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Black Economy Division
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Introducing an Economy-Wide Cash Payment Limit

The Housing Industry Association (HIA) would like to provide the following comments in relation to the consultation paper released in May responding to the Government's announcement and the recommendation of the Black Economy Taskforce to introduce an economy-wide cash payment limit of \$10,000 prohibiting cash payment for business to business transactions of more than \$10,000.

HIA has actively participated in the work of the Black Economy Taskforce and we support the Government's intention to address areas of tax leakage and avoidance. With respect to this specific option we believe that the current proposal will potentially have little effect on tax leakage and criminal activities associated with large cash payments. The proposal will however adversely affect legitimate and compliant cash transactions.

The already declining use of cash payments, existing reporting requirements for cash transactions over \$10,000 and the difficulties associated with enforcement of the proposed cash payment limit, provides little justification for the adoption of additional measures. Furthermore, imposing such a limit on the residential building industry is considered unnecessary in light of other current regulatory arrangements that address business payments and tax reporting.

The residential building industry is one of the most heavily regulated sectors in the Australian economy. Across all jurisdictions those operating in the industry must comply with, amongst other things, various licencing, contractual and financial requirements that have direct implications for the method of obtaining payments. Additionally, financial institutions have become a quasi-regulator of progress payments for residential building work.

In the context of the black economy, the areas of concern are likely to be two-fold and may involve payments of less than \$10,000, rather than over \$10,000.

The first relates to small building work that is more one-off and involves a builder or trade contractor.

The second relates to cash payments that may occur in relation to residential building work managed by owner-builders where a range of contractors are used for individual work that may be under \$10,000 in value and subject to cash payments. Of note, owner-builders are not subject to the regulatory obligations imposed on licenced and registered builders across the country.

While HIA sees the need to manage tax leakage from large value cash transactions, given the current regulatory arrangements, such transactions in the residential building industry are rare. As such a cautious approach should be taken moving forward with this proposal.

The Residential Building Industry

In the residential building industry there is ample incentive and regulatory requirements to properly account for and record all transactions, whatever form they may take.

Within the residential building industry, the majority of businesses seek to correctly meet their tax obligations in relation to the administration of their finances.

Due to existing regulatory and other limits on residential building work, it is considered that, outside of work undertaken by owner-builders, where the value of work exceeds \$10,000 is it likely to be recorded and paid electronically or by cheque therefore the payment of taxation is likely to be correctly administered for the amounts received and expended.

Licencing and insurance

In order to carry out residential building work of a certain value all jurisdictions except Tasmania require that the builder obtain warranty insurance. Warranty insurance is unique to the residential building industry and, broadly speaking, provides a safety net for consumers in circumstances where a builder is no longer available to complete the residential building work, for example they have died, disappeared or have become bankrupt/insolvent.

Similarly, a licence must also be obtained to carry out residential building work of a certain value. The table below outlines the various warranty insurance and licence thresholds across the country.

	Warranty Insurance Project Threshold	Licence Requirement Project Threshold
QLD	\$3,300	\$3,300
NSW	\$20,000	\$5,000
VIC	\$16,000	\$5,000
SA	\$12,000	Nil
WA	\$20,000	\$20,000
NT	\$12,000	\$12,000
ACT	\$12,000	Nil
TAS	Nil	\$20,000

While the systems vary, obtaining warranty insurance and a builder's licence requires that certain financial requirements be met and disclosed.

For example, in order to obtain warranty insurance in NSW a builder must apply for and be granted eligibility, without which residential building work cannot be undertaken. This involves providing evidence of a builder's:

- technical capabilities,
- history,
- financial performance, and
- equity exposed to the building operations.

In terms of a builder's financial performance, a range of measures are considered including the level of working capital (i.e. assets able to be converted to cash in next 30 days to meet all current liabilities), trading losses over any of the past 9 months, businesses closures and insolvencies or a probability of insolvent trading, actual and projected turnover etc.

Similarly, in order to be granted a licence in Queensland, a builder must meet the Minimum Financial Requirements which includes meeting both revenue criteria and net tangible asset thresholds. In order to continue holding a licence those criteria must at all times be satisfied. A builder must provide reports showing the financial position and performance of the business including:

- Statement of Financial Performance (also known as a Trading and Profit and Loss Statement);
- Statement of Financial Position (also known as a Balance Sheet);
- Aged listings of trade debtors and creditors; and
- Statement of Cash Flows.

In both cases, a builder's capacity to grow their business is limited by their financial eligibility assessed through the licencing and warranty insurance framework. If a business wishes to grow, expand and take on more work, they must provide evidence of this annually.

Therefore in the context of the proposed cash limit, there is already a clear risk to the ongoing operation of a residential building business that does not declare all income received. The underreporting of income would act as a self-imposed impediment to business growth.

Contractual Arrangements in the Sector

Home building laws across the country not only mandate that a contract must be used for works over a certain value but that a range of contractual terms be included in that contract.

Again for example, in Queensland all residential building work over \$3,300 requires a complaint contract, in NSW all work over \$5,000 requires a complaint contract. Further, all jurisdictions (except the ACT) place limits on the deposit amount that a builder can take for residential building work. In fact, industry practice dictates that all residential building work is paid in stages based on the completed value of the work carried out during a certain stage; some states have seen fit to regulate these stages.

This level of transparency in the taking of payments during residential building work makes avoiding tax obligations through cash payments highly unusual. The value of residential building work often necessitates the obtaining of finance by the client, again muting any ability to use cash payments.

Renovation building work

The requirements set out above for new home building apply equally to renovation building work. The value thresholds for warranty and the use of contracts, the licensing requirements and the potential financing by banks, all operate in the same manner.

On this basis, HIA considers that residential building work over the value of \$10,000 is unlikely to rely on 'cash' payment options, and even where this may occur, the other regulations already in place create sufficient transparency on the collection of money and the subsequent payment of taxation and other obligations, that a \$10,000 cash limit is unlikely to have any meaningful impact.

Owner-builder engagement

During HIA's involvement in the Black Economy Taskforce, there was discussion regarding the arrangements used by owner-builders to engage one off trade contractors and potentially rely on cash payments for these transactions.

It was on this basis that the Taskforce recognised the potential benefit of introducing trade contractor reporting into this segment of the market. Use of this framework to address small project work, under or over \$10,000 is more likely to bring forward businesses choosing to avoid tax payment obligations, along with highlighting businesses potentially not meeting other obligations related to licensing, contracts and warranty.

Please find **attached** HIA response to some of the questions posed in the discussion paper.

Given the potential implications of the proposed cash limit on all HIA member businesses, HIA would appreciate continuing to be informed and consulted on the progress of this potential change, to ensure that it's impact can be clearly understood and members informed well in advance of any changes that may be introduced.

I would be pleased to meet and discuss the proposal further and can be contacted on 02 6245 1300 or k.brookfield@hia.com.au.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED



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Response to Discussion Questions

2. What are the barriers to implementing a cash payment limit on 1 July 2019?

If the proposal is adopted, more time will be needed to educate the community on the changes and it would be more appropriate to commence the change from July 2020.

7. Are there types of ABN holders that the limit should not apply to and why?

In light of the current regulatory arrangements, those operating in the residential building industry should be excluded from the proposed limit on cash payments.

9. Should there be any additional reporting requirements for businesses to report transactions above or close to the cash payment limit?

No, as outlined above the current regulations applying to residential building work would capture the majority of such payments.

10. Is it appropriate for both parties to a transaction exceeding the cash payment limit be liable for a penalty?

The use of a penalty to dissuade people from using cash for transactions over \$10,000 is problematic.

Firstly, the legitimate use of cash (including the appropriate remittance of tax and compliance with other legal obligations) above a certain limit should not be seen as a negative business arrangement and should not be penalised. If the proposed measure is to capture currently unreported tax then legitimate cash transactions where the recipient has complied with their obligations should be permitted as an alternative method of compliance.

Secondly, those identified as breaching the limit would remain subject to existing tax laws that impose penalties for non-compliance. A further penalty would seem both excessive and draconian.

Finally, such transactions are often only possible due to the mutual acceptance of such an arrangement. In those circumstances identify those in breach of the cash limit would be near impossible.

12. What restrictions should be put in place to ensure cash transactions cannot be structured to take place over a period of time in amounts below the payment limit as a way of subverting the policy?

HIA is concerned with the presumption that the purpose of such arrangements would be to subvert the proposed policy outcome. Again the proposal may inadvertently capture legitimate payment arrangements. As long as the appropriate taxation requirements are complied with, such arrangements should remain unaffected and permitted.