

EXPOSURE DRAFT



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Currency (Restrictions on the Use of Cash) Rules 2019

I, Michael Sukkar, Assistant Treasurer, make the following rules.

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) Rules 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Note: This table relates only to the provisions of this instrument as originally made.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

Note: Expressions have the same meaning in this instrument as in *Currency (Restrictions on the Use of Cash) Act 2019* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

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*.

Australian government agency has the same meaning as in the *Income Tax Assessment Act 1997*.

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

FTR reporting entity means:

- (a) an entity covered by either paragraph (c) or (h) of the definition of ***cash dealer*** in section 3 of the *Financial Transaction Reports Act 1988*; and

Note 1: Paragraph (c) of the definition covers a motor vehicle dealer acting as an insurer or insurance intermediary.

Note 2: Paragraph (h) of the definition covers an entity that carries on a business of issuing, selling or redeeming travellers cheques.

- (b) a solicitor, a solicitor corporation or a partnership of solicitors.

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

public official includes:

- (a) an officer, employee or member of an Australian government agency; and
- (b) a person performing services for, and on behalf of, an Australian government agency.

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*.

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Value of cash—foreign currency and digital currency **Part 2**

Section 5

Part 2—Value of cash—foreign currency and digital currency

5 How to work out the value of foreign currency in Australian currency

For the purposes of the Act, the value in Australian currency of an amount of cash paid in foreign currency is to be worked out in the same manner as the manner determined by the Commissioner of Taxation, from time to time, under subsection 9-85(2) of the *A New Tax System (Goods and Services) Tax Act 1999*.

Note: Section 9 of the Act provides that a method for working out the value in Australian currency of an amount of cash paid in foreign currency may be prescribed in these rules.

6 How to work out the value of digital currency in Australian currency

For the purpose of the Act, the value in Australian currency of an amount of cash paid in digital currency is to be worked out in the same manner as the manner determined by the Commissioner of Taxation, from time to time, under subsection 9-85(2) of the *A New Tax System (Goods and Services) Tax Act 1999*.

Note: Section 9 of the Act provides that a method for working out the value in Australian currency of an amount of cash paid in digital currency may be prescribed in these rules.

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Part 3 Payments not subject to the cash payment limit

Section 7

Part 3—Payments not subject to the cash payment limit

Note: This Part specifies the circumstances in which payments are not subject to the cash payment limit in Part 2 of the Act, which prohibits a payment of cash if the amount of the payment is at or above the cash payment limit.

7 Payments relating to personal or private transactions

Payments for supplies and acquisitions

- (1) For the purposes of subsections 12(5) and 13(3) of the Act:
 - (a) a payment that is solely for one or more supplies or acquisitions, each of which is *not* made in the course or furtherance of carrying on an enterprise, is specified; and
 - (b) the following circumstances relating to the making of a payment are specified—the entity making the payment reasonably believes that it is making the payment solely for one or more supplies or acquisitions each of which is *not* made in the course or furtherance of carrying on an enterprise; and
 - (c) the following circumstances relating to the acceptance of a payment are specified—the entity accepting the payment reasonably believes it is accepting the payment solely for one or more supplies or acquisitions each of which is *not* made in the course or furtherance of carrying on an enterprise.
- (2) However, subsection (1) does not cover a payment that relates, in whole or in part, to the supply or acquisition of real property.

Payments that are gifts

- (3) For the purposes of subsections 12(5) and 13(3) of the Act:
 - (a) a payment made solely as a gift, and *not* made in the course or furtherance of carrying on an enterprise, is specified; and
 - (b) the following circumstances relating to the making of a payment are specified—the entity making the payment reasonably believes it is making the payment solely as a gift *not* made in the course or furtherance of carrying on an enterprise; and
 - (c) the following circumstances relating to the acceptance of a payment are specified—the entity accepting the payment reasonably believes it is accepting the payment solely as a gift *not* made in the course or furtherance of carrying on an enterprise.

8 Certain payments involving AML/CTF reporting entities

- (1) For the purposes of subsections 12(5) and 13(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 by section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* to give the Chief Executive

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Payments not subject to the cash payment limit **Part 3**

Section 9

Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction; 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 by section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction.

Note: Section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* requires the reporting of transactions relating to certain supplies of financial services, bullion and gambling services above \$10,000.

- (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
 - (c) if the entity is *not* the AML/CTF reporting entity—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.

9 Certain payments involving FTR reporting entities

- (1) For the purposes of subsections 12(5) and 13(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 FTR reporting entity is required by subsection 7(1) or 15A(1) of the *Financial Transaction Reports Act 1988* to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction; and
 - (b) the following circumstances relating to the acceptance of a payment are specified—the payment forms part of a transaction for which an FTR reporting entity is required by subsection 7(1) or 15A(1) of the *Financial Transaction Reports Act 1988* to give the Chief Executive Officer of the Australian Transaction Reports and Analysis Centre a report of the transaction.

Note 1: Section 7 of the *Financial Transaction Reports Act 1988* requires the reporting by motor vehicle dealers acting as insurance intermediaries, and businesses dealing with travellers cheques, of all transactions above \$10,000.

Note 2: Section 15A of the *Financial Transaction Reports Act 1988* requires the reporting by solicitors of all transactions above \$10,000.

- (2) However, subsection (1) does *not* cover a payment that forms part of a transaction if:
 - (a) the entity is *not* an FTR reporting entity; and
 - (b) the entity making or accepting the payment knew, reasonably suspected, or ought to have known, that a report of the transaction was not going to be given to the Chief Executive Officer of the Australian Transaction Reports

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Part 3 Payments not subject to the cash payment limit

Section 10

and Analysis Centre as required by the *Financial Transaction Reports Act 1988*.

10 Certain payments involving public officials in the performance of their duties

- (1) For the purposes of subsections 12(5) and 13(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:
 - (i) the making or accepting of the payment is in the performance of their duties in accordance with a law of the Commonwealth, a State or a Territory; and
 - (ii) the making or accepting of the payment in cash is necessary for the proper performance of those duties;
 - (c) in the case of a payment being made to a public official—the public official is *not* accepting the cash solely for the discharge of a debt owed to the Commonwealth, a State, a Territory, or a 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 public officials of the Reserve Bank of Australia or Royal Australian Mint issuing Australian currency in accordance with a law of the Commonwealth.

- (2) For the purposes of subsections 12(5) and 13(3) of the Act, a payment that meets all of the following is specified:
- (a) the payment is made from or to an Australian government agency;
 - (b) the payment consists of foreign currency produced by an Australian government agency for, or on behalf of, a foreign country.

11 Payments involving cash in transit providers

For the purposes of subsections 12(5) and 13(3) of the Act, a payment that meets all of the following is specified:

- (a) the payment results only from one or more of the following:
 - (i) collecting cash from a party to a transaction (of which the payment forms part); or
 - (ii) holding cash collected on behalf of a party to a transaction (of which the payment forms part); or
 - (iii) delivering cash to a party to a transaction (of which the payment forms part);
- (b) that 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.

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Payments not subject to the cash payment limit **Part 3**

Section 12

12 Payments of digital currency

For the purposes of subsections 12(5) and 13(3) of the Act, a payment that meets all of the following is specified:

- (a) the payment is or includes a payment of digital currency;
- (b) if the digital currency were disregarded, the payment would *not* contravene the Act.

13 Payments where no non-cash payment method is reasonably available

- (1) For the purposes of subsections 12(5) and 13(3) of the Act, a payment that meets all of the following is specified:
 - (a) the parties to a transaction, of 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 (*a 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 having regard to the objects of the Act and the financial or other costs faced by the party or parties making the choice;
 - (c) it would not be reasonably practicable, having regard to the objects of the Act, 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.

- (2) However, paragraph (1)(b) is not satisfied if the inability to use a non-cash payment method is due to a law of the Commonwealth, a State or a Territory preventing or limiting the use of a non-cash payment method.