



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Centre for Theology and Ministry
29 College Crescent
Parkville Victoria 3052

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
E-mail: economics.sen@aph.gov.au

Submission from the Synod of Victoria and Tasmania, Uniting Church in Australia on *Currency (Restrictions on the Use of Cash) Bill 2019*

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The Synod of Victoria and Tasmania, Uniting Church in Australia welcomes this opportunity to provide a submission on the *Currency (Restrictions on the Use of Cash) Bill 2019* introducing an economy-wide cash payment limit. The Synod shares the government's concern that large cash payments facilitate money laundering in Australia. There appear to be minimal reasons why a person engaged in a lawful transaction would do so with a large amount of cash.

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Recommendations

The Synod requests that the Committee makes the following recommendations:

- That the Senate pass the Bill;

- That the Bill be amended to include a review after three years to determine if measures have been used by those in criminal activities to circumvent the intent of the Bill and to identify reforms that may be needed to strengthen the law. The review should include consideration of lowering the \$10,000 threshold;
- That the Bill be supported by an adequately resourced communication strategy to make people aware of the obligations created by the Bill;
- That the government establish support for vulnerable groups, such as people with mental health problems and older people, who have trouble navigating the financial system and therefore still make large payments in cash. The service should assist those people in being able to make payments without being prosecuted under the provisions of the Bill;
- That the government not exempt digital currencies from the requirements of the Bill, as this will encourage criminals to make greater use of digital currencies and circumvent the intent of the Bill;
- That the government not exempt private and personal payments from the provisions of the Bill, as this will open a loophole for money laundering activities, allowing criminals to 'gift' the proceeds of crime to associates;

Assessments of the value of having a cash payment limit

An evaluation of placing restrictions on cash payments by the Harvard Kennedy School, Mossavar-Rahmani Centre for Business and Government, drew the conclusion:¹

Criminals like to use cash because it is so widely accepted, anonymous and virtually impossible to track. Cash thresholds make it harder to move large volumes of money into or out of the legal economy.

Further:²

Cash thresholds are likely to have most impact on tax evasion and money laundering connected to organised crime, but relatively limited impact on terrorist finance or petty crime. Cash thresholds make it harder to avoid taxes on high-value purchases. Cash-based tax evasion, through avoiding VAT or sales taxes, and under-reporting profits is the largest source of tax evasion in most countries. Cash thresholds also make it much harder and more expensive to launder the cash proceeds of organised crime. Criminals can break up large sums of money into many smaller transactions (known as 'smurfing'), but this is more costly and slower. Cash thresholds would have limited direct impact on terrorist operations as these typically involve relatively low-value financial transactions. However, to the extent that cash thresholds impede organised crime, such measures could conceivably help undermine the financing of those terrorist networks dependent on such funding.

There appear to be limited downsides to implementing cash thresholds in terms of impact on legitimate economic activity or concerns about individual privacy. The overwhelming majority of legitimate cash transactions are below the levels at which cash thresholds would be imposed. High-value cash transactions that are not motivated by illegal purpose appear to be rare and only relevant to a small, wealthy proportion of the population. Privacy concerns,

¹ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, vii.

² Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, vii-viii.

while legitimate, seem of less relevance to high-value transactions, since a large proportion of transactions of this magnitude require some recording of personal details.

Cash thresholds appear to be an attractive policy option for curtailing the illicit use of cash with limited adverse effects or implementation risks. Thresholds need to be set at a level well above the purchase price of most consumer durables, but low enough to capture the purchase of vehicles and luxury items. This should have an impact on money laundering and tax evasion with little inconvenience to law-abiding citizens.

The Harvard Kennedy School, Mossavar-Rahmani Centre for Business and Government made the point that ordinary law-abiding citizens tend to make large purchases by non-cash means (bank transfers and debit and credit cards). By contrast, as governments continue to strengthen their anti-money laundering requirements on the financial sector, many criminals are finding it increasingly difficult to effectively launder the proceeds of crime through the formal banking sector with the assistance of professional enablers. Purchases of high-value goods using cash offer criminals the ability to integrate cash into the legitimate economy without raising anti-money laundering flags.³ Cash transaction limits help to force high-value transactions into electronic payment mechanisms, where they can be recorded and tracked.⁴

The Harvard Kennedy School, Mossavar-Rahmani Centre for Business and Government recommended the EU introduce a maximum uniform cash threshold in the range of €3000 to €4,000 (\$4,800 to \$6,400).⁵

A 2017 assessment of setting an EU cash transaction limit by ECORYS and the Centre for European Policy Studies concluded that:⁶

Findings indicate that the likely impact of a cash payment restriction on combatting terrorist financing is limited. Amounts involved are so small that the threshold levels would have to be set at an exceedingly low level. This is corroborated by the case study analysis. In the researched terrorist financing cases, neither a cash payment restriction nor a declaration obligation would have a significant impact...

A restriction or declaration obligation will remove anonymity of a transaction and hence will complicate money laundering via the purchase of high-value goods. Cash restrictions are relevant for cash-generating crimes (such as the production and trade in illicit drugs) and to a much lesser extent to various so-called 'white-collar crimes', such as various types of fraud involving money that is already in the financial system. A cash restriction will have an impact on specific categories of illegal spending and money laundering schemes: in particular those where the purchase of high-value goods is involved.

The adoption of both a ban and a declaration obligation are expected to have a positive impact on the fight against money laundering, as it will restrict the expenditures of cash on high-value goods....

³ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 6.

⁴ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 26.

⁵ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, viii.

⁶ ECORYS and the Centre for European Policy Studies, 'Study on an EU initiative for a restriction on payments in cash', 15 December 2017, 10-11.

Positive sides effects of a restriction are expected regarding increased alertness on the risks of illegal activities and on indirectly decreasing risks of robberies.

ECORYS and the Centre for European Policy Studies analysed the costs associated with carrying out eight high profile terrorist attacks in Europe and found the costs were generally low.⁷ The only transactions of goods above €1,000 were the purchase of firearms and explosives in the Charlie Hebdo attack, the Hyper Kacher attack and the Paris attacks, and possibly the purchases of the Audi A3 linked to the Barcelona and Cambrils attack.⁸ The weapons were paid for by cash on the black market, so a cash transaction limit would have made no difference to the transactions. Someone illegally selling weapons will not be concerned about breaking cash transaction limit laws.

ECORYS and the Centre for European Policy Studies were less optimistic about the impact of a cash payment limit on tax evasion in the shadow economy:⁹

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.

They assessed that there were limited additional costs to enforcing a cash payment limit:¹⁰

The data that is available suggests that enforcement costs are rather limited, especially when seen in perspective of the total costs associated with enforcing the broader EU AML/CFT framework. It is clear that both the type of measure and the threshold level greatly determine consequences for expected additional enforcement costs....

The effects of 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 because they are to a large extent already digitalised.

An assessment of the role of cash transactions in facilitating crime by Europol in 2015 concluded that 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.”¹¹

In 2015 the Financial Action Task Force (FATF) estimated the amount of money laundered through the smuggling of cash across international borders to be “between hundreds of billions and a trillion US dollars a year.”¹² Given the total value of cash outstanding in the world amounts to about US\$4

⁷ ECORYS and the Centre for European Policy Studies, ‘Study on an EU initiative for a restriction on payments in cash’, 15 December 2017, 38-56.

⁸ ECORYS and the Centre for European Policy Studies, ‘Study on an EU initiative for a restriction on payments in cash’, 15 December 2017, 56.

⁹ ECORYS and the Centre for European Policy Studies, ‘Study on an EU initiative for a restriction on payments in cash’, 15 December 2017, 11.

¹⁰ ECORYS and the Centre for European Policy Studies, ‘Study on an EU initiative for a restriction on payments in cash’, 15 December 2017, 11-12.

¹¹ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, ‘Limiting the Use of Cash for Big Purchases’, Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 3.

¹² Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, ‘Limiting the Use of Cash for Big Purchases’, Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 5.

trillion, it means a significant proportion of the world's physical cash is used for illicit purposes.¹³ An even higher proportion of high-denomination banknotes are used for illicit purposes.¹⁴

The threshold level of the cash payment limit

Thus, in the Synod's view a cash payment limit of \$10,000 is at a very high level to address shadow economy activities, as demonstrated by most of the cash transaction limits set by the other jurisdictions that were outlined in the Treasury consultation paper:¹⁵

France	
Cash Limit Rules Residents are not allowed to make cash payments for goods of over EUR 1,000 (approx. AUD 1,600). Cash payments for certain services cannot exceed EUR 450. Exceptions exist for non-residents to make payments up to EUR 15,000 (approx. AUD 24,000); for salaries paid in cash up to EUR 1,500 (approx. 2,400) and for people who do not have any other means of payment. For amounts below EUR 1,000, French laws require that merchants accept cash with no surcharge.	Integrity Measures Any cash deposits or withdrawals of more than EUR 10,000 (approx. AUD 16,000) euros over a single month will be automatically reported to the Tracfin Anti-Fraud and Money Laundering Agency by the relevant bank. Further, authorities also have to be notified over transfers of more than EUR 10,000. Changing more than EUR 1,000 in cash into another currency requires identification.
Spain	
Cash Limit Rules Cash payments are restricted to a maximum of EUR 2,500 (approx. AUD 4,000) where one of the parties of the transaction is a business or a sole trader. It does not apply to payments between individuals and allows foreign tourists to make payments of up to EUR 15,000 in physical cash.	Integrity Measures A fine of 25 per cent of the transaction value will apply on non-compliance, which can be imposed on both parties to the transaction. If the price of the good or service is above the limit, no part of the payment can be in cash.
Italy	
Cash Limit Rules Cash payments are restricted to a maximum of EUR 3,000 (approx. AUD 4,800). Payments above EUR 3,000 amount must be made using traceable instruments, such as bank transfers and non-transferable cheques.	Integrity Measures Banks are required to report any transaction over EUR 1,000 to financial regulators. Fines apply for breaches to the cash payment limit. Lower limits are applied in the use of prepaid cards if they are not registered in any name (EUR 2,500) and transferable cheques or money orders (EUR 1,000).
Israel	
Cash Limit Rules	Integrity Measures

¹³ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 5.

¹⁴ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 5.

¹⁵ Australian Treasury, 'Introducing an Economy-Wide Cash Payment Limit', 23 May 2018, 10-11.

<p>Cash payments to businesses are restricted to 11,000 shekels (approx. AUD 4,000). Cash transactions between individuals are limited to 50,000 shekels (approx. AUD 18,500). The Israeli Finance Minister has noted that these limits may be reduced to 6,000 and 15,000 shekels respectively in 2020.</p>	<p>Payments with bank cheques will be limited to 10,000 shekels. Tourists will be limited to paying no more than 55,000 shekels (approx. AUD 20,400) to buy services or assets, although they can do so up to five times.</p>
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In addition, the following EU countries had in place cash transaction limits in 2017:¹⁶

- Belgium (€3,000)
- Croatia (€15,000)
- Czech Republic (CZK 350,000)
- Greece (€1,500)
- Poland (€15,000)
- Portugal (€1,000)
- Romania (RON 10,000)
- Slovakia (€15,000)
- Bulgaria
- Hungary
- Denmark
- Latvia
- Slovenia.

Belgium introduced a €15,000 cash threshold in January 2004. The level was reduced €5,000 in April 2012 and to €3,000 in January 2014. However, enforcement of the limit only began in 2011.¹⁷ The threshold has assisted authorities in the detection of cases of drug trafficking, tax fraud and trading in stolen jewels.¹⁸ All cash transactions in the real estate sector are banned in Belgium.¹⁹

The German Customs Investigation Bureau revealed in a study that Germany has become more popular as a destination for money launderers as they moved their activities as a result of other EU governments imposing cash transaction limits.²⁰

A 2016 study found that the €1,000 cash transaction limit at the time of the study (it was subsequently increased to €3,000) had a beneficial impact on curtailing the illicit use of cash within Italy.²¹

¹⁶ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 13; and ECORYS and the Centre for European Policy Studies, 'Study on an EU initiative for a restriction on payments in cash', 15 December 2017, 26.

¹⁷ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 15.

¹⁸ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 15.

¹⁹ ECORYS and the Centre for European Policy Studies, 'Study on an EU initiative for a restriction on payments in cash', 15 December 2017, 27.

²⁰ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 16.

²¹ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 16.

The Indian *Finance Act 2017*, took various measures to restrain the shadow economy, including inserting a new section 269ST in the *Income Tax Act*. Section 269ST restricted a cash transaction and limited it to Rs 2 Lakhs per day (around \$4,100).²²

Section 269ST states that no person shall receive an amount of Rs 2 Lakh or more:

- In aggregate from a person in a day; or
- In respect of a single transaction; or
- In respect of transactions relating to one event or occasion from a person.

However, the Central Board of Direct Taxes (CBDT) has clarified that this cash withdrawal limit does not apply for withdrawals from Banks and Post offices.

Other examples of governments that have set cash transaction limits are:²³

- Jamaica (JMD\$1 million, which is approximately A\$10,000);
- Mexico (500,000 pesos for real-estate transactions, which is around A\$38,000; and 200,000 pesos for purchases of vehicles, luxury goods and lottery tickets, which is approximately A\$15,000); and
- Uruguay (US\$5,000).

There is some anecdotal evidence from Mexico that the cash transaction restriction had an impact on the real estate market in Sinaloa, a state notorious for major cartel activities. Real-estate brokers, jewellery stores and car dealerships in Sinaloa all reported a significant decrease in sales after the introduction of the cash payment limit in 2014.²⁴

Why the Australian Parliament should support a cash payment limit

The current ability to make substantial cash payments assists with money laundering activities in Australia. This is especially the case when real estate professionals, accountants and lawyers have no obligation to report suspicious transactions. As an example, John Spriggs was found guilty in Queensland of serious criminal drug-related offences, was subject to proceeds of crime proceedings in Queensland commenced in 2007 and settled in 2016. Court documents reveal that one of the assets subject to confiscation proceedings, a Gold Coast residential property, was purchased in 2000 by Spriggs for the total cost of \$275,000. The real estate agent received two deposits - \$5,000 cash and a \$5,000 cheque. The Bundall conveyance lawyer received the \$265,000 remainder with Spriggs paying 190 separate payments over a period of two weeks. These payments consisted of:

- \$181,000 in 181 \$1,000 money orders purchased from more than 14 different post offices;
- \$40,000 in 6 cash payments; and
- \$44,000 in 3 bank cheques.

The lawyer issued 190 separate receipts for these payments, and there is no evidence a report of suspicious behaviour was made to authorities. Spriggs, who was believed to be unemployed at the

²² India Filings, 'Cash Transaction- Limit & Penalty – Income Tax', <https://www.indiafilings.com/learn/cash-transaction/>

²³ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 19-20.

²⁴ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 20.

time, said the monies were saved from employment, business operations and gambling wins on horses. The funds were stored in a home safe, a bank security box and his bank account.

The Synod has regularly received reports of large amounts of cash-in-hand payments being made to workers by employers in the horticultural and chicken processing sectors, to avoid having to pay the employees legal wages. In some cases, we have passed this information to the ATO for possible investigation by them. While we believe the sources of these reports have been credible, we have been unable to verify the allegations for ourselves independently. However, without mounting surveillance of our own to observe the payments being made, it would be difficult to do so. Further, doing so could tip-off anyone engaged in such illegal activity that their activities have been discovered frustrating any investigation by law enforcement agencies.

The Australian Institute of Criminology points out that a common strategy used by individuals wishing to transfer the proceeds of crime across national borders is to conceal it in their clothing or strap it to their body.²⁵ They gave the case of a couple visiting Australia from Beijing who allegedly attempted to bring in more than \$100,000 in cash concealed inside the man's jacket and the woman's handbag.

The Synod is concerned about those in the community which appear to think that tax evasion is an acceptable criminal activity, by paying cash for goods and services in undocumented transactions.²⁶ Often obtaining a discount from a tradesperson for paying cash is due to the tradesperson then not declaring the income to the Australian Taxation Office

Across the Synod's broad operations, from providing community services, to property transactions to delivering financial services, no staff could identify a legitimate reason to engage in large cash transactions. The only area where the Synod has dealt with large cash payments has been in its camping area. Some community organisations that are not registered as businesses or charities (they exist as an informal network of people) will hold camps. Each person attending the camp pays the organisation centrally for their costs to participate in the camp, and the organisation pays our campsite in cash. Occasionally these transactions will exceed \$10,000. Our campsites also get requests to provide a discount when payments are made in cash.

One staff member had experience of previously of working in agricultural pharmaceuticals and reported it was not uncommon for some primary producers to pay for orders over \$10,000 in cash. However, he indicated that it could not be ruled out that some of these payments and other large cash payments made by these primary producers were sourced from illegal shadow economy activities such as undeclared income to the Australian Taxation Office.

People who still make legitimate large cash payments in Australia

One of our Ministers raised concern that there were people in congregations he had ministered to who, due to age or mental impairment, did not use modern financial technologies and still did almost all their transactions in cash. In one case, a funeral payment of greater than \$10,000 was made in cash, and in another, a vehicle was purchased with over \$10,000 in cash. The design of the economy-wide cash payment limit will need to provide some accommodation for people who lack

²⁵ Russell Smith and John Walker, 'The illegal movement of cash and bearer negotiable instruments: Typologies and regulatory responses', *The Australian Institute of Criminology, Trends and Issues No. 402, October 2010, 2.*

²⁶ The concern about the link between discounts for cash and tax evasion did not appear even to be a consideration of those supporting such discounts who spoke with journalist Karen Middleton. Karen Middleton, 'Cash Checks', *The Saturday Paper*, 12 October 2019.

the skills or who have a mental health issue that means they still deal in cash. However, such people are reasonably rare, and the number of transactions they would need to do over \$10,000 is also scarce. A solution might be to contract out a service to assist such people in making such payments.

ECORYS and the Centre for European Policy Studies also argued that while the impact of a cash payment limit on vulnerable groups in society would be low, governments needed to support such groups with their compliance:²⁷

The expected impacts regarding both options are not be very significant regarding vulnerable groups since the latter generally are not buying high-value goods. Nevertheless, access to information and additional targeted support is a crucial factor for these groups. Accompaniment is hence crucial to allow adaption and full inclusion of vulnerable people. Additional support but also coordination from banks, associations (for consumers, persons with disabilities, refugees, etc.) and legal guardians would be needed to guarantee their inclusion.

Need for the Bill to include a review

The Synod recommends that the *Currency (Restrictions on the Use of Cash) Bill 2019* be amended to include a specific section requiring a review after three years to identify the impact of the cash transaction limit and any mechanisms, arrangements or schemes that have been set up to circumvent the ban. The Harvard Kennedy School, Mossavar-Rahmani for Business and Government recommended that GST receipts for the sectors of the economy most directly affected by the introduction of a cash payment limit (such as luxury goods, constructions and second-hand cars) be monitored before and after the introduction of the limit to help assess the impact of the limit.²⁸

Comments on the Bill

The Synod has taken a long interest in the need to reduce corruption in Australia and globally. Corruption does real harm to people, holds back development and undermines confidence in government and public institutions. In 2014 the meeting of 400 representatives of the Synod resolved:

14.7.19.3. The Synod resolved:

(a) To continue its support for action by the Commonwealth Government to combat corruption, both in Australia and internationally; and

(b) To request the Commonwealth Government:

- (iii) To extend Australia's anti-money laundering/counter-terrorism financing laws to cover designated non-financial businesses and professions named in the Financial Action Task Force international standards, and specifically to real estate agents in relation to the buying and selling of property, dealers in precious metals and stones, lawyers, accountants, notaries and company service providers;*
- (iv) To require a bank or other financial institution which assesses that funds it is dealing with have a high risk of being associated with money laundering to*

²⁷ ECORYS and the Centre for European Policy Studies, 'Study on an EU initiative for a restriction on payments in cash', 15 December 2017, 12.

²⁸ Peter Sands, Haylea Campbell, Tom Keatinge and Ben Weisman, 'Limiting the Use of Cash for Big Purchases', Harvard Kennedy School, Mossavar-Rahmani for Business and Government, September 2017, 26.

- refuse to deal with the funds unless instructed otherwise by the appropriate Australian law enforcement agency;*
- (vii) *To share information automatically with the relevant foreign authorities when a foreign politically exposed person purchases property or transfers funds to Australia, unless the Australian authorities have some reason to carry out a prosecution of the person themselves and sharing the information would compromise that prosecution, or if the Australian Government has reasonable concerns the information is likely to be misused to carry out human rights abuses;*
 - (ix) *To establish a dedicated unit within the Australian Federal Police to investigate money and assets stolen from foreign governments and shifted to Australia by politically exposed persons and to seek to return the stolen assets where possible;*
 - (x) *To establish a national unexplained wealth scheme to combat the ability of organised criminals to profit from their crimes, where unexplained wealth provisions are not limited by having to prove a predicate offence;*
 - (xi) *To implement an effective non-conviction based confiscation and restraint mechanism to deal with criminal assets transferred from overseas to Australia; and*
- (c) *To write to the Prime Minister, the Attorney General, the Leader of the Opposition and the Shadow Attorney General to inform them of this resolution.*

The Synod supports the establishment of a cash payment limit backed by strict liability offences. The Synod supports that both parties to the transaction, the payer and the receiving business, be subject to a penalty for a transaction exceeding the cash payment limit. The measure is necessary to avoid parties on one side of the transaction being able to ask for cash transactions and not face sanction for doing so. The Synod supports there being stronger penalties for those that are reckless in making cash payments above the cash payment limit. Given those using cash payments for criminal activities are usually likely to derive significant advantage to securing and using their criminal profits through cash payments, the penalties need to be adequate to deter others involved in the cash payments but not in the other criminal activities associated with the criminal activity.

The Synod supports that the start date for the Act is 1 January 2020, but this will need to be backed by a significant awareness campaign, so people across Australia understand the new ban. However, given how close this date is, it may be necessary to delay the implementation of the cash transaction limit.

The Synod supports the definition of cash in the Bill as both physical and digital currency within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

The Synod supports the strict liability offences being subject to category B extended geographical jurisdictions to ensure that entities that are closely linked to Australia cannot escape the application of the law by arranging for payment and supply to take place outside of Australia.

The Synod supports entity being defined with the same meaning as within the *Income Tax Assessment Act 1997*.

The Synod supports that where the entity that committed the payment offence is not a legal person, other entities that control the actions of the entity that carried out the offence will be taken to have committed the offence. This will address attempts by people trying to circumvent the law through the use of structures that are not legal persons.

The Synod supports the vicarious liability provisions in the Bill.

The Synod supports that it will be an offence to breach the cash payment limit if the payment or series of payments is made after the date of the commencement of the offence, even if the payment or series of payments were under an agreement made before that date.

Need to include personal and private transactions in the cash payment limit

The Synod is concerned that the draft *Currency (Restrictions on the Use of Cash) Rules 2019* propose to provide an exemption for personal and private transactions. One of the benefits of the cash transaction limit across the economy would be to make it harder for cash gained through illegal means to be used to purchase goods and services or transferred to other people. While the underlying crime that produces the cash is prosecutable, in many cases, the police lack the resources to prove the crime took place. The Bill would help make all transactions in our economy for more significant amounts of money more visible. Applying the restriction to private and personal transactions is unlikely to inconvenience many people engaged in a legitimate transaction. For example, a person wanting to make a financial gift to a relative would not be inconvenienced to do the transaction as a transfer from their bank account to the bank account of the relative. The exemption means a criminal can freely transfer large sums of cash to others as gifts, or use the proceeds of crime to buy goods from private individuals. The exemption appears to create a significant loophole.

Need to include digital currencies in the cash payment limit

The Synod is also concerned that the draft *Currency (Restrictions on the Use of Cash) Rules 2019* propose to exempt digital currencies. The Synod believes this will create a very significant loophole in the risks the Bill intends to create to make substantial cash payments in the shadow economy. The Synod requests that the Committee recommend that digital currencies be subject to the cash transaction limit of \$10,000.

The Financial Action Task Force (FATF) stated in their guidance on virtual assets and virtual asset providers:²⁹

...the virtual asset ecosystem has seen the rise of anonymity-enhanced cryptocurrencies (AECs), mixers and tumblers, decentralised platforms and exchanges, and other types of products and services that enable or allow for reduced transparency and increased obfuscation of financial flows, as well as the emergence of other virtual asset business models or activities such as initial coin offerings (ICOs) that present ML/TF risks, including fraud and market manipulation risks. Further, new illicit financing typologies continue to emerge, including the increasing use of virtual-to-virtual layering schemes that attempt to further obfuscate transactions in a comparatively easy, cheap, and secure manner.

Further, FATF stated that virtual assets:³⁰

... have certain characteristics that make them more susceptible to abuse by criminals, money launderers, terrorist financiers, and other illicit actors, including their global reach, capacity for rapid settlement, ability to enable "individual-user-to-individual-user"

²⁹ FATF, 'Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers', Paris, June 2019, 6.

³⁰ FATF, 'Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers', Paris, June 2019, 25.

transactions (sometimes referred to as “peer-to-peer”), and potential for increased anonymity and obfuscations of transaction flows and counterparties.

The Australian Federal Police have just hosted an international conference on ‘Rethinking Law Enforcement Efforts to address the Globalisation and Digitalisation of the Criminal Economy’ which had a focus on the role of cryptocurrency in proceeds of crime.³¹

Europol has pointed out that the most threatening organised crime groups are those who can invest their significant profits in the legitimate economy as well as into their criminal enterprises. The investment ensures business continuity and a further expansion of their illegal activity.³² Digital currencies are one vehicle for such investment.

CipherTrace estimated that in the first half of 2019 thefts, scams and other misappropriation of funds from cryptocurrency users and exchanges netted criminals and fraudsters approximately US\$4.26 billion.³³ One alleged Ponzi scheme in the second quarter of 2019 appeared to have defrauded millions of users out of US\$2.9 billion in crypto assets.³⁴ CipherTrace points out that pulling off a successful robbery of digital currency by hacking an exchange involves two phases. The first phase is the hack itself. The cybercriminals then need to make their online getaway to avoid detection by law enforcement agencies. The hackers need to launder the stolen digital currency and find an exit ramp into the traditional financial system so they can use the stolen digital currency as clean fiat to purchase things in the real world.³⁵

There are enterprises set up assisting criminals in laundering proceeds of crime using digital currencies. For example, in May 2019 the Netherlands Financial Intelligence and Investigation Service (FIOD), Europol and authorities in Luxembourg collaborated to shut down the Curacao-based cryptomixing site Bestmixer.io by seizing six of its servers in the Netherlands and Luxembourg.³⁶ BestMixer had processed at least \$300 million in its one year of business. Because mixing services are not illegal in Curacao, BestMixer advertised itself as a successful way to avoid anti-money laundering policies through guaranteed anonymity.³⁷ BestMixer “cryptodusted” user’s accounts as a means of foiling anti-money laundering tracing technologies by “dusting” every address with money laundering funds, thereby soiling virtually every user’s reputation.³⁸ The following week another digital currency mixing service, Bitcoin Blender, choose to shut down voluntarily.³⁹

The exemption of digital currencies from the cash payment limit is likely to encourage criminals to make greater use of digital currencies. As an example of digital currency used for criminal purposes, the case filed by the US Attorney for the Southern District of New York against Liberty Reserve SA provides a significant example. Australians were involved in using the services of Liberty Reserve. Liberty reserve operated one of the world’s most widely used digital currencies. Through its website, the Costa Rican company provided its clients with what it described as “instant, real-time currency

³¹ Australian Federal Police, ‘Police target cryptocurrency at National Proceeds of Crime Conference’, Media Release, 13 November 2019.

³² Europol, ‘European Union Serious and Organised Crime Threat Assessment. Crime in the age of technology’, 2017, 11.

³³ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 4.

³⁴ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 4.

³⁵ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 15.

³⁶ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 27.

³⁷ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 27.

³⁸ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 27.

³⁹ CipherTrace, ‘Cryptocurrency Anti-Money Laundering Report, 2019 Q2’, July 2019, 27.

for international commerce". The currency could be used to "send and receive payments from anyone, anywhere on the globe". The US authorities allege that people behind Liberty Reserve:⁴⁰

...intentionally created, structured, and operated Liberty Reserve as a criminal business venture, one designed to help criminals conduct illegal transactions and launder the proceeds of their crimes. Liberty Reserve was designed to attract and maintain a customer base of criminals by, among other things, enabling users to conduct anonymous and untraceable financial transactions.

Liberty Reserve emerged as one of the principal means by which cyber-criminals around the world distributed, stored and laundered the proceeds of their illegal activity. Indeed, Liberty Reserve became a financial hub of the cyber-crime world, facilitating a broad range of online criminal activity, including credit card fraud, identity theft, investment fraud, computer hacking, child pornography, and narcotics trafficking. Virtually all of Liberty Reserve's business derived from suspected criminal activity.

The scope of Liberty Reserve's criminal operations was staggering. Estimated to have had more than one million users worldwide, with more than 200,000 users in the United States, Liberty Reserve processed more than 12 million financial transactions annually, with a combined value of more than \$1.4 billion. Overall, from 2006 to May 2013, Liberty Reserve processed an estimated 55 million separate financial transactions and is believed to have laundered more than \$6 billion in criminal proceeds.

A user opened an account through the Liberty Reserve website, and Liberty Reserve did not validate identities. Users routinely established accounts under false names, including blatantly criminal names ("Russia Hackers", "Hacker Account", "Joe Bogus") and blatantly false addresses ("123 Fake Main Street, Completely Made Up City, New York"). To add a further layer of anonymity, Liberty Reserve required users to make deposits and withdrawals through recommended third-party exchangers – generally unlicensed money transmitting businesses operating in Russia and several countries without significant governmental money laundering oversight or regulation at the time, such as Malaysia, Nigeria and Vietnam. By avoiding direct deposits and withdrawals from users, Liberty Reserve evaded collecting information about them through banking transactions or other activity that would create a central paper trail.⁴¹

It was further alleged by US authorities, that for an additional "privacy fee" of 75 cents per transaction, a user could hide their own Liberty Reserve account number when transferring funds. The arrangement effectively made the transfer completely untraceable, even within Liberty Reserve's already opaque system.⁴²

Liberty Reserve had its own virtual currency, Liberty Dollars. However, at each end, transfers were denominated and stored in fiat currency (US dollars).⁴³

⁴⁰ US Attorney for the Southern District of New York, 13 Civ 3565, 28 May 2013, pp. 4-5.

⁴¹ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 10.

⁴² US Attorney for the Southern District of New York, 13 Civ 3565, 28 May 2013, p. 6.

⁴³ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 10.

The investigation into Liberty Reserve involved law enforcement agencies from 17 countries, demonstrating the complexity of investigating global online crime operations involving virtual currencies.⁴⁴

In an Australian example, Steen McBeth and Jackson Li were arrested in October 2017 after a joint investigation by the Australian Federal Police and the FBI. They were allegedly involved in illicit drug trafficking inside children's toys. It was a multimillion-dollar operation paid for with bitcoin.⁴⁵

Another example is that of the Western Express Cybercrime Group. An eight-year investigation of this multinational, Internet-based cybercrime group resulted in convictions or guilty pleas of 16 of its members for their role in a global identity theft/cyber-fraud scheme. Members of the cybercrime group interacted and communicated primarily through Internet "carding" web sites devoted to trafficking in stolen credit card and personal identifying information. They used false identities, anonymous instant messenger accounts, anonymous e-mail accounts, and anonymous virtual currency accounts to conceal the existence and purpose of the criminal enterprise; avoid detection by law enforcement and regulatory agencies; and maintain their anonymity.⁴⁶

The criminal enterprise was composed of vendors, buyers, cybercrime service providers and money movers located in numerous countries, ranging from Ukraine and throughout Eastern Europe to the US. The vendors sold nearly 100,000 stolen credit card numbers and other personal identification information through the Internet, taking payment mostly in e-Gold and WebMoney. The buyers used the stolen identities to forge credit cards and purchase expensive merchandise, which they fenced (including via reshipping schemes). They committed additional crimes, such as larceny, criminal possession of stolen property, and fraud, and generating about US\$5 million in credit card fraud proceeds.⁴⁷

The hub of the entire operation was Western Express International Inc, a New York corporation based in Manhattan that operated as a virtual currency exchanger and unregistered money transmitter. Western Express International coordinated and facilitated the Internet payment methods used by the criminal enterprise, and to launder the group's proceeds. Western Express International exchanged a total of US\$15 million in WebMoney and US\$20 million in e-Gold for the cybercrime group. It used banks and traditional money transmitters to move large sums of money. It also provided information and assistance through its websites (including Dengiforum.com and Paycard2000.com) on ways to move money anonymously and to insulate oneself from reporting requirements.⁴⁸

Western Express International and its owner/operator, a Ukrainian national, pleaded guilty in February 2013 in New York State to money laundering, fraud and conspiracy offences. Three other defendants were convicted after trial in June 2013. Several more had pleaded guilty in August 2009.⁴⁹

In another example, on 9 April 2018, the US Department of Justice seized Backpage.com. Backpage.com was the Internet's leading forum for prostitution advertisements and a place where sex traffickers frequently advertised children and adults. Backpage earned hundreds of millions of

⁴⁴ International Centre for Missing & Exploited Children and Thomas Reuters, 'The Digital Economy: Potential, Perils and Promises. A Report of the Digital Economy Task Force', March 2014, p. 15.

⁴⁵ Erin Pearson, 'Pair in court over bitcoin, drugs sting', *The Age*, 14 November 2019.

⁴⁶ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 12.

⁴⁷ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 12.

⁴⁸ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 12.

⁴⁹ FATF, 'Virtual Currencies. Key Definitions and Potential AML/CFT Risks', June 2014, p. 12.

dollars from facilitating prostitution and sex trafficking and served as a platform for human traffickers.⁵⁰ Seven Backpage executives were indicted for their role in a conspiracy to facilitate prostitution. They were charged with 40 counts of money laundering in various forms.⁵¹ The indictment by the US Department of Justice unsealed by the US District Court for the District of Arizona alleged one of the money laundering techniques used by those running Backpage was to convert advertisers' payments and the proceeds of Backpage's business into and out of digital currency.⁵²

Over time, many banks and credit card companies refused to do business with Backpage due to the illegal nature of its business. In response, those running Backpage found ways to fool credit card companies into believing that Backpage associated charges were being incurred on different websites. They then routed Backpage-related payments and proceeds through bank accounts held in the name of seemingly unconnected entities and used cryptocurrency-processing companies for similar purposes.⁵³ This serves as a warning that if the cash payment limit is applied to normal cash transactions, but not digital currency transactions, there is a high likelihood that criminals will modify their behaviour to take advantage of the loophole.

CipherTrace found that the barriers to entry for buying and selling privacy coins such as Monero and other anonymous tokens makes them impractical for most dark market purchases and ransomware payments. They are most useful as a payment rail and to obfuscate chain hopping to more liquid tokens. In addition, as regulators around the world implement the new FATF rules for virtual assets, there will probably be fewer exchanges willing to trade privacy coins due to their ability to anonymise the two parties in a cryptocurrency transaction. Therefore, Bitcoin remains the leading digital currency used in criminal transactions online.⁵⁴

The amounts of criminal funds shifted through digital currencies can be very large, noting that a single bitcoin is worth more than \$12,000. In May 2019, hackers stole 7,074 bitcoins (worth US\$40 million at the time) from the world's number-one cryptocurrency exchange, Binance. Recently, the thieves have begun to move some of the stolen bitcoin, in both larger slices and smaller slices. Each of the smaller slices was 19.99 Bitcoin worth US\$216,774. The final transaction was sent to Chipmixon for obfuscation so they would be integrated into the financial system and made available to the criminals as clean bitcoin.⁵⁵

Dr Mark Zirnsak
Senior Social Justice Advocate
Phone: [REDACTED]
E-mail: [REDACTED]

⁵⁰ FATF and Asia/Pacific Group on Money Laundering, 'Financial Flows from Human Trafficking', FATF, Paris, 2018, 23.

⁵¹ FATF and Asia/Pacific Group on Money Laundering, 'Financial Flows from Human Trafficking', FATF, Paris, 2018, 23.

⁵² FATF and Asia/Pacific Group on Money Laundering, 'Financial Flows from Human Trafficking', FATF, Paris, 2018, 23-24.

⁵³ FATF and Asia/Pacific Group on Money Laundering, 'Financial Flows from Human Trafficking', FATF, Paris, 2018, 23.

⁵⁴ CipherTrace, 'Cryptocurrency Anti-Money Laundering Report, 2019 Q2', July 2019, 6.

⁵⁵ CipherTrace, 'Cryptocurrency Anti-Money Laundering Report, 2019 Q2', July 2019, 14.