

Additional Comments from Labor Senators

1.1 Labor Senators wish to make only brief remarks in addition to the Chair's report. Labor Senators thank the Chair for facilitating this inquiry.

Schedule 1 – Amendments to the FinTech Sandbox

1.2 Labor Senators note comments by FinTech Australia expressing disappointment with the current sandbox arrangements:

I think it's fair to say that, from a FinTech Australia perspective, the sandbox outcome to date has been disappointing. We understand that just four fintechs have relied on the exemption to date, and we argue that it's the construct of the original sandbox that was excessively rigid in its approach.¹

1.3 Labor Senators support the position of consumer groups, such as CHOICE, that fintech companies be required to be assessed by ASIC before being allowed entry into the sandbox. Labor Senators agree with Choice that the two major tests on entry should be that the company wants to test something that is:

- a) genuinely innovative; and
- b) provides a consumer benefit.²

1.4 Labor Senators note that FinTech Australia also supported a test on entry:

Having an official review or a screen is definitely something that we would be supportive of to ensure that only appropriate companies or businesses were able to enter the sandbox...

To the question that was asked earlier as to whether or not this needs to be beneficial or not detrimental, we'd argue not detrimental is a good outcome, and how you define beneficial also goes to that. It may be that it's a similar economic outcome for a consumer but just delivered in a much more user-friendly, favourable, time efficient manner, which will create benefits in other manners.³

Schedule 2 – the closure of tax loopholes

1.5 Treasury officials confirmed that this legislation has been introduced because of tax arrangements that are not in line with the original policy intent:

We find that there are certain arrangements which come to our attention, often due to interpretations they've evolved in respect of the law. In this case we're making minor technical amendments to rectify some anomalies where taxpayers are applying the law in a way that's slightly inconsistent to what was originally intended under the law...

1 Mr Stuart Stoyan, *Committee Hansard*, p. 5.

2 Choice, Consumer Action Law Centre & Financial Rights Legal Centre, *Submission 1*, p. 4.

3 Mr Stuart Stoyan, *Committee Hansard*, p. 6.

In respect of the early-stage venture capital limited partnerships, we provide a tax incentive of 10 per cent on eligible investments in those vehicles. We intended for that offset to be 10 per cent. Stakeholders raised that there may be certain situations where that offset was being accessed in addition to the offset for early-stage innovation companies. That was not intended under the law.⁴

1.6 Treasury officials confirmed that the original 2016 legislation, particularly angel investor tax incentives, was based on the UK's Seed Enterprise Investment Scheme:

Yes, I understand that they were based on the Seed Enterprise Investment Scheme.⁵

1.7 One of the key differences between the UK and Australian arrangements is that the Australian Government allowed trusts and companies to access the Angel Tax Incentive. While Treasury officials took on notice the question about whether this loophole was due to a failure of the 2016 legislation and to confirm that this loophole does not exist in the UK legislation, the Government has not ruled out that the legislation in this bill is intended to rectify a mistake of its own making. Put simply, it appears at this stage that the Government deliberately chose to ignore certain elements of the UK arrangements and this potentially opened up a tax loophole that they are now seeking to close.

1.8 If true, it is incumbent on the Government to acknowledge to this mistake before this bill is debated in the Parliament.

Position of Labor Senators

1.9 Labor Senators are supportive of the principles of the FinTech Sandbox. Labor Senators continue to hold the view that there should be adequate protections for consumers, and notwithstanding this, that the fintech sector and the regulatory sandbox holds promise in challenging the status of the major banks and can help to provide new products and services that improve the welfare of ordinary Australians.

1.10 Labor Senators are supportive of this bill, but reiterate their view that there should be an entry requirement to the sandbox based on the principles of genuine innovation and beneficial consumer outcomes.

1.11 Labor Senators also believe, given international precedents for regular reviews of Fintech Sandbox arrangements and the slow Australian adoption rate, that Australia's Fintech Sandbox should be reviewed in 12 months to evaluate consumer outcomes and whether the current regulatory arrangements are suitable for fintech companies.

4 Mr Greg Derlacz, *Committee Hansard*, p. 17.

5 Mr Greg Derlacz, *Committee Hansard*, p. 18.

Recommendation 1

1.12 To amend the bill to include a mandatory review mechanism for the enhanced FinTech Sandbox starting no later than 12 months after Royal Assent.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

