

RETURN OF THE INNOVATION NATION? - AUSTRALIA'S SENATE ISSUES FINTECH FINDINGS

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Legal Briefings - By **Julian Lincoln, Peter Jones, Anna Jaffe, David Ryan and Lucy Harris**

The Senate Select Committee has issued its interim report on FinTech and RegTech. We chart the path forward.

The Australian Senate's Select Committee on Financial Technology and Regulatory Technology (the **Committee**), established in September 2019 to inquire into financial technology and regulatory technology (the **Inquiry**), released its Interim Report on 2 September 2020.

The Inquiry's remit, already broad in its focus on opportunities and barriers to the uptake and facilitation of new technologies in the financial sector, including FinTech and RegTech start-ups, swiftly pivoted, and expanded in light of the then-unfolding COVID-19 pandemic in March 2020. This has resulted in interim findings and recommendations which are relevant not only to FinTech, RegTech and the financial services sector, but to the digital economy, start-up ecosystem and technology sector more broadly.

The final report of the Inquiry is promised by April 2021.

In the meantime, there are a number of key takeaways from the Interim Report; ours are set out below.

- **The Interim Report is both broad and deep in its content.** The Committee categorised its findings in five broad categories: tax, regulation, access to capital, skills and talent, and culture, with a focus on the settings required to encourage Australia's national competitiveness in the sector. As a result of its call for additional submissions and evidence in relation to the COVID-19 pandemic, the Committee also specifically

considered its impact—and the technology-driven regulatory responses to it—in its Interim Report. This means that the Interim Report covers both:

- issues which are highly targeted and specific to the financial sector, such as the Consumer Data Right (**CDR**) and the New Payments Platform; and
- matters which will be relevant to and find resonance with the broader digital economy (including the rise and importance of telehealth and ePrescriptions in the midst of the COVID-19 pandemic), Australia’s startup ecosystem, and the technology sector more broadly. The latter including technology companies’ access to capital and skilled talent and the tax treatment afforded to innovative young companies. This trend promises to continue with the Final Report, which is intended to cover international policy and investment issues.

- **A report to meet the moment.** In its agile pivot to quickly gather evidence and materials in relation to the then-emerging COVID-19 pandemic, the Interim Report provides an opportunity to reflect upon the technology-focused (and temporary) regulatory measures taken to respond to the pandemic. In many cases, the Inquiry has revealed one silver lining of the pandemic, in that it helped to accelerate the digitisation of corporate governance and business transactions as well as the delivery of government services. Its call to make many of these measures more permanent is not unexpected but is likely to prove welcome to businesses that are still navigating the uncertainty of the pandemic.
- **A potential vision for regulation of new technologies.** In considering the role of regulation in relation to new and innovative FinTech products and services such as ‘buy-now-pay-later’ solutions, the Interim Report highlighted the ways in which new solutions can operate on the ‘fringes of regulation’, in particular because of views that existing regulation is built for existing (incumbent) solutions. The Interim Report ultimately articulated a clear preference away from ‘one-size-fits-all’ regulatory solutions and towards more flexible measures, including industry self-regulatory measures such as codes of practice, as a way of setting standards for these new solutions. Similarly, the Interim Report identified technology-neutral regulation as a key component of permanent post-pandemic regulatory measures. These recommendations could readily form a blueprint for future regulatory responses to other sectors experiencing digital disruption — but they could equally be easily overridden by urgent policy priorities that require the government to legislate for these ‘fringe’ cases.
- **A unified oversight model for the CDR.** The Interim Report considered that oversight

of the CDR was ‘unnecessarily fragmented’, and that it would be beneficial to consolidate the national data policy under a single agency. This responded to — but did not necessarily endorse — concerns raised in submissions that Australia’s data economy more generally should be both viewed and regulated in a more holistic way. The Interim Report also highlighted challenges that have arisen throughout the rollout of the CDR, providing commentary ranging from practical matters like technology implementation, the complexities of accreditation and intermediary access to CDR data, to more systemic issues regarding the level of uptake of the regime by accredited data recipients and the disruptive impacts of COVID-19. Notably, the Interim Report recommended expansion of the CDR to other sectors, commencing with superannuation and general insurance, perhaps indicating that despite the at times troubled implementation of the CDR to date, the Committee remains confident that the CDR framework is broadly beneficial to Australia’s data economy.

- **A global benchmark for local success.** The Interim Report emphasised the need to apply an international lens to Australia’s regulatory and policy settings in order to determine whether they are sufficient to attract talent and capital into the financial sector. These same settings will of course apply to the broader start-up ecosystem as well as other technology-driven sectors of the economy.

As such, the recommendations made by the Interim Report in relation to Australia’s business tax environment, its support and incentives for innovation, the enhancement of its programs and other incentives for capital investment in start-up companies, its approaches to up-skilling and re-skilling of workers and the impact of its governmental procurement policies and initiatives on small businesses will have wider relevance. Many of the recommendations made in relation to these areas have already been the focus of existing and separate governmental inquiries, initiatives and reviews, and will be welcomed by industry (especially in relation to the enhancements of and clarifications to the Research and Development Tax Incentive, which is critical to many start-ups). However, there are some recommendations that are unlikely, without more, to lead to the changes sought by industry (for example, the recommended changes in relation to expanding the Early Stage Innovation Company regime and encouraging superannuation funds to invest in start-ups).

Ultimately, the Interim Report adds weight, and the support of the Inquiry, to the concerns of many industry stakeholders, but with only a few days left in the Parliamentary calendar for 2020 — and the final report not expected until April — it is not clear whether (or when) its opportunities will be realised.

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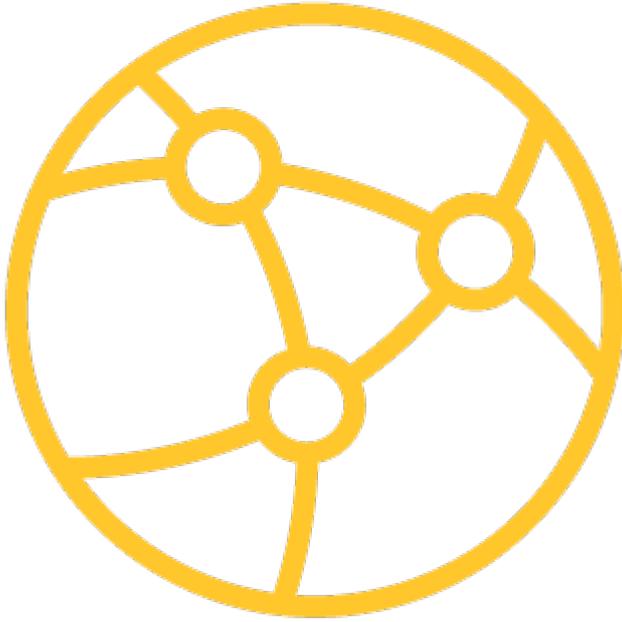
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