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12 August 2019

Manager  
Black Economy Division  
Langton Cres  
Parkes ACT 2600

Dear Manager,

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

Thank you for the opportunity to provide a few brief comments.

While I support measures to combat illegal economic activity and welcome innovative regulation to support digital financial services, I read the Bill and related materials with some concern. I have not seen a convincing argument for the monetary threshold of \$10 000. I am furthermore concerned about the impact of the proposed measures marginalised communities and the businesses that serve them.

**The impact of the \$10 000 cash limit**

The Bill implements a recommendation made by the Black Economy Task Force in their final 2017 report. The Task Force advanced a number of reasons for their recommendation, for example:

“Introducing a cash payment limit will send a strong signal to the community that it is not acceptable to avoid tax and other obligations by using cash as a means of payment. A cash payment limit will make it more difficult to under-report income or charge lower prices and not remit GST. This would therefore be expected to result in an increase in income reported and have a positive impact on the revenue.” (Black Economy Task Force *Final Report 2017*, 54)

The decision regarding the most appropriate monetary limit was however rather arbitrary:

“A cash payment limit was broadly supported in consultations and submissions. Stakeholders noted the difficulties of enforcing such rules, and some commented that such a move could be difficult for groups with strong preferences for cash, for example, older Australians. Businesses that are required to operate in cash noted that such limits could affect their businesses, however some, such as casinos and gambling providers have expressed support for this measure. Others have supported the concept of a limit but argued that \$10,000 is too high. ... For reasons of simplicity and interoperability, and to reduce the impact on groups with a strong legitimate preference for cash like older Australians, the threshold for the economy-wide cash payment limit should be aligned to the threshold used for the AML/CTF framework. Given that, the \$10,000 limit should be reviewed and adjusted as appropriate in line with any review of the AML/CTF threshold. (Black Economy Task Force *Final Report 2017*, 55)

The main reason why the monetary value of \$10 000 was chosen was therefore not that it would be the most effective to counter the dark economy but rather that it is simple and promotes interoperability with the threshold set for AML/CTF-related cash reporting under the AML/CTF.

Ironically the latter motivation is largely diluted by the Currency (Restrictions on the Use of Cash)(Consequential Amendments) Bill 2019 which proposes the removal of the mandatory cash threshold transaction reporting obligation for the majority of reporting entities.

***It is submitted that appropriate consideration should be given to a stronger evidence base to support an appropriate threshold amount.***

### **Unintended impact and consequences**

The Report, it is submitted, did not give adequate consideration to the harms that may flow from the restrictions on the use of cash.

Firstly, the Report did not consider the plight of those who do not have access to formal financial services, including the businesses that serve them. The Report largely views financial exclusion as a choice:

“While some consumers will retain a preference for cash, consultations suggest that the majority of legitimate transactions would be unaffected by the recommendation.” (Black Economy Task Force *Final Report* 2017, 54)

One example of a group of businesses that have been refused access to banking services is the remittance sector. This is the sector that handles flows of funds between migrant communities in Australia and family members abroad. In 2017 the then Treasurer, Mr Scott Morrison, addressed the G20 in Wiesbaden and mentioned the work that the Government of Australian and Australian businesses were doing to investigate new models of business in line with Australia’s G20 commitment to reduce the global average cost of sending remittances. As acknowledged by the Report:

“The formal remittance service sector is highly regulated in Australia. Those providing remittance services in Australia must register with AUSTRAC and comply with Australian AML/CTF reporting obligations.” (Black Economy Task Force *Final Report* 2017, 296)

Despite the importance of the industry and the commitment of government to the industry, banks for a variety of reasons began to close accounts of formal remittance service providers. Concerned about the impact of the closures of the accounts of these providers, the Australian government formed a Working Group on Remittance Account Closures in 2014.<sup>1</sup> The problem was also considered by Parliamentary Joint Committee on Law Enforcement in their 2015 inquiry into financial related crime. Despite this attention, businesses that lost accounts and access to the financial services industry did not regain that access. Worldwide this trend of refusal of services to remittances businesses and other small businesses as well as the termination of correspondent banking relationships is continuing.

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<sup>1</sup> Working Group on Remittance Account Closures, *Outcomes statement, 2015*  
<<https://www.homeaffairs.gov.au/criminal-justice/files/fcs-outcomes-report-working-group-on-remittance-account-closures.pdf>>.

A study published in 2017 (De Koker, Louis; Singh, Supriya; Capal, Jonathan "Closure of Bank Accounts of Remittance Service Providers: Global Challenges and Community Perspectives in Australia" (2017) 36(1) *University of Queensland Law Journal* 119) probed the reasons and considered solutions. The study also found evidence of some remitters that retained their AUSTRAC registration and complied with AML/CTF laws while trading in cash. I enclose a copy of the relevant article.

Ironically the Report cites various examples of European countries that have adopted similar cash transaction limits without referring to a very important element that many of these countries share: Their citizens and businesses enjoy a right access financial services. The European Union adopted the Payment Accounts Directive in 2014. This Directive provides EU consumers with a right to open a payment account that allows them to perform essential operations, such as receiving their salaries and making payments. The Second European Payment Services Directive requires credit institutions such as banks to provide payment institutions, such as remittance service providers, with non-discriminatory and proportionate access to payment account services. For more information, see De Koker, Louis; Singh, Supriya; Capal, Jonathan "Closure of Bank Accounts of Remittance Service Providers: Global Challenges and Community Perspectives in Australia" (2017) 36(1) *University of Queensland Law Journal* 119 151-153. Introducing a cash transaction limit without providing consumers and businesses with a similar right to access the formal financial services in Australia will lead to hardship for those who are refused banking services.

The Report has furthermore not provided an analysis of the cost impact of the new provisions on consumers who do enjoy access to financial services. It only considered in one sentence the potential cost impact on government

“Depending on how it is implemented, a cash payment limit may involve some increase in government expenditure, for example, establishing systems relating to enforcement and penalties.” (Black Economy Task Force *Final Report* 2017, 54)

A more precise, public analysis of the costs and the benefits are required.

***It is submitted therefore that an appropriate analysis should be done of the impact of the proposed measures on all businesses, particularly those who may not have access to financial services, and on different types of consumers.***

Lastly, the impact of the proposed measures on privacy and data protection is not appropriately considered. Criminalising non-exempted cash transactions above \$10,000 compels parties to use formal regulated financial services for such transactions. As explained in the Explanatory Memorandum:

“This ensures that entities cannot make large payments in cash so as to avoid creating records of the payment and facilitating their participation in the black economy and undertaking related illicit activities. (Currency (Restrictions on the Use of Cash) Bill, 2019, Exposure Draft Explanatory Materials, 3)

The purpose of the restriction is therefore to generate records and data. Unfortunately neither formal financial institutions nor government agencies have proved immune against data theft. Where a Bill is compelling citizens to use a channel in order to generate data to be collected by

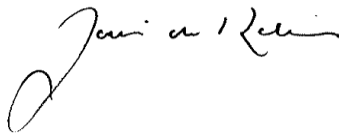
government it is submitted that the government should also take measures to ensure that the data is appropriately protected. Such measures are absent from the proposed legislation. The Bill rather relies on existing, general data protection measures. It is not clear why those measures are held to be adequate.

***It is therefore submitted that an appropriate privacy and data protection risk assessment should be undertaken and published for comment.***

In summary, it is therefore submitted that:

- appropriate consideration should be given to a stronger evidence base to support an appropriate threshold amount;
- an appropriate analysis should be done of the impact of the proposed measures on all businesses, particularly those who may not have access to financial services and on different types of consumers; and
- an appropriate privacy and data protection risk assessment should be undertaken and published for comment.

Yours sincerely



**Professor Louis de Koker**

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