The Senate

Select Committee on Australia as a Technology and Financial Centre

Second interim report

April 2021

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Recommendation 23

7.75 The committee recommends that the Australian Government consider mechanisms to improve visa administration, including faster processing times, and ongoing review of visa eligibility to ensure visa categories are adaptable and responsive to market changes in the FinTech and RegTech sectors.

Executive Summary

Overview

In the seven months since the committee last reported, Australia's economic recovery from the COVID-19 recession has continued apace, while the pandemic continues to accelerate the global uptake of emerging financial and other technologies.

Australia has a strong foundation for growth, with sound financial institutions, stability in governance, and innovative initiatives such as the world-leading Consumer Data Right. Australia's performance in dealing with the pandemic has positioned us well to attract new investment, skills and talent in high-tech growth industries.

The committee's interim report of September 2020 set out 32 recommendations designed to help Australia's FinTechs, and the technology sector more broadly, to grow and innovate through the pandemic. While the government has not yet provided a formal response to the committee's first interim report, a number of the committee' recommendations have been picked up in the October 2020 Budget and in subsequent policy announcements (for example, in relation to telehealth, Digital Identity and the Consumer Data Right).

In the second phase of the inquiry, the committee has examined further issues affecting the sector, leading it to make a number of recommendations. For this second interim report, the committee has again categorised its work across the key areas of: tax settings; regulatory issues; access to capital; and skills and culture. This report also includes a standalone chapter on blockchain and digital assets, which is an area that will be of continued focus for the remainder of the committee's inquiry.

Following this second interim report, the committee will undertake the final phase of its deliberations, which will focus on developing Australia as a technology and financial Centre. Particular areas of focus will be:

- further work on the regulatory framework for blockchain technology, cryptocurrencies and digital assets;
- the policy environment for neobanks in Australia;
- instances of corporate law holding back investment; and
- options to replace the Offshore Banking Unit.[1]

This second interim report makes 23 recommendations across the committee's areas of focus. These recommendations will strengthen the regulatory

[1] The Australian Government announced on 12 March 2021 that reform of the Offshore Banking Unit will be undertaken.

environment for FinTechs and innovative businesses in Australia more broadly.

Tax issues

The committee took evidence on several matters relating to Australia's tax settings in this phase of the inquiry, detailed in Chapter 2, and has made recommendations on the Research and Development Tax Incentive (R&DTI) and Australia's interest withholding tax regime in this report.

Research and Development Tax Incentive

In its first interim report, the committee noted the call for greater clarity and certainty in relation to the operation of the R&DTI for software development, and made two recommendations. The committee received further feedback on the R&DTI during this phase of the inquiry, with the majority of witnesses remaining strongly of the view that there is still a need for greater clarity around the eligibility of software for the R&DTI.

Options proposed to address this issue included: changing the existing legislation to clearly support software development as eligible R&D; allowing for multiple assessment methodologies to be utilised to give the scheme more adaptability and flexibility; or the creation of a new, software-specific R&D incentive. The committee is recommending that different assessment methodologies be allowed under the R&DTI scheme, and that consideration also be given to a standalone scheme for software development.

The timing of R&DTI payments was also raised with the committee, with the suggestion that payments be changed from annual to quarterly to assist with cash flow for businesses without increasing the overall cost of the scheme. This is a sensible measure that would provide important support to new startups.

Interest withholding tax

In relation to withholding taxes, the committee heard that these taxes are hindering Australia's international competitiveness. In order to access a diversity of offshore sources of funding, the committee believes it is time to act on the recommendation of the 2009 Johnson Report *Australia as a Financial Centre – Building on Our Strengths*, to remove withholding taxes: on interest paid on foreign-raised funding by Australian banks; on interest paid to foreign banks by their Australian branches; and on financial institutions' related party borrowing.

Regulation issues

Australia's regulatory environment for FinTechs and RegTechs is generally supportive, with several initiatives of significance underway such as the Consumer Data Right (CDR) rollout and Digital ID reforms. Several regulatory issues are canvassed in Chapter 3 of this report.

Consumer Data Right

While the initial CDR rollout has not been as rapid as some in industry would like, the scheme is nonetheless building steadily and has the potential to be transformational for the Australian economy as it continues to expand. Mr Scott Farrell's CDR *Future Directions* report has provided a valuable template for the CDR going forward.

Following the committee's initial recommendations relating to the CDR in the first interim report, the committee looked at several specific issues relating to the CDR in this phase of the inquiry and has made recommendations in three areas.

On the issue of interoperability with overseas data portability schemes, the committee has endorsed the recommendations of the Farrell review in this area and is recommending that the Australian Government vigorously pursue the establishment of international open banking standards, and the establishment of mutual recognition arrangements for accreditation between the CDR and schemes in other jurisdictions.

The committee is mindful of the potential for Big Tech companies to become involved in the CDR as data recipients. While the existing CDR Privacy Safeguards and protocols provide some assurance, the committee heard that the participation of these companies in the CDR may still raise a range of significant privacy risks, given the volume of data already held by these entities and their sheer scale and market dominance. The government needs to pre-empt any issues in this area by reviewing and publicly reporting on what additional rules or safeguards may be required in the event Big Tech firms seek accreditation under the CDR.

The committee also heard an interesting proposal for the CDR regime to incorporate prompts or behavioural 'nudges' to overcome consumer inertia and encourage individuals to actively compare and, where necessary, switch products. The committee is recommending that such mechanisms be incorporated into the CDR framework to help it achieve its objectives to encourage innovation and competition.

Big Tech platforms and app marketplaces

The committee took evidence on the way large app marketplaces, namely Apple's App Store and the Google Play Store, may be inhibiting competition for app developers. The committee considers that, pending any relevant findings from the ACCC as part of its Digital Platforms inquiry, the government may need to consider an access regime for app marketplaces to ensure that Apple and Google are not unfairly stifling competition in this space.

Use of government registry data

The inability of FinTechs to cheaply access relevant data from government registers to facilitate identity verification services was raised as a significant impediment by industry. FinTechs are concerned that accessing data from sources such as the AEC roll and ASIC registers for the purpose of facilitating identity checks is expensive and unwieldy, relative to the access regimes available in other comparable jurisdictions. The committee found that the government should review these arrangements and see whether any changes or improvements are necessary.

Rules as Code initiatives

The committee received strong evidence about the potential for a 'Rules as Code' approach to developing legislation and regulations to drive efficiency and spur innovation in the administration of the law and in service delivery. A range of research initiatives and pilot projects have already been undertaken in this area, and there is significant interest across industry, academia and government agencies in various Australian jurisdictions.

Key stakeholders in the Rules as Code and LawTech domains have urged that a government innovation hub for coding of legal rules, along with a regulatory sandbox to enable the implementation and assessment of results from this hub, should be created to help drive momentum in this area. The committee agrees that this concept should be progressed by the federal government.

Access to capital

Access to capital remains one of the core needs for emerging FinTechs and other companies in Australia. The committee's first interim report made recommendations to amend the Early Stage Innovation Company and Early Stage Venture Capital Limited Partnership schemes, as well as to introduce new Collective Investment Vehicle structures to Australia.

In this second phase of the inquiry, the committee heard evidence on a range of matters concerning access to capital, and has focused in Chapter 4 on some specific issues, namely: the role of trading plans for company founders; and the regulatory framework for company capital raisings as it affects retail investors in Australia.

Trading plans for start-up founders and US Rule 10b5-1

A number of witnesses commented on the operation of SEC Rule 10b5-1 in the United States, which allows company founders and insiders to set up a predetermined plan to sell company stocks without violating insider trading laws. The committee heard that establishing a similar mechanism in Australia, with some additional modifications and safeguards, will encourage promising companies to retain their operations onshore and pursue listing in Australia.

Reform to allow programmed trading by company founders has been proposed in Australia for many years, and the committee considers that it is time to introduce such a mechanism based on the approach taken in the United States, which takes into consideration the suggestions made to the committee.

Issues around capital raising

The committee sees the need to improve the regulatory framework around capital raisings, with data provided to the committee showing that only 13 per cent of recent capital raisings between February and November 2020 went to retail investors, with the rest going to fund managers and institutions.

The committee considers that increased transparency about capital raisings would put pressure on companies to act in the interest of all shareholders; for example, companies should be required to disclose to all investors, after a capital raise is completed, how the raising has been allocated and why it has been allocated in a particular way. Modernising the rights issuance system through the use of technology should also be pursued to help address the inability of retail investors to fully engage with raisings.

If these changes do not resolve these issues, the government should review the sophisticated investor definitions in the *Corporations Act 2001*, which witnesses before the committee have argued unfairly exclude some retail investors.

Blockchain and digital assets

The committee heard a range of evidence on blockchain technologies and the regulation of digital assets, which is discussed in Chapter 5.

Blockchain

Australia is at the leading edge in some areas of this technology frontier, with Standards Australia taking a lead role in the development of international standards for blockchain through the International Organization for Standardization Working Group. The Council of Financial Regulators Cyber Working Group is currently undertaking work to harmonise ASIC, APRA and Reserve Bank of Australia cyber requirements, and should liaise with Standards Australia to ensure that this work takes into account existing and emerging international data standards with respect to blockchain and smart contracts.

The federal government also released a National Blockchain Roadmap in February 2020, including 12 signposts for the period 2020-2025 to guide activity under the roadmap. The roadmap has been well received by industry and academia, and the committee considers it will be important to maintain the momentum that it has created, including through regular public reporting on implementation of the roadmap. As this is a quickly evolving technological

and policy space, the government needs to act flexibly and responsibly in relation to amending and updating the roadmap where appropriate.

The committee recognises the substantial potential for blockchain RegTech applications to improve and streamline administrative processes in both the public and private sectors. It is encouraged by the work already underway in this area, including with respect to public sector innovation. The committee was particularly impressed with the potential for blockchain to drive efficiencies in the area of land registries, and is recommending that this issue be further explored in the context of the National Cabinet.

The committee also noted concerns from submitters and witnesses about the uncertain status of blockchain-based 'smart contracts' under Australian law. The committee is recommending that the government consider how best to improve clarity with respect to the standing of smart contracts under Australian law as a matter of priority.

Broader policy framework for digital assets and cryptocurrencies

At a broader level, the committee recognises the clear appetite for improved clarity and certainty in the regulatory landscape applicable to digital assets, cryptocurrencies and related areas. While the committee heard extensive evidence on the need for such regulation, it heard less on concrete ideas for how this regulation should best be crafted.

As such, the committee will make this a focus of its deliberations in the final phase of this inquiry. The committee will examine more closely the application of capital gains tax to cryptocurrency transactions as part of these deliberations. It will also include closer consideration of emerging central bank digital currencies and stablecoins, including the Reserve Bank of Australia's work in this area.

Culture and skills

Chapter 6 of the committee's report deals with issues relating to culture and skills, focusing in particular on the need to attract global talent and skills to Australia and our visa settings in this area.

A number of submitters and witnesses highlighted the opportunities for Australia to position itself as a preferred destination for exceptional individuals and business in the tech sector looking to relocate. This is as a result of our successful management of the COVID-19 pandemic relative to many other parts of the world, as well as the current geopolitical events in Hong Kong presenting opportunities to attract talent and companies looking to relocate. Getting Australia's visa settings and other policy measures right has never been more critical to grow the tech sector and position Australia for a strong economic recovery.

Commendable government initiatives already underway in this area include: the global talent visa program; the establishment of a Global Business and Talent Attraction Taskforce; and enhanced arrangements to attract talent and businesses from Hong Kong, which the government announced in 2020.

The committee generally heard support for the approach of the global talent visa programs; however, some stakeholders suggested that certain elements were too restrictive, lacked clarity in some areas, and were not sufficiently flexible. Evidence also indicated that uncertainty around the timeframes and decisions for visa applications makes it difficult for Australian companies to attract highly skilled individuals in a competitive global market. It was also suggested that there should be more permanent residence options for employees of high-value businesses relocating to Australia. The committee agrees that as the global competition for talent intensifies, there is merit in reviewing these visa programs to ensure they are responsive to industry needs and that Australia stays competitive.

Submitters and witnesses also emphasised the importance of promoting and marketing Australia's Global Talent Scheme and the Global Business and Talent Attraction Taskforce. The committee sees value in the government reviewing its approach to the promotion of Australia as a destination for international talent in the FinTech and RegTech sectors, including focussed marketing in target jurisdictions.

The committee took some evidence in this phase of the inquiry on the implementation of the UK-Australia FinTech Bridge. The bridge is a bilateral agreement that was signed in 2018 and is designed to support FinTech companies in both countries by promoting collaboration and facilitating entry for FinTechs into each other's markets, especially by reducing regulatory barriers and allowing steps towards reciprocity on policy.

While opinions on the UK-Australia FinTech Bridge were largely positive, there was a view that it would benefit from greater visibility of practical outcomes, such as how the bridge arrangements can benefit businesses, and the process for companies to access initiatives under the bridge.

Chapter 1
Introduction

Introduction

1.1 On 11 September 2019, the Senate resolved to establish a Select Committee on Financial Technology and Regulatory Technology to inquire into and report on the following matters on or before the first sitting day in October 2020:

(a) the size and scope of the opportunity for Australian consumers and business arising from financial technology (FinTech) and regulatory technology (RegTech);
(b) barriers to the uptake of new technologies in the financial sector;
(c) the progress of FinTech facilitation reform and the benchmarking of comparable global regimes;
(d) current RegTech practices and the opportunities for the RegTech industry to strengthen compliance but also reduce costs;
(e) the effectiveness of current initiatives in promoting a positive environment for FinTech and RegTech start-ups; and
(f) any related matters.[1]

1.2 On 24 April 2020 the reporting date was extended from the first sitting day in October to 16 April 2021.[2]

First interim report

1.3 The committee tabled an interim report on 2 September 2020 which made 32 recommendations to government. At the time of tabling this report the committee has not received a government response.

Second interim report

1.4 As foreshadowed in its interim report, the committee has now turned its attention to the investigation of longer term issues. The committee has continued to consider issues under the broad areas of tax, regulation, capital, culture and skills, which are key to maintaining Australia's competitive position.

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1 *Journals of the Senate*, No. 14—11 September 2019, pp. 441-443.

2 *Journals of the Senate*, No. 49—12 May 2020, p. 1610. An extension pursuant to the Senate order of 2 March 2020.

Final report

1.5 On 18 March 2021, the Senate agreed to a further extension for the committee to present its final report until 30 October 2021. The Senate also agreed to a committee name change and revised terms of reference.[3]

Conduct of this phase of the inquiry

1.6 On 9 November 2020 the committee released a second issues paper calling for submissions by 11 December 2021. During this phase of the inquiry the committee received 87 submissions. A full list of submissions received by the committee during the inquiry to date is at Appendix 1.

1.7 The committee held three public hearings: on 11 and 12 February 2021 in Sydney, and on 5 March 2021 in Canberra. A list of witnesses who gave evidence is available at Appendix 2. Submissions and transcripts of evidence may be accessed through the committee website.

Structure of this report

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

- Chapter 2 looks at taxation issues, including the R&D Tax Incentive;
- Chapter 3 examines regulatory issues such as progress with the Consumer Data Right;
- Chapter 4 explores issues in relation to access to capital;
- Chapter 5 investigates blockchain and digital assets;
- Chapter 6 discusses issues relating to culture and skills; and
- Chapter 7 details the committee's conclusions and recommendations.

Acknowledgement

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

[3] *Journals of the Senate*, No. 96—18 March 2021, pp. 3366-3367.

Chapter 2
Tax issues

2.1 This chapter covers the key issues relating to tax which were raised with the committee during this phase of the inquiry. These include the competitiveness of corporate tax settings, the Research and Development Tax Incentive, interest withholding tax, employee share schemes, the Offshore Banking Unit regime, and patent box policies.

Competitiveness of corporate tax settings

2.2 The second issues paper sought views on Australia's corporate tax settings in comparison with other countries and how to reduce effective rates of taxation to promote investment in technology, noting that this may not necessarily require the headline company tax rates to be adjusted.

2.3 The Australian Investment Council (AIC) was of the view that '[r]eforming Australia's taxation regime is broadly considered to be the policy area with the greatest potential to reinvigorate Australia's economy over the long term'. Pointing to the 2010 Australia's Future Tax System (AFTS) review, the AIC noted that some of the key priority reforms set out in the AFTS review and other analysis of the tax system 'revolve around reducing the headline corporate income tax rate for all businesses to 25 per cent, a step that would deliver income growth for all Australians, and at the same time, lift Australia's competitive standing in the global marketplace for capital and talent'. This would form part of a broader strategy to shift the nation's 'tax mix' by 'reducing reliance on direct taxes – such as personal and corporate income taxes – and re-balancing towards greater reliance on 'user pays' pricing mechanisms and indirect taxes'.[1]

2.4 The Australian Financial Markets Association (AFMA) argued that the high corporate tax rate and high reliance on corporate tax as a revenue base 'hinders the ability of Australia to attract foreign investment'. This is:

> particularly important in the context of attracting foreign capital to fund innovation where a high corporate tax rate exacerbates the risk associated with investment in companies in their formative stages. While the corporate tax rate alone is not the only tax disincentive for Australia as a destination for foreign capital, it is clearly an area where we have been slipping and tangible improvements can be made…[2]

2.5 AFMA further stated:

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1 *Submission 12.2*, p. 5.

2 *Submission 47.1*, p. 2.

> To the extent that Australia's dividend imputation system operates as a withholding tax as opposed to a final tax, at least in terms of resident shareholders receiving franked dividends, there is a discrepancy between the headline corporate rate of 30% and the actual amount of revenue raised that is referable to corporate taxation. However, this discrepancy only exists in relation to domestic shareholders that enjoy the benefits of imputation, and not the non-resident investors whose capital Australia is seeking to attract. Equity investors into Australian companies may be effectively taxed both in Australia (through the underlying corporate tax paid by the company) and in their jurisdiction of residence, to the extent that dividends paid by the company are not exempt from tax. It is for these foreign equity holders, therefore, that the high Australian corporate tax rate is the greatest disincentive for investment.[3]

2.6 The Australian Finance Industry Association (AFIA) pointed to the Institute for Management Development's World Digital Competitiveness Ranking which 'measures the capacity and readiness of 63 economies to adopt and explore digital technologies as a key driver for economic transformation in business, government and society'. AFIA noted that in the 2020-21 results Australia was ranked 26 on 'government efficacy in relation to tax policy with a competitive tax regime ranking the lowest of all key attractive indicators for investment in the Australian economy'.[4]

2.7 In this context AFIA noted there is opportunity for reform and recommended reducing the current corporate tax rate of 27.5 to 30 per cent, noting Singapore's corporate tax rate of 17 per cent and Hong Kong where it is 16.5 per cent. While acknowledging the current environment with high levels of government debt, AFIA outlined a number of benefits:

- less profit shifting by multinationals;
- a greater flow of foreign investment into Australia to fund additional projects made viable by the reduction in the tax rate;
- the creation of jobs from the resumption of immigration with flow on effects to personal and consumption tax collections; and
- increased growth in GDP, with the increase in business activity and household consumption over time.[5]

2.8 KPMG pointed to a 2017 paper co-authored by KPMG and Treasury, *International Trends in Company Tax Collective Investment Vehicles*, which aimed to provide a cross-country comparison of corporate tax systems. It noted that in Australia:

> [t]he corporate income tax rate for a FinTech/RegTech company with an aggregated annual turnover of less than $50 million is 26 percent for the 2020-21 income year and will fall to 25 percent from 2021-22.[6]

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3 *Submission 47.1*, p. 2.

4 *Submission 87.4*, p. 5.

5 *Submission 87.4*, pp. 5-6.

2.9 KPMG noted that this rate 'ranks among the lower of those of the comparator countries examined in the above report'.[7] However, it cautioned that 'the headline corporate tax rate should not be considered in isolation from the effective tax rate borne by shareholders who are resident in the same country':

> For example, Australian resident shareholders may use the franking credit on a franked dividend to offset their tax liability on other income if their average tax rate is less than the company tax rate. In other countries, shareholders may pay tax on their dividend income at reduced rates that recognise to varying degrees that company tax has already been paid.[8]

2.10 KPMG also pointed out:

> In their early stages, companies may receive equity investment from a variety of sources and at different points in time. The business plan and products and services that the company is developing may also evolve to better fit a rapidly changing market. A company is currently only entitled to offset losses of an earlier year against profits of the current year if it can satisfy either a 'similar business' test or a 'continuity of ownership' test. These requirements introduce uncertainty for early-stage technology businesses, which can inhibit additional investment and innovation.[9]

2.11 KPMG suggested that the government could 'consider whether it remains appropriate to apply these tests to a company that is in its early stages of trading, or which has not increased its aggregated turnover beyond the $50 million threshold for the lower company tax rate'. It added that 'there should be a broader examination of whether this would be effective in reducing early-stage entrepreneurial risk across all industries'.[10]

2.12 FinTech Australia recognised that 'setting an overall favourable tax framework is key to business success', adding:

> If the 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.[11]

2.13 FinTech Australia took the position that the corporate tax rate is too high, particularly when compared to other countries such as Singapore. It noted a 2017 Treasury working paper which analysed the long term effects of a company tax cut. The working paper concluded that a corporate tax cut from

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6 *Submission 147.1*, p. 9.

7 *Submission 147.1*, p. 9.

8 *Submission 147.1*, p. 9.

9 *Submission 147.1*, p. 9.

10 *Submission 147.1*, p. 9.

11 *Submission 19.2*, p. 26.

30 to 25 per cent 'encourages investment, which in turn increases the capital stock and labour productivity'.[12]

R&D tax incentive

2.14 In the second issues paper the committee indicated its interest in ideas to further encourage R&D activities in Australia to assist the tech sector and drive growth in the Australian economy.

2.15 The committee heard again of the importance of the Research and Development Tax Incentive (R&DTI) for companies. For example, Canva is a Sydney headquartered technology company providing a design platform which told the committee of the importance of the R&DTI for its development:

> In the early days of creating Canva, there was less certainty that we could obtain sufficient and timely external funding to build the new features that would help us attract and retain a sustainable customer base. At that time Canva had investment interest from Silicon Valley venture capital funds, but most of those investors wanted Canva to move to the US before they were willing to invest. Canva's founders were committed to keeping Canva's headquarters in Australia and helping to grow the Australian technology ecosystem. We feel very fortunate to have had access to R&D tax incentives and the Commercialisation Australia Program that allowed Canva to be able to afford to remain headquartered in Australia and to hire and retain talented Australian employees. We were (and still are) creating exciting new knowledge in software technology and relied heavily on the Australian refundable R&D tax credits and grants from the Commercialisation Australia Program to fuel our progress. These initiatives played a critical role in allowing us to build a great company here in Australia – an opportunity we want many other companies to be afforded.[13]

2.16 Mr Alex McCauley, CEO, StartupAUS, emphasised that much of the R&DTI is used to create jobs:

> We know for a fact that dollars into companies from the R&D tax incentive are spent on jobs. Our research suggests that something like 85-plus per cent of dollars into firms from this incentive go to some kind of job and a very high percentage of those go to more R&D based software development jobs. When I say these firms are high growth, I mean that it translates directly to employment growth and most of that employment growth is in more people to build more products more quickly.[14]

2.17 This was illustrated by Canva:

> We had a vision of democratising the design industry by making design more accessible for everyone. To bring our ideas to life, we needed a strong team of highly skilled software engineers to perform the R&D necessary to

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[12] *Submission 19.2*, p. 26.

[13] *Submission 216*, p. 1.

[14] *Proof Committee Hansard*, 12 February 2021, p. 22.

> develop these tools. We've grown from two engineers in 2012 to hundreds today with roughly 90% of these engineers located in Australia. We've been reinvesting our [R&DTI] dollars into attracting more talent with a high priority focus on software engineers located close to home. We are proud to play a role in helping to grow the Australian technology ecosystem and to provide exciting, well paid careers to some of Australia's best software engineering talent. This would have been far more difficult to do without the support we received from the Australian government's technology support initiatives.[15]

2.18 Mr McCauley provided another example of a firm keeping R&D in Australia due to the R&DTI:

> We've had specific comments from founders of companies like 99designs. That is a Melbourne based company that moved its headquarters to the US at one stage, and then moved back here a few years ago looking at a future listing. In that whole transition, it kept its whole R&D team in Melbourne. One hundred per cent of its R&D was done in Melbourne, and the CEO, Patrick Llewellyn, specifically said the business reason behind that was the R&D tax incentive. Without it, he said, he would have moved the whole business to the US. That's the kind of example that is repeated anecdotally by quite a few different firms.[16]

2.19 Mr Luke Anear, Chief Executive Officer, SafetyCulture, also emphasised the importance of the R&DTI for SafetyCulture, a firm which provides Occupational Health and Safety documentation.[17]

Recent changes to the R&DTI

2.20 As part of the 2020-21 Budget, the government announced further enhancements to the R&DTI, including the investment of an additional $2 billion.[18] These changes were included in the Treasury Laws Amendment (A Tax Plan for the COVID-19 Economy Recovery) Bill 2020 which passed both Houses on 9 October 2020.[19]

2.21 While the changes announced in the Budget were welcomed, witnesses were of the view that some issues persist, particularly in relation to software-based R&D activities. As noted by Dr Julia Prior, Head, Innovation and Software Development Strategy, WiseTech Global:

> The intent of the R&D tax incentive scheme is to encourage Australian companies to invest in innovation. Unfortunately, in its present form the

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15 *Submission 216*, p. 2.

16 *Proof Committee Hansard*, 12 February 2021, p. 22.

17 *Proof Committee Hansard*, 5 March 2021, p. 14.

18 Budget Paper No. 2, Budget Measures, pp. 19-20.

19 See https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page%3D0;query%3DBillId%3Ar6610%20Recstruct%3Abillhome, accessed 9 February 2021.

> scheme strongly distorts software projects and discourages software technology companies from actual technology innovation, and it is having a detrimental effect on R&D tax incentive sponsored innovation in this pivotal industry.[20]

2.22 Mr McCauley elaborated on these detrimental effects:

> For existing businesses it means significantly less government support for the kinds of businesses that this government wants to support, which is young high-growth, job-creating tech firms. When I say 'significantly less government support', it's because they now see software claims under the R&D tax incentive as highly risky and are making fewer claims for less money, which just means dollars straight out of the pockets of those firms. The second point is the point that I made earlier about investors taking a much shyer approach to companies that are participants in the R&D tax incentive. That is obviously a perverse outcome of a scheme that's there to support the growth of these companies.[21]

Issues raised

2.23 It was put to the committee that despite additional guidance in relation to software, the R&DTI in its current form is not suitable for software development. Suggestions were made to improve the R&DTI and, failing that, it was proposed that a separate scheme for software should be considered.

Further clarification

2.24 Canva called for greater clarity around software eligibility by way of simplified rules and more examples of eligible activities:

> Focussing specifically on Australian R&DTIs, we have found there is little eligibility guidance specific to software engineering. Most can understand the high-level concepts, but we believe the Australian technology start-up ecosystem would benefit from simplified rules and access to more detailed, non-exhaustive examples of eligible activities. This would better ensure the burden of applying for the incentives does not prevent technology companies from pursuing available support and would help prevent these companies from spending valuable resources yet applying the law incorrectly and triggering lengthy audits, penalties and interest.[22]

2.25 FinTech Australia also recommended 'explicit guidance to clarify when and how the R&D Tax Incentive applies to software development in relation to fintech businesses'.[23]

2.26 In relation to providing increased clarity, KPMG noted changes in the recent Budget that:

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[20] *Proof Committee Hansard*, 11 February 2021, p. 40.

[21] *Proof Committee Hansard*, 12 February 2021, p. 22.

[22] *Submission 216*, p. 2.

[23] *Submission 19.2*, p. 6.

> …the Board of Innovation and Science Australia (the Board) now has the power to make binding determinations on interpretation which it is hoped will be used to provide greater clarity to both industry and regulators alike.[24]

2.27 At a hearing Ms Kristina Kipper, Partner, KPMG, explained further:

> That means that those determinations cannot be changed retrospectively. We believe that there is an opportunity to provide more clarity around the definition and how it may apply to software development, but I want to point out that these determinations and the power of the board can only be within the law. So my point is that, while it can provide clarification, it is not able to extend the definition in any way. We have not seen, to date, the board exercise that power, so we are yet to see how it might go about it.[25]

2.28 The Australian Business Software Industry Association (ABSIA) reported that '[w]hile there has been reform since the initial [committee] issues paper was released, many software developers who are significantly innovating and providing economic benefits are still not able to easily access R&D incentives as innovating off existing technology is not categorised as R&D activity'.[26] In addition:

> Considering that over the course of this year many software developers have been disrupted through needing to provide solutions for Government stimulus measures including JobKeeper and JobMaker, they are in need of support to better enable them to provide innovative products and solutions over the coming years. Providing further clarity on and perhaps widening the definition of what constitutes R&D to include innovation off existing technology should be considered to better support FinTechs, RegTechs and software developers from the business software industry.[27]

2.29 The Department of Industry, Science, Energy and Resources (DISER) advised that the refreshed Guide to Interpretation was released on 4 November 2020 and 'is applicable across all program sectors in providing guidance on self-assessment and interpretation issues'. It advised that the department 'is in the process of updating a redesigned and rebranded 'Software Activities and the RDTT' guide. Once approved, this guide is expected to replace the existing 'Software Activities and the RDTI guide'.[28]

2.30 The Australian Investment Council indicated that it contributed to the consultation on the refreshed guidance for the R&DTI, reporting that it 'is now

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[24] *Submission 147.1*, p. 11.

[25] *Proof Committee Hansard*, 5 March 2021, p. 16.

[26] *Submission 72.1*, p. 2.

[27] *Submission 72.1*, p. 2.

[28] DISER, Answer to Question on notice, received 30 March 2021.

more user friendly for users of the guide and contains examples of eligibility for the regime'.[29] The AIC explained:

> Notable changes include more clarity around 'experiments' including a new definition of a hypothesis as 'as 'an idea or proposed explanation for how you could achieve a particular result and why that result may or may not be achievable', along with more clarity on new knowledge which is defined as being a 'new or improved material, device, product process or service and a new practical or theoretical understanding of a subject'.[30]

2.31 The AIC added that while there has been progress 'there is still work to be done to provide businesses with clear and consistent information to help them get their R&DTI claims right. Additional material relevant to the R&DTI can be found in the Guide to common errors and Software activities and the R&D Tax Incentive publications'. The AIC suggested that 'consolidation of these documents into one, accurate repository of information would significantly assist in building confidence in the program amongst the FinTech and RegTech sectors'.[31]

Methodology for R&DTI assessment

2.32 The committee sought views on how best to provide the additional clarity being sought around the eligibility of software. WiseTech Global, a leading developer and provider of software solutions, suggested that the ability to use more than one methodology would allow sufficient flexibility to keep up with rapidly changing technology.[32]

2.33 Mr Richard White, Founder and Chief Executive Officer, WiseTech Global, explained that the use of the Frascati Manual[33] 'becomes a major braking force for many smaller software companies that are significantly disadvantaged by the complex and dysfunctional nature of the particular method which is inscribed fairly rigidly within the regulation or the legislation.'[34]

2.34 WiseTech Global argued that 'several appropriate, alternate methodologies for R&D in the software industry could be investigated and explicitly acknowledged by the R&D Tax Incentive scheme'.[35] One methodology

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[29] *Submission 12.2*, p. 6.

[30] *Submission 12.2,* p. 6.

[31] *Submission 12.2*, p. 6.

[32] *Submission 214,* p. 2.

[33] The Frascati Manual is published by the OECD as a methodology for collecting and using R&D statistics for science and innovation policy makers. See The Australian Small Business and Family Enterprise Ombudsman, *Review of the R&D Tax Incentive*, December 2019, p. 19.

[34] *Proof Committee Hansard*, 11 February 2021, p. 41.

[35] *Submission 214*, p. 2.

WiseTech Global put forward for consideration as one of several approaches to software development R&D is the 'action research' methodology which:

> is specifically designed for creating knowledge in practical, applied circumstances where the outcome cannot be known in advance. The implication in action research is that knowledge is emergent. Further, certain forms of knowledge can only manifest through practice – or actions – and accessing this emerging knowledge requires participation in these actions.[36]

2.35 It was argued by WiseTech Global that action research methodology is particularly suitable for software development:

> The action research methodology aligns exceptionally well with R&D, where research is applied experimentally to a practical scenario, in order to create new knowledge while developing, or to use in the development of, an inventive technology, product, service by a company to use or sell.
>
> It also aligns with mainstream iterative, agile software development approach, while also embedding the work within a rigorous research approach that provides empirical evidence on what is the result of the intervention (change or experiment) and the impact of this effect.[37]

2.36 Dr Prior emphasised that they were not advocating for just one particular method because ' the industry is changing so fast that we actually have to have methods that will change with it in order to continue being innovative'. She argued that the 'scheme needs to allow for perhaps more than one approach'. Besides action research Dr Prior also mentioned design science, experimentation and case studies as approaches that could be incorporated.[38]

2.37 On this issue DISER responded:

> While the legislated definition of R&D activities under the R&D Tax Incentive has been found to be broadly consistent with the Frascati Manual (2016 Review of the R&D Tax Incentive), the Frascati Manual and other methods of defining research and development, such as 'agile methodologies', are not the basis for decisions on eligibility. In December 2020, to ensure clarity on this point, the department redacted references to the Frascati Manual from the Software Activities and the RDTI and Avoiding Commons Errors software guides.
>
> The legislation requires, among other things, eligible activities to involve an outcome that cannot be known or determined in advance on the basis of current knowledge, but can be determined only by applying a systematic progression of work that is based on principles of established science; and proceeds from hypothesis to experiment, observation and evaluation, and

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[36] *Submission 214*, p. 5.

[37] *Submission 214*, p. 7.

[38] *Proof Committee Hansard*, 11 February 2021, p. 41.

> leads to logical conclusions. Activities using agile methodologies that meet this requirement can and have been found to be eligible R&D activities.[39]

Further clarification or separate scheme

2.38 For many submitters the view was that if greater clarity cannot be provided around the eligibility of software then a separate scheme should be considered.

2.39 While calling for greater clarity on R&D activities and experiments and the applicability to software development, FinTech Australia members also suggested that R&D activities 'should be interpreted as activities which contribute to building new and innovative services, and addressing technical unknowns for the fintech sector, even when built on top of existing rails'. FinTech Australia also called for a review into Innovation & Science Australia's conduct with regard to the treatment of companies making an R&DTI claim for software development.[40]

2.40 Mr Alex McCauley, CEO, StartupAUS, recommended the legislation be changed to better support software companies. He also suggested an alternative would be to develop a new scheme which specifically targets software firms, and explained the benefit of this second approach:

> The advantage there is that we all know that software is becoming more and more a core part of most businesses, whether it's a bank, a mining company or a tech company, so it is hard to see how you would limit the growth of the R&D tax incentive vis-a-vis software if it were in its current incarnation. A standalone program targeting companies whose core business is the development of software would probably be a more effective way to do it.[41]

2.41 The Australian Small Business and Family Enterprise Ombudsman told the committee that the R&DTI 'in its current form is unsuitable for software development' which 'inhibits investment in and growth of those industries with which the committee is concerned'. It recommended that:

> The eligibility requirements applied to software technology need to be changed to more appropriately fit software development, or alternatively a new software-specific incentive should be created. This will promote investment in the fintech, regtech and insurtech sectors.[42]

2.42 Atlassian was also of the view that the R&DTI 'as it currently stands has not, at its core, kept pace with the nature of software development, or the context and frameworks within which it occurs'. Atlassian called for additional clarity in

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[39] DISER, Answers to questions on notice, received 30 March 2021.

[40] *Submission 19.2*, p. 17.

[41] *Proof Committee Hansard*, 12 February 2021, pp. 21-22.

[42] *Submission 46.2*, p. 1.

relation to the eligibility of software R&D. It also raised the possibility of creating 'a separate scheme to incentivise such investments'.[43]

2.43 Mills Oakley were of the view that:

> Extensive guidance has been released regarding software R&D but this alone has not injected enough confidence into the sector to partake in the regime. The technology sector and other sectors going through digital transformation do not need further guidance from the regulators. Instead, a Simple R&D Tax Incentive and a Software R&D Tax Incentive both of which are based on an authorisation model are required.[44]

2.44 Noting that the current R&DTI 'excludes certain software development activities', MYOB supported the creation of a 'new dedicated software development tax that is separate from the R&D tax incentive regime [which] would provide much needed support to build Australia's software development capabilities'.[45]

2.45 KPMG noted that there are many innovative FinTech and RegTech solutions being developed which do not currently qualify for the R&DTI. It suggested the government '[e]xplore the merits of an innovation tax incentive or software specific tax incentive to support innovative software development in Australia that doesn't qualify for support under the R&D Tax Incentive program'.[46]

2.46 At a hearing, Ms Kipper, KPMG, reflected on the issues raised in relation to the R&DTI and offered the view that 'the current R&D tax incentive does not serve the technology industry, obviously fintech and regtech included' and the 'definition of R&D is too narrow'. She added that it also doesn't always 'fit and match how software development is undertaken' with these issues being 'reflected in the fact that a large number of software related R&D claims, when reviewed by the regulator, are disallowed'.[47]

2.47 Ms Kipper continued, suggesting that even if the definition for software was extended this may not be sufficient 'because the industry is constantly evolving and rapidly changing', noting there is innovation which is not necessarily R&D based:

> …there are aspects of software innovation that don't necessarily involve R&D. In fact, the 2020 Innovation and Science Australia report on Australian business investment and innovation highlighted that close to 50 per cent of innovation in Australia is actually not R&D based. Many of those examples in fact relate to digital innovation. But let me provide an example specifically around fintech. Really large financial data sets are a

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43 *Submission 201*, p. 2.

44 *Submission 198*, p. 10.

45 *Submission 197*, p. 6.

46 *Submission 147.1*, p. 6.

47 *Proof Committee Hansard*, 5 March 2021, p. 16.

> very critical part of the business model, and significant investment and effort is required to develop those. Yet the creation of those data sets is not necessarily an R&D activity as described in our legislation. It's really necessary to be able to scale the fintech solutions. This was also highlighted in the recent [UK] Kalifa report…A recommendation was put forward that the UK tax credits should be expanded to cover the creation of such data sets. I think when you reflect on all of that, perhaps the focus is too much on the process rather than the outcome, or the intended outcome. It doesn't really matter how the activities are undertaken; it is more about the purpose for which they are undertaken. Is that perhaps what the primary test should be? I note that there is currently a purpose test, but it's not the primary test.[48]

2.48 Ms Kipper summarised the reasons for considering a separate scheme:

> I think the answer is dependent on what the government is trying to encourage. If we are, as is the object of your inquiry, looking to see what the role of technology could be in creating jobs and creating and driving economic growth, then the answer seems to be that it should really be more about the outcome, or the intended outcome—so questions like 'Are the activities undertaken for the purpose of creating something new or significantly improved?' 'Can it be scaled?' and 'Can it be commercialised in local but perhaps also offshore markets?' This is why our submission is that the government should consider a separate innovation or software incentive, one that can specifically focus on incentivising activities that are aimed at achieving commercially successful outcomes.[49]

Payment times

2.49 Fintech Australia has raised the timing of payments with the committee, most recently stating:

> …often R&D tax rebate payments are made many months after a project is complete. This means companies need to find the funds before they can begin to work on their innovation. Having the money after the fact allows spending on other things, but does prevent projects moving forward due to a lack of upfront cash flow. Therefore, being able to apply for the R&D Tax Incentive at the beginning of a project would add clarity to the project scope and timeframes. It would mean more planning in advance and lead to tighter projects, but would also allow for the cash to begin the new concepts. This should be an optional path. Alternatively (or additionally) having R&D refund payments quarterly will also allow projects to continue during tough cash flow times of the build stage.[50]

2.50 The call for quarterly payments was supported by the Australian Innovation Collective[51] and Identitii.[52]

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[48] *Proof Committee Hansard*, 5 March 2021, p. 16.

[49] *Proof Committee Hansard*, 5 March 2021, p. 17.

[50] *Submission 19.2*, p. 37. See also FinTech Australia, *Submission 19.1*, pp. 7-8.

[51] *Submission 155*, p. 15.

[52] *Submission 157*, p. 1.

2.51 Mr Sasha Reid, Founder and Chief Executive Officer, Hyper, highlighted that the assistance provided by the R&DTI comes quite late in the cycle of a startup, suggesting front loading the payment, speeding it up by six months or providing it in two tranches:

> It is a great program, and without that we would definitely have seen a lot of really great startups not get as far as they have got to. There are some issues with it, though. The fact that the money comes so late in the process—up to 12 months sometimes—means that there is a significant financial shortfall in terms of runway for a lot of startups, which can make it quite difficult, and that's almost developed a secondary market where other companies are willing to loan the amount at a 15 per cent fee, which obviously reduces the total amount that you would get anyway. Bringing that forward by six months would really help. This idea would obviously have to exist with the right framework, but, if there was the ability to have the money given to founders as a loan on the prospect of doing R&D as opposed to retrospectively once they've done the R&D, that could help them fund that next bit of innovation that may be the difference between them being able to launch just in Australia or expand overseas.[53]

Other suggestions

2.52 Fintech Australia members recommended that 'large companies' R&D claims for in-house development ought to be reduced and be replaced with an R&D-like incentive to perform proof of concept work with early-stage technology companies'. In addition it was recommended to look at simplification of the administration and processes of the system.[54] At a hearing Ms Rebecca Schot-Guppy, CEO, FinTech Australia, also suggested 'to add a premium that rewards industry collaboration with publicly funded bodies'.[55]

2.53 KPMG also suggested 'a collaboration premium which would reward companies for collaborating with each other and with research institutions could be developed to further incentivise innovation'.[56]

2.54 MYOB recommended:

> increasing the rate to 10-12.5% (from 8.5%) for R&D expenditure between 0-2% R&D intensity while also increasing the cap for larger claimants to $200m. Allow a higher R&D tax benefit, for example 16.5% (not based on intensity) for projects of strategic importance to Australia.[57]

2.55 Ms Deborah Young, CEO, The RegTech Association, told the committee about feedback from members:

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53 *Proof Committee Hansard*, 5 March 2021, pp. 5, 6.

54 *Submission 19.2*, p. 17.

55 *Proof Committee Hansard*, 11 February 2021, p. 47.

56 *Submission 147.1*, p. 11.

57 *Submission 197*, p. 6.

> Our position has always been that regtech is more the D than the R. Regtech is not revolutionising the actual research side and the development of new technologies; it's more about the development of existing technologies to come up with creative solutions to solve problems. We've always said that some of our members are finding it difficult to access the existing scheme, because they sit more on development than on research. And so, by and large, the feedback that I get is that it's not fit for purpose for many of them.[58]

2.56 The Australian Investment Council (AIC) noted that 'other nations in our region have more supportive programs, such as New Zealand and Singapore' and suggested the R&DTI 'should be leveraged to support Australian businesses and to position Australia as a stable and attractive destination for offshore investors in the period ahead'. To this end the AIC recommended that the government harness the new R&DTI law applicable from 1 July 2021 to:

> …relaunch the program as Government's flagship mechanism to support R&D and innovation. This would promote the benefits, access and useability of the RDTI ahead of the implementation of the new legislation and to alleviate concerns and provide clarity on areas such as the eligibility of software development and its applicability to FinTech and RegTech.[59]

2.57 CPA Australia and the Chartered Accountants Australia and New Zealand put forward the 'establishment of a fund by Government that directly invests into R&D activity by the sector'. It pointed to the Hong Kong Government's Innovation and Technology Fund as an example which 'provides matched funding support for local companies to conduct in-house R&D activities and to encourage the private sector to invest in R&D.'[60]

DISER response

2.58 DISER summarised the recent history of the R&DTI:

> The Australian Government announced reforms to the R&D Tax Incentive in the 2018-19 Budget to improve its integrity and its effectiveness in response to the 2016 Review, Industry Innovation and Science Australia's 2030 Plan and over two years of extensive stakeholder consultation. The proposed reforms were revisited in 2019 and again in the 2020-21 Budget.[61]

2.59 In relation to the reforms announced in the 2020-21 Budget, DISER explained:

> The recent reforms to the R&D Tax Incentive announced in the 2020-21 Budget are aimed at better achieving the program's objective to encourage investment by Australian businesses in R&D activities while assisting in the economic recovery from COVID-19…
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> …

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58 *Proof Committee Hansard*, 12 February 2021, p. 3.

59 *Submission 12.2*, p. 6.

60 *Submission 188*, p. 3.

61 *Submission 18.1*, p. 5.

> The 2020-21 Budget reforms to the R&D Tax Incentive, together with the Australian Government's other business R&D and innovation support measures, are expected to provide businesses, including those in the technology sector, with the confidence and certainty they need to invest in R&D and contribute to Australia's economic recovery from the pandemic, as well as long-term growth for businesses and the economy.[62]

2.60 At a hearing DISER officials indicated that they are aware of the criticisms and feedback to the committee in relation to the R&DTI and software, adding:

> Essentially, there are certain elements of software that are eligible research and development activities, but not all software development falls within the definition. It's, essentially, a program that doesn't target specific sectors but is accessed broadly right across the economy. The way that we've approached it, because we know there's been confusion in industry in relation to the eligibility of software, is we've been focusing on approaching that through guidance and assisting people to understand what is eligible research and development and what isn't.[63]

2.61 DISER advised the committee that 'many software development activities can and do meet the requirements under the definition of research and development in the legislation. Since 2021-13, registrations in the Information and Communication Technology (ICT) field of research across all sectors have comprised more than 40 per cent of total program registrations and more than 30 per cent of total R&D expenditure'.[64]

2.62 However, DISER spoke about the constraints of the existing legislation:

> In terms of the administration of the existing legislation, there is software development that sits within the eligibility criteria and is assessed as such, and we're conscious that for some businesses there's a strong sense that they would like that definition to be expanded to include research that does not currently fit within the R&D eligibility criteria and the way in which that's applied. That would be a policy question, probably for our colleagues in Treasury, with regard to changes to that. But, certainly, there is a large amount of software research and development that does fit the eligibility activities and is therefore covered by the RDTI.[65]

Interest withholding tax

2.63 As explained by the Australian Financial Markets Association (AFMA), '[u]nder Australia's taxation legislation, generally payments of interest, amounts in the nature of interest or amounts in substitution for interest are subject to withholding tax when paid to an overseas lender'. AFMA added:

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62 *Submission 18.1*, pp. 5-6.

63 Ms Kirsty Gowans, General Manager, R&D Tax Incentive Branch, DISER, *Proof Committee Hansard*, 5 March 2021, p. 44.

64 DISER, Answers to questions on notice, received 30 March 2021.

65 *Proof Committee Hansard*, 5 March 2021, p. 44.

> Generally, the rate of withholding tax is 10% of the amount of the interest payment and, commercially, it may be the case that the lender will require the borrower to "gross up" for the withholding tax such that the payer receives the full amount free and clear of any withholding tax.[66]

2.64 AFMA told the committee that it has argued against the imposition of interest withholding tax for amounts paid from Australia 'particularly in the context of payments made by financial institutions that may act as intermediaries between the companies seeking to attract capital and the offshore investors'. It added that its views are 'consistent with recommendations from the Henry Tax Review and the Johnson Report into Australia as a Financial Centre and observations from the Financial System Inquiry. Further, the appropriateness of interest withholding tax has been considered by recent Government inquiries such as the inquiry on the development of the Australian corporate bond market'.[67]

2.65 AFMA suggested that the committee inquire as to 'whether the imposition of interest withholding tax on payments made by Fintech and Regtech companies is hindering the availability of debt capital for such companies and/or increasing the cost of such funding through the gross-up requirement'.[68]

2.66 Mr Robert Colquhoun, Director of Policy at AFMA, spoke about the objectives of the interest withholding tax regime in Australia:

> The objective is to acknowledge that interest is generally sourced in Australia. Australia taxes global participants on their Australian-sourced income. Instead of obliging those participants to lodge a return in Australia, work out their deductions and pay the net amount to the ATO, or 30 per cent thereof, Australia clips the ticket on the way out. It's a full and final tax for the payee—they don't have any further obligations in Australia—and therefore Australia's gets its share of what it believes to be an appropriate proxy for the sourced income that's derived by the offshore payee.[69]

2.67 Mr Colquhoun explained why interest withholding tax is an issue:

> …interest withholding tax is idiosyncratic to Australia, in terms of financial centres. It creates a friction for the free flow of capital. It's operationally burdensome to determine whether exemptions apply. There are certain exemptions in the Income Tax Assessment Act, under 128F, but also in various tax treaties for unrelated financial institution payments. It's very complicated. So, when firms look to establish in Australia, the compliance costs are already significant. The other barnacle is that generally accepted commercial practice is that the payer of the interest is obliged to gross up to the extent that there is a withholding tax burden—

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66 *Submission 47.1*, p. 7.

67 *Submission 47.1*, p. 7.

68 *Submission 47.1*, p. 7.

69 *Proof Committee Hansard*, 11 February 2021, p. 2.

> that is, the payee receives free and clear. Consequently, if there is a withholding tax burden it is one that is suffered by the Australian payer, and it is therefore a cost of business in Australia.[70]

2.68 Mr Colquhoun discussed the situation in other jurisdictions:

> My understanding is that, particularly in Singapore, the UK, the US and Hong Kong, they will either exempt fully or they will exempt payments to unrelated financial institutions. Indeed, that's what our treaties do. If you think about the new version of the OECD model tax treaty—which is now reflected in our treaties with the US, the UK, Germany, Israel and France—a payment of interest out of Australia to an unrelated financial institution is exempt. That, coupled with the domestic exemptions, means that this is very much a dwindling source of revenue for the government. Add to that the fact that we have historically low interest rates, and will continue to have them for some time, and we're actually collecting a de minimis amount of revenue but very much enhancing the complication and the complexity for people who want to set up in Australia and raise that capital from offshore.[71]

2.69 On notice AFMA provided further detail about interest withholding tax treatment in comparable jurisdictions, noting that 'Hong Kong does not impose interest withholding tax on payments of interest from a Hong Kong borrower to a non-resident lender'. AFMA argued that [b]etter alignment of the interest withholding tax exemptions with key competitor jurisdictions will assist Australia in enhancing its position as a Finance and Technology Centre'.[72]

2.70 Mr Colquhooun argued that '[i]f there's a time to consider whether or not this is a tax which is fit for purpose then it's now, given that the revenue take will continue to be low and will continue to dwindle over time as more and more treaties come on line which negotiate the financial institutions exemption'.[73]

2.71 As an incentive for foreign investors, Atlas Advisors Australia suggested the ATO 'remove withholding tax on distributions to foreign investors in start-ups meeting the [Early Stage Innovation Company] requirements to mirror the benefits achievable via ESIC regulations to domestic Australian investors'.[74]

2.72 The 2009 report by the Australian Financial Centre Forum, *Australia as a Financial Centre: Building on our Strengths* (known as the Johnson Report) noted the rationale for interest withholding tax:

> When interest withholding tax was introduced in 1967, the then Treasurer explained that the purpose was to ensure that a reasonable amount of tax

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70 *Proof Committee Hansard*, 11 February 2021, p. 2.

71 *Proof Committee Hansard,* 11 February 2021, pp. 2-3.

72 AFMA, Answer to written question on notice, received 8 April 2021.

73 *Proof Committee Hansard*, 11 February 2021, p. 3.

74 *Submission 200*, p. 2.

> was paid by overseas lenders in relation to interest drawn from Australia, and to provide a relatively simple method of collection of the tax. Prior to the introduction of interest withholding tax, interest income paid to non-residents was subject to tax at a rate of 42.5 per cent. Withholding tax allows the government to collect tax at the source, without needing to directly tax interest income in the hands of non-residents. For countries that provide foreign tax credits, withholding taxes have the advantage of ensuring that tax is paid in Australia, rather than overseas, without (in theory) imposing any additional cost on the payer (other than administrative costs).[75]

2.73 The Forum was ultimately of the view that 'the application of interest withholding tax to offshore borrowings by Australian based banks is inconsistent with Australia's need, as a capital importing country, to access a diversity of offshore sources of funding'. In addition, 'the continuing application of interest withholding tax on financial institutions' borrowing offshore sits uneasily with the Government's desire to develop Australia as a leading financial centre and is putting Australia at a competitive disadvantage with respect to overseas financial centres, which increasingly do not charge interest withholding tax on such transactions'.[76]

2.74 The forum recommended that:

> Recommendation 3.4: Withholding tax on interest paid on foreign-raised funding by Australian banks; on interest paid to foreign banks by Australian branches; and on financial institutions' related party borrowing
>
> •Remove withholding tax on interest paid on foreign-raised funding by Australian banks, including offshore deposits and deposits in Australia by non-residents.
>
> •Remove withholding tax on interest paid to foreign banks by their Australian branches.
>
> •Remove withholding tax on financial institutions' related party borrowing.[77]

2.75 The Second Johnson Report in 2016 noted:

> The Johnson Report recommended removing withholding taxes on interest paid on foreign-raised funding by Australian banks; on interest paid to foreign banks by their Australian branches; and on financial institutions' related party borrowing.
>
> There have been no further announcements regarding this tax.[78]

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[75] Australian Financial Centre Forum, Australia as a Financial Centre: Building on our Strengths, November 2009, p. 65.

[76] Australian Financial Centre Forum, Australia as a Financial Centre: Building on our Strengths, November 2009, p.68.

[77] Australian Financial Centre Forum, Australia as a Financial Centre: Building on our Strengths, November 2009, p. 68.

[78] FSC, Australia as a Financial Centre Seven years on: The Second Johnson Report, June 2016, p. 11.

2.76 The Australia as a Financial & Technology Centre Advisory Group Report, *Making Australian an Internationally Competitive Financial Centre & Attracting Asia-Pacific Business Headquarters to Australia*, also recommended the government eliminate interest withholding tax on borrowings by financial institutions based in Australia. It referenced the 2010-11 Budget where the government agreed to proceed with the recommendation by the Johnson Report and Henry Tax Review to phase down the interest withholding tax paid by financial institutions on their offshore borrowings. The report pointed out that this has not been implemented.[79]

2.77 When asked about the withholding tax issues raised by AFMA, Treasury responded:

> Withholding taxes only apply to non-resident investors. Withholding taxes form an important part of Australia's tax integrity framework, ensuring certain classes of Australian income paid to foreign tax residents are taxed by Australia. Interest withholding tax plays an important integrity role in Australia, especially since interest expenses are tax-deductible against Australian source income across all industry sectors. The default withholding tax rate for interest payments is 10 per cent, however the income tax law and tax treaties provide exemptions from the requirement to pay interest withholding tax in certain circumstances.
>
> Any change to tax policy settings would need to be carefully considered having regard to the broader tax system, tax integrity issues and the Budget's fiscal position. The Treasury continues to monitor international developments to ensure our tax settings remain competitive into the future.[80]

2.78 Costings undertaken by the Parliamentary Budget Office (PBO) in April 2021 examined a proposal to eliminate the following withholding tax on interest paid by financial institutions operating in Australia to foreign residents:

- the standard interest withholding tax levied at the rate of 10 per cent; and
- the reduced interest withholding tax charged on Australian branches borrowing from their foreign parents.

2.79 The PBO estimated that if this proposal were to be introduced from 1 July 2022, it would be expected to cost approximately $1.2 billion in forgone revenue over the 2020-21 Budget forward estimates period (to 2023-24), and approximately $7.9 billion over the period to 2030-31.[81]

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[79] Australia as a Financial & Technology Centre Advisory Group (AFTCAG) Report: Making Australia an Internationally Competitive Financial Centre & Attracting Asia-Pacific Business Headquarters to Australia, January 2021, p. 7.

[80] Treasury, Answers to questions on notice from 5 March 2021 public hearing (number 66), received 23 March 2021.

[81] Parliamentary Budget Office, 'Policy costing: Interest withholding tax for financial institutions', April 2021, available at

Employee share schemes

2.80 Safety Culture raised the expectation in the tech industry that employees receive options, arguing that when that is not on offer a company is 'materially uncompetitive and the best and brightest will go overseas'.[82] Providing further detail, Mr Peter Dunne, Partner, Herbert Smith Freehills, explained:

> …if I as an employer provide an equity participation rate in the form of options or shares to one of my employees, they are taxed upfront unless I do a material amount of structuring. There's no suggestion that the ATO should not recover when there is a capital gain, but companies spend an enormous amount of money, which is really dead money, seeking to structure around the implications of an employee being taxed up-front for simply receiving an option. I think the mindset needs to change. It is a relatively easy win and a quick win to remove that administrative burden.[83]

2.81 StartupAUS also mentioned the ability to offer equity in the business as part of remuneration packages as a critical factor in attracting talent:

> This model has emerged as a feature of tech companies around the world, aligning employee and employer motivations and giving staff skin in the game.[84]

2.82 Tic:Toc submitted that employee share schemes:

> significantly support entrepreneurship and innovation by supporting risk taking and helping early stage businesses to attract, retain and motivate talent. The purpose of employee share schemes is to distribute wealth from owners to workers; not only is the current scheme complex and fragmented, but it's also actively discouraging many businesses from offering share schemes and thereby growing employer-held wealth.[85]

2.83 Tic:Toc provided further explanation:

> It is our opinion that there is a bigger picture being missed – share schemes grow taxable wealth over the longer term. Tax revenue via the schemes is not lost – it is simply delayed, with larger longer-term returns. We are losing the home-grown commercially successful technology companies – like Atlassian – to the US, where they lead the world in the value of and participation in employee share plans.[86]

2.84 StartupAUS noted that some improvements had been made but submitted that there is still work to be done:

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https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Publications/Costings

82 Mr Peter Dunne, Partner, Herbert Smith Freehills, *Proof Committee Hansard*, 5 March 2021, p. 9.

83 *Proof Committee Hansard*, 5 March 2021, p. 9.

84 *Submission 5.1*, pp. 5-6.

85 *Submission 127.2*, p. 1.

86 *Submission 127.2*, p. 1.

> Employee equity arrangements in Australia improved substantially in 2015, with changes legislated specifically to help startups issue options under Employee Share Options Plans (ESOPs). This was an important step, but some amendments still need to be made in order for Australia to have a truly world class equity access regime…[87]

2.85 Tic:Toc recommended the following:

- Remove the 10 per cent cap on individual staff options – this does not support new start-ups who require shares to incentivise "employee owners".
- Increase the tax free amount on issue threshold on the gifting of shares from $1000 to $20,000.
- Modify the taxing events on employee share and option plans for private companies, so that tax events can be managed to align to bona fide liquidity events for the company, such as becoming listed or change of control.[88]

2.86 Afterpay suggested 'broaden[ing] qualification criteria and simplify[ing] the disclosure requirements for Employee Share Scheme (ESS) startup concessions':

> This includes removal of or increasing the 10-year limit to recognise different maturity rates of new businesses. As well as doubling the $50 million turnover limit to accommodate low-margin, high-turnover businesses. Startup concessions could be applied to all entities to reduce administrative burden and significantly bolster Australia's attractiveness to overseas businesses.[89]

2.87 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills (Herbert Smith Freehills) provided a set of detailed recommendations about suggested changes to the ESS regulatory framework, including to remove the 10-year rule (that a company and its subsidiaries must have been incorporated less than 10 years to be eligible for ESS concessions) and changing a number of other restrictions in the regime.[90]

2.88 FinTech Australia raised the mechanism by which equity is taxed, stating:

> 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

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87 *Submission 5.1*, pp [5-6].

88 *Submission 127.2*, p. 1.

89 Afterpay, Answers to question on notice from 11 February 2021 public hearing (number 59), received 10 March 2021.

90 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills, Answers to Questions on Notice following public hearing on 5 March 2021, pp. 1-4.

> unlisted shares in an early company with uncertain valuation, with cash. This is a significant disincentive.[91]

2.89 The Law Council of Australia (LCA) was also of the view that 'US employee share schemes, in particular, appear to be much more effective to foster talent'. More generally 'tax and legal complexity to employee share schemes in Australia adds unnecessary cost and inefficiency to implementation of share schemes'. The LCA recommended 'using tax settings to support share schemes that are simpler, more cost effective, and capable of attracting talent'.[92]

2.90 Mr Dunne from Herbert Smith Freehills raised a second issue regarding the provision of a prospectus for employees:

> I was fortunate to work, in 2015, for the federal government when they reformed employee share ownership rules, and those reforms were significant and very beneficial. What weren't addressed were the Corporations Act prospectus rules. Obviously, if SafetyCulture is raising money from the public, it should prepare a prospectus. When it is giving an option to one of its employees as an incentive and a retention tool, it should not have to prepare a long exposure document or, indeed, waste money on lawyers and other advisers. That's another quick win if we wanted to simplify the offer regime.[93]

2.91 Herbert Smith Freehills detailed further that its preferred solution to this issue would involve: permitting companies to prepare a short form disclosure document in respect of offers of equity to employees, rather than a full prospectus; and allowing companies to withhold commercial-in-confidence information from being publicly available via ASIC for disclosures made in connection with employee equity offers.[94]

2.92 In its first interim report, the committee noted that the House of Representatives Standing Committee on Tax and Revenue is conducting an inquiry into the Tax Treatment of Employee Share Schemes and it is yet to report.

Offshore Banking Unit

2.93 As noted by the Australian Financial Markets Association (AFMA), the Offshore Banking Unit (OBU) regime[95] 'promotes Australia as a location from which to conduct mobile financial services through providing a 10% corporate tax rate for eligible business, together with an interest withholding tax

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91 *Submission 19.2*, pp. 26-27.

92 *Submission 176.2*, pp. 1-2.

93 *Proof Committee Hansard*, 5 March 2021, p. 9.

94 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills, Answers to Questions on Notice following public hearing on 5 March 2021, p. 4.

95 Established in 1992.

concession in respect of offshore borrowings'.[96] The OBU 'aims to encourage offshore financial transactions between non-residents to be conducted by a Australian institution, rather than by an offshore financial institution'.[97]

2.94 AFMA emphasised that a number of fintech companies use Australia as a base from which to trade in international financial markets and they rely on the OBU regime. AFMA indicated that the importance of the regime was noted in the Johnson Report into Australia as a Financial Centre.[98]

2.95 In the 2016 report by the FSC, *Australia as a Financial Centre seven years on: The Second Johnson Report*, it noted that in relation to OBUs, reforms commenced from 1 July 2015 but 'modernisation of the regime to enhance Australia's financial services export has not been achieved and a broadening of its application is still not complete'.[99]

2.96 During a review of the regime by the OECD's Forum on Harmful Tax Practices (FHTP) some concerns were raised, 'including the concessional tax rate and the ring-fence nature of the regime', i.e. its limited access to domestic markets. In response to this, in October 2018, the government announced that, following consultation, it will reform Australia's OBU regime 'to strengthen the integrity of our tax system'.[100]

2.97 AFMA noted that there is currently no clarity from the OECD on any necessary amendments. AFMA expressed its preference that:

> …any amendments to the OBU regime do not undermine the competitiveness of the regime but satisfy any OECD concerns, just as occurred with respect to the Singaporean Financial Sector Incentive (FSI) regime, which was also reviewed by the OECD but approved with only minor amendment. In the case that the amendments to the OBU regime do undermine its competitiveness, it is incumbent on the Government to implement settings that are at least competitive, if not preferable, to key regional competitor jurisdictions if Australia is going to be able to attract and retain mobile financial businesses, including Fintech. This may include providing concessional tax rates to mobile businesses with both domestic and offshore customers.[101]

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96 *Submission 47.1.*, p. 2.

97 FSC, *Australian Financial Centre Forum, Australia as a Financial Centre: Building on our Strengths*, November 2009, pp. 57-58.

98 *Submission 47.1*, p. 2. See Australian Financial Centre Forum, *Australia as a Financial Centre: Building on our Strengths*, November 2009.

99 FSC, *Australia as a Financial Centre seven years on: The Second Johnson Report*, June 2016, p. 7.

100 The Hon Josh Frydenberg MP, Treasurer of the Commonwealth of Australia, 'Amending Australia's Offshore banking regime', *Media release*, 26 October 2018.

101 *Submission 47.1*, p. 3.

2.98 On 12 March 2021 the government announced that it would introduce legislation into the Parliament to reform the OBU responding to the concerns raised by the OECD's FHTP. The legislation will remove the preferential tax rate and close the regime to new entrants. Existing participants will continue to access the concessional tax rate for two years and the government will use this time to 'consult with industry on alternative measures to support the industry and ensure activity remains in Australia once the two year grandfathering period ends'.[102]

Patent box policies

2.99 KPMG noted that a Patent Box[103] regime 'is a policy tool that applies a lower rate of corporate tax to any profits made from IP [intellectual property] developed in that country'.[104]

2.100 The government undertook a review in 2015 and the report prepared by DISER noted that in contrast with R&D tax credits 'which target the front end of the innovation lifecycle, a patent box regime targets the last stage of the innovation lifecycle, namely commercialisation'. The tax relief 'can be given either as a reduced tax rate or a tax break for a portion of the patent box income'.[105]

2.101 The DISER report noted the two different objectives being used by the various countries which have adopted patent box polices: attracting mobile IP income; and incentivising innovation. The key points made in the report in relation to these two objectives were:

> A policy aimed at attracting mobile IP income is a winner takes-all policy and therefore requires an aggressive lowering of the headline tax rate. In addition, it opens the door to a fiscal race to the bottom as more and more countries seek to offer patent box regimes.
>
> Regarding the latter objective, there are no solid theoretical or empirical grounds for claiming that patent box regimes induce more innovation.[106]

2.102 The DISER report acknowledged that the implementation of a patent policy box would increase the number of patent applications but stated:

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[102] The Hon Josh Frydenberg MP, Treasurer of the Commonwealth of Australia, 'Amending Australia' Offshore Banking Unit regime', *Media release*, 12 March 2021.

[103] The term patent box refers to the fact that there is a box to tick on the tax form. See Australian Government, DISER, Office of the Chief Economist and Melbourne Institute at the University of Melbourne, *Patent box policies*, November 2015, p. 1.

[104] *Submission 147.1*, p. 11.

[105] Australian Government DISER, Office of the Chief Economist, and Melbourne Institute at the University of Melbourne, *Patent box policies*, November 2015, p. 1.

[106] DISER, Officer of the Chief Economist and Melbourne Institute at the University of Melbourne, Patent box policies, November 2015, Key points.

> most of these additional patent applications are likely to be opportunistic (i.e., inventions that would previously have been kept secret will be patented) and will not be tied to real economic activity (i.e., the risk is high that R&D leading to these patent applications is performed abroad).[107]

2.103 A number of European countries,[108] the UK and China have all adopted patent boxes to attract mobile IP income and encourage innovation, with the UK doing so in 2013.[109]

2.104 KPMG supported the government considering the introduction of an IP box regime, similar to that offered by the UK 'to help keep commercialisation of IP in Australia'.[110]

2.105 At a public hearing, Mr Grant Wardell-Johnson, Lead Tax Partner, Economics & Tax Centre, KPMG, stated:

> Until relatively recent times, R&D and patent box were separate concepts insofar as you could set up a patent box regime and you could attract R&D or the outcome of R&D in another country and bring that to that particular jurisdiction and get concessional taxation in relation to that. The OECD, through the BEPS [Base erosion and profit shifting] process, said, 'No, you need to have some sort of linkage between those two.' So, in order to be able to legitimately have a patent box regime, there needs to be R&D done in your country to give rise to the IP. So, now globally there is a system whereby, when people ask, 'Where are we going to locate this R&D?' they then ask, 'Are we going to locate this R&D where there's a patent box regime as well, or where there's not a patent box regime?' In that sense, to the extent that Australia doesn't have a patent box regime, it is at a disadvantage compared with countries that do...[111]

2.106 It appears that in July 2019 in London, the Treasurer indicated that the government would be prepared to look at the UK regime.[112] There also seems to be a more recent push from biotech firms in pre-budget submissions.[113]

2.107 The Australia as a Financial & Technology Centre Advisory Group Report[114] outlined an issue faced by IP driven companies, including Fintech and other tech and medical businesses, namely that:

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[107] DISER, Office of the Chief Economist and Melbourne Institute at the University of Melbourne, Patent box policies, November 2015, Key points.

[108] Belgium, France, Luxembourg, the Netherlands, Hungary, Spain. See DISER, Officer of the Chief Economist and Melbourne Institute at the University of Melbourne, Patent box policies, November 2015, pp. 2-8.

[109] *Submission 18.1*, p. 5.

[110] *Submission 147.1*, p. 12.

[111] *Proof Committee Hansard*, 5 March 2021, p. 19.

[112] Yolanda Redrup, 'Tech sector supports tax cuts for profits from patented IP', *AFR*, 17 June 2019.

[113] Emma Koehn, 'Biotechs push for IP tax incentives post-pandemic', *SMH*, 3 September 2020.

> …when they export their intellectual property internationally, they pay the full 30% corporate tax on the royalties from licensing the IP. This is in contrast with jurisdictions like Singapore and the United Kingdom, which provide for concessional tax rates of 5%-10% on income associated with patents and other forms of intellectual property, and in practice leads to companies moving Australian IP to other countries once they start to become successful.[115]

2.108 It recommended that the government introduce:

> a concessional [Technology Export Royalty] TER that would tax the royalty paid to an Australian entity by an offshore party at 12.5% rather than 30%. There would be an additional requirement that at least 5 staff are employed in Australia by the entity to which the Royalty is being paid.[116]

2.109 On notice DISER was asked about any work in this area. It noted that the 2015 report 'expressed reservations about whether a patent box scheme would produce any substantive benefit to the Australian economy'. Since that time DISER and IP Australia 'have continued to monitor international developments and relevant research' adding:

> Recent research suggests patent boxes reduce patent ownership transfers out of a country. However, research also indicates there is little evidence that introduction of patent boxes increases patentable inventions or research, and development investment.[117]

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[114] The report of a taskforce convened by Senator Andrew Bragg. The members of the taskforce listed on page 1 of the report participated in their personal capacities. The Chairman was Mr Andrew Low from the Australian British Chamber of Commerce.

[115] Australia as a Financial & Technology Centre Advisory Group Report: Making Australia an Internationally Competitive Financial Centre & Attracting Asia-Pacific Business Headquarters to Australia, January 2021, pp. 8-9.

[116] Australia as a Financial & Technology Centre Advisory Group Report: Making Australia an Internationally Competitive Financial Centre & Attracting Asia-Pacific Business Headquarters to Australia, January 2021, p. 7.

[117] DISER, Answers to questions on notice, received 1 April 2021.

Chapter 3
Regulation issues

3.1 This chapter discusses a number of regulatory issues raised during this phase of the committee's inquiry, including relating to the Consumer Data Right, Digital ID reforms, and Rules as Code approaches to regulation.

Consumer Data Right

3.2 The establishment and rollout of the Consumer Data Right (CDR) in Australia has been a focus area of the committee throughout its inquiry, with the committee's interim report making several recommendations in relation to the CDR.[1]

3.3 While the committee is not focussing in detail on every aspect of the CDR rollout, it did receive evidence during this phase of its inquiry on several issues of significance. This section outlines recent developments in relation to the CDR, and then considers evidence relating to:

- harmonisation and interoperability of the CDR regime with data sharing regimes in other jurisdictions;
- encouraging consumer uptake of product switching through the CDR; and
- oversight arrangements in place in relation to the possible involvement of 'Big Tech' companies in the CDR.

Key developments since September 2020

3.4 Several developments in relation to the CDR since the committee's interim report was released in September 2020 are of note.

CDR Future Directions report

3.5 On 23 December 2020, the report of the *Inquiry into Future Directions for the Consumer Data Right* (Future Directions report) was released publicly, following its completion in October 2020.[2] The report of the inquiry, led by Mr Scott Farrell, 'provides options to expand and enhance the functionality' of the CDR and makes 100 recommendations, which are currently under consideration by government.

3.6 The report devotes significant attention to exploring options for expanding the CDR framework to enable accredited third parties, with a consumer's consent,

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1 Senate Select Committee on Financial Technology and Regulatory Technology, *Interim Report*, September 2020, pp. 218-221.

2 Treasury, 'Inquiry into Future Directions for the Consumer Data Right - Final Report', https://treasury.gov.au/publication/inquiry-future-directions-consumer-data-right-final-report (accessed 22 March 2021).

to apply for and manage products on the consumer's behalf (known as 'action initiation' and commonly referred to as 'write access'). The report recommends that action initiation first apply in the banking sector and include the initiation of payments.[3]

3.7 Other recommendations in the report focus on growth and expansion of participation and services in the CDR ecosystem, consumer safeguards, and opportunities for connecting the CDR to the broader data economy both domestically and internationally, promoting consistency and interoperability.[4]

Governance changes to the CDR

3.8 The committee's interim report of September 2020 made several recommendations in relation to the ongoing rollout of the Consumer Data Right (CDR), including that the Australian Government establish a new national body to consolidate regulatory responsibilities in relation to the implementation of the CDR.[5]

3.9 While not creating a new standalone body, some changes to the governance structure of the CDR were announced as part of the October 2020 Federal Budget, with some responsibilities moving to Treasury, as outlined in Treasury's supplementary submission to the inquiry:

> With the CDR regime having launched and focus now shifting to the expansion of its coverage, this refocussing of priorities will best be accompanied by new organisational arrangements to ensure the system is scalable, sustainable and developed in a coordinated way with broader digital policy initiatives.
>
> The Data Standards Body (DSB) will also move from the CSIRO to the Treasury to support greater alignment of standards and rules development but retain its independence in setting the standards for the regime.[6]

3.10 Treasury stated that it has created a new division within Treasury to deal with CDR issues:

> The new Treasury Division will advise on the overall CDR strategy, and establish and oversee the governance, rules, funding and leadership of the program, in close partnership with key regulators such as ACCC, Office of the Australian Information Commissioner (OAIC) and other sector regulators and through strong connections with industry, consumers, and international counter-parts. It will also support alignment with other

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3 Australian Government, *Inquiry into future directions for the Consumer Data* Right, October 2020, pp. x-xi and Chapter 5.

4 Treasury, 'Inquiry into Future Directions for the Consumer Data Right - Final Report', https://treasury.gov.au/publication/inquiry-future-directions-consumer-data-right-final-report (accessed 22 March 2021).

5 Senate Select Committee on Financial Technology and Regulatory Technology, *Interim Report*, September 2020, p. 218.

6 Treasury, *Supplementary Submission 166.1*, p. 1.

> intersecting Government digital and competition policies. It will continue the successful and timely rollout of the Consumer Data Right to the banking and energy sectors, the designation and rollout to additional sectors, and provide advice on new reforms.[7]

3.11 Treasury submitted that the CDR 'will remain a multi-agency policy initiative, requiring ongoing engagement with a variety of agencies and regulators', ensuring that the regime 'develops in a way that aligns with consumer needs and broader digital development'.[8]

Interoperability of the CDR with other international initiatives

3.12 The issue of pursuing interoperability between the CDR and other data-sharing regimes in other jurisdictions was discussed at length during this phase of the committee's inquiry.

3.13 Mr Scott Farrell's Future Directions report sets out the context for discussions around harmonisation and interoperability for these schemes:

> Around the world, customer controlled standardised data portability regimes are being developed using different implementation approaches. Each regime is unique, with differences in scope functionality and standard setting. At one end of the spectrum, government-led regimes such as Australia and the United Kingdom require industry participation by data holders and accreditation of data recipients by regulatory bodies. At the other end of the spectrum a market-led approach, as developed in the United States that allows a regime to develop without any government initiatives or guidance. Somewhere in between, countries including Singapore, Hong Kong and Japan provide guidance and encouragement to promote participation.[9]

3.14 The ACCC commented that globally there are 'diverging approaches to data sharing regimes in various stages of development and implementation':

> Whereas the [CDR] prescribes data standards and mandates participation on market participants operating within designated sectors, some other regimes are limited to portability requirements without prescribing the form in which data must be shared.
>
> Different approaches have been adopted based on the respective policy intent of each jurisdiction. These differences will impact the extent to which interaction, in the sense of interoperability, between different schemes is possible. The Data Standards Body supports the principle of interoperability, and the use of open, robust and widely used standards wherever possible.[10]

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7 Treasury, *Supplementary Submission 166.1*, p. 1.

8 Treasury, *Submission 166.1*, p. 2.

9 Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, pp. 197-198.

10 ACCC, *Submission 15.1*, pp. 8-9.

3.15 The OAIC submitted that while the global digital economy relies on data being able to flow securely and efficiently across borders, cross-border data flows are subject to increased concern and scrutiny around the world.[11] It stated that in this context:

> It is therefore critical that any interaction between Australia's CDR system, and data portability regimes in other jurisdictions is designed appropriately to ensure the efficient movement of data across borders while including strong protections for individuals' personal information.[12]

Current framework for cross-border data flows under the CDR

3.16 The OAIC explained that under the CDR system, the framework for cross-border data flows is established in two ways:

- Privacy Safeguard 8 provides that CDR data must not be disclosed to an overseas recipient unless the recipient is accredited under the CDR, or is subject to an overseas law that provides substantially similar privacy protections. Where international privacy laws do not provide substantially similar protections to the Privacy Safeguards, the accredited person who discloses the CDR data remains liable for future breaches by those overseas entities.
- Overseas entities may also be accredited under the CDR system, so that consumers may wish for their data to be securely sent to an overseas provider to access products or services.[13]

3.17 The CDR also operates with extraterritorial application in certain situations, for example when CDR data is held outside Australia but an act or omission causes suffering or financial disadvantage to an Australian person.[14]

3.18 The OAIC expressed the view that the approach established under the CDR 'strikes an appropriate balance between allowing CDR data to flow overseas, whilst ensuring there are meaningful redress mechanisms available to Australian consumers', which is important to ensure that individuals' CDR data remains protected in situations where there is no extraterritorial jurisdiction in relation to an overseas entity.[15]

Proposals in relation to pursuing greater interoperability

3.19 Treasury submitted that a wide range of jurisdictions internationally are considering the benefits of increasing data portability through regimes similar to the CDR, and noted that though each regime will inevitably be unique, 'it

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[11] OAIC, *Submission 184*, pp. 7-8.

[12] OAIC, *Submission 184*, pp. 7-8.

[13] OAIC, *Submission 184*, p. 8.

[14] OAIC, *Submission 184*, p. 8.

[15] OAIC, *Submission 184*, p. 8.

would be beneficial to ensure that there is enough commonality to enable international cooperation and engagement where appropriate'.[16] It outlined the concept and importance of interoperability as follows:

> In designing the CDR, it is important to engage internationally to ensure interoperability between data portability regimes. In this context, international interoperability means that technology and systems built for one regime can be used with minimal changes in another regime or that similar systems can be connected relatively easily by 'technology bridges'. A CDR that is internationally interoperable offers potential benefits for Australian consumers and businesses. Consumers could benefit from a more competitive market for data-enabled services. This could give consumers greater choice and access to benefits. Aligning the CDR with international regimes would also give Australian data driven businesses greater opportunity to access overseas markets.[17]

3.20 The ACCC urged a degree of caution in pursuing interaction with overseas data sharing regimes:

> While facilitating interaction between the Consumer Data Right and relevant schemes being implemented in other jurisdictions may generate certain benefits for Australian consumers, including the potential for increased competition, these outcomes are not guaranteed. Overseas requirements may not be suitable for Australian consumers or industry. As a preliminary step, careful analysis of the potential risks and benefits should be undertaken, with particular reference to the policy objectives of relevant schemes to mitigate against unintended consequences.[18]

3.21 The Future Directions report found that elements of a system that foster international interoperability 'may include leveraging common standards, streamlined paths to accreditation and similar overarching design principles'. It noted that these could be facilitated 'by cooperation and improved information sharing, including through international forums'.[19]

Common standards across data sharing and open banking regimes

3.22 In relation to pursuing common international standards in developing the CDR, the Future Directions report recommended that:

- Open international standards should be used as a starting point for CDR rules and standards where available and appropriate; and
- Where divergences from open international standards are proposed, the reason for this should be clearly articulated during consultation, giving

[16] Treasury, *Submission 166.1*, p. 2.

[17] Treasury, *Submission 166.1*, p. 2.

[18] ACCC, *Submission 15.1*, p. 9.

[19] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, p. 200.

stakeholders a chance to comment on whether alignment or divergence would be the most appropriate course.[20]

3.23 Ms Kate O'Rourke, First Assistant Secretary, Consumer Data Right, Treasury, commented that international alignment at the level of data portability standards may be more achievable than seeking alignment on the detailed rules used in each jurisdiction:

> [The Future Directions report] really did reiterate the importance of aligning with international standards. There's recognition that that will be as much as possible and there may be some divergence, particularly at the rules level, if we're trying to fit into regulatory frameworks, whether they be privacy or otherwise. We have, as a starting point, quite different privacy settings in Australia versus the UK, for example. A goal of complete consistency would be difficult, but, to the extent there is divergence, there is a good reason for them, so people can try to help navigate that. I think there's more capacity to be closer at the standards level, because there's less of the sense of there being a political and regulatory framework in which they're sitting.[21]

3.24 The ACCC noted that, where appropriate, it seeks to leverage existing standards to reduce the potential costs for participants; for example, the ACCC recently announced its intention to recognise particular existing standards as evidence of meeting the information security requirements under the CDR Rules.[22]

3.25 FinTech Australia argued that Australia should be proactive in seeking to develop international standards for Open Banking:

> The [CDR] is a world leading regime. Countries all over the world are looking to Australia when establishing their own Open Banking regimes. An important component of our regime are the Open Banking Standards being developed by Data61. FinTech Australia considers this work vitally important to the success of Open Banking and CDR. However, we believe there is an opportunity to leverage our already world leading position by developing International Open Banking Standards. Standards Australia are the peak standards body and are responsible for world leading blockchain and data standards… FinTech Australia believes that the Government should consider developing International Open Banking standards with

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[20] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, p. 202.

[21] Ms Kate O'Rourke, First Assistant Secretary, Consumer Data Right, Treasury, *Proof Committee Hansard*, 5 March 2021, p. 27.

[22] ACCC, *Submission 15.1*, p. 8. This includes: partial recognition of ISO 2700, which is an international standard on how to manage information security, for the purposes of accreditation at the restricted level; and recognition of persons meeting ATO's Digital Service Provider Operational Framework requirements to its highest 'standard' for a particular software product.

> Data61, Standards Australia and industry at the helm to cement our position as world leaders in Open Banking.[23]

Mutual recognition arrangements in relation to the CDR and similar schemes

3.26 TrueLayer, an API-based open banking FinTech headquartered in the UK, argued that relevant accreditation schemes in other jurisdictions should be recognised for the purposes of CDR accreditation in order to accelerate participation in the CDR:

> There are large numbers of regulated FinTech firms in Europe, such as TrueLayer, who specialise in building technology that would help deliver the government's aims for FinTech. To provide their services to the market, these firms have had to ensure they meet the high expectations of EU regulators, in particular in respect of stringent data protection, privacy and information security measures (for example under the PSD2 regulations).
>
> We believe that recognition of non-Australian accreditation and certifications would speed up the rate at which FinTechs can provide their infrastructure services to the Australian market, which would be beneficial to the Australian economy and job market, and speed up the growth of local FinTechs and Regtechs.
>
> We recommend focussing on enabling greater participation by international fintech firms in Australia, and vice versa through recognising regulatory accreditation, before exploring cross border data sharing arrangements as an example. We recommend you could also consider making it easier for international corporations to participate using their internationally regulated entity, even just as an interim measure.[24]

3.27 FinTech Australia agreed that implementing a process of recognition for non-Australian accreditation, through the lens of adequacy to the CDR regime, would hasten the participation of international companies in the CDR.[25] It argued that recognising non-Australian accreditation could go towards promoting the CDR regime as an international standard for data sharing regimes.[26]

3.28 The Future Directions report noted that various options are possible in terms of how Australia could choose to pursue streamlining accreditation arrangements with other jurisdictions:

> Options for streamlining accreditation could vary from full recognition where an international accreditation is considered appropriate to satisfy the Australian requirements, or partial recognition where international accreditation is considered appropriate to satisfy some elements of Australian requirements to enable a quicker, streamlined process. The

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[23] FinTech Australia, *Submission 19.2*, pp. 45-46.

[24] TrueLayer, *Submission 206*, p. 5.

[25] FinTech Australia, *Submission 19.2*, p. 39.

[26] FinTech Australia, *Submission 19.2*, p. 46.

extent of additional requirements could vary depending on the tier of accreditation being sought.[27]

3.29 The report stated that there are several design options to consider, such as whether such a streamlined accreditation regime is:

- unilateral, whereby Australia recognises accreditation provided by another jurisdiction;
- mutual bilateral, where Australia and another jurisdiction negotiate and agree to mutually recognise each other's accreditation; or
- multilateral, via a 'passport scheme' where two or more countries agree to recognise each other's accreditation (an option that could be explored as part of an international forum).[28]

3.30 The Future Directions report made three recommendations on this issue that:

- The registration system for Authorised Data Recipients (ADRs) should be updated to include a clear procedure for accreditation under equivalent foreign regimes to be considered (as appropriate) in meeting some or all of the requirements for participation in the CDR;
- Australia should approach the UK with the prospect of creating a mutual bilateral recognition regime, including a process for identifying differences in registration requirements so any additional requirements in either regimes are clearly articulated; and
- Australia should engage with New Zealand as it considers whether and how to develop a consumer data right including to explore options for mutual recognition of licensing for participants.[29]

3.31 The ACCC submitted that it supports mutual recognition of accreditation with other jurisdictions for open banking data sharing schemes, and stated that it works with relevant agencies responsible for progressing the overarching policy frameworks that would facilitate these outcomes.[30]

Other suggestions for facilitating greater participation in the CDR

3.32 In addition to mutual recognition of accreditation, TrueLayer identified three further measures it considered would support interoperability with UK and EU regulations and facilitate participation in the CDR:

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[27] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, p. 203.

[28] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, pp. 203-204.

[29] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, p. 204.

[30] ACCC, *Submission 15.1*, p. 8.

- accelerating the introduction of the Affiliate/Sponsor model of CDR accreditation to encourage both Australian and non-Australian participation;
- allowing access to CDR testing environments (e.g. a regulatory sandbox environment) prior to accreditation to speed up participation and mirror international standards; and
- introducing "write access" for the CDR using Payment Initiation to mirror EU regulation.[31]

3.33 Mr Brenton Charnley, Head of Australia at TrueLayer, commented that while the CDR 'has been mirrored and is somewhat comparable' to UK and EU regulations, the CDR rules are 'seemingly more complex, so there's more regulation', and used the lack of a sponsorship model of accreditation in the CDR as an example:

> The simplest example that we can provide is: we can enable our global companies and local companies to participate in Australia but both TrueLayer and our clients would need to be regulated. In the UK there is an agency model very similar to the AFSL-authorised model whereby we, as a regulated entity, can sponsor our clients, and that has greatly increased the participation in the UK.[32]

International discussions on interoperability issues

3.34 The Future Directions report recommended that the government 'should seek opportunities to convene an international forum for policy makers considering, designing, implementing and maintaining consumer-controlled data portability regimes'. It also recommended that in the interim, Australia should 'formalise existing relationships by establishing a quarterly dialogue with international policy bodies commencing with the United Kingdom, New Zealand, India and Singapore'.[33]

3.35 Treasury noted that the initial design of the CDR drew heavily on lessons from the UK's Open Banking regime, which has meant that the CDR incorporates features to allow greater cooperation with the UK in future. Further:

> The UK has, in turn, looked to Australia's design decisions to help expand its data portability regime. The UK is now looking to implement a 'Smart Data' initiative, allowing data portability in other sectors, beginning with the energy and pension markets.[34]

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[31] TrueLayer, Answer to question on notice from a public hearing held 12 February 2021, Sydney (received 22 February 2021), p. 3.

[32] Mr Brenton Charnley, Head of Australia, TrueLayer, *Proof Committee Hansard*, 12 February 2021, p. 29.

[33] Australian Government, *Inquiry into future directions for the Consumer Data Right*, October 2020, p. 206.

[34] Treasury, *Submission 166.1*, p. 2.

3.36 Treasury submitted that it is 'keeping abreast of international developments and is mindful of opportunities to engage with other countries progressing reform in this area', noting work has been conducted with a number of countries 'to better understand international approaches to data sharing', including the UK, Singapore and New Zealand.[35]

3.37 Mr O'Rourke of Treasury noted that active discussions are underway between Treasury officials and counterparts in the UK, India, Singapore and New Zealand, while there have also been 'enquiries about our system from a lot of other places as well'.[36]

3.38 Representatives of the ACCC noted that they have had extensive consultations with the UK, as well as more limited engagement with agencies in Singapore, New Zealand, Chile and the US.[37]

3.39 Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner, noted that the OAIC has memoranda of understanding in place with counterpart agencies in the UK and Singapore, and stated:

> [Interoperability] is an issue that we traverse in terms of sharing experience of the way in which the systems are operating, albeit under different domestic laws. From a privacy perspective, any issues of interoperability with international schemes need to take account of ensuring the protection of Australians' data wherever it flows, and the consumer data right legislation does seek to ensure that those protections flow with the data. For instance, recipients of data overseas need to be accredited or have substantially the same kinds of protections applied to the data in their systems, and, if that's not the case, then the entity in Australia that transfers the data remains liable for any misuse of that data. So those are features of the Privacy Act more generally as well as the privacy safeguards in consumer data right. We see that that's an important safeguard that will allow data to flow internationally and still allow for Australians to have the protection that their data needs.[38]

Issues relating to cross-border data transfers

3.40 The OAIC noted that mechanisms for overseas data flows are currently being considered more broadly in relation to the *Privacy Act 1988* (Privacy Act) under the Privacy Act Review:

> Three examples of these mechanisms are contractual safeguards, certification and 'adequacy' or whitelists.

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35 Treasury, *Submission 166.1*, p. 2.

36 Ms Kate O'Rourke, First Assistant Secretary, Consumer Data Right, Treasury, *Proof Committee Hansard*, 5 March 2021, p. 28.

37 Mr Paul Franklin, Executive General Manager, Consumer Data Right, ACCC, and Ms Sarah Court, Commissioner, ACCC, *Proof Committee Hansard*, 11 February 2021, pp. 28-29.

38 Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner, *Proof Committee Hansard*, 12 February 2021, p. 31.

> The Committee may wish to consider whether any recommendations from that broader review in relation to these mechanisms could be applied under the CDR (as both the CDR and Privacy Act frameworks allow for cross-border disclosure, where there is appropriate accountability or where other jurisdictions have comparable privacy protections to the Australian CDR).[39]

3.41 FinTech Australia submitted on the need to enable cross border transfer of data in a way that accounts for countries' desire for data sovereignty:

> Data is the 21st century equivalent of oil of the global digital economy and countries all over the globe have become heavily reliant on data flows, with this reliance only increasing. It is logical to assume that the market and the jurisdictions operating in those markets will begin to impose a level of data sovereignty… These positions of data sovereignty are often justified on the basis of privacy protections, national security and the preservation of core system integrity through forced on-shore operation. This necessitates the need to enable cross border trade of data in a way that honours data sovereignty.[40]

3.42 FinTech Australia stated that several possible models for this kind of trade are currently being proposed within the international community. It argued that the success of engaging with other countries in respect of a data economy that leverages CDR data 'relies on a robust consent management framework and consent taxonomy, which are inextricably linked to any cross border data economy':

> A common language or standard that allows for interoperability between jurisdictions in respect of consents is fundamental in facilitating a functional and efficient cross border data economy. A common approach to consent management and data free trade agreements is essential to have any potential for cross-jurisdictional CDR interoperability be realised.[41]

3.43 FinTech Australia noted that these issues are of relevance to the Privacy Act Review as well as work specifically related to the CDR, and proposed a series of reforms that would create industry aligned frameworks in the Privacy Act that 'concentrate on consent management, taxonomies and tokenisation of personal information'.[42]

3.44 CSIRO commented that international interoperability for the CDR regime would 'benefit from a relatively consistent and uniform consumer experience', including 'consent, authorisation, authentication, language usage, and expectations of sensitive data handling':

> Harmonisation across regimes should extend beyond the standardisation of user interfaces and API payloads, to the methods and processes for

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39 OAIC, *Submission 184*, p. 8.

40 FinTech Australia, *Submission 19.2*, pp. 48-49.

41 FinTech Australia, *Submission 19.2*, pp. 49-50.

42 FinTech Australia, *Submission 19.2*, pp. 51-54.

> managing derived, or value-added data. The management of 'anonymised' data, for example, presents significant opportunities for innovative analytics, but requires an agreed understanding of the risks involved, and universal acceptance of their management. For example, as novel use cases and business models bring together more data sets in new ways, new data privacy risks are presented, which may erode and undermine attempts at anonymisation and deidentification. CSIRO's Data61 continues to provide research and insight into data privacy methods and platforms for Australian industry and regulators.[43]

Encouraging consumer uptake of product switching through the CDR

3.45 Finder submitted that a high proportion of consumers could be getting a significantly better deal on many of their financial products if they engaged in the market and sought a better deal, yet do not do so. Finder argued that helping consumers overcome this inertia would be critical to the ultimate success of the CDR regime:

> The CDR is an ambitious and significant intervention that resolves a wide range of the information asymmetry problems that were present in many of the markets where it is being, and will be, introduced. However, it will only realise its potential economic value to Australia when consumers start using it consistently. While we are still in the very early stages of consumer adoption, there is little evidence that the CDR will resolve the fundamental issue of consumer apathy.
>
> Simply put, many consumers just do not think about switching to a better deal even if it could save them thousands of dollars a year. We suspect that this will still be the same even when comparing and switching is easier than ever thanks to regulatory and technological innovation such as the CDR.[44]

3.46 Finder outlined a 'demand-side policy intervention' that in its view, would build on the CDR to nudge consumers into taking expedited action to improve their finances:

> This proposed "CDR Prompt" would give consumers a regular personalised reminder as to how their products are performing compared to the market. In our view, these prompts could be the catalyst that ensures the CDR is a success and delivers on its initial stated purpose of driving competition and delivering better outcomes for consumers.[45]

3.47 Under this proposal, the CDR Prompt would be 'an additional layer to the CDR that reminds consumers to use the CDR to engage in the market for better deals'. Such prompts would 'inevitably have to differ by sector, and likely by product as well', but at a broad level, they could:

- be mandated for all suitable sectors where the CDR has been introduced;

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[43] CSIRO, *Submission 17.1*, p. 4.

[44] Finder, *Submission 70.2*, p. 5.

[45] Finder, *Submission 70.2*, p. 5.

- be delivered on a regular basis by the consumer's current provider through the consumer's preferred communication channel;
- communicate the potential benefits of switching in a personalised way with a comparison between the provider's current deal and the average price paid on the market based on CDR product data for comparable options; and
- provide clear next steps on how to access the CDR powered tools that can help the user find a better deal.[46]

3.48 Finder noted that this kind of initiative is consistent with the approach taken in the recent *Your Super, Your Future* reforms, in which superannuation funds found to be performing poorly must inform members of this finding and direct them to comparison tools. It noted that the ACCC has also recommended the introduction of a consumer prompt for variable rate home loan borrowers that have been with their lender for more than three years, to encourage consumers to find a better deal on their mortgage.[47]

3.49 Finder argued that a CDR Prompt initiative could combine with the implementation of CDR write-access to create positive consumer outcomes:

> We believe that if both write-access for switching and regular CDR Prompts were to be introduced in Australia, the outcome could be a virtuous cycle of better outcomes for consumers. The cycle starts when consumers are reminded by the CDR Prompt to compare, which tells them whether they could be getting a better deal. The consumer then uses a CDR-powered comparison service to make finding personalised product savings insights easier than ever. Finally, and thanks to write-access CDR, the consumer can also use the CDR to physically switch providers in a seamless way. The consumer then reaps the benefits of the improved deal until the virtuous cycle starts again through the next CDR prompt.[48]

3.50 When asked about the potential for CDR prompts or similar mechanisms to be implemented, Treasury commented:

> Treasury continues to consider opportunities to encourage greater participation by consumers, ADRs and service providers in the data economy. Additional functions, such as 'prompts' to consumers, could be established by ADRs and service providers to increase consumer participation and increase consumer benefit.[49]

CDR and Big Tech

3.51 The committee heard evidence from a number of submitters and witnesses on the potential for global non-bank technology companies such as digital platforms ('Big Tech' companies) to participate in the CDR, and whether

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[46] Finder, *Submission 70.2*, p. 5.

[47] Finder, *Submission 70.2*, p. 6.

[48] Finder, *Submission 70.2*, p. 7.

[49] Treasury, Answers to written questions on notice, (received 8 April 2021), p. 2.

existing processes and the CDR Rules would be adequate to ensure a level playing field among participants should this occur.

3.52 The ACCC explained that Big Tech companies can become CDR participants in two ways: compulsorily by government designation; or voluntarily by applying for accreditation as a CDR Data Recipient.[50]

Potential designation of Big Tech firms or relevant datasets

3.53 Following a sectoral assessment, which could be specific to Big Tech or could relate to a sector in which Big Tech companies participate, it would be open to the government to specify relevant datasets and Big Tech companies as data holders in a designation instrument.[51] The ACCC presented a hypothetical example of how this could operate:

> The Government designates location data as a class of information relevant to designation of the taxi and ride share sector. The Government also specifies Google as a data holder, bringing within scope consumer data collected through Google Maps.
>
> In this scenario, Google would be required to share relevant consumer data with ADRs at the direction of the consumer. A consumer may direct their location data to be shared with their accredited bank when travelling overseas to avoid the effort involved providing their travel details to their bank ahead of time. A more sophisticated service offering could be automated currency conversion or selection at the point of sale.[52]

3.54 The ACCC noted that designating digital platforms as a sector to which the CDR regime applies would 'raise a number of complexities, due to the breadth and integration of Big Tech firms across the economy', and would require in-depth analysis as to whether other solutions could be more effective.[53]

Big Tech firms seeking accreditation as CDR Data Recipients

3.55 In the event that Big Tech firms seek accreditation as CDR Data Recipients, a number of factors are relevant in terms of existing regulatory safeguards and potential new measures.

3.56 The ACCC submitted that while possible competition impacts of accrediting a particular company as a CDR Data Recipient would not normally arise as a relevant factor in accreditation decisions, in certain circumstances, 'competition matters may be considered relevant to the assessment of whether an accreditation applicant is a fit and proper person to manage CDR data'.[54] It noted, however, that 'compelling evidence from authoritative sources would

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50 Australian Competition and Consumer Commission (ACCC), *Supplementary Submission 15.1*, p. 4.

51 ACCC, *Supplementary Submission 15.1*, p. 4.

52 ACCC, *Supplementary Submission 15.1*, p. 4.

53 ACCC, *Supplementary Submission 15.1*, p. 5.

54 ACCC, *Supplementary Submission 15.1*, p. 5.

be required for the ACCC to determine an accreditation applicant did not satisfy the fit and proper person requirement'.[55]

3.57 The ACCC stated that all Accredited Data Recipients must comply with the CDR Rules and CDR Privacy Safeguards, including the data minimisation principle,[56] and consent requirements which 'are stronger than those which currently apply to Big Techs under the *Privacy Act 1988*'.[57]

3.58 The Office of the Australian Information Commissioner (OAIC), which holds regulatory oversight of privacy issues relating to the CDR, submitted that the CDR has been designed with a number of world leading privacy protections, which 'provide individuals with increased choice and control, underpinned by robust accountability and transparency provisions for their handling of CDR data'.[58]

3.59 The OAIC noted, however, that the participation of large non-bank technology companies in the CDR 'may raise a range of significant privacy risks, given the volume of data already held by these entities':

> For example, it would be open to accredited data recipients to ask consumers to consent to combining sensitive financial data with the extensive amount of personal information already collected by these large technology companies (through social media profiles, messages, emails, search histories, and other sources), to deliver products or services. This would allow a large non-bank technology company accredited under the CDR to build profiles of individual consumers, and to derive and provide deep and rich insights into those individuals.[59]

3.60 The OAIC submitted that while CDR consumers must consent to such uses of data, 'depending on the circumstances issues may arise about a consumer's capacity to provide fully informed and voluntary consent to certain data handling practices' by Big Tech companies, with these challenges and potential harms amplified for vulnerable consumers.[60]

3.61 The OAIC expressed the view that some types of information handling practices, many of which are used by Big Tech companies in their existing

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55 ACCC, *Supplementary Submission 15.1*, p. 6.

56 The data minimisation principle in the CDR Rules provides that accredited persons: must not collect more data than is reasonably needed in order to provide the requested goods or services, including over a longer time period than is reasonably required; and may use the collected data only in accordance with the consent provided, and only as reasonably needed in order to provide the requested goods or services.

57 ACCC, *Supplementary Submission 15.1*, p. 6.

58 Office of the Australian Information Commissioner (OAIC), *Submission 184*, p. 4.

59 OAIC, *Submission 184*, pp. 5-6.

60 OAIC, *Submission 184*, p. 6.

business models, which do not meet the expectations of the Australian community, in particular:

- undertaking inappropriate surveillance or monitoring of an individual through audio or video functionality of the individual's mobile phone or other personal devices;
- the scraping of personal information from online platforms, with the community considering the social media industry the most untrustworthy in how they protect or use their personal information;
- the collection, use and disclosure of location information about individuals, which can be used to profile individuals and is difficult to make anonymous; and
- certain uses of AI technology to make decisions about individuals.[61]

3.62 The OAIC recommended that, in light of Big Tech companies potentially participating in the CDR, the committee consider 'whether there are specific uses or disclosures of data that should be prohibited in the CDR':

> For example, the Committee could consider recommending the creation of further 'no-go zones'. Prohibitions on information handling activities are already a feature of the CDR (for example, selling CDR data, or aggregating CDR data for the purposes of identifying, compiling insights into, or building a profile in relation to a person who is not the consumer), however, there may be other types of unethical, unfair or uncompetitive acts or practices that should be considered for prohibition.[62]

3.63 When questioned on the potential for Big Tech companies to become ADRs and whether any additional protections may be required, Treasury stated that it 'continues to monitor the protections required to safeguard consumers who share data' and noted the existing privacy protections in place under the CDR regime.[63] Treasury noted further that the CDR regime provides the minister with the ability to make further rules to prohibit inappropriate data practices, and that breaches of privacy safeguards can attract significant penalties.[64]

Potential for collaboration with local FinTechs

3.64 FinTech Australia submitted that it would be 'counterproductive and ultimately ineffective to ban Big Tech companies from participating in the CDR', stating that it would instead 'be far more effective if the Government were to assist and incentivise smaller entities to compete with Big Tech'.[65]

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61 OAIC, *Submission 184*, p. 6.

62 OAIC, *Submission 184*, pp. 2-3 and 7.

63 Treasury, Answers to written questions on notice (received 8 April 2021), p. 2.

64 Treasury, Answers to written questions on notice (received 8 April 2021), p. 2.

65 FinTech Australia, *Submission 19.2*, p. 38. FinTech Australia suggested that mechanisms such as the introduction of the Affiliate & Sponsor accreditation model announced by the ACCC can facilitate this type of competition.

3.65 FinTech Australia argued that this would 'have the added benefit of promoting adoption of the CDR regime as a whole, as well as promoting competition in the market and fuelling innovations and job growth'.[66] It commented further:

> Instead of taking an adversarial approach to preserving smaller fintech competition, FinTech Australia's members take the view that a collaborative approach would be much more beneficial to broader market adoption and competition. Such a collaborative undertaking could take many forms, but one such form as suggested by members was akin to a hackathon, whereby smaller fintechs and Big Tech companies work together to create CDR based solutions for business problems. Such solutions could be Government and industry funded, with the solutions being the focus of a showcase. This would allow for the fostering of new ideas and innovations and adoption, while also advertising to the market both domestically and internationally the Australia's Government's commitment to fintech innovation and their CDR competition mandate.[67]

Big Tech platforms and app marketplaces

3.66 The committee received evidence from Match Group, a global app development business with a portfolio of app and website-based dating products, on issues facing mobile app developers globally, including in Australia, and how these relate to FinTech and RegTech. Match Group noted that FinTech and RegTech players are often app developers, with apps being a key way for these businesses to deliver products and services to their customers; moreover, FinTechs also develop payment systems that app developers can use in their apps.[68]

3.67 Match Group raised three specific concerns about competition issues in the two dominant mobile app marketplaces, Apple's App Store and the Google Play Store, which it believes 'may have significant impacts on innovation among FinTech and other digital services offerings'.[69]

3.68 Firstly, Match expressed concern that a subset of app developers, who develop apps offering 'digital goods or services', must use Google's and Apple's mandated in-app payment processing facilities:

> [This] results in these app developers having no choice of in-app payment processing service providers. FinTechs cannot compete to supply these app developers with their innovative and relatively cost effective solutions. App developers cannot also develop their own innovative FinTech solutions. This limits innovation in that area which would otherwise deliver better outcomes for consumers.[70]

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66 FinTech Australia, *Submission 19.2*, p. 38.

67 FinTech Australia, *Submission 19.2*, p. 39.

68 Match Group, *Submission 187*, p. 1.

69 Match Group, *Submission 187*, p. 2.

70 Match Group, *Submission 187*, p. 2.

3.69 Secondly, Match stated that app developers who must use Google's and Apple's mandated in-app payment processing facilities must pay a 30 per cent commission for each transaction or in-app purchase made by a user:

> This is substantially higher than the fees charged by FinTech alternatives and the costs to develop an in-house solution. This impacts on the returns developers receive, which reduces incentives to invest and makes innovation riskier.[71]

3.70 Thirdly, Match argued that the mandated use of these in-app payment systems gives Apple and Google access to important data:

> Ultimately, the inability to negotiate alternative terms is a reflection of a bargaining imbalance between app developers on the one hand, and Apple and Google on the other, which is exacerbated by privileged access to data.[72]

3.71 The ACCC is currently examining potential competition and consumer issues relating to mobile app shops or marketplaces as part of its ongoing Digital Platforms inquiry, with an interim report on these issues due in March 2021.[73]

3.72 Mr Mark Buse, Head of Global Government Relations and Policy for Match Group, told the committee Match has suggested to the ACCC that they 'look at changing either the legal structure or the regulatory structure to allow choice in this—that would allow for a developer to have options as to how they want to have the product paid for' within Apple and Google's app marketplaces. Mr Buse gave evidence that there should be an obligation on the Big Tech platforms to provide more choice for their marketplace participants:

> If they operate as a monopoly store, then they [should not be able to] self-serve—in essence, take their own internal products and give them an advantage by not charging them a 30 per cent surcharge. They should give developers choice, let developers have those options for payment and work directly with their consumers.[74]

3.73 Match Group noted that a number of ongoing developments in various jurisdictions globally where companies and regulatory authorities are seeking to change Apple's and Google's in-app purchase requirements.[75] This includes litigation currently before the Federal Court of Australia in relation to disputes between Epic Games, the developer and producer of the popular video game

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71 Match Group, *Submission 187*, p. 2.

72 Match Group, *Submission 187*, p. 3.

73 ACCC, 'Digital platform services inquiry 2020-2025: March 2021 interim report', https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/march-2021-interim-report (accessed 30 March 2021).

74 Mr Mark Buse, Head of Global Government Relations and Policy, Match Group, *Proof Committee Hansard*, 5 March 2021, p. 33.

75 Match Group - Answer to question on notice from a public hearing held 5 March 2021, Canberra (received 12 March 2021).

Fortnite, and both Apple and Google in relation to alleged contraventions of Australia's competition laws.

3.74 Google Australia lodged a submission with the committee contesting Match Group's claims. Google noted that its Play Store operates within the Android mobile platform, and stated that since the launch of the first Android smartphone, 'Android has been developed in accordance with the principle of openness and choice', which 'has led to greater competition, innovation, and choice at every level of the mobile ecosystem'.[76]

3.75 Google submitted that its Play Store 'faces extensive competition for app distribution from a range of different channels', both within the Android ecosystem, and outside it through competition for users and app developers with app stores on other platforms, including Apple's App Store on iOS.[77]

3.76 Google argued that its requirement that certain purchases of digital goods and services be made through the Google Play billing system 'is about maintaining the quality of the Play ecosystem', including safeguarding the security of users.[78] It submitted:

> Overall, purchases of digital goods or services within apps distributed on Play represent only a fraction of all in-app payment transactions, and an even smaller part of all payment transactions online. As such, FinTechs offering their own payment processing services are not prevented from competing effectively… [W]ithin the Android ecosystem alone, there are a range of distribution channels through which FinTechs or developers may provide alternate payment processing facilities. Ultimately, Google, like any app store provider, is entitled to make legitimate business decisions about the model and customer features we wish to implement.[79]

3.77 Google argued further that the service fee it charges when users purchase digital goods and services supports Google's investment in Play and the Android ecosystem and is not simply a 'transaction fee':

> For a small percentage of all apps available through Play (less than 3%), Google charges a 30% service fee when a user pays for an app, signs up for an app-based subscription via Play, and/or makes in-app purchases of digital content. With respect to subscriptions, the initial 30% service fee drops to 15% after the first year.
>
> The service fee is an integral part of Play's business model and enables Google to maintain its investment in Play and the Android ecosystem. Google invests substantial resources in creating, developing and maintaining Android and Play, and, like any commercial enterprise, seeks

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[76] Google Australia, *Submission 217*, p. 2.

[77] Google Australia, *Submission 217*, p. 3.

[78] Google Australia, *Submission 217*, p. 4.

[79] Google Australia, *Submission 217*, p. 5.

> to monetise its investment to keep the platform commercially viable and continue to provide a high level of service.
>
> Through this business model, the majority of developers (especially new developers trying to build a user base) can access Play's app development tools, the distribution channel, and the broader Android ecosystem for free. It is therefore not commensurate to compare the service fee we charge with the fees charged by FinTechs that might offer to simply facilitate a payment transaction.[80]

Digital ID reforms and identify verification issues

3.78 Since the committee's interim report was published in September 2020, the Australian Government announced a commitment of $256.6 million over two years from 2020-21 'to continue development and expansion of Digital Identity to improve access to government services and payments online'.[81]

3.79 The Digital Transformation Agency (DTA) submitted that this funding received as part of the Government's Digital Business Package in Budget 2020-21 'supports work across the states and territories, private sector and internationally to bring the program to full maturity over the next two years'. DTA stated that this funding will deliver:

- Enhanced security for myGovID through the integration of face verification, a biometric capability which allows for higher value and higher risk transactions to be completed entirely online and in real time.
- Onboarding 14 additional services and expanding to 5 states and territories.
- Offering myGovID as a way to log in to myGov, improving the experience for people and increasing security for services.
- Developing legislation that will enable expansion of Digital Identity to non-Commonwealth relying parties, embed privacy protections and establish an oversight authority with enforcement powers.
- Progressing interoperability across trust frameworks internationally to optimise the potential for mutual recognition of Digital Identities other jurisdictions.[82]

3.80 DTA noted that the expansion of the Australian Government's Digital Identity program presents significant opportunities to strengthen the CDR system, including through:

- CDR adopting Digital Identity standards, regulations and guides, including alignment with the Trusted Digital Identity Framework; and

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[80] Google Australia, *Submission 217*, p. 5.

[81] Budget 2020-21, *Budget Paper No. 2: Budget Measures*, p. 65.

[82] Digital Transformation Agency, *Submission 167.1*, p. 3.

- CDR using Digital Identity as its preferred identity verification process when Digital Identity is extended to private sector use, avoiding duplication of expensive infrastructure.[83]

Access to government registers for the purpose of KYC checks

3.81 One issue raised with the committee in relation to identity verification services and Know-Your-Customer (KYC) authentication checks is the ability for companies to access relevant data from government registers to facilitate identity verification services. FinTech Australia submitted:

> One particular area which needs to be considered is access to information provided by ASIC for the purposes of conducting KYC. For instance, in Australia the [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 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.[84]

3.82 FinTech Australia recommended that the Australian Electoral Commission (AEC) 'should provide access to electoral roll information to all companies that pass their own security verification to facilitate KYC checks'.[85] FinTech Australia's initial submission to the committee also recommended that 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'.[86]

3.83 Ms Rebecca Schot-Guppy, CEO, FinTech Australia, commented that in relation to Digital ID, FinTech Australia's recommendations 'would be to allow private companies to have access to public registers to be able to drive…digitalised identity and verification':

> We don't submit that it should be the Singapore model where everyone is plugging directly into government; we submit that it should be a public-private partnership: what entities can build across BECS and things that are currently verifying and then plugging into government registers as

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[83] Digital Transformation Agency, *Submission 167.1*, p. 1.

[84] FinTech Australia, *Submission 19.2*, p. 69.

[85] FinTech Australia, *Submission 19.2*, p. 70.

[86] FinTech Australia, *Submission 19*, p. 102.

> well. You could speed up that process and the APIs and connectivity to get you there.[87]

Australian Electoral C response

3.84 The AEC informed the committee that under the *Commonwealth Electoral Act 1918*, the only commercial purpose permitted by the Act for the provision of electoral roll data to organisations is for organisations that verify (or facilitate the verification of) the identity of persons for the purposes of Anti-Money Laundering and Counter-Terrorism Financing legislation.[88] These organisations are permitted to use and disclose the provided data only for these verification purposes.

3.85 The AEC explained that data can only be provided to organisations that are specifically listed in the Electoral and Referendum Regulation 2016. There are currently six organisations listed in this way, however only two currently receive data, with the remaining four being inactive. Inclusion of new organisations in the Regulation must be approved by Parliament through the Minster responsible for electoral matters. The AEC noted further that even if an organisation is listed in the Regulation and has requested data for a permitted purpose, the Electoral Commission still has the discretion as to whether to provide the data.[89]

3.86 The AEC submitted that it is 'currently reviewing its policies around how organisations will be recommended for inclusion in the Regulation', and stated that it will not be putting further organisations to the Minister for inclusion until this review is completed.[90]

3.87 The AEC stated that the access price charged by the two companies currently accessing electoral roll data for identity verification purposes 'is not a matter for the AEC but is a commercial decision for those organisations', noting that the AEC 'has not previously had any visibility of what these two organisations are charging their customers'.[91]

3.88 On the question of expanding access to electoral roll data, the AEC commented:

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87 Ms Rebecca Schot-Guppy, CEO, FinTech Australia, *Proof Committee Hansard*, 11 February 2021, p. 49.

88 Australian Electoral Commission (AEC), Answers to written questions on notice (received 23 March 2021), p. 1.

89 AEC, Answers to written questions on notice (received 23 March 2021), p. 1.

90 AEC, Answers to written questions on notice (received 23 March 2021), p. 2.

91 Australian Electoral Commission, Answers to written questions on notice (received 23 March 2021), p. 2.

> [T]he broad provision and use of the electoral roll is contrary to Parliament's view that the electoral roll should primarily be used for the purposes of conducting elections and referendums…
>
> [While the electoral Act provides] for the electoral roll to be used for certain purposes other than electoral, the AEC is cognisant of privacy concerns, as well as the broader issue of potential loss of confidence in the AEC or in the enrolment and the electoral process more generally if electors become concerned about how their data may be shared. It is the need to balance these factors with the requirements of the Act that led the AEC to conduct the current policy review.[92]

ASIC response

3.89 ASIC informed the committee that users can currently choose to search its registers either directly through ASIC, or through an ASIC approved Information Broker. It explained further:

> Some information on ASIC's registers can be accessed for free. However, ASIC is required by law to charge fees for certain information, for example: to obtain a current company extract or to obtain copies of documents on ASIC's registers… ASIC-approved Information Brokers have direct access to ASIC registers. They offer a variety of commercial services that may suit a person's needs, and the fee they charge may vary according to the services and incorporate the statutory fee payable to ASIC. ASIC does not endorse any specific information broker.[93]

3.90 ASIC stated that the question of providing access to registry data at a lower cost would be a policy decision solely for the government, and noted that it is 'unable to discriminate in its administration of fee recovery between users or applicants'.[94]

3.91 The government is currently in the process of consolidating the Australian Business Register and 31 business registers administered by ASIC onto a single platform through the Modernising Business Registers program.[95] ASIC noted that this reform program 'has not yet dealt with lowering costs to access registry information', which would be a policy decision for government and would require legislative amendments.[96]

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92 Australian Electoral Commission – Answers to written questions on notice (received 23 March 2021), p. 2.

93 ASIC, Answers to written questions on notice (received 7 April 2021), p. 1.

94 ASIC, Answers to written questions on notice (received 7 April 2021), p. 2.

95 Australian Business Register, 'Modernising Business Registers and Director Identification Numbers', https://www.abr.gov.au/media-centre/modernising-business-registers-and-director-identification-numbers (accessed 7 April 2021).

96 ASIC, Answers to written questions on notice (received 7 April 2021), p. 2.

Coding law and 'Rules as Code'

3.92 The committee heard from a number of academic, industry and regulatory bodies in relation to the potential for 'Rules as Code' and related approaches to drive efficiency in administration of the law and in service delivery.

3.93 La Trobe LawTech, part of the La Trobe University Law School, submitted that coding legal rules would 'increase access to the law and support increased and even automated compliance'.[97] Professor Louis de Koker of La Trobe LawTech told the committee that although coding legal rules in 'not a new science…adoption is still limited'.[98] The adoption of this practice provides an 'opportunity for a step change that would support digital transformation in Australia and globally'.[99]

3.94 CSIRO informed the committee that its experience with pilot projects demonstrated that it is 'technically feasible to use a Rules as Code approach to create and validate models of many kinds of law.'[100] CSIRO predicts that rules as code 'will become part of the core business of government globally.'[101] In October 2020, the OECD released a white paper on global rules as code initiatives.[102]

3.95 The committee heard that two main approaches to the task of coding legal rules are being explored: taking existing legislative rules and creating a coded, machine-readable version of these rules; or working to create an official and machine-consumable version of coded rules from the outset of the rule-making process.[103]

Challenges associated with coding legal rules

3.96 Coding legal rules is challenging, given it requires coding legal interpretations. According to the La Trobe LawTech, the legal and policy challenges involved in employing a rules as code approach include: the difficulty of dealing with unforeseen cases and applying control measures to prevent unfair outcomes; the possibility of rules as code appropriating, undermining or limiting the role of courts in interpreting law; whether or not the view of the drafter of the law

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97 *Submission 193*, p. 2. See also: CSIRO, *Submission 17.1*, p. 7.

98 *Proof Committee Hansard*, 11 February 2021, p. 30.

99 *Proof Committee Hansard*, 11 February 2021, p. 30.

100 *Submission 17.1*, p. 7.

101 *Submission 17.1*, p. 8.

102 *Submission 193*, p. 2.

103 QUT Law/Digital Media Research Centre and CSIRO's Data61, *Submission 196*, p. 15. Professor de Koker, *Proof Committee Hansard*, 11 February 2021, p. 30.

is the definitive one; and methods for identifying mistakes and assigning liability for those mistakes.[104]

3.97 Dr Anna Huggins, Associate Professor, School of Law/Digital Media Research Centre, Queensland University of Technology (QUT), also noted the risk of losing statutory meaning or oversimplification when coding complex legislation. Addressing this requires further 'interdisciplinary collaboration' involving lawyers and computer scientists, as well as 'acknowledging the limits of digitising legislation'.[105]

3.98 Professor de Koker referred to a proof of concept project on spent conviction data sharing completed for the Australian Criminal Intelligence Commission, which involved coding the relevant provisions of the Criminal Code.[106] La Trobe LawTech noted that its projects were constrained by the 'complexities of engaging the relevant government stakeholders to identify and support projects that would further the objectives of government and deepen research engagement', as well as 'enabling and assessing the implementation of research results.'[107]

3.99 QUT Law/Digital Media Research Centre and CSIRO's Data61 together provided information on their joint research project on converting the *Competition and Consumer Act 2010* and *Competition and Consumer (Consumer Data Right) Rules 2020* into code. They found that the principal challenge was 'determining the extent to which the code accurately reflects the law'. They further explained:

> A key challenge is promoting alignment between the languages and logics of the statute and the encoded provisions, which is compounded by the complex interplay between different legislative and regulatory rules, and the lack of case law to guide interpretive choices. The absence of case law on the CDR is significant because, under Australia's constitutional framework, only the judiciary can conclusively interpret the legal meaning of a statute.[108]

3.100 Related challenges in this project included 'bridging disciplinary knowledge gaps, standardising coding conventions and streamlining processes for integrating encoded provisions'.[109] QUT and CSIRO provided detailed

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[104] *Submission 193*, p. 2.

[105] *Proof Committee Hansard*, 11 February 2021, p. 31.

[106] *Proof Committee Hansard*, 11 February 2021, p. 30.

[107] La Trobe LawTech, Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 26 February 2021), p. 1.

[108] QUT Law/Digital Media Research Centre and CSIRO's Data61, *Submission 196*, p. 2.

[109] *Submission 196*, p. 2.

information on these challenges, including discussion of the difficulty of encoding provisions that 'confer powers, set standards, or aid interpretation'.[110]

Opportunities and the need for coordination and government leadership

3.101 La Trobe LawTech called for the government to consider incentivising the development of pilot projects and fund collaborative research programs 'to increase the pace and sophistication of coding of complex regulation and to explore the links to technologies such as cryptocurrenices and blockchain'.[111] Mills and Oakley also supported government support for a pilot project using rules as code, specifically on company incorporation, reasoning that it would be a 'useful learning exercises for the initial, and second, third and fourth order benefits of investing in 'Rules as Code''.[112]

3.102 The Commonwealth Bank of Australia (CBA) supported government exploration of rules as code to 'objectively articulate and outline the prescriptive, deterministic rules within regulatory obligations and policy', which it believes could 'increase the efficiency of compliance within regulated entities, whilst enabling regulated entities to deliver better customer outcomes as a result of the certainty and assurance that regulators could provide through the codification of their rules'.[113] CBA advocated for priority to be given to:

> …policies, legislation and regulation that is associated with the process or starting, running and managing a small business. By simplifying these processes and enabling entrepreneurs to accelerate the creation of safe, sound and secure businesses, we can support the next generation of small business and industries to enable our economic recovery.
>
> For the financial services industry, CBA would suggest that the priority areas for the development of 'Rules as Code' be the policies, legislation and regulation connected to KYC, AML/CTF, and financial product design and distribution obligations.[114]

3.103 CBA called for the establishment of a rules as code 'incubator, focused on selecting the core technology platform to host the rules engine and creating the supporting processes that would enable regulators across the country to convert their regulation into machine-readable rules'.[115]

3.104 The Australian Business Software Industry Association supported 'the calculation of employee entitlements' as a good starting point for implementing rules as code given there is already significant progress towards

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[110] *Submission 196*, p. 10.

[111] *Submission 193*, p. 4.

[112] *Submission 198*, p. 12.

[113] *Submission 121.1,* pp. 13-14.

[114] *Submission 121.1*, p. 14.

[115] *Submission 121.1*, p. 14.

such an approach in this area that could be accelerated with government support.[116]

3.105 Professor Pompeu Casanovas, La Trobe University, said there was a need for 'a bold government framework for collaborative public-private rule coding innovation'.[117] This framework should allow 'more challenging projects to be undertaken in order to expand our rule coding knowledge.' Professor Casanovas elaborated on this point:

> The more challenging questions relate to coding of complex legislation. Pilot projects in this space require, for example, the collaboration of members of parliament and parliamentary council, and government departments and agencies too. Ideally, a regulatory sandbox should be created to support rule coding projects, evaluate the results and eventually support implementation. Having a framework for innovative collaborative pilot projects planned, and support for resources to implement the plan, will help position the government as a global leader in digital law and regulation, strengthen Australia's law-tech industry and facilitate legal compliance by companies, government agencies and citizens. But much more is at play. By getting it right we will make law more accessible to citizens and enhance the transparency and accountability of our legal system as a whole. In short, it will foster trust. On the other hand, delaying or getting it wrong can do damage.[118]

3.106 La Trobe LawTech further submitted that the government could best support coding of legal rules by creating a 'government innovation hub for coding legal rules and a sandbox to enable the implementation and assessment of results'.[119] La Trobe suggested this hub could be located at the DTA or the Office of Parliamentary Counsel (OPC). The hub would be tasked with:

- Drafting a strategic framework for identification, funding, management and testing of coding innovation;
- Identifying strategic projects and inviting requests and proposals;
- Identifying and addressing regulatory and process barriers to projects and to implementation;
- Enabling independent transparent assessment of results;
- Monitoring and assessing implementation of results;
- Organising coding techsprints; and
- Fostering national and international collaboration.[120]

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[116] *Submission 72.1*, p. 4.

[117] *Proof Committee Hansard*, 11 February 2021, p. 30.

[118] *Proof Committee Hansard*, 11 February 2021, p. 30.

[119] La Trobe LawTech, Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 26 February 2021), p. 1. The QUT School of Law supported this proposal.

[120] La Trobe LawTech, Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 26 February 2021), p. 2.

3.107 CSIRO recommended the government consider 'undertaking a program of work leading to the publication of Rules as Code models for important bodies of legislation or regulation', which will help create relevant 'digital infrastructure for future scalable innovation'.[121] It noted that federal government involvement would be 'a key catalyst, because of the government's natural authority over legislation and regulation, in drafting, publishing, administering, and delivering services related to it'.[122]

3.108 In relation to the idea of a Rules as Code innovation lab, CSIRO commented:

> A Rules as Code innovation lab would require sufficient resources to deliver more efficient and effective digitally-enabled operation of regulation across government and industry. Key stakeholders in the operation of an innovation lab might include CSIRO, OPC, DTA, and PM&C. These agencies, and other agencies and regulators such as Treasury and ASIC, should all be enabled and encouraged to actively participate in it. Prior to setting up an innovation lab, consultation would need to occur on its structure, activities, and priorities. This work should include relevant agencies, as well as the deregulation taskforce in PM&C, leaders of ASIC's regtech initiative, and previous leaders of the ad hoc inter-departmental Digital Legislation Working Group.
>
> In addition to the key government participation, industry and a range of disciplines from academia should be involved in the activities of the Rules as Code innovation lab, potentially through a Rules as Code regulatory sandbox.
>
> Policy experts, lawyers, legal drafters, researchers, software developers, and service providers all have perspectives that will be important to understand the space.[123]

3.109 CSIRO noted that the role of a regulatory sandbox operated by the innovation lab would be 'to control expectations and risk to both government agencies and other participants while carrying out innovation trials to demonstrate the practice and practical benefit of the Rules as Code approach'.[124]

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121 *Submission 17.1*, p. 8.

122 CSIRO, Answers to written questions on notice (received 29 March 2021), p. 1.

123 CSIRO, Answers to written questions on notice (received 29 March 2021), p. 1.

124 CSIRO, Answers to written questions on notice (received 29 March 2021), p. 2.

Chapter 4
Access to capital

4.1 This chapter details evidence on issues in relation to access to capital. These include shareholder arrangements, capital raising rules (including the treatment of retail shareholders), and issues relating to foreign investment.

Shareholder arrangements

Rule 10b5-1 trading plans

4.2 The US Securities and Exchange Commission Rule 10b5-1 was introduced in 2000. It permits insiders of publicly traded corporations to set up a trading plan for buying or selling a predetermined number of securities at a predetermined time, and provides an affirmative defence to insider trading.[1] The ASX noted that Rule 10b5-1 covers the selling and purchase of securities, adding that 'many founders and other insiders use Rule 10b5-1 to avoid breaching insider trading laws'.[2]

Possible benefits

4.3 Some submissions supported the introduction of an Australian scheme based on the US Rule 10b5-1 trading plans. Atlassian, an Australian global technology firm, supported consideration of an Australian scheme equivalent to the Rule 10b5-1, outlining the following benefits:

> The clear benefits of 10b5-1 plans are that they allow founders and insiders to orderly diversify their concentrated holdings in a stock without causing price volatility. This clearly benefits other shareholders, but also enables founders and insiders to realise the capital they have generated post-listing, which can then be used to diversify their investments. Freeing up this entrepreneurial capital for investment in new ventures is critical in the operation of successful innovation and start-up ecosystems and therefore has exponentially wider benefits.[3]

4.4 At a hearing, Mr David Masters, Director of Global Public Policy, Atlassian, elaborated:

> …[Rule10b5-1] enables the establishment of a trading plan for buying or selling a predetermined number of securities at a predetermined time and provides an affirmative defence to insider trading. A plan along those lines in Australia would enable founders and early employees who have helped to grow and develop companies to realise the listed capital of their

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1 U.S. Securities and Exchange Commission, Final Rule: Selective Disclosure and Insider Trading, accessed 8 February 2021.

2 *Submission 44.2*, p. 2.

3 *Submission 201*, p. 3.

> endeavours in an orderly way, without causing price volatility. Such a reform will improve the attractiveness of listing locally and also supports the growth of entrepreneurial capital for investment in new ventures in Australia. As we note in our submission, this is not a new idea and has been a recommendation of previous reports on these issues, including as far back as 2003 in the Corporations and Markets Advisory Committee's Insider trading report.[4]

4.5 Mr Masters emphasised the benefits of such a scheme:

> I think the benefit of the plans in the US is that it does allow for the orderly drawdown of capital in a way that doesn't cause market shocks. It's not reducing transparency. It's all done in a way that is reported. So that's very much on the record. I think the challenge that you have with the current environment is that, if anyone draws down significant capital from their listing, it is a reportable event and it tends to cause shocks in the system at the moment. So it's probably best for the operation of the market and obviously the best possible outcome for those listing on the Australian Stock Exchange to have a more orderly process for drawing down that capital. Once that capital is drawn down by entrepreneurs, you tend to find a lot of that is reinvested back into the system. It becomes a circular effect. [The Atlassian founders] are very good examples of that, in that they have invested quite heavily in the capital they've drawn down from Atlassian in the local ecosystem.[5]

4.6 Atlassian added that given their listing on the US Nasdaq index, the 10b5-1 plan arrangements are 'broadly used within Atlassian'.[6]

4.7 StartupAUS noted that they had received the support of a number of companies for this proposal.[7] It put forward the advantages of such a scheme

> As it stands, founders and company insiders in Australia are relatively constrained from selling stock in companies once they are publicly listed. This has system-level implications, tying up capital which could otherwise be used to support new ventures or redeployed elsewhere. The circulation and redeployment of entrepreneurial capital is a critical component of successful startup ecosystems…[8]

4.8 StartupAUS also noted:

> Under the current rules, founder stock divestment can also have market implications. Absent a 10b5-1 process it is often seen as a signal indicating a lack of confidence, and can cause stock price fluctuations. A system to regulate these transactions without impacting the market would help limit volatility unrelated to business fundamentals.

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4 *Proof Committee Hansard*, 5 March 2021, pp. 23-24.

5 *Proof Committee Hansard*, 5 March 2021, p. 24.

6 *Submission 201*, p. 3.

7 Airtasker, Athena, Cluey Learning, CultureAmp, Deputy, Kogan, NextDC, Nitro, Rokt, Tyro, Zip and Temple & Webster.

8 *Submission 5.1*, p. 6.

> The ability for founders and insiders to divest stock is likely to be a factor in the listing decision for any Australian tech firm looking to go public. The absence of a system equivalent to Rule 10b5-1 could discourage firms from listing in Australia.[9]

4.9 TDM Growth Partners also advocated for the adoption of an Australian equivalent of US Rule 10b5-1, citing a number of benefits. For investors they pointed to: knowing what to expect and when, thereby mitigating any signalling effects; and allowing for a more transparent process as 'regardless of the share price movement in the lead up to a trade, execution will take place automatically, nullifying an interpretation of the reasons for the trade, with the intentions of the [Key Managerial Personnel] being known well in advance'. Benefits listed for the board and management included: optics, 'because of the pre-set systematic method for accumulating or disposing of shares, the possession of insider information becomes irrelevant'; and 'trading windows and blackout periods become irrelevant'.[10]

4.10 The ASX recognised that 'given the practical challenges of staying within insider trading laws, it is usually the case that as a founder or other insider it is harder to sell company shares when listed in Australia, compared to when listed in the United States'.[11] The ASX highlighted the benefits of a Rule10b5-1 plan:

- these plans provide a mechanism for companies and corporate insiders to purchase and sell securities when they are in possession of [material non-public information]…
- Rule 10b5-1 plans benefit both companies and their insiders by offering clarity and certainty on how insiders can plan and structure share trades to avoid incurring liability. Further, establishing a plan eliminates the need to evaluate the materiality of any MNPI that insiders may possess every time a trade is contemplated. The materiality determination only needs to be made at the time the plan is enacted…
- by outlining intentions and terms of the plan upfront, the founder or other insider can sell down a position over time, instead of relying on a single block trade, and mitigate the need to manage adverse, often unfounded, investor perceptions…
- by allowing the timing of insider trades to be set and managed in advance, 10b5-1 plans avoid the requirement for founders and other insiders to trade only during company-specified 'trading windows'. This would likely lessen the increase in company share price volatility

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[9] *Submission 5.1*, p. 6. See also Mr Alex McCauley, CEO, Startup AUS, *Proof Committee Hansard*, 12 February 2021, pp. 22-23.

[10] *Submission 185*, referring to TDM Whitepaper: The regulation for how insiders can trade in Australia needs to change, pp. 3-4.

[11] *Submission 44.2*, p. 2.

> commonly observed around the time of 'trading windows' and expiry of escrow restrictions.[12]

4.11 However, Atlas Advisers Australia and Stoic Venture Capital Fund were of the view that a scheme similar to US Rule10b5-1 trading plans 'would not be a significant factor affecting Australian start-up founders' plans for which country they list their company', adding:

> Very few founders consider this an issue when deciding on listing as few are prevented from selling their shares by insider trading laws. Insider trading mainly occurs if they sell after a significant event occurs but before it is announced. However the founders only need to time their sale of shares to avoid times when important events occur.[13]

4.12 Mr Dean Paatsch, Director, Ownership Matters, supported this view stating 'being able to exploit 10b5-1 is not the main reason why people would choose the US over Australia'.[14]

4.13 Mr Paatsch cautioned the committee to 'hasten very slowly in this space' adding:

> There's a substantial body of academic research in the US which demonstrates how easily gamed 10b5-1 is. In particular, I draw your attention to the decades-long activism by the Council of Institutional Investors, which is probably the most august and conservative investor body in the US, which has consistently tried to rein in the excesses of 10b5-1. Look no further than the now famed selldown of the Intel CEO many years ago. It seems to me to be a problem in search of a solution. Many of the famed fintech and other founder investors on the ASX have not had problems selling down at all. There have been billions of dollars of founder selldown.[15]

4.14 Mr Paatsch further explained:

> Some of the reasons about minimising discounts and volatility and attracting listings to Australia don't seem to me to be the remit of the committee. We should be looking at attracting listings but recognising that Australia—the ASX—is a fantastic forum to raise capital. It trades at a governance premium, because investors trust the way in which the existing law is enforced in relation to insiders and insider information. Any weakening of that may be reflected in an increased cost of capital, which will in turn impact on jobs and growth. So I would urge you to very, very carefully examine the counter-proposition and not just the evidence-free testimony that was given today.[16]

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[12] *Submission 44.2*, p. 3.

[13] *Submission 200*, p. 3. See also Mr Guy Hedley, Executive Chairman, AtlasAdvisers Australia and Dr Geoff Waring, Partner Stoic Venture Capital Fund ILP, *Proof Committee Hansard*, p. 4.

[14] *Proof Committee Hansard*, 12 February 2021, p. 19.

[15] *Proof Committee Hansard*, 12 February 2021, p. 19.

[16] *Proof Committee Hansard*, 12 February 2021, p. 19.

4.15 In its submission FinTech Australia noted that in relation to Rule 10b5-1 trading plans, its members were divided:

> While some noted that it would provide clarity to founders that wish to trade their own stock, others had concerns that implementing such a defence to insider trading may affect public perception of the market, and impact non-sophisticated investors that wish to enter the market. To make a recommendation, we would require more information about the proposed scheme.[17]

4.16 Ms Rebecca Schot-Guppy, CEO of Fintech Australia, confirmed that its membership remains divided, explaining:

> We actually need to understand how it would work in Australia. We have a very different publicly traded system and rules, and so we'd need to understand how that worked before we provided any guidance.[18]

Developing an Australian equivalent

4.17 The introduction of a scheme similar to US Rule 10b5-1 was supported by The Law Council. However, it noted that Trading Plans have some shortcomings, recommending clearer standards be adopted in Australia in the areas outlined below:

- Cooling-off period: That clear rules are put in place with respect to cooling-off periods;
- Disclosure: the existence of a trading plan for directors must be disclosed to the market and that the existence of a trading plan for an employee should be disclosed only to the company;
- Duration: there should be a minimum period for specific plans eg. at least six months in duration. It should be clarified that certain early termination events are allowed, eg. hardship, death or incapacity, material changes in circumstances, or a specified term after cessation of employment/office;
- Coordination with other laws: careful consideration should be given to other laws to ensure harmony and efficient operation between various provisions. There should be balanced exclusions from market manipulation provisions of the *Corporations Act 2001* (Cth) and, for the avoidance of doubt, cartel provisions of the *Australian Competition and Consumer Act 2010* (Cth).[19]

4.18 These suggestions were further discussed at a hearing. Ms Shannon Finch, Chair, Corporations Committee, Business Law Section, Law Council of Australia, noted that:

> In the US [the trading plan] can be set up by an individual on their own initiative, or quite often companies will require that executives sign up to a

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[17] *Submission 19.2*, p. 22.

[18] *Proof Committee Hansard*, 11 February 2021, p. 49.

[19] *Submission 176.2*, pp. 3-4.

> trading plan as part of a condition of their share plan. You can have company hosted plans, potentially, even with a dedicated broker so that the company is certain that the plans are being structured within parameters that it's comfortable with. But in the US there is the ability to choose. This exemption can also be used by companies themselves, to give them protection from insider-trading rules around share buyback programs.[20]

4.19 Ms Finch further explained:

> The key with a 10b-5 plan is that the qualifying criteria are that you must not have inside information at the time that it's established. It has to be entered into in good faith. It shouldn't be part of a scheme to avoid the rules on insider trading. There have been cases—fairly limited cases—of abuse, for instance, where different plans and competing plans can be set up with different trading instructions in the knowledge that there may be something which emerges down the track, and the ones that conflict with the information that becomes public at a later time are switched off.[21]

4.20 In relation to disclosure of a trading plan, Ms Finch told the committee:

> In the United States it's a choice as to whether to make the trading plan known publicly. Most companies regard it as best practice to disclose it, but it's not mandatory. Here, to have it known publicly would probably fit with the Australian disclosure ethos. It is possible to cancel a plan once it's up and running—if someone decides that it's exposing them to too much risk and they want to switch it off, they can. The risk and the protection under the legislation in the United States is that when you switch a plan off then any trades which have been conducted under that plan cease to have the benefit of a safe harbour, so they can be scrutinised for exposure to insider-trading liability. That's a protection against people using plans in a way where they're gaming the system.[22]

4.21 Ms Finch also drew the committee's attention to rule 10b-18 which is:

> almost a paired exemption that focuses on market manipulation. To qualify to fall within these rules—they're both described as safe harbours—they give guidance to companies and executives around the parameters for structuring a plan that permits a ready exemption and safe harbour from insider-trading liability and, in the case of 10b-18, market manipulation provisions. It sets certain parameters for the plan.[23]

4.22 TDM Growth Partners also made a number of recommendations regarding the development of an Australian scheme, including:

- Plan approval: the use of company approved templates, with each plan having to be approved by General Counsel and the Chairman of the Board;

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20 *Proof Committee Hansard*, 12 February 2021, p. 6.

21 *Proof Committee Hansard*, 12 February 2021, p. 6.

22 *Proof Committee Hansard*, 12 February 2021, p. 8.

23 *Proof Committee Hansard*, 12 February 2021, p. 6.

- Cooling off period: 30 or 60 days between establishing a plan and commencement of trading; considering only allowing the initiation of plans;
- Trading windows: considering only allowing the initiation of plans in one short window annually or aligning trading windows with the current Australian landscape. The use of a single trading window would support the optics the insider is acting in good faith and without non-public sensitive information;
- One insider, one plan: this negates the opportunity to game the system and enter multiple plans with the view to terminate one depending on how circumstances develop;
- Disclosure: prompt and mandatory public disclosure of the adoption of a plan;
- Modifications to a plan: consideration for not allowing of modifications of plans outside of trading windows, with a minimum cooling off period;
- Terminations: consideration of prohibiting termination outside of trading windows;
- No sales outside of plan and no fast selling: Guidelines should encourage the design of plans to have a greater number of smaller sales over time to minimise optics of sales times with sensitive information.[24]

4.23 The committee tested some possible scenarios with witnesses who confirmed that under the current method the plan could only be modified in a trading window where you did not have inside information and the suggestion is that would remain.[25] Ms Finch supported this as a qualification to the US model.[26]

4.24 The ASX concluded that the approach taken in the US provides a useful framework that could be used by Australian markets and the ASX would support implementing a similar mechanism in Australia.[27]

4.25 The ASX suggested that a review and update of Australian insider trading laws is required, and argued:

> By not having a mechanism in place that allows founders and other insiders to manage an orderly sell down of shareholdings over time, Australia risks losing potential listings of home-grown companies to Nasdaq/NYSE or private markets offshore.[28]

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[24] *Submission 185*, referring to TDM Whitepaper: The regulation for how insiders can trade in Australia needs to change, pp. 4-5.

[25] Mr Tom Cowan, Director, TDM Growth Partners, *Proof Committee Hansard*, 12 February 2021, p. 11.

[26] *Proof Committee Hansard*, 12 February 2021, p. 11.

[27] *Submission 44.2*, p. 3.

[28] *Submission 44.2*, p. 3.

4.26 The Australian Shareholders' Association (ASA) did not object to the concept of introducing a scheme similar to the SEC's Rule10b5-1 Trading Plans in the US providing:

> the rules for the plans are kept simple with minimal changes, the number of shares involved are not huge relative to the issued capital and the administration is transparent.[29]

4.27 The ASA added:

> While understanding a preference for best execution price, we would prefer orderly trading which may mean spreading volume over a longer period rather than any plan rules facilitating overly opportunistic purchases.[30]

4.28 Further, the ASA stated that:

> [w]e would expect executives would accrue their more substantial holdings through the equity component of their remuneration packages. We would expect sales programs to be announced to shareholders when set up. ASA supports Directors and executives having "skin in the game". Our voting guidelines state: "After three years on a board, a director should own or have invested at least one year's worth of base cash fees in the company's ordinary shares".[31]

4.29 ASA noted its expectation that 'the CEO and KMP (Key management personnel) build holdings over time. Building up such a holding can be more challenging when a start-up/new listing appoints new directors under rules at this time, so a sensible scheme would be beneficial providing the rules for the plans are kept simple with minimal changes, the number of shares involved are not huge relative to the issued capital and the administration is transparent'.[32]

Enforcement

4.30 At a hearing, Ms Finch submitted to the committee that although last year 'was a little quiet on insider trading enforcement…generally, ASIC maintains a significant degree of activity around insider trading. They continuously monitor trades'. In addition:

> ASIC scrutinises trades for a period prior to significant announcements, so when a material announcement is made to the market the ASIC systems go and scrutinise trades for a substantial period prior to that announcement. There has been a significant number of successful enforcements, albeit often of fairly small trades. The major insider trading cases are few and far

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29 ASA, Answer to written question on notice (received 12 March 2021).

30 ASA, Answer to written question on notice (received 12 March 2021).

31 ASA, Answer to written question on notice (received 12 March 2021).

32 ASA, Answer to written question on notice (received 12 March 2021).

between, but low level insider trading is actively enforced very successfully.[33]

Government consideration

4.31 Atlassian and StartupAUS noted that this is not a new issue, highlighting the 2003 *Insider Trading Report* by the Corporations and Market Advisory Committee (CAMAC) where:

> The Majority considers that there should be an exemption from the insider trading provisions for trading under non-discretionary plans where:
>
> • the trading takes place in accordance with a plan entered into when either the person was not aware of any inside information or any information of which the person was then aware was no longer inside information when any trading under the plan took place
>
> • there are no discretions under the plan, other than to terminate it, and
>
> • the plan was entered into in good faith and not as part of a scheme to evade the insider trading prohibitions.
>
> The person seeking to rely on the exemption should have the legal onus of establishing the above elements, rather than merely an evidential onus to raise them.
>
> The Minority does not support any exemption.[34]

4.32 It appears that the above CAMAC majority recommendation which addresses transactions under non-discretionary trading plans was accepted by the then government[35] but it does not appear to have been progressed.

4.33 Ms Cathie Armour, Commissioner, ASIC, reported that ASIC has conducted studies on 'market cleanliness' in which Australia compares well globally to comparable markets. In relation to the proposed US Rule 10b5-1 Ms Armour pointed out:

> Whilst this might be of particular interest to fintech founders, I don't think it's any different for a fintech founder to, say, someone who's founded another business, like a biotech business or even a resources business. It's a question of whether, you're the founder of a business and you build a business and then list that business, you are under any special disadvantages if you'd like to sell your shares.[36]

Listing environment

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[33] *Proof Committee Hansard*, 12 February 2021, p. 12.

[34] Australian Government, Corporations and Markets Advisory Committee, *Insider Trading Report*, November 2003, p. 25.

[35] See Australian Government, Attorney-General's Department, *Insider Trading, Position and Consultation Paper*, March 2007, p. 5.

[36] *Proof Committee Hansard*, 12 February 2021, p. 38.

4.34 The committee explored improving the listing environment. Mr Peter Dunne, Partner, Herbert Smith Freehills, appearing with the CEO of SafetyCulture, reported that the listing environment is seen as good, however, he suggested that the dual listing rules should be looked at to make it easier 'for some of the great Australian businesses that have listed on the Nasdaq to list on the ASX also'. The suggestion was to make the dual-listing regime more streamlined.[37]

4.35 In relation to dual listing, the ASX advised:

> A straightforward and relatively inexpensive process is currently available for foreign companies listed in other major markets to dual list on ASX under the 'Foreign Exempt' listing category. This category is for companies listed on another securities exchange that wish to have a secondary listing on ASX and that meet certain eligibility criteria. Companies in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of the ASX's Listing Rules.[38]

4.36 However, the ASX listing rules do not currently allow for Australian incorporated companies to make use of this option. The ASX highlighted the 'NZ Foreign Exempt' listing category introduced in 2015 'to allow NZX-listed companies to also list on ASX under a Foreign Exempt regime, but with significantly reduced size requirements'. In addition '[f]or companies in other jurisdictions that would like to dual list on ASX but do not meet the Foreign Exempt thresholds, ASX may grant relief to its rules on a limited basis to help facilitate the dual regulatory requirements'.[39]

4.37 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills (Herbert Smith Freehills) expressed the view that the ASX Foreign Exempt Listing regime in its current form is too restrictive as, among the other conditions, only those companies which are either 'qualifying NZ entities' or who have an operating profit before tax of at least $200 million and are listed on an exchange that is acceptable to ASX may seek an ASX Foreign Exempt Listing.[40] It recommended expanding the 'qualifying NZ entity' concept and/or creating an analogous concept to facilitate the dual-listing of emerging Australian companies:

> We recommend that the "qualifying NZ entity" concept be broadened to, at a minimum, capture Australian incorporated companies whose home exchange is the NASDAQ, the NYSE or the TASE (Tel Aviv Stock Exchange). In our view, such an amendment to the ASX Listing Rules would encourage the dual-listing of Australian companies who prior to

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37 *Proof Committee Hansard*, 5 March 2021, p. 14.

38 ASX, Answers to written questions on notice (received 30 March 2021), p. 1.

39 ASX, Answers to written questions on notice (received 30 March 2021), p. 2.

40 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills, Answers to Questions on Notice following public hearing on 5 March 2021 (received 16 April 2021), p. 5.

> such an amendment would have been either (a) not eligible for an ASX Foreign Exempt Listing because they failed to meet the profitability threshold requirements or (b) discouraged from seeking a full dual ASX Listing because of the compliance and administrative burden.[41]

4.38 The ASX noted that it 'recognises and monitors the evolving nature of market dynamics and periodically assesses its rules and guidance to ensure they remain fit for purpose. A key formal mechanism for this is the public consultation process, where ASX consults with the market on specific issues'.[42]

Capital raising by listed entities

Treatment of retail shareholders

4.39 The committee heard evidence from several witnesses concerned that current fundraising and disclosure requirements for ASX-listed entities unfairly disadvantage retail investors, and that these issues were exacerbated during a temporary COVID-19 rule change period that was in place for much of 2020.[43]

4.40 As a result of the economic shock caused by COVID-19, on 31 March 2020 ASIC and the ASX announced temporary emergency capital raising measures to help facilitate capital raisings in the short term and enable companies to survive the initial phase of the COVID crisis.[44] These changes included:

- an ASX class waiver that lifted the cap on the size of share placements to institutional investors from 15 per cent of a company's share base to 25 per cent;[45] and
- temporary relief from ASIC to enable certain 'low doc' offers (including rights offers, placements and share purchase plans) to be made to investors without a prospectus, even if they did not meet all ASIC's normal requirements.[46]

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41 Herbert Smith Freehills, Answers to Questions on Notice following public hearing on 5 March 2021 (received 16 April 2021), p. 5.

42 ASX, Answers to written question on notice (received 30 March 2021).

43 These concerns were raised in relation to access to capital by listed entities, and as such are not applicable to capital raising by private companies, unlisted public companies, trusts or unlisted managed investment schemes.

44 ASIC, '20-075MR Facilitating capital raisings during COVID-19 period', *Media Release*, 31 March 2020.

45 ASX, 'ASX Regulatory Relief and Updated Guidance during COVID-19 Pandemic', *Media Release*, 31 March 2020. The ability to offer an extended placement of between 15 and 25 per cent was subject to a follow-on accelerated pro rata entitlement offer or Share Purchase Plan offer being made to retail investors (to help meet the expectation to treat all shareholders fairly). The ordinary 15 per cent cap on share placements is found in ASX Listing Rule 7.1.

46 ASIC, '20-220MR ASIC extends COVID-19 relief for certain capital raisings and financial advice', *Media Release*, 23 September 2020.

4.41 The ASX's temporary exemptions expired on 30 November 2020.[47]

4.42 The SMSF Association (SMSFA) and Stockbrokers and Financial Advisers Association (SAFAA) focussed on retail and SMSF shareholders who have been unable to participate in recent capital raisings by ASX-listed entities and argued that:

> Our associations believe there is a level of inequity in recent and current capital raisings that are being undertaken by many Australian ASX-listed businesses.[48]

4.43 Ms Judith Fox, Chief Executive Officer, SAFA, pointed to data released from corporate advisory firm Vesparum Capital which reported on the amount which went to retail investors during COVID-19 capital raisings:

> Out of $38 billion in capital raised during the period 21 February to 30 November 2020 only $5 billion was allocated to retail investors via either share purchase plans or the retail component of entitlement offers. This 13 per cent allocation came despite retail investors typically occupying about 40 per cent of the share register of a company on the All Ordinaries Index. Only $2.7 billion of the $15.7 billion increase in portfolio values due to capital raising allocations was attained by retail investors. Inequitable capital raising structures and allocations have resulted in a wealth transfer from retail investors to institutional investors of $3.6 billion, based on typical retail investor company ownership levels of 40 per cent. The above results occurred despite retail investors showing strong on market support around capital raisings during both the COVID-19 period and in normal times, compared with institutional investors who were typically net sellers in the aftermarket.[49]

4.44 Ms Fox argued that these figures 'highlight how retail, high net worth and SMSF investors are disadvantaged twice':

> Not only are their shareholdings in these companies diluted, but they miss the opportunity to buy shares at prices that are often a hefty discount to the market price. It is not a level playing field. ASX listed companies play a vital role as generators of wealth for retail investors over the long term, including as retirement income for millions of Australians. The last ASX investor study had them at nine million. Australia has one of the strongest cultures in the world for individual direct share market investment via ordinary citizens, and that's the result of 25 years of bipartisan government policy. That's also seen the advent and significant growth of the SMSF sector. It's allowed corporate prosperity to be spread and supports the use of our savings to finance equity in Australian companies…[50]

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47 ASX, 'ASX is extending temporary emergency capital raising relief to 30 November 2020', *Media Alert*, 9 July 2020.

48 *Submission 190*, p. 1.

49 *Proof Committee Hansard*, 12 February 2021, p. 13. See Vesparum, Vesparum White Paper Series Paper 34, Inequitable treatment of retail investors in COVID-19 capital raisings, 15 January 2021.

50 *Proof Committee Hansard*, 12 February 2021, pp. 13-14.

4.45 Commenting on capital raises made during the COVID-19 period, SMSFA and SAFAA submitted that 'the investment banking industry which facilitates the capital raisings typically do not offer retail and SMSF investors a proportionate opportunity to participate in discounted capital raisings, instead relying on domestic and international institutional clients'.[51]

4.46 Mr John Maroney, CEO, SMSF Association, elaborated at a hearing:

> We made a joint submission with the Stockbrokers and Financial Advisers Association because of our concerns about the unfair treatment that retail shareholders received during many capital raisings last year… and that unfairness was driven by the regulatory relief provided by ASIC and the ASX to allow increased capital raisings during that period without shareholder approval. As [Ms Fox] has explained, this is not the first time that retail shareholders and SMSF investors have faced the dual issue of dilution of the holdings and limited opportunity to participate in capital raisings compared to institutional shareholders.[52]

4.47 Mr Maroney emphasised '[w]e believe it is now feasible for boards and their advisers to more carefully consider the position of retail shareholders and SMSF investors when they embark on capital raisings'.[53]

4.48 Mr Dean Paatsch, Director, Ownership Matters, advisers to international fund managers and superannuation funds, also pointed out data in relation to capital raising during the 2020 COVID temporary exemptions, highlighting the discrepancy between retail and wholesale investors:

> …$36 billion was raised and the most interesting element was that $23 billion of it—so 64 per cent—was raised by way of placement. A placement, by definition, excludes retail investors and there is no limit to the discount. The average discount that was reserved in the 12-month period was 13.6 per cent to the last traded price. So where a retail investor or another investor doesn't get to access that, they're diluted and miss out on an opportunity….
>
> In the GFC, placements were only 45 per cent. So placements increased in the COVID period from 45 per cent to 64 per cent from the GFC, crisis to crisis.[54]

4.49 Ownership Matters argued in its submission that renounceable rights issues are the fairest mechanism through which listed companies can raise capital, but that placements to institutional investors are often utilised instead:

> [F]airness for all investors in capital raisings is assured where renounceable rights issues are used to raise capital. Shareholders that do not take up their rights to take part in a capital raising are able receive

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51 *Submission 190*, p. 1.

52 *Proof Committee Hansard*, 12 February 2021, p. 14.

53 *Proof Committee Hansard*, 12 February 2021, p. 14.

54 *Proof Committee Hansard*, 12 February 2021, p. 15.

> compensation if there is a market value attributable to 'rights' that have been foregone.
>
> Australia has developed innovations such as the PAITREO (pro-rata accelerated institutional & tradeable retail entitlement offer) to balance the need for funding certainty with fairness for retail shareholders.
>
> However it is notable that many Australian issuers eschew renounceable rights issues in favour of a combination of placements, share purchase plans and non-renounceable offers.[55]

4.50 Commenting on the reasons why company boards often prioritise placements to institutional investors rather than rights issues or other mechanisms involving retail investors, Ms Fox commented that it's 'basically speed and deal certainty':

> Deal certainty is often given as the reason they don't go to retail and they go to institutional investors, because the underwriters don't want the risk; they want to make sure that there's no risk, and they want certainty. And retailers seem to be taking too long. Again, technology can deal with that, because we already know that retail brokers certainly can go out very quickly to their clients.[56]

4.51 Ownership Matters argued for a change to the ASX Rules in order to allow rights issues to be offered at a shorter timeframe, to make them more comparable with institutional placements when companies need to raise capital quickly:

> [M]any issuers do not use renounceable offers citing difficulties obtaining underwriting given the length of time (market risk) that the offer remains open. Typically companies adopt a longer timetable than the minimum (up to 28 days) to allow time for the delivery (and acceptance) of the offer by mail to retail shareholders that have not chosen to communicate with the company in electronic form only…
>
> Given that the cost of choosing unfair capital raising mechanisms penalises nonparticipating shareholders (predominantly retail) who receive no compensation for rights foregone, we believe that the Committee ought recommend that the ASX clarify that renounceable rights offers can occur on a truncated timetable (no greater than seven days in total) under the following conditions:
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> • The offer can be accepted only electronically, provided that Australian resident shareholders without access to electronic communications have been notified about the offer by post before it expires.[57]

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55 Ownership Matters, *Submission 220*, p. 1.

56 Ms Judith Fox, Chief Executive Officer, Stockbrokers and Financial Advisers Association, *Proof Committee Hansard*, 12 February 2021, p. 18.

57 Ownership Matters, *Submission 220*, pp. 1-2.

4.52 Ms Fox argued that a cultural change is required to ensure retail shareholders are adequately considered when companies are making decisions around capital raising:

> Say retail brokers were actually included in the deal at the beginning and had a meaningful role in the boardroom…and were involved in the deal in a meaningful way from the start. Often the issue is they know they've got a huge retail register and they actually are often quite concerned about their retail investors, but they're talking to institutional investment banks that don't have any meaningful role in the retail world, so literally don't even think about those clients and say they're going to be too slow and there's no certainty. But, if a retail broker were involved in the deal in a meaningful way, then you would actually be able to let the issuers who are concerned about their retail investors be able to think about the allocation to them. We know that the technology is there to allow for them to get to them quickly. So there is a culture shift that needs to take place[.][58]

4.53 To address the level of inequity in recent and current capital raisings, SMSFA and SAFAA suggested:

- ASX 200 listed companies should structure offers to maximise access for retail investors to a proportionate offer.
  - This includes setting aside a certain proportionate allocation for retail-focused brokers and firms to utilise their current modern technologies to provide offers quickly to SMSFs and retail clients
- If a company does not offer retail investors the chance to participate, they should publicly explain why not.
- Companies should disclose post-allocation to their investors the percentage of retail, SMSF and institutional offer allocations.[59]

4.54 Dr Stephen English also spoke about the need to treat smaller investors in a reasonable way to reduce inefficiencies in capital raising.[60]

Questioning the definition of sophisticated investor

4.55 Wilson Asset Management (WAM) also argued that retail investors are locked out of discounted capital raisings. WAM explained to the committee that regulations developed to protect retail shareholders are now precluding them from equitable participation in equity raisings. WAM pointed out that section 708 of the *Corporations Act 2001* (Corporations Act) distinguishes between retail and wholesale investors, 'by using wealth as a proxy for financial literacy'. Noting the wealth thresholds in the Corporations Act,[61]

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[58] Ms Judith Fox, CEO, Stockbrokers and Financial Advisers Association, *Proof Committee Hansard*, 12 February 2021, p. 19.

[59] *Submission 190*, p. 2.

[60] *Submission 195*, p. 1. See also *Proof Committee Hansard*, 12 February 2021, p. 15.

[61] The sophisticated investor criteria is currently defined as investors above $250,000 in annual gross income over the last 2 years or $2.5 million of net assets including the family home.

WAM argued that greater assets do not equal financial literacy and further that the 'paternalistic policy, designed with the intent to protect retail shareholders, has unfairly created a systemic bias whereby retail investors are excluded from participating in capital raisings'.[62]

4.56 To address this, WAM proposed amending section 708 of the Corporations Act to 'remove the requirement for an investor to qualify as a sophisticated or professional investor, which unfairly excludes retail investors from discounted equity capital raisings and, in many cases, dilutes their ownership in the company'.[63]

4.57 WAM pointed out that in New Zealand, the *Financial Markets Conduct Act 2013* 'passed securities law reforms that provided exemptions to the 'Wholesale Investors' classification'. The reforms:

> allow for all shareholders to participate in any offer of securities that are in a class that are already traded on the New Zealand Stock Exchange (NZSX) without a prospectus, as the financial products are quoted on a licensed market which require adherence to continuous disclosure obligations. Our colleagues in the New Zealand investment community have attributed to this reform greater and fairer market participation and improved outcomes for all investors. We contend the policy rationale for the applicable Australian and New Zealand laws are the same.[64]

4.58 Mr Paatsch also mentioned the situation in New Zealand 'where you don't have to provide a prospectus because effectively it's a fully informed market.' However Mr Paatsch argued that the biggest protection for retail investors would be 'to make retail rights issues easier' which involves:

> …lowering the time at which an underwriter is at market risk, and making it more seamless. The vast majority of dilution occurs because of the listing rule, in which you can raise up to 15 per cent of the additional capital base on a non pro rata basis. [Share Purchase Plans] have made a big difference but rights issues are the perfect solution. So, unless anyone is prepared to revisit the placement threshold, I think you really have to focus on improving the retail rights issue framework. That will involve chucking out a lot of the old processes and trying to pick up some utilisation of technology so that people like [Dr Stephen English] can participate. I don't think it's realistic that you will have retail investors being able to participate in placements at the sufficient level that is required.[65]

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62 *Submission 192*, p. 1.

63 *Submission 192*, p. 1. Under Section 708, corporate issuers are required to issue new securities under a disclosure document namely a prospectus, unless an issue falls within one of the specified exemptions. Exemptions include the issuance of securities to wholesale investors. Section 708AA provides mechanisms by which listed companies can conduct rights issues to any existing shareholders (including retail investors) without a prospectus.

64 *Submission 192*, p. 4.

65 *Proof Committee Hansard*, 12 February 2021, p. 20. See also Dr Stephen English, *Proof Hansard*, 12 February 2021, pp. 15, 16.

The role of technology

4.59 SMSFA and SAFAA suggested that the development of 'a single digital retail platform that builds on advances in financial technology could create a more efficient mechanism for fund raising for SMSFs and retail investors'.[66] SMSFA and SAFAA elaborated on this suggestion:

> The purpose of such a platform would be to create a more efficient mechanism for fund raising from SMSFs and other retail investors. Participants could register for the single depository which would help facilitate an even quicker process for brokers to access larger retail markets. Not only would this be more effective for capital raisings, but it may also be useful for larger scale infrastructure investments that SMSFs and retail investors are also typically restricted from accessing.[67]

4.60 Mr Maroney encouraged the committee to:

> explore how a digital retail platform could be developed to facilitate a more efficient process which links the investment banking industry with retail and SMSF trustee shareholders.[68]

4.61 SMSFA and SAFAA suggested that this could include a system where:

- Participants can register the interests of their retail and SMSF investors on a single depository.
- The facilitator of the capital raising can verify the shareholding.
- The facilitator can allocate proportionate capital to retail and SMSF investors.[69]

Foreign investment

4.62 Treasury was asked about current requirements in relation to foreign investment into financial services and technology businesses in Australia. The importance of access to capital and seed funding for start-up businesses was recognised by Treasury which added:

> When assessing proposed foreign investments to ensure they are not contrary to the national interest, Treasury is committed to meeting urgent commercial deadlines wherever possible.[70]

4.63 Treasury provided further detail in relation to national interest test:

> Broadly, investments in the fintech industry by private investors will not require screening under the broader national interest test if they are below the monetary screening threshold ($281 million for most business investments or as high as $1.216 billion for certain FTA partners). Foreign

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66 *Submission 190*, p. 2.

67 *Submission 190*, p. 2.

68 *Proof Committee Hansard*, 12 February 2021, p. 14.

69 *Submission 190*, p. 2.

70 Treasury, Answers to written questions on notice (received 23 March 2021), p. 3.

> government investors will continue to be subject to mandatory national interest screening from $0 for all investments, including in fintech.
>
> The foreign investment reforms that commenced on 1 January 2021 mean an investment in a national security business – including starting such a business – is now subject to mandatory screening under the narrower national security test. Investments not otherwise notified may be 'called in' for review if they raise national security concerns.[71]

4.64 Material has been published on the Foreign Investment Review Board's website 'that gives some guidance to potential investors around the sorts of things that we think could be subject to this call-in power'.[72]

4.65 Mr Tom Hamilton, First Assistant Secretary, Foreign Investment Division, Treasury, indicated that in the guidance there are two broad categories relevant for fintech:

> Firstly, we've identified banking and finance as a sector where, for certain types of investments, including banks and credit unions, billing societies and other authorised deposit-taking institutions, superannuation, insurance, financial markets, clearing and settlement facilities, payment systems, derivative trade repositories and benchmark administrators—the reason we've identified those is we consider them to be essential banking and financial services that underpin economic activity. There would be a disruption in the banking and finance sector that would have a detrimental impact on Australia's national interests of the economy. In addition to that, the information contained in the banking and finance sector is a potential target for espionage, sabotage and foreign interference. So we have identified it as an area where we are interested in having the ability to call in and assess, and we have been encouraging investors to voluntarily come to us.[73]

4.66 The second sector where investors are encouraged to voluntarily notify is around information technology data and cloud services:

> including where the data centres or cloud services store data for the Commonwealth or a state and territory government or an entity that's managing a critical infrastructure asset; businesses with access to bulk personal information, which we would define as over 100,000 Australian residents, information on their financial information; and businesses that have access to sensitive networks over which a Commonwealth or state or territory government might rely on for access to that information.[74]

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[71] Treasury, Answers to written questions on notice (received 23 March 2021), p. 3. See also Mr Tom Hamilton, First Assistant Secretary, Foreign Investment Division, Treasury, *Proof Committee Hansard*, 5 March 2021, p. 28.

[72] Mr Tom Hamilton, First Assistant Secretary, Foreign Investment Division, Treasury, *Proof Committee Hansard*, 5 March 2021, pp. 28-29.

[73] *Proof Committee Hansard,* 5 March 2021, p. 29.

[74] Mr Tom Hamilton, Treasury, *Proof Committee Hansard*, 5 March 2021, p. 29.

4.67 The committee was interested in whether there has been any consideration given to expediting approval processes for investors from the Five Eyes. Mr Hamilton responded:

> It's a question that's asked of us reasonably often. I'll make a couple of points there. Firstly, it is a non-discriminatory framework, and it applies to all countries, and each investment proposal is assessed on a case-by-case basis. A point I'd make there is that we don't just look at the country of origin. We also look at the particular asset that might be subject to acquisition, and that's a really important point in response to the concept of this idea that you could sort of expedite things. It's non-discriminatory, and we need to look at both the asset and the country of investment, through our very detailed case-by-case assessment.[75]

4.68 Mr Hamilton also noted that 'under the broader national interest test, we also look at the character of the individual investor'. He added that:

> If we wanted to move away from that, the other thing is that we'd have to have a very careful assessment of the very extensive range of obligations that we have under our network of free trade agreements to make sure that it is legally consistent with those. That would be something where we don't have the expertise. That would be a matter for the Department of Foreign Affairs and Trade.[76]

4.69 Austrade reported that it has been informing investors, business and stakeholders, overseas and in Australia, about reforms to Australia's Foreign Investment Framework which commenced 1 January 2021. Austrade indicated that:

> Most investors have advised that they feel informed about the rationale for change, and are reassured that Australia's fundamental foreign investment policy settings remain open to foreign investment. This allows companies to plan for the long term to achieve their investment goals and target rates of return.[77]

4.70 Austrade reported on the areas where investors are seeking additional clarity:

> In particular, investors sought clarity on new terms and regulatory mechanisms within the reforms. This included the proposed fee structure changes, the last-resort powers, and the sequencing and links to other government reforms underway such as the Security of Critical Infrastructure Act 2018.[78]

4.71 Austrade also noted that in collaboration with CSIRO it is 'leading a process to better understand current drivers for global research and development activity by foreign multinationals'. Consultation will commence in 2021 with the

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[75] *Proof Committee Hansard*, 5 March 2021, p. 29. See also Treasury, Answers to written questions on notice (received 23 March 2021), p. 1.

[76] *Proof Committee Hansard*, 5 March 2021, p. 29.

[77] *Submission 148.1*, p. 5.

[78] *Submission 148.1*, p. 5.

results expected by March 2021.[79] The intent of the process 'is to identify opportunities where Australia can compete to increase Australia's share of R&D-related activity by foreign corporates, together with actions to be taken or policy recommendations to make Australia more competitive'.[80]

[79] No results of this consultation have been published at the date of this report.

[80] *Submission 148.1*, p. 4.

Chapter 5
Blockchain and digital assets

5.1 This chapter covers issues raised with the committee in relation to blockchain and the regulation of digital assets.

Blockchain

5.2 The committee explored progress and opportunities in the area of blockchain. Many submitters and witnesses viewed that good work had been done to put Australia in a beneficial position in relation to blockchain. At the same time, witnesses pointed to the need for regulation to keep pace with innovation in this space.[1]

5.3 The Commonwealth Scientific and Industrial Research Organisation (CSIRO) said that the adoption of blockchain technology is 'sufficiently mature for production systems to be implemented in Australia and internationally.'[2] CSIRO considered governance as the major challenge to adoption given the need for 'multi-lateral decentralised governance' and suggested this may need to be coordinated by an international organisation such as the United Nations or World Trade Organization.[3]

5.4 FinTech Australia noted with interest developments within Australia's universities, with many establishing blockchain centres, some of which have secured public funding to advance blockchain technology, cryptocurrency and digital assets through research in a variety of disciplines.[4] Various government-funded cooperative research centres are also 'exploring blockchain applications and co-funding projects with the blockchain industry to solve problems'.[5]

National Blockchain Roadmap

5.5 In February 2020, the National Blockchain Roadmap was released by the Department of Industry, Science, Energy and Resources (DISER). The roadmap highlights current and future opportunities for blockchain technology across the economy.[6] The roadmap focuses on regulation and standards, skills,

1 See for example *Submission 204*, p. 5.

2 *Submission 17.1*, p. 5.

3 *Submission 17.1*, p. 5

4 Answer to question on notice, 11 February 2021 (received 5 March 2021), p. 8.

5 Answer to question on notice, 11 February 2021 (received 5 March 2021), p. 8.

6 Australian Government, Department of Industry, Science, Energy and Resources, *The National Blockchain Roadmap: Progressing towards a blockchain-empowered future*, February 2020, p. 5.

capability and innovation, international investment and collaboration, and opportunities in particular sectors.[7]

5.6 DISER noted that the roadmap identifies a set of twelve next steps, or signposts, for the future, which guide the roadmap's implementation. Broadly, these signposts seek to: coordinate efforts to deliver public value; raise awareness of the potential of blockchain through education, skills and use cases; and support the development and adoption of blockchain to enable industry to capture growth opportunities.[8]

5.7 Under the roadmap, four working groups on supply chains, cybersecurity, credentialing and RegTech are conducting further work on the deployment of 'blockchain-based systems that assist people and business to deal with government more easily'.[9] DISER and the four working groups established to take forward key aspects of the roadmap report to the National Blockchain Steering Committee on progress towards the twelve signposts.[10]

5.8 Many witnesses welcomed the roadmap and associated working groups.[11]

Blockchain standards

5.9 Australia has been involved in the development of international standards for blockchain since 2016, with Standards Australia chairing the International Organization for Standardization Working Group responsible for this development. The Working Group has published three standards and a further eight are under development.[12] According to DISER, this work on standards aims to:

> …establish market confidence to support the development and adoption of blockchain technology. The aim is to unlock a public-private dialogue on blockchain industry and standards development requirements and improve the understanding, awareness and business benefits of this emerging technology.[13]

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7 Australian Government, Department of Industry, Science, Energy and Resources, *The National Blockchain Roadmap: Progressing towards a blockchain-empowered future,* February 2020.

8 Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 1 April 2021), p. 2.

9 *Submission 18.1*, p. 7.

10 Department of Industry, Science, Energy and Resources, Answers to written questions on notice (received 1 April 2021), p. 2.

11 See for example Ms Rebecca Schot-Guppy, CEO, FinTech Australia, *Proof Committee Hansard*, 11 February 2021, p. 49 and Blockchain Australia, *Submission 211*, p. 4.

12 *Submission 18.1*, p. 6.

13 *Submission 18.1*, p. 7.

5.10 Several submitters saw Australia's chairing of this group as a significant strength and opportunity.[14]

5.11 The Home Affairs Portfolio informed the committee that Australia is also involved with the setting of international standards for combatting money laundering and terrorism financing. Home Affairs further outlined:

> In October 2018, Australia adopted international standards for the regulation of businesses providing 'virtual asset' (or digital currency) services. The new standards require that virtual asset service providers be subject to the full range of Anti-Money Laundering / Counter-Terrorism Financing regulation.[15]

5.12 Noting that standardisation is positive, CSIRO was of the view that the adoption of blockchain technology should not be contingent of the '"completion" of standards' since 'the standardisation process is never complete'.[16]

5.13 The Australian Financial Markets Association (AFMA) called for 'increased consistency with, and use of, international standards' in the context of blockchain.[17] AFMA noted that financial firms are subject to a variety of standards in Australia. For example, while ASIC's standard aligns with international standards, APRA's does not.[18] AFMA suggested that a 'single graded national standard that recognises international standards' would be 'more likely to deliver consistently high security outcomes'.[19] To this end, it expressed support for work underway by the Council of Financial Regulators Cyber Working Group to harmonise ASIC, APRA and Reserve Bank of Australia cyber requirements.

5.14 In a similar vein, the Commonwealth Bank of Australia (CBA) called for greater consistency with 'existing international standards and industry standards when undertaking data reforms' noting that solutions tailored to one system or jurisdiction 'can create issues with future extensibility, security and interoperability with other regimes.'[20]

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14 See for example Block 8, *Submission 210*, p. 14.

15 *Submission 132.1*, p. 6.

16 *Submission 17.1*, p. 5

17 *Submission 47.1*, p. 4.

18 *Submission 47.1*, p.5.

19 *Submission 47.1*, p. 5.

20 *Submission 121.1*, p. 11.

5.15 From FinTech Australia's perspective, the lack of information sharing to inform standards, governance frameworks and best practices has led to the duplication of efforts and resources.[21]

5.16 Hamilton Blackstone Lawyers (HBL) submitted that 'decentralised smart contracts' were 'one of the most promising and innovative uses of blockchain technology in business. And that this had been recognised by the International Organisation for Standardisation Working Group.[22] HBL called for the government to prioritise consideration of 'digital international standards pertaining to smart contracts in order to devise an appropriate regulatory strategy to overcome':

> (a) The uncertain legal status of smart contracts with respect to whether they are binding under Australian law; and
>
> (b) The inadaptability of smart contracts which can frustrate the jurisdiction of the courts and the will of the parties.[23]

Blockchain for public sector innovation

5.17 The committee heard a large amount of evidence on possible government applications for blockchain technology, as well as information on work already underway within government in this area.

5.18 FinTech Australia submitted that blockchain technology can be used by government 'to reduce the regulatory burden placed upon businesses':

> Blockchain technology serves a horizontal role in this scenario by proving or verifying the state of a transaction, and therefore demonstrating compliance for a business and directly reducing regulatory burden.[24]

5.19 It also noted that the ability of blockchain technology to store data in a way that is both secure and interoperable also has potential applications to create efficiencies for government itself. FinTech Australia raised the possibility of COVID-19 immunity status as an example.[25]

5.20 Block8 said it was 'difficult to overstate the economic benefits associated with using blockchain to deliver public sector data and information services.'[26] It further outlined:

> There is potentially immediate opportunity for Government to use distributed ledger technology to provide a superior means of delivering an infrastructure for public information, starting with the delivery and

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21 Answer to question on notice, received 5 March 2021, p. 10.

22 *Submission 208*, p. 2.

23 *Submission 208*, p. 2.

24 Answer to question on notice, received 5 March 2021, p. 11.

25 Answer to question on notice, received 5 March 2021, p. 21.

26 *Submission 210*, p. 14.

> maintenance of public registers. This method of managing information develops a 'single key view' for individuals and companies that integrates all Government and other public information, such as:
>
> - Incorporation, licencing, and public notices for corporate Australia;
> - Emissions trading schemes such as carbon and salinity; and
> - Other civic affairs, such as land titles, births, deaths and marriages, licencing and electoral rolls.[27]

5.21 The Australian Small Business and Family Enterprise Ombudsman recommended government examine the use of blockchain technology to host the Personal Property Securities Register, which currently presents 'significant difficulties of small business'. The Ombudsman considered that blockchain technology would: 'support increased functionality while ensuring the ongoing security and integrity' of the Register; provide an 'irrefutable timeline, expediting investigations required in the insolvency process'; and reduce associated costs and stresses 'while increasing funds available for distribution to creditors'.[28]

5.22 Dr Aaron Lane, a researcher affiliated with the RMIT Blockchain Innovation Hub, appearing in a private capacity, highlighted the use of blockchain for public sector innovation, outlining a project at the RMIT Blockchain Innovation Hub which is building the digital infrastructure for water rights. Dr Lane provided more information:

> This is a joint project with Civic Ledger, Far North Queensland Growers and SunWater in the Queensland government. What this is looking at doing is building that digital platform to allow water holders to trade those water rights in a way that is open and transparent and it can be seen. In the past that has been done on paper. In the past in order to get information about water rights trading people have simply called up the office and asked someone to look in the book and see if any information is there, whereas now we're going to get much better information and a more efficient water trading scheme. That's something tangible that is being done on the ground at the moment, albeit in a pilot phase…[29]

5.23 Dr Lane added that there is a need to scale up 'the capacity of regulatory agencies to accept blockchain based records where it makes sense—agricultural supply chains being one example where product is coming in and its being traced and used as a blockchain enabled supply chain platform'. Dr Lane further explained that it will be important for Australian Customs, the Australian Taxation Office and the Department of Agriculture to be able to accept and view that record.[30]

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[27] *Submission 210*, p. 15.

[28] *Submission 46.2*, pp. 1-2.

[29] *Proof Committee Hansard*, 11 February 2021, p. 16.

[30] *Proof Committee Hansard*, 11 February 2021, p. 16.

5.24 In their submission, Dr Lane, Dr Darcy Allen and Dr Chris Berg, all of the RMIT Blockchain Innovation Hub, discussed several other potential regulatory applications of blockchain. They found that blockchain-based supply chains 'have the potential to increase the value capture by primary producers by disrupting the way that supply chain data is governed.'[31] They are trialling using blockchains to provide patients with property rights in their health record data. They are also looking into the use of blockchain for the governance of copyright for Australia's creative industries. This has the potential to 'drive efficiency, fairness for creative practitioners, and new business and funding models.'[32]

Federal government initiatives

5.25 Mr Tim Bradley, General Manager, Emerging Technologies and Adoption Branch, DISER, said there are 'quite a number of examples where blockchain technologies are being used by government', the majority in the finance sector.[33] DISER considers that blockchain can 'streamline regulatory processes and reduce the cost of compliance procedures through increased speed and automation.'[34] DISER further explained:

> Using blockchain technology can also potentially eliminate the need for both regulators and businesses to keep duplicated records, improving the speed and quality of regulatory review processes, since data is reconciled on the blockchain rather than on duplicated accounts, and reducing the costs for business. Since data is shared by design on the blockchain, regulators would not have to collect, store, reconcile and aggregate data themselves, allowing businesses to focus on getting on with business.[35]

APS Blockchain Network

5.26 Under the National Roadmap, DISER is developing an Australian Public Service (APS) Blockchain Network to 'help identify where applications of the technology could be deployed'.[36] This network 'aims to connect, support and promote blockchain enthusiasts and users in the APS', and will 'build a community of practice within the APS to facilitate discussion about blockchain technology and share lessons learned through regular events such as webinars'.[37]

Pilot projects to reduce regulatory compliance costs

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31 *Submission 204*, p. 3.

32 *Submission 204*, p. 4.

33 *Proof Committee Hansard*, 3 March 2021, p. 45.

34 *Submission 18.1*, p. 7.

35 *Submission 18.1*, p. 7.

36 *Proof Committee Hansard*, 3 March 2021, p. 46.

37 DISER, Answers to written questions on notice (received 1 April 2021), p. 3.

5.27 The Australian Government, through DISER, will provide $6.9 million over two years from 2020-21 'to fund two pilots to demonstrate how blockchain technology can reduce regulatory compliance costs and to encourage businesses to take up blockchain technology to boost productivity', and increase familiarity with blockchain and its potential more broadly.

5.28 One pilot will support businesses in the critical minerals industry 'to digitally transform their compliance and ethical certification processes and reduce their costs of doing business'. The second pilot will be in food provenance, 'given the increasing challenges of supply chains created by the COVID-19 pandemic' and the fact that Food and Beverage is a sector identified as a national manufacturing priority.[38]

RegTech commercialisation initiative

5.29 Mr Bradley informed the committee that as part of an $11.4 million initiative on regtech commercialisation, DISER had 'engaged with agencies from around the Commonwealth to identify potential challenges' and that those challenges 'are being reviewed, and then they'll be advanced.'[39] Once the challenges have been identified, small and medium enterprises (SMEs) will be invited to propose solutions, with up to five SMEs per challenge receiving grants of up to $100,000 to develop feasibility studies.[40] SMEs that complete the feasibility study have an opportunity to apply for one of two proof of concept grants available per challenge, which are worth up to $1 million.[41]

Other initiatives

5.30 The Australian Border Force (ABF) is currently conducting a trial in partnership with Singapore, using blockchain technology to simplify cross-border trade:

> Digital verification systems will be tested across both the ABF-developed Intergovernmental Ledger (IGL) and IMDA's [Singapore's Infocomm Media Development Authority] TradeTrust for electronic trade documents. Businesses and regulators will give feedback on their experience verifying Certificates of Origin with the two systems, with the aim of reducing administrative costs and increasing trade efficiency.[42]

5.31 CSIRO referred to various initiatives to deploy blockchain in the public sector in a variety of countries, including Georgia, Sweden, the Netherlands and the United Kingdom. CSIRO informed the committee that it had partnered with the Commonwealth Bank to conduct a research project on 'conditional

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38 DISER, Answers to written questions on notice (received 1 April 2021), pp. 2-3.

39 *Proof Committee Hansard*, 3 March 2021, p. 45.

40 *Proof Committee Hansard*, 3 March 2021, p. 45.

41 DISER, Answers to written questions on notice (received 1 April 2021), p. 2.

42 *Submission 18.1*, p. 8.

payments on blockchain, motivated by the complexity of the National Disability Insurance Scheme.'[43]

Land registries

5.32 Block8 informed the committee of state government efforts to 'move their jurisdictions to a fully electronic conveyancing ecosystem.'[44] In 2019, the South Australian government issued a request for information on the use of distributed ledger technology for Electronic Lodgement Network Operator[45] interoperability in this context.[46] Despite around 12 months of discussions on a blockchain solution, Block8 regretted that South Australia did not proceed with this approach and considered that this was a result of pressure to fast-track implementation.[47]

5.33 CSIRO noted the use of a blockchain-based land registry system in the Republic of Georgia.[48]

5.34 Dr Oleksii Konashevych provided information on his research on the application of blockchain technology to land titles. He found that, using blockchain, 'public bodies can retain the traditional amount of power' but also citizens are given 'direct access to manage their records by performing peer-to-peer transactions'.[49] Dr Konashevych detailed that such a system would allow the public direct access to their property records, rather than needing to go through the registrar as intermediary. He further explained:

> …blockchain is fundamentally different because it's open by default, and so the proprietors, the owners of any property—title rights are just an example; it can be any property rights—can directly interact with their property rights and manage these records that represent their property. Why the registrar is inefficient is that, when there is a centralised database closed by default and it's mediated through other people, it's a bottleneck.[50]

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43 *Submission 17.1*, p. 6.

44 *Submission 210*, p. 10.

45 Electronic Lodgement Network Operators provide the means for transacting parties to collaborate electronically on the preparation of registry instruments, the settlement of the funds and the lodgement of instruments with the land registry to complete conveyancing transactions. (See https://www.arnecc.gov.au/resources/links/electronic_lodgment_network_operators, accessed 19 March 2021).

46 *Submission 210*, p. 11.

47 *Submission 210*, p. 12.

48 *Submission 17.1*, p. 6

49 Oleksii Konashevych, *Submission 186*, p. 11.

50 *Proof Committee Hansard*, 11 February 2021, p. 9.

5.35 Existing closed database systems don't allow smart contracts or 'automation and interaction by many interested parties, like banks, insurance companies, landowners and developers'. By contrast, with an open infrastructure like blockchain it is 'possible to introduce these sorts of things, with digital rights operating with smart contracts.'[51] Dr Konashevych estimated that the use of blockchain in land registries would reduce the work of registrars by 90 per cent.[52]

5.36 Dr Konashevych told the committee that there would be 'lots of advantages, including attracting investments from all over the world' for early adopters of these technologies.[53] He advocated for Australia adopting blockchain in the land registry as a pilot, which would not require amending or adopting new legislation. He did however consider that the 'full power of the technology' could be achieved only by changes in regulations.[54]

Regulatory uncertainty

5.37 It was put to the committee that regulatory uncertainty remains an issue inhibiting the widespread uptake of blockchain and distributed ledger technology. Blockchain Australia informed the committee that it continued to receive comments from cryptocurrency and digital asset businesses that 'they have no clear guidance or understanding of whether their crypto asset activities are regulated, whether they need to hold an Australian Financial Services Licence and what they need to do to ensure they are compliant.'[55]

5.38 Blockchain Australia was of the view that 'a nimble regulatory regime will be the catalyst for uptake across the industry, creating high value knowledge economy jobs and growth'.[56] It added that:

> In the short term, the provision of clear guidance from Regulators in relation to how they intend to regulate categories of digital assets, including a willingness to engage with industry to provide a position statement regarding the regulation of specific categories [of] digital assets in a balanced way would, we submit, support investment and aid the growth of jobs.[57]

5.39 BTC Markets considered that 'regulation sets the tone':

> It builds the culture, facilitates the flow of capital and manifesting of skills in our workforce. It is needed to construct the right safeguards, and

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51 *Proof Committee Hansard*, 11 February 2021, p. 9.

52 *Proof Committee Hansard*, 11 February 2021, p. 10.

53 *Proof Committee Hansard*, 11 February 2021, p. 8.

54 *Proof Committee Hansard*, 11 February 2021, p. 8.

55 Answer to question on notice (number 56), received 4 March 2021.

56 *Submission 211*, p. 1.

57 Answer to question on notice, received 4 March 2021, p. 2.

> demonstrate industry preparedness, in protecting all investor clients. It also provides surety as to the direction for investment and jobs growth.[58]

5.40 According to BTC Markets, 'private equity, venture capital firms and investment banks looking to float innovative Australian companies' via security token offerings are 'inhibited by a regulatory framework shaped for traditional markets.'[59]

5.41 BTC Markets submitted that other jurisdictions are 'already pulling ahead' of Australia in regulating digital currency exchanges.[60] It drew attention to Hong Kong's initiative to create a licensing regime for digital currency exchanges, including the ability to list security token offerings. It also noted progress in Singapore and the United States.

5.42 Bitaroo considered that regulators 'lack a fundamental understanding of Bitcoin as well as open source blockchain technology in general' and that this lack of understanding leads to decisions increasing risks to individuals 'while failing to adequately address both real and hypothetical threats'.[61]

5.43 Dr Darcy Allen, Dr Chris Berg and Dr Aaron Lane, researchers affiliated with the RMIT Blockchain Innovation Hub, providing information in their personal capacities, also highlighted that 'the rapid pace of digital innovation and adoption generates regulatory tensions', adding that '[n]ew business models do not necessarily fit tightly or neatly within existing frameworks'.[62] They argued that Australia needs 'ongoing and deep regulatory reform' in order to realise the benefits of the digital economy.[63] They acknowledged that regulatory reform is difficult due to uncertainty over the costs and benefits of particular regulations and rent-seeking.

Smart contracts

5.44 Blockchain Australia told the committee that the enforcement of smart contracts is 'uncertain under Australian law.'[64]

5.45 Noting that other governments have taken steps to clarify the legal status of smart contracts, HBL called for the government 'to issue guidance or enact declarative legislation in order to reassure businesses that smart contracts are subject to the adjudication of the courts.'[65] HBL also called on the government

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58 *Submission 209*, p. 3.

59 *Submission 209*, p. 4.

60 *Submission 209*, p. 2.

61 *Submission 207*, p. 1.

62 *Submission 204*, p. 5.

63 *Submission 204*, p. 5.

64 Answer to question on notice (number 56), received 4 March 2021, p. 7.

65 *Submission 208*, p. 5.

to work with 'smart contract platform developers' to create 'pre-coded boilerplate causes' allowing smart contracts to be 'varied, suspended, and terminated.'[66]

Crypto and digital assets

5.46 While the committee heard that Australia is well placed in relation to blockchain in general, it also heard that there are ongoing regulatory issues for the sector, particularly with regards to crypto and digital assets.

5.47 Mr Steve Vallas, CEO, Blockchain Australia, noted that most jurisdictions are more actively considering regulation issues in these areas. For example, the United Kingdom has recently been asking for input from industry on how crypto and digital assets and stablecoins should be regulated. In contrast Australia is 'underdeveloped in these areas.[67] Mr Vallas added:

> I think everyone knows that we have a very good regulatory framework, but the sign doesn't say 'Open for business' with respect to this technology. So, when we look at some of the custodian businesses and the like that are taking shape in the United States, they're not naturally coming to Australia, because no-one is saying that this is a welcoming environment and you can trust our regulatory framework and we're open to a conversation about what these businesses could do in Australia.[68]

5.48 Mr James Manning, Founder and Managing Director, Cosmos Capital, noted that 'crypto-assets are rapidly becoming a growing financial asset class'. As such, he considered it would be timely for the 'government to address regulatory deficiencies by having a clear regulatory framework for businesses within the crypto assets sector, removing the de factor legislative positions held by ASIC and establishing a clear licensing regime for fintech businesses operating within products in the digital currency and digitisation space'.[69] He provided further explanation:

> The curious anomaly with assets is that Australian retail investors are investing in markets that have little or no regulation at all. This stops neither retail investors from investing in them nor unscrupulous offshore operators from taking advantage of the situation. The growth of the crypto assets sector and growth in retail interest in them render urgent the need for considered regulation that is the product of a discussion with and input from key stakeholders such as groups like Cosmos, Independent Reserve and various legal firms.[70]

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66 *Submission 208*, p. 9.

67 *Proof Committee Hansard*, 11 February 2021, p. 11.

68 *Proof Committee Hansard*, 11 February 2021, p. 11.

69 *Proof Committee Hansard* 11, February 2021, p. 18.

70 *Proof Committee Hansard* 11 February 2021, p. 18.

5.49 Mr Manning explained the possible outcomes of this lack of a clear regulatory framework:

> As a direct result of the inability to launch suitably regulated and governed retail financial products in the crypto asset space, there exists a current framework in which investors are exposed to little or inappropriate disclosure. There is an increased likelihood of being scammed. There are increasingly high transaction costs, very poor understandings of the underlying asset class, exposures to unscrupulous offshore operators and unclear treatment of insolvency. We believe the government could address this by having a clear disclosure regime and encouraging clear dispute resolution programs for an alternative asset class.[71]

5.50 Mr Michael Bacina, partner, Piper Alderman, considered that 'signposting and leadership from the government itself about where regulators should be regulating…would be of great value'. He continued:

> …there is an education gap. There's a continued narrative that digital currencies are used by bad actors, whereas we have annual reports from Chainalysis in particular, which is a monitoring company, showing that the amount of money laundering and illicit use of digital currencies is significantly less than in the 'real' cash economy. In fact, the most recent information from Chainalysis is that something like 75 percent of it is Russian-speaking countries only. It's just not an issue, but it still shows up in newspapers. Even last week there was reporting on the prices of Bitcoin going up in one article, in the second paragraph. I think that narrative ties into a blocker for regulators: when they hear that narrative, they feel understandably concerned. As you heard from my friends, there is the concern of where this currency could have been before. These problems have been effectively solved at a technological level for more than a year, but the narrative hasn't changed yet. That's still, I think, a challenge for Australia—that we see that narrative being repeated in media reporting in particular…
>
> … On the ground level, something like revision to regulatory guides and clear guidance which is of a traffic light variety would be extremely useful. That's not something that is a surprise to hear. That's something that the blockchain community has been contacting and agitating for with regulators, particularly ASIC and the ATO, for quite some time…[72]

5.51 Mills Oakley also raised the lack of a globally agreed set of definitions for digital assets and suggested the government 'consider leading the preparation and release of a multi-agency working taxonomy of Digital Assets to support Australian legal and tax applications, with input from multiple Australian regulators'.[73] It argued that such a set of definitions 'would be a clear signal to

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71 *Proof Committee Hansard*, 11 February 2021, p. 18.

72 *Proof Committee Hansard*, 11 February 2021, p. 21.

73 *Submission 198*, p. 5.

the global market that Australia is attempting to be a more friendly jurisdiction to encourage innovation'.[74]

5.52 The Australian Banking Association (ABA) told the committee that it believes virtual assets 'have many potential benefits.'[75] It considered however that 'without proper sector regulation', digital currency exchange providers 'risk becoming a virtual safe haven for the financial transactions of criminals and terrorists.' It considered the key risk for banks to be that 'the identify of users of virtual assets are often unknown to banks and sometimes not adequately known to the operators of the exchanges were virtual assets are traded.'[76]

5.53 The ABA expressed support for the 2019 Financial Action Task Force Standards regulating virtual asset activities and related service providers for 'anti-money laundering and counter-terrorism financing (AML/CTF)'. It concurred with the ACCC finding that the denial of bank services to non-bank suppliers (sometimes referred to as debanking) should be addressed by the adoption of 'a scheme through which international money transfers suppliers can address the due diligence requirements of banks, including in relation to AML/CTF requirements' and that such regulation should be globally consistent.

5.54 Concerned that regulators lack technical competence, Bitaroo recommended that agencies representing Australia in Financial Action Task Force deliberations on digital assets 'engage in regular and genuine consultation with the private sector.'[77]

5.55 Ms Cathie Armour, Commissioner, Australian Securities and Investments Commission (ASIC), told the Committee that, in January 2021, ASIC had its largest number of misconduct complaints for 'many, many months' and that most of them related to crypto-asset scams.'[78]

5.56 In response to a question on notice, ASIC informed the committee that crypto-assets are 'available directly to retail investors in Australia through local digital currency exchanges and overseas based crypto-asset trading platforms.'[79] They do not automatically benefit from all ASIC safeguards, which instead depend on the 'rights and features of each individual crypto-asset.'[80] It added:

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74 *Submission 198*, p. 6.

75 Additional information, received 18 March 2021, p. 3.

76 Additional information, received 18 March 2021, p. 3.

77 *Submission 207*, p. 5.

78 *Proof Committee Hansard*, 12 February 2021, p. 37.

79 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 1.

80 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 1.

> …whether a crypto asset is within or outside the financial regulatory framework depends on particular characteristics of the crypto-asset offering. This can cause uncertainty for investors and consumers as well as issuers and distributors of these assets. It is a policy matter for government whether or not there should be clarity on this issue.[81]

5.57 ASIC further detailed:

> Crypto-assets are not a homogenous asset class and each crypto-asset raises different considerations. As such, crypto-assets present unique challenges that can make it difficult to meet the safeguards in place to protect retail investors and Australian financial markets. For example, to ensure adequate investor and market safeguards within the Australian financial regulatory framework, the product issuer may need to identify how to:
>
> - reliably price underlying crypto-assets that trade on multiple digital currency exchanges (market quality would be a consideration);
> - hold and reliably audit crypto-assets in custody (this would include considering the control of private keys, wallet types or storage mechanisms, network or cyber security issues, insurance, auditing, and suspicious matter reporting processes);
> - ensure any third-party service providers connected with the product (such as calculation agents, liquidity providers and authorised participants) have the appropriate competencies to deal with crypto-assets;
> - ensure adequate risk management arrangements to manage crypto lifecycle events such as forks.[82]

5.58 ASIC commented that it was not aware of 'any retail financial products that have crypto-assets as a sole underlying asset that have been issued under the Australian financial regulatory framework'.[83] ASIC inquired with several counterparts in other jurisdictions and found that in general 'there is limited asset to crypto-asset 'financial' products by retail investors'.[84]

5.59 KPMG told the committee that virtual asset service providers could 'in some ways provide increased security through strict customer onboarding and Know Your Customer' programs, and that as a result, any regulatory requirements 'should be technology-neutral'.[85] It added that enabling a virtual asset service provider 'to be regulated under a provisional sandbox-style

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81 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 2.

82 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 2.

83 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 2.

84 Answer to question on notice, 12 February 2021 (received 15 March 2021), p. 3.

85 Answer to question on notice, 5 March 2021 (received 26 March 2021), p. 1.

framework would further add to the industry maturity and strengthen investor confidence.'[86]

5.60 The Home Affairs Portfolio acknowledged that as 'Australia's regulation of digital currency exchanges pre-date the revised Financial Action Task Force standards, further reforms would be required to bring it into full compliance'.[87]

5.61 When asked about the current regulatory arrangements for cryptocurrencies in Australia, Treasury commented that the government and regulators 'continue to monitor developments in cryptocurrencies to ensure that risks are considered and mitigated as appropriate while balancing potential benefits'.[88] It stated further:

> Inter-agency collaboration is ongoing including through the Council of Financial Regulators. The Government and regulators continue to engage in international forums considering cryptocurrencies, including through the G20 and the Financial Stability Board.
>
> The Government and regulators also continue to monitor developments in other jurisdictions, including in the United Kingdom, where the Kalifa Review of Fintech was published on 26 February 2021 and made several recommendations to the UK Government regarding the regulation of cryptoassets and international engagement.[89]

5.62 Treasury also noted that the current review of the regulatory architecture of the payments system, led by Mr Scott Farrell, will assess whether the regulatory architecture remains fit for purpose and capable of supporting continued innovation, including cryptocurrency developments.[90]

Treatment of cryptocurrencies or digital tokens

5.63 Mills Oakley encouraged government to consult on 'the need and role for regulation in token-enabled blockchain-based marketplaces where both sides or all sides of a market are participants and the native token enables incentive-based regulation.'[91]

5.64 Cosmos Capital and Independent Reserve noted that digital currency or tokens are subject to little or no regulation, with regulators seeking to 'absolve themselves of responsibilities through designating such assess non-securities.'[92]

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86 Answer to question on notice, 5 March 2021 (received 26 March 2021), p. 1.

87 *Submission 132.1*, p. 6.

88 Treasury, Answers to questions on notice (received 8 April 2021), p. 1.

89 Treasury, Answers to questions on notice (received 8 April 2021), p. 1.

90 Treasury, Answers to questions on notice (received 8 April 2021), p. 1.

91 *Submission 198*, p. 13.

92 *Submission 202*, p. 9.

5.65 Blockchain Australia noted that there is not at present any licensing regime specific to cryptocurrency companies, that the assessment of licensing is activity based, and that current ASIC guidance identifies the ways possible cryptocurrency uses could be licensed but not how it could be used in a business without a licence.[93] It contrasted this with the situation in the United Kingdom, where the regulator outlines categories of tokens which are and which are not subject to regulation. It also noted the divergence between Australia and the United Kingdom on advice relating to whether or not a token is a financial product.[94]

5.66 Block8 said that 'hybrid financial-software construction represents one of the most significant financial technology innovations in recent memory':

> These tokens may ultimately come to be recognised as an entirely new asset class given their unique compound of properties, being either managed under a not-for-profit or a profit-minimising public company in order to retain the value of the distributed software network within the token itself. The convergence of ownership and use appears to fundamentally maximise capital efficiency in such a way that the network effects they sustain would be practically permanent.[95]

Application of capital gains tax

5.67 Dr Chris Berg, a researcher affiliated with the RMIT Blockchain Hub appearing in a private capacity, raised that a 'cryptocurrency transaction or a transaction between two cryptocurrencies is treated as a capital gains event'. He argued that this treatment:

> …really makes no sense in an environment where people are rapidly changing between multiple tokens, multiple cryptocurrencies, in order to conduct their daily business—whether it be investing or interacting on a chain that requires multiple tokens, which many of them do.[96]

5.68 On notice, Dr Berg, Dr Darcy Allen and Dr Aaron Lane provided further detail:

> This treatment of tokens poses unique challenges for cryptocurrency users. As each token-to-token exchange is treated by the ATO as a capital gains tax event, taxpayers are required to record gains or losses in the Australian dollars. However, token-to-token exchanges often occur at multiple times removed from Australian dollar-denominated markets. For many cryptocurrency tokens, liquid token-AUD exchange markets do not exist. In addition, the volume and complexity of some of these token exchanges

93 Answer to question on notice (number 56), received 4 March 2021.

94 Answer to question on notice, (number 56), received 4 March 2021, p. 1.

95 *Submission 210*, p. 19.

96 *Proof Committee Hansard*, 11 February 2021, p. 12.

> make precise accounting of gains and losses on a per-transaction basis unrealistic, even for honest taxpayers seeking to fully ensure compliance.[97]

5.69 It was put to the committee that the current capital gains tax treatment of token-to token exchanges 'imposes significant and unnecessary uncertainty and regulatory burden on cryptocurrency users, investors and the blockchain industry more generally'.[98] They further contended that this does not stop investors from investing or unscrupulous operators taking advantage. They argue for the regulation of digital currencies depending on the end use case for each currency and that such regulation will help ensure Australia leads the world in this space.[99]

5.70 Dr Berg, Dr Darcy Allen and Dr Aaron Lane further explained:

> For example, the rise of decentralised finance ('defi') means that token-to-token exchanges are now commonly occurring through a vast ecosystem of decentralised protocols that operate at multiple levels removed from Australian dollar-denominated markets and provide no easy-to-use tools for the granular record keeping required by the ATO.[100]

5.71 They recommended that capital gains tax events 'be limited to exchanges where it is reasonable to comply with the capital gains tax regime' which would be when:

- Cryptocurrency is exchanged with fiat currency (most commonly the Australian dollar),
- Cryptocurrency is used in the acquisition or disposal of a tangible good or service, or a non-fungible token (such as a piece of digital art). Depending on the CGT classification of the respective token (for example a personal use asset or collectable), these transactions may yield the normal concessional treatments.[101]

5.72 Blockchain Australia also discussed what is characterised as the 'onerous compliance burden upon taxpayers' in relation to digital asset transactions.[102] It called for the review of taxable events 'in light of the nuances of digital asset transactions' as soon as possible.[103]

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97 Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021), p. 1.

98 Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021), p. 2.

99 *Submission 202*, p. 10.

100 Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021).

101 Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021).

102 Answer to question on notice (number 56), received 4 March 2021, p. 3.

103 Answer to question on notice (number 56), received 4 March 2021, p. 4.

Managed investment schemes

5.73 Dr Berg, Dr Darcy Allen and Dr Aaron Lane noted that a managed investment scheme (MIS) 'is an investment structure where a 'responsible entity' manages investments for unit holders'. They added that '[t]here is a significant risk for blockchain companies that the MIS regime will be inappropriately applied, particularly as it applies to decentralised finance (defi) products'.[104]

5.74 At a hearing Dr Berg further explained:

> Our reading of the environment in which people are developing what we call distributed autonomous organisations, which are decentralised organisations that have voting rights, or many of the decentralised finance applications, could very plausibly be described as managed investments, so come under that rather severe regulatory framework that would require these pop-up organisations, these pop-up financial products, which are completely decentralised and completely run without registered individuals, to be registered with ASIC and to put out product disclosure statements and so forth. It is an extraordinary burden that these rules might apply to Australian products—so much so that many legal advisers are telling people to leave Australia, that you can't launch it in Australia because there is too much regulatory uncertainty.[105]

5.75 Blockchain Australia provided further detail on this issue:

> [There is a] lack of regulatory certainty around when a project can pre-sell a service without being construed as a managed investment scheme. Clear regulatory guidance on when the pre-sale of a service is not a managed investment scheme (as compared to when it would be a managed investment scheme) would go a long way towards providing projects with the certainty they require so as not to relocate offshore.[106]

5.76 Dr Aaron Lane, a researcher affiliated with the RMIT Blockchain Hub appearing in a private capacity, put forward two possible ways to address these issues. The first requiring legislation, would be carving them out of the definition of managed investment schemes in the Corporations Act. The second was to expand the FinTech or enhanced sandbox to achieve the same outcome.[107]

5.77 On notice, Dr Berg, Dr Darcy Allen and Dr Aaron Lane added that 'while legislative change is preferred to provide certainty, we note that this approach

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[104] Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021).

[105] *Proof Committee Hansard*, 11 February 2021, p. 12.

[106] *Submission 211*, pp. 9-10.

[107] *Proof Committee Hansard*, 11 February 2021, p. 12.

could also be achieved through regulation as section 9 of the Act provides a mechanism for the Regulations to declare that a scheme is not a MIS'.[108]

5.78 Mr James Manning, Founder and Managing Director, Cosmos Capital, noted his firm's efforts to 'get approved an exchanged traded product, which would give retail investors exposure to Bitcoin.' Despite having 'addressed most of the legislative requirements to issue a product', he said that ASIC had a 'policy position that such a product shouldn't be made available to retail investors on a platform like the ASX'.[109] Mr Manning said such a product would be a 'managed investment scheme with an appropriate product disclosure statement, the appropriate provisions of a responsible entity, a custodian and insurance, clear tax treatment for investors….still giving retail investors exposure to the underlying investment case of Bitcoin, which currently they're doing via unregulated exchanges or transacting offshore.'[110]

5.79 Cosmos and Independent Reserve submitted that ASIC has 'internal policies which directly stifle innovation, more specifically around listed products which hold Bitcoin.'[111] They further viewed that this internal policy amounted to de-facto legislation. To address these issues, they called for the government to establish a 'licensing regime for Fintech businesses operating with products in the digital currency and digitisation space.'[112]

5.80 Mr Manning saw this as part of a larger fear, including from banks, about exposure to cryptocurrencies and possible *Anti-Money Launder and Counter-Terrorism Financing Act* issues. There a 'a raft of legal issues as to chain of title, who has owned the bitcoin prior to you, whether you knowingly or unknowingly are participating in some form of activity', resulting in Australian banking groups finding it easier to say no than to try to understand the space.[113] Mr Manning added:

> I think a clear definition of what digital currency is would give banks a basis on which to assess risk. Currently, there is a lack of understanding about whether Bitcoin is a commodity. Is it a security? Is it some other asset class? Is it intangible? What sort of asset is it? The accounting standards are moving in this space. They're starting to treat these as intangibles, yet in some jurisdictions they're being treated like a security and in other jurisdictions they're being treated like a commodity. I think the government ultimately really needs to form an opinion on what the

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[108] Dr Berg, Dr Allen and Dr Lane, answers to questions on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021).

[109] *Proof Committee Hansard*, 11 February 2021, p. 19.

[110] *Proof Committee Hansard*, 11 February 2021, p. 19.

[111] *Submission 202*, p. 8.

[112] *Submission 202*, p. 9.

[113] *Proof Committee Hansard*, 11 February 2021, p. 20.

> classification of it is and, with that, enable banks to understand the risk associated with each one.[114]

5.81 The Australian Securities Exchange (ASX) informed the Committee that its previous cautious view on bitcoin developments was changing. It said that 'any product would need to enter the market within a robust framework' such as ASX's AQUA rules[115] for exchange traded funds.[116]

Banking and insurance services

5.82 Blockchain Australia drew attention to the difficulty experienced by digital currency exchanges and related services providers in accessing reliable banking services, which it characterised as a 'persistent and increasing problem facing both digital asset providers and other businesses involved in the space.'[117] It considered the '"industry-centric" view of risk' taken by authorised deposit-taking institutions in this regard to run 'counter to fair industry practice.'[118] Given this and the lack of public guidance on requirements to establish or maintain banking facilities:

> …local businesses seek out offshore providers and the rapid development of the global landscape will accelerate this outflow.[119]

5.83 According to Blockchain Australia, it is very difficult for digital currency exchanges to secure insurance coverage, with no industry or limited liability scheme for the sector, and limited professional indemnity, director and officer insurance available.[120]

5.84 Cosmos Capital and Independent Reserve made a similar observation, noting that the lack of access to banking and insurance services was '[o]ne of the single greatest impediments to Fintechs operating in the digital currency space'.[121] They recommended that the government prohibit APRA-regulated banks from de-banking businesses in the blockchain and crypto-currency industries and provide incentives for insurance providers to service the sector.[122]

Enhanced regulatory sandbox

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114 *Proof Committee Hansard*, 11 February 2021, p. 23.

115 The ASX AQUA rules are set out in Schedule 10A to the ASX operating rules.

116 ASX, answer to question on notice, 11 February 2021 (received 5 March 2021), p. 2.

117 Answer to question on notice, 11 February 2021 (received 4 March 2021), p. 4.

118 Answer to question on notice, 11 February 2021 (received 4 March 2021), p. 4.

119 Answer to question on notice, 11 February 2021 (received 4 March 2021), p. 4.

120 Answer to question on notice, 11 February 2021 (received 4 March 2021), p. 5.

121 *Submission 202*, p. 10.

122 *Submission 202*, p. 11.

5.85 From 1 September 2020, the government introduced the enhanced regulatory sandbox which supersedes the previous regulatory sandbox administered by ASIC. It allows testing of a broader range of financial services and credit activities for a longer duration.[123]

5.86 Mr Mark Adams, Senior Executive Leader, Strategic Intelligence, ASIC, provided the committee with an update on the operation of the enhanced sandbox:

> It's been in operation for about four or five months. Three entities are making use of it. There's one application on foot at the moment and seven have been rejected. The majority of those seven didn't fit within the actual terms of the exemption. It wasn't because they weren't innovative or weren't going to meet the public benefit test; they just didn't meet the terms of the class of the exemption. So those are the numbers. There was a pick-up before Christmas, and our aim is to continue to work with FinTech Australia and continue to let people know about it and the experience with it.[124]

5.87 Dr Allen, Dr Berg and Dr Lane of the RMIT Blockchain Innovation Hub recommended that the government design and implement new regulatory reform tools, such as regulatory sandboxes, 'to assist in the ongoing process of regulatory evolution'.[125]

5.88 Mills Oakley said that the both the previous and enhanced regulatory sandbox were 'not effective to fully support testing of emerging technologies in the financial services sector.'[126]

Improving the narrative

5.89 Blockchain Australia suggested that digital exchanges and assets suffer from a 'dark web' narrative: '[o]ne that suggests activity is primarily 'illicit' and 'nefarious''. Blockchain Australia argued that this narrative has 'been pervasive and is a material stumbling block to the development of confidence across the sector in Australia'.[127] It noted that the development of the National Blockchain Roadmap had 'been instrumental in giving credibility to the sector'.[128]

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123 See https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox/, accessed 22 February 2021.

124 *Proof Committee Hansard*, 12 February 2021, p. 39.

125 *Submission 204*, p. 6.

126 *Submission 198*, p. 3.

127 *Submission 211*, p. 2.

128 *Submission 211*, p. 4.

5.90 FinTech Australia pointed to the tendency for many in government and business to dismiss blockchain technology as 'a "hammer looking for a nail" or "a solution looking for a problem".'[129]

5.91 Block8 noted that while there are 'pockets' of government discourse accommodating to blockchain, 'when asked about the application of DLT to [a] given regulatory domain', responses are characterised by 'uncertainty, vagueness or mischaracterisation'.[130] It further detailed:

> There is a striking gap between blockchain software specialists and the apparent centre mass of blockchain knowledge in both Government and businesses.
>
> The problem also appears to be partly one of incentive. At a macro level, the incentive is clear. Government organisations are champions for policy setting that supports innovation. If you're a business, failure to innovate puts you at risk of disruption. At a micro level, the reality is quite different. There is scant appetite for individuals to embrace a topic that is perceived as risky, experimental or potentially illegal.
>
> The combination of misapprehension, lack of awareness, and risk aversion means that our regulatory apparatus never ventures beyond the strict black letter boundary, and our business leaders [are] electing for a strategy of 'wait-and-see'.[131]

5.92 Block8 also wished to dispel what it termed common misconceptions with regards to blockchain technology, including that blockchains cannot satisfy privacy requirements, are slow, are not scalable and not secure.[132]

Central Bank Digital Currency

5.93 The Reserve Bank of Australia (RBA) noted that [t]here has been increasing international focus on the possible issuance of central bank digital currencies (CBDC) and global stablecoin[133] arrangements, such as Diem (formerly Libra)'.[134] Piper Alderman noted that advances in this area were accelerating due to the COVID-19 pandemic.[135]

5.94 Mr Michael Bacina, partner, Piper Alderman, told the committee that the CBDC space is moving forward. Canada has indicated that a 'digital loonie is

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[129] Answer to question on notice, received 5 March 2021, p. 11.

[130] *Submission 210*, p. 8.

[131] *Submission 210*, p. 8.

[132] *Submission 210*, pp. 27-28.

[133] A type of cryptocurrency designed to address the price volatility of other cryptocurrencies, e.g. Bitcoins, by backing the stablecoins on issue with safe assets or using algorithmic techniques to try and match the supply of coins with demand. See RBA, *Submission 16.1,* pp. 2-3.

[134] *Submission 16.1*, p. 1. See *Submission 56.2* for an overview of relevant global developments.

[135] *Submission 56.2*, p. 2.

inevitable' and the Bank of Korea has said that they will be 'issuing a blockchain based digital won during this year'. He added that by the end of the year it should be known whether the European Union 'will be moving towards a distributed ledger technology or blockchain based digital euro'.[136] China had recently announced that Beijing would be its third city to have an 'on-the-ground retail issuance'.[137]

5.95 Mr Bacina thought the RBA was 'in the process of finalising their second pilot on a wholesale settlement level for digital currency' and were not going to the retail level.[138] He further explained:

> A retail CBDC is effectively in its most extreme sense a digital token issued by a reserve bank which everyone can use as money as if it were a paper note, but it's in digital form and it's programmable. That is a dramatic move away from how we currently operate.[139]

5.96 Piper Alderman urged the government to explore beyond a wholesale CBDC, arguing that Australia would be 'in a better position to secure the Australian Dollar within the digital currency space and also garner a better understanding of the jurisdictional challenges and opportunities' if it did so.[140]

5.97 Ms Joni Pirovich, Special Counsel, Tax, Blockchain and Digital Assets, Mills Oakley, argued that a CBDC 'is actually simplifying tax':

> It is simplifying the administration of government, reducing red tape for business and making Australia more competitive.
>
> …
>
> Our government will be more expensive to administer than other countries' governments if we do not invest in designing and launching our own blockchain based infrastructure and CBDC along with other critical national digital infrastructure.[141]

5.98 As an example, Ms Pirovich noted that if there was a CBDC, 'stimulus in COVID could have been distributed within a matter of days or hours instead of months'.[142] Ms Pirovich said that regardless of whether a CBDC is introduced, 'the 2020s must see the introduction of digital taxes' as our 'basis of taxation…needs to evolve'.[143]

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136 *Proof Committee Hansard*, 11 February 2021, p. 18.

137 *Proof Committee Hansard*, 11 February 2021, p. 22.

138 *Proof Committee Hansard*, 11 February 2021, p. 22.

139 *Proof Committee Hansard*, 11 February 2021, p. 22.

140 *Submission 56.2*, p. 2.

141 *Proof Committee Hansard*, 11 February 2021, p. 19.

142 *Proof Committee Hansard*, 11 February 2021, p. 19.

143 *Proof Committee Hansard*, 11 February 2021, p. 19.

5.99 Mills Oakley called for the government, in conjunction with the RBA, to consider as soon as possible:

> (a) release of a prototype eAUD (i.e. retail central bank digital currency) that startups and existing businesses can experiment with to show what innovation is possible with a native Australian digital dollar;
>
> (b) approving certain blockchain-based projects to use a prototype eAUD (or a simple Australian dollar stablecoin), in a sandbox-like environment observable by multiple regulators including the Reserve Bank of Australia;
>
> (c) as an interim and transitional measure only, partnering with one or more of the AUD stablecoin projects with a view of mandating one or more as legal Australian digital tender; and
>
> (d) undertaking research into the role of an eAUD when the majority of international digital commerce could likely be denominated in USD, EURO or RMB (and likely transacted in USDT, a digital EURO or the DCEP), including research into a scenario where a significant proportion of Australian businesses adopt a foreign sovereign digital currency as their functional currency for business, accounting and tax purposes.[144]

5.100 The RBA noted the arguments for issuing a CBDC, including the declining role of cash and increasing reliance on electronic payment services, introducing it as a defensive or precautionary measure, or providing a motivation for payments innovation. However, the RBA was of the view that at this time 'the public policy case for issuing a CBDC for general use in Australia has not been established'. It explained its reasoning:

> While the use of cash for transactions is declining, cash is still widely available and accepted as a means of payment in Australia. Households and businesses are also well served by a modern, efficient and resilient electronic payment system that has undergone significant innovation in recent years, including the introduction of the New Payments Platform, a real-time, 24/7 and data-rich electronic payments system. The Bank is committed to providing high-quality banknotes, and ensuring reasonable access to them, for as long as Australians wish to keep using them.[145]

5.101 The RBA underlined the importance of distinguishing between a retail CBDC, 'which would be like a digital version of cash' and a wholesale CBDC, 'which would be accessible only to a more limited range of wholesale market participants and/or restricted for use in specialised payment and settlement systems.'[146] Launching a CBDC would be a 'major, multi-year project for the Bank' that would be 'costly in financial terms and quite risky from both a financial and technology perspective.'[147]

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144 *Submission 198*, p. 4.

145 *Submission 16.1,* pp. 1-2.

146 *Submission 16.1*, p. 1.

147 *Submission 16.1*, pp. 1-2.

5.102 Mr Anthony Richards, Head, Payments Policy Department, RBA, told the Committee that its recently published strategic plan includes a commitment to evaluate the case for a CBDC and explore the possible use of wholesale settlement tokens. The RBA considers it more likely that 'a case would emerge for a wholesale central bank digital currency rather than for a retail one' and is focussing its efforts accordingly.[148]

5.103 However, the RBA indicated that it would continue to 'consider the case for a retail CBDC, including researching the future conditions in which demand for a CBDC might emerge and closely watching the experiences of some other jurisdictions that are considering retail CBDC projects'.[149]

5.104 The RBA has been conducting research 'on the technological and policy implications of a wholesale CBDC'. Noting that the case for a wholesale CBDC 'remains an open question', it highlighted a number of potential benefits, including improving the 'speed, cost and robustness of payments, reduce settlement risk in certain transactions and enable new kinds of 'programmable money''.[150]

5.105 Mr Thompson further outlined how in 2019 the RBA innovation lab developed a rudimentary proof of concept of 'what a wholesale CBDC might look like on a blockchain platform.'[151] In 2020, the RBA initiated a larger project, also focused on developing a concept for a wholesale CDBC on a blockchain platform, but also bringing in the 'tokenised syndicated loan as well, as a tokenised form of financial asset.' This is allowing them to examine the interactions between the payment and asset sides.

5.106 The RBA has focussed its recent work on stablecoins. RBA staff members are 'participating in several global regulatory groups focused on stablecoins, including a group that developed recommendations on the appropriate regulatory and oversight approach for global stablecoin arrangements'.[152] The RBA noted the possibility of both positive and negative implications of the widespread adoption of stablecoins. Potential benefits include reducing the costs of cross-border payments and overcoming some aspects of financial exclusion. Potential negative implications include their use for money laundering or illicit activities, consumer protection and privacy concerns and potentially undermining monetary and financial stability.[153]

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148 *Proof Committee Hansard*, 12 February 2021, p. 34.

149 *Submission 16.1*, p. 2.

150 *Submission 16.1*, p. 2.

151 *Proof Committee Hansard*, 12 February 2021, p. 34.

152 *Submission 16.1*, p. 3.

153 *Submission 16.1*, p. 3.

5.107 The RBA advised that it recently commenced a second project with the Commonwealth Bank, National Australia Bank, Perpetual and ConsenSys Software which is a blockchain technology company 'to further explore the potential use and implications of a wholesale form of CBDC'. The project is due to be completed around the end of 2020 with a report being published during the first half of 2021.[154]

5.108 In relation to global stablecoins, the RBA advised that it is continuing to monitor developments, noting that 'without appropriate oversight and regulation, stablecoins have the potential to be used for money laundering or illicit activities and could raise consumer protection and privacy concerns'.

[154] *Submission 16.1*, p. 2.

Chapter 6
Issues relating to culture and skills

Introduction

6.1 This chapter outlines a number of issues presented in evidence to the committee relating to attracting global talent and growing domestic talent in the financial services and technology sectors. This chapter also looks at the operation of the UK-Australia FinTech Bridge since its inception in 2018.

Attracting global talent

6.2 A number of submitters and witnesses advised of the importance of attracting highly skilled people from across the globe for Australia to become a leading FinTech nation, not only growing the sector, but bringing enormous economic benefits. The committee heard that it was critical to get the settings right in the current global environment in order to promote the benefits of Australia as a leading FinTech nation. In particular, it was noted that the combined factors of Australia's strong performance in managing the COVID-19 crisis and the current events in Hong Kong, offer enormous opportunities for the promotion of Australia as a preferred destination for highly skilled individuals and international businesses.

6.3 International competition by governments to set in place a framework to lead in global innovation and attract talent in the FinTech sector was discussed in the recently released independent policy paper by Mr Ron Kalifa OBE, *The Kalifa Review of UK FinTech*, (Kalifa report) commissioned by Her Majesty's Treasury in the United Kingdom, which advised:

> Fintech companies engaged in the Review have pointed to aggressive attempts by other markets to attract them through initiatives that make access to talent easier. For example in France (Tech Visa), Canada (Global Talent Stream) and Australia (Global Talent Programme). These options will be attractive to fintech firms, not because they offer perfect solutions, but because each offers some mitigation against either cost, administrative burdens or inflexibilities in the current system for this highly innovative talent to engage in spin-off activity.
>
> …
>
> There are examples of good practice globally, but no single jurisdiction gets this exactly right, yet.[1]

[1] Her Majesty's Treasury, Mr Ron Kalifa OBE, *Kalifa Fintech Review Final Report*, 26 February 2021, pp. 44-45.

6.4 While noting Australia's strong talent pool in the FinTech sector, the committee was advised of the advantages of attracting international talent to supplement and build skills of local staff. Mr Anthony Eisen, Co-Founder and Co-Chief Executive Officer, Afterpay, advised the committee:

> We absolutely have an entrepreneurial spirit and work ethic that is well suited to innovation. But, given our size, our workforce often lacks the specific experience needed to build the global platforms needed for fintech businesses. In my experience of building Afterpay, bringing the world's experts here can unlock the potential of our existing talented staff by training them with the skills needed to develop a world-leading financial technology…The good news is that there are more highly skilled people in startups that are willing to move right now than ever before, and it should be our collective imperative to ensure Australia is at the top of their list.[2]

6.5 StartupAUS also advised of the importance for tech firms to attract and retain world-class talent:

> Young technology companies are typically looking to compete in global markets right from the outset. To succeed in such a competitive landscape, Australian firms need to have access to the best talent in the world. The skills required to build a high-growth tech firm are in fierce demand, driving a global war for talent.
>
> …
>
> For tech firms, access to the right talent often means rapid growth. In this context, 'growth' typically means boosting local employment. Importing talent in key positions is therefore a key driver of local job creation. StartupAUS data over the last three years supports this thesis, with difficulty finding high quality candidates for key positions in product management, digital marketing, UX and UI design, and data science often holding companies back from further employment growth.
>
> Simply put, skilled migrants help companies grow and employ more Australians.[3]

6.6 Evidence before the committee noted the many assets that position Australia as an attractive option for overseas skilled individuals and international businesses, including a stable political system, well-managed economy, well developed infrastructure, respected legal system, open society and good lifestyle.[4]

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[2] Mr Anthony Eisen, Co-Founder and Co-Chief Executive Officer, Afterpay, *Proof Committee Hansard*, 11 February 2021, p. 33.

[3] StartupAUS, *Supplementary Submission 5.1*, pp. 4-5.

[4] See for example: Zip Cod, *Supplementary Submission 116.2*, p. 5; Mr Anthony Eisen, Co-Founder and Co-Chief Executive Officer, Afterpay, *Proof Committee Hansard*, 11 February 2021, p. 33; Wisetech Global, *Proof Committee Hansard*, 11 February 2021, p. 42; Mr Robert Colquhoun, Director, Policy, Australian Financial Markets Association, *Proof Committee Hansard*, 11 February 2021, p. 1.

COVID-19

6.7 The committee was also advised in particular about the opportunities for attracting talent to Australia at the present time as a result of Australia's successful management of the COVID-19 pandemic, which has positioned Australia as a preferred destination; as well as the accelerated and innovative use of technology which has transformed business practices. For example, Mr David Masters, Director of Global Public Policy, Atlassian, advised that:

> …Australia is seen in a very favourable light because of its management of COVID-19. It's seen as a nation with good governance and is able to manage both the health and the economic shocks of COVID-19 very successfully, and I think that has made us a very attractive place to live. I think we should be out there marketing ourselves very strongly to talented individuals to come and work here, but we do require collaboration between government and industry around that, because you can't get people to move unless there are the jobs for them to move to. Right now, I think we should be capturing this moment in the sun and really driving it forward.[5]

6.8 Mr Richard White, Chief Executive Officer of WiseTech Global, concurred with this view:

> Australia was seen as a very desirable country even before COVID-19, and now it's much more desirable.
>
> …
>
> We have gained a significant advantage from COVID-19…Now our geolocation, our isolation, has become a positive, and not a small net positive but a very substantial advantage. We can do digitally now what everybody wanted us to do digitally before but the customers wouldn't accept it. Now everybody wants to meet digitally and nobody wants you to fly anywhere. It is a big opportunity. There is a lot of advantage in front of us.[6]

6.9 Mr Eisen, CEO of Afterpay, observed that:

> …Australia has a once-in-a-lifetime, once-in-a-generation opportunity to become a world leader in financial services and technology. The current global environment and Australia's success in dealing with the COVID-19 pandemic can be a catalyst to drive our competitiveness in these industries of the future…While governments don't always decide what happens or what type of innovations happen, they do play a big role in where the innovations happen and where the resulting jobs go.[7]

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5 Mr David Masters, Director of Global Public Policy, Atlassian, *Proof Committee Hansard*, 5 March 2021, p. 25.

6 Mr Richard White, Chief Executive Officer, WiseTech Global, *Proof Committee Hansard*, 11 February 2021, pp. 42-43.

7 Mr Anthony Eisen, Co-Founder and Co-Chief Executive Officer, Afterpay, *Proof Committee Hansard*, 11 February 2021, p. 33.

Hong Kong

6.10 In its interim report, the committee noted the possible decline of Hong Kong as a global financial centre and potential opportunities for other regional centres, including Sydney, to attract new investment, companies and talent and develop its status as a hub for financial and technology services.[8] While acknowledging the humanitarian issues facing the people of Hong Kong, the committee also recognises the opportunities for the FinTech sector and the economy more broadly.

6.11 The committee heard from a range of submitters and witnesses who agreed that current geopolitical events, particularly in Hong Kong, offer Australia opportunities to capture exceptional talent looking to relocate. For example, Mr Richard White, Chief Executive Officer of WiseTech Global, advised that:

> …the Hong Kong situation and various other geopolitical situations allow us to attract a lot of talent. We get a lot of talent…from Russian-speaking engineers, who are very highly qualified and are living in societies that they would prefer to leave to come to Australia.[9]

6.12 Mr Guy Hedley, Executive Chairman, AtlasAdvisors Australia, expanded on the reasons why Australia is in a strong position to attract talent and business from Hong Kong, particularly in regard to the migration programs and location in Asia:

> Where Australia has a huge competitive advantage is that we're deemed to be a friendly country with a great regulatory environment and, unlike Singapore, we're not deemed to allow people to come in, if you like, on a temporary passport entry program. So if I'm a business operating in Hong Kong and I look at Singapore as my competitive option to Australia, I know that I can take care of my business interests—I can probably a get better commercial outcome for my business initially—but I can never actually become part of the culture and ingrain myself into the Singapore environment because I just don't get a passport and I don't get citizenship for my family. Again, our approach is to say that the early competitive advantage that Australia has already put in place is the ability to bring those entrepreneurs and those business people into Australia and bring their key staff into Australia and bed them down as part of the Australian culture and environment through the citizenship program
>
> …
>
> …my experience is largely in the Hong Kong-China market regime, so that line straight down. That line straight down is critical for business people in Asia because of the time zone. Then, it's also critical because our regulatory and our legal framework here is strong and robust. For them to actually go across to Europe…or the other way towards Canada, they're operating

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[8] Select Committee on Financial Technology and Regulatory Technology, *Interim report*, September 2020, pp. 9-10.

[9] See for example, Mr Richard White, Chief Executive Officer, WiseTech Global, *Proof Committee Hansard*, 11 February 2021, pp. 42-43.

> outside of their time zone, they're operating in an environment where obviously there's a lot more competition locally in those markets and they're not Asian-aligned. So I think the start position for most of the entrepreneurs in Asia is that they view Australia as being an appropriate place for them to actually house their business interests.[10]

Visa programs attracting global talent and international business

6.13 Several submitters advised that a key element in attracting global talent in the FinTech sector was a responsive and efficient visa/migration program supported by a targeted marketing and global awareness campaign.

6.14 The Australian Trade and Investment Commission (Austrade) advised the committee on the important role of Australia's migration program in supporting talent acquisition in the FinTech sector. Austrade noted that in the *EY FinTech Australia Census 2020*, 72 per cent of Australian FinTechs believed that easier access to skilled migration would be an effective mechanism for growth.[11]

6.15 This view was also supported by FinTechs, for example, Afterpay advised that 'the Government's efforts to streamline visas and access for priority occupations in the tech sector gives businesses like ours the confidence to keep hiring and investing in Australia.'[12] Mr Alex McCauley, Chief Executive Officer, StartupAUS, remarked 'that the only way to fix the [immediate] talent gap, which we know we have, is visas and importing great talent.'[13]

Global talent scheme

6.16 Recognising the competition to attract the world's best and brightest, in order to help grow the Australian economy, the Government has introduced two talent schemes to assist tech companies to access skills not available on the Skilled Occupations List (SOL): the Global Talent Employer Sponsored (GTES) Program in 2018 and the pilot Global Talent Independent (GTI) Program[14] in November 2019.

6.17 The GTES program allows employers to sponsor overseas workers for highly-skilled niche positions that cannot be filled by Australian workers, or through other standard visa programs. The GTES is designed to benefit Australia and Australian workers by bringing 'globally mobile, highly-skilled and specialised individuals to Australia who can act a "job multipliers" in Australian

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[10] Mr Guy Hedley, Executive Chairman, AtlasAdvisors Australia, *Proof Committee Hansard*, 11 February 2021, p. 4.

[11] Austrade, *Submission 148.1*, p. 6.

[12] Afterpay, *Submission 83.1*, p. 1.

[13] Mr Alex McCauley, Chief Executive Officer, StartupAUS, *Proof Committee Hansard*, 12 February 2021, p. 23.

[14] Also known as the Global Talent Visa Program

businesses, helping them to hire more local staff and fill critical areas of need'.[15] Sponsors must demonstrate that any positions that are filled through the program must provide opportunities for Australians by, for example, creating new jobs for Australians or transferring skills and knowledge to Australian workers.[16]

6.18 The GTI Program 'is a streamlined visa pathway for highly skilled professionals to work and live permanently in Australia.' In 2020-21, there are 15,000 places available under this program. To promote this program, Global Talent Officers are usually located in London, Shanghai, Singapore and Washington DC but are currently performing this role from Australia due to COVID-19.[17] Eligibility for this program includes a high level of skill in one of 10 target sectors, including financial services and FinTech.[18]

6.19 The Global Talent visa (subclass 858), formerly the Distinguished Talent visa, is a permanent visa for people who have internationally recognised record of exceptional and outstanding achievement in an eligible field.[19]

6.20 The Government is piloting the 'Supporting Innovation in South Australia', a new visa arrangement 'designed to attract foreign entrepreneurs to take forward innovate ideas and launch seed stage startups.' If successful, the visa will be rolled out nationally.[20]

Global Business and Talent Attraction Taskforce

6.21 On 4 September 2020 the Government announced the establishment of the Global Business and Talent Attraction Taskforce to attract international businesses and exceptional talent to Australia, to support post-COVID

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[15] See: Department of Home Affairs, 'Global Talent Employer Sponsored program', https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/global-talent-scheme (accessed 26 February 2021).

[16] See: Department of Home Affairs, 'Global Talent Employer Sponsored program https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/global-talent-scheme (accessed 26 February 2021).

[17] See: Department of Home Affairs, 'Global Talent Visa Program', https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/global-talent-independent-program (accessed 26 February 2021).

[18] See: Department of Home Affairs, 'Global Talent Visa Program: Eligibility', https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/global-talent-independent-program/eligibility (accessed 26 March 2021).

[19] See: Department of Home Affairs, 'Subclass 858 Global Talent visa', https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/global-talent-visa-858 (accessed 12 March 2021).

[20] See: Department of Home Affairs, 'Supporting Innovation in South Australia', https://immi.homeaffairs.gov.au/visas/working-in-australia/visas-for-innovation/supporting-innovation-in-south-australia (accessed 26 February 2021).

recovery and boost local jobs. Committing $29.8 million over two years for the Taskforce in the 2020-21 Budget, the Government advised that the initiative will build on the objectives of the GTI Program and the Business Innovation and Investment program; as well as the incentives announced by the Prime Minister on 9 July 2020 to attract export-orientated Hong Kong based businesses to relocate to Australia (outlined below).[21]

6.22 The new whole-of-government initiative is hosted by the Department of Home Affairs in partnership with Austrade, and draws on expertise from across the Commonwealth Government, as well as States and Territories and the private sector to:

> …operate as a 'strike team' to turbo-charge the creation of jobs by boosting our efforts to attract high value global business and exceptional talent.[22]

6.23 Financial services (including FinTech) was identified as a priority sector and will be an initial focus of the Taskforce, in addition to the advanced manufacturing and health sectors. [23]

6.24 The Department of Home Affairs advised the committee that:

> The Taskforce is focussed on attracting and relocating exceptional individuals and high-yield, apex enterprises – entities that could make a significant contribution to the national economy by opening operations, investing in Australia and creating jobs for Australians, but also bolstering supply chain security, building ecosystems and boosting innovation.
>
> …
>
> To best support the Government in driving Australia's post-COVID economic recovery and creating job opportunities for Australians, the Taskforce welcomes the development of initiatives that enhance Australia's attractiveness as a place to relocate and do business, while also ensuring the security and resilience of our economy.[24]

6.25 Mr Peter Verwer AO, Prime Minister's Special Envoy for Global Business and Talent Attraction, advised that committee that:

> …the overarching goal is to accelerate Australia's ability to build capacity in future-facing industries and then to use those skills to help transform

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[21] Australian Government, *Budget 2020-21, Budget Measures – Budget paper No. 2*, p. 109.

[22] Senator the Hon Simon Birmingham, Minister for Trade, Tourism and Investment, and the Hon Alan Tudge MP, Minister for Population, Cities and Urban Infrastructure, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, 'New Taskforce to Create Jobs by Attracting Business and Talent to Australia', *Joint media release*, 4 September 2020.

[23] Department of Home Affairs, *Submission 132.1*, p. 7.

[24] Department of Home Affairs, *Submission 132.1*, p. 7.

existing industries, all of which should result in more jobs, better jobs and an Australia which is more resilient…[25]

6.26 The Taskforce's website advises that it will do this by:

- fast tracking visas with a streamlined path to residency;
- providing end-to-end support, including tailored advice; and
- facilitating connections to essential industry and professional networks.[26]

6.27 The Taskforce will seek to identify enterprises and individuals who will 'drive innovation and job creation by':

- partnering and co-investing with Australian enterprises
- helping Australian firms expand into global markets
- creating exciting new ventures
- building Australia's skills base
- developing a deeper pool of intellectual and creative capital
- building national resilience by filling gaps in critical supply chains[27]

Business Innovation and Investment program

6.28 The Business Innovation and Investment program (BIIP) was created in 2012 and provides provisional and permanent visa options which target 'migrants who have a demonstrated history of success or talent in innovation, investment and business and are able to make a significant contribution to the national innovation system and the Australian economy.'[28]

6.29 The committee notes that the Government is in the process of reforming business and investor visas to maximise the economic benefits to Australia following a consultation process on the BIIP which concluded on 14 February 2020. The findings of the review were released in December 2020 with the Government announcing that it 'will put in place measures to ensure the BIIP is well-placed to support Australia's post-COVID-19 economic recovery by maximising its economic contribution.'[29] In announcing the reforms, which will simplify the nine streams to four and change eligibility requirements, the Hon Alan Tudge MP, then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, advised that:

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[25] Mr Peter Verwer AO, Prime Minister's Special Envoy for Global Business and Talent Attraction, Department of Home Affairs, *Proof Committee Hansard*, 5 March 2021, p. 38.

[26] Australian Government Global Business and Talent Attraction Taskforce, 'How we help', https://www.globalaustralia.gov.au/how-we-help (accessed 21 April 2021).

[27] Australian Government Global Business and Talent Attraction Taskforce, 'About Us', https://www.globalaustralia.gov.au/about-us (accessed 21 April 2021).

[28] Department of Home Affairs, *Business Innovation and Investment Program: Getting a better deal for Australia* – Consultation paper, p. 2.

[29] Department of Home Affairs, *Business Innovation and Investment Program: Getting a better deal for Australia – Review Findings Report,* December 2020, p. 5.

> Almost $1.3 billion dollars was invested through the [BIIP] last year, investment that is critical to our COVID-19 economic recovery…
>
> These changes will maximise the economic contribution of these high value investors to get the best possible outcomes for Australians.
>
> Our Migration Program for 2020-21 is clearly focussed on job creators, those with key skills and migrants who are going to invest in Australia's future.[30]

6.30 The Home Affairs website advises that '[t]he Government intends to put in place the measures aligned with the findings in this review from July 2021.'[31] The committee further notes that the Government has committed to further consultation with industry to inform any further changes to the Complying Investment Framework.[32]

Enhanced arrangements for Hong Kong

6.31 On 9 July 2020, the Government announced a number of initiatives to strengthen Australia's place as a favoured destination for the people of Hong Kong to 'attract talent and companies…in order to boost productivity and create further job opportunities for Australians.'[33] The Government announced that it will

- …bolster efforts to attract Hong Kong's best and brightest through the Global Talent and Business Innovation and Investment Programs, both part of the permanent migration program.
- These programs will be prioritised and a dedicated Global Talent officer will focus on facilitating the Hong Kong caseload.
- To support future applications we will re-open our visa application centre in Hong Kong which shut down during COVID-19.[34]

6.32 In relation to enhanced efforts to attract business from Hong Kong, the Government also announced that:

> New incentives will be developed to attract export-oriented Hong Kong based businesses to relocate to Australia. As well as economic incentives, there will be permanent visa pathways available for all critical Hong Kong based staff of the relocated business. The government will particularly

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30 The Hon Alan Tudge MP, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *Media release*, 'Getting a better deal for Australia from business and investment visas', 17 December 2020.

31 See https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/biip-getting-better-deal-australia (accessed 26 February 2021).

32 See https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/biip-getting-better-deal-australia (accessed 26 February 2021).

33 The Hon Scott Morrison MP, Prime Minister, *Media statement*, 'Hong Kong', 9 July 2020, p. 1.

34 The Hon Scott Morrison MP, Prime Minister, *Media statement*, 'Hong Kong', 9 July 2020, p. 3.

> target businesses that presently operate their regional headquarters out of Hong Kong who may be looking to relocate to a democratic country.[35]

6.33 On 21 August 2020, the Government announced that the new visa arrangements for Hong Kong students, temporary graduates and skilled workers had come into effect, resulting in up to 10,000 Hong Kong passport holders in Australia being able to extend their stay for five years and apply to remain in Australia permanently.[36] Under the new arrangements:

- Hong Kong passport holders who held a Temporary Graduate (subclass 485) or Temporary Skilled Shortage (subclass 482 or 457) visa on 9 July 2020 will automatically have that visa extended for five years.
- Current and future students from Hong Kong will be eligible for a five year Temporary Graduate visa on the successful completion of their tertiary studies. Applicants will still need to meet the usual requirements of this visa, including meeting the Australian Study Requirement.
- Hong Kong passport holders who apply for a temporary skilled visa will be eligible for a five year visa if they have qualifications listed on the occupational skills lists and meet Labour Market Testing requirements.[37]

Attracting global talent

6.34 While the committee generally heard support for the approach of the global talent visa programs, evidence suggested there were a number of possible areas for improvement in these and other skilled visa programs. A number of witnesses also advised about the need for a greater focus on promotion of the global talent visa programs.

Promotion

6.35 StartupAUS saw these programs as closely aligning with the needs of the tech sector;[38] however, believes that more should be done in their marketing and promotion:

> I think a big challenge with lots of visa programs is that for a long time government has said that its role has been to have the visas that allow people to come, and then it's up to others to take advantage of those. I think for something like this, which is really headhunting the best talent in the world, we need to be really proactive about going out, finding that

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35 The Hon Scott Morrison MP, Prime Minister, *Media statement*, 'Hong Kong', 9 July 2020, p. 3.

36 The Hon Alan Tudge MP, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *Media release*, 'New visa arrangements for Hong Kong passport holders now in effect', 21 August 2020.

37 The Hon Alan Tudge MP, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *Media release*, 'New visa arrangements for Hong Kong passport holders now in effect', 21 August 2020.

38 StartupAUS, *Supplementary Submission 5.1*,p. 5.

> talent and making it clear that we're open for business and that Australia is a great place to come and start, join and build a tech company. We can do more, I think, in marketing the scheme and marketing Australia. I know we've got global talent officers now stationed around the world whose job it is to do a bit of that headhunting. I think there are only six or seven of them. I'm talking at scale—a big digital marketing campaign in target markets to try and sell Australia as a destination and sell the global talent scheme as a means to get here.[39]

6.36 StartupAUS also recommended the establishment of a 'global talent sourcing fund' to sit alongside existing programs to 'bolster industry efforts to promote Australia and attract high value candidates':

> The fund could be administered by the recently-established Global Business and Talent Attraction Taskforce and would be used to match private sector efforts to unearth and recruit the world's best and brightest tech workers.[40]

6.37 Mr Eisen of Afterpay advised the committee that:

> Building on the federal government's Global Business and Talent Attraction Taskforce, there is substantial opportunity to increase take-up of highly skilled visas, to fast-track processing and to enhance awareness.[41]

6.38 Afterpay elaborated further:

> In Afterpay's experience top global talent do not fully recognise Australia as a place to grow their career in tech or the visa programs available to them. This should be addressed through target marketing campaigns, virtual roadshows and trade delegations. The Canadian Government's highly successful campaign to attract tech workers from the US is a proven example to draw from.
>
> Under the Global Business and Talent Attraction Taskforce, a global talent sourcing service could be established to bolster industry efforts to promote Australia and attract high value industry candidates. This would sit alongside and support existing programs including the network of Global Talent Officers.[42]

6.39 Mr Tom West, Chief Executive Officer and co-founder of Hyper, a global technology incubator, described the Global Business and Talent Attraction Taskforce as an 'amazing initiative' and that:

> …people over here and globally need to be made aware of it. No-one I know in the industry here—engineers—have heard about it yet. It's going

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[39] Mr Alex McCauley, Chief Executive Officer, StartupAUS, *Proof Committee Hansard*, 12 February 2021, p. 23.

[40] StartupAUS, *Submission 5.1*, p. 5.

[41] Mr Anthony Eisen, Co-Founder and Co-Chief Executive Officer, Afterpay, *Proof Committee Hansard*, 11 February 2021, p. 33.

[42] Afterpay, Answers to questions on notice from a public hearing held 11 February 2021 (received 10 March 2021).

> to be really important for Australia to market that correctly and ensure that, for instance, all of the top engineers know about this initiative and the fact that they can get the skilled visa in Australia.[43]

Visa programs

6.40 Mr Richard White, founder and Chief Executive Officer of WiseTech Global, advised that in his view the Global Talent scheme was good; however, 'we can leverage it more' and that there should be flexibility to be able to 'tweak' it.[44]

6.41 KPMG was of the view that the global talent visa programs 'go some way to facilitating investment in attracting and retaining innovative and exceptional talent to Australia'; however, noted a number of restrictive features, including:

- the salary cap to access this [GTI] program is quite high, currently set at AUD153,600 – this could be limiting for many potential FinTech/RegTech businesses;
- the criteria associated with the concepts of distinguished talent might not be adaptable and flexible to the industries and candidates being targeted…The program would benefit from guidance for high-growth fields and the provision of flexible measures for these industries that would be supported by standard processes to assess and recognise overseas credentials through dedicated third-party organisation[s].
- the turnover requirement for the Global Talent Employer Sponsored (GTES) stream limits certain businesses from accessing this program/similarly the designated investment required for start-ups stream;
- the age threshold of 55 still exists under the independent stream which can be limiting if 'an exceptional benefit' to Australia cannot be shown.[45]

6.42 KPMG noted that the Government's revision of the target sectors for the GTI program, which increased from 7 to 10 in December 2020, retaining financial services and fintech sectors, to ensure Australia is investing in 'future-focused occupations and those sectors that will aid our economic recovery.'[46] However, while acknowledging that the broadening of the target industries is 'a large step in the right direction', KPMG suggested the need for clearer policies and guidelines on the identified target sectors and more permanent residence options:

> …there is currently no detailed information on which skill-sets fall into which categories…This can make the scheme difficult to navigate for those unsure of whether their skills meet a particular target sector and could act as a disincentive to use the program.

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43 Mr Tom West, Chief Executive Officer, Hyper, *Proof Committee Hansard*, 5 March 2021, p. 4.

44 *Proof Committee Hansard*, 11 February 2021, p. 43.

45 KPMG, *Supplementary Submission 147.1*, p. 19.

46 KPMG, Answers to questions on notice from a public hearing held 5 March 2021 (received 26 March 2021), p. 10.

6.43 KPMG also commented on the availability of permanent visa options:

> When focusing on the Global Business and Talent Attraction Taskforce and the messaging on the support for high-value businesses, it is noted that much of the focus is on the targeted funding and incentives available to business when operating in these industries, without offering similar inducements for their employees on the visa side. The introduction of the Temporary Activity visa (subclass 408) Australia Government Endorsed Event visa under the Post COVID-19 Economic Recovery event only facilitates a temporary stay in Australia.[47]

6.44 Therefore, it was suggested by KPMG that greater permanent residence options for businesses and their employees may contribute to Australia's economic recovery.[48]

6.45 KPMG suggested that a review of the global talent scheme be undertaken to ensure Australia is competitive with other jurisdictions, particularly Canada, Singapore and Hong Kong.[49] In particular it noted that:

> …the special visa arrangements for Hong Kong nationals provides a longer visa term but does not provide any other concessions to skills and labour market testing criteria for current work visa subclasses. If the government wanted to attract a larger cohort of skilled migrants from Hong Kong a visa class that provided additional concessions could be effective in attracting FinTech/RegTech professionals.[50]

6.46 KPMG also suggested that improving processing times for the global talent scheme and the BIIP visa categories, so they are 'adaptable and responsive to market changes and business requirements, would greatly improve their take-up.'[51] KPMG advised:

> …The current processing times as indicated by the Department of Home Affairs under the GTI program is 90 days. This does not include the EOI timeframe and is much longer than other jurisdictions who promise fast-tracked processing under similar schemes (for example in Canada) of 2 weeks.
>
> The processing times seen under some of the Business Innovation and Investment visa categories is extensive and unsustainable and acts as a significant disincentive to investors who want to start or acquire an interest in an Australian business. High-net worth individuals may consider

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47 KPMG, Answers to questions on notice from a public hearing held 5 March 2021 (received 26 March 2021), p. 10.

48 KPMG, Answers to questions on notice from a public hearing held 5 March 2021 (received 26 March 2021), p. 11.

49 KPMG, *Supplementary Submission 147.1*, p. 19.

50 KPMG, *Supplementary Submission 147.1*, p. 19.

51 KPMG, *Supplementary Submission 147.1*, p. 19.

> investment in Australia 'too difficult' and opt to set up their businesses or invest their wealth in other jurisdictions.[52]

6.47 Acknowledging the potential of the Global Business and Talent Attraction Taskforce to streamline pathways to permanent residency for exceptional talent and successful businesses, KPMG also noted that the 'current lengthy processing times, program restrictions and lack of clarity are a disincentive to investors'.[53]

6.48 Mr Ian Pollari, Partner, National Banking and Capital Markets Sector Leader, and Global Co-Lead of Fintech, KPMG, noted the recent introduction of a fast-track visa in the United Kingdom to enhance global talent attraction for home-grown tech companies, which came out of the Kalifa report, and saw this approach as having merit:

> That, in short, has proposed an introduction of a points based visa scheme, also allowing those with a job offer from a recognised UK scale-up to qualify for that fast-track process. It also allows recognition of holders of international prizes, winners of scholarships and other programs of early promise to automatically qualify. I think our view would be that there are opportunities that are global in orientation that we should capitalise upon. Certainly, I think the UK has recommended and is implementing one that we think has merit in the context of our current scheme.[54]

6.49 A recent opinion article by CEDA (Committee for Economic Development of Australia), *Optimising Australia's permanent skilled migration*,[55] looked at the current arrangements for skilled migration and called for improvements in a number of areas, recommending a more comprehensive overhaul. Ms Melinda Cilento, Chief Executive Officer of CEDA, in summarising the report advised:

> Accessing the right skills at the right time, and getting the right people into the right jobs, are critical to enabling future investment and job opportunities, and to Australia's economic dynamism more broadly.
>
> The Federal Government has recognised this and made some changes, such as Global Talent visas. But these are band-aid measures and continue Australia's revolving-door approach to migration policy that CEDA has previously criticised.
>
> What is required is structural and sustainable change, and the development of a system that can evolve as skills needs change.
>
> CEDA is calling for the Federal Government to establish a new government-regulated online skills-matching jobs platform. This would

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[52] KPMG, Answers to questions on notice from a public hearing held 5 March 2021 (received 26 March 2021), p. 11.

[53] KPMG, *Supplementary Submission 147.1*, p. 19.

[54] Mr Ian Pollari, Partner, National Banking and Capital Markets Sector Leader, and Global CoLead of Fintech, KPMG, *Proof Committee Hansard*, 5 March 2021, p. 20.

[55] CEDA (Committee for Economic Development of Australia), *Optimising Australia's permanent skilled migration*, 29 March 2021.

> allow permanent skilled migrants to register their skills, and let accredited employers hire migrants from within the platform. It would initially apply to a small proportion of the permanent skilled migrant intake.
>
> Over time, as more employers and prospective migrants register for the platform and it matures, it would operate like any other job site, using algorithms that would nudge people to apply for jobs that meet their skillset, or alert employers to new workers who might have skills they need or have looked for in the past. [56]

6.50 Mr Peter Verwer AO advised that the Global Talent Visa (formerly the Distinguished Talent Visa) may address some of the issues raised by some witnesses around making visas more relevant to the FinTech and RegTech industry as it:

> …recognises that industries are very fast evolving. That is because of changes in science and technology and knowledge. It makes sense to select individuals to move into Australia on the basis of talent, which may not be defined in terms of a box that might have developed out of the industrial age or an industrial based economy. So it is far more difficult for industry 4.0 talents to be turned into a taxonomy. That's why the global talent visa is based on a set of criteria which are specifically designed to identify and quantify global talent. That is particularly the case when it comes to financial services, fintech, and our other two big areas, health and life sciences, and advanced manufacturing, which has a number of subsectors. In those three big headline areas it's quite clear that what makes the tech in fintech, the tech in agritech, the tech in insurtech, the advance in advanced manufacturing, is a range of knowledge and skills that don't fit into the old categories. That's why we've created this visa.[57]

6.51 Austrade advised that the GTES program has had a low take-up to date:

> We understand from businesses it has not been utilised by the target market due to restrictive qualifying criteria. Austrade clients have told us they want the ability to recruit and bring into Australia skilled migrants under employer-sponsored programs.
>
> To better support economic recovery, companies have told [Austrade] they want transparent and streamlined means to attract the highest-quality skills and talent to support and grow their operations.[58]

6.52 In regard to the GTI program, Austrade advised that FinTech is a priority sector 'although the current criteria emphasises technical skills and qualifications'. It added that the 'fast processing times of the GTI program [are] supported by investors' noting that '[s]everal of our clients have successfully

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[56] Ms Melinda Cilento, Chief Executive Officer, Committee for Economic Development of Australia, https://www.ceda.com.au/NewsAndResources/Opinion/Population/Optimising-skilled-migration-to-drive-the-COVID-19 (accessed 29 March 2021).

[57] Mr Peter Verwer AO, Prime Minister's Special Envoy for Global Business and Talent Attraction, Department of Home Affairs, *Proof Committee Hansard*, 5 March 2021, p. 40.

[58] Austrade, *Submission 148.1*, p. 6.

filled positions that could not be filled quickly through the employer-sponsored route'.[59]

6.53 While noting that it would almost always be the preference of Australian-based employers to hire local talent if available, Atlassian advised that 'some skills and experiences are in short supply within the Australian technology market' and therefore welcomed the establishment of the Global Business and Talent Attraction Taskforce, recommending:

> …that it focus on arrangements that facilitate bringing job-multiplying skills sets to Australia – particularly individuals with experience of leading and developing large teams in global technology firms.[60]

6.54 The Australian Financial Industry Association (AFIA) advised that uncertainty around criteria or timeframes for visa applications and decisions makes it difficult to attract highly skilled individuals.[61] AFIA was supported by other submitters[62] in its suggestion that the government 'consider a more flexible skilled working migrant visa regime to allow for the attraction and engagement of overseas skilled workers where there is an absence of such in Australia.'[63] The expansion and/or the fast-tracking of visas for certain skills and qualifications for the tech sector were also variously proposed.[64]

6.55 Afterpay suggested the consideration of temporary high-skill visas under the global talent program:

> Under US law, US citizens who are Australian Permanent Residents must also file US tax returns and can be liable to pay additional incremental income tax in the US. This is a significant disincentive for many candidates to relocate to Australia. In lieu of changes to US law, providing more access [to] flexible temporary high-skill visas could be used to address this.[65]

6.56 Mr Luke Anear, Chief Executive Officer of SafetyCulture remarked on the need to have flexibility to shape visa settings to attract specific technology talent, particularly in regional areas:

> A practical example of that is a product manager. A product manager is essentially responsible for prioritising what engineering teams build, but there really isn't a qualification or criteria that allow product managers to

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59 Austrade, *Submission 148.1*, p. 6.

60 Atlassian, *Submission 201*, p. 4.

61 Australian Financial Industry Association, *Submission 87.4*, p. 12.

62 Zip Co, *Submission 116.2*, p. 6; and humm group, *Submission 191*, p. 4

63 Australian Financial Industry Association, *Submission 87.4*, p. 12.

64 See for example Australian Financial Industry Association, *Submission 87.4*, p. 12; Zip Co; *Submission 116.2*, p. 6; and humm group, *Submission 191*, p. 4.

65 Afterpay, Answers to questions on notice from a hearing held 11 February 2021 (received 10 March 2021).

> come into Australia. They're some of the experienced people in the tech industry and they don't meet those criteria. So we've got user experience designers—people that work for great companies like Airbnb—who don't meet the criteria and we may not necessarily be paying them a salary. For a regional area to succeed, we need to be able to bring in talent.[66]

Significant Investor Visa

6.57 In relation to the Significant Investor Visa (SIV), a provisional visa under the BIIP for people who invest at least AUD5 million in Australian investments that meet certain requirements and maintain investment activity in Australia, Dr Geoff Waring, Partner, Stoic Venture Capital Fund ILP, disagreed with the suggested amendments outlined in the report of the Australia as a Financial and Technology Centre Advisory Group, Chaired by Mr Andrew Low, which proposed:

> …a broader and more flexible range of investments to qualify for the SIV but with protections to ensure that funds are only invested in directly-managed and AFS-regulated funds of scale that are "widely held", and that investors cannot borrow against these investments. The visa would also require that the visa holder demonstrate a plan to create at least 5 new jobs in Australia and that they have a basic level of English proficiency.[67]

6.58 Dr Waring advised that the proposed amendments would:

> …create greater opportunity for short-term rorting of the program, to get five, probably short-term, low-value jobs. Also, they're only asking for a plan for five jobs. This is a weak requirement, as there's no guarantee and very little likelihood the plan will be successfully implemented. The positive of the current requirement, to invest in a range of assets of varying risks, is the evidence that the earlier the stage of financing, the greater the information asymmetry and market failure, so that allocating a significant share of these investor visa funds into financing early-stage venture capital and emerging companies will lead to the greatest gain in employment.[68]

6.59 Noting that there has been 'material drop off' in SIV applicants since changes to the investment policy settings in 2015, Atlas Advisors Australia and Stoic Venture Capital Fund ILP advised in their submission that leveraging the SIV with the Global Talent visa 'has potential to drive significant investment into industries that will drive future economic growth':

> The idea is to heavily promote the SIV programme, particularly through government and industry supported roadshows, in partnership with the Global Talent Visa. By having the SIV and GTV cross-promoted in market

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[66] Mr Luke Anear, Chief Executive Officer, SafetyCulture, *Proof Committee Hansard*, 5 March 2021, p. 10.

[67] Australia as a Financial and Technology Centre Advisory Group, *Making Australia an Internationally Competitive Financial Centre and Attracting Asia-Pacific Business Headquarters to Australia*, January 2021, p. 70.

[68] Dr Geoff Waring, Partner, Stoic Venture Capital Fund ILP, *Proof Committee Hansard*, 11 February 2021, p. 2.

> (particularly China and Hong Kong) it creates a more powerful value proposition for Australia's cornerstone investor/talent migration programmes, particularly when competing for investment and talent against the US, European and Singapore programmes.
>
> We would also suggest that the GTV programme be heavily promoted to those SIV investors who have now or are about to secure 888 permanent residencies. In our experience this cohort are the most likely to establish new business ventures in the Australian market and best placed to bring key staff from their home market who would meet the GTV criteria.
>
> We believe that the SIV programme remains at the core of the opportunity to attract talented financial and technology business owners and entrepreneurs to Australia, in particular currently from Hong Kong.
>
> …
>
> We have seen a significant lift in enquiry and applications for the SIV programme from our Hong Kong team. Given that exchange controls on capital flows out of Hong Kong are not an issue and the source of funds for Hong Kong applicants is more straightforward than with China based applicants, we would expect that a targeted initiative by the Government departments (Home Affairs, DFAT) would unlock a number of relevant investors.[69]

6.60 Additionally, Atlas Advisors Australia and Stoic Venture Capital Fund ILP advised that the Austrade offices should be allowed to engage with SIV funds managers and their clients to provide direction and endorsement of preferred Australian Government direct investment choices, noting that:

> One of the unintended consequences of the SIV policy review in 2015,[70] was that Austrade, who have previously worked closely with us in the China and Australian market, were barred from dealing with or working with any SIV funds manager. This instruction was given by the then Trade Minister Andrew Robb to presumably remove any conflict of interest given that Austrade were charged with the SIV Investment Policy.
>
> …
>
> This ruling has [been] hugely detrimental to the SIV investor engagement with Australia's peak trade body and we recommend that it is not only

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[69] Atlas Advisors Australia and Stoic Venture Capital Fund ILP, *Submission 200*, p. 4.

[70] On 7 March 2014, the government announced an internal departmental review into the SIV to identify measures for further improvement, see *Department of Immigration and Border Protection Submission 50* to the House of Representatives Standing Committee on Economics for the inquiry into foreign investment in residential real estate. On 17 October 2014, the government announced changes to the SIV and the introduction of the Premium Investor Visa (PIV), with the changes to the SIV taking effect during 2014-15 and the PIV introduced from 1 July 2015, see the Hon Tony Abbott MP, Prime Minister; the Hon Andrew Robb AO MP, Minister for Trade; and the Hon Scott Morrison MP, Minister for Immigration and Border Protection, *Joint media release*, 'Reforming skilled migration to improve Australia's competitiveness, 14 October 2014.

> reversed by that Austrade offices but encouraged to engage with SIV funds managers and their clients.[71]

Green belt for technology

6.61 Mr Anear echoed other evidence that Australia is in a strong position to attract global talent 'off the back of COVID.' He told the committee about SafteyCulture's difficulties in attracting the best talent, noting that a lot of the people that they attract don't necessarily meet visa requirements in terms of experience and qualifications. To address this, he suggested a system to allow talent in the technology sector to relocate between select countries more easily:

> I think we propose a green belt for technology talent that allows visa applicants between countries like Australia, the US, Canada, the UK, Germany, the Netherlands and others to relocate very easily to Australia, provided they're working in the technology sector. SafetyCulture was actually the first company in Australia, I understand, to get the fast-track visa accredited program certification, and we're audited every year to make sure that we're complying with legislation. We need to broaden the criteria for applicants. For each person that we bring in with experience, they then train local people and bring them up to a new level as well. So this is an urgent requirement that we need to have…People are open to coming here. We're relocating people, particularly from the United States, and now is the time for us to move.[72]

Domestic talent

Attracting Australians home

6.62 Zip Co noted that, although the FinTech sector is expanding, its relatively small size has resulted in many qualified young Australians moving overseas to find employment. While the growth of the sector will see more highly skilled Australians finding suitable employment in Australia, this is a long-term proposition and should be addressed in the interim. As such, Zip Co supports Government initiatives which support 'technology companies in Australia to help incentivise and attract the best Australian talent to return home.'[73]

Growing domestic talent

6.63 As noted above, the committee heard that one of the many immediate benefits of attracting global talent in the short-term was the ability for local staff to learn and acquire skills from them.[74] However, a number of submitters also

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[71] Atlas Advisors Australia and Stoic Venture Capital Fund ILP, *Submission 200*, pp. 4-5.

[72] Mr Luke Anear, Chief Executive Officer, SafetyCulture, *Proof Committee Hansard*, 5 March 2021, p. 9.

[73] Zip Co, *Supplementary Submission 116.2*, p. 6.

[74] See for example, Altassian, *Submission 201*, p. 4.

raised the need for the development of local talent in the medium- to longer-term to support the technology sector as it grows, suggesting a number of approaches to achieve this.

6.64 The Department of Industry, Science, Energy and Resources (DISER) noted that:

> This includes supporting directors and organisational leaders of Australian SMEs in the finance sector to develop the complementary digital skillsets required to drive transformation.[75]

6.65 DISER advised that it works with the Department of Education, Skills and Employment and Home Affairs to examine the development of domestic skills pipelines, in addition to the skilled migration policy.[76] DISER also outlined complementary initiatives announced as part of the Digital Business Plan in the 2020-21 Budget, including the Digital Directors training package to help directors and leaders of Australia organisations improve their digital literacy and decision making; and to make training available through the industry-led Digital Skills Finder Platform to assist workers reskill and upskill for jobs in the sector.[77]

6.66 AustCyber advised the committee of the significant growth of cyber security workers in Australia in recent years, with almost a 40 per cent growth from 2017. AustCyber's 2020 Update to the Cyber Security Sector Competitiveness Plan (SCP 2020) found that 75 per cent of cyber security businesses in New South Wales and Victoria provide services and technology solutions to the financial sector.[78]

6.67 In relation to cyber skill development, the SCP 2020 found that education providers are 'stepping up to deliver a pipeline of skilled cyber security professionals'; however:

> …the SCP 2020 has also highlighted that around 7,000 more cyber security professionals will be needed by 2024, if Australia is to adequately meet the increased risks arising from cyber attacks.[79]

6.68 AustCyber advised the committee that Australia is on a positive path; however, there was a need 'to remain vigilant and continue to encourage and engagement student interest in cyber security to deliver a growing supply of talent' by:

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[75] Department of Industry, Science, Energy and Resources, *Submission 18.1*, p. 12.

[76] Department of Industry, Science, Energy and Resources, *Submission 18.1*, pp. 12-13.

[77] Department of Industry, Science, Energy and Resources, *Submission 18.1*, p. 13.

[78] AustCyber, *Submission 57.1*, p. 2.

[79] AustCyber, *Submission 57.1*, p. 2.

- Encouraging students to become motivated to pursue cyber security and digital technology (including critical and emerging technologies that are underpinned by cyber security) training and careers;
- Ramping up education offerings from both TAFE, Universities and through micro credentialing…[80]

6.69 AustCyber also suggested the creation of 'opportunities for mid-career professionals to transition into cyber security and digital technology careers through transition pathways, including through formal and on-the-job training.'[81]

6.70 Atlassian set out the priority areas for the development of local talent and skills training in the technology sector, recommending the Government:

- Improve the quality of careers advice and guidance in schools around digital careers. Under the National Careers Institute, the Government should make technology, testing, tools and programs available to students that help them to assess the alignment of different career options with their interests and aptitude. Existing programs and content include the School of Life and Year 13. The range of digital career options should be clearly articulated, as well as the growing opportunities to leverage digital skills into other industries.
- Focus vocational training on alignment with industry and employment outcomes. The Government should build on the Digital Skills Organisation pilot to explore more innovative training models that integrate industry content, alignment with employer requirements and incentivise employment outcomes.[82]

6.71 Mr Sasha Reid, founder and Chief Executive Officer, Hyper, a global technology incubator, advised the committee of the importance of developing skills and awareness in schools to create more informed future FinTech entrepreneurs, suggesting:

> …awareness, education, coursework or classes that can exist in high school or even at the start of university, that would be such a great way to introduce the right people rather than the wrong people to start ups.[83]

6.72 Noting the maturity of the technology startup sector in the US, Mr Reid remarked on the importance of developing more potential founders at this point in Australia's startup development:

> America's extremely mature in the way that they have VCs actively partnering up with universities and schools to try to teach kids entrepreneurialism and also to try to work with them on any idea that

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80 AustCyber, *Submission 57.1*, p. 2.

81 AustCyber, *Submission 57.1*, p. 2.

82 Atlassian, *Submission 201*, pp. 4-5.

83 Mr Sasha Reid, founder and Chief Executive Officer, Hyper, *Proof Committee Hansard*, 5 March 2021, p. 5.

> sounds remotely good, with a person who is remotely coherent. They start to fund them so they can develop a team and get the capital they need. I believe that's one of the main reasons why America has pretty much all of the enormous new tech businesses that exist at the moment. We're in that midlife cycle at the moment where there are just enough founders and just enough sources of endgame capital, but I believe we do need to create a lot more founders who are better educated, who understand and want to take the risk and can see the value. We can then start to really allow the other side—the VC side—to develop and to flourish as well.[84]

6.73 Mr Anear commented on the need for Australian universities to adapt and innovate their approach to develop home-grown talent in the technology sector. Citing the US model, particularly Stanford University, he advised the committee on the need to:

> …support and incentivise universities to do R&D work that leads to the commercialisation of products that we can then export to the world. In its simplest sense, Australia needs to create the products that we're exporting.
>
> …
>
> Schools are struggling with budgets and trying to provide a curriculum that sets young students up for their career pathways…I think there is a challenge for the universities to be able to shorten their courses, which then also reduces their income, and there's a model change that needs to happen throughout that. Perhaps it's in partnership with businesses, where they're free to commercialise without some of the current constraints. Universities could provide equity to students and other things—we need to be creative. Then they're more likely to be able to continue rather [than] lose those students straightaway to private enterprise—and the IP goes with them as well.
>
> Fundamentally, if you want to see universities thrive, they need to be able to create products and businesses that can be spun out and that the community and the universities all benefit from. That's a model change that needs to happen…It's not that we're necessarily trying to replicate Silicon Valley, but we can take some of the lessons from how that ecosystem was formed and the role that universities can play in that. But universities right now need the cash and they're doing whatever they can to get it. I think we need to relieve them of some of that pressure and help them innovate on their model. The pinnacle of going to school is no longer to become a professor, but that's where our current system leads. We need to be able to change that model and adapt.[85]

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[84] Mr Sasha Reid, founder and Chief Executive Officer, Hyper, *Proof Committee Hansard*, 5 March 2021, p. 5.

[85] Mr Luke Anear, Chief Executive Officer, SafetyCulture, *Proof Committee Hansard*, 5 March 2021, p. 12.

UK-Australia FinTech bridge

6.74 The UK-Australia FinTech Bridge came into effect on 22 March 2018.[86] According to Austrade:

> the UK-Australia FinTech Bridge is an agreement between the United Kingdom and Australian governments to support FinTech companies in both countries. It promotes collaboration, co-operation and partnerships and facilitates entry for FinTechs into each other's markets, especially by reducing regulatory barriers and allowing steps towards reciprocity on policy. The Australian Trade and Investment Commission and the UK Department for International Trade (DIT) work to deliver the benefits of the Bridge by bringing together British and Australian FinTech eco-systems and helping companies in both countries identify opportunities for growth.
>
> Within its first two years, the Bridge has facilitated high levels of regulatory cooperation, the sharing of best practice and promoted two-way trade and investment flows for Australia and UK companies. Multiple events and trade missions have helped companies from both countries gain key market insights and obtain introductions…[87]

6.75 In the 2020-21 Budget, the government provided $9.6 million over four years for Austrade to enhance support for Australian FinTech start-ups to 'gain a foothold in international markets and to encourage foreign investment and job creation in Australia'.[88]

6.76 Austrade noted that the UK-Australia FinTech Bridge promotes two-way trade and investment flows.[89] Mr Jay Meek, Acting General Manager, High Growth Export Services, Austrade, noted that over the last three years, '31 UK fintech companies set up in Australia and 27 Australian businesses set up in the UK'.[90]

6.77 Providing examples, Mr Meek reported that UK companies Revolut and 10x Future Technology have opened offices in Melbourne and Sydney and Australian companies such as CoinJar and Trade Ledger have established operations in the UK.[91]

6.78 Mr McCredie, Chief Executive Officer, Australian British Chamber of Commerce, noted recent reforms such as the Consumer Data Right which 'provides an added incentive for British Organisations to look at investing in

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[86] See https://treasury.gov.au/fintech/uk-australia-fintech-bridge accessed 10 March 2021.

[87] *Submission 148.1*, pp. 7-8.

[88] Budget Paper No.2, Budget Measures, p. 65

[89] Austrade, *Submission 148.1*, p. 3.

[90] *Proof Committee Hansard*, 5 March 2021, p. 36.

[91] *Proof Committee Hansard*, 5 March 2021, p. 36.

Australia and participating in our market'.[92] He noted the funding in the last federal budget, adding that:

> I think at this stage it's a little bit too early to tell what the impact of that is at this stage, but we look forward to continuing to work with Austrade and other partners in trying to develop and working to enhance that relationship.[93]

6.79 Speaking about the positives of the UK-Australia FinTech Bridge, Mr McCredie reported:

> I think the thing the fintech bridge has been most effective at is highlighting the fact that there is an opportunity for Australian companies into the UK and UK companies into Australia. It puts a spotlight on it, no different than the FTA in a broader context does. I think that's probably been the major takeaway, and that's very positive.[94]

6.80 Mr McCredie spoke about next steps:

> I think the key element that's probably missing is a level of certainty in terms of what the fintech bridge actually does provide, and there are some challenges that need to be understood and worked on with industry to actually enhance that opportunity, making that engagement line as visible as possible for companies looking to travel in either direction...[95]

6.81 He provided further detail:

> In my humble opinion, there have probably been too few businesses taking full advantage of the bridge. As I made reference to in my opening comments, the visibility and understanding of it in the startup market aren't as broad as we might hope and expect…The fact that it's not easy to find and not easy to navigate on your own, as a small startup that is trying to do 101 things at once, probably makes that a little bit more challenging. Even for more established players, it's really about getting to know the people in trade and investment and other places.
>
> Theoretically, that's through the bridge, but they probably approach those not through the bridge per se but through the normal conversation of business, in the way that organisations in other industry sectors would. The bridge itself doesn't necessarily make it that clear.
>
> I think it's also interesting that there's very little transparency of the organisations that have actually used the bridge and what benefits they've seen. So it's a bit difficult to spruik it, beyond the text of a few pages in the document itself, and say, 'This is why using the fintech bridge is a really great idea for your business.'[96]

6.82 Ms McCredie also reported:

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92 *Proof Committee Hansard*, 11 February 2021, p. 44.

93 *Proof Committee Hansard*, 11 February 2021, p. 44.

94 *Proof Committee Hansard*, 11 February 2021, p. 46.

95 *Proof Committee Hansard*, 11 February 2021, p. 44.

96 *Proof Committee Hansard*, 11 February 2021, pp. 44-45.

> One of the criticisms that I often hear is that Treasury do a great job talking to each other, regulators do a great job talking to each other, the industry bodies do a pretty good job of talking to each other, and trade and investment services do a good job of talking to each other, but they don't necessarily have an easy route for somebody who's thinking about using the bridge to know who I have to go and talk to if I want to have a conversation with Treasury or if I want to have a conversation with somebody at the FCA. Actually, that one's quite easy. With the Treasury sandbox, those sorts of signposts for industry to use are probably the key thing that really needs to be focused on.[97]

6.83 FinTech Australia suggested that the best way 'to leverage the Government's $9.6 million investment would be to facilitate partnerships between industry and government agencies'. In addition, the government should 'enter into a FinTech Bridge style relationship with other Asia-Pacific Economic Cooperation (APEC) countries, with equivalent regulatory regimes…'.[98]

6.84 ASIC noted that due to COVID-19 some activities envisaged under the UK-Australia Fintech Bridge were suspended. However:

> during our most recent quarterly dialogue with the FCA [UK Financial Conduct Authority] in late November 2020, ASIC and the FCA agreed to reflect on options to refresh these initiatives in the coming year. These options include conducting a series of virtual meetings (or webinars) to share deeper insights and experience on fintech and regtech developments for staff at ASIC and the FCA (instead of secondments or visits), and considering opportunities for joint fintech and regtech initiatives.[99]

6.85 ASIC also noted that:

> Both the UK and Australian Governments will work to raise the profile of the FinTech Bridge, as well as its benefits to UK and Australian fintech firms.[100]

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97 *Proof Committee Hansard*, 11 February 2021, p. 46.

98 *Submission 19.2*, p. 23.

99 *Submission 14.2*, p. 24.

100 *Submission 14.2*, p. 21.

Chapter 7
Conclusions and recommendations

7.1 This chapter details the committee's conclusions and recommendations from this phase of its inquiry, and notes some directions for the final phase of the committee's work.

Tax issues (Chapter 2)

Research & Development Tax Incentive

7.2 In its interim report, the committee noted the call for greater clarity and certainty in relation to the operation of the Research & Development Tax Incentive (R&DTI) for software development, and made two recommendations. However, the government is yet to provide a response to the committee's recommendations.

7.3 Despite refreshed guidance being provided by the Department of Industry, Science, Energy and Resources, the majority of witnesses remained strongly of the view that there is still a need for greater clarity around the eligibility of software for the R&DTI. A number of suggestions were made to address this. One involves changes to the existing legislation to clearly support software development as eligible R&D. Another was that the current method used for R&DTI assessment (Frascati) is out of line with software engineering and another method or methods should be able to be used to give the scheme more adaptability and flexibility. A further suggestion was that if certainty and clarity could not be achieved for software within the existing regime, then the creation of a new software-specific incentive should be considered.

7.4 The timing of R&DTI payments was also raised with the committee, with the suggestion that payments be changed from annual to quarterly to assist with cash flow for businesses without increasing the overall cost of the scheme.

Recommendation 1

7.5 The committee recommends that the Research & Development Tax Incentive be amended to allow for:

- **different assessment methodologies to be used; and**
- **quarterly payments to successful applicants.**

Recommendation 2

7.6 The committee recommends that the Australian Government consider the establishment of a separate software-specific tax incentive scheme.

Interest withholding tax

7.7 In order to access a diversity of offshore sources of funding and ensure Australia's competitiveness, the committee believes it is time to act on the recommendation of the 2009 *Australia as a Financial Centre – Building on Our Strengths* report (the Johnson Report) to remove withholding taxes: on interest paid on foreign-raised funding by Australian banks; on interest paid to foreign banks by their Australian branches; and on financial institutions' related party borrowing.

Recommendation 3

7.8 The committee recommends that the Australian Government consider abolishing interest withholding tax, in line with recommendations from the Johnson Review.

Offshore banking unit

7.9 The committee notes the government announcement on 12 March 2021 that it would introduce legislation to reform the offshore banking unit (OBU) to respond to concerns raised by the OECD's Forum on Harmful Tax Practices. Options to replace the OBU will be considered during the final phase of the committee's inquiry.

Employee share schemes

7.10 The committee received further evidence during this phase of the inquiry from Australian tech companies about perceived shortcomings in Australia's Employee Share Scheme arrangements, particularly when compared with the schemes available in jurisdictions such as the US.

7.11 As noted in the first interim report, the House of Representatives Standing Committee on Tax and Revenue is conducting an inquiry into the issue of employee share schemes which has not yet reported.

Regulation issues (Chapter 3)

Consumer Data Right (CDR)

7.12 The committee is pleased that the world-leading CDR rollout continues to progress in Australia. Ongoing refinements to the scheme are required to ensure that it is implemented in a way that realises its full potential for the Australian economy. While not making detailed recommendations about every aspect of the CDR, there were several key issues highlighted in this phase of the inquiry that the committee wishes to comment on.

Harmonisation and interoperability with relevant schemes in other jurisdictions

7.13 The committee took evidence about the need to ensure that the CDR is developed in a way that maximises the potential for international

interoperability with similar schemes in other jurisdictions, while mitigating any potential risks. Mr Scott Farrell's *Inquiry into future directions for the Consumer Data Right* made several recommendations in this area which the committee endorses.

7.14 The committee considers that there are several key areas that need to be progressed in this space, noting that complete alignment between international data portability regimes is neither possible, nor desirable.

7.15 First, the Australian Government should leverage our existing domestic Open Banking standards to pursue the development of International Open Banking standards, with the CDR Data Standards Body, Standards Australia and industry driving this work. This would entrench Australia's position as a global leader in this space. The importance of adopting a common approach to consent taxonomy and consent management protocols (in addition to agreements on the sharing of data itself) was highlighted to the committee. The committee notes that the most effective method to align standards would be a multijurisdictional alignment body, as a starting point between Australia, Singapore and the UK.

7.16 Secondly, Australia should immediately pursue mutual recognition arrangements for accreditation between the CDR and other similar regimes, with the UK being the first and most obvious candidate. This could happen via memoranda of understanding with counterpart countries, underpinned via relevant amendment to the CDR Rules.

7.17 The government should also strongly consider other suggestions from stakeholders such as TrueLayer, including implementing the Sponsor/Affiliate model of CDR accreditation and creating a sandbox environment for companies to safely test products before they receive CDR accreditation.

Recommendation 4

7.18 The committee recommends that the Australian Government and relevant agencies pursue mechanisms to increase international participation in the Consumer Data Right (CDR) and interoperability with similar schemes in other jurisdictions, including by:

- **driving the establishment of International Open Banking standards and broader standards relating to data sharing and consent management; and**
- **establishing mutual recognition arrangements for accreditation under the CDR and relevant schemes in other jurisdictions, in particular the United Kingdom.**

CDR and 'Big Tech'

7.19 The committee heard evidence from a number of submitters and witnesses on the potential for global non-bank technology companies such as digital

platforms ('Big Tech' companies) to participate in the CDR, and whether existing processes and the CDR Rules would be adequate to ensure a level playing field among participants should this occur.

7.20 The committee notes in particular evidence from the Office of the Australian Information Commissioner (OAIC) that participation of these companies in the CDR may raise a range of significant privacy risks, given the volume of data already held by these entities. These risks include, for example, the potential for combining sensitive financial data with the extensive amount of personal information already collected by these platforms, allowing Big Tech companies accredited under the CDR to build profiles of individual consumers, and to derive and provide deep and rich insights into those individuals.

7.21 The committee notes that the existing CDR Privacy Safeguards mitigate these risks somewhat. However, the committee considers that the giant reach of these companies, as well as their track record of utilising data in ways that may not meet community expectations, make it prudent to give further consideration to what additional rules or safeguards may be required in the event Big Tech firms seek accreditation under the CDR.

Recommendation 5

7.22 The committee recommends that the Australian Government, through Treasury and other relevant agencies, review and publicly report on what additional rules and safeguards may be required in the event that large non-bank digital platforms were to seek accreditation under the CDR regime.

Mechanisms to encourage consumers to utilise CDR product switching services

7.23 The committee notes that one of the CDR's primary goals is to encourage consumers to compare their financial products with others on the market and, where necessary, switch products to get a better deal. Any mechanisms that can help drive this consumer behaviour are welcome, noting that uptake of CDR services in the banking sector has been slow to date.

7.24 Finder's proposal of 'CDR Prompts' as a mechanism to proactively remind consumers that they can find and switch products using the CDR is worthy of consideration by government. Such prompts, or nudge mechanisms, would need to be carefully designed to ensure that they do not result in badgering of consumers or 'hawking' style operations. If designed correctly, however, they could be of significant benefit in driving the desired outcomes of the CDR.

Recommendation 6

7.25 The committee recommends that the Australian Government develop consumer 'nudge' mechanisms to be incorporated into the design of the CDR regime, to ensure consumers are periodically made aware of their ability to find better products and services through the CDR.

Big Tech platforms and app marketplaces

7.26 The committee heard concerning evidence from Match Group about the way large app marketplaces, namely Apple's App Store and the Google Play Store, may be inhibiting competition by: unfairly limiting app developers' means of distributing their apps through these marketplaces; and limiting the ability of app developers to use payment solutions of their choosing for transactions made by customers within apps. Google contested these claims in its submission to the inquiry.

7.27 The committee notes that the ACCC is examining potential competition and consumer issues relating to mobile app shops or marketplaces as part of its ongoing Digital Platforms inquiry, with an interim report on these issues due in March 2021.[1]

7.28 The committee further notes that there is currently litigation before the Federal Court of Australia in relation to disputes between a major app developer and both Apple and Google.

7.29 The committee considers that, pending any relevant findings from the ACCC, the government may need to consider an access regime for app marketplaces to ensure that Apple and Google are not unfairly stifling competition in this space.

Recommendation 7

7.30 The committee recommends that, pending any relevant findings of the ACCC, the Australian Government consider whether an access regime for app marketplaces may be necessary in order to ensure fair and equitable access for app developers.

Digital Identity reforms

7.31 The committee welcomes the government's investment of over $250 million in the October 2020 Budget to advance Digital Identity reforms in Australia. This agenda will ultimately create a federated system of digital identity services and products that will enable innovation across a wide range of areas and accelerate the development of other reforms such as the CDR.

7.32 One particular issue in relation to Digital Identity services and Know-Your-Customer authentication checks raised with the committee was the ability for companies to access relevant data from government registers to facilitate identity verification services. FinTechs are concerned that accessing data from sources such as the AEC roll and ASIC registers for the purpose of facilitating identity checks is expensive and unwieldy, relative to the access regimes available in other comparable jurisdictions.

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[1] The ACCC's interim report had not been published at the time of this report.

7.33 The committee considers that the government should review these arrangements and see whether any changes or improvements are necessary.

Recommendation 8

7.34 The committee recommends the Australian Government review the ability for businesses to access relevant information from government registers (including ASIC registers and AEC electoral roll data) for the purposes of facilitating identity checks and offering Digital Identity services, particularly in comparison with how this access is facilitated in similar jurisdictions overseas.

Rules as Code innovation hub and regulatory sandbox

7.35 The committee received compelling evidence about the potential for a 'Rules as Code' approach to developing legislation and regulations to drive efficiency and spur innovation in the administration of the law and in service delivery.

7.36 A range of research initiatives and pilot projects have already been undertaken in this area, and there is significant interest across industry, academia and government agencies in various Australian jurisdictions.

7.37 The committee notes CSIRO's evidence that federal government involvement in championing Rules as Code would be a key catalyst to the development of this area, because of the government's natural authority over legislation and regulation, in drafting, publishing, administering, and delivering services related to it.

7.38 A number of challenges still need to be worked through if a Rules as Code approach is to become embedded in government processes. This will require collaboration between policy experts, lawyers, legal drafters, researchers, software developers, and service providers, as well as upskilling in relevant public service agencies.

7.39 Key stakeholders in the Rules as Code and LawTech domains have recommended that a government innovation hub for coding of legal rules, along with a regulatory sandbox to enable the implementation and assessment of results from this hub, should be created to help drive momentum in this area. The hub could be responsible for developing strategic priorities for coding innovation, undertaking pilot projects in association with relevant agencies and partners, assessing results, and driving national and international collaboration.

7.40 The committee considers that this initiative will reap a dividend of accelerated digitisation in government services and put Australia at the forefront of this domain internationally, creating new opportunities for our LawTech and RegTech companies.

Recommendation 9

7.41 The committee recommends that the Australian Government establish a Commonwealth 'Rules as Code' innovation hub, accompanied by a regulatory sandbox, to advance legal coding approaches to Commonwealth legislation and regulation.

Access to capital (Chapter 4)

Trading plans for start-up founders and US Rule 10b5-1

7.42 The committee heard that reform to allow programmed trading by start-up founders is well overdue as a measure to keep companies onshore and encourage them to list in Australia. The committee agrees that it is time for a mechanism based on the approach taken in the US to be progressed, which takes into consideration the suggestions made to the committee.

Recommendation 10

7.43 The committee recommends the Australian Government provide for an Australian scheme based on US Rule 10b5-1 as an option for start-up companies. The government should enact integrity measures to avoid any gaming which may arise from trading plan modification.

Issues around capital raising

7.44 The committee sees the need to improve the regulatory framework around capital raisings by listed entities, to ensure that retail shareholders are treated equitably. The committee notes the data provided to the committee showing that only 13 per cent of recent capital raisings during the COVID-19 temporary exemptions period went to retail investors, with the rest going to fund managers and institutions. Retail investors are considered by the law to be less financially literate than their wholesale counterparts. However, the financial benchmarks used in the legislation to define who can qualify as a sophisticated investor are almost two decades old, while incomes and house prices have increased substantially during this time.

7.45 It was argued to the committee that the existing definitions for sophisticated investors under the *Corporations Act 2001* are outdated because a monetary threshold is used rather than one linked to understanding and experience. The potential for more asset-rich but knowledge-poor investors to be classified as sophisticated investors under the current definition is also noted. The committee agrees that the current definition may need reviewing.

Increased transparency

7.46 It was argued to the committee that increased transparency about capital raisings would put pressure on companies to act in the interest of all shareholders; for example, that companies should be required to disclose to all

investors, after a capital raise is completed, how the raising has been allocated. If a company does not offer retail/SMSF investors the chance to participate in a capital raising, they should be required to explain this publicly.

Recommendation 11

7.47 The committee recommends that the Australian Government amend existing legislation to require post-capital raising disclosure from listed companies.

Recommendation 12

7.48 The committee recommends that the Australian Government should ensure that technology drives an equitable deal for retail shareholders by modernising the rights issuance system.

Recommendation 13

7.49 The committee recommends that if the rights issues reforms contained in the recommendations above do not resolve the equity issues for retail shareholders, the Australian Government should conduct a review into retail shareholder participation in capital raisings.

Blockchain and digital assets (Chapter 5)

Blockchain standards

7.50 The committee heard about the variety of standards applicable to blockchain and the burden this places on actors in this space. As such, the committee supports the harmonisation work being undertaken by the Council of Financial Regulators Cyber Working Group and hopes that this work will continue and produce concrete results.

7.51 The committee was pleased that Australia, through Standards Australia, has a lead role in the development of international standards for blockchain through the International Organization for Standardization Working Group.

Recommendation 14

7.52 The committee recommends that the Council of Financial Regulators Cyber Working Group ensure its work takes into account existing and emerging international data standards with respect to blockchain and smart contracts. To this end, the Working Group should maintain open channels of communication with Standards Australia.

National blockchain roadmap

7.53 The committee commends the government for initiating a National Blockchain Roadmap which has been well received. It will be important to keep the momentum that it has created when it comes to implementation. Regular

public reporting on implementation of the roadmap would be one way to facilitate this.

Recommendation 15

7.54 The committee recommends that the Department of Industry, Science, Energy and Resources (DISER) regularly publish information about the National Blockchain Roadmap's implementation and the evaluation of that implementation.

Recommendation 16

7.55 The committee recommends that, as this is a quickly evolving technological and policy space, DISER act flexibly and responsibly with regards to reviewing, amending and updating the National Blockchain Roadmap as appropriate.

Blockchain for public sector innovation

7.56 The committee recognises the substantial potential for blockchain RegTech applications to improve and streamline administrative processes in both the public and private sectors. It is encouraged by the work already underway in this area, including with respect to public sector innovation.

7.57 The committee sees value in government reflection on how it can best lead by example in this regard, with a view to maximising public sector efficiencies and also demonstrating the advantages of utilising this technology more broadly. It is important that leading experts in the academic and private sectors are able to feed their expertise to government in this regard.

7.58 The committee was particularly impressed with the potential for blockchain to drive efficiencies in the area of land registries. Cognisant that the government is already sponsoring two public sector Regtech pilots, and that land registries are a state and territory concern, the committee recommends that this issue can be further explored in the context of the National Cabinet.

Recommendation 17

7.59 The committee recommends that National Cabinet consider supporting a blockchain land registry initiative as a pilot project for Commonwealth-State cooperation on RegTech.

Policy framework for digital assets and cryptocurrencies

7.60 The committee recognises the clear appetite for improved clarity and certainty in the regulatory landscape applicable to digital assets, cryptocurrencies and related areas. While the committee heard extensive evidence on the need for such regulation, it heard less on concrete ideas for how this regulation should best be crafted.

7.61 For this reason, the committee will make this a focus of its deliberations in the final phase of this inquiry. The committee will examine more closely the application of capital gains tax to cryptocurrency transactions as part of these deliberations.

7.62 The committee does however feel it is possible to improve the environment as it relates to smart contracts in the more immediate term.

Recommendation 18

7.63 The committee recommends that the Australian Government consider how best to improve clarity with respect to the standing of smart contracts under Australian law as a matter of priority.

Central bank digital currency

7.64 The committee welcomes the ongoing work of the Reserve Bank of Australia in the areas of a wholesale central bank digital currency and stablecoins. It hopes that this work continues and helps ensure that Australia does not find itself on the back foot with regards to related developments overseas.

7.65 There is clearly a need for more work and deliberation in this area, and the committee will make it a focus of the next phase of its work.

Culture and skills (Chapter 6)

Attracting global talent

7.66 The committee heard evidence on the importance of attracting global talent in order to grow the FinTech sector and create jobs, while bringing economic benefits to Australia. A number of submitters and witnesses highlighted the opportunities for Australia to position itself as a preferred destination for exceptional individuals and international business in the tech sector looking to relocate as a result of our successful management of the COVID-19 pandemic, as well as the current geopolitical events in Hong Kong presenting opportunities to attract talent and companies looking to relocate. In the current international competitive environment, getting the visa settings right has never been more critical to grow the sector and position Australia for a stronger economic recovery from recession.

7.67 The committee notes the government's initiatives in recent years to establish visa programs to incentivise global talent to relocate to Australia by streamlining pathways for highly skilled professionals and assisting employers to fill niche positions that cannot be filled by Australian workers or through other visa programs. Building on these efforts, the government's establishment of the Global Business and Talent Attraction Taskforce last year will boost efforts to attract high value global business and exceptional talent. The

committee also notes a number of enhanced arrangements to attract talent and businesses from Hong Kong which the Government announced in 2020.

7.68 The committee generally heard support for the approach of the global talent programs; however, some submitters and witnesses suggested that certain elements were too restrictive, lacked clarity in some areas, and were not sufficiently flexible. There was also support for greater permanent residence options for employees of high-value businesses relocating to Australia. The committee agrees that as the global competition for talent intensifies, there is merit in reviewing these programs to ensure they are responsive to industry needs and that Australia stays competitive.

Recommendation 19

7.69 The committee recommends that the Australian Government review the global talent visa program and Hong Kong visa arrangements to ensure international competitiveness, including consideration of salary caps, age thresholds, turnover requirements and key criteria.

Recommendation 20

7.70 The committee recommends that the Australian Government, when undertaking the review of the global talent visa program, consider providing clearer policies and guidelines on the identified target sectors.

Recommendation 21

7.71 The committee recommends that the Australia Government consider the introduction of more permanent residence visa options for employees of high-value businesses relocating to Australia.

Promoting Australia as a destination for international talent

7.72 A number of submitters and witnesses raised the importance of the promotion and marketing of Australia's global talent scheme and the Global Business and Talent Attraction Taskforce and that more could be done to increase the recognition of these initiatives. The committee sees value in reviewing the promotion of the global talent program and taskforce to ensure maximum reach and exposure.

Recommendation 22

7.73 The committee recommends that the Australian Government review its approach to the promotion of Australia as a destination for international talent in the FinTech and RegTech sectors, including through focussed marketing of the Global Talent Scheme and the Global Business and Talent Attraction Taskforce in target jurisdictions.

Visa administration processes

7.74 The committee also heard evidence that uncertainty around the timeframes and decisions for visa applications makes it difficult to attract highly skilled individuals in a competitive market. The committee supports the consideration of mechanisms to improve visa administration processes and to ensure that visa categories are adaptable and responsive to market changes in the FinTech and RegTech sectors.

Recommendation 23

7.75 The committee recommends that the Australian Government consider mechanisms to improve visa administration, including faster processing times, and ongoing review of visa eligibility to ensure visa categories are adaptable and responsive to market changes in the FinTech and RegTech sectors.

Growing domestic talent

7.76 While a number of submitters and witnesses focussed on the immediate need for Australia to attract global talent in the tech sector, the committee also heard evidence about the importance of setting in place strategies for growing and retaining domestic talent in digital and tech careers in the medium- to longer-term.

7.77 The committee heard a range of suggestions to support this objective, but a consistent message was the importance in developing skills and awareness at an early stage of education, including better quality careers advice and information on the future workforce demands. Supporting Australian universities to adapt and innovate in order to develop home-grown tech talent through R&D work which leads to commercialisation was also a proposed. Finally, the committee also heard about the need to create opportunities for mid-career professionals to transition into digital technology careers.

7.78 The committee was pleased to learn about recent Government support for initiatives to grow the domestic tech talent pipeline, including the Digital Directors training package and the availability of training to reskill and upskill workers through the Digital Skills Finder Platform.

UK-Australia FinTech bridge

7.79 While the views on the UK-Australia FinTech bridge were largely positive, there was a view that it would benefit from greater visibility of more practical outcomes, such as how the bridge arrangements can benefit businesses, and what the process is for companies to access initiatives under the bridge.

Senator Andrew Bragg
Chair

Additional Comments from Senator Paul Scarr

Introduction

1.1 I provide these additional comments in relation to the recommendations of the report relating to trading plans for start-up founders (Recommendation 10) and issues around capital raising (Recommendations 11 to 13).

Trading plans for start-up founders and US Rule 10b5-1 (Recommendation 10)

1.2 I support the introduction of a regime comparable to US Rule 10b5-1 provided that there are strong integrity measures, including a high level of transparency to the market. The primary purpose of these additional comments is to describe the nature of the integrity measures which are essential to any introduction of a US Rule 10b5-1 regime in Australia.

1.3 As a past company secretary of a publicly listed ASX 200 company, I have had the experience of developing and managing a securities trading policy over a number of years. Hence, my initial reaction to the proposed introduction of a proposed US Rule 10b5-1 was somewhat sceptical. Is this necessary in the context of the Australia market? Does this give an unfair benefit to one class of shareholders over another? How will this impact market perceptions? Can sufficient integrity measures be introduced to prevent a gaming of the system?

1.4 I have been persuaded by the arguments that there is a benefit in providing a mechanism to enable the orderly sell down of large interests held by founders. This enables founders to liberate value from their investment to enable diversification and potential investment (hopefully) in other innovative enterprises. The submissions from Atlassian, Startup Aus and TDM Growth Partners were persuasive in that regard. However, I also put great weight on the testimony of Mr Dean Paatsch, Director of Ownership Matters who said we should "hasten very slowly in this space".[1]

1.5 Ultimately, it has been the rigorous analysis of the application of US Rule 10b5-1 in practice over the last 18 or so years that has provided me with greater confidence.[2] That analysis provides very useful information regarding the integrity issues which have arisen in a US context and guidance as to how those issues can be managed through appropriate governance measures. In this context, there is some benefit in being a late adopter rather than an innovator.

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1 *Proof Committee Hansard*, 12 February 2021, p. 19.

2 Refer to: *Gaming the System, Three Red Flags of Potential 10B5-1 Abuse*, Stanford Closer Look Series, David F Larcker et al, 19 January 2021; *Statement of Stock Sales by Insiders*, Council of Institutional Investors, Adopted 10 March 2020.

1.6 In my view, the integrity measures need to include clear rules providing for:

(a) Minimum cooling off periods between plan adoption and the first trade
The longer the cooling off period the greater the confidence that the system is not being gamed. In a US context, some commentators have suggested periods of between three and six months.[3] In an Australian context, consideration should be given to the operation of the continuous disclosure regime (i.e. the requirement to update the market immediately the company is aware of price sensitive information rather than waiting for periodic disclosure events). The goal must be to minimise the opportunity for plans to be used (or perceived to be used) opportunistically.

(b) Plans should not permit single trades, trades over a short period of time or multiple plans
For the regime to be consistent with its purpose of enabling an orderly sell down of an interest held by a founder, the plan should operate over a reasonable time period. The Law Council of Australia suggests at least a six-month period.[4] In my view, the period should not be less than six months. In addition, each participant should only be permitted to have one operating plan at any given time.

(c) Alignment of material actions with securities trading policy
Consideration could be given to requiring material steps relating to the commencement of a plan, trades under a plan and cessation of a plan occurring only during permitted trading windows under a company's securities trading policy. This would dovetail the operation of the plan with: (a) the rationale for its adoption that a founder may find it impractical to trade even during permitted trading windows due to the possession of price sensitive information; (b) usual market practice regarding when founders and insiders trade in the Australian market. In my view, that would provide confidence around the operation of the plan.

(d) Termination or Amendment of Plan
The area which provides me with the greatest concern relates to decisions made by a participant to terminate the operation of a plan or to amend the operation of a plan (e.g. minimum sale price). In my view, a participant in

[3] Refer to: *Gaming the System, Three Red Flags of Potential 10B5-1 Abuse*, Stanford Closer Look Series, David F Larcker et al, 19 January 2021, where the research quoted by the authors indicates that the shorter the interval between plan adoption and the first trade, the more likely it appears that the plan is being used opportunistically; *Statement of Stock Sales by Insiders*, Council of Institutional Investors, Adopted 10 March 2020, which indicates a cooling off period of three months.

[4] Law Council of Australia, *Submission 176.2*, p. 3.

a plan should only be able to terminate or amend the operation of a plan in very narrow circumstances. This is because the participant may be in possession of material information which has not been disclosed to the market as a whole at the time of making such decisions. The ability to make decisions informed by material information not available to the market as a whole would give them an unfair advantage. Moreover, it could reasonably be expected that any termination of, or amendment to, a plan would be the subject of market speculation.

(e) Disclosure and Transparency

Rigorous disclosure should be required around the operation of a plan. As commented above, it can be expected that the disclosure will be the subject of rigorous scrutiny by the financial media, regulators, investors, analysts and other stakeholders. That is a good thing. To some extent, that scrutiny will be the most effective control against a potential gaming of any regime.

Issues around capital raisings (Recommendations 11 to 13)

1.7 In this section, I provide some additional comments in relation to the issue of capital raisings.

1.8 Whilst the Australian market has been extremely effective in raising capital over the last 12 months, there are ongoing issues around the fairness of capital raisings and the treatment of retail shareholders. Persuasive evidence was received by the Committee that retail shareholders have been disadvantaged.

1.9 The fairest method of capital raising is a pro-rata accelerated institutional, tradeable retail entitlement offer. It is fair to both institutional and retail shareholders. It provides retail shareholders with the opportunity to either: (a) participate in the capital raising on the same proportionate basis as institutional shareholders; or (b) crystallise the value of the entitlement especially where the retail shareholder is not in a position to access funds to accept the offer (this can be more often the case in a situation such as the GFC or the COVID-19 pandemic where the dividend receipts of shareholders have been impacted).

1.10 Hence, I support measures that will assist in the streamlining of processes for the making of renounceable entitlements offers.

1.11 I strongly support the submission from Ownership Matters that:

> Given that the cost of choosing unfair capital raising mechanisms penalises non-participating shareholders (predominantly retail) who receive no compensation for rights foregone…we recommend that the ASX clarifies renounceable rights offers can occur on a truncated timetable (no greater than seven days in total under the following conditions:

- The offer can be accepted only electronically, provided that Australian resident shareholders without access to electronic communications have been notified about the offer by post before it expires.[5]

1.12 However, it must be noted that the issue of post delivery has become problematic. Consider the most recent Bank of Queensland Limited capital raising where many retail shareholders missed out on the opportunity to participate in a very successful capital raising.

1.13 As stated in the Bank of Queensland's letter to shareholders dated 16 April 2021:

> The Board and [the Chair] were disappointed to learn that some of our shareholders received their Retail Entitlement Offer booklets late, resulting in those shareholders missing the cut off date for acceptance of the offer...[6]

1.14 This is unsatisfactory.

1.15 In my view, the regulatory requirements applying with respect to entitlements offers to retail shareholders need to be reconsidered. The regulatory requirements are penalising the investors they are meant to protect.

1.16 If a company is subject to continuous disclosure obligations on the ASX and appropriate disclosures have been made to market, then the need to send a retail offer booklet of voluminous length is of limited benefit. Shareholders obtain comfort from the prior performance of the company, including its compliance with continuous disclosure obligations. How many retail shareholders will even read the booklet, as opposed to the investor presentation released to the market at the time of the announcement of the offer?

1.17 There is pressing need for reform in this area. Too many retail shareholders have been disadvantaged. There must be change.

Senator Paul Scarr

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5 Ownership Matters, *Submission 224*, pp. 1-2.

6 Bank of Queensland, 1H21 Letter to Shareholders, 16 April 2021, [p. 3], available at https://company-announcements.afr.com/asx/boq/1197491d-9e85-11eb-9744-7e037ccddc41.pdf.

Appendix 1
Submissions, additional information and answers to questions on notice

1 Power Ledger
- 1.1 Supplementary to submission 1

2 RedCrew

3 Australian Computer Society
- 3.1 Supplementary to submission 3

4 Pepperstone Group Limited
- 4.1 Supplementary to submission 4
- 4.2 Supplementary to submission 4
- 4.3 Supplementary to submission 4

5 StartupAUS
- 5.1 Supplementary to submission 5

6 Swaggle

7 Mr Yousef Hosseini

8 Hon David Pisoni MP, Minister for Innovation and Skills, South Australia

9 WoolProducers Australia

10 The RegTech Association
- 10.1 Supplementary to submission 10
- 10.2 Supplementary to submission 10

11 Iress

12 Australian Investment Council
- 12.1 Supplementary to submission 12
- 12.2 Supplementary to submission 12

13 illion
- 13.1 Supplementary to submission 13

14 Australian Securities and Investments Commission
- 14.1 Supplementary to submission 14
- 14.2 Supplementary to submission 14

15 Australian Competition and Consumer Commission
- 15.1 Supplementary to submission 15

16 Reserve Bank of Australia
- 16.1 Supplementary to submission 16

17 CSIRO
- 17.1 Supplementary to submission 17

18 Department of Industry, Innovation and Science
- 18.1 Supplementary to submission 18

19 FinTech Australia
- 19.1 Supplementary to submission 19
- 19.2 Supplementary to submission 19

20 ANZ

21 Australian Energy Council

22 AGL

23 Mastercard

24 NPP Australia Limited
- 24.1 Supplementary to submission 24

25 Stone & Chalk

26 Australian Banking Association
- 26.1 Supplementary to submission 26

27 Data Republic

28 Sargon

29 RAIZ Invest Limited
- 29.1 Supplementary to submission 29
- 29.2 Supplementary to submission 29

30 Ernst & Young
- 30.1 Supplementary to submission 30

31 86 400
- 31.1 Supplementary to submission 31

32 Dr Kate Galloway

33 Verifier

34 SolveXia

35 H2 Ventures
- 35.1 Supplementary to submission 35

36 Financial Rights Legal Centre and Consumer Action Law Centre

37 Australian Institute of Superannuation Trustees
- 37.1 Supplementary to submission 37

38 Chartered Accountants Australia and New Zealand

39 Financial Planning Association of Australia
- 39.1 Supplementary to submission 39

40 Brighte
- 40.1 Supplementary to submission 40
- 40.2 Supplementary to submission 40

41 Prospa
- 41.1 Supplementary to submission 41

- 41.2 Supplementary to submission 41

42 Thread Harvest
43 Insurance Australia Group
44 ASX
- 44.1 Supplementary to submission 44
- 44.2 Supplementary to submission 44

45 Stockpot
46 Australian Small Business and Family Enterprise Ombudsman
- 46.1 Supplementary to submission 46
- 46.2 Supplementary to submission 46

47 Australian Financial Markets Association
- 47.1 Supplementary to submission 47

48 FINSIA
49 Super Consumers Australia
50 Prof Ross P Buckley, Douglas W Arner, Dirk A Zetzsche and Evan C Gibson
51 National Australia Bank Limited
52 A.T. Kearney
- 52.1 Supplementary to submission 52

53 Square
54 Square Peg
- 54.1 Supplementary to submission 54
- 54.2 Supplementary to submission 54

55 Australian Retail Credit Association
- 55.1 Supplementary to submission 55
- 55.2 Supplementary to submission 55

56 Piper Alderman
- 56.1 Supplementary to submission 56
- 56.2 Supplementary to submission 56

57 AustCyber
- 57.1 Supplementary to submission 57

58 Revolut
59 Luno
60 Lakeba Group
- 60.1 Supplementary to submission 60

61 Dr Louise Parsons
62 Financial Data and Technology Association (FDATA)
63 Baker McKenzie
64 CyberCX
65 Seed Space Venture Capital
- 65.1 Supplementary to submission 65

66 34 South 45 North Consulting
- 66.1 Supplementary to submission 66

67 Birchal
- 67.1 Supplementary to submission 67

68 Ezypay

69 BDO Services Pty Ltd

70 Finder
- 70.1 Supplementary to submission 70
- 70.2 Supplementary to submission 70

71 American Express Australia

72 Australian Business Software Industry Association (ABSIA)
- 72.1 Supplementary to submission 72

73 Vanteum, Galois and Inpher

74 Castlepoint Systems

75 Novatti

76 StarlingTrust Sciences

77 Dr Dimitrios Salampasis

78 African Money Remmittance Association

79 Lowrey Business and Litigation Support Consultants
- 79.1 Supplementary to submission 79

80 Airwallex

81 Australian Information Industry Association

82 Xero
- 82.1 Supplementary to submission 82

83 Afterpay Limited
- 83.1 Supplementary to submission 83
- 83.2 Supplementary to submission 83

84 Associate Professor Andrew Godwin and Professor Carsten Murawski

85 Law Innovation Technology Entrepreneurship

86 AgriDigital

87 Australian Finance Industry Association (AFIA)
- 87.1 Supplementary to submission 87
- 87.2 Supplementary to submission 87
- 87.3 Supplementary to submission 87
- 87.4 Supplementary to submission 87

88 Skyjed

89 Mr Prashant Singh

90 Adatree

91 Gateway Network Governance Body Ltd
- 91.1 Supplementary to submission 91

92 China Construction Bank Corporation
93 Fabrick Innovations
94 Start-Up Nation Central
95 The Jerusalem Business School
96 Max
97 Westpac Group
98 Startupbootcamp Australia
99 Australian Payments Network
- 99.1 Supplementary to submission 99

100 Financial Services Council
- 100.1 Supplementary to submission 100

101 D.C Consulting and Management Pty Ltd
102 Australian Taxpayers' Alliance
103 Australian Sustainable Finance Initiative
104 OurCrowd
105 National Farmers Federation
106 Salesforce
107 Business Council of Co-operatives and Mutuals
108 Department of Foreign Affairs and Trade
109 Australian Prudential Regulation Authority
110 Macquarie Group Limited
111 Moula Money Pty Ltd
112 UNE SMART Region Incubator
- 112.1 Supplementary to submission 112

113 Visa
114 Istanbul Investa
115 Mr Gerald Jensen
- 115.1 Supplementary to submission 115

116 Zip Co Ltd
- 116.1 Supplementary to submission 116
- 116.2 Supplementary to submission 116

117 Imperium Markets Pty Ltd
- 117.1 Supplementary to submission 117

118 SISS Data Services Pty Limited
119 The Hon Gabrielle Upton MP
120 Digital Industry Group Inc. (DIGI)
121 Commonwealth Bank (CBA)
- 121.1 Supplementary to submission 121

122 Standards Australia
123 Dominos's Pizza Enterprises Ltd
124 FairVine Super

125 Business Council of Australia
- 125.1 Supplementary to submission 125

126 Mr Abraham Robertson
- 126.1 Supplementary to submission 126

127 Tic:Toc
- 127.1 Supplementary to submission 127

128 Split Payments
129 Challenger Limited
130 Bank of Queensland
131 Ferocia
132 Department of Home Affairs and AUSTRAC
- 132.1 Supplementary to submission 132

133 Mr Timothy Holborn
134 Ms Pamela Wood
135 Xinja Bank Limited
136 *Name Withheld*
137 *Name Withheld*
138 *Confidential*
139 *Confidential*
140 Mr Scott Farrell
141 PayPal
- 141.1 Supplementary to submission 141

142 *Confidential*
143 *Confidential*
144 *Confidential*
145 *Confidential*
146 CPA Australia
147 KPMG
- 147.1 Supplementary to submission 147

148 Austrade
- 148.1 Supplementary to submission 148

149 *Confidential*
150 Plenty Wealth
151 SDGx
152 Chi-X Australia
153 Computershare
- 153.1 Supplementary to submission 153
- 153.2 Supplementary to submission 153

154 Klarna Australia Pty Ltd
- 154.1 Supplementary to submission 154

155 Australian Innovation Collective
156 Birdi
157 Identitii Limited
158 eftpos Payments Australia
- 158.1 Supplementary to submission 158

159 Mr Chris Poynton
160 LIXI Limited
161 ProvenDB
162 Dr Adir Shiffman
163 DataMesh Group Pty Ltd
164 *Confidential*
165 Australian Taxation Office
166 Treasury
- 166.1 Supplementary to submission 166

167 Digital Transformation Agency
- 167.1 Supplementary to submission 167

168 Mr Neil Hopley
169 Australasian Investor Relations Association
170 Link Group
171 Governance Institute of Australia
172 Australian Office of Financial Management
173 Tanda
174 Australian Institute of Company Directors
175 Australian Medical Association
176 Law Council of Australia
- 176.1 Supplementary to submission 176
- 176.2 Supplementary to submission 176

177 ScalaMed
178 New South Wales Government
179 The Royal Australian College of General Practitioners Ltd
180 Automic Proprietary Limited
181 Escrow.com
182 Global Data Alliance
183 Mr Aleksandar Svetski
184 Office of the Australian Information Commissioner
185 TDM Growth Partners
186 Dr Oleksii Konashevych
- 186.1 Supplementary to submission 186

187 Match Group
188 CPA Australia and Chartered Accountants Australia and New Zealand
189 BPAY Group

190 SMSF Association & Stockbrokers and Financial Advisers Association
191 Humm group
192 Wilson Asset Management
193 La Trobe LawTech
194 bitfwd - Blockchain Ventures
195 Dr Stephen English
196 QUT Law/Digital Media Research Centre and CSIRO's Data61
197 MYOB
198 Mills Oakley
199 Digital Law Association
200 Atlas Advisors Australia
201 Atlassian
202 Cosmos Capital and Independent Reserve
203 Mr A.B Abundo
204 Dr Darcy Allen, Dr Chris Berg and Dr Aaron Lane
205 Associate Professor Anthony Asher and Mr John De Ravin
206 TrueLayer Ltd.
207 Bitaroo Pty Ltd
208 Hamilton Blackstone Lawyers
209 BTC Markets Pty Ltd
210 Block8
211 Blockchain Australia
212 The Association of Corporate Counsel GC100
213 *Name Withheld*
214 WiseTech Global
215 Dr Shumi Akhtar
216 Canva
217 Google Australia
218 Ms Giulianna Hsu and Associate Professor Rob Nicholls
219 Swoop Funding
220 *Confidential*
221 *Confidential*
222 *Confidential*
223 *Confidential*
224 Ownership Matters

Additional Information

1 Correspondence from Raiz Invest Limited, received 3 February 2020.
2 Correspondence from Commonwealth Bank, received 10 February 2020
3 Additional information from ASIC, received 26 February 2020

4 Correspondence from Xinja Bank regarding corrections to Hansard 19 February 2020, received 9 March 2020
5 Correspondence from ANZ, received 23 March 2020
6 Additional information provided at public hearing on 30 June 2020: AMP's AGM mailing room, representing 430,000 mail packs
7 Digital Transformation Agency, Opening Statement, 5 March public hearing
8 Additional information from the Australian Banking Association, received 18 March 2021.

Answers to Questions on Notice

1 Pepperstone Group - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 7 February 2020)
2 illion - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 17 February 2020)
3 RAIZ - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 18 February 2020)
4 Australian Computer Society - Answers to question on notice from a public hearing held 20 February 2020, Sydney (received 28 February 2020)
5 Startupbootcamp Australia - Answer to question on notice from a public hearing held 30 January 2020, Melbourne (received 19 February 2020)
6 Financial Rights Legal Centre - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 5 March 2020)
7 EY - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 5 March 2020)
8 Treasury - Answer to written questions on notice (received 6 March 2020)
9 Zip Co - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
10 Business Council of Australia - Answers to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
11 Digital Transformation Agency - Answer to questions on notice from a public hearing held 26 February 2020, Canberra (received 6 March 2020)
12 ANZ - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
13 Baker McKenzie - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
14 Australian Banking Association - Answer to question on notice from a public hearing held 19 February 2020, Sydney (received 6 March 2020)
15 Afterpay - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
16 ASX Group - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)
17 Australian Investment Council - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 6 March 2020)

18 Finder - Answer to questions on notice from a public hearing held 20 February 2020, Sydney (received 10 March 2020)
19 Department of Finance - Answer to questions on notice from a public hearing held 26 February 2020, Canberra (received 11 March 2020)
20 Reserve Bank Australia - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
21 Department of Industry, Science, Energy and Resources - Answers to written questions on notice (received 13 March 2020)
22 Australian Prudential Regulation Authority - Answer to question on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
23 Department of Foreign Affairs and Trade - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 13 March 2020)
24 Xinja Bank Limited - Answer to questions on notice from a public hearing held 19 February 2020, Sydney (received 11 March 2020)
25 Commonwealth Bank - Answers to written questions on notice (received 16 March 2020)
26 Australian Competition & Consumer Commission - Answer to questions on notice from a public hearing held 27 February 2020, Canberra (received 17 March 2020)
27 Australian Competition & Consumer Commission - Answers to written questions on notice (received 17 March 2020)
28 Austrade - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 17 March 2020)
29 FinTech Australia - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 20 March 2020)
30 Stone & Chalk - Answers to questions on notice from a public hearing held 19 February 2020, Sydney (received 21 March 2020)
31 Department of Home Affairs - Answers to questions on notice from a public hearing held 28 February 2020, Canberra (received 24 March 2020)
32 Australian Prudential Regulation Authority - Answers to written questions on notice (received 15 April 2020)
33 Australian Competition and Consumer Commission - Answers to written questions on notice (received 28 April 2020)
34 Australian Competition and Consumer Commission - Answers to written questions on notice (received 28 May 2020)
35 Governance Institute of Australia - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)
36 Australian Institute of Company Directors - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)
37 Treasury - Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 15 July 2020)

38 Link Group - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

39 Computershare - Answers to questions on notice from a public hearing held 30 June 2020, Canberra (received 14 July 2020)

40 Financial Planning Association of Australia - Answer to question on notice from a public hearing held 30 June 2020, Canberra (received 15 July 2020)

41 CSIRO - Answer to written question on notice (received 20 July 2020)

42 Department of Agriculture, Water and the Environment - Answer to written questions on notice (received 24 July 2020)

43 Australian Small Business and Family Enterprise Ombudsman - Answer to question on notice from a public hearing held 14 July 2020, Canberra (received 24 July 2020)

44 Department of Industry, Science, Energy and Resources - Answer to written question on notice (received 29 July 2020)

45 Australian Medical Association - Answers to questions on notice from a public hearing held 1 July 2020, Canberra (received 29 July 2020)

46 Australian Competition and Consumer Commission - Answers to written questions on notice (received 10 August 2020)

47 StartupAus - Answers to written questions on notice (received 11 August 2020)

48 Dr Oleksii Konashevych - Answer to questions on notice from a public hearing held 11 February 2021, Sydney (received 18 February 2021)

49 Dr Darcy Allen, Associate Professor Chris Berg and Dr Aaron Lane - Answers to questions taken on notice from a public hearing held 11 February 2021, Sydney (received 22 February 2021).

50 Reserve Bank of Australia - Answer to question on notice from a public hearing held 12 February 2021, Sydney (received 16 February 2021).

51 TrueLayer - Answer to question on notice from a public hearing held 12 February 2021, Sydney (received 22 February 2021)

52 Mills Oakey - Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 18 February 2021)

53 LaTrobe LawTech – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 26 February 2021)

54 QUT Law School and Data61 – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 26 February 2021)

55 Office of the Australian Information Commissioner – Answer to question on notice from a public hearing held 12 February 2021, Sydney (received 2 March 2021)

56 Blockchain Australia – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 5 March 2021)

57 ASX – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 5 March 2021)

58 FinTech Australia – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 5 March 2021)

59 Afterpay – Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 10 March 2021)

60 Australian Financial Markets Association - Answer to question on notice from a public hearing held 11 February 2021, Sydney (received 10 March 2021)

61 Australian Shareholders' Association - Answer to written question on notice (received 12 March 2021)

62 Australian Securities and Investments Commission - Answer to question on notice from a public hearing held 12 February 2021, Sydney (received 11 March 2021)

63 Australian Securities and Investments Commission - Answer to question on notice from a public hearing held 12 February 2021, Sydney (Additional response, received 15 March 2021)

64 Match Group - Answer to question on notice from a public hearing held 5 March 2021, Canberra (received 12 March 2021)

65 Australian Electoral Commission – Answers to written questions on notice (received 23 March 2021)

66 Treasury - Answers to questions on notice from a public hearing held 5 March 2021, Canberra (received 23 March 2021)

67 Treasury - Answers to written questions on notice from Senator McDonald (received 23 March 2021)

68 Department of Home Affairs - Answers to written questions on notice from Senator McDonald (received 26 March 2021)

69 KPMG - Answers to questions on notice from a public hearing held 5 March 2021, Canberra (received 26 March 2021)

70 CSIRO – Answers to written questions on notice (received 29 March 2021)

71 ASX – Answers to written questions on notice (received 30 March 2021)

72 Department of Industry, Science, Energy and Resources - Answers to written questions on notice (received 30 March 2021)

73 Digital Transformation Agency - Answers to written questions on notice (received 1 April 2021)

74 Department of Industry, Science, Energy and Resources - Answers to written questions on notice (received 1 April 2021)

75 Australian Securities and Investments Commission - Answers to written questions on notice (received 7 April 2021)

76 Australian Financial Markets Association - Answer to written question on notice (received 8 April 2021)

77 Treasury - Answers to written questions on notice (received 8 April 2021).

78 Treasury - Answer to question taken on notice from a public hearing held 5 March 2021 (received 8 April 2021)

79 Herbert Smith Freehills and Greenwoods & Herbert Smith Freehills - Answer to questions taken on notice from a public hearing held 5 March 2021 (received 16 April 2021)

Appendix 2
Public hearings and witnesses

Thursday, 30 January 2020
Edinburgh Room
Stamford Plaza
111 Little Collins Street
Melbourne

Sargon
- Mr Phillip Kingston, Founder and Chief Executive Officer

Verifier
- Ms Lisa Schutz, Chief Executive Officer

Pepperstone Group Limited
- Mr Tamas Szabo, Group Chief Executive Officer
- Ms Peta Stead, Group Head, Regulatory Affairs
- Mr Jason Noorman, Chief Technology Officer

Ferocia
- Mr Mike Morris, Head of Technology
- Mr Xavier Shay, Engineer

RAIZ Invest Limited
- Mr Brendan Malone, Chief Operating Officer
- Ms Astrid Raetze, General Counsel

A.T. Kearney
- Mr Rod Feeney, Partner
- Mrs Bronwyn Kitchen, Manager

Airwallex
- Mr Dave Stein, Head of Corporate Development
- Mr Adam Stevenson, Senior Legal Counsel

illion
- Mr Simon Bligh, Chief Executive Officer
- Mr Luke Howes, Managing Director, illion Data Solutions

StartUpBootcamp Australia
- Mr Brian Collins, Fintech Managing Director

Wednesday, 19 February 2020
The Portside Centre
Level 5, Symantec House
207 Kent Street
Sydney

Square Peg Capital Pty Ltd
- Mr Anthony Holt, Co-founder and Partner

Piper Alderman
- Mr Michael Bacina, Partner, Fintech Group, Bookchain Group

Stone & Chalk
- Mr Alex Scandurra, Chief Executive Officer

Australian Banking Association
- Mr Aidan O'Shaughnessy, Executive Director, Policy
- Ms Fiona Landis, Acting Executive Director, Corporate Affairs

Australian and New Zealand Banking Group Limited
- Ms Emma Gray, Chief Data Officer

Zip Co Ltd
- Mr Peter Gray, Chief Operating Officer

StartupAUS
- Mr Peter Bradd, Chair

Tic:Toc
- Mr Anthony Baum, Founder and Chief Executive Officer
- Mr Daniel Price, Chief Enterprise Officer
- Mr Richard Shanahan, Manager, Data Science and Enterprise Products

Xinja Bank Limited
- Mr Eric Wilson, Chief Executive Officer and Founder
- Ms Van Le, Co-founder and Executive Board Director

Australian Payments Network
- Mr Andy White, Chief Executive Officer

34 South 45 North Consulting
- Dr Brad Pragnell, Principal

Financial Rights Legal Centre & Consumer Action Law Centre
- Mr Drew MacRae, Policy and Advocacy Officer, Financial Rights Legal Centre

86 400

- Mr Robert Bell, Chief Executive Officer

Gateway Network Governance Body Ltd

- Ms Jan McClelland AM, Chair of the Board
- Ms Michelle Bower, Executive Officer

Baker McKenzie

- Mr Bill Fuggle, Partner
- Mr Guy Sanderson, Partner
- Mr Adrian Lawrence, Partner
- Ms Caitlin Whale, Special Counsel, Technology and Commercial Team
- Ms Shemira Jeevaratnam, Associate

Thursday, 20 February 2020

The Portside Centre
Level 5, Symantec House
207 Kent Street
Sydney

Power Ledger

- Dr Jemma Green, Executive Chairman and Co-founder

Fabrick Innovations

- Mr Heath Behncke, Executive Chair

Australian Securities Exchange (ASX)

- Mr Peter Hiom, Deputy Chief Executive Officer
- Mr Cliff Richards, Executive General Manager, Equity Post Trade
- Mr Daniel Chesterman, Chief Information Officer

Super Consumers Australia

- Ms Erin Turner, Director, Campaigns and Communications
- Ms Rebecca Curran, Senior Policy Advisor

H2 Ventures

- Mr Benjamin Heap, Founding Partner

Afterpay Limited

- Mr Anthony Eisen, Chief Executive Officer and Managing Director
- Ms Elana Rubin, Interim Chair

D.C Consulting and Management Pty Ltd

- Mr David Columbro, Director

Australian Investment Council

- Ms Robyn Tolhurst, Public Affairs Manager
- Mr Yasser El-Ansary, Chief Executive
- Mr Brendon Harper, Head of Policy and Research

New Payments Platform Australia

- Mr Adrian Lovney, Chief Executive Officer
- Ms Vanessa Chapman, General Counsel & Company Secretary
- Ms Katrina Stuart, Head of Engagement

Australian Finance Industry Association (AFIA)

- Ms Diane Tate, Chief Executive Officer

Brighte Capital Pty Ltd

- Ms Katherine McConnell, Chief Executive Officer and Founder
- Mrs Malini Sietaram, Chief Marketing Officer

Business Council of Australia

- Mr Simon Pryor, Executive Director Policy
- Mr Pero Stojanovski, Acting Chief Economist

Finder

- Mr Fred Schbesta, Chief Executive Officer and Co-founder

Australian Computer Society

- Mr Andrew Johnson, Chief Executive Officer

Wednesday, 26 February 2020

Committee Room 1S3
Parliament House
Canberra

Department of Finance

- Mr Nicholas Hunt, First Assistant Secretary, Procurement and Insurance Division
- Mr Andrew Bourne, Assistant Secretary, Procurement Policy Branch

Digital Transformation Agency

- Mr Jonathon Thorpe, Acting Chief Strategy Officer, Digital Strategy and Capability Division
- Ms Berlinda Crowther, Head of Strategic Sourcing, Strategic Sourcing Branch, Digital Strategy and Capability Division

Thursday, 27 February 2020
Committee Room 2S3
Parliament House
Canberra

Australian Securities and Investments Commission
- Mr John Price, Commissioner
- Mr Sean Hughes, Commissioner
- Mr Tim Gough, Executive Director, Financial Services
- Mr Mark Adams, Senior Executive Leader, Strategic Intelligence

Australian Competition and Consumer Commission
- Mr Paul Franklin, Executive General Manager Consumer Data Right
- Mr Bruce Cooper, General Manager Consumer Data Right

Friday, 28 February 2020
Committee Room 2S1
Parliament House
Canberra

FinTech Australia
- Ms Rebecca Schot-Guppy, General Manager
- Mr Alan Tsen, Chairman of the Board
- Mr Stuart Stoyan, Ex-Chairman of Fintech Australia and Founder/Chief Executive Officer MoneyPlace
- Ms Simone Joyce,, Director of Fintech Australia and Founder/Chief Executive Officer of Paypa Plane

The RegTech Association
- Ms Deborah Young, Chief Executive Officer

Skyjed
- Ms Leica Ison, Chief Executive Officer

Reserve Bank of Australia
- Dr Anthony Richards, Head of Payments Policy
- Mr Christopher Thompson, Deputy Head of Payments Policy

Australian Prudential Regulation Authority
- Ms Heidi Richards, Executive Director, Policy and Advice
- Ms Melisande Waterford, General Manager, Regulatory Affairs and Licensing
- Ms Alison Bliss, General Manager, Data Analytics and Insights

CSIRO DATA61

- Dr Mark Staples, Senior Principal Researcher and Group Leader
- Mr Barry Thomas, Director, Consumer Data Standards
- Ms Katie Ford, Head of Government and Stakeholder Relations

Department of Industry, Science, Energy and Resources

- Ms Elizabeth Kelly, Deputy Secretary
- Ms Narelle Luchetti, Head of Division, Digital Economy and Technology Division
- Ms Louise Talbot, General Manager, Technology Growth and International Branch

Department of Home Affairs

- Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy Division

AUSTRAC

- Dr Nathan Newman, National Manager, Regulatory Operations

Department of Foreign Affairs and Trade

- Ms Elizabeth Bowes, Chief Negotiator, Regional Trade Agreements Division (RTD)
- Ms Caroline McCarthy, Assistant Secretary, FTA Investment, Digital Trade and Other Issues Branch, RTD
- Mr John Donnelly, Acting Assistant Secretary, Competitiveness and Business Engagement Branch, Trade, Investment and Business Engagement Division

Austrade

- Ms Margaret Bowen, Acting General Manager, Government and Partnerships
- Ms Jenny West, General Manager, Trade and Investment, Global Market and Sector Engagement
- Ms Katherine Heathcote, Senior Advisor, Fintech

National Farmers Federation

- Dr Adrienne Ryan, General Manager, Rural Affairs
- Mr Peter Thompson, Chair, Telecommunications and Social Policy Committee (via teleconference)

AgriDigital

- Mr Bob McKay, Co-founder
- Ms Emma Weston, Chief Executive Officer and Co-founder

EY

- Mr Alf Capito, Leader, Tax Policy
- Mr Colin Jones, EY Oceania Corporate Tax Partner

Tuesday, 30 June 2020
Committee Room 2S1
Via Videoconference
Parlament House
Canberra

Australian Innovation Collective

- Ms Maria MacNamara, CEO, Advance.org
- Mr Alex Scandurra, CEO, Stone & Chalk

Governance Institute of Australia

- Ms Megan Motto, Chief Executive Officer, Governance Institute
- Mr Graeme Blackett, Senior Company Secretary, Company Matters and Member Legislation Review Committee
- Mr Peter Smiles, Deputy Company Secretary and Senior Manager, Group Legal, QBE Insurance Group Limited and Member Corporate and Legal Issues Committee

Australian Institute of Company Directors

- Mr Christian Gergis, Head of Policy, Advocacy
- Ms Laura Bacon, Policy Adviser, Advocacy

Australasian Investor Relations Association

- Mr Ian Matheson, Chief Executive Officer, AIRA
- Ms Marnie Reid, Head of Shareholder Services, AMP Investor Relations

Link Group

- Ms Lysa McKenna, Co-CEO Corporate Markets

Computershare

- Ms Ann Bowering, CEO, Issuer Services Australia & New Zealand

Financial Planning Association of Australia

- Mr Dante De Gori, Chief Executive Officer
- Mr Benjamin Marshan, Head of Policy and Standards

Wednesday, 1 July 2020
Committee Room 2S1
Via Videoconference
Parliament House
Canberra

A.T. Kearney
- Mr Robert Feeney, Lead Partner Digital Transformation Practice
- Mr Robert Holt, Lead Partner Government Practice
- Mr Craig Pandy, Principal

FinTech Australia
- Ms Rebecca Schot-Guppy, Chief Executive Officer
- Mr Alan Tsen, Chair

Australian Medical Association
- Dr Tony Bartone, President

Rural Doctors Association of Australia
- Ms Peta Rutherford, Chief Executive Officer

WearOptimo
- Professor Mark Kendall, Chief Executive Officer

Financial Rights Legal Centre
- Mr Drew MacRae, Policy and Advocacy Officer
- Mrs Julia Davis, Policy and Communications Officer

Law Council of Australia
- Ms Pauline Wright, President
- Ms Shannon Finch, Chair, Corporations Committee
- Dr Natasha Molt, Director of Policy

Strata Community Association
- Mr Chris Duggan, President Strata Community Association NSW
- Mr Richard Eastwood, Executive General Manager, Smarter Communities

Digital Transformation Agency
- Mr Peter Alexander, Chief Digital Officer
- Mr Jonathon Thorpe, Head of Identity Branch

Treasury
- Mr Warren Tease, Chief Adviser, Financial System Division
- Ms Lauren Hogan, Senior Adviser, Financial System Division
- Ms Phillipa Brown, Acting Division Head, Job Keeper Division
- Mr Daniel McAuliffe, Senior Adviser, Market Conduct Division

Tuesday, 14 July 2020
Committee Room 2S1
Via Videoconference
Parliament House
Canberra

The RegTech Association
- Ms Deborah Young, Chief Executive Officer

Australian Small Business and Family Enterprise Ombudsman
- Ms Kate Carnell AO, Ombudsman
- Mr Eamon Sloane, Analyst

Tanda
- Mr Andrew Stirling, Partner - Tanda PaySure
- Mr Rod Schneider, Head of Strategic Partnerships

AgriDigital
- Ms Emma Weston, Chief Executive Officer and Co founder

Monday, 10 August 2020
Committee Room 2S2
(Via teleconference)
Parliament House
Canberra

Australian Shareholders' Association
- Ms Fiona Balzer, Policy and Advocacy Manager

Thursday, 11 February 2021
York Room, The Grace Sydney
77 York Street
Sydney

Australian Financial Markets Association
- Mr Robert Colquhoun, Director, Policy

Atlas Advisors Australia and Stoic Venture Capital Fund ILP
- Mr Geoff Waring, Partner, Stoic Venture Capital Fund ILP
- Mr Guy Hedley, Executive Chairman, Atlas Advisors Australia

Blockchain Australia
- Mr Steve Vallas, Chief Executive Officer

Dr Darcy Allen, Dr Chris Berg and Dr Aaron Lane

- Dr Darcy Allen, Postdoctoral Research Fellow, RMIT Blockchain Innovation Hub
- Dr Chris Berg, Co-Director & Senior Fellow, RMIT Blockchain Innovation Hub
- Dr Aaron Lane, Research Fellow, RMIT Blockchain Innovation Hub

Dr Oleksii Konashevych, Private capacity

Piper Alderman

- Mr Michael Bacina, Partner

Cosmos Capital

- Mr James Manning, Founder and Managing Director
- Mr Michael Hughes, Director

Mills Oakley

- Ms Joni Pirovich, Special Counsel, Tax, Blockchain and Digital Assets

Australian Competition and Consumer Commission

- Mr Rod Sims, Chair
- Ms Sarah Court, Commissioner
- Mr Paul Franklin, Executive General Manager Consumer Data Right
- Mr Marcus Bezzi, Executive General Manager Specialised Enforcement and Advocacy

La Trobe LawTech

- Professor Pompeu Casanovas, Research Professor, La Trobe University Law School
- Professor Louis de Koker, LaTrobe LawTech, La Trobe University Law School

QUT Law/Digital Media Research Centre and CSIRO's Data61

- Associate Professor Anna Huggins, Faculty of Law, QUT
- Associate Professor Mark Burdon, Faculty of Law, QUT
- Professor Guido Governatori, Senior Principal Researcher, Data61

Afterpay

- Mr Anthony Eisen, Co-founder and CEO
- Mr Damian Kassabgi, EVP Public Policy

WiseTech Global

- Mr Richard White, Chief Executive Officer
- Dr Julia Prior, Head of Innovation & Software Development Strategy

Australian British Chamber of Commerce

- Mr David McCredie OBE, Chief Executive

FinTech Australia

- Ms Rebecca Schot-Guppy, Chief Executive Officer
- Ms Simone Joyce, Chair

Friday, 12 February 2021

York Room, The Grace Sydney
77 York Street
Sydney

The RegTech Association

- Ms Deborah Young, Chief Executive Officer

Australian Securities Exchange (ASX)

- Mr Maxwell Cunningham, Executive General Manager, Listings, Issuer Services and Investment Products

Law Council of Australia

- Ms Shannon Finch, Chair, Corporations Committee, Business Law Section

TDM Growth Partners

- Mr Tom Cowan, Director

Wilson Asset Management

- Mr Jesse Hamilton, Chief Financial Officer

SMSF Association & Stockbrokers and Financial Advisers Association

- Mr John Maroney, Chief Executive Officer, SMSF Association
- Mr Brian Sheahan, Chairman, Stockbrokers and Financial Advisers Association
- Ms Judith Fox, Chief Executive Officer, Stockbrokers and Financial Advisers Association

Dr Stephen English, Private capacity

Ownership Matters

- Mr Dean Paatsch, Director

StartupAUS

- Mr Alex McCauley, Chief Executive Officer

Finder

- Mr Fred Schebesta, Co-founder and Chief Executive Officer

TrueLayer Ltd.

- Mr Brenton Charnley, Head of Australia

Office of the Australian Information Commissioner

- Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner
- Ms Elizabeth Hampton, Deputy Commissioner
- Ms Stephanie Otorepec, Director, Regulation and Strategy

Reserve Bank of Australia

- Mr Anthony (Tony) Richards, Head, Payments Policy Department
- Mr Christopher Thompson, Deputy Head, Payments Policy Department

Australian Securities and Investments Commission

- Ms Cathie Armour, Commissioner
- Mr Mark Adams, Senior Executive Leader Strategic Intelligence
- Ms Joanna Bird, Executive Director, Financial Services and Wealth

Friday, 5 March 2021

Via Videoconference
Main Committee Room
Parliament House
Canberra

Hyper

- Mr Tom West, Chief Executive Officer

SafetyCulture

- Mr Luke Anear, Chief Executive Officer
- Mr Peter Dunne, Partner, Herbert Smith Freehills

KPMG

- Mr Ian Pollari, Partner, National Banking and Capital Markets Sector Leader, and Global co-Lead of Fintech
- Mr Dan Teper, Partner, Mergers & Acquisitions and Head of FinTech (Australia)
- Mr Grant Wardell-Johnson, Lead Tax Partner, Economics & Tax Centre
- Ms Kristina Kipper, Partner in Charge, Mid-Market, Enterprise

eftpos Payments Australia

- Mr Stephen Benton, Chief Executive Officer
- Mr Ben Tabell, Chief Information Officer

Atlassian

- Mr David Masters, Director of Global Public Policy

Department of the Treasury

- Ms Katherine (Kate) O'Rourke, First Assistant Secretary, Consumer Data Right
- Mr Tom Hamilton, First Assistant Secretary, Foreign Investment Division
- Mr Andrew Deitz, Assistant Secretary, Policy and National Security Branch

Match Group

- Mr Mark Buse, SVP, Head of Global Government Relations and Policy

Global Data Alliance

- Ms Eunice Lim, Senior Manager, BSA/The Software Alliance

Austrade

- Mr Jay Meek, Acting General Manager High Growth Export Services
- Ms Kelly Sims, Assistant General Manager Born Global

Department of Home Affairs and AUSTRAC

- Ms Peter Verwer AO, Prime Minister's Special Envoy for Global Business and Talent Attraction
- Mr Daniel Mossop, Assistant Secretary Transnational Crime Policy, Department of Home Affairs
- Mr Bradley Brown, National Manager, Education, Capability and Communications, AUSTRAC

Department of Industry, Innovation and Science

- Ms Narelle Luchetti, Head of Division, Technology and National Security Division
- Mr Tim Bradley, General Manager, Emerging Technologies and Adoption Branch
- Ms Emma Greenwood, Head of Division, AusIndustry
- Ms Kirsty Gowans, General Manager, Research and Development Tax Incentive Branch
- Mr James White, Acting Head of Division, Electricity
- Mr David Luchetti, General Manager, Commercialisation Branch

Digital Transformation Agency

- Ms Peter Alexander, Deputy Chief Executive Officer
- Mr Jonathon Thorpe, Division Head, Digital Identity and myGov