



## Atlassian Submission to Issues Paper 2 from the Select Committee on Financial Technology and Regulatory Technology

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Atlassian appreciates the opportunity to comment on the second issues paper of the Select Committee on Financial Technology and Regulatory Technology and to participate in its ongoing inquiry. We also commend the Committee for the important work that it has already undertaken on issues facing the digitisation of our economy and the further development of the Australian technology industry.

Many of the initiatives that the Committee is exploring to foster the growth and development specifically of the FinTech and RegTech sectors are relevant to, and will also benefit, technology start-ups across the start-up ecosystem and indeed across the broader local technology sector. Atlassian, as an Australian-born and headquartered global technology firm, brings a unique perspective to the growth and development of technology-focused enterprises in Australia.

This submission sets out Atlassian's views on several of these critical issues and initiatives, based on our own early experiences and our continued championing of local start-ups and technology enterprises. This submission is limited to those issues and initiatives that we consider important to support and prioritise, having regard to the matters set out in the Interim Report and second issues paper released by the Committee.

### Provide certainty around existing support for Early Stage Innovation Companies.

The Australian Government's long-running Venture Capital Limited Partnerships (VCLP) program, first established in 2002, has been successful in growing the Australian VC industry and increasing the pool of risk-based capital for Australian Early Stage Innovation Companies (ESIC) to an estimated \$3.5 billion in Funds Under Management (FUM) in 2020.<sup>1</sup>

Similarly, the Export Market Development Grant (EMDG) program, which was established in 1997, has reduced the risk for start-ups seeking to develop export markets and has supported many Australian companies, including Atlassian in its early stages, to grow their presence and marketing activities internationally.

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<sup>1</sup> <https://fundcomb.com/overview/venture-capital/australia-region>



Both programs demonstrate the benefit of Government taking a long term focus. Unfortunately, the converse is also true; short-term thinking can significantly disadvantage companies by reducing the certainty and predictability of the investment landscape. Recent uncertainty created by the proposed (and since abandoned) changes to the Research and Development Tax Incentive (RDTI), and even the changes to the funding arrangements and eligibility criteria for the EMDG program, have inadvertently created disincentives for investment and growth.

We encourage the Government to take a long term focus, demonstrate ongoing commitment to these successful programs. In the case of the EMDG program, for example, the Government should explore expanding the eligibility criteria for expenditure under the EMDG program as the rules for access under the new terms of the program are finalised.

Encourage economic incentives to ensure investments flow to the technology sector and R&D efforts.

We agree with Recommendation 9 of the Committee's Interim Report: the eligibility of legitimate and innovative software product creation under the R&D Tax Incentive (RDTI) scheme lacks clarity and should be improved. We strongly endorse Recommendations 9 and 10 of the Interim Report, and more specifically, we recommend:

- The Government should clarify the eligibility of software R&D under the existing RDTI scheme, or even create a separate scheme to incentivise such investments.
- Both approaches can and should seek to simplify administration of the scheme, by limiting the application of software-related R&D claims to organisations that are developing software as part of externally-facing product development, or for whom software is their primary product.
- The scheme should be accompanied by clear guidance for all companies accessing the incentive to provide greater assurances as to their eligible activities and eligible expenditure, for example by sharing clear and comprehensive examples or "genericised" determinations of activities and expenditure that are clearly eligible, or were deemed not to be eligible, for the scheme.
- Clear limitations (including time limits) should be placed on clawbacks.

The RDTI as it currently stands has not, at its core, kept pace with the nature of software development, or the context and frameworks within which it occurs. This problem is not unique to Australia, given that many similar R&D incentives globally derive from the same origins in scientific research and development activities. What it means, however, is increased uncertainty for businesses that may wish to claim under the RDTI, as a result of a combination of issues relating to both the activities that qualify for the RDTI as well as the types of costs and expenditure that can be claimed under it. We think that the complexity of these issues and their broader relevance provides the Australian Government with a clear opportunity to take the lead in seeking to resolve them.

We also appreciate that the Committee's Interim Report emphasised the importance of the RDTI and highlighted the significant concerns held by industry with respect to then-proposed cuts to the RDTI. These cuts were abandoned, with proposed increases instead introduced in the October Budget. However, as was highlighted in the Interim Report, there is more that can be done in the short-term. In particular, the proposed



increases to RDTI offsets in FY22 should be brought forward and made immediately available in FY21.

#### Adopt an equivalent scheme to Rule 10b5-1

Atlassian supports the Committee's consideration of an Australian scheme equivalent to the Rule 10b5-1 trading plans available in the United States (US). As the issues paper rightly identifies, this enables the establishment of a trading plan for buying or selling a predetermined number of securities at a predetermined time, and provides an affirmative defence to insider trading.

The clear benefits of 10b5-1 plans are that they allow founders and insiders to orderly diversify their concentrated holdings in a stock without causing price volatility. This clearly benefits other shareholders, but also enables founders and insiders to realise the capital they have generated post-listing, which can then be used to diversify their investments. Freeing up this entrepreneurial capital for investment in new ventures is critical in the operation of successful innovation and start-up ecosystems and therefore has exponentially wider benefits.

Given our listing on the US Nasdaq Index, the 10b5-1 plan arrangements are broadly used within Atlassian.

No equivalent arrangement under Australian Corporations law currently exists, which creates challenges for founders and insiders of ASX-listed companies and a disincentive to start-ups who may be considering local listings.

This has been a long understood issue with Australian insider trading laws and was first recommended as a necessary amendment by the Government's own Corporations and Market Advisory Committee in its *Insider Trading Report* from November 2003.

*"A majority of the Committee supports an exemption, modelled on the US SEC Rule 10b5-1, to allow persons who are regularly exposed to inside information (such as directors and other senior corporate officers) to trade in their company's securities under non-discretionary trading plans, subject to safeguards against abuse."*<sup>2</sup>

#### Invest in talent and skills training

In order to invest in local talent over the longer term, we recommend that the Government:

- Improve the quality of careers advice and guidance in schools around digital careers. Under the National Careers Institute, the Government should make technology, testing, tools and programs available to students that help them to assess the alignment of different career options with their interests and aptitude. Existing programs and content include the School of Life and Year 13. The range of digital career options should be clearly articulated, as well as the growing opportunities to leverage digital skills into other industries.
- Focus vocational training on alignment with industry and employment outcomes. The Government should build on the Digital Skills Organisation pilot to explore

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<sup>2</sup>Insider Trading Report, Corporate and Market Advisory Committee, November 2003. Viewed at: [https://www.camac.gov.au/camac/camac.nsf/byheadline/whats+newinsider+trading%253a+report+\(november+2003\).html](https://www.camac.gov.au/camac/camac.nsf/byheadline/whats+newinsider+trading%253a+report+(november+2003).html)



more innovative training models that integrate industry content, alignment with employer requirements and incentivise employment outcomes.

Beyond these longer term priorities, there are also immediate gains to be seen by investing in global talent in the short- to medium-term. Given the favourable handling of the COVID-19 pandemic, Australia's attractiveness as a destination for global talent has never been higher. Australia should capture this moment in time to improve the tech talent pool in Australia, which will in turn improve our local tech sector (by using their skills and experience to help us grow our businesses and importantly to hire many local employees who benefit and learn from them) and ultimately help our industry to power our future economy.

Because of the costs and complexities of hiring, sponsoring and relocating staff to Australia, Australian-based employers will almost always hire local talent if it is available. However, some skills and experiences are in short supply within the Australian technology market.

As such, we welcome the establishment of the Global Business and Talent Attraction Taskforce and recommend that it focus on arrangements that facilitate bringing job-multiplying skill sets to Australia - particularly individuals with experience of leading and developing large teams in global technology firms.

Atlassian looks forward to further engaging with the Committee to help support the start-up community and technology sector in Australia, now and into the future.

Yours sincerely,

**David Masters**  
**Director of Global Public Policy**  
**Atlassian**