The Senate

Select Committee on Financial Technology and Regulatory Technology

Select Committee on Financial Technology and Regulatory Technology

Interim report

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Chair's Foreword

I am very pleased to be chairing this inquiry which is about facilitating increased competition in Australia's financial sector and beyond. The conduct exposed by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry clearly showed there is a need for more competition in the sector.

New competition is coming from the FinTech sector, which unless fostered, will leave the nation with the status quo or force Australia to buy more and more technology from abroad. It is critical that Australia continues developing into a leading Asia-Pacific FinTech nation as Hong Kong declines as a financial centre. A unique opportunity has opened for new jobs and better consumer choices if we can be as good as Singapore and Tokyo in our time zone.

Every day Australia is competing for the best ideas, best people and for the capital needed to create the next wave of jobs and widen consumer choices.

Put simply, the inquiry is about ensuring the settings are optimal to encourage and support Australian FinTech and RegTech businesses, the purpose of which is to increase competition and productivity, offer technology solutions to assist customers, create jobs and also engage in export opportunities. More jobs and more choice will be the dividend.

New jobs will be found throughout the economy as technology is pervasive and provides the basis for Australian businesses to achieve a competitive edge. AgTech is an example of one such area as farming becomes increasingly more reliant on technology.

The committee intended to table an interim report at the end of March 2020. However, since the committee finished its public hearings in February, Australia’s economic and financial environment changed dramatically as a result of the unfolding COVID-19 pandemic.

In light of these evolving circumstances, the committee decided not to press ahead with its previous timetable and to extend its final reporting date until 16 April 2021. The committee re-opened its inquiry submission process to enable submitters to provide further input to the committee on what the needs of the sector are at this time.

The committee has also been using this additional time to review the technology changes and reforms driven by COVID-19 across a range of areas. The committee heard that it is important to lock in the productivity gains driven by COVID-19. The

committee also looked into the opportunities created in relation to the use of Regtech to provide solutions for making business compliance simpler and easier.

During the inquiry to date the committee has heard inspiring FinTech and RegTech success stories and welcomes the growing number of unicorns.[1] The committee heard that innovative FinTech companies are using technology to improve the customer experience and outcomes and solve customer problems by providing tailored products.

The committee also heard about the difficulties for innovative startups to compete with very large incumbents and deal with a large amount of regulation.

In order to focus more easily on the settings that are overseen by the Commonwealth Government, the committee has taken the approach of investigating issues in the following areas: tax; regulation; capital and funding; skills and talent; and culture. These are set out in the following chapters with a final chapter containing the committee's conclusions and recommendations.

It is my hope that this interim report can be seen as a series of 'quick wins'. The intention is then for longer term structural issues to be dealt with in the final report now due by April 2021. If we are going to compete with Singapore and Tokyo, we first need to get our house in order at home. Much progress has been made but it's time for some recalibration. Government should not be afraid to act like in FinTech and be iterative.

I wish to thank the other members on the committee for their interest, engagement and collegiate approach to the operation of the committee. I welcome the engagement from the sector with the inquiry to date and look forward to the committee's recommendations making a practical difference.

Senator Andrew Bragg
Chair

[1] A privately held startup company valued at over $1 billion.

Executive Summary

The committee has received a great deal of evidence and is grateful to those who have engaged with the inquiry to date. Given the number of issues raised, the committee has decided to table this interim report covering some areas of focus thus far. Further issues, as well as some follow up on issues covered in this interim report, will be contained in the committee's final report in 2021.

Australia has a vibrant and growing FinTech sector, with a significant number of startups and early stage ventures as well as several established unicorns that clearly show the incredible potential of this sector of the economy. FinTech has the potential to revolutionise financial services in Australia, increasing competition in the sector and providing better outcomes for consumers.

Australia's RegTech industry is comparatively less well developed, however still ranks very highly in global terms, due to the sector's nascent status overall. The opportunities in RegTech span across the economy, and have the potential to be a significant export industry for Australia.

While COVID-19 has undoubtedly impacted the startup sector, it is also hastening digital transformation across the economy, providing opportunities to ensure that Australian organisations and individuals work more efficiently into the future.

To review and organise the material presented to the committee, the committee has chosen to view it through some key components of national competitiveness: tax, regulation, access to capital, skills and talent, and culture. The committee also received specific evidence relating to the impact of COVID-19 and technology enablers that have risen to prominence during the crisis.

COVID-19 issues

The committee heard that COVID-19 has had a range of impacts on the FinTech and RegTech sector. Some businesses, particularly well-established FinTechs and those in specific niches, have 'ridden the wave' and experienced significant growth over this period. However, many newer startups have struggled, with loss of capital inflows and faltering customer acquisition the key problems encountered. The sector has received support from a number of government initiatives including JobKeeper and programs supporting non-bank lending.

The committee also heard about technology enablers in a range of areas that have assisted businesses and individuals through the pandemic. In particular, the committee highlighted several initiatives currently underway that should be continued as a 'new normal' way of doing things into the future, including:

enabling electronic company meetings and communications; allowing for electronic signing and witnessing of legal documents; the extended rollout of telehealth services; and the utilisation of electronic prescriptions. The committee also identified accelerating progress on the Australian Government's digital identity reforms as a key opportunity, as well as the potential for RegTech to be used to facilitate compliance with industrial awards. The evidence received is contained in Chapter 2.

Tax issues

The committee took evidence on a range of taxation-related issues that affect FinTechs and RegTechs in Australia. The committee heard that a competitive tax framework will assist these organisations to reach their potential and maximise the impact of the sector in Australia's future growth.

The operation of the Research and Development Tax Incentive (R&DTI) was a key issue raised in the evidence to the committee to date. Companies emphasised to the committee the importance of the incentive for startups including FinTechs. However, there was a great deal of evidence on the uncertainty around the eligibility of software development for the program, and concern about retrospective audits which can result in companies having to pay back the incentive.

The committee heard that some companies had paid for professional advice to ensure their claims complied with the rules but still had to pay back the incentive. The committee was told that as a result of the complexity and uncertainty of eligibility and audits, claims are being pared back or not lodged at all to reduce the risk for start-ups. The committee understands that companies, especially startups need as much certainty as possible and facing repayment of scarce capital would be particularly difficult for a small company. The committee is therefore recommending greater certainty around these matters.

Although a state-based tax, the committee heard that the different payroll tax platforms and requirements between jurisdictions results in complexity and inefficiency for firms, and that payroll tax requirements can create a handbrake on company growth for early stage and mid-size startups. Noting the payroll tax measures introduced by several jurisdictions during the COVID-19 pandemic, the committee is recommending that the government work through the Council for Federal Financial Relations to simplify payroll tax across jurisdictions.

The tax chapter also covers employee share schemes and the tax treatment of Initial Coin Offerings. The evidence received is in Chapter 3 and the committee's views and recommendations are in Chapter 8.

Regulation

Chapters 4 and 5 of this report canvas issues raised with the committee about Australia's regulatory settings as they impact FinTechs and RegTechs.

A clear, consistent and pro-innovation regulatory environment is necessary for the FinTech and RegTech sectors to reach their potential in Australia. It is also critical to ensure that Australia is internationally competitive in this space, with significant opportunities available if Australia can capitalise on the growth of FinTech and RegTech globally.

Regulation of competition issues

The number of regulators with a role in relation to competition and financial services in Australia mean that it is not straightforward to ensure that competition is operating effectively in this sector. The committee understands that the main responsibility for competition lies with the ACCC but that other agencies such as ASIC, APRA and the Treasury have competition as part of their mandates. Witnesses viewed this fragmentation as a risk and saw the need for Australia's financial regulators to collectively provide greater focus on promoting competition in the financial system.

It was pointed out that competition in financial services is being driven largely from firms outside the major banks, with the rise of the buy now pay later sector showing that innovative FinTechs can drive increased consumer choice and attract significant market share from large incumbents.

The committee heard about various initiatives ASIC, APRA and the RBA are undertaking designed to support innovation in the financial services sector. The committee considers that these initiatives need to be undergirded by clear, market-based performance metrics for these regulators to ensure that they are achieving real outcomes in the sector.

In the committee's view, the most efficient mechanism for elevating consideration of domestic competition issues at the regulatory level would be to provide the Council of Financial Regulators with a competition mandate, as advice to the government, and ensure that they regularly report on competitive dynamics in the Australian financial services market.

Witnesses also highlighted that Australia must ensure its regulatory settings for FinTech and RegTech are internationally competitive in order to attract investment capital, skills and talent to Australia. It was suggested to the committee that Australia should undertake regular benchmarking of these regulatory settings against global standards. As such, the committee considers that the Council of Financial Regulators should regularly consider and report on Australia's external competitive position in financial services.

Foreign Exchange Transparency

The committee took evidence from several innovative FinTechs offering products in foreign exchange services and international money transfers that are disrupting these markets to the clear benefit of consumers. The lack of clear requirements around the transparent pricing of foreign exchange fees charged is of concern. Addressing this issue will enable newer players offering better deals to customers to compete on a level playing field with larger incumbents.

Consumer Data Right

An important reform to encourage greater competition and provide consumers with more power is the Consumer Data Right (CDR), which launched in the banking sector on 1 July 2020. Open banking will give customers greater access to and control over their own banking data, with banks required to share customer data with accredited third parties when directed to do so by the consumer. The expected outcomes are to improve price transparency, facilitate comparison services, assist customers with the choice of the most appropriate products and facilitate switching from one provider to another.

The committee heard unanimous support for the rollout of open banking. Several issues were raised that require consideration and refinement, in the areas of: governance arrangements; intermediary access; the role of digital data capture practices; education and awareness; and expansion of CDR into other financial services.

It was highlighted that governance of the CDR is overseen by three different regulatory bodies, and that consolidation of these arrangements, and regulatory arrangements for data policy more broadly, could confer significant benefits. This is an area of significant potential reform, which the committee intends to catalyse through this inquiry. A new national body will provide focus and accountability.

On the issue of intermediary access, the committee heard concerns that the current CDR framework may not sufficiently enable third party 'intermediary' organisations to participate in the CDR ecosystem. Noting that the rules relating to intermediaries are still being finalised, the committee considers this issue needs to be adequately addressed to ensure the full benefits of the CDR can be realised.

An area of concern related to the roll out of the CDR is the practice of digital data capture or 'screen scraping, which the committee understands is used in the banking and financial services industry. This method is used by some FinTechs, with the agreement of customers, using their login details to access their bank accounts and data to provide a service. Contrasting views were expressed to the committee on this continuation of this practice, noting the

advice from ASIC that they were not aware of any consumer loss from screen scraping.[1]

In relation to education and awareness, the committee supports the intention of the CDR to provide consumers with greater access to and control over their data. However, the committee agrees with submitters and witnesses that the Australian public needs to be made aware of this significant reform and the opportunities it provides, and that funding commitments from government and industry are required to drive this initiative forward.

Looking to the expansion of the CDR, the committee heard that other areas of financial services, in particular superannuation and general insurance, would benefit greatly from the increased transparency and consumer functionality provided by the CDR. Work to explore the practical considerations of expansion into these sectors should commence now.

Access to Capital

Evidence received by the committee highlighted the critical role that access to capital plays in fostering the growth of innovative businesses in Australia, including FinTechs and RegTechs.

Chapter 6 focuses on the operation of the Early Stage Venture Capital Limited Partnerships (ESVCLP) program and the Early Stage Innovation Company (ESIC) tax incentives, the potential role of Collective Investment Vehicles (CIVs), and the need for collaboration between large and small businesses. The committee also heard about the potential for the superannuation sector to become more actively involved in investing in Australian startups and scaleups, either directly or indirectly through venture capital funds, to spur this sector of the economy forward.

The committee has made recommendations to strengthen ESVCLP and ESIC, and create a new CIV structure to enhance Australia's global attractiveness as an investment destination. Additionally, the government should explore options in relation to incentivising collaboration between large businesses and startups as a means of attracting additional capital into new businesses. Superannuation funds should also be encouraged to invest more broadly, including into the Australian startup sector.

Culture

The committee received evidence indicating that culture was a crucial factor in creating a national ecosystem conducive to innovation and startup success.

In particular Chapter 7 examines several specific issues that impact on innovation culture, both for FinTechs and more broadly. This includes looking at the challenges faced by startups in participating in government procurement

[1] Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 9.

processes. Government should play a proactive role in encouraging growth opportunities for innovative firms through appropriate procurement policies. The committee considers that the government should undertake work to better understand the costs and complexity for small businesses, including FinTechs and RegTechs, in Commonwealth Procurement.

The committee also heard of the importance of government-led, challenge-based innovation initiatives to enable X-tech firms to solve policy and service delivery challenges. There are some initiatives in this area already underway, and the Australian Government can play a greater role in advancing this area.

In its consideration of innovation culture in the Agricultural sector, the committee heard that while much work is being done on innovative agricultural technology (AgTech) initiatives, there is a lack of coordination in relation to AgTech policy development and implementation. The committee is recommending the establishment of an AgTech Advisory Council to help drive this agenda forward.

Skills and talent

Inquiry participants informed the committee that a substantial pool of local and international talent is required to accelerate and grow the Australian FinTech and RegTech sectors. The global demand for tech talent means that Australia must position itself well in order to attract and develop the necessary skilled employees to drive forward new industries such as FinTech and RegTech.

In this context, Chapter 7 looks into how the government can facilitate lifelong learning and retraining in ways that would benefit both workers and employers, including via microcredential qualifications and Fringe Benefit Tax exemptions. The importance of creating training and reskilling opportunities through these mechanisms was emphasised in the context of COVID-19, which has hastened the need to ensure that Australian workers can adapt to suit the needs of emerging industries. The newly created National Skills Commission is a significant reform in this area that will be able to provide further direction on priority areas and means of advancing Australia's skill set in key technology areas.

Abbreviations list

ABA	Australian Banking Association
ABSF	Australia Business Securitisation Fund
ACCC	Australian Competition and Consumer Commission
ACS	Australian Computer Society
ADI	Authorised Deposit-taking Institution
ADR	Accredited Data Recipient
AFCA	Australian Financial Complaints Authority
AFIA	Australian Finance Industry Association
AGM	Annual General Meeting
AgTech	Agricultural Technology
AI	Artificial Intelligence
AIC	Australian Investment Council
AICD	Australian Institute of Company Directors
AIRA	Australasian Investor Relations Association
AIST	Australian Institute of Superannuation Trustees
AMA	Australian Medical Association
AML/CTF	Anti-Money Laundering / Counter-Terrorism Financing
ANZ	Australia and New Zealand Banking Group
AOFM	Australian Office of Financial Management
APC	Australian Payments Council
API	Application Programming Interface
APRA	Australian Prudential Regulation Authority
ASBFEO	Australian Small Business and Family Enterprise Ombudsman
ASIC	Australian Securities and Investments Commission
ASX	Australia Securities Exchange
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BCA	Business Council of Australia
BNPL	Buy Now Pay Later
CALC	Consumer Action Law Centre
CBA	Commonwealth Bank of Australia
CCR	Comprehensive Credit Reporting
CDR	Consumer Data Right
CFR	Council of Financial Regulators
CGT	Capital Gains Tax
CHESS	Clearing House Electronic Subregister System
CIV	Collective Investment Vehicle
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DAWE	Department of Agriculture, Water and the Environment

DDC	Digital Data Capture
DFAP	Digital Finance Advisory Panel
DFAT	Department of Foreign Affairs and Trade
DISER	Department of Industry, Science, Energy and Resources
DTA	Digital Transformation Agency
ESIC	Early Stage Investment Company
ESS	Employee Share Scheme
ESVCLP	Early Stage Venture Capital Limited Partnerships
FBT	Fringe Benefit Tax
FCA	Financial Conduct Authority (United Kingdom)
FinTech	Financial Technology
FRLC	Financial Rights Legal Centre
FSC	Financial Services Council
FWO	Fair Work Ombudsman
GNGB	Gateway Network Governance Body
GPD	Government Property Data
IAG	Insurance Australia Group
ICO	Initial Coin Offering
ISA	Innovation and Science Australia
KYC	Know Your Customer
MAS	Monetary Authority of Singapore
MedTech	Medical Technology
NAB	National Australia Bank
NFF	National Farmers' Federation
NPP	New Payments Platform
NSC	National Skills Commission
OAIC	Office of the Australian Information Commissioner
PSB	Payments System Board
RACGP	Royal Australian College of General Practitioners
RBA	Reserve Bank of Australia
RDAA	Rural Doctors' Association of Australia
RDTI	Research and Development Tax Incentive
RegTech	Regulatory Technology
SCA	Super Consumers of Australia
SFSF	Structured Finance Support Fund
SME	Small and Medium Enterprise
STEM	Science, Technology, Engineering and Mathematics
STN	Superannuation Transaction Network
TDIF	Trusted Digital Identity Framework
TFF	Term Funding Facility
UK	United Kingdom
US	United States of America

VC	Venture Capital
VCLP	Venture Capital Limited Partnerships
VET	Vocational Education and Training

Chapter 1
Introduction and background

Introduction

1.1 On 11 September 2019, the Senate resolved to establish a Select Committee on Financial Technology and Regulatory Technology to inquire into and report on the following matters:

(a) the size and scope of the opportunity for Australian consumers and business arising from financial technology (FinTech) and regulatory technology (RegTech);
(b) barriers to the uptake of new technologies in the financial sector;
(c) the progress of FinTech facilitation reform and the benchmarking of comparable global regimes;
(d) current RegTech practices and the opportunities for the RegTech industry to strengthen compliance but also reduce costs;
(e) the effectiveness of current initiatives in promoting a positive environment for FinTech and RegTech start-ups; and
(f) any related matters.

1.2 The committee was due to present its final report on or before 12 October 2020.[1] Subsequently, the committee received an extension of time to present its final report, until 16 April 2021.

Conduct of the inquiry

1.3 Details of the inquiry were placed on the committee website at: http://www.aph.gov.au/senate_FinRegtech. The committee also contacted a number of relevant organisations and individuals to notify them of the inquiry and to invite submissions by 31 December 2019. Submissions received are at Appendix 1.

1.4 The committee held six public hearings in its initial round of hearings: Melbourne on 30 January, Sydney on 19 and 20 February, and Canberra on 26, 27 and 28 February 2020. A list of witnesses who gave evidence is available at Appendix 2. Submissions and Hansard transcripts of evidence may be accessed through the committee website.

Further call for submissions and hearings

1.5 After receiving 150 submissions and conducting six hearings, the committee had initially decided to table an interim report at the end of March 2020

[1] *Journals of the Senate*, No. 14, 11 September 2019, pp. 441–443.

covering some of the issues raised with the committee and making initial recommendations.

1.6 However, since the committee finished its initial round of public hearings in February, in light of the dramatic changes in the economic and financial environment as a result of the unfolding COVID 19 pandemic, the committee decided not to press ahead with its previous timetable. Instead, on 27 March 2020 the committee re-opened its inquiry submission process to enable submitters to provide further input to the committee, with a new submissions closing date of 10 April 2020. The committee continued to receive submissions after that date.

1.7 The committee held four additional public hearings in Canberra, via videoconference, on 30 June and 1 and 14 July 2020, and via teleconference on 10 August 2020. The committee also agreed to extend the final reporting date until 16 April 2021.[2]

1.8 Following this interim report, the committee's final report is intended to examine further areas that have not received as much focus in the first phase of this inquiry, including the international aspects of Australia's FinTech policy (for example, looking at: policy architecture in the region; Australia's export policy and trade agreements; promotion of Australian firms overseas; and issues relating to international capital investment flows into Australian companies). The final report will also contain follow up on some of the issues covered in this interim report.

Structure of the interim report

1.9 The committee's interim report is laid out in the following chapters:

- the remainder of Chapter 1 provides background on the FinTech and RegTech sectors, introduces the key Commonwealth regulators and relevant work undertaken and underway by the Commonwealth Government;
- Chapter 2 covers the challenges and opportunities for the sector in light of the COVID-19 pandemic, including the role technology enablers during the crisis;
- Chapter 3 looks at some taxation issues relevant to FinTechs and RegTechs, such as the R&D tax incentive;
- Chapter 4 provides an overview of the regulatory environment for FinTechs and RegTechs and discussion of several specific regulatory issues;
- Chapter 5 examines in detail a major regulatory reform, the introduction of the Consumer Data Right;
- Chapter 6 explores the issue of access to capital for FinTechs and RegTechs;
- Chapter 7 discusses issues relating to culture and skills; and

[2] *Journals of the Senate*, No. 49, 12 May 2020, p. 1610.

- Chapter 8 details the committee's conclusions and recommendations.

Acknowledgement

1.10 The committee would like to thank the organisations and individuals who have participated in the public hearings to date as well as those that made written submissions.

Background

1.11 The remainder of this chapter provides an overview and snapshot of the FinTech and RegTech landscape in Australia, the Commonwealth regulators involved in these sectors and a brief description of relevant Commonwealth initiatives underway, some of which are discussed in greater detail in the following chapters.

Overview of the FinTech industry

What is FinTech?

1.12 The term FinTech describes a broad category of innovative businesses, with FinTech Australia offering the following definition:

> Organisations combining innovative business models and technology to enable, enhance and disrupt financial services.[3]

1.13 Elaborating on this definition, the PwC Global Fintech Report 2019 defined FinTech in the following way:

> Fintech is a combination of technology and financial services that's transforming the way financial businesses operate, collaborate, and transact with their customers, their regulators, and others in the industry. All types of companies, from startups to tech companies to established firms, are using fintech.
>
> In recent years, many variations of fintech have emerged that draw on cutting-edge technologies specifically tailored for certain sectors or functions within the [financial services] ecosystem, such as regtech and insurtech.[4]

Areas covered by FinTech

1.14 While there does not appear to be consensus on a standard classification within FinTech, companies offer products and services in areas including: money transfers and payments; savings and investment; borrowing; and

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[3] FinTech Australia, *Submission 19*, p. 23.

[4] *PwC Global Fintech Report* 2019, p. 3.

personal finance management. The following categories are drawn from the EY FinTech Australia Census 2019:[5]

- Wealth and investment
- Lending
- Data analytics/big data
- Payments, wallets and supply chain
- Business tools
- Marketplace-style or p2p solution
- Asset management and trading
- RegTech
- Insurance/Insurtech
- Identity, security and privacy
- Accelerator/venture capital
- Blockchain/distributed ledger
- Challenger/neobank
- Crowdfunding investing.[6]

1.15 RedCrew noted that there are three main types of FinTechs, namely those:

- providing a direct service to customers which are effectively in competition or opposition to the incumbent banks;
- providing a service directly to the banks; and
- facilitating the wider eco-system eg. intermediaries, general payment providers and providers of generic software platforms.[7]

Consumer adoption

1.16 FinTech Australia states that FinTechs 'use consumer-centric design to deliver products that consumers value':

> The popularity, rapid adoption and re-use of fintech enabled solutions and high net promoter scores demonstrate that fintech solutions are valued, fit for purpose products that are trusted by consumers. The speed, convenience and transparency of these solutions give consumers greater choice and control to make informed decisions. Listening to and doing the right thing by the customer builds trust, loyalty and engagement with consumers. In this way, fintechs play a key role in rebuilding consumer trust in the financial services.[8]

1.17 Consumer adoption of FinTech is growing fast. The 2019 EY Global Fintech Adoption Index reported Australia's rate of FinTech adoption at 58 per cent

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[5] Note: The census was based on 120 online surveys, 8 interviews with FinTech leaders and stakeholders and 6 interviews on collaboration case studies with leaders of innovation/digital functions within major Australian financial service organisations.

[6] *EY FinTech Australia Census 2019*, p. 10.

[7] RedCrew, *Submission 2*, p. [8].

[8] FinTech Australia, *Submission 19*, pp. 30–31.

(up from 13 per cent in 2015 and 37 per cent in 2017). It shows the acceptance of FinTech and the demand for services is continuing to rise. In explaining the strong growth in FinTech adoption, the report pointed to the increasing availability of FinTech services from incumbents.[9]

1.18 One reason customers adopt new FinTech options is FinTech companies are often able to offer more innovative solutions than incumbent players. A lack of legacy systems means start-ups can respond in an agile way to consumer needs and demands. Successful FinTech companies are typically customer focused in seeking to improve financial experiences, offering services which are 'personalised, accessible, transparent, frictionless and cost-effective'.[10]

1.19 Such innovations are now expected by consumers; EY's 2019 report into global FinTech adoption noted 'what was considered new and disruptive in 2015 has since become a prerequisite for all players.'[11]

Benefits and opportunities

1.20 Increased adoption of FinTech and RegTech services is likely to deliver considerable economic benefits, including a potential next wave of employment growth. As noted by Mr Rob Feeney, Partner A.T. Kearney:

> What we're going to find, we believe, is that there are definitely going to be some job disruptions in some of the sectors, through some of these changes. But, at the same time, many of these technologies that come through will create new jobs. Some of these jobs we're unable to perceive today. They'll involve analytics. They'll involve AI. They'll involve new technologies.
>
> The point that we would like to make…is that we can't and we shouldn't try and stop this change. What we should try and do is harness this to create more opportunities for Australia and Australians, try and create a more competitive Australia on the international stage. We believe that will lead to this being a jobs winner for Australia.[12]

1.21 The potential for AgTech to create and support jobs in regional and rural areas was also highlighted to the committee along with the need to ensure reliable and affordable telecommunications.[13]

1.22 When asked about job creation, Mr Dave Stein, Head of Corporate Development, Airwallex, observed:

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9 *EY Global FinTech Adoption Index 2019*, p. 8.

10 *EY Global FinTech Adoption Index 2019*, p. 11.

11 *EY Global FinTech Adoption Index 2019*, p. 11.

12 Mr Rob Feeney, *Committee Hansard*, 30 January 2020, p. 46.

13 Wool Producers Australia, *Submission 9*, pp. 6–7; Australian Investment Council, *Submission 12*, p. 8; illion, *Submission 13*, p. 8; Department of Industry, Innovation and Science, *Submission 18*, p. 19. Digital Industry Group, *Submission 120*, Attachment 1, AlphaBeta, *Australia's Digital Opportunity*, September 2019, pp. 10, 16, 30 and 31.

> A quick anecdote on that is that Airwallex had zero employees 4½ years ago and now it has 400 globally and 100 here in Melbourne. So I'm a very, very strong believer, and we are as a company, that technology increases the number of jobs and does not decrease the number of jobs. Obviously, I know that there are nuances around that in terms of which jobs are created and how they're created…We're now at the point where there are companies like Airwallex, Canva and other start-ups and neobanks that are exciting for engineers and for people to work on…[14]

1.23 As well as employment, bringing innovative products to market provides more competition and choice for consumers. As noted by Mr Feeney:

> We think these technologies offer the opportunity to enrich people's experiences, create new products and services, create value beyond what exists today.[15]

1.24 Mr Brendan Malone, Chief Operating Officer of Raiz Invest Limited, a microinvesting platform, described how it is responsive to their customers:

> Just as an example: six months after we launched, the millennial customer base said: 'Hey, this is great, but we would love an investment portfolio with what we believe in. Can you create an ethical portfolio?' So we've got an ESG based portfolio. We built it, they came, and it is now the second-biggest portfolio. Six months after that, the customers were saying: 'Hey, wouldn't it be great if you guys had super? I would love to see my super in my Raiz app as well.' They are realising that it's real time. They can see their transactions, they can see their investments and they can see what the market means to them from that education. They may see in the paper that $3 billion has been wiped off the ASX and that's X percentage. They look in their own app and they realise it's one per cent and they've lost a minimal amount. So it's an education, to say what it means when they see it on the news. So we're building our product, and it's pretty much all based on what our customers are asking, but we do want to take them on that journey.[16]

1.25 While some FinTech companies such as neobanks[17] are in direct competition with incumbent players, many are collaborating with incumbents to deliver the more flexible services customers are seeking. Ultimately FinTech companies are improving financial services through introducing innovative ideas which deliver benefits for consumers, for example faster and easier payment options, as well as disruption leading to increased competition in the sector.

1.26 Detail about collaboration between incumbents and FinTechs to improve the customer experience is included in Chapter 6.

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[14] Mr Dave Stein, *Committee Hansard*, 30 January 2020, p. 52. See also Mr Tamas Szabo, Chief Executive Officer, Pepperstone Group Limited, *Committee Hansard*, 30 January 2020, pp. 22–23.

[15] Mr Rob Feeney, *Committee Hansard*, 30 January 2020, p. 43.

[16] Mr Brendan Malone, *Committee Hansard*, 30 January 2020, p. 37.

[17] A digital only platform. Neobanks in Australia include: Up, 86 400 and Xinja.

1.27 While providing greater benefits and choice for consumers, achieving greater competition in Australia is challenging, as outlined by Mr Malone:

> Our customers have highlighted to us how important it is to them to have an alternative to these big current players. With the likes of Raiz, our success in signing up a large number of the Australian population illustrates this. The limited competition and dominant market share of the four big banks create challenges in all aspects of launching a new fintech business such as Raiz. Those challenges are broad; for example, restrictive government policies, capital raising, toehold acquisition, customer acquisition and growing the market share just to name a few.[18]

1.28 The challenges for FinTech and RegTech businesses to provide greater competition are covered in greater detail in the following chapters focussing on the key areas of regulation, tax, capital, culture and skills.

What is the current size and profile of the FinTech sector?

1.29 Australia has a rapidly growing number of FinTech companies. A KPMG report for the Committee for Sydney found the number of FinTech companies had grown from less than 100 in 2014 to 579 in 2017 employing more than 10,000 staff.[19] In 2018, FinTech Australia estimated there to be more than 700 FinTech companies operating in Australia.[20] Other key findings from the EY FinTech Australia Census 2019 include:

- The top four types of FinTech companies in Australia are: wealth and investment (30 per cent), lending (18 per cent), data analytics/big data (18 per cent) and payments, wallets and supply chain (17 per cent)
- 15 per cent of Australian FinTech companies are less than one year old. 42 per cent have been running for 2 to 3 years, and 44 per cent have been running for over 3 years
- New South Wales and Victoria are the business base for the majority of Australian FinTech companies (52 per cent and 27 per cent respectively)
- Female representation in the sector has increased by more than 10 per cent since 2016, up to 32 per cent of the overall workforce in 2019
- The end customer profile for Australian FinTech companies are: retail customers (44 per cent); sophisticated investors (23 per cent); banks and other financial institutions (41 per cent); small to medium enterprises and other start-ups (38 per cent); corporate (43 per cent) and government (15 per cent)

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18 Mr Brendan Malone, *Committee Hansard*, 30 January 2020, p. 34.

19 KPMG, *Scaling the FinTech Opportunity: for Sydney and Australia*, Issues paper 17, July 2017, p. 10.

20 FinTech Australia response to the Productivity Commission's draft report on competition in the financial system, March 2018, p. 4.

- Australian FinTech companies note the following as the top 3 talent shortages: engineering/software (69 per cent); sales (41 per cent) and marketing (33 per cent)[21]

1.30 FinTech Australia emphasised the diversity in the FinTech industry: that 'metrics such as the size and age of the business can be helpful tools, however they may not always reflect the realities of the business'.[22]

Global FinTech comparisons

1.31 The 2019 FinTech100 Leading Global Fintech Innovators report features the leading 50 established FinTech companies across the globe as well as the 50 emerging stars. Key points are:

- Chinese FinTech companies continue to dominate the top of the list, accounting for three in the top ten with:
- Ant Financial (the world's largest third party payments platform) in first place for the second year, followed by;
- Singapore's Grab (which uses data and technology to improve everything from transportation to payments); and
- China's JD Digits (digital technology company) third.
- There is the emergence of India taking out two of the top ten positions, Paytm (largest digital payments company in India) at five and Ola (utilising its ridesharing user base Ola money is making payments easier and simpler) at eight.
- Other companies in the top 10 are Indonesia's Go Jek (multi services platform) at four, China's Du Xiaoman Financial (providing short term loan and investment services) at six, Compass from the United States (US) (a real estate technology company) at seven, Opendoor from the US (makes it possible to receive an offer on a home in a few clicks and sell in a matter of days) at nine and OakNorth from the United Kingdom (UK) (specialises in small and medium size enterprise lending) at number ten.
- There are more Asia Pacific based companies (42) than from any other region.
- The US had 15 FinTech companies, followed by 11 in the UK, ten in China and seven in Australia.
- Seven Australian FinTech companies were included with cross-border payment provider Airwallex the highest ranked firm at 32 on the top 50 (up from 49 in 2018). Challenger bank Judo was at 33 and online payment service Afterpay Touch at 47. Of the top 50 emerging firms Australian FinTech companies included mortgage provider Athena Home Loans, voice analysis engine daisee, disaster response provider Sempo and smart receipts app Slyp.

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[21] E*Y FinTech Australia, Census 2019*.

[22] FinTech Australia, *Submission 19*, p. 24.

- Payment and transactions companies dominate the FinTech100 with 27 in total, followed by 19 in wealth and brokerage, 17 in insurance, 15 in lending and credit, nine neo/challenger banks and 13 operating across multiple FinTech sectors.[23]

1.32 Apart from the US, several countries have strong FinTech centres, including the UK, Singapore and Israel.

1.33 The UK has a strong FinTech sector, supported by government policy targeting start-ups. EY research, conducted in partnership with Her Majesty's Treasury in 2016, found the UK to be a global FinTech capital. The UK government set out its FinTech Sector Strategy in 2018, outlining opportunities for developing and growing the sector.[24] The UK Government subsequently announced in March 2020 that an independent FinTech Strategic Review would be conducted to identify opportunities to support further growth in the sector, across five areas: skills and talent; investment; national connectivity; policy; and international attractiveness. The review was formally launched in July 2020, led by Mr Ron Kalifa OBE, and is due to report in early 2021.[25]

1.34 Singapore has a strong FinTech ecosystem. Singapore's central bank and financial regulator, the Monetary Authority of Singapore (MAS), supports the FinTech industry with innovation grants, regulatory concessions (regulatory sandbox), IP protection, and other government initiatives to support the industry to grow. Singapore has 31 signed FinTech cooperation agreements with other countries (including with Australia, signed in 2016), to foster closer cooperation on FinTech and to promote innovation in financial services in their respective markets.[26]

1.35 Israel is noted as a FinTech centre, as a result of its strong start-up culture, research and development investment in the region, and government incentives for new start-ups. In 2018, Deloitte noted the Israeli FinTech industry had experienced a significant leap forward in recent years.[27]

1.36 Hong Kong has long been regarded as a global financial hub. It has been noted, however, that recent political developments in Hong Kong may lead to

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[23] H2 Ventures and KPMG, *2019 Fintech 100 Leading Global Fintech Innovators*.

[24] Her Majesty's Treasury, *FinTech Sector Strategy: Securing the Future of UK FinTech*, March 2018.

[25] Her Majesty's Treasury, 'Review launched to boost UK Fintech sector', 20 July 2020, https://www.gov.uk/government/news/review-launched-to-boost-uk-fintech-sector (accessed 3 August 2020).

[26] See ACS, *Submission 3*, p. 5; https://www.mas.gov.sg/development/fintech and https://www.mas.gov.sg/development/fintech/fintech-cooperation-agreements accessed 5 March 2020.

[27] Deloitte, *Israel FinTech Landscape Report 2018*, 2018.

deterioration in its status as a global financial centre.[28] This creates potential opportunities for other regional centres such as Sydney, Singapore and Tokyo to attract new investment, companies and talent in the financial services sector.[29] It is reported that the Australian Government is considering tax and regulatory concessions to help attract capital and skilled workers from Hong Kong and make Australia an international financial services hub.[30]

Overview of the RegTech sector

1.37 RegTech is the use of new technology in regulatory monitoring, reporting and compliance. RegTech companies typically provide software-as-a-service (SaaS) to assist businesses to comply with regulations efficiently and cost effectively. RegTech is sector agnostic and its technology solutions can be applied in any industry with regulatory and compliance requirements.[31]

1.38 For some RegTech has been regarded as a subset of FinTech. The RegTech Association, a peak body for the sector in Australia with 150 members, provided clarification on this aspect:

> RegTech is often confused with FinTech because the first sector to take note of RegTech conceptually was financial services. The RegTech industry in Australia is still predominantly focussed on financial services but this does not limit the potential across other industry verticals and where it may add significant value. RTA members have customers spanning the Government, Health Services, Telco, and Energy sectors.[32]

1.39 The Global RegTech Industry Benchmark report indicated that the top five functional areas of focus for RegTech solutions are: data collection/reporting (55 per cent); data analytics (52 per cent); risk identification, aggregation and management (52 per cent); regulatory management information tools (48 per cent); and predictive analysis for fraud, misconduct and noncompliance

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[28] Sse: The Economist, 'Can Hong Kong remain a global financial centre?', 6 June 2020, https://www.economist.com/finance-and-economics/2020/06/06/can-hong-kong-remain-a-global-financial-centre (accessed 3 August 2020); Ben Butler, *The Guardian*, 'China's grip on Hong Kong eroding its status as financial hub, investors believe', 8 July 2020, https://www.theguardian.com/world/2020/jul/08/chinas-grip-on-hong-kong-eroding-its-status-as-financial-hub-investors-believe (accessed 3 August 2020).

[29] Reuters, 'Tokyo, Sydney aim to lure edgy HK financial firms, but Singapore a top draw', 28 July 2020, https://www.reuters.com/article/hongkong-security-finance/rpt-tokyo-sydney-aim-to-lure-edgy-hk-financial-firms-but-singapore-a-top-draw-idUSL3N2EY290 (accessed 3 August 2020).

[30] John Kehoe, *Australian Financial Review*, 'Australia financial hub push to replace Hong Kong', 16 July 2020, https://www.afr.com/companies/financial-services/australia-financial-hub-push-to-replace-hong-kong-20200714-p55byv (accessed 3 August 2020).

[31] EY and the Cambridge Centre for Alternative Finance, *The Global RegTech Industry Benchmark Report*, September 2019, p. 9.

[32] The RegTech Association, *Submission 10*, p. 4.

(32 per cent).[33] In addition, the primary RegTech buyer motivations, as reported by firms were: reporting data (10 per cent); processing large quantities of data (11 per cent); organising complex information (14 per cent); navigating existing regulations (15 per cent); implementing an internal compliance program (15 per cent) and implementing new regulations (19 per cent) and other (14 per cent).[34]

1.40 While predominantly focussed on financial services in Australia, RegTech works with the following customers: insurers; government; wealth managers; consulting firms; education; superannuation funds; health services; Telcos; energy; technology/software; agriculture; regulatory agency; real estate; accountancy; manufacturing; transport; legal and consumer goods/retail.[35]

Benefits and opportunities

1.41 Verifier outlined the benefits of RegTech:

> RegTech creates a win for community and commerce by automating the outcomes the community has indicated that it wants - as expressed through its laws and regulations - and also supports the monitoring of achieving and adhering to those outcomes. In doing so, RegTech supports "trust at scale". RegTech supports incumbents and challengers alike to adhere to community expectations (and exceed them), at the scale our markets require, and does so across more than just financial services. In financial services particularly, RegTech also has significant export potential as a result of Australia's reputation as a country with a sophisticated approach to regulation and supervision…[36]

1.42 The RegTech Association pointed out that there is substantial opportunity for economic growth driven by the high export potential of RegTech:

> Global RegTech spending is predicted to exceed USD$127 billion by 2024, up from USD$25 billion in 2019; driven by a dramatic rise in the automation of resource-intensive tasks.
>
> Australia's excellent regulatory track record has led to the creation of a rich and diverse RegTech sector. Australia is consistently ranked globally in the top echelon for RegTech product development and innovation. The impacts of RegTech include increased efficiency, productivity and lowering of costs.[37]

1.43 The RegTech Association offered the view that 'Australia has the skills, infrastructure and experience to lead a global Centre of Excellence for

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[33] EY, Cambridge Centre for Alternative Finance, *The Global RegTech Industry Benchmark Report*, 2019, p. 11.

[34] EY, Cambridge Centre for Alternative Finance, *The Global RegTech Industry Benchmark Report*, 2019, p. 11.

[35] The RegTech Association, *Submission 10*. p. 4.

[36] Verifier, *Submission 33*, p. 5.

[37] The RegTech Association, *Submission 10*, p. 5.

RegTech, providing a vehicle to improve our ranking in global innovation, and to make RegTech a key aspect of 'Brand Australia'.[38]

Barriers to the uptake of RegTech

1.44 Ms Lisa Schutz, Chief Executive Officer, Verifier, spoke about the effect of regulatory uncertainty and suggested the need for regulators to provide 'negative assurance' to the design of innovative approaches to managing regulatory compliance:

> …if you think about how compliance works, historically it is a very manual process. So everything about our regulators is geared up for the manual processes. So if they didn't like something they would say, 'Change your processes,' and 100 people would start doing the process differently. The trick with regtech—and I think the elephant in the room, if you like, for policy around this—is that we're going from manual processes where you go in and you say, 'I don't like the way you're doing blah; change it,' to people like Verifier are building machines to do it. The trick with that is that, if you get the machine design wrong, you can't just tell it to do it slightly differently. So you are never going to get the big investment until there is some de-risking. That's where AUSTRAC have led. They managed, for whatever set of reasons, to see that and were much more active around 'not noes'.[39]

1.45 Despite the opportunities RegTech can provide to transform compliance processes, the committee heard that:

> The commitment in financial services to remediation above transformation is stifling the potential of RegTech. In many cases, the current focus is on addressing issues of the past, instead of reimagining the way that businesses could be transformed with processes that deliver superior transparency, efficiency and productivity, into the future.[40]

1.46 Although recognising the benefits of RegTech, this focus on remediation was confirmed by the Australian Banking Association (ABA):

> Banks see it as a competitive advantage. Regtech has the ability to reduce operating costs significantly. I think banks will drive this very quickly; it's just the capacity. Open banking is a focus, as are a number of the royal commission recommendations.[41]

1.47 When asked whether there are any initiatives underway to promote the uptake of RegTech, the ABA replied 'not within the ABA'.[42] While acknowledging the statement of the ABA, the Commonwealth Bank of Australia (CBA) advised the committee that '[o]ver the course of the last three years, CBA has moved to

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38 The RegTech Association, *Submission 10*. p. 5.

39 Ms Lisa Schutz, *Committee Hansard*, 30 January 2020, p. 9.

40 The RegTech Association, *Submission 10*, p. 9.

41 Mr Aidan O'Shaughnessy, *Committee Hansard*, 19 February 2020, p. 24.

42 Mr Aidan O'Shaughnessy, *Committee Hansard*, 19 February 2020, p. 25.

accelerate our understanding and adoption of RegTech' and outlined a number of key initiatives that have been undertaken.[43]

1.48 Other barriers for RegTechs include access to capital and long sales cycles:

> The sales cycle is linked to the difficulty in raising capital for businesses with a long sales cycle and protracted periods of resource-draining intensity but low cash flow. Investors would like speedier returns and RegTech by its nature needs a different and more patient capital style of capital investment. This is also where RegTech differs from FinTech where it is reported by Accenture that in 2019, FinTechs in Australia raised $400 million in just six months as a disruptor or partner to financial services. We do not have the data to support the fundraising for RegTechs at this time but would estimate that this would be a much lower figure and many are still self-funded….[44]

Overseas comparisons

1.49 The RegTech Association reported that Ireland and Singapore 'offer some excellent comparisons showing innovation done well' and provided case studies.[45]

Role of the Commonwealth government

1.50 The National Innovation and Science Agenda (NISA) was announced in December 2015 and set a focus on science, research and innovation as long term drivers of economic prosperity, jobs and growth. The government announced a $1.1 billion package over four years for 24 measures, many relevant to FinTech companies.[46] The package 'promotes commercial risk-taking and is aimed at encouraging early-stage investments in innovative Australian companies—such as start-ups—so they are better able to find the capital and support they need to successfully develop their idea and bring it to market'.[47]

1.51 In 2016 the then Treasurer, the Hon Scott Morrison MP, released the paper, *Backing Australian FinTech* which detailed creating 'an environment for Australia's FinTech sector where it can be both internationally competitive and play a central role in aiding the positive transformation of our economy'.[48]

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43 CBA, Answers to written questions on notice, received 16 March 2020.

44 The RegTech Association, *Submission 10*, p. 10.

45 The RegTech Association, *Submission 10*, p. 17.

46 See https://www.industry.gov.au/strategies-for-the-future/boosting-innovation-and-science accessed 18 November 2019.

47 Commonwealth of Australia, *Backing Australian FinTech*, 2016, p. 6.

48 Commonwealth of Australia, *Backing Australian FinTech*, 2016, p. v.

Relevant agencies and regulators

1.52 There are a number of government agencies and regulators that play a role in relation to the FinTech and RegTech sectors, including:

- the Australian Securities and Investments Commission (ASIC);
- the Australian Prudential Regulation Authority(APRA);
- the Reserve Bank of Australia (RBA);
- the Australian Competition and Consumer Commission (ACCC);
- the Department of Industry, Science, Energy and Resources (DISER);[49]
- the Commonwealth Scientific and Industrial Research Organisation (CSIRO);
- the Australian Transaction Reports and Analysis Centre (AUSTRAC); and
- the Department of Foreign Affairs and Trade (DFAT).

1.53 The role of each agency is briefly outlined below.

Australian Securities and Investments Commission

1.54 ASIC is Australia's corporate, markets, financial services and consumer credit regulator. One of its key functions in regard to the FinTech sector is the monitoring and promotion of market integrity and consumer protection in relation to the payments system. It does this though promoting the adoption of approved industry standards and codes of practice, the protection of consumer interests, community awareness of payment system issues, and sound customer-banker relationships.[50] Since 2018 ASIC has had 'an explicit mandate to consider competition matters that affect the performance of our functions and the exercise of our powers'.[51]

1.55 In March 2015 ASIC established an Innovation Hub to assist FinTech and RegTech businesses navigate Australia's regulatory system in the financial services sector, without compromising investor and financial consumer trust and confidence. The Innovation Hub seeks to streamline ASIC's engagement with the FinTech and RegTech sectors and act as a 'one-stop-shop' for tailored resources and guidance.[52]

1.56 ASIC has also formed a Digital Finance Advisory Panel (DFAP) to assist in informing how it should focus its efforts with the FinTech and RegTech sectors. The DFAP meets quarterly and is comprised of FinTech industry representatives, academics, and other national authorities and regulators.[53]

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[49] Department of Industry, Innovation and Science (DIIS) until 5 December 2019.

[50] Australian Securities and Investments Commission, *Submission 14*, pp. 3–4.

[51] Mr John Price, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 2.

[52] Australian Securities and Investments Commission, *Submission 14*, pp. 5–6.

[53] Australian Securities and Investments Commission, *Submission 14*, pp. 10–11.

Australian Prudential Regulation Authority

1.57 APRA is a prudential regulator tasked with protecting the interests of depositors, policyholders and superannuation fund members. Its core role is supervising banks, credit unions, building societies, general insurance and reinsurance companies, life insurers, private health insurers, friendly societies, and most superannuation trustees.[54]

1.58 APRA stated that where FinTech or RegTech companies seek a licence or provide services for regulated entities, it seeks to allow for opportunities and innovations without undue policy or supervisory barriers, while ensuring risks are appropriately managed.[55]

1.59 In 2018 APRA introduced a restricted authorised deposit-taking institution (ADI) licensing framework to provide an alternative pathway to a full licence for new banking entrants. The restricted framework has been successfully used by a number of FinTechs and a number of others are in the process of being licensed.[56]

Reserve Bank of Australia

1.60 The RBA is the principal regulator of the payments system in Australia, and part of its mandate is to contribute to promoting efficiency and competition in the payments system. Under the *Reserve Bank Act 1959*, the Payments System Board (PSB) is responsible for determining the RBA's payments system policy.[57]

1.61 The RBA further explained its role to the committee:

> The Bank seeks to ensure that new players in the payments industry are able to compete fairly and that there are no unwarranted restrictions on their participations in payment systems. Doing so inevitably involves managing the balance between the competition new participants can bring and any additional risks that arise, particularly where new entrants are not subject to the same form of prudential regulation as incumbents. The Bank also strives to have a regulatory regime that is technology neutral and best able to support competition and innovation in the payments system.[58]

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54 Australian Prudential Regulation Authority, *Submission 19*, p. 4.

55 Australian Prudential Regulation Authority, *Submission 19*, p. 4.

56 Australian Prudential Regulation Authority, *Submission 19*, p. 6.

57 Reserve Bank of Australia, *Submission 16*, p. 3.

58 Reserve Bank of Australia, *Submission 16*, p. 1.

Australian Competition and Consumer Commission

1.62 The ACCC is the lead implementation agency for the Consumer Data Right (CDR) initiative.[59] It has undertaken significant preparation ahead of the commencement of the CDR in banking, which is scheduled to roll-out for consumer data about credit and debit cards, deposit accounts and transaction accounts from 1 July 2020, and after 1 November 2020 for mortgage and personal loan data. The ACCC engaged extensively with stakeholders via policy consultations to develop the CDR rules, and also consulted with FinTechs seeking accreditation as data recipients in the banking sector.[60]

1.63 The ACCC provided the committee with details on its broader approach to developing the CDR rules:

> The approach that we have taken for banking, and which we will take for new sectors as the CDR is rolled out, is to develop a core set of rules that are common across sectors, with sector-specific issues addressed in schedules to the rules. Bringing on new sectors may also necessitate changes to the rules that are common across sectors.[61]

1.64 During 2020 the ACCC will also undertake preparation for the roll-out of CDR to the energy sector.[62]

Department of Industry, Science, Energy and Resources

1.65 The department oversees or is involved in a number of initiatives that aim to assist growth of the Australian FinTech sector. These activities include:

- developing a National Blockchain Roadmap to highlight the opportunities for blockchain technology across the whole economy and examine key issues such as regulation and standards;
- administering a number of programs (either solely or jointly with the Australian Taxation Office) that aim to create favourable environments for sectors and firms looking to invest in FinTech opportunities in Australia, including the Early Stage Venture Capital Limited Partnerships, the Venture Capital Limited Partnerships, and the R&D Tax Incentive;
- administering the Entrepreneurs' Programme that provide eligible small and medium businesses with support and advice;
- working with the Department of Home Affairs to ensure that Australia's migration program creates pathways for industry to access skilled and specialised workers that cannot be found locally;
- administering the Women in STEM and Entrepreneurship grants program and the Boosting Female Founders initiative; and

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59 Australian Competition and Consumer Commission, *Submission 15*, p. 1.

60 Australian Competition and Consumer Commission, *Submission 15*, p. 1.

61 Australian Competition and Consumer Commission, *Submission 15*, p. 2.

62 Australian Competition and Consumer Commission, *Submission 15*, pp. 1–2.

- administering the Cooperative Research Centres Program aimed at lifting levels of industry-research cooperation.[63]

National Meeting of Digital Economy and Technology Ministers

1.66 A newly established National Meeting of Digital Economy and Technology Ministers, convened by Commonwealth Minister for Industry, Science and Technology, the Hon Karen Andrews MP, took place on 15 May 2020. Ministerial representatives from all Australian jurisdictions took part, and discussed coordination of digital and technology policy in light of the COVID-19 pandemic. The meeting communique noted:

> Many businesses have, by necessity, had to use technology to transform day-to-day operations and pivot to different business models. The experience has revealed new possibilities of doing things differently. Concerted, collaborative efforts are required to support business to sustain potential gains from digital adoption.[64]

1.67 Ministers agreed to establish a Digital Economy and Technology Senior Officials Group to progress several strands of work to promote more connected digital economy and technology policies across the Commonwealth, State, and Territory governments, namely:

- mapping the digital economy policies and business support services needed to accelerate the digitisation and resilience of businesses in response to COVID-19;
- complete an Artificial Intelligence (AI) and Autonomous Systems Capability Map to highlight the areas of strength and expertise to drive greater collaboration domestically, and inform the promotion of Australia as a key location for research and development, and commercialisation in these areas;
- promoting pathways for digital and cyber security jobs, and identify technology led deregulation projects to support the growth of Australia's digital economy and help reduce the compliance burden on business; and
- working together to identify a collaborative project on addressing the digital divide and increasing digital inclusion.[65]

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63 Department of Industry, Innovation and Science, *Submission 18*, pp. 9–19.

64 Department of Industry, Science, Energy and Resources, 'National Meeting of Digital Economy and Technology Ministers: Communiqué May 2020', 15 May 2020, https://www.industry.gov.au/news-media/national-meeting-of-digital-economy-and-technology-ministers-communique-may-2020#:~:text=The%20inaugural%20National%20Meeting%20of,leading%20digital%20economy%20by%202030, (accessed 29 July 2020).

65 Department of Industry, Science, Energy and Resources, 'National Meeting of Digital Economy and Technology Ministers: Communiqué May 2020', 15 May 2020.

1.68 The ministerial group will meet three times a year on an ongoing basis to progress this agenda.

Commonwealth Scientific and Industrial Research Organisation

1.69 CSIRO is Australia's national science agency, and Data61 is the data and digital research unit within the broader agency. Data61 works in technology domains such as FinTech and RegTech, and CSIRO also carries out technology research in AgTech, EnergyTech, MedTech, and GreenTech. CSIRO's areas of technology research relevant to FinTech and RegTech include machine learning, privacy and private computing, blockchain, financial risk modelling and legal informatics.[66]

Australian Transaction Reports and Analysis Centre

1.70 AUSTRAC regulates more than 15 000 Australian businesses, including major banks, the financial services sector, casinos and single-operator businesses in the money remittance, digital currency exchange and gambling sectors. FinTech businesses may offer services that are regulated by AUSTRAC, such as lending, issuing a debit card, money remittance and digital currency exchange. AUSTRAC requires reporting entities to take preventative measures to identify, mitigate and manage the risk of their services being used for money laundering or terrorism financing.[67]

1.71 AUSTRAC engages with FinTech partners through the FinTel Alliance and has established an Innovation Hub which allows FinTech Alliance partners to collaborate, co-design and test new and innovative technology solutions. AUSTRAC also engages with the RegTech sector to ensure that RegTechs develop products which meet the compliance needs of reporting entities.[68]

Department of Foreign Affairs and Trade

1.72 DFAT supports Australian FinTech and RegTech providers by shaping an 'enabling environment' for those providers to operate and compete in overseas markets. DFAT seeks to foster an enabling market through shaping international rules, supporting trade initiatives (particularly with regard to harmonisation of standards and regulatory cooperation), and advocating to other governments the importance of minimising any trade distorting impacts when considering rules affecting trade.[69]

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66 Commonwealth Scientific and Industrial Research Organisation, *Submission 17*, pp. 3–4.

67 Department of Home Affairs and AUSTRAC, *Submission 132*, pp. 3–4.

68 Department of Home Affairs and AUSTRAC, *Submission 132*, p. 4.

69 Department of Foreign Affairs and Trade, *Submission 108*, p. 1.

Specific measures

1.73 The Commonwealth Government has a number of initiatives underway relevant to the FinTech and RegTech sectors.

Open banking

1.74 Open banking is leading the evolution of the financial services industry, designed to put customers in control of their data to create more personalised experiences and customer focused services. In Australia this will be facilitated by the Consumer Data Right (CDR). The European Union's regulations in this area are the Payment Services Directive (PSD2) and General Data Protection Regulation, while the UK has an Open Banking regime.[70]

1.75 The introduction of a consumer data right in Australia was announced in November 2017, with the aim of improving consumers' ability to compare and switch between products and services. It will also 'encourage competition between service providers, leading not only to better prices for customers but also more innovative products and services'. It will first apply to the banking sector, to be followed by the energy sector and then telecommunications. It will be introduced in phases, with consumer data for credit and debit cards and deposit and transaction accounts of the major banks made available under the scheme on 1 July 2020.[71] Open banking is discussed in greater detail in Chapter 5.

Tax changes for early stage investment

1.76 The measures listed in *Backing Australian FinTech* include the following to incentivise investments in eligible early-stage innovation companies that have high-growth potential:

- a 20 per cent non-refundable tax offset on investment capped at $200,000 per investor per year; and
- a new 10 year capital gains tax exemption for investments held for 12 months.[72]

1.77 In relation to venture capital, the government indicated that it would ensure FinTech start-ups can be eligible for venture capital tax concessions. The reforms which commenced from 1 July 2016 are:

- limited partners in new Early Stage Venture Capital Limited Partnerships (ESVCLPs) will receive a 10 per cent investor tax offset on capital invested during the year;
- the maximum fund size for new and existing ESVCLPs will be increased from $100 million to $200 million; and

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70 Prospa, *Submission 41*, p. 8.

71 ACCC, Consumer Data Right timeline update, *Media release*, 20 December 2019.

72 Commonwealth of Australia, *Backing Australian FinTech*, 2016, p. 6.

- ESVCLPs will no longer need to divest a company when its total assets exceed $250 million.[73]

The new payments platform

1.78 The New Payments Platform (NPP) is a collaborative effort between 13 banks and financial service providers which provides payments infrastructure to facilitate faster and more convenient banking for customers such as real-time money transfers. Operating 24/7, 365 days a year, with the ability to use a PayID as an alternative form of banking ID to BSB and bank account numbers. It also allows innovators to build on top of the infrastructure to develop products such as Osko by BPAY which enables real time peer-to-peer payments.[74]

1.79 An Application Programming Interface (API) is a software intermediary that allows two applications to talk to each other. APIs play an important role in helping innovators and third parties to use the NPP's capabilities. The NPP API Sandbox helps developers to learn and test the NPP's capabilities via sample APIs.[75]

1.80 The RBA has reported that the 'transaction volumes through the NPP have continued to grow steadily. Although the full roll-out of NPP services by the major banks has been slower than expected'. The RBA indicated that a review undertaken by the RBA and the ACCC 'made a number of recommendations to improve access to the system and promote the timely roll-out of NPP services and new functionality'.[76]

Entrepreneur visas

1.81 From September 2016 the government introduced a new Entrepreneur Visa to target foreign entrepreneurs with innovative ideas and financial backing from a third party.[77] In March 2019 it was reported that documents released under FOI revealed that 25 visa applications had been lodged under the entrepreneur stream of the Business Innovation and Investment Subclass 188 visa since its launch in September 2016. Of these only eight were successful. It was reported that these figures include secondary applicants such as family members which means the number of entrepreneurs 'could be as few as two'. The report stated that 'restrictive funding requirements and a lack of awareness of the scheme

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73 Commonwealth of Australia, *Backing Australian FinTech*, 2016, p. 6.

74 See https://nppa.com.au/the-platform/ accessed 20 November 2019.

75 See https://nppa.com.au/the-platform/api-framework-and-sandbox/ accessed 20 November 2019.

76 RBA, *Payments System Board Annual Report*, 2019, p. 1.

77 Commonwealth of Australia, *Backing Australian FinTech*, 2016, p. 7. The Hon Peter Dutton MP, Minister for Home Affairs, 'Supporting innovation through visas: Entrepreneur visa and points test changes go live', *Media release,* 16 September 2016.

contributed to its failure'. It pointed to a revamped version of the program being trialled in South Australia.[78]

1.82 On the Department of Home Affairs website under visas for innovation, the Supporting Innovation in South Australia (SISA) is listed as a new visa arrangement 'designed to attract foreign entrepreneurs to take forward innovative ideas and launch seed stage startups'. It notes that SISA is being piloted in South Australia from November 2018 to November 2021 and if successful will be rolled out nationally.[79] Also under visas for innovation is the Global Talent Independent program (GTI) launched on 4 November 2019 which is designed to 'attract skilled migrants at the top future focused fields to Australia'.[80] The website also lists a Global Talent Employer Sponsored visa which 'allows employers to sponsor overseas workers for highly-skilled niche positions that cannot be filled by Australian workers or through other standard visa programs'.[81]

Investment in start-up incubators

1.83 As part of the then Prime Minister's innovation statement in 2015, the government announced $8 million for an incubator support program which commenced on 1 July 2016.[82] In September 2016 this was increased to $15 million over four years.[83] In March 2019, the Minister for Industry, Science and Technology announced five new incubator projects in the agricultural technology, resources and energy sectors would receive $2.2 million.[84]

Global landing pads

1.84 In 2016 the government announced landing pads, managed by the Australian Trade and Investment Commission, which would provide market-ready Australian start-ups and scale-ups with access to five global innovation hubs in San Francisco, Tel Aviv, Shanghai, Berlin and Singapore. The landing pads

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78 Denham Sadler, 'Entrepreneur visa program is broken', *InnovationAus.com*, 13 March 2019.

79 See https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/supporting-innovation-in-south-australia accessed 18 November 2019.

80 The target sectors are: AgTech, Space and advanced manufacturing, FinTech, Energy and mining technology, MedTech, Cyber security, Quantum information, Advanced digital, Data science and ICT. The Hon Karen Andrews MP, Minister for Industry, Science and Technology, 'Global Talent program open for business', *Media release*, 4 November 2019.

81 See https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/global-talent-scheme (accessed 18 November 2019).

82 Australian Government, *Backing Australian FinTech*, 2016, p. 7.

83 Yolanda Redrup, 'Government opens $23m start-up incubator support program', *Australian Financial Review*, 20 September 2016.

84 The Hon Karen Andrews MP, Minister for Industry, Science and Technology, 'Incubator funding helps kick-start new ventures', *Media release*, 28 March 2019.

cost $36 million over five years.[85] In practical terms the landing pads provide workspace for up to 90 days along with access to coaching, investors, customers, training and networking events.[86] Austrade advised the committee that '[a]s at September 2019, a total of 254 companies have accessed the Landing Pads program'. This includes:

> 81 participants in boot-camps which are sector-focused delegations delivered in collaboration with ecosystem partners for shorter intensive programs that combine educational and market testing elements.[87]

[85] See https://www.austrade.gov.au/landingpads accessed 19 November 2019.

[86] See https://www.business.gov.au/grants-and-programs/landing-pads accessed 19 November 2019.

[87] Austrade, *Submission 148*, p. 4.

Chapter 2
Responding to COVID-19

2.1 In light of the extraordinary economic circumstances facing Australia as a result of the COVID-19 pandemic, the committee sought additional submissions in March 2020 on what assistance is required by the FinTech and RegTech sectors at this time. The committee then held public hearings in June, July and August 2020 to take evidence on the ongoing effects on the sector, as well as assessing opportunities to take permanent advantage of technological advancements made by necessity during the pandemic.

2.2 This chapter discusses the key impacts and opportunities for FinTechs and RegTechs in the current economic crisis. It then examines the technology enablers that have allowed businesses and individuals to continue to operate during the pandemic restrictions across a range of areas, and looks at opportunities created particularly in relation to RegTech solutions for business, deregulation and digitisation.

Key impacts and opportunities arising from COVID-19

2.3 The committee heard that the economic crisis has had a significant detrimental impact on various parts of the FinTech and RegTech sectors in Australia, and that some opportunities are also arising as a result of the disruption caused by the pandemic.

2.4 The Australian Securities and Investments Commission (ASIC) submitted that in its recent meetings with innovative financial services businesses about the crisis, several themes have emerged, including:

- feedback that some businesses are focusing on building better services and products during the locked down period, allowing for stronger go-to-market prospects from October 2020 onwards;
- the mere survivability of many FinTech and RegTech businesses during the pandemic;
- the eligibility of small FinTech and RegTech businesses to access support and assistance from Government and banks during this period; and
- the eligibility of FinTech and RegTech businesses to continue to employ their staff during this period.[1]

2.5 FinTech Australia submitted in March 2020 that COVID-19 'has impacted the fintech ecosystem in a significant way, with many fintechs already laying off and standing down considerable proportions of their workforce'. It stated further:

[1] ASIC, *Submission 14.1*, p. 6.

> [M]ore needs to be done in respect of supporting the fintech ecosystem, which was already in a precarious position before Covid-19 as most companies are still pre-revenue or invest all their revenue directly back into R&D to support their future growth. In addition, as an industry fintechs have created a significant amount of new jobs over the past 24 months and have brought versatility to the workforce including remote working, part time [work], and bringing people back to work.
>
> The time to act is now in order to prevent an irreversible market shock to the Fintech sector. Anything the Government can do in maintaining confidence, supporting investment and keeping people in jobs across the Fintech sector during the crisis is key to maintaining the upward trajectory of increased competition in the banking sector.[2]

2.6 Ms Rebecca Schot-Guppy, Chief Executive Officer of FinTech Australia, told the committee in July 2020:

> [W]hile the fintech industry has—to its best ability—weathered the fallout of COVID-19, the worst is yet to come. The success of some of our larger players has masked the pain felt by emerging companies in the sector. History shows the hardest time to raise capital comes almost a year after the initial downturn. We are concerned as to what this could mean for our growing industry and for those it employs in 2021.[3]

2.7 Mr Alex Scandurra, Chief Executive Officer of Stone & Chalk and representative of the Australian Innovation Collective, told the committee at a public hearing on 30 June 2020 that it is still too early to tell what the overall impact of the recession will be on the start-up and scaleup sector in Australia, however there have already been significant impacts on workforce and customer acquisition:

> [W]hat we've seen is a huge number of fintechs and regtechs, across the board, significantly constrict their employee base—and I use 'employee' more generally in terms of not necessarily employees but people that they have on their payroll in one way, shape or another. What we've also seen is a huge reduction when it comes to customer acquisition, and this is something that's extremely difficult to quantify. But, right across the board, whether it was deals with corporates that were underway, whether it was deals with corporates that were committed or whether it was healthy pipelines pre COVID, most of them have completely dried up. We're in a situation now where there are a huge number of fintechs out there that are really struggling to get revenue through the door, and…are having to stand down and let go of people and are losing that internal capability to continue to build their IP and to build their platforms. Potentially, that might have longer term consequences in terms of their viability financially.[4]

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[2] FinTech Australia, *Submission 19.1*, p. 6.

[3] Ms Rebecca Schot-Guppy, Chief Executive Officer, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 7.

[4] Mr Alex Scandurra, Representative, Australian Innovation Collective, *Proof Committee Hansard*, 30 June 2020, pp. 4–5.

2.8 The committee heard that larger, well established FinTechs and tech companies generally have fared well through the initial phase of the crisis, with newer start-ups and scaleups affected badly. Mrs Maria MacNamara, Convenor of the Australian Innovation Collective, commented:

> Essentially, what you're talking about is established enterprises with a sophisticated offering that's already in the market, where really all they're doing is meeting an increased need. Atlassian went through the roof; Canva's sales have increased, as have Culture Amp's. So anyone that was already in the market rode the wave—just like Zoom did. Those that weren't in the market suffer from not being ready. What happens is, as the discretionary spend is killed, so are the opportunities, because no-one's prepared to take a risk. They just want to be able to move their operation online with bankable, reliable platforms that are working. That's what you're seeing. Many, many organisations that were not yet in market or where the ink wasn't dry on the contracts saw revenue lines go to zero, just like the airlines. One day they had a good pipeline and the next day it was gone.[5]

2.9 Ms Schot-Guppy of FinTech Australia echoed these observations:

> Our bigger [FinTech] companies have done incredibly well out of it. A great example is Afterpay, and 'buy now, pay later' have done really well. However, our smaller companies are really struggling on two fronts. One is raising capital. We know, from other recessions, that the hardest period for them to raise capital will actually be 12 months down the track. Additionally, our smaller companies are struggling with procurement. They may have been going down the route of partnering with an incumbent or had two potential contracts on the table and, from our understanding, they were pulled at the start of COVID. We are seeing some of our members start to get a little bit of an uptick with the economy coming back. However, it is definitely the smaller members that have been hardest hit through this time.[6]

2.10 Mr Alan Tsen, Chair of FinTech Australia, commented that there are 'very specific sectors' within FinTech that are seeing an uptick:

> Payments is an obvious one. Digital payments are the new normal in many ways. So it is, I suppose, a two-speed sort of ecosystem at the moment—those who have done well and those who are probably finding everything from capital raising to partnerships being slowed down.[7]

2.11 Mr Scandurra commented on another dynamic at play in the current crisis; to a significant extent, the firms that have maintained success so far have been those offering business-to-consumer propositions rather than business-to-business products:

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5 Mrs Maria MacNamara, CEO Advange.org and Convener, Australian Innovation Collective, *Proof Committee Hansard*, 30 June 2020, p. 5.

6 Ms Rebecca Schot-Guppy, Chief Executive Officer, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 10.

7 Mr Alan Tsen, Chair, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 10.

> A lot of where they've succeeded is actually in providing alternative options to the mainstream for consumers, [for example non-bank lenders]. For fintech and regtech more broadly, I think the biggest casualty rates are likely to come from the fact that the vast majority of our sector is [business-to-business]—that is, they're providing enterprise solutions, selling to other enterprises like corporates and government organisations.[8]

2.12 The RegTech Association submitted that 40 per cent of members surveyed in July 2020 indicated a retraction in trials and proof of concepts—a key indicator of likely RegTech adoption—as a result of the pandemic, with some RegTech firms reporting cancellation of their entire forward sales pipeline.[9]

2.13 H2 Ventures warned that the potential consequences of this crisis could be extremely damaging for FinTechs and other high growth companies:

> The existential threat to all Fintech companies is that the SME high growth sector in Australia (of which Fintech is an important part) will be eviscerated by this crisis. This has happened before, during the so called 'dot com bust' in 2000, and it took more than a decade for the startup sector to re-emerge. The emerging role that Fintech companies will play in our economy means we cannot let this happen. It is critical that (a) the SME high growth sector survives the short term and thrives in the medium and longer terms; and (b) Australia capitalises on its advantageous position with respect to Fintech as the Australian and global economy moves through and beyond this crisis.[10]

2.14 Pepperstone Group submitted that COVID-19 and 'the extreme stock market movements that have arisen as a consequence have had an immediate impact on all financial services firms in Australia, including FinTech firms'. Pepperstone stated that firms will continue to feel the effects of the economic crisis for an extended period of time, even after the pandemic has been contained, and argued further that these impacts are exacerbated by the general uncertainty of the COVID-19 crisis:

> …there are no clear indications as to how markets and investors will react, how Government restrictions may impact suppliers, and when businesses will be able to operate in their usual capacity again. There is also clearly the potential for other market events to occur that may make things worse (for example, the collapse of a key supplier or even a large, systemically important institution).[11]

2.15 A.T. Kearney submitted that the FinTech and RegTech sectors are subject both to particular vulnerabilities and some opportunities in this period:

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[8] Mr Alex Scandurra, Representative, Australian Innovation Collective, *Proof Committee Hansard*, 30 June 2020, p. 5.

[9] RegTech Association, *Submission 10.1*, pp. 3 and 6.

[10] H2 Ventures, *Submission 35.1*, p. 1.

[11] Pepperstone Group, *Submission 4.2*, pp. 1 and 2.

> The impacts of the COVID-19 pandemic have been felt by all Australians and all parts of the Australian economy. The fintech and regtech industries are no exception and, in some ways, have been hit harder than other industries due to their relative infancy and reliance on underlying activity in, for example, the retail sector. Some of Australia's leading fintechs…have shares trading at ~50% of their 2020 high at the time of writing. With that said, the fact that fintech and regtech businesses are (by their nature) digital and generally more adaptable and nimble presents opportunities as the economy progresses towards a post-COVID equilibrium.[12]

2.16 A.T. Kearney commented that there are two distinct but related challenges for policymakers and the private sector at this time: how best to ensure the industries can survive and operate through the crisis; and how best to ensure the industries can thrive and achieve full potential post-crisis.[13] It noted that particular challenges for the FinTech and RegTech sectors that could arise despite current government responses include persistent issues in employee retention, cashflow and consumer confidence and trust, particularly with respect to lending and credit.[14]

2.17 A.T. Kearney elaborated on some potential silver linings emerging from this crisis that are 'likely to act as tailwinds for existing x-techs and even encourage new players to enter the market':

- Increased use of digital channels provides FinTechs with an opportunity to exploit a potential competitive advantage as digital natives, as they may be best placed to serve customer needs during and post-crisis.
- Changing attitudes towards data and privacy may act as an impetus for wider adoption of open banking-enabled solutions once the CDR provisions are effective.
- The drive to 'pandemic-proof' businesses, through automation and the adoption of technology for manual processes, may provide, opportunities to RegTech companies who are able to automate manual compliance activities.
- Emergence of new 'problems' that incumbents are not well placed to solve. The effects of the pandemic will bring into focus several topics for which we do not currently have adequate solutions, for example in finance:
  - remote access to financial services (banking, advice);
  - digital payments;
  - financial planning under stress, particularly retirement planning;
  - debt restructuring and collections; and

[12] A.T. Kearney, *Submission 52.1*, p. 3.

[13] A.T. Kearney, *Submission 52.1*, p. 3.

[14] A.T. Kearney, *Submission 52.1*, p. 3.

– affordability and funding for insurance, including health insurance, life insurance and income protection vehicles.[15]

2.18 The Australian Government has taken significant actions to reduce the economic impact of the pandemic, with many FinTech and RegTechs eligible for a number of programs including JobKeeper (discussed in Chapter 7) and schemes designed to support smaller lenders (discussed further in Chapter 6), namely:

- the Structured Finance Support Fund, a $15 billion fund administered by the Australian Office of Financial Management designed to support small lenders;[16] and
- the Coronavirus SME Guarantee Scheme, under which the government will guarantee 50 per cent of new loans issued by eligible lenders to SMEs (including several FinTech lenders).[17]

2.19 The government also announced several measures aimed at reducing regulatory burden for financial services providers during the crisis, including:

- On 20 March 2020 the Treasurer announced that the government would be providing some temporary exemptions to responsible lending obligations, to enable small businesses to continue to access loans quickly and efficiently during the crisis.[18]
- On 25 May 2020, the Treasurer announced that the government would temporarily amend the continuous disclosure provisions that apply to companies and company officers for a period of six months, 'to enable them to more confidently provide guidance to the market during the Coronavirus crisis'.[19]
- On 8 May 2020 the Treasurer announced a six month deferral to scheduled legislative reforms arising from the Banking Royal Commission as a result

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15 A.T. Kearney, *Submission 52.1*, p. 7.

16 The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Government to invest up to $15B in support of SME lending', 19 March 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/government-invest-15b-support-sme-lending (accessed 7 April 2020).

17 The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, Joint *Media Release*, 'Supporting Australian workers and business', 22 March 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/supporting-australian-workers-and-business (accessed 8 April 2020).

18 The Hon Josh Frydenberg MP, Treasurer, 'Helping small businesses get access to credit', *Media Release*, 20 March 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-rele3ases/helping-small-businesses-get-access-credit (accessed 7 April 2020).

19 The Hon Josh Frydenberg MP, Treasurer, 'Temporary changes to continuous disclosure provisions for companies and officers' *Media Release*, 25 May 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/temporary-changes-continuous-disclosure-provisions (accessed 26 May 2020).

of the impacts of the coronavirus. The Treasurer stated that the deferral 'will enable the financial services industry to focus their efforts on planning for the recovery and supporting their customers and their staff during this unprecedented time'.[20]

Technology enablers during the pandemic crisis and recovery period

2.20 The committee received evidence on a range of issues relating to the ways in which the use of technology and digitisation has enabled businesses and other entities to continue to operate through the crisis period. In many instances this has been facilitated by regulatory exemptions or changes, both at the Commonwealth and state and territory level. The committee took evidence on whether, and how, these measures can be advanced or made permanent as Australia progresses through the pandemic.

2.21 Specific areas examined by the committee include:

- measures allowing corporations to hold meetings virtually and execute company documents electronically;
- measures enabling increased use of telehealth and digital prescriptions;
- regulations governing the virtual signature and witnesses of legal documents;
- the importance of RegTech solutions to businesses, including possibilities in relation to compliance with industrial awards; and
- the rollout of a digital identity framework across Commonwealth government agencies, and future proposed developments in this area.

Changes to allow for electronic company meetings and execution of documents

2.22 On 5 May 2020 the Treasurer, the Hon Josh Frydenberg MP, announced temporary changes to allow companies to convene annual general meetings (AGMs), and other meetings prescribed under the *Corporations Act 2001* (Corporations Act), entirely online rather than face-to-face. Under these changes, company boards are able to:

- provide notice of annual general meetings to shareholders using email;
- achieve a quorum with shareholders attending online; and
- hold annual general meetings online.[21]

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[20] The Hon Josh Frydenberg MP, Treasurer, 'Update on the implementation of the Banking, Superannuation and Financial Services Royal Commission', *Media Release,* 8 May 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/update-implementation-banking-superannuation-and (accessed 8 May 2020).

[21] The Hon Josh Frydenberg MP, Treasurer, 'Making it easier for business to operate during Covid-19', *Media Release,* 5 May 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/making-it-easier-business-operate-during-covid-19 (accessed 29 May 2020).

2.23 The Treasurer noted that meetings must continue to provide shareholders with a reasonable opportunity to participate, with shareholders able to put questions to board members online and vote online.[22]

2.24 Further changes allow company officers to sign a document electronically, providing certainty that requirements of the Corporations Act will be met; previously, in a number of cases, signatories were required to sign the same physical document. The Treasurer stated that this measure 'will ensure that documents are able to be properly executed at a time when ordinary business operations have been disrupted'.[23]

2.25 Several states and territories also implemented new temporary regulations to enable the electronic execution of documents during the pandemic restrictions.[24]

2.26 The Commonwealth changes to the corporations regulation were implemented via a legislative instrument, the Corporations (Coronavirus Economic Response) Determination (No 1) 2020, and were put in place for a period of six months beginning on 6 May 2020.[25] The Treasurer subsequently announced on 31 July 2020 that the temporary relief measures granted in the determination would be extended for a further period of six months beyond the initial November 2020 expiry date. The Treasurer stated:

> The Morrison Government is continuing to provide certainty to businesses about how they can meet their legal obligations by extending temporary regulatory relief in respect of online meetings and electronic document execution for a further six months.
>
> …
>
> The feedback that the Government has received from industry is that these temporary changes have provided certainty to business and helped them continue to operate through the coronavirus crisis. Under the social distancing measures that are currently in place, and the ongoing challenges in Victoria, it is difficult for shareholders to physically gather and for companies to execute documents in person.[26]

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[22] The Hon Josh Frydenberg MP, Treasurer, 'Making it easier for business to operate during Covid-19', *Media Release*, 5 May 2020.

[23] The Hon Josh Frydenberg MP, Treasurer, 'Making it easier for business to operate during Covid-19', *Media Release*, 5 May 2020.

[24] See, for example: in Victoria, the COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 made under *the Electronic Transactions (Victoria) Act 2000*; and in New South Wales, the Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020 made under the *Electronic Transactions Act 2000* (NSW).

[25] Corporations (Coronavirus Economic Response) Determination (No 1) 2020, 5 May 2020, available at https://www.legislation.gov.au/Details/F2020L00553 (accessed 9 June 2020).

[26] The Hon Josh Frydenberg, Treasurer, 'Continuing to make it easier for business to operate during COVID-19' *Media Release*, 31 July 2020, https://ministers.treasury.gov.au/ministers/josh-

2.27 Submitters and witnesses to the inquiry argued that these changes allowing online meetings and electronic execution of documents should be made permanent, and that additional measures could also be taken to help modernise the Corporations Act and make it more technology-friendly. The Governance Institute of Australia submitted:

> COVID–19 has exposed many of the shortcomings of the current legislative environment, particularly the out-dated, paper-based state of the Corporations Act. If Australia's corporate markets are to be fit for purpose in the 21st century, the legislation governing corporations and the management of corporations needs to embrace technology. Governance Institute has consistently advocated the need to bring the Corporations Act into the 21st century and to ensure it is technology neutral.[27]

Electronic AGMs and other prescribed meetings

2.28 A number of submitters and witnesses commended the Treasurer's Determination enabling virtual company meetings to occur during the pandemic restrictions.

2.29 The Governance Institute explained that social distancing, travel and public gathering restrictions implemented in March 2020 created uncertainty for companies about how they could legitimately conduct meetings without shareholders being physically present in the same venue, forcing companies to consider whether they could use technology to comply with COVID-19 restrictions to hold either:

- a 'hybrid' AGM (where there is a physical location and online facilities) or
- a 'virtual' AGM that is conducted solely online.[28]

2.30 The Governance Institute stated that prior to the Treasurer's Determination, the ability for companies to use technology to overcome the pandemic restrictions was limited by the Corporations Act and the provisions of their constitutions:

> Many companies were unwilling to hold a hybrid AGM due to legal uncertainty as to whether their constitutions allowed them to do so. There was doubt as to whether the Corporations Act permitted virtual AGMs and there was also doubt as to the validity of resolutions passed at a virtual AGM.[29]

2.31 The Australian Institute of Company Directors (AICD) expressed the view that companies should be able to decide on the best format for their meetings, whether that be physical, hybrid or virtual meetings, 'mindful of the need to

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frydenberg-2018/media-releases/continuing-make-it-easier-business-operate-during (accessed 31 July 2020).

27 Governance Institute of Australia, *Submission 171*, p. 1.

28 Governance Institute of Australia, *Submission 171*, p. 3.

29 Governance Institute of Australia, *Submission 171*, p. 3.

enfranchise their shareholders and allow meaningful participation'.[30] It noted 2019 survey data showing that less than one per cent of shareholders attended AGMs and less than five per cent voted:

> These are not positive results, given the important governance function which the AGM plays in our system of corporate governance. Virtual or hybrid meetings provide an opportunity to effectively interact with significantly more members and stakeholders by removing geographical and physical barriers to attendance.[31]

2.32 Ms Shannon Finch, Chair of the Law Council of Australia's Corporations Committee, stated similarly that while attendance in person at AGMs has been declining over time, hybrid meetings can provide new avenues for engagement:

> One of the things that we would see as a real benefit is increased direct participation of shareholders in meetings, rather than simply appointing proxies and being passive. There's tremendous potential, I think, for these new sorts of platforms to facilitate active and respectful engagement, which we think could reinvigorate the general meeting process rather than it becoming a stale process where people file proxies and don't really pay attention and maybe read the transcript or read the release later on ASX. So we actually see the potential of technology to reinvigorate this as being greater than the difficulty of accommodating the sectors of the community that would like to attend in person. Once we are free of lockdown restrictions, we think that hybrid meetings should be encouraged so that all of those segments can be accommodated fairly readily.[32]

2.33 Submitters noted that some listed companies holding their AGMs in late May have successfully relied on the Determination to hold AGMs digitally with shareholders participating online. The Governance Institute reported that feedback from these companies has been positive and 'it appears that practices concerning virtual AGMs have developed over the May mini-AGM season'.[33]

2.34 The Australasian Investor Relations Association (AIRA) commented:

> We commended the Treasurer's Determination. These measures to support companies have accelerated the inevitable evolution of the Corporations Act to reflect the behaviours and desires of investors in the 21st Century, which revolve around digital communications and technology.
>
> Recent AGMs that have been held virtually have been highly successful, led to greater levels of shareholder participation and attendance, as well as

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[30] Mr Christian Gergis, Head of Policy, Advocacy, Australian Institute of Company Directors, *Proof Committee Hansard*, 30 June 2020, p. 8.

[31] Mr Christian Gergis, Head of Policy, Advocacy, Australian Institute of Company Directors, *Proof Committee Hansard*, 30 June 2020, p. 8.

[32] Ms Shannon Finch, Chair, Corporations Committee, Law Council of Australia, *Proof Committee Hansard*, 1 July 2020, p. 27.

[33] Governance Institute of Australia, *Submission 171*, p. 4.

> saving listed entities thousands of dollars in costs associated with venue hire and travel costs. We believe such positive results will continue to be experienced, particularly as companies and technology providers address and resolve issues associated with the changes.[34]

2.35 Mr Christian Gergis, Head of Policy, Advocacy, at the AICD, told the committee that initial analyses by Computershare of virtual AGMs conducted through the course of April and May 2020 'indicate that overall attendance has increased by 36 per cent relative to the same period in 2019, suggesting that the shift to digital platforms has facilitated greater shareholder attendance and engagement'. Further, three major ASX 50 company AGMs during this period received an average of 33 written questions, 'indicating that the electronic format has not undermined shareholder engagement, nor has there been discernible change in the voting patterns of institutional investors'.[35]

2.36 The AICD noted that providing flexibility in the Corporations Act to enable companies to adopt the best format for their shareholder meetings (whether that be physical, hybrid or virtual) would bring us into line with other countries which allow both virtual and hybrid AGMs, such as the United States, Canada, Spain, South Africa, Denmark, Ireland and New Zealand.[36]

2.37 The Australian Shareholders' Association (ASA) noted that its representatives had attended over 50 fully virtual AGMs since March 2020, with several issues arising from a shareholder perspective. It stated that some shareholders have been unable to access online AGMs due to poor internet connectivity or physical constraints that have prevented them from participating.[37]

2.38 Ms Fiona Balzer, Policy and Advocacy Manager at the ASA, commented that at the online AGMs held to date, 'the feeling of engagement and being heard has thus far not really been achieved' for shareholders.[38] The ASA stressed the importance of maintaining accountability at virtual meetings:

> An important part of maintaining corporate accountability, the shareholder meeting is a forum where even the smallest retail holder can question the board and the executives. In a physical meeting, the response or lack of response to these questions is laid bare for all attendees to see. This is not the case with an online meeting where moderators control the

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[34] Australasian Investor Relations Association, *Submission 168*, p. 3.

[35] Mr Christian Gergis, Head of Policy, Advocacy, Australian Institute of Company Directors, *Proof Committee Hansard*, 30 June 2020, p. 8.

[36] Australian Institute of Company Directors, Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020).

[37] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, p. 1.

[38] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 3.

> flow of questions and ignored questions may not be apparent to the audience until complaints are made to the regulators after the event.[39]

2.39 To address these concerns about virtual meetings, the ASA urged that companies should be required to publish a record of all questions submitted by shareholders, and answers provided by Directors at an AGM, in order to ensure transparency about which issues are being addressed and which questions (if any) are being avoided.[40]

2.40 The ASA indicated its support for the increased use of hybrid AGMs, as opposed to fully virtual meetings, in order to maintain~~ing~~ corporate accountability whilst ensuring disenfranchised shareholders continue to receive adequate engagement:

> The ASA has long supported hybrid meetings—a physical meeting with an online meeting—because those people who are disenfranchised from attending due to, say, their rural location, mobility issues or illness can attend from home while there are also people attending via physical presence. We are quite supportive of hybrid meetings being the way forward to encourage greater engagement overall, but we also note that goodwill is required on the part of the company as well as the part of the shareholders to make those meetings work.[41]

Extending the temporary determination beyond November 2020

2.41 Submissions lodged in June 2020 noted that the initial six month timeframe placed on the Treasurer's determination still created uncertainty for companies planning AGMs in November and December 2020. AIRA noted that the determination will not apply to 'roughly 970 listed entities who have their AGM between 6 November and 31 December 2020' as well as 'thousands of unlisted companies and not-for-profits'. It commented further that these companies 'must be given the option of having a virtual or hybrid AGM'.[42]

2.42 Automic submitted that extending the determination would provide surety for companies, deliver cost savings, improve shareholder engagement, as well as enabling companies offering virtual or hybrid AGMs in late 2020 to learn from the experiences of companies who have already done so in mid-2020,

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[39] Australian Shareholders' Association, *Guide to Online Meetings*, July 2020, https://www.australianshareholders.com.au/common/Uploaded%20files/Advocacy/Guide_Online_Meetings_Final.pdf (accessed 10 August 2020). See also Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, pp. 1 and 3.

[40] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, pp. 2 and 4.

[41] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 2.

[42] Australasian Investor Relations Association, *Submission 168*, p. 3.

delivering simpler communication and greater shareholder awareness of participation options available to them.[43]

2.43 The Law Council of Australia emphasised the need for an early announcement of an extension of the temporary determination, or of legislation to make the modification permanent, in order to provide certainty for companies planning AGMs towards the end of 2020.[44]

2.44 These concerns have now been addressed by the Treasurer's announcement on 31 July that the temporary determination would be extended until mid-2021.

Technology neutrality in the Corporations Act

2.45 In addition to enabling hybrid or virtual company meetings, the committee heard that broader changes are required to make the Corporations Act technology neutral, enabling efficiency in company operations and future-proofing the Act as technology evolves. The Governance Institute submitted:

> Government should aim to enable transactions and business to be carried out digitally end-to-end: regulation should not make it more difficult and expensive to conduct business through purely digital channels.
>
> However, given the speed of technological change and the uptake of technology accelerated by the impact of the pandemic, it is important that any amendments to the Corporations Act be technology-neutral. That is, they need to provide for the use of technology without specifying any particular technology. This allows for innovation as technology evolves.[45]

2.46 One specific area mentioned by submitters was in relation to the requirements under the Corporations Act for giving notice of meetings and distributing materials to shareholders. Currently, notices of meeting and meeting materials must be provided to shareholders in hard copy unless they have nominated an electronic means of communication. The committee heard that this requirement results in significant inefficiencies and wastage, as explained by Ms Megan Motto, CEO of the Governance Institute:

> [By] enabling companies to digitally engage with shareholders through notices of meetings…there is a significant efficiency dividend, an engagement dividend and an environmental dividend. We've done some back-of-the-envelope calculations for the committee. If you just look at the ASX top 20 companies alone and in isolation—of course, they are just the tip of the iceberg of companies that need to engage with shareholders in Australia—the approximate cost of sending out physical notices of meetings to those who have not provided email addresses equates to somewhere in the vicinity of $13 million per AGM season. Of those $13 million worth of notices sent out, there is only a 3.6 per cent proxy

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43 Automic, *Submission 180*, p. 3.

44 Law Council of Australia, *Submission 176.1*, pp. 2–3.

45 Governance Institute of Australia, *Submission 171*, p. 3.

> return. So the return on that $13 million investment is very, very small in the context of what companies are trying to do.
>
> In addition, there is the paper that is used to produce these physical notices of meetings. If you take into account two envelopes and an average of, say, 16 pages—they can go up to 50 pages or be shorter, but we took an average of 16 pages—the waste that equates to is approximately 8,306 trees per AGM, which is per annum, for those companies alone. That's a hell of a lot of trees being cut down and environmental waste.[46]

2.47 The ASA also supported the increased use of electronic communications for shareholders but noted that the use of emails should not be the only form of communication from companies. Ms Balzer noted that individual shareholders must have the option to opt-in to receiving communications by post, in hard copy:

> I'd also like to note that in relation to electronic communications we encourage shareholders to be mindful of the delivery constraints of Australia Post. ASA supports communications by email being the default communication method, with shareholders being able to receive particular documents in hard copy. We would be extremely concerned if this were the only method of communication. No investor should be excluded from being able to buy and sell securities or receive company communications because they don't have an email address. We have already heard from members complaining about disenfranchisement due to their rural location, disability or technology setup.[47]

2.48 In response to COVID-19, the Government amended the Australian Postal (Performance) Regulations 2019 to relax performance standards for the delivery of letters to enable Australia Post to manage impacts on its operations. Ms Balzer of the ASA provided some examples to the inquiry as to how this has negatively impacted certain shareholders:

> Early in the piece, when Australia Post advised that there were going to be delays in delivering documents with the capital raisings that were going on, we were quite aware that members who were reliant on post may miss out on participating in those capital raisings. We had one gentleman from Parkville, New South Wales, who basically said that the internet was slower than the Australia Post delivery. He felt that he was unable to switch to electronic communications because he has intermittent internet. I didn't feel able to ask whether or not he's capable of upgrading his technology. Another member has difficulty typing due to the pain in her hands-she's comfortable writing-and therefore doesn't participate in life through email or electronic communications but is quite comfortable with writing or phoning people. She phoned us with that complaint, when Telstra advised that the AGM notices would only be delivered

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[46] Ms Megan Motto, Chief Executive Officer, Governance Institute of Australia, *Proof Committee Hansard*, 30 June 2020, pp. 9–10.

[47] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 1.

> electronically. We put her onto the registry, and I believe that they have worked out how to get her the physical documents.[48]

2.49 It was noted that Treasury conducted an initial consultation process in 2016 on these matters, issuing a proposal paper *Technology neutrality in distributing company meeting notices and materials*, but that reforms have not progressed since.[49]

2.50 Several submitters provided the committee with specific proposed amendments to the Corporations Act, to provide technology neutrality in relation to the provision of meeting notices and materials, and the holding of company meetings.[50] It was also suggested that an overriding 'technology neutral' clause could be included in the Corporations Act to ensure that technology changes are adopted as widely as possible to promote consistency and efficiency.[51]

Electronic execution of company documents and other legal documents

2.51 The ability of companies and individuals to execute and witness legal documentation during COVID-19 restrictions was discussed in evidence to the committee.

2.52 The Law Council of Australia submitted that it has been 'particularly difficult for members of the legal profession and their clients to sign and witness documents during lockdown'.[52] The Governance Institute noted that executing documents when people are working remotely 'is one of the many challenges thrown up by COVID-19', with people working remotely unavailable to apply a 'wet ink' signature and often not able to print, execute, scan and return documents from home.[53]

2.53 In this light, a number of submitters and witnesses expressed support for the temporary measures introduced under the Treasurer's Determination of May 2020 to assist persons and companies to meet their obligations under the Corporations Act by allowing documents to be in electronic form and to be

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[48] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 1.

[49] Treasury, 'Technology Neutrality in Distributing Meeting Notices and Materials Proposals Paper', June 2016, https://treasury.gov.au/consultation/technology-neutrality-in-distributing-meeting-notices-and-materials-proposals-paper (accessed 28 July 2020).

[50] Link Group, Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020), pp. 1–2; Governance Institute of Australia, Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020), pp. 1–2.

[51] Link Group, Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020), p. 2.

[52] Law Council of Australia, *Submission 176*, p. 8.

[53] Governance Institute of Australia, *Submission 171*, p. 7.

executed using electronic means (or e-signatures). [54] These stakeholders argued that the Corporations Act should be amended to make permanent changes enabling electronic execution of company documents.

2.54 Ms Motto described reforms to enable electronic execution of company documents as 'just a no-brainer':

> I heard a story from one of our company secretaries who had to jump into an Uber risking her own health at the height of the COVID crisis and drive to the chairman's house—luckily the chairman lived within driving distance—to get a wet signature on the minutes. To me, that is absolutely ridiculous when we are able to transact electronically in so many other areas.[55]

2.55 The Law Council of Australia noted that the issue of electronic execution of documents is of significance in other circumstances beyond the COVID-19 pandemic:

> Improving the ability to sign and execute documents electronically, where appropriate, ought to remain a priority law reform area. Recent experience of the bushfires of the summer of 2019/2020 and, more recently, the COVID-19 pandemic, illustrates that this issue will re-surface during future natural disasters, arises often in regional, remote and rural areas and may in some instances be key in keeping pace with modern global business practises.[56]

Issues to consider in formulating permanent changes

2.56 The Law Council of Australia raised several issues that need addressing in order to create permanent changes that facilitate digital execution of company documents and other legal documents.

2.57 In relation to company documents, the Law Council noted that the wording of the Treasurer's temporary determination had still left some uncertainty in the minds of some legal practitioners, and commented that permanent amendments to the Corporations Act need to explicitly override the need for paper-based signatures:

> The need for clear and express words is particularly important to authorise the electronic execution, witnessing and attestation of deeds, to overcome common law principles that otherwise would require 'wet ink' signatures on hard copy documents (known as the 'paper, parchment or vellum' principles) and to put efficacy of execution beyond doubt. Legal practitioners have been divided as to the efficacy of the emergency

[54] Law Council of Australia, *Submission 176*, p. 8; Australian Institute of Company Directors, *Submission 174*, p. 4; Governance Institute of Australia, *Submission 171*, p. 7. See also: FinTech Australia, *Submission 19*, p. 117; Ms Fiona Balzer, Policy & Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 5.

[55] Ms Megan Motto, Chief Executive Officer, Governance Institute of Australia, *Proof Committee Hansard*, 30 June 2020, p. 9.

[56] Law Council of Australia, *Submission 176*, p. 8.

> Determination, resulting in some firms refusing to give 'due execution' opinions on electronically signed documents and deeds, and a continued insistence on 'wet ink' signatures.[57]

2.58 Ms Finch of the Law Council explained that reliance on some aspects of state and territory law in the execution of company documents can also be a complicating factor:

> The execution of documents is a complicated area. It relies on a combination of federal law when documents are executed by companies and states and territory law to the extent that there are individuals involved in the execution of documents or where they need to be executed by that individual as part of a corporate transaction, so there is responsibility in all of those jurisdictions to solve the problem of electronic execution.[58]

2.59 Ms Finch explained that differing approaches taken to the electronic execution of legal documents in different Australian jurisdictions during the pandemic has caused confusion, with particular issues arising in relation to the execution of legal deeds:

> At a state level, there have been different approaches taken by each of the states and territories. Some still do not have a regime for electronic execution of documents. In other states and territories there have been significant moves made on a temporary basis during the period affected by COVID-19 to introduce e-signing protocols, but they have had varying degrees of efficacy... Each state and territory has made some efforts to acknowledge that electronic signing may be possible in a variety of ways, but the intricacies of effective signing of a document versus signing of a deed have not yet been addressed in all states and territories. In most places you may be able to sign a contract electronically, but to sign a deed at the moment is only inclusively possible in Victoria.[59]

2.60 The Law Council stated that the absence of uniformity in this area across jurisdictions through the period of the COVID-19 pandemic 'has significantly hampered the efficacy of emergency reforms'. It commented further that the possibility of harmonising e-signature processes across the states and territories needs to be considered, 'not just in cases of emergency, given that commercial and personal transactions regularly cross jurisdictional boundaries'.[60]

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[57] Law Council of Australia, *Submission 176*, p. 9.

[58] Ms Shannon Finch, Chair, Corporations Committee, Law Council of Australia, *Proof Committee Hansard*, 1 July 2020, p. 26.

[59] Ms Shannon Finch, Chair, Corporations Committee, Law Council of Australia, *Proof Committee Hansard*, 1 July 2020, p. 26.

[60] Law Council of Australia, *Submission 176*, pp. 8–9.

Requirements for witnessing of documents

2.61 The Law Council noted that requirements relating to witnessing the execution of deeds is a particular area of concern, and expressed the view that requirements for a deed to be witnessed in person have in some cases outlived their usefulness:

> Each Australian State or Territory has different requirements for the execution of deeds, but generally they must be witnessed, which is more difficult online and the witness must also attest to having witnessed for execution to be complete. In this context, an individual's inability to execute a deed remotely is a material impediment and an unnecessary one with no sound policy justification. Whilst the purpose of the witnessing requirement was originally to protect against fraud, electronic execution is, by definition, less liable to fraud, given the digital record that is necessarily created by any form of electronic execution. Hence, consideration should be given to completely dispensing with witnessing where technology can provide robust evidence of due execution.[61]

2.62 Submitters and witnesses pointed to several examples of technology platforms that can currently be securely used for executing documents and validating identity in that context, providing an alternate to requirements for witnessing of documents in person.[62]

2.63 The Law Council submitted that as an alternative to removing witnessing requirements altogether, another option could be to introduce amendments to the Corporations Act to allow witnessing to occur via videoconference. This process is currently authorised in several states under temporary emergency regulations. The Law Council explained:

> [These regulations] authorise a process for witnessing documents by which one person sees, through an audio-visual connection, a second person sign a document digitally. The first person then receives a copy of the signed digital document and signs a digital attestation of the documents that they saw the second person sign. This process could be authorised to fulfil witnessing requirements under federal law generally, including in relation to statutory declarations and affidavits.[63]

Telehealth, ePrescriptions and medical technology

2.64 The pandemic has necessitated a variety of new arrangements in the delivery of healthcare, including through the use of technology to make services more accessible remotely. The Australian Medical Association (AMA) commented on the progress made in these areas as follows:

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61 Law Council of Australia, *Submission 176*, p. 10.

62 Ms Shannon Finch, Chair, Corporations Committee, Law Council of Australia, *Proof Committee Hansard*, 1 July 2020, p. 27; Law Council of Australia, *Submission 176.1*, pp. 3–4; Ms Megan Motto, Chief Executive Officer, Governance Institute of Australia, *Proof Committee Hansard*, 30 June 2020, p. 14.

63 Law Council of Australia, *Submission 176.1*, p. 4.

> The introduction of telehealth services and ePrescriptions has led to many years of health care reforms being delivered in a matter of weeks and months... The key challenge now is ensuring that we retain these reforms while refining them to ensure they support more flexible access to care for patients – within an appropriate quality framework.[64]

2.65 The Royal Australian College of General Practitioners (RACGP) submitted that it is 'fully supportive of initiatives which seek to move towards a more digitised and coordinated healthcare system' and commended the government for its 'rapid support and implementation of telehealth and prescriptions via telehealth following the COVID-19 outbreak'.[65]

Telehealth measures

2.66 In response to the COVID-19 health crisis, the Australian Government has made a number of announcements since March 2020 progressively expanding the availability of telehealth services by General Practitioners and other medical specialists. The most significant expansion of the availability of Medicare-subsidised telehealth services was announced on 29 March 2020 by the Minister for Health, the Hon Greg Hunt MP, with $669 million in Commonwealth funding allocated to new telehealth services items on the Medicare Benefits Schedule (MBS).[66] The Minister stated that the new arrangements would 'be in place until 30 September 2020, when they will be reviewed in light of the need to continue our battle against COVID-19'.[67]

2.67 The Health Minister provided an update on 20 April 2020 that more than 4.3 million health and medical services had been delivered to a total of more than three million patients through the telehealth items introduced by the Australian Government for the COVID-19 pandemic.[68]

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64 Australian Medical Association (AMA), *Submission 175*, p. 3.

65 Royal Australian College of General Practitioners, *Submission 179*, p. 1.

66 The Hon Greg Hunt MP, Minister for Health, 'COVID-19: Whole of population telehealth for patients, general practice, primary care and other medical services', *Media Release*, 29 March 2020, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covid-19-whole-of-population-telehealth-for-patients-general-practice-primary-care-and-other-medical-services (accessed 13 July 2020); The Hon Scott Morrison MP, Prime Minister, '$1.1 billion to support more mental health, Medicare and domestic violence services', *Media Release*, 29 March 2020, https://www.pm.gov.au/media/11-billion-support-more-mental-health-medicare-and-domestic-violence-services-0 (accessed 13 July 2020).

67 The Hon Greg Hunt MP, Minister for Health, 'COVID-19: Whole of population telehealth for patients, general practice, primary care and other medical services', *Media Release*, 29 March 2020.

68 The Hon Greg Hunt MP, Minister for Health, 'Australians embrace telehealth to save lives during COVID-19', *Media Release*, 20 April 2020, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/australians-embrace-telehealth-to-save-lives-during-covid-19 (accessed 13 July 2020).

2.68 Further changes were announced on 10 July 2020, whereby Medicare-subsidised telehealth services 'will now promote patients receiving continuous care from a patient's regular GP or medical practice':

> From July 20, Telehealth GP providers will be required to have an existing and continuous relationship with a patient in order to provide Telehealth services.
>
> This will ensure patients continue to receive quality, ongoing care from a GP who knows their medical history and needs.
>
> …Requiring COVID-19 video and telephone services are linked to a patient's usual GP or practice will support longitudinal, person-centred primary health care, associated with better health outcomes.[69]

2.69 The AMA submitted that the telehealth measures had ensured that patients can access care without risk of exposure to the coronavirus, as well as protecting doctors from potential exposure and reduced the avoidable use of personal protective equipment during the pandemic.[70]

2.70 Dr Tony Bartone, President of the AMA, expanded on the benefits of ongoing telehealth arrangements in evidence to the committee:

> Prior to COVID-19…Australians had very little access to MBS funded telehealth, with MBS arrangements largely based on geography. COVID-19 has been a proving ground for telehealth, with the MBS reformed to support phone and video consultations where clinically appropriate. Indeed, since March around 20 per cent of all GP services have been delivered over the phone or video platforms as well as just under 20 per cent of non-GP specialist services. COVID-19 has shown that telehealth works in the Australian context. It has been embraced by patients and doctors alike. It works for both GPs and non-GP specialists.[71]

2.71 The RACGP submitted that the introduction of MBS telehealth items to support telephone and video consultation in general practice was a 'critically important development' that has demonstrated that care 'can be equally effective when delivered remotely, challenging traditional conceptions of face-to-face consultations as the only effective medium to support patient care'.[72]

2.72 Mrs Peta Rutherford, Chief Executive Officer of the Rural Doctors' Association of Australia (RDAA), stated that the government's swift action on telehealth has been 'transformational to the system, both in response to the pandemic and for the future':

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[69] The Hon Greg Hunt MP, Minister for Health, 'Continuous care with telehealth stage seven', *Media Release*, 10 July 2020, https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/continuous-care-with-telehealth-stage-seven (accessed 10 July 2020).

[70] AMA, *Submission 175*, p. 1.

[71] *Proof Committee Hansard*, 1 July 2020, p. 13.

[72] Royal Australian College of General Practitioners, *Submission 179*, p. 1.

> GP patient consultations via telehealth in any great numbers had never been available prior to the COVID-19 pandemic. Telehealth through Medicare addressed many access issues. It contributed to ensuring that GP practices were able to keep their doors open and retain their staff.[73]

2.73 Mrs Rutherford commented that rural GPs have been quick to embrace the telehealth service model:

> Many would previously have used the technology when sitting beside a patient while having a consultation with a non-GP specialist in a major city or regional centre. For the most part, rural GPs also coped when supervising registrars [used] telehealth services. The Australian College of Rural and Remote Medicine actually has telehealth as a core skill for their registrars.[74]

2.74 In relation to cost savings from telehealth, the AMA advised '[w]hile the benefits of telehealth extend beyond mere cost savings, the permanent adoption of telehealth will reduce costs across the health system while improving patient outcomes'.[75] The AMA explained that several factors contribute to these savings:

> with the most notable being the cost associated with travel, and the societal cost for the patient, such as time off work (i.e. reduced productivity) to attend outpatient clinics. Travel costs, including fuel, meals, and potentially accommodation increase with patient rurality and can present a barrier to accessing care.[76]

2.75 The AMA provided a number of examples of how telehealth services have greatly decreased the cost of consultations and health service delivery. For example, for Indigenous Australians:

> Teleophthalmology services decreased the cost per consultation to $107 compared with $260 for face-to-face services. Likewise, the use of telehealth for the home monitoring of chronic conditions reduced the cost of health care delivery by an estimated 40% compared with face-to-face. Store and forward teledermatology is also more economical than face-to-face care, and this difference increased the further the patient needed to travel access face-to-face dermatology services.[77]

2.76 Also a home telehealth program for rural paediatric palliative care services in Queensland was found to be significantly more cost effective than face to face services. Further:

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[73] *Proof Committee Hansard*, 1 July 2020, pp. 13–14.

[74] *Proof Committee Hansard*, 1 July 2020, p. 14.

[75] AMA, Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 29 July 2020).

[76] AMA, Answers to questions on notice, received 29 July 2020.

[77] AMA, Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 29 July 2020).

> While there were considerable cost reductions for the patient when using telehealth rather than attending outpatient consultations, the savings were largest when replacing home visits with video consultation ($1214 versus $294 per consultation). The cost of clinician time and travel, travel expenses for families reimbursed through the Patients Travel Subsidy scheme, outpatient costs and equipment and infrastructure costs were considered.[78]

2.77 Another example found a telegeriatric service model to be more economical than the cost of a visiting geriatrician service model. 'When considering the expense of the round-trip for the geriatrician and four patients per round trip, an estimated $131 per patient consultation could be saved using the telegeriatric model'.[79]

2.78 The AMA noted that while many of the examples provided were associated with the cost of living in a rural area, 'research has suggested that the use of telehealth for metropolitan patients may achieve cost savings though economies of scale. This is because large numbers of metropolitan patients using video consultations may exceed savings from comparatively smaller numbers of rural and remote patients and their doctors not travelling large distances for appointments'. The AMA added:

> The lack of uptake in telehealth services by metropolitan based doctors (until COVID-19) is influenced by a lack of reimbursement for these services. Overall, larger investment into telehealth under Medicare and more flexible arrangements around their use will likely result in long-term savings to the health care system.[80]

Extending telehealth arrangements beyond September 2020

2.79 The AMA expressed support for continuing expanded telehealth arrangements beyond September 2020:

> Overall, patients are overwhelmingly embracing telehealth as an important part of their health care management, making a strong case for the Federal Government to make the COVID-19 telehealth reforms a permanent feature of our health system[.][81]

2.80 The RACGP submitted that extending access to telehealth services beyond COVID-19 'would allow time to gradually alleviate patient concerns about the safety of receiving face-to-face care', and that the continuation of telehealth could also form part of an ongoing strategy to reduce the risk of COVID-19 infection in the community in the absence of a vaccine being developed.[82] The RACGP submitted further that patients in rural, regional and remote areas

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78 AMA, Answers to questions on notice, received 29 July 2020.

79 AMA, Answers to questions on notice, received 29 July 2020.

80 AMA, Answers to questions on notice, received 29 July 2020.

81 AMA, *Submission 175*, p. 2.

82 Royal Australian College of General Practitioners, *Submission 179*, p. 1.

'require ongoing access to telehealth services to ensure parity of health outcomes with their metropolitan counterparts'.[83]

2.81 Mrs Rutherford emphasised the RDAA's view that 'there is great opportunity for telehealth into the future and that, with some key amendments, it has a long future' in Australia. Ms Rutherford cautioned that the model of telehealth pursued in the long term needs to support rural general practice rather than undermine it:

> We can't have telehealth as a replacement of face-to-face consultations, and we need to ensure that the model that we set up going forward doesn't put at harm the viability of those general practices in those small communities, because that doesn't just have impacts for the primary care but also often has impacts on the hospital service as well.[84]

2.82 The RACGP commented that the decision to require mandatory bulk-billing for GP telehealth services for certain categories of patients is creating issues for some practices:

> The RACGP has received numerous enquiries from concerned GPs and practice staff who have described this decision as inequitable and detrimental to the viability of their practices, impacting their ability to provide care for their patients. During these challenging times, GPs should be trusted to apply their usual billing practices and exercise discretion where necessary (eg if patients are clearly unable to afford a gap fee).[85]

2.83 The RACGP recommended that all Australians continue to have access to Medicare-funded telehealth services beyond 30 September 2020 through their usual general practice, and that GPs be permitted to apply their usual billing practices to telehealth services to maintain practice viability and ensure ongoing access to high-quality care for patients.[86]

Use of telephone and video services for telehealth consultations

2.84 The committee heard that approximately 95 per cent of telehealth consultations in the COVID-19 period have been conducted via telephone rather than through video consultations.[87]

2.85 Mrs Rutherford expressed the view that video options for telehealth need to be more readily available:

> RDAA would like to see measures put in place whereby any medical practitioner offering a telehealth service should be offering both video and

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[83] Royal Australian College of General Practitioners, *Submission 179*, p. 1.

[84] Ms Peta Rutherford, Chief Executive Officer, Rural Doctors' Association of Australia, *Proof Committee Hansard*, 1 July 2020, p. 15.

[85] Royal Australian College of General Practitioners, *Submission 179*, p. 2.

[86] Royal Australian College of General Practitioners, *Submission 179*, p. 2.

[87] Dr Tony Bartone, President, AMA, *Proof Committee Hansard*, 1 July 2020, p. 15.

> telephone options, with a preference for video where any level B or longer consultation is done. Telephone certainly provides a worthy backup if video fails or if the patient has a particular preference for phone, but it shouldn't be the first and foremost option.[88]

2.86 Mrs Rutherford outlined some of the benefits of video being used in the delivery of telehealth services:

> There are benefits to being able to see the patient physically as opposed to just hearing them over the phone.
>
> Our members talk about that often it will be the trigger to ask other questions in relation to the patient's health and wellbeing and open up a broader conversation about their health and what they're doing, as opposed to just the purpose of the telephone call. So the visuals are important and will be important going forward. We just need to make sure the framework is there to encourage more videoing and that we support patients as well to ensure that their first time of using video consultations for telehealth is a positive one.[89]

2.87 Dr Bartone commented that phone consultations offer a universally accessible and immediate option for telehealth, and that lack of investment into general practice facilities means that current video options are limited:

> With the lack of investment that goes into general practice, especially on the background of a funding model, such as the MBS, which is where the patient's rebate has been frozen for the last part of six years, and putting an enormous impost on the financial viability of general practice, being able to invest in video based platforms which, at this current time, don't exist in significant numbers or maturity to become seamlessly integrated into the patient management system is not an acceptable next step until we get greater maturity and investment in that sector.[90]

2.88 Dr Bartone noted further than general internet connectivity and capacity issues and patient preference were also strong factors in the weighting of telehealth interactions to date towards phone consultations.[91]

2.89 Mrs Rutherford agreed that additional investment is required into video and other digital platforms to support general and specialist telehealth practice in rural and regional areas.[92]

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[88] Ms Peta Rutherford, Chief Executive Officer, Rural Doctors' Association of Australia, *Proof Committee Hansard*, 1 July 2020, p. 14.

[89] Mrs Peta Rutherford, Chief Executive Officer, Rural Doctors' Association of Australia, *Proof Committee Hansard*, 1 July 2020, p. 16.

[90] Dr Tony Bartone, President, AMA, *Proof Committee Hansard*, 1 July 2020, p. 15.

[91] Dr Tony Bartone, President, AMA, *Proof Committee Hansard*, 1 July 2020, p. 15.

[92] Mrs Peta Rutherford, Chief Executive Officer, Rural Doctors' Association of Australia, *Proof Committee Hansard*, 1 July 2020, p. 17.

2.90 The RACGP recommended that in order to support optimal delivery of health services via telehealth now and into the future, governments should commit research funding into:

- effective models to ensure the provision of high-quality care via telehealth for the treatment and management of a range of health conditions;
- the impacts of a large-scale adoption of telehealth on general practices (during and post pandemic) to assist with the allocation of future funding; and
- the role of telehealth in different contexts, including Aboriginal and Torres Strait Islander primary healthcare.[93]

Electronic prescriptions (ePrescriptions)

2.91 Electronic prescriptions are an alternative to paper prescriptions which allow people convenient access to their medicines without having to leave their residence, thus lessening the risk of infection being spread in general practice waiting rooms and at community pharmacies.[94]

2.92 In light of the COVID-19 pandemic, the Australian Government announced plans in March 2020 to fast-track the implementation of electronic prescriptions for medicines available under the Pharmaceutical Benefits Scheme (PBS) in Australia, with ePrescriptions functionality to be rolled out progressively from the end of May 2020.[95]

2.93 The government also announced a number of interim special arrangements to allow people in self-isolation to access their medicines, whereby doctors can prepare an electronic prescription during a telehealth consultation (by creating a digital copy of a normal paper prescription) that is then electronically shared with the patient's pharmacy, where the pharmacy is able to support the home delivery of medicines.[96]

2.94 The AMA and RACGP both expressed support for these measures as important steps to reduce the risk of COVID-19 transmission, but noted some issues in how the special arrangements had been implemented, due to the need for the Commonwealth policy to be implemented through changes to regulations in each state and territory leading to inconsistencies in application

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93 Royal Australian College of General Practitioners, *Submission 179*, p. 2.

94 Australian Digital Health Agency, 'Electronic Prescriptions', https://www.digitalhealth.gov.au/get-started-with-digital-health/electronic-prescriptions (accessed 15 July 2020).

95 Australian Digital Health Agency, 'Electronic Prescriptions', https://www.digitalhealth.gov.au/get-started-with-digital-health/electronic-prescriptions (accessed 15 July 2020).

96 Department of Health, *Fact Sheet*, 'Interim arrangements for prescriptions for supply of medicines: Supporting telehealth patients and healthcare professionals', 6 April 2020, https://www.health.gov.au/sites/default/files/documents/2020/04/covid-19-national-health-plan-prescriptions-via-telehealth-a-guide-for-pharmacists.pdf (accessed 15 July 2020).

across jurisdictions.[97] The AMA suggested improved coordination of jurisdictions to align with Commonwealth initiatives more quickly and consistently, 'especially when the changes are time-sensitive and are beneficial to the fight against COVID-19'.[98]

2.95 Dr Bartone of the AMA commented further on the success of digital prescription measures during the pandemic:

> In the absence of a full e-prescribing solution, stakeholders have worked with governments to implement interim workaround measures, including providing digital copies of prescriptions…This has left us very well positioned to take the next step forward in supporting improved patient care—a step which is long overdue and which has been very protracted in its development. The implementation of a full e-prescribing solution will do away with the need to print and store paper based scripts. Once implemented into practice software, it will become part of our normal workflows. It will give patients a choice of pharmacy, and they will no longer have to worry about losing their script. It has the potential to reduce medication errors and the associated harms. E-prescribing will be another brick in the road towards a more digitally enabled health system, one that is truly focused with the patient at its centre.[99]

2.96 The AMA stated that it strongly supports the proposed electronic prescribing system becoming a lasting feature of Australia's health system.[100] In relation to the potential cost savings of this measures, the AMA noted that '[w]hile there are several causes of medicine related problems that amounts to an annual cost of $1.4 billion in Australia, ePrescribing has the potential to contribute to reducing some of this cost'. The AMA explained that there are potential cost savings at every step in the process of a patient obtaining medicine once ePrescribing is fully operational.[101]

2.97 The RACGP commented that while it broadly supports the rollout of the government's planned electronic prescribing initiative, this must be undertaken 'in a measured and planned way to ensure general practices and pharmacies have sufficient time, resources and education to implement and adapt to the changes effectively'.[102]

2.98 The RACGP noted further that the rollout of electronic prescribing creates the potential risk of monopolisation of prescription exchange services (PES), and that governments need to address this risk and ensure that general practices

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97 AMA, *Submission 175*, pp. 2–3; RACGP, *Submission 179*, pp. 2–3.

98 AMA, *Submission 175*, p. 3. See also RACGP, *Submission 179*, p. 3.

99 Dr Tony Bartone, President, AMA, *Proof Committee Hansard*, 1 July 2020, p. 13.

100 AMA, Answer to questions on notice, received 29 July.

101 AMA, Answer to questions on notice, received 29 July.

102 RACGP, *Submission 179*, p. 3.

are afforded choice when selecting the best clinical information system and PES to suit their practice's needs.[103]

2.99 ScalaMed, a smart prescription tech startup based in Sydney, submitted to the committee that existing pharmacy software vendor arrangements make it difficult for new innovative companies to enter the market in Australia as ePrescriptions are rolled it out. It argued that the Australian Government needs to ensure that Australia takes a 'truly consumer centred approach' to the rollout of ePrescriptions and ensure that innovative new participants are not shut out of the market.[104]

Electronic access to other medical documentation

2.100 The RACGP submitted that the rapid shift to telehealth GP consultations in recent months had highlighted the inability of GPs to deliver pathology and imaging services requests electronically, as well as an inability to safely and securely handle other medical documents digitally. It recommended that a centralised exchange server be developed by the Australian Digital Health Agency for the purposes of pathology and imaging requesting.[105]

Advancing the MedTech industry in Australia

2.101 Australia has a growing medical technology (MedTech) sector, with a 2015 Deloitte report stating that this sector generated over $10 billion in sales and employed over 19,000 people.[106] The committee heard that, particularly in light of the COVID-19 pandemic, Australia must ensure that the MedTech sector must be given every opportunity to thrive and bring innovative products to market.

2.102 Professor Mark Kendall, Chief Executive Officer of MedTech microwearables firm WearOptimo, told the committee that a major challenge in developing and commercialising new medical technologies in Australia is accessing appropriate investment capital. Professor Kendall argued that Australia needs to consider measures to attract funding into the MedTech sector from new sources in order to drive new developments in this area:

> When we consider that it feels like there's this seismic shift taking place with COVID-19 and how Australia is positioning itself on the world stage, we need to really think carefully about building up some of our technologies locally and investing more locally. One example is that we have a venture capital system here in Australia. While it's grown and it's a lot better than what it used to be, there's still a massive gap in its maturity

[103] RACGP, *Submission 179*, p. 3.

[104] ScalaMed, *Submission 177*, pp. 2–3.

[105] RACGP, *Submission 179*, p. 3.

[106] AMA, Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 24 July 2020), p. 3.

> and its way of getting things done compared to its counterparts in other parts of the world, such as the US. So, the more we can do to plug that hole and actually put it to work so that we're not only coming up with good ideas but also manufacturing here in Australia, the better.[107]

2.103 Professor Kendall highlighted the potential opportunities for superannuation funds to invest into the MedTech sector, as well as the need to attract offshore investment into the sector.[108]

2.104 Dr Bartone of the AMA noted that the key bottleneck for development of the MedTech sector in Australia is at the commercialisation phase:

> We have some of the most eminent researchers, most eminent professors and leading experts in parts of medtech. The key issue they've run into there is obviously funding and innovation opportunities…Often a lot of expert and innovation ideas are taken offshore or lost either in personnel or the expertise having to find people to further the process in an overseas situation.[109]

2.105 The AMA noted that further growth in MedTech 'will obviously be dependent on the regulatory environment, including the extent to which Australian products are compliant with overseas laws, access to a skilled workforce, appropriate Government incentives and support and the encouragement of collaboration between governments, the research sector and the public and private sectors'.[110]

Progress of Digital Identity reforms in Australia

2.106 Submitters and witnesses highlighted the importance of developing a coherent and secure digital identity framework in Australia, particularly as more government and private sector services are being accessed online through the COVID-19 period.

2.107 The task of progressing digital identity reforms is being led at the Commonwealth level by the Digital Transformation Agency (DTA), in partnership with Services Australia, the Australian Tax Office (ATO), the Department of Home Affairs and the Department of Foreign Affairs and Trade.[111]

2.108 DTA described the purpose of creating a Digital ID framework for government services as follows:

> DTA is delivering a system which allows people and businesses to have a single secure way to verify their identity to use government services

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[107] Professor Mark Kendall, CEO, WearOptimo, *Proof Committee Hansard*, 1 July 2020, p. 18.

[108] Professor Mark Kendall, CEO, WearOptimo, *Proof Committee Hansard*, 1 July 2020, pp. 18–19.

[109] Dr Tony Bartone, President, AMA, *Proof Committee Hansard*, 1 July 2020, p. 20.

[110] AMA, Answer to questions on notice, received 29 July.2020,

[111] Digital Transformation Agency, *Submission 167*, p. 2.

> online. Creating a digital identity is similar to a 100-point identification check, but with the addition of biometric proofing, it removes the need to visit a government office and strengthens identity verification. It will allow more government services to move online and be available whenever and wherever people and businesses need to access them.[112]

2.109 Mr Peter Alexander, Chief Digital Officer at DTA, explained further to the committee:

> The Digital Identity Program will give people a personal key to faster, safer, and more convenient access to government services. It will give people the ability to verify who they are, from where and when they want and with the assurance their personal information will be safeguarded.
>
> Each time you interact with a government or private sector service, you answer questions about who you are, dig up documents like birth certificates or passports, and show various forms of ID. Digital Identity allows you to verify that information once, create a digital identity and then reuse it again and again.[113]

2.110 Mr Alexander pointed to modelling from the McKinsey Global Institute which estimated widespread uptake of digital identity could deliver a gain of approximately $4.8 billion to Australia's Gross Domestic Product by 2030.[114]

Trusted Digital Identity Framework (TDIF)

2.111 The Australian Government has chosen to deliver a federated-style model of trusted digital identities, through a Trusted Digital Identity Framework (TDIF), whereby a range of government and commercial service providers may become accredited to offer digital identity solutions as part of a trusted digital identity ecosystem.

2.112 Work on the TDIF began in 2015, in response to a recommendation made by the *Financial System Inquiry* in 2014.[115] To date the DTA has progressively delivered four iterations of the TDIF, which sets out the rules and requirements for all participants using the Digital Identity system.[116] The most recent iteration of the TDIF was released in May 2020, with the next scheduled review of the TDIF due to occur by July 2022.[117]

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[112] Digital Transformation Agency, *Submission 167*, p. 1.

[113] *Proof Committee Hansard*, 1 July 2020, p. 33.

[114] Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 33.

[115] Digital Transformation Agency, 'The Trusted Digital Identity Framework', https://www.dta.gov.au/our-projects/digital-identity/trusted-digital-identity-framework (accessed 20 July 2020).

[116] Digital Transformation Agency, *Submission 167*, p. 2.

[117] Digital Transformation Agency, 'The Trusted Digital Identity Framework', https://www.dta.gov.au/our-projects/digital-identity/trusted-digital-identity-framework (accessed 20 July 2020).

2.113 Mr Alexander informed the committee that initial participants in the Digital Identity system have been accredited, including:

- the ATO's identity service provider, myGovID;
- the first commercial identity service provider, Australia Post's Digital iD;
- the Exchange run by Services Australia, which protects people's privacy by sitting between a digital service and an identity provider; and
- a Relationship Authorisation Manager, run by the ATO, that allows Australians to link an ABN to their Digital Identity so they can complete business transactions with the government.[118]

2.114 As at 29 June 2020, more than 1.42 million people have created a digital identity using the ATO's myGovID app. The DTA has conducted private beta testing of Digital Identity as a new way to log in to the myGov services portal, and anticipates that by the end of 2020 this will simplify access to myGov by allowing Australians to log in using their myGovID.[119]

2.115 DTA noted that the vision for the TDIF is that it will expand beyond allowing access to Commonwealth government services:

> Currently the Digital Identity system provides access to selected federal government services. To enable a convenient approach to verifying identity online across the whole economy, the system will evolve to allow access to private sector and state/territory government services. This additional functionality will be underpinned by strong legislative protections for users' data security and privacy.[120]

2.116 Mr Alexander stated that DTA is working on legislation that will 'provide authority for the Commonwealth to connect private sector services' including those in the FinTech and RegTech sectors, stating that this legislation 'will further strengthen the Trusted Digital Identity Framework and boost trust and confidence within the Australian community'.[121] Mr Alexander explained further:

> For this to become an economy-wide service and capability we would need legislation that would set out the trusted digital identity framework and the requirements for participation in the identity ecosystem, because of course we can enforce policy in the federal government but we can't enforce it in the state, territory and local government jurisdictions—and we certainly can't enforce it in industry and businesses. If this were legislated, which we would like to see, we would have a national set of rules that

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[118] Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, pp. 33–34.

[119] Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 34.

[120] Digital Transformation Agency, *Submission 167*, p. 2.

[121] Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 34.

> operate digital identity—and identity more broadly—and then we would have a facility that would enable small players in fintech to access the same digital identity services as big players and they would have the ability to participate as identity providers and differentiate themselves however they see fit within that framework and legislative framework.[122]

Private sector Digital Identity framework

2.117 In addition to the TDIF system developed by the Australian Government, a group of private sector organisations in the financial services industry, under the umbrella of the Australian Payments Council (APC), are developing an open and contestable digital identity framework called the TrustID Framework.[123] The first version of the TrustID framework was completed in June 2019.[124]

2.118 The Australian Payments Network, which supported the APC in developing this framework, explained that the TrustID Framework creates a series of rules and guidelines for organisations to adhere to when designing and developing digital identity products and services.[125] These business rules and technical specifications ensure interoperability between different service providers, 'allowing a range of service providers, including FinTechs to create a marketplace of solutions'.[126]

2.119 The DTA stated that the TrustID framework complements the TDIF for the financial sector, in that it 'promotes choice of identity providers and may be a path to increase the take up of digital identity in the broader economy'.[127] DTA commented further:

> The APC and DTA intend to minimise duplicative effort for service providers wishing to participate in multiple frameworks and to achieve this, where practical, the frameworks will reference the same rules and open standards. Fundamentally, both frameworks are centred around addressing the fragmented experience of proving who you are to access or obtain a service and the ability to reuse it.
>
> In the first instance the two frameworks are focused on servicing the needs of their immediate customers. Over time, it is envisaged that the focus on open standards and strong collaboration between the APC and the DTA will mean that an individual could have the option of using a single service provider to access both public and private sector services. This could

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122 Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 38.

123 Australian Payments Network, *Submission 99*, p. 3.

124 Reserve Bank of Australia, *Submission 16*, p. 11.

125 Australian Payments Network, *Submission 99*, p. 3.

126 Australian Payments Network, *Submission 99*, p. 3.

127 Digital Transformation Agency, *Submission 167*, p. 5.

> include accessing innovative digital products and services provided by the financial services sector.[128]

2.120 Mr Alexander commented:

> Our preference has always been for one [national] framework, but we know moving to one framework was challenging, so conversations with the Payments Network were about them developing a framework for financial institutions and payments providers and then seeing if we could make those frameworks interoperable, which was relatively straightforward, and build out from there.[129]

2.121 Mr Jonathon Thorpe, Head of Identity at the DTA, noted that fourth iteration of the TDIF had taken into account a significant range of feedback from the financial services sector. This resulted in additional levels of identity proofing being added to the framework specifically to support the requirements of that sector, which would not otherwise have been needed by government agencies.[130]

2.122 Several submitters and witnesses highlighted the potential upside to Australia continuing to drive uptake of secure digital identity solutions in the financial services sector.[131] The Reserve Bank of Australia (RBA) commented:

> The Bank is keen to see market participants leverage these frameworks to launch digital identity services in the Australian market that can start to address some of the challenges of identity verification in a digital economy. The hope is that a widely-adopted digital identity ecosystem will develop in Australia, with competing but interoperable digital identity services. There is potential for fintech firms to participate in such an ecosystem as well as to benefit from services that enable people to be more efficiently and securely identified.[132]

2.123 FinTech Australia submitted that digital identity is 'a key touchpoint for development of innovative technologies', and advocated for the implementation a public-private model for a digital ID framework.[133]

2.124 A.T. Kearney suggested that accelerating and broadening the ambition of Australia's digital transformation agenda, including digital identity reforms, can be a foundational policy to support technology firms across all sectors of

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[128] Digital Transformation Agency, *Submission 167*, p. 5.

[129] Mr Peter Alexander, Chief Digital Officer, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 34.

[130] Mr Jonathon Thorpe, Head of Identity, Digital Transformation Agency, *Proof Committee Hansard*, 1 July 2020, p. 34.

[131] See, for example: FinTech Australia, *Submission 19*, p. 78; Mastercard, *Submission 23*, p. 4; eftpos Payments Australia, *Submission 158*, pp. 3–4.

[132] Reserve Bank of Australia, *Submission 16*, p. 11.

[133] FinTech Australia, *Submission 19*, p. 78; Ms Rebecca Schot-Guppy, Chief Executive Officer, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 10.

the Australian economy through and beyond the COVID-19 period.[134] It submitted that increasing focus on already planned digital ID pilot programs, as well as expanding the possible use cases accessible through digital identification, could be part of this strategy.[135]

Use of RegTech solutions for business compliance

2.125 The committee heard that RegTech solutions will become of increasing importance for businesses as a result of the COVID-19 pandemic, with time and cost savings able to be delivered using RegTech products.

2.126 The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) submitted that small businesses are vital to Australia's economic recovery and often bear a disproportionate regulatory burden. It argued that endorsing RegTech solutions 'is a simple way for the Australian Government to cut red tape for small business'.[136] Ms Kate Carnell AO, the Australian Small Business and Family Enterprise Ombudsman, told the committee:

> [E]mbracing regtech to translate complex regulation—such as in the IR space, in the tax space or in the OH&S space—to make it simple and usable for small businesses can help them to get it right. I think most small business, most businesspeople, want to do the right thing, but sometimes the complexity of regulation that they find themselves in makes that really hard.[137]

2.127 Ms Carnell stated that RegTech is a 'real opportunity to make it easier and simpler for small businesses to cut the red tape and to get on with running their businesses'.[138]

RegTech solutions for compliance with industrial awards

2.128 ASBFEO suggested that as part of a COVID-19 recovery plan for small business, RegTech solutions developed by the private sector should be accredited by the Fair Work Ombudsman (FWO) to provide 'a technology driven method for small business to adhere to the current awards system, contracts, conditions, and dismissal processes'.[139] ASBFEO explained:

> The Fair Work Ombudsman should endorse a (or several) reg-tech solution(s) where accurate conditions and pay scales can be ascertained. It

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134 A.T. Kearney, *Submission 52.1*, p. 3.

135 A.T. Kearney, *Submission 52.1*, p. 13.

136 Australian Small Business and Family Enterprise Ombudsman, *Submission 46.1*, p. 1.

137 Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman, *Proof Committee Hansard*, 14 July 2020, p. 1.

138 Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman, *Proof Committee Hansard*, 14 July 2020, p. 1.

139 Australian Small Business and Family Enterprise Ombudsman, *Submission 46.1*, 'COVID-19 Recovery Plan', May 2020, p. 16.

> should be integrated with payroll software to make it easy for Small Business to pay their employees with confidence. Government should not duplicate services already available in the market, but should partner with the private sector, and could initially focus on the largest awards/sectors.[140]

2.129 ASBFEO argued that in situations where an accredited RegTech solution has been followed, a small business should be provided a safe harbour from prosecution for non-compliance:

> Given that the current system includes inherent difficulties for businesses to be fully compliant, the government should 'de-risk' the landscape for Small Business by providing a 'safe harbour' where they have acted in good faith. Initially, this safe harbour should be achieved through ensuring that, where an eligible business has made a mistake after relying on tools, information or advice provided by government, that business is able to 'make good' without any additional penalties unless it can be reasonably shown that they did not act in good faith.[141]

2.130 In response to questions about how an accreditation system for RegTech products could work in practice, the ASBFEO offered the following outline:

> 1. The Fair Work Ombudsman [would] develop and provide to each regtech company that wishes to gain compliance accreditation, a test package for each award. The regtech companies would test their systems and provide the results to the FWO. If their results are compliant, they would then receive accreditation.
>
> A list of accredited regtech products would be published and maintained by the FWO. The FWO could alter and re-administer the test packages on a regular basis. This would ensure ongoing wage compliance for small business through any software changes by the regtech companies or changes or new interpretation to awards or legislation.
>
> Where a small business correctly used an accredited regtech product and is found to be incorrectly paying staff, they would make good on the payment but face no additional penalties or prosecution. Where a small business chooses not to use an accredited product, they are subject the system as it currently operates.
>
> 2. The provision of public legally binding rulings on award interpretations be used by the Fair Work Commission in response to more complex questions posed by regtech companies. These rulings could be built into regtech products to ensure compliance with complicated award and legislative clauses.

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[140] Australian Small Business and Family Enterprise Ombudsman, *Submission 46.1*, 'COVID-19 Recovery Plan', May 2020, p. 18.

[141] Australian Small Business and Family Enterprise Ombudsman, *Submission 46.1*, 'COVID-19 Recovery Plan', May 2020, pp. 18–19.

> This would again provide clarity and confidence to regtech companies in developing robust products. The rules could also be made available to those businesses that chose not to use regtech.[142]

2.131 Tanda, a Brisbane-based company that provides a cloud-based workforce management platform to help businesses manage rostering, time and attendance, and payroll calculations, submitted that technology is 'the best means of identifying and uncovering unlawful employee underpayments'.[143] It argued that small businesses need 'off-the-shelf technological payroll compliance solutions':

> [Small businesses] do not have the resources to invest in expensive legal and accounting services to help them interpret and apply awards. Instead, they need to have confidence that when they invest in a technological solution it provides them with compliance off-the-shelf. This technology is essential to avoiding, as well as identifying and uncovering, underpayments.[144]

2.132 Tanda suggested that, rather than a formal accreditation system for RegTech products in this area, the Government should develop a rating system 'to measure and report on the extent to which off-the-shelf payroll calculation technology provides a compliant solution when used properly'.[145]

2.133 Mr Roderick Schneider, Head of Strategic Partnerships at Tanda, told the committee that the FWO already assesses compliance with industrial awards for the purposes of prosecuting non-compliance, and that this kind of interpretive work could be done up front in the development of a ratings system for relevant RegTech products:

> The Fair Work Ombudsman makes no guarantees about the advice it gives, which leaves doubts surrounding the correct interpretation. This doubt must be removed to give employers and employees certainty. The Fair Work Ombudsman has sufficient capability to interpret awards for the purposes of prosecuting non-compliance, so it is well positioned to give clearer certainty to us and employers generally when it comes on what interpretations it believes are correct.[146]

2.134 Tanda argued that rather than formal 'safe harbour' provisions in relation to the use of RegTech products to help businesses comply with industrial awards, the *Fair Work Act 2009* should be amended to make investment in compliant

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142 Australian Small Business and Family Enterprise Ombudsman - Answer to question on notice from a public hearing held 14 July 2020, Canberra (received 24 July 2020), pp. 1–2.

143 Tanda, *Submission 173*, p. 3.

144 Tanda, *Submission 173*, p. 5.

145 Tanda, *Submission 173*, p. 2.

146 Mr Roderick Schneider, Head of Strategic Partnerships, Tanda, *Proof Committee Hansard*, 14 July 2020, pp. 2 and 6.

payroll calculation technology by a business 'a factor that courts must consider when imposing civil penalties in the case of underpayments'.[147] It explained:

> We are not recommending that employers be able to avoid making good underpayments. However, since technology is so integral to ensuring payroll compliance, employers should have legislative encouragement to invest in it. Making investment in compliant payroll technology a factor that courts must consider when imposing civil penalties is a proportionate degree of encouragement, while allowing the court to ultimately determine what civil penalty (if any) is appropriate.[148]

2.135 Tanda also recommended that the FWO itself invest in RegTech solutions in order to conduct its enforcement activities more effectively, and recommended further that the FWO invest in an upgraded 'true payroll calculator' for use by the public on the FWO website.[149]

[147] Tanda, *Submission 173*, p. 2.

[148] Tanda, *Submission 173*, p. 5 (emphasis in original).

[149] Tanda, *Submission 173*, pp. 6–7.

Chapter 3
Tax Issues

3.1 Evidence to the committee emphasised the importance of an overall favourable tax framework for FinTech business success. This chapter provides a short overview of the tax system for businesses in Australia, then discusses a number of taxation issues raised in evidence to the committee, including: the Research & Development Tax Incentive (R&DTI); payroll tax; employee share schemes; and initial coin offerings.

Overview of business taxation in Australia

3.2 Businesses operating in Australia are subject to a range of taxes, including:

- Company tax, collected by the Commonwealth Government at a full rate of 30% per annum, or 27.5% for companies with aggregated turnover less than $50 million from 2018–2019;[1]
- Goods and Services Tax, a national, broad-based consumer tax on most goods and services sold or consumed in Australia;
- Capital Gains Tax, collected by the Commonwealth and applicable to any capital gain made through the disposal of assets;
- Payroll tax, collected by state and territory governments on the basis of wages paid to employees; and
- other Commonwealth and state and territory taxes applicable to certain business activities, such as land tax and fringe benefits tax.[2]

3.3 The Australian Government's 2015 Tax discussion paper, noted that Australia relies heavily on income taxes, particularly company income tax compared to other developed countries. It observed that Australia's tax system was designed when the economy was very different and the tax system needs to adapt to support the modern economy.[3] Key factors include 'technological change (particularly the rise of the digital economy), highly mobile investment and greater labour mobility'.[4] The Tax discussion paper noted that:

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1 Australian Government, 'Income tax for business', 24 June 2020, https://www.business.gov.au/finance/taxation/income-tax-for-business

2 Australian Trade and Investment Commission, 'Australian Business taxes', https://www.austrade.gov.au/International/Invest/Guide-to-investing/Running-a-business/Understanding-Australian-taxes/Australian-business-taxes#:~:text=%20Australian%20business%20taxes%20%201%20Company%20tax.,on%20the%20amount%20of%20wages%20paid...%20More%20 (accessed 28 July 2020).

3 Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 1.

4 Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 7.

> Technological change is particularly significant for the taxation of income, especially corporate income. Multinational firms operate across many jurisdictions, much of their value is intangible and the location where value is added can be difficult to determine. The digital economy also facilitates greater personal importation of goods and services, placing pressure on the indirect tax bases.[5]

3.4 It was pointed out that:

> Tax is becoming increasingly important as competition for foreign investment intensifies and businesses become more mobile. Australia's corporate tax rate is high compared to many countries we compete with for investment, especially those in the Asia-Pacific region.
>
> While company tax is paid by companies, the burden is passed on to shareholders, consumers and employees. A more competitive business tax environment would encourage higher levels of investment in Australia and benefit all Australians through increased employment and wages in the long run.[6]

3.5 The Tax discussion paper also noted the increased complexity of the corporate tax system as well as compliance costs which were estimated for all taxpayers to be in the order of $40 billion per year.[7] In relation to business innovation, the Tax discussion paper further noted:

> Business innovation encompasses improvements to goods and services, processes and marketing. Benefits can include productivity enhancements, firm growth, job creation and higher living standards. The research and development tax incentive and employee share schemes are two ways that the tax system supports business innovation.[8]

3.6 A more recent report by PwC in June 2020 again noted similar issues, observing that Australia's tax system is ill-equipped to support a growing economy due to:

- an over-reliance on personal and corporate taxes
- inequities (particularly intergenerational)
- a reliance on unsustainable tax bases
- a misalignment between revenues and responsibilities
- a reliance on distortionary and inefficient taxes
- high compliance costs
- an inability to keep up with global business
- tax avoidance throughout the cash economy.[9]

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5 Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 7.

6 Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 73.

7 Australian Government, *Re:think, Tax discussion paper*, March 2015, pp. 73, 112.

8 Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 73.

9 Pwc, Where next for Australia's tax system?: How our tax system can help reboot prosperity for Australia, June 2020, p. i.

3.7 The PwC report noted 'significant tax reform to grow economies in other jurisdictions'[10] arguing that tax reform in post-COVID-19 Australia will become even more important because of the need to:

- generate revenue to support ongoing government expenditure;
- improve equity, particularly intergenerational equity given that the costs of The Great Lockdown will be borne disproportionately by the young; and
- support economic growth.[11]

3.8 State and territory governments collect around 15 per cent of tax revenue largely through payroll and property taxes.[12] The 2015 tax discussion paper noted that in practice payroll tax is less efficient and more complex than it could be because of tax free thresholds and other exemptions such as size of payroll, business type and wage type.[13] It observed:

> …there is significant criticism of payroll tax, including of its short-run impact on business costs. While the states and territories have substantially harmonised legislation and the administration of payroll tax in recent years, some business groups, particularly those operating across state borders, remain concerned about the complexity associated with differing thresholds and rates across states…[14]

3.9 The lack of efficiency of state and territory taxes such as payroll tax, due to exemptions provided, was also noted by PwC in its 2020 report.[15]

3.10 A number of submitters and witnesses to the inquiry commented that Australia is uncompetitive in its company tax settings, particularly as they relate to entrepreneurs and startups.[16] FinTech Australia argued that Australia's current corporate tax rate is too high, particularly when compared with other relevant jurisdictions such a Singapore, and stated:

> In relation to taxation more broadly, setting an overall favourable tax framework is key to business success. If government were to align Australia's legal and tax framework with international best practice it

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[10] Pwc, Where next for Australia's tax system?: How our tax system can help reboot prosperity for Australia, June 2020, p. 31.

[11] Pwc, Where next for Australia's tax system?: How our tax system can help reboot prosperity for Australia, June 2020, p. ii.

[12] Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 15.

[13] Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 144.

[14] Australian Government, *Re:think, Tax discussion paper*, March 2015, p. 144

[15] Pwc, Where next for Australia's tax system?: How our tax system can help reboot prosperity for Australia, June 2020, p. 15.

[16] See, for example: Iress, *Submission11*, p. 5; Airwallex, *Submission 80*, p. 9; Business Council of Australia, *Submission 125*, p. 2; CPA Australia, *Submission 146*, p. 11.

would attract increased international private capital investment and simplify the structures that make it difficult to attract foreign investment.[17]

R&D tax incentive

3.11 The committee received a great deal of evidence in relation to the R&DTI. The R&DTI provides targeted tax offsets designed to encourage more companies to engage in research and development activities.[18] The stated aim of the R&DTI is to boost competitiveness and improve productivity across the economy by:

- encouraging industry to conduct R&D that may not otherwise have been conducted;
- improving the incentive for smaller firms to undertake R&D; and
- providing business with more predictable, less complex support.[19]

3.12 The R&DTI has two core components:

- a 43.5% refundable tax offset of for eligible entities whose aggregated turnover is less than $20 million; and
- a 38.5% non-refundable tax offset for eligible entities whose aggregated turnover is greater than $20 million.[20]

3.13 A $100 million threshold applies to the R&D expenditure for which companies can claim a concessional tax offset under the R&D Tax Incentive. For any R&D expenditure amounts above $100 million, companies are able to claim a tax offset at the company tax rate.[21]

3.14 The Australian Government pays out R&DTI offsets worth over $2 billion annually.[22]

3.15 Companies wishing to access the R&DTI must register their R&D activities with the Department of Industry, Science, Energy and Resources within

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17 FinTech Australia, *Submission 19*, p. 27.

18 Australian Taxation Office, 'Research and development tax incentive: About the program', https://www.ato.gov.au/business/research-and-development-tax-incentive/about-the-program/ (accessed 18 November 2019).

19 Australian Taxation Office, 'Research and development tax incentive: About the program', https://www.ato.gov.au/business/research-and-development-tax-incentive/about-the-program/ (accessed 18 November 2019).

20 Australian Taxation Office, 'Research and development tax incentive', https://www.ato.gov.au/Business/Research-and-development-tax-incentive/ (accessed 4 August 2020).

21 Australian Taxation Office, 'Company Tax Return instructions 2020', https://www.ato.gov.au/Forms/Company-tax-return-instructions-2020/?page=25 (accessed 7 August 2020).

22 Department of Industry, Innovation and Science, *Submission 18*, p. 15.

10 months of the end of the company's income year.[23] Companies then lodge their claims for the R&DTI as part of their corporate tax return. The committee heard payments of the offset are generally made to companies between September and December for the preceding financial year, via the ATO portal.[24]

3.16 R&DTI claims may be audited by the department, with clawbacks of amounts already paid out to companies possible in the event that the department determines the initial claim was ineligible.

3.17 The committee heard conflicting views about the operation of the incentive, with some saying it is working well and can be accessed, but many others saying the definitions make it incredibly difficult to access and that the process is long, difficult and resource intensive. However, the one thing witnesses agreed upon was the importance of the incentive.

Importance

3.18 Evidence to the committee highlighted the importance of this tax incentive for startups including FinTechs.

3.19 StartupAUS acknowledged that the R&DTI 'is the single biggest government program supporting startups in Australia', with the program accounting for around $3 billion, of which about two-thirds is spent on companies with less than $20 million in annual turnover.[25] StartupAUS reported on data that suggests for almost 9 in 10 startups (89.2 per cent) the incentive is either 'very important' or 'critical' to the success of their business.[26] Mr Peter Bradd, Chair StartupAUS also highlighted that from their *Crossroads* report they found '82 per cent of the respondents said they used the money to hire more staff for product-related research and development'.[27]

3.20 The importance of this program was also emphasised by other witnesses including the Australian Investment Council:

> The Research and Development Tax Incentive is a critically important policy that drives large parts of Australia's innovation ecosystem. The R&D Tax Incentive encourages considerable investment into the development of new products and services across countless sectors of the economy, which is essential for the economic transition that we need to

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[23] Australian Taxation Office, 'Research and development tax incentive: Registering', https://www.ato.gov.au/Business/Research-and-development-tax-incentive/Registering/ (accessed 7 August 2020).

[24] Dr Adir Shiffman, *Submission 162*, p. 1.

[25] StartupAUS, *Submission 5*, p. [1].

[26] StartupAUS, *Submission 5*, p. [4]. See also Mr Peter Bradd, Chair, StartupAUS, *Committee Hansard*, 19 February 2020, p. 38.

[27] Mr Peter Bradd, *Committee Hansard*, 19 February 2020, p. 38.

> make towards a more knowledge-based high value-add market. The R&D Tax Incentive regime is a strong and compelling commercial driver for attracting offshore R&D programs to relocate to Australia and undertake their activities here. This has the effect of helping to transfer knowledge and skills into the local market.[28]

3.21 FinTech Australia highlighted that the R&DTI 'has been identified as the number one regulatory issue for FinTechs in the Fintech Census for the past three years'. It further explained:

> The importance of the R&D tax incentive to the industry cannot be underestimated, as evidenced by the large number of fintechs who have successfully applied or are in the process of doing so (64%). Further to this, 76% of fintechs indicate that the R&D incentive helps keep aspects of their business onshore. An absence of an effective R&D scheme would significantly hamper innovation and monetisation of Australian fintech offerings.[29]

3.22 Mr Michael Bacina, Partner, FinTech Group, Blockchain Group, Piper Alderman argued that the R&DTI is 'certainly viewed as an essential aspect of the Australian startup culture, whether that's because startups have just come to rely upon it or because it provides that critical early boost of funds when a project may be bootstrapping and getting towards a point where it could seek investment'. Mr Bacina provided more context around the investment culture in Australia:

> Australia does have a shortage of that very early stage angel investment, and Australia, culturally, is much more comfortable from the investor perspective of investing in something that's a little bit more proven, which does contrast otherwise to our habits of betting on two flies crawling up a wall. But that boost there is very targeted and very useful, and I think that's essential to our start-up space. That covers all fintechs.[30]

3.23 Mr Yasser El-Ansary, Chief Executive Officer, Australian Investment Council also supported this view and stated:

> …we believe fundamentally that the R&D program is Australia's best and most important innovation policy bar none, by a country mile. It is the centrepiece of our investment policy framework. Any changes that we make to the R&D program have to be viewed from that lens.[31]

3.24 It was highlighted to the committee that being able to access the R&DTI would assist in attracting venture capital.[32] Mr Alan Tsen, Chairman FinTech Australia explained:

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[28] Australian Investment Council, *Submission 12*, p. 5.

[29] FinTech Australia, *Submission 19*, p. 26.

[30] Mr Michael Bacina, *Committee Hansard*, 19 February 2020, p. 8.

[31] Mr Yasser El-Ansary, *Committee Hansard*, 20 February 2020, p. 33.

[32] Mr Stuart Stoyan, *Committee Hansard*, 28 February 2020, p. 9.

> In many ways, it has a multiplicative effect. If you are an investor and you see other forms of cash capital come in, that also gives more safety in terms of the company being around. For example, in this instance, that is R&D.[33]

3.25 While supporting targeted tax concessions such as the R&DTI, CPA Australia recommended 'consideration of more targeted grants to reduce the current heavy reliance on the tax incentive to encourage innovation'.[34]

Issues raised with the committee

3.26 The committee heard two primary concerns in relation to the R&DTI:

- there is uncertainty about the types of software development activities that are eligible under the scheme; and
- the ability for rebates paid to companies to be clawed back retrospectively creates significant ambiguity and uncertainty among startups as well as larger innovative firms.

3.27 Several other issues were also noted by submitters and witnesses.

Uncertainty around eligibility of software

3.28 Witnesses emphasised the lack of clarity and uncertainty around the tax incentive, particularly in relation to software development. StartupAUS explained that when the current iteration of the RDTI was introduced in 2010, it was with the intention that most software R&D would be treated consistently with R&D occurring in other sectors; however, the bulk of software development is now not currently eligible due to an increasingly narrow interpretation of the 'new knowledge' requirement in the R&DTI legislation:

> Under s355-25(1)(b) of the Act, 'Core R&D Activities' are required to be conducted for the purpose of generating new knowledge. Importantly, s355-25(1)(b) identifies that 'new knowledge' includes 'new knowledge in the form of new or improved materials, products, devices, processes or services'.
>
> If this language in s355-25(b) is given full effect, software development which is done with the effect of producing 'new products', 'new devices', 'new processes', or 'new services' would be included as a Core R&D Activity, provided companies can meet the stringent legislative evidence and process requirements. This would include most software development, in line with the original intention of the scheme[.][35]

3.29 StartupAUS commented that the R&DTI 'is set up in such a way that, despite its importance to startups, it has always been awkward for software firms to meet the requirements':

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33 Mr Alan Tsen, *Committee Hansard*, 28 February 2020, p. 9.

34 CPA Australia, *Submission 146*, p. 11.

35 StartupAUS, Answers to questions on notice (received 11 August 2020), pp. 1–2.

> Under the scheme, eligible R&D must follow a strict and extensively-documented scientific model (called the 'Frascati model') of hypothesis, experimentation, observation and evaluation, and logical conclusions. The results of the experiment must not be able to be predetermined[.][36]

3.30 StartupAUS further explained that '[t]his process is highly suitable for lab experiments and scientific research [but] is not so suitable for software development or other kinds of technology commercialisation'.[37] It provided several example of software development activities it considered should be eligible in line with the original intent of the scheme:

- experimental development of new software to meet an identified or hypothesised commercial market gap;
- software development processes designed to iteratively add innovative features to an existing software product; and
- testing, improving, and refining software or software features identified above using innovative software development methods.[38]

3.31 StartupAUS stated that the current narrow focus of the interpretation of the 'new knowledge' component of the R&DTI requirements 'incorrectly limits the definition in favour of *research* and *invention* focused R&D, ignoring *development* and *innovation* focused activities (which are often more directly commercially applicable'.[39] It recommended that the R&DTI legislation be amended to specifically make clear that software development qualifies as core R&D activities in the examples described above.[40]

3.32 Mr Anthony Baum, Founder and Chief Executive Officer, Tic:Toc suggested that 'Australia should do more to support R&D, to update the legislation for the way technologies are evolving and to effectively support the sharing of risk with respect to development of software as we see the businesses in the technology sector grow as a percentage of the overall economy'. He suggested that 'I think the framework around revenue and the hurdles you need to jump can be set as your revenue base grows'.[41]

3.33 Airwallex also emphasised to the committee a lack of clarity with the program in relation to software:

> The R&D Tax Incentive is one of the largest programs supporting the growth of startups in Australia, but can be difficult to correctly interpret,

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36 StartupAUS, *Submission 5*, p. [2].

37 StartupAUS, *Submission 5*, p. [2].

38 StartupAUS, Answers to questions on notice (received 11 August 2020), p. 2.

39 StartupAUS, Answers to questions on notice (received 11 August 2020), p. 2 (emphasis in original).

40 StartupAUS, Answers to questions on notice (received 11 August 2020), p. 3.

41 Mr Anthony Baum, *Committee Hansard*, 19 February 2020, p. 47.

> even with external consultation. It is often unclear what claims are considered appropriate under the scheme, particularly in the case of software R&D claims.[42]

3.34 Mr Robert Bell, Chief Executive Officer 86 400 emphasised the need for clarity, particularly for small FinTechs saying 'any clarity at the front, or any extra things at the front to help understand what the outcome would be, will help fintechs, even ones smaller than us. We were very well funded in the first instance, so we're a little bit more privileged relative to some of the two- or three-man shops that are starting'.[43]

3.35 This view was supported by Afterpay:

> There are particular challenges for startups that are creating software R&D, and we experienced some of these challenges ourselves in the early days. Getting the paperwork right can require expert assistance, and many startups will struggle to access and/or afford specialist assistance. There is no doubt that we would have benefited from greater expert support during our early days.[44]

3.36 Mr McKay also offered the view that: 'I think getting very clear guidelines, particularly for software companies around what is eligible and what isn't, would be very useful'.[45]

3.37 FinTech Australia was concerned that 'the current definition of 'experiments' prevents software companies from claiming this incentive which has the result of hampering innovation'.[46] It recommended that 'experiments in the R&D tax incentive should be interpreted broadly by the ATO to include companies which contribute to building new and innovative services for the fintech sector, even where these are built on top of existing rails'.[47] The Australian Banking Association (ABA) noted this recommendation, commenting:

> The ABA view is that RegTech's natural market is solving distinct problems within a large, mature and heavily regulated Australian financial services system. The ABA sees value in ensuring that technological improvements to existing infrastructure are not negatively impacted under the R&D eligibility. Our view is aligned with FinTech Australia in that this would drive research, innovation and efficiencies in the sector.[48]

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42 Airwallex, *Submission 80*, p. [8].

43 Mr Robert Bell, *Committee Hansard*, 19 February 2020, p. 76.

44 Afterpay, Answer to questions on notice from 20 February 2020 public hearing, received 6 March 2020.

45 Mr Bob McKay, *Committee Hansard*, 28 February 2020, p. 55.

46 FinTech Australia, *Submission 19*, p. 9.

47 FinTech Australia, *Submission 19*, p. 20.

48 ABA, Response to question on notice from the 19 February 2020 hearing, received 6 March 2020.

3.38 Mr Stuart Stoyan, Member FinTech Australia and Founder/CEO MoneyPlace, saw the issues as the design of the scheme but also a need for improved guidance around 'at what point it is software innovation and what point it is not'.[49]

3.39 Zip suggested that '[g]uidance materials for the software/technology industry need to be improved and made much more practical'.[50]

3.40 The RegTech Association also called for more clarity:

> The goal of the current R&D grant is innovation and providing an economic advantage to Australia. We would encourage the Government to consider how RegTech fits within the R&D programme, and issue guidance to that effect. Since the regime tightened, there is confusion about where RegTech fits.
>
> The challenge is that RegTech companies are often conducting process innovation – they do not work in laboratories and their research is often in ascertaining whether the design is acceptable to the industry, the regulators and the regulated entities. This is why we would argue the focus needs to be more on 'D' than R&D.[51]

3.41 Mr Bacina also suggested greater clarity of the interpretation of the existing scheme for software development in the form of 'clarification from the [tax] commissioner'. He usefully summarised:

> Anything that we can have that's a bright line from a regulator, in my view, is very useful when you have reports of these issues coming up. They'll obviously need to be adjusted over time.[52]

3.42 Mr Bacina also suggested a different design:

> …you could look at a separately funded bucket of an amount that is available for specifically this kind of software-driven [X]-tech development—whether it's focusing on fintech, depending on the government's priorities—to provide a specific path to that. That may be something you could tie into a more self-assessed approach to reduce those costs of businesses accessing it.[53]

3.43 FinTech Australia recommended creating tax incentives to encourage businesses to use fintech start-ups.[54] Expanding on that idea, Mr Alex Scandurra, Chief Executive Officer, Stone and Chalk suggested an alternative process to encourage large companies to direct some of their R&D expenditure towards startups:

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[49] Mr Stuart Stoyan, *Committee Hansard*, 28 February 2020, p. 6.

[50] Zip, Answer to question on notice from the 19 February 2020 hearing, received 6 March 2020.

[51] The RegTech Association, *Submission 10*, p. 14.

[52] Mr Michael Bacina, *Committee Hansard*, 19 February 2020, p. 10.

[53] Mr Michael Bacina, *Committee Hansard*, 19 February 2020, p. 10.

[54] FinTech Australia, *Submission 19*, p. 76.

> We could quite easily update the legislation regarding the R&D tax credit regime by assigning a proportion of R&D tax credit spend with Australian startups and scaleups which can apply to companies with an annual revenue of greater than $100 million…In doing so, this provides a financial incentive to larger firms to conduct research and development with Australian startups and scaleups at no additional cost to the budget. Additional benefits may result in an improvement in the time it takes to commercially negotiate with large firms thereby improving cash flow and having the secondary benefit of obviously increasing the success rate at early stage.[55]

3.44 In contrast to the views expressed above Mr Andrew Johnson, Chief Executive Officer, Australian Computer Society, was of the view that the scheme is working well:

> …at a high level I think it's very easy to say that any software development is innovation and that you're building something new and that with that come some risks. The program incentivised that risk taking. On the flip side, it's very hard to see how you'd start a new business providing digital products and services without having some technology to base it on. Was it the intention of the scheme when it was first designed to build business as usual? We would think not. So there needs to be that happy medium, and so far our anecdotal evidence would say that that has been achieved.[56]

3.45 Ms Leica Ison, Founder and Chief Executive Officer, SkyJed, said that in her personal experience 'the R&D tax incentive has been a very strong support mechanism for that early phase of experimentation and developing your product construct'.[57]

Concern about retrospective action leading to further uncertainty

3.46 The other aspect of uncertainty highlighted to the committee was in relation to audits of previously awarded incentives by the then Department of Industry, Innovation and Science which resulted in some companies being ordered to repay rebates.[58] In December 2018, media reported that high profile startups including Airtasker were sent notices to pay back millions of dollars in R&D incentives with the issue 'looming as a potentially disastrous problem for the development of a vibrant Australian software industry, which many view as a

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[55] Mr Alex Scandurra, *Committee Hansard*, 19 February 2020, p. 13. See also Stone & Chalk, *Submission 25*, pp. 9–10.

[56] Mr Andrew Johnson, *Committee Hansard*, 20 February 2020, p. 67.

[57] Ms Leica Ison, *Committee Hansard,* 28 February 2020, p. 13.

[58] On 1 February 2020, the Department of Industry, Innovation and Science became the Department of Department of Industry, Science, Energy and Resources, in line with the Machinery of Government changes announced by the Prime Minister on 5 December 2019.

key employer of the future'. Some companies indicated that they had paid for professional advice to ensure their claims complied with the R&D rules.[59]

3.47 The Australian Investment Council indicated that '[t]his about-turn on eligibility has had a material effect on many early stage businesses, who have relied on their access to R&D tax incentive refundable offsets in order to fund ongoing cashflow investment into R&D activities'.[60]

3.48 Mrs Katherine McConnell, Chief Executive Officer and Founder, Brighte capital spoke from first-hand experience about an audit:

> We put in two applications. Hundreds of thousands of dollars: for an early stage company that was a substantial amount that we were able to receive. And then we got the letter from AusIndustry that we were under review. I think you can imagine that to potentially be at risk for hundreds of thousands of dollars for an early stage company when you haven't broken even is a huge concern to yourself, your staff and your shareholders. That period of uncertainty lasted for many months. We were working with AusIndustry, providing information. We thought we'd done the right thing because we'd engaged a top tier accounting firm to help us develop our hypotheses and our approach. We thought we'd done the right thing. In the end, we were one of the first lucky ones to get a positive outcome, but I know many peers who haven't received a positive outcome, and I know how difficult that has been for them given the capital constraints that startups operate under. The timing that it takes to resolve that is very stressful. Also, what we felt was that uncertainty. I was there when Malcolm Turnbull made that announcement at Stone & Chalk—'innovation nation'. We engaged top tier support and we paid for that. We thought we'd done the right thing, and then we were just left. It felt as though the rug was pulled out. We felt as though we'd potentially done the wrong thing. So I think that is an area where I can see other startups experiencing trouble.[61]

3.49 Witnesses described the effect of this uncertainty on their business. StartupAUS reported that '[a] common experience right across the sector is that R&D claims are being pared back substantially to try to reduce the risk of facing a potentially catastrophic clawback'.[62]

3.50 Ms Simone Joyce, Director FinTech Australia and Founder/CEO Paypa Plane told the committee that despite being successful two years ago 'I chose not to even attempt last year, because I felt like it was too risky for a call-back to happen…'.[63]

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[59] Paul Smith and Natasha Gillezeau, 'Airtasker hit by R&D incentive tax crackdown that threatens tech firms', *Australian Financial Review*, 3 December 2018.

[60] Australian Investment Council, *Submission 12*, p. 6.

[61] Mrs Katherine McConnell, *Committee Hansard*, 20 February 2020, pp. 48-49.

[62] StartupAUS, *Submission 5*, p. [3].

[63] Ms Simone Joyce, *Committee Hansard*, 28 February 2020, p. 6.

3.51 StartupAUS suggested the R&D tax incentive is 'slipping away from startups':

> Startups - particularly software startups - find themselves in a particularly difficult position here. They're engaging in a form of development that doesn't always neatly fit the process outlined in the legislation. They're also generally small and short on cash runway, which means even the threat of an ATO clawback can have very serious (often existential) business ramifications. Few are likely to hire armies of lawyers to fight any adverse ruling (something larger claimants would do as a matter of course). As a result, if they perceive that software is no longer welcome in the R&D Tax Incentive program, it's reasonable to expect that lots of these businesses will drop out of the scheme entirely, or substantially reduce their claims regardless of their merits.[64]

3.52 Airwallex also expressed concern about the retroactive actions and recommended:

> …an increase in scope and clarification on what software claims are eligible under the scheme, that review and audit is conducted at the time of claim to prevent rejection of claims years after submission, and that the threshold for refundable tax offsets be raised to cater for high growth, pre-profit startups that invest heavily in their tech and software R&D.[65]

3.53 Mr Price agreed that 'the risk of audit for what I could imagine a smaller fintech would be, I think, would be very real' and supported a 'tiered approach where true fintechs, depending on where that dollar figure scale is, are exposed to slightly less risk with regard to audit but, the higher up that scale you go, the higher the burden you would expect to manage that process'.[66]

3.54 StartupAUS suggested a way forward:

> In the immediate term, there needs to be some assurance for vulnerable software companies. Companies with turnover of less than $20m that have been claiming the incentive, in good faith and on credible professional advice, need an assurance that they are not going to be subject to audit processes unless their claims are manifestly unreasonable or have had sharp unfounded increases. Such a moratorium should remain in place until the introduction of a clear legislative fix to the way the R&D Tax Incentive operates or a new scheme that directly supports software development is implemented. This would help address uncertainty and reduce existential risk for good-faith claimants.[67]

3.55 Zip suggested ensuring that 'risk and compliance activities are conducted as close as possible to when companies register their R&D activities and before they claim the benefit with the ATO':

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[64] StartupAUS, *Submission 5*, p. [3].

[65] Airwallex, *Submission 80*, p. [8].

[66] Mr Daniel Price, *Committee Hansard*, 19 February 2020, p. 47.

[67] StartupAUS, *Submission 5,* p.[5]. See also Mr Peter Bradd, *Committee Hansard*, 19 February 2020, p. 44; StartupAUS, Answers to questions on notice (received 11 August 2020), p. 3.

> Retrospective compliance activity, especially after refunds are received and then claims amended to reduce or reject them, has a devastating impact on the companies, with many facing financial ruin.[68]

Other sector concerns

Process of applying for and claiming the R&DTI

3.56 Evidence to the committee, even from some successful applicants, was that the process of claiming the R&DTI is long, difficult and resource intensive and this is particularly challenging for early stage FinTechs which are resource and time poor.

3.57 Raiz Invest, a FinTech which successfully claimed the R&DTI, described the process as 'difficult' and 'long', taking a 'solid three months' worth of work'. Mr Brendan Malone, Chief Operating Officer, Raiz Invest Limited, stated that in his view the process wasn't built to accommodate technology:

> I remember a couple of years ago when we did our first one; it wasn't built for technology. The applications, and even the registration process, weren't built. It was: 'What are you building? What's your widget? What's your agriculture? What's your medicine or buyer?' It was really centred on the old R&D sides. So that matter has increased. It's a process. We do it. We've done it for three years now. Our submissions would be 40 or 50 pages long. We've built processes around our R&D that we do in-house to make sure that it's easier to complete the application forms. We have steps. We have processes. We have changed management processes in place to make it easier to complete the actual administration process.[69]

3.58 Mr Michael Morris, Head of Technology, Ferocia, discussed the challenge of knowing what is new research in a definitional sense, describing the current process as 'cumbersome' saying the ATO are 'trying to map the quite prescriptive R&D process'. While Ferocia were ultimately successful the process involved 'a lot of pain'.[70]

3.59 Mr Guy Sanderson, Partner, Baker McKenzie commented that it is 'complicated' and further explained:

> I think the issue is that some of our clients don't find it reliable. They might be undertaking the expenditure up front without having the certainty that what the outcome will be in terms of getting the incentive.[71]

3.60 Mr Daniel Price, Chief Enterprise Officer, Tic:Toc reported that the process 'is very onerous, depending on the scale of the business'.[72] Mr Bob McKay, Co-

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[68] Zip, Answer to question on notice from the 19 February 2020 hearing, received 6 March 2020.

[69] Mr Malone, *Committee Hansard*, 30 January 2020, p. 36.

[70] Mr Morris, *Proof Committee Hansard*, 30 January 2020, pp. 31-32.

[71] Mr Guy Sanderson, *Committee Hansard*, 19 February 2020, p. 83.

[72] Mr Daniel Price, *Committee Hansard*, 19 February 2020, p. 47.

Founder, AgriDigital, indicated that they have 'heavily relied on that rebate coming through every year' but '[w]e've utilised one of the big four to help us prepare that. So it does come at a cost, but I just don't think we could do it ourselves'.[73]

3.61 Zip reported that it has 'previously received an R&D incentive but as the process has been more complex, and the cost of lodging the last return equalled the value [of] the incentive, it is unlikely Zip will lodge further claims under the R&D scheme'. However, Zip was of the view that it provides important benefits for FinTech companies and should be retained.[74]

3.62 FinTech Australia highlighted the need to '[s]implify the application requirements for the R&D Tax Incentive'[75] and confirmed that from the 2019 FinTech Census, 88 per cent of FinTechs considered making the R&DTI more accessible would be a way of promoting and growing the Australian FinTech industry.[76]

3.63 Afterpay encouraged the government to 'consider allocating resources, especially for start-ups, so that they can better understand and navigate the processes for applying for the incentive'.[77]

$20 million turnover limit for refundable R&D tax offset

3.64 Mr Bob Mckay, Co-Founder AgriDigital, 'a fintech operating in an ag commodity space' told the committee that they 'very quickly breached the $20 million turnover limit for the refundable R&D tax offset' because:

> …unlike most fintechs, who just take loans on to their balance sheet, we have to buy and sell the actual commodity that we're financing. So that very quickly means that we breach the $20 million limit. It would be very welcome if there were some sort of carve-out for people financing ag commodities, because it does severely impact on our ability to get the refundable component of the R&D program.[78]

3.65 Zip also drew the committee's attention to the $20 million in turnover explaining:

> The refundable tax incentive is particularly attractive. But given the compliance costs, the program is not attractive for a fintech company once it reaches over $20 million in turnover. To explain - under $20 million turnover companies get a cash rebate back based on their R&D spend.

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73 Mr Bob Mckay, *Committee Hansard*, 28 February 2020, p. 53.

74 Zip, Answer to question on notice from 19 February 2020 hearing, received 6 March 2020.

75 FinTech Australia, *Submission 19*, p. 74.

76 FinTech Australia, *Submission 19*, p. 97.

77 Afterpay, Answer to questions on notice from 20 February 2020 public hearing, received 6 March 2020.

78 Mr Bob McKay, *Committee Hansard*, 28 February 2020, p. 51.

> Over $20 million and they get an additional tax deduction. But it is the cash refund every year that is very attractive for fast-growth technology companies. Additional losses that might be used years down the track is far less attractive as it does not help with cashflow in the short term.[79]

3.66 Zip suggested that 'consideration should be given to raising the $20 million turnover cap to $50 million'.[80]

3.67 Dr Adrienne Ryan, General Manager, Rural Affairs, National Farmers Federation added:

> …the vast majority of farm businesses aren't able to access their R&D tax incentive due to not being incorporated entities. They are sole traders or partnerships, by and large, so they are not eligible currently for the R&D tax incentive, despite the fact that a number of them probably would engage in activities that would meet the requirements of that measure. So that's an issue that we are exploring at the moment given the legislation that's currently before the parliament.[81]

Suggestions on the R&DTI to assist industry in light of the COVID-19 pandemic

3.68 Following the COVID-19 pandemic, the committee reopened submissions and received additional evidence on suggestions in relation to the R&DTI. Several key sector stakeholders emphasised the importance of the R&DTI to the ongoing viability and recovery of the FinTech and broader innovation ecosystem in Australia.[82]

3.69 FinTech Australia suggested increasing the tax incentive available under the R&DTI from 43 per cent to 65 per cent for the 2020 financial year to provide a boost to firms.[83] The Australian Innovation Collective recommended immediate enhanced funding for the R&DTI program of $500 million, focused specifically on software and deep technology hardware development.[84]

3.70 Several submitters recommended bringing forward R&DTI payments to help businesses with immediate cashflow issues. FinTech Australia commented that waiting for businesses to submit new claims for the 2020 financial year would not provide benefits quickly enough, and that the government should make immediate payments based on claims submitted for the 2019 financial year.[85] It

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79 Zip, Answer to question on notice from the 19 February 2020 hearing, received 6 March 2020.

80 Zip, Answer to question on notice from the 19 February 2020 hearing, received 6 March 2020.

81 Dr Adrienne Ryan, *Committee Hansard*, 28 February 2020, p.53.

82 See: Rebecca Schot-Guppy, Chief Executive Officer, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 7; Mr Alex Scandurra, CEO Stone & Chalk and Representative, Australian Innovation Collective, *Proof Committee Hansard*, 30 June 2020, p. 2.

83 FinTech Australia, *Submission 19.1*, p. 7.

84 Australian Innovation Collective, *Submission 155*, p. 15.

85 FinTech Australia, *Submission 19.1*, p. 7.

recommended further that a 'two times multiplier could be established for R&D with a focus on SMEs' (applying, for example, to those with a turnover up to $50 million per financial year). This 'would provide immediate financial benefit to SMEs in innovation intensive sectors, which in turn would support jobs and research'.[86]

3.71 The Australian Innovation Collective also recommended a 'bring forward payment' of the R&DTI, targeted at startups with revenue of less than $20 million in the current financial year, and based on R&DTI payments for the 2019 financial year.[87]

3.72 In addition to bringing forward payments for the 2019-20 financial year, some submitters suggested that eligible companies be authorised to make a forward claim on their future R&DTI payment for the 2020-21 financial year, based on a fair and reasonable forecast of that year's R&D activity (for example, enabling companies to claim 50-100 per cent of their 2019-20 claim amount).[88]

3.73 Submitters also suggested that, rather than R&DTI payments being made annually, these payments could be made to businesses half-yearly or quarterly.[89] Early-stage FinTech firm Identitii Limited commented that this measure would mean it could access the rebate it has already accrued in the first half of this fiscal year and deploy the cash in the business immediately.[90]

Eligibility and R&DTI criteria

3.74 The Australian Innovation Collective submitted that to assist startups and scaleups focused on the development of software and deep technology hardware, streamlined eligibility criteria should be implemented, namely: making 'software development costs eligible for the refundable RDTI component'; and a two year guarantee that claims for software development of any kind will not be rejected.[91]

3.75 The Australian Investment Council submitted that the government needs to 'address recent uncertainty around the future settings of the R&D program', and recommended that steps should be taken to 'broaden the definition of "experiments" to encompass businesses that innovate on top of existing infrastructure and to provide clarity on which R&D claims are eligible' to avoid potential disputes with the Australian Taxation Office (ATO).[92]

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86 FinTech Australia, *Submission 19.1*, pp. 7–8. See also Mr Abraham Robertson, *Submission 126.1*, p. 1.

87 Australian Innovation Collective, *Submission 155*, p. 15.

88 Mr Abraham Robertson, *Submission 126.1*, p. 1; Birdi, *Submission 156*, p. 1.

89 Australian Innovation Collective, *Submission 155*, p. 15.

90 Identitii Limited, *Submission 157*, p. 1.

91 Australian Innovation Collective, *Submission 155*, p. 15.

92 Australian Investment Council, *Submission 12.1*, p. 2.

Government work and proposed legislative changes

3.76 In announcing the National Innovation and Science Agenda on 7 December 2015 a review panel was formed to 'identify opportunities to improve the effectiveness and integrity of the R&D Tax Incentive, including by sharpening its focus on encouraging additional R&D spending'.[93] The review found that the incentive is 'falling short of meeting its objectives of supporting additional R&D activities that generate broader benefits for the Australian economy'.[94]

3.77 The government announced its response to the review as part of the 2018-19 Budget described as 'sharpening its focus on additional eligible business R&D while ensuring ongoing fiscal affordability'.[95] Media at the time reported that the changes would save $2.9 billion over 2018-19 to 2020-2021 by reducing grant levels for many claimants and increasing compliance and enforcement measures.[96]

Proposed Legislation

3.78 Legislation to support the 2018-19 Budget announcement was first introduced in September 2018 and considered by the Senate Economics Legislation Committee. A number of concerns were raised through the inquiry which reported in February 2019 and recommended amendments to address industry concerns.[97] This bill lapsed with the dissolution of the parliament.

3.79 Revised legislation was introduced into parliament on 5 December 2019 and referred to the Senate Economics Legislation Committee on 6 February 2020, with the inquiry due to report by 12 October 2020.[98]

3.80 The key reforms announced include:

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[93] Mr Bill Ferris AC, Chair, Innovation Australia, Dr Alan Finke AO, Chief Scientists, and Mr John Fraser, Secretary to the Treasury, *Review of the R&D Tax Incentive*, 4 April 2016, p. 1.

[94] The Hon Josh Frydenberg MP, Treasurer, Second Reading Speech, House of Representatives Hansard, 5 December 2019, p. 11. See also The Hon Karen Andrews MP, Minister for Industry, Science and Technology, Joint media release with the Treasurer the Hon Josh Frydenberg MP, 'Morrison government better targeting the Research and development Tax *Incentive', 5 December 2019.* See also Department of Industry, Innovation and Science, *Submission* 18, p. 15.

[95] Budget 2018-19, Budget Overview, 8 May 2018, p. 29.

[96] Michael bailey and Ben Potter, 'Federal Budget 2018: Warnings R&D could move offshore as incentives slashed', *Australian Financial Review*, 9 May 2018.

[97] See Treasury Laws Amendment (Making Sure Multinationals Pay their Fair share of Tax in Australia and Other Measures_ Bill 2018 [provisions] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABMultinationalsTax/Report accessed 11 December 2019.

[98] See Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019 https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6473 accessed 17 February 2020.

- an R&D intensity premium for larger companies, which replaces the existing 38.5 per cent non-refundable R&D tax offset with a tiered series of thresholds, and provides progressively higher rates of support as a claimant's R&D intensity increases;
- increasing the maximum threshold amount of R&D expenditure eligible for concessional R&D tax offsets from $100 million to $150 million;
- for smaller companies (with an annual turnover below $20 million), the available offset is equal to their corporate tax rate plus a 13.5 per cent premium; and
- introducing a cap on the total refundable amount available to smaller companies of $4 million per annum[99] with clinical trials exempted.[100]

3.81 The Explanatory Memorandum to the revised legislation indicates that the amendments will result in a gain to the Commonwealth budget of $1.8 billion over the forward estimates.[101]

3.82 The Department of Industry, Innovation and Science reported that the revised legislation takes account of the Senate Economics Legislation Committee's recommendations and the refinements include:

- deferring of the start date for the reforms by 12 months, now applying to income years commencing on or after 1 July 2019 –
  - this helps minimise the impact on investment decisions made by businesses before the reforms were announced, including SMEs impacted by the cap on cash refunds; and
- simplifying the new R&D intensity premium by reducing the tiers from four to three –
  - this improves the benefit for initial R&D investment in keeping with the Senate recommendation, but continues to reward those with higher R&D intensity with a higher premium, consistent with the aims of the reforms.[102]

3.83 In relation to the legislation, the Australian Investment Council (AIC) noted that:

> …while the bill marked an important step forward in providing certainty to businesses about the future direction of Australia's R&D tax incentive,

[99] Noting the review recommended a $2 million cap.

[100] The Hon Josh Frydenberg MP, Treasurer, Second Reading Speech, *House of Representatives Hansard*, 5 December 2019, p. 11; Department of Industry, Innovation and Science, *Submission 18*, pp. 15–16.

[101] EM, p. 3.

[102] Department of Industry, Innovation and Science, *Submission 18*, p. 16.

> certain definitions used in the legislation are likely to continue to create uncertainty on the eligibility criteria for R&D tax incentives.[103]

3.84 Mr El-Ansary from the AIC further explained:

> …we were not supportive of changes that would seek to restrict the eligibility of certain businesses to access the R&D refundable credit program in particular, which is the program… we are most interested in from a stakeholder perspective. As you would all know, at the moment the program does not have a cap for refundable credits, subject to meeting all of the relevant criteria tests that exist. In our view, the thinking about an introduction of a cap was flawed but…we have convinced ourselves—at least as an industry—that, in the context in which changes are to be made, introducing caps at a range of $4 million per year would be appropriate and reasonable and much better than the proposed caps of $2 million a year that were originally mooted.[104]

3.85 Mr Alf Capito, Tax Policy EY provided the EY view on the current legislation:

> Our view is the same as it was when the bill was first introduced, which is that the notion of an intensity test is an adverse move. That intensity test effectively halves the benefit companies can claim for R&D incentives. It takes it from the existing 8½ per cent to basically 4½ per cent for most companies. In order to get the same 8½ per cent benefit as you do now under the intensity test, which only applies admittedly to companies that have a turnover of more than $20 million—you heard from the last witness that even farmers have trouble staying under that limit—in order to retain the same benefit, you need to have an R&D intensity of 13½ per cent. That means that your R&D costs as a numerator above the denominator, being all of your operating costs, have to be 13½ per cent. Hardly anyone has that unless you go to a Cochlear or a CSL or something.[105]

3.86 The Australian Innovation Collective also recommended revising the criteria for the longer-term by amending the proposed R&DTI legislation in the following ways:

- the qualifying expenditure threshold should remain at $100 million to ensure the longevity of the program;
- the R&D expenditure threshold should be a permanent feature of the law;
- R&D entities with an aggregated turnover of less than $50 million should be generally entitled to an R&D tax offset equal to their corporate tax rate plus a 13.5 per cent premium;
- there should be no caps placed on those accessing the refundable R&D tax offset;
- instead of the proposed intensity premium, the government should retain a flat percentage rate above the corporate tax rate for expenditure on R&D

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[103] Australian Investment Council, *Submission 12*, p. 5.

[104] Mr El-Ansary, *Committee Hansard*, 20 February 2020, p. 33.

[105] Mr Alf Capito, *Committee Hansard*, 28 February 2020, p. 58.

activities and introduce a 20 per cent non-refundable startup and scaleup collaboration premium in its place.[106]

Software guidance published

3.87 On 21 February 2019, the Minister for Industry, Science and Technology published new software guidance which:

> …does not change the eligibility of software under the R&DTI, but provides more clarity to companies around what are considered eligible software research and development activities under the program and what are not, helping them to self-assess their claims more effectively'.[107]

3.88 The guidance was part of a 'broader program of user-focussed education products being rolled out by the Department of industry, Innovation and Science to improve clarity and support to businesses seeking to claim the R&DTI'.[108]

3.89 In relation to software development, the then Department of Industry, Innovation and Science submitted to the committee:

> While often innovative, not all ICT and software development and other digital innovation activities are eligible R&D, as defined in R&D Tax Incentive legislation. Since 2011, consistent with the program's objectives, this definition has centred on the extent to which outcomes are uncertain without undertaking specific R&D processes, and whether activities are being undertaken with the purpose of generating new knowledge.
>
> However, digital innovation activities frequently utilise approaches that do not rely on a traditional R&D cycle. These approaches can include agile methodologies, incremental improvements to existing products or services, or business model optimisation.
>
> Consequently, a range of digital innovation activities are not eligible for the R&D Tax Incentive, or may have met the definition at one time, but no longer do so due to the pace of technological advancement in this sector. For example, over a relatively short period of time, the outcomes of particular ICT and software development activities become more certain, the knowledge generated no longer new, the risks lower and the benefits easier to capture. As businesses are more likely to invest in these sorts of activities without government support, they are not the intended target of the R&D Tax Incentive.[109]

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106 Australian Innovation Collective, *Submission 155*, pp 41-42.

107 The Hon Karen Andrews MP, Minister for Industry, Science and Technology, 'Assisting businesses with eligibility for Research & Development Tax Incentive', *Media release*, 21 February 2019. See https://www.business.gov.au/grants-and-programs/research-and-development-tax-incentive/help-guides-and-resources/software-development accessed 5 February 2020.

108 The Hon Karen Andrews MP, Minister for Industry, Science and Technology, 'Assisting businesses with eligibility for Research & Development Tax Incentive', *Media release*, 21 February 2019.

109 Department of Industry, Innovation and Science, *Submission 18*, p. 15.

3.90 The department noted further that 'the limitations of the program's scope, including with regard to digital innovation, has been raised on a number of occasions':

> For example, it was considered by the 2016 Review, the Government's response to the Review and the Senate inquiry. In all cases, it was agreed that current scope was fit for purpose and should be retained.
>
> To ensure the Government achieves best value for Australian tax payers and is not simply funding businesses to do what they would have done anyway, its support for digital innovation activities needs to be deliberate and targeted. The Government has a range of more direct measures to support and drive broader R&D and innovation of this kind. These include Cooperative Research Centres, Venture Capital incentives…and elements of the Entrepreneurs' Programme, like Accelerating Commercialisation.[110]

Innovation and Science Australia 2020 report

3.91 In February 2020, a report by Innovation and Science Australia (ISA) to the Minister for Industry Science and Technology, titled *Stimulating business investment in innovation*, was released. It makes a distinction between R&D innovation and non-R&D innovation,[111] concluding that:

> Consequently, the traditional focus of business innovation policy on stimulating the supply of R&D should be complemented by measures that stimulate the supply of non-R&D innovation, especially where spillovers are important or systemic impediments exist. Government should also look at demand-side measures (examples include government procurement and missions) to spur greater innovation investment by businesses.[112]

3.92 The report recommended that:

> …Government rebalance its policy mix to support business investment in both non-R&D innovation and R&D, specifically with significant additional support for non-R&D innovation for a defined period, say, 5–10 years.[113]

3.93 In relation to greater investment in technology the report recommended:

> ISA recommends that Government reduce reliance on the R&D Tax Incentive (R&DTI) as the primary support to businesses and complement

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[110] Department of Industry, Innovation and Science, *Submission 18*, p. 17.

[111] Non-R&D innovation defined as innovation activities that do not stem from a scientific method or involve R&D. Page 7 makes it clear that non-R&D innovation is 'predominantly software and digital in nature'.

[112] Australian Government, Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 6.

[113] Australian Government, Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 7.

> support with direct measures (such as grants) to encourage non-R&D innovation investment.[114]

3.94 In response to this report, Mr Stoyan of FinTech Australia provided the following view:

> The position that Andrew Stevens in ISA took earlier this week in the report is now a delineation between R&D innovation and non-R&D innovation, where ISA categorises non-R&D innovation to be software. The assertion that innovation cannot happen outside of a petri dish is ludicrous. You see a bias and a very strong opinion from ISA. Following a scientific method is one thing, but it is possible to follow a scientific method in a software environment for a software product or software innovation. But the view that has been taken by ISA has typically been that unless it's in a laboratory, unless there is true chemistry happening in that situation, it's not innovation.[115]

Payroll tax

3.95 Although a state imposed tax, the 2019 FinTech Census reported on other tax related initiatives that would assist Australian fintechs and a 'reduction in taxes associated with hiring employees, such as payroll taxes' was considered to be effective by 83 per cent of FinTechs.[116]

3.96 Airwallex emphasised the effect payroll tax has on early to mid-stage startups:

> …state imposed payroll tax can represent a significant financial burden when looking to rapidly grow local teams. Payroll tax can act to de-incentivise employee growth, leading to small local teams and driving high value technology employment opportunities offshore.[117]

3.97 Xinja also recommended a 'decrease in payroll taxes for startups in their initial years'.[118]

3.98 When asked to elaborate on the points made in the Airwallex submission at a public hearing, Mr Adam Stevenson, Senior Legal Counsel, Airwallex responded:

> I think Airwallex is happy—we're growing rapidly, we employ people all over the world and we want to employ people all over Australia. One of the barriers is obviously this state based regulation which makes it hard for us to learn what payroll tax in South Australia is compared to New South Wales and Victoria. What we want to do is simplify that in terms of how easy it is for us. We have one employee in Sydney and we have a whole additional regime to comply with. That takes up time for our finance staff

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[114] Australian Government, Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 17.

[115] Mr Stuart Stoyan, *Committee Hansard*, 28 February 2020, p. 5.

[116] EY FinTech Australia Census 2019, p. 29.

[117] Airwallex, *Submission 80*, p. [9].

[118] Xinja, *Submission 135*, p. 21.

> to figure out what the pay is for just one staff member. We're less likely to grow around Australia with these types of taxes in place.[119]

3.99 When providing suggestions to support the FinTech ecosystem, Mr Simon Bligh, Chief Executive Officer, illion, noted 'it would be good to support some small businesses via increased R&D tax concessions and, perhaps, payroll tax concessions'.[120]

3.100 A.T. Kearney also mentioned the 'proliferation of jurisdictional payroll tax platforms' and suggested '[a] single payroll tax platform could provide all Australian businesses with a simple, common interface':

> This would allow each jurisdiction to still have their own unique payroll tax laws in place, and simplify the compliance process for businesses, who would be required to simply answer basic questions related to number of employees, salaries and other basic variables needed to understand the employer's payroll tax obligation.[121]

3.101 The Government of South Australia told the committee of its work in this area:

> In South Australia, we are creating an environment to make it easier to do business. In January 2019 we reduced the payroll tax burden for small businesses by lifting the annual taxable wages threshold from $600,000 to $1.5 million. This provides a saving of up to $44,550 a year and will benefit more than 3,500 South Australian businesses.[122]

Employee Share Schemes

3.102 Xinja detailed recruitment challenges for startups:

> To enable startups to better attract talent, there needs to be sufficient compensation for the risk of working in a startup, such as salaries, options, learning and development, or other benefits. Startups in their early years can be limited in their ability to pay the above market rates required to attract tech talent – and are therefore more reliant on non-salary based incentives.[123]

3.103 Digital Industry Group provided the report *Australia's Digital Opportunity* which noted the use of employee share schemes in the US:

> Successful technology companies and startups often rely on equity in their business as a way to incentivise high quality talent and compete with larger businesses. This particularly prevalent in the US which offers accessible and attractive employee share schemes which incentivise talent to work in startups.[124]

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[119] Mr Adam Stevenson, *Committee Hansard*, 30 January 2020, p. 55.

[120] Mr Simon Bligh, *Committee Hansard*, 30 January 2020, p. 61.

[121] A.T. Kearney, *Submission 52*, p. 10.

[122] Government of South Australia, *Submission 8*, p. 5.

[123] Xinja, *Submission 135*, p. 21.

[124] Digital Industry Group, *Submission 120*, p. 57.

3.104 According to the ATO, employee share schemes 'give employees a benefit such as: shares in the company they work for at a discounted price; and the opportunity to buy shares in the company in the future (a right or option)'. The ATO indicates that in most cases, 'employees will be eligible for special tax treatment known as tax concessions'.[125]

3.105 FinTech Australia noted that '[a]lthough improvements have been made for employee share schemes, there has been significant confusion'. It explained:

> As the prospect of owning a stake in the business is a major incentive for talent to join uncertain fintechs, taxing shares as income is detrimental. Effectively it equates unlisted shares in an early company with uncertain valuation, with cash. This is a significant disincentive.[126]

3.106 Xinja made a number of recommendations 'to not only enable fintech startups to attract the talent they need, but also to raise the profile of the fintech industry as an attractive career and employment alternative'. It included the recommendation to 'provide a CGT [Capital Gains Tax] exemption for startup equity, including employee share schemes, to enable fintech startups to better compete for hard to find talent'.[127]

3.107 Airwallex also highlighted the CGT implications for Australian employees receiving equity, providing more detail:

> Employee share schemes (ESS) have come to represent a significant component of many remuneration policies designed to both attract and retain talent. Current Capital Gains Tax (CGT) implications for Australian employees receiving equity and exercising options are complex and prohibitive, decreasing the effectiveness of ESS as an acquisition and retention tool, especially in maturing and high growth startups. Changes to the tax treatment of employee share schemes has improved for startups since 2015, however these improvements fail to extend to more mature startups that fall out of the startup exemption.
>
> Under current legislation, organisations are required to disclose details of the ESS offered to more than 20 employees and/or non-senior managers per year (the 20/12 rule). Disclosure of this nature contains sensitive data, is time consuming, and is quickly made redundant given the rate of startup growth and the propensity for equity to form part of remuneration.[128]

3.108 Airwallex suggested legislative amendments 'to allow for a broader range of growing tech companies to be covered under the start-up concession, including significantly raising the current $50m annual turnover threshold'. In addition 'employees granted equity should not be considered 'investors' under

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[125] See https://www.ato.gov.au/General/Employee-share-schemes/ accessed 26 February 2020.

[126] FinTech Australia, *Submission 19*, p. 27.

[127] Xinja, *Submission 135*, p. 21.

[128] Airwallex, *Submission 80*, p. [10].

the 20/12 rule to reduce the burden of disclosure on startups and reflect the common nature of equity forming a part of remuneration'.[129]

3.109 The Australian Securities and Investments Commission (ASIC) informed the committee that it has:

> issued class waivers for employee incentive schemes (LI 14/1000 and LI 14/1001) that enable companies to incentivise employees with equity based remuneration. This is popular among tech companies that require highly skilled staff but are unable to offer competitive salaries.[130]

3.110 ASIC also noted the review process on employee share schemes underway by Treasury. A consultation paper was released on 3 April 2019 and submissions closed at the end of April 2019. Submissions have been published on the relevant Treasury website and it states that the consultation process has been completed. However, a final report does not appear to be available.[131]

3.111 On 6 February 2020, the House of Representatives Standing Committee on Tax and Revenue commenced an inquiry into the Tax Treatment of Employee Share Schemes which invited submissions by 28 May 2020. Hearings have been held in June and July 2020.[132]

Tax treatment of Initial Coin Offerings

3.112 Witnesses highlighted the potential of blockchain and welcomed the National Blockchain Roadmap from the Department of Industry, Science, Energy and Resources.[133]

3.113 The importance of access to capital for blockchain firms was emphasised to the committee. Power Ledger highlighted that 'for blockchain enabled startups, an important means of achieving this can be through an Initial Coin Offering (ICO) whereby tokens that perform a certain utility can be sold to the market, as an alternative to traditional forms of capital raising'. Power Ledger suggested that Australia's tax laws have not contemplated this new way of capital raising with the issuance of an ICO currently taxed as income. Blockchain Australia and RMIT Blockchain Innovation Hub have released a report titled *Australia's Blockchain Future: Recommendations for the Taxation of Initial Coin Offerings* which highlighted that 'other countries have remedied or are in the process of changing their tax laws to encourage their blockchain

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129 Airwallex, *Submission 80*, p. [10]

130 ASIC, *Submission 14*, p. 29.

131 See https://treasury.gov.au/consultation/c2019-t373902 accessed 11 March 2020.

132 See https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/EmployeeShareSchemes accessed 13 March 2020.

133 See https://www.industry.gov.au/sites/default/files/2020-02/national-blockchain-roadmap.pdf accessed 26 February 2020. See Mr Michael Bacina, *Committee Hansard*, 19 February 2020, p. 6.

sector'.[134] Dr Jemma Green, Executive Chairman and Co-Founder, Power Ledger, explained what is occurring in some other countries:

> Many countries—for example, Switzerland—are changing that to put them on capital accounts, which is moving the taxing point to when proceeds build a platform which generates income. In Australia, the proceeds are presently being taxed as income. As a result of this regulation, Australia is not an attractive proposition to undertake one of these initial coin offerings or indeed set up a business here.[135]

3.114 Dr Green highlighted that '[t]o date, globally, more than US$26 billion of capital has been raised through these ICO markets and Australia has only captured less than one per cent of this value'. She argued:

> I think that the opportunity here, if we take it, is for the Googles and Facebooks in the blockchain sector of tomorrow to be based in Australia and to capture a bigger piece of that $26 billion pie that I mentioned. In doing so, there will be many companies, like Power Ledger, which will indeed employ tens of thousands of people. So from an employment perspective it's a really exciting story. And then the taxation revenue from those companies that come in profitable will be the bounty for the Treasury. And so I think there's a bigger play around capturing the value for those markets in the Australian economy, as opposed to them being based outside Australia. It's stimulating the fintech sector, providing employment opportunities and delivering better quality services to the Australian people.[136]

3.115 The Treasury is currently conducting a review into ICOs which includes tax treatment. An issues paper was released in January 2019 calling for submissions by 28 February 2019. Submissions have been published on the relevant Treasury website and it states that the consultation process has been completed.[137]

3.116 In response to a question on notice the Treasury confirmed that Treasury staff met with industry participants and government agencies and hosted roundtable discussions before and after the issues paper was released. The Treasury confirmed the issue raised with the committee is part of the review and that decisions related to the timing of any announcement of the review's outcomes are a matter for government.[138]

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134 Power Ledger, *Supplementary Submission 1.1*, p. [1].

135 Dr Jemma Green, *Committee Hansard*, 20 February 2020, p. 3.

136 Dr Jemma Green, *Committee Hansard*, 20 February 2020, p. 3.

137 See https://treasury.gov.au/consultation/c2019-t353604 accessed 21 February 2020

138 The Treasury, Answer to written question on notice, received 6 March 2020.

Chapter 4
Regulation Issues

4.1 This chapter and Chapter 5 examine a range of regulatory issues identified in the first year of the committee's inquiry that impact on the FinTech and RegTech sectors.

4.2 Chapter 4 commences with a broad discussion of the regulatory environment in Australia as it affects FinTechs, including:

- regulatory relief measures applied during COVID-19;
- the way regulators deal with competition issues and innovation in the domestic market;
- the use of self-regulation and industry codes in financial services; and
- Australia's global competitiveness in financial services.

4.3 The chapter then discusses several specific regulatory issues raised in evidence to the committee, namely:

- the functionality and accessibility of the New Payments Platform;
- the management of property data in Australia, including data held by government; and
- issues raised concerning transparency and pricing in the foreign exchange market.

4.4 Chapter 5 then deals singularly with a major regulatory reform that will create significant opportunities for the FinTech and RegTech sectors: the introduction of the Consumer Data Right (CDR).

Overview of Australia's regulatory environment for FinTechs

4.5 Australia presents a complex environment for new FinTechs, with a number of regulators responsible for different aspects of the financial sector, and a range of regulations and standards that firms must understand and adhere to. The committee heard that the ability of start-ups to navigate Australia's regulatory environment is, on its own, a significant factor in determining a company's success.

Regulatory complexity, fragmentation and duplication

4.6 FinTech Australia submitted that FinTechs are subject to a complex regulatory regime:

> It includes financial services and consumer credit licensing and disclosure obligations, consumer law requirements, privacy and anti-money laundering and counter terrorism financing requirements. Depending on the type of services engaged in, fintechs may need to hold an Australian financial services licence, Australian credit licence, rely on an exemption

> from licensing, or even become some form of authorised depository institution. In addition to licensing they may also be required to enrol or register with AUSTRAC [the Australian Transaction Reports and Analysis Centre] and comply with requirements under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.[1]

4.7 It gave a further example in relation to payments regulation:

> The regulation for payments is fragmented and complicated as it relies on three regulators to supervise different aspects of the payments ecosystem, which do not dovetail and are, in some instances, contradictory. In addition, much of the guidance is outdated and has not adapted to technological development.[2]

4.8 The committee heard that the number of regulators in the financial sector causes confusion, particularly for new businesses looking for advice and not knowing where to turn. Zip for example pointed to the large number of regulators it has to engage with. Mr Peter Gray, Chief Operating Officer provided more detail:

> [H]ere's the rub for fintechs: in providing cutting-edge services and products, we operate in a variety of regulatory landscapes and are faced with a myriad of current and potential regulation from different regulators that does not speak to the technology or products that we have created. As a quick snapshot, we're currently regulated or overseen by ASIC [the Australian Securities and Investments Commission], the ACCC [Australian Competition and Consumer Commission], AFCA [Australian Financial Complaints Authority], AUSTRAC, the OAIC [Office of the Australian Information Commissioner], APRA [Australian Prudential Regulation Authority], Treasury and the ASX, and now, in addition, the RBA [Reserve Bank of Australia] is also making moves.[3]

4.9 Dr Bradley Pragnell, Principal, 34 South 45 North Consulting also raised the issue of multiple regulators creating challenges.[4] Mr Guy Sanderson, Partner, Baker McKenzie spoke about the fragmentation of regulators to whom clients are responsible as an issue for clients:

> In Australia the regulatory landscape has grown up organically rather than in an organised, top-down way. We've got…a whole range of regulators, each of which have got different priorities. For example, the RBA might want to reduce processing costs, whereas ASIC might want to enhance consumer protection and increase costs for business. You've not necessarily got all of the regulators pulling in the same direction...[5]

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1 FinTech Australia, *Submission 19*, p. 32.

2 FinTech Australia, *Submission 19*, p. 9.

3 Mr Peter Gray, *Committee Hansard*, 19 February 2020, p. 31.

4 Dr Bradley Pragnell, *Committee Hansard*, 19 February 2020, p. 61.

5 Mr Guy Sanderson, *Committee Hansard*, 19 February 2020, p. 81.

4.10 Mr Guy Sanderson, Partner, Baker McKenzie suggested '[a] single point of contact would be a helpful thing'. However, he acknowledged that changing regulatory responsibilities would be challenging, adding:

> There are two aspects to this: one is the structure of regulators, the other is their attitude. Some regulators here are more active. AUSTRAC can be quite proactive in what it does. Whereas some are more reactionary. ASIC, for example, is more reactionary than others. Where we've seen successful regulators, like [the Monetary Authority of Singapore] in Singapore, they are very proactive. They not only have a single point of contact for a fin-tech company across the various laws and regulations with which they have to comply, but they are also proactive.
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> …So I don't think it's necessary to suddenly form one super regulator in Australia. But I think having some overlay where there is a single point of contact who is also very proactive in developing an ecosystem, helping a fin-tech or reg-tech company navigate the maze of different regulators, would certainly be a way of encouraging that kind of system.[6]

4.11 Mr John Price, Commissioner, ASIC, acknowledged that Australia's regulatory framework has a number of regulators with a number of different mandates and by way of explanation provided the following example:

> I will take the example of authorised deposit-taking institutions—banks, as the community would commonly refer to them. APRA regulates banks from a financial stability point of view. They're interested in the prudential soundness of banks and making sure that depositors are looked after. ASIC, on the other hand, looks at banking regulation from the focus of, are customers being looked after and are investors adequately informed? As you can see, we have coextensive duties and mandates in respect of the regulation of banks, but they are complementary in some ways, and we try to coordinate to minimise red tape as much as we can.[7]

4.12 Mr Mark Adams, Senior Executive Leader, Strategic Intelligence, ASIC detailed ways the regulators are improving coordination, highlighting the work of ASIC's Innovation Hub:

> Through the work of the Innovation Hub we've established a network of the regulators through the committee we've got, the Digital Finance Advisory Panel. Many of the regulators you've probably heard about through the evidence you've received are all members of that. We have a network of contacts. It is routine for us to refer entities to another regulator. We often say to a fintech, if they come in seeking informal assistance, 'Don't worry if you don't know which regulator to go to. We will connect you to the right regulator.' That's often been the case with AUSTRAC. We also will meet together with an entity, if that makes sense, depending on the subject matter of what they are wanting to do. The other forms of working together include attending meet-ups with the fintech

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[6] Mr Guy Sanderson, *Committee Hansard*, 19 February 2020, p. 81.

[7] Mr John Price, *Committee Hansard*, 27 February 2020, p. 4. Subsequent to ASIC's hearing appearance, Mr Price finished his term as Commissioner in June 2020.

> sector and the regtech sector, where all of those regulators often attend, present and we take questions together. Those are all ways of trying seamlessly to bring us together to reduce some of the issues around coordination.[8]

Regulation of competition, innovation and global competitiveness in financial services

4.13 The committee received a range of evidence on how Australia's financial regulators deal with competition matters in Australia and how regulatory culture can support innovation in the financial services sector. Consideration of Australia's global competitiveness by financial regulators was also discussed.

Regulation of domestic competition issues

4.14 There was significant discussion from submitters and witnesses on how Australia's financial regulators deal with competition issues in the sector, and what regulatory approaches can help promote competition.

4.15 The committee sought to clarify with each of the core financial regulators and the ACCC what their respective roles are in relation to competition issues in the financial sector.

ACCC's role

4.16 The ACCC's core role is to 'promote competition and fair trade in markets to benefit consumers, businesses, and the community', as well as regulating national infrastructure services.[9] It enforces the *Competition and Consumer Act 2010* and other legislation, covering areas including: product safety and labelling; unfair market practices; price monitoring; industry codes; industry regulation (for airports, electricity, gas, and telecommunications); and mergers and acquisitions.[10]

4.17 The ACCC undertakes compliance activities including: education and targeted campaigns; industry engagement, through general advice as well as formal consultative committees; and research and advocacy activities, including sector reviews and formal market studies. It has a range of enforcement powers and

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8 Mr Mark Adams, *Committee Hansard*, 27 February 2020, p. 3.

9 ACCC, 'About the ACCC', https://www.accc.gov.au/about-us/australian-competition-consumer-commission (accessed 13 March 2020).

10 ACCC, 'Legislation', https://www.accc.gov.au/about-us/australian-competition-consumer-commission/legislation (accessed 13 March 2020).

can take actions ranging from infringement notices and administrative resolution of issues through to formal litigation.[11]

4.18 The ACCC's remit covers market and consumer activity across all sectors of the Australian economy. At an organisational level, the ACCC's structure includes a standalone division responsible for the CDR. Its Specialised Enforcement & Advocacy Division deals with several areas, including Financial Services Competition.[12]

4.19 When questioned at Senate Estimates in March 2020, ACCC representatives defended its ability to manage financial services competition, stating that the ACCC considers it has the necessary tools it needs to promote and protect competition in the financial services sector. Officials pointed to the rollout of Open Banking and other work the ACCC is undertaking in relation to mortgage pricing and foreign exchange pricing as examples of initiatives it is taking to help enhance competition in the sector.[13]

4.20 The ACCC informed the committee that in the wake of the COVID-19 crisis, it is working with a range of participants across the financial services sector 'to maintain and promote competition in the context of the current public health crisis both now and importantly in the future as we emerge from the COVID-19 crisis'.[14] The ACCC noted its current inquiry into home loan pricing stating that this work will 'be critical to ensuring that when this crisis subsides, smaller banks and fintechs who are offering better deals, can attract customers and compete vigorously on a more level playing field'.[15]

4.21 The ACCC also explained that it had granted interim authorisations in March and April 2020 to enable coordination of crisis response measures between financial services firms, without breaching competition law:

> In the current circumstances, competitors in the financial services sector may need to cooperate with each other and coordinate some aspects of their operations. This kind of collaboration between competitors would ordinarily give rise to concerns under competition law. The ACCC's authorisation process enables it to suspend the operation of competition

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[11] ACCC, 'Compliance & enforcement policy & priorities', https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities (accessed 13 March 2020).

[12] ACCC, 'Organisation structure at 3 February 2020', available at https://www.accc.gov.au/about-us/australian-competition-consumer-commission/organisation-structure#accc-organisation-structure (accessed 13 March 2020).

[13] Mr Rod Sims, Chair and Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division, ACCC, Senate Economics Legislation Committee, *Estimates Hansard*, 4 March 2020, pp. 172-173.

[14] ACCC, Answers to written questions on notice, received 28 April 2020, p. 1.

[15] ACCC, Answers to written questions on notice, received 28 April 2020, p. 1.

> law in relation to such collaboration where the public benefit outweighs any detriment.
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> In late March 2020, the ACCC granted two interim authorisations to the Australian Banking Association, on behalf of its member banks, to enable it to coordinate their responses and implement uniform rescue packages for businesses and consumers. On 8 April 2020 the ACCC also granted interim authorisation to the Australian Securitisation forum to enable its members, which include ADIs, both large and small, as well as a number of FinTechs, to exchange information and develop a coordinated industry response to the implementation of the Structured Finance Support Fund (SFSF).
>
> The ACCC has commenced public consultation on both of these authorisations. This consultation process will ensure that the conduct we have authorised is not causing unnecessary or unintended consequences, particularly for smaller players in the market, including fintechs.[16]

ASIC's role

4.22 Since September 2018, ASIC's legislative mandate has included a provision that ASIC 'must consider the effects that the performance of its functions and the exercise of its powers will have on competition in the financial system'.[17] This addition to ASIC's mandate was made following recommendations from the 2014 Financial System Inquiry and the 2018 Productivity Commission report *Competition in the Australian Financial System*.[18]

4.23 At ASIC's public hearing appearance, Commissioner John Price provided some detail as to how these new competition considerations are being implemented in ASIC's decision making:

> Our mandate in relation to competition was changed recently. The government passed some changes to our constituent legislation in October 2018. We now have an explicit mandate to consider competition matters that affect the performance of our functions and the exercise of our powers. Really it's about looking at the performance of our functions, the exercise of our powers and considering what impact they will have on competition in the financial system.
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> …
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> [W]e think about things like will the exercise of our powers or performing our functions create a barrier to entry? Will it create regulatory advantages? Will it improve consumers' ability to exert demand-side competitive pressure? Will particular regulation have a disproportionate impact on smaller entities? … This sort of requirement to think about

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[16] ACCC, Answers to written questions on notice, received 28 April 2020, pp. 1–2.

[17] *Australian Securities and Investment Commission Act 2001*, ss 1(2A). This provision was inserted into the ASIC Act in the *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018*, which received Royal Assent on 17 September 2018.

[18] See: Liz Wakerly, Parliamentary Library, *Bills Digest No. 111, 2017–18: Treasury Laws Amendment (Enhancing ASIC's Capabilities) Bill 2018*, 23 May 2018, available at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1718a/18bd111#_ftnref1.

> competition issues may apply to functions such as when granting, varying or cancelling certain types of licence, when we ban people from conducting certain activities, when we make instruments—legislative instruments as well—that modify the law, when we register and deregister companies and schemes, when we accept enforceable undertakings, and so on.[19]

4.24 Commissioner Price commented further:

> Rather than promoting competition for its own sake, we focus on competition and how that will help us deliver on our statutory mandates around fair and efficient markets and making sure that consumers have the level of protection that is intended under the legislation that we administer. We're not the competition regulator. We're not the ACCC. In performing our functions and powers what the government has decided is that we should be able to take into account competition factors.[20]

4.25 In attendance with Commissioner Price was ASIC Commissioner Sean Hughes, who further noted:

> I think the legislative reform that took place in 2018 was deliberately crafted in a way to make sure that the consideration of competition was something that we took into account when making regulatory decisions or exercising regulatory powers. As Mr Price said, it is not our role to promote competition in the market. That was a government policy decision. That's the first point I'd make.
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> Therefore, that means when you come to something like buy now, pay later, where we do not exercise what I would call a gatekeeper role or a front-fence role, because we do not license buy now, pay later operators, the consideration of competition must be such that, if we undertake some consumer protection action, if we were to observe a consumer harm, then we would give consideration to the impact of our decision or regulatory action.[21]

4.26 ASIC announced on 23 March 2020 that it would focus its regulatory efforts on the challenges created by the COVID-19 pandemic, with other work reprioritised. It stated that it is 'committed to working constructively and pragmatically with the firms we regulate, mindful they may encounter difficulties in complying with their regulatory obligations due to the impact of COVID-19'.[22] ASIC made a more detailed announcement regarding the recalibration of its regulatory activities on 14 April 2020.[23] ASIC stated that it would be suspending certain regulatory obligations in relation to the provision

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19 Mr John Price, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, pp. 1-2.

20 Mr John Price, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 3.

21 Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 3.

22 ASIC, *Submission 14.1*, p. 4.

23 ASIC, '20-086MR Details of changes to ASIC regulatory work and priorities in light of COVID-19', *Media Release*, 14 April 2020, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-086mr-details-of-changes-to-asic-regulatory-work-and-priorities-in-light-of-covid-19/ (accessed 4 May 2020).

of financial advice, in order to enable financial advisers to give affordable and timely financial advice to consumers during the COVID-19 pandemic.[24]

APRA's role

4.27 Ms Heidi Richards, Executive Director, Policy and Advice at the Australian Prudential Regulation Authority (APRA), commented on how it can consider competition issues:

> [F]inancial safety is our primary mandate…Competition is a secondary objective. We are required to balance considerations of efficiency and competition in achieving our primary mandate. So it is definitely part of our mandate. It is something we consider very actively in carrying out our responsibilities. Particularly when we develop a new policy proposal or a new regulation or new reporting requirements, we do give explicit consideration to competition issues. We've actually… focused on this quite a bit more in the last few years. We put out a paper last year on how we balance our mandate. We're also working much more with the ACCC. When we are working on a major policy proposal, we will consult with the ACCC to get their advice on competition issues.[25]

4.28 Ms Richards went on further to note how and why APRA needs to balance various considerations within its mandate:

> APRA is not focused only on safety, though. Our mandate requires us to balance considerations of efficiency and competition. Those are ultimately key to a long-term sustainable and sound financial system. This includes maintaining a regulatory environment that doesn't restrict the development of different business models and technology models.[26]

4.29 APRA representatives contended that it is taking significant steps to ensure new banking entrants can compete in the Australian market, particularly through the introduction of the new Restricted ADI Licensing pathway. Ms Melisande Waterford, General Manager, Regulatory Affairs and Licensing at APRA, stated that internationally, Australia 'is the most open licensing regime in the world for neobank arrangements', and that APRA's decisions to relax some capital and other regulatory requirements for new entrants is also aimed at assisting them to foster competition in the market.[27]

4.30 APRA noted that in response to the COVID-19 crisis, it had announced a suspension of 'the majority of its planned policy and supervisory initiatives for

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[24] Aleks Vickovich, 'ASIC relaxes financial advice rules amid pandemic', *Australian Financial Review*, 14 April 2020, https://www.afr.com/policy/tax-and-super/asic-relaxes-financial-advice-rules-amid-pandemic-20200414-p54js4 (accessed 17 April 2020).

[25] Ms Heidi Richards, Executive Director, Policy and Advice, APRA, *Committee Hansard*, 28 February 2020, pp. 25–26.

[26] Ms Heidi Richards, Executive Director, Policy and Advice, APRA, *Committee Hansard*, 28 February 2020, p. 25.

[27] *Committee Hansard*, 28 February 2020, p. 27.

the coming period to allow APRA-regulated entities to dedicate time and resources to maintaining their operations and supporting customers'. It noted that this applies equally to APRA-regulated FinTechs and start-ups as to incumbents.[28] APRA stated that it is 'continuing to deliver on its mandate with respect to competition' during the pandemic:

> APRA is regularly in contact with smaller entities and their industry groups on relief measures including, for example, deferring implementation of new prudential and reporting requirements and adjustments to existing capital, liquidity and reporting requirements.[29]

4.31 On 8 April 2020, APRA announced that it is suspending the issuance of new licences for a period of at least six months due to the economic challenges caused by the COVID-19 pandemic. It stated that the COVID-19 virus 'has led to a fundamental change in the economic and social environment in Australia and globally' and commented that experience has shown 'it is challenging for new entrants to succeed even under normal economic conditions, which is why APRA does not consider it prudent to license APRA-regulated entities at this time'.[30] APRA noted that the Monetary Authority of Singapore has recently implemented a similar measure in that jurisdiction, which 'involves an extended assessment period for the award of digital bank licences for current applicants'.[31]

4.32 APRA subsequently announced on 10 August 2020 that it would be recommencing consultation on several high-priority reform areas, as well as recommencing assessing and issuing new licences in a phased manner, with the first phase commencing in September 2020:

> New licences issued during phase one will be issued to applicants that are branches or subsidiaries of foreign entities with significant financial resources and a strong operational track record in a similar business. APRA will also accept new licence applications from any entity from September 2020.
>
> From March 2021, APRA envisages new licences may be issued to any entity that meets the relevant prudential requirements. APRA is also reviewing the pathways to an ADI licence, including the Restricted ADI licensing framework that was launched in 2018, to incorporate experiences to date, while continuing to support competition in the sector.[32]

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28 APRA, Answers to written questions on notice (received 15 April 2020), p. 1.

29 APRA, Answers to written questions on notice (received 15 April 2020), p. 1.

30 APRA, 'COVID-19: APRA's approach to licensing', 8 April 2020, https://www.apra.gov.au/covid-19-apra%E2%80%99s-approach-to-licensing (accessed 8 April 2020).

31 APRA, Answers to written questions on notice (received 15 April 2020), p. 2.

32 APRA, 'APRA to recommence prudential policy program and issuing of new licences', *Media Release*, 10 August 2020, https://www.apra.gov.au/news-and-publications/apra-to-recommence-prudential-policy-program-and-issuing-of-new-licences (accessed 10 August 2020).

RBA's role

4.33 The Reserve Bank of Australia (RBA) regulates the payments system in Australia, through the RBA's Payments System Board. It explained its role in fostering competition as follows:

> [A]s the principal regulator of the payments system in Australia…the Bank has the mandate to contribute to promoting efficiency and competition in the payments system and the overall stability of the financial system. In pursuit of this mandate, the Bank has had a longstanding focus on encouraging innovation in the payment system, including from new players such as fintechs and regtechs, as well as by incumbent firms.
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> …
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> The Bank seeks to ensure that new players in the payments industry are able to compete fairly and that there are no unwarranted restrictions on their participation in payment systems. Doing so inevitably involves managing the balance between the competition new participants can bring and any additional risks that arise, particularly where new entrants are not subject to the same form of prudential regulation as incumbents. The Bank also strives to have a regulatory regime that is technology neutral and best able to support competition and innovation in the payment system.[33]

4.34 Dr Anthony Richards, Head of Payments Policy at the RBA, told the committee that the RBA strongly considers competition and innovation in determining how it fulfils its regulatory role:

> We have responsibility for three things, which is competition, efficiency and controlling risk. Efficiency we have thought of broadly in terms of price efficiency but also dynamic efficiency and encouraging innovation et cetera. So it very much enters into our thinking…[M]ost of the bank's regulatory activity has been access regimes. We've been intervening to make it easier for new players to enter. We've imposed access regimes on the international card systems, on EFTPOS and on the ATM system. We could do so on other payment systems if we felt the need to.[34]

Role of the Council of Financial Regulators

4.35 The role of the Council of Financial Regulators (CFR) was also mentioned in relation to regulation of competition issues. The CFR is the coordinating body for Australia's main financial regulatory agencies. It meets quarterly and is chaired by the RBA, with membership that also includes APRA, ASIC and the Treasury. The CFR's objectives are:

> …to promote stability of the Australian financial system and support effective and efficient regulation by Australia's financial regulatory agencies. In doing so, the Council recognises the benefits of a competitive, efficient and fair financial system.[35]

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33 Reserve Bank of Australia, *Submission 19*, p. 1.

34 Dr Anthony Richards, Head of Payments Policy, RBA, *Committee Hansard*, 28 February 2020, p. 23.

35 Council of Financial Regulators, 'Who we are', https://www.cfr.gov.au/ (accessed 5 March 2020).

4.36 Ms Richards of APRA commented in evidence to the committee that the CFR is 'focused mainly on financial systems stability', but can also discuss competition issues and invites the ACCC to attend CFR meetings at least once a year.[36]

Submitter and witness views on domestic competition regulation

4.37 Submitters pointed out that increased competition in financial services is being driven largely from firms outside the major banks, and highlighted developments such as the emergence of the buy now, pay later (BNPL) sector to show that innovation can drive increased consumer choice.

4.38 Mr Anthony Eisen, Chief Executive Officer (CEO) and Managing Director of Afterpay, argued that the regulatory framework needs to reflect the needs of innovative companies trying to compete with the major financial institutions:

> We would especially urge the committee to consider what it means for innovative companies to compete with very large incumbents and regulation that has been built with incumbents and not startups in mind. Senators, it needs to be acknowledged that some large Australian corporates have tried to use legacy regulation as a way to stifle innovation and competition, and continue to do so, but traditional regulation should not be pushed onto fintechs as an end in itself. This kind of thinking is dangerous as it inhibits competition and new entrants. It has absolutely nothing to do with leniency as it relates to customer protections, which should be held paramount for every player in the market, but it has everything to do with outcomes that benefit consumers, promote choice and promote competition.[37]

4.39 Mr Ben Heap, Founding partner, H2 Ventures, commented:

> [R]egulation is really important in financial services. However, there's a point here about getting those settings right to maximise competition. If you set a regulatory boundary so high that, for example, only the highly funded, large banks are able to meet that hurdle, the downside is, of course, that you will lose competition and you will lose a competitive pressure for the benefit of consumers. If you get the settings right, if you make sure that companies seeking to build financial services in this market are able to do so without an overly burdensome regulatory environment, where you therefore rely a little bit more on the impact of competition to drive the best outcome for consumers, that will be more effective longer term.[38]

4.40 Ms Simone Joyce, Founder and CEO of Paypa Plane, told the committee:

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[36] Ms Heidi Richards, Executive Director, Policy and Advice, APRA, *Committee Hansard*, 28 February 2020, p. 25.

[37] Mr Anthony Eisen, Chief Executive Officer and Managing Director, Afterpay, *Committee Hansard*, 20 February 2020, p. 22.

[38] Mr Ben Heap, Founding partner, H2 Ventures , *Committee Hansard*, 20 February 2020, p. 20.

> [W]e're not advocating for a relaxation of how companies are assessed from a consumer protection perspective. What we're advocating for is a change in the way that regulation is done so that the rules of behaviour and codes of practice and of operating are friendly towards innovative products that do meet those safety standards and that do meet the requirements of providing benefit back to the community, be it a small business or a consumer. Without a reassessment of how those regulations are designed, we run the risk of having all new products needing to fit into the mould of what has gone before, which doesn't extend those new benefits that can be gained by the community.[39]

4.41 A number of submitters and witnesses argued that there needs to be greater focus at the regulatory level on promoting competition in Australia's financial services sector, given the lack of a single regulator to deal with conduct and competition in financial services.

4.42 Several submitters contrasted Australia's position with that of the United Kingdom (UK) and Singapore. It was noted that in the UK, the Financial Conduct Authority (FCA) is responsible for both general financial services regulation as well as market competition issues in the sector, and the FCA is equipped with competition powers that apply to the financial services industry and are equivalent to the powers of the UK's economy-wide competition regulator, the Competition and Markets Authority.[40] FinTech Australia commented:

> [O]ne of the [FCA's] operational objectives is to promote effective competition in consumers' interests, as long as it does not conflict with the FCA's duty to protect consumers and enhance market integrity. The Monetary Authority of Singapore (MAS) has a similar mandate, where the MAS must undertake supervision of the market in a way that does not unnecessarily impair the competitiveness of financial services market participants. This mandate also requires that MAS take into account the business and operational concerns of these businesses so as to not hinder them, provided that these businesses exercise good risk management and governance, and are supported by long-term and sustainable strategies.[41]

4.43 Mr Alan Tsen, Chair of FinTech Australia, gave evidence that the regulatory structure in the UK has enabled the FCA to proactively push through an agenda seeking to enhance competition in that jurisdiction; something that is less straightforward in Australia due to the division of responsibilities between ASIC and the ACCC:

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[39] Ms Simone Joyce, Member, FinTech Australia, and Founder/CEO of Paypa Plane, *Committee Hansard*, 28 February 2020, p. 7.

[40] Afterpay, Answer to question on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020), p. 8.

[41] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 3.

> I understand the position that regulators are in in Australia, given that financial services is, for all intents and purposes from a corporate law perspective, in the remit of ASIC. Yet, obviously…ACCC has the remit around competition law. The end outcome in Australia is that, from a financial services perspective and pushing forward competition, it in many ways falls between those two regulators. That is a challenge; we understand that.
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> …
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> I think [consolidating the competition agenda is] a good starting point. Look at the ACCC. For all intents and purposes, in financial services, they are not specialists in that area. That is part of the challenge around having a competition watchdog that doesn't sit all day every day in financial services. That is what I mean by falling between the cracks.[42]

4.44 FinTech Australia noted that in order for the ACCC to intervene, there must be an alleged breach of the *Competition and Consumer Act 2010*. FinTech Australia advocated for 'a more proactive approach as has been adopted by both the FCA and MAS', led ideally by ASIC:

> Under this approach, the designated regulator would look to accelerate competition in the financial services industry by reviewing and then implementing (subject to their legislative power) changes that could 'substantially enhance competition in the financial services industry'.
>
> In our view, this would likely need to be administered by a regulator that has the ability to implement these changes by way of, for example, administrative exemption. In this regard, we are of the view the best placed regulator would be ASIC. It is worth noting, the 'proactive competition' approach we propose should be distinguished from the amendments made [in 2018] that require ASIC to take into account the impact their decisions have on competition. This again, is not pro-competitive but simply ensures decisions made by ASIC are competition neutral.[43]

4.45 FinTech Australia stated that an alternative approach could be to create an entirely new authority to be charged with enhancing competition in the financial services industry. It acknowledged that 'this would require further amendments to the current regulatory framework… [however], it may provide a more robust means to ensure continued enhancement of the industry's structure from a competition perspective'.[44]

4.46 Seed Space Venture Capital commented:

> Government regulatory support for competition is an additional area with potential for improvement in Australia. Policies should be finely tuned to

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[42] Mr Alan Tsen, Chair, FinTech Australia, *Committee Hansard*, 28 February 2020, p. 3.

[43] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 3.

[44] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 4.

> ensure that opportunities to access the Australian market, and to compete on a level playing field are available to emerging FinTechs. Policy settings that unduly hinder new market entrants act to prevent the creation of new technologies, products and services and so prevent innovation and the creation of jobs.
>
> …
>
> Ideally the Australian government, ASIC, and APRA would adopt a progressive pro-competitive approach to implementing any mandates for competition and use the UK experience as a benchmark.[45]

4.47 Stone & Chalk submitted that it has encountered 'a substantial number of instances where the implementation of new technological solutions by regulated entities have met resistance by APRA' because APRA either lacks the capability to adequately assess the technology or insists that regulated entities continue to implement and use legacy systems 'which in APRA's determination represent a relatively lower technology related risk profile'.[46]

4.48 Stone & Chalk argued that this practice 'is severely damaging the uptake of Australia's enterprise platforms in the financial services sector due to regulatory pressure'. It stated further that this issue has also been encountered by firms seeking licencing by ASIC where the firm 'is seeking to introduce a new business model or technology that does currently fit within existing licencing guidelines and regulation'.[47]

4.49 Stone & Chalk suggested that all financial regulators as well as Treasury to have a competition mandate.[48] Mr Alex Scandurra, CEO of Stone & Chalk, commented further in evidence to the committee:

> Currently, these regulators are heavily focused on policing, particularly in the case of ASIC when it comes to conduct and APRA when it comes to prudence. I don't believe that it's feasible any longer for the ACCC alone to have a competition mandate as there are too many ways in which, if we are not careful, current mandates for other regulators and their priorities might be such as to unnecessarily increase the barriers to entry as opposed to lowering them over the longer term.[49]

4.50 Mr Benjamin Heap, Founding Partner of H2 Ventures, expressed strong support for ASIC adopting a stronger competition mandate, and commented:

> [A] risk we run at the moment is that there has been perhaps over the last year or two, and perhaps with good reason, an incentivisation towards the compliance role of ASIC. ASIC does have a compliance role to play… But I think competition, as the opposite side of the balance there, is a really

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45 Seed Space Venture Capital, *Submission 65*, p. 4.

46 Stone & Chalk, *Submission 25*, p. 16.

47 Stone & Chalk, *Submission 25*, p. 16.

48 Stone & Chalk, *Submission 25*, p. 16.

49 Mr Alex Scandurra, CEO, Stone & Chalk, *Committee Hansard*, 19 February 2020, p. 13.

> important component piece. I think, if we have our choice between regulating our way to best consumer outcomes and creating a competitive environment so that actually the market solves [issues] to give the best consumer outcome, the second option is more likely to be successful longer term.[50]

4.51 Afterpay argued that consideration should be given to ASIC having formal competition powers, and that 'at a minimum ASIC should be given powers to authorise or approve industry initiatives which promote good consumer outcomes but which may technically trigger competition laws'.[51]

4.52 The Australian Finance Industry Association commented that more collaboration and coordination between regulators is required, potentially through the Council of Financial Regulators, to avoid duplication and set a cohesive FinTech regulatory agenda.[52]

Supporting a pro-innovation regulatory culture

4.53 The committee took additional evidence on how Australia can promote a pro-innovation regulatory culture in financial services.

4.54 As noted earlier, several of Australia's financial regulators offer innovation programs designed to support new and prospective entrants into the market, the most prominent of which is ASIC's Innovation Hub.

ASIC Innovation Hub and Regulatory Sandbox

4.55 ASIC explained that its Innovation Hub, established in 2015, has been seeking to support FinTech and RegTech start-ups and scaleups navigate Australia's framework through the provision of informal assistance and removing red tape where possible.[53] ASIC submitted that it applies a 5-point approach to innovation, involving:

- **Engagement** with the sector to maintain and support effective information sharing, including through industry events and initiatives, regular meetings with FinTech and RegTech networks, international roundtables and conferences, and a quarterly RegTech Liaison Forum.
- **Streamlining** ASIC's assistance to entities with innovative business models through the provision of informal assistance (accelerating their licensing applications) and access to the Regulatory Sandbox.
- **Enhanced communication** including through a one-stop shop Innovation Hub website that contains tailored resources and guidance.

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50 Mr Benjamin Heap, Founding Partner, H2 Ventures, *Committee Hansard*, 20 February 2020, p. 20.

51 Afterpay, Answer to question on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020), p. 8.

52 Australian Finance Industry Association, *Submission 87*, p. 4.

53 ASIC, *Submission 14*, p. 5 and *Submission 14.1*, p. 5.

- **Coordination** in ASIC's internal innovation approach through its centralised Innovation Hub and disseminating information via senior committees, internal working groups, staff onboarding, and external networking. In addition, ASIC has established a network of domestic agencies dealing with innovative businesses with a view to promote information sharing and a cross-agency coordinated approach.
- Formation of the **Digital Financial Advisory Panel**, which meets quarterly and brings together FinTech and RegTech industry representatives, academics, and national regulators (Treasury, APRA, AUSTRAC, OAIC, ACCC and RBA).[54]

4.56 ASIC submitted that since the introduction of the Innovation Hub in March 2015, a total of 96 licence applications (full and variation) were approved to 86 innovative FinTech service providers (out of 145 licence applications from 124 FinTechs).[55]

4.57 ASIC noted that on average, FinTech businesses that engage with the Innovation Hub prior to submitting their application for approval for an Australian financial services or credit licence receive approval 22 per cent faster than those who do not.[56]

4.58 ASIC informed the committee that since the onset of the COVID-19 pandemic, individual FinTechs and RegTechs have continued to engage with ASIC's Innovation Hub, and that ASIC has held discussions with industry groups, regulators and other government agencies through a series of forums.[57] It indicated that it intends to continue with meetings of the Digital Finance Advisory Panel (DFAP), industry meet-ups, and quarterly RegTech Liaison Forums, albeit in a webinar format.[58] ASIC stated that its planned RegTech Initiative Series activities for FY2019-20 have had to be reviewed, with consideration being given to proceeding with some activities via virtual platforms and postponing or cancelling others.[59]

ASIC Regulatory Sandbox

4.59 In late 2016 Australia announced the introduction a 'regulatory sandbox' framework for FinTech companies, administered by ASIC, which would allow companies to test FinTech products and services without holding an AFS or credit licence for up to 12 months, providing certain criteria are met. ASIC

54 ASIC, *Submission 14*, pp. 5–6 (emphasis in original).

55 ASIC, *Submission 14*, p. 7.

56 ASIC, *Submission 14*, p. 8.

57 ASIC, *Submission 14.1*, p. 7.

58 ASIC, *Submission 14.1*, p. 7.

59 ASIC, *Submission 14.1*, p. 9.

explained that the sandbox is comprised of three mechanisms to support testing a new product or service without a licence:

(a) existing flexibility in the regulatory framework (e.g. acting as a representative of a licensee), or exemptions already provided by the law or ASIC, which mean that a licence is not required;
(b) ASIC's FinTech licensing exemption, which allows eligible FinTech businesses to test certain specified dealing or advising services without holding an AFS or credit licence for 12 months; and
(c) tailored, individual licensing exemptions from ASIC to facilitate product or service testing.[60]

4.60 ASIC reported in December 2019 that a total of seven entities have participated in the ASIC Sandbox, with a further 44 entities having submitted preliminary notifications but not meeting the criteria necessary to qualify.[61]

4.61 On 10 February 2020, legislation to create an Enhanced Regulatory Sandbox (the Treasury Laws Amendment (2018 Measures No. 2) Bill 2019) was enacted by Parliament. These changes will allow 'more businesses to test a wider range of new financial and credit products and services without a licence from ASIC, for a longer time'.[62]

4.62 Regulations implementing the changes received Royal Assent on 28 May 2020, and the new sandbox arrangements will commence on 1 September 2020.[63] Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, stated:

> The enhanced sandbox will provide a further boost to Australia's rapidly maturing fintech ecosystem, reducing barriers to entry and promoting competition. Australian consumers will benefit from greater choice in financial services, with technology-driven offerings that are convenient, tailored and cost effective.
>
> The sandbox creates a safe environment for fintech firms to test the viability of new products and services without first holding licences that can be costly and time-consuming to obtain. Innovative firms now have 24 months to test their products with customers in the sandbox before

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60 ASIC, *Submission 14*, p. 9.

61 ASIC, *Submission 14*, p. 9.

62 Treasury Laws Amendment (2018 Measures No. 2) Bill 2019, Explanatory Memorandum, p. 5.

63 Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, *Media Release*, 'Regulatory sandbox to boost Fintech innovation and competition in the financial system', 28 May 2020, https://ministers.treasury.gov.au/ministers/jane-hume-2019/media-releases/regulatory-sandbox-boost-fintech-innovation-and-competition (accessed 31 July 2020).

> obtaining a financial services licence or a credit licence from the Australian Securities and Investments Commission (ASIC).[64]

4.63 Under the enhanced sandbox arrangements, FinTechs will be able to test specified financial services including financial advice, the issuing of consumer credit contracts and facilitating crowd-sourced funding for up to 24 months.[65]

Submitter views

4.64 FinTech Australia reported the following views in relation to ASIC's Innovation Hub:

> Whilst a relevant resource, members report that the Innovation Hub is not always helpful in achieving their objectives. Members have noted it is difficult to get involved and hard to get questions answered or access assistance from ASIC. Whilst members accept that the ASIC Innovation Hub cannot provide legal advice, there is anecdotal evidence that some who have relied on indications provided by officers at the hub have received conflicting views from ASIC and as a result had to close businesses to avoid regulatory consequences. As one member put it, "What is the purpose of the Innovation Hub?"[66]

4.65 The committee heard strong support for the changes in ASIC's enhanced regulatory sandbox framework.[67]

4.66 Stone & Chalk stated that when considering how regulators deal with competition and innovation issues, government needs to prescribe clear outcomes based on 'key performance metrics and reporting which demonstrate how effective regulators have been in fulfilling their charters and in particular the proactive steps they have taken to increase competition for the benefit of Australians'.[68] It argued further:

> Whilst there have been a number of competition and innovation initiatives taken by ASIC and APRA in recent times including innovation hubs, sandboxes and phased licensing, it would be beneficial to look to the UK approach to measuring regulator performance, particularly given the UK Government's expectations as to the explicit and proactive role the [Financial Conduct Authority] and [Prudential Regulatory Authority] has been directed to take. Robust performance measurements should still be in

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[64] Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, *Media Release*, 'Regulatory sandbox to boost Fintech innovation and competition in the financial system', 28 May 2020.

[65] Treasury, *Submission 166*, p. 8.

[66] FinTech Australia, *Submission 19*, pp. 89–90.

[67] FinTech Australia, *Submission 19, p. 92*; Mr Alex Scandurra, CEO, Stone & Chalk, *Committee Hansard*, 19 February 2020, p. 18; Ms Dianne Tate, CEO, Australian Finance Industry Association, *Committee Hansard*, 20 February 2020, p. 46.

[68] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 40.

> place regardless of whether the mandate is to 'promote', 'facilitate' or 'consider' competition issues.[69]

4.67 Stone & Chalk recommended that the Australian Government:

- stipulate the specific Key Performance Indicators it wishes ASIC and APRA to achieve in relation to its competition obligations and expectations;
- stipulate acceptable internal operating service levels for ASIC and APRA in relation to their competition mandate; and
- ensure that regulators such as ASIC and APRA fully integrate their competition obligation through staff training, decision making processes and outcomes reporting.[70]

Supporting innovation via self-regulation

4.68 Some innovative sectors within the financial services industry are seeking to ensure consumer protection via self-regulation in the form of industry codes and similar measures.

4.69 Afterpay noted in its submission comments made on the topic of industry self-regulation by APRA Chair Mr Wayne Byres in August 2019:

> ...if self-regulation is not in good shape, we need to restore it. More formal regulation and enforcement cannot be the only answer to the issues of community concern. It must be accompanied by a healthy degree of self-regulation: industry codes of practice with genuine force, stronger frameworks of governance and accountability within companies, and a commitment by individuals to seek to operate with ethical restraint. Everyone needs to step up to the challenge. Governments and regulators can help to restore the foundations for self-regulation, but only the industry and its participants can return it to full health.[71]

4.70 The committee heard a range of evidence in this regard relating to the Buy Now Pay Later (BNPL) sector. Unlike other credit providers, BNPL products are not covered by the *National Consumer Credit Protection Act 2009* (the National Credit Act) and as such BNPL providers have no legal obligation to adhere to the responsible lending obligations in the Act.

4.71 ASIC considered issues relating to regulation of the BNPL sector in a November 2018 report. ASIC stated that it had not yet formed a view that it would be necessary to require BNPL providers to comply with the National

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[69] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 43.

[70] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 45.

[71] Mr Wayne Byres, Chair, APRA, 'Is self-regulation dead?', 8 August 2019, https://www.apra.gov.au/self-regulation-dead (accessed 28 August 2020). As quoted by Afterpay, *Submission 83*, p. 11.

Credit Act, and that it would continue to monitor the industry to assess whether this was required.[72]

4.72 It is the strong view of consumer groups, represented at this inquiry by the Financial Rights Legal Centre (FRLC) and the Consumer Action Law Centre, that BNPL products should be regulated through the National Credit Act. Mr Drew MacRae of the FRLC told the committee that:

> [The BNPL model of credit as opposed to traditional credit] is a slightly different model but it is a form of credit in the general understanding of what credit is. We would want them to be regulated under the National Credit Code. We're not arguing that they need to have the maximum amount of regulations that are applied there. What we are arguing for is a scalable form of regulation to ensure that when people use the service they're able to pay it back. We've already seen too many people who've found themselves in trouble. The people who we see who use by now, pay later services use them as a bit of a last resort credit option, because there's not much they need to do. They don't have to do the same responsible lending checks they do when they obtain a credit card.[73]

4.73 Regulation of the BNPL sector was then considered by the Senate Economics References Committee in a 2019 report on credit and financial products targeted at Australians at risk of financial hardship, which recommended:

- that the government consider, in consultation with ASIC, consumers and industry, what regulatory framework would be appropriate for the buy now pay later sector; and
- that the BNPL sector develop an industry code of practice.[74]

4.74 The Australian Finance Industry Association (AFIA), which represents a range of finance providers in Australia including Online Small Business Lenders and Buy Now Pay Later (BNPL) providers, announced on 19 December 2019 the development of an industry code for its BNPL members, designed to:

- set consumer protection standards for the BNPL industry; and
- address the recommendations from the Senate Economics Committee in February 2019 and ASIC's Report 600 in November 2018.[75]

4.75 Public consultation on the draft BNPL Code commenced in January 2020, with the intention for the code to be operational from 1 July 2020.[76] Following significant feedback from stakeholders, AFIA announced in May 2020 that it

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[72] ASIC, *Report 600: Review of buy now pay later arrangements*, November 2018, p. 16.

[73] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, pp. 65–66.

[74] Senate Economics References Committee, *Credit and hardship: report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship*, February 2019, pp. 11–12.

[75] AFIA, *Submission 87*, p. 5.

[76] AFIA, *Submission 87*, p. 5.

would be undertaking further work on the draft code with a view to having it finalised for a commencement date of 1 January 2021.[77]

4.76 Mr MacRae of the FRLC noted during his appearance before the committee that in his organisation's view, the draft BNPL Code does not go far enough to protect the interests of consumers:

> As I understand it, it does address a few of the issues but I don't think it covers everything that we would want it to and I don't think, from the consumer movement's perspective, it goes far enough in terms of the regulation in responsible lending requirements that we would hope to see in this space.[78]

4.77 Mr MacRae noted that young people were increasingly seeking assistance from his organisation when encountering problems with BNPL services:

> A lot of the new fintech products, like buy now, pay later services, definitely lean towards younger people. That is a cohort that doesn't tend to look for help through our services but is increasingly doing so. We have found that there have been significant issues or problems arising from the use or misuse of buy now, pay later services in Indigenous communities. The younger crowd and Indigenous communities are the two that come to mind. They have had problems with buy now, pay later services. You don't tend to have older people using these services, but that may change over time. They're pretty new.[79]

4.78 ASIC Commissioner Mr Sean Hughes told a recent hearing of the Parliamentary Joint Committee on Corporations and Financial Services that ASIC had provided feedback to AFIA in relation to the draft BNPL code:

> Our initial feedback to the association was that we thought the code could be strengthened by using more definitive language and could more directly address the perceived problems we identified in our Report 600 of overcommitment, excessive late fees and merchant surcharging.
>
> …[the BNPL industry] code cannot be approved by ASIC once finalised, as buy-now pay-later arrangements are not regulated under the national credit act.[80]

4.79 ASIC is due to present a follow-up report to government on issues relating to the BNPL sector by the end of September 2020.[81]

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77 AFIA, 'BNPL Code of Practice public consultation closes', *Media Release*, 18 May 2020, available at https://www.afia.asn.au/bnpl (accessed 29 July 2020).

78 Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 66.

79 Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 71.

80 Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, Parliamentary Joint Committee on Corporations and Financial Services, 15 July 2020, p. 8.

81 Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, Parliamentary Joint Committee on Corporations and Financial Services, 15 July 2020, p. 9.

4.80 In a supplementary submission discussing the performance of the BNPL sector in the context of the COVID-19 crisis, AFIA stated that, consistent with other parts of the financial services industry, 'BNPL providers initially experienced a spike in hardship requests in March and April 2020, including from consumers who proactively contacted them concerned about their potential financial and personal circumstances', however:

> …even at the peak in March and April 2020, at aggregate accords the BNPL industry the percentage of customers approved for hardship compared to the total number of customers was less than 1%, with some BNPL providers experiencing significantly lower incidences.[82]

Advantages to industry codes as a regulatory tool

4.81 AFIA noted that in the final report for the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Commissioner Hayne noted that industry codes offered a form of self-regulation by which industry participants set standards on how to comply with, and exceed, various aspects of the law.[83]

4.82 AFIA commented more broadly on the potential of industry codes:

> We believe industry codes allow for self-regulation of an industry, particularly for emerging industries, and can help with raising standards of industry practices and establishing boundaries for new participants into a sector.
>
> Industry codes can provide a dynamic means of ensuring there are appropriately set standards for new product and service offerings and emerging customer expectations are captured and reflected in standards.
>
> Industry codes can balance the needs of financial services providers to operate prudently and commercially while optimising consumer protection. We support the Federal Government's proposal to continue to allow for ASIC approved, non-ASIC approved and Government to mandate codes where there is a gap in regulation.[84]

4.83 AFIA stated that it supports self-regulation as a key strategic priority because self-regulation:

- assists members to meet community standards;
- promotes the interest of members and responds to member demand for Codes of Practice;
- strengthens trust and good standing of the finance industry among stakeholders;
- allows members to self-regulate and demonstrate to customers a level of service, product design and distribution capability that gives an operational

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82 AFIA, *Submission 87.3*, p. 2.

83 AFIA, *Submission 87*, p. 4.

84 AFIA, *Submission 87*, p. 4.

context and commitment to the law and sets a standard of behaviour that exceeds the law; and
- improves industry ownership of Codes of Practice, and therefore, responsibility and accountability around compliance and best practice.[85]

Co-regulation through ASIC-approved industry codes

4.84 ASIC is able to approve financial services sector codes of conduct relating to activities for which ASIC has a regulatory responsibility.[86] Under this regulatory model, ASIC will formally approve industry codes where they meet a defined set of criteria, outlined in ASIC's *Regulatory Guidance 183: Approval of financial services sector codes of conduct*.[87] ASIC has stated that the primary role of such codes is 'to raise standards and to complement the legislative requirements that already set out how product issuers and licensed firms (and their representatives) deal with consumers'.[88]

4.85 ASIC approved the Australian Banking Association's (ABA) *Banking Code of Practice* (Banking Code) in July 2018, which is the first comprehensive broad-based industry code ASIC has approved under its relevant powers.[89] The Banking Code provides 'a set of enforceable standards that customers, small businesses, and their guarantors can expect from Australian banks'.[90]

4.86 ASIC noted that in approving the Banking Code, it considered that:

- the rules in the Code are binding on the ABA's members and form part of the contracts between banks and their customer;
- the Code was developed and reviewed in a transparent way, which involved significant consultation with relevant stakeholders including consumer and small business groups; and
- the Code is supported by effective administration and compliance mechanisms, with a Banking Code Compliance Committee to have oversight on banks' Code compliance, tools to require banks' cooperation

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85 AFIA, *Submission 87*, p. 5.

86 *Corporations Act 2001*, Section 1101A.

87 ASIC, *Regulatory Guide 183: Approval of financial services sector codes of conduct*, March 2013.

88 ASIC, *Regulatory Guide 183: Approval of financial services sector codes of conduct*, March 2013, p. 4.

89 ASIC, 'ASIC approves the Banking Code of Practice', *Media Release*, 31 July 2018, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-223mr-asic-approves-the-banking-code-of-practice/ (accessed 24 August 2020).

90 Australian Banking Association, 'New Banking Code', https://www.ausbanking.org.au/campaigns/new-banking-code/ (accessed 24 August 2020).

with their monitoring and investigations, and a range of sanctions available for non-compliance with Code provisions.[91]

4.87 Consumer representative groups Financial Counselling Australia, Financial Rights Legal Centre and Consumer Action Law Centre, stated that the new Code included some enhancements, including:

- more proactive assistance for customers experiencing financial difficulty;
- improved commitments for more inclusive and accessible banking, including better promotion about low or fee-free accounts;
- a three-day cooling off period after signing a guarantee; and
- a commitment to no longer bundle the sale of consumer credit insurance with a loan.[92]

4.88 The consumer groups also pointed to several areas they viewed as 'gaps in the new Code', raising issues relating to the treatment of credit cards, direct debits, debt collection and penalty fees.[93]

4.89 After ASIC's initial approval, changes to the Banking Code were subsequently sought by the ABA and approved by ASIC for commencement on 1 July 2019.[94] Further temporary changes to the Banking Code were made in June 2020 as a result of the COVID-19 pandemic.[95]

Consideration of Australia's global competitiveness in financial services

4.90 The committee heard a range of evidence on the need for Australia to undertake regular benchmarking of its regulatory settings, to ensure that they are internationally competitive.

4.91 Mr Scandurra from Stone & Chalk commented on the need to keep looking globally when considering Australia's regulatory settings:

> One thing that I would stress and caution is that over the five years I've been engaging with government there also tends to be a tendency to look at what we've done in the past as opposed to what we need to do to outdo

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91 ASIC, 'ASIC approves an updated Banking Code of Practice', *Media Release*, 28 June 2019, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-162mr-asic-approves-an-updated-banking-code-of-practice/ (accessed 24 August 2020).

92 Financial Counselling Australia, Financial Rights Legal Centre and Consumer Action Law Centre, *Joint Media Release*, 'New Banking Code Must Have Teeth: Consumer Groups', 1 August 2018, available at https://financialrights.org.au/joint-media-release-new-banking-code-must-have-teeth-consumer-groups/ (accessed 31 August 2020).

93 Financial Counselling Australia, Financial Rights Legal Centre and Consumer Action Law Centre, *Joint Media Release*, 'New Banking Code Must Have Teeth: Consumer Groups', 1 August 2018.

94 ASIC, 'ASIC approves an updated Banking Code of Practice', *Media Release*, 28 June 2019.

95 Australian Banking Association, 'Temporary changes to Code due to COVID-19' 25 June 2020, https://www.ausbanking.org.au/temporary-changes-to-code-due-to-covid-19/ (accessed 24 August 2020).

> our competitors. And so through this review what I'd like to encourage is seeking to outdo our regional competitors and perhaps in some cases global competitors in terms of the policies we put in place to ensure we attract the best talent, capital and expertise to Australia, as opposed to doing better than we did last year.[96]

4.92 Mr Heap of H2 Ventures stated that without the right regulatory settings, Australia will become an importer of new financial services rather than an exporter:

> The issue we have is that, if our settings are such that it's just a little bit more difficult than it is in other markets to build successful financial services organisations, then other financial service organisations, fintechs from offshore, will arrive in Australia. They will just offer a service—think Uber: that's just better than what you can get in this market. Consumers will and should say, 'Actually, that's a better service; I'm taking that one.' And before we know it—and it will happen very quickly—we will have significantly eroded our financial services in this country, to everyone's disadvantage. So it's important we recognise that we are competing internationally. It's not getting the settings right for a particular sort of set of requirements in this market. We're setting those settings to ensure that companies in this market can be competitive globally, because that's the only way to make sure that companies globally don't have a disadvantage or an advantage over companies here.[97]

4.93 The RegTech Association submitted that RegTech should be an area in which Australia can leverage its relative strength in regulatory systems to create world-leading products:

> Australia is ranked 22nd in the Global Innovation Index 2019 (slipping two positions since 2018). Australia has particular weaknesses around knowledge, technology, creative outputs and business sophistication. However, this same index rates the quality of our regulatory systems as a *strength*, suggesting this is a major export opportunity when coupled with our overall product development global ranking.
>
> Like most countries (except US and China), Australia does not have the capital or capacity to compete in each of the technologies driving the Fourth Industrial Revolution (e.g. robotics, biotechnology, nanotechnology). It must select key applications for development, that meet the needs of its own economy, as well as those that are in demand globally. We believe Australia has a strategic advantage to act as a fulcrum for the inevitable evolution of global regulation.
>
> The next two years are crucial in determining which markets generate the RegTech solutions that will underpin global regulation going forward. Australia has the skills, infrastructure and experience to lead a global Centre of Excellence for RegTech; providing a vehicle to improve our

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[96] Mr Alex Scandurra, CEO, Stone & Chalk, *Committee Hansard*, 19 February 2020, p. 17.

[97] Mr Benjamin Heap, Founding Partner, H2 Ventures, *Committee Hansard*, 20 February 2020, p. 20.

ranking in global innovation, and to make RegTech a key aspect of "Brand Australia".[98]

4.94 Dr Dimitrios Salampasis of the Swinburne Business School at Swinburne University of Technology submitted that the Australian Government should consider a range of strategic interventions including 'conducting annual benchmarking analyses comparing Australia to other FinTech hubs and leveraging the unique value proposition of the Australian economy and the FinTech competitive advantage'.[99]

4.95 Submitters and witnesses referred to a range of benchmarking reports and indexes that can help assess Australia's international position in relation to financial services generally, and FinTech and RegTech specifically, including:

- the *Global FinTech Hub Report*, compiled by Cambridge Judge Business School; [100]
- the *Global FinTech Adoption Index* released biennially by Ernst & Young (EY);[101]
- KPMG's *The Pulse of FinTech*, a biannual publication looking at key activities and trends in FinTech globally;[102]
- H2 Ventures and KPMG's *Fintech 100 Leading Global Fintech Innovators*, which ranks FinTech companies globally based on a range of metrics;[103]
- Cambridge Centre for Alternative Finance's *Global RegTech Industry Benchmark Report*;[104]
- The World Economic Forum's *Global Competitiveness Report*;[105]
- The IMD Business School's *World Competitiveness Ranking*;[106]

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98 The RegTech Association, *Submission 10*, p. 6.

99 Dr Dimitrios Salampasis, *Submission 77*, p. 2.

100 Power Ledger, *Submission 1*, p. 9. See: Cambridge Judge Business School, *The Future of Finance is Emerging, New Hubs, New Landscapes: Global FinTech Hub Report*, 2018. This report compiles a global assessment of 100 top FinTech Hubs; in the 2018 edition, the city of Sydney ranked 11th overall.

101 Ernst & Young, *Submission 30*, p. 1.

102 For the latest edition of this series, see: KPMG, *The Pulse of Fintech H2'19: Global report on fintech investment trends in the second half of 2019*, February 2020, https://home.kpmg/au/en/home/insights/2017/04/pulse-of-fintech.html (accessed 10 March 2020).

103 See: KPMG and H2 Ventures, *2019 Fintech100: Leading Global fintech innovators*, https://home.kpmg/xx/en/home/insights/2019/11/2019-fintech100-leading-global-fintech-innovators-fs.html (accessed 10 March 2020).

104 See: Cambridge Centre for Alternative Finance and EY Japan, *Global RegTech Industry Benchmark Report*, https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/the-global-regtech-industry-benchmark-report/#.XmctT02P4Ss (accessed 10 March 2020).

105 Dr Dimitrios Salampasis, *Submission 77*, p. 2. This report focuses on competitiveness issues at an economy-wide level; in 2019, it found that Australia has the 16th most competitive business environment globally, down two places from 14th in 2018.

- The *Global Innovation Index*, published annually by Cornell University, INSEAD and the World Intellectual Property Organization;[107] and
- AlphaBeta's 2019 report *Australia's Digital Opportunity: growing a $122 billion a year tech industry*.[108]

4.96 Austrade told the committee that, in addition to utilising benchmarking research generated by the private sector, it 'publishes capability reports on fintech and the wider financial system for Australia which includes information on Australia's regulatory regime including', to assist international investors looking to enter the Australian market.[109]

4.97 It was noted that other jurisdictions are continuing to progress initiatives to further their growth and competitiveness in the FinTech sector. For example, the UK Government announced a review of the FinTech sector in that country in its March 2020 Budget:

> The government has invited Ron Kalifa OBE to lead a major review into the fintech sector. The review will identify what more industry and government can do to support growth and competitiveness, to ensure that the UK maintains its global leadership in this vital sector. The government will also extend funding for the Fintech Delivery Panel, as well as touring the regions and nations of the UK to showcase its diverse range of fintech firms.[110]

Access to the New Payments Platform

4.98 A number of FinTechs raised concerns with the committee about their ability to access the New Payments Platform (NPP).

4.99 As noted in Chapter 2, the NPP is a real-time payments infrastructure platform developed by 13 Australian banks and financial services providers, which became available to the public in February 2018. The development and

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[106] Dr Dimitrios Salampasis, *Submission 77*, p. 2. This report ranks Australia in 18th place on the 2019 list, up from 19th in 2018.

[107] See https://www.globalinnovationindex.org. Australia ranked 22nd globally in the 2019 Global Innovation Index, down from 20th in 2018.

[108] Digital Industry Group Inc, *Submission 120*, p. 1.

[109] Ms Jenny West, General Manager, Trade and Investment, Global Market and Sector Engagement, Austrade, *Proof Committee Hansard*, 28 February 2020, pp. 43–44; Austrade, Answers to questions on notice from a public hearing 28 February 2020 (received 17 March 2020), p. 2. Austrade's current capability report for the Australian financial services sector is available at: www.austrade.gov.au/International/Buy/Australian-industry-capabilities/Financial-Services.

[110] United Kingdom Government, HM Treasury, *Budget 2020*, 'Budget Policy Decisions', 12 March 2020, https://www.gov.uk/government/publications/budget-2020-documents/budget-2020#budget-policy-decisions (accessed 13 March 2020).

operation of the NPP is overseen by a joint venture company NPP Australia (NPPA) established for this purpose.[111]

4.100 More than 66 million accountholders are now able to make and receive payments via the NPP (estimated at about 90 per cent of all accounts that will eventually be reachable). According to analysis conducted by the RBA, the adoption rate of the NPP is proceeding at least as quickly, if not faster, than the take up of real time payments in other overseas markets. [112]

4.101 The NPP operates as an economically self-sustaining entity, with the NPPA's operating costs recovered from its shareholders via wholesale operating charges.[113]

4.102 Mr Adrian Lovney, CEO of NPPA, informed the committee how governance and decision-making processes relating to the NPP are structured:

> The NPPA board has 12 voting directors: three independent directors, including the chair; a director representing the Reserve Bank of Australia; four directors from small to medium-sized banks and payment aggregators; and only four directors from the four major banks. Each director has one vote. Collectively, the directors appointed by the four major banks have only one-third of the votes on the board. Incumbent banks do not have a say in how decisions about direct access or indirect access to the NPP are made. Applications for direct access are assessed by management, with the final decision made by a board subcommittee, which is made up entirely of independent directors and me. This same committee also determines wholesale transaction fees and oversees banks' compliance with mandatory NPP functionality under our mandatory compliance framework.[114]

NPP access and costs

4.103 The NPPA outlined that there are different connection options for organisations wishing to access the NPP, 'catering to market participants with different regulatory status, technology capability, risk and compliance capabilities, and with different cost implications in terms of upfront versus ongoing fees'.[115]

4.104 Direct NPP participants must contribute capital to build and operate the NPP platform, meet extensive technical connectivity requirements, take on

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[111] The current shareholders of NPP Australia (NPPA) are: ANZ Bank, Australian Settlements Limited, Bendigo and Adelaide Bank, Citigroup, Commonwealth Bank of Australia, Cuscal Limited, HSBC Bank Australia, Indue Limited, ING Australia, Macquarie Bank, NAB, Reserve Bank of Australia and Westpac. See: NPPA, *Submission 24*, p. 4.

[112] NPPA, *Submission 24*, p. 7.

[113] NPPA, *Submission 24*, p. 4.

[114] Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 38.

[115] NPPA, *Submission 24*, p. 11.

significant risks (security, fraud etc) and commit to providing mandated functionality as it is rolled out. They are charged a wholesale transaction price set by NPPA. There are currently ten NPP direct participants, including: the four major banks, three aggregator businesses (ASL, Cuscal and Indue), Macquarie Bank and RBA Banking.[116]

4.105 Organisations are able to connect to the NPP indirectly, via services offered by directly connected participants (currently five direct participants are offering such services). 80 organisations (including banks, credit unions, building societies and FinTechs) are currently accessing the NPP indirectly in this way, primarily via the three aggregator businesses.[117]

4.106 The NPPA offered further explanation on the access model pursued by the NPP:

> The NPP has been intentionally designed to be 'open access', encouraging broad participation across the payments ecosystem. One of the three stated constitutional objectives of NPPA is facilitating fair access to the NPP as mutually owned utility infrastructure. It is the first clearing and settlement system in Australia to be designed with access as one of its primary objectives.
>
> …
>
> Direct connection to the NPP is likely to be a practical option for only a few organisations. Some of Australia's largest banks are among 77 organisations who have elected to access the NPP indirectly. The vast majority of organisations seeking access to the NPP do not want to connect directly because of the technical requirements that this entails, and the complexities involved in connecting to a real-time, 24/7 payments infrastructure (specifically operational, security, availability, and resilience requirements imposed by NPPA, as well as maintenance and functionality upgrades). By contrast, connecting indirectly provides organisations with a lower cost, lighter integration option for providing NPP payment services to their customers.
>
> Given this, ensuring a competitive secondary access market to the NPP is important.[118]

4.107 A number of submitters argued that direct access to the NPP should be opened up to a broader range of FinTechs and payments providers. FinTech Australia argued that a reliance on intermediary aggregators to access the NPP will lead to negative outcomes over time:

> [FinTech Australia members] would also like to see more fintechs approved for full usage of the NPP. Approval for full usage is a cost issue

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[116] NPPA, *Submission 24*, p. 11; Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 38.

[117] NPPA, *Submission 24*, p. 6; Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 38.

[118] NPPA, *Submission 24*, p. 12.

> as much as it is a regulatory and compliance one. The significant costs of direct access mean that new entrants remain reliant on third party incumbents to access Australia's world leading payment system. Whilst this may not be a problem in the short term, it has longer term ramifications, including that it further entrenches incumbents and prevents further innovation in the payments space. Opening up access involves more than just accepting members into the [API] sandbox. Instead, opening up direct access to the NPP should be viewed as a future initiative to drive competition in the payments space.[119]

4.108 Airwallex commented that the current requirements for organisations seeking direct access to the NPP are limiting for non-bank FinTechs that don't hold an ADI licence:

> For these non-bank institutions, their ability to access the NPP is restricted to partnership with an NPP Full Participant, many of which offer competing services. Creation of an additional category to support creation of PayIDs…for the purposes of funding payments and foreign exchange and related services would enable faster, more seamless payment experiences for the customers of providers that do not hold an ADI.[120]

4.109 Xinja, a neobank that launched its first products in the Australian market in 2019, outlined a range of difficulties associated with accessing the NPP in its submission:

> We have found NPP accessibility to be expensive, which is not unexpected given that pricing is on a cost recovery basis rather than to promote widespread adoption. We have been quoted $2m to be a direct member of the NPP, in addition to per transaction fees of 8c for each NPP payment sent or received, (compared to direct entry payments on the [Bulk Electronic Clearing System] at 4c per transaction sent). When we explored indirect access, we were quoted costs of at least ~$350k plus implementation costs plus year 1 tiered transaction volume-based fees. There is no price regulation for indirect access, nor are there [Service Level Agreements] for implementation of NPP connection.[121]

4.110 Xinja noted that when connecting indirectly, there are four parties involved at a minimum to implement an NPP connection, and that indirect access 'essentially puts us at the mercy of another small participant in the NPP'.[122] Further:

> We estimate that it may take 6 months to implement as a new player, however we don't believe it needs to take this long. By comparison it took us 6 weeks it took us to do an implementation of Apple Pay and Google

[119] FinTech Australia, *Submission 19*, p. 86.

[120] Airwallex, *Submission 80*, p. 7.

[121] Xinja Bank, *Submission 135*, p. 27.

[122] Xinja Bank, *Submission 135*, pp. 27–28.

> Pay, which also involved 4 parties…Uncertainty in delivery timeframes has a disproportionate impact on pre-revenue startups like Xinja.[123]

4.111 Xinja expressed support for several measures it considered would improve the situation for startups seeking to access the NPP:

- the government could consider either regulating the cost of access, and/or provide grants and/or subsidising NPP connection and ongoing transaction costs, to reduce the financial barriers to connection and strengthen the business case for investment in NPP capability;
- government could invest directly in the NPP to allow some cost recovery by its existing owners, whilst also reducing the upfront and ongoing costs of connection to the NPP for new participants; and
- Service Level Agreements for connectivity to the NPP should be introduced to provide new participants with more certainty of timeframes for connection and associated business cases to invest in NPP access.[124]

4.112 FinTech Australia recommended similarly that the government 'consider subsidising NPP transaction costs to incentivise ADIs to provide access to the NPP, allow them to recoup the investment and reduce the cost for fintechs to access the NPP'.[125]

4.113 Mr Adrian Lovney, CEO of the NPPA, commented on the issue of transaction costs at a public hearing of the committee:

> The cost of NPP transactions has been raised by some as an issue. NPPA operates as an economically self-sustaining entity, recovering its operating costs from shareholders via wholesale operating charges. Ultimately, NPPA will charge a wholesale fee per transaction, which will be published. As volumes grow, this fee will come down. The NPP wholesale fee is one input cost of many, and what banks choose to charge their customers is a commercial decision. But as this fee comes down and the same fee is charged by us to every bank, all organisations seeking to access the NPP should benefit.[126]

4.114 On the broader issue of access to the NPP, Mr Lovney argued that the market for providing NPP access services should become more competitive as the platform matures, enabling greater ease of access at lower cost:

> The NPP is only two years old…[F]ive organisations provide access to third parties which are mostly financial institutions. Two indirectly connected organisations, which are not ADIs and which are both fintechs, Assembly Payments and Monoova, specialise in providing third-party access to other fintechs and non banks. Over time, we think there'll be more competition in this space as more organisations, whether directly

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123 Xinja Bank, *Submission 135*, p. 28.

124 Xinja Bank, *Submission 135*, p. 28.

125 FinTech Australia, *Submission 19*, p. 88.

126 Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 38.

> connected or indirectly connected, deliver access services, including APIs. We're aware of a number of fintechs that are in the advanced stages of obtaining access as we speak. This issue is largely one about timing and maturity.[127]

4.115 Mr Lovney commented further that some of the business models and use cases for NPP functionality sought by FinTechs (for example, cryptocurrency exchanges, blockchain-based services or short-term lending) are diverse and unfamiliar to those providing NPP access services, with the result that they may be perceived as riskier and 'the market is therefore less competitive for this kind of access'. Mr Lovney argued that 'this too, will change over time as familiarity grows with the kinds of services that are sought and a broader range of organisations move to deliver them'.[128]

NPP Functionality

4.116 It was noted that the NPP is still in the process of developing and rolling out additional functionality that will enhance the types of services able to be offered by participants. The NPPA released a roadmap in October 2019 that lays out the expected functionality to be added to the NPP by the end of 2022, with six key priorities:

- Development of NPP message standards to utilise the structured data capabilities of the NPP.
- Development of a 'Mandated Payments Service' to support recurring and 'debit-like' payments on the NPP.
- Implementation of payment initiation capability across the platform ('Basic Payment Initiation Service').
- Implementation of services to support the domestic leg of an inbound cross-border payment.
- Supporting the use of QR codes on the NPP.
- Extension of the NPP API framework and an upgrade of the API sandbox.[129]

4.117 Mr Lovney commented that the capability that is most frequently requested, and which will have the biggest positive impact on NPP access and use, is third-party payment initiation capability, which will be available from late 2021. Mr Lovney noted that because of its specific technical nature, this capability 'will be accessible via a broader range of access points, both direct and indirect access points, than is the case for the services that we have in the market today'.[130]

4.118 FinTech Australia submitted:

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[127] Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 38.

[128] *Committee Hansard*, 20 February 2020, p. 39.

[129] NPPA, *New Payments Platform Roadmap 2019: Enhancing the platform's capabilities*, October 2019, p. 9.

[130] Mr Adrian Lovney, Chief Executive Officer, NPPA, *Committee Hansard*, 20 February 2020, p. 39.

> Members appreciate that realising the full potential of the NPP requires the technical and ideological alignment of all the banks, which takes time. It is acknowledged by members that whilst the NPP has not been easy to access for fintechs, many of the services fintechs demand are simply not available yet.
>
> In this regard, the recently released NPP roadmap does create more transparency around the plans and future service rollouts.[131]

4.119 It was noted, however, that some of the capabilities contained in the NPP roadmap will only be optional for NPP participants to implement; FinTech Australia argued that incumbent providers must enable access to full NPP functionality by all market participants as it becomes available:

> The success of the roadmap will rely upon the 'participants' (ie the banks) being committed to supporting the new functionality - both at technical and service level. Though the NPPA has reviewed their messaging standards (particularly around PayID protection and service level commitments), it will be increasingly important to maintain universal adoption. An example of this is the current APIs available from the NPPA. Though they are available, they cannot be accessed unless the participant bank supports them. This limits the ability for Fintech's to access APIs as not all banks yet support the APIs meaning adoption will not be at an optimal level.[132]

4.120 FinTech Australia recommended that the NPP Roadmap be fully implemented, and that incumbent players with direct access to the NPP ensure that they fully rollout the capabilities of the NPP in a fast and open manner.[133]

Consideration of NPP issues by the RBA

4.121 The RBA which has responsibility for the regulation of the payments system in Australia through the Payments System Board, noted in its submission that the RBA undertook a review into functionality and access issues relating to the NPP in 2018–19, with assistance from the ACCC.[134] It stated that this consultation was partly in response to concerns raised by stakeholders, including some FinTechs, relating to services offered through the NPP and ways of accessing the platform.

4.122 The RBA published the conclusions and recommendations of this review in June 2019, which found that while the NPP was generally operating well:

> …the report also noted that there had been a slow and uneven rollout of NPP services by the major banks, which had likely slowed the development of new NPP functionality and contributed to stakeholder concerns about access to the NPP. The report therefore included a number

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131 FinTech Australia, *Submission 19*, p. 86.

132 FinTech Australia, *Submission 19*, p. 87.

133 FinTech Australia, *Submission 19*, p. 86.

134 Reserve Bank of Australia, *Submission 16*, p. 8.

> of recommendations aimed at promoting the timely rollout of NPP services and development of new functionality.
>
> The report also addressed concerns raised by some stakeholders, including some fintechs, about a number of access issues that could present potential barriers to entry for new participants. In response, the report included a number of recommendations relating to NPP access.[135]

4.123 The RBA stated that it has been satisfied with NPPA's response to its recommendations and the planned functionality roadmap released by NPPA.[136] Dr Anthony Richards, Head of Payments Policy at the RBA, commented on these issues further at a public hearing of the committee:

> We looked at the access arrangements that were already available and were broadly happy with them. We made some recommendations which NPP Australia Ltd has enacted. The fact is that there are 13 direct participants in the NPP, and then a lot of institutions connect indirectly to the NPP. That's very standard. It's actually quite difficult to do a connection to a real-time payment system that has to be operating 24/7.
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> …
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> So it's not unusual to have a system where have you a relatively small number of direct connectors and then indirect connections provided by other entities. The fact is that there are close to 80 smaller institutions, mid-sized banks and even, I think, increasingly some of the large foreign banks. They are connecting through either the three aggregators, who are providing indirect services, or the two fintech providers, who are also providing indirect services. A couple of the major banks are also providing indirect connection. So there is an increasingly active market for indirect connection. The NPP's constitution says it's supposed to be an open access utility. There will be the same price for all. The smallest direct connector will pay the same price as the largest one. So there's a lot of access friendly activity.[137]

4.124 The RBA noted that it has committed, along with the ACCC, to commence another review of NPP functionality and access issues starting no later than mid-2021:

> This review will be an opportunity to re-assess whether NPPA's access arrangements are warranted in light of developments in the market. This review could commence earlier if the Bank becomes aware of significant issues or concerns regarding NPP access or functionality.[138]

Blockchain and distributed ledger technologies

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[135] Reserve Bank of Australia, *Submission 16*, p. 8.

[136] Reserve Bank of Australia, *Submission 16*, p. 9.

[137] Dr Anthony Richards, Head of Payments Policy, Reserve Bank of Australia, *Committee Hansard*, 28 February 2020, p. 20.

[138] Reserve Bank of Australia, *Submission 16*, p. 9.

4.125 The committee heard about the potential of blockchain technology, estimated at $175 billion annually within five years and $3 trillion by 2030.[139] Mr Michael Bacina, Partner, Fintech Group, Blockchain Group, Piper Alderman told the committee that in his view, 'most fintech and regtech projects will either be built predominantly on distributed ledger technology or blockchain or heavily using that within the next 10 years'.[140]

4.126 The National Blockchain Roadmap from the Department of Industry, Science, Energy and Resources, mentioned in Chapter 3, highlights blockchain's potential as well as opportunities for blockchain to add economic value to a range of business sectors. The leading industries for blockchain activities are financial and insurance services, followed by professional, scientific and technical services and retail trade but other areas include healthcare and social assistance, agriculture as well as real estate services.[141]

4.127 Witnesses noted the potential for blockchain in the property sector including property investment, blockchain as a reporting tool and management of property data.

4.128 The Australian Taxpayers Alliance drew attention to the report by Professor Jason Potts and Dr Trent MacDonald titled *Who should Regulate Bitcoin? Challenges and opportunities for blockchain technology in Australia* and the potential of using blockchain technology to 'encode, confirm, and transfer almost all forms of property'.[142] This use was also highlighted in the report by Dr Chris Berg, Professor Sinclair Davidson and Professor Jason Potts, titled, *What Does the Blockchain Mean for Government – Cryptocurrencies in the Australian Payments System.*[143]

Property investment

4.129 Lakeba noted using blockchain, AI and cloud computing technologies to develop successful commercial ventures such as Bricklet which:

> has revolutionised property investment, by enabling investors to directly own fragments of real estate; thereby expanding the property investment

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[139] Mr Michael Bacina, Partner, Fintech Group, Blockchain Group, Piper Alderman, *Committee Hansard*, 19 February 2020, p. 6.

[140] Mr Michael Bacina, Partner, Fintech Group, Blockchain Group, Piper Alderman, *Committee Hansard*, 19 February 2020, p. 6.

[141] Australian Government, Department of Industry, Science, Energy and Resources, *National Blockchain Roadmap*, February 2020, p. 10.

[142] Australian Taxpayers Alliance, *Submission 102*, Attachment 3, Professor Jason Potts and Dr Trent MacDonald, *Who should Regulate Bitcoin? Challenges and opportunities for blockchain technology in Australia*, p. 10.

[143] Australian Taxpayers Alliance, Submission 102, Attachment 4, Dr Chris Berg, Professor Sinclair Davidson and Professor Jason Potts, *What Does the Blockchain Mean for Government – Cryptocurrencies in the Australian Payments System*, pp. 7–9.

> market to those who are unable or unwilling to purchase entire properties.[144]

4.130 This technology 'makes it more affordable for people to invest in property by enabling small parcels of a property title, known as 'bricklets', to be purchased by individuals. Bricklets can then be traded in the same way entire property titles are bought and sold, only incurring pro rata costs'.[145]

4.131 Dr Kate Galloway, Dr Louise Parsons and Dr Francina Cantatore also spoke about the 'fractionalisation of real property through integration of a blockchain platform with the land register'.[146]

Mortgage transactions

4.132 A.T. Kearney highlighted government initiatives in the UK where the Financial Conduct Authority (FCA) in collaboration with R3, Royal Bank of Scotland and other global banks 'built a prototype application for regulatory reporting of mortgage transactions on distributed ledger technology (blockchain)'.[147]

Government Property Data

4.133 Although a state and territory government issue, the issue of government property data (GPD) was raised by FinTech Australia:

> GPD predominantly comes from the various state and territory governments. It is provided primarily by valuers, government departments and land registration service providers (land titles offices). Critically, government property data ("GPD") represents the core data that sits at the heart of any national property database that is required to build analytics such as an automated valuation model. Fintechs face a significant hurdle in attempting to build a national property database because they have to deal with 8 different data licenses and application processes to become a value added reseller…of GPD.[148]

4.134 FinTech Australia was of the view that the NSW Open Data Initiative 'represents the gold standard to which other State and Territory governments should aspire…'[149] The cost of accessing this data was also raised with FinTech Australia arguing that 'appropriate protections to keep GPD affordable have not been put in place'.[150] It recommended that:

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144 Lakeba, *Submission 60*, p. 5.

145 Premier of South Australia, the Hon Mr Steven Marshall MP, 'SA-based innovation to revolutionise property investment bricklet by bricklet', *Media release*, 23 September 2019.

146 Dr Kate Galloway, Dr Louise Parsons, and Dr Francina Cantatore, *Submission 32*.

147 A.T. Kearney, *Submission 52*, p. 20.

148 FinTech Australia, *Submission 19*, p. 45.

149 FinTech Australia, *Submission 19*, p. 45.

150 FinTech Australia, *Submission 19*, p. 45.

> Every Australian State and Territory should make Government property data available to the Australian public, including fintechs, free of charge under the Creative Commons Attribution Licence (or equivalent) in order to allow fintechs and other parties to develop solutions that improve information asymmetries in the Australian property market.[151]

4.135 The ASX spoke with the committee about the potential of blockchain or distributed ledger technology to 'build the next generation of financial services and reduce costs for consumers'. Mr Cliff Richards, Executive General Manager, Equity Post Trade, ASX, indicated that the opportunities provided by blockchain are 'much larger than just addressing the clearing and settlement functions of the stock market'. Mr Richards explained:

> Our architecture and the work that we're doing now that is parallel and separate to CHESS[152] replacement are making the same infrastructure, the blockchain infrastructure, available to any technology company of any size. We will be making available as another service the same safety and security that we're putting into the replacement of CHESS. There are examples of fintechs, regtech and technology companies in general coming to us because they see the value of an infrastructure using distributed ledger technology being available by a trusted, recognised brand such as ASX. It allows them to focus on the differentiation that they want to present to their clients. [153]

4.136 When asked whether this technology could be applied to the state government management of property data Mr Peter Hiom, Deputy Chief Executive Officer, ASX, responded:

> The short answer is yes. The slightly longer answer is: when we talk about blockchain—blockchain is a broad church of technologies. Some blockchains are open and public, which means data is shared in a very universal way, meaning everybody gets everything. Other blockchains, such as the one we're using, create a private permission blockchain where the data that is received by each participant in that ecosystem only pertains to the data they have a right to see. I think those sorts of blockchains can play a role, particularly when, embedded in the software programming language you're using, you have the ability to define everyone's rights and obligations as they relate to data. As long as you have those things—you're segregating the data such that users only get what they are entitled to see and it isn't predicated on sharing everything, and you have the ability to encode the data governance that pertains to maintaining the appropriate consumer protections around data— then I think the answer is yes.[154]

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[151] FinTech Australia, *Submission 19*, p. 46.

[152] Clearing House Electronic Subregister System, which is the computer system used by the ASX to manage the settlement of share transactions and to record shareholdings.

[153] Mr Cliff Richards, *Committee Hansard*, 20 February 2020, p. 6.

[154] Mr Peter Hiom, *Committee Hansard*, 20 February 2020, pp. 6–7.

4.137 Mr Hiom added there could be 'a series of interconnected nodes in individual states'.[155]

CHESS replacement project

4.138 Concerns were raised about the ASX CHESS replacement project, which replaces the ASX's core system that facilitates clearing, settlement and other post-trade services with distributed ledger technology. ASX has been working on the replacement project since 2016.[156] The ASX's technology partner to deliver the project is distributed ledger technology firm Digital Asset, in which ASX holds an equity stake.[157]

4.139 The project was described as 'a very significant change to the technology that will progressively and materially change the structure of the Australian equity capital market and how it works compared to today'.[158] Computershare argued that this will result in changes to the roles, responsibilities, processes and custody of data and as such ASX should acknowledge this change in the market structure and 'allow the appropriate scrutiny and governance to occur'.[159]

4.140 Computershare indicated that it holds concerns that the suggested benefits of the project may not be realised 'due to the presentation of inaccurate information, the absence of critical analysis, or the reliance of secondary or tertiary events that are beyond the control of ASX'. It expressed further concern 'over the risk accumulating in this project in light of the April 2021 go live deadline' as 'ASX has still not released all information about the project, inhibiting the industry's ability to prepare and increasing the risk on the market'.[160] Computershare argued:

> At this stage, and with the information available, it seems the ASX is attempting to entrench its monopoly powers over the industry. As our industry continues to evolve and new technologies are adopted, the Government must take an active role in encouraging growth and market competition.[161]

4.141 A key concern outlined was:

> At the heart of industry concerns is the potential conflict of interest of ASX being the project owner responsible for the design of the replacement

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[155] Mr Peter Hiom, *Committee Hansard*, 20 February 2020, p. 7.

[156] ASX, *Submission 44.1*, p. 3.

[157] ASX, *Submission 44.1*, p. 2.

[158] Computershare, *Submission, 153*, p. 2.

[159] Computershare, *Submission, 153*, pp. 2–3.

[160] Computershare, Submission, 153, p. 3.

[161] Computershare, *Submission, 153*, p. 3.

> project, the body controlling the rule amendments that govern all users, as well as its future operator and a for-profit ASX (self) listed entity.[162]

4.142 These concerns were supported by the Australasian Investor Relations Association (AIRA) which agreed with Computershare's recommendation that 'legislation is passed to allow the Council of Financial Regulators and the Australian Competition and Consumer Commission to enforce appropriate parameters around the ASX's use of its monopoly powers and provide oversight of ASX's rule making powers'.[163] While acknowledging the ASX decision to reconsider the consultation and implementation schedule in light of COVID-19, AIRA submitted that in its view 'the go live date should be pushed back 12 months to at least April 2022' with the date chosen through engagement with industry.[164] AIRA also argued that a 'broader review of the governance and scope of the Replacement Project is required to remove uncertainty and safeguard a level playing field for all participants'.[165]

4.143 The ASX was asked to respond to these concerns which it did by way of a supplementary submission. It reported that significant progress has been made on the CHESS Replacement Project with the 'deployment of software representing close to 90% of core clearing and settlement functionality in the customer development environment, and…the publication of 100% of the functional customer technical specifications for the new system'.[166] It reported that the scope of change is the result of a comprehensive consultation process with the market. In addition, '[a]ll changes to ASX's operating rules are subject to an extensive public consultation and regulatory approval process overseen by ASIC'.[167]

4.144 In response to the COVID-19 pandemic and feedback from stakeholders, the ASX reported that the go-live date has been delayed until April 2022, noting that this is also subject to public consultation.[168]

4.145 Addressing governance and conflict of interest concerns, the ASX stated:

> There have been no conflicts of interests demonstrated in the development of the CHESS replacement system. ASX operates clearing and settlement facilities subject to strict licence obligations under the Corporations Act. This includes being accountable for the development, implementation and operation of the technology that supports those facilities. We take these

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[162] Computershare, *Submission, 153*, p. 6.

[163] AIRA, *Submission 169*, p. 4. See also Computershare, *Submission, 153*, pp. 8–9.

[164] AIRA, *Submission 169*, p. 4.

[165] AIRA, *Submission 169*, p. 4

[166] ASX, *Submission 44.1*, p. 1.

[167] ASX, *Submission 44.1*, p. 1.

[168] ASX, *Submission 44.1*, p. 2. See also ASXCHESS Replacement Project Newsletter, 28 July 2020.

> responsibilities extremely seriously and as a result the project is operated under robust governance processes within ASX. ASX's equity stake in Digital Asset is neither evidence of a conflict nor unusual. Companies often make investments in their vendors as they work together on mission critical projects. In fact similar to ASX, several other financial services and technology firms who are working with Digital Asset have made investments in the company.
>
> The project is also subject to significant regulatory oversight by the RBA, ASIC, ACCC and the Treasury. This is based on the regulatory framework applicable to CHESS as critical market infrastructure. ASX has a structured and intensive program of engagement with the regulatory agencies on the project, which includes the provision of a range of detailed documentation.[169]

4.146 The ASX added that the new system is being built to enable the 'safe and secure sharing of CHESS data between entitled parties, and to enable others to use the infrastructure to build innovative new services that will benefit issuers, investors and the intermediaries that service them'. While acknowledging this may challenge business models that rely on manual processing:

> …an overwhelming majority of participants believe that further digitisation of the industry - making richer data sets more widely available -will benefit the market as a whole. Many in the industry are embracing the opportunity that the new system will provide them. This infrastructure is being developed to unleash innovation by allowing fintechs, participants, and existing service providers to be able to build their own services directly on top of it.[170]

Foreign exchange pricing and transparency

4.147 Airwallex raised the issue of transparent pricing for foreign exchange transactions and explained:

> Due to the traditionally complex nature of foreign exchange, customers rely on the advice of trusted financial services providers to make decisions on FX and international payments. The [opacity] of this function however has created an environment in which FX providers are able to charge unreasonable and overinflated rates and fees to customers that are ill-equipped with the data needed to make informed decisions.[171]

4.148 This view was supported by FinTech Australia which noted '[i]n relation to fees, it is well known that there is a lack of transparency in foreign exchange ("FX") around the world'. It added this is 'further compounded by a lack of transparency in advertising fees to provide these services'.[172]

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[169] ASX, *Submission 44.1*, p. 2.

[170] ASX, *Submission 44.1*, p. 2.

[171] Airwallex, *Submission 80*, pp. [7–8].

[172] FinTech Australia, *Submission 19*, p. 48.

4.149 FinTech Australia recommended that the government 'enact laws requiring all foreign exchange fees to be transparently displayed including the exchange rate, markup and upfront fees, all displayed as a total cost'.[173]

4.150 Airwallex suggested a different approach:

> Australia should look to the United Kingdom's Financial Conduct Authority (FCA) FX Global Code, a market code of best practice to promote integrity and effectiveness within the FX market. Under this code, full and upfront disclosure of associated fees and markups is encouraged to equip customers with the data required to make informed decisions. If a market code of best practice in Australia is made mandatory, especially for the big banks and other market participants that are less transparent in their foreign exchange pricing, it will help promote better outcomes for customers by giving them visibility over the actual costs of performing foreign exchange transactions. This will ultimately increase competition across the sector by calling out bad players that do not transparently disclose the cost of exchanging one currency for another.[174]

4.151 The RBA acknowledged the issue around transparency of foreign exchange. Dr Anthony Richards, Head of Payments Policy, pointed to work undertaken by the ACCC and stated:

> The [RBA] governor made a speech in December. He showed a very interesting graph that showed that if you go to one of the big four banks and try to make a foreign exchange transfer, you will often pay about four or five per cent.[175]

4.152 Dr Richards added:

> If you go to one of the non-traditional providers, one of the new business models, you might pay something closer to 70 basis points or 100 basis points. So you might pay one-fifth of that or less. So it's very clear that there are competitors out there providing cross-border payments much more cheaply than the banks. We think that's a problem that needs solving…[176]

4.153 In October 2018 the ACCC started an inquiry into the supply of foreign currency conversion services in Australia. In September 2019 it released its final report. In relation to price information presented to consumers the ACCC report stated:

> Inquiry stakeholders noted that there was inadequate disclosure of prices by some suppliers and consumers have expressed concern that they do not always know what the total price for an FX service will be up-front. Our inability to easily collate complete price information from publicly

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[173] FinTech Australia, *Submission 19*, p. 50.

[174] Airwallex, *Submission 80,* p. [8].

[175] Dr Richards, *Committee Hansard*, 28 February 2020, p. 24.

[176] Dr Richards, *Committee Hansard*, 28 February 2020, p. 24.

> available sources demonstrates how difficult it is for consumers to compare total prices.[177]

4.154 In the report the ACCC referred to research commissioned by the UK government in 2018, undertaken by the UK's Behavioural Insights Team (BIT) which conducted a study presenting price information to participants in five scenarios: low (baseline), medium (2 scenarios), high transparency and a current market option. The ACCC summarised that the study found:

> …only 42 per cent of participants were able to identify the best option when the low transparency format was used. In contrast, 69 per cent of participants identified the best option when the medium transparency format was used…Study participants performed (slightly) poorer with the high transparency format.[178]

4.155 The ACCC concluded:

> The BIT hypothesised that results observed could be because providing consumers too much information could lead to 'choice overload', where an excess of information in (complex) choice situations can lower engagement and decision-making quality'. This suggests that any proposed price disclosure regime would need to strike an appropriate balance between providing transparency and avoiding overloading consumers with unnecessary information.[179]

4.156 The ACCC found that 'prices lack transparency'[180] and considered that 'improving price transparency will support price competition by making it easier for consumers to seek out the cheapest suppliers'.[181] The final report also investigated international approaches to improving price transparency and comparability looking at the US, UK and European Union.[182] The ACCC recommended measures to improve how prices are presented to consumers:

> **Up-front correspondent banking fees**
>
> International money transfer (IMT) suppliers should take the necessary steps to inform their customers up-front of the total price, inclusive of any retail mark-ups and fees, of conducting an IMT transaction.
>
> **Online calculator**

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177 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 9.

178 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 79. FinTech Australia, *Submission 19*, pp. 48–49. Referring to the report *The impact of improved transparency for foreign many transfers for consumers and SMEs* available at: https://www.bi.team/wp-content/uploads/2018/03/The-impact-of-improved-transparency-on-foreign-money-transfers-for-consumers-and-SMEs_WEB.pdf accessed 4 March 2020.

179 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 79.

180 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 10.

181 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 8.

182 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 78.

> Suppliers of IMTs and foreign cash should offer digital tools on their websites to calculate the total price, inclusive of any retail mark-ups and fees, for those services for consumers.
>
> **Foreign cash prices on rate boards**
>
> Foreign cash suppliers should ensure that they provide price information that will enable an in-store consumer to understand the total price, inclusive of any retail mark-ups and fees, of foreign cash transactions.
>
> **Disclosure of international transaction fees**
>
> Merchants offering goods and services online to Australian consumers should inform consumers if they are likely to be charged an international transaction fee. Merchants should provide this information prominently and clearly, before a customer enters into a transaction. If consumers are charged an unexpected international transaction fee, they should contact their bank or card scheme to request a refund of the fee.[183]

4.157 In its report, the ACCC undertook to 'monitor the take up of [the] recommendations and assess whether further response is needed, either by the ACCC or government'.[184]

4.158 In December 2019, the ACCC published on its website best practice guidance documents for businesses on the transparent pricing of foreign currency conversion services, and on the disclosure of international transaction fees.[185] This guidance states that the ACCC 'will be monitoring the uptake of our guidance and will consider enforcement action where appropriate'.[186]

4.159 The ACCC informed the committee that the Treasurer has formally required the ACCC to report back to government by September 2020 on industry's implementation of the ACCC's recommendations.[187]

4.160 At the 4 March 2020 Senate Economics Legislation Additional Estimates hearing, the ACCC told that committee that following their earlier work, they have established a working party on foreign exchange issues which involves:

> …a number of parties within government that have got an interest in the issues. We're working actively within that group to figure out how we can

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183 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 12.

184 ACCC, *Foreign currency conversion services inquiry*, Final Report, July 2019, p. 12.

185 ACCC, Answers to questions on notice from a public hearing held 27 February 2020, Canberra (received 17 March 2020), p. 2. See: ACCC, *Transparent pricing of foreign currency conversion services*, December 2019, available at:

https://www.accc.gov.au/system/files/1651FAC_FX%20busines%20guide%20Transparent%20pricing%20D02.pdf (accessed 17 March 2020).

186 ACCC, *Transparent pricing of foreign currency conversion services*, December 2019, p. 2.

187 ACCC, Answers to questions on notice from a public hearing held 27 February 2020, Canberra (received 17 March 2020), p. 2.

reduce some of the obstacles that were being put in the way of some of those fintechs.[188]

[188] Mr Marcus Bezzi, Executive General Manager, Specialised Enforcement and Advocacy Division, Senate Economics Legislation Committee, *Estimates Hansard*, 4 March 2020, p. 173.

Chapter 5
Regulation issues - Consumer Data Right

5.1 This chapter discusses evidence received by the committee on the introduction of the Consumer Data Right in Australia.

5.2 The Consumer Data Right (CDR) is an economy-wide reform with the objective of empowering consumers to access better products and services across a range of industries. It aims to achieve this by giving consumers the right to safely access certain data about themselves held by businesses, and direct that this information be transferred to accredited, trusted third parties of their choice.[1] The CDR will also require businesses to provide public access to information on specified products that they offer (known as 'product reference data') in a common format.[2]

5.3 The CDR is designed to give consumers more control over their data, leading, for example, to more choice in where they take their business and more convenience in managing their services.[3] The CDR will be rolled out sector-by-sector, starting with the banking sector, where it is referred to as 'Open Banking'. The Treasurer has authority to designate sectors for rollout of the CDR. Following banking, the CDR will be rolled out in the energy and telecommunications sectors, with further sectors of the economy to follow.

5.4 The committee received a large volume of evidence on issues relating to the CDR, including:

- the implementation and rollout of Open Banking;
- accreditation issues and access to CDR data;
- the future of alternate means of accessing customer data once CDR is implemented;
- extending the CDR regime to other sectors within financial services, including superannuation and general insurance; and
- governance arrangements for the CDR.

Implementation of Open Banking

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1 Treasury, *Consumer Data Right Overview*, September 2019, p. 1, available at https://treasury.gov.au/consumer-data-right (accessed 10 February 2020); Australian Competition and Consumer Commission (ACCC), *Explanatory Statement: Proposed Competition and Consumer (Consumer Data Right) Rules 2019*, August 2019, p. 5.

2 Product reference data provides information about the features and descriptions of bank products, including interest rates, fees and charges, and eligibility criteria. Publication of this data will be of particular benefit as an aid to comparison services.

3 ACCC, *Explanatory Statement: Proposed Competition and Consumer (Consumer Data Right) Rules 2019*, August 2019, p. 5.

5.5 The introduction of a consumer data right in the banking sector came about following an announcement in the 2017–18 Commonwealth Budget that the Government would introduce an Open Banking regime in Australia.[4]

5.6 The government commissioned a review, led by Mr Scott Farrell, to develop the best approach to implement the open banking regime in Australia. Following a public consultation period in early 2018, the review's recommendations were agreed by the Australian Government in May 2018.[5] The government allocated funding of $20 million over four years to oversee the implementation of the CDR, starting with the rollout of Open Banking.[6] The legislation establishing the framework for the CDR regime was subsequently passed through the Parliament in August 2019.[7]

5.7 Under the CDR framework, the Australian Competition and Consumer Commission (ACCC) has responsibility for developing the detailed rules governing the implementation of the CDR in banking and in subsequent sectors, including overseeing an accreditation scheme for data holders, approving technical standards, and taking enforcement action to ensure compliance by participants.

5.8 The Office of the Australian Information Commissioner (OAIC) has responsibility for privacy protections relating to the CDR, while a Data Standards Body (currently CSIRO's Data61) is responsible for developing technical standards relating to data transfer and security under the CDR.

Evidence received on Open Banking rollout

5.9 Many submitters and witnesses commented on the potential of Open Banking to create a more competitive environment in the financial services sector and enable innovative businesses to prosper and drive better outcomes for consumers.[8]

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4 Treasury, 'Review into Open Banking in Australia', https://treasury.gov.au/review/review-into-open-banking-in-australia (accessed 11 February 2020).

5 Treasury, 'Consumer Data Right', https://treasury.gov.au/consumer-data-right (accessed 11 February 2020).

6 ACCC, *Media Release*, 'ACCC welcomes consumer data right', 9 May 2018, https://www.accc.gov.au/media-release/accc-welcomes-consumer-data-right (accessed 11 February 2020).

7 *Treasury Laws Amendment (Consumer Data Right) Act 2019*.

8 See for example: Australian Computer Society, *Submission 3*, p. 3; illion, *Submission 13*, p. 5; RedCrew, *Submission 2*, p. [12]; Tic:Toc, *Submission 127*, p. 2; Professor Ross Buckley, Douglas Arner, Dirk Zetzsche and Evan Gibson, *Submission 50*, p. 2; Ms Emma Gray, Chief Data Officer, ANZ, *Committee Hansard*, 19 February 2020, p. 26; American Express Australia, *Submission 71*, p. 3; Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), p. 7.

5.10 FinTech Australia noted that 40 per cent of respondents in the 2019 *FinTech Census* indicated that they anticipate their organisations will become an accredited provider under the CDR regime, demonstrating that Fintech companies 'see benefit from being part of this new data regime'.[9]

5.11 Issues of concern relating to the rollout of the CDR for banking data raised with the committee included:

- the implementation timeline for Open Banking;
- the accreditation regime for data recipients under the CDR, particularly the treatment of intermediary organisations;
- the future of other data capture methods such as 'screen scraping'; and
- the need to educate consumers about the rollout of Open Banking.

Implementation timeline

5.12 The ACCC released the foundational CDR rules and accreditation guidelines in September 2019, and the CDR Rules entered into effect as a formal legislative instrument on 6 February 2020.[10]

5.13 The implementation of Open Banking is being pursued in an iterative fashion, with several types of data and financial institutions progressively coming under the scheme over a period of time.

5.14 The types of banking data consumers will be able to direct CDR data holders to share have been divided into three phases, which will be rolled out sequentially:

- Phase 1 – data relating to credit and debit cards, deposit accounts and transaction accounts.
- Phase 2 – data relating to mortgages and personal loans.
- Phase 3 – data relating to products including business loans, overdraft facilities, and foreign currency accounts.[11]

5.15 Under the current timeline for implementation, the four major banks (ANZ, Commonwealth Bank, NAB and Westpac) started sharing product reference data from July 2019 on a voluntary basis,[12] and commenced sharing phase 1

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9 FinTech Australia, *Submission19*, p. 33.

10 *Competition and Consumer (Consumer Data Right) Rules 2020*. See: ACCC, *Media Release*, 'Consumer Data Right Rules made by ACCC', https://www.accc.gov.au/media-release/consumer-data-right-rules-made-by-accc (accessed 11 February 2020).

11 For the full list of account types captured under each phase, see: Competition and Consumer (Consumer Data Right) Rules 2020, Schedule 3, paragraph 1.4.

12 ACCC, 'Consumer data right updates: Voluntary publication of product reference data and GitHub update', 1 July 2019, https://mailchi.mp/accc.gov.au/voluntary-publication-of-product-reference-data-and-github-update (accesses 21 February 2020).

customer data from 1 July 2020. They are required to share Phase 2 data from 1 November 2020, and phase 3 data from 1 February 2021.[13]

5.16 Under the ACCC's current timeline, mandatory consumer data sharing obligations for non-major authorised deposit-taking institutions (ADIs) are due to commence on 1 July 2021 for Phase 1 data and 1 November 2021 for Phase 2 data,[14] with the sharing of product reference data commencing on 1 October 2020.[15]

Timeline delays

5.17 The current implementation schedule is the result of several delays that have already occurred. Under the initial timeline announced in May 2018, the major banks were required to make customer data available in several phases between July 2019 and July 2020.[16] Under an updated implementation timetable published in September 2019, the commencement of the sharing of the first customer data set was revised to February 2020.[17]

5.18 This timetable was further revised to the current iteration in December 2019, revising the start date for the commencement of customer data sharing delayed from February 2020 to July 2020. The ACCC stated that this updated timeline for these aspects of the CDR reforms would 'allow additional implementation work and testing to be completed and better ensure necessary security and privacy protections operate effectively'.[18]

5.19 At the committee's public hearing on 27 February 2020, ACCC representatives advised the committee that system testing was currently underway with the big four banks as well as eight entities selected to be initial data recipients under Open Banking.[19] Mr Paul Franklin, Executive General Manager,

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13 ACCC, 'Consumer data right updates: Update to CDR timeline announced', 20 December 2019, https://mailchi.mp/accc.gov.au/update-to-cdr-timeline-announced; Competition and Consumer (Consumer Data Right) Rules 2020, Schedule 3, paragraph 6.6.

14 ACCC, 'Consumer Data Right updates: Timeframes confirmed and exemptions made', 4 June 2020, https://mailchi.mp/accc.gov.au/timeframes-confirmed-and-exemptions-made (accessed 29 July 2020).

15 ACCC, Answers to written questions on notice (received 28 April 2020), p. 3.

16 ACCC, *Media Release*, 'ACCC welcomes consumer data right', 9 May 2018, https://www.accc.gov.au/media-release/accc-welcomes-consumer-data-right (accessed 11 February 2020).

17 ACCC, *Consumer Data right (CDR): CDR Rules (banking)*, 2 September 2019, https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/cdr-rules-banking (accessed 17 February 2020).

18 ACCC, *Media Release*, 'Consumer Data Right timeline update', 20 December 2019.

19 Ten participants were selected in September 2019 as initial data recipients to take part in the pre-launch CDR testing regime. These are: 86 400; Frollo Australia; Identitii; Procure Build; Quicka; Regional Australia Bank; Verifier Australia; Wildcard Money; Intuit Australia; and Money

Consumer Data Right at the ACCC, told the committee extensive work was required on the part of all participants to build the systems necessary for Open Banking to function:

> Two prerequisites for the launch are that the initial group of data recipients are accredited and that the necessary technology is in place and has been tested to ensure it's robust and secure. In relation to accreditation of the data recipients… we are currently hopeful that the majority will be able to be accredited for launch.
>
> In relation to technology, IT builds are required by the ACCC, each of the major banks and each of the data recipients… As lead regulator, the ACCC has overall responsibility for the delivery of a trusted and secure ecosystem, and is undertaking a significant testing and assurance program to ensure that at launch the systems operate as intended, deliver the expected functionality and that they're safe and secure.[20]

5.20 When questioned on the expected uptake of the CDR system, Mr Franklin stated that the ACCC doesn't have 'a specific target' in mind, however it has seen evidence of 'very strong demand from prospective data recipients' as well as a number of ADIs that 'are very keen to make their data available as quickly as possible'. Mr Franklin commented further:

> [B]y the end of 2021 we would like substantially all consumers in Australia to have their banking data available, and we would like to have a vibrant selection of data recipients available.[21]

5.21 Despite disruptions caused by the onset of the COVID-19 pandemic, the first phase of consumer data sharing under Open Banking formally went live on 1 July 2020. Two data recipients, Frollo and Regional Australia Bank, had fully completed the accreditation process and were the first participants able to receive Open Banking data from the major banks.[22]

5.22 The ACCC stated although many FinTechs 'wanted to be part of the system on day one, the pandemic had caused many to shift their priorities and redirect resources away from the accreditation process'. With a further 39 parties

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Tree Financial Technology. See: ACCC, 'Successful participants selected for CDR testing and release of accreditation guidelines', https://mailchi.mp/accc.gov.au/successful-participants-selected-for-cdr-testing-and-release-of-accreditation-guidelines (accessed 2 March 2020). Two participants have now withdrawn from the process.

[20] *Committee Hansard*, 27 February 2020, p. 11.

[21] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, p. 15.

[22] Mr James Eyers , 'Open banking will reduce costs, improve choice: Treasurer', *Australian Financial Review*, 1 July 2020, https://www.afr.com/companies/financial-services/open-banking-will-reduce-costs-improve-choice-treasurer-20200630-p557hh (accessed 29 July 2020).

having started the approval process, the ACCC considers there 'should be about a dozen official data recipients' by September 2020.[23]

5.23 Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, described the launch of Open Banking as 'a game changing reform' that will 'revolutionise the way that consumers and small businesses use their data to compare prices and switch between products and providers in the banking sector'.[24] The Minister noted that Open Banking can assist consumers navigate their finances during the COVID-19 crisis:

> Open banking couldn't have come at a better time. As people tend to their personal balance sheets and say 'how am I going to find a way through this crisis?' and 'are the products that I've got right for me?', Open Banking will allow them to find a better deal and to use their own data to find that deal.
>
> It will encourage financial services organisations to innovate and tailor products specifically to their clients. And it will make switching between those products more seamless. So it actually comes at a great time and overall, of course, it will reduce the cost of financial services and of everyday banking.[25]

Accreditation issues and access to CDR data

5.24 An issue of importance to many submitters is ensuring that the CDR regime is as accessible as possible to both small and large financial institutions who wish to participate.

5.25 The CDR rules currently provide for a single 'unrestricted' level of accreditation for Accredited Data Recipients (ADRs). Banks holding an ADI licence will automatically be able to access accreditation at this level, due to their pre-existing prudential regulatory requirements, which are deemed sufficient to meet the necessary standards for CDR accreditation.[26] For non-ADIs (which includes the vast majority of FinTechs), Mr Franklin of the ACCC summarised the accreditation requirements as follows:

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[23] Mr James Eyers, 'ACCC paves way for more fintechs in open banking', *Australian Financial Review*, 1 July 2020, https://www.afr.com/companies/financial-services/accc-paves-way-for-more-fintechs-in-open-banking-20200630-p557hm (accessed 29 July 2020).

[24] Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, 'The Consumer Data Right arrives', *Media Release*, 1 July 2020, https://ministers.treasury.gov.au/ministers/jane-hume-2019/media-releases/consumer-data-right-arrives (accessed 10 August 2020).

[25] Cliona O'Dowd, 'No better time for open banking to launch: Senator Jane Hume', *The Australian*, 7 July 2020, https://www.theaustralian.com.au/business/financial-services/no-better-time-for-open-banking-to-launch-senator-jane-hume/news-story/94d64ec6609fc9760b7884358313972e#&gid=null&pid=1 (accessed 10 August 2020).

[26] Mr Bruce Cooper, General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, p. 16.

> For fintechs who are not banks…there are essentially three requirements to pass. Do they have adequate insurance? Are they fit and proper persons? Can they demonstrate that they have a secure environment for the data? Then they need to pass some practical tests that they can actually collect the data. Provided any organisation meets those requirements…any organisation is able to participate in the consumer data right.[27]

5.26 Some FinTechs that submitted to the inquiry expressed disappointment at the estimated costs that will be incurred by organisations who wish to become ADRs, due to the need to upgrade data systems and meet the insurance and other requirements imposed under the accreditation scheme.[28] It was estimated that the costs to an organisation of building a data storage centre capable of hosting CDR data to the required security standards can cost in the range of $50,000 to $70,000.[29]

5.27 These submitters argued that the costs and laborious nature of the accreditation process will prove prohibitive for many FinTechs and RegTechs that would otherwise wish to participate fully in the CDR, thus limiting overall uptake of the scheme and decreasing the benefits available to consumers.[30] Xero, a cloud-based accounting software provider, summarised these issues as follows in its submission:

> For consumers to benefit from open banking and the subsequent increase in competition among lenders, the Government must ensure barriers to entry for FinTechs and RegTechs are as high as necessary but as low as possible. The accreditation process is a major barrier that will materially impact the level of participation, competition among lenders, utility to consumers and consumer interaction with the initiative.[31]

5.28 Raiz Invest argued that the streamlined accreditation process available to ADIs under the CDR Rules unfairly benefits the large incumbent financial institutions and as such will limit Open Banking's ability to provide a more competitive market for consumers.[32]

5.29 SISS Data Services suggested that, to ensure smaller players are able to participate in the CDR, a financial incentive could be offered by government to FinTechs who have gained CDR accreditation:

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[27] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, pp. 15–16.

[28] See: FinTech Australia, *Submission 19*, p. 34; SISS Data Services, *Submission 118*, p. 2.

[29] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, p. 16; FinTech Australia, *Submission 19*, p. 34.

[30] FinTech Australia, *Submission 19*, p. 34. See also: Xero, *Submission 82*, pp. 6–8; SISS Data Services, *Submission 118*, p. 2.

[31] Xero, *Submission 82*, p. 8.

[32] Raiz Invest, *Submission 29*, pp. 6–9.

> This payment would help offset the initial and ongoing costs (compliance, audit and development) of complying with the CDR. To minimise the potential abuse of this incentive, payments would be paid in equal instalments, over a period of time, and only available to FinTechs if they attained and maintained their CDR accreditation.[33]

5.30 ANZ suggested implementing several tiers of accreditation as the next logical step in the evolution of the CDR scheme, whereby 'additional levels of accreditation that are easier to obtain could be introduced that would allow entities to receive either less sensitive CDR data or simply insights from the data rather than the data itself'.[34]

Concerns about unaccredited parties accessing CDR data

5.31 The Financial Rights Legal Centre and the Consumer Action Law Centre (FRLC and CALC) lodged a joint submission raising several concerns about the potential for consumer data released under the CDR framework to be misused. A key concern is the leakage of sensitive financial data to non-accredited recipients outside of the protections of the CDR framework.

5.32 FRLC and CALC stated that under the current framework, if a CDR consumer provides their CDR Data that it has received from a Data Holder (e.g. their banking provider), directly to a third party, the privacy protections afforded to that CDR Data under the CDR regime will not apply:[35]

> [U]naccredited FinTechs can simply ask for people to hand over the data that the consumers themselves request directly from their data holder in a machine readable format. These FinTechs/companies would therefore not have to get accredited.[36]
>
> …
>
> One of the key aims of the CDR is to create a safe and secure environment in which consumers will be able to trust and have confidence that they will be able to transfer or port their data from one data holder or participant to another. However the CDR legislation will facilitate non-accredited parties obtaining CDR information, leaving these consumers, who were led into a system on the promise of higher privacy protections, vulnerable to the lower privacy standards of the [Australian Privacy Principles].[37]

5.33 FRLC and CALC noted that 'Treasury engaged Maddocks to prepare an iteration of the CDR's Privacy Impact Assessment (PIA) to identify the impacts

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[33] SISS Data Services, *Submission 118*, p. 2.

[34] ANZ, *Submission 20*, pp. 4–6; Ms Emma Gray, Chief Data Officer, ANZ, *Committee Hansard*, 19 February 2020, p. 26.

[35] Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 6.

[36] Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 5.

[37] Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, pp. 6–7.

that the CDR may have on the privacy of individuals', and stated that the Maddocks PIA 'detailed significant issues with the current CDR'.[38]

5.34 The Maddocks PIA was released in September 2019, making ten recommendations. In December 2019, Treasury, the ACCC, the OAIC and Data61 released an agency response to the Maddocks PIA, which supported eight of the Maddocks recommendations in full, offered partial support to one recommendation, and noted that Treasury would soon be releasing further information relating to one recommendation.[39]

5.35 FRLC and CALC noted that Treasury and other responsible agencies have supported many of the recommendations, and expressed support for the regulators 'implementing these recommendations as soon as possible'.[40] They submitted further:

> However the response has failed to address other fundamental issues with the CDR regime including the issue alluded to above that, if the CDR Consumer provides their CDR Data that it has received from a Data Holder, to a third party, the privacy protections afforded to that CDR Data under the CDR regime will not apply.[41]

5.36 FRLC and CALC recommended that the CDR framework needs to ensure that third party recipients 'have clear obligations about the handling of CDR Data they receive by, for example, extending the application of the Privacy Safeguards to apply to third party data recipients of CDR Data'.[42] These Consumer Groups also advocate for 'amending the Privacy Act and the [Australian Privacy Principles] to ensure that the same strong protections under the CDR apply to all consumer data'.[43]

ACCC approach to accreditation of data recipients

5.37 The ACCC explained in its submission that it is taking 'an evolving approach' to accreditation of data recipients:

> Accreditation of data recipients helps foster trust in the CDR regime, by ensuring that recipients of consumer data are subject to appropriate privacy, Information Technology security, insurance and other obligations. The accreditation regime needs to strike the right balance between

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38 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 6.

39 Treasury, ACCC, OAIC and Data61, *Consumer Data Right Privacy Impact Assessment Agency Response*, December 2019, available at https://treasury.gov.au/publication/p2019-41016#:~:text=Treasury%20has%20engaged%20Maddocks%20to%20prepare%20a%20subsequent,recommendations%20for%20managing%2C%20minimising%20or%20eliminating%20these%20impacts (accessed 28 August 2020).

40 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 6.

41 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 6.

42 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 7.

43 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 7

> encouraging FinTechs to participate in the CDR ecosystem, while also ensuring sufficient consumer and information security protections are in place.
>
> …The ACCC noted in the Rules Outline that the first general level of accreditation is intended to enable an accredited data recipient to receive all CDR data in scope for banking and is therefore subject to stringent accreditation obligations. It is intended that the unrestricted level of accreditation will become the level that entitles access to all CDR data across sectors.[44]

5.38 The ACCC submitted that it has 'undertaken significant consultation with FinTechs that will be seeking accreditation as data recipients', with priority for initial accreditation to be given to those FinTechs that have participated in the testing program.[45] Mr Franklin commented at the committee's public hearing:

> In all of these matters the consumer data right legislation requires us to consider a number of priorities, including the interests of consumers and promoting competition and data-driven innovation, and the privacy and confidentiality of consumer information.
>
> Underlying our approach to development of version 1 of the rules is the confidence that the CDR ecosystem can be expanded through following a successful launch, and that it is easier to relax controls over time than to tighten them. A project of the scale and complexity of the consumer data right is always going to present challenges.[46]

5.39 Mr Franklin also expressed the view that the accreditation and application process would become more streamlined over time:

> One thing we are building as part of our technology suite is a conformance test suite to automate the testing process. We intend to make it much easier for prospective data recipients to go through the accreditation and testing process. If we can facilitate the use of outsourcing providers and intermediaries, automate the testing, then the path from application through to go-live should be shorter and much less expensive.[47]

5.40 The ACCC stated further in May 2020 that it is continuing to consider appropriate ways to reduce potential costs and provide flexibility to data recipients, stating:

> We have recently revised the requirements for information security to provide greater flexibility around the type of assurance report that will be accepted to meet the information security obligation. The requirement for applicants to provide an assurance report is the biggest up-front cost for

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[44] ACCC, *Submission 15*, p. 3.

[45] ACCC, *Submission 15*, p. 1.

[46] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, pp. 11–12.

[47] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, p. 15.

> them to be accredited. This change may enable some applicants to reduce those upfront costs.
>
> We are also pursuing other potential ways to reduce the cost of accessing CDR data, including changes to the outsourced service provider provisions, introducing lower tiers of accreditation, appropriate measures to permit the use of intermediaries, and allowing transfer of CDR data outside the CDR ecosystem in some circumstances.[48]

Access to CDR data by third party 'intermediaries'

5.41 Given the stringent requirements of becoming accredited as an unrestricted data recipient, submitters were in agreement that Open Banking needs to provide the ability for 'intermediary' organisations to be able to become accredited and allow third party organisations to access CDR data for the purpose of providing products and services to consumers.[49]

5.42 The ACCC submitted that it recognises the importance of intermediaries in the financial sector, and 'the roles that they play including in assisting or facilitating the collection of data, as well as providing 'end to end' services through the collection and use of data':

> The ACCC is seeking views on whether intermediaries should be accredited and whether accreditation of intermediaries may support development of lower tiers of accreditation that would reduce barriers to entry, by allowing ADRs to become accredited at a lower cost, but with restricted data access rights. The ACCC also intends to engage with ASIC to explore the potential development of a tier of accreditation that would complement ASIC's regulatory sandbox licensing exemptions.[50]

5.43 The ACCC released a consultation paper on how best to facilitate participation of third party service providers on 23 December 2019.[51] The ACCC subsequently released a set of draft rules on 22 June 2020 relating to intermediary access for further feedback, with stakeholder submissions due by 20 July 2020. The draft rules would authorise third parties who are accredited at the 'unrestricted' level to collect CDR data on behalf of another accredited person, allowing 'accredited persons to utilise other accredited parties to

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48 ACCC, Answers to written questions on notice (received 28 May 2020), p. 2.

49 See, for example: FinTech Australia, *Submission 19*, p. 34; Tic:Toc, *Submission 127*, p. 3; Prospa, *Submission 41*, p. 8; SISS Data Services, *Submission 118*, p. 2.

50 ACCC, *Submission 15*, p. 3.

51 ACCC, 'ACCC consultation on facilitating participation of intermediaries in the CDR regime', 23 December 2019, https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/accc-consultation-on-facilitating-participation-of-intermediaries-in-the-cdr-regime (accessed 7 February 2020).

collect CDR data and provide other services that facilitate the provision of goods and services to consumers'.[52]

5.44 Submitters urged for the rules relating to intermediaries to be finalised as quickly as possible to provide certainty for all parties, noting that until such rules are implemented, there remains a level of ambiguity for organisations who already provide intermediary services in the financial services sector. The Financial Data and Technology Association submitted:

> In the meantime, the obligations of an intermediary, acting as an outsource service provider to an ADR, [are] ambiguous making it difficult for an existing Fintech using a data intermediary or a startup looking to quickly test a new idea, to plan a viable path into the CDR ecosystem. As a result, only mature businesses or incumbent banks may be at sufficient scale to operate as an ADR, potentially at the expense of new ideas and business innovation.[53]

5.45 Xero commented that the treatment of intermediaries and non-accredited third parties will be 'crucial elements' in determining the success of the CDR initiative, stating:

> Intermediaries will be a crucial service provider in the open banking ecosystem giving access to multiple CDR APIs via a single API. This service will replace the need for accredited CDR recipients to build to the individual APIs of data holders. However, should intermediary regulation be too high the service will be the domain of few competitors. Lacklustre competition is likely to lead to higher prices, meaning CDR data is available to only the few with resources to access full API coverage or with capacity to absorb high intermediary costs they are unable to pass on.[54]

5.46 Several submitters to this inquiry provided detailed comments on how they consider the ACCC should calibrate the settings for allowing intermediaries to access the Open Banking regime.[55]

Future of 'screen scraping' and other alternative means of data sharing

5.47 A considerable number of submitters and witnesses provided evidence to the committee on other methods of data access currently being used in the banking and financial services industry, and how these will be affected by the introduction of Open Banking.

5.48 The practices discussed are referred to by some industry participants as Digital Data Capture (DDC) and are commonly called 'screen scraping'. In the banking context, these terms refer to the practice of an organisation (such as a bank, a

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[52] ACCC, 'CDR Rules consultation', 22 June 2020, https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/cdr-rules-consultation (accessed 29 July 2020).

[53] Financial Data and Technology Association, *Submission 62*, p. 3.

[54] Xero, *Submission 82*, pp. 7 and 8–9.

[55] See, for example: illion, *Submission 13*, pp. 4–5.

financial service provider or a data aggregation company) using a customer's login details to access their bank accounts and data in order to provide a secondary product or service.

5.49 Companies that utilise screen scraping do so for a variety of use cases. Some companies access customers' accounts on an ongoing basis in order to provide investment products or financial planning tools; others access account information on a one-off basis in order to access information such as transaction records to be used, for example, as part of loan assessment process.

5.50 The committee heard that within the financial sector, screen scraping technology is widely used by banks, lenders, financial management applications, personal finance dashboards, and accounting products.[56]

Bank terms and conditions and the ePayments Code

5.51 Various submitters noted that banks' customer terms and conditions prohibit the provision of customer account access information to third parties, and that any customers who do so by giving their details to a third party to conduct DDC may lose protections available to them under the ePayments Code[57] if any loss, theft or misuse subsequently occurs.

5.52 The ePayments Code provides that where a service provider can prove on the balance of probability that a user contributed to a loss through fraud, or breaching the pass code security requirements in the Code, the customer is liable in full for any losses that occur until the point this is reported to the service provider.[58]

5.53 ASIC is currently conducting a review of the ePayments Code; it released an initial consultation paper in March 2019 seeking submissions on issues to be reviewed in the Code, and conducted further stakeholder consultations in August-September 2019. ASIC planned to release a secondary consultation paper in July 2020, setting out ASIC's intended updates to the Code (and including a draft copy of the updated Code) for stakeholder feedback.[59] Due to

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[56] See: illion, *Submission 13*, p. 2; FinTech Australia, *Submission 19*, p. 35; Mr Robert Bell, CEO, 86 400, *Committee Hansard*, 19 February 2020, p. 76.

[57] The ePayments Code regulates consumer electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. It requires subscribers to give people clear terms and conditions, outlines how terms and conditions changes need to be made, and sets the rules on who pays for unauthorised transactions and how mistaken internet payments are recovered. ASIC is responsible for monitoring compliance with the Code.

[58] ePayments Code, Clause 11.2.

[59] 'Additional information from ASIC', received 26 February 2020, p. 1.

reprioritisation of work as a result of the COVID-19 pandemic, ASIC now plans to release this consultation paper in the fourth quarter of 2020.[60]

Arguments opposed to the use of digital data capture techniques

5.54 A number of submitters and witnesses advocated against the continuing availability and use of screen scraping techniques in the financial services sector. Arguments advanced by these stakeholders included that:

- screen scraping is a poor technology solution that is slow and unstable, with the potential for inaccuracies and other deficiencies in the data collected;[61]
- allowing customers to engage in any practice in which they disclose logon and password information to third parties runs counter to good IT security practices and the explicit security advice provided by the Australian Government to consumers, thereby weakening consumers' resistance to other malicious activity such as phishing attacks;[62] and
- allowing screen scraping to continue alongside the faster, safer data transfer mechanism created by Open Banking will undermine the potential success of the CDR regime by creating a two-tiered system where less trustworthy operators will continue to utilise screen scraping rather than seek CDR accreditation.[63]

5.55 Mr Michael Morris, Head of Technology for Ferocia, a Melbourne-based software firm that developed and operates the technical platform for digital banking platform Up, summarised some of these concerns as follows:

> Screen-scraping is another organisation enticing a customer to input their user name and password into their site with, I guess, a promise that they will only use it for the purposes that customer intended. Obviously there is no enforceability of this promise. There is no regulation of this promise. It's against the terms and conditions of the financial institution, yet it continues. It's effectively a time bomb waiting to happen. You have these organisations that amass a bunch of customer credentials. Secondly, it encourages bad customer practice to start typing in your user name and passwords into lots of different websites, which can lead to financial crime or breaches of privacy. There are better ways to do these sorts of things, like open banking. We would certainly not like to see it encouraged...It's a hack, if you will. We should not be promoting or endorsing that. We

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60 ASIC, 'Changes to regulatory work and priorities in response to COVID-19', https://asic.gov.au/regulatory-resources/find-a-document/regulatory-document-updates/changes-to-regulatory-work-and-priorities-in-response-to-covid-19/ (accessed 4 August 2020).

61 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, pp. 10 and 15.

62 See: Mr Xavier Shay, Senior Engineer, Ferocia, *Committee Hansard*, 30 January 2020, p. 33; Ms Lisa Schutz, Chief Executive Officer, Verifier, *Committee Hansard*, 30 January 2020, p. 13; Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 12; Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), p. 5.

63 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, pp. 16–17.

> should be supporting organisations for their ability to enforce their terms and conditions and restrict it.[64]

5.56 The joint consumer submission from FRLC and CALC expressed particular concern about the use of screen scraping by payday lenders:

> We are aware of financially vulnerable clients providing log-in details to payday lenders, only to have the payday lender use the log-in details later to identify when a consumer is getting low on cash and subsequently directly advertise to that consumer. This has the effect of exacerbating financial hardship.[65]

Arguments in favour of the continued allowance of screen scraping practices

5.57 Other submitters and witnesses expressed strong support for the continuing use of digital data capture techniques.[66] Arguments advanced by these stakeholders included that:

- screen scraping techniques are utilised by a wide range of institutions within the financial services sector, including major banks and accounting firms, as well as smaller FinTechs;
- many providers of DDC services maintain bank-level security, and as such these practices do not put consumers at risk;
- the use of screen scraping allows FinTechs to offer innovative products that increase competition in the financial services sector;
- there is no significant evidence of consumer detriment or security breaches occurring as a result of these techniques being used; and
- screen scraping techniques will not be readily replaceable by Open Banking in the short term, meaning that an outright ban on the practice will lead to poorer immediate consumer outcomes.

5.58 illion (formerly Dun and Bradstreet), a data and analytics company that provides products including consumer and commercial credit registries and has operated in Australia for over 130 years, submitted:

> DDC is a critical mechanism to empower consumers and facilitate competition, [is] valued by consumers, is secure and cost-effective, and is making a significant contribution to the competitive dynamics in the current market.[67]

5.59 FinTech Australia submitted:

> Screen scraping is one of the primary ways that fintechs are able to receive data from customers and provide tailored services as it is cheap and easy

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64 Mr Michael Morris, Head of Technology, Ferocia, *Committee Hansard*, 30 January 2020, p. 30.

65 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 13.

66 See, for example: FinTech Australia, *Submission 19*, p. 35; Mr Fred Schebesta, CEO and Co-Founder, Finder, *Committee Hansard*, 20 February 2020, p. 57; Mr Robert Bell, CEO, 86 400, *Committee Hansard*, 19 February 2020, pp. 73–74.

67 illion, *Submission 13*, p. 2.

> to access. Businesses rely on this technology including as a mechanism to review payments data and perform reconciliations which may prevent against fraud. It may even assist compliance with CDR where screen scraping is used to help clean and correct CDR data parcels and perform data reconciliation. Others have noted that screen scraping may even be used as a mechanism to test ideas prior to or during the process of applying for accreditation as an accredited data recipient.[68]

5.60 Raiz, a microinvesting platform that enables customers to save and invest their 'spare change' through the automated depositing of small residual amounts from everyday purchases into a managed investment fund platform, commented:[69]

> [Screen scraping] is a relatively inexpensive way in which a FinTech can provide a user with useful data aggregation services, such as money management tools. Importantly it is regulated by current privacy laws. Raiz uses Yodlee's screen scraping services to provide our Round-Up service along with our personal financial management tool… Screen scraping has existed in Australia for over 5 years. It is widely used by many companies, including ANZ and Xero with no reported security or fraud issues in those 5 years.[70]

5.61 Supporters of digital data capture emphasised that data aggregation firms use encryption and bank standard security measures to keep data safe, stating that these aggregators must take data security extremely seriously in order to meet the requirements of lenders who are accessing their data checking services.[71]

5.62 When asked about screen scraping at a public hearing of the committee, ASIC Commissioner Sean Hughes told the committee that ASIC is not aware of any evidence of consumer loss occurring as a result of screen scraping.[72]

5.63 In the context of using screen scraping to access bank statement data as part of responsible lending checks for loan applicants, illion emphasised that their customers are given a choice between using quicker digital assessment processes using digital data capture, and manual paper-based assessment which take considerably longer; when offered this choice, over 80 per cent of consumers choose the faster, digital option.[73]

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[68] FinTech Australia, *Submission 19*, p. 35.

[69] Raiz Invest, *Submission 29*, p. 1.

[70] Raiz Invest, *Submission 29*, p. 4. ANZ clarified in correspondence to the committee that Raiz's evidence 'appears to relate to a service that ANZ ceased providing in 2016'. See: 'Additional information from ANZ', received 23 March 2020, p. 1.

[71] See: Mr Simon Bligh, Chief Executive Officer, illion, *Committee Hansard*, 30 January 2020, p. 57; Raiz Invest, *Submission 29*, p. 5; Finder, *Submission 70*, p. 6.

[72] Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 9.

[73] illion, Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 17 February 2020), p. 2.

Customer communications regarding screen scraping and the ePayments Code

5.64 Submitters informed the committee that in some instances, major banks are regularly contacting their customers who are utilising third party applications via screen scraping, and warning these customers that doing so breaches the ePayments Code. FinTech Australia submitted:

> Several FinTech Australia members, including Raiz Invest have long received letters from banks noting that its activities breach the ePayments code. This bank has sent notifications and emails to its customers who use the service on a continual basis. Such letters have been viewed as a thinly veiled excuse for anti-competitive conduct.[74]

5.65 Raiz submitted further detail on its experience in this regard with the Commonwealth Bank (CBA):

> CBA does not like FinTechs using screen scraping to service CBA's customers. CBA's campaigns against Raiz (and other FinTechs) have been ongoing since 2016...CBA contacts its customers via emails, in-app messages and push notifications…and tells them that by sharing their account details with a third-party provider (such as Raiz) to enable screen scraping, they may be putting their money at risk due to fraudulent activity on their account. CBA goes on to warn the customer that the customer may have invalidated the protections against loss of the customer's money in the [ePayments Code.]
>
> This communication from CBA has caused serious detriment to our business... More importantly, in our view, CBA is deliberately confusing customers and potentially misleading them about the consequences of sharing account details.[75]

5.66 Raiz commented:

> The lack of clarity around screen scaping and inaction by the regulator, Treasury and the Government allows banks to engage in campaigns that are designed to misinform the Australian public, contributing to a distrust and suspicion of new technologies and the use of [Business-to-Consumer] FinTechs. The banks' actions are therefore directly contributing to inhibiting competition by making it more difficult for FinTechs to run successful businesses, including raising capital in Australia; investing in Australian jobs and developing technology that can be exported globally.[76]

5.67 Finder stated in its submission that using digital data capture 'is generally accepted as the most secure way to access banking data in lieu of the CDR', and argued that negative communication from incumbents about DDC will ultimately undermine the CDR regime:

> [S]ome of the major banks in Australia have been sending warning messages to their customers about using these services. While we are fully

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74 FinTech Australia, *Submission 19*, p. 35.

75 Raiz Invest, *Submission 29*, pp. 4–5.

76 Raiz Invest, *Submission 29*, p. 6.

> supportive of banks warning their customers about security risks, we don't believe that these services create the level of risk that warrants the action seen from banks, including Commonwealth Bank and Bankwest. More specifically, we think that repeated emails and in-app notifications warning customers to change their log-in credentials are helping to shape public opinion in a way that discourages data sharing and undermines the CDR regime. In our opinion, the government should facilitate (and normalise) the use of third-party services and encourage participants, through regulatory catalysts, to support these processes. We appreciate the security issues and the need for appropriate indemnities but, particularly in the interim before CDR, incumbents should be discouraged from increasing consumer apprehension in this space.[77]

5.68 Mr Robert Bell, Chief Executive Officer (CEO) of digital neobank 86 400, told the committee that its customers have also been targeted with communications by a major bank because of 86 400's use of screen scraping as part of its services offering. Mr Bell expressed the view, however, that his business had not been significantly impacted by this practice:

> When a big bank writes to your customers once a week or once a day and says, 'You've breached your terms and conditions because you've used screen scraping,' that can really only be seen, I think, as anticompetitive. The good thing is, though, that Australians are pretty sensible, our customers are pretty sensible, and they just see that for what it is, so it hasn't had an impact on us.
>
> …
>
> We're not seeing any change in behaviour [from our customers]… We're giving them value, and they like it, so they want to use it. If you can genuinely provide a great product, a great service, a great experience, then people will use it.[78]

5.69 CBA responded to the comments made by other submitters and witnesses, arguing that sharing user names and passwords 'is a fundamentally unsafe practice' and that screen scraping poses a number of security risks.[79] In relation to its customer communications on these issues, it stated:

> We communicate with our customers because we have a responsibility to protect the safety of our customers' information, and we can play an important role in customer education and awareness on data and online safety.
>
> We know the security of their data is a concern for customers, who may not be aware of the vulnerability to which they are exposed when

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77 Finder, *Submission 70*, p. 6.

78 Mr Robert Bell, CEO, 86 400, *Committee Hansard*, 19 February 2020, pp. 76 and 77.

79 Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), pp. 4–5.

> providing their log-on credentials to third parties and who seek greater assistance in identifying ways to protect themselves online.[80]

5.70 CBA stated further:

> In our ongoing monitoring of the security of customer accounts, we have identified circumstances where it appears our customers' accounts were accessed by a third party. Where we identify this may be occurring, we warn our customers of the potential risk. We then provide customers the information they need to decide about the steps they can take to protect their security and privacy online.
>
> Our communications are consistent with, and an adjunct to, the annual notifications we are required to provide our customers under the ePayments Code.
>
> …
>
> Claims made during the Committee's consultations that our communications are anti-competitive are incorrect.[81]

5.71 When asked whether it was considering any possible anti-competitive behaviour in this area, the ACCC informed the committee that following the receipt of correspondence in early March 2020 from two financial institutions relating to these practices, it had considered these complaints in accordance with its Compliance and Enforcement Policy:

> The ACCC considered the detail of the complaints and the terms of the warnings by the major banks and decided not to commence an investigation. The alleged conduct involves general statements or warnings regarding potential security or safety risks associated with screen scraping and sharing passwords, and does not appear to have the purpose or effect of substantially lessening competition.
>
> The ACCC has responded to the complainants and will continue to assess any allegations of anti-competitive conduct across the financial services sector. We currently have six investigations on foot in relation to allegations of anti-competitive conduct relating to the financial services sector.[82]

5.72 Noting ASIC's current review of the ePayments Code, some FinTechs and other companies took the view that the code should be amended to specifically allow for screen scraping practices. illion commented:

> The current version of the ePayments Code does not provide clear guidance as to which party is liable for unauthorised transactions made via

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[80] Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), p. 6.

[81] Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), pp. 4–5.

[82] ACCC, Answers to questions on notice from a public hearing 27 February 2020, Canberra (received 17 March 2020), p. 4; ACCC, Answers to written questions on notice (received 10 August 2020), p. 1.

> a customer's account, if the customer has knowingly provided their account logon details to a third party, such as a data aggregator. This is a significant technological and market development since the last major review of the Code.
>
> illion contends that ASIC should be more prescriptive, that DDC is a strong example of positive industry practice…This will provide greater clarity to lenders and other financial service providers, as well as benefiting consumers.
>
> The ePayments Code, which regulates consumer electronic payment transactions and is currently subject to review by ASIC, could be amended to provide clarity on DDC technology and provide additional safeguards for consumers who are engaged with businesses using this capability.
>
> DDC technology is a useful data transfer tool that is used consistently and safely to deliver substantial value to consumers and data holders.[83]

5.73 Raiz considered that the Code should be amended to make it clear that screen scraping is an acceptable process, and that customers can share their account details 'without any risk of loss of bank protections'. It stated that without such an amendment, the banks 'will be able to continue to confuse customers about the technical legal position'.[84]

5.74 Contrastingly, FRLC and CALC strongly disagreed with the suggestion that the ePayments Code should expressly authorise digital data capture practices.[85]

5.75 ASIC officials confirmed that it would be considering screen scraping as part of the next round of consultations on the ePayments Code. When asked whether the next iteration of the ePayments Code would deal with screen scraping explicitly, ASIC Commissioner Sean Hughes commented:

> It depends on what the submitters to the next round of consultations say. We would like to be more helpful. I would be surprised if we move away from the warning that both we, the ACCC, the ATO [Australian Taxation Office] and other agencies give about the risks of sharing passcodes with third parties, but we will reiterate that at the moment it is not something that the code prohibits.[86]

Future of digital data capture under the transition to Open Banking

5.76 There were a range of contrasting views put to the committee about how DDC should be treated with the rollout of Open Banking, including that:

- screen scraping must be prohibited in order for the CDR to have its intended effect;

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83 illion, *Submission 13*, p. 3.

84 Raiz Invest, *Submission 29*, p. 5.

85 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 15.

86 Mr Sean Hughes, Commissioner, ASIC, *Committee Hansard*, 27 February 2020, p. 9.

- screen scraping should be allowed for an interim period (possibly limited by sunsetting arrangements) until Open Banking is fully rolled out; or
- screen scraping techniques should be allowed to continue indefinitely, in parallel with Open Banking.

5.77 Some stakeholders opposed to the practice of screen scraping argued that it must be prohibited with the introduction of Open Banking. FRLC and CALC submitted:

> [The very] reason the government's Consumer Data Right was established [is] to provide a fast, safe, and secure process to access personal and financial data.
>
> Without a ban on screen-scraping, there is very little incentive for businesses such as payday lenders and debt management firms to use CDR accredited software over screen scraping technology.[87]

5.78 FRLC and CALC argued that unless screen scraping is prohibited, 'two very distinct FinTech sectors will be created: a sector that will adhere to higher privacy safeguards and standards and a sector that will not'. It stated that this 'ultimately undermines the potential success of the CDR regime to ensure great consumer protections and increase confidence in the sector'.[88]

5.79 SISS Data Services argued similarly that without a clear endpoint for screen scraping, there is no incentive for FinTechs to adopt the new CDR data sharing model. Rather than an immediate ban, however, it recommended the introduction of a sunset date to phase out screen scraping, allowing industry to focus on the CDR data-sharing model.[89]

5.80 Conversely, illion argued that digital data capture needs to continue to operate in parallel to the Open Banking framework 'as an essential value adding technique':

> The continued utility of DDC relates to real-time data provision; simplicity of customer onboarding; level and quality of data availability; and providing a redundancy fail-safe in the future world of Open Banking, for example, in a period when a financial institution's API is offline.
>
> DDC is also a useful tool enabling smaller organisations, who are not yet participating in Open Banking to compete; they would otherwise be shut out of the system. Conversely DDC also enables larger organisations to access information from pre-Open Banking smaller organisations. Without DDC we will likely face a "have and have not" information structure benefitting larger institutions.
>
> …

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87 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 16.

88 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 17. See also: Commonwealth Bank of Australia, Answers to written questions on notice (received 16 March 2020), p. 7.

89 SISS Data Services, *Submission 118*, p. 3.

> illion believes DDC technology will provide an important benchmark to assess the performance of Open Banking. We note the current rollout of the CDR will take many years and may be subject to additional delays. There is a need for a mechanism to be available for smaller lenders and service providers such as brokers to provide access to digital bank statement data in the interim.[90]

5.81 Mr Fred Schebesta, CEO and Co-Founder of Finder, commented:

> [W]e should keep screen-scraping live until we have the full rollout of the CDR. Why is that important? Because unlocking Australian banking data today empowers Australians to make better financial decisions now. If we were to rule out and get rid of screen-scraping we would essentially send Australians back 10 years. We obviously have to find the checks and balances and safe and responsible and regulated ways to do that, but we should work towards that and finding accredited ways to make that happen and let them join in with this new program.[91]

5.82 FinTech Australia stated that organisations utilising screen scraping in order to undertake responsible lending checks would not be able to complete these checks using the CDR in its current form.[92]

5.83 Several submitters noted that the initial review into Open Banking in 2017, conducted by Mr Scott Farrell, considered the issue of screen scraping and made the following points:

- Open Banking should not prohibit or endorse 'screenscraping', but should aim to make this practice redundant by facilitating a more efficient data transfer mechanism.
- Over time, the ability to share customers' banking data in a more seamless and secure way through Open Banking should reduce the need for customers to compromise their security and privacy by disclosing their login credentials.
- Open Banking should not be mandated as the only way that banking data may be shared. Allowing competing approaches will provide an important test on the design quality of Open Banking and the Consumer Data Right.[93]

5.84 Along these lines, FinTech Australia recommended that the CDR must be implemented in a way that 'is easier to access, provides better functionality and is cheaper than screen scraping'.[94] It was argued that this will facilitate a

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[90] illion, Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 17 February 2020), pp. 1–2.

[91] Mr Fred Schebesta, *Committee Hansard*, 20 February 2020, p. 57.

[92] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 10.

[93] Mr Scott Farrell, *Submission 140*, pp. 1–2.

[94] FinTech Australia, *Submission 19*, p. 36.

natural transition away from screen scraping practices over time, without the need to specifically prohibit this practice.

5.85 Other technical innovations were also mentioned to the committee that will impact on the use of screen scraping techniques. For example, Mr Morris of Ferocia informed the committee that Up's digital banking app has been designed using world-leading technology that makes third party access of a customer's account via screen scraping impossible at a technical level.[95]

5.86 On 23 January 2020, the Treasurer announced an inquiry into future directions for the Consumer Data Right led by Mr Scott Farrell. An issues paper was released in March 2020 and the inquiry is due to report to the Treasurer by September 2020.[96]

Consumer awareness and education regarding Open Banking and the CDR

5.87 The committee heard that for Open Banking and the Consumer Data Right initiative more broadly to be effective, the Australian public needs to be made aware of this significant reform and the opportunities it provides. Without this awareness, adoption of services provided using the CDR may be weak.

5.88 The Australian Computer Society noted:

> Australia's [CDR] legislation will ultimately be judged against increased competition and consumer movement across products by enabling consumers to share their data with third parties. If adoption is weak, the main objective will be lost, and we won't see the downstream innovation on products and services[.][97]

5.89 FinTech Australia submitted that consumers generally have poor awareness of alternative financial services providers outside the major incumbent players in the market, and that consumers need to be educated about new initiatives such as the CDR. It commented:

> CDR will require a campaign to educate consumers about what it is and how they can receive new services and improved services from new providers. As an example, the government should look to equivalent overseas campaigns, such as in the UK.[98]

5.90 FinTech Australia recommended that government 'should conduct a targeted campaign to educate consumers as to what the CDR is to allow them to

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[95] Mr Michael Morris, Head of Technology, Ferocia, *Committee Hansard*, 30 January 2020, pp. 32–33.

[96] The Hon Josh Frydenberg MP, 'Building on the Consumer Data Right', *Media release*, 23 January 2020.

[97] Australian Computer Society, *Supplementary Submission 3.1*, p. 7.

[98] FinTech Australia, *Submission 19*, p. 34.

understand the opportunities provided to consumers through the new data economy'.[99]

5.91 When asked for more details on what type of education campaign would be required, representatives of FinTech Australia commented that it needs to focus on educating consumers that the CDR will provide a new safe and trusted mechanism for sharing their sensitive financial information, and highlight the ways consumers can use it to their benefit.[100]

5.92 FinTech Australia commented further that the CDR education campaign 'should be composed of various modules that address different parts of relevant markets':

> Firstly, ads and explanatory materials should be available to consumers that explain what the CDR is, and the benefits that it can bring. These explanatory materials should come in the form of electronic and paper materials, and should be made available by the participating banks and fintechs, as well as government bodies. As highly technologically literate individuals, high school and university students would also be ideal candidates for targeted marketing. These campaigns could concentrate on leveraging their existing technological knowledge and familiarity, with an aim to improve financial literacy and fiscal behaviour.
>
> Secondly, increased adoption of the CDR can be driven through an increase in professional development, particularly in key industries such as legal and professional services. Should individuals in these industries better understand the CDR and the benefits it can bring to themselves and their clients, the higher adoption rates will be. Professional development should also be provided to those in more consumer facing roles, such as customer service professionals at participating banks and fintechs.[101]

5.93 FinTech Australia also stressed the importance of banks ensuring that CDR functionality is integrated seamlessly into their customer-facing systems:

> To promote adoption through an increase in consumer trust, a consumer's interaction with a bank's CDR related interfaces, such as web pages that facilitate the movement of data or provision of consent, should be consistent with any other experience with that bank. Members have noted that in the UK these experiences can differ significantly, which can negatively impact consumer trust. Adoption of the CDR by everyday consumers necessitates accessibility and ease of use. Making the web pages that facilitate the consent process straightforward and easy for the consumer to navigate through is essential, as well as ensuring that any

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[99] FinTech Australia, *Submission 19*, p. 34. See also: American Express Australia, *Submission 71*, p. 4; Finder, *Submission 70*, p. 6.

[100] Mr Alan Tsen, Chair, FinTech Australia; and Mr Stuart Stoyan, Member, FinTech Australia and Founder/CEO, MoneyPlace, *Committee Hansard*, 28 February 2020, p. 4.

[101] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 4.

> legal language is in plain English, and clearly sets out that customer's rights.[102]

5.94 FinTech Australia Member Mr Stuart Stoyan commented that a further issue to consider will be which body will coordinate a CDR education campaign.[103]

5.95 The ACCC informed the committee that it is working closely with Treasury, the OAIC and the Data Standards Body to develop a 'comprehensive communication and education strategy which will be targeted to both consumers and industry'. The ACCC outlined further:

> The work includes educational materials, including videos and webinars, a dedicated website, stakeholder newsletters and proactive media engagement. Elements of the strategy have already commenced, the CDR website will be launched in June 2020 and consumer-focussed communications will commence from July 2020.
>
> We are working with cross-government stakeholders to ensure consistency in communications to consumers and industry, and each agency involved in the delivery of the Consumer Data Right will play a role in delivering communications to consumers.
>
> We have been funded $350,000 in FY2019-20, which is being used among other things for development of a stand-alone CDR website and educational videos and a series of webinars.[104]

5.96 The FRLC noted that the implementation of Open Banking and CDR could further exacerbate the "digital divide" of those who have access to technologies and those who don't—and more importantly, those who understand technology and those who don't:

> We have found that there are becoming 'digital haves' and 'digital have-nots'. Even those who do have access to technology find themselves in difficult circumstances. I'm thinking of people in rural or remote communities who don't have access to a wide range of ATMs or digital services and are forced to go to the only ATM in town, which charges them quite a lot. This came up during the royal commission. Palm Island is an example. Yes, there are a lot of people who are not able to access, for example, technologies to receive their bills electronically. They're either charged for a paper bill, in some circumstances, or end up not being able to receive bills, and they may fall behind. So, yes, there are a lot of benefits that the fintech sector and fintech products will be able to provide for most Australians, who are on smartphones, but, yes, unfortunately there will be some losers in this situation.[105]

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[102] FinTech Australia, Answers to questions on notice from a public hearing held 28 February 2020 (received 20 March 2020), p. 4.

[103] Mr Stuart Stoyan, Member, FinTech Australia and Founder/CEO, MoneyPlace, *Committee Hansard*, 28 February 2020, p. 4.

[104] ACCC, Answers to written questions on notice (received 17 March 2020), p. 1.

[105] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 65.

5.97 The FRLC noted that it is under resourced and not funded to undertake education campaigns on financial literacy:

> Our organisation is pretty small and under-resourced. It's basically me and another policy officer.
>
> ……..
>
> We're one of the few organisations that do have a policy person who can deal with these [Fintech related] issues.
>
> …….
>
> With the royal commission, we've basically had to put all our resources into fixing problems now, and very few of us in the consumer movement can even have the time to think about what the problems are in the future. We've decided to do that (now focus on issues related to CDR) because we see a lot of poor people calling us worried about data. We've discovered some problems, so we decided to put some effort into providing a submission to this inquiry and other inquiries around the CDR. We will continue doing so where we can.
>
> ……..
>
> Our organisation is not funded to do that (Financial Literacy), but sometimes we get funding to do a project from Ecstra or its predecessor, Financial Literacy Australia, to do a small financial literacy project. One I can think of is one that we did around payday loans recently. It's very rare that we are able to do it, because we're not funded to do it.[106]

5.98 When asked at a hearing whether the FRLC think that financial literacy is keeping up with the range of products and offerings on the market as it is innovating and changing so quickly, Mr McRae stated:

> No, not at all. On the weekend, I walked past a poster for a new buy now, pay later service called Bundll, which had a bear with sunglasses, basically saying, 'You can put this on buy now, pay later,' and it had photos of the types of things you can put on. One was a roll of toilet paper and one was a hamburger. My thought, when I saw that, was that most people will think that's really cool; it's got a cool bear in cool sunglasses. There is nobody out there providing financial literacy information about the problems inherent in buy now, pay later, and debt more generally, that would enable people to have a bit more understanding of the problems that may arise when you're using a buy now, pay later service to buy essential goods like toilet paper.[107]

Expansion of the Consumer Data Right to other sectors

5.99 The committee heard a range of evidence on the potential to expand the Consumer Data Right to other sectors.

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[106] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 70.

[107] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 70.

5.100 Under the CDR framework, the ACCC can recommend to the Treasurer that a sector should be designated for rollout of the CDR after considering a range of factors. As noted earlier, the first three sectors (banking, energy and telecommunications) have been nominated by the government. The designation of the CDR rollout to other sectors is a decision for government.[108]

5.101 The ACCC noted that specific sectors raised with it by interest groups as possibilities in the economy-wide rollout of CDR include: superannuation; general insurance; private health insurance; digital platforms; hotels; agricultural data; automobile telematics data; and supermarket data.[109] The ACCC submitted:

> We have not yet considered which of the above sectors may be best suited for priority rollout of the CDR. For some sectors, substantial benefits may be captured through the release of product reference data to facilitate reliable and independent price comparisons, but there may be significant challenges and complexities in sharing consumer data, such as where contractual terms must be reduced to machine readable format. There will no doubt be lessons from implementation in banking that are relevant to other sectors, but each sector will raise novel issues that need to be closely worked through as part of the ACCC's sectoral assessment. The scope for facilitating innovation and new services, the privacy risks and the costs of implementation will differ across sectors.[110]

5.102 Evidence presented to the committee by submitters and witnesses focused particularly on CDR rollout into other segments of the financial services industry beyond banking services, namely superannuation and insurance.

CDR in superannuation

5.103 The committee heard strong support for measures to make data in the superannuation sector more accessible, including by designating the sector under the CDR framework.[111]

5.104 The Productivity Commission's report *Superannuation: Assessing Efficiency and Competition*, released in January 2019, recommended that superannuation funds be automatically accredited as authorised data recipients for Open Banking data, and that the CDR be extended to superannuation members' data itself. The report commented:

> The new Consumer Data Right, which is initially being applied to banking, can help by enabling members to consent to their banking data being

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[108] ACCC, *Submission 15*, p. 3.

[109] ACCC, *Submission 15*, p. 3.

[110] ACCC, *Submission 15*, p. 4.

[111] See, for example: A.T. Kearney, *Submission 52*, pp. 9–10; Challenger, *Submission 129*, pp. 3–4; SISS Data Services, *Submission 118*, p. 2; Finder, Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 10 March 2020), pp. 3–4.

> shared with their super fund…The Government should automatically accredit super funds to be eligible to receive such data (with the member's consent). The Government should also roll out the Consumer Data Right to superannuation itself, to empower members to take their data with them when they switch funds — which may, in turn, help funds to design better insurance products (for example, using contributions data to infer breaks from the workforce) and retirement products (for example, using data on past drawdowns).[112]

Intended purpose and scope of 'open super' data

5.105 Submitters raised several potential applications of extending the CDR to superannuation. These included:

- sharing of individuals' superannuation data to allow for holistic financial planning and advice, including automated digital advice;
- allowing superannuation funds to access CDR Banking data in order to provide better and more tailored products (including insurance products within superannuation) to their customers; and
- making machine-readable product reference data available for products offered by super funds, to enable FinTechs and RegTechs to provide digital advice and comparison services to consumers on their superannuation options.[113]

5.106 The Australian Business Software Industry Association commented that utilising 'open super' data could facilitate the uptake of automated digital financial advice services to benefit consumers,[114] and stated:

> The introduction of Open Super, alongside Open Banking, would cover the majority of an individual's entire financial position allowing software providers to create solutions capable of bringing this data together in products aimed at both individual consumers and advisers. The opportunity exists to empower advisers and give them the necessary tools to provide more encompassing super advice to their clients, as most individuals are not aware of their full financial positions. Additionally, the opportunity exists for services to provide Robo advice[.][115]

5.107 Neobank 86 400 commented:

> We believe that CDR should be extended to superannuation as soon as possible. As superannuation is a very significant part of financial planning this will significantly improve the quality of digital advice and the ability to provide holistic advice.

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[112] Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, 21 December 2018, p. 600.

[113] Finder, *Submission 70*, p. 10.

[114] Australian Business Software Industry Association, *Submission 72*, p. 5.

[115] Australian Business Software Industry Association, *Submission 72*, p. 6.

> We would suggest that as well as requiring superannuation funds to share data, the ATO should also use the CDR to report on unclaimed funds that those entities hold (i.e. lost super).[116]

5.108 Some stakeholders argued that making machine-readable product reference data available for superannuation products should be a focus of Open Super. Finder argued that this product reference data should be a logical starting point for Open Super, as it has been for the rollout of Open Banking.[117] It stated that in particular, making product reference data available can assist in enabling comparison of insurance products offered within superannuation:

> One key area where we believe Open Super can improve consumer experience in the market for superannuation is in relation to the insurance that is routinely packaged up in superannuation products. These insurance products can be difficult for consumers to understand, particularly when trying to understand what they're paying for this cover and the value of what the cover provides. This information is often buried in the Product Disclosure Statement and is presented in a variety of ways from fund to fund. We would advocate for this insurance information to be clearly broken out in any product reference dataset created as part of the Open Super regime. This would enable an accredited data recipient like a comparison website to use this information to clearly show a consumer the insurance product they are paying for and to compare it with like-for-like products from competing superannuation and insurance providers. Again, this outcome could be achieved with low-risk product reference data alone.[118]

5.109 Other submitters argued that the focus of Open Super should be on access to individual consumer data rather than product reference data. The Gateway Network Governance Body commented that a 'significant amount of information is already available to superannuation fund members through their fund and the ATO, as well as the increasing volume and quality of data being collected by APRA':

> Ultimately, data about products and investment options is best obtained through regulator data collection and publication processes. APRA has significant work underway to increase the quantity and quality of information collected and published. The value of implementing an open super framework lies in making available additional data as it relates to individual members.
>
> We envisage that the most likely use of open super data will be in the context of fund members receiving services from a financial advisor, who may benefit from their advisor having broader integrated data on full

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[116] 86 400, *Submission 31*, p. 15.

[117] Finder, *Submission 70*, p. 10.

[118] Finder, Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 10 March 2020), pp. 3–4.

> financial health and history, which could include their superannuation and group life insurance details.[119]

5.110 The Financial Services Council (FSC) similarly expressed this view, and recommended that the Open Super framework should centre 'on enabling individuals to access their own, tailored data and be a core focus in extending the Consumer Data Right'.[120]

5.111 The Australian Institute of Superannuation Trustees (AIST) emphasised the importance of super funds being able to access Open Banking customer data:

> AIST supports the use of CDR to allow members to share relevant information with their super funds. This will allow super funds to tailor their services, increase member engagement and ultimately improve retirement outcomes for members. Implementation of CDR in superannuation needs to include the ability for superannuation funds to be eligible to receive information under the Open Banking Initiative.[121]

Standardisation of superannuation product information

5.112 Super Consumers Australia (SCA) submitted that in order for the benefits of open data to be realised, common standards around superannuation product information are required:

> There is currently little agreement over a common standard for comparison of superannuation products. For example, what one fund might classify as a growth investment option, another will classify as balanced. Without 'apples with apples' comparisons an open data regime may further complicate decision making and ultimately lead to poor outcomes for consumers.[122]

5.113 SCA noted that the Productivity Commission report made recommendations in relation to rectifying identified shortfalls in APRA's data collection in the superannuation system, and requiring super funds to publish simple, single-page product dashboards for all superannuation investment options and standard machine readable versions of this data.[123]

5.114 SCA argued that the implementation of these recommendations should occur by June 2020, and that this would pave the way for the benefits of Open Super data to be realised. It recommended further that the Federal Government adequately resource ASIC to develop a consumer-facing comparator tool for superannuation, including product dashboards for choice products,

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[119] Gateway Network Governance Body, *Submission 91*, p. 5.

[120] Financial Services Council, *Submission 100*, p. 6.

[121] Australian Institute of Superannuation Trustees, *Submission 37*, p. 1.

[122] Super Consumers Australia, *Submission 49*, p. 3.

[123] Super Consumers Australia, *Submission 49*, p. 3.

comparable information on insurance products and a comparison tool for superannuation fund performance.[124]

Implementation considerations for Open Super

5.115 It was noted that the superannuation industry already has significant data infrastructure in place that could be leveraged to facilitate the implementation of CDR in superannuation. The Superannuation Transaction Network (STN) is the digital data messaging network over which superannuation transactions are sent, with approximately 79 million data transactions per year across the network between employers, superannuation funds, APRA and the ATO.[125]

5.116 The Gateway Network Governance Body (GNGB), an industry-owned governance body which oversees the security and integrity of the STN, submitted that several considerations would be necessary in developing a framework for Open Super:

- A clear definition of what "open super" means and its intended benefits to consumers is needed to encourage innovation and make the link between consumer demand and solution development.
- Wide stakeholder engagement on possible design solutions for the open super environment is required, taking into consideration existing data infrastructure, such as the STN and the interdependencies of multiple solutions across the end to end superannuation environment.
- Agree clear data standards for open super based on the Superannuation Data and Payment Standards.
- Adopt the STN as the preferred access mechanism for any open super design to streamline and control data access.
- Ongoing Governance: in a highly dynamic environment, which is also subject to a large degree of regulatory change, the long-term success of any infrastructure is dependent on the ongoing governance, continuous improvement and maintenance of the asset.[126]

5.117 Representatives of the GNGB confirmed that, with some configuration, it would be possible at a technical level to incorporate Open Super data into the existing data transfer mechanisms utilised by the STN.[127]

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[124] Super Consumers Australia, *Submission 49*, pp. 3–4.

[125] Gateway Network Governance Body, *Submission 91*, pp. 1–2; Ms Michelle Bower, Executive Officer, Gateway Network Governance Body, *Committee Hansard*, 19 February 2020, p. 78.

[126] Gateway Network Governance Body, *Submission 91*, p. 3. See also: Financial Services Council, *Submission 100*, p. 6.

[127] Ms Michelle Bower, Executive Officer, Gateway Network Governance Body, *Committee Hansard*, 19 February 2020, pp. 78–79.

Implementation timing

5.118 Several FinTechs and consumer groups commenting on Open Super argued that the transition to implement Open Super should occur as soon as possible.[128]

5.119 Stakeholders representing superannuation providers were less enthusiastic about the rapid rollout of Open Super. The Financial Services Council (FSC) argued that a 'significant pipeline of reform' is currently underway in the superannuation system, and that 'other reforms flagged by the Productivity Commission and Royal Commission are likely to offer a greater benefit to consumers, including the implementation of a 'default once' system for default superannuation'.[129] The FSC recommended that in this context, the government should 'delay the development of Open Super until 2022 to allow the appropriate level of resources to be dedicated to this important reform'.[130]

5.120 The FSC also commented that the extension of the CDR to superannuation 'should be supported by other reforms as required to ensure that superannuation legislation is technology-neutral, and consumers are able to engage with and manage their superannuation online if they choose'.[131]

5.121 The Australian Institute of Superannuation Trustees similarly commented that sufficient time needs to be given prior to the implementation of Open Super, to be able to assess learnings from Open Banking and ensure a considered approach to the transition to Open Super.[132]

ACCC consideration of implementing CDR in Super

5.122 Mr Franklin of the ACCC commented in evidence to the committee that one of the ACCC's roles in relation to the CDR is to do studies of other industries that could be opened up to the CDR, and that the ACCC would happily take a request to consider the superannuation sector.[133]

Extending CDR to general insurance

5.123 Mr Frank Schebesta, CEO of Finder, a comparison website offering services in various financial services segments, argued that the insurance sector, and in particular the market for car insurance in Australia, would benefit from the extension of the CDR:

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[128] See, for example: 86 400, *Submission*, p. 15; Finder, *Submission 70*, p. 10; Super Consumers Australia, *Submission 49*, pp. 3–4.

[129] Financial Services Council, *Submission 100*, p. 7.

[130] Financial Services Council, *Submission 100*, p. 7.

[131] Financial Services Council, *Submission 100*, p. 7.

[132] Australian Institute of Superannuation Trustees, *Submission 37*, pp. 3–4.

[133] Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, *Committee Hansard*, 27 February 2020, p. 14.

> [We need] more access to car insurance pricing so that Australians can get a better deal and are better protected on the road. Right now superannuation and car insurance are two industries that are very difficult to navigate, to switch, to deal with...Car insurance in the United Kingdom has been an open industry, whereas in Australia it has not been...The pricing of car insurance in Australia is high compared to the UK now. That's because comparison industries have given people choice and have reduced prices. We don't have that here in Australia. You've got two big insurers with 70 per cent of the market controlling it. I say this very openly: they send us legal letters all the time telling us to pull down our comparisons of their products. I don't think that's how a normal competitive market should operate. We should have comparison in the insurance space in Australia. It's not competitive.[134]

5.124 FinTech Australia submitted that 'insurtech' companies who are seeking to innovate and disrupt the insurance industry would be greatly assisted by the extension of the CDR to the general insurance sector. It commented:

> CDR in insurance is critical in the insurtech sector as there is a fundamental and significant information asymmetry between incumbents and insurtechs. In the insurance industry, access to historical claims information (including no claims bonus information) is critical to designing new products and pricing them.
>
> At present, insurance companies are sharing historical general insurance claims, underwriting and other data through their membership of the Insurance Council of Australia. Disrupters and innovators in insurtech are excluded from accessing this information as they are not APRA regulated insurers and cannot become members of the Insurance Council.[135]
>
> …
>
> There is no incentive for incumbents to disrupt their own product suites given their market dominance and their control over insurance data. CDR in insurance would disrupt this imbalance and promote an environment where new insurtechs can more easily compete and develop and test new product offerings. This is critical in an insurance market where Lloyd's and APRA-regulated insurers are exiting certain lines of insurance due to loss making books of business, changes in risk profile and profitability limitations.[136]

5.125 Insurance Australia Group (IAG) argued that if CDR is extended to general insurance, there should be provisions to protect underwriting data held by insurers:

> [T]he protection of underwriting data, including pricing and historic claims data and models, is essential to the proper functioning of the insurance sector.

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134 Mr Frank Schebesta, CEO, Finder, *Committee Hansard*, 20 February 2020, p. 57.

135 FinTech Australia, *Submission 19*, pp. 37–38.

136 FinTech Australia, *Submission 19*, p. 38.

> Underwriting data is a source of intellectual property and a commercial asset for insurers. It forms the basis of insurers assessing and pricing risk as well as price competition. It is imperative that any future rollout of CDR that looks to grant access (either read or write) to consumer data to Fintech companies does not compromise the IP embedded in the underwriting data of insurers. To do so would be to discourage further innovation in the understanding of risk.[137]

5.126 IAG submitted that intellectual property issues need to be considered in the drafting of the CDR Rules for general insurance, including specific exemptions and anti-avoidance provisions to address issues with intellectual property.[138]

Governance arrangements for the Consumer Data Right

5.127 As noted above, under the CDR framework, the ACCC has responsibility for developing the detailed rules governing the implementation of the CDR in banking and in subsequent sectors, while the OAIC has responsibility for privacy protections relating to the CDR and the Data Standards Body is responsible for developing technical standards relating to data transfer and security. Treasury also has responsibility for broad policy development in relation to the CDR scheme. Some submitters expressed concern that oversight of the CDR initiative is unnecessarily fragmented, and that regulatory arrangements may need to be consolidated.

5.128 The Financial Data and Technology Association submitted:

> There is undoubtedly good collaboration between the CDR regulator and the data standards body. However, ongoing ambiguity between the rules and technical data standards may suggest the need for an overall coordinator, similar to the Open Banking Implementation Entity in the UK.[139]

5.129 Data Republic contended that more broadly, regulatory responsibility in Australia for all relevant elements of the data economy are split across multiple different bodies or government departments, resulting in problems including: confusion within and outside of government about departmental ownership and mandate for different components of the data value chain; and piecemeal legislation and policy action in different parts of the data economy. It recommended that Australia should 'centralise data economy regulation and industry development under one dedicated government body to allow for greater transparency, accountability and effective engagement with private industry'.[140]

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137 Insurance Australia Group, *Submission 43*, p. 10.

138 Insurance Australia Group, *Submission 43*, p. 10.

139 Financial Data and Technology Association, *Submission 62*, p. 4.

140 Data Republic, *Submission 27*, pp. 5–7. See also: FinTech Australia, *Submission 19*, pp. 41–42.

5.130 Data Republic contrasted Australia's fragmented regulatory arrangements with those of Singapore, which has 'evolved rapidly to a single executive branch for the data economy which has a paired model of accelerator (innovation, industry development) and brake (privacy, sovereignty etc)'. It explained further:

> The IMDA is a statutory board in the Singapore government, that seeks to deepen regulatory capabilities for a converged info-communications media sector (i.e. data) while safeguarding the interests of consumers and fostering pro-enterprise regulations.
>
> ...
>
> Within the IMDA, the paired brake/accelerator model reports under a single statutory authority (separate sub-branches) which allow for nuanced decisions to be made that might require consideration of trade-offs between privacy and innovation. These two sub-branches are:
>
> ● Personal Data Protection Commission – whose mission is to "promote and enforce personal data protection so as to foster an environment of trust among businesses and consumers, contributing to a vibrant Singapore economy"; and
>
> ● Data Innovation Programme Office (DIPO) – stated ambitions include facilitating data-driven innovation projects, and the development of Singapore's data ecosystem. DIPO will introduce a Data Sandbox Programme, a trusted platform for companies to share data across sectors.
>
> These capabilities have been organised to deliver on Singapore's stated ambition "to build the world's first "global data exchange", based in Singapore". Given a coordinated and comprehensive top down data strategy, the ability to organise industry and Singapore's status as a progressive yet privacy-centric country, they are well-placed to achieve this vision.[141]

5.131 In relation to Australia's regulatory arrangements for data issues, the Australian Banking Association (ABA) submitted:

> The Consumer Data Right (CDR) is a transformational Australian innovation that will empower consumers to utilise their own data, making more informed decisions about the financial products that best suit them and their families.
>
> With the launch of Open Banking and the CDR in 2020, Australia is uniquely placed and we should now examine, refine and consolidate the regulatory responsibility for all relevant elements of data management and privacy in the digital economy that is currently split across multiple regulators and government departments.
>
> The ABA believes it is critical that a more effective, clear and accountable regulatory structure is established for such an important part of the Australian economy. Ultimately, a co-ordinated national data strategy should also be tasked with facilitating public and private sector

[141] Data Republic, *Submission 27*, p.6.

> collaboration by engaging with and solving those data issues as they emerge. A good example of this would be ensuring that the privacy regime that accompanies the CDR does not conflict with existing Australian Privacy Principles…such that incumbents and start-ups entering a market only have to comply with one clear set of privacy obligations thereby strengthening compliance, protecting consumers and also minimising regulatory costs and facilitating innovation.[142]

[142] Australian Banking Association, *Submission 26*, pp. 1–2.

Chapter 6
Access to Capital

6.1 This chapter canvasses issues related to access to capital and investment funding. Evidence to the committee highlighted the importance of this issue in creating favourable conditions that facilitate the growth of FinTech and RegTech innovation in Australia.

6.2 This chapter highlights several issues relating to access to capital for FinTechs and RegTechs, including:

- measures implemented by the Australian Government to support access to capital for lenders and businesses in response to the COVID-19 pandemic;
- the operation of the Early Stage Venture Capital Limited Partnerships (ESVCLP) program and the Early Stage Innovation Company (ESIC) tax incentives;
- the role of collective investment vehicles;
- the need for collaboration between large and small businesses;
- issues relating to the ability of superannuation funds to invest in the startup sector; and
- national interest issues concerning access to investment capital.

Support measures relating to COVID-19

6.3 The Australian Government announced several rounds of measures from March 2020 onwards designed to ameliorate the economic impact of the COVID-19 pandemic. Several support measures were put in place that supported access to capital; some applicable to FinTech and non-bank lenders, and some addressing general business needs to access loans and other forms of capital during the crisis.

Support for SME lenders

6.4 On 19 March 2020, the government announced a facility of up to $15 billion to support lenders providing credit to small and medium enterprises (SMEs).

6.5 The Treasurer, the Hon Josh Frydenberg MP, stated that this measure 'will enable customers of smaller lenders to continue to access affordable credit as the world deals with the significant challenges presented by the spread of coronavirus'. The Treasurer stated further that small lenders 'are critical to Australia's lending markets, often driving innovation and providing competition for larger lenders'.[1]

[1] The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Government to invest up to $15B in support of SME lending', 19 March 2020, https://ministers.treasury.gov.au/ministers/josh-

6.6 Legislation creating the new investment facility, called the Structured Finance Support Fund (SFSF), passed the Parliament on 23 March 2020. The SFSF is administered by the Australian Office of Financial Management (AOFM), to invest in wholesale funding markets used by small ADIs and non-ADI lenders. In announcing the facility, the Treasurer stated that the $15 billion capacity will 'allow the AOFM to support a substantial volume of expected issuance by these lenders over a 12 month period'.[2]

6.7 The SFSF lending facility is designed to complement the Reserve Bank of Australia's (RBA's) announcement of a $90 billion term funding facility (TFF) for authorised deposit-taking institutions (ADIs) that will also support lending to small and medium enterprises.[3]

6.8 The government's announcement was welcomed by the sector, with FinTech Australia Chief Executive Officer (CEO) Ms Rebecca Schot-Guppy labelling it 'landmark recognition of the power of fintech from government'.[4]

6.9 The AOFM outlined the purpose of the SFSF in a submission to the committee:

> The SFSF aims to ensure continued access to funding markets by SME lenders impacted by the economic effects of the pandemic and in doing so maintain competition for smaller lenders that are servicing consumers and SMEs. In particular, the aim is to ensure that smaller lenders can maintain access to funding during the period of economic and financial market disruption by the Government making targeted investments in structured finance markets.[5]

6.10 The role of the SFSF is also complementary to the Australia Business Securitisation Fund (ABSF), which is an existing fund administered by the AOFM. Established in mid-2019, the ABSF has $2 billion in capacity and is designed to support the provision of finance to SMEs on more competitive

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frydenberg-2018/media-releases/government-invest-15b-support-sme-lending (accessed 7 April 2020).

2 The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Government to invest up to $15B in support of SME lending', 19 March 2020.

3 The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Government to invest up to $15B in support of SME lending', 19 March 2020. Through the TFF, the RBA will provide up to $90 billion in funding to ADIs at a rate of 25 basis points, with funding made available on a three-year term. The objectives of the TFF are to enable ADIs to reduce interest rates for borrowers and encourage additional lending to businesses, particularly SMEs. See: RBA, 'Term Funding Facility to Support Lending to Australian Businesses', 19 March 2020, https://www.rba.gov.au/mkt-operations/term-funding-facility/announcement.html (accessed 15 April 2020).

4 Aleks Vickovich, 'Fintechs lick lips at $15b 'small lender' stimulus', *Australian Financial Review*, 20 March 2020, https://www.afr.com/companies/financial-services/fintechs-lick-lips-at-15b-small-lender-stimulus-20200319-p54bxm (accessed 25 March 2020).

5 Australian Office of Financial Management, *Submission 172*, p. 2.

terms. The AOFM called for proposals for the first round of ABSF investments in December 2019.[6]

Funding released through the ASBF and SFSF

6.11 The AOFM announced on 27 March 2020 that it had released the first funds from the SFSF.[7] On 2 April 2020 the AOFM announced that it intends to invest $500 million into a warehouse vehicle sponsored by Judo Bank, a challenger bank focused on the SME sector. This will consist of a $250 million funding tranche allocated from the ASBF, and a further $250 million in a different security class issued by the same warehouse facility on a temporary basis through the SFSF.[8]

6.12 The AOFM noted that other shortlisted proponents from the first round of ABSF investments will be automatically considered for investment by the newly-created SFSF.[9] It was reported that several FinTechs are likely to apply for funding through the SFSF.[10]

6.13 The AOFM reported in July 2020 that as at 30 June 2020, total SFSF investments and commitments were just over $2.7 billion, with three main work streams for the provision of SFSF support: public (primary and secondary) markets; private (warehouse) markets; and forbearance (the establishment of arrangements to enable small lenders to provide forbearance for borrowers experiencing COVID-19 related hardship).[11]

SME Guarantee Scheme

6.14 The government announced on 22 March 2020 the Coronavirus SME Guarantee Scheme, designed to support SMEs 'to get access to working capital

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6 Australian Office of Financial Management, *Media Release*, 'ABSF update and results of first round of ABSF investments', 2 April 2020, https://www.aofm.gov.au/absf/absf-update-and-results-first-round-absf-investments (accessed 8 April 2020).

7 Australian Office of Financial Management, 'SFSF Update', 27 March 2020, https://www.aofm.gov.au/sfsf/sfsf-update-1 (accessed 8 April 2020).

8 Australian Office of Financial Management, *Media Release*, 'ABSF update and results of first round of ABSF investments', 2 April 2020.

9 Australian Office of Financial Management, *Media Release*, 'ABSF update and results of first round of ABSF investments', 2 April 2020.

10 James Eyers, James Thomson and Jonathan Shapiro, *Australian Financial Review*, 'Fintechs eye $15b fighting fund as Judo bags cheque', 2 April 2020, https://www.afr.com/companies/financial-services/prospa-zip-flexigroup-look-to-aofm-judo-bags-cheque-20200402-p54gep (accessed 8 April 2020).

11 Australian Office of Financial Management, 'Quarterly Structured Finance Support Fund (SFSF) Update', 14 July 2020, https://www.aofm.gov.au/quarterly-structured-finance-support-fund-sfsf-update (accessed 28 July 2020).

to help them get them through the impact of the coronavirus'.[12] Under the Scheme, the Government will guarantee 50 per cent of new loans issued by eligible lenders to SMEs. The Treasurer stated that this support 'will enhance lenders' willingness and ability to provide credit to SMEs', with the government guaranteeing up to $20 billion in order to support $40 billion of lending to SMEs.[13]

6.15 Under the scheme, the Government will provide eligible lenders with a guarantee for loans with the following terms:

- SMEs, including sole traders, with a turnover of up to $50 million.
- Maximum total size of loans of $250,000 per borrower.
- Loans will be up to three years, with an initial six month repayment holiday.
- Unsecured finance, meaning that borrowers will not have to provide an asset as security for the loan.[14]

6.16 By mid-May 2020, the government had approved 41 lenders to participate in the scheme, including ten FinTech lenders. Non-bank lenders participating in the scheme include: Banjo Loans; Get Capital; Judo Bank; Lumi Finance; Moula; On Deck; Prospa; Speedy Finance; Spotcap; and Tyro Payments.[15]

6.17 Treasury informed the committee that as at 19 June 2020, seven of the FinTech lenders participating in the scheme had made 632 loans to the value of $29.4 million (with the three remaining FinTech participating lenders yet to report data).[16] As at 20 July 2020, the SME Guarantee Scheme as a whole had supported loans worth $1.5 billion to more than 15,600 businesses.[17]

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[12] The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, *Joint Media Release*, 'Supporting Australian workers and business', 22 March 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/supporting-australian-workers-and-business (accessed 8 April 2020).

[13] The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, *Joint Media Release*, 'Supporting Australian workers and business', 22 March 2020.

[14] Treasury, 'Coronavirus SME Guarantee Scheme - supporting the flow of credit', https://treasury.gov.au/coronavirus/sme-guarantee-scheme (accessed 20 April 2020).

[15] James Thomson, 'Prospa will cut loan rates with government guarantee', *Australian Financial Review*, 15 April 2020, https://www.afr.com/companies/financial-services/prospa-will-cut-loan-rates-with-government-guarantee-20200414-p54jow (accessed 15 April 2020); Treasury, Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 15 July 2020), p. 2.

[16] Treasury, Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 15 July 2020), p. 2.

[17] The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Supporting small business to adapt, grow and create jobs', 20 July 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/supporting-small-business-adapt-grow-and-create-jobs (accessed 28 July 2020).

Expansion of the scheme

6.18 On 20 July 2020 the Treasurer announced an extension of the scheme, with a second phase to commence from 1 October 2020. Key changes to the Scheme include:

- extending the purpose of loans able to be provided beyond working capital, such that a wider range of investment can be funded;
- permitting secured lending (excluding commercial or residential property);
- increasing the maximum loan size to $1 million (from $250,000) per borrower;
- increasing the maximum loan term to five years (from three years); and
- allowing lenders the discretion to offer a repayment holiday period.[18]

6.19 The Treasurer stated that the next phase of the scheme 'will help businesses move out of hibernation, successfully adapt to the new COVID-safe economy and invest for the future'.[19]

Boosting cashflow for employers

6.20 On 22 March 2020 the government announced it would be providing payments of up to $100,000 to eligible SMEs and not-for-profits with annual turnover of under $50 million, with a minimum payment of $20,000. These payments flow through to employers automatically from the Australian Taxation Office (ATO) on the basis of salary and wages payable to employees, with the aim of helping businesses' and not-for-profits' cash flow so they can keep operating, pay their rent, electricity and other bills and retain staff.[20]

6.21 This measure is expected to benefit around 690,000 businesses employing around 7.8 million people, as well as around 30,000 not-for-profits, at an estimated total cost of $31.9 billion.[21]

Submitter views on COVID-19 support measures

6.22 Submissions commented on the ability of FinTechs to access financial support programs and stimulus funding measures announced by the government in recent months.

6.23 Zip expressed support for the stimulus initiatives the government had already implemented to assist Australian businesses through the crisis, but suggested

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[18] The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Supporting small business to adapt, grow and create jobs', 20 July 2020.

[19] The Hon Josh Frydenberg MP, Treasurer, *Media Release*, 'Supporting small business to adapt, grow and create jobs', 20 July 2020.

[20] The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, *Joint Media Release*, 'Supporting Australian workers and business', 22 March 2020 (accessed 1 May 2020).

[21] The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, *Joint Media Release*, 'Supporting Australian workers and business', 22 March 2020 (accessed 1 May 2020).

it was 'critical' that these support packages be extended to include established FinTech businesses. It noted:

> Many of these businesses do not currently qualify for any of the support packages available and we support the extension of these packages to ensure the last eight years of innovation and competition are not destroyed by the current crisis.[22]

6.24 Zip also asserted that FinTechs needed to be supported to continue to compete against the Big Four Banks, which were being bolstered by government support packages and using the crisis to 'advertise aggressively' and increase market share as smaller players were unable to compete. Zip noted that Buy Now Pay Later (BNPL) players like itself had 'significant distribution' and supported a large part of the economy through their customers and merchants, and in that sense were no different to the Big Four Banks.[23]

Access to AOFM funding mechanisms

6.25 Zip recommended that the government offer 'priority access' for FinTech and BNPL lenders to the AOFM funding scheme, the $15 billion SFSF, provided that the relevant qualifying criteria were met.[24] Zip explained why it believed that priority access to the AOFM scheme was required:

> BNPL companies currently use public market and bank securitisation and warehouse facilities. Using the current AOFM program to support these facilities would provide strong additional support to the BNPL sector. Certainty and access to debt funding allows fintechs and BNPL to continue to offer their services to millions of Australian consumers and thousands of Australian retailers.[25]

Access to low-interest loans through the RBA funding facility

6.26 Several submitters suggested broadening access to the RBA's $90 billion term funding facility, which will provide capital to ADIs at a borrowing rate of 0.25 per cent, in order to facilitate ADIs lending to small and medium enterprises.

6.27 Zip suggested that the government's low-interest loan package be extended to include established and emerging FinTech lenders such as neobanks and BNPL providers. It argued that doing so would allow businesses like Zip to support their existing customers with interest and fee waivers, as well as repayment moratoriums, similar to those offered by the Big Four Banks. Zip asserted that excluding certain sections of the economy provided the Big Four

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22 Zip, *Submission 116.1*, p. 1.

23 Zip, *Submission 116.1*, p. 1.

24 Zip, *Submission 116.1*, p. 2.

25 Zip, *Submission 116.1*, p. 2.

with a competitive advantage and would work to stifle the innovative and competitive landscape.[26]

6.28 86 400 commented that access to RBA funding at preferred interest rates as a mechanism to stimulate the economy is 'typically directed to established large scale players', with the TFF being a case in point:

> Providing substantial funds at 25 bps allows large banks to directly target retail borrowers with Government subsidised rates that new entrants are simply unable to match. This approach appears perfectly rational at a macro-economic level – ensuring stimulus with broad coverage – however it ignores the impact at a micro-level, which is that the biggest banks can establish a stranglehold on new business flows and choke effective competition.[27]

6.29 86 400 submitted that this issue 'could be quickly and easily addressed by the RBA' by providing $200 million from the TFF to 86 400 and other neobanks, rather than making TFF funding allocations based on the capital ratios held by ADIs.[28]

6.30 FinTech Australia commented on access to the TFF, arguing that it exacerbates problems with a lack of competition in the banking sector:

> [The TFF] is not directly available to neo banks and challenger banks where that bank does not lend to corporates or SMEs. Even where a neo bank or challenger bank lends to these sectors, they do not have the large self-securitised mortgage books that are used by the major banks as collateral for the TFF. Competition in the Australian banking sector suffers a great detriment from this discrepancy, as the access to cheaper funding enables major banks to lower the cost of overall funding. This in turn allows major banks to subsidise their lending businesses (including residential mortgages) by being more aggressive on acquisition. Additionally, while [APRA] has granted capital buffer relief to ADIs, due to the early stage of neobanking in Australia many neo banks have not had sufficient time in existence to be able to mature to the point of having excess capital buffers.[29]

SME Guarantee Scheme

6.31 Zip recommended that the government extend the SME Guarantee Scheme to FinTech lenders and BNPL companies that provide credit to consumers. Zip argued that extending this program would provide 'significant support' for new businesses which would support millions of Australian consumers and retailers during the pandemic. It explained:

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[26] Zip, *Submission 116.1*, p. 1.

[27] 86 400, *Submission 31.1*, p. 3.

[28] 86 400, *Submission 31.1*, pp. 3 and 5.

[29] FinTech Australia, *Submission 19.1*, pp. 17–18.

> It is critical that retail and consumer spending is supported throughout this challenging period. As a very responsible provider of credit (1 in 100 Zip customers [are] late in any given month compared with 1 in 6 for credit cards), Zip is well placed to continue to offer consumers choice and provide competition to the Big Four Banks.[30]

6.32 Brighte recommended similarly that the definitions of 'eligible loan' and 'participating lender' under the scheme be expanded to allow more FinTech lenders to access the scheme, for example, including BNPL services provided for businesses.[31]

Other support options for FinTech lenders

6.33 The Australian Finance Industry Association (AFIA) noted the constraints of the SFSF and the SME Guarantee Scheme in respect of smaller lenders including FinTechs:

> [The] SFSF and the [SME Guarantee] Scheme are geared towards the larger banks or larger non-bank lenders, and will not provide support to smaller innovative lenders. Furthermore, while the '6 month moratorium' announced by the banks has been an important measure to calm the community, it is having a significant impact across lending markets, putting pressure on smaller lenders that are not permitted or unable to provide similar initiatives to their customers.
>
> Smaller lenders are challenged in being able to participate in the SFSF and Scheme because of their business models, existing funding arrangements and/or tailored product range.[32]

6.34 AFIA recommended that the government create a new fund to provide liquidity support and access to alternative funding sources for smaller lenders. This additional initiative 'would recognise the complexities of the lending market, the varying needs of Australians through the COVID-19 crisis, and the need for Government and industry action to focus on the immediate challenges, with the longer term and recovery in mind'.[33]

Refinements to ESVCLP and ESIC incentives

Venture capital investment incentives

6.35 Venture capital (VC) is a specialised form of finance suited to high potential, early-stage businesses targeting rapid growth. The Department of Industry,

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30 Zip, *Submission 116.1*, p. 2.

31 Brighte, *Submission 41.1*, p. 3.

32 Australian Finance Industry Association, *Submission 87.1*, p. 5.

33 Australian Finance Industry Association, *Submission 87.1*, p. 3.

Science, Energy and Resources[34] (the department) administers the Early Stage Venture Capital Limited Partnerships (ESVCLP) program to encourage VC investment in businesses in Australia including FinTechs.[35]

6.36 The ESVCLP program provides tax exemptions to domestic and foreign investors on their share of the fund's income and capital gains. Additionally, investors receive a 10 per cent non-refundable tax offset on capital invested during the year. The partnership is not considered a taxing point and the income and gains flow through to investor, which avoids double taxation.[36] Through the ESVCLP program, a total of $1.17 billion has been invested since partnerships commenced investing in 2010-11.[37]

6.37 The department also administers the Venture Capital Limited Partnerships (VCLP) program, which is aimed at increasing foreign investment in the Australian VC sector. VCLPs also provide flow-through tax treatment, and eligible foreign investors receive a capital gains tax exemption for gains made on eligible investments.[38] Through the VCLP program, a total of $7.82 billion has been invested since partnerships commenced investing in 2004-05.[39]

6.38 The department provided information on annual investment flows through these two programs, shown at Table 6.1.

Table 6.1 ESVCLP and VCLP investment amount

Financial year	ESVCLP ($million)	VCLP ($ million)
FY 04/05		8.15
FY 05/06		149.70
FY 06/07		522.98
FY 07/08		390.03
FY 08/09		286.33
FY 09/10		206.27
FY 10/11	6.55	486.51

[34] On 1 February 2020, the Department of Industry, Innovation and Science became the Department of Department of Industry, Science, Energy and Resources, in line with the Machinery of Government changes announced by the Prime Minister on 5 December 2019.

[35] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

[36] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

[37] Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 13 March 2020), p. 1.

[38] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

[39] Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 13 March 2020), p. 1.

FY 11/12	17.55	315.18
FY 12/13	21.20	225.28
FY 13/14	37.21	265.66
FY 14/15	63.84	582.56
FY 15/16	104.68	900.56
FY 16/17	191.19	820.21
FY 17/18	217.00	1133.56
FY 18/19	299.88	797.56
FY 19/20	208.86	727.91
Total	1167.96	7818.46

Source: Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 13 March 2020), p. 2.

6.39 In relation to the ESVCLP program and the FinTech sector, the department noted:

> Companies developing technology, including for use in the financial services sector, are eligible for investment by ESVCLPs and VCLPs. However, ESVCLPs and VCLPs are not permitted to invest in companies predominantly undertaking financial services activities. The close relationship between FinTech and these ineligible activities had given rise to uncertainty about the eligibility of FinTech investments and some stakeholders expressed concerns that this could constrain investment in Australian FinTechs. [40]

6.40 To counter these concerns, government amended the legislation governing the programs in 2018 to make it clear that FinTech companies were eligible for investment through the ESVCLP and VCLP programs.[41]

6.41 The department submitted that program data 'shows ESVCLPs and VCLPs are investing in FinTech and RegTech':

> In 2018-19 these partnerships invested over $42 million in 47 FinTech and RegTech companies. This is a significant increase over the last five years, when $6 million was invested in 4 companies in 2013-14.[42]

Early Stage Innovation Companies incentives

6.42 Since July 1 2016, investments made in qualifying Early Stage Innovation Companies (ESIC) have been eligible for tax incentives.[43] The ESIC incentives provide eligible early stage investors who purchase new shares with:

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[40] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

[41] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

[42] Department of Industry, Innovation and Science, *Submission 18*, p. 14.

- a non-refundable carry forward tax offset equal to 20 per cent of the value of their qualifying investments, capped at a maximum tax offset amount of $200,000; and
- modified capital gains tax (CGT) treatment, under which capital gains made or accrued on qualifying shares that are continuously held for at least 12 months and less than ten years are exempt from CGT. Capital losses made or accrued on shares held less than ten years are also disregarded.[44]

6.43 The department noted that in the first two years of the scheme (from July 2016), around $630 million was invested in ESICs.[45]

Submitter views on the ESVCLP and ESIC programs

6.44 The committee received evidence from a number of submitters that there was room for improvement in the ESVCLP and ESIC structures.

6.45 In regard to the ESVCLP, SquarePeg Capital (SquarePeg) informed the committee that the current policy setting needed to be clarified to ensure that FinTechs and investment firms did not have to operate in a grey area.[46] It noted:

> We continue to be concerned by the complexity of the ESVCLP regulation. In particular, as it relates to fintechs, the distinction that limits the eligibility of lending businesses in the legislation causes a higher hurdle rate for such fintechs.[47]

6.46 Mr Anthony Holt, co-founder and partner of SquarePeg, further explained to the committee the distinction in the ESVCLP eligibility criteria that caused concern:

> It [the distinction] is between people in the business of providing platforms versus people in the business of lending. Those who are providing platforms, as a general matter, will fit under the legislative requirement to be an ESVCLP-eligible investment. Those that are more specifically providing lending as a primary purpose—I can't remember the exact words, but there's a balance to what you're doing and, to the extent that the balance tips over more on the lending side, you will not be eligible for

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[43] According to the Australian Tax Office, a company will quality as an ESIC if it meets both the 'early stage test and either the 100-point innovation test or the principles-based innovation test'. For further details see https://www.ato.gov.au/Business/Tax-incentives-for-innovation/In-detail/Tax-incentives-for-early-stage-investors/?page=2#BK_100pointinnovationtestrequirements, (accessed 12 March 2020).

[44] Australian Taxation Office, *Tax incentives for innovation*, 6 May 2016, www.ato.gov.au/Business/Tax-incentives-for-innovation/#Earlystageinvestmentcompanies (accessed 28 February 2020).

[45] Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 13 March 2020), p. 2.

[46] SquarePeg, *Submission 54*, p. 5.

[47] SquarePeg, *Submission 54*, p. 6.

> ESVCLP. It's hard to understand from an investor perspective why that distinction is made. There must be a reason. But it means that it's an element of judgement and an element of evolution for us when we're looking at what's eligible and what's not eligible. That makes it difficult to assess where and how we invest.
>
> Because of the structures that we've got in place because we invest in Australia as well as in international markets, we've got a degree of flexibility that others in the industry don't have and we can use our international structure to invest in non-ESVCLP-eligible investments, and so to an extent it affects us less, but the logic of it not being ESVCLP-eligible is something that is hard to understand and adds a burden for us in making the assessment. It makes things more difficult than they need to be.[48]

6.47 FinTech Australia noted that current legislation prohibits VCLPs and ESVCLPs from investing in authorised deposit-taking institutions (ADIs). It noted that there were potential tax advantages for an investor using a VCLP or ESVCLP, and these may encourage investors to look specifically at neobanks if the ADI investment restrictions were lifted.[49]

6.48 The Australian Computer Society (ACS) recommended changes to the ESIC incentives. It noted that from a government policy lever perspective, the attraction of a successful ESIC regime was that increased investment does not mean forgoing tax revenue.[50]

6.49 The ACS outlined why it believed changes to the ESIC incentives would positively impact Australia's economy:

> Capital is globally mobile. Australian investors are sophisticated so they will allocate their investments based on where they will achieve the greatest return. Reforming and enhancing the appeal of ESIC will ensure a greater share of Australian private capital is retained and invested in Australia rather than going overseas – capital that can expedite our future economic growth.[51]

6.50 Additionally Mr Andrew Johnson, ACS Chief Executive Officer, observed:

> At a high level, if we had a broader definition and less bureaucracy around our scheme, encouraging more people to participate, that would go a long way to improving capital flows. In an environment where the fiscal environment is very tight, if we can ensure more Australian capital stays in

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48 Mr Anthony Holt, Co-founder and Partner, SquarePeg, *Committee Hansard*, 19 February 2020, p. 2.

49 FinTech Australia, answers to questions on notice, 28 February 2020 (received 20 March 2020).

50 Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

51 Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

> country rather than going overseas—capital is globally mobile, just like labour is—the economy will benefit.[52]

6.51 The ACS provided information on how Australia's ESIC incentives compared to similar programs in the United Kingdom (UK):

> Deloitte Access Economics has benchmarked ESIC to the United Kingdom's Enterprise Investment Scheme and Seed Enterprise Investment Scheme (SEIS). This stylised scenario assumes an initial investment of $200,000 and holding shares for over twelve months across all schemes and hence avoiding capital gains tax.
>
> The analysis indicates an effective return of 18.5% for investments in early-tech companies under Australia's ESIC, compared to an effective return of 38.6% for investors in the UK's SEIS – more than double the rate of return.[53]

6.52 The ACS put forward three recommendations on the ESIC tax incentive for the committee to consider:

> 1.) Streamlining red tape by abolishing ESIC's 100-point innovation test requirements with the highest use innovation test requirements (such as enforceable patents, participating in an eligible accelerator programme) converted to examples contained under the Principles Based Innovation Test Requirements.
>
> 2.) Broadening the criteria defining an "early stage company" eligible for ESIC investment lifting the criteria capping from $1m or less total expenses in the previous year to $2m or less and raising assessable income caps of $200,000 or less the previous income year to $400,000 or less.
>
> 3.) Lifting the income tax relief from 20% upfront offset to match the SEIS of 50% upfront offset.[54]

6.53 The ACS contended that remodelling ESIC to 'match and better' the UK equivalent would be a low risk, easy to implement initiative that would help increase capital flows into the FinTech sector. It posited that the costs to the budget would be offset by tax receipts through employment growth and increased GST and capital gains revenue.[55]

Suggestions on ESIC and ESVCLP programs following the COVID-19 pandemic

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[52] Mr Andrew Johnson, Chief Executive Officer, Australian Computer Society, *Committee Hansard*, 20 February 2020, p. 65.

[53] Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

[54] Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

[55] Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

6.54 Submissions lodged following the commencement of the pandemic restrictions noted that access to venture capital funding for start-ups and scaleups, including FinTechs, is likely to become significantly more difficult during the economic downturn currently being experienced.

6.55 The Australian Innovation Collective provided a submission in March 2020 which stressed the importance of refining the Early Stage Investment Company (ESIC) program as part of a suite of measures to ensure that high-growth start-up companies can survive the current economic shock caused by the COVID-19 pandemic and attract private capital. It stated:

> A black swan event like COVID-19 will make investors even more risk averse in the absence of urgent action.
>
> It is vitally important that Australians understand these opportunities are available to them and are encouraged to take them.
>
> Policies that lead to a paradigm shift increase in equity investment in startups and scaleups rather than the current approach which is regarded in the industry as incremental and restrictive.[56]

6.56 It argued that, at a broad level, the following changes are required:

- Make it easier for companies to qualify for early stage investment incentives by simplifying the criteria and application process for ESIC.
- Adjust the incentive levels and limits imposed on participating retail and sophisticated investors.
- Replace the existing ESIC eligibility criteria for companies and investors.[57]

6.57 The Australian Innovation Collective argued that increasing the tax deductions available under the ESIC scheme, and making them accessible upon capital deployment, could incentivise investment decisions in the next 36 months to help spur economic recovery.[58] It commented that high growth technology based companies 'are the simplest way to reboot a flagging economy'.[59]

6.58 Several other submitters urged similarly that the ESIC scheme be expanded, in line with the UK model, in order to provide an injection of private capital into FinTechs and the broader start-up sector.[60]

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[56] Australian Innovation Collective, *Submission 155*, p. 16.

[57] Australian Innovation Collective, *Submission 155*, p. 16. A detailed explanation of how to implement these suggested changes was included at: Australian Innovation Collective, *Submission 155*, pp. 37–39. See also: Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), pp. 13–21.

[58] Australian Innovation Collective, *Submission 155*, p. 22.

[59] Australian Innovation Collective, *Submission 155*, p. 22.

[60] FinTech Australia, *Submission 19.1*, p. 16; Mr Abraham Robertson, *Submission 126.1*, p. 1; BIRDI, *Submission 156*, p. 2; Birchal, *Submission 67.1*, p. 1.

6.59 FinTech Australia also drew attention to opportunities to strengthen the Early Stage Venture Capital Limited Partnerships (ESVCLP) program to maintain investment in the FinTech ecosystem at this time, by:

- extending the non-refundable carry forward tax offset from, for example, 20 per cent to 30 per cent; and
- expanding eligible asset classes under the scheme, which could benefit neobanks as well as FinTechs in the areas of property development, land ownership, finance, insurance or making investments directed at deriving passive income.[61]

6.60 FinTech Australia argued that the current restriction on investment into ADIs is particularly problematic:

> Access by neo banks to capital could also be facilitated by championing initiatives such as more generous tax incentives for investments in early stage fintechs (including neobanks) for amounts up to a certain amount (for example, $20m). Unfortunately, current legislation prohibits venture capital limited partnerships ("VCLP") and ESVCLPs from investing in [ADIs]. There is, however, a potential tax advantage for an investor using a VCLP/ESVCLP, which may encourage these investors to specifically look at neo banks if ADI investment restrictions are lifted. We also note that ADIs are also specifically excluded from certain investor incentives that are made available to foreign investors that are available to other companies.[62]

Creation of Corporate CIV and Limited Partnership CIV

6.61 The committee received evidence arguing that Australia's current set of collective investment vehicles (CIVs) were not structured in a globally recognisable way.

6.62 The Australian Investment Council (AIC) highlighted that CIVs are an important structure to facilitate the aggregation and pooling of capital to be invested into Australian start-up and scale-up businesses. However, it argued that Australia's current suite of CIVs were not competitive with other similar markets offshore.[63]

6.63 The AIC emphasised that a 'world-class' CIV regime was key to building and expanding on the pool of capital that could be attracted into FinTech and RegTech businesses in Australia. It informed the committee that a number of large international investors had identified that the current structure of Australian CIVs was a material deterrent for investing more into Australia. The AIC stated:

> As a result, these international investors are making decisions to invest in jurisdictions that have CIV regimes they are more familiar with. This

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61 FinTech Australia, *Submission 19.1*, p. 16.

62 FinTech Australia, *Submission 19.1*, pp. 16-17.

63 Australian Investment Council, *Submission 12*, p. 4.

> means Australia misses out on significant volumes of capital simply because our policy infrastructure is not as competitive and consistent with global practices as it should be.[64]

6.64 Mr Yasser El-Ansary, Chief Executive of the AIC provided further detail to the committee at a public hearing on why international investors preferred more familiar CIVs:

> One of the areas of feedback that I hear the most about when it comes to effectively selling Australia as an investment destination to offshore providers of capital—offshore pension funds or sovereign wealth funds in particular—is that they are unfamiliar and therefore sometimes uncomfortable investing into vehicles such as managed investment trusts here in Australia, which we have a deep propensity for, because they are vehicles that are not common, standard or consistent with other markets with which we compete globally. So their preference is to invest into vehicles with which they are familiar, and a limited partnership vehicle is exactly that. It is a vehicle that is used in markets all over the world. It is a vehicle used in markets with which we're in competition for capital, and the feedback from those investors is: 'When you as Australia start to look consistent with some of the other markets that we are already investing into, we will take another look at you. But at the moment there are too many question marks around investing into Australia when we simply don't understand this vehicle that you have.'[65]

6.65 The AIC observed that in 2016 the government committed to introducing two new types of CIVs (a Corporate CIV and a Limited Partnership CIV); however, it noted that these have not yet been implemented. The AIC recommended that a Limited Partnership CIV aligned with international best practice be fast-tracked, with a target start date of 1 July 2021.[66]

6.66 The AIC further argued that for Australia to achieve an investment environment for FinTech and RegTech that is competitive with other jurisdictions the investment framework should: have clear parameters; be conducive to domestic and international investment; and align with best practice in other jurisdictions. It added:

> Implementing CIVs as a priority will reignite Australia's competitiveness as an investment destination as investors are familiar with this form of investment vehicle. This in turn will increase the pool of capital for investment which will have the flow on benefits of economic growth and attracting talent.[67]

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64 Australian Investment Council, *Submission 12*, p. 4.

65 Mr Yasser El-Ansary, Chief Executive, Australian Investment Council, *Committee Hansard*, 20 February 2020, p. 34.

66 Australian Investment Council, *Submission 12*, p. 4.

67 Australian Investment Council, Answers to questions on notice, from a public hearing on 20 February (received 6 March 2020).

Collaboration between large and small businesses

6.67 The committee received evidence indicating that there was a role for government in encouraging collaboration between large businesses and start-ups in the FinTech and RegTech sectors.

6.68 For example, global consulting firm A.T. Kearney noted:

> Government has a significant role to play in promoting the adoption of fintech and regtech and creating the conditions were these technologies can thrive. These technologies promise to enable better and cheaper financial services products and more effective and efficient regulatory compliance, but this will not happen in a vacuum. Realising their potential is dependent on creating the conditions for entrants to emerge, supporting competition and protecting the safety of consumers and businesses.[68]

6.69 Mr Rob Feeney, partner at A.T. Kearney, further explained:

> We don't think you're [the government] the only player in this ecosystem, but we think you're one of the most significant players, and there's a large role. We think that your role is around promoting adoption, creating the conditions for success for many of these institutions and companies, helping to drive innovation and competition, and helping to remove funding barriers and enable some of these companies to develop.[69]

6.70 A.T. Kearney gave the example of the Financial Sector Technology and Innovation scheme in Singapore, where the government provides direct investment to encourage collaboration. The scheme includes direct funding elements and aims to allocate $168 million over the next five years to encourage financial institutions to collaborate with FinTech start-ups.[70]

6.71 FinTech Australia informed the committee that 'difficulties abound' for FinTechs entering into commercial contracts with incumbents:

> Fintech businesses have found that although corporates speak the language of innovation, the process to adopt new technologies are outdated. Issues arise around procurement processes, legal compliance, technology review and onboarding process and timelines. For instance, fintechs are frequently asked to provide 3 years of financial data. Where a business is under 3 years old this is a practical impossibility. Even where businesses are over 3 years old, they are likely to reinvest all profits into the business, meaning that companies cannot rely on the same metrics to assess the viability of fintechs which they would incumbents. Taking over 12 months to sign a contract may make sense for the corporate incumbent but may be a significant and potentially unsurmountable, or even fatal, barrier for the fintech to enter into the arrangement.[71]

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[68] A.T. Kearney, *Submission 52*, p. 12.

[69] Mr Rob Feeney, Partner, A.T. Kearney, *Committee Hansard*, 30 January 2020, p. 43.

[70] A.T. Kearney, *Submission 52*, p. 18.

[71] FinTech Australia, *Submission 19*, p. 76.

6.72 FinTech Australia argued that the government should incentivise companies of all sizes that have the potential to generate long term economic value, jobs, and contribute to the intellectual and technological future of Australia. It suggested that collaboration between large incumbents and small start-ups could be incentivised by providing tax incentives to businesses which use FinTech or other start-ups in their business, even for a trial period.[72]

6.73 FinTech Australia also suggested that the government could help to educate and raise awareness in the business and broader community about the benefits of collaboration:

> As developers of new concepts and products, fintechs and startups also often encounter marketing difficulties as users generally do not accept their new concepts or products. The government could assist with this problem through education campaigns (similar to the CDR campaign) that could, for example, demonstrate to the public what fintech is or what fintech products are, and they benefit they can bring to an individual or business.[73]

6.74 FinTech Australia noted that some international jurisdictions (such as New Zealand and Singapore) were already taking this approach, with these governments producing online and television content to help promote and support the FinTech ecosystem.[74]

6.75 The RegTech Association advised that there were challenges for RegTech start-ups looking to collaborate with large businesses, and listed procurement and IT security as two of the key obstacles. As a way to overcome this, Ms Deborah Young, Chief Executive Officer of the RegTech Association explained that her organisation was attempting to gather a group of procurement managers to work through the problems cooperatively:

> We would like to attempt to see if it's possible to gather a group of procurement heads. In fact, we tried to do that late last year. We intend to convene that to get together a group of procurement heads from large institutions, such as the banks, and ask them about looking at ways that they are currently onboarding small companies and to see what are the low-hanging fruit on the things that they might be able to address and change.[75]

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[72] FinTech Australia, *Submission 19*, p. 76.

[73] Fintech Australia, Answers to questions on notice, 28 February 2020 (received 20 March 2020).

[74] Fintech Australia, Answers to questions on notice, 28 February 2020 (received 20 March 2020).

[75] Ms Deborah Young, Chief Executive Officer, The RegTech Association, *Committee Hansard*, 28 February 2020, p. 12.

6.76 Ms Young also mentioned that large businesses should consider a 'dual track process' for how they onboard new technology, with one track for 'big players' and separate, less onerous track for small or startup businesses.[76]

6.77 The committee received evidence relating to the ways in which FinTechs present challenges to incumbents, including dealing with legacy systems and comparatively more regulation, as well as responding to competitors who are not bankers but entrepreneurs and technology specialists. However, the committee heard that Australian banks are responding to the growth of FinTech companies.

6.78 ANZ indicated that it 'is a strong supporter of, and investor in, fintech' and has three groups that focus on ways of supporting FinTech innovation: New Business Labs, ANZi Partnerships and ANZi Ventures. ANZ reported that [i]nvesments made through ANZi focus on four key areas: homeownership, trade and capital flows, small and medium businesses and open data'.[77]

6.79 Speaking to the House of Representatives Economics Committee, Mr Shayne Elliott, CEO of ANZ, indicated that the ANZ is an active investor in about eight FinTech companies, with all except for one based in Australia. Mr Elliott provided more detail that the companies:

> …offer either critical pieces of technology infrastructure—which will be important for us, to build a better ANZ—or, mostly, a unique or really valuable customer proposition that we cannot offer but would like to embed into the ANZ service proposition. It's public information. We're a major shareholder in Lend[i]. We're a shareholder in Zip and DiviPay. There are a range of companies that we have invested in and partnered with. We're not a venture capital firm; we have to partner to build better services and products for our customers. I think we are well ahead on that.[78]

6.80 In April 2020 during the COVID-19 pandemic ANZi Ventures invested in Australian FinTech Airwallex as part of a Series D funding round. Mr Ron Spector, Managing Director of ANZi Ventures, characterised the investment as a 'strategic' move and indicated that ANZi Ventures was looking forward to working with Airwallex.[79]

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[76] Ms Deborah Young, Chief Executive Officer, The RegTech Association, *Committee Hansard*, 28 February 2020, p. 12.

[77] ANZ, *Submission 20*, p. 2.

[78] House of Representatives, Standing Committee on Economics, Australia's four major banks and other financial institutions: four major banks, *Committee Hansard*, 15 November 2019, p. 60.

[79] Cara Waters, 'ANZ and Salesforce back Airwallex in $252 million raise', *Sydney Morning Herald*, 16 April 2020, www.smh.com.au/business/small-business/anz-and-salesforce-back-airwallex-in-252-million-raise-20200415-p54k84.html (accessed 17 April 2020).

6.81 The Commonwealth Bank (CBA) mentioned the work of its Innovation Lab and its partnership with the World Bank 'issuing the world's first bond issued on a blockchain (Project Bond-i).[80] CBA has invested in Swedish BNPL firm Klarna, becoming the company's exclusive partner in Australia and New Zealand.[81]

6.82 In July 2019 CBA announced it would use 'artificial intelligence technology to advise customers…as digital banking shifts from facilitating transactions to provision personal, customised insights to customers based on data'.[82] CBA launched a startup incubator program in February 2020 called X15 Ventures, with the aim of launching 25 new FinTech startups within five years.[83]

6.83 National Australia Bank reported on some of its collaborations such as a new digitised receipt product developed in partnership with Slyp, as well as 'the launch of Xero NAB Payments'.[84]

6.84 Westpac Group indicated that it is a corporate partner for the establishment of Stone & Chalk which is a 'start-up hub focussed on the FinTech sector'. It has a $150 million Reinventure Fund which is 'a venture capital fund focussed on FinTech and adjacent industries that embed financial services'. Westpac also holds an 'annual innovation challenge' and has participated in the development of Lot Fourteen in South Australia which is an 'innovation hub which is a central element of the $551 million Adelaide City deal'.[85]

Encourage superannuation funds to invest more broadly

6.85 The committee received evidence that there may be ways for superannuation funds to appropriately invest capital in the FinTech sector.

6.86 In response to the committee's query about what measures could be taken to support the FinTech sector's ability to raise capital from other types of institutional investors, company accelerator Startupbootcamp Australia mentioned an initiative in Singapore that had been successful:

> The best example for this would be Singapore. The government offers large tax credits to incumbents for putting together VC funds that encourage

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80 Commonwealth Bank, *Submission 121*, p. 2.

81 Colin Kruger, 'CBA puts $US100m down payment in Afterpay rival Klarna', *Sydney Morning Herald*, 7 August 2019; James Frost and James Eyers, 'CBA tips $14m into Bassat-backed Square Peg', *Australian Financial Review*, 28 July 2020.

82 James Eyers, 'CBA technology to advise customers whether to spend, *Australian Financial Review*, 31 July 2019.

83 James Eyers, 'CBA to launch 25 start-ups in five years', *Australian Financial Review*, 3 February 2020, https://www.afr.com/technology/commonwealth-bank-creates-x15-ventures-to-build-new-start-ups-20200131-p53wp7 (accessed 7 August 2020).

84 National Australia Bank, *Submission 51*, p. 2.

85 Westpac Group, *Submission 97*, p. 2.

> and develop the startup space. This removes the risk for funds like superannuations as there is a built in offset to the investment.[86]

6.87 Mr Brian Collins, Fintech Managing Director of Startupbootcamp, also noted that any initiatives to incentivise investment from superannuation funds would need to be different to measures taken to incentivise investments by individuals. He noted:

> On the corporate or the superannuation side, to give a broad answer, it is any way you can help reduce the risk element that they're going to take at the beginning of the process as they're first starting to do these investments.[87]

6.88 Mr Collins also noted that there were several different incentive models that could be used, including a tax credit model, a rebate model, or a matched investment model.[88]

6.89 Mr Collins provided further detail on how it would be possible to use a layer of intermediation and risk management to create the right structures to encourage superannuation funds to invest:

> One is investing into an existing VC function [as per the Singapore example above]; the other is creating a joint venture—possibly between multiple superannuation funds. But the key with any of the fund processes is twofold. One, we need to ensure that those funds have what are called floors and ceilings on investments. We need to ensure that the floor is low enough that they're incentivised to work with early stage start-ups, which is where that funding gap is right now.[89]

6.90 The ACS put forward a suggestion for a voluntary tech investment accord that superannuation funds could choose to enter into. It described the idea to the committee as follows:

> This recommendation is the development of a voluntary accord with superannuation funds where signatories commit to allocating up to 0.5% of their funds under management to high growth tech startups as a higher risk asset class.
>
> Ultimately, this initiative is really about cultural change and sending signals to the market that Australia is serious about improving the sophistication of our economy.[90]

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[86] Startupbootcamp, *Submission 98*, p. 6.

[87] Mr Brian Collins, FinTech Managing Director, Startupbootcamp, *Committee Hansard*, 30 January 2020, p. 64.

[88] Mr Brian Collins, FinTech Managing Director, Startupbootcamp, *Committee Hansard*, 30 January 2020, p. 64.

[89] Mr Brian Collins, FinTech Managing Director, Startupbootcamp, *Committee Hansard*, 30 January 2020, pp. 64–65.

[90] Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

6.91 The ACS pointed out that technology was an increasingly important sector in the ASX, with 21 technology companies with market capitalisation over $1 billion with technology and telecommunication companies making up approximately six per cent of the ASX's total market capitalisation.[91]

6.92 It submitted that a 0.5 per cent voluntary accord would not be a 'stretch target' and that as voluntary measure, the accord would be more about government 'facilitating a conversation' with superannuation funds that may wish to differentiate themselves in the market.[92]

6.93 Stone & Chalk put forward a more specific recommendation to increase superannuation fund investment in start-ups. It suggested that the government provide sufficient incentives to individual retail and wholesale taxpayers to invest in Australian start-ups and scaleups that qualify for ESIC, allowing 100 per cent Capital Gains Tax relief for investors and a 100 per cent tax loss offset up to a threshold limit of $400,000. Stone & Chalk recommended that should the government choose to exclude retail investors from directly accessing such incentives, then the government should instead mandate superannuation funds to provide access to this investment class to retail investors.[93]

6.94 FinTech Australia informed the committee that its members were concerned about the relatively low proportion of superannuation funds that invest in FinTechs and start-ups, outlining its understanding of the situation as follows:

> This low rate of investment seems to be a product of the superannuation funds' individual investment processes and risk appetites, with some superannuation funds expressing that the same level of effort and due diligence is required to invest $100,000 as it is to invest $100m. This results in a lack of incentive for superannuation funds to invest in early stage companies that are raising smaller amounts of capital.[94]

6.95 In order to rectify this trend, FinTech Australia asserted that superannuation fund investment processes and frameworks need to be modified to better accommodate smaller companies. It further noted that promoting investment in FinTechs by superannuation funds would also provide benefit to fund members, as it would allow a diversification of that fund's portfolio and risk profile.[95]

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91 Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

92 Australian Computer Society, answers to written questions on notice, 20 February 2020 (received 28 February 2020).

93 Stone & Chalk, *Submission 25*, p. 7.

94 FinTech Australia, answers to questions on notice, 28 February 2020 (received 20 March 2020).

95 FinTech Australia, answers to questions on notice, 28 February 2020 (received 20 March 2020).

Consideration of national interest issues in relation to investment capital

6.96 When considering how to attract investment capital from overseas into Australia's FinTechs and RegTechs, it was noted that national interest matters may need to be considered due to the sensitive nature of these businesses, in terms of both the data they acquire and the services they provide.

6.97 The committee explored with several witnesses at a public hearing whether the government should be prioritising investment from countries aligned with Australia's national interest goals, such as the partners in the Five Eyes intelligence alliance.

6.98 Mr Robert Feeney, Lead Partner, Digital Transformation Practice at A.T. Kearney, commented:

> [The question is] something like: can we identify a set of very trusted allies where we would say capital from those particular companies or those particular areas should be able to be invested in Australian technology, and would that help us overcome potential capital restrictions in Australia? I think that's really interesting…it's certainly something that I think is worth exploring, particularly if you could find areas where not just the capital but, more importantly, the expertise could be accessed.
>
> …
>
> Obviously financial interest comes with that investment, but along with that financial interest also comes the particular expertise of the person making the investment. If we were to consider organisations where we felt that they had expertise that would help our Australian companies get a leg-up, I think that would be very beneficial.[96]

6.99 Professor Mark Kendall, CEO of MedTech firm WearOptimo, stated:

> Certainly, when it comes to foreign investment, our federal government has been looking at this and—I understand as a result of COVID-19—has changed the Foreign Investment Review Board position to being more careful about what we do with foreign investment. I think there's a good case to argue for some preferential terms for parties within the Five Eyes system, building on our cultural links and capital and all the rest. I think that would help. It would certainly help Australians, as we go to build out our medtech technologies, if we have that more level playing field to make it more straightforward for deployment of capital— for someone from the US, for instance, to invest into an Australian technology.[97]

6.100 The committee intends to explore this issue further in the remainder of its inquiry and provide further views in its final report.

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[96] Mr Robert Feeney, A.T. Kearney, *Proof Committee Hansard*, 1 July 2020, p. 5.

[97] *Proof Committee Hansard*, 1 July 2020, p. 18.

Chapter 7
Issues relating to Culture and Skills

7.1 This chapter outlines a number of issues presented in evidence to the committee in the areas of culture and skills.

Culture

7.2 Promoting a culture of innovation and startup success is critical to the ongoing development of the FinTech and RegTech sectors in Australia, and Australia's economic success more broadly in the post-COVID period. While this cannot be created solely by government, regulators and government agencies can promote innovation and facilitate initiatives in this space.

7.3 This section examines several matters that feed into Australia's FinTech and startup culture across a range of areas, including:

- the role of Commonwealth procurement in fostering the Australian FinTech and RegTech sectors;
- the need for challenge-based innovation; and
- the creation of an AgTech Advisory Council to promote innovation in the agricultural sector.

Leveraging Commonwealth procurement

7.4 The committee received evidence which highlighted the important role that government could play in promoting the Australian FinTech and RegTech sectors through procurement.

7.5 For example, FinTech Australia argued that more needed to be done to open up government procurement processes to Fintechs, as some of the current guidelines automatically eliminated new FinTech businesses from tendering. It explained:

> Government procurement processes should be amended to allow fintechs to tender and be appointed as service providers. Government is a significant consumer of services. However, in many cases businesses are required to have more than 3 years of financial data before they can tender for government contracts. This should be revised.[1]

7.6 The RegTech Association also noted that procurement programs often do not cater for early stage RegTech companies:

> Startups or scaleups find themselves needing to engage expensive professional services and other advisors to satisfy the requirements of the programs. Many require International Standards (ISO) compliance to be

[1] FinTech Australia, *Submission 19*, p. 102.

> met that is cost prohibitive and resource-intensive. A one-approach fits-all for procurement does not work.[2]

7.7 Stone & Chalk Chief Executive Officer, Mr Alex Scandurra, pointed out that federal and state governments were significant buyers in the economy, meaning they could take practical steps to promote Australian FinTech and RegTech sectors through procurement:

> We have, for various years, tried to help both levels of government become what we call 'startup ready', which is in creating a fast-track procurement process for early stage technology companies in Australia. To a large extent, we've failed in implementing that successfully across the country. When we look at startup and scale-up success, the biggest factor is in reducing the perceived risk profile of that investment and there is no better way of reducing that risk than through validation that comes through customer contracts, and, right now, as governments, we are talking about it, but we aren't doing it and leading the way. So we desperately need a fast-track procurement process that is fit for purpose for working with early stage startups and scale-ups across the country at both a state and federal level. What we don't mean is where there is high risk or where it's core to government systems, for example, where potentially it could be seen as a highly risky decision to employ an immature technology, let's say, versus an alternative. But, when we look at the extent and breadth of government expenditure at both state and federal levels, there is more than enough to provide a real accelerant to startup and scale-up growth in this country.[3]

7.8 FinTech Australia noted that many FinTechs in the Australian market would benefit from having the government as a customer. It suggested that this would allow for the government to integrate system efficiencies and have the added bonus of ensuring that the FinTechs would be able to provide future jobs, with the job growth potential increasing over time.[4]

7.9 Ms Kate Carnell AO, the Australian Small Business and Family Enterprise Ombudsman, told the committee that government procurement for RegTech solutions is particularly important during the economic downturn created by the COVID-19 pandemic:

> One of the things governments could do really well to help things along in the sector is actually go out to tender, using their purchasing power to get some regtech solutions happening. There is a whole range of areas in government where that could be a great benefit certainly to small business

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2 The RegTech Association, *Submission 10*, p. 12.

3 Mr Alex Scandurra, Chief Executive Officer, Stone & Chalk, *Committee Hansard*, 19 February 2020, p. 14.

4 FinTech Australia, answers to questions on notice, 28 February 2020 (received 20 March 2020).

> and more broadly. This is, in our view, a time when government purchasing power really needs to be used to stimulate the economy.[5]

7.10 Innovation and Science Australia (ISA) is an independent statutory board of entrepreneurs, investors, research and educators which advises the government on innovation, research and science matters. In its February 2020 *Stimulating business investment in innovation* report to government, the ISA noted that many countries have used government procurement (including challenge-based approaches) to support the development of an innovation ecosystem and drive productivity growth.[6]

7.11 ISA noted that although governments in Australia were using challenge-based procurement (such as the Business Research and Innovation Initiative, and the Small Business Innovation Research for Defence), these programs were not on a scale to create sufficient demand for innovation from firms.[7]

7.12 ISA outlined how government procurement policies could create opportunities and generate more customers for Australian firms:

> Government is a major purchaser and its procurement processes are a training ground for customer engagement. The use of government procurement to increase business investment in innovation could impact how businesses think about the value of innovation and drive considered risk taking.[8]

7.13 ISA recommended that where appropriate, government should leverage its procurement of products and services to promote a more innovation-oriented response from business and build business capability.[9]

7.14 The Digital Transformation Agency informed the committee about the Digital Marketplace initiative, which assists small and medium enterprises in making government aware of their services:

> Certainly a key way that we have introduced as an easier way to introduce yourself to government is…the Digital Marketplace. That allows a particular emphasis on small-to-medium enterprises to offer their services to government. It also includes some features like 'ask the market'. In other words, government agencies can put a request out to the marketplace,

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5 Ms Kate Carnell AO, Australian Small Business and Family Enterprise Ombudsman, *Proof Committee Hansard*, 14 July 2020, p. 7.

6 Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, www.industry.gov.au/data-and-publications/stimulating-business-investment-in-innovation, (accessed 4 March 2020), p. 18.

7 Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 18.

8 Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 18.

9 Innovation and Science Australia, *Stimulating business investment in innovation*, February 2020, p. 18.

> looking for an outcome versus a prescribed set of requirements, particularly in emerging technology spaces where it's not clear what you need.[10]

Challenge-based innovation

7.15 The committee received evidence on how government could utilise the challenge-based innovation to help grow Australian businesses, as well as solve difficult public policy and service delivery challenges.

Business Research Innovation Initiative

7.16 The Business Research Innovation Initiative (BRII) is administered by the Department of Industry, Science, Energy and Resources and aims to help the government tap into leading edge thinking and encourage innovation. The initiative offers competitive grants to encourage small and medium enterprises (SMEs) to develop solutions to public policy and service delivery challenges nominated by government.[11]

7.17 In Stage 1 of the BRII, five challenges are selected and published. The challenges are proposed by government agencies, recommended by Innovation and Science Australia and then approved by the Minister.[12]

7.18 For example, the challenges proposed for the 2019 funding round were:

- Fast and secure digital identity verification for people experiencing domestic violence (proposed by the Department of Human Services)
- Intelligent data to transform tourism service delivery (proposed by Austrade)
- Uplifting government capability to help deliver world-leading digital services (proposed by Digital Transformation Agency)
- Managing the risks of hitchhiking pests and contaminants on shipping containers (proposed by Department of Agriculture and Water Resources)
- Automating complex determinations for Australian Government information (National Archives of Australia).[13]

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[10] Mr Jonathon Thorpe, Acting Chief Strategy Officer, Digital Strategy and Capability Division, Digital Transformation Agency, *Committee Hansard*, 26 February 2020, p. 3.

[11] Australian Government, 'Help us solve government challenges', www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

[12] Department of Industry, Innovation and Science, 'Business Research and Innovation Initiative (BRII)', www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

[13] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII) – Fact Sheet*, www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

7.19 During Stage 2 of the process, eligible entities apply for competitive grants to undertake a feasibility study on their proposed solution to a challenge. Feasibility study projects must demonstrate the scientific, technical and commercial feasibility of the proposed solution. The maximum grant for each feasibility study is $100,000, with a maximum period of three months. Each round has $2 million available for all feasibility studies.[14]

7.20 During Stage 3, SMEs that have shown that their idea is feasible through a feasibility study can apply for funding to develop a proof of concept. Proof of concept projects involve undertaking activities to produce a working prototype or demonstration of the proposed solution. The maximum grant amount is $1 million, with a maximum period of 18 months. For each round there is $10 million available for all proofs of concept.[15]

7.21 At the conclusion of this stage, the government agency that proposed the challenge has the option to negotiate the purchase of the solution, although there is no obligation to do so. Any purchase of the solution is subject to negotiation between the agency and the solution provider.[16]

7.22 Factil Pty Ltd (Factil) is a specialist software company based in Melbourne that provides organisations with solutions to complex data integration challenges. Between March 2017 and October 2018 it was successful in two stages of grant funding for the BRII Round 1 Challenge.[17]

7.23 Factil developed a system called 'Kalinda' to meet the requirements of a BRII challenge aimed at sharing information nationally to ensure child safety. Kalinda provides an advanced general query and record matching search process across Person, Location, and Relationship data maintained by state-based child protection agencies. The system utilises leading machine learning techniques and is a scalable solution in a secure certified government cloud system.[18] As a result of the BRII funding Factil was able to employ three

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[14] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII)*, www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

[15] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII)*, www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

[16] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII) – Fact Sheet*, www.business.gov.au/Grants-and-Programs/Business-Research-and-Innovation-Initiative, 13 February 2020 (accessed 5 March 2020).

[17] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII) – Factil Pty Ltd*, https://www.business.gov.au/grants-and-programs/business-research-and-innovation-initiative/customer-stories/factil-pty-ltd, 11 October 2019 (accessed 5 March 2020).

[18] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII) – Factil Pty Ltd*, https://www.business.gov.au/grants-and-programs/business-research-and-innovation-initiative/customer-stories/factil-pty-ltd, 11 October 2019 (accessed 5 March 2020).

specialist staff, and the Kalinda system directly led to two follow-up projects with the Victorian and Commonwealth governments.[19]

Events-based innovation challenges

7.24 Submitters highlighted the role of hackathons and event-based challenges in enabling innovative companies to solve policy problems and develop new ideas.[20]

7.25 CPA Australia argued that to maximise FinTech clustering and networking effects and attract international FinTech start-ups and investors into the country, Australia 'stands to benefit from more government involvement in facilitating annual FinTech events'. It recommended that the Australian Government organise or sponsor large-scale FinTech events annually, which 'could include expanding on the format of the RegTech Liaison Forums or GovHack, to include FinTech-specific hackathons'.[21]

Targeted innovation grants

7.26 FinTech Australia submitted that a targeted innovation grants program could help both sustain the FinTech sector through the COVID-19 crisis period and advance specific initiatives the government has prioritised:

> Members have suggested the Government create a targeted grant scheme to fund continued innovation in an environment of increased withdrawal of venture capital. This scheme could be aimed at promoting innovation in key initiatives such as the implementation of the Consumer Data Right or progressing payments through the New Payments Platform. This would have the added benefit of not only financially supporting innovative fintechs and startups, but also supporting development and adoption of the Consumer Data Right by industry, and its customers.[22]

AgTech Advisory Council

7.27 The committee received evidence on the opportunities and potential for the agricultural technology (AgTech) sector in Australia.

7.28 The National Farmers' Federation (NFF) noted that while the Australian AgTech sector was still relatively immature on a global scale, there had been significant growth in activity in recent years. It advised that there are now at

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[19] Department of Industry, Innovation and Science, *Business Research and Innovation Initiative (BRII) – Factil Pty Ltd*, https://www.business.gov.au/grants-and-programs/business-research-and-innovation-initiative/customer-stories/factil-pty-ltd, 11 October 2019 (accessed 5 March 2020).

[20] CPA Australia, *Submission 146*, p. 8; Mr Jonathan Thorpe, Digital Transformation Agency, *Committee Hansard*, 26 February 2020, p. 7.

[21] CPA Australia, *Submission 146*, p. 8. GovHack is an annual international competition staged over a weekend in which teams agree and complete projects utilising open data sources to solve real world problems.

[22] FinTech Australia, *Submission 19.1*, p. 16.

least eleven operational incubators, accelerator and pre-accelerator programs dedicated to food and agriculture across the country, a growing number of public and private funding opportunities, as well as hundreds of AgTech start-ups.[23]

7.29 AgriDigital, a company focused on bringing emerging technologies and innovation to the agricultural supply chain, stated that it was investigating significant international opportunities. Co-founder Mr Bob McKay explained:

> We've started our expansion into the US. We see that as critical for the success of our business. Australia is a fantastic place to trial and commercialise software. It's a tough market. We're not helped by two years of drought, which impacts on that as well. If you can commercialise software in Australia and then take it to the world, we're finding that North Americans and Canadians in particular are really receptive to Australian companies, particularly in the agtech space.[24]

7.30 Mr McKay also spoke positively regarding the potential for the Australian AgTech sector more broadly:

> We think there's a really good opportunity to brand Aussie AgTech as the leading world brand for agricultural technology. When you think of Israel, you think of security and those sorts of things. I think for Australia there is a good opportunity for us to be seen as the agtech leaders. In reality, the Australian market, while big—and it is substantial for agriculture—is really not big enough to justify the investment that companies like us put into our technology, so we do have to go and treat the world as our market.[25]

7.31 The NFF emphasised the importance of bringing the general agricultural sector on board in the AgTech space to ensure solid user take-up and build trust. Dr Adrienne Ryan, General Manager of Rural Affairs for the NFF highlighted this point to the committee at a public hearing:

> …technology in the ag sector and quite possibly in other sectors is often pushed on to industry by entrepreneurs who may not have a good understanding of the complexities of the system that they are seeking to service, rather than being pulled into the industry by producers who are seeking to address on-farm problems. So the end result can be solutions looking for problems. This in turn undermines trust and can affect how farmers respond to products that are genuinely useful and well-targeted. So we need a really considered approach. Farmers aren't always comfortable with the rapid turnover of new technologies. They are not always convinced by short-term benefits. They may prefer to wait for it to be proven and tested before investing significant time and money.[26]

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[23] National Farmers' Federation, *Submission 105*, p. 5.

[24] Mr Bob McKay, Co-Founder, AgriDigital, *Committee Hansard*, 28 February 2020, p. 53.

[25] Mr Bob McKay, Co-Founder, AgriDigital, *Committee Hansard*, 28 February 2020, p. 53.

[26] Dr Adrienne Ryan, General Manager of Rural Affairs, National Farmers' Federation, *Committee Hansard*, 28 February 2020, p. 50.

7.32 In order effectively tap into the AgTech sector's potential, the NFF recommended that the government adopt a leadership role in digital agriculture by establishing a high level advisory group to oversee development of a digital strategy for agriculture, including a data strategy and a data sharing policy.[27]

7.33 Dr Ryan explained the reasoning behind this recommendation:

> That was a recommendation that came out of the probably three to four years of work that the rural research and development corporations [RDCs] have been leading. It was the first time that all 15 of the RDCs had worked together on a single initiative, which I think is a clear demonstration of how seriously they are all taking digital agriculture. A lot of work was done, but I think the feeling was that there was now a need for some national leadership if we are actually going to generate real change and get the necessary traction to achieve.[28]

7.34 The Department of Agriculture, Water and the Environment (DAWE) provided a list of activities underway to support the opportunities offered by AgTech including:

- The 2019 Ernst & Young report *Agricultural Innovation – A national Approach to Grow Australia's Future* commissioned by DAWE;
- *Horizon Scan: The future of agricultural technologies*, undertaken by the Australian Council of Learned Academies, commissioned by the Australian Government National Science and Technology Council and Australia's Chief Scientist and funded by DAWE;
- $157 million Rural Research and Development for Profit Program with many projects targeting digital agriculture and AgTech; and
- Traceability Grants Program which is investing $7 million into projects to enhance supply chain traceability systems.[29]

7.35 DAWE also noted the Agricultural Research and Development Corporations which 'invest in a wide range of research activities that include developing AgTech solutions such as robotics, automated irrigation, precision agriculture and virtual fencing'.[30]

7.36 CSIRO informed the committee that it has a large portfolio of research in digital agriculture including:

- Graincast which uses weather and soil information to forecast soil moisture and yield for grain crops; and

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[27] National Farmers' Federation, *Submission 105*, p. 8.

[28] Dr Adrienne Ryan, General Manager of Rural Affairs, National Farmers' Federation, *Committee Hansard*, 28 February 2020, p. 54.

[29] DAWE, Answers to written questions on notice (received 24 July 2020).

[30] DAWE, Answers to written questions on notice, (received 24 July 2020).

- Waterwise which advises farmers when to irrigate using a plant stress prediction model from infrared sensors and weather forecasts.[31]

7.37 The University of New England's SMART Region Incubator, which supports over 60 startups from regional NSW, noted the potential to activate technology based start-ups in rural communities and generate new economy jobs.[32] It identified a number of key actions to transform the digital technologies in agriculture in Australia, including:

- recognising data ownership and governance as a policy priority, with research required to pilot different approaches to the management of farmer's data along the supply chain, including the payment of farmers for use of their data;
- undertaking research activities to identify barriers and opportunities toward the rapid development of a competitive digital services industry in agriculture, given the costs and risks associated with adoption of digital technology and digital transformation along the food supply chain;
- developing school level, VET and university programs for careers in AgTech, noting that AgTech can help address agriculture's inability to attract and retain young talent;
- creating RegTech partnerships between the food industry and government regulators, by trialling projects which connect real time data streams between agricultural assets and regulatory bodies to assist in compliance and to enhance understanding of the nature of agriculture's externalities;
- establishing a pilot project looking at the value proposition for hands-free product delivery on both export and domestic markets made possible by enhanced data transfer at processor-retailer interfaces; and
- piloting novel approaches to incorporate real time and digital measurement into financial sector applications relating to AgTech, such as the use of Australian carbon credit units.[33]

Skills

7.38 The committee received a broad range of evidence relating to skills, training and access to talent in the FinTech and RegTech sectors in Australia. For this interim report, the committee has focused specifically on some of the matters raised, including:

- recent developments in Australia's vocational education and training system, including the establishment of the National Skills Commission;

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[31] CSIRO, Answers to written questions on notice (received 20 July 2020). See also: https://www.csiro.au/en/Research/AF/Areas/Digital-agriculture (accessed 30 July 2020).

[32] UNE Smart Regions Incubator, *Submission 112*, p. 1.

[33] UNE Smart Regions Incubator, *Submission 112.1*, pp. 1–2.

- response measures to the COVID-19 crisis that have supported employment and skills, including for FinTechs and RegTechs;
- the need to facilitate lifelong learning in order to allow Australians to retrain and reskill, including through 'microcredentials'; and
- the need for clarity around the operation of Fringe Benefits Tax.

Recent developments and establishment of the National Skills Commission

7.39 The Australian Government announced a suite of initiatives for the vocational education and training (VET) sector in the 2019-20 Budget, through the $585.3 million skills package *Delivering Skills for Today and Tomorrow*.[34] The package was announced following a review of the VET sector conducted by the Hon Steven Joyce, *Strengthening Skills: Expert Review of Australia's Vocational Education and Training System* (the Joyce review), completed in March 2019.[35]

7.40 A key recommendation of the Joyce Review implemented in the *Delivering Skills for Today and Tomorrow* reform package was the establishment of a National Skills Commission (NSC).[36] Other components of the package include:

- establishing the National Careers Institute to provide a single authoritative government source of careers information, with a particular focus on marketing and promoting vocational careers;
- supporting up to 80,000 additional apprenticeships over five years; and
- piloting new Skills Organisations 'to enhance the role and leadership of industry and to test and trial ways to improve Australia's VET sector'.[37]

National Skills Commission

7.41 The NSC's role will be to work with state and territory governments, employers and other stakeholders to develop advice to the Australian Government and collect, analyse, share and publish data on:

- Australia's current, emerging and future workforce skills needs;
- the performance of Australia's system for providing VET;
- issues affecting the state of the Australian and international labour markets;
- efficient prices for VET courses;

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[34] Department of Education, Skills and Employment, 'Delivering Skills for Today and Tomorrow', https://www.employment.gov.au/delivering-skills-today-and-tomorrow (accessed 29 July 2020).

[35] The Honourable Steven Joyce, *Strengthening Skills: Expert Review of Australia's Vocational Education and Training System*, March 2019, available at https://www.pmc.gov.au/resource-centre/domestic-policy/vet-review/strengthening-skills-expert-review-australias-vocational-education-and-training-system (accessed 29 July 2020).

[36] National Skills Commission, 'About us: Our journey', https://www.nationalskillscommission.gov.au/about-us/our-journey (accessed 29 July 2020).

[37] Department of Education, Skills and Employment, 'Delivering Skills for Today and Tomorrow', https://www.employment.gov.au/delivering-skills-today-and-tomorrow (accessed 29 July 2020).

- the public and private return on government investment in VET qualifications; and
- opportunities to improve access, skills development and choice for regional, rural and remote Australia in relation to VET.[38]

7.42 Mr Adam Boynton was appointed interim National Skills Commissioner in October 2019 to oversee early design work and engage in a co-design process for the NSC. Legislation to establish the NSC as a statutory position was introduced into Parliament on 14 May 2020, and passed the Senate on Thursday 18 June 2020 and will be considered again by the House of Representatives before it receives Royal Assent.[39]

7.43 The Prime Minister, the Hon Scott Morrison MP, outlined in May 2020 the importance of overhauling the VET system in Australia to assist economic recovery in the wake of the COVID-19 pandemic, highlighting the role of the NSC:

> The National Skills Commission has been established…and will now provide detailed labour market analysis, including an annual report each year setting out the skill needs of Australia, replacing those existing lists for apprenticeships and skilled migration.
>
> This will be supplemented by the publication of closer to real time data on the labour market drawing on emerging data sets, such as single-touch payroll, to flag emerging skills shortages and other labour market trends and pressures.
>
> The Commissioner's analysis is what will also help…students with their career and training choices via the National Careers Institute (NCI), by giving them the most accurate and comprehensive data on where skills gaps and jobs are. Information from the [NSC] will be publicly available and should inform government and private investment in the system, including VET subsidies and a new national skills funding agreement.[40]

Suggestions arising from COVID-19 pandemic period

7.44 Submitters and witnesses commented on the JobKeeper program as being critical to assisting FinTechs and RegTechs survive the initial phase of the COVID-19 pandemic. The committee also received various suggestions on other initiatives that could be taken to support jobs and skills training in the sector through the crisis.

JobKeeper scheme

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[38] National Skills Commission, 'About us: about the National Skills Commission' https://www.nationalskillscommission.gov.au/about-us (accessed 29 July 2020).

[39] National Skills Commission, 'About us: Our journey', https://www.nationalskillscommission.gov.au/about-us/our-journey (accessed 29 July 2020).

[40] The Hon Scott Morrison MP, Prime Minister, *National Press Club Address*, 26 May 2020, https://www.pm.gov.au/media/address-national-press-club-260520 (accessed 29 July 2020).

7.45 The JobKeeper scheme, designed to subsidise the wages payable to employees by businesses affected by the coronavirus, was announced on 30 March 2020. In its initial phase it provides a payment of $1500 per fortnight to each eligible employee of businesses and not-for-profits that qualify for the scheme, for a period of up to six months.[41]

7.46 In broad terms, businesses can qualify for the scheme if they experience, or are likely to experience, a 30 per cent reduction in turnover due to the coronavirus economic downturn, relative to a comparison period from 2019.[42]

7.47 On 23 April 2020 the Australian Taxation Office (ATO) released rules outlining several circumstances in which alternative eligibility tests may be made for businesses that do not meet the baseline criteria. Relevantly for new businesses and high-growth businesses (including many FinTechs), alternative tests are available in circumstances where:

- newer entities have commenced business sometime in the 12 months prior to March 2020 (and hence do not have a relevant comparison period under the standard test); or
- the entity's turnover substantially increased by:
- 50 per cent or more in the 12 months immediately before the applicable turnover test period, or
- 25 per cent or more in the 6 months immediately before the applicable turnover test period, or
- 12.5 per cent or more in the 3 months immediately before the applicable turnover test period.[43]

7.48 In these circumstances, businesses can use alternative tests based on average monthly or quarterly GST turnover.[44]

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41 The Hon Josh Frydenberg MP, Treasurer, and the Hon Scott Morrison MP, Prime Minister, *Joint Media Release*, '$130 billion JobKeeper payment to keep Australians in a job', 30 March 2020, https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/130-billion-jobkeeper-payment-keep-australians-job (accessed 1 May 2020). It was subsequently announced in July 2020 that the program would be extended beyond the end of September 2020 with lower payment rates and updated eligibility criteria.

42 Australian Taxation Office, 'JobKeeper Payment: Eligible employers', https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Eligible-employers/ (accessed 11 May 2020). Different thresholds apply for: businesses with annual turnover of more than $1 billion (who must demonstrate a 50 per cent reduction in turnover); and not-for-profits (who must demonstrate a 15 per cent reduction in turnover).

43 Australian Taxation Office, 'Applying the turnover test: Alternative test', https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/Applying-the-turnover-test/?anchor=Alternativetest (accessed 11 May 2020).

44 Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020, 23 April 2020, paras 6 and 9.

7.49 Submitters and witnesses expressed strong overall support for the JobKeeper program, particularly after the changes made to enable high-growth companies access to the program. Mr Alex Scandurra, Chief Executive Officer of Stone & Chalk and representative of the Australian Innovation Collective told the committee:

> [T]he support that JobKeeper did provide for those that did meet the criteria, both from a business and individual perspective, was a lifesaver. I think we would have had mass collapse, to be completely honest, of the entire sector nationally if JobKeeper hadn't been amended to that second version.[45]

7.50 It was noted that FinTechs and RegTechs were still unable to access JobKeeper in some circumstances, namely: pre-revenue startups; and those utilising contractors, employees on short-term specialised visas or casual staff. Mr Scandurra commented:

> Perhaps the two biggest issues that JobKeeper didn't support—pre-revenue startups and companies that themselves were spending potentially considerable amounts of money. If you imagine some of the deeper tech versions of fintech and regtech and other startups more broadly, they tend to be capital intense, they rely heavily on RDTI, they rely heavily on upfront seed investment, and yet they were completely ignored in the entire JobKeeper policy. Likewise…in early stage businesses it's quite common that they—whether we call them casuals, whether we call them freelancers, whether we call them contractors, for example—typically supply the vast majority of the workforce for these types of companies, even well into the scale-up phase. It's also quite typical for these resources to come in and out for durations of less than 12 months. That was the second major hole that JobKeeper didn't provide for in terms of protecting and supporting startups in particular here in Australia and, to a lesser extent, scale-ups that had that kind of temporary workforce.[46]

7.51 FinTech Australia raised several issues that may still arise for FinTechs in relation to eligibility for the JobKeeper scheme:

> Eligibility regarding JobKeeper is also an issue for startups that utilise contractors, employees on specialised visas or casual workers, as they are typically engaged on an as needed basis, often for less than 12 months. Receiving JobKeeper payments for contractors, visa and casual workers who would otherwise be ineligible for the JobKeeper scheme would allow the business to continue operating, and would keep those workers employed.[47]

7.52 Ms Rebecca Schot-Guppy, Chief Executive Officer of FinTech Australia, commented:

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45 *Proof Committee Hansard*, 30 June 2020, p. 4.

46 Mr Alex Scandurra, Representative, Australian Innovation Collective, *Proof Committee Hansard*, 30 June 2020, p. 4.

47 FinTech Australia, *Submission 19.1*, p. 9.

> Broadly, I would like to congratulate the government on the scheme. It's been very successful for many of our members. The additional tests that were released, in relation to high growth, irregular turnover and for businesses that weren't around 12 months before, allowed many of our members to access it.
>
> …
>
> On the whole, we're very supportive of JobKeeper and I think it provided 95 per cent of the industry with support. There are obvious failures, in relation to pre-revenue companies. I would say all our pre-revenue members missed out on any support, but we understand the government's logic in only supporting businesses that have products in the market.[48]

Lifelong learning

7.53 The committee heard that enabling workers to retrain, reskill and upskill will be critical to Australia's general economic performance in the coming years, and specifically will be required to ensure that the Australian workforce can service growing needs in areas of emerging technology.

7.54 Stone & Chalk noted a recent report which found that 56 per cent of all Australian workers are in roles projected to be impacted by automation and augmentation over the next 15 years.[49] It argued that Australian industry is 'at a critical point where the government can lead the way for lifelong learning at every stage of the skills value chain' and 'provide the impetus for the take up of emerging technologies which will ensure the Australian economy remains competitive'.[50]

7.55 Stone & Chalk recommended the establishment of an 'enduring, transferrable and universal lifelong skills framework that points to employability applied through the entire education system that reflects continuous industry demands', as well as the development of programs to address skills gaps within emerging technology startups and scaleups.[51]

7.56 The Business Council of Australia (BCA) put forward a proposal for a Lifelong Skills Account, which would provide opportunities for individuals to retrain

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[48] Ms Rebecca Schot-Guppy, CEO, FinTech Australia, *Proof Committee Hansard*, 1 July 2020, p. 8.

[49] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 57, citing: Australian Computer Society and Faethm, *Technology Impacts on the Australian Workforce*, March 2020.

[50] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 62.

[51] Stone & Chalk, Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020), p. 62.

and reskill throughout their careers by updating their training through 'microcredential qualifications'.[52]

7.57 Mr Simon Pryor, Executive Director of Policy for the BCA, explained the idea of microcredential qualifications:

> One example we've got is where you're a data analyst looking to get into a fintech. You could do a short course on blockchain. That won't take you two or three years to do. It's a quick course designed to meet your needs and the industry's needs, and you can draw upon a lifelong learning account to pay for some, or all, of that course. Some of it might also be paid for through a HECS scheme. These are decisions that would be made around each course.[53]

7.58 Mr Pryor also highlighted the benefits of the Lifelong Skills Account idea could bring to the FinTech sector:

> [I]t would provide a skilled workforce to meet the needs of fintechs and other businesses. They would quickly be able to get access to the workers they need, because the workers would have been able to do the microcredential course to then bring those skills to jobs that are changing rapidly and where the skills needs are changing rapidly.
>
> We did some work a year or two ago that showed that some jobs might be replaced over time through technological disruption but overwhelmingly it's the tasks within the jobs that are going to change. These microcredential courses allow you to provide the skills to meet the needs of the ever-changing tasks within the jobs.[54]

Clarity around Fringe Benefits Tax and retraining

7.59 Ernst & Young (EY) recommended that the ATO review its current position that retraining provided or paid for by employers for terminating employees is subject to the Fringe Benefit Tax (FBT).[55]

7.60 EY informed the committee that an ATO private ruling[56] stated that while outplacement assistance services (such as external career information sessions or assistance with CV writing) are FBT exempt, any actual attempt to retrain or upskill the employee is subject to FBT.[57]

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[52] Mr Simon Pryor, Executive Director of Policy, Business Council of Australia, *Committee Hansard*, 20 February 2020, p. 54.

[53] Mr Simon Pryor, Executive Director of Policy, Business Council of Australia, *Committee Hansard*, 20 February 2020, p. 54.

[54] Mr Simon Pryor, Executive Director of Policy, Business Council of Australia, *Committee Hansard*, 20 February 2020, pp. 54–55.

[55] Ernst & Young, *Submission 30.1*, p. 1.

[56] See Ernst & Young, *Attachment to Submission 30.1*, for copy of ATO private ruling on FBT released in October 2014 (Authorisation 1012702982847).

[57] Ernst & Young, *Submission 30.1*, p. 2.

7.61 EY provided an example of how this position would impact employers:

> For example, an employer, as a result of technology advancements, might make an employee redundant but wish to invest in that employee's future employment or business prospects by retraining activities as well as outplacement advice. The ATO view is that outplacement assistance services are FBT exempt, but any actual attempt to retrain or upskill the employee would be subject to FBT under the law.[58]

7.62 It further observed:

> The FBT cost makes these activities economically prohibitive as it effectively doubles the cost for employers wanting to arrange such retraining programs. We say that ATO view is an incongruous tax policy position at a time of economic disruption and such a program should be free of FBT.[59]

7.63 EY argued that Australians would better accept disruptive technology advancements if employers were encouraged to assist in retraining employees being terminated. It reiterated that the tax system should encourage such retraining, and that the current settings 'massively' discouraged such economy wide positive behaviour by doubling the cost to employers.[60]

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58 Ernst & Young, *Submission 30.1*, p. 1.

59 Ernst & Young, *Submission 30.1*, p. 1.

60 Ernst & Young, *Submission 30.1*, p. 2.

Chapter 8
Conclusion and recommendations

8.1 This chapter details the committee's conclusions and recommendations in the following areas: technology enablers during the COVID-19 pandemic; regulation; tax settings; access to capital; culture and skills.

COVID-19 recovery measures (Chapter 2)

8.2 The committee heard that the economic impacts of the COVID-19 pandemic have created serious difficulties for the FinTech and RegTech sectors in Australia. The committee also notes the significant support that has been provided to the sector through the JobKeeper program, as well as funding initiatives aimed at supporting non-bank lenders and regulatory relief offered by Australia's financial regulators.

8.3 The committee took a range of evidence on technology enablers which have supported businesses and other entities to continue to operate through the crisis period. The committee considers that a number of temporary changes made during the crisis should be made permanent in order to lock in technology gains.

Technology neutral corporations law

8.4 The committee received evidence that the temporary changes to allow companies to convene annual general meetings (AGMs) and other meetings prescribed under the *Corporations Act 2001* (Corporations Act) online were broadly supported and should continue. The committee commends the Treasurer's recent decision to extend the temporary changes for a further six months beyond the initial November 2020 expiry date.

8.5 The committee notes evidence that virtual company meetings can provide new avenues for engagement, with analysis of virtual AGMs during April and May 2020 indicating that overall attendance increased by 36 per cent relative to the same period in 2019. The committee supports enabling companies to decide on the best format for their meetings while ensuring that shareholders are not disenfranchised.

8.6 In particular, in the case of virtual meetings (where shareholders are not physically present), there should be requirements for the transparent recording and publishing of questions submitted by shareholders and answers given by directors, management and the auditor so that the dynamic of public accountability which occurs through an open question and answer session in a physical meeting is replicated in a virtual meeting.

8.7 In addition to enabling hybrid or virtual company meetings, the committee heard that broader changes are required to make the Corporations Act technology neutral, in order to: enable efficiency in company operations; ensure that technology changes are adopted as widely as possible; and future proof the Act as technology evolves. This includes amendments to enable companies to communicate electronically with shareholders by default, with shareholders retaining the right to request paper-based communications if they wish to do so. This measure would improve efficiency and address paper wastage.

8.8 Given that the Treasurer's temporary determination will now be in place until mid-2021, this time should be used to prepare permanent changes to the Corporations Act for implementation.

Recommendation 1

8.9 The committee recommends that the *Corporations Act 2001* be amended to allow companies to decide the best format for holding their annual general meetings and other prescribed meetings (whether through virtual meetings, in-person meetings or hybrid meetings), while ensuring the needs of shareholders are taken into account.

Recommendation 2

8.10 The committee recommends that the *Corporations Act 2001* be amended to enable companies to communicate with shareholders electronically by default, with shareholders retaining the right to request paper-based communications on an opt-in basis.

Digital signatures and videoconferencing for legal purposes

8.11 The committee notes that evidence supported the temporary measures to assist persons and companies to meet their obligations under the Corporations Act by executing company documents electronically. A number of states and territories also put temporary regulations in place aimed at enabling electronic execution and witnessing of legal documents, with mixed results in terms of efficacy and certainty.

8.12 The committee considers that changes to enable electronic execution and witnessing of legal documents should be made permanent, and consistent across Australian jurisdictions. This can be done while maintaining similar levels of security as 'wet signatures', and would provide significant efficiencies in both time and cost. It will also assist in future scenarios such as during natural disasters, as well as assisting those in regional and remote areas.

8.13 The committee urges the Australian Government to work with states and territories to amend relevant regulations across jurisdictions to achieve consistency in this area.

Recommendation 3

8.14 The committee recommends that the *Corporations Act 2001* and other relevant legislation and regulations be amended in order to allow for the electronic signature and execution of legal documents.

Recommendation 4

8.15 The committee recommends that relevant regulations be amended in order to enable the witnessing of official documents via videoconferencing or other secure technological means.

Telehealth and e-Prescriptions

8.16 The committee received overwhelming support for the expansion of the availability of telehealth services by general practitioners and other medical specialists during COVID-19, hearing that it has been transformational to the health system both in responding to the pandemic and for the future. The committee notes that telehealth has been embraced by patients and doctors alike. The benefits extend beyond cost savings to improving patient outcomes and ensuring access in non-metropolitan areas.

8.17 The committee emphasises in particular that access to telehealth services has been critically important to Australians in rural, regional and remote areas during the pandemic. It is vital that the needs of rural Australians continue to be addressed through the use of appropriate telehealth services into the future.

8.18 The committee is recommending that telehealth items become a permanent feature of the Australian healthcare system as a means of increasing patient choice and control over their health services. It is important that any permanent changes in this area do not result in a diminishing of the availability of face-to-face GP services; patients who wish to access health services in person should be enabled to do so wherever possible.

Recommendation 5

8.19 The committee recommends that Medicare telehealth items introduced during the pandemic be made a permanent feature of the Australian healthcare system, with ongoing refinement and review as appropriate.

8.20 The committee commends the temporary solutions for digital prescriptions implemented during the COVID-19 period. The committee notes the government plan to fast-track the implementation of electronic prescriptions, with ePrescription functionality to be rolled out progressively from mid-2020. The committee considers that this implementation should continue to be rolled out as quickly as possible. The government should also ensure that the system implemented creates an open and accessible market for ePrescription services in Australia.

8.21 As with telehealth services, it is important that the rollout of ePrescriptions is an enabler of patient choice and convenience, and does not result in reduced services available in-person at pharmacies; the community's ability to consult a pharmacist face to face when necessary must be fully maintained.

Recommendation 6

8.22 The committee recommends that work on implementing ePrescriptions in Australia continue as quickly as possible, and that the Australian Government ensure an open and accessible market for ePrescription services.

Progress of Digital ID reforms

8.23 The committee notes the significant progress made since 2015 towards establishing a national framework for the operation of a federated digital identity ecosystem.

8.24 The Digital Transformation Agency (DTA) told the committee that its current work program for this initiative includes: continuing to expand the range of federal government services accessible under the myGovID digital identity; and developing legislation that will enable a truly national, economy-wide set of rules to be established within which digital identity providers will operate, including state and territory government agencies and private sector providers.

8.25 The committee considers that continuing and accelerating this program of work is of great importance as Australia emerges from the COVID-19 crisis. These reforms will deliver significant time and cost savings to individuals and businesses, as well as creating opportunities for innovative FinTechs and others working in the digital identity space.

8.26 The committee notes that the intention of a federated digital identity ecosystem would not be to create a single digital identity solution for individuals or businesses to use; rather, it would develop a common set of ground rules for both government agencies and private sector organisations to be able to develop tailored digital identity management products and solutions. This can enable innovation and competition among providers to occur, while ensuring that consumers retain control over which (if any) digital identity providers they choose to engage with.

8.27 The committee urges that legislative work being developed by DTA be brought forward as quickly as possible by government, in consultation with states and territories through the Digital Economy and Technology Ministers forum.

8.28 Any proposal brought forward by the government must ensure that the digital identity solutions created under the framework are accessible on an opt-in

basis only (rather than being mandated); and should be available in addition to the other forms of identity verification currently in use, rather than replacing those alternatives.

Recommendation 7

8.29 The committee recommends that the Digital Identity reforms led by the Digital Transformation Agency be accelerated in order to deliver a national, economy-wide framework for the operation of a federated digital identity ecosystem as soon as possible.

Use of RegTech to simplify compliance with industrial awards

8.30 The committee supports any initiatives that would help small business to comply with industrial awards and protect the interests of employees, and considers that RegTech solutions can be of significant assistance in this area. The committee heard several proposals on these issues.

8.31 The Australian Small Business and Family Enterprise Ombudsman proposed that the Fair Work Ombudsman (FWO) should be empowered to accredit RegTech solutions to be used by Small and Medium Enterprises in complying with industrial award requirements, and that where an accredited RegTech solution has been used appropriately, a business should be provided safe harbour from prosecution for non-compliance (while still having to make good on any underpayments).

8.32 Tanda suggested that, rather than a formal accreditation system for these RegTech products, government should develop a rating system to measure and report on the extent to which off-the-shelf payroll calculation technology provides a compliant solution when used properly.

8.33 The committee considers that there is enormous potential for RegTech products to provide practical benefit to both businesses and employees, however the committee does not have a clear view at this stage on the best way forward in balancing the various interests at stake. Further work is required to develop a system in which RegTech solutions in this area can be used with confidence by businesses, while ensuring that employees are appropriately protected. The government, in conjunction with the FWO and other relevant stakeholders, should explore options to create a workable solution in this area.

Recommendation 8

8.34 The committee recommends that the Australian Government explore options to promote the use of RegTech solutions in assisting small and medium-sized enterprises to comply with their obligations under industrial awards.

Tax issues (Chapter 3)

R&D Tax Incentive

8.35 The committee notes evidence from witnesses that the process of applying for the R&D Tax Incentive (R&DTI) is long, difficult and resource intensive, making it especially challenging for early stage FinTechs which are time and resource poor.

8.36 A consistent theme in evidence to the committee was the call for greater clarity and certainty in relation to the operation of the R&DTI for software. While the committee acknowledges that in February 2019 the government published new software guidance, this does not appear to have addressed the concerns. While the incentive appears to support the early phase of experimentation and development of a product, the committee believes there needs to be greater clarity around the point at which software is seen as innovation and the point at which it is not. The committee considers this additional clarification is required to clarify when and how the R&DTI is applied to software development in relation to FinTech businesses to ensure genuine software creation by Australian startups is reliably supported.

8.37 The committee also heard significant concerns around the retrospective action taken against R&DTI claimants, with rebates being clawed back in some cases several years after initial payment. The committee considers that this creates an unacceptable level of uncertainty for participants in the scheme. The government needs to provide clearer guidance on this issue and limitations on the ability for payments to be clawed back retrospectively.

Recommendation 9

8.38 The committee recommends that the Australian Government provide further clarity around eligibility for the Research & Development Tax Incentive to ensure genuine software creation by Australian startups is reliably supported.

Recommendation 10

8.39 The committee recommends that the Australian Government provide increased certainty around claiming the Research & Development Tax Incentive through issuing guidance in conjunction with the Australian Tax Office. In particular, clear limitations should be placed on the ability for payments to be clawed back retrospectively.

8.40 The committee notes the Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019 [Provisions] has been referred to the Senate Economics Legislation Committee which is due to report on 12 October 2020.

Payroll tax

8.41 The committee notes that although payroll tax is a state imposed tax, it was raised as a significant issue by some submitters and witnesses, due to the different platforms and requirements between jurisdictions. It was also suggested that early to mid-stage startups should be supported through payroll tax concessions. Noting the action taken by the Government of South Australia to reduce the payroll tax burden for small businesses, and other payroll tax measures introduced by several jurisdictions during the COVID-19 pandemic, the committee recommends that the Council for Federal Financial Relations work to drive simplification of payroll taxes across Australian jurisdictions to assist ease of compliance.

Recommendation 11

8.42 The committee recommends that the Australian Government, through the Council for Federal Financial Relations, simplify payroll taxes across Australian jurisdictions.

8.43 The committee also sees value in state governments investigating RegTech solutions to provide a single payroll tax platform to simplify compliance processes.

Employee share schemes

8.44 The committee understands the highly competitive nature of the skills market in the technology sector and the need to offer non-salary based incentives to attract and retain scarce talent. The use of employee share schemes (ESS) was raised in this context. The committee notes evidence that while the tax treatment of ESS has improved in recent years, current capital gains tax implications decrease the effectiveness ESS as a means of attracting and retaining talent, and there has been confusion as to the operation of these schemes.

8.45 The committee notes that the Treasury completed a consultation process in relation to ESS, with a consultation paper released in April 2019 and submissions received by Treasury; however no final report from this consultation is evident. The committee also notes that the House of Representatives Standing Committee on Tax and Revenue is currently conducting an inquiry into the Tax Treatment of Employee Share Schemes, which commenced on 6 February 2020.

Initial Coin Offerings

8.46 The committee notes the potential of blockchain and the National Blockchain Roadmap released by the Department of Industry, Science, Energy and Resources in February 2020. In the context of raising capital, the tax treatment

of Initial Coin Offerings (ICOs) was raised with the committee, in particular that the issuance of an ICO is currently taxed as income.

8.47 The committee notes that the Treasury conducted a consultation process into ICOs with an issues paper released in January 2019 and submissions received. A final report does not appear to be available.

Recommendation 12

8.48 The committee recommends that the Australian Government release the final Treasury report on Initial Coin Offerings when it is completed.

Regulation issues (Chapter 4)

Competition mandate for financial regulators

8.49 The committee recognises the critical importance of promoting competition in the financial services sector for Australia's future prosperity. As such, ensuring financial regulators and policymakers are sufficiently focused on this outcome is key.

8.50 The committee notes that the ability of the Australian Securities and Investment Commission (ASIC) to consider competition issues has increased since legislated changes to its mandate in 2018, and that the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA) both can engage with competition issues in their decision making.

8.51 Despite this, feedback from submitters and witnesses indicates that it is still unclear who is running competition in the financial services sector. Too many issues are falling between the cracks due to the multiple agency approach currently in place. The committee considers that a more holistic focus on competition issues would be helpful, backed up by regular public reporting.

8.52 Rather than making further changes to the individual mandates of the various financial regulators, the committee considers that the most efficient mechanism for elevating consideration of competition issues at the regulatory level would be to arm the Council of Financial Regulators (CFR) with a competition mandate, backed up by regular reporting to deal with this issue. This will require the Australian Competition and Consumer Commission (ACCC) to provide more regular input to the CFR than it does currently.

Recommendation 13

8.53 The committee recommends that the Australian Government provide the Council of Financial Regulators (CFR) with a competition mandate as advice to the government and that the CFR regularly report on competitive dynamics in the Australian financial services market.

International competitiveness framework

8.54 The committee considers it is vital that Australia is regularly assessing its global competitiveness in financial services broadly, and in FinTech and technology adoption specifically. The global nature of FinTech businesses means that there is significant upside potential if Australia can create the right settings to attract talent and capital into our financial services sector; conversely, the downside risk if we fall behind global trends is also substantial.

8.55 Other jurisdictions are moving ahead in this area. It is worth noting, for example, that the United Kingdom, which is already an established FinTech leader, recently launched a further review of its policy settings to support growth and competitiveness in the sector and extend government funding initiatives. Australia risks being left behind if it does not continue to proactively consider its global position and take measures to maintain its competitiveness.

8.56 The committee notes Austrade's evidence that it is involved in compiling research on Australia's global position in FinTech. To ensure that Australia's key financial regulators and policymakers are giving Australia's international competitive position the focus it requires, the committee considers that the Council of Financial Regulators is best placed to take up the function of regularly considering and reporting on this issue.

Recommendation 14

8.57 The committee recommends that the Australian Government establish a framework for the Council of Financial Regulators, supported by Austrade, to regularly consider and report on Australia's external competitive position in financial services, including measuring technology adoption and innovation.

Supporting a pro-innovation regulatory culture

8.58 The committee heard that more needs to be done to ensure Australia's financial regulators are actively driving a pro-innovation culture in financial services. The committee considers that ASIC's enhanced regulatory sandbox framework, coming into effect from 1 September 2020, will go some way to assisting on this issue. More broadly, however, regulators such as ASIC, APRA and the RBA need clearer measures of accountability when it comes to supporting innovation.

8.59 To give one example, measuring ASIC's performance in relation to competition and innovation needs to go beyond measuring how many organisations engage with ASIC's Innovation Hub; rather, a market basis is required for determining success (for example, reporting on the number of new businesses established, people employed and innovative products deployed to market as a result of the Innovation Hub).

8.60 The committee considers that ASIC and APRA need to have clear Key Performance Indicators established relating to their support for competition and innovation in the market. Examining the model used in the United Kingdom to measure regulator performance may be helpful in this regard.

Recommendation 15

8.61 The committee recommends that the Australian Government establish a market basis for determining the success of Australia's financial regulators in supporting a pro-innovation and pro-competition culture in financial services.

8.62 The committee considers that in many instances, industry self-regulation can be an efficient way for innovative products in the financial services sector to emerge, while ensuring adequate protections for consumers. The Australian Banking Association's *Banking Code of Practice*, approved by ASIC in 2018, shows that a co-regulatory approach between industry and regulators can be effective in enhancing consumer outcomes.

8.63 The development of an industry code of practice in the Buy Now Pay Later (BNPL) sector is an example of where industry is working constructively to respond to stakeholder concerns and seek to achieve appropriate regulation that benefits consumers. The committee notes evidence from the Australian Finance Industry Association that even at the peak of financial hardship requests from consumers in March and April 2020, across the BNPL industry the percentage of customers approved for hardship was less than 1 per cent.

8.64 The committee considers that the Australian Government should support initiatives where self-regulation can be utilised appropriately in financial services. Although it is appropriate that ASIC and the RBA undertake reviews into various regulatory issues, the policy in this space must be set by the Parliament.

8.65 It is therefore appropriate that the regulatory landscape for innovative products like BNPL be set out by a clear policy statement from the elected Parliament.

8.66 Because innovation like BNPL often occurs on the fringes of regulation, it is inappropriate to force each innovation into a one size fits all approach. Industry self-regulation provides an initial framework to protect innovation which can later be backed up by a policy statement or a form of co-regulation (collaboration between industry and government).

Recommendation 16

8.67 The committee recommends that the Australian Government establish a culture of innovation and competition in financial services by supporting

self-regulation where innovative products emerge, whilst ensuring strong consumer protection.

Access regime for the NPP

8.68 The committee believes that the New Payments Platform (NPP) is a vital piece of market infrastructure that will underpin improvements in the payments system and across financial services in Australia in the years to come.

8.69 The committee has noted the strong concerns raised by some submitters and witnesses around access arrangements and functionality offered by the NPP.

8.70 The committee notes that the RBA's Payments Systems Board is monitoring these issues closely and will undertake a further formal review of NPP functionality and access issues commencing no later than July 2021, or earlier if it deems necessary.

8.71 There are a range of options available in the case that further measures are required to ensure fair and equitable access to the NPP for FinTechs and smaller market participants, including a regulated access regime or support for NPP access costs and transaction fees.

8.72 While not recommending any of these measures be taken up directly at this time, the committee considers that more regular public reporting of the progress of NPP capability upgrades (including the implementation status of these upgrades by each direct NPP participant) will enhance transparency and drive wider access to the platform. NPP Australia could deliver this reporting requirement quarterly to give full visibility as to the progress of the NPP as it matures.

Recommendation 17

8.73 The committee recommends that New Payments Platform Australia regularly report on implementation progress of the NPP roadmap in order to drive wider access to the platform.

Property and Blockchain

8.74 Noting the potential of blockchain in the property sector and the developing infrastructure around blockchain the committee sees value in the property sector working with the states and territories to investigate the development of a blockchain based set of government property data.

Foreign exchange transparency

8.75 The need for transparency in the area of foreign exchange fees appears self-evident to the committee. The committee agrees that consumers should be empowered to know how much they are paying in foreign exchange fees, and that this transparency would lead to increased competition.

8.76 The committee notes that the ACCC has published best practice guidance documents for businesses on the transparent pricing of foreign currency conversion services, and on the disclosure of international transaction fees. The committee notes further that the ACCC will be monitoring industry implementation of this guidance and reporting back to government by September 2020, and that a cross-agency working party has been established to look at foreign exchange issues. The committee is of the view that a mandatory code of best practice for industry participants should be strongly considered as part of these developments.

Recommendation 18

8.77 The committee recommends that, if the ACCC finds poor industry adherence to its best practice guidance for foreign currency conversion services and international transaction fees, the development of a market code of best practice to promote integrity and transparency within the foreign exchange market should be considered.

Refine and expand the Consumer Data Right (Chapter 5)

8.78 The Consumer Data Right (CDR) is a complex and ground-breaking reform that will, over time, deliver increased competition and significant benefits to consumers across the Australian economy.

8.79 Submitters and witnesses raised a wide variety of issues, relating to the initial CDR rollout in the banking sector as well the CDR's subsequent expansion into other sectors.

Governance arrangements

8.80 The committee notes concern that oversight of the CDR is unnecessarily fragmented and regulatory arrangements need to be consolidated. More broadly, the committee heard that great benefits could be achieved by consolidating national data policy under a single agency. The committee agrees that it is time for a clear, effective and accountable regulatory structure for all aspects of data management and privacy in the digital economy.

8.81 As this broad goal may take some time to achieve, as a starting point the committee is recommending that a new national body be established to take on regulatory and operational responsibility for the Consumer Data Right. Over time, other functions relating to data policy could also be consolidated under this new body.

Recommendation 19

8.82 The committee recommends that the Australian Government establish a new national body to consolidate regulatory responsibilities in relation to the implementation of the Consumer Data Right.

Accreditation of third party intermediaries to access CDR data

8.83 The committee heard significant concerns that the current, single accreditation level of 'unrestricted data recipient' is not a viable proposition for many FinTechs due to the costs and rigour associated with becoming accredited at this level. As such, an appropriate accreditation regime for third parties and intermediaries will be critical if Open Banking is to achieve its intended purpose of increasing competition and providing greater choice for consumers.

8.84 The committee notes the ACCC is currently undertaking a consultation process on draft rules relating to third party intermediary access to Open Banking data. It is critical that this framework enables access by a wide range of intermediary organisations, and that intermediary organisations can commence getting accredited as soon as possible.

Recommendation 20

8.85 The committee recommends that the Australian Competition and Consumer Commission, or the new proposed national Consumer Data Right (CDR) body, finalise the rules for intermediary and third party access to CDR banking data by late 2020, and enable intermediaries to enter the CDR ecosystem as soon as possible thereafter.

Consumer education and awareness

8.86 The committee concurs with FinTechs and other submitters who argued that consumer awareness of the CDR and the impending rollout of Open Banking is currently low. It is vital that consumers themselves are educated about the benefits and opportunities of the CDR in order for these benefits to be realised.

8.87 The committee notes that the ACCC and Treasury are coordinating a CDR communication and education strategy targeted to both consumers and industry, with initial funding of $350,000 in FY2019-20. The committee considers it is vital that the banking industry itself is involved in promoting the transition to Open Banking and in engaging customers with the new ways they can utilise their data.

8.88 The ACCC should require, at a minimum, that the major banks provide agreed messaging to their customers in order to promote the CDR, as well as considering advertising campaigns specific to Open Banking (as opposed to the broader, economy-wide CDR initiative). The Australian Banking Association may be well placed to help facilitate the coordination of this messaging.

8.89 It is important that government continue to provide appropriate resourcing in FY2020-21 for the ACCC and Treasury to continue its communication and education strategy. In addition, the banking industry itself should also

contribute funding towards the costs of the education campaigns necessary to drive consumer uptake of the CDR in that sector.

Recommendation 21

8.90 The committee recommends that the Australian Government work with the banking industry to establish and implement targeted campaigns to educate consumers on the Consumer Data Right and the opportunities that Open Banking provides.

8.91 In the context of new and innovative products and services coming to market, the committee considers it important to recognise the need for financial literacy programs to keep pace with policy and technology change to help address any digital divide in terms of understanding new technology. While these products can have the potential to provide benefit to customers, there is also a need to ensure customers, particularly those who are vulnerable, are able to understand their obligations and any risk in order to avoid suffering detriment from an evolving marketplace.

Treatment of digital data capture practices

8.92 On the issue of digital data capture or 'screen scraping', the committee notes the strong views expressed by both supporters and opponents of this technology.

8.93 In the committee's view, it is pertinent that ASIC has found no evidence of consumer harm as a result of these practices. It is also clear that it will take some time for the Open Banking regime to provide a level of data quality and ubiquity that is currently available using digital data capture services.

8.94 As such, the committee considers that an outright ban on screen scraping is not prudent at the present time, and that in many cases these practices are enabling companies to innovate and provide competition in the financial services sector. This situation should continue to be monitored, however, as Open Banking is rolled out. ASIC's current consideration of the ePayments Code will also provide important input on this issue.

Recommendation 22

8.95 The committee recommends the Australian Government maintain existing regulatory arrangements in relation to digital data capture.

Expanding the Consumer Data Right

8.96 The committee considers that, given the technical infrastructure already in place and the ongoing work on data availability in the superannuation sector, the CDR should be expandeto superannuation as soon as possible.

8.97 The committee is unconvinced by arguments made by some submitters that additional time is required to implement the CDR in Superannuation. The superannuation industry has a poor track record of making relevant and useful data available to consumers.

8.98 In relation to the scope of Open Super, the committee considers that both customer-level data as well as product reference data would be valuable to be brought under an Open Super scheme, and that, as recommended by the Productivity Commission, super funds should be automatically accredited to receive Open Banking data.

8.99 The ACCC told the committee that it is willing to start research work on the rollout of the CDR into the superannuation sector. The committee considers that this work should commence immediately, with a view to expanding the CDR into superannuation as quickly as possible. The committee will monitor progress on this issue in the coming months and provide further comment on the implementation of Open Super in its final report.

8.100 The committee also considers that the general insurance market would benefit considerably from the rollout of the CDR. The government should flag its intention to expand the CDR into insurance and provide an indicative timeline in which this may be possible.

Recommendation 23

8.101 The committee recommends that the Australian Government expand the Consumer Data Right to include other financial services, starting with the superannuation sector and then including sectors such as general insurance.

Access to Capital (Chapter 6)

Refinements to ESVCLP and ESIC incentives

8.102 The committee is of the view that the Early Stage Innovation Company (ESIC) and Early Stage Venture Capital Limited Partnerships (ESVCLP) initiatives were designed on the basis that they could be recalibrated. It believes that such schemes must be iterative in order to facilitate success and be responsive to the needs of the sector, and that the qualification criteria for these programs now need to be amended to widen access to startups and investors.

Recommendation 24

8.103 The committee recommends that the Australian Government amend the Early Stage Innovation Company and Early Stage Venture Capital Limited Partnerships qualification criteria to widen access to startups and investors.

Creation of Corporate CIV and Limited Partnership CIV

8.104 The committee notes evidence received from the Australian Investment Council that the current Australian Collective Investment Vehicle (CIV) regime may be acting as a deterrent to international investors. Implementing CIVs as a priority would boost Australia's competitiveness as an investment destination as investors are familiar with this form of investment. This action could help capitalise on recent political changes in Hong Kong which may lead to the deterioration in its status as a global financial centre. The uncertainty that has been created provides opportunities for other regional centres including Australia to attract new investment, companies and talent to become a regional technology and financial services centre.

8.105 The committee agrees that the creation of a Limited Partnership CIV and a corporate CIV would be beneficial in encouraging international investment in the Australian FinTech and RegTech sectors.

Recommendation 25

8.106 The committee recommends that the Australian Government implement a Limited Partnership Collective Investment Vehicle and a Corporate Collective Investment Vehicle regime to drive inbound capital investment for Australian startups.

Collaboration between large and small business

8.107 The committee is of the view that government has a role to play in creating an ecosystem which encourages competition and choice, and facilitates getting more innovative FinTech and Regtech products to market.

8.108 As such, the committee considers it appropriate that the government consider incentives to assist in and encourage collaboration between large businesses and startups.

Recommendation 26

8.109 The committee recommends that the Australian Government consider incentives to encourage collaboration between large businesses and startups.

Encourage super funds to invest more broadly

8.110 The committee is mindful of the sole purpose test in superannuation; that is, the legal requirement that requires super funds be maintained for the sole purpose of providing retirement benefits to their members, or to their dependants if a member dies before retirement.

8.111 The committee is not suggesting that a particular component of superannuation be mandated for a particular investment purpose. Additionally, the committee is mindful that superannuation funds must

consider levels of risk appetite and prudently manage their costs in relation to investments.

8.112 However, the committee is of the view that there is merit in further investigation as to how the vast pool of capital available in superannuation funds can be appropriately and prudently invested.

Recommendation 27

8.113 The committee recommends that the Australian Government foster a culture where superannuation funds invest more widely, including in Australian startups, without undermining the sole purpose test.

Culture (Chapter 7)

Leveraging Commonwealth procurement

8.114 The committee considers that government should play a proactive role in encouraging growth opportunities for innovative firms through appropriate procurement policies, including at the Commonwealth level.

Recommendation 28

8.115 The committee recommends that the Australian Government undertake a stocktake to better understand the costs and complexity for small businesses, including FinTechs and RegTechs, in Commonwealth Procurement.

Challenge based innovation

8.116 The committee heard evidence on several initiatives aiming to enable X-tech firms to solve policy challenges set by government.

8.117 The committee is impressed by the work being done as part of the Business Research and Innovation Initiative (BRII). It is of the opinion that the BRII is valuable not only in opening up opportunities for SMEs to showcase their potential and grow their business, but also for allowing government to access and support innovative technologies.

8.118 The committee also notes that under the Digital Marketplace initiative run by the Digital Transformation Agency, SMEs are able to make government aware of their services and government agencies are able to 'Ask the Market' for participants to solve particular problems.

8.119 The importance of hackathons and similar challenge-based events was also highlighted to the committee as a means of allowing innovative firms to pitch ideas and contribute solutions to problems across a range of areas. The committee suggests that the government consider holding event-based challenges based on specific problems to augment the initiatives already taking

place. Issues such as the challenge of modern award complexity could be excellent candidates for this type of program.

Recommendation 29

8.120 The committee recommends that the Australian Government consider holding event-based challenges or initiatives to enable innovative FinTechs and RegTechs to solve policy and service delivery challenges.

AgTech Advisory Council

8.121 The committee is encouraged by the work being done by the National Farmers' Federation, the rural and research development corporations, university-based incubators, and individual companies in the Agricultural Technology (AgTech) space. It considers there is immense potential for Australian AgTech innovations to deliver productivity, market, and employment benefits both domestically and internationally.

8.122 The committee is of the view that the AgTech sector would benefit from a national leadership group to provide guidance and leadership on AgTech policy matters in a consultative and consolidated manner.

Recommendation 30

8.123 The committee recommends that the Australian Government create an Agricultural Technology (AgTech) Advisory Council to advise on AgTech policy in a consolidated manner.

Skills and training (Chapter 7)

Lifelong learning

8.124 It is apparent to the committee that there is great benefit in ensuring that Australian workers have the opportunity to retrain and reskill throughout their careers. The committee heard that microcredentials and similar skills programs will be of critical importance as Australia transitions its workforce towards emerging technologies and industries, particularly in the context of COVID-19.

8.125 The committee sees merit in the proposal submitted by the Business Council of Australia for a HECS-style Lifelong Skills Account, which would provide opportunities for individuals to retrain and reskill throughout their careers by updating their training through microcredential qualifications. The committee is of the view that further investigation should be conducted to progress such a policy.

Recommendation 31

8.126 The committee recommends that the Australian Government work with industry to ensure reskilling of workers affected by economic change and the availability and accessibility of microcredentials for those seeking to join the FinTech and RegTech industries.

Clarity around Fringe Benefits Tax and retraining

8.127 The committee sees value in the recommendation put forward by EY and agrees that eligible outplacement training should be exempt from Fringe Benefits Tax.

8.128 The committee considers that this change would improve the regulatory environment and provide benefits to employers and employees impacted by technological advancement.

Recommendation 32

8.129 The committee recommends that the Australian Government explore including eligible outplacement training under the Fringe Benefit Tax exemption provision for eligible startups.

Senator Andrew Bragg
Chair

Dissenting Report from Labor Senators

1. Introduction

1.1 Labor Senators were supportive of the majority of recommendations and commentary provided in the Interim Report tabled regarding the ongoing Inquiry into Financial Technology and Regulatory Technology by the Senate Select Committee.

1.2 Evidence provided to the inquiry to date has overwhelmingly demonstrated the opportunities that exist for the development of innovative financial and regulatory technologies, and Labor is supportive of this sector continuing to grow and flourish.

1.3 It was inspiring for Labor Senators to hear the stories of entrepreneurs of these technologies who have given evidence to the inquiry describing the challenges and obstacles they are overcoming to get their innovative products to market and to realise their future growth. We also note that these entrepreneurs are located beyond the confines of Sydney and Melbourne, bringing job growth and opportunity to our other capital cities and regional areas.

1.4 Evidence to the inquiry has highlighted the need for the modernising of current regulatory frameworks to ensure the benefits of these innovative products can be better realised by Australian consumers and the broader economy.

1.5 Notwithstanding this, Labor Senators are firmly aware that the successful transition into the greater use of digitalised financial products amongst the Australian community will also require the modernisation of consumer protections.

1.6 It is on this basis that Labor Senators provide the following Dissenting Report which sets out our conclusions on the Interim Report. This report should not be taken as a dissent from the broader work of the committee, which has worked for the most part in a bipartisan and effective way.

This report is divided into two sections, those being:

- Dissenting Comments
- Additional Comments

2. Dissenting Comments

Hybrid/Virtual Meetings

Recommendation 1

The committee recommends that the Corporations Act 2001 be amended to allow companies to decide the best format for holding their annual general meetings and other prescribed meetings (whether through virtual meetings, in-person meetings or hybrid meetings), while ensuring the needs of shareholders are taken into account.

2.1 The committee's recommendation was not supported by Labor Senators and we provide the following dissenting comments:

2.2 Labor Senators support the use of technology enablers including videoconferencing of Annual General Meetings; however, these should be conducted through a hybrid model to ensure fair and equitable participation among shareholders.

2.3 The committee's recommendation allows companies to provide exclusively virtual annual general meetings. Labor Senators do not support the exclusive use of virtual meetings beyond the pandemic. Hybrid meetings would ensure the fair participation of older, regional and rural shareholders, as well as those with a disability, whilst still providing virtual participation options.

2.4 The Australian Shareholders Association which is the main representative body of Australian shareholders noted to the inquiry its support for the increased use of hybrid AGMs, as opposed to fully virtual meetings. The ASA see this as a long-term initiative to increase shareholder engagement while maintaining corporate accountability and ensuring disenfranchised shareholders continue to receive adequate engagement:

> The ASA has long supported hybrid meetings—a physical meeting with an online meeting—because those people who are disenfranchised from attending due to, say, their rural location, mobility issues or illness can attend from home while there are also people attending via physical presence. We are quite supportive of hybrid meetings being the way forward to encourage greater engagement overall, but we also note that goodwill is required on the part of the company as well as the part of the shareholders to make those meetings work.[1]

[1] Ms Fiona Balzer, Policy and Advocacy Manager, Australian Shareholders' Association, *Proof Committee Hansard*, 10 August 2020, p. 2.

Digital Identity

Recommendation 7

The committee recommends that the Digital Identity reforms led by the Digital Transformation Agency be accelerated in order to deliver a national, economy-wide framework for the operation of a federated digital identity ecosystem as soon as possible.

2.5 The committee's recommendation was not supported by Labor Senators and we provide the following dissenting comments:

2.6 The myGovID is the digital ID system for interacting with online government services. The digital ID will replace myGov's existing two-factor authentication system, allowing citizens to verify their identity when applying for passports, driver's licences, Medicare cards and other documents, as well as to access other government and private sector services.

2.7 If successful, Australians will find they should no longer have to fill in the same forms for government services repeatedly, queue for hours at Centrelink shopfronts to provide hard copy identification or spend needless time looking for the same documents when they need to provide proof of identity. Instead, these credentials will be stored in the one easily-accessible place.

2.8 There have been considerable delays to the suite of digital reforms promised by the Morrison Government this year.

Specifically on the myGovID project:

- The DTA had announced last year that myGovID would be fully up and running by the end of the 2019-20 financial year
- As it stands, only two government-funded digital identity services have so far been accredited: ATO and Australia Post

2.9 The project deliverables that remain outstanding are significant and include:

- Plans to integrate the digital identity with the new myGov interface
- Introduction of facial recognition technology
- Accreditation of private sector companies into the scheme
- A public awareness and education campaign
- Ironing out technical flaws highlighted in their initial beta testing

2.10 While we support improvements to the government owned and operated digital identity platform, and strongly support the extension of those learnings to the private sector where appropriate, we believe there is clearly a lot more work to be done to build the infrastructure, as well as educating the public on what these reforms look like. Prioritising expediency over care isn't the best way to achieve this.

2.11 We are concerned about reports that the DTA don't consult well with the broader tech community. Reports from the tech community on the rollout of the COVIDSafe app is that constructive feedback wasn't sought early enough, that it was difficult to find the avenues to provide it, and that it was sat on or ignored for long periods. We encourage the DTA to improve these relationships for future partnerships to ensure a robust dialogue an engagement going forward.

Governance Arrangements for the New CDR

Recommendation 19
The committee recommends that the Australian Government establish a new national body to consolidate regulatory responsibilities in relation to the implementation of the Consumer Data Right.

2.12 The committee's recommendation was not supported by Labor Senators and we provide the following additional comments:

2.13 Labor Senators are aware of the benefits that could be achieved by consolidating national data policy under a single agency. We further note Singapore's paired brake/accelerator model reports under a single statutory authority (separate sub-branches) which we understand requires decisions to be made that might require consideration of trade-offs between privacy and innovation.

2.14 However it is the view of Labor Senators that immediate concerns related to the roll-out of Open Banking necessitate that in the immediate term the ACCC should remain the primary regulatory body in this area as it operates with clear and concise Competition and Consumer Protection mandates. Labor Senators note that the ACCC has been working with the Office of the Australian Information Commissioner (OAIC) and the Data Standards Body (DSB) in the development and implementation of the CDR.

Accreditation issues and access to CDR Data

Recommendation 20

The committee recommends that the Australian Competition and Consumer Commission, or the new proposed national Consumer Data Right (CDR) body, finalise the rules for intermediary and third-party access to CDR banking data by late 2020 and enable intermediaries to enter the CDR ecosystem as soon as possible thereafter.

2.15 The committee's recommendation was not supported by Labor Senators and we provide the following additional comments:

2.16 As noted earlier in this report, Labor Senators are not supportive of the establishment of a new national Consumer Data Right (CDR) body at this time.

2.17 Labor Senators otherwise support the recommendation's call for the implementation of an accreditation system for intermediary and third-party access to CDR data.

2.18 Labor Senators support evidence provided to the inquiry by the Financial Rights Legal Centre and the Consumer Action Law Centre which states that such accreditation should be accompanied by rules that ensure:

- if a CDR Consumer provides their CDR Data that it has received from a Data Holder, to a third party, the privacy protections afforded to that CDR Data under the CDR regime will continue to apply to the CDR Consumer.

- Intermediary and third-party recipients 'have clear obligations about the handling of CDR Data they receive'.[2]

Future of screen scraping

Recommendation 22

The committee recommends the Australian Government maintain existing regulatory arrangements in relation to digital data capture.

2.19 The committee's recommendation was not supported by Labor Senators and we provide the following dissenting comments:

2.20 Labor Senators note that the ePayments Code provides that where a service provider can prove on the balance of probability that a user contributed to a loss through fraud, or breaching the pass code security requirements in the Code, the customer is liable in full for any losses that occur until the point this is reported to the service provider.[3]

2.21 In its submission to the inquiry, the Financial Rights Legal Centre expressed concerns that customers may be held liable in cases of fraud after providing their banking details to third parties providing legitimate banking services using Digital Data Capture (DDC).[4] Labor Senators encourage ASIC to clarify this issue in its current review of the ePayments Code.

2.22 Labor Senators believe that it is premature for the committee to provide the above recommendation which effectively calls for the permanent maintenance

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2 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, pp 6 & 7.

3 ASIC, *ePayments Code*, effective from 29 March 2016, p. 16.

4 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p 14

of DDC, prior to ASIC providing further guidance on any potential consumer liability under the ePayments code.

2.23 Labor Senators acknowledge the legitimate concerns of primary service providers regarding unauthorised access to their online security systems.

2.24 Labor Senators are also aware that DDC has been a useful tool for service providers to comply with their responsible lending obligations, however we remain hopeful that the practice will no longer be required pending a successful transition into Open Banking.

Digital or Online Hawking

2.25 Labor Senators are strongly of the view that data obtained from DDC should only be used for the express purpose authorised by a customer.

2.26 It was submitted to the inquiry by the Financial Rights Legal Centre and the Consumer Action Law Centre that 'financially vulnerable clients (are) providing log-in details to payday lenders, only to have the payday lender use the log-in details later to identify when a consumer is getting low on cash and subsequently directly advertise to that consumer. This has the effect of exacerbating financial hardship.[5]

2.27 Labor Senators are disappointed that the committee chose not to incorporate this evidence provided by the FRLC and CALC regarding the issue of digital or online hawking.

2.28 Labor Senators support the suggested recommendation provided by the FRLC and CALC which called for an amending of both the law, and ASIC regulatory guidelines for hawking (RG 38 (2005)), to capture digital or online hawking.

Expansion of Consumer Data Right to Other Sectors

Recommendation 23

The committee recommends that the Australian Government expand the Consumer Data Right to include other financial services, starting with the superannuation sector and then including sectors such as general insurance.

2.29 The committee's recommendation was not supported by Labor Senators and we provide the following dissenting comments:

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5 Financial Rights Legal Centre and the Consumer Action Law Centre, *Submission 36*, p. 13.

2.30 Labor Senators are of the view that far greater immediate consumer benefits would be realised by expanding the Consumer Data Right to other sectors such as the Telecommunications and Energy sectors.

2.31 The Financial Services Council (FSC) provided evidence to the inquiry that a 'significant pipeline of reform' is currently underway in the superannuation system, and that 'other reforms flagged by the Productivity Commission and Royal Commission are likely to offer a greater benefit to consumers with a CDR regime'. It is the FSC's view that the development of Open Super should be delayed until 2022 to allow the appropriate level of resources to be dedicated to this important reform.[6]

3. Additional Comments

Supporting Innovation via self-regulation

Recommendation 16

The committee recommends that the Australian Government establish a culture of innovation and competition in financial services by supporting self-regulation where innovative products emerge, whilst ensuring strong consumer protection.

3.1 The committee's recommendation was supported by Labor Senators and we provide the following additional comments:

3.2 Labor Senators note the concerns of the Financial Rights Legal Centre and Consumer Law Action Centre expressed through this inquiry regarding the gaps they believe exist in the protection of consumers with the current regulation of the BNPL sector.

3.3 Whilst not necessarily suggesting that BNPL products need to be regulated through the National Credit Act, Labor Senators believe that the current Code being drafted by the Australian Financial Industry Association (AFIA) should continue to be consulted on with consumer groups.

3.4 Labor Senators understand that AFIA have adopted many of the regulatory suggestions in their draft Code made by consumer groups but that that there are other necessary measures that have been suggested which are missing.

3.5 In its submission to the inquiry the Financial Rights Legal Centre and the Consumer Action Law Centre provided a list of measures that they believe must be included in any self-regulatory code for the BNPL sector. These items (whilst not exhaustive) are noted below.

- responsible lending checks;
- internal dispute resolution;
- external dispute resolution;

[6] Financial Services Council, *Submission 100*, p. 7.

- access to financial hardship arrangements;
- regulating late fees;
- limiting multiple accounts;
- ensuring appropriate identity checks;
- ensuring users who have been blocked from further borrowing can still access their accounts for the purposes of monitoring their debt, repayments and the application of any fees and charges; and
- restricting the use of these services by minors.[7]

Superannuation Funds Investing in Start-Ups

Recommendation 27

The committee recommends that the Australian Government foster a culture where superannuation funds invest more widely, including in Australian startups, without undermining the sole purpose test.

3.6 The committee's recommendation was supported by Labor Senators and we provide the following additional comments:

3.7 Labor Senators supported the above recommendation however we also wish to clarify and strongly assert that superannuation funds have a long track record of investing in Australia to the benefit of its members and the broader Australian economy.

3.8 Throughout the pandemic, the Government's Early Access to Superannuation Scheme has undermined our superannuation system. We note that now is not the time to further weaken the superannuation system, including through amending the legislated scheduled superannuation increase.

Financial Literacy and the Digital Divide

3.9 Labor Senators note FRLC's evidence to the inquiry that the implementation of Open Banking and CDR could further exacerbate the "digital divide" with respect to those who have access to technologies and those who don't; and more importantly, those who understand technology and those who don't:

> We have found that there are becoming 'digital haves' and 'digital have-nots'. Even those who do have access to technology find themselves in difficult circumstances. I'm thinking of people in rural or remote communities who don't have access to a wide range of ATMs or digital

[7] Financial Rights Legal Centre and the Consumer Action Law Centre, Submission 36, p. 33.

> services and are forced to go to the only ATM in town, which charges them quite a lot. This came up during the royal commission. Palm Island is an example. Yes, there are a lot of people who are not able to access, for example, technologies to receive their bills electronically. They're either charged for a paper bill, in some circumstances, or end up not being able to receive bills, and they may fall behind. So, yes, there are a lot of benefits that the fintech sector and fintech products will be able to provide for most Australians, who are on smartphones, but, yes, unfortunately there will be some losers in this situation.[8]

3.10 Labor Senators believe that the Government should be addressing the Financial Literacy needs of the Australian community as we see an increase in the amount of financial technology products coming to market. The FRLC provided evidence to the inquiry noting that:

> Our organisation is pretty small and under-resourced. It's basically me and another policy officer.
>
> …
>
> We're one of the few organisations that do have a policy person who can deal with these [Fintech related] issues.
>
> …
>
> With the royal commission, we've basically had to put all our resources into fixing problems now, and very few of us in the consumer movement can even have the time to think about what the problems are in the future. We've decided to do that [now focus on issues related to CDR] because we see a lot of poor people calling us worried about data. We've discovered some problems, so we decided to put some effort into providing a submission to this inquiry and other inquiries around the CDR. We will continue doing so where we can.
>
> …
>
> Our organisation is not funded to do that [Financial Literacy], but sometimes we get funding to do a project from Ecstra or its predecessor, Financial Literacy Australia, to do a small financial literacy project. One I can think of is one that we did around payday loans recently. It's very rare that we are able to do it, because we're not funded to do it.
>
> …
>
> There is nobody out there providing financial literacy information about the problems inherent in buy now, pay later, and debt more generally, that would enable people to have a bit more understanding of the problems that may arise when you're using a buy now, pay later service to buy essential goods like toilet paper.[9]

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[8] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 65.

[9] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 70.

3.11 Labor Senators note specific evidence provided by the FRLC that younger people are increasingly looking for help through its advocacy services when they are faced with issues from the use or misuse of buy now, pay later services.[10]

3.12 Labor Senators acknowledge that innovation in the financial technology space is an exciting development for the Australian economy, including for consumers. However, its true potential will only be fulfilled if their availability results in a narrowing of the digital divide and they are easily understood by consumers.

Senator Marielle Smith
Deputy Chair

Senator Jess Walsh

[10] Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre, *Committee Hansard*, 19 February 2020, p. 71.

Additional Comments from Senator Scarr

ASX CHESS Replacement Project

1.1 These additional comments relate to the ASX Clearing House Electronic Subregister System (CHESS) Replacement Project. CHESS is a critical piece of financial market infrastructure.

1.2 During the course of this inquiry, stakeholders raised a number of material issues with respect to the project. As someone who has served as a company secretary of a listed ASX200 company, the issues raised have caused me grave concern.

1.3 The concerns raised by Computershare, Link Market Services and the Australasian Investor Relations Association, relate to a broad range of matters including:

- Risk management (including the appropriateness of the proposed methodology for rolling out of the project);
- The business case justifying the project;
- The consultation process;
- Project governance; and
- Conflicts of interest.

1.4 In a response to a question taken on notice at a hearing, Link Market Services (Link) stated:

> It is Link's view that the manner in which the CHESS replacement project is being managed is resulting in confusion in the market about what the project will deliver to industry participants and what it will cost for participants to implement and therefore how it may alter the structure of the market and possibly extend ASX's market position.[1]

1.5 In supplementary submission dated 17 July 2020, ASX responded to the concerns raised. It stated:

> Significant progress has been made in delivering the system that will replace CHESS…Despite statements to the contrary, the scope of change being implemented through the new system is the result of a very comprehensive consultation process with the market.[2]

1.6 I should state that it is not for me (or this Committee) to assess the status of this project. Nor is it for me to weigh the merits of, and make a final determination regarding, the issues raised in relation to this project. I have

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[1] Link Group, Answers to questions on notice from a public hearing held 30 June 2020, (received 14 July 2020).

[2] ASX, *Submission 44.1*, p. 1.

neither the expertise nor the information to make an assessment. However, when such well respected stakeholders raise material concerns in relation to a project of such significance, then I consider myself obliged to raise my concerns in the public interest. I do not do this lightly.

1.7 Based on the ASX's own submission, consultation has been undertaken since September 2016. Given the period of consultation, how can it be that such material issues are still being raised, by a range of stakeholders, in relation to the project?

1.8 In my view, there needs to be serious reflection on the part of the senior management and Board of Directors of the ASX Limited, by regulators (including ASIC and the Council of Financial Regulators) and all stakeholders. The market cannot afford this project to fail. Yet it is difficult to see how an optimal outcome can be achieved when there is such a diverse range of views amongst key stakeholders regarding the status of the project. Stakeholder alignment is key to the success of any major project; especially one as complicated as this.

1.9 A pathway needs to be identified which provides confidence to the market. This could involve the introduction of an independent governance structure. In addition, consideration should be given to the appointment of an appropriately qualified independent expert to conduct an urgent review of the current status of the project. If there are no issues, then an independent expert review will provide confidence to the market. If there are issues, then an independent expert could provide recommendations as to how the project could be progressed to ensure that all material issues are appropriately addressed.

1.10 It is my hope that appropriate action is taken as a matter of urgency to ensure the success of this project which relates to a critical piece of Australia's financial market infrastructure.

Senator Paul Scarr

Appendix 1
Submissions, Additional information and Answers to questions on notice

1 Power Ledger
- 1.1 Supplementary to submission 1

2 RedCrew

3 Australian Computer Society
- 3.1 Supplementary to submission 3

4 Pepperstone Group Limited
- 4.1 Supplementary to submission 4
- 4.2 Supplementary to submission 4

5 StartupAUS

6 Swaggle

7 Mr Yousef Hosseini

8 Hon David Pisoni MP, Minister for Innovation and Skills, South Australia

9 WoolProducers Australia

10 The RegTech Association
- 10.1 Supplementary to submission 10

11 Iress

12 Australian Investment Council
- 12.1 Supplementary to submission 12

13 illion
- 13.1 Supplementary to submission 13

14 Australian Securities and Investments Commission
- 14.1 Supplementary to submission 14

15 Australian Competition and Consumer Commission

16 Reserve Bank of Australia

17 CSIRO

18 Department of Industry, Innovation and Science

19 FinTech Australia
- 19.1 Supplementary to submission 19

20 ANZ

21 Australian Energy Council

22 AGL

23 Mastercard

24 NPP Australia Limited

25 Stone & Chalk

26 Australian Banking Association
27 Data Republic
28 Sargon
29 RAIZ Invest Limited
- 29.1 Supplementary to submission 29
- 29.2 Supplementary to submission 29

30 Ernst & Young
- 30.1 Supplementary to submission 30

31 86 400
- 31.1 Supplementary to submission 31

32 Dr Kate Galloway
33 Verifier
34 SolveXia
35 H2 Ventures
- 35.1 Supplementary to submission 35

36 Financial Rights Legal Centre and Consumer Action Law Centre
37 Australian Institute of Superannuation Trustees
38 Chartered Accountants Australia and New Zealand
39 Financial Planning Association of Australia
40 Brighte
- 40.1 Supplementary to submission 40
- 40.2 Supplementary to submission 40

41 Prospa
- 41.1 Supplementary to submission 41
- 41.2 Supplementary to submission 41

42 Thread Harvest
43 Insurance Australia Group
44 ASX
- 44.1 Supplementary to submission 44

45 Stockpot
46 Australian Small Business and Family Enterprise Ombudsman
- 46.1 Supplementary to submission 46

47 Australian Financial Markets Association
48 FINSIA
49 Super Consumers Australia
50 Prof Ross P Buckley, Douglas W Arner, Dirk A Zetzsche and Evan C Gibson
51 National Australia Bank Limited
52 A.T. Kearney
- 52.1 Supplementary to submission 52

53 Square

54 Square Peg
- 54.1 Supplementary to submission 54

55 Australian Retail Credit Association
- 55.1 Supplementary to submission 55

56 Piper Alderman
- 56.1 Supplementary to submission 56

57 AustCyber
58 Revolut
59 Luno
60 Lakeba Group
61 Dr Louise Parsons
62 Financial Data and Technology Association (FDATA)
63 Baker McKenzie
64 CyberCX
65 Seed Space Venture Capital
66 34 South 45 North Consulting
67 Birchal
- 67.1 Supplementary to submission 67

68 Ezypay
69 BDO Services Pty Ltd
70 Finder
- 70.1 Supplementary to submission 70

71 American Express Australia
72 Australian Business Software Industry Association (ABSIA)
73 Vanteum, Galois and Inpher
74 Castlepoint Systems
75 Novatti
76 StarlingTrust Sciences
77 Dr Dimitrios Salampasis
78 African Money Remmittance Association
79 Lowrey Business and Litigation Support Consultants
- 79.1 Supplementary to submission 79

80 Airwallex
81 Australian Information Industry Association
82 Xero
83 Afterpay Limited
- 83.1 Supplementary to submission 83

84 Associate Professor Andrew Godwin and Professor Carsten Murawski
85 Law Innovation Technology Entrepreneurship
86 AgriDigital

87 Australian Finance Industry Association (AFIA)
- 87.1 Supplementary to submission 87
- 87.2 Supplementary to submission 87
- 87.3 Supplementary to submission 87

88 Skyjed
89 Mr Prashant Singh
90 Adatree
91 Gateway Network Governance Body Ltd
92 China Construction Bank Corporation
93 Fabrick Innovations
94 Start-Up Nation Central
95 The Jerusalem Business School
96 Max
97 Westpac Group
98 Startupbootcamp Australia
99 Australian Payments Network
100 Financial Services Council
- 100.1 Supplementary to submission 100

101 D.C Consulting and Management Pty Ltd
102 Australian Taxpayers' Alliance
103 Australian Sustainable Finance Initiative
104 OurCrowd
105 National Farmers Federation
106 Salesforce
107 Business Council of Co-operatives and Mutuals
108 Department of Foreign Affairs and Trade
109 Australian Prudential Regulation Authority
110 Macquarie Group Limited
111 Moula Money Pty Ltd
112 UNE SMART Region Incubator
- 112.1 Supplementary to submission 112

113 Visa
114 Istanbul Investa
115 Mr Gerald Jensen
- 115.1 Supplementary to submission 115

116 Zip Co Ltd
- 116.1 Supplementary to submission 116

117 Imperium Markets Pty Ltd
- 117.1 Supplementary to submission 117

118 SISS Data Services Pty Limited
119 The Hon Gabrielle Upton MP

120 Digital Industry Group Inc. (DIGI)
121 Commonwealth Bank (CBA)
122 Standards Australia
123 Dominos's Pizza Enterprises Ltd
124 FairVine Super
125 Business Council of Australia
126 Mr Abraham Robertson
- 126.1 Supplementary to submission 126

127 Tic:Toc
128 Split Payments
129 Challenger Limited
130 Bank of Queensland
131 Ferocia
132 Department of Home Affairs and AUSTRAC
133 Mr Timothy Holborn
134 Ms Pamela Wood
135 Xinja Bank Limited
136 *Name Withheld*
137 *Name Withheld*
138 *Confidential*
139 *Confidential*
140 Mr Scott Farrell
141 PayPal
- 141.1 Supplementary to submission 141

143 *Confidential*
144 *Confidential*
145 *Confidential*
146 CPA Australia
147 KPMG
148 Austrade
149 *Confidential*
150 Plenty Wealth
151 SDGx
152 Chi-X Australia
153 Computershare
- 153.1 Supplementary to submission 153

154 Klarna Australia Pty Ltd
155 Australian Innovation Collective
156 Birdi
157 Identitii Limited
158 eftpos Payments Australia
159 Mr Chris Poynton

160 LIXI Limited
161 ProvenDB
162 Dr Adir Shiffman
163 DataMesh Group Pty Ltd
164 *Confidential*
165 Australian Taxation Office
166 Treasury
167 Digital Transformation Agency
168 Mr Neil Hopley
169 Australasian Investor Relations Association
170 Link Group
171 Governance Institute of Australia
172 Australian Office of Financial Management
173 Tanda
174 Australian Institute of Company Directors
175 Australian Medical Association
176 Law Council of Australia
- 176.1 Supplementary to submission 176

177 ScalaMed
178 New South Wales Government
179 The Royal Australian College of General Practitioners Ltd
180 Automic Proprietary Limited

Additional Information

1 Correspondence from Raiz Invest Limited, received 3 February 2020.
2 Correspondence from Commonwealth Bank, received 10 February 2020
3 Additional information from ASIC, received 26 February 2020
4 Correspondence from Xinja Bank regarding corrections to Hansard 19 February 2020, received 9 March 2020
5 Correspondence from ANZ, received 23 March 2020
6 Additional information provided at public hearing on 30 June 2020: AMP's AGM mailing room, representing 430,000 mail packs

Answer to Question on Notice

1 Pepperstone Group - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 7 February 2020)
2 illion - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 17 February 2020)
3 RAIZ - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 18 February 2020)
4 Australian Computer Society - Answers to question on notice from a public hearing held 20 February 2020, Sydney (received 28 February 2020)

5 Startupbootcamp Australia - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 19 February 2020)
6 Financial Rights Legal Centre - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 5 March 2020)
7 EY - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 5 March 2020)
8 Treasury - Answer to written questions on notice (received 6 March 2020)
9 Zip Co - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
10 Business Council of Australia - Answers to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
11 Digital Transformation Agency - Answer to questions on notice from a public hearing held 26 February 2020, Canberra (received 6 March 2020)
12 ANZ - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
13 Baker McKenzie - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
14 Australian Banking Association - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
15 Afterpay - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
16 ASX Group - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
17 Australian Investment Council - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
18 Finder - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 10 March 2020)
19 Department of Finance - Answer to questions on notice from a public hearing held 26 February 2020, Canberra (received 11 March 2020)
20 Reserve Bank Australia - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
21 Department of Industry, Science, Energy and Resources - Answers to written questions on notice (received 13 March 2020)
22 Australian Prudential Regulation Authority - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
23 Department of Foreign Affairs and Trade - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
24 Xinja Bank Limited - Answer to questions on notice from a public hearing held 19 February 2020, Sydney (received 11 March 2020)
25 Commonwealth Bank - Answers to written questions on notice (received 16 March 2020)

26 Australian Competition & Consumer Commission - Answer to questions on notice from a public hearing held 27 February 2020, Canberra (received 17 March 2020)

27 Australian Competition & Consumer Commission - Answers to written questions on notice (received 17 March 2020)

28 Austrade - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 17 March 2020)

29 FinTech Australia - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 20 March 2020)

30 Stone & Chalk - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020)

31 Department of Home Affairs - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 24 March 2020)

32 Australian Prudential Regulation Authority - Answers to written questions on notice (received 15 April 2020)

33 Australian Competition and Consumer Commission - Answers to written questions on notice (received 28 April 2020)

34 Australian Competition and Consumer Commission - Answers to written questions on notice (received 28 May 2020)

35 Governance Institute of Australia - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

36 Australian Institute of Company Directors - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

37 Treasury - Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 15 July 2020)

38 Link Group - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

39 Computershare - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

40 Financial Planning Association of Australia - Answer to question on notice from a public hearing held 30 June 2020, Canberra (received 15 July 2020)

41 CSIRO - Answer to written question on notice (received 20 July 2020)

42 Department of Agriculture, Water and the Environment - Answer to written questions on notice (received 24 July 2020)

43 Australian Small Business and Family Enterprise Ombudsman - Answer to question on notice from a public hearing held 14 July 2020, Canberra (received 24 July 2020)

44 Department of Industry, Science, Energy and Resources - Answer to written question on notice (received 29 July 2020)

45 Australian Medical Association - Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 29 July 2020)

46 Australian Competition and Consumer Commission - Answers to written questions on notice (received 10 August 2020)

47 StartupAus - Answers to written questions on notice (received 11 August 2020)

Appendix 2
Public hearings and witnesses

Thursday, 30 January 2020
Edinburgh Room
Stamford Plaza
111 Little Collins Street
Melbourne

Sargon
- Mr Phillip Kingston, Founder and Chief Executive Officer

Verifier
- Ms Lisa Schutz, Chief Executive Officer

Pepperstone Group Limited
- Mr Tamas Szabo, Group Chief Executive Officer
- Ms Peta Stead, Group Head, Regulatory Affairs
- Mr Jason Noorman, Chief Technology Officer

Ferocia
- Mr Mike Morris, Head of Technology, UP
- Mr Xavier Shay, Engineer

RAIZ Invest Limited
- Mr Brendan Malone, Chief Operating Officer
- Ms Astrid Raetze, General Counsel

A.T. Kearney Pty Ltd
- Mr Rod Feeney, Partner
- Mrs Bronwyn Kitchen, Manager

Airwallex
- Mr Dave Stein, Head of Corporate Development
- Mr Adam Stevenson, Senior Legal Counsel

illion
- Mr Simon Bligh, Chief Executive Officer
- Mr Luke Howes, Managing Director, illion Data Solutions

Startupbootcamp Australia
- Mr Brian Collins, Fintech Managing Director

Wednesday, 19 February 2020
The Portside Centre
Level 5, Symantec House
207 Kent Street
Sydney

Square Peg Capital Pty Ltd
- Mr Anthony Holt, Co-Founder and Partner

Piper Alderman
- Mr Michael Bacina, Partner, Fintech Group, Bookchain Group

Stone & Chalk
- Mr Alex Scandurra, Chief Executive Officer

Australian Banking Association
- Mr Aidan O'Shaughnessy, Executive Director, Policy
- Ms Fiona Landis, Acting Executive Director, Corporate Affairs

Australian and New Zealand Banking Group Limited (ANZ)
- Ms Emma Gray, Chief Data Officer

Zip Co Ltd
- Mr Peter Gray, Chief Operating Officer

StartupAUS
- Mr Peter Bradd, Chair

Tic:Toc
- Mr Anthony Baum, Founder and Chief Executive Officer
- Mr Daniel Price, Chief Enterprise Officer
- Mr Richard Shanahan, Manager, Data Science and Enterprise Products

Xinja Bank
- Mr Eric Wilson, Chief Executive Officer and Founder
- Ms Van Le, Co-Founder and Executive Board Director

Australian Payments Network
- Mr Andy White, Chief Executive Officer

34 South 45 North Consulting
- Dr Brad Pragnell, Principal

Financial Rights Legal Centre & Consumer Action Law Centre
- Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre

86 400

- Mr Robert Bell, Chief Executive Officer

Gateway Network Governance Body Ltd

- Ms Jan McClelland AM, Chair of the Board
- Ms Michelle Bower, Executive Officer

Baker McKenzie

- Mr William Fuggle, Partner
- Mr Guy Sanderson, Partner
- Mr Adrian Lawrence, Partner
- Ms Caitlin Whale, Special Counsel, Technology and Commercial Team
- Ms Shemira Jeevaratnam, Associate

Thursday, 20 February 2020

The Portside Centre
Level 5, Symantec House
207 Kent Street
Sydney

Power Ledger

- Dr Jemma Green, Executive Chairman and Co-Founder

Fabrick Innovations

- Mr Heath Behncke, Executive Chair

Australian Securities Exchange (ASX)

- Mr Peter Hiom, Deputy Chief Executive Officer
- Mr Cliff Richards, Executive General Manager, Equity Post Trade
- Mr Daniel Chesterman, Chief Information Officer

CHOICE & Super Consumers Australia

- Ms Erin Turner, Director, Campaigns and Communications
- Ms Rebecca Curran, Senior Policy Advisor

H2 Ventures

- Mr Benjamin Heap, Founding Partner

Afterpay Limited

- Mr Anthony Eisen, Chief Executive Officer and Managing Director
- Ms Elana Rubin, Interim Chair

D.C Consulting and Management Pty Ltd

- Mr David Columbro, Director

Australian Investment Council

- Ms Robyn Tolhurst, Public Affairs Manager
- Mr Yasser El-Ansary, Chief Executive
- Mr Brendon Harper, Head of Policy and Research

NPP Australia Limited

- Mr Adrian Lovney, Chief Executive Officer
- Ms Vanessa Chapman, General Counsel and Company Secretary
- Ms Katrina Stuart, Head of Engagement

Australian Finance Industry Association (AFIA)

- Ms Diane Tate, Chief Executive Officer

Brighte Capital Pty Ltd

- Ms Katherine McConnell, Chief Executive Officer and Founder
- Mrs Malini Sietaram, Chief Marketing Officer

Business Council of Australia

- Mr Simon Pryor, Executive Director Policy
- Mr Pero Stojanovski, Acting Chief Economist

Finder

- Mr Fred Schbesta, Chief Executive Officer and Co-Founder

Australian Computer Society

- Mr Andrew Johnson, Chief Executive Officer

Wednesday, 26 February 2020

Committee Room 1S3
Parliament House
Canberra

Department of Finance

- Mr Nicholas Hunt, First Assistant Secretary, Procurement and Insurance Division
- Mr Andrew Bourne, Assistant Secretary, Procurement Policy Branch

Digital Transformation Agency

- Mr Jonathon Thorpe, Acting Chief Strategy Officer, Digital Strategy and Capability Division
- Ms Berlinda Crowther, Head of Strategic Sourcing, Strategic Sourcing Branch, Digital Strategy and Capability Division

Thursday, 27 February 2020
Committee Room 2S3
Parliament House
Canberra

Australian Securities and Investments Commission

- Mr John Price, Commissioner
- Mr Sean Hughes, Commissioner
- Mr Tim Gough, Acting Executive Director, Financial Services
- Mr Mark Adams, Senior Executive Leader, Strategic Intelligence

Australian Competition and Consumer Commission

- Mr Paul Franklin, Executive General Manager Consumer Data Right
- Mr Bruce Cooper, General Manager Consumer Data Right

Friday, 28 February 2020
Committee Room 2S1
Parliament House
Canberra

FinTech Australia

- Ms Rebecca Schot-Guppy, General Manager
- Mr Alan Tsen, Chairman
- Mr Stuart Stoyan, Member, Fintech Australia and Founder/CEO MoneyPlace
- Ms Simone Joyce, Director, Fintech Australia and Founder/CEO of Paypa Plane

The RegTech Association

- Ms Deborah Young, Chief Executive Officer

Skyjed

- Ms Leica Ison, Founder and Chief Executive Officer

Reserve Bank of Australia

- Dr Anthony Richards, Head of Payments Policy
- Mr Christopher Thompson, Deputy Head of Payments Policy

Australian Prudential Regulation Authority

- Ms Heidi Richards, Executive Director, Policy and Advice
- Ms Melisande Waterford, General Manager, Regulatory Affairs and Licensing
- Ms Alison Bliss, General Manager, Data Analytics and Insights

CSIRO DATA61

- Dr Mark Staples, Senior Principal Researcher and Group Leader
- Mr Barry Thomas, Director, Consumer Data Standards
- Ms Katie Ford, Head of Government and Stakeholder Relations

Department of Industry, Science, Energy and Resources

- Ms Elizabeth Kelly, Deputy Secretary Innovation
- Ms Narelle Luchetti, Head of Division, Digital Economy and Technology Division
- Ms Louise Talbot, General Manager, Technology Growth and International Branch

Department of Home Affairs

- Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy Division

AUSTRAC

- Dr Nathan Newman, National Manager, Regulatory Operations

Department of Foreign Affairs and Trade

- Ms Elizabeth Bowes, Chief Negotiator, Regional Trade Agreements Division
- Ms Caroline McCarthy, Assistant Secretary, FTA Investment, Digital Trade and Other Issues Branch, Regional Trade Agreements Division
- Mr John Donnelly, Acting Assistant Secretary, Competitiveness and Business Engagement Branch, Trade, Investment and Business Engagement Division

Austrade

- Ms Margaret Bowen, Acting General Manager, Government and Partnerships
- Ms Jenny West, General Manager, Trade and Investment, Global Market and Sector Engagement
- Ms Katherine Heathcote, Senior Advisor, Fintech

National Farmers Federation

- Dr Adrienne Ryan, General Manager, Rural Affairs
- Mr Peter Thompson, Chair, Telecommunications and Social Policy Committee

AgriDigital

- Mr Bob McKay, Co-Founder
- Ms Emma Weston, Chief Executive Officer and Co-Founder

EY

- Mr Alf Capito, Leader, Tax Policy
- Mr Colin Jones, EY Oceania Corporate Tax Partner

Tuesday, 30 June 2020
Committee Room 2S1
Via Videoconference
Parlament House
Canberra

Australian Innovation Collective

- Ms Maria MacNamara, Representative
- Mr Alex Scandurra, Representative

Governance Institute of Australia

- Ms Megan Motto, Chief Executive Officer, Governance Institute
- Mr Graeme Blackett, Senior Company Secretary, Company Matters and Member Legislation review Committee
- Mr Peter Smiles, Deputy Company Secretary and Senior Manager, Group Legal, QBE Insurance Group Limited and Member Corporate and Legal Issues Committee

Australian Institute of Company Directors

- Mr Christian Gergis, Head of Policy, Advocacy
- Ms Laura Bacon, Policy Adviser, Advocacy

Australasian Investor Relations Association

- Mr Ian Matheson, Chief Executive Officer
- Ms Marnie Reid, Head of Shareholder Services, AMP Investor Relations

Link Group

- Ms Lysa McKenna, Co-Chief Executive Officer Corporate Markets

Computershare

- Ms Ann Bowering, Chief Executive Officer Issuer Services Australia and New Zealand

Financial Planning Association of Australia

- Mr Dante De Gori, Chief Executive Officer
- Mr Benjamin Marshan, Head of Policy and Standards

Wednesday, 1 July 2020
Committee Room 2S1
Via Videoconference
Parliament House
Canberra

A.T. Kearney
- Mr Robert Feeney, Lead Partner, Digital Transformation Practice
- Mr Robert Holt, Lead Partner Government Practice
- Mr Craig Pandy, Principal, Government Practice

FinTech Australia
- Ms Rebecca Schot-Guppy, Chief Executive Officer
- Mr Alan Tsen, Chair

Australian Medical Association
- Dr Tony Bartone, President

Rural Doctors Association of Australia
- Ms Peta Rutherford, Chief Executive Officer

WearOptimo
- Professor Mark Kendall, Chief Executive Officer

Financial Rights Legal Centre
- Mr Drew MacRae, Policy and Advocacy Officer
- Mrs Julia Davis, Policy and Communications Officer

Law Council of Australia
- Ms Pauline Wright, President
- Ms Shannon Finch, Chair, Corporations Committee
- Dr Natasha Molt, Director of Policy

Strata Community Association (NSW)
- Mr Chris Duggan, President, Strata Community Association (NSW)
- Mr Richard Eastwood, Executive General Manager, Smarter Communities

Digital Transformation Agency
- Mr Peter Alexander, Chief Digital Officer
- Mr Jonathon Thorpe, Head of Identity

The Treasury
- Mr Warren Tease, Chief Adviser, Financial System Division
- Ms Lauren Hogan, Senior Adviser, Financial System Division
- Ms Phillipa Brown, Acting Division Head, Job Keeper Division
- Mr Daniel McAuliffe, Senior Adviser, Market Conduct Division

Tuesday, 14 July 2020
Committee Room 2S1
Via Videoconference
Parliament House
Canberra

The RegTech Association
- Ms Deborah Young, Chief Executive Officer

Australian Small Business and Family Enterprise Ombudsman
- Ms Kate Carnell AO, Ombudsman
- Mr Eamon Sloane, Analyst

Tanda
- Mr Andrew Stirling, Partner - Tanda PaySure
- Mr Roderick Schneider, Head of Strategic Partnerships

AgriDigital
- Ms Emma Weston, Chief Executive Officer and Co-Founder

Monday, 10 August 2020
Committee Room 2S2
(via teleconference)
Parliament House
Canberra

Australian Shareholders Association
- Ms Fiona Balzer, Policy & Advocacy Manager