the *A New Tax System (Goods and Services) Tax Act 1999*.

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## Part 1 Preliminary

### Section 4

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**local governing body** means a local governing body established by or under a law of a State or Territory.

**real property** includes:

- (a) any interest in or right over land; or
- (b) a personal right to call for or be granted any interest in or right over land;  
or
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land.

**the Act** means the *Currency (Restrictions on the Use of Cash) Act 2019*.

Note: Expressions have the same meaning in this instrument as in the Act as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

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Payments excepted from the cash payment limit **Part 2**

Section 5

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## Part 2—Payments excepted from the cash payment limit

Note: This instrument specifies the payment for which the cash payment limit in Division 1 of Part 2 of the Act does not apply. Division 1 of Part 2 of the Act makes it an offence to make a payment of cash above prescribed limits.

### 5 Payments relating to personal or private transactions

- (1) For the purposes of subsections 10(5) and 11(3) of the Act:
  - (a) a payment is specified if the payment is solely for one or more supplies or acquisitions each of which is *not* made in the course or furtherance of an enterprise being carried on; and
  - (b) the following circumstances relating to the making of a payment are specified—the entity making the payment reasonably believes that the making of the payment is solely for one or more supplies or acquisitions each of which is *not* made in the course or furtherance of an enterprise being carried on; and
  - (c) the following circumstances relating to the acceptance of a payment are specified—the entity accepting the payment reasonably believes that accepting the payment is solely for one or more supplies or acquisitions each of which is *not* made in the course or furtherance of an enterprise being carried on.
- (2) However, subsection (1) does not cover a payment that relates, in whole or in part, to the supply or acquisition of real property.

### 6 Certain payments involving AML/CTF reporting entities

- (1) For the purposes of subsections 10(5) and 11(3) of the Act:
  - (a) the following circumstances relating to the making of a payment are specified—the payment forms part of a transaction for which an AML/CTF reporting entity is required to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction by section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and
  - (b) the following circumstances relating to the acceptance of a payment are specified—the payment forms part of a transaction for which an AML/CTF reporting entity is required to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction by section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Note: The exception includes transactions involving the supply of certain financial services provided by entities with reporting obligations.

- (2) However, subsection (1) does *not* cover a payment that forms part of a transaction if:
  - (a) the AML/CTF reporting entity is required under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* to be enrolled on the Reporting Entities Roll; and
  - (b) the AML/CTF reporting entity is not so enrolled; and

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## Part 2 Payments excepted from the cash payment limit

### Section 7

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- (c) the entity making or accepting the payment knew, reasonably suspected, or ought to have known, that the AML/CTF reporting entity was not so enrolled.

### 7 Certain payments involving public officials in the performance of their duties

For the purposes of subsections 10(5) and 11(3) of the Act, a payment that meets all of the following is specified:

- (a) the payment is made from or to a public official;
- (b) the public official reasonably believes that making or accepting the payment of cash is necessary for the performance of their duties in accordance with a law of the Commonwealth, a State or a Territory;
- (c) the public official is not accepting the cash solely for the discharge of a debt owed to the Commonwealth, State, Territory, or local governing body.

Example 1: This exception would include a payment to or from police, security or intelligence officers in course of an authorised operation.

Example 2: This exception would also include a payment to or from officials of the Reserve Bank of Australia or Royal Australian Mint issuing currency in accordance with a law of the Commonwealth.

### 8 Payments involving cash-in-transit providers

For the purposes of subsections 10(5) and 11(3) of the Act, a payment that meets all of the following is specified:

- (a) the payment results from only one or more of the following:
  - (i) collecting cash from a party to a transaction (for which the payment forms part); or
  - (ii) holding cash collected on behalf of a party to a transaction (for which the payment forms part); or
  - (iii) delivering cash to a party to a transaction (for which the payment forms part);
- (b) the collecting, holding, or delivering is undertaken in the course of carrying on an enterprise of:
  - (i) collecting cash from entities; and
  - (ii) delivering cash to entities;
- (c) if that collecting, holding, or delivering were disregarded, no remaining payment would contravene the Act.

### 9 Payments of digital currency

For the purposes of subsections 10(5) and 11(3) of the Act, a payment that meets all of the following is specified:

- (a) the payment includes, in whole or in part, a payment of digital currency;
- (b) if that payment of digital currency were disregarded, no remaining payment would contravene the Act.



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Payments excepted from the cash payment limit **Part 2**

Section 10

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## **10 Payments where no non-cash payment method is reasonably available**

For the purposes of subsections 10(5) and 11(3) of the Act, a payment that meets all of the following is specified:

- (a) the parties to a transaction, for which the payment forms part, are unable to make one or more payments using a method of payment that does not involve the use of cash (*non-cash payment method*);
- (b) the inability to use a non-cash payment method is not due to a choice of one or both parties, unless the choice was reasonable in all the circumstances in view of the financial or other costs faced by the party or parties;
- (c) it would not be reasonably practicable for the payment to be delayed until a non-cash payment method can be used.

Example: A remote town is severely affected by flooding. The flooding has shut down all telecommunications services in the area and prevents most transport out of the town. To obtain supplies, the people of the town pool all of their available cash, the total of which exceeds \$10,000. This cash is then paid to a single community member who has been nominated to travel to a nearby town to purchase emergency supplies. This exception would apply to that payment.