XX August 2019

Manager

Black Economy Division

Langton Crescent

Parkes ACT 2600

**By email:** [blackeconomy@treasury.gov.au](mailto:blackeconomy@treasury.gov.au)

Dear Sir/Madam,

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

We write with respect to the *Currency (Restrictions on the Use of Cash) Bill 2019* (**the Bill**) as made available for public consultation by the Commonwealth Treasury from 26 July 2019.

The National Retail Association, Union of Employers (**NRA**) is an industrial association of employers registered under *the Fair Work (Registered Organisations) Act 2009* (Cth), and represents the interests of retail businesses throughout Australia.

NRA’s concerns with the Bill relate to two primary areas:

• policy – to the extent that the Bill will have an adverse impact on retail trade; and

• implementation – to the extent that compliance with the Bill will overly burden small businesses.

**Policy – impact on retail trade**

The feedback that NRA has received from its members is that the provisions of the Bill are likely to have a significant impact on retailers who trade in luxury goods and who rely significantly on tourist trade.

Retail trade with tourists, particularly tourists from the People’s Republic of China (**PRC**), is substantially cash-based due to the incompatibility of PRC banking facilities with the in-store facilities provided by Australian banks.

This trade with tourists is particularly vital to small businesses trading in luxury goods; in least one store on the Gold Coast, this trade accounts for 80% of turnover.

Our members have expressed concern that limiting the amount of cash able to be used with respect to a single supply will severely curtail the retail trade of luxury goods with tourists, and have an adverse flow-on effect to the economy both locally and more generally.

**Implementation – burden on small businesses**

Additionally, our members have expressed concern as to the demands placed upon individual sales persons to administer the laws of currency.

Whilst medium and larger businesses may be able to invest in technology to assist in complying with these laws, smaller businesses lack the resources to make such an investment and must rely on their employees.

At present, employees in these smaller businesses face a steep learning curve in being required to identify conterfeit currency by skill alone, as these businesses do not have the resources to employ technological measures.

If this learning curve was added to by burdening employees with the requirment of adminisitering the provisions of the Bill, our members are concerned that the potential for inadvertant non-compliance due to simple human error may be unavoidable.

As the Bill provides for strict liability for offences against its provisions, inadvertant offences due to human error will likely see smaller businesses which are unable to acquire technological aids bearing the brunt of the regulatory burden.

**Proposed remedies**

***Policy***

The NRA wishes it noted that neither it nor its members support the Bill due to the adverse effect that it is likely to have on retail trade generally, and particularly on smaller businesses and/or those businesses substantially reliant on tourist trade, however notes that the policy aspect of the Bill is subject to ministerial discretion.

***Implementation***

Given the nature of the conduct that the measures proposed by the Black Economy Task Force are intended to address, the NRA does not believe it appropriate for strict liability offences which will capture inadvertance, and therefore more likely have a disproportionate impact on small businesses, to be included in the provisions of the Bill.

This is particularly the case where there is no distinction between the offences in section 11 and the offences in section 10 other than the strict liability aspect of section 10.

In order to mitigate the adverse effect on smaller businesses, the NRA proposes that the strict liability offences in section 10 of the Bill be removed, and that the offences in section 11 of the Bill be amended to include a *mens rea* of “deliberately, knowingly or recklessly” making or accepting a payment above the cash payment limit.

This would capture circumstances where:

• an entity is deliberately ignoring the cash payment limit;

• an entity has identified that a payment is above the cash payment limit, and accepts or makes the payment regardless; and

• an entity makes or receives a payment above the cash payment limit without taking reasonable steps (in all of the circumstances) to ensure compliance with the requirements of the Bill.

Importantly, this would exclude circumstances where a business had taken all reasonable steps to ensure compliance, but human error nevertheless results in non-compliance.

It would of course be necessary for proper education to be provided to employees to enable them to manually ensure compliance insofar as possible. The NRA is well-placed to assist in the development and/or delivery of training for small businesses affected by the provisions of the Bill, whether provided online or in person.

With respect to this, the NRA is happy to consult further with the Department in relation to the materials and support required by small businesses in order to ensure the policy objective of the Bill is being achieved.

Please do not hesitate to contact me if you wish to discuss any of the above points further.

Yours faithfully,

Dominique Lamb

Chief Executive Officer

National Retail Association