



THE SENATE

## SENATE SELECT COMMITTEE ON FINANCIAL TECHNOLOGY AND REGULATORY TECHNOLOGY

### Issues Paper

The Senate Select Committee on Financial Technology and Regulatory Technology tabled an interim report on 2 September 2020 which made 32 recommendations to government.

The committee looks forward to receiving a formal government response to the recommendations in due course. However, it notes that a number of recommendations are already being implemented through measures announced as part of the 2020-2021 Budget delivered on 6 October, including in the areas of telehealth, Digital Identity reforms, the Research & Development Tax Incentive, and RegTech commercialisation.

As foreshadowed in its interim report, the committee will now turn its attention to the investigation of longer term issues. It is clear that Australia needs to take a long term view of tech as a driver of future jobs and economic growth to ensure that Australia remains globally competitive. In the context of COVID-19, rapidly increasing global digitisation and the decline of Hong Kong as a financial services hub, there are significant opportunities for Australia to seize.

The committee still considers that the broad areas of tax, regulation, capital, culture and skills, as well as impacts and opportunities in responding to COVID-19, are key to maintaining our competitive position.

Some specific issues of interest in this phase of the inquiry are outlined below. The committee welcomes submissions addressing these areas by **11 December 2020**.

#### **Tax issues**

##### **Competitiveness of Australia's corporate tax settings**

Firms in Australia are subject to a range of taxes, across the Commonwealth and state and territory levels. However, the most significant tax in this space is the federal company tax.

Total Commonwealth company tax receipts for the 2019-20 financial year were \$84.7 billion, accounting for nearly 20 per cent of the total Commonwealth tax take.<sup>1</sup>

The latest OECD report comparing corporate tax revenue as a share of GDP showed Australia in 2017 as seventh at 5.5 per cent. In contrast there were 15 jurisdictions

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1 Budget 2020-21, *Budget Paper No. 1: Budget Strategy and Outlook*, Table 7, p. 5-22.

with corporate tax revenues less than 2 per cent of GDP, with the OECD average at 3 per cent.<sup>2</sup>

The OECD's *Tax Policy Reforms 2020* noted that 'the downward trend in statutory corporate income tax rates is continuing' across member countries. However, using 2017 data, Australia's rate was ranked third highest of 39 countries, after Norway and Luxembourg.<sup>3</sup> In 2020 corporate tax rate cuts were introduced in Belgium, France, Greece, Indonesia and Canada (Alberta).<sup>4</sup>

In 2019 the Committee for Economic Development of Australia noted corporate tax as a weakness in Australia's global competitiveness. Reporting from the latest annual IMD World Competitiveness Yearbook indicates that 'a high 30 percent corporate tax rate and lack of business entrepreneurship are holding back Australia's economic competitiveness', with Australia's competitiveness ranking stagnating at 18<sup>th</sup> out of 63 countries.<sup>5</sup>

The committee is interested in views on Australia's corporate tax settings in comparison with other countries. The committee is open to views on 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. The committee is actively seeking views on global corporate tax models which best promote investment.

### **Research & Development agenda for growth**

Investment in Research and Development will be an important contributor to rebooting Australia's economic growth and making Australia attractive to startups and larger tech companies, as well as incentivising startups to stay in Australia.

The committee notes the 2020-21 Budget announcements around the R&D Tax Incentive, which are expected to keep an additional \$2 billion in the scheme.

The committee is interested in ideas to further encourage R&D activities in Australia, to assist the tech sector to drive growth in the Australian economy.

## **Regulation**

### **Consumer Data Right**

The Consumer Data Right continues to be implemented, with Open Banking now live and arrangements underway for its introduction in the energy and telecommunications sectors. The Budget included \$28.6 million in funding for 2020-21 to continue the implementation of the CDR and commence work on its rollout in the energy sector.

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2 OECD, *Corporate Tax Statistics*, Second Edition, 2020, pp. 7-8.

3 OECD, *Tax Policy Reforms 2020*, OECD and Selected Partner Economies, September 2020, p. 59.

4 OECD, *Tax Policy Reforms 2020*, OECD and Selected Partner Economies, September 2020, p. 62.

5 John Kehoe, 'Tax, timid managers hurt Australia's competitiveness' *AFR*, 16 June 2020.

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The committee is interested in examining further issues relating to the CDR, as follows.

#### *Arrangements with 'Big Tech' companies*

The committee is interested in further exploring the obligations on accredited data recipients, particularly with the potential for big non-bank technology companies to become accredited data recipients under the CDR regime.<sup>6</sup> Consideration must be given to whether the regulatory framework governing the use of financial data can adequately maintain a level playing field if, for example, a large tech multinational such as Google were to start offering banking or other financial services in Australia.

In this context the committee notes the development of the news media bargaining code by the ACCC to address bargaining power imbalances between Australian news media businesses and digital platforms, specifically Google and Facebook.<sup>7</sup>

The committee is interested in what kinds of measures may be required as the Consumer Data Right evolves in Australia to ensure that it increases competitive forces in Australia.

#### *Rollout into additional sectors*

The committee is interested in hearing evidence on the progress of preparatory work for the rollout of the CDR into energy and telecommunications.

Having recommended the rollout of the CDR into additional sectors within financial services in its interim report, the committee would welcome further input on options in this area. Noting that the superannuation measures proposed in the 2020-21 Budget include a new online YourSuper comparison tool, the committee is interested in whether the CDR could still assist and facilitate choice in the superannuation sector.

#### *Future prospects for the CDR*

As the CDR is expanded into new sectors in the economy, the potential for linkages and a more holistic data economy in Australia will increase. Ideas on how to best leverage the long term potential of the CDR, in combination with other data reforms, are welcomed by the committee.

The committee also seeks feedback on the potential for Australia's CDR to interact with open banking data sharing schemes in other jurisdictions (e.g. California, the United Kingdom and Singapore), and how this potential can be realised.

#### **Data standards and blockchain**

The committee is interested in further exploring the issue of international data standards and facilitating data sharing with other jurisdictions.

The committee notes that the 2020-2021 Budget announced:

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6 See: Jonathan Kearns, Reserve Bank of Australia, 'Changes in Banking: Looking Back and Looking Forward', 16 December 2019, <https://www.rba.gov.au/speeches/2019/sp-so-2019-12-16.html#r12>.

7 On 31 July 2020 the draft code was released for public consultation.

- \$6.9 million over two years from 2020-21 to support industry-led pilots to demonstrate the application of blockchain technology to reduce regulatory compliance costs and encourage broader take up of blockchain by Australian businesses; and
- \$6.0 million over three years from 2020-21 to strengthen Australia's role in international standard-setting and support businesses to apply these standards.<sup>8</sup>

Australia has been at the forefront of developing international blockchain standards, chairing the ISO committee responsible for developing blockchain standards on a number of key topics including interoperability, terminology, privacy and security.<sup>9</sup>

The committee seeks feedback on what other areas of digital international standards should be prioritised by the Australian Government to best enable FinTechs, RegTechs and other Australian stakeholders in the private and public sectors to benefit in the long term.

### *Blockchain applications*

Blockchain applications should be of use to governments in all Australian jurisdictions. The committee is interested in the deployment of blockchain-based systems that assist people and businesses to deal with government more easily and efficiently.

### *Digital Identity and MyGov*

The committee notes the recent budget 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'.<sup>10</sup> The committee welcomes feedback on the ongoing Digital ID reforms and future priorities to enable the benefits to be harnessed across both public and private sector.

The committee is interested in exploring the long term possibilities of how a single digital channel to government could streamline the interactions of businesses and individuals with government, and how it could be used to support novel applications.

The committee is also interested in exploring the role of data in delivering seamless services to businesses and individuals and welcomes feedback on the innovative ways to achieve that.

### *Data security*

In August 2020, the Australian Government released *Australia's Cyber Security Strategy 2020*, which will invest \$1.67 billion over 10 years to achieve a vision of 'creating a more secure online world for Australians, their businesses and the essential services upon which we all depend'.<sup>11</sup>

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8 Budget 2020-21, *Budget Paper No. 2: Budget Measures*, p. 65.

9 See: ISO/TC 307 Blockchain and distributed ledger technologies, <https://www.iso.org/committee/6266604.html>; Standards Australia, *Submission 122*.

10 Budget 2020-21, *Budget Paper No. 2: Budget Measures*, p. 65.

11 Australian Government, *Australia's Cyber Security Strategy 2020*, available at <https://www.homeaffairs.gov.au/about-us/our-portfolios/cyber-security/strategy>.

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Data security is a critical issue for all tech firms, including startups and scaleups. The committee is interested in approaches to cyber security in the FinTech and RegTech space, and seeks comments on whether current industry practices and requirements in relation to data security are adequate.

### **Rules as Code**

The committee received some evidence in the initial phase of its inquiry into the potential for a 'Rules as Code' approach to regulation to facilitate compliance and open new opportunities for innovative businesses.

Pilot initiatives in this area are underway at the Commonwealth level,<sup>12</sup> and other jurisdictions such as NSW are also making progress.<sup>13</sup>

The committee seeks feedback on priority areas for implementing a 'Rules as Code' vision and how this can be accelerated.

### **Know Your Customer regulations**

The committee received feedback during the first phase of its inquiry on the current status of KYC obligations in relation to financial services providers, and the potential for streamlining some of these obligations while retaining adequate protections against fraud and other criminal activity.

The committee will examine proposals in this area, and how it interacts with other areas of reform such as Digital Identity.

## **Access to Capital**

The committee is interested in exploring any possible further initiatives to make Australian startups and scaleups more attractive to overseas capital and investment.

Actions that can be taken by governments at all levels will be considered by the committee, as well as mechanisms for government to encourage industry-led initiatives in this area.

### **Managing shareholdings for startup founders**

The committee is interested in measures that encourage successful local company founders to list their companies in Australia rather than overseas.

To this end, the committee is interested in feedback on the potential for a scheme similar to the Rule 10b5-1 trading plans available in the United States (US) to be offered in Australia. In the US, Rule 10b5-1 plans, made under the *Securities Exchange Act (1934)*, permit 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 provide an affirmative defence to insider trading.

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12 See: CSIRO, *Submission 17*, pp. 7-8.

13 Tom Burton, 'Bingo to lead regulatory revolution', *Australian Financial Review*, 30 September 2020, <https://www.afr.com/politics/federal/bingo-to-lead-regulatory-revolution-20200930-p560oa>.

Rule 10b5-1 plans benefit both companies and their insiders by offering clarity and certainty on how insiders can plan and structure securities transactions to avoid incurring liability. As a recent example, Atlassian's founders were able to undertake stock transactions utilising this scheme in early 2020 through their US company listing.

### **National interest considerations**

The committee will also take evidence on national interest considerations relating to foreign capital investment. Noting the proposed changes to the Foreign Investment Review Board arrangements, the committee is interested in:

- how the sensitivities around financial services and financial data can be managed in the context of foreign investment in Australian FinTechs and startups more broadly; and
- whether investment processes can be streamlined for capital investment from Australia's trusted security partners (for example, through an expansion of arrangements relating to the Five Eyes network).

## **Skills and Culture**

### **Regulatory culture**

The committee discussed regulatory culture at some length in its interim report, and will keep a watching brief on this area. A specific matter the committee is interested in analysing is the ongoing role and use of ASIC's product intervention power.

More broadly, the committee notes the establishment of a regulator performance role within the Department of Prime Minister and Cabinet, aimed at measuring, benchmarking and evaluating regulator performance, and streamlining and consolidating performance reporting at a whole-of-Government level.<sup>14</sup>

The committee also notes the recent release of a Productivity Commission information paper on Regulatory Technology,<sup>15</sup> and the Government's commitment in the 2020-21 Budget of \$11.4 million over four years to deliver a RegTech Commercialisation Initiative to streamline Government administration and simplify regulatory compliance.<sup>16</sup> The committee seeks further input about how these initiatives can help spur the development of the RegTech sector in Australia.

### **Talent acquisition and retention**

Attracting highly skilled individuals to Australia is a key, ongoing challenge for developing the industries that will drive future economic growth, including

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14 The Hon Ben Moreton MP, Assistant Minister to the Prime Minister and Cabinet, *Address to the Business Council of Australia*, 2 October 2020, <https://ministers.pmc.gov.au/morton/2020/morrison-governments-deregulation-agenda>.

15 Productivity Commission, *Regulatory Technology: Information Paper*, 9 October 2020, <https://www.pc.gov.au/research/completed/regulatory-technology>.

16 Budget 2020-21, *Budget Paper No. 2: Budget Measures*, p. 65.

technology-based industries. This challenge has only increased in the context of COVID-19 and global travel restrictions.

Recent developments in Hong Kong also present a unique opportunity for Australia to develop its status as a regional centre for financial and technology services. The committee is interested in ideas to attract business from Hong Kong.

The committee notes recent initiatives including:

- the establishment of the Global Business and Talent Attraction Taskforce in September 2020;<sup>17</sup>
- new, special visa arrangements for Hong Kong;<sup>18</sup> and
- Australia's Global Talent visa scheme attracting 4,109 highly skilled workers to Australia in its first year of operation.<sup>19</sup>

The committee seeks feedback on how to continue to enhance Australia's ability to attract and retain highly skilled workers in FinTech and related fields. The committee is particularly interested in how Australia could enact a tax regime which makes our country attractive to the world's brightest minds.

## **Trade and international Policy**

The 2020-2021 Budget included \$9.6 million in funding over four years from 2020-21 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'.<sup>20</sup>

The committee will consider how this investment can be implemented to leverage long term benefits for Australia.

The committee will also consider Australia's broader digital trade policy.

On 6 August 2020, Australia and Singapore digitally signed the Australia-Singapore Digital Economy Agreement (DEA).<sup>21</sup> The DEA will upgrade the Free Trade Agreement (FTA) between the two countries, by providing modernised trade rules that

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17 The Hon Alan Tudge MP, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *Media Release*, 'New taskforce to create jobs by attracting businesses and talent to Australia', 4 September 2020, <https://minister.homeaffairs.gov.au/alantudge/Pages/New-taskforce-to-create-jobs-by-attracting-businesses-and-talent-to-Australia-.aspx>.

18 The Hon Scott Morrison MP, Prime Minister, *Media Release*, 'Hong Kong', 9 July 2020, <https://www.pm.gov.au/media/hong-kong>.

19 The Hon Alan Tudge MP, Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, *Media Release*, 'Outcomes of the 2019-20 Migration Program', 16 September 2020, <https://minister.homeaffairs.gov.au/alantudge/Pages/Outcomes-of-the-2019-20-Migration-Program.aspx>.

20 Budget 2020-21, *Budget Paper No. 2: Budget Measures*, p. 65.

21 Department of Foreign Affairs and Trade, *Australia-Singapore Digital Economy Agreement*, <https://www.dfat.gov.au/trade/services-and-digital-trade/Pages/australia-and-singapore-digital-economy-agreement>.

assist businesses and consumers to engage with and benefit from digital trade and the digital economy.

The committee also seeks feedback on the progress of the FinTech Bridge between Australia and the United Kingdom.

The committee is interested in initiatives to deepen engagement on digital economy issues in the negotiation of future FTAs, and the scope for pursuing DEAs or FinTech Bridges with other partners. The committee seeks feedback on which countries Australia should prioritise in seeking to establish further FinTech bridges.

### **Framework for ongoing for consideration of FinTech policy issues**

The committee notes that this is the first parliamentary inquiry specifically examining issues relating to FinTech and RegTech. The committee considers that the evidence it has received to date has been of significant value, with the committee's recommendations already translating into action by the Executive.

This model has been responsive to the concerns of industry participants. Policy makers and legislators need to stay close to what is happening in the market to ensure that policy and regulation remains fit for purpose.

The committee is interested in what ongoing regulatory architecture should be in place, following the completion of the committee's work in mid-2021, to ensure that the voices of market participants and consumers can continue to be heard by government. The committee notes the previous activities of the FinTech Advisory Group, and seeks input on whether this structure, or a different type of structure, should be established for a more meaningful long term role.