

Australian Remittance and Currency Providers Association Ltd
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Manager
Black Economy Division
The Treasury
Langton Crescent PARKES ACT 2600

Sunday, 11 August 2019

Dear Manager,

Re: *Currency (Restrictions on the Use of Cash) Bill 2019*

Australian Remittance and Currency Providers Association (ARCPA) Submission into the Exposure draft legislation for an economy-wide cash payment limit of \$10,000/-

ARCPA represents the Remittance and Currency Providers who are operating under the regulatory framework of the AUSTRAC under the purview of Anti-Money Laundering and Counter Terrorism Act 2006.

2007 onwards, AUSTRAC, driven by the FATF recommendations and resultant mutual evaluation, required its reporting entities to take Risk Based Approach towards mitigating their Money Laundering and Terrorism Financing Exposure while onboarding clients, delivering financial products and maintaining such relationship for over a period.

Unintended Consequences, as it is rightly termed by the bureaucrats and politicians alike, brought most of the banks to exit business and personal account relationship with thousands of individuals, reporting entities and obviously some of the black-market operators. This situation continues for over a decade now. IMF, ARCPA and other organisations have petitioned, held round table conferences, departmental meetings and issue joint press conferences. These efforts intended to bring an equilibrium by asking the banks to consider the true risk instead of just perceived risk. Perceived risk is a set of uncertainties that one has in his mind while considering merits and demerits of a factor. It is kind of a psychological and functional risk that one feels while taking a decision. This does not have to be essentially a risk as an outcome.

ARCPA has a strong view against the existence and development of black economy in various forms and shapes, and or through enhancement of advanced and innovative technologies. Our members support the FINTEL Alliance and we also have a tip-off service for unregistered service providers. It has been acknowledged by AUSTRAC that the Suspicious Matter Reports submitted by many of our members have been so effective, timely and lead to many enforcement actions.

We have submitted our concerns to ACCC, that the independence gained by the Authorised Deposit-taking Institutions (ADIs) based on Risk Based Approach has taken many out of businesses and many individuals from a much essential bank account.

Australian Citizens so far do not have a legal right to have a bank account, in a climate where the whole world is driving towards economic inclusion, in a time when everything is becoming digital. ADIs are playing below the thresholds of the risk tolerance levels, many have already closed their branches to become online ADIs.

ARCPA has worked towards a voluntary quality benchmark for its members to ensure quality of compliance and operational strength for its certified members, these standards have been revised twice in the past 3 years to ensure that we have listened to the concerns of all the stakeholders including banks and regulators. We strongly believe that the industry participants should have appropriate control measures, policies, procedures and mitigation tools to ensure that they are not used to channel Money Laundering, Terrorism Financing and any other predicate offences. Likewise, the ADI should be sufficiently equipped to make sure that they are dealing with safe people and channel safe transactions.

In case, if they come across any exceptions in excess of their tolerance levels must be reported to the regulators by means of efficient and timely Suspicious Matter Reports (SMRs), then the regulators would deal with and prosecute the wrong doers. Our members have not revived from the injuries of unintended consequences caused by the existing legislation, implementation of this new law without even considering the injuries caused earlier.

Without even thinking about the remedies of past unintended consequences would drive our members and many innocent Australians into grave injuries. It is all our responsibility to learn from earlier mistakes and follow the lessons learnt, carefully for the future. We could not afford to pay for lobby group which you seem to be listening than to the victims. Remember Australian Banks are not fully state owned, and it would be difficult for the State to steer them towards responsible economic inclusion, this has been proven earlier.

We welcome the cessation of the Threshold Transaction Reports as all the reporting entities except for Currency Exchanges and the like. However, once this legislation comes to effect, these institutions would require banking services too. There is a clear danger that these institutions would put out of banking system based on the risk assessment and the changed risk approach post the legislation. These would gravely affect the tourism industry and the obvious livelihood of the thousands of families depending on this kind of businesses.

Even though the intention of this Bill is to bring cashless or less cash economy, E-Commerce Gateways and Merchant facilities have not been in the reach of MSBs (our members) due to the high risk our members are placed by the ADIs while considering rendering these services to our members. This also renders out members to quit accepting cash as a medium of payment.

A business analyst working in an ADI can decide whether the pattern of a or the profile of an entity is within the risk tolerance levels, this means a person can lose bank account based on his judgement. ADIs can flag a profile or a transaction for risk and if not satisfied may submit an SMR. It is un-acceptable for a legal entity in Australia to be thrown out of a banking system on perceived risks. This is even worse if this happens to an individual in a modern economy where he requires a bank account to receive wages, social security payments and pay tax, telephone bill and even shop in convenience stores which no longer employs a checkout assistant. There is a huge danger that there would be tens of thousands of Australians who could be innocent but bear some sort of perceived risk by means of profiling and driven out of their right to hold assets, save for their future and live a normal day to day life. Remember, day by day Artificial Intelligence profiles people and flags them for risk. In absence of cultural understanding, innocent people could be easily perceived to be risky.

Without making sure, that all the business entities could be included into the banking system, this is going to be challenging for this legislation to reduce the physical currency usage in the market place, without contravening the consumer and competition legislation and the fundamental rights of the citizens to be treated impartial.

As an Example, transferring small amounts in a dozen transactions in a week to Philippines by a woman will be flagged immediately as a risky pattern, this in absence of cultural understanding may be deemed as suspicious pattern in contrast to other cultural backgrounds. In reality, for people from country like Philippines. It is common for many family members, relative of husbands, relative of wife and distant relative depend on small support from their Overseas Philippine family members. There is also a danger of such pattern being represented by other predicate offences, this is a delicate issue and only law enforcement agencies and the justice system could determine these cases finally, leaving the final decision to live like a normal Australian or a deprived one should not be left to an employee working for an ADI.

In another example, An employee of a phone repair and sales retailer had been responsible for banking, the bank suspected that the withdrawals of the retailer had been more frequent on a daily basis, therefore they suspected something was wrong and they closed the bank account of the retailer and black listed both the owner and the employee at the closure. In reality, the phone shop was buying second-hand phones to service and resell, that's why their withdrawal was more. Later, the employee moved to another employment and attempted to open his own account to receive his salaries, the bank refused to open his account without disclosing a reason. There are many stories that law makers need get down to know about. Some ADIs don't even allow people to be third party signatories of social organisations where they volunteer to be an office bearer.

If necessary, we can make arrangement to meet and listen to the innocent Australians who have been affected and continuing to be affected.

It would be interesting to know that the Politically Exposed People, politicians and Public servants for 5 years from the time of leaving their offices could be refused to be served by certain ADIs, since they could be posing high risk.

Since 2010 many banks have created blacklist of individuals and corporations based on their perceived risk findings. Entities who had conducted legitimate money service businesses have been de-banked, individuals who have owned, directed and certain employees who handled cash on behalf of these entities have been de-banked, which means they are out of the Australian Banking System. They can't receive wages, unemployment benefits, social security payments, borrow, have a credit card, buy a house on mortgage, pay their bills and taxes in their name, either they must be dependent on friends and relatives for these services or continue to stay out of the system. This would encourage forming of new underground systems that would sneak out of regulatory monitoring. Enforcing the terms of this legislation into the economy would only create new dens of criminal channels even deeper.

ARCPA supports Trench 2 of AML CTF Act to close all the loopholes in the monetary system, We support any initiative that drives the dangerous and hindering Black Economy out of business, but we anticipate a bill of right for Individuals and legal entities to have a bank account as a fundamental right, without which efforts like these would create second class citizens in Australia within and outside the formal monetary system. The effects of earlier legislations in this sphere have already created a bias between the disadvantaged, increased the advantage of the ADIs in the marketplace.

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We worked for over month to submit to the Royal Commission on Banking and Financial Services, we were heard but pity that not a single word was spoken about de-banking, in their final report it is very unfair this commission has not even assessed and the biased situation that “de-banking” has created on the Australian Remittance Industry, as a result the number of Australian Lives this has ruined. No one seems to be worrying about the anti-competitiveness, these have created in the Australian Market Place. We support a crime free Australia while it continues to be a Competitive, Impartial and fair dinkum Australia.

In conclusion, we urge the treasury department, the honourable treasurer and the assistant treasurer to delay the effective date of this legislation and to introduce a simultaneous bill of right to enshrine the right to have bank accounts as a fundamental right for every Australian Resident, before making this legislation effective.

We thank you for your attention.

Very sincerely yours,

For and on behalf of AUSTRALIAN REMITTANCES AND CURRENCY PROVIDERS ASSOCIATION LTD.

A handwritten signature in blue ink, appearing to read 'Ramanathan Karupiah'. The signature is fluid and cursive, written over a white background.

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