TREASURY ON NOTICE

Analysis of Treasury's answers to questions taken on notice at public hearings of the Senate Inquiry into the Currency (Restrictions on the Use of Cash) Bill 2019

Introduction

The Senate Standing Committee on Economics held a public hearing for their Inquiry into the Currency (Restrictions on the Use of Cash) Bill 2019, on the 12th December 2019 and the 30th January 2020. Representatives from Treasury took several questions from Senators on notice, which are now published on Parliament's website.
In my opinion, Treasury's answers to the Senator's questions were either extraordinarily oversimplified, not backed up by substantiated evidence, or appear deliberately misleading.

Treasury referred to a report from the Centre for European Policy Studies (CEPS), saying that compliance costs on cash restrictions were expected to be minimal for the majority of businesses. However, CEPS shows that compliance for most countries were expected to be minimal, **as they already had cash restrictions in place**. For countries such as Germany and Austria, which do not have cash thresholds, compliance and enforcement costs were expected to be significant.

Treasury said the CEPS shows there appears to be very limited downsides to imposing cash thresholds. This directly contradicts the report, which outlined significant negative impacts on revenue in tourism, markets, domestic trade and small businesses, particularly in high value goods. Enforcement of cash restrictions involves expensive physical interventions such as site visits, wire tapping and 'mystery shopping'- which must be paid for by the taxpayer. Cash restrictions resulted in reduction of consumer choice and exposure to risk of abuse by the banking sector. There were negative impacts on vulnerable groups such as the elderly, people with disabilities, rural populations, the digitally illiterate and the unbanked.

Treasury said that CEPS showed a 'compelling argument that imposing cash thresholds will disrupt money laundering and tax evasion.' However, the report acknowledged cash restrictions are expected to have a limited impact on money laundering and tax evasion. (Although CEPS still concludes in favour of an EU-wide cash ban!)
"*[T]he most important cash intensive ML schemes… can not really be hindered by legal cash payment restrictions… While positive impact in terms of reducing tax evasion might exist, the overall impacts of a prohibition remain limited."*

Treasury informed Senators that CEPS said cash thresholds can complement other measures to curb the illicit use of cash. However, the report says studies have shown that positive incentives can have a higher effect than cash payment restrictions. In opposition to Treasury's assertion that cash restrictions can 'complement other measures', Dutch authorities point out that, "*a negative consequence of a ban is that there would be less information available on cash flows, as the cash money will not disappear but just flow elsewhere*."
Treasury informed Senators that CEPS said cash thresholds 'can be initially calibrated to minimise any perceived downside risk, then reduce over time.' This statement does not appear to be referenced in the CEPS report at all. Regardless of the factual accuracy of this statement, the risks of cash restrictions are more then merely 'perceived'. The CEPS report demonstrates they are material and demonstrable.

This report and its findings have been published in the public interest and out of respect to the Committee Senators. I believe it is important that evidence given by Treasury to the Senate Committee is substantiated by evidence.

M Harrison 9/02/2020

TREASURY ON NOTICE

Treasury: Answer to a question taken on notice at a public hearing in Sydney on 30 January 2020 (received 3 February 2020)[1]

Below I have outlined a critique of the answers supplied by Treasury to questions taken on notice at a public hearing in of the Senate Standing Committee on Economics for the Inquiry into the Currency (Restrictions on the Use of Cash) Bill 2019.

Question b)

Senator Kitching: I accept that some businesses might update their MYOB every year or whatever, but they may have to do a specific update at that point. So that is a cost that is possible to quantify.

Mr Boneham: Yes. As to the European Union—and I'll get the relevant extracts from the European Union paper—I think they said that they did not expect there'd be much cost to business. I'm not sure what their assumptions were in coming to that conclusion, but that's what they found.

Senator Kitching: So you'll re-send the committee—

Mr Boneham: We'll pull the relevant extracts from that report.

Treasury, Answer b) 'Compliance costs'

'*The report provided to the European Commission in 2018 found that the effects on compliance costs can be expected to be minimal for the majority of businesses, as not many cash transactions are being conducted at the various threshold levels and are to a large extent already digitalised*.'

This statement does not appear to be supported by the CEPS report referenced, 'Study on an EU Initiative for a Restriction on Payments in Cash'[2]. The CEPS report notes that 16 countries in the report currently have a cash prohibition in place. There is limited additional cost expected to be incurred with compliance and enforcement of a proposed EU-wide cash restriction prohibition, **as these costs are already a part of their systems.** The CEPS report does say they expect the number of transactions which will be affected by cash bans to be low, as they think not many transactions take place at a high threshold, but then contradicts itself- going on to outline serious impacts on businesses and trade in countries which have cash restrictions, acknowledging these countries have experienced measurable negative impacts on GDP. (See below: 'Revenue impacts')

Germany, Austria and the Netherlands do not currently have cash prohibitions in place. The report shows their respective authorities have identified significant expected enforcement and compliance costs if a cash threshold were to be implemented.

"*The main group of people who would be affected from cash payment restrictions are business owners in cash intense sectors… their compliance costs could increase in case of a ban or a declaration depending on their business model.*"

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[1] Senate Standing Committees on Economics 'Currency (Restrictions on the Use of Cash) Bill 2019', Additional Documents

[2] European Commission: 'Study on an EU Initiative for a Restriction on Payments in Cash'

In addition, Treasury has only commented on '**compliance costs**' and not on the '**enforcement**' costs of a cash payment restriction, which can be significant.

Compliance costs are identified as: "*costs for businesses associated with ensuring that the policy measure is implemented. This may entail for example investments in ICT (to facilitate alternative means of payment), training of personnel in the relevant legislation, and in the case of a declaration obligation, producing reports on cash payments*…"

Enforcement costs are identified as: "*costs associated with ensuring that the policy measure is enforced. This may entail for example… manpower needed to conduct on-the-spot visits of businesses to check their books, but also the costs of prosecuting and convicting violations of the rules.*
"Enforcement costs under this option relate primarily to law enforcement and public prosecutors as well as the courts, who would need to prevent, detect, investigate and prosecute violations. To enforce a prohibition, in-person inspections of dealers in high-value goods need to take place. Not enough data is available on the costs associated with current cash payment restrictions to provide reliable quantifiable estimates. Businesses may receive visits of inspectors, who check their accounts and look if there have been cash payments above the threshold. An alternative measure can be to send 'mystery shoppers' who try to pay in cash, thereby establishing which economic operators are willing to violate the cash payment restriction. In the current situation, countries with cash payment restrictions often rely on risk assessments to determine which economic operators to check (more) regularly."

Cash restriction costs by country

Netherlands
Note: No cash ban in force (currently has reporting requirement, similar to $10,000 ASIC)

"If a cash payment ban were instituted, this would lower the costs associated with reporting. This would however be replaced with costs for ensuring that all cash transactions above the threshold chosen, are transferred digitally… a negative consequence of a ban is that there would be less information available on cash flows, as the cash money will not disappear but just flow elsewhere. In the Dutch situation, if a ban was instituted, this would lead to substantial extra costs, as it is a whole new measure. Those costs would mostly accrue to the National Police and the Public Prosecutor, as well as the courts, who would need to detect, investigate and prosecute. At the same time, costs for the FIU would decrease, as there would be fewer reports of transactions." (However, in Australia there is no indication that ASIC would stop requiring reporting obligations for a $10,000 threshold? That cost would still be incurred, in addition to new costs associated with enforcement of a cash restriction.)

Austria
Note: No cash ban or automatic reporting requirements in force, has due diligence requirements. Austria has a small shadow economy.

The Austrian government vehemently opposes cash restrictions and has "*not only stressed the importance of cash as a means of payment, but in a binding resolution in 2016, the Austrian National Council has decided to oppose any limitations of cash usage on any European or international level*."

"*In the Austrian situation, if a ban were instituted, this would lead to substantial extra costs, as it is a completely new measure. Those costs would mostly accrue to the Federal Police and the Public Prosecutor, as well as the courts, who would need to detect, investigate and prosecute. At the same time, costs for the FIU would decrease, as there would be fewer reports of transactions.*"
(However, in Australia there is no indication that ASIC would stop requiring reporting obligations for a $10,000 threshold? That cost would still be incurred, in addition to new costs associated with enforcement of a cash restriction.)

Germany
Note: No cash ban in force, due diligence obligation
The German Retail association "*noted that it is not possible to quantify the costs, losses, and losses that can be incurred when a cash cap is introduced… Ultimately, according to their expectation, there is hardly any demonstrable benefit of an incalculable cost burden*."

The CEPS report states: "*In the German situation, if a ban were instituted, this would lead to substantial extra costs, as it is a completely new measure. Those costs would mostly accrue to the Federal Police and the Public Prosecutor, as well as the courts, who would need to detect, investigate and prosecute. At the same time, costs for the FIU would decrease, as there would be fewer reports of transactions.* (However there is no indication that ASIC would stop requiring reporting obligations for a $10,000 threshold? That cost would still be incurred, in addition to new costs associated with enforcement of a cash restriction.)

"*If a uniform declaration obligation were instituted, enforcement costs would rise because of the mandatory nature of issuing a declaration above a certain threshold.*
Already a declaration obligation would sustainably damage the reputation of the cash and impose extensive bureaucratic hurdles on the trade, which would increase with decreasing upper limits. They stressed that it is not possible to quantify the expenses for the reporting paths and bureaucratic processes, which would lead to a declaration of the payments. However, they noted that the expenses would be substantial and unnecessary and without any demonstrable benefit in the fight against terrorism."
The German Retail Associated noted that "*it is not possible to quantify the costs, losses, and losses that can be incurred when a cash cap is introduced. Moreover, the introduction of a cash ceiling should be assessed regarding their benefits, not just regarding possible costs. Ultimately, according to their expectation,* ***there is hardly any demonstrable benefit of an incalculable cost burden.*** *An introduction of a declaration for cash payments should be carefully considered in order to ensure that it does not create undue bureaucracy. It should also be ensured that these do not unnecessarily duplicate existing efforts, such as the STRs that are submitted to the FIUs by obliged entities. A large increase in the amount of such declarations could also lead to an unnecessary burden for the FIUs and other investigating authorities that might overload them with reports. This might increase the workload and strain on resources without improving the quality of the investigation of actual money laundering cases identified.*" (Emphasis added)

Belgium
Note: Cash threshold in force
Belgian jewellery stores experience "*direct compliance costs [that] are associated with controls rather than raising awareness of the restrictions. Additionally, investing in alternative payment methods to reduce the cash reliance can be substantial in specific cases.*"

Bulgaria

Note: Cash threshold in force

"*If the threshold is lowered, more and more payments will be made electronically. However, bank fees in Bulgaria are among the highest in Europe… [resulting in] a rise in operational costs. This is regarded as unnecessary and unwanted financial burden on taxpayers… limiting payment possibilities could diminish their business viability. … In addition, because of the excessive costs, some companies might experience financial trouble and lower profits,* ***hence the tax base would fall.*** *The latter is quite an unwanted effect.*"

Greece

Note: Cash threshold in force

"*Several claims indicate that enforceability of cash restrictions in Greece is insufficient…the inputs from several interviewees indicate that the cash restrictions are not implemented to a large extent. Many businesses in Greece face the danger of bankruptcy as a result of the reduced demand and increased taxes. The high levels of tax evasion indicate that it is a common practice for several businesses, for some of which is the only way to maintain their activities and avoid a bankruptcy. Moreover, public authorities do not have sufficient means for identifying and punishing non-compliant businesses.*"

Compliance costs include:

- Credit card fees
- Bank fees for cash transactions and payments which had increased in the last few years
- POS terminals "*entail a minimum cost of 150 euros, in several cases businesses need more expensive ones in order to accept all credit cards, or several units*"
- POS terminals require internet connection, which is a new recurring cost for businesses who previously did not use the internet
- Possibly decline in demand due to lost customers, who desire to pay in cash. After the financial crisis, and despite strict capital controls, people preferred to use as cash because of (understandable) lack of trust in the banking system.
- Indirect costs of losing business to non-compliant businesses which accept cash payments above the threshold, resulting in market distortion and unfair competition. As above, tax evasion is sometimes the only way for businesses "to maintain their activities and avoid a bankruptcy."

'Key reasons in favour of cash thresholds'

In Answer b), Treasury states that the CEPS report outlines four key reasons in favour of cash thresholds:

1. There appear to be very limited downsides to imposing cash thresholds.
2. There is a compelling argument that imposing cash thresholds will disrupt money laundering and tax evasion.
3. Cash thresholds can complement other measures to curb the illicit use of cash.
4. Cash thresholds can be initially calibrated to minimise any perceived downside risk, then reduce over time.

These 'key reasons in favour' appear to be extraordinarily oversimplified and **do not accurately represent the findings of the report.** One of the 'key reasons' does not appear to be referenced in the report at all. I have addressed each 'key reason in favour of cash thresholds', with information sourced directly from the CEPS report.

Key reason in favour of cash threshold #1: '**There appears to be very limited downsides to imposing cash thresholds'**

The CEPS report does not support this statement. A wide variety of 'downsides' and negative impacts were documented.

Technical impacts

"*Making the use of cash impossible for high-value payments could increase the reliance on (banking) system infrastructures, which occasionally face technical problems making it temporarily impossible to pay by (credit)card. Depending on the threshold level, this effect may be marginal. In order to deal with this, adequate counter-measures would need to be in place, or exceptions need to be made where cash is allowed in case of temporary system outages."*

Germany authorities noted: "*A limitation of cash payments has the consequence that such transactions have to be carried out above the limit using expensive card payment methods, which can also be technically risky. Insecurity exists, e.g., by often unknown amount limits for the card payment. If payments - especially higher value ones - are subject to uncertainty about the probability of the transaction, this can lead to a waiver of purchases. Also, in the event of a failure of the non-cash payment infrastructure, payment will no longer be possible. As a result, the trade must reckon with purchase restraint, especially in the luxury segment. In addition, the Association stated that consumers are very mobile and would simply move to countries without cash surpluses outside Europe*."

The CEPS report notes that "*specific infrastructure is needed for the acceptance of bank cards, while cash as the legal tender must always be accepted…Reliability refers to whether a payment instrument relies on a specific infrastructure. As mentioned above, a cash transaction can be conducted without electricity, or any specific infrastructure, this is not the case for other payment instruments, which rely on those*."

"*On top of these attributes, different payment methods entail different transaction costs which are on average lower for cash, however according to ECB, such costs are linked with the popularity and use of each payment instruments*."

Italian merchants were affected by cash restrictions, which "*combined with the high fees paid by merchants to banks and with the large number of merchants that did not install point-of-sale terminals complicates the implementation of cash restriction measures*."

Revenue Impacts

"*[S]everal economic operators, mostly in countries already exhibiting strict cash restrictions (e.g. Belgium and France), see negative effects of cash restrictions on their sectors (vehicle dealers, jewellery, hotel and café, real estate and gambling sector).*

[S]tronger GDP growth is associated with higher turnover. Likewise, a new or tighter cash restriction at in the home country reduces turnover… Cash restrictions in the home country have a small but statistically significant negative effect on turnover in high value goods and service sectors… Overall, the results, particularly for euro area countries, show support for the claim that cash restrictions have an impact on displacement of turnover from one country to another in case of diverging cash restriction… one might conclude that national cash restrictions distort the internal market.

Tourism may be particularly affected by cash restrictions: It is clear from the current national restrictions in place that a trade-off between effectiveness of a measure in combating illegal activities and potential negative effects on tourism exists.

A possible effect of cash payment restrictions is that buyers will simply cancel the transaction, because they do not wish or are not able to adopt an alternative means of payment…. A cash payment ban could have an impact on sales of high-value goods and lead to revenue losses. This may be the case if: No alternative means of payment is available, at the same cost to consumers as cash; Buyers have significant privacy concerns that override their wish to buy a good or service…

Netherlands

Note: No cash threshold in force

The casino industry was expected to be particularly affected, depending on the threshold of the restriction: "*As currently pay-outs below EUR 5 000 are usually done in cash, the casinos would have to spend a significant amount of additional time in ensuring these pay-outs are done digitally. It was stressed that for casinos, transferring money whose origin is unknown (and cannot be verified) to customers involves more risk than paying them out in cash, as transfers in the name of Holland Casino may lend a veneer of legitimacy to the money. To counter that, Holland Casino would have to invest heavily in due diligence measures.*

*In the case of an outright ban on high-value cash payments, depending on the threshold level, the impact on revenues is expected to be significant for the casino industry. One representative voiced his concern that customers would move towards online or underground banking, rather than not being able to pay with cash anymore. Legitimate customers would be hit, as many also use cash as a way to maintain grip on the amount of money they are spending…. It was also emphasized that a negative consequence of a ban is that there would be less information available on cash flows, **as the cash money will not disappear but just flow elsewhere**."* (Emphasis added)

Germany

Note: No cash threshold in force

The German Retail association "*stressed that the negative effect on revenue streams would be severe, arguing that consumers of goods from the luxury segment with high value are extremely mobile… Especially tourists from countries with traditional cash affinity could change their plans and shop in other countries. German traders in these segments could suffer from location-related disadvantages.*

"*In their stance, a cash limit would also significantly damage the reputation of cash. Cash is actually in competition with non-cash funds and is a key benchmark for non-cash payment providers. In their opinion, any restriction of this competition must be justified very carefully*."

German authorities also identified the gambling industry as potentially negatively affected by cash restrictions, concerned that this would push consumers into the underground gambling industry. "*A migration of the guests into the area of illegal gambling, which are not subject to any documentation obligations, would be a logical consequence, which would lead to a decrease in demand in the area of licensed gambling banks. The degree of demand reduction would depend on the level of the threshold, which would trigger further documentation obligations. The lower the limit, the higher would be the drop in demand and the financial effect on the legal gambling market.*"

Bulgaria

Bulgarian authorities noted: "*If the threshold is lowered, more and more payments will be made electronically… bank fees in Bulgaria are among the highest in Europe [therefore, businesses and people] will experience a rise in operational costs [considered an] unnecessary and unwanted financial burden on taxpayers…* ***limiting payment possibilities could diminish their business viability****… severe restrictions may ultimately reduce competitiveness… The risks associated with obligatory bank transfers will be especially high for start-ups and young entrepreneurs, as a rise in operational costs could be even more challenging to newly emerged companies.*
In addition, because of the excessive costs, some companies ***might experience financial trouble and lower profits, hence the tax base would fal****l. The latter is quite an unwanted effect.*" (Emphasis added)
Bulgarian authorities do not want "*citizens and companies to become poorer because less disposable income and less profit might lead to an increase of jobless persons (which means more money for social transfers), less consumption (subject to indirect taxation) and higher risk of bankruptcy*."

"*[E]ach bank card has a certain limit of the amount which might be withdrawn or paid and BCCI expert thinks that* ***this could thwart a trade dea****l. On the other hand, a payment could be delayed if done via bank transfer when one takes into account the working time of banks and the time needed for money transfers.*" (Emphasis added)

France

French authorities noted that cash restrictions have had a significantly negative impact on tourism and domestic trade.
"*France has introduced a EUR 1 000 limit to cash payments, but in order to minimise the potential harm to tourism, the threshold for foreign visitors (non-residents) was set at EUR 15 000… A recent study showed that the cash restriction for non-residents of 15 000 euros* ***led to a cancellation of the sale in 34% of cases.***
Distortions particularly impinge the activity of retail sub-sectors such as luxury shops, jewellers and large high-end department stores…. It has been observed that customers prefer to shop in another country, which does not have cash payment restrictions or implements less stringent restrictions".

From the jewellery and clockwork association's perspective, the current cash restrictions implemented in France cause important problems… The decision to lower the thresholds has created ***significant distortions of competition*** *between France and the competing European capitals, which have mainly introduced vigilance thresholds but no prohibition. France, with 82.6 million visitors a year, remains the first tourist destination in the world… A recent study showed that the cash restriction for non-residents of 15 000 euros led to a cancellation of the sale in 34% of cases."*
"[A]ccording to a recent study cited by the jewellery and clock making association, these categories of tourists have the habit of paying in cash, mention "shopping" as a key element of their stay (e.g. 44% of Chinese indicate that it is a determining factor in their choice of destination)…"

“*According to the retailers association, the most impacted sectors are jewellery and clock making, luxury big Parisian department stores. “[I]t has been observed that customers prefer to shop in another country, which does not have cash payment restrictions or implements less stringent restrictions.”*

“There are different types of impacts: ***Macro economic: impact on trade and tourism****, especially for border regions. Moreover, these restrictions contribute to the impoverishment of certain city centres. Indeed, there is already a problem of vacant premises and desertion of city centres in France and the restrictions imposed in terms of payment in cash, are likely to aggravate the situation… Finally, there may be* ***an impact on domestic trade****, with a shift in cash transactions abroad rather than in France”.* (Emphasis added)

Belgium

“*The Belgian jewellery sector indicated to be particularly affected by cash restrictions… Belgian jewellers are often dependent on cash as a mean of transaction. The differences in cash restrictions among EU Member States have had* ***profound repercussions on the jewellery sector****….led to a significant competitive advantage of foreign jewellers” in other countries that do not have cash restrictions in place*.”

Belgium authorise estimate that “*lost revenues due to cash restrictions* ***could amount up to 30%*** *for some jewellers. Customers who upon notification of the threshold are unable to pay via cash or other means due to technical difficulties explain some of this drop. These customers reduce selected items to not meet the threshold or use this fact in negotiations of the price. However, some customers threaten to take their business elsewhere and also do so in practice. The Netherlands [with no cash restriction] is the primary recipient of these customers. These jewellers take advantage of their competitive advantage and even pro-actively advertise the lack of restriction in the Netherlands.*” (Emphasis added)

Belgian AML requirements are strict, which have had unintended consequences: “*Belgian authorities have seen evidence that the imposition of cash thresholds has displaced money laundering from Belgium to elsewhere*”. This echoes the position of Dutch authorities who say "*a negative consequence of a ban is that there would be less information available on cash flows, as the cash money will not disappear but just flow elsewhere.*"

Market distortion has also affected Belgium’s auto industry, impeding competition. To counteract this,“*Some Belgian garages have even opened a subsidiary in the Netherlands to continue to be able to accept cash*."

Economic Freedom/Customer protection impacts

The CEPS report quotes the Heritage Foundation’s definition of economic freedom: “*The notion of economic freedom is based on the assumption that individuals and organisations know best their preferences and make informed decisions based on those… Meaning that, economic freedom is hampered when certain payment instruments are not available or not accessible by individuals or organisations due to state or other interventions.*”

The CEPS report acknowledges the impact cash restrictions have on economic freedom. “*Cash prohibitions are expected to have direct and indirect impacts on economic freedom…*
Overall, a cash prohibition reduces the payment options for individuals and organisations.”

German consumer organisations oppose cash payment limits: "*In their opinion, perpetrators can still circumvene a cash limit, but normal consumer behaviour would be criminalized… selling valuable private items, such as the car or a sports equipment, requires the possibility of paying or receiving larger amounts of cash.*" They believe the use of cash protects consumers from electronic payment fraud.

Italian authorities noted that cash restrictions may impinge on customers that do not have ready access to a bank account. "*Consumers are often the weak party of the transaction, suffering more from a shortage of alternative payment methods… In addition, fees (up to 2%) charged by merchants to consumers to pay with debit/credit cards are still quite common in Italy, thus making electronic payments less attractive.*"

In Greece,"*cash restrictions in combination with the financial crisis and the vulnerability of the financial system lead to additional negative impacts for consumers.*"
In addition, bank fees have increased over the last few years. Greek banks have a negative record in their treatment of the private data of customers, giving out their customers contact details and banking information to collecting companies, which harass them for loan repayments.
The enforcement of cash restrictions is weak, resulting in market distortion and unfair competition between compliant and non-compliant businesses.

Cash restrictions in combination with Greece's financial crisis may have led to exacerbation of businesses' difficulties and caused "*premature bankruptcy or severe problems with maintaining their operations*." The freezing of assets (eg banks accounts) occurred even for small debts. Businesses forced to use the banking system, with no or limited cash reserve "*would not manage to survive even for short periods until their assets are unfrozen. Greek business associations report that freezing and seizures of assets occur in an unregulated manner, without respecting the minimum required funds for running a business (e.g. salaries, daily operations).*"
The CEPS report concludes: "*Overall, cash restrictions are mostly harmful for businesses and economic activity in Greece*."

Safe haven impacts

The CEPS report acknowledges the role of cash as a 'safe haven'. "*For instance, cash can provide anonymity, security, reliability, safe haven and 24/7 availability… Safe haven is the level of resistance of a payment instrument to market failures and financial crises. As the value of cash is only linked with central banks, in cases of bank bankruptcies or seizures of financial assets in periods of financial crises, cash would not be affected to the extent that most payment instruments may be affected.*"

Privacy impacts

"*Regarding privacy, as long as an alternative to cash providing full anonymity does not exist, a cash prohibition could severely affect privacy of consumers… In the case of cash, anonymity is ensured, as no authority or intermediary can obtain information for the use of cash without the users consent*."
Privacy concerns go beyond the regulatory allowable collection and use of data. Potential risks include the abuse of collected data (for instance, in targeted marketing or harassment) sharing of user's personal data without user consent and risks of identity theft and cyber attacks.

The CEPS report identifies instances of abuses of privacy in electronic payments services: "*Greek consumer organisations claim that they receive several complaints that their contact details and banking information (loans, total debt, delays in payments etc.) have been communicated without their clear consent to debt collecting companies, which harass them in order to collect loan payments.*
Research in other countries such as in the USA and India reveal other cases of payment service providers interfering with personal data in a manner that affects privacy rights. A study on security in mobile payments in India concludes that all of the five mobile phone based payment systems that were tested raise serious privacy concerns. For instance, mobile apps did not function if access to the users' camera and media was not provided."

Even 'de-identified' data does not always remain anonymous, as the CEPS report notes: "*Google has come in possession of data on credit card transactions, which can be linked, back to individual consumers.*"

Vulnerable Groups

The CEPS report identifies groups which may be vulnerable to cash restrictions including the elderly, digitally illiterate and people with limited access to the banking system. People with disabilities may be isolated because of their physical, mental or intellectual impairment.

For example, in Greece: "*Fees for transactions performed in bank branches have increased in the last few years. Computer illiterate population or those who do not have regular access to internet are burdened with these fees as they have no alternative payment methods available to them. In some cases people are dependent on relatives or others for performing their transactions.*"

In Sweden, "*living in an isolated part of the country can be sometimes problematic in terms of access to services, information and internet connection. In Sweden for instance, the Swedish agricultural authority, 34% of the population lives in rural areas and are often obliged to travel long distances to access banking services… additional costs could also appear, e.g. travel costs should the person need to travel to bigger cities in order to make the necessary payments.*"

Bulgarian authorities identified the issue that smaller towns and villages were not well serviced by banks. "*It is quite common people living and working in a small village (e.g. with 200 inhabitants) to need to travel to a bigger town in order to use bank services… in smaller towns and villages electronic transactions are not quite popular.*" In addition, "*many elderly people still have difficulties with payments via bank cards let alone to make bank transactions.*"

Key reason in favour of cash threshold #2: '**There is a compelling argument that imposing cash thresholds will disrupt money laundering and tax evasion**'

The CEPS report does not support this statement. On the contrary, the report acknowledges that cash restrictions are expected to have a limited impact on money laundering and tax evasion, although the report still concludes in favour of imposing them.

Money Laundering and cash restrictions

The CEPS report does not offer a ‘compelling argument that imposing cash thresholds will disrupt money laundering’, rather acknowledges limitations on the effect of cash restrictions, except in only one specific area: high value transactions.

“*Money laundering may involve cash, but this is not always the case. On the contrary, many typologies.. involve laundering schemes of money that is already in the financial system… It is important to note that cash-intensiveness is only one factor that contributes to the vulnerability of a business sector to money laundering.*
Cash is less or not relevant to money laundering for crimes that generate money that is already in the financial system (like many types of fraud and certain forms of large scale tax evasion – many so called ‘white collar crimes’)… Investments in real estate and legitimate businesses are a common form of money laundering… Businesses have in most cases a direct link or ownership to the criminal and his relatives. However, these investments do not necessarily involve cash transactions.”

However, the most important cash intensive ML schemes get around the STR [Suspicious Transaction Reporting] process and can not really be hindered by legal cash payment restrictions. These schemes are made up of large international networks collecting cash from smugglers and fraudsters and transporting it physically to foreign countries. They often use Hawala channels. They can also use commodities markets (especially physical gold) and obscure foreign exchange markets (especially in countries enforcing an exchange control and/or high exchange rates). Paradoxically, the AML/FT regulatory framework has reinforced such international networks that collect and transport cash, since they remain the best way to avoid the radars of the obliged entities.”

The CEPS study somewhat contradicts itself, saying that cash prohibitions “may” or “should” improve money laundering. Even though it acknowledges the effect is uncertain, it still proposes cash restrictions. “*Measures to curb the illicit use of cash should therefore make it harder for criminals to conceal the movement or payment of large amounts of money, enabling further investigation… Even if the effect of cash payment restrictions is uncertain to contain ML schemes, the existence of diverse national thresholds between EU countries weakens the AML/TF framework.”*
"A cash restriction may have an impact on money laundering via cash front businesses for expenses above the threshold – if compliance to the cash restriction is actively enforced." (Note: enforcement in this scenario involves costly interventions: physical inspections, wire tapping, ‘mystery shopping’.)

The CEPS report only confirms the impact of cash restrictions on money laundering in a specific area- high value transactions. “*A cash restriction or declaring obligation has an impact on a specific category of expenses: high value goods…. A restriction or declaration obligation will remove anonymity of a transaction and hence will complicate money laundering via the purchase of high-value goods.* ”

The Netherlands government says that “*a negative consequence of a ban is that there would be less information available on cash flows, as the cash money will not disappear but just flow elsewhere.” Cash restrictions only impact one specific area: high value goods. Proceeds from money laundering will simply be diverted to other channels.”*

Tax evasion

The CEPS report does not offer a ‘compelling argument that imposing cash thresholds will disrupt tax evasion’, rather it states that there is no clear connection that cash controls will affect tax evasion.

"*It should be noted that in general tax evasion is rather explained by other factors than solely by the use of cash. It also does not capture larger tax evasion schemes, which do not depend on cash at all…. Whereas cash may play a role in tax crimes (in particular in "petty" cash evasion by businesses and private individuals), it is definitely not the only form of tax evasion, with larger tax evasion schemes often being cash-less making use of offshore jurisdictions. The correlation between cash and tax evasion has been subject to numerous academic studies and debates and there is no general academic consensus as to whether cash does or does not have an impact on tax evasion.*

Cash from criminal activities flows into the legal economy via various channels. Placement of large amounts of cash into a bank or other financial institution has become increasingly difficult… Other channels of placement are via direct consumption and investment of cash into the legal economy. Investments of cash in financial assets, legitimate businesses and real estate are, as with placement in the financial system. Mostly covered by the current AML/CFT regime (customer due diligence and reporting suspicious transactions).

"[A] large proportion of tax evasion activities are not likely to be affected by a cash payment limit and consequently no reduction or prevention of such activities should be expected in the event of [the] introduction of a cash payment limit… Financial flows which are moved with (non-restricted) non-cash payment instruments and are used for tax evasion cannot, however, be directly captured by a cash payment limit. A significant part of the tax evasion would therefore not be affected.

[P}rominent cases of tax evasion are illicit work or the purchase of products or services on the black market. These activities are, without doubt, also settled with cash. However, if the persons involved in a transaction are aware of an illegal execution of the transaction, as it should be the case with illicit work, it seems unlikely that these persons refrain from using cash due to a cash payment limit… Studies have shown that positive incentives can have a higher effect than cash payment restrictions.

An indicator to measure the size of tax evasion is a country's VAT gap. The VAT gap is defined as the difference between the VAT total tax liability and the amount of VAT actually collected… It should be noted that this definitely is not at all related to the use of cash as VAT evasion can take many shapes and forms… there is no clear correlation between the existence of a cash restriction and the VAT gap.

One main conclusion can be drawn from the analysis: While positive impact in terms of reducing tax evasion might exist, the overall impacts of a prohibition remain limited. In general, tax evasion can only (very) partially be explained by the availability of cash.

Austria

Austrian authorities "*stressed that it is highly doubtful that persons who have acquired illegal money will refrain from committing an additional crime, i.e. refrain from making cash transactions above a certain threshold if a harmonised cash payment limit should be introduced.*
The Austrian National Bank generally considers restrictions of cash payments as ineffective in the fight against tax evasion. They stressed that Austria has a rather low shadow economy compared to other European countries despite its high level of cash usage."

Germany

German authorities do not expect that cash restrictions will have an impact on tax evasion or money laundering. "*It is not expected that the shadow economy would decrease through a measure, as those transactions are already illegal now and there is no reason to suspect that an additional measure would prompt those engaging in these transactions to stop or declare them… even if sellers* *of high-value goods are sticking to the already existing identification obligation, many criminals either use fraudulent documents or engage scarecrows who complete the purchases for them.*"

German authorities are concerned that cash restrictions will intensify the migration of payments into the dark net and cryptocurrencies. "*This problem has significantly increased in Germany and, similar to cash payments, it is almost impossible to trace transactions in the virtual space. Cash payment restrictions could lead to a significant displacement effect and hence would make it even harder for law enforcement authorities to detect suspicious payments and chasing offenders.*"

The German state-state-licensed gambling market "*can only fulfil its regulatory task of channelling the population's gambling drive, if the organizational obligations imposed on gamblers are met and the demand is not shifted to other, particularly illegal areas. The German gambling banks are trying to meet the ever-increasing requirements of the prevention of money laundering. Further tightening in this area will lead to demand and thus tax reductions. However, the popularity of the population could be shifted to markets, which are immune to the threat of money laundering.*"

The impact of the proposed $10,000 cash payment limit

The Australian governments proposed $10,000 payment limit is not supported by 'compelling evidence'. The CEPS report says that: "*A high ban would not fulfil the purpose of reducing tax evasion. Even a threshold of 1 000 EUR is most likely going to be too high, because the vast majority of tax evasion cases concerns small amounts and would not be affected. The lower the threshold value, the more cash-settled commercial payments are likely to be affected by a cash payment limit. Despite the limited impact the measure would have on tax evasion, the threshold should be as low as possible to be somehow effective*."

The consensus of German authorities was that "*the more extensive the restriction, the higher the incentive to circumvent this. A lower threshold would, on the other hand, affect the public largely and make it difficult for them to pay in cash.*"

Austrian authorities are strongly opposed to cash restrictions in any form. When asked about benefits of high cash payment limit threshold versus low threshold, "*Austria refrained from answering half of the questions in this section, arguing that the effects of cash payment restrictions have not been proven*."

Key reason in favour of cash threshold #3: **'Cash thresholds can complement other measures to curb the illicit use of cash'**

As demonstrated above, the CEPS report indicates that effectiveness of cash restrictions on the illicit use of cash through money laundering and tax evasion is limited. Other measures are deemed to be more effective.

For example, in the case of two parties mutually participating in tax evasion, "*tax evasion regulatory measures do not work. This problem needs to be tackled with other measures such as increasing labour controls at building sites and find other innovative approaches to fight the black market. Studies have shown that positive incentives can have a higher effect than cash payment restrictions.*"

The intervention of cash thresholds has other, unintended negative consequences on tourism, markets, domestic trade and businesses.
In opposition to Treasury's assertion that cash restrictions can 'complement other measures', Netherland authorities point out that, "*a negative consequence of a ban is that there would be less information available on cash flows, as the cash money will not disappear but just flow elsewhere*."

Rather than perceiving that cash thresholds 'complement other measures', Austrian authorities "*stressed that it is highly doubtful that persons who have acquired illegal money will refrain from committing an additional crime, i.e. refrain from making cash transactions above a certain threshold… The Austrian National Bank generally considers restrictions of cash payments as ineffective in the fight against tax evasion. They stressed that Austria has a rather low shadow economy compared to other European countries despite its high level of cash usage.*"

Key reason in favour of cash threshold #4: '**Cash thresholds can be initially calibrated to minimise any perceived downside risk, then reduce over time'**

This statement does not appear to be supported by the CEPS report Treasury is referencing. I cannot find any reference to the statement that: 'Cash thresholds can be initially calibrated to minimise any perceived downside risk, then reduce over time.'
This is particularly in light of the fact that many European countries already have differing levels of cash restrictions in place- they do not need to convince the public by 'initial calibrations' of cash thresholds to 'minimise any perceived downside risk'.
I would request that Treasury provide the page number of the report that they are referencing to make this claim, which they cite as a "key reason in favour of cash thresholds".

The wording of this statement is also troubling. Treasury says to 'minimise any perceived downside risk', thresholds can initially be 'calibrated' (presumably at a high threshold) to make them palatable to the public, then 'reduced over time'.
Public opposition to the proposed cash restriction has been widespread, and the community's claims that the government intends to lower the $10,000 cash restriction once the legislation has been introduced has been labelled a 'conspiracy theory' - yet Treasury has just publicly confirmed this 'conspiracy'!

Regardless of the factual accuracy of this statement, as demonstrated above, the risks of cash restrictions are more then merely 'perceived'. The CEPS report demonstrates these are material and demonstrable:

- Significant negative impacts on revenue in tourism, markets, domestic trade and small businesses, particularly in high value goods.
- Reduction of consumer choice, exposure to risk of abuse by the banking sector
- Negative impact on vulnerable groups such as the elderly, people with disabilities, rural populations, the digitally illiterate, the unbanked.
- Enforcement of cash restrictions involves expensive physical interventions such as site visits, wire tapping and 'mystery shopping'- which must be paid for by the taxpayer, instead of on other essential services such as welfare or healthcare.

- Increased costs to businesses, in bank & credit card fees, market distortion, and increased exposure to harassment through the banking system.
- Privacy concerns, such as the abuse of financial data
- The prevention of using cash as a 'safe haven' asset
- Loss of economic freedoms, which Austrian and German governments have declared should be 'constitutionally protected'- these governments have rejected and strongly opposed any restrictions on cash payments.

Countries with cash restrictions in place, such as France (initially 3000 euro restriction, then lowered to 1000 euros) have not become accustomed to them over time, but rather remain unhappy with them. "*According to a recent survey, 84% of French do not want cash to disappear in favour of dematerialized payment methods… According to a recent study, 62% consider that measures to limit the use of cash are an infringement of individual freedoms.*"
The negative impacts of cash restrictions on the French economy are not 'perceived' risks - they are a material example of the damage of cash restrictions. The CEPS study notes the *"macro economic impact on trade and tourism, especially for border regions. Moreover, these restrictions contribute to the impoverishment of certain city centres. Indeed, there is already a problem of vacant premises and desertion of city centres in France and the restrictions imposed in terms of payment in cash, are likely to aggravate the situation.*"

Question c)

Senator McAllister: *This is a question on notice for Treasury. Quite a number of the written submissions to the committee have made reference to research which, it's argued, demonstrates that there's no correlation between the size and scale—or trend, in terms of the size and scale—of the black economy and a cash ban, and they look at European economies in this regard. One such bit of research was written by a pair called Schneider and Medina; it comes up routinely in the written submissions. On notice, can you just provide a short response to the committee about how you evaluate that particular line of analysis and the reasons why Treasury believes that a cash ban will work? I'd explore it here in the room but we are running out of time.*

Treasury, Answer c) 'Critique of Schneider'

Treasury states that a "*paper titled "Limiting the Use of Cash for Big Purchases" by Peter Sands, Haylea Campbell, Tom Keatinge and Ben Wesiman published in 2017, **critiqued Professor Schneiders's work***." (Emphasis added)

The paper referenced was published by the Royal United Services Institute (RUSI), and was "the culmination of a partnership between RUSI and the Mossavar-Rahmani Center for Business and Government."

Corporate supporters of RUSI include KPMG, the corporation whose interests appear strongly linked to the proposed Australian cash payment limit.[3] The Head of the Black Economy Taskforce was the former global head of KPMG. KPMG is lobbying the government to have the payment limit reduced to

[3] RUSI, Supporters

$2000. The Black Economy Final Report recommends the ‘New Payments Platform’ as a solution to replace features of cash - KPMG is the coordinator of this financial service.

One of the Directors of Mossavar-Rahmani Centre for Business and Government is Larry (Lawrence) Summers, who has advocated for a “*moratorium on printing new high denomination notes [which] would make the world a better place… a global agreement to stop issuing notes worth more than say $50 or $100*.”[4]

One of the authors, Peter Sands, “*has publicly and forcefully argued for the elimination of high denomination bank notes” and has been outspoken in his support of the restriction of cash”*, saying “*the presence of physical cash makes it more difficult for central banks to impose negative interest rates*.”[5]

The other three authors currently work for RUSI or the Mossavar-Rahmani Centre for Business and Government, and have previously worked for organisations such as JP Morgan, the Federal Reserve Bank of New York and Citi (banking).

Treasury states that the RUSI report critiqued Professor Schneider’s work. The report stated “*Schneider is also sceptical about the impact of cash thresholds on tax evasion. This does not seem to be consistent with the evidence from multiple countries that* ***suggests that cash-based tax evasion is a major – if not the major – source of tax evasion***.” (Emphasis added)

The ‘evidence from multiple countries’ referenced, comes from the following papers (which are **copied & pasted** onto Treasury’s Answer c):

‘Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report’[6]
This report mentions that cash restrictions (along with a host of other interventions and changes) were introduced in Europe in 2014, but **does not link** them as a driver or cause of tax evasion.
This report actually says that “*Based on numerous studies on the determinants of tax compliance, the capacity and willingness to pay taxes is strongly affected by the economic cycle.*”

‘Cash Businesses and Tax Evasion’[7]
“*Tax cheating follows opportunity, not complexity or immorality, and it is shaped by peer influence*…”

The study identifies (often elaborate) ways that would-be tax-evaders must hide their cash income, by operating in a ‘parallel cash economy’. The study identifies a number of difficulties faced: maintaining internal control risks such as employee secrecy, they must make do with self-financing strategies, or at least accept that bank loans will be based on their reported income only, how to find a sympathetic tax preparer and whether to confide in the tax preparer, understatement of income made even accurately reported deductions seem too large, in many of these cases, taxpayers lacked the ability to minimize taxes by not reporting cash income and finding ways to spend unreported cash flow without detection (mainly in household items, business upgrades, everyday spending).

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[4] Washington Post, Larry Summers: ‘It’s time to kill the $100 bill’

[5] Bundesbank: ‘War on cash: Is there a future for cash?’

[6] ‘Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report’

[7] ‘Cash Businesses and Tax Evasion’ Morse, Karlinsky, Bankman’ (2008)

The impact of a cash threshold on this form of tax evasion would appear to be minimal (and Schneider therefore correct), as the unreported cash income is spent on lower-value purchases, in the legal economy. The study's authors do not suggest cash restrictions to combat this - they suggest authorities focus on investigating assets that are not consistent with tax records.

Evaluating Tax Evasion in the European Union: A Case Study of the Prevalence and Character of "Envelope Wage" Payments[8]

"*This is the illegitimate wage practice that is being used by legitimate businesses whereby they pay their formal employees two separate wages, an official wage that is declared to the state for tax and social security purposes and an unofficial "envelope" wage which is not declared…*"

This practise (as Schneider correctly asserts) would not be affected by cash restrictions, as it involves the payment of wages, usually in a low-wage environment (such as restaurants). The report does not recommend the institution of a cash restriction to address this issue, instead changing social norms as "perception variables were also found to be key in tax evasion decisions. This shows the significant role played by social interactions on tax compliance decisions… Arguably imposing a social norm on behaviour might be considered in countries where evasion is relatively common."

The RUSI report that Treasury references does not supply any data to support its claim that "*Schneider is also sceptical about the impact of cash thresholds on tax evasion. This does not seem to be consistent with the evidence from multiple countries that suggests that cash-based tax evasion is a major – if not the major – source of tax evasion*."
The papers referenced do not support this statement.

Treasury, Answer c) 'Schneider's projections'

Treasury: *"Professor Schneider acknowledges the difficulty in measuring and interpreting figures on the criminal usage of cash and thus his own projections on the effects of a cash limit and states that cash plays a highly important role in criminal activities such as money laundering but suggests that placing limitations on the usage of cash will not prevent criminal activity occurring by electronic means."*

I would like to address factually incorrect or misleading parts of this statement.

"*Professor Schneider acknowledges the difficulty in measuring and interpreting figures on the criminal usage of cash and thus his own projections on the effects of a cash limit*"

In the paper Treasury references [9], Schneider says "*Figures on crime and criminal cash usage are rare, often contain large errors (problem of double counting) and are difficult to interpret*." Schneider is referring to the previous chapters of his paper, where he critiques a large number of papers and studies, analysing them to determine if a wide variety of factors are statistically significant.

[8] 'Evaluating Tax Evasion in the European Union: A Case Study of the Prevalence and Character of "Envelope Wage" Payments', Kedir, Fethi, Williams (2011)

[9] Friedrich Schneider: 'Restricting or Abolishing Cash: An Effective Instrument for Fighting the Shadow Economy, Crime and Terrorism?'

"…*and thus his own projections*" is a curious thing for Treasury to say, as Professor Schneider has published a significant number of papers with empirical studies on shadow economies and is considered to be a global expert in this field.

Treasury says Schneider "*states that cash plays a highly important role in criminal activities such as money laundering…*"
The paper referenced is 'The Financial Flows of Transnational Crime and Tax Fraud'[10]. In it, Schneider illustrates a variety of methods of money laundering, some of which use cash, some of which **do not use cash at all**!

Professor Schneider says "*There is an extensive literature about the definition of a shadow economy also estimating a shadow economy and its interaction with the official economy… We clearly see that the cash limit variable has no statistically significant influence as a causal factor on the size of the shadow economy whereas the tax burden, rule of law index and the inflation rate all have the theoretically expected sign and are highly statistically significant… Of course, anonymous cash makes tax evasion easier, especially for those who cannot afford to shift funds abroad. However, easy cash is clearly not the main reason for tax evasion, though it does facilitate it.…Other means of storing and transferring illegally obtained assets without leaving many traces are already in use.*"

Treasury, Answer c) Europol report

Treasury: "*However, the Europol Police Office's 2015* ***Why is cash still king? A strategic Report on the use of cash by criminal groups as a facilitator for money laundering*** *notes that 'while not all use of cash is criminal, almost all criminals use cash at some stage during the money laundering process. Cash is an entirely legal facilitator which enables criminals to inject illegal proceeds into the legal economy with far fewer risks of detection than other systems."*

The Europol report consistently asserts that restricting cash is required to fight money laundering, even though it says "*there are no empirical figures available on either the legitimate or illegitimate uses of cash*".

The Europol report acknowledges that "*In either event, holding cash does not fulfil the money laundering cycle: it i**s merely one stage in the money laundering process**… criminals seek to place, layer and integrate cash in such a way that is a) does not arouse suspicion; b) cannot be traced by law enforcement; c) is seamlessly integrated in the legal economy allowing them to enjoy the fruits of their labour.*" This is done by using "*Cash front businesses - 'blending' or 'co-mingling' : mixing illegal funds with legal funds, making them more difficult to detect. Blending criminal profits with those generated from legitimate business not only helps to obscure transactions, but in addition, may have the added advantage… of limiting any confiscation order to those sums which are demonstrably illegal funds - something nearly impossible to show*." (Emphasis added)

The cash front businesses required labour-intensive interventions to detect money laundering: "*The question of physical surveillance to detect the use of cash-front businesses for money laundering… largely requires traditional, resource intensive investigation techniques.… physical surveillance, wire tapping and communication analysis, as well as the deployment of under cover agents*."

[10] Freidrich Schneider: 'The Financial Flows of Transnational Crime and Tax Fraud'

Although Europol is insistent in their opinion that cash restrictions would prevent money laundering, it is difficult to see how already criminal operations laundering cash through small transactions would be affected.

The Treasury: Answer to a question taken on notice at a public hearing in Canberra on 12th December 2019 (received 17th January 2020)

Below I have outlined a critique of the answers supplied by Treasury to questions taken on notice at a public hearing in of the Senate Standing Committee on Economics for the Inquiry into the Currency (Restrictions on the Use of Cash) Bill 2019.

Question

Senator Patrick: *Because I'm across a number of different portfolios and I don't have the time to read that quite extensive report, I wonder if you could pull out, on notice, the relevant data, even if it's only loosely quantifiable – perhaps from those reports and any other information that you have – that says: this is why we should support this legislation in the face of a significant number of constituents who are who are against it.*

Answer to Senator Patrick (partial excerpt)

Treasury: *"Financial Action Task Force (FATF)*
Various reports produced by the FATF over the last few years have made reference to the fact that the real estate sector may be one of the many vehicles used by criminal organisations to launder their illicitly obtained money.
The FATF found that large amounts of cash are suspected to be laundered out of China into the Australian real estate market. Once implemented, the cash payment limit will reduce the ability for individuals to launder illicit money through the Australian real estate sector as they will no longer be able to purchase property or pay for any part of property in large sums of cash."

Treasury has apparently recommended a blanket cash restriction as a 'catch-all' solution for money laundering through real estate. However, this appears unlikely to work as claimed given that the FATF identifies:

- There is already a $10,000 payment declaration threshold for cross-border cash transfers. Declarations are not investigated by AUSTRAC and are apparently not of concern either: "*The authorities do not appear to be investing serious effort in mitigating this risk".*
- Real estate agents are *"not subject to AML/CTF requirements or supervision and, with limited exceptions, demonstrated a low understanding of their respective ML/TF risks."*
- Money laundering though illicit funds received from abroad, into the real estate market currently occurs *"despite the fact that, for example, buying real estate with cash would trigger a significant cash transaction report".*

The Financial Action Taskforce: Money laundering through real estate in Australia

The FATF produced a 2015 evaluation of Australia: 'Anti-money laundering and counter-terrorist financing measures', which I have quoted below.
The FATF acknowledges that large amounts of cash may be laundered into Australia, through real estate. However, **at no time** does the Financial Action Taskforce suggest cash restrictions as a

method to combat this. Instead, their primary focus is on extending AML/CTF requirements to high risk 'designated non-financial businesses and professions (DNFBPs).

"Australia is seen as an attractive destination for foreign proceeds, particularly corruption-related proceeds flowing into real estate, from the Asia-Pacific region… Australia remains at significant risk of an inflow of illicit funds from persons in foreign countries who find Australia a suitable place to hold and invest funds, including in real estate…

The laundering of foreign proceeds of crime in Australia (particularly in the real estate sector) was acknowledged by some of the authorities and much of the private sector as a high ML risk, but assessors' attention was not drawn to any national policies explicitly targeting or prioritising this risk. ***Of great concern is that Australia has not brought real estate agents within the AML/CTF regime…*** *(Emphasis added)*

The FATF report noted concern that most DNFBPs (including real estate agents) *"are also not subject to AML/CTF controls or suspicious transaction reporting obligations, even though they are highlighted as being high-risk for ML activities… there are limited measures in place to mitigate high ML/TF risks…"*

The FATF said that DNFBPs such as real estate agents *"are not subject to AML/CTF requirements or supervision and, with limited exceptions, demonstrated a low understanding of their respective ML/TF risks… At the same time, a lot of reliance is placed on the banking and financial sector as gatekeepers due to the absence of AML/CTF regulation and requirement on key high-risk DNFBPs such as lawyers, accountants, real estate agents and trust and company service providers. As a result of these factors, the effectiveness of the preventive measures in the financial system as a whole and DNFBPs is called into question to some extent".*

*"**The following recommendations are made on preventive measures:** Ensure that [real estate agents] understand their ML/TF risks, and implement effective AML/CTF obligations and risk mitigating measures in line with the FATF Standards. Among others, persons and entities in these sectors should be able to demonstrate that they are effectively refusing businesses on ML/TF grounds or when CDD is incomplete, in addition to their own business or reputation considerations. In addition, they should be required to report suspected proceeds of crime and funds in support of terrorism to competent authorities in a swift manner. Last but not least, the effectiveness of the controls and measures that they put in place should be subject to sufficient monitoring and supervision to ensure compliance." (Emphasis added)*

The Financial Action Taskforce: Cash laundered cross-border

The FATF acknowledges the risk of cash laundered cross-border. The FATF notes that the cross-border movement of cash above the threshold of $10,000 already triggers a declaration requirement. However, the FATF notes that declarations are **not followed up or investigated by AUSTRAC** and 'authorities do no appear to be investing serious effort in mitigating this risk'.

Australia is taking some steps to target the cross-border movement of cash and bearer negotiable instruments (BNIs). Australia remains at significant risk of an inflow of illicit funds from persons in foreign countries who find Australia a suitable place to hold and invest funds, including in real estate.

The movement of undeclared currency ("cash smuggling") is identified as an increasing high risk in Australia and some steps have been taken to target cross-border movement of cash and bearer negotiable instruments (BNIs).

Because all international wire transfers are reported to AUSTRAC, smuggling cash and BNIs is considered an attractive alternative to bring illicit funds in and out of Australia without the certainty of being reported. AUSTRAC and all law enforcement agencies indicated that illicit cash coming from abroad (for example to buy real estate) - is a major typology in Australia ***despite the fact that, for example, buying real estate with cash would trigger a significant cash transaction report****… Australia is also at significant risk of an inflow of illicit funds from persons in foreign countries who find Australia a suitable place to hold and invest funds, including in real estate. Cash non-declarations/ seizures at border points also indicate illicit funds are entering Australia. The authorities do not appear to be investing serious effort in mitigating this risk, including when foreign predicate offences may be involved.*

Australia implements a combination of declaration (for cash) and disclosure (for BNI) systems for incoming and outgoing cross-border transportation of currency and BNIs. For cash (whether Australian or foreign), the AML/CTF Act requires a declaration for all physical cross-border movements above the threshold of AUD 10 000, whether by travellers or through mail and cargo.

Australia is taking some steps to target the cross-border movement of cash and BNIs. However the authorities were unable to provide information about how much of the detected cash is seized or confiscated, and insufficient action is taken to investigate significant declarations. ***All persons entering or leaving the country are required to declare whether they are carrying more than AUD 10 000 in currency…*** *All declarations made at border points and collected by ACBPS are filed with AUSTRAC. If significant sums are declared and an ACBPS officer develops a reasonable suspicion, such as where there is targeted intelligence indicating laundering, they would actively question the traveller. However, it is not clear whether travellers declaring significant sums are questioned in all circumstances.* ***Nor are declarations of significant sums actively reviewed, investigated, or profiled by AUSTRAC*** *when automatically passed on from ACBPS… (Emphasis added)*

Treasury claims that introducing a cash payment limit will address the money laundering issues that FATF has identified. However, the 2015 recommendations made by the FATF in regards to real estate money laundering risks and cash transferred cross-border, **were still not addressed in 2018**, when the FATF conducted a follow-up evaluation.

Please note: In September 2019, I personally contacted the Financial Action Taskforce to query if they were involved in the Black Economy Taskforce's reporting or consultation process.
The FATF replied: "*FATF was not involved in the research or consultation process of this report.*"

Conclusion

It is my opinion that Treasury's answers to Senators' questions on notice appear to be either extraordinarily oversimplified, not backed up by substantiated evidence, or appear deliberately misleading.

This report and its findings have been published in the public interest and out of respect to the Committee Senators. I believe it is important that evidence given by Treasury is substantiated by evidence.

M Harrison