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Innovation and fintech policy: Post-Murray developments

Australian Centre for Financial Studies

Authors:
Professor Kevin Davis

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Thought Leadership in the Financial Sector

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The Australian Centre for Financial Studies (ACFS) instigated the Funding Australia's Future project in 2012 to understand the changing dynamics of the Australian financial system, and how these will affect future economic growth.

In an economy which has enjoyed 26 years of consecutive economic growth and showed a resilience through the Global Financial Crisis which was the envy of many nations, the financial sector has played an important role. The past decade, however, has been one of significant change. The growth of the superannuation sector, the impact of the GFC, and the subsequent wave of global re-regulation have had a profound effect on patterns of financing, financial sector structure, and attitudes towards financial sector regulation.

Research is conducted by leading academics, and benefits from support and insights from stakeholders across the financial sector, comprising representatives from K&L Gates, Suncorp, Australian Treasury, Westpac, the Australian Securities and Investments Commission (ASIC), FinTech Australia, The Reserve Bank of Australia, Stone&Chalk and the Australian Government's FinTech Advisory Group.

This paper is one of four in Stage Four which explore the growth of fintech, its implications on the structure of the financial sector and the value it can produce for the broader Australian community through increased competition in the financial services sector:

- *A framework for understanding fintech and its value,* David Link (Verrency) and Professor Rodney Maddock (Adjunct, Monash Business School)
- *International competition policy and regulation of financial services – Lessons for Australian fintech*, Deborah Cope (PIRAC Economics)
- *Innovation and fintech policy: Post-Murray developments*, Professor Kevin Davis, (ACFS)
- *Cryptocurrencies, institutions and trust*, Dr John Vaz and Dr Kym Brown (Monash Business School)

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NOTES ON THE AUTHORS

David Link: David Link is Chair of Verrency and an advisor and board member of firms in the global fintech space, David is a retired Managing Director of Accenture, where he held global practice leadership roles in Asia Pacific, Australia, Korea, France, and Benelux, primarily focused on financial services.

Professor Rodney Maddock: Rodney Maddock is a Professor at the Australian Centre for Financial Studies. Prior to this he was a senior executive at the Commonwealth Bank of Australia. He has a distinguished academic record with extensive academic publications and experience working in a number of countries, and his ongoing research is in the areas of Finance and Australian economic development

Deborah Cope: Deborah Cope is Principal at PIRAC Economics. She has extensive experience in analysing and reforming governments' economic, social and environmental policies, and has also been involved in developing and implementing competition policy, improving the effectiveness and efficiency of regulation and regulators, and designing and implementing strategies for competitive neutrality between government and private businesses.

Professor Kevin Davis: Kevin Davis is Professor of Finance at the University of Melbourne and Research Director of the Australian Centre for Financial Studies. His primary research interests are financial regulation, financial institutions and markets, financial innovation and corporate finance. He is the Deputy Chair of SIRCA, a member of the Australian Competition Tribunal, and has undertaken an extensive range of consulting assignments for financial institutions, business and government.

Dr John Vaz: John Vaz, is a Senior Lecturer at Monash University. Prior to this, John held chief executive and senior management roles from start-ups to large enterprises in the Tech sector across many countries. John has done business and worked in many countries including Australia, SE Asia and the UK. John's research interests follow his PhD in Finance in how the macro-economy impacts financial markets, financial institutions and investor behaviour

Dr Kym Brown: Kym Brown is a Senior Lecturer in the Department of Banking and Finance at Monash University. She teaches across a number of banking and international finance related subjects. She has research interests in banking, Islamic finance, Chinese banking, ethics in cryptocurrencies and inequality.

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INTRODUCTION

In November 2014, the Australian Financial System (Murray) Inquiry handed its Final Report to the Australian Treasurer. The recommendations presented focused on five main areas, one of which was headed "Innovation". As stated in the final report "The Inquiry's recommendations seek to provide more facilitative settings that enable financial firms to innovate – increasing competitive tension, delivering greater efficiency and enhancing user outcomes."

The objective of this paper is to provide an update on the status of implementation of the recommendations relating to innovation, which takes into account significant developments in the fintech area and its regulation which have occurred since the AFSI Final Report was released.

The recommendations of the Inquiry with regard to technological change and innovation had four main underpinning planks. The first was the need for government-business cooperation, to ensure increased understanding of the issues arising from "fintech" developments and policy implications required for achieving maximum social benefit. Among those issues are the network and "public good" features of many fintech developments requiring some form of government involvement in enabling efficient supply chain characteristics.

The second plank was recognition of the need to remove regulatory (and legislative) impediments to the development of socially valuable new products, services and business models enabled by fintech. The regulatory system evolves over time and thus reflects historical institutional features and practices based on then-existing technology. Many resulting features may thus not be suited for dealing with, and may impede, new innovations which were not contemplated when regulation or legislation was developed.

The third plank was the recognition of the potential social benefits available from the massive increase in data accumulation and technological advances enabling analysis of that data arising from the digital revolution. Many of the potential fintech advances involve data-driven business models, such that policy should not impede use of such models where social benefits can be identified. Social benefits arising from sharing of hitherto private information, such as information collected about customer transactions, may exceed the private loss of value to the current holder of that information. At the same time, such data driven models and "open data" can create social and private costs, such as invasion of privacy, which need to be considered. Also relevant in this regard is the question of proprietary rights over information accumulated by financial firms about their customers. Firms will, as part of their business practices and involving possibly significant costs, curate and transform raw data into useable information.

This raises complex questions about what compensation might be appropriate for being forced to divulge transformed data.

The final plank was the need to ensure that in responding to their mandates and balancing competing regulatory objectives, regulators adopted sufficient flexibility so as not to preclude the growth of new fintech business models which could ultimately bring significant social benefits.

There were nine relevant recommendations (on general topic areas shown in **Error! eference source not found.**), all of which were accepted by the government in its response to the Inquiry published in October 2015. The following sections describe each of the recommendations in more detail and provide an update on the current status of the policy response.

Table 1. AFSI Technology Recommendation Topics

Recommendation	Focus
14	Collaboration to enable innovation
15	Digital identity (federated-style model)
16	Clearer graduated payments regulation
17	Interchange fees and customer surcharging
18	Crowdfunding
19	Data access and use (PC review of costs/benefits)
20	Comprehensive credit reporting
38	Cyber security
39	Technology neutrality

1. COLLABORATION TO ENABLE INNOVATION

> *Recommendation 14: Establish a permanent public–private sector collaborative committee, the 'Innovation Collaboration', to facilitate financial system innovation and enable timely and coordinated policy and regulatory responses.*

There have been several actions taken which can be viewed as responses to this recommendation.

The Treasurer and the Prime Minister jointly announced the formation of a Government Fintech Advisory Group (GFAC) in February 2016. Chaired by Craig Dunn, the group comprises 13 other representatives primarily from established financial institutions and fintech

companies. It is (among other matters) "exploring increased facilitation of digital advice models, regulation technology — or 'RegTech' — the uptake of Blockchain technologies, the tax treatment of digital currencies, evolution of the Australian crowdfunding framework, data transparency and aggregation, and emerging insurance models".[1]

Other than a ministerial press release about the first meeting in February 2016,[2] there have been no public pronouncements from that group or publication of minutes etc., although members of the group are prominent as speakers at various industry conferences. The Ministerial press release[3] announcing the creation of the group also noted that it "will complement the Innovation Collaboration Committee being established under the Financial System Program". There appears to have been no further progress on establishment of that group.

ASIC has taken four main initiatives facilitating public-private sector collaboration on fintech. The first was the establishment of the ASIC Digital Finance Advisory Committee (DFAC) which first met in August 2015. This small committee is chaired by an academic (for the first two years Prof Deborah Ralston, since then by Prof Ross Buckley), has primarily fintech representatives as members, and initially had some (small) membership overlap with the GFAC. As with GFAC, there have been no public pronouncements by the group or distribution of meeting notes or minutes. The focus has been primarily on building relationships, and developing lines of communication, with fintech start-ups and fintech associations. Other regulatory agencies also obtain information about relevant fintech developments through participation as observers.

The establishment by ASIC of DFAC is one component of a broader (the second) initiative known as the ASIC Innovation Hub established in April 2015. The Innovation Hub is a "virtual" entity which provides a focal point for fintech businesses to seek information from ASIC about licensing and regulatory issues relevant to them.

The third ASIC initiative has been the introduction of a "regulatory sandbox", which commenced in December 2016, and involving a "fintech licensing exemption". The nature of the "sandbox" approach is to enable start-up fintech companies to test the suitability of new products/services/processes on a limited scale and for a limited time without meeting all the normal requirements for either an Australian Financial Services Licence (AFSL) or an Australian Credit Licence (ACL). The licensing exemption has been available for providers of

[1] Treasury "Backing Australian FinTech' http://fintech.treasury.gov.au/working-with-australias-fintech-industry/
[2] https://www.malcolmturnbull.com.au/media/first-meeting-of-the-fintech-advisory-group-parliament-house-canberra
[3] http://sjm.ministers.treasury.gov.au/media-release/015-2016/

financial advice on (and dealing in) a number of financial products, and also for intermediary of assistance roles relating to credit contracts. Provided that applicants meet certain requirements such as consumer protection, compensation and dispute resolution arrangements and limits on scale of activities, entry into the sandbox is not subject to ASIC review of the nature of the product or service.

Following a government announcement in the 2017-18 budget in May 2018, in November 2017, the Treasury consulted on draft legislation[4] to facilitate an enhanced regulatory sandbox, permitting increased scope of activities and timeframe for participation. Following that process, as part of a commitment to review the sandbox operations, ASIC released a consultation paper on December 12, 2017, indicating that until such legislation was passed there would be no changes proposed to its current approach. At the time of writing legislation[5] was before Parliament to amend the Corporations Act and the National Consumer Credit Protection Act to allow conditional exemptions from AFSL and ACL requirements for firms to test financial and credit products under certain conditions (that is, participation in a regulatory sandbox). ASIC will have the power to make decisions regarding the details of the exemption.

The fourth initiative has been the establishment of a number of agreements with regulators in other jurisdictions, aimed at assisting cross border expansion and regulation of valuable fintech innovations. At the end of 2017 there were over ten such agreements in place involving referral arrangements (for fintechs seeking to expand to another jurisdiction) and information sharing between regulators.

A further related development has been the establishment of a UK-Australia Fintech Bridge via signing of an agreement by both Governments on March 22, 2018.[6] This agreement proposes increased cross-border cooperation and liaison by governments, regulators and government agencies to, *inter alia*, facilitate fintechs to undertake activities in the other jurisdiction.

Comments:

There is an inherent tension in the operation of advisory committees where members share information – some of which may have commercial value. Membership protocols to prevent use by other members of such confidential information should apply to encourage beneficial information sharing. But also, information emerging as part of discussions which can be

[4] https://treasury.gov.au/consultation/c2017-t230052/
[5] Treasury Laws Amendment (2018 Measures No.2) Bill 2018
[6] https://treasury.gov.au/fintech/uk-australia-fintech-bridge/

usefully placed in the public domain should be made available to a wider group than just members of such committees. The absence of any public disclosures such as minutes or meeting notes of such advisory committees reduces the potential benefits of such information sharing, and this should become common practice.

Regulatory sandboxes are a potentially useful initiative to test new business models and practices (which may enhance competition or efficient provision of financial products and services) at reduced cost to their proponents. Controls to ensure risk mitigation are important and generally in place. However, sandboxes are akin to a controlled experiment (trial), where private benefits will accrue to the successful participants. There should be both explicit criteria for assessing whether the provision of the trial facility has generated social benefits and some requirement for those whose trials are successful and provide them with private benefits to contribute¸ ex post, to the overall cost of providing the trial environment.

2. DIGITAL IDENTITY

Recommendation 15: Develop a national strategy for a federated-style model of trusted digital identities.

The need for a trusted "digital identity", enabling providers of services via digital communications to robustly verify the identity of customers is well recognised. Creation of a single trusted digital identity for each individual to be used across a range of service providers promises efficiency and security benefits.

This is a rapidly evolving field with use of biometric data and speech recognition via computers supplementing the use of user-names and passwords for establishing validity of customer access to services. But regardless of which of these or other access/authorisation mechanisms are used, they are ultimately linked back to the specific identity of the individual. While some individuals may prefer, for various reasons, to have multiple identities, this is not optimal from a societal perspective.[7]

While it would be possible for the Government to create some unique alpha-numeric identifier for each individual, such as would occur with a National Identity Card, this is unlikely to be acceptable to many in society (despite acceptance of such an approach elsewhere).

[7] At the business level, there has been an international effort to develop Legal Entity Identifiers (LEIs). https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei

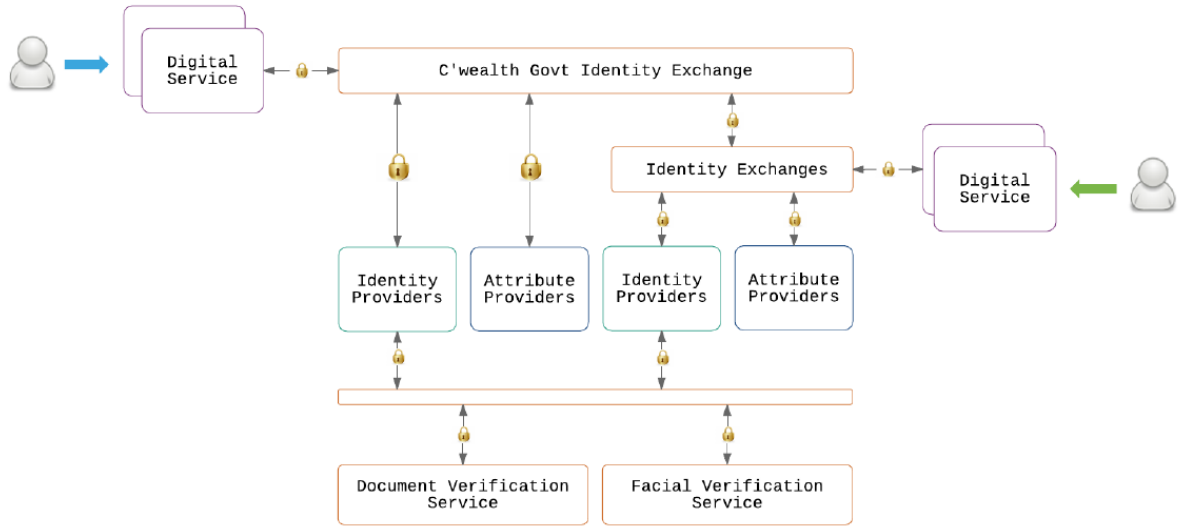
The AFSI recommendation was to draw upon private sector initiatives in creating digital identities which, subject to being trustworthy, could be accepted without further need for verification by providers of services. The access authorisation step could, in theory, involve the credentials (password) being held by the identity provider and checked electronically from that source by the business service supplier when an individual requests access, or involve password etc. being specific to each service supplier.

One issue not addressed in the FSI Report was the possibility that individuals could create multiple digital identities by using a number of different providers.

The FSI recognised that the issues involved in creation of trusted digital identities provided from a number of private and/or government entities required significant research effort. Hence its recommendation involved developing a government led strategy to enable such a federated model.

The Digital Transformation Agency released a draft "Trusted Digital Identity Framework" [8] for public consultation in mid November 2017 (with submissions due by December 5), which consists of 14 documents. Figure 1 below, from the first of those documents, illustrates the proposed structure. Service providers in dealing with customers will access, via one of a number of authorised "identity exchanges", a verified identity of the customer, provided by an authorised "identity provider", and verify the access credentials provided to the individual by an "attribute provider" (who may also be the identity provider).

Figure 1: Identity federation conceptual architecture



[8] https://www.dta.gov.au/news/have-your-say-tdif/

The Government Identity Exchange is for access to the Govpass platform.

How the Federal Government announcement in October 2017 of a national facial recognition database (primarily for security reasons) drawing on State drivers licence and passport photos etc interacts with the digital identity arrangements (if at all) remains to be seen.

Comment:

The proposed Trusted Digital Identity framework appears to explicitly preclude sharing of private information between alternative Identity provider firms. This may mean that an individual is able to obtain several different digital identities from different providers. This would appear to be unsatisfactory. It may reduce ability to detect money laundering activities and may impede aggregation of data related to the underlying individual – such as for the Financial Claims Scheme where a limit on coverage for an individual exists.

3. CLEARER GRADUATED PAYMENTS REGULATION

Recommendation 16: Enhance graduation of retail payments regulation by clarifying thresholds for regulation by the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority.

- The regulators should publish a clear guide to the framework for industry, and in particular for new entrants, that outlines thresholds and regulatory requirements."

- Narrow the AFSL regime for non-cash payment facilities so that only service providers that provide access to large, widely-used payment systems require an AFSL." (This would remove requirements for systems such as public transport cards and road toll devices)

Strengthen consumer protection by mandating the ePayments Code. Introduce a separate prudential regime with two tiers for purchased payment facilities.

- APRA, in consultation with other regulators, should develop a separate, two-tier prudential payments regime for purchased payment facilities (PPFs)"

- The regulators should review the extent to which their current powers enable them to regulate system and service providers using alternative mediums of exchange to national currencies, such as digital currencies

"In its response to the FSI, the Government stated that APRA, ASIC and the Reserve Bank of Australia would review the framework for payments system regulation and develop clear guidance. This work is ongoing and the Government, Treasury and the relevant regulators are still considering how to give effect to the FSI's recommendation that payments regulation be made clearer and more graduated." (ASIC, March 2016) It appears that this is still in progress.

In December 2014, APRA released a revised version of Prudential Standard APS610 "Prudential Requirements for Providers of Purchased Payment Facilities". This imposed minimum capital requirements on PPF providers, as well as a high quality liquid asset (HQLA) requirement and operational risk management requirements. These apply to all PPF providers with stored value at risk. Those without stored value at risk are where funds received are held in an ADI account (over which the PPF provider has no operational control) till settlement, and to which no other creditors of the PPF provider can have legal access.

The latest version of the E-Payments Code is dated March 2016, but is still voluntary. The code covers electronic payments, funds transfer and withdrawals. While most of such transactions involve customer interactions with banks, the Code also covers electronic tolling and public transport ticketing. Most banks and ADIs are subscribers to the code (most of the 113 subscribers as at November 2017). None of the toll road providers nor public transport providers appear to be subscribers.

A related issue is the extent to which Industry Codes of Conduct such as the E-Payments Code are enforceable. The ASIC Enforcement Review panel made a number of recommendations in this regard which the Government agreed in principle with[9], but has deferred action pending the findings of the Royal Commission which is investigating, *inter alia*, the adequacy of industry self-regulation.

In March 2016 ASIC made the legislative instrument ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 (and update RG185 to reflect this). This provides/continues relief (for three years) from the need for an ASFL for providers of non-cash payments products such as certain: travellers cheques; loyalty schemes and road toll facilities; prepaid mobile and gift facilities; and low value payments products. It may be seen as an interim measure awaiting completion of the review of the framework for payments system regulation.

In October 2017, the Senate Legal and Constitutional Committee considered a bill to include digital currency exchange operators under the purview of AUSTRAC and recommended its passage. This was passed in December 2017 to take effect from April 2018. It involves

[9] https://static.treasury.gov.au/uploads/sites/1/2018/04/Aus-Gov-response-ASIC-Enforcement-Review-Taskforce-Report.pdf

mandatory registration and compliance obligations for such operators including: customer identification procedures; maintenance of an AML/CTF program; reporting of suspicious transaction and record keeping requirements. Existing operators are required to submit applications for registration with AUSTRAC by May 14, 2018, and several were registered in early April.

In December 2016 the Payments System Board (PSB) issued a consultation paper on "electronic wallet" arrangements and competition. A particular focus was on the issues raised by "dual network" cards and the options available for routing of transactions by the least costly system. At its May 2017 meeting the PSB noted that commitments from industry participants to "facilitate greater choice and convenience in the payment options available to cardholders through mobile devices and improve the ability of merchants to encourage the use of lower-cost payment methods" has meant that "the Board does not see a need for regulation at this point. The Bank will continue to monitor developments in mobile payments."

The Productivity Commission Inquiry into Competition in the Australian Financial System may address some relevant payments system issues in its Report due in 2018.

Some of the complexities of competition issues involving providers of payments technology and banks were evident in the application of three of the major banks to the ACCC for permission to negotiate jointly with Apple over access by their payments technology to the near field technology on IPhones. The application was rejected.

The launch on February 2013 of the New Payments Platform (NPP), which has involved the RBA developing a "Fast Settlement Service" (FSS) for real time settlement of all, including retail, transactions, is also relevant for future developments. Innovations enabled by the new technology include; the ability to use a PayID (such as a phone number, email address or ABN) linked to a deposit account when providing instructions to others about how to make payments; ability to attach more detailed information when making payments.

4. INTERCHANGE FEES AND CUSTOMER SURCHARGING

> *Recommendation 17: Improve interchange fee regulation by clarifying thresholds for when they apply, broadening the range of fees and payments they apply to, and lowering interchange fees.*
>
> *Improve surcharging regulation by expanding its application and ensuring customers using lower-cost payment methods cannot be over-surcharged by allowing more prescriptive limits on surcharging.*

Over 2015 and 2016 the RBA (Payments System Board) undertook a comprehensive review of Payments Card regulation. Arising from that review were a number of changes to the regulations, reflecting the recommendations of the AFSI. These changes were finalised in May 2016[10] to take effect from June 2017 (or earlier for changes to merchant surcharging). Various limits on levels and structure of interchange fees were put in place, inclusion of some payments card systems within the regulatory framework occurred, and cost-only merchant surcharging requirements were mandated via Standard No 3 of 2016.

Since that time, the major banks have announced changes to ATM charging arrangements, which have meant the removal of fees charged to customers from other banks accessing an ATM. In November 2017 the RBA noted the need for merchants to be able to route contactless card transactions via the least costly processing system, and urged the industry to facilitate this. At its February meeting, the Payments System Board noted[11] some progress in this area but flagged its intention to consider whether the RBA might need to issue a standard to ensure desired outcomes.

5. CROWDFUNDING

> *Recommendation 18: Graduate fundraising regulation to facilitate crowdfunding for both debt and equity and, over time, other forms of financing.*

Legislation was passed in March 2017, taking effect in September 2017, permitting equity crowd funding for non-listed eligible public companies.[12] In May 2017, Treasury released for consultation an exposure draft on legislation on Extending Crowd-sourced Equity Funding (CSEF) to proprietary companies"[13]. The draft legislation enables proprietary companies to access equity crowd funding subject to a number of restrictions designed to protect investors, and removes requirements for them to convert to a public company within a specified time.

As some submissions point out, use of crowd sourced funding means that proprietary companies may no longer be closely held (having many shareholders) creating potential risks to new investors from inadequate control rights (either via voice (voting) or low cost exit (due to absence of a viable secondary market). It may be that further investigation of the types of legal structures under which companies can operate is warranted.

10 http://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/conclusions-paper-may2016/executive-summary.html
11 http://www.rba.gov.au/media-releases/2018/mr-18-04.html
12 Maximum asset size ($25 million) and turnover ($25 million p.a.) are specified as well as some governance and activity restrictions, and maximum fundraising of $5 million p.a. and $10,000 limit per investor. https://www.legislation.gov.au/Details/C2017A00017
13 https://treasury.gov.au/consultation/extending-crowd-sourced-equity-funding-csef-to-proprietary-companies/

Legislation providing for CSEF for proprietary companies was introduced to Parliament in September 2017 and in December 2017, Treasury released an exposure draft of regulations on December 11, 2017 for comment.

ASIC has provided guidance[14] for companies wishing to undertake crowd sourced equity funding and also for intermediaries[15] assisting in the process. A (non-prescriptive) template CSF offer document has been provided. (ASIC Report 544 provides more information).

Primary market offerings of equity raise issues regarding the ability of investors to subsequently dispose of their interests and assess the value of their investments, both functions which secondary markets perform. This suggests a need for development of secondary market arrangements which current markets licence regulation would impede. ASIC has also consulted on developing a tiered markets licence regime[16] which could facilitate secondary markets for crowd sourced equity. As at November 2017, the draft regulatory guide[17] remains a draft.

There appears to be no action on crowd funding of debt – although small businesses can effectively achieve such an outcome via peer to peer or market-place lenders. There is also no action on crowd funding of insurance, despite the growth of a range of innovative models appearing overseas.[18]

One further development overseas, and in Australia, has been that of "Initial Coin Offerings" (ICOs) by companies seeking to raise finance. Under these offerings, an investor is, for example, given a token which provides an entitlement to some stream of future services or products produced by the start-up company. Should the company succeed, the tokens will increase in value (and can be sold to those wishing to purchase the services or products). These ICOs thus have the financial risk normally associated with an equity investment, but do not carry with them any governance rights. ASIC released an information sheet (INFO 225) in September giving guidance about Corporations Act compliance to potential issuers of ICOs.[19]

14 Regulatory Guide 261, http://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-261-crowd-sourced-funding-guide-for-public-companies/
15 Regulatory Guide 262, http://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-262-crowd-sourced-funding-guide-for-intermediaries/
16 Consultation Paper 293 "Revising the market licence regime for domestic and overseas operators" http://download.asic.gov.au/media/4394412/cp293-published-20-july-2017.pdf, July 2017
17 Draft Regulatory Guide 172 "Financial markets: Domestic and overseas operators". http://download.asic.gov.au/media/4396002/attachment-1-to-cp293-published-20-july-2017-1.pdf
18 See for example, http://www.web-strategist.com/blog/2016/05/24/market-snapshot-crowd-based-insurance-startups-on-the-rise/
19 http://asic.gov.au/regulatory-resources/digital-transformation/initial-coin-offerings/

6. DATA ACCESS AND USE

> *Recommendation 19: Review the costs and benefits of increasing access to and improving the use of data, taking into account community concerns about appropriate privacy protections".*

This task was given to the Productivity Commission by the government. Its Final Report, *Data Availability and Use*[20] was released in May 2017. The PC found that:

"Comprehensive reform of Australia's data infrastructure is needed to signal that permission is granted for active data sharing and release and that data infrastructure and assets are a priority. Reforms should be underpinned by:

- clear and consistent leadership
- transparency and accountability for release and risk management
- reformed policies and legislation
- institutional change."

It also found that "Community trust and acceptance will be vital for the implementation of any reforms to Australia's data infrastructure. These can be built through enhancement of consumer rights, genuine safeguards, transparency, and effective management of risk."

The PC made numerous recommendations including a comprehensive right of consumers to access to data, and greater public provision of data by public agencies. It recommended several legislative changes including the introduction of a "Data Sharing and Release" Act.

Since that time, the government has initiated an Open Banking Review, following an announcement that it will initiate an Open Banking regime, and Treasury has undertaken a public consultation on the Review's Issues Paper[21]. The objective is to promote increased competition in financial services (by, for example, facilitating switching between suppliers by customers) as well as enabling better utilisation of information by customers in their use of financial services (through provision of services by third parties granted permissioned access to such information).

Among the issues which need to be considered in developing the Open Banking regime are: intellectual property rights relating to curated/transformed data; data relevant for inclusion in

[20] http://www.pc.gov.au/inquiries/completed/data-access/report
[21] https://treasury.gov.au/consultation/review-into-open-banking-in-australia/

access conditions; technology and means of access to data; costs to holders of data; governance arrangements for the regime; incentives for cooperation by data holders; risks and appropriate regulation; privacy issues; permissible marketing of services by third party operators; remedies and responsibilities of participants and external dispute resolution arrangements.

The Final Report of the Open Banking Review was released by the Treasurer on February 9, 2018. It made 50 recommendations covering: Regulatory framework; Scope of application; Safeguards to inspire confidence; Data transfer mechanisms; Implementation issues. At the time of writing the Government response had not been released.

7. COMPREHENSIVE CREDIT REPORTING

> *Recommendation 20: Support industry efforts to expand credit data sharing under the new voluntary comprehensive credit reporting regime. If, over time, participation is inadequate, Government should consider legislating mandatory participation.*

On 2 November 2017, the Treasurer announced that the government will legislate for mandatory comprehensive credit reporting to come into effect by 1 July 2018. This followed an earlier Budget announcement that if a 40 per cent reporting threshold was not reached by end 2017, such mandating would occur. An exposure draft of proposed legislation was released for consultation by Treasury on 8 February, and requires large ADIs with resident assets of over $100 billion to meet a 50 per cent reporting requirement by 28 September 2018 and 100 per cent a year later. Those institutions not mandated to report will be able to access the expanded information available if they too elect to provide comprehensive reporting. The National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 incorporating these requirements was introduced into Parliament on March 28, 2018, but was referred by the Senate to its Economics Legislation Committee for report by 29 May 2018. Concurrently, the Attorney-General's Department is reviewing privacy issues arising from disclosures of repayment history of borrowers under hardship agreements which lead to agreed changes to repayment schedules different from those originally contracted.[22] Since this review is not expected to report until late 2018, the full implementation of CCR may yet be further delayed.

[22] https://www.ag.gov.au/RightsAndProtections/Pages/Review-of-financial-hardship-arrangements.aspx

8. CYBER SECURITY

Recommendation 38: Update the 2009 Cyber Security Strategy to reflect changes in the threat environment, improve cohesion in policy implementation, and progress public–private sector and cross-industry collaboration.

Establish a formal framework for cyber security information sharing and response to cyber threats.

The First Annual Update of the Cyber Security Strategy was released in 2017.[23]

Among the developments listed, CERT (the government's Computer Emergency Response Team) has begun scoping an information sharing portal.

The Australian Cyber Security Growth Network (ACSGN)[24] was established in December 2016[25] as an independent not-for-profit entity as part of the Government's National Innovation and Science Agenda. Its focus appears to be primarily on assisting the growth of the cyber security industry in Australia, as opposed to the mechanics of improving cyber-security for Australian businesses and individuals.

The Privacy Amendment (Notifiable Data Breaches) Act 2017 was passed in February 2017 and will take effect from February 2018. It requires organisations to report data breaches believed to have occurred, where there is a risk of serious harm to the individuals from unauthorised access to personal information, to the Office of the Australian Information Commissioner (**OAIC**) and affected individuals. However, if the entity has taken remedial action before any serious harm is caused, the obligation to report does not apply.

9. TECHNOLOGY NEUTRALITY

Recommendation 39: Identify, in consultation with the financial sector, and amend priority areas of regulation to be technology neutral.

Embed consideration of the principle of technology neutrality into development processes for future regulation.

Ensure regulation allows individuals to select alternative methods to access services to maintain fair treatment for all consumer segments.

23 https://cybersecuritystrategy.pmc.gov.au/cyber-security-strategy-first-annual-update-2017.pdf
24 https://www.acsgn.com/
25 https://www.innovation.gov.au/page/cyber-security-growth-centre

The Treasury released a proposals consultation paper in mid-2016 regarding electronic distribution of company meeting notices and materials, focusing primarily on whether the default should be opt-in, or opt-out. (Currently the default is opt-out, that is, hard copy provision). There appears to have been no further progress on this initiative.

In November 2017, The Treasury issued a consultation on a Regulation Impact Statement (RIS) on "Paper Billing".[26] The consultation is based on concerns that industry practices of charging for provision of hard copy (paper) bills (rather than free electronic delivery) was disadvantaging some groups of consumers. It considers a number of alternative policy approaches towards such charging practices.

It is perhaps noteworthy that there still exists legislation entitled the "Cheques Act". In contrast, direct debits (which are also an "order to pay") are not part of any legislation, but are subject to rules applied by the Australian Payments Network. While cheques are a negotiable instrument, unlike a direct debit authority, the demise of cheques as a payment mechanism suggests that a review of the Cheques Act to reflect alternative types of "orders to pay" and "negotiable instruments" is warranted.

26 https://consult.treasury.gov.au/small-business-and-consumer-division/fees-for-paper-bills/supporting_documents/Fees%20for%20paper%20bills%20%20Consultation%20Paper.pdf