

KPMG submission

Exposure Draft

*Currency (Restrictions on the Use of
Cash) Bill and associated material*

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Executive Summary

KPMG supports the Federal Government's action against the black economy. The black economy is a significant cost to society, government revenue and services, and a haven for some of the most egregious criminals.

Broadly, we support the proposal to limit the scope for transactions to be carried out via cash. We have some recommendations which would allow for the proposed legislation to better achieve its objectives. These include:

- The cash payment limit ("CPL") should be set lower than \$10,000, ideally at \$5,000 or even \$2,000.
- Where the legislation is enacted with the CPL at \$10,000, it should include provision for the CPL to be reduced according to a specified timetable and via legislative instrument, rather than requiring a future amendment to the Act.
- With a cash payment limit of \$10,000, there would be an advantage in having it apply to those private transactions and gifts that would be Excepted Transactions under paragraph 5 of the proposed legislative instrument (noting that paragraph 10 would still protect individuals who had no reasonable alternative to using cash). There would be a benefit to the community in providing an additional reason for individuals not to deal in such large quantities of cash.
- The legislation should specifically state that entering into, or seeking to enforce a contract that requires cash payments in excess of the CPL would be an offence under proposed section 11.

Detailed comments

1. **General**

- 1.1 KPMG welcomes the opportunity to comment on the Exposure Draft (ED) of *Currency (Restricting the Use of Cash) Bill 2019* and associated Explanatory Memorandum and draft legislative instruments, as published by Treasury on 26 July 2019.
- 1.2 Implementing measures to curtail the black economy is rightfully a high priority for the Commonwealth Government. Accordingly, we broadly support the intention of this reform – to ensure that there are legal penalties for using cash as a medium of exchange in transactions above a certain limit.

2. **The \$10,000 cash payment limit (“CPL”)**

- 2.1 The government should set the CPL at a lower level. At the very least the legislation should allow the scope for the CPL to be reduced over time via legislative instrument or regulation, rather than via a change to the legislation itself.
- 2.2 A CPL of \$5,000, or even \$2,000 would be better suited to achieving the intended curbing of black economy dealings. As an example of other countries’ practices, the limit in France is Euro 1,000 (ie less than \$2,000).
- 2.3 Where the government proceeds with the proposed \$10,000 CPL upon introduction of the Bill to Parliament, it should additionally specify a timeframe for introduction of lower CPLs in future.

3. **The exception for private transactions**

- 3.1 The proposal to use a legislative instrument to define Excepted Transactions is the most appropriate mechanism, and will allow the Treasurer to respond quickly to developments in cash transaction activity.
- 3.2 The current draft would exclude gifts (other than to a registered charity) and non-business transactions from the CPL. Where the CPL is legislated at \$10,000, there remains a considerable possibility that many high-risk transactions could take place without breaching the CPL. Yet the community generally would regard carrying that amount of cash around as unusual, risky or suspicious behaviour.

- 3.3 Given that paragraph 10 of the proposed legislative instrument would protect individuals who had no reasonable alternative to using cash, there should be no practical disadvantage from having a \$10,000 CPL also apply to private transactions. It would be appropriate for private citizens to have a further deterrent, in addition to considerations of personal security, from undertaking such large transactions in cash.
- 3.4 It is accepted that the CPL may be even more difficult to enforce in the context of private gifts and transactions. However a public awareness campaign highlighting that from 1 January 2020 people would be doing “the wrong thing” has the potential to be effective in deterring behaviour that may (even unintentionally) facilitate money laundering or otherwise be an enabler of black economy activity.
- 3.5 Where, as we recommend in section 2, the government in future reduces the CPL to a level (such as \$2,000) that might impact private transactions that were relatively much lower-risk, the legislative instrument could then be activated to classify private transactions between the CPL and a reasonable higher amount as Excepted Transactions.

4. Two tiers of offence for both parties to the transaction

- 4.1 It is appropriate for the offence to apply to both parties to the transaction. We also support the two tiers of offence, based firstly on strict liability and then a more serious offence where there is reckless behaviour.
- 4.2 Making both parties to the transaction guilty of an offence may act as a substantial deterrent to either party seeking to enforce a contract that stipulates the payment of amounts that would breach the CPL in cash form.
- 4.3 Nonetheless, it would be beneficial for the Bill to state that reckless behaviour for the purpose of the proposed section 11 would include entering into or seeking to enforce a contract that required cash payments in excess of the CPL.