

Article Information

Authors: Jade McGlynn, Michael Bacina, Tom Skevington

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Technology accelerates financial services reforms

The Australian Senate Committee's Interim Report into RegTech and Fintech has made a number of key recommendations, and coupled with the upcoming Corporations Act review and ongoing National Blockchain Roadmap, some real opportunities are arising for disruptive innovation and regulatory evolution.

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The tides are turning. Emerging technology and the ongoing digitalisation of the economy has sparked a series of significant developments in the FinTech regulation space. The Australian Senate Select Committee's Interim Report on Fintech and Regtech, published in September 2020, was followed closely by the [Australian Law Reform Commission's \(ALRC\)](#) commencement of a three-year review into improving the efficiency of Australian financial services regulation. Fast forward to 6 October 2020, when the Morrison Government released the 2020-21 Federal Budget, which included sizable amounts being allocated to digital transformation, blockchain pilots and cyber security strategy. To cap it off, as recently as 30 October, the Attorney General's office has also commenced a review into whether the *Privacy Act 1988 (Cth)* (**Privacy Act**) is fit for the digital age.

Although there is no ability to predict with any precision the outcome of these developments, to provide better insight into what the future of FinTech might look like in light of these movements, it would be helpful to review them:

The trailblazer: Australian Senate Select Committee into Fintech and Regtech

The goal of the Australian Senate Select Committee into Fintech and Regtech was two-sided -on the one hand to investigate and report on the size and scope of opportunity presented to Australian Regtech and Fintech businesses, and on the other, to identify the barriers to the uptake of new technologies present within the financial sector. The Committee also expanded its focus to include the challenges and opportunities for the sector in light of the COVID-19 pandemic.

The Committee received over 180 submissions and a number of public hearings were held, which the writer was honoured to have appeared at. The Committee members were highly engaged in those public hearings, the transcripts of which are available on Hansard. These submissions and hearings culminated in the Committee publishing an Interim Report in September 2020, which included 32 recommendations on a broad range of issues affecting the FinTech and RegTech sector from tax and regulation, through to the consumer data right and access to skills.

Having extended its final reporting date until 16 April 2021, the Committee will continue to consider the submissions.

Second up to the plate: The ALRC Financial Services Reform Inquiry

Following the release of the [Interim Report](#) by the [Committee](#), the ALRC has confirmed on 11 September 2020 that it is kickstarting a three-year review into how financial services regulation could be more efficient.

In a nutshell, the ALRC's three-year review is an inquiry into the potential simplification of laws that regulate financial services in Australia, forming part of the Morrison Government's response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry released in February 2019.

While the Senate Select Committee inquiry and the ALRC inquiry are entirely separate, there is little doubt that the ALRC will also consider the Senate Committee's 32 recommendations from the Interim Report and the final report once released

on 16 April 2021.

The Terms of Reference of the ALRC inquiry focus on the provisions of the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) while also referring to other financial financial services legislation, and legislative instruments.

Unlike the Committee, the ALRC is not tasked with recommending policy changes regarding the content of the obligations on financial service providers. It is instead seeking to facilitate a more adaptive, efficient and navigable framework of legislation within the current policies.

The three sub-topics specifically identified by the ALRC are:

- **Definitions in Legislation** - A first interim report focusing on the appropriate use of definitions in corporations and financial services legislation - due by 30 November 2021;
- **Hierarchy of Laws** - A second interim report focusing on regulatory design and the hierarchy of primary law provisions, regulations, class orders, and standards, - due by 30 September 2022;
- **Chapter 7 - Financial Services and Markets** - A third interim report focusing on potential reframing or restructuring of Chapter 7 of the Corporations Act - due by 25 August 2023

With over a year until the ALRC's first interim report, we expect to see the submission process opening shortly, awaiting if and how the Final Report of the Senate Select Committee informs the first ALRC report due in November 2021.

A sign of policy change: Federal Budget 2020-21

Historically, Hon Scott Morrison MP has been a strong advocate of Fintech development in Australia and its ability to change how business is done. In 2016 he stated that:

“Fintech is not just about digitising money, it’s about monetising data... More digitised transactions support greater audit capability, transparency in payment systems and security in transactions by reducing risks and are also reducing the need for regulation. In this world, de-risking and deregulating an environment actually go hand in hand.”

This has also been reflected in the 2020-21 Federal Budget which showcased some key measures aimed at supporting startups, Fintech and the financial services industry more broadly:

Digital transformation

Aiming to streamline interactions with government by combining the dozens of disparate registers into one location, the Budget allocates a further \$419 million to fund the development and implementation of the Modernising Business Registers program. Over the next two years, the Government will invest \$256 million in the expansion of its Digital Identity system as well as provide an additional \$9.6 million for FinTech trade and investment flows. Part of the Modernising Business Register program involves the introduction of director identification numbers.

At a federal level, e-invoicing will become mandatory for all agencies by 1 July 2022, with over 80 percent of invoices being able to be received electronically by 1 July 2021. A further \$11.4 million will be invested into a new RegTech Commercialisation Initiative, ambiguously intended to “make it easier for businesses to comply with regulations”.

Blockchain pilots

Announced soon before the publication of the Budget was released, the government confirmed \$6.9 million was being allocated over two years, from 2020-21, to support industry-led blockchain pilots. These pilots will be demonstrating the application of blockchain technology to quantify its ability to reduce regulatory compliance costs and encourage broader take-up of blockchain technology by Australian businesses.

Cyber Security Strategy

The Budget also provides for an additional \$201.5 million to deliver the [2020 Cyber Security Strategy](#). As part of the Strategy, among other initiatives, the Government has planned to invest \$128.1 million to counter cybercrime and \$37.7 million in developing Australia’s cyber security skills.

Simplification of Export Market Development Grants

The popular Export Market Development Grants Scheme (**EMDG**) is being “simplified and reoriented” to more effectively support export-ready small and medium enterprises. This change was expected, and aims to implement the recommendations of the [independent review](#) of the EMDG scheme.

But wait, there’s more: the Attorney General’s Review of the Privacy Act.

In addition to all of the above, the Attorney General’s office has launched a review considering the Privacy Act’s aptitude to keep up with an increasingly digitised economy. The review includes a raft of potential changes proposed by the Australian Competition and Consumer Commission’s [landmark digital platforms inquiry](#) in July 2019 which recommended an overhaul of Australia’s privacy laws to provide greater transparency about the collection and use of consumer data by companies.

In view of its dual purpose – to strengthen privacy protections for consumers and streamline privacy law compliance for global businesses, [experts have commented](#) that the proposed makeover has a very similar feel to European Union’s General Data Protection Regulation.

The Attorney General’s review will envisage a slew of potential changes to privacy law including whether the law should be changed to expand the definition of what constitutes personal information and allow consumers to bring lawsuits, including class actions, for privacy breaches.

The deadline for submissions on the review paper is 29 November and a discussion paper will be released next year announcing any desirable options for reform.

Where to from here?

As technology continues to drive change and disrupt industries, the appetite for substantive law reforms and greater investment into the Fintech and Regtech space is likely to grow. Of course, these review processes will not conclude for over three years. Even then, there is no guarantee that any recommendations made by will be adopted. However, when submissions open for the above reviews, this remains an important and rare opportunity to influence changes in the financial services and FinTech regulatory framework for the better.