

Australia's Proposed Cash Ban Will Not Work

Shôn Ellerton, January 13, 2020

The Australian government has put forward a bill to make it illegal to make any transaction of \$10,000 or more in cash illegal. Will it work?



It's all the rage in the news today in Australia; the controversial proposal of making cash transactions \$10,000 or over illegal if the [Currency \(Restrictions on the Use of Cash\) Bill 2019](#) gets in.

Basically, the proposal is this. If you make any cash transaction \$10,000 or more, it is deemed illegal and you may be subject to 2 years imprisonment. Currently at time of writing, all transactions, whether cash or electronic of over \$10,000 must be reported but this new proposal seems quite ridiculous. I'd even put it in the same bucket as the infamous [Window Tax](#) of 1696 or the ruling earlier last century in the United States that it was deemed illegal to hold gold.

I'm not an expert in the world of finance or law, but I am intrigued as to how such a proposal could even be seriously considered. Searching on the Internet on this proposal reveals many opinions scattered throughout various articles and blogs on this proposal but in order to get to the root of the issue, it's probably best to read the official proposal from the government website as included in the link above in the first paragraph. It is short and easy to read.

What does the proposal suggest?

The bill proposal is short and sweet.

It suggests that any transaction or a *series* of transactions cannot take place using cash (whether physical or digital) if the total value of the transaction or the sum total of the series of transactions equals \$10,000 or more.

Diving into the proposal, let's look at the Definitions (*section 7*).

What does *cash* mean?

“Cash means either or both of the following: (a) digital currency; (b) physical currency”

To get a better understanding of these definitions, one must have a read of the definitions section of the much longer [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#).

Physical currency is defined as being any coin or note defined as being legal tender whether it is Australian or foreign. Digital currency is more interesting. Bitcoin, Ethereum and other related decentralised cryptocurrencies are good examples of digital currency.

Government-issued cryptocurrency; however, is *excluded* from the definition in the Act; presumably because government-issued cryptocurrency is centralised and under the control of the government fiduciary system. China, for example, is toying with the idea to implement government-based cryptocurrencies and the US, with the proposal to implement e-dollars. It's not a new concept; references to the idea stretching back to the 1980s or earlier. Therefore, transacting an amount of \$10,000 or more with government-backed digital currency is *not* illegal under the new proposal.

Cash does not include valuables such as precious metals, rare postage stamps or any other article which could be used as a form of 'currency'. For example, would you be exempt from the proposed bill if you paid out in gold? Of course, if you wanted to purchase the gold in cash, you would have to have been purchasing quantities of gold worth less than \$10,000 at a time. It's not very clear to me how this would be enforced.

The meat of the proposal can be found under the Offences section (*Part 2*). Again, one can read it by downloading the pdf from the website.

It stipulates that an entity commits an offence if they make or receive a payment in cash equal or more than the amount of \$10,000. Individuals are considered *entities* as well as a whole host of other items as described in the definitions section of the proposal. That's right. Those who *receive* a payment of \$10,000 or more in cash are also committing an offence.

Now, before I read the proposed bill, I was thinking this out aloud. I'm sure many others have as well.

What if I break down the transactions to be less than \$10,000? Let's take two quite different examples.

First, let's look at buying a new house.

It's clearly obvious if you were to hand out the best of \$300,000 in cash to pay for a new home, that's going to constitute an illegal action according to the proposal. Now, it's not clear in the act if the penalty given will be any worse than if you forked out \$10,000 illegally. Section 13 of the proposal states that the penalty is

“Imprisonment for 2 years or 120 penalty units, or both”

If practical reasoning is exercised on handing out sentence to someone who paid out \$10,000 (instead of \$9999.99), it would be a little harsh, to say the least, if the convicted would be given the full 2 years' custodial sentence, compared to someone who brought a briefcase full of \$100 notes to purchase a house outright.

Maybe there's a loophole. What if you purchased the house piecemeal ensuring *every single item* is less than \$10,000? It would be a dastardly difficult thing to do but it *is* possible.

Maybe not, and this is why. In the proposed bill, back in the Offence section, there is another heading that states this:

“Series of payments that equal or exceeds cash payment limit”

The keyword here is ‘**series**’. It doesn't seem to be defined in the proposal, not that I could find, but one can assume that any number of separate payments

contributing to the purchase of a house *could* be considered a *series* of payments for the house. In any case, it seems a little ambiguous. And let me tell you why in my second example.

Let's go to my second example. A purchase of that dream hi-fi system that some of you have always wanted!

If you're not into hi-fi, basically this is a sound system that will make your ears dance with delight. They are often incredibly expensive comprising of separate components that include a combination of turntables, pre and power amplifiers, high-quality interconnect and speaker cables, digital to analogue converters (DACs), CD players, speakers and multimedia streamers. Seldom does one ever purchase everything outright at the same time, unless you're astronomically wealthy. They are usually put together through an upgrade process which can take place over a number of years.

Maybe you've already got a basic system at home. You start off by getting a great turntable from a hi-fi specialist shop to replace that old horrid one you already have which is slowly chewing up your records. After that, you might grab a couple of high-end amps second-hand from eBay, followed by a trip to another retailer to purchase some speakers. After all that, you might have a system worth around \$50,000 all paid for in cash!

From this example, does the concept of *series* apply? That you've purchase a hi-fi system for \$50,000 in cash but made out to different vendors at different points of time? It suggests to me that this proposal is ineffective and, to put a stronger word to it, farcical.

Throughout the proposal are numerous references to '**rules**'. These are defined in the last section (*20. Rules*), and I have to say, are extremely vague and could mean anything as they are based on the whims of the Minister prescribing any number of matters permitted by the Act. You're confused, aren't you? So am I!

Why was the proposal put in place?

The common answer to the question of why this proposal is being put in place is to crack down on money laundering or non-payment of tax by using cash instead of using electronic funds transfer (EFT) using a credit card, direct transfer or other trackable means.

The intentions are good and sound. A rich overseas investor handing over a suitcase of cash to buy an apartment or an artworks vendor receiving a hundred grand in cash for an oil painting should be liable for tax. That's great. However, a ticket tout selling seats last minute for a sold-out concert could easily rack up many thousands of dollars in a matter of minutes. Arguably, tax should be liable for selling those tickets, but in this case, it is below the \$10,000 threshold per ticket sold. That's not so great.

How do you even enforce this?

The concept of the proposal is simple enough, but how would it be enforced effectively? One of the examples above whereby an overseas investor hands over a suitcase of money for a property would be obvious and probably would not require much in the need of investigative services to prove the case as being illegal.

However, what about all the cash transactions that will take place in breach of the proposed rulings? If the ruling did come into effect, will it lessen the overall flow of non-taxed cash transactions than before? If that did happen, it would seem decidedly simple to use a little creative thought to ensure one didn't get caught. The premise of the proposal is to lessen the amount of tax-evasion and money laundering which it might do, but what it will most *certainly* do, will be to *increase* the amount of public resources (i.e. money) required to administer and enforce this.

Returning to the subject of decentralised digital currency, this is an area that governments have a very hard time dealing with. Tracking the movement of decentralised digital currency is a blindingly difficult thing to do. As cryptocurrencies work on an open ledger system, the United States government has taken advantage of this and is in the continual process of compiling a massive database of cryptocurrency transactions with the intent of mining the data and connecting the dots to get what they need. Where the money came from, how much and to who.

However, this exercise seldom works on so-called 'privacy coins' like Monero or Dash (amongst many others) which obfuscate send and receive addresses. Some are better than others on how well they obfuscate the data of course. Much like trying to stop all piracy of films, books and music, governments will never win the battle with digital currency. If anything, this proposal only

strengthens the case of using decentralised currencies, the very thing that governments deem as a threat.

To finish

The concept of making something illegal using material which is deemed legal tender is a little paradoxical. Perhaps they need to change the wording on the currency from ‘Legal Tender Throughout Australia’ to ‘Legal Tender Throughout Australia unless it is used in a transaction or through a series of transactions to render the payment of a goods or services up to a maximum value of \$9999.99’! What will the lawyers have to say?

I can envisage a whole wing of a prison housing ‘hardened’ cash spenders. With each prisoner costing around \$300k per person per year of taxpayers’ money, according to a friend of mine who works at South Australia’s Correctional Services, that could account for a lot of money. And that doesn’t include the huge potential amounts of money to pay for the legal framework and the required levels of enforcement to support the proposed rulings.

I often laugh when new proposals like this come along. A whole new set of countermeasures to circumvent them will sprout up, and believe me, they will be sophisticated, clever and creative. Very creative! Time and time again, governments get outwitted by far more agile criminal organisations who can mastermind loopholes in the system faster than you can blink an eye. Interpreting the new legal framework of the proposal will, no doubt, line the pockets of enterprising lawyers!

As mentioned in the beginning of the article, I’m not professing to be an expert in the field of finance or law; however, that doesn’t put me off about writing my opinion on the matter. I took the time to read the official proposal much like I did when I read the surprisingly woolly 26-page Paris Agreement before writing an article on it. Frankly, I’m surprised just how short and vague some of these proposals are. Not all of course. For Brexit and the EU issues, I wouldn’t touch those with a barge pole unless you want to immerse yourself into reams of mind-killing boring documentation which no one could possibly understand in its entirety. But as for this proposal, let’s see where it takes us in the next year or two!