



SUBMISSION PAPER:

Senate Issues Paper Response

December 2019

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 300 fintech Startups, VCs, Accelerators and Incubators across Australia.



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Table of Contents

About this Submission	6
Submission Process	6
Executive summary	7
Summary of key areas detailed in the submission	7
CDR	7
Payments	8
R&D tax incentive	8
Regulatory setting including shared KYC	8
Capital	8
Export	8
Consumer awareness	9
Additional	9
Recommendations	9
Section One: Chair’s overview of national competitiveness issues	21
What is fintech?	21
Industry metrics	22
Capital and funding	23
Taxation including R&D tax incentive	24
Skills and talent	26
Competition and trust	27
Standardisation	30
Regulation	31
Consumer data right (“CDR”)	31
Screen Scraping	33
Data standards	34
Write access in CDR	35
CDR in Superannuation	35
CDR in other verticals	35
Insurance	36
Agtech	36
CDR 2.0 Consent Management	37



FinTech Australia

Consent	37
Regulatory Centralisation and Competitive Neutrality	39
Anti-money Laundering and Counter-terrorism Financing	40
Government property data	42
Payments	44
NPP	45
Digital identity	45
Cross border remittance	46
Operational resilience	47
Lending	50
Buy now pay later	52
Section Two: Specific sectoral issues - FinTech and RegTech in Australia	54
General questions for FinTech and RegTech companies in Australia	54
What area of technological innovation does your company specialise in?	54
In general terms, how would you describe the operating environment for FinTech and RegTech startups in Australia?	55
What are the biggest opportunities and challenges for your business in the short-to-medium term?	56
Capital and financing arrangements (including access to venture capital and other forms of finance)	57
Talent	58
Collaboration and partnerships with other nascent firms and traditional financial services firms.	59
Opportunities to expand into overseas markets	59
Issues affecting your business that may be specific to your product niche or area of specialisation (rather than affecting the FinTech and RegTech sectors as a whole).	59
What are your views on recent and forthcoming changes to policy settings and regulatory initiatives affecting the sector (e.g. implementation of the new Open Banking framework; introduction of the NPP in 2018; and ASIC's FinTech regulatory sandbox)?	60
Open banking and CDR	60
NPP and payments	62
Regulatory sandbox	63



FinTech Australia

Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the FinTech and RegTech industries in Australia?	63
Regulatory settings in Australia	66
Do current regulatory settings support the growth of local FinTech and RegTech companies in Australia?	66
What are the key reform priorities that will enable FinTech and RegTech innovations to flourish in Australia?	71
To what extent should government encourage or incentivise the disruption of existing financial services business models by new market entrants, as opposed to promoting partnerships between new and incumbent players? Are these aims mutually exclusive?	73
How should Australia take a prominent role in supporting and developing international blockchain standards?	75
How can the FinTech and RegTech sectors link into the Australian digital identity ecosystem reforms?	76
Can Australian regulators do more to support FinTech and RegTech companies to develop digital advice services? How can the Australian digital advice sector be supported to grow?	76
Are there any impediments to ensuring that the benefits Open Banking offers for consumers and FinTech firms are maximised?	79
Following the implementation of the CDR in the banking sector, how quickly should government seek to implement CDR reforms in related financial sectors such as superannuation?	80
What specific considerations need to be given to the implementation of CDR in the superannuation sector?	81
Is the New Payments Platform accessible enough for FinTech startups and scale-ups? If not, how should this issue be addressed?	83
Is ASIC's FinTech regulatory sandbox useful for startups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector?	86
Individual relief	86
Innovation Hub	87
Proposed Enhanced Sandbox	87
Licensing	89
Do the tax incentives offered for ESVCLP and VCLP support growing FinTech startups? Should the government consider further work to support VC investment in FinTech startups?	90



FinTech Australia

Are there measures that can be taken to support the FinTech sector's ability to raise capital from other types of institutional investors (e.g. superannuation funds)?	91
Is the R&D Tax Incentive adequately assisting companies in the FinTech and RegTech space? If not, how should it be reformed to encourage innovation in these sectors?	94
Are the existing visa settings for entrepreneurs and workers in the tech industry succeeding in attracting overseas talent into Australian FinTech and RegTech companies? Are changes needed to make this process more straightforward?	98
Is the FinTech Advisory Group meeting its goals? Could the group be doing more to assist the development of the industry?	98
How can public sector data be made more accessible and useful for FinTech and RegTech companies seeking to deliver innovative products and services?	98
Integrating FinTech and RegTech solutions across the economy	100
In addition to traditional financial services, which sectors of the Australian economy could benefit most from the integration of innovative FinTech and RegTech technologies? Why?	100
Are there current examples of innovations in this area that the committee could explore during its inquiry?	100
What changes are required in order to create a better enabling environment for the transfer of technological innovations across sectors of the economy?	100
Noting the lengthy sales cycle (approximately 2 years) for RegTech products to be adopted by companies, how can government assist emerging RegTech providers to ensure that this time lag does not preclude innovative technology solutions from being brought to market?	103
How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia?	103
Global comparisons and investment	104
What learnings and opportunities can Australia glean from international FinTech and RegTech industries?	104
What innovations from other countries could have a positive impact on the Australian FinTech industry?	105
Are there any pitfalls Australia can avoid in growing its FinTech industry by learning from international experience?	105
How can Australia take advantage of its geographical proximity to the rapidly growing markets in the Asia-Pacific and increase its financial services exports in the region?	106
What measures can the Australian Government take to directly support FinTech businesses seeking to expand internationally?	107



FinTech Australia

UK Australia FinTech Bridge	107
Should Australia seek more formal international FinTech agreements? Are there particular countries that Australia should look to for partnership?	109
Section three: Other areas for consideration	110
Superannuation	110
Cultural Drivers	110
Structural Drivers	111
E-invoicing	113
Trust for SME's	113
Trust Accounts and Client Money Rules	113
Document Execution	114
Bank Account Closures	114
Conclusion	115
About FinTech Australia	115
FinTech Australia members	115

About this Submission

This document was created by FinTech Australia in consultation with its members, which consists of over 300 company representatives. In particular, the submission has been compiled with the support of our Co-leads:

- Rebecca Schot-Guppy, FinTech Australia
- Alan Tsen, FinTech Australia

This Submission has also been formally endorsed by the following FinTech Australia members:

- Reinventure
- Data Republic
- Side Fund
- Entersoft
- Paypa Plane
- Birchal
- Link4



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- Credi
- Longevity App
- OnDeck
- Transferwise
- MyProsperity
- Airwallex
- Rollit Super
- Startupbootcamp
- Equitise
- Best Exchange Rates
- Cloudfloat
- Pax Republic
- Inamo
- Look Who's Charging
- Kova tax
- Archa
- Omni-Financial
- Biza.io
- Accurassi
- Frankie Financial
- Monoova
- Butn
- Prospa
- 86400
- Volt Bank
- Certified By
- Traction Fintech Pty Ltd
- AgriDigital
- Moneytech
- Payment Assist
- Coinjar
- 25Fifteen
- Zip
- Brighte
- MoneyPlace
- AfterPay
- Quiet Growth



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- Joust
- Frolo
- Carthona Capital
- Mayflower
- Stockspot
- Ezypay
- Selfmade
- Insight Data Solutions
- Moneytree
- Block8
- Fractal -Labs
- Revolut
- Instarem
- NIUM Pty Ltd
- True Lawyer

Submission Process

In developing this submission, our members held a series of member roundtables/teleconferences as well as circulating working drafts of the submission to each member to ensure everyone had the opportunity to provide input on the issues relating to the Senate Enquiry into FinTech and RegTech.

We also particularly acknowledge the support and contribution of our policy partners to the topics explored in this submission.

Executive summary

This submission represents the views of FinTech Australia, the Industry body advocating for policy reform, in consultation with its 300+ members – fintech startups operating in Australia.

Given the rapid pace, and potential impact of the industry, the submission begins by defining fintech and the metrics used by the industry before addressing the key components of national competitiveness. We have focussed our submission on all the areas of current and critical importance that can only be addressed through legislative, policy and cultural changes, thereby benefiting both consumers and the industry.



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Recommendations are also based on our findings from EY FinTech Australia Census 2019 (“**FinTech Census**”), which FinTech Australia and EY jointly published in October 2019.

Summary of key areas detailed in the submission

CDR

FinTech Australia supports the implementation of the economy wide consumer data right. However the laborious accreditation process is a top concern. Requiring a company to become accredited, expending significant time and upfront costs, simply to undertake initial tests is cumbersome and economically unviable.

Successful implementation of CDR requires educating consumers, acknowledging benefits of screen scraping, including a right to initiate payments, rolling out to superannuation among other sectors, and adopting globally accepted regulatory and data standards where possible.

A properly constituted dynamic approach to consent capture, codification and management overcomes the technical and experiential difficulties with static consent. Critically, consent fatigue for consumers and impractical technical burdens for businesses can be addressed through a codified consent management system which implements a common taxonomy of permitted uses.

Payments

Payments, wallets and supply chain related services are the 4th largest sector by fintech type. Fintechs operating in this space will require transparent and ubiquitous frameworks, access to new payment systems, and pathways to partnerships with incumbents.

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.

R&D tax incentive

The R&D Tax incentive is considered the most important initiative to grow and promote the fintech industry in Australia. FinTech Australia and its members are concerned that the current definition of “experiments” prevents software companies from claiming this incentive which has the result of hampering innovation. Additionally, the seemingly world leading scheme in which



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tax incentives are provided to early stage innovation companies is neither well understood nor utilised well. There is also significant confusion around employee share schemes.

Regulatory setting including shared KYC

Regulatory responsibility for all relevant elements of the data economy is fragmented across multiple regulators. So too is governmental responsibility is split across multiple departments. This leads to confusion about departmental ownership, competing data priorities and compliance burdens, and competition between government and private enterprise. Identifying verification processes in financial services (referred to ‘**know-your-customer**’ or ‘**KYC**’) are slow, cumbersome and involve significant duplication. A transferable or shareable KYC will reduce the barrier to entry, and streamline processes allowing both banks and fintechs to provide a wider range of financial services.

Capital

Access to funding is a significant issue for fintechs, especially during their early stages with funding in the sector favoured towards the more established and experienced fintechs. Members indicated that the lack of angel investment makes it extremely hard to keep talented startup founders and teams in Australia.

Export

The FinTech Bridge has been successfully supporting companies’ expansion in both directions between Australia and the UK but there is more work to be done. A lot of work remains to articulate the offering from government to businesses, and to maximise the impact and number of high-potential businesses reached. The current FinTech Bridge seems to inhibit the growth of local fintech firms. As the Australian fintech industry is relatively young, most newer Australian fintech firms are not yet well positioned to enter the UK market.

Consumer awareness

Awareness of alternative providers of financial services in the market is lacking. Most Australians aren’t aware that there are more than 4 ADIs (authorised deposit-taking institutions), or even what an ADI is. This along with the almost oligopolistic environment results in barriers for new entrants thus preventing fintechs from being competitive both nationally and internationally.

Additional

There is a local shortage of talent, particularly managerial and engineering talent, needed to facilitate growth. Any additional support to source talent would be welcome. Jobs have left



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Australia because of high wages, brain drain and lack of focus in developing skills in science, technology, engineering and maths (“**STEM**”).

Standardisation will help with the creation and implementation of compliance driven fintech applications. Most fintechs also support robust regulatory environments that promote consumer confidence and protection, informed decision-making and innovation.

Given the importance of property data and analytics to the Australian economy, especially in industries such as real estate where vendors traditionally have agent representation, but buyers do not, there is a constant need for reliable solutions that Australian consumers and industry can rely upon.

Based on the above highlighted challenges, the following recommendations have been made which are further detailed in the submission.

Recommendations

No	Recommendation	Section	Importance
1	<i>Government should foster an educated network of angel investors. To supplement this, government should create a rigorous early stage ecosystem that promotes cooperation between privately run advisory businesses and government incubators in order to facilitate deal flow. Ultimately this will help Fintech entrepreneurs be investor ready from angel round.</i>	Section One: “Capital and funding”	High



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2	<i>Provide incentives to encourage incumbents to work with startups on viable business solutions.</i>	Section One: “Capital and funding”	Low
3	<i>The Government re-examine any proposal to change the R&D tax incentive and increase rather than decrease the incentive available to support innovation in Australia.</i>	Section One: “Taxation including R&D tax incentive”	Medium
4	<i>Promote the ESIC tax incentives to ensure it is well understood and used appropriately.</i>	Section One: “Taxation including R&D tax incentive”	Medium
5	<i>ASIC to heed the comments of the Productivity Commission, take inspiration from Singapore and the UK, and adopt a progressive pro-competitive approach to implementing the mandate for competition, set out in the ASIC Act.</i>	Section One: “Competition and Trust”	Medium
6	<i>Create and promote programs which raise awareness of alternative providers of financial services in the market to increase competition.</i>	Section One: “Competition and Trust”	Low
7	<i>Government to work with the fintech industry to launch an education campaign to educate consumers about the industry, and opportunities available for consumers to receive services and create new ventures. This will also build consumer trust in technology.</i>	Section One: “Competition and Trust”	Medium
8	<i>Provide support to the existing APIX to engage with the ASEAN region and promote international technological development</i>	Section One: “Standardisation”	Low
9	<i>The lock down version of the CDR rules for intermediaries be released for consultation and implemented as soon as possible.</i>	Section One: “Consumer Data Right”	High
10	<i>Government should conduct a targeted campaign to educate consumers as to what the CDR is to allow them to understand the opportunities provided to consumers through the new data economy.</i>	Section One: “Consumer Data Right”	High



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11	<i>No attempt should be made to outlaw screen scraping until CDR and CDR data is readily and widely available across the economy so that there is no need for companies to use screen scraping.</i>	Section One: "Screen Scraping"	High
12	<i>CDR should be implemented in a manner that is easier to access, provides better functionality and is cheaper than screen scraping.</i>	Section One: "Screen Scraping"	High
13	<i>Allow screen scraping for the purpose of testing and validating CDR use cases and data parcels.</i>	Section One: "Screen Scraping"	Medium
14	<i>If appropriate in the Australian context, wherever possible, globally accepted regulatory and data standards should be adopted.</i>	Section One: "Data Standards"	Low
15	<i>Extend CDR to include a right to initiate payments.</i>	Section One: "Write access in CDR"	High
16	<i>The Consumer Data Right should be rolled out to superannuation funds. As a preliminary step, funds should automatically be accredited data recipients to receive information that banks hold on their members (with member consent).</i>	Section One: "CDR in Superannuation"	High
17	<i>CDR should be rolled out in all major sectors of the Australian consumer economy including financial sectors such as insurance.</i>	Section One: "CDR in other verticals"	Medium
18	<i>Adopt a granular approach to consent and enable technical solutions for consent management including to capture consents, and for the codification and transmission of consent and the underlying data.</i>	Section One: "CDR 2.0 Consent Management"	High
19	<i>Centralise data economy regulation and industry development under one dedicated government body. Follow-through on the</i>	Section One: "CDR 2.0 Consent Management"	Medium



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	<i>mandated competitive neutrality framework for Government and quasi-Government bodies.</i>		
20	<i>Government pass the proposed Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019, No. , 2019 (Cth) to facilitate shared KYC.</i>	Section One: “Anti money Laundering and Counter-terrorism Financing”	High
21	<i>Review and refine definitions of “designated remittance arrangement” under the AML/CTF Act to:</i> (a) <i>provide comfort to service providers who are inadvertently considered to be remittance providers that they are not caught;</i> (b) <i>reflect and account for electronic remittance services; and</i> (c) <i>ensure that only remittance service providers and not all payment service providers are caught. Consider whether payment service providers should have their own separate designated service.</i>	Section One: “Anti money Laundering and Counter-terrorism Financing”	Medium
22	<i>Review and amend the IFTI regime in consultation with fintechs to reflect the requirements of new businesses.</i>	Section One: “Anti money Laundering and Counter-terrorism Financing”	Medium
23	<i>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</i>	Section One: “Government property data”	Low



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24	Create a regime to allow non-banks direct access to the NPP.	Section One: “Payments”	Medium
25	Encourage use of the NPPA to increase the network effect (necessary for a functioning payment system). The government should consider subsidising NPPA transaction costs either at participant level (assuming the subsidy would be passed along to users) or downstream at the service level (eg the service layer company or overlay).	Section One: “Payments”	Medium
26	The government should consider subsidising the cost of direct access to the NPPA for appropriate businesses to encourage service-level innovation. Currently, direct access (or participant) costs are prohibitively high.	Section One: “Payments”	Low Medium
27	The Australian 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.	Section One: “Payments”	High
28	The Council of Financial Regulators publicly release its report provided to government in October 2019 following the Review of Retail Payments Regulation: Stored-value Facilities undertaken in September 2018.	Section One: “Payments”	Medium
29	The Purchased Payment Facility regime be changed to: 1 reduce capital requirements; and 2 minimise governance overhead.	Section One: “Payments”	Medium
30	Any reforms with respect to payments should account for electronic and data driven payments noting that as far as possible any law must be technology neutral.	Section One: “Payments”	High
31	Conduct a review of the BECS rules alongside the review into the ePayments code to reduce conflict and confusion between these and the NPP as businesses transition from one system to another.	Section One: “Payments”	High



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32	Standardise consent procedures across all payment methods wherever possible.	Section One: “Payments”	High
33	The government should “strengthen consumer protection by mandating the ePayments Code” as recommended in the Murray Review into the Financial Systems Inquiry.	Section One: “Payments”	High
34	Lending standards and safeguards for consumer and small business lending are fundamentally different and should not be unnecessarily streamlined.	Section One: “Lending”	Medium
35	Facilitate small business lenders’ access to comprehensive consumer credit data. This can be facilitated by (1) allowing a person who is providing credit and is not required to hold an ACL to access CCR data in the event that the small business lender complies with a self regulatory regime, such as a binding code of conduct and AFCA membership. (2) expanding the Principles of Reciprocity and Data Exchange to allow provision of comprehensive credit data to commercial lenders (which we understand is already supported by ARCA in principle).	Section One: “Lending”	Medium
36	Government follows existing views from the Senate and ASIC that the consumer buy now pay later sector is not providing consumer credit and allow the industry to continue to self-regulate.	Section One: “Buy now pay later”	Medium
37	The industry continue to work with AFIA to establish a voluntary industry code of practice for the buy now-pay later sector.	Section One: “Buy now pay later”	Medium
38	State governments continue to support fintech hubs, accelerators and incubators.	Section Two: “2.3”	Medium



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39	<i>The ACCC increase the number of fintechs allowed to test the CDR to facilitate development of services for consumers using the system. This will enable consumers to take full advantage of the CDR when it comes online.</i>	Section Two: "2.4"	
40	<i>Accredited data recipients should be able to use technology provided by third parties to assist with compliance. This will ensure that costs are minimised and compliance is able to be managed using the most effective method.</i>	Section Two: "2.4"	Medium
41	<i>Implement a collaborative policy process involving technological and commercial participants in the fintech industry to ensure policy and regulation is effective and able to be effected within the prescribed timeframes.</i>	Section Two: "2.5"	Medium
42	<i>State and Federal governments should follow the Queensland model in championing innovation by creating an office of the chief entrepreneur and establishing a Business Development Fund to co-invest in businesses.</i>	Section Two: "2.5"	Medium
43	<i>State, territory and federal governments should continue existing efforts to coordinate their approach to fintech policy and regulation through COAG.</i>	Section Two: "2.5"	Medium
44	<i>Develop a strategic plan for investment in AI by the public and private sectors.</i>	Section Two: "2.5"	Medium Low
45	<i>Government should require businesses implement technological systems which lessen the cost of collection of information, or provide financial assistance to build infrastructure for new reporting requirements.</i>	Section Two: "2.6"	Medium
46	<i>Where possible regulators to supply information/extra information regarding how businesses can comply with relevant regulations.</i>	Section Two: "2.6"	Medium



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47	<i>Examine and define the regulatory parameters of each regulator so their role and responsibilities are clearly defined to assist compliance.</i>	Section Two: "2.6"	High
48	<i>Regulation should be proportionate to the nature of the business and risks posed, considering the size of the business and number of customers.</i>	Section Two: "2.6"	High
49	<i>FinTech Australia endorses the proposal for the ALRC to be commissioned to conduct an inquiry into simplification of the financial services regulatory regime in Australia.</i>	Section Two: "2.7"	Low
50	<i>Create tax incentives to encourage businesses to use fintech start-ups.</i>	Section Two: "2.8"	Low
51	<i>Re-introduce and pass the Bankruptcy Amendment (Enterprise Incentives) Bill to reduce the difficulties faced by entrepreneurs following bankruptcy, reduce the fear of failure and encourage serial entrepreneurship.</i>	Section Two: "2.8"	Medium
52	<i>Provide clarity and certainty regarding timeline for open banking and ensure that these are able to meet requirements of all in the industry, not just the big four.</i>	Section Two: "2.12"	High
53	<i>The Australian Government should play an active role in the development of CDR style regimes around the world to facilitate export opportunities.</i>	Section Two: "2.12"	High
54	<i>Government should designate all sectors of the consumer economy as being subject to the CDR to facilitate the data economy.</i>	Section Two: "2.13"	High
55	<i>Data required by APRA to comply with superannuation requirements be standardised. This can be facilitated by CDR.</i>	Section Two: "2.14"	Medium
56	<i>Incumbents roll out the NPP capabilities in a fast and open manner.</i>	Section Two: "2.15"	High



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57	<i>The NPPA, Government and RBA implement the NPP Roadmap.</i>	Section Two: “2.15”	High
58	<i>Introduce measures to ensure that ADIs who are participants in the NPPA support adoption by the full industry.</i>	Section Two: “2.15”	High
59	<i>RBA review the BECS rules and the NPP direct payment Mandate to ensure direct debit services are not interrupted as providers switch between systems.</i>	Section Two: “2.15”	Medium
60	<i>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.</i>	Section Two: “2.15”	Low
61	<p><i>FinTech Australia members:</i></p> <ul style="list-style-type: none"> ● <i>strongly support the Government’s proposal to enact the enhanced regulatory sandbox as set out in both the Act and Regulations; and</i> ● <i>encourage the Government to review the operation of the enhanced regulatory sandbox after 12 months and consider further expansion of its scope.</i> 	Section Two: “2.16”	High
62	<i>Government should consider its grants program and fund ideas and technology which build underlying infrastructure which can be applied across industries.</i>	Section Two: “2.18”	High
63	<i>Ensure allocations from the ABSF are aligned with the government’s original and ongoing policy intent to provide finance to small businesses responsibly and in a timely way, facilitating funding to where the need is greatest: for unsecured small business lending.</i>	Section Two: “2.18”	High
64	<i>The approach to year 1 allocations as set out during the ABSF information sessions be</i>	Section Two: “2.18”	Medium



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	<i>closely reconsidered, with a view to ensuring that unsecured small business lenders are included.</i>		
65	<i>The government consider the metrics to access the ABSF and ensure that funding can be accessed by startups who are pre-profit and at an early stage.</i>	Section Two: "2.18"	High
66	<i>Government continue to fund the R&D tax incentive scheme and increase the budget allocation to this program.</i>	Section Two: "2.19"	Medium
67	<i>Explicit guidance be provided to clarify when and how the R&D tax incentive applies to software development in relation to fintech businesses.</i>	Section Two: "2.19"	High
68	<i>Conduct a review of Innovation & Science Australia's conduct with regards to treatment of companies making a R&D tax incentive claim for software development.</i>	Section Two: "2.19"	High
69	<i>Review the R&D tax incentive scheme to consider how the application process may be simplified.</i>	Section Two: "2.19"	High
70	<i>"Experiments" in the R&D tax incentive scheme 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.</i>	Section Two: "2.19"	High
71	<i>Allocate 15% of all fines levied by AUSTRAC to investing in fintech.</i>	Section Two: "2.19"	High
72	<i>The AEC should provide access to electoral role information to all companies that pass their own security verification to facilitate KYC checks.</i>	Section Two: "2.22"	Low
73	<i>Data from government agencies, such as ASIC, should be available to multiple service providers to increase competition and</i>	Section Two: "2.22"	Low



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	<i>decrease costs of accessing government mandated information.</i>		
74	<i>Follow the model set by Companies House in the United Kingdom and provide free access to information regarding company directors and shareholders held by ASIC.</i>	Section Two: "2.22"	Low
75	<i>To build a trusted Fintech ecosystem, Industry and Government should come together to create a Fintech Cyber Security Working Group which can define minimum national approaches for Australian Fintech Companies based on recommendations from International Cyber Security Standards and guidelines.</i>	Section Two: "2.25"	High
76	<i>Mandate that companies only be required to retain data for the period of time that is necessary.</i>	Section Two: "2.25"	Low
77	<i>Establish a growth centre around fintech and regtech as an engine to drive Australia's ability to compete on a global scale to attract and foster innovation.</i>	Section Two: "2.31"	High
78	<i>Review support provided by AUSTRADE and consider whether funding provided is sufficient and effective.</i>	Section Two: "2.32"	High
79	<i>The Fintech Bridge should offer equal support to Australian companies entering the UK and UK companies entering Australia.</i>	Section Two: "2.32"	High
80	<i>In implementing the Fintech Bridge, the government should:</i> <ul style="list-style-type: none"> <i>(1) encourage coordination between industry participants;</i> <i>(2) build on existing private sector engagement and increasing its participation in and work with fintechs in Australia and the UK;</i> 	Section Two: "2.32"	High



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	<p><i>(3) help businesses understand the value they can get from involvement;</i></p> <p><i>(4) centrally coordinate Australia’s efforts including by appointing specialists); and</i></p> <p><i>(5) allocate specific budget to support FinTech Bridge activity.</i></p>		
81	<p><i>Enter into a FinTech Bridge style relationship with other APEC countries, with equivalent regulatory regimes, such as with the Monetary Authority of Singapore.</i></p>	Section Two: “2.33”	High
82	<p><i>The Australian government promote the concept of e-Invoicing and the savings it can bring to Australia.</i></p>	Section Three: “Other Areas For Consideration”	Medium
83	<p><i>Commonwealth and State Governments extend the applicable Electronic Transactions Acts to allow:</i></p> <ul style="list-style-type: none"> • <i>companies to sign electronically under section 127 of the Corporations Act, and counterparties to rely on assumptions; and</i> • <i>deeds to be signed electronically.</i> <p><i>To ensure that this is enacted appropriately government should consult widely prior to implementing such an amendment.</i></p>	Section Three: “Other Areas For Consideration”	Medium /Highybe

Section One: Chair’s overview of national competitiveness issues

Context

Key components of national competitiveness

Capital and Funding



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Tax

Skills and Talent

Culture

Regulation

- *Consumer Data Right*
- *CDR cost issues*
- *'Write-access' for CDR data in Open Banking*
- *CDR in superannuation*
- *Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF)*
- *Government property data*

What is fintech?

Fintech describes a broad category of innovative businesses and may be defined as “Organisations combining innovative business models and technology to enable, enhance and disrupt financial services.”¹

FinTech Australia and EY in their joint EY FinTech Australia Census 2019 published in October 2019 (“**FinTech Census**”) identify 5 pillars which underpin the success of the fintech industry – talent, capital, demand, policy and environment.²

Fintechs are innovative, agile and focus on customer outcomes. Their technology delivers speed, transparency and simplicity. Fintech enabled products and services solve customer problems and address their needs. They fill market gaps with fit for purpose solutions. They provide significant value for consumers, small businesses and the economy. The rapid growth of fintechs and the popularity of fintech products demonstrates from consumers and small businesses preference for fast, convenient and easy to use payment and banking solutions.

Core to this growth is the role of technology. Technology allows fintechs to strip out human functions and automate them, removing the opportunity for human error and bias. Instead, products and investment strategies can be created for every client based on a sophisticated algorithm.

¹ FinTech Census, p.11.

² EY & FinTech Australia, *EY FinTech Australia Census 2019* (October 2019), <https://fintechauscensus.ey.com/2019/Documents/EY%20FinTech%20Australia%20Census%202019.pdf>, (“**FinTech Census**”) p.7.



FinTech Australia

The fintech industry has changed dramatically over the last 3 to 5 years. The increase in the number of venture capital funds, incubators, co-working spaces as well as the support from initiatives like the UK FinTech Bridge have in the words of one member “brought the industry on leaps and bounds and no doubt led to a lot of companies succeeding that would otherwise have failed or not even started at all.

Industry metrics

The terms of reference establishing the Senate Select Committee notes that the committee is established to, amongst other things, inquire and report on “the size and scope of the opportunity for Australian consumers and business arising from financial technology (FinTech) and regulatory technology (RegTech).”³

FinTech Australia feels that there may be a disconnect between how government and the fintech industry view the stages of development of fintech companies. 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. For instance, Uber is pre-profit, and one FinTech Australia member which has been operating for almost a quarter of a century noted that it remains in “scale-up” phase, and still needs support. It was also noted that

“Fintechs are always old by the time you get there [to scale-up]. Age is not always a good measure for where the business is up to.”

This is partially due to the fact that any company building a technological solution is particularly in its early stages capital and resource intensive. As a result, unlike other businesses, the phase of development of the technology is equally as important as the age of the business. This considers whether the product is in concept, beta, production or similar mode.

Without metrics and information which reflects the realities of the growth of a fintech company, policy cannot adequately reflect the needs of the industry.

FinTech Australia members provided feedback that the early stage ‘start-up’ phase may involve validating product to be able to pitch to investors in the first instance. Given the iterative process this may take longer or be more costly than previously anticipated.

³ Senate Journal, 24 *Financial Technology and Regulatory Technology – Select Committee – Appointment*, (No.14, 11 September 2019), at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22chamber%2Fjournals%2Fa0ddb57e-3906-4579-a04d-0ccaca2de569%2F0025%22>, (“**Terms of Reference**”).



FinTech Australia

Other FinTech Australia members have noted that the diversity in the fintech industry means that the start-up lifecycle proposed in the Issues Paper will not necessarily apply in all cases. In particular, some start-ups need to have a global mindset from the very earliest stages in its lifecycle. Otherwise there could be significant struggles with scale later on.

FinTech Australia members have also noted that there is significant diversity within the fintech industry. For instance, fintechs include businesses which provide B2B, B2C and even B2B2C services. These encompass both consumer and commercial loans, budgeting, wealth management, payments, banking, insurance and superannuation businesses as well as purely technological companies. This causes difficulties in creating a one-size fits all policies.

Capital and funding

Access to funding is a significant issue for fintechs. Whilst there have been improvements in the availability of venture capital funding in Australia many fintechs don't access this form of funding. The EY FinTech Australia 2019 Census reports that funding in the sector is becoming more conservative and favoured towards the more established and experienced fintechs.⁴ Indeed 75% of fintechs are founder funded.⁵ This has increased from 60% in 2018.⁶

For most fintechs, having access to a private source of funding is critical for success when starting out.

Recommendation: Government should foster an educated network of angel investors. To supplement this, government should create a rigorous early stage ecosystem that promotes cooperation between privately run advisory businesses and government incubators in order to facilitate deal flow. Ultimately this will help Fintech entrepreneurs be investor ready from angel round.

Recommendation: Provide incentives to encourage incumbents to work with startups on viable business solutions.

The levels of capital available to high-growth businesses in Australia have tightened in 2019, reflected in slightly less success in capital raising and lower levels of funds raised.⁷ Members

⁴ FinTech Census, p.25.

⁵ FinTech Census, p.25.

⁶ FinTech Census, p.25.

⁷ FinTech Census, p.7.



FinTech Australia

indicated that there is a severe lack of proper angel investment is making it extremely hard to keep talented startup founders and teams in Australia. It was noted that angel investing is a niche skill that requires a large network, solid educational partners and sourcing partners. It was suggested that more work should be done by the government to foster an educated angel network across Australia and more incentives should be provided to corporates to encourage them to work with startups on viable business solutions. See response to questions 2.2, 2.5, 2.10 and 2.17 below.

Taxation including R&D tax incentive

The R&D tax incentive has been identified as the number one regulatory issue for fintechs in the Fintech Census for the past three years. The R&D tax incentive is the primary channel used by the Federal Government to reward and promote local innovation.⁸ 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%).⁹ Further to this, 76% of fintechs indicate that the R&D incentive helps keep aspects of their business onshore.¹⁰ An absence of an effective R&D scheme would significantly hamper innovation and monetisation of Australian fintech offerings.

In the 2019 budget, the Federal Government announced a cut of \$1.35B in R&D tax incentives over the forward estimates.¹¹ This adds to a sum of more than \$2B that was effectively stripped from the previous budget.¹² The Senate Committee reviewing the proposed legislation to amend the R&D tax incentive notes that the proposal may cause unintentional consequences and notes

“the proposed \$4 million cap on the refundable tax offset, the committee believes that it would benefit from some finessing to ensure that R&D entities that have already made investment commitments are not impeded unintentionally.

...

the intensity threshold should be re-examined in order to ensure that Australian businesses are not unfairly disadvantaged.”¹³

⁸ FinTech Census, p.35.

⁹ FinTech Census, p.35.

¹⁰ FinTech Census, p.35.

¹¹ FinTech Census, p.35

¹² FinTech Census, p.35.

¹³ Senate Economics Legislation Committee, Report, *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 [Provisions]*, February 2019,



FinTech Australia

Recommendation: The Government re-examine any proposal to change the R&D tax incentive and increase rather than decrease the incentive available to support innovation in Australia.

R&D tax incentives should be supported by grants and funding:

- (a) Technology companies are often ineligible for grants and other funding;
- (b) Grants and funding is typically supply side focused rather than demand side;
- (c) Need more innovation resourcing;
- (d) Support from Austrade is not significant for particular documents; and
- (e) Access to capital doesn't seem to reflect the industry

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 would attract increased international private capital investment and simplify the structures that make it difficult to attract foreign investment. One of the simplest measures is reducing the current corporate tax rate. The rate of 27.5% to 30% is high, particularly when compared with other countries, such as Singapore which has a corporate tax rate of 17%. Despite proposals to lower this rate, these have not been acted on. In May 2016, Treasury published a working paper analysing the long term effects of a company tax cut. One of the conclusions was that a corporate tax cut from 30% to 25% "encourages investment, which in turn increases the capital stock and labour productivity".¹⁴

Another matter to be considered is the mechanism by which equity is taxed. Changes regarding the applicability or not of tax deferral mechanisms when employees are granted shares or options have been detrimental to the industry. Although improvements have been made for employee share schemes, there has been significant confusion. 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.

Another scheme which assists the industry is the tax incentive provided to early stage innovation companies ("ESIC"). Qualifying companies must be incorporated in Australia, have

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABMultinationalsTax/~media/Committees/economics_cte/TLABMultinationalsTax/report.pdf, p.32.

¹⁴ The Treasury, *Treasury Working Paper: Analysis of the long term effects of a company tax cut*, (May 2016).



FinTech Australia

total expenses less than \$1 million in the previous income year, assessable income of \$200,000 or less, and shares must not be listed on any stock exchange. In addition, the company must meet a 100 point innovation test or a principles based innovation test.¹⁵ However this seemingly world leading scheme is neither well understood and, anecdotally, appears to be underutilised. More should be done to promote it.

Recommendation: Promote the ESIC tax incentives to ensure it is well understood and used appropriately.

Another of, if not the most challenging parts of the Australian taxation system is the high rate of personal tax. The effect of this is that salaries are inflated and may result in startups seeking cheaper offshore labour where it can be outsourced appropriately.

Skills and talent

Access to talent pools is the lifeblood of the fintech industry. There is a local shortage of talent, particularly managerial and engineering talent, needed to facilitate growth. Whilst the number of people with the requisite skills appears to be increasing, there still needs to be more of a focus on developing science, technology, engineering and maths (“STEM”), and other computing skills. This is also compounded by a brain drain where many qualified Australians are attracted to jobs abroad offering high salaries, dynamic economies and fast track careers.

Whilst outsourcing or insourcing (bringing people to Australia) are always possibilities, having access to local talent is preferred.

The 2019 FinTech Census notes a significant shift in perceptions to staffing, recruitment and talent retention over the four years in which the 2019 FinTech Census has been run.¹⁶ There has been a 15-point drop since 2016 in the percentage of fintech leaders who believe there is a lack of experienced startup and fintech talent in Australia (58% in 2016 vs. 43% in 2019).¹⁷

¹⁵ ATO, *Qualifying as an early stage innovation company*, <https://www.ato.gov.au/Business/Tax-incentives-for-innovation/In-detail/Tax-incentives-for-early-stage-investors/?page=2>.

¹⁶ FinTech Census, p.21.

¹⁷ FinTech Census, p.21.



FinTech Australia

Notwithstanding this, attracting suitable or qualified talent remains a significant issue for fintech leaders. Of those fintechs struggling to attract qualified or suitable talent, the 2019 FinTech Census notes that recruiting suitable engineering or software talents remains the top challenge for seven in ten (69%) fintechs, although this is less pronounced than last year (76%).¹⁸ To this end, FinTech Australia members noted that any additional support to source and find talent would be welcome. One particular measure noted was the creation of a specific X-tech forum for both local and overseas talent to pitch themselves and get placed. This would focus on the technology and engineering skills required to build new technology rather than the commercial and business ideas.

Some fintechs have also noted that wages are high compared with other developed markets like Europe and the US. This has resulted in using offshore developers, meaning that jobs have left Australia.

Competition and trust

Australia should take advantage of its significant successes to date with companies such as Envato, Seek and Atlassian demonstrating that success can and does come from Australia. This also shows that we do have significant talent here that has the potential to go on to make other successful startups. The Government should highlight these success stories both nationally and internationally to promote start up culture in Australia to attract top talent and more investment.

It has been noted by members of FinTech Australia that the Australian ecosystem has developed with large established organisations, which cause difficulties for fintechs to establish themselves. This almost oligopolistic environment is difficult to break into and results in a lack of competition.

FinTech Australia is encouraged by the additional requirement placed on ASIC since October 2018 to “consider the effects that the performance of its functions and the exercise of its powers will have on competition in the financial system”.¹⁹ ASIC is required to consider competition in the financial system in exercising all its duties. This is not the same as the ACCC which enforces competition laws. Instead, this broad mandate allows ASIC to factor and appropriately balance competition into regulatory decision making.

¹⁸ FinTech Census, p.21.

¹⁹ Treasury Laws Amendment (Enhancing ASIC’s Capabilities) Act 2018 (Cth), schedule 1, now Australian Securities and Investments Commission Act 2001 (Cth) (“ASIC Act”), s1(2).



FinTech Australia

This follows the Productivity Commission's report which found that what is often considered to be enhanced competition in the market is more a matter of white labelling existing and "barely differentiated" products, and that those who had previously been disruptors, had become part of the establishment.²⁰

Both the MAS²¹ and FCA²² have similar mandates which encourage them to consider increased competition in the market. This has assisted both Singapore and the UK to grow robust and world renowned fintech industries.

Recommendation: ASIC to heed the comments of the Productivity Commission, take inspiration from Singapore and the UK, and adopt a progressive pro-competitive approach to implementing the mandate for competition, set out in the ASIC Act.

Governments have a responsibility to keep the Australian economy as productive and flexible as possible to enable us to be competitive nationally and internationally. Support for and promotion of Fintech, Regtech and xTech industries will assist to increase competition in the market.

Recommendation: Create and promote programs which raise awareness of alternative providers of financial services in the market to increase competition.

Fintechs use consumer-centric design to deliver products that consumers value. This indicates a broader issue namely, the importance of building and harnessing trust early. 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

²⁰ Productivity Commission, Inquiry Report: Competition in the Australian Financial System, No.89 (29 June 2018), <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system.pdf>.

²¹ Monetary Authority of Singapore, *Objectives and principles of financial supervisions in Singapore*, (April 2004, revised September 2015), <https://www.mas.gov.sg/~media/MAS/News%20and%20Publications/Monographs%20and%20Information%20Papers/Objectives%20and%20Principles%20of%20Financial%20Supervision%20in%20Singapore.pdf>. Principle 11 states that the MAS "Give due regard to competitiveness, business efficiency and innovation".

²² Financial Conduct Authority, *FCA Mission: Our Approach to Competition*, (December 2017) <https://www.fca.org.uk/publication/corporate/our-approach-competition.pdf>. One of the FCA's 3 operational objectives is to promote competition, meaning to promote effective competition in consumers' interests.



FinTech Australia

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.

As new participants emerge in the financial services industry, unless people are aware of and see these as viable long term alternatives to their normal financial choices, difficulties will arise across the industry. FinTech Australia members, such as Volt noted that it is partly for companies to carry out marketing and PR campaigns but that there was still a place for overall campaigns to “drive consumer and SME awareness.” For instance, FinTech Australia members noted that, most Australians aren’t aware that there are more than 4 ADIs (authorised deposit-taking institutions), or even what an ADI is. Any Government led education campaign to promote fintech must focus around what is happening in Australia, the opportunities available and the key drivers.²³ This is more than a TV campaign.

Recommendation: Government to work with the fintech industry to launch an education campaign to educate consumers about the industry, and opportunities available for consumers to receive services and create new ventures. This will also build consumer trust in technology.

The key however is not to unfairly advantage one party or another, but for government to create an even playing field. Initiatives such as widening licencing and regulatory exemptions to include smaller players lower barriers to entry. Other measures such as adjusting parameters in government tender processes to permit companies which have not existed for a long period of time to apply, ensure that less established companies are not unconsciously ruled out of contention.

Standardisation

FinTech Australia members recognise that there are many levels to policy – legislation, subordinate legislation, regulatory guidance etc. – and appreciate that, as far as possible, this should be technology neutral. Standardisation may well help the creation and implementation of compliance driven fintech applications. Standards may be implemented to assist in a number of innovative areas, including:

- (1) data parcels;

²³ Note that innovation may not necessarily be the right name for this campaign given the political results when this was previously put forward.



FinTech Australia

- (2) CDR implementation, noting that Data Standards are being developed by the Data Standards body, overseen by Data61;
- (3) AML/CTF compliance; and
- (4) cybersecurity.

In relation to data in the superannuation sector, policy initiatives by APRA or even under the CDR might establish a reporting and data taxonomy to assist people to understand comparison rates and make better choices regarding their superannuation.

This may be assisted by CDR. See 2.13 below.

Another initiative that the Australian government can consider is the API Exchange (“**APIX**”). This is an initiative of the ASEAN Financial Innovation Network (“**AFIN**”), a not-for-profit entity that was jointly formed by the MAS, the World Bank Group’s International Finance Corporation (IFC) and the ASEAN Bankers Association.²⁴ The purpose of this is to

“help market players connect with one another, design experiments collaboratively and deploy new digital solutions.”²⁵

It focusses on connecting fintech businesses, allowing them to collectively design and test digital solutions and deploy new digital solutions.

Recommendation: Provide support to the existing APIX to engage with the ASEAN region and promote international technological development.

Regulation

Most fintechs support robust regulatory environments that promote consumer confidence and protection, informed decision-making and innovation.

The regulatory regime that applies to fintechs is complex. 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

²⁴ Monetary Authority of Singapore, *API Exchange (APIX)*, <https://www.mas.gov.sg/development/fintech/api-exchange>.

²⁵ Monetary Authority of Singapore, *API Exchange (APIX)*, <https://www.mas.gov.sg/development/fintech/api-exchange>.



FinTech Australia

services engaged in, fintechs may need to hold an Australian financial services licence (“**AFSL**”), Australian credit licence (“**ACL**”), rely on an exemption from licensing, or even become some form of authorised depository institution (“**ADI**”). In addition to licensing they may also be required to enrol or register with AUSTRAC and comply with requirements under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (“**AML/CTF Act**”).

Further considerations regarding Australia’s regulatory landscape are set out in 2.4, 2.6 and 2.7.

Consumer data right (“**CDR**”)

FinTech Australia supports the implementation of the economy wide consumer data right. Following information provided in response to the FinTech Australia EY Census 2019 (“**Fintech Census**”), 40% of fintechs responded that they anticipate their organisations will become an accredited provider of Consumer Data Right (CDR). This demonstrates that Fintech companies see benefit from being part of this new data regime.

Fintech Australia understands that the ACCC will shortly begin consultation regarding regulations to allow intermediaries to share data with a third party (such as a lender) which provide services to a customer with consumer consent. On 25 November 2019, the ACCC published a media release stating that the lock down rules for intermediaries and storage under the CDR were released in September 2019.²⁶ These are to be released for broader consultation on December 2019. FinTech Australia looks forward to having the opportunity to review and comment on these draft rules.

Fintech Australia has long advocated that such a regime is required for the CDR to reach its full potential. In a submission to the ACCC in May 2019 in relation to the proposed *Competition and Consumer (Consumer Data Right) Rules 2019* (“**Draft CDR Rules**”) FinTech Australia highlighted the need for third party access noting that there should be

²⁶ ACCC, *Consumer data right updates: Development of rules for ‘intermediaries’ and storage under the lock-down version of the rules*, 25 November 2019, <https://mailchi.mp/accc.gov.au/development-of-rules-for-intermediaries-and-storage-under-the-lock-down-version-of-the-rules>.



FinTech Australia

“more flexibility for the sharing of data to enable, for example, one entity or multiple entities collecting data from data holders and another entity or multiple other entities providing services to consumers using that data.”²⁷

FinTech Australia members currently estimate that it will cost from \$50,000 to \$100,000 or above to become an accredited data recipient. These costs are increased by the audit requirements set out in the Standard on Assurance Engagements ASAE 3150. For example, a fintech company is required to test its product market fit and viability quickly and cheaply to allow it to commercialise or pivot without losing money. Requiring a company to expend significant time and up front costs required to become accredited simply to undertake those initial tests is cumbersome and economically unviable in many cases. In the case of startups this requirement may well be prohibitive.

Many FinTech Australia members who participated in the Fintech Census and stated they are not planning to become accredited data recipients cited the laborious accreditation process as their top concern. Allowing intermediaries to access, hold and manage CDR data facilitates access to CDR data by fintechs and others in the broader economy without the significant capital outlay. This ensures that consumers can provide CDR data to fintechs to receive services offered by those businesses under a system where the consumer remains in control of their data.

Recommendation: The lock down version of the CDR rules for intermediaries be released for consultation and implemented as soon as possible.

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.

Recommendation: Government should conduct a targeted campaign to educate consumers as to what the CDR is to allow them to understand the opportunities provided to consumers through the new data economy.

²⁷ FinTech Australia, *Submission to ACCC regarding the Competition and Consumer (Consumer Data Right) Rules 2019*, May 2019.



FinTech Australia

Screen Scraping

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 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.

Despite the usefulness of this technology, FinTech Australia members have expressed concern that the government may outlaw screen scraping. 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.

Against this background, FinTech Australia members call on the government to ensure that screen scraping is not outlawed. Any attempt to do so will be effectively anti-competitive. Alternatively, the government should acknowledge that screen scraping provides a secure, economical, accessible and accepted system by which fintechs can and do seek information. Indeed, there is even evidence that established players are not wholly opposed to screen scraping. For instance, both NAB Ventures and Westpac's Reinventure have invested in Basiq which uses screen scraping to collate financial data from a collection of APIs to provide financial solutions. In fact, screen scraping was first used by ANZ to aggregate account balances ANZ customers held in other institutions.

Outlawing screen-scraping would not only have the potential to be anti-competitive, it would also be contrary to the government's Open Banking Report which provides that "Open Banking should not prohibit or endorse 'screen scraping', but should aim to make this practice redundant by facilitating a more efficient data transfer mechanism"²⁸

FinTech Australia members have noted that

²⁸ *Review into Open Banking: giving customers choice, convenience and confidence* (December 2017), <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-For-web-1.pdf>, p.x



FinTech Australia

“CDR needs to be better (easier to access, cheaper) than screen scraping. For many fintechs the cost / time / effort to become accredited and maintain the CDR rails does not make sense given screen scraping rails already exist and a relatively easier / less complex to access for new fintechs.”²⁹

Recommendation: No attempt should be made to outlaw screen scraping until CDR and CDR data is readily and widely available across the economy so that there is no need for companies to use screen scraping.

Recommendation: CDR should be implemented in a manner that is easier to access, provides better functionality and is cheaper than screen scraping.

Recommendation: Allow screen scraping for the purpose of testing and validating CDR use cases and data parcels.

Data standards

Wherever possible, FinTech Australia members recommend adoption of globally accepted regulatory and data standards provided that these are not to the detriment of Australian laws. In the context of the Data Standards for the implementation of CDR, it was noted that there are multiple deviations from the specifications that OpenID Foundation & the FAPI Working Group have developed. Departure from accepted standards should only be made where it is justified to prevent duplication of services or the international standard is inappropriate in the Australian context.³⁰

Recommendation: If appropriate in the Australian context, wherever possible, globally accepted regulatory and data standards should be adopted.

Write access in CDR

FinTech Australia members have recommended that Australia’s CDR should be extended to include a right to initiate payments, similar to that provided by the European Union’s Payment Services Directive 2 and implemented in the UK’s open banking regime. The greatest benefit in

²⁹ Comment by Fintech Australia member, Stuart Stoyan, CEO MoneyPlace.

³⁰ Stuart Low can you please review this and let us know if it reflects your understanding?



FinTech Australia

the UK system has been provided by the implementation of ‘write access’ as this has fostered competition in the payments space.

Recommendation: Extend CDR to include a right to initiate payments.

CDR in Superannuation

FinTech Australia endorses the recommendation of the Productivity Commission that CDR be rolled out to superannuation. Whilst it remains to be seen whether any recent efforts to improve transparency in superannuation, such as through APRA’s heatmap, will have any effect, the preliminary view from journalists is that these efforts do little to assist consumers.³¹

Extending the CDR to data holders themselves and not forcing the instructions who stand to lose business will dramatically improve the visibility all Australians have of their mandated contributions. To facilitate the quick roll out of the CDR in superannuation, FinTech Australia supports automatically accrediting superannuation funds as accredited data recipients to receive information that banks hold on their members (with member consent).

Recommendation: The Consumer Data Right should be rolled out to superannuation funds. As a preliminary step, funds should automatically be accredited data recipients to receive information that banks hold on their members (with member consent).

See 2.13 and 2.14 for further details.

CDR in other verticals

Insurance

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.

³¹ Alan Kohler, *the Australian*, ‘APRA’s heatmap makes me see red’, 13 December 2019, <https://www.theaustralian.com.au/business/apras-heatmap-makes-me-see-red/news-story/d5763aaaf6475ea60f9971ddeb55d1>.



FinTech Australia

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.

Given APRA's licensing process, it is unlikely that a full stack insurtech disrupter will qualify for an APRA licence and, in all cases, insurtechs will need to partner with an incumbent to underwrite any new insurance offering. A lack of data in relation to personal and domestic lines of insurance make it difficult for insurtechs to partner with an incumbent to underwrite the product because pricing assumptions cannot be tested and are based on inferior underwriting and claims data. Where this information is already widely shared by the industry there should be no barriers to sharing it with insurtechs. Of course, where this information is subject to protection under privacy law or due to duties of confidentiality this should be subject to the same protections. Extending CDR to insurance would assist to provide this information and simultaneously protect the consumer.

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.

Recommendation: CDR should be rolled out in all major sectors of the Australian consumer economy including financial sectors such as insurance.

Agtech

As we come to better understand CDR in practice there are other industries that would appear to benefit from the application of CDR. Agriculture has already been identified as one such industry. Currently, there are a number of diverse participants all generating, contributing to, utilising, aggregating, and in some cases, commercialising large datasets without an agreed approach to the rights of consumers. In particular, extending CDR to consumers in agtech would assist farmers and could assist to increase access to banking and financial services tailored to the sector.



FinTech Australia

In the US, EU and NZ there are voluntary codes of practice with respect to agricultural data that already exist. In Australia this is now under active consideration by the National Farmers Federation. The need for a code of practice has largely been driven by the fact that agricultural data is often linked to farmers' personal data. This can be seen across agricultural supply chains as of the personal data of traders, domestic commodity buyers, freight, logistics and storage providers is all interwoven with general commercial data. In most cases, farmers and others are concerned about how their data or data that identifies them and their assets in some way is being used and whether they have control over that data.

Of particular concern is whether farmers can use this data for their own purposes including migrating data from one repository to another should that be commercially beneficial to them. This would allow them to take advantage of new technologies, facilitating the emergence of agtechs and competitors more generally.

Data lock-up as a means of locking in farmers and others to one service provider is a real concern given the enormous amount of agricultural data now being generated by the average farmer and indeed all agricultural supply chain participants.

CDR 2.0 Consent Management

Consent

FinTech Australia submits consent should remain a fundamental component of the data value exchange between organisations and consumers. We acknowledge that privacy advocates and global data giants alike propose that consent is an unnecessary / unhelpful burden (though they claim this for very different reasons). However, a properly constituted dynamic approach to consent capture, codification and management (**Consent Management**) overcomes the technical and experiential difficulties with static consent.

Consent Management requires that consent is simple, unbundled and granular, and systemically ingrained - giving opportunity for consumers to have full control and determine how much data to share, with who and for what purpose; equally to give data collectors ability to tailor products, services and incentives to match consent (i.e. if a consumer has a narrow consent then they just get the service with no frills, if they have a broad consent then they get the service with frills (could be loyalty points, a discount, special offers)).



FinTech Australia

Ultimately, the concept of consent has evolved from a binary broad-based catch all to an informed, granular choice. The fundamental elements of informed, fine grained consent are:

- That the consent is **express** - that is that the consumer makes an active choice to consent, rather than is taken to consent by implication or silence.
- That the consent is **unbundled** - that is that the consent, if broader than absolutely necessary to deliver the product or service, is not a condition of receiving or obtaining that product or service. The customer should have the ability to determine how broad or narrow the consent is.
- That the consent is **simple** - that is that the scope of the consent is easy to consume and understand. This is primarily a Customer Experience requirement.
- That the consent is **revocable** - that is that the customer has the ability to withdraw the consent at any time.
- That the consent is **time-bound** - that is, that the consent is not indefinite or not effectively indefinite (for example an excessively long time-period). 12 months is often tossed around as an absolute limit.

Critically, in order to avoid consent fatigue for consumers and impractical technical burdens for consumer facing organisations, the elements of Consent Management set out above need to be capable of codification and a common taxonomy of permitted uses developed. This takes the existing CDR framework further into a more practical, easily adoptable framework. Under CDR 2.0, the codification and taxonomy need to be capable of implementation at the API level and permit transmission of consent and the underlying data related to the consent, between different entities and geographies (subject to the permitted use associated with the consent).

- That the consent is revocable - that is that the customer has the ability to withdraw the consent at any time.
- That the consent is time-bound - that is, that the consent is not indefinite or not effectively indefinite (for example an excessively long time-period). 12 months is often tossed around as an absolute limit.

Critically, in order to avoid consent fatigue for consumers and impractical technical burdens for consumer facing organisations, the elements of consent set out above need to be capable of codification and a common taxonomy of permitted uses developed. The codification and taxonomy need to be capable of implementation at the API level and permit transmission of consent and the underlying data related to the consent, between different entities and geographies (subject to the permitted use associated with the consent).



FinTech Australia

In a practical sense, this approach would enable consumers to manage their consents through a centralised consent wallet, according to the level of granularity they desire. In addition, organisations can engage directly with consumers through that consent wallet or through the use of agents acting on their behalf - this would be determined by the level of technical sophistication and capability of each organisation.

Recommendation: Adopt a granular approach to consent and enable technical solutions for consent management including to capture consents, and for the codification and transmission of consent and the underlying data.

Regulatory Centralisation and Competitive Neutrality

In order to be a global leader, Australia should undertake a process of regulatory centralisation with respect to the Data Economy (similar to Singapore). Currently, regulatory responsibility for all relevant elements of the data economy are split across multiple different bodies or government departments, including:

- (a) Australian Securities and Investment Commission (ASIC) – appears to hold responsibility for regulatory sandbox initiatives and cross border regulatory harmonisation relating to data.
- (b) APRA – has regulations relating to financial services data (sovereignty, utilisation of cloud technology, presence of data outside of firewall etc). APRA also holds oversight on financial services problems which are ostensibly data sharing problems (income verification, expense verification, responsible lending, CCR etc);
- (c) Australian Competition and Consumer Commission (ACCC) – newly-introduced agency with responsibility for oversight and enforcement of the Consumer Data Right and Open Banking regulation, as well as driving outcomes from Digital Platforms Inquiry;
- (d) Data61 appointed Data Standards Body with responsibility for the technical implementation of the CDR regime across banking, energy, telco;
- (e) AUSTRAC – data driven policing of AML/CTF compliance, including KYC procedures (both of which are data sharing and digital identity problems);
- (f) Digital Transformation Agency – under Department of Prime Minister & Cabinet, holds the policy framework for Digital identity and federal Open Data strategy;
- (g) Office of the Australian Information Commissioner (OAIC) – responsible for privacy regulation and enforcement of APP's;



FinTech Australia

- (h) Home Affairs – responsible for cyber-security, which is inextricably linked to the design, development and regulation of a data economy.

The consequences of this fragmentation have been felt by our members in the following ways:

- (a) Confusion within and outside of government about departmental ownership and mandate for different components of the data value chain. As a result, there is no clear pathway to engage with government as either a vendor or a policy advisor (by contrast, our members are actively operating in global markets in a manner facilitated by central governmental agencies).
- (b) Piecemeal legislation and policy action ignores the fact that data is a by-product of systems and requires a systems-based approach to both opportunity and risk management. Solving one data policy issue at a time with disparate departmental leadership has created a labyrinth of competing data priorities and compliance burdens, e.g. Open Banking does not align with closed AML/CTF requirements. Therefore, significantly reducing private sector bandwidth for value creation with data. Data has become a one-sided risk conversation to the detriment of our national productivity.
- (c) Government competition with private enterprise: The role of the CSIRO and more specifically Data61 appears to be at odds with the Government's mandate of competitive neutrality. We often find Data61 competing directly with private enterprise for government and non-government work. This is further complicated by the quasi-regulatory role that Data61 plays as the CDR Data Standards Body.

By consistently taking a narrow-view, for example just focusing on Open Banking and fintech - we ignore the fact that everything comes back to the design and regulation of the consumer data right for Australia's data economy. The Government should be an enabler rather than a blocker and even worse, a competitor.

Recommendation: Centralise data economy regulation and industry development under one dedicated government body. Follow-through on the mandated competitive neutrality framework for Government and quasi-Government bodies.

Anti-money Laundering and Counter-terrorism Financing



FinTech Australia

Over 74% of fintechs indicated support for a cross-industry solution to share know-your-customer and identity validation information.³² The *Open Banking Report* noted that “Identity verification processes in financial services (often referred to as ‘know-your-customer’ or ‘KYC’ data) are slow and cumbersome and involve significant duplication”³³ FinTech Australia members have noted that providing a solution which allows for transferable or shareable KYC will allow both banks and fintechs to provide a wider range of financial services.

Australia currently has one of the highest KYC costs in the world. Further details are set out in 2.22 below in relation to access to government data.

The Government has proposed *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019, No. , 2019* (Cth) which will, amongst other things, amend the AML/CTF Act to allow reporting entities to rely on the collection and customer identification procedure of another reporting entity in circumstances where it is reasonable to do so, and they have entered into a written agreement to rely on these arrangements. These measures follow recommendations from a review conducted by the Financial Actions Taskforce and will align Australian laws with internationally accepted standards.

Recommendation: Government pass the proposed Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019, No. , 2019 (Cth) to facilitate shared KYC.

The definition of “designated remittance arrangement” under the AML/CTF Act is not necessarily aligned with the current digital world and should be revised. In particular, due to the breadth of the definition, payment service providers who facilitate payments within Australia are considered to be providing these remittance services. This imposes a significant regulatory burden, which is not aligned with the requirements anywhere else in the world. On occasion, those who are providing services which merely facilitate movement of goods, not money are caught under the current definitions.

Amending this should help provide comfort to service providers who are inadvertently considered to be remittance providers that they are not caught. The current definition does not provide such clarity.

³² FinTech Census, p.30.

³³ *Review into Open Banking: giving customers choice, convenience and confidence* (December 2017), <https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-For-web-1.pdf>, p.38.



FinTech Australia

Further, the revised definition should reflect and account for electronic remittance services. Whenever possible this should be drafted in a manner which is technology neutral. These should reflect not only current technology but also the principle that AML/CTF Act should fit with and not overlap with overseas equivalent regimes.

Recommendation: Review and refine definitions of “designated remittance arrangement” under the AML/CTF Act to:

- (a) provide comfort to service providers who are inadvertently considered to be remittance providers that they are not caught;***
- (b) reflect and account for electronic remittance services; and***
- (c) ensure that only remittance service providers and not all payment service providers are caught. Consider whether payment service providers should have their own separate designated service.***

At the time the *AML/CTF Act* was enacted in 2006, the innovation that fintech brings to Australia was not contemplated.³⁴ One part of this regime is the reporting of international funds transfer instructions (“**IFTIs**”) which require those enrolled with AUSTRAC to report the flow of funds across the Australian border.³⁵ The IFTI regime is a binary model which does not cater for fintechs. It assumes an entity is either a bank or a remitter. Fintechs have aspects of both models. It is difficult to innovate at speed and report IFTI where the AML/CTF Act does not cater for fintech business models or products.

FinTech Australia members participated in an AUSTRAC workshops to discuss this in 2018 but have not received anything further since. FinTech Australia welcomes the opportunity for fintechs to share more detail about areas for improvement, in partnership with AUSTRAC.

Recommendation: Review and amend the IFTI regime in consultation with fintechs to reflect the requirements of new businesses.

Government property data

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³⁴ For instance, the original AML/CTF act regulated “stored value cards” but not a similar facility that did not involve a card, such as a digital wallet on a mobile phone as this was beyond contemplation at the time. This was amended in 2017.

³⁵ AML/CTF Act, division 4.



FinTech Australia

Given the importance of property data and analytics to the Australian economy, especially in industries such as real estate where vendors traditionally have agent representation but buyers do not, there is a constant need for reliable solutions that Australian consumers and industry can rely upon. Removing information asymmetries throughout the many industries that rely on Australian property information would have a dramatic effect on productivity and consumer confidence. For this reason, we think the NSW Open Data Initiative represents the gold standard to which other State and Territory governments should aspire to foster constant innovation in intech and related industries.

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 (“**VAR**”) of GPD.

On top of the operational cost of dealing with 8 different State and Territory government regimes, which can be significant (especially if the fintech does not have access to an internal legal resource), every state and territory, apart from NSW, charges a different licence fee that is often calculated in different ways. For example, some States charge a flat licence fee, some States charge a percentage of revenue generated from being a VAR, and some States charge a fee for each new sale recorded akin to charging for a title search. In total, a fintech could expect licensing fees of approximately \$400,000 just to license GPD from every State and Territory before any costs to aggregate and compile this data are considered. This poses a significant hurdle for a fintech considering to build a national property database to compete with incumbents.

It has also been our observation that as some States have privatised various portions of their land title offices, appropriate protections to keep GPD affordable have not been put in place. Given the importance of GPD to any national property database, these private entities may significantly increase their licence fees as they are essentially a monopoly supplier. This may lead to price increases which place greater barriers to entry for fintechs looking to build a national property database.

NSW remains the gold standard under which GPD is made available to fintechs and other parties interested in property information. Under its Open Data Initiative, GPD is made available



FinTech Australia

free of charge via weekly data files downloadable from the Internet under the Creative Commons Attribution Licence. fintechs can also apply to become a formal VAR, which will give them API access for a nominal fee, but the current regime in NSW allows fintechs to access current and historical GPD free of charge and with minimal (if any) legal overhead.

Recommendation: 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.

Payments

Payments, wallets and supply chain related services are the 4th largest sector by fintech type and account for 17% of the fintech industry.³⁶ Given the important role payments play in fintech, it is critical that Australia be viewed as a market leader and the regulatory landscape needs to be designed to facilitate this.

Broadly, the responsibilities for payments regulation can be divided as follows:

- RBA in relation to credit and debit payment systems and certain aspects of purchased payment facilities;
- APRA in relation to banking activities and purchased payment facilities;
- ASIC in relation to non-cash payment facilities and credit facilities; and
- AUSTRAC in relation to remittance and stored value facilities (known as stored value cards).

As the industry continues to grow, fintechs operating in this space will require:

- (1) transparent and ubiquitous frameworks particularly in relation to AML/CTF and KYC and resolution of transaction disputes;
- (2) access to new payment systems such as the New Payments Platform (“NPP”) operated by New Payments Platform Australia (“NPPA”); and
- (3) pathways to partnerships with incumbents, including ADIs.

Regulators have begun the process of reviewing and streamlining Australia’s payment services.

³⁶ Fintech Census, p. 10.



FinTech Australia

The RBA has identified 4 areas where further progress is required:

- 1 industry needs to work to realise the full potential of the NPP. Including its data-rich capabilities;
- 2 provide portable digital identity services that allow Australians to securely prove who they are in the digital environment;
- 3 reduce in the cost of cross-border remittances; and
- 4 improve operational resilience in the electronic payments system.³⁷

The fintech community supports these 4 focus areas.

NPP

Access to payment systems is to increase competition in the payments landscape. NPP is the key payment services in Australia. The current governance model only direct access by ADIs. This reinforces a situation whereby incumbent banks control access by their competitors to this essential service. Today, access to the NPP is restricted, the cost to join is punitively high (which prevents competition), and incumbent participants have been slow to roll out of the available technology to fintechs. There is no sign that the system will correct itself in current form. When coupled with issues regarding access to bank accounts, (see Bank Account Closures in section 3 below) it is clear that direct access to the NPP is even more critical. Some fintechs have held discussions with the NPP on how to enable direct access.

In the UK, when non-bank remittance providers were able to access their equivalent service, the FPS, the Faster Payment Scheme, they were able to drop prices for customers and to increase the speed of transfers to and from the UK.

Recommendation: Create a regime to allow non-banks direct access to the NPP.

Recommendation: Encourage use of the NPPA to increase the network effect (necessary for a functioning payment system). The government should consider subsidising NPPA transaction costs either at participant level (assuming the subsidy would be passed

³⁷ Philip Lowe, Governor Reserve Bank of Australia, *Speech: A Payments System for the Digital Economy*, Address to the 2019 Australian Payments Network Summit, 10 December 2019, <https://www.rba.gov.au/speeches/2019/sp-gov-2019-12-10.html>.



FinTech Australia

along to users) or downstream at the service level (eg the service layer company or overlay).

Recommendation: The government should consider subsidising the cost of direct access to the NPPA for appropriate businesses to encourage service-level innovation. Currently, direct access (or participant) costs are prohibitively high.

Further details regarding the NPP are set out in response to 2.15 below.

Digital identity

Digital identity is a key touchpoint for development of innovative technologies. Further detail in relation to this is set out in 2.10.

Cross border remittance

Cross border remittance is an area which needs to be considered from both the perspective of the RBA, payments policy and AML/CTF. To the extent that this relates to AML/CTF please see our comments above.

In relation to fees, it is well known that there is a lack of transparency in foreign exchange (“FX”) around the world. The fees for remittance charged by the major banks on a transfer under AUD \$10,000 range from \$6.000 to \$32 per transaction.³⁸ However when sending money internationally, the up-front fee advertised by banks is a small portion of the total cost - the rest is generated in exchange rate markups. For instance, the mid market exchange rate published by the RBA on 19 December 2019 for the price of the USD against 1 AUD was \$0.6880.³⁹ The price quoted by the four major banks was \$0.6589,⁴⁰ \$0.6516⁴¹, \$0.6647⁴² and \$0.6514.⁴³

³⁸ See National Australia Bank, *Transfer Money Overseas* <https://www.nab.com.au/personal/travel-and-overseas-banking/transfer-money-overseas> and Commonwealth Bank *International Money Transfer*, <https://www.commbank.com.au/personal/international/international-money-transfer.html>.

³⁹ RBA, *Latest Exchange Rates*, <https://www.rba.gov.au/statistics/frequency/exchange-rates.html>, 19 December 2019.

⁴⁰ NAB, Foreign exchange rates calculator, List of rates, <https://www.nab.com.au/personal/travel-and-overseas-banking/foreign-exchange-rates#/rate>, 19 December 2019.

⁴¹ Commonwealth Bank, *Check currency rates*, <https://www.commbank.com.au/international/foreign-exchange-rates.html>, 19 December 2019.



FinTech Australia

Comparatively, the exchange rate offered by Transferwise on the same day was \$0.68830.⁴⁴ This is further compounded by a lack of transparency in advertising fees to provide these services. Research by the UK's Behavioural Insights Team has shown that when international money transfers are priced this way - showing a small fixed fee and not the exchange rate mark-up - ~66% of consumers can't identify the true cost of moving money internationally - and therefore cannot compare the total costs between providers.⁴⁵

In October 2018, the Treasurer announced the ACCC would conduct an inquiry into foreign exchange ("FX").⁴⁶ The report handed down in July 2019 found that pricing information was complex, there was a lack of standardisation in the way it was presented a lack of transparency.⁴⁷ It recommended suppliers take measures to improve how prices are presented to consumers. This approach which only requires the received amount to be disclosed will not lead to a material improvement in outcomes for Australian consumers who send money abroad. Instead, we recommend looking to models implemented overseas, such as in Europe, where regulation requires providers to transparently disclose exchange rate markups and any fees as a single "total cost" figure.⁴⁸ The Australian government should follow in the footsteps of other jurisdictions and introduce laws that require this form of transparent pricing of exchange rate markups and upfront fees displayed as the total cost. This would prevent Australians from losing billions of dollars a year to opaque and detrimental pricing in international money transfer.

⁴² ANZ, *Currency Exchange Rates*, <https://www.anz.com.au/personal/travel-international/foreign-exchange-rates/>, 19 December 2019.

⁴³ Westpac, *Foreign Exchange Rates*, <https://www.westpac.com.au/business-banking/services/foreign-exchange-rates/> 19 December 2019.

⁴⁴ Transferwise, *Currency Converter*, <https://transferwise.com/au/currency-converter/aud-to-usd-rate?amount=1>, 19 December 2019.

⁴⁵ The impact of improved transparency of foreign money transfers for consumers and SMEs, https://www.bi.team/wp-content/uploads/2018/03/The-impact-of-improved-transparency-on-foreign-money-transfers-for-consumers-and-SMEs_WEB.pdf

⁴⁶ ACCC, *ACCC commences inquiry into foreign exchange*, 2 October 2018, <https://www.accc.gov.au/media-release/accc-commences-inquiry-into-foreign-exchange>.

⁴⁷ ACCC, *Foreign currency conversion services inquiry*, July 2019, https://www.accc.gov.au/system/files/Foreign%20currency%20conversion%20services%20inquiry%20-%20final%20report_0.PDF.

⁴⁸ Regulation (EU) 2019/518 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges, PE/91/2018/REV/1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R0518>.



FinTech Australia

Recommendation: The Australian 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.

Operational resilience

In September 2018, the Council of Financial Regulators (“CFR”) conducted a review of retail payments regulation regarding stored value facilities. This considered issues regarding purchased payment facilities, non-cash payment facilities and the interaction between the three regulators with respect to these facilities. The purpose of the review was:

- to identify opportunities to simplify the regulatory framework for stored-value facilities;
- to ensure that regulation does not pose an undue obstacle to innovation and competition, while maintaining appropriate levels of consumer protection and system-wide safety;
- to identify any changes necessary to enable regulation to adapt to recent and prospective developments in the payments market, including those associated with advances in technology and new participants;
- to identify opportunities to improve the ‘competitive neutrality’ of regulation; and
- to improve the transparency and clarity of regulation, from the perspective of regulated entities, potential new entrants, and consumers and other users. noted that⁴⁹

The report following this review is yet to be released.

Recommendation: The Council of Financial Regulators publicly release its report provided to government in October 2019 following the Review of Retail Payments Regulation: Stored-value Facilities undertaken in September 2018.

FinTech Australia members note that the current, existing regime is not fit for purpose and recommend key changes to reduce the capital requirements and governance overhead. Specifically, the capital requirements today are onerous and prevent fintechs from pursuing this license type. These are disproportionate to the risk that most PPFs introduce into the financial sector. So too are the governance requirements out of step with the way global businesses operate. For example, the current PPF license requires fintechs to appoint a local board which is onerous, imposes additional costs and creates a significant barrier to entry for fintechs. This is a significant barrier for overseas service providers seeking to operate in Australia.

⁴⁹ Council of Financial Regulators, Review of Retail Payments Regulation: Stored-value Facilities, An Issues Paper by the Council of Financial Regulators, 24 September 2018, <https://www.cfr.gov.au/publications/consultations/2018/review-of-retail-payments-regulation-stored-value-facilities/pdf/review-of-retail-payments-regulation-stored-value-facilities.pdf>.



FinTech Australia

To facilitate these changes, the RBA should look to equivalent overseas examples such as the eMoney regime in the EU. Australia could, and should, develop a proportionate non-bank stored value licensing regime so that innovative non-bank payment service providers who do not want to enter into the riskier elements of banking (credit, debt, loans) can offer stable competitive services.

Recommendation: The Purchased Payment Facility regime be changed to:

- 1** ***reduce capital requirements***
- 2** ***minimise governance overhead***

FinTech Australia is encouraged that the RBA has on 28 November 2019 released an issues paper seeking feedback in relation to retail payments regulation in Australia and looks forward to actively participating in consultation.⁵⁰ This review is critical given the developments in the payments landscape.

However, this review is just the beginning. A broader payments review needs to be considered given 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 neatly dovetail. In addition, much of the guidance is outdated and does not take into account changes to the regulatory landscape.

Any broader payments review should consider the following questions:

- Should there be a dedicated regulatory framework for payment systems?
- Should there be a dedicated regulator for payment systems?
- How should the payments regulatory framework be designed to ensure it caters for future developments?

Recommendation: Any reforms with respect to payments should account for electronic and data driven payments noting that as far as possible any law must be technology neutral.

⁵⁰ RBA, *Review of Retail Payments Regulation: Issues Paper* (November 2019), <https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/pdf/review-of-retail-payments-regulation-issues-paper-nov-2019.pdf>.



FinTech Australia

Access to payment rails and interchange fees are the focus of the issues paper published by the RBA regarding Regulation of Retail Payments in Australia.⁵¹ Some of the concerns raised by the RBA reflect those raised by FinTech Australia members regarding surcharging and fee disparities between different payment mechanisms. FinTech Australia looks forward to providing feedback on the specific questions in its response to the Issues Paper.

As Australia builds its payments capabilities, we have an opportunity to build a best in breed regulatory framework that draws on the experience of other jurisdictions. The United Kingdom is a good example as it undertook a comprehensive review of payment systems and introduced a dedicated regulatory regime and regulator in 2013.

As Australia transitions to the NPP, the RBA should consider reviewing and revising the BECS rules to, as far as possible, reduce conflicting or confusing operational guidelines for businesses, consumers or payment service providers for the period when these regimes cross over. This review should be done in conjunction with the ePayments code review currently being conducted by ASIC to reduce any conflict that may arise between these rules.

Recommendation: Conduct a review of the BECS rules alongside the review into the ePayments code to reduce conflict and confusion between these and the NPP as businesses transition from one system to another.

Recommendation: Standardise consent procedures across all payment methods wherever possible.

As the layers of regulation around payments become more complex, FinTech Australia members encourage the council of financial regulators to continue to work together to ensure that payments regulation is aligned. In particular, FinTech Australia members note that ASIC's review of the ePayments code should consider other reviews being undertaken, including the RBA's review into retail payments and changes to the payments system for instance to interchange fees, the NPP and stored value facilities (purchased payment facilities).

⁵¹ RBA, *Review of Retail Payments Regulation: Issues Paper* (November 2019), <https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/pdf/review-of-retail-payments-regulation-issues-paper-nov-2019.pdf>.



FinTech Australia

Recommendation: The government should “strengthen consumer protection by mandating the ePayments Code” as recommended in the Murray Review into the Financial Systems Inquiry.

Lending

Lending is a high growth area for fintechs. Lenders focus on either consumer or small business lending.

As pointed out in the issues paper, only consumer lending is subject to the *National Consumer Credit Protection Act 2009* (Cth) (“**NCCPA**”). Small business lending is not subject to an equivalent licensing regime. However it is subject to a number of safeguards. From a legislative perspective, it is subject to prohibitions on unconscionable conduct, false and misleading conduct, and against having unfair contract terms, under Part 2, Division 2 of the ASIC Act. Outside of legislation, lenders have also entered into binding voluntary codes, such as the Code of Lending of Practice entered into by the AFIA Online Small Business Lending Group.⁵² This code indicates that members should:

- (1) join an external dispute resolution scheme, being the Australian Financial Complaints Authority (AFCA);
- (2) provide borrowers with transparent financial metrics about the cost of the loan which are comparable across providers; and
- (3) observe certain published standards with respect to their lending practices.⁵³

Small business lending is very different to consumer lending in a number of important regards:

- (1) Small businesses view loans as an alternative to raising capital in the form of equity. Where interest costs for borrowing is too high, or the business is too risky for lenders, small businesses can turn to equity raising, which individuals cannot.
- (2) Small businesses can deduct the fees and interest costs of borrowing as a business expense for taxation purposes, which partly offsets the costs of borrowing.

⁵² Australian Finance Industry Association, *Code of Lending Practice: AFIA Online Small Business Lenders* (30 June 2018, updated 1 January 2019) <https://static1.squarespace.com/static/598589963e00bec843be0ea1/t/5c2a71730ebbe85745eb3e7c/1546285432543/Code+of+Lending+Practice+-+Jan+2019.pdf>

⁵³ Australian Finance Industry Association, *Code of Lending Practice: AFIA Online Small Business Lenders* (30 June 2018, updated 1 January 2019) <https://static1.squarespace.com/static/598589963e00bec843be0ea1/t/5c2a71730ebbe85745eb3e7c/1546285432543/Code+of+Lending+Practice+-+Jan+2019.pdf>



FinTech Australia

- (3) Small businesses use leverage in a calculated way to generate revenue or for other business purposes. Whereas a consumer loan is often a sunk cost, business loans are used for working capital, or to buy equipment or stock to grow the business.
- (4) Startup small businesses which are unprofitable at the time of borrowing can use leverage to generate growth for later profitability.

For these and other considerations, FinTech Australia notes that lending standards for consumer and small business lending are, and safeguards which are applied to them should be, fundamentally different.

Recommendation: Lending standards and safeguards for consumer and small business lending are fundamentally different and should not be unnecessarily streamlined.

Where new reforms are proposed care must be taken to ensure that they can be accessed by those who may seek to rely on this. One particular area of concern is CCR. As this has been established under the *Privacy Act 1988* (Cth) (“**Privacy Act**”) and the Principles of Reciprocity and Data Exchange (“**PRDE**”) administered by the Australian Retail Credit Association (“**ARCA**”), it can only be accessed by lenders who hold a credit licence and provide reciprocal consumer lending data to the credit bureaus and other credit providers. Not all providing credit services are required to hold a credit licence (“**ACL**”). As holding an ACL is a barrier to accessing this information it prevents some who are not required to hold an ACL due to the nature of the credit provided from accessing information which should be made available to them. Access to reliable data is key to being able to appropriately price risk.

FinTech Australia notes that commercial lenders which have signed up to AFCA and have agreed to binding forms of self-regulation which are akin to the regulation imposed under the NCCPA should be permitted to access comprehensive credit reporting. This would create a “level playing field” between commercial and consumer lenders.

Recommendation: Facilitate small business lenders’ access to comprehensive consumer credit data. This can be facilitated by

- (1) allowing a person who is providing credit and is not required to hold an ACL to access CCR data in the event that the small business lender complies with a self regulatory regime, such as a binding code of conduct and AFCA membership.***
- (2) expanding the Principles of Reciprocity and Data Exchange to allow provision of comprehensive credit data to commercial lenders (which we understand is already supported by ARCA in principle).***



Buy now pay later

Consumer buy now pay later services are another high growth area for fintechs. Buy now pay later arrangements allow consumers to buy and receive goods and services immediately but pay for that purchase over time.⁵⁴ Our members have divergent views on how buy now pay later businesses should be regulated.

Like lending, buy now pay later businesses frequently focus on either consumer or business products. Whilst these appear similar and there may be overlap between the two, they remain distinct business models.

According to an ASIC report released at the end of 2018, from the 2015-2016 financial year to the 2017-2018 financial year the number of consumers who used at least one buy now pay later arrangement has five times. Many buy now pay later users appear to be regular users of these arrangements.⁵⁵

The buy now pay later sector recognises that as the industry grows, so too does the need to ensure that consumers are protected. The NCCPA does not apply to buy now pay later arrangements nor do providers need to comply with responsible lending obligations⁵⁶ Similarly, they are not generally subject to chapter 7 of the Corporations Act. However this does not mean that these services are not formally regulated. Under the ASIC Act, these services may be considered to be credit facilities⁵⁷ meaning that they fall within ASIC's regulatory purview. This also means that consumer buy now pay later products are subject to ASIC's product intervention powers where necessary.⁵⁸

Recommendation: Government follows existing views from the Senate and ASIC that the consumer buy now pay later sector is not providing consumer credit and allow the industry to continue to self-regulate

⁵⁴ ASIC, *Review of buy now pay later arrangements* (November 2018), <https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>.

⁵⁵ ASIC, *Review of buy now pay later arrangements* (November 2018), <https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>, p.4.

⁵⁶ This has also been reiterated by ASIC in its Report on p.4

⁵⁷ See *Australian Securities and Investments Commission Act 2001* (Cth) ("**ASIC Act**"), s12BAA, and *Australian Securities and Investments Commission Regulations 2001* (Cth) ("**ASIC Regulations**"), reg2B.

⁵⁸ Corporations Act, s994AA(1)(b) extends to all financial products under the ASIC Act.



FinTech Australia

Given the nature of the industry, the Senate Committee recommended that the buy now pay later sector develop an industry code of practice.⁵⁹ The industry supports this initiative and is working with AFIA to establish a voluntary code of conduct through which the industry can self regulate. Unlike the ePayments Code or Banking code of Conduct, such a code cannot be endorsed by ASIC. ASIC only has the power to approve codes which are created under section 1101A of the Corporations Act, which relate to financial products. That being said, this by no means precludes the sector from entering into and abiding by such a code. Codes can improve consumer trust and confidence. A speech by then ASIC Chair Greg Medcraft in 2017, noted that

“The primary role of a financial services sector code is to raise standards and to complement the legislative requirements that already set out how firms (and their representatives) must deal with consumers.

Accordingly, we expect an effective code to:

- *address specific industry issues and consumer problems not covered by legislation;*
- *elaborate on legislation to deliver additional benefits to consumers; and/or*
- *clarify what needs to be done to comply with legislation.”⁶⁰*

Whilst this does not replace regulatory requirements or legislation, it does assist to raise the bar for the entire industry.

Recommendation: The industry continue to work with AFIA to establish a voluntary industry code of practice for the buy now-pay later sector.

⁵⁹ Senate Economics Committee, *Report: Credit and financial services targeted at Australians at risk of financial hardship*, (22 February 2019), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report, recommendation 1.66.

⁶⁰ Speech, Greg Medcraft, ASIC Chair, *Codes of conduct and the widening perimeter of regulatory intervention*, (14 September 2017), <https://download.asic.gov.au/media/4472294/greg-medcraft-speech-codes-of-conduct-published-15-september-2017.pdf>.



Section Two: Specific sectoral issues - FinTech and RegTech in Australia

General questions for FinTech and RegTech companies in Australia

2.1 What area of technological innovation does your company specialise in?

FinTech Australia is the peak body for the fintech industry in Australia. FinTech Australia has over 300 members comprising startups, venture capital firms, accelerators and incubators across Australia. There are currently almost 700 fintechs operating in Australia working across a diverse range of areas including lending, personal finance, asset management, payments, supply chain management, wealth and investment, and data and analytics. FinTech Australia members are from many verticals including lending, Buy Now Pay Later, wealth management, superannuation, Regtech, payments, blockchain, insuretech, robo and other forms of digital advice, and financial technology providers.

In recent years we have also seen the emergence of adjacent verticals in the areas of InsurTech, RegTech, AgTech and HealthTech – which are often co-located in the same innovation districts enabling the crossover of ideas, talent and enthusiasm.

2.2 In general terms, how would you describe the operating environment for FinTech and RegTech startups in Australia?

FinTech Australia members are of the view that, whilst the situation for fintech in Australia is improving, there is a general sense that more needs to be done. The continued expansion and maturity of the Australian fintech ecosystem is underpinned by increasing consumer demand for fintech services. This opens up new markets and opportunities for our members. The opportunities to solve problems and willingness of customers to consider and adopt/use services provided by fintechs is growing. This is reflected in the 2019 EY FinTech Australia Census (“**2019 FinTech Census**”) which claims that usage of fintechs by Australians continues to rise, with the Global Fintech Adoption Index showing an Australian adoption rate of 58% (up



FinTech Australia

21 percentage points since 2017).⁶¹ Almost 1 in 4 fintechs (23%) are now reporting they are profitable (up from 1 in 5 the previous year).⁶² This is especially true for companies operating in the “B2B” and “B2B-2C” space that comprise 73% of the market.⁶³ Growing demand is being driven by Australia’s improving digital infrastructure and strong consumer appetite for digital financial services.

Policy, regulation and broader government support have also assisted fintech growth. Significant policy changes such as the introduction of equity crowdfunding, comprehensive credit reporting (“**CCR**”) expansion and double GST removal from digital currency transactions have impacted fintechs positively. Initiatives such as open banking and the consumer data right (“**CDR**”) should drive further growth in the industry, levelling the playing field and making it easier for fintechs to acquire new customers. The CDR was seen as an effective growth initiative by 85% of fintechs interviewed as part of the 2019 FinTech Census.⁶⁴

Government support for the sector, especially through the establishment of the Senate Committee and legislation such as the Australian Business Securitisation Fund (‘ABSF’) Act delivers awareness and credibility. So too has the appointment of a minister for fintech given the fintech industry a much needed voice in parliament. FinTech Australia member Prospa noted that

“we can imagine the benefits if Government supported campaigns promoting awareness of open banking, of alternative providers of capital or of other services; or allowed lenders given access to the ABSF to say they have received funds from the Australian Government.”

However, Australia still seems to remain at the very early stages of its fintech journey. Certain fintech companies raise significant concerns regarding the Australian government and regulators commitment to assisting and promoting fintech. There is a view that certain initiatives, such as the consumer data right and the bank guarantee fund, favour incumbents and in doing so increase the disparity in the industry making it more difficult for fintech companies to compete. See Part 1, Regulatory Settings in Australia for further details.

⁶¹ FinTech Census, p.26.

⁶² FinTech Census, p.4.

⁶³ FinTech Census, p.10.

⁶⁴ FinTech Census, p.7.



FinTech Australia

Another issue identified was inertia. Small businesses, and for that matter consumers, are reluctant to, and face impediments when seeking to, switch from a traditional lender to an online lender. The reasons for their reluctance include, amongst other factors, a desire by small businesses to have all their financial information (i.e. both personal and business financial information) in one place.

The United Kingdom continues to provide a good benchmark. Its fintech industry is well recognised for providing long-term value to the UK - economically, culturally and socially. There is no similar recognition in the wider Australian political or social context even though the value offered by fintech for Australia's future is no less true here than it is in the UK. Further details regarding the UK context are set out in "Global Comparison and Investment" below. Continued effort across all parts of the fintech ecosystem in Australia – government, incumbents and fintechs themselves – is required if the industry is to realise its full potential.

2.3 What are the biggest opportunities and challenges for your business in the short-to-medium term?

Capital and financing arrangements (including access to venture capital and other forms of finance)

In FY18, the financial year saw the fintech sector recording 111 fund raisings, with an average value of just under \$9m.⁶⁵ The evidence shows that the ability of fintechs to raise greater amounts of capital is increasing overtime. Despite this general trend, the levels of capital available to high-growth businesses in Australia have tightened in 2019, reflected in slightly less success in capital raising and lower levels of funds raised.⁶⁶ Indeed one FinTech Australia member noted that "raising capital is the single biggest challenge and opportunity". The FinTech Census indicates that fintechs have experienced weakened success in capital raising (38%, down 43% last year).⁶⁷

The pool of available capital in Australia is small. The traditional sources of capital in this country (banks and super funds) tend to be focused on property and lending. This leaves little capital left for truly innovative and 'disruptive' fintechs that threaten their short-term revenue

⁶⁵ 2018 FinTech Census, p.20.

⁶⁶ FinTech Census, p.7.

⁶⁷ FinTech Census, p.24.



FinTech Australia

streams. Finding the right strategic financing partners, alongside acceptable terms is time consuming and takes focus away from the core goal of the business.

There is a view that government should be doing more to assist small to medium entities (“**SMEs**”) to raise equity and to access finance through alternative lenders. There are 2.3 million small businesses in Australia.⁶⁸ They make up 97% of all Australian businesses and are a critical source of growth and job creation for the Australian economy. In 2017, they employed 44% of Australia’s private sector workforce and generated 35% of Australia’s GDP.⁶⁹

SMEs have difficulty accessing loans from banks as banks have limited experience providing financing to fintech businesses. Difficulties accessing loans from traditional lenders, arise for the following reasons:

- products provided by traditional lenders are not well-suited to the needs of small businesses;
- banks often have onerous information requirements to undertake a credit assessment; and
- banks often require some form of upfront security.

Further discussion and recommendations regarding capital raising and the venture capital (“**VC**”) industry are set out in part 1 “Capital and Funding”, 2.18 and 2.19.

Talent

Access to talent is a significant issue. The time taken to find suitable people, with the right skills for the job can delay projects within the business. To navigate this, businesses have sometimes recruited less experienced staff, with the expectation they will be able to learn quickly on the job. See Part 1 Skills and talent for further details.

Greater access to high quality hubs, accelerators and incubators is considered an important contributor to the success of the fintech industry in Australia. Founders continue to draw on support networks provided through hubs, incubators and accelerators, peer networks and government initiatives. Users of these resources describe the workplaces as invaluable sources

⁶⁸ Australian Bureau of Statistics (ABS), *8165 Counts of Australian Businesses including Entries and Exits* (June 2018, released in February 2019).

⁶⁹ Parliament of Australia, Department of Parliamentary Services, Research Paper Series, 2017-18.



FinTech Australia

of ideas, experience, expertise, accommodation and support. These are seen as vital for the success of the fintech industry. The impact of governments (both State and Federal) in supporting the continued operation of innovation hubs remains crucial to attract international talent and incubate local talent. 66% of fintechs surveyed as part of the FinTech Census agreed that accelerators and incubators are an important contribution to the success of the fintech industry.⁷⁰

Indeed FinTech Australia member Startupbootcamp noted that their most recent fintech program was the most successful in the organisation's history with nearly \$500k in revenue coming to the cohort in only two months after demo day. They consider this to be a sign that the broader innovation ecosystem is changing and becoming more advanced as businesses are adopting global best practice on how to manage and work with startups.

Recommendation: State governments continue to support fintech hubs, accelerators and incubators.

Further discussion regarding access to talent is set out in Part 1 "Skills and talent".

Collaboration and partnerships with other nascent firms and traditional financial services firms.

According to the FinTech Census, the vast majority of FinTech Australia members that have dealt with incumbents in the past year view the relationship as either unchanged (50%) or improved (40%).⁷¹ However, some members noted that while there are more and more of these partnerships and collaborative efforts occurring, they often develop on the back of long relationships, expensive and cumbersome 'request for proposals' (RFPs) and procurement processes that are often outdated and not fit for purpose. See 2.8 below for further details.

Opportunities to expand into overseas markets

FinTech Australia members are wholly supportive of initiatives such as the UK Australia FinTech Bridge. Since signing, the FinTech Bridge has been successful in supporting companies expanding in both direction between Australia and the UK but there is more work to be done. See 2.32 below for further details regarding the FinTech Bridge, its success and changes that can be made to better leverage this significant initiative.

⁷⁰ FinTech Census, p.38

⁷¹ FinTech Census, p.14.



FinTech Australia

Issues affecting your business that may be specific to your product niche or area of specialisation (rather than affecting the FinTech and RegTech sectors as a whole).

Specific issues affecting the digital advice niche centre around application of regulation which is created for the legacy traditional advice sector. One such issue is the need to re-educate Australians about best practice principles in investing and the need to keep fees and costs low when investing.

There are also trust issues in the financial services sector. The Royal Commission in Banking, quite rightly reduced consumer trust in the major financial institutions. The more financially literate customers and those aware of fintech understand that fintechs are a challenger and can provide a similar advice service with a completely different operational model. However, due to poor financial literacy many Australians are likely to lump fintech's in the same broad category and mistrust all financial service providers.

There is also a lack of awareness about investment products. While fintechs work hard on marketing to educate consumers they do not have the same large budgets the incumbents do.

In relation to new banks, the new ADI regime and ability to obtain a full ADI is certainly a step in the right direction but could be improved. One particular major hurdle is fundraising. One FinTech Australia member noted that a new challenger bank is likely to require three to four times the capital required by a start-up non-bank lender. This means that for a banking product to be in market, significantly more money needs to be spent, and thus raised. This is further compounded by the delays in the licensing process which cause potentially fatal "cash burn". FinTech Australia members call on the government to streamline the licensing process to reduce delays by

- (1) investing in licensing teams by adding additional resources; and
- (2) nurturing greater technical knowledge within licencing teams and openness to innovation.

2.4 What are your views on recent and forthcoming changes to policy settings and regulatory initiatives affecting the sector (e.g. implementation of the new Open Banking framework; introduction of the NPP in 2018; and ASIC's FinTech regulatory sandbox)?



FinTech Australia

Open banking and CDR

Open Banking, which is the first phase of new CDR legislation, will give consumers greater control of their data, including the ability to require banks share it with their fintech competitors. Initiatives such as Open Banking are expected to drive growth in the fintech industry, levelling the playing field by providing trusted third parties with access to consumer data via APIs and lowering the cost of acquiring customers. 85% of fintech leaders expect that the implementation of Open Banking will be an effective growth initiative and 40% of members expect to become accredited when Open Banking is launched.⁷² The opportunity that Open Banking presents has the potential to further revolutionise the service we provide clients.

Whilst members are generally supportive of this policy change there is some scepticism around the roll out of the program. In particular, FinTech Australia members have noted that it favours incumbents from the perspective of the cost to comply, timing of roll out and the fact that only very limited companies have been invited to test the system. One FinTech Australia member noted that even during the consultation phase it felt like there was little opportunity to participate as even in the roundtables it seemed clear that they were only looking for submissions from the big four.

FinTech Australia is disappointed by the delay to the commencement of CDR as announced by the ACCC via email on 20 December. This is unsurprising given some members noted during consultation that they felt it was unlikely that banks would have their data sets ready to be opened to the public in the timeframe given the process of discovery, cleaning and packaging of data that is required to comply. As one member put it “we can’t afford for another NPP type scenario. Banks and the industry needs to be held to account to meet the timetables established.”

Nevertheless, FinTech Australia understands and appreciates the importance of testing the CDR system to ensure that it is robust and resilient. Given the increased timeline for testing purposes, FinTech Australia recommends that additional fintech businesses be allowed to test the CDR to facilitate development of services for consumers using the CDR. This would ensure that as soon as the CDR is online, consumers can take full advantage of the system.

⁷² FinTech Census, p.29.



FinTech Australia

Recommendation: The ACCC increase the number of fintechs allowed to test the CDR to facilitate development of services for consumers using the system. This will enable consumers to take full advantage of the CDR when it comes online.

Members have also suggested that Open Banking and CDR needs to be supported by an education program to inform people about what it is and counter potential fear mongering and negative messaging from incumbents. This education program should also be able to be used for other sectors, such as superannuation. This education campaign should learn from, and follow the campaigns conducted in the UK. It should also learn from the less successful campaigns conducted in respect of comprehensive credit reporting. These campaigns saw government invest in education which did not fully explain the new measures to the public.

To ensure that CDR is appropriately implemented, it is important to establish a clear roadmap, including uniform standards and a framework setting out how access and operation of Open Banking and CDR will be managed. These will ensure that all stakeholders can build services and products in a transparent and appropriately competitive environment. Whilst there have been efforts to implement this, there is a feeling amongst FinTech Australia members that this timeline and implementation is designed to assist incumbents rather than promote innovation or access to innovative services. See Part 1, “Consumer data right” for further details and recommendations.

Another recommendation is that the obligations imposed on accredited data recipients should be designed so as to minimise compliance costs and to allow compliance to be easily outsourced.

Recommendation: Accredited data recipients should be able to use technology provided by third parties to assist with compliance. This will ensure that costs are minimised and compliance is able to be managed using the most effective method.

NPP and payments

The NPP as a technological development is supported by industry. However access has been limited. An entity must be an ADI and make a material capital contribution in order to be a full participant in the NPP. Accordingly, new entrants who do not have the same scale or regulatory approvals as the incumbent banks cannot fully participate. Even if a fintech is an ADI, the investment required to directly access the NPP creates a barrier which is almost impossible for



FinTech Australia

a new bank to overcome. Measures need to be put in place to facilitate direct access by start-ups and scale-ups. Further detail in relation to this is set out in Part 1 Payments and the response to 2.15 below.

Members have also highlighted that other legacy payment systems will continue to coexist with the NPP for the foreseeable future and should not be neglected. Again, further detail is set out in Part 1 “Payments” and 2.15 below.

Similarly, the government should consider following the recommendation of the Murray Review into the Financial Systems Inquiry to:

“Strengthen consumer protection by mandating the ePayments Code”⁷³

Earlier this year, ASIC also consulted on measures to make this voluntary code mandatory.⁷⁴ FinTech Australia members support this initiative.

Regulatory sandbox

See response to 2.16 below for further details.

2.5 Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the FinTech and RegTech industries in Australia?

Collaboration between government and industry is essential to the continued growth of the fintech and regtech industries. To this end, initiatives such as participating in this Senate Inquiry and being able to contribute to other policy processes, whether it be by providing submissions, participating in formal or informal discussions or any other measures, are important to the continued meaningful development of the sector.

Where there is regulatory uncertainty, FinTech Australia encourages regulators to engage with industry and one another to develop and communicate definitive and appropriate solutions. Any policy being developed should include all aspects of the industry, including regulatory, commercial and technological/development. It should ensure that all these aspects can work

⁷³ Commonwealth of Australia, *Financial Systems Inquiry*, (November 2014)

<https://www.treasury.gov.au/sites/default/files/2019-03/p2014-FSI-01Final-Report.pdf>.

⁷⁴ ASIC, *Consultation Paper 310: Review of the ePayments Code: Scope of the review*, (6 March 2019), <https://download.asic.gov.au/media/5024680/cp310-published-6-march-2019.pdf>.



FinTech Australia

together effectively. Where they do not work together the regulation may not be practical to implement. For instance, regulation which requires certain information be provided in circumstances where the required data parcels available are not in an appropriate format is plagued by practical problems. To alleviate a practical impossibility, the timing of the reform should allow industry enough time to change systems to comply. It should also ensure that the data required meets the commercial data available. Such issues can only be uncovered and mitigated through a collaborative policy process.

It is also important to note that some FinTech Australia members have raised concerns regarding the consultation process. In relation to the consultation for the proposed business growth fund (“BGF”) certain members noted that only granting the public 5 days to consider and make submissions on the legislation, demonstrates that the process for creating legislation which affects the fintech industry is not always collaborative. Every effort should be made to ensure that the fintech industry is allowed to play a meaningful part in the consultation process.

Similarly, when regulators conduct reviews into new fintech driven financial products or services it would be useful for those who participate in the process to receive greater feedback about regulator’s findings and recommendations, preferably prior to release of their report. This is particularly relevant if a participant will be named in the report. This would enable the participants to respond to concerns and make enhancements to policies and processes.

Recommendation: Implement a collaborative policy process involving technological and commercial participants in the fintech industry to ensure policy and regulation is effective and able to be effected within the prescribed timeframes.

Other measures which may be implemented to improve collaboration between government and industry are:

- (1) **Educate government;** The fintech industry must assist to educate government about the industry more broadly. This includes education regarding the services needed as well as the delineation between regulated and purely technological innovations. FinTech Australia would welcome the opportunity to assist government in better understanding the full fintech landscape and ensuring policy is fit for purpose.
- (2) **Transparency;** There is a lack of transparency in advice received by fintechs from government and regulators. Vague broad brush answers make it difficult to develop products. To assist, FinTech Australia suggests embedding experts who understand the technology into the process of developing regulation.



FinTech Australia

- (3) **Scenario testing**; To ensure that services provided and technology deployed is appropriate, FinTech Australia members suggested that fintechs can work with government and test scenarios to assist with policy development in this space.

Government should also implement education campaigns across federal and state governments to streamline initiatives and assist fintechs around the country.

Government may even provide fintech employees an incentive or grant to attend conferences and workshops and contribute to national initiatives such as NPP which will benefit the overall economy.

Recommendation: State and Federal governments should follow the Queensland model in championing innovation by creating an office of the chief entrepreneur and establishing a Business Development Fund to co-invest in businesses.

State and federal government should look to the example set by Queensland to promote innovation through Advance Queensland. “Advance Queensland” which is described as

“Advance Queensland is our vision for the future and investment in a stronger Queensland economy. This \$755 million innovation initiative is supporting programs and activities that drive innovation, build on our natural advantages, and help raise our profile as an attractive investment destination.”⁷⁵

As part of this initiative, Queensland has created the role of the Chief Entrepreneur to promote Queensland as a destination for entrepreneurship and innovation, and support the ecosystem. The office was established in 2016 and the current Chief Entrepreneur is Leanne Kemp, CEO and founder of Everledger. In addition to being a point person to promote Queensland and mentor select companies, this provides resources for all in the innovative sector. The Advance Queensland website includes information regarding events and opportunities in the sector with accelerators, courses, events all advertised. This initiative is broader than fintech and extends to all forms of innovation.

It may be said that Advance Queensland is somewhat similar to the role of Jobs for NSW which is positioned under the NSW Department of Industry. However the Jobs for NSW initiative has approximately a quarter of the funding and seems to have been focussed on providing grants and promoting⁷⁶ the Sydney fintech hub rather than promoting and creating a coherent ecosystem.

⁷⁵ Advance Queensland, *About Advance Queensland*, <https://advance.qld.gov.au/about#:~:targetText=Advance%20Queensland%20is%20our%20vision,as%20an%20attractive%20investment%20destination.>

⁷⁶ Jobs for NSW, *About Jobs for NSW*, <https://www.jobsforNSW.com.au/about-us>.



FinTech Australia

Recommendation: State, territory and federal governments should continue existing efforts to coordinate their approach to fintech policy and regulation through COAG.

Further collaboration between the states and federal government would assist to promote the fintech industry both at home and abroad. FinTech Australia members have also considered that to further promote fintech, state, territory and federal governments should coordinate their response through the Council of Australian Governments (COAG). We understand that this has been considered by both Treasury and the Department of Science and Innovation. These initiatives should ensure that there is no duplication of services and should account for the recommendations of the industry.

Members were broadly supportive of a government/industry led education campaign around 'innovation', fintech and what is happening in Australia to drive consumer demand. Members suggested that as the fintech sector grows and Open Banking, CDR and the NPP become more widely accessible, positive public messaging from the government will contribute to acceptance, adoption and awareness. Similarly, as noted in Part 1 'Screen Scraping', given there have been recent and targeted campaigns from incumbents to raise alarm amongst consumers who use screen scraping or other similar functions, a united front and positive messaging should be used to overcome fears and to educate the public about appropriate security and safety.

One particular field noted was AI. Fintechs also use their advanced technological and analytical capabilities to deliver a more customer-centric experience than traditional approaches. Fintechs can use their artificial intelligence expertise and analytical capabilities to produce faster and more accurate information. For example, these capabilities enable fintechs to mine rich data, drawn from non-traditional sources, when assessing credit applications or undertaking identity checks on customers. As Australia considers how to regulate AI, FinTech Australia members urge the government to proceed carefully and to remember the important role AI plays to get small businesses paid faster and ensure compliance with tax requirements. Artificial Intelligence ("AI") has been defined by one member as

"Machine Learning, Knowledge Engineering, and Natural Language Processing."

The government can promote and support R&D through a strategic plan developed between the public and private sectors that will encourage innovation and incentives for investment in AI.

Recommendation: Develop a strategic plan for investment in AI by the public and private sectors.



Regulatory settings in Australia

2.6 Do current regulatory settings support the growth of local FinTech and RegTech companies in Australia?

Members acknowledge the important role of regulators in ensuring that the financial system is stable, robust and safe. However FinTech Australia members would like to see regulators respond faster and with greater transparency when assessing new technologies. The Australian government's deregulation agenda aims to improve the quality of its regulation, including minimising the burden of regulation on businesses, community organisations and individuals. One in two fintechs have expressed concern about the tightening regulatory framework in Australia, perceiving that the level of regulation is 'excessive' (48%).⁷⁷ One example of this increased regulation would be the new requirement to submit payments data to ATO. This requires payments companies to allocate resources and build new reports and undergo a complex upload process to meet this requirement. Government should, where possible, implement systems which lessen the burden on collection of information, or provide financial assistance to build infrastructure for new reporting requirements. Simplifying and improving regulatory quality and removing the burden of unnecessary regulation and red tape will assist to boost productivity and jobs.

Recommendation: Government should require businesses implement technological systems which lessen the cost of collection of information, or provide financial assistance to build infrastructure for new reporting requirements.

A more flexible regulatory regime is required to assist the growth of the industry. The financial services regulatory regime aims to adopt a 'technology-neutral' approach. The aim is to regulate financial and credit products equally, irrespective of the product or service type or method of delivery. However, new technology powered solutions for existing product types, and new products and services do not always fit into existing regulatory frameworks. Regulators have been very slow to adopt new technologies. Whilst ASIC has begun working with some regtech companies, this is still at an early stage.

⁷⁷ FinTech Census, p.29.



FinTech Australia

The government has a role to play in ensuring that there is scope for disruption and improvement within the banking and financial services industries. Allowing fintechs to innovate and take on incumbents fosters a broader culture of innovation.

Increasing the speed at which regulations assess new technologies and adapt accordingly would be extremely helpful. FinTech Australia members acknowledge that ASIC, the RBA and other regulators have a responsibility to ensure that the financial system is stable, robust and safe. However, providing a fast and transparent regulatory process would be helpful to provide certainty to businesses to allow them to get to market and generate revenue sooner. This can be assisted by an increased partnership model and education campaign. Engagement programs for newer fintech firms, may include:

- Compliance guidelines;
- A point of contact for general questions on compliance; and
- An avenue for obtaining reliable compliance advice on a confidential, “without-prejudice” basis.

This collaboration extends to collaboration between regulators. Depending on their focus, fintech start-ups are often subject to financial services and consumer laws including regulation by ASIC, ACCC, APRA, AUSTRAC, RBA, OAIC. These jurisdictions may well overlap.

Even still, some have observed that regulators may adopt a siloed approach to oversight and regulation of participants. FinTech Australia acknowledges that there are reasons for this overlap and recognises that it is not always possible, practical or optimal for distinctions between jurisdictions and laws to be ironed out. With this in mind FinTech Australia would encourage regulators to engage, either formally or informally, to determine their jurisdictional boundaries and communicate them to industry participants to assist compliance.

Recommendation: Where possible regulators to supply information/extra information regarding how businesses can comply with regulation.

Recommendation: Examine and define the regulatory parameters of each regulator so their role and responsibilities are clearly defined to assist compliance.

There is an inherent risk aversion amongst Australian regulators which inhibits growth and innovation in the sector. Regulators such as the ACCC are heavily focused on consumer protection and less on their mandate for competition. The current view amongst members is that



FinTech Australia

regulators are paralysed by the prospect of consumers suffering a loss. However, as one of our members put it:

“if you always need to be licenced and regulated in the same way as a bank or insurance company how are you ever going to create a new regime?”

This view persists in ASIC too. Whilst ASIC has the power to and has sometimes granted bespoke licensing exemptions which allow a fintech to operate without an Australian financial services licence (“**AFSL**”) or Australian Credit Licence (“**ACL**”), this is rare. Indeed, even if an exemption is granted, the time, cost and effort expended may negate the benefit. This is exacerbated by the fact that the exemption may not be provided on the terms requested.

According to the FinTech Census, 76% of fintechs believe an expanded and more flexible regulatory sandbox environment would be an effective initiative.⁷⁸ As one member put it:

“you don’t regulate for innovation. Regulation is a defensive mechanism, not a mechanism for aggressive growth.”

Regulation can create risks and costs that inhibit the uptake of new technologies, specifically through:

- regulatory uncertainty due to ambiguity in the wording or application of rules;
- the same rules being applied, inappropriately, to both consumer and commercial lending;
- the incorrect application of the appropriate Codes of Conduct;
- application of the highest bar for ‘industry best practice’ to newer organisations without the same levels of experience, resourcing or budgets, and without the same scope of business and thus ability to impact Australian consumers;
- the insurmountable impracticalities of appealing decisions; and
- high costs of compliance for newer organisations.

We seek a proportionate and, as appropriate, graduated level of regulation and compliance based on the age and stage of maturity of the complying organisation. FinTech Australia members have identified that the existing regulatory framework does not necessarily support fintech.

⁷⁸ FinTech Census, p.30.



FinTech Australia

Recommendation: Regulation should be proportionate to the nature of the business and risks posed, considering the size of the business and number of customers.

Significant feedback has been received regarding the efficacy of the ASIC Innovation Hub. FinTech Australia members report quite different experiences with regulators other than ASIC including APRA and AUSTRAC, who are seen as more helpful, flexible and supportive enablers of fintech. See 2.16 below for further detail regarding the Innovation Hub. And Regulatory Sandbox.

FinTech Australia notes that ASIC has recently provided significant assistance clarifying the scope of the responsible lending laws. ASIC has this month published a revised Regulatory Guide 209, which, amongst other things, clarifies that responsible lending laws do not apply to commercial loans. ASIC's updated guidance provided in Regulatory Guide RG 209 provides that

“Loans to individuals or strata corporations that are predominantly for a purpose that is not a consumer purpose (e.g. to be used for a business purpose) are not regulated and the responsible lending obligations do not apply to such loans.”⁷⁹

This recognises that where different products and services are made available, it is appropriate that regulation reflects the nature of those products and services. FinTech Australia wants to thank ASIC for providing this helpful guidance as it greatly assists the industry to ensure compliance in all circumstances.

In relation to AML/CTF compliance, regulators have been viewed as “sitting on the fence” and not having a pathway for people to be recognised as a ‘credible’ supplier of solutions. This would not only assist businesses developing these solutions, but it would also assist those looking to comply to be able to find appropriate solutions to problems faced by the business.

This increased conservatism exists against a background of increasing regulatory mandates. For example, AUSTRAC has oversight of nearly 14,700 businesses. The AML/CTF laws are risk-based meaning that a burden is placed on regulated businesses across a range of financial and non-financial industry sectors to identify, assess, mitigate and manage money laundering and terrorism financing risks. Many organisations lack the capacity and capability to assess,

⁷⁹ ASIC, Regulatory Guide 209: Credit Licensing: Responsible lending conduct, 9 December 2019, <https://download.asic.gov.au/media/5403117/rg209-published-9-december-2019.pdf>, RG209.31.



FinTech Australia

mitigate and manage their risk exposures. There are numerous examples of large scale non-compliance of businesses that have been regulated for the last 13 years in Australia. Were the ambit of the AML/CTF Act to be expanded to include lawyers, accountants and real estate agents as suggested by the Financial Actions Taskforce (“**FATF**”), it was estimated by one member that AUSTRAC will have oversight of up to 100,000 businesses. Given recent action taken by AUSTRAC against some of Australia’s largest financial institutions, it has been suggested that the risk management framework is broken.

The increased regulatory burden may be assisted by standardisation and implementation of innovative technologies. FinTech Australia member Arctic Intelligence noted that if risk assessment for AML/CTF purposes was standardised, AUSTRAC will be able to better understand ML/TF risks and controls of related businesses and Australian businesses and the economy will be better protected against the effects of money laundering . It noted that to date, implementing these sorts of processes has been limited.

This negative sentiment is perpetuated by continued barriers to accessing offshore talent through the skilled migration visa program, and a further reduction in R&D Tax incentives.

As set out above, tax related initiatives are considered the most effective initiatives to grow and promote the fintech industry in Australia. Please refer to Part 1 “Taxation including R&D tax incentive”, 2.5 above and 2.19 below for further details.

FinTech Australia members have also suggested that fintechs, including lenders may be deterred from voluntarily joining with AFCA for the following reasons, which may undermine confidence in the sector:

- (1) AFCA members pay for the costs of all disputes, even where unmeritorious. We are particularly concerned about the scope for mischief in the complaints regime, particularly when debt workout negotiators become involved and take a significant share of the reduction in debt or compensation awarded to the borrower.
- (2) AFCA applies unpublished standards which are beyond the rules of law. Companies develop compliance systems based on published rules of law. There is a sense of regulatory uncertainty as a result.
- (3) AFCA decisions are inconsistent (and depend on the particular case officer involved) and apply a fairness lens without proper regard to the applicable legal obligations and broader regulatory framework.

There are no rights to appeal determinations, unlike predecessor regimes such as FOS. This lack of a complaints regime within the framework of a complaints regime is not only an ironic



FinTech Australia

outcome, but contributes to a real or perceived lack of procedural fairness and lack of confidence in the system by lenders. This is concerning when viewed in the context of AFCA's name and shame powers.

2.7 What are the key reform priorities that will enable FinTech and RegTech innovations to flourish in Australia?

Please refer to 2.5 above.

Key reform priorities for government should be:

- (1) Conduct education programs to educate consumers as to:
 - a. the sector's growth particularly where this is driven by new regulation as with Open Banking, CDR and even the NPP; and
 - b. improve financial literacy around superannuation and investments .
- (2) Adopt a partnership model where government and fintech industry work together to educate one another about the technological developments so that regulation can be appropriately designed and administered, and government can take advantage of new technologies.
- (3) Increase the speed at which regulatory decisions are made to assess new technologies and apply existing regulations to new technologies.
- (4) Enact the proposed enhanced regulatory sandbox.
- (5) Improve payments regulation.
- (6) Improve access to local and international capital.
- (7) Simplify the application requirements for the R&D Tax Incentive.
- (8) Improve access to the talent pool of software engineers.
- (9) Elevate the importance of the fintech sector in consultation with the sector.
- (10) Ensure that incumbents do not delay the introduction of new platforms or ecosystems (e.g. NPP, CDR).
- (11) Invest directly in early stage startups (e.g. via the Future Fund).
- (12) Build regulator's staff capabilities and understanding of technological innovation.

Members are in favour of a partnership model with greater two-way communication between fintechs and regulators. As set out above, there is a lack of transparency from regulators. They have a history of providing vague answers and being unreceptive to advice. A partnership model would enable fintechs to explain technological changes and developments to regulators and educate them on both risks and opportunities. FinTech Australia is supportive of initiatives in this regard, such as ASIC's Digital Finance Advisory Panel and participation in meetings with government. FinTech Australia wants to again thank the Senate for taking the opportunity to



FinTech Australia

conduct this inquiry to consider the issues facing the sector and determine how Australia's burgeoning fintech industry can become a pillar of the Australian economy.

As noted above in Part 1 "Payments", FinTech Australia encourages the government to release the insights and conclusions from this investigation to the industry.

FinTech Australia notes the Australian Law Reform Commission ("ALRC") has recently released a paper, 'The Future of Law Reform: A Suggested Program of Work 2020-25', in which the ALRC has proposed exploring structural reform to financial services regulation.

Feedback from FinTech Australia members is consistent with the submissions made to the ALRC that described financial services regulation as 'too long, complex and inaccessible'⁸⁰. Our members' experience is that the complexity and lack of certainty in the regulatory system is creating a significant barrier to new entrants into the fintech space, as valuable time and capital is spent engaging with lawyers and regulators in order to bring products and services to market.

Recommendation: FinTech Australia endorses the proposal for the ALRC to be commissioned to conduct an inquiry into simplification of the financial services regulatory regime in Australia.

Reform of the AML/CTF Act as noted in Part 1 and 2.6 above, regulatory settings set out in 2.6 and comments regarding the regulatory sandbox in 2.16 should also be considered. FinTech Australia encourages Government to consider the recommendations set out at the beginning of this submission. These provide a comprehensive list of the practical assistance that and regulators can provide to foster a vibrant and innovative financial services, regulatory and technology driven industry.

2.8 To what extent should government encourage or incentivise the disruption of existing financial services business models by new market entrants, as opposed to promoting partnerships between new and incumbent players? Are these aims mutually exclusive?

⁸⁰ *The Future of Law Reform: A Suggested Program of Work 2020-25*, Australian Law Reform Commission, December 2019, at page 31



FinTech Australia

These aims are not mutually exclusive. Incumbents need to be encouraged to work with new market entrants, but without encouraging and incentivising new ventures and market entrants the incumbents will have no one to work with.

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.

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 should not be a deterrent if these companies have the potential to disrupt incumbent services so long as the financial stability of the industry is appropriately protected. It is in everyone's best interest for the government to support and encourage new business models, companies and services.

This might be incentivised by providing tax incentives to businesses which use fintech or other start-ups in their business, even for a trial period. This would encourage collaboration.

Recommendation: Create tax incentives to encourage businesses to use fintech start-ups.

Another cultural shift required, is to reduce the “fear of failure” entrenched in the Australian mindset. Whilst we hear of successes, we hear little of the difficulties faced by companies. The first two years of grind are where many startups fail. Consider an oft cited study by Harvard lecturer Sikhar Ghosh that 75% of startups that receive venture funding fail. This indicates that an environment which discourages failure does not promote growth of the industry. Government has a role to play in removing the fear of failure and seeing it as a part of innovation. Financial incentives to support creation of new businesses are one way that this can be encouraged.



FinTech Australia

In 2016 the Australian Government as part of the National Innovation and Science Agenda proposed a suite of reforms to improve bankruptcy and insolvency laws.⁸¹ This proposed 3 measures

- (1) reducing the current default bankruptcy period from three years to one year
- (2) introducing a 'safe harbour' for directors from personal liability for insolvent trading if they appoint a restructuring adviser to develop a turnaround plan for the company, and
- (3) making 'ipso facto' clauses, which have the purpose of allowing contracts to be terminated solely due to an insolvency event, unenforceable if a company is undertaking a restructure.⁸²

This recognised that entrepreneurs fail several times before they achieve success and this was designed to enable and allow entrepreneurs to succeed even after failure. The *Bankruptcy Amendment (Enterprise Incentives) Bill 2017* (Cth) was introduced into parliament in October 2017 to implement these reforms⁸³. This Bill lapsed on 1 July 2019. FinTech Australia encourages the government to re-introduce this Bill and implement the reforms to reduce the difficulties faced by entrepreneurs following bankruptcy, reduce the fear of failure and encourage serial entrepreneurship.

Recommendation: Re-introduce and pass the Bankruptcy Amendment (Enterprise Incentives) Bill to reduce the difficulties faced by entrepreneurs following bankruptcy, reduce the fear of failure and encourage serial entrepreneurship.

There are times when governments should encourage disruption. Particularly where existing services are not yielding beneficial consumer outcomes and incumbents are hamstrung by the innovators dilemma. One FinTech Australia member has identified that financial advice is one such industry. Following the Hayne Royal Commission, there is evidently a need for disruption to existing financial services business model. The Royal Commission demonstrated that clients receive inappropriate investment advice and pay a high price for it. Bad investment advice can obliterate people's savings. Fintech businesses are able to use technology to provide services

⁸¹ Australian Government, Improving bankruptcy and insolvency laws, April 2016, https://treasury.gov.au/sites/default/files/2019-03/C2016-017_pp_NIS_insolvency_measures.pdf.

⁸² Australian Government, *Improving bankruptcy and insolvency laws*, April 2016, https://treasury.gov.au/sites/default/files/2019-03/C2016-017_pp_NIS_insolvency_measures.pdf, p.3.

⁸³ Bankruptcy Amendment (Enterprise Incentives) Bill 2017, Parliament of Australia, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1097.



FinTech Australia

such as investment advice at a low cost to many Australians who would not be able to afford or access a traditional adviser because of high legacy costs and conflicts between advice and product distribution. Attempting to compete with the disruptor will destroy earnings while ignoring the disruptor will allow it to grow and eat into future revenues. This makes it difficult for incumbents to embrace disruptors - either as an investor or partner - because it hurts its margins and acts as a perceived endorsement that might lead its traditional customers to ask for a lower price.

2.9 How should Australia to take a prominent role in supporting and developing international blockchain standards?

Members suggested that an advisory committee of verifiable blockchain experts could be created who can explore the macro opportunities of the technology for the Australian public and private groups. FinTech Australia acknowledges the work to date on the National Blockchain Roadmap and recognises that there are a broad range of industries which may use blockchain technology. Australia has long been a leader in this field, both in private sector applications, such as the ASX's CHES replacement project, and standardisation, by chairing the International Standards Organisation's ISO/TC 307 on Blockchain and Smart Contract Standards. FinTech Australia encourages Australian industry and government to continue to invest in and work to develop solutions for the adoption of innovative technologies, including blockchain.

2.10 How can the FinTech and RegTech sectors link into the Australian digital identity ecosystem reforms?

Digital identity is a key touchpoint for development of innovative technologies. The government should be conscious and cautious of the digital identity frameworks which have previously been proposed, such as the Australia card. Instead, there is a general view that standardised digital identity frameworks should be proposed. These would allow for federated identity to be provided by multiple parties.

Whilst the industry recognises that any viable digital identity framework is a long way off, this will also require a long term commitment to ensure that the system built and implemented is fit for purpose into the future.



FinTech Australia

One initiative which may lead in this direction is the implementation of CDR as the individual is at the centre. This may not be a full solution to providing digital identity overall but it may help solve some of the problems faced by previous iterations.

2.11 Can Australian regulators do more to support FinTech and RegTech companies to develop digital advice services? How can the Australian digital advice sector be supported to grow?

FinTech Australia members are not unanimous on their views on this subject. Some view that the current regulation of financial advice businesses is not designed to accommodate the provision of digital advice. Others however do not feel that such changes are necessary. They feel that businesses which provide investment advice and services should be subject to regulations that protect the best interest of the consumer.

At present, the regulatory framework for advice is limited and could be viewed as binary. It has been designed for traditional financial advice models with some flexibility for simple calculators (which must operate within extremely narrow parameters). It does not readily cater for any digital advice tools that operate within these two parameters i.e. robo advice.

ASIC Regulatory Guide 255 Providing digital financial product advice to retail clients (“**RG 255**”) defines digital advice to mean “the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser”.⁸⁴

However, digital advice tools can be nuanced and may harness different levels of technology (including AI) and human interaction. The level of human interaction varies with some digital advice tools having zero, minimal or significant human involvement built into the advice process. The type of human interaction also varies with some using humans to:

- Troubleshoot an issue or flag that has been identified in the advice process;
- Review key aspects of the advice process; or
- Approve the advice output.

While ASIC guidance does acknowledge hybrid models, its application of the regulatory framework is complex when it comes to human involvement, particularly in relation to best interests and conflicted remuneration. There is also the added complexity of the applicability of

⁸⁴ ASIC Regulatory Guide 255 Providing digital financial product advice, August 2016, <https://download.asic.gov.au/media/3994496/rg255-published-30-august-2016.pdf>, RG255.1.



FinTech Australia

the FASEA Code of Ethics to any advisers who play a role in a digital advice tool. There is no specific consideration of how artificial intelligence is to be regulated within digital advice models.

Guidance also does not specifically address the different distribution channels for digital advice tools (i.e. B2B, B2B2C and B2C). This is important as the regulatory requirements will vary depending on who the provider is, who the end user is and whether any intermediary is involved in the process.

Guidance should also consider the different service offerings. Digital advice tools may provide any one or more of the following activities along the advice value chain:

- fact finding: gathering information about the client's financial circumstances, understanding the client's needs and objectives and assessing risk tolerance ;
- recommendation: Providing advice in relation to strategy, asset allocation and product selection;
- implementation: Opening accounts and enabling money and investment flows; or
- review and monitor: Providing periodic reports, notifications and asset rebalancing.

ASIC's position is that the law is technology neutral and can equally apply to digital products and traditional financial advice models.⁸⁵

However, the particular questions and challenges faced by digital advice tools are not specifically addressed in ASIC's regulatory guidance, RG 255. As a starting point, regulatory guidance needs to better consider the objectives of digital advice tools: complying with the regulatory requirements in a manner that reduces friction and provides consumers with a seamless user experience.

With a growing digital native population and an increasing cost of financial advice (as a result of a number of regulatory reforms seeking to professionalise the industry), digital advice tools (particularly, in the scale advice space) will become more prevalent and readily accessed by consumers. In fact, digital advice tools are usually designed for and seek to target those Australians who can least afford traditional financial advice. In this context, it is critical that regulatory guidance be updated to specifically cater for alternate models for delivering financial advice. This requires a rethink of what and how regulatory requirements should apply to digital advice tools. The application of the best interests duty, disclosure requirements and conflicted remuneration obligations are key areas that should be considered. Any consideration should ensure sufficient flexibility is built into regulatory guidance to enable different product and service offerings and enable those offerings to build custom solutions to satisfy the legal requirements.

⁸⁵ Paragraph 255.6 ASIC Regulatory Guide 255 Providing digital financial product advice.



FinTech Australia

The MoneySmart website provides consumers with information on digital advice tools. It provides a list of things that consumers should consider before getting robo advice. As drafted, the list of considerations imply digital advice tools carry more risk and consumers should exercise extreme caution. However, many of the considerations listed (e.g. data input, updating advice, portfolio rebalancing, fees and costs and withdrawal) apply to traditional advice models (particularly ongoing advice service offerings) and in some instances, more acutely.

Regulators need to balance the risk and benefits of digital advice tools while also highlighting limitations with the traditional model.

One digital advice business, recently ceased operations following reliance on an indication from the ASIC Innovation Hub that it was compliant with relevant laws. This all turned on an interpretation of the digital advice laws. Despite an indication from the regulator in 2014, that the business was within the regulatory perimeter, a subsequent review by ASIC resulted in a different view being formed, with devastating consequences. This indicates that efforts by the Innovation Hub to assist new businesses may instead be detrimental as the current system is not always fit for the digital future.

2.12 Are there any impediments to ensuring that the benefits Open Banking offers for consumers and FinTech firms are maximised?

As set out above, initiatives such as Open Banking and CDR are expected to drive further growth in the fintech industry. However, despite these benefits, members have suggested that it is important to establish a clear roadmap, uniform standards and a framework setting out how access and operation of Open Banking and CDR will be managed to ensure that all stakeholders can build services and products in a transparent and appropriately competitive environment.

There is some concern amongst FinTech Australia members that the implementation of Open Banking under the CDR will further assist incumbents and will not foster innovation.

In addition, as part of the broader consumer education program recommended in 2.7 above, Open Banking and CDR needs to be supported by an education program to inform people about what it is and counter potential fear mongering and negative messaging from incumbents. See also Part 1 “Regulation” and 2.4 above.



FinTech Australia

FinTech Australia members have also asked for further clarity regarding the concept of “derived data” and the operation of privacy safeguards.

In addition, feedback has been received from FinTech Australia members that clarity around the deadlines for implementing Open Banking is required. Whilst there is an acknowledgement that certain timelines may not be met, without providing strict deadlines, there is potential for incumbent ‘big four’ banks in particular to negotiate to increase timelines, effectively flaunting the current proposal and delaying an initiative that would benefit all Australians.

Recommendation: Provide clarity and certainty regarding timeline for open banking and ensure that these are able to meet requirements of all in the industry, not just the big four.

We are aware that CDR style laws and regimes are being considered around the world. As these are developed, Australia is at a significant advantage as it is able to establish itself as a world leader in the field. This provides significant opportunities for Australian fintechs and technology providers and Australia should play an active role wherever possible to facilitate development of these regimes to ensure that Australian businesses are able to export their know how and expertise.

Recommendation: The Australian Government should play an active role in the development of CDR style regimes around the world to facilitate export opportunities.

2.13 Following the implementation of the CDR in the banking sector, how quickly should government seek to implement CDR reforms in related financial sectors such as superannuation?

To fully take advantage of the CDR and create the data economy, the government should designate all sectors of the consumer economy. A significant benefit of the CDR is that a person who is not from a designated industry they can still become an “accredited data recipient”. This means that there is no need to be in the banking or indeed financial services industry to take advantage of the regime. However, once an industry has been designated there is certainty regarding the data parcels to be transferred and their form. Such an extension is likely to assist adoption of CDR across the economy. Making compliance easier and opening up the regime.



Recommendation: Government should designate all sectors of the consumer economy as being subject to the CDR to facilitate the data economy.

In particular, FinTech Australia supports the swift roll out of CDR in other areas of financial services such as superannuation. Government should recognise that superannuation is a significant part of the financial services industry in Australia and implementation of CDR should be prioritised in this space. There does not appear to be any reason for its adoption in superannuation to be delayed following successful implementation in banking. To facilitate this, we encourage involvement from the superannuation industry in the design and roll out of CDR to the superannuation sector to ensure positive outcomes for all stakeholders.

In its 2018 report, *Superannuation: Assessing Efficiency and Competitiveness*, the Productivity Commission focussed on funds making better use of data to develop individualised member services, as this would allow them to better match products with member needs throughout their lifecycle.⁸⁶ Our experience is that superannuation funds are investing in data analytics tools and data capture, as they understand the benefit of capturing data about their members and the market. However, currently funds are focussed on collecting rather than sharing data, which limits the benefits that may be gained by members through increased competition in the superannuation sector.

As noted above, APRA's attempts to provide further clarity regarding superannuation through the recently released Superannuation Fund Heat Map have been confusing and inconsistent. The data provided has not been sufficiently standardised nor does it provide clarity to consumers. Implementing CDR in superannuation would achieve these aims and place the consumer in the centre.

Implementing CDR in superannuation, has the potential to not only drive competition between funds, but also to allow members to present their financial data to funds and invite them to present a personalised 'best offer' to the member. The funds would obtain a holistic picture of a member's financial position, allowing a fund to present the most appropriate product. This would empower members and spur competition in the superannuation market.

⁸⁶ Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, 21 December 2018, <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>.



FinTech Australia

The implementation of CDR in super will also open up opportunities for financial advisors and service providers to act as intermediaries in obtaining the ‘best offer’ for members. They may develop tools and services which can assist members to take advantage of their data and secure a tailored product which suits their current financial situation.

The benefits of applying CDR to superannuation extend beyond fee and insurance transparency. For instance, this may open up the ability for superannuation balances and contributions to be used to create new products and tools which ultimately positively benefit the financial outcome of Australians.

2.14 What specific considerations need to be given to the implementation of CDR in the superannuation sector?

To facilitate CDR in superannuation FinTech Australia members call for standardisation of data parcels required by APRA in the superannuation sector as soon as possible. Data rules should be developed to ensure transparency, consistency and comparability with fees, costs, investment options, investment performance and insurance. This is not a small exercise.

Recommendation: Data required by APRA to comply with superannuation requirements be standardised. This can be facilitated by CDR.

CDR provides a framework through which such a data taxonomy may be proposed. If consistently applied, this would assist consumers to understand comparison rates and provide consumers access to data so they can make active, informed decisions on where they invest their retirement savings. One particular issue is the opacity and expense of fees charged by superannuation funds. Research conducted by FinTech Australia member Stockspot⁸⁷ for the past 7 years consistently demonstrates that the worst performing super funds are predominantly controlled by the large financial institutions. They also regularly rank as charging high fees to their members. CDR would help reveal the true cost of superannuation and facilitate switching.⁸⁸

⁸⁷ Stockspot, *2019 Fat Cat Funds report*, <https://blog.stockspot.com.au/fatcat/>.

⁸⁸ It is also important to note that, while implementing CDR within superannuation may encourage switching, consumers must also remain informed of any consequential effect, such as changes to their insurance policy or coverage.



FinTech Australia

It will also assist consumers to understand and compare information between providers of superannuation or financial advice.

APRA rolled out data standards in 2014 for MySuper Products to assist with its supervision activities and enable the production of meaningful industry quarterly data reports. The work is still ongoing with APRA in the process of rolling out a Superannuation Data Transformation Program, which is due to complete in mid-2022. The program comprises three phases:

- Phase 1: Plug key gaps, namely choice products and investment options;
- Phases 2: Explore new and better approaches; and
- Phase 3: Assessing the quality and consistency of data reported.

CDR in superannuation is critical and should not be put on hold for APRA's Superannuation Data Transformation Program, which is due to end in 2022. Rather, both projects should be working in tandem with industry and APRA collaborating on the required data parcels to maximise efficiency, consistency and functionality. Any developed data standards will need to be flexible enough to cater for the different product offerings but prescriptive enough to ensure there is very little discretion with how to report. Otherwise there is a risk that CDR will not provide an avenue for customers to access better information about their current offering and the other options in the market that may better suit their needs.

Consideration should also be given to the ethical use of consumer data.

2.15 Is the New Payments Platform accessible enough for FinTech startups and scale-ups? If not, how should this issue be addressed?

FinTech Australia is supportive of the NPPA's roadmap and many FinTech Australia members are looking to use this new technology. Indeed most fintechs (76% according to the FinTech Census) believe that providing more transparent access points for fintechs to connect to the NPP is an effective industry growth initiative.⁸⁹

However access to the NPP is restricted to ADIs meaning that very few fintechs are eligible to access the platform. Difficulties arise as access relies on incumbents embracing and rolling out the additional services, as well as providing access to these services. Whilst the NPPA appears

⁸⁹ FinTech Census, p.30.



FinTech Australia

to be embracing this, this must also be embraced by incumbents in the industry. FinTech Australia encourages incumbents to undertake this roll out exercise in a fast and open manner.

Recommendation: Incumbents roll out the NPP capabilities in a fast and open manner.

Members would also like to see more fintechs approved for full usage of the NPP. Approval for full usage is a cost issue 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 sandbox. Instead, opening up direct access to the NPP should be viewed as a future initiative to drive competition in the payments space.

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. This roadmap to 2022 includes the following components:

- 1 *Development of NPP message standards to utilise the structured data capabilities of the NPP*
- 2 *Development of a 'Mandated Payments Service' to support recurring and 'debit-like' payments on the NPP*
- 3 *Implementation of payment initiation capability across the platform ('Basic Payment Initiation Service')*
- 4 *Implementation of services to support the domestic leg of an inbound cross-border payment*
- 5 *Supporting the use of QR codes on the NPP*
- 6 *Extension of the NPP API framework and an upgrade of the API sandbox⁹⁰*

Recommendation: The NPPA, Government and RBA implement the NPP Roadmap.

⁹⁰ NPPA, *New Payments Platform Roadmap 2019 Enhancing the platform's capabilities*, 28 October 2019, https://nppa.com.au/wp-content/uploads/2019/10/NPP-Roadmap-2019_28-Oct-2019-final.pdf, p.9.



FinTech Australia

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.

Recommendation: Introduce measures to ensure that ADIs who are participants in the NPPA support adoption by the full industry.

There is a lot of focus on the NPPA's payment mandates (which replace direct debits currently on the Bulk Electronic Clearing System (“**BECS**”) used for recurring or scheduled payments. BECS governs direct entry (debit) and direct credit payments. These types of payments sit alongside credit/debit card scheme payments and are very often used for scheduled or recurring payments. However the differences between these rules are outdated and not appropriate for businesses and consumers as they cause confusion in understanding and mitigating risks. This becomes even more complex if a scheduled payment runs on the NPP (in the future).

It is important to acknowledge that it will take some years to completely migrate all the direct debits to the NPP, and during this time, there will be cross-over where both payment systems operate at once. FinTech Australia recommends a review of the BECs rules so that the ensuing years of cross over do not present conflicting or confusing operational or compliance issues for businesses or payment service providers. It is conceivable to think that a business may have payments running via direct debit and some via NPP Mandate.

Recommendation: RBA review the BECS rules and the NPP direct payment Mandate to ensure direct debit services are not interrupted as providers switch between systems.

There should be a ubiquitous and accepted standard of operation that all stakeholders can adhere to regardless of the payment method used to make the payment. This framework should also extend to responsible fee setting as the current lack of regulation has seen consumer and business fees imposed by third-party providers (such as fees as high as \$25 for a declined payment of \$10) are opaque and difficult to avoid.

To increase use of the NPP, FinTech Australia recommends that the government consider subsidising the cost of transactions on the NPP. These subsidies may be applied at the



FinTech Australia

participant level or at the service level (eg the company providing the service or overlay). Given the cost of an NPP transaction is quite high in comparison with direct debit via the RBA's cheapest payment method, the BECS, even if the right infrastructure was in place for Mandated Payments Service' to support recurring and 'debit-like' payments, the current cost of transactions would be prohibitive. A subsidy scheme would recognise the investment that ADIs have made into the NPP and stimulate growth across the system to drive economic returns for those ADIs and provide access to fintechs. Over time as adoption increases, transaction costs will flatten naturally and the need for subsidies will elapse.

The Government may also consider subsidising to cost of acceding the NPP as a direct participant. Increasing the number of direct participants would also help to create the network effect required for the payment system's success.

Recommendation: 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.

FinTech Australia members consider the NPP sandbox to be a great step forward. However, it was noted that the capability within the sandbox will need to be extended as new functions become available through the NPP.

See also 2.4.

2.16 Is ASIC's FinTech regulatory sandbox useful for startups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector?

Australia achieved considerable global acclaim as one of the first countries to allow fintech companies to test credit and financial products using a regulatory sandbox in 2016, and the only country to permit fintech businesses to "opt in" to its sandbox.

Limitations⁹¹ on the types of financial and credit services eligible to use the current sandbox, the permissible transaction sizes, client numbers and a 12 month testing period have meant that

⁹¹ ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176, also ASIC Regulatory Guide 257: Testing fintech products and services without holding an AFS or credit licence



FinTech Australia

only 7 companies have used the sandbox (with only 1 current user).⁹² This is a stark contrast to the UK where its regulatory sandbox has been accessed by 118 companies, with 31.6% of applications to participate in the sandbox being successful.⁹³

Individual relief

Businesses that do not qualify to use the sandbox or want to extend the sandbox limits can apply to ASIC for an individual ruling enabling them to test for a period. However, ASIC has not provided any clear pathway for making these applications (other than its generic guidance on relief applications, which requires legal advice to navigate) or the criteria that it applies.⁹⁴ The experience of fintech businesses to date is that, any novel application for individual relief has been time consuming, slow and costly; requiring extensive legal advice and negotiations with ASIC.

As a result, the current sandbox and individual relief process are not conducive to facilitating testing by fintech start-ups within their time and budgetary constraints.

Innovation Hub

ASIC created an Innovation Hub⁹⁵ in late 2016, shortly prior to the introduction of the regulatory sandbox. Innovative companies may apply for informal assistance on issues such as their obligations under the financial services regulatory framework and ASIC's thoughts on regulatory issues they should consider as they set up your business.

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

⁹² See ASIC, *Regulatory sandbox: Licence exemption users*, <https://asic.gov.au/for-business/innovation-hub/fintech-regulatory-sandbox/regulatory-sandbox-licence-exemption-users/>, accessed 2 December 2019.

⁹³ See FCA, *Regulatory Sandbox*, <https://www.fca.org.uk/firms/regulatory-sandbox>, published 11 May 2015, last updated 23 October 2019, accessed 2 December 2019.

⁹⁴ The UK sandbox, which is probably the most advanced globally, has a clearly defined process for applications and has published detailed policies about what businesses are in scope, and the criteria which it will apply to determine whether to admit applicants to the sandbox.

⁹⁵ See <https://asic.gov.au/for-business/innovation-hub/>



FinTech Australia

and as a result had to close businesses to avoid regulatory consequences.⁹⁶ As one member put it, “What is the purpose of the Innovation Hub?”

Proposed Enhanced Sandbox

During 2017, Treasury consulted extensively with FinTech Australia and ASIC, culminating in the introduction (in 8 February 2018) of a Bill⁹⁷ to amend the Corporations Act and NCCPA to permit Treasury to make regulations allowing conditional exemptions from the need to be licensed under those Acts. The proposed regulations⁹⁸ expand the scope of the sandbox in a number of important respects.

The table below summarises the scope of the current sandbox and the proposed expansion.

	Current	Additional
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⁹⁶ See the story of Plenty Wealth in 2.11 below.

⁹⁷ Treasury Laws Amendment (2018 Measures No. 2) Bill 2018

⁹⁸ Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2017, National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2017



FinTech Australia

Types of financial and credit services	<p>Advice, dealings and assistance in relation to:</p> <ul style="list-style-type: none"> · Listed or quoted Australian securities · Securities issued by the Australian Government · Simple managed investment schemes · Deposit products · Some general and life insurance products · Payment products · Credit contracts. <p>Product providers are not eligible</p>	<p>Include:</p> <ul style="list-style-type: none"> · Superannuation products · Life insurance products · Certain listed domestic and international securities
Client numbers	100 'retail' clients	No change
Transaction sizes	<p>Financial products - \$10,000 in value</p> <p>General insurance - \$50,000 sum insured</p> <p>Total overall exposure of \$5million</p>	<p>General insurance - \$85,000 sum insured</p> <p>Life insurance products - \$300,000 sum insured</p> <p>Superannuation products - \$40,000</p>
Testing period	12 months - participants can apply to ASIC for up to 12 months extension	

The Bill was agreed to by the House of Representatives on 25 June 2018, but has not yet passed the Senate due, it seems, to other matters taking precedence.



FinTech Australia

According to the FinTech Census, 76% of fintechs believe an expanded and more flexible regulatory sandbox environment would be an effective initiative.⁹⁹

FinTech Australia members are encouraged by and have long supported the proposal to expand the scope of the regulatory sandbox as it will allow Australian fintechs time and scope to properly test their businesses.

However, as significant limitations on eligibility to access the sandbox remain, Fintech Australia members urge a proactive and flexible approach to implementation and ongoing review of the enhanced sandbox.

Recommendation: FinTech Australia members:

- ***strongly support the Government’s proposal to enact the enhanced regulatory sandbox as set out in both the Act and Regulations; and***
- ***encourage the Government to review the operation of the enhanced regulatory sandbox after 12 months and consider further expansion of its scope.***

Licensing

That being said, while regulatory sandboxes may be useful in the early stages of development of new financial and credit services, broader access and longer-term sandboxes would be beneficial. Start up, early stage or small fintechs generally have fewer resources to apply to compliance, even after launch so this would enable fintechs to receive guidance about learnings following launch, particularly where the regulatory environment is uncertain. Regulators need to be responsive proactive when dealing with fintechs.

In particular, the processes to obtain licences in Australia are complex and time consuming (up to 9 months for an AFSL and in some cases longer), requiring significant human and financial resources. ASIC claims that fintech businesses who access the Innovation Hub experience shorter licensing timeframes, but this is not borne out by the experience of Fintech Australia members. Simpler and faster licensing would make it attractive to become licenced in Australia (rather than another jurisdictions).

⁹⁹ FinTech Census, p.30.



FinTech Australia

2.17 Do the tax incentives offered for ESVCLP and VCLP support growing FinTech startups? Should the government consider further work to support VC investment in FinTech startups?

Additional funding complexity arises due to the current restrictions around the eligibility of fintech investments under the Early Stage Venture Capital Limited Partnership (ESVCLP) structure, which is the structure most of Australia's venture capital funds operate under.

Prior to the fintech reforms that came into effect in October 2018, fintechs that engaged in business models that included property development, land ownership, finance (including banking and lending), insurance, or making investments directed at deriving passive income, were considered to be ineligible investments through the ESVCLP structure. This increases complexity for these businesses to raise funds, despite their legitimacy as fintech businesses.

While barriers have now been removed to an extent for banking, lending and insurance-focused businesses, there remains some ambiguity around interpretation of the new eligibility conditions. Further challenges remain for many other existing and emerging fintech business models, including those related to property investment and ownership, which arise given the significance of mortgages within the financial services landscape, and the critical issues with housing affordability that fintech can help address.

In addition to challenges around eligibility of fintech investments under the current ESVCLP structure, there are also issues with availability of later stage funding. Greater VC follow-on needed in ventures to support the pathway to IPO, which will ultimately require larger funds to be raised to enable ESVCLPs to continue to participate in a portfolio company's fundraising through to 'mega-rounds'. According to s9-3(1)(d) of the *Venture Capital Act 2002* (Cth), ESVCLP funds are restricted to a \$200m cap. As the ecosystem matures, this should be reviewed to ensure eligibility is moving in accordance with the growth of the ecosystem to ensure the tax benefits of the ESVCLP structure can be extended.

VC is only one aspect of the funding pool. Indeed the FinTech Census provides that the number of fintechs which are founder funded increased from 60% to 75% of survey respondents.¹⁰⁰ This reverses a previous trend which indicated that there was a reduction in founder funded fintechs. Given the increase in the size of the fintech industry, this indicates that there is less of a reliance on VC to sustain the ecosystem. One point raised in consultation with

¹⁰⁰ FinTech Census, p.25.



FinTech Australia

members was that the early 'start-up' phase, which includes validating ideas and testing may well not include VC at all.

In general stronger incentives to support investment in Australian fintechs is necessary if Australia is to play on a global stage, effectively take on local/international incumbents and ultimately contribute to a robust economy for the future.

Australia has not seen the same level of investor interest in local fintech as it has globally. Many startups struggle to raise a 'Series A' venture capital (\$500k to \$5m) round, which would fund expansion.

At this stage deals are generally too small to peak the interest of international capital. The local pool of capital tends to be focussed on the property and loans market. More innovative tax structures for VCs is critical to the future of the sector.

2.18 Are there measures that can be taken to support the FinTech sector's ability to raise capital from other types of institutional investors (e.g. superannuation funds)?

Members suggested that Singapore provided a good example of best practice in this space, offering large tax credits to incumbents putting together venture capital funds that encourage and develop the startup ecosystem.

Members noted that a severe lack of proper angel investment is making it extremely hard to keep talented startup founders and teams in Australia. It was noted that angel investing is a niche skill that requires a large network, solid educational partners and sourcing partners. It was suggested that more work should be done to foster an educated angel network across Australia and more incentives should be provided to corporates to encourage them to work with startups on viable business solutions.

There is also a need to consider the grants offered by government. Grants focus on a particular industry – agriculture, infrastructure, energy etc. – and not on the underlying technology. As a result, many pure technology companies are ineligible for grants and other funding as they do not fit the specific funding bracket offered. Further these grants are typically supply side focused rather than demand side meaning that they are not always matched with the need for government assistance. As a result the available capital does not seem to reflect the industry it is trying to support.



FinTech Australia

Recommendation: Government should consider its grants program and fund ideas and technology which build underlying infrastructure which can be applied across industries.

In relation to access to loans, FinTech Australia members are supportive of the Australian Business Securitisation Fund (“**ABSF**”). The stated policy objective of the ABSF is

“SMEs are a key driver of activity and growth in the Australian economy. ...

However, there are concerns about SME access to finance, the interest rates charged and the terms on which they can access finance. New and quickly growing businesses are more reliant on external finance compared to large and established businesses, but they are finding it more difficult to access. This can hamper the growth of SMEs, prevent the formation of new SMEs or lead to the failure of SMEs, which has significant ramifications for the wider Australian economy.

...

There are also concerns about the terms SMEs have to accept when they are able to access finance.

...

There are also concerns regarding the interest rates charged on SME loans.”¹⁰¹

Wholesale funding costs are highest for the unsecured small business loan asset class.¹⁰² This is essentially because that asset class is relatively new and, hence, lacks the data necessary to demonstrate a credible loan performance track record. The ABSF attempts to address this temporary market failure by providing lower cost wholesale funding, lenders will be able to offer lower interest rates to customers, attracting more customers and building up the data required to demonstrate a credible loan performance track record. We believe that this will accelerate capital market acceptance of the small business unsecured loan asset class by several years.

However the AOFM has taken longer than anticipated to implement the regime and has indicated during information sessions in Sydney and Melbourne in late July, that they have no initial intention of making allocations to the asset class for unsecured small business loans.

¹⁰¹ *Australian Business Securitisation Fund Bill 2019 – Explanatory Memorandum*, https://treasury.gov.au/sites/default/files/2019-04/ABSF-Bill-Explanatory_Memorandum.pdf, para 2.1-2.6.

¹⁰² *Australian Business Securitisation Fund Bill 2019 – Explanatory Memorandum*, https://treasury.gov.au/sites/default/files/2019-04/ABSF-Bill-Explanatory_Memorandum.pdf, para 2.11 – 2.17.



FinTech Australia

This is despite evidence that the areas where access to capital is most needed is in the unsecured small business lending space.

FinTech Australia members have raised concerns that if the AOFM proceeds with this proposed implementation, it will assist incumbents and will not assist fintechs to either provide or access capital. This may create a perception of lack of confidence or trust by the Government in unsecured small business lenders – the majority of whom are ‘fintechs’. This may have a flow on effect of reducing public trust in the fintech or ‘alternative lending’. In turn, this would have the unintended consequence of reducing the addressable market and increasing costs of acquisition, essentially reducing competition and choice in the market, which is contrary to the ultimate policy aim of increasing access to capital.

Recommendation: Ensure allocations from the ABSF are aligned with the government’s original and ongoing policy intent to provide finance to small businesses responsibly and in a timely way, facilitating funding to where the need is greatest: for unsecured small business lending.

Recommendation: The approach to year 1 allocations as set out during the ABSF information sessions be closely reconsidered, with a view to ensuring that unsecured small business lenders are included.

FinTech Australia supports the proposal to create the Business Growth Fund. While SMEs appear to be the focus, startups and fintechs will inevitably apply for this scheme, as they are well suited to the criteria and are used to pitching for this kind of funding. We welcome any new funding initiative which will assist the industry to grow and create more jobs. As currently drafted, we see this plan stemming the gap between Series B and Series D, which sees companies go overseas for further funding. This keeps capital within the Australian ecosystem.

We also applaud the government’s foresight in bringing the banks together to fund startups and small business.

However we recommend that the policy metrics to access the fund be reconsidered. In particular, requirements that small businesses have 3 been profitable for 3 years are not aligned with the realities faced by the industry. For the most part, fintechs pursue growth over profit as scale generally leads to better returns down the line. As a result, they may not seem to be profitable due to ongoing investment in the business. This requirement also goes against what we expect to see with other venture-style funding arrangements. Funds typically like to see



FinTech Australia

strong revenue growth when investing but not necessarily early profits. Contrary to the fund's proposal, in some startup circles, early profits are actually an indicator of a reduced return down the line as pursuing immediate profit over reinvestment and rigorous testing can limit a company's ultimate scope and opportunity.

This doesn't rule out all fintechs and startups, as some pursue a combination of growth scale and profit. Sentiment in the sector is changing and some investors now look for profit as an indicator of success too. However alongside the other criteria it could limit the number of eligible businesses for this scheme.

In addition, other requirements that a startup may offer up to 40 per cent of their equity and require an exit strategy in mind are unlikely to be met by many in the industry.

Recommendation: The government consider the metrics to access the ABSF and ensure that funding can be accessed by startups who are pre-profit and at an early stage.

2.19 Is the R&D Tax Incentive adequately assisting companies in the FinTech and RegTech space? If not, how should it be reformed to encourage innovation in these sectors?

As set out above, the 2019 FinTech Census reports that tax related initiatives (including the R&D Tax incentive) are again considered the most important initiatives to grow and promote the fintech industry in Australia. As set out above, programs considered most effective from the perspective of Australian fintechs are:

- Making the R&D tax incentive more accessible (88% of fintechs considered this to be way of promoting and growing the Australian fintech industry);¹⁰³
- Reduction in taxes associated with hiring employees, such as payroll taxes (83% considered this to be effective);¹⁰⁴ and
- Capital gains tax relief for tech startups first incorporated in Australia (82% considered this to be effective).¹⁰⁵

¹⁰³ FinTech Census, p.29.

¹⁰⁴ FinTech Census, p.29.

¹⁰⁵ FinTech Census, p.29.



FinTech Australia

FinTech Australia is concerned by the government's recent trend to cut the R&D tax incentive budget. In the 2019 budget, the Federal Government announced a cut of \$1.35B in R&D tax incentives over the forward estimates.¹⁰⁶ This adds to a sum of more than \$2B that was effectively stripped from the previous budget.¹⁰⁷ As the R&D tax incentive is widely agreed to be the most effective investment in innovation in this country, cutting this budget will directly lead to a reduction in innovation. By removing this scheme Australian fintechs would no longer be able to make the investment required to build and monetise business.

In a report published on 12 December 2019 by the Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, includes 24 recommendations.¹⁰⁸ The Ombudsman noted in her media release that

"It is clear from our investigation that many small and family businesses rely on the R&DTI to help fund innovation,"

"That's why it is vital to have a transparent and predictable system that works for those businesses conducting research and development."

...

"Our report found there has been a shift in the interpretation of the R&DTI legislation, narrowing the focus and leading to more claims being rejected, particularly in the area of software innovation."¹⁰⁹

Recommendation: Government continue to fund the R&D tax incentive scheme and increase the budget allocation to this program.

In addition, some have noted that it takes too long for the cash to be received. The incentives currently available are not easy to access and require engagement of a 3rd party expert/accountant to be eligible. For example consultation on R&D claims consist of an upfront fee and some providers look to retain up to 50% of successful incentive claim. When coupled

¹⁰⁶ FinTech Census, p.35.

¹⁰⁷ FinTech Census, p.35.

¹⁰⁸ Australian Small Business and Family Enterprise Ombudsman, Review of the R&D Tax Incentive, December 2019 <https://www.asbfeo.gov.au/sites/default/files/documents/ASBFEO-RDTI-report.pdf>.

¹⁰⁹ Australian Small Business and Family Enterprise Ombudsman, Ombudsman recommends sweeping changes to R&D Tax Incentive administration, 12 December 2019, <https://www.asbfeo.gov.au/news/news-articles/ombudsman-recommends-sweeping-changes-rd-tax-incentive-administration>.



FinTech Australia

with the long application process to obtain the incentive it reveals that the way that the R&D tax incentive is implemented may need to be reconsidered.

This creates a sort of paradox. Unless a business is truly innovative/"disruptive", it is hard to obtain the R&D tax incentive. But the more innovative the business practice, the harder it is for the business to obtain the other necessary services required to start up a business, such as accessing banking services.

Despite the widespread support, FinTech Australia members suggested the implementation of R&D tax incentives could be improved. The system is not as easy to navigate as it should be even for established or large banks and fintechs. Working through the R&D application process has been described as a "costly challenge". Some members have noted that the complexity of the provisions and possibility of clawback is deterring R&D claims.

Feedback has also been received that the R&D incentive depends on the definition of "experiments". It was suggested that there may be a wider interpretation of "experiments" than current interpretation. This could contribute to building new and innovative services for the fintech sector. For instance, where new fintech services are created over the top of existing systems this may not be interpreted as "new or experimental" from an R&D perspective despite the unique technology or application of that technology. This is particularly apparent where fintech operates within long established financial infrastructure and ensuring that technological improvements to existing infrastructure are not negatively impacted under the R&D eligibility would drive research and innovation in the sector.

A key challenge of accessing the R&D tax incentive has been the restrictive view Innovation & Science Australia (I&SA) has taken towards the applicability of the R&D tax incentive to software development. Put simply, it has been our member's experience that I&SA does not view software development as innovative, rather innovation needs to occur in a petri dish. That is, there is a strong bias from I&SA towards 'laboratory based experiments' rather than innovation as it relates to software and data. This is especially challenging for fintechs whose business is built on software and data.

In addition, in recent years both I&SA and the ATO have taken a very aggressive approach to pursuing companies that are seeking to claim (or have claimed) the R&D tax incentive, including forcing companies to appeal a decision all the way to the Administrative Appeals Tribunal. This is a confronting experience for fintech startups who on one hand are reliant on the R&D tax



FinTech Australia

inventive as a source of funding, but do not have the funds or time available to pursue their claim. We have some members who have live matters before the AAT that have been going for up to five years. This is an unnecessary and resourcing consuming distraction, with many fintechs opting out of the R&D tax incentive altogether.

Recommendation: Explicit guidance be provided to clarify when and how the R&D tax incentive applies to software development in relation to fintech businesses.

Recommendation: Conduct a review of Innovation & Science Australia's conduct with regards to treatment of companies making a R&D tax incentive claim for software development.

Others have noted that there is “too much risk” to rely on the R&D incentives to fund business operations and receive a claim from the ATO.

Recommendation: Review the R&D tax incentive scheme to consider how the application process may be simplified.

Recommendation: “Experiments” in the R&D tax incentive scheme 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.

Recommendation: Allocate 15% of all fines levied by AUSTRAC to investing in fintech.

2.20 Are the existing visa settings for entrepreneurs and workers in the tech industry succeeding in attracting overseas talent into Australian FinTech and RegTech companies? Are changes needed to make this process more straightforward?

One FinTech Australia member noted that changes to 457 Visa regulations have had a significant impact on the talent available across all fintech roles, not just engineering but also product, marketing and customer experience, contributing to the shortage of talent needed to facilitate growth. Interestingly, there has been a slight decline in the proportion of fintechs indicating that easier access to the skilled migration visas would be effective in tackling



FinTech Australia

recruitment issues (66%, down from 75% last year).¹¹⁰ However, this by no means indicates that the industry does not feel this is a necessary policy. and members remain optimistic that the proposed changes to the skilled migration visas will improve access to skilled programmers and software engineers and thus help address persisting skill shortages.

Other changes which may be considered include reducing red tape for skilled international workers entering the country without first securing a role. This would increase the talent pool and could also significantly reduce the cost of sponsorship for fintech companies.

2.21 Is the FinTech Advisory Group meeting its goals? Could the group be doing more to assist the development of the industry?

FinTech Australia is supportive of the FinTech Advisory Group. The FinTech Advisory Group provides an important link to Government to have many informal/formal discussions about the regulatory and cultural framework required to ensure that fintechs have the right policy and regulatory settings to scale and grow.

2.22 How can public sector data be made more accessible and useful for FinTech and RegTech companies seeking to deliver innovative products and services?

FinTech Australia members call on government to:

- (1) Promote available datasets;
- (2) Grant access to additional datasets to test and build products; and
- (3) Allow and encourage fintechs to tender to provide services to government.

Certain government data such as through ABEARS and AIDC environment is already readily available and should be promoted. This will enable start-ups to test products using real, reliable data. It will also allow them to engage with the services provided by government and improve the relationship between industry and applicable government bodies.

One particular area which needs to be considered is access to information provided by ASIC for the purposes of conducting KYC, as noted in Part 1 “AML/CTF” above. For instance, in Australia the AEC (Australian Electoral Commission) provides exclusive use of electoral roll data to two companies: Equifax and illion. As a result, it costs \$1.20 to conduct this check. An equivalent electronic verification check in the UK costs £0.30. This reduces competition and increases

¹¹⁰ FinTech Census, p.21.



FinTech Australia

prices. Similarly, the costs to access documents regarding the beneficial ownership of a company, including with respect to its directors, its shareholders and possibly shareholders and directors of any shareholder itself, from ASIC registries are comparably high. Equifax and Illion charge between \$10-20 for this information. As this is held in government registries some have expressed a view that it should be more readily and cheaply made available.

Recommendation: The AEC should provide access to electoral role information to all companies that pass their own security verification to facilitate KYC checks.

Recommendation: Data from government agencies, such as ASIC, should be available to multiple service providers to increase competition and decrease costs of accessing government mandated information.

Recommendation: Follow the model set by Companies House in the United Kingdom and provide free access to information regarding company directors and shareholders held by ASIC.

FinTech Australia members noted that there are specific data sets they would like to access to test products including data produced by the Australian Tax Office and identity data. Another type of government held data which should be more readily available is information regarding companies. Following the model set by Companies House in the United Kingdom, FinTech Australia member suggested that access to information regarding company directors and shareholders held by ASIC should be free. Making this readily available would assist with conducting KYC checks. It was noted that ASIC could still charge for other information regarding companies it holds such as historical company details and forms lodged with ASIC.

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. It was noted that ASIC has had significant progress with its engagement in the RegTech space.



Integrating FinTech and RegTech solutions across the economy

2.23 In addition to traditional financial services, which sectors of the Australian economy could benefit most from the integration of innovative FinTech and RegTech technologies? Why?

Whilst not necessarily outside the financial services space, many opportunities are emerging in insurance and superannuation. Adjacent to financial services, areas such as agtech and healthtech have been cited as clear avenues where technological innovation can improve delivery of services over both the short and long term. See Part 1 “CDR in Other Verticals” for further information.

2.24 Are there current examples of innovations in this area that the committee could explore during its inquiry?

2.25 What changes are required in order to create a better enabling environment for the transfer of technological innovations across sectors of the economy?

Customer and transaction information is a fintech company’s greatest asset. Financial and consumer data is a premium target for hackers, offering clear financial incentive for their malicious attacks. Keeping this data secure is a fintech company’s biggest responsibility. In addition to regulation specific to fintech, issues such as cyber crime will be a significant focus for new players in the technology space. This takes a complex and systematic approach that addresses all the elements of cyber security.

We have seen from recent major systemic compliance issues in the banking sector including with respect to AML/CTF, that existing financial crime risk management is broken. Failure to adopt appropriate IT systems was criticised in part. This indicates that there is increasing focus on the technology used to mitigate risks in financial services.

Traditionally, cyber security has been tested through penetration testing. This involves a checklist-based testing by companies with certified resources. However to quote Turing award winning computer science engineer, Dijkstra over 50 years ago “Program testing can be used to show the presence of bugs, but never their absence!”. More sophisticated cybersecurity



FinTech Australia

mechanisms may be used such as security researchers may investigate products and platforms more broadly.

Early investment into security can be a massive selling point for a fintech and give investors, partners, and consumers more confidence in the fintech ecosystem. As a new field, fintechs have an opportunity to embed security into their organisations and working culture from day one. Security can be built from the ground up. Sadly, fintechs sometimes see cybersecurity as an impediment as they do not have budget, do not understand where to start, do not know what to protect or who to trust or ask for help, etc. This makes achieving absolute security for new technologies extremely difficult and costly.

Recommendation: To build a trusted Fintech ecosystem, Industry and Government should come together to create a Fintech Cyber Security Working Group which can define minimum national approaches for Australian Fintech Companies based on recommendations from International Cyber Security Standards and guidelines.

In a recent speech delivered by APRA Member Geoff Summerhayes, he noted that breaches are inevitable and that this is acknowledged by the industry.

“[companies] appreciate the need to be ready to respond rapidly and effectively when your organisation’s information security defences are breached.

I say “when”, rather than “if” quite intentionally; not out of pessimism about the scale of the cyber threat, nor scepticism ... but because of APRA’s belief in the importance of organisations adopting an “assumed breach” mentality. In essence, it means acting on the basis that your information security defences will, at some point, be compromised by a cyber-adversary, and having the systems and experienced personnel available to repel the attack, re-secure the network and rectify any damage.”¹¹¹

The fintech sector, like the banking sector must be afforded the same treatment. With a shift in mindset fintechs should see security as a way to actually adopt speed and build trust with both users and regulators. The best way to handle this is to start thinking about security from the start and bringing security into the design of products.

¹¹¹ APRA member Geoff Summerhayes, *Once more under the (assumed) breach*, (Speech to CyBSA 2019 Cyber Breach Simulation Australia, (7 November 2019), <https://www.apra.gov.au/news-and-publications/apra-member-geoff-summerhayes-speech-to-cybsa-2019-cyber-breach-simulation>).



FinTech Australia

This can be supported by developing standards which can be adhered to so the overall sector can maintain its reputation and credibility. Implementing such standards may also limit the risk that one or two issues damage the sector's reputation.

Such cybersecurity and system must be provided alongside appropriate guidance and at a price that reflects the dangers posed by the technology and financial position of start-ups. This means that it can be appropriately implemented across the industry. Both the obligations and costs may scale as the business grows rather than require small companies to expend sometimes prohibitive costs upfront.

Recommendation: Mandate that companies only be required to retain data for the period of time that is necessary.

Some specific recommendations are that a company should only be required to retain data for the period of time that is necessary. Requiring a longer retention period could lead to increased security risk and could lead to a violation of underlying privacy principles.

Similarly, in relation to breach notification, it was suggested in consultation that a risk based approach should be adopted and that any time for reporting should be subject to a "reasonable timeline". In particular, some cautioned that wherever possible legislation should consider the breadth of what constitutes a breach and avoid anything that may be too broad. To protect businesses, government should consider whether a "safe harbor" concept similar to the cybersecurity law in Ohio should be implemented. This provides businesses with a defence if they had an appropriate cybersecurity framework in place prior to the breach.

2.26 Noting the lengthy sales cycle (approximately 2 years) for RegTech products to be adopted by companies, how can government assist emerging RegTech providers to ensure that this time lag does not preclude innovative technology solutions from being brought to market?

Fintech, like regtech suffers from the same predicament that businesses it is selling to do not have the same time imperative. As noted above, businesses are locked out of government procurement processes if they have less than 3 years of financial data. Similarly, it may take up to –(or in some cases exceeding) 12 months to enter into a contract with an incumbent.



FinTech Australia

Considering that 50% of businesses fail in the first 2 years, this time lag is a significant problem for the industry.

2.27 How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia?

Following the Queensland model of creating a Chief Entrepreneur and encouraging development initiatives all over the country including in rural areas might assist to foster a nation-wide approach to innovation. See response to 2.5 above.

Technologically driven wealth management services have the potential to improve access to services and thus the financial position of regional Australians and people with physical or mental disabilities. Regional Australians and people living with a disability have traditionally been isolated from receiving good personal investment advice. 'Robo-advice' breaks these barriers with:

- (1) online access
- (2) low costs to invest and fees because technology automates the expensive 'human' functions
- (3) licenced financial advisers who are required to comply with the same level of obligations under the Corporations Act as any other advisor.

To paraphrase the views of one member, this contributes to the democratisation of money and wealth.

Global comparisons and investment

- *United Kingdom*
 - *Singapore*
 - *Australia's international FinTech agreements*
- Questions

2.28 What learnings and opportunities can Australia glean from international FinTech and RegTech industries?

As noted above, the FCA is renowned in the fintech space for transparency and efficiency and, as such, has contributed to the explosion of fintechs (in both number and value) in the UK. The



FinTech Australia

FCA and UK government significantly invest in the fintech industry. As noted above, so far 118 businesses have been accepted into the Regulatory Sandbox¹¹² and the Department of Trade and Investment is promoting UK fintechs at international conferences. This shows a commitment to fintech not just as a solution at home but an export to the world - a true new part of the economy.

Other jurisdictions we look to include Singapore and Israel. Each of these is seen to have more favourable ecosystems for fintech particularly in the testing phase.

An example of the contrasting approaches to financial services regulation between Australia and Singapore can be seen in the approach to, and success of, the respective 'regulatory' sandbox initiatives in those countries. The regimes appear to share a common framework, including:

- prescribing specific legal and regulatory requirements which the sandbox entity will otherwise be subject to, for the duration of the sandbox.
- including appropriate safeguards to contain the consequences of failure and maintain the overall safety and soundness of the financial system.

requiring the sandbox entity, upon successful experimentation, to fully comply with the relevant legal and regulatory requirements. However, there is more flexibility in the design and implementation of the Singaporean sandbox system, including:

- a greater capacity for a variety of products to be eligible for the sandbox regulatory relief, which is assessed on a case-by-case basis by MAS based on risk assessments;
- more certainty and timing of delivery of the relief, with two streams available - general or express - with the 'express' model having been specifically designed to allow new entrants to get their offering to market more quickly, within the framework of a pre-defined sandbox, without going through the existing sandbox application and approval process.

Another initiative that the Australian government can consider is the API Exchange ("**APIX**"). This is an initiative of the ASEAN Financial Innovation Network (AFIN), a not-for-profit entity that

¹¹² FCA, *Regulatory Sandbox*, <https://www.fca.org.uk/firms/regulatory-sandbox>, published 11 May 2015, last updated 23 October 2019, accessed 2 December 2019.



FinTech Australia

was jointly formed by the MAS, the World Bank Group's International Finance Corporation (IFC) and the ASEAN Bankers Association.¹¹³ The purpose of this is to

“help market players connect with one another, design experiments collaboratively and deploy new digital solutions.”¹¹⁴

It focusses on connecting fintech businesses, allowing them to collectively design and test digital solutions and deploy new digital solutions.

2.29 What innovations from other countries could have a positive impact on the Australian FinTech industry?

As noted in 2.3, 2.4 and 2.28, Australia should look to the example set by the UK in assisting and promoting fintech.

2.30 Are there any pitfalls Australia can avoid in growing its FinTech industry by learning from international experience?

Australia has a fine balancing act when designing standards and regulation. On the one hand FinTech Australia members cautioned against developing isolationist technical standards. On the other, members highlighted the importance of considering the requirements for Australia from first principles and not just blindly following overseas regimes such as GDPR. In relation to GDPR, specifically, there is a view that this may be considered sufficient. Instead of accepting this, it is important to consider whether that is the case in light of its own context and whether it may be sufficient to achieve the aims in Australia. We should always conduct our own fulsome review. Whatever is proposed needs to work for the Australian economy as a whole.

Thank being said, data privacy and security has been identified as a key area of focus for neobank and FinTech Australia member Volt. Volt believes that this should be equally important for the sector. Privacy and security implemented overseas under GDPR, PSD2 and

¹¹³ Monetary Authority of Singapore, *API Exchange (APIX)*, <https://www.mas.gov.sg/development/fintech/api-exchange>.

¹¹⁴ Monetary Authority of Singapore, *API Exchange (APIX)*, <https://www.mas.gov.sg/development/fintech/api-exchange>.



FinTech Australia

PCI DSS compliance arrangements are somewhat opaque. Further, these may not be applicable in Australia. Better advice on compliance and access to resources will undoubtedly help the sector remain resilient and competitive.

In addition, when examining appropriate taxation regimes, it may be worth considering R&D incentives from places such as Europe and the UK. Similarly, it is worth considering the taxation regime in Singapore. Each of these systems is different but assists to grow the ecosystem.

2.31 How can Australia take advantage of its geographical proximity to the rapidly growing markets in the Asia-Pacific and increase its financial services exports in the region?

Australia has a unique position within the Asia Pacific region with deep global ties to established economies around the world such as the UK and USA. However FinTech Australia members who work across South East Asia feel that Australia is not fully capitalising on this position. More should be done at the federal government level. In particular, FinTech Australia is supportive of efforts by the Department of Industry, Innovation and Science to establish industry growth centres as a means to drive cultural change and overcome barriers to innovation, productivity and growth. In particular, they play a key role in improving international opportunities and market access.

To ensure that fintech and regtech initiatives are fully supported, FinTech Australia recommends that a growth centre for these industries should be established. Whilst there is a growth centre for cyber security, fintech and regtech extends far beyond this. Similarly, collaboration between Other areas of growth centres focus on traditional industries. For a program which is innovation focussed to not include these new sectors of innovation is a missed opportunity. Establishing such a growth centre would allow Australia to compete on a global scale, linking our initiatives with the entrepreneurs program, global innovation linkages and SME export hubs initiative.¹¹⁵

Recommendation: Establish a growth centre around fintech and regtech as an engine to drive Australia's ability to compete on a global scale to attract and foster innovation.

¹¹⁵ Department of Industry, Innovation and Science, *Industry Growth Centres*, <https://www.industry.gov.au/strategies-for-the-future/industry-growth-centres>, 10 December 2019.



FinTech Australia

2.32 What measures can the Australian Government take to directly support FinTech businesses seeking to expand internationally?

The Australian government should recognise the value in an innovative financial sector. As an industry with transferrable global skills, from a highly respected market, by supporting this emerging sector, Australia has the potential to become a global leader building a new industry that can be readily exported. Domestic initiatives such as the CDR can assist, but care must be taken to ensure that Australian initiatives remain aligned with initiatives around the world to enable technology to be used across multiple jurisdictions and to allow Australia to become market leaders.

Further support is also required from AUSTRADE. Feedback received from FinTech Australia members noted that the amount of assistance offered by AUSTRADE was far less than the amount required to answer the relevant questions or indeed to travel overseas.

Recommendation: Review support provided by AUSTRADE and consider whether funding provided is sufficient and effective.

FinTech Australia is encouraged that the state governments are investing in and promoting the fintech industry internationally. The scalable nature of technology means that the fintech industry easily translates into a strong export market. However further collaboration between the states is necessary. Without this, we risk fragmenting the industry and may detract from the opportunities available to Australia as a whole.

UK Australia FinTech Bridge

Since signing, the FinTech Bridge has been successful in supporting companies expanding in both direction between Australia and the UK but there is more work to be done. The FinTech Bridge Program was launched in April 2019 by the UK Department of Investment and Trade (“DIT”) offering a cohort of 10 UK based financial technology companies a programme of tailored, structured support for entry into Australia. The program enabled DIT to test a support framework and substantiate understanding of market access barriers with a view to creating a scalable blueprint for expansion of fintechs in both directions.

Recommendation: The FinTech Bridge should offer equal support to Australian companies entering the UK and UK companies entering Australia.



FinTech Australia

Since its establishment, visibility of the Bridge has improved but a lot of work remains to articulate the offering from government to businesses, and maximise the impact and number of high-potential businesses reached. There have also been suggestions that the FinTech Bridge should offer equal support for Australian companies entering the UK as UK companies entering Australia. Certain FinTech Australia members noted that they believe the current FinTech Bridge operates to inhibit the growth of local fintech firms. As the Australian fintech industry is relatively young, most newer Australian fintech firms are not yet well positioned to enter the UK market. On the other hand, as the UK fintech market is mature, UK fintech firms are in a position to enter the Australian market. This forces newer local firms to compete with more mature, established UK firms entering the Australian market using the UK-Australia FinTech Bridge.

The following have been identified as areas for future collaboration between Australian and UK governments:

- Visibility of offering and availability of practical support from both State and commonwealth governments to ensure that the right partnerships are in place for the Bridge to deliver for industry.
- Regulation – in particular issues such as resourcing, time to obtain licences, and general market openness have been identified and it has been suggested that there may be potential for “high potential” businesses to be ‘prioritised’.
- Infrastructure – this relates to access to infrastructure such as the NPP, banking services and issues such as digital identity which are key to the fintech industry’s success.
- Policy - including data laws, incentives, capital raising, visas.

Recommendation: In implementing the FinTech Bridge, the government should:

- (1) encourage coordination between industry participants;***
 - (2) build on existing private sector engagement and increasing its participation in and work with fintechs in Australia and the UK;***
 - (3) help businesses understand the value they can get from involvement;***
 - (4) centrally coordinate Australia’s efforts including by appointing specialists);***
- and***
- (5) allocate specific budget to support FinTech Bridge activity.***

FinTech Australia members have been particularly impressed with the UK government’s broader ‘fintech bridge’ agreements with nations other than Australia which build closer and stronger collaboration between governments, financial regulators and the fintech industry.



FinTech Australia

They would like to see more similar programs in the fintech space designed to bring talent to Australia, and to offer opportunities for expansion. Indeed the 2019 FinTech Census revealed tapering interest in government initiatives focussed on supporting overseas market entry.¹¹⁶ This may appear to indicate that Australian fintechs are less interested in overseas programs. However FinTech Australia members and other Australian fintech's have indicate to the UK's DIT that the government's tapering interest does not reflect the interest of fintechs in exploring overseas opportunities. Indeed the absence of the Australian government at the FinTech Festival Singapore in November 2019 was noted by FinTech Australia members who attended as part of the delegation for the UK Department of Investment and Trade. This was particularly apparent as the International Zone included representatives from the UK and New Zealand as well as other Asia, European and Middle Eastern countries.

2.33 Should Australia seek more formal international FinTech agreements? Are there particular countries that Australia should look to for partnership?

Following the successful establishment of the Fintech Bridge with the UK, Australia should look to establish similar programs with other jurisdictions with robust, equivalent regulatory regimes, who champion innovation and with whom we have strong relationships. In particular, we should look to establish such a relationship with the Monetary Authority of Singapore. Our geographical proximity, equivalent regimes and history of collaboration between regulators (for instance through passporting of foreign financial service providers) make it an ideal candidate for collaboration.

Recommendation: Enter into a FinTech Bridge style relationship with other APEC countries, with equivalent regulatory regimes, such as with the Monetary Authority of Singapore.

¹¹⁶ FinTech Census, p.31.



Section three: Other areas for consideration

Superannuation

There are structural and cultural reasons why we have not seen a great deal of innovation in the superannuation sector to date. These reasons are on top of the regulatory constraints that also exist in the system. FinTech Australia believes that these structural and cultural matters are more detrimental than the regulatory challenges when it comes to kickstarting much-needed innovation in the superannuation sector.

Cultural Drivers

To begin with, the cultural drivers for innovation and disruption do not exist, to a large degree, inside of the superannuation sector. Given the findings of the Productivity Commission report, superannuation funds should arguably be driving innovation aggressively, however, this has not been the case.

If cultural innovation does exist, it is inward 'innovation' with respect to investment products and asset allocation only, which has little bearing or interest to the average Australian. Investing theses by superannuation fund CIO's makes for great coverage in the AFR, but it does not increase their members' engagement with superannuation, or improve their knowledge around being self-sufficient come retirement. As superannuation funds focus on investing, they find themselves increasingly disconnected from their member base, who are increasingly illiterate in this area.

This has a serious impact on the ability of all Australian's to take seriously the need to insulate themselves financially for retirement, both with superannuation and other savings, and will significantly impact the government and future taxpayers over time. Superannuation funds need to reimagine the customer experience. This requires a refreshed and open mindset that does not seem to be native to the large funds.

While many superannuation funds acknowledge they need to address this, many are not equipped to redesign this experience. If innovation teams do exist inside of superannuation funds, they are small and under-resourced, and do not achieve significant buy-in at the C-Suite level to implement innovative programs, or make direct investments. CIOs are also not interested in small direct technology investments. Nearly all superannuation funds lack the



FinTech Australia

sophistication and maturity of banks in the fintech space, who all run corporate venture arms, and think of VC as an asset class to invest in.

Structural Drivers

Industry superannuation funds are the leading investors (LPs) in nearly all of Australia's VC funds. It would make sense for these superannuation funds, knowing their own internal issues with innovation, to make investments in startup super funds and innovation via these VCs. Unfortunately, they often actively block such investments, citing the 'for-profit' nature of superannuation startups as out-of-step with their philosophy . This makes funding for a high-risk, capital intensive startup venture impossible for superannuation funds. Further still, VCs are not always interested in taking steps which are not aligned to these funds. Unless a startup venture can raise capital from high net worth or offshore investors, there is almost no road to achieve scale or bring innovative solutions to market.

Both these cultural and structural issues severely hamper the ability for startups to exist and compete. This leaves a vacuum in the market, with very few well-capitalised startups able to offer better products and superannuation experiences to Australians. As a result, the government and the entire economy loses. As a result of this dynamic, offshore entities arrive to fill this gap, to the detriment of the Australian innovation sector and our economy.

The Australian government is in a position to directly sponsor and fund superannuation innovation. When rolling out the Medicare Easyclaim system, the Australian government provided grants to fintechs Tyro and Touch Holdings to develop these services in part as the incumbents were not investing in this space. These grants enabled competition in this sector, delivering a solution which was needed by all in the medical system.¹¹⁷

Superannuation funds could be called upon to contribute a portion of member funds into this innovation pool if they could not demonstrate how they were funding their own innovation, and achieving real results. This could push super funds to actively invest, or change their behaviour as LPs with VCs, thus resulting in the minimal expenditure by the government.

The government needs to send a message to the industry that it is time to invest in ailing technology and to leverage the rich data now available to improve member outcomes via better

117

<https://www.theaustralian.com.au/business/technology/government-injects-48m-to-support-troubled-easyclaim/news-story/9f61c642b3bc83e4dd4eb9ce6959cdab>.



FinTech Australia

digital experiences. We need to ensure this innovation happens both in and out of house, to avoid self-imposed delays, to encourage competition and build a thriving ecosystem that better prepares the economy for the future.

One such structural matter to be considered is the need to promote comparison between superannuation, benchmarks and other disclosure requirements should be standardised. Prudential Standard SPS 515 Strategic Planning and Member Outcomes (“**SPS 515**”) requires a registerable superannuation entity licensee (“**RSE**”) undertake a holistic business performance review to determine whether its decisions support a forward-looking approach in assessing whether they are delivering quality outcomes to its members. The review is undertaken across operations, services and product offerings and includes analysis of performance, including benchmarking net returns, fees, insurance and an outcomes assessment to be reviewed by APRA. These benchmarks are not defined.

To achieve optimal outcomes for members, the regulation must provide a reporting and data taxonomy that is able to be consistently applied across the sector. This will ensure that APRA and ultimately members achieve a 'comparison' rate / scorecard that can be assessed across all products. As evidenced by the introduction of SuperStream, RSEs and the broader industry may delay or maintain information asymmetries with disengaged members with strong guidance. The result will be government via APRA being the trusted 'source of truth' on the performance of the sector

As with SuperStream, when industry participated and drove adoption of e-commerce standards across the sector, universal participation was achieved. Benchmark data is very similar in that access and demand will be driven by innovation and private enterprise participation to securely access and disseminate the information to the industry, employers and members. It is not reasonable to expect that members will be likely to make informed decisions through government portals such as MyGov alone.

E-invoicing

The Australian government should do more to promote e-Invoicing. The Prime Minister mentioned in a press release that Australia could save \$3B a year if just 15% of businesses did e-Invoicing. They are progressing with making e-Invoicing available, but once it is here, there



FinTech Australia

doesn't appear to be a mechanism in place to let the average business owner know.¹¹⁸ The New Zealand and Singapore governments also see the value of e-Invoicing and have budgeted to support an awareness campaign. We would like to see the Australian government have a small amount of money set aside to promote the e-Invoicing concept.

Recommendation: The Australian government promote the concept of e-Invoicing and the savings it can bring to Australia.

Trust for SME's

The regulatory, cybersecurity and data protection environment has never been more demanding for business, especially SMEs, yet (until now) there have been no meaningful or affordable ways to mitigate their risk so as to power growth. Governments around the world talk about stimulating economic productivity through SMEs but rarely do we see adequate support to match the rhetoric. Financial Services and fintech SMEs are prime examples of businesses in desperate need of building trust, and so we hope the government are open to exploring new and innovative ways of delivering relevant education, assessment, remediation and certification tools to an industry in need.

Trust Accounts and Client Money Rules

An AFSL holder must deal with application money in accordance with the client money rules in Part 7.8 of the Corporations Act.¹¹⁹ Among other things, this includes a requirement to pay client money into an account that meets the requirements of s981B, which for us means a designated trust account with an Australian ADI. This requirement makes it difficult for fintechs to use off the shelf services from fintech payment services like Stripe, Assembly Payments and others as these providers are not ADI. It seems to us that amendment to the Corporations Regulations (r 7.8.01(2)) to permit accounts with a broader range of AFS licensees (rather than just ADIs) would be beneficial to us, and fintechs wanting to provide these services.

¹¹⁸ *Joint Statement by Prime Ministers the Rt Hon Jacinda Ardern and the Hon Scott Morrison MP, 22 Feb 2019*
<https://www.pm.gov.au/media/joint-statement-prime-ministers-rt-hon-jacinda-ardern-and-hon-scott-morris-on-mp>.

¹¹⁹ Corporations Act, part 7.8.



FinTech Australia

Document Execution

The Corporations Act provides that a person may assume that a document has been duly executed by a company if the document appears to have been signed in accordance with section 127(1) of the Act. Financiers almost invariably draft their documents for companies to execute in accordance with that section so that the financiers can take the benefit of the “due execution” assumption signed-in the Act. But if a company is to sign a document electronically, it is unable to rely on the assumptions in 127(1) of the Act. Although legally, this does not mean a contract cannot be signed in this way, it does give rise to uncertainty as to the validity of a signature. For several years, this uncertainty has constrained financiers’ adoption of online channels for contract formation when dealing with companies. This is further compounded in the case of deeds which require that a deed be signed, sealed and delivered. This requires it to be signed on paper, meaning a deed signed electronically is invalid. The invalidity of these signatures is to the detriment of the growth of the online finance industry generally, including fintechs.

Recommendation: Commonwealth and State Governments extend the applicable Electronic Transactions Acts to allow:

- ***companies to sign electronically under section 127 of the Corporations Act, and counterparties to rely on assumptions; and***
- ***deeds to be signed electronically.***

To ensure that this is enacted appropriately government should consult widely prior to implementing such an amendment.

Bank Account Closures

There is evidence that banks have relied on discretionary powers in the terms and conditions to close bank accounts of fintech companies. This is particularly apparent in the case of remitters and others providing money transfer services. The ACCC’s report regarding remittance in July 2019 found that this conduct was reducing competition. The ACCC has recommended the development of a due diligence scheme through which non-bank remitters can address and comply with due diligence requirements to allow them to provide services.¹²⁰ The ACCC is

¹²⁰ ACCC, *Foreign currency conversion services inquiry*, July 2019, https://www.accc.gov.au/system/files/Foreign%20currency%20conversion%20services%20inquiry%20-%20final%20report_0.PDF.



FinTech Australia

currently consulting on this and FinTech Australia looks forward to receiving the results of this consultation.

Conclusion

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions:

- Baker McKenzie
- Cornwalls
- DLA Piper
- Hall & Wilcox
- King & Wood Mallesons
- K&L Gates
- The Fold Legal

FinTech Australia members

Some FinTech Australia members who have contributed to this submission include:

- Paypa Plane is a payment technology company serving banks, small and medium-sized enterprises, large enterprises and consumers. They are a cloud-hosted platform that works over merchant services and bank account payment facilities.
- Startupbootcamp is one of the world's largest startup accelerators, operating in 21 cities around the world. They are currently focused on energy and fintech.
- Prospa leverages financial technology to provide better access to finance for small businesses. This has flow-on benefits for Australia's economy. Specifically, small



FinTech Australia

business owners use financing to build, run and develop their businesses. This can lead to job creation and to growth in Australia's GDP. The RFI Economic Impact Report¹²¹ found that for every \$1 million in lending by Prospa, 57 full time equivalent positions are maintained.¹²² Additionally, the RFI Economic Impact Report found that for every \$1 million in lending by Prospa, there is a corresponding \$4 million increase in Australian GDP.

- Longevity App is a superannuation focussed micro-savings platform that is dedicated to bridge the retirement gap that exists for many Australians, one cent at a time. Longevity App allows users to significantly boost their retirement balances with a little extra whenever they spend through a linked bank account.
- OnDeck was established in Australia in 2015 to solve a major issue facing small businesses: efficient access to capital. OnDeck is a joint venture between NY listed OnDeck Capital Inc and Melbourne-based business management solution provider MYOB.
- Link4 was designed to automate the invoice process for SMEs with e-Invoicing. Allowing invoices to be sent instantly to/from Xero, MYOB, QuickBooks and more, helps SMEs improve cashflow, reduce errors and become more efficient.
- Reinventure Group is an independent early stage venture capital fund founded in 2015, and focused exclusively on fintech and adjacent technology investments across Australia and the Asia-Pacific region. With \$150m under management for its limited partner, Westpac Banking Corporation, the fund has made 31 investments to date, including Society One, Assembly Payments, Basiq, Data Republic and Indebted. Reinventure Group was a founding member of Fintech Australia.
- Intuit uses Artificial Intelligence to solve our customers' most pressing problems.
- In just over 3 years Brighte has approved 36,000+ homeowners and invested \$302m+ into Australian homes and businesses. Brighte has created Australian jobs and enabled small businesses to grow.
- Stockspot was the first is an online investment adviser and portfolio manager (robo adviser) to launch in Australia in 2014. Stockspot uses technology and algorithms to automate many of the tasks and processes a traditional (human) investment adviser does to provide investment advice and manage client money, making investing easy and low cost. Clients get access to expert personal investment advice, a diversified portfolio based on proven investment strategies and an online investment dashboard that shows

¹²¹ This refers to a recent independent study conducted by RFI Group and the Centre for International Economics on behalf of Prospa. See full report here: https://howto.prospa.com/rs/317-LRS-411/images/PRO028_EconomicImpactReport_FA03_Digital.pdf.

¹²² The Economic Impact of Prospa Lending to Small Business, RFI Group and The Centre for International Economics, January 2019, p4.



FinTech Australia

them how their investments are performing against their goals and exactly what they are invested in.

- Ezy pay provides a service enabling subscription payments.
- Entersoft Security is a global-award winning application security provider with a focus on helping businesses across fintech & Blockchain. With a team of elite Offensive Security Certified Professionals Entersoft provides highly cost effective solutions to the most pressing problems in Application Security. Entersoft is recognised by many global organisations such as United Airlines, Microsoft, Lenevo, Blackberry, Dropbox, Yahoo, Western Union, etc. for responsible disclosure of security vulnerabilities in their applications. Entersoft is an ISO27001 accredited organisation and the team hold certifications such as OSCP (Offensive Security Certified Professional), CRT (CREST Registered Test), CPSA (CREST Practitioner Security Analyst).
- Biza.io helps Data Holders and Data Recipients work together in preparing for, deploying, integrating, testing, validating and reaching compliance within the technical framework established for the Consumer Data Right. Biza's customers are businesses developing innovative product offerings enabled by the CDR for the benefit of the Australian consumer.
- TransferWise is a money transfer company with a mission to bring fairness, transparency and lower prices into our sector. Its core business is to offer convenient, transparent and fair services to customers who wish to move their funds internationally. It launched in 2011 in the UK (their HQ) and in Australia in 2015 and have over 6 million customers globally who move over A\$7 billion every month. In addition to its money transfer services, TransferWise provides a TransferWise account and debit Mastercard in Australia so consumers and businesses can now spend overseas with the real exchange rate at prices that are up to 11x cheaper than the major banks. Australia is one of TransferWise's biggest markets.