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Dear Committee

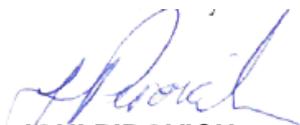
**Submission to Second Issues Paper**

Thank you for the opportunity to provide a submission to the Second Issues Paper released as part of the Committee's Inquiry into FinTech and RegTech.

We look forward to discussing our submission and lending assistance as the Inquiry progresses. Whilst not specifically dealt with under a heading 'Talent acquisition and retention', we consider that most if not all of the recommendations we have made would assist with retaining or attracting talent and innovation in Australia.

If you have any questions or require further information, please do not hesitate to contact Joni Pirovich on +61 450 958 749 or [jpirovich@millsoakley.com.au](mailto:jpirovich@millsoakley.com.au).

Yours sincerely



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*Please note our offices will be closed from  
COB Wednesday 23 December 2020 and will re-open on Monday 11 January 2021.  
The team at Mills Oakley wishes you the compliments of the  
season and all the best for the New Year.*

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# 1 Framework for ongoing consideration of FinTech policy issues

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## Recommendation #1

The Australian Government consider making the Senate Select Committee a permanent feature and extending the purview from FinTech and RegTech to xTech, with submissions accepted and published on a rolling basis and recommendations made and published at least bi-annually.

### Intended outcomes

- Timely and transparent discussion of issues and recommendations from market participants so that Australia's regulatory framework can be made internationally competitive and regulatory and cultural barriers quickly resolved or called out for resolution.
- A permanent committee focussed on issues at the intersection of law and technology with acceptance of rolling submissions would form part of a dynamic framework for identifying where and being more agile with amendments to existing law or new regulation is required to foster innovation and attract capital.
- A simple, timely and direct means to receive views from industry / those impacted on a particular issue at the intersection of technology and the law.

### Reasons

Technology development is exponential, agile and rapid whereas policy reform is naturally linear, careful and slow. For Australian innovation to keep pace with technology advancements and international competition, our regulatory framework needs to be more dynamic in the way it identifies and addresses regulatory and cultural barriers to experimentation and adoption of technology and xTech business models. That is, more agile. The lack of use of the ASIC FinTech Sandbox (under the old model or under the Enhanced Regulatory Sandbox) demonstrates that Australia's sandbox design is not effective to fully support testing of emerging technologies in the financial services sector. In addition, why start-ups who enquire with the ASIC Innovation Hub but then do not go on to make use of the ASIC FinTech Sandbox is never made public for the FinTech community and policy makers to leverage and learn from.

Unpaid advisory groups and committees to Federal Ministers and Regulators, such as the FinTech Advisory Group, the Digital Finance Advisory Panel (**DFAP**) to ASIC and the National Blockchain Roadmap Steering Committee, seem to be the preferred method of informing government and regulators about regulatory issues. These groups and committees may meet regularly but generally there are no public calls for input into these meetings nor any record of the local and global developments and opportunities and risks discussed and may become captive to certain interest groups. Members of these groups and committees are not required and do not tend to share such information publicly. In contrast is the regular sharing of minutes of meetings of the Reserve Bank of Australia Board, an example of a model we think works.

One-off discussions with Federal Ministers never seem to carry any weight unless and until lobbying effort is deployed which includes paid attendance at a Minister's fundraising events. This means that start-ups in xTech effectively do not have a voice, compared to larger companies that employ government affairs personnel and can afford political donations / attendance at fundraisers.

Whilst there are Memoranda of Understanding between various regulators, the discussions and sharing of information is opaque and does not allow the necessary public transparency to critique whether MoU arrangements are appropriate to encourage innovation nor are they easily discernible or accessible for start-ups to navigate.

## 2 Payments Architecture

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### 2.1 Central Bank Digital Currency

#### Recommendation #2

The Australian Government, in conjunction with the Reserve Bank of Australia, consider the following as soon as possible:

- (a) release of a prototype eAUD (i.e. retail central bank digital currency) that start-ups 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.

### Intended outcomes

- Unlock innovation in the Australian blockchain industry that has to date been stifled.
- Move away from comparing an eAUD to existing and planned capability of the New Payments Platform (**NPP**) – they are different and focus on the NPP is distracting from the importance and urgent need for an eAUD.
- Talk of the prototype or actual eAUD available for approved projects enhances digital literacy of Australians and Australian businesses and therefore Australia's capability to fruitfully participate in the digital economy.

### Reasons

On 3 February 2020 we provided a submission to the Reserve Bank of Australia's Review of Retail Payments Regulation regarding the pros and cons surrounding the issuance of an eAUD or a retail CBDC, which is available here: <https://www.millsosakley.com.au/wp-content/uploads/2020/02/LET-Submission-to-RBA-review-of-retail-payments-regulation-Jan-2020.pdf>. We stressed that the Bank commence trials as soon as possible regarding the issuance of an eAUD for household use or the hybrid applications of an eAUD for blockchain infrastructure, initially targeted at wholesale investors but which could be extended to retail investors on certain standards being met.

Only with experimentation can the Bank understand, with confidence, the opportunities and challenges of an eAUD that are specific to the Australian financial system. Such an understanding would better allow the Bank to develop an Australian hybrid CBDC model that gives Australians and Australian businesses a choice to use an eAUD, rather than other digital assets, and thus a competitive advantage.

Put simply, the release of a prototype eAUD would promote innovation in the Australian blockchain industry that has been fallow due to start-ups and businesses being hesitant to incur costs and regulatory effort to issue and manage their own AUD stablecoin amidst:

- uncertainty as to when (not if) Australia will announce development of its eAUD; and
- the ease of transacting in USDT (a USD stablecoin).

An eAUD would be natively digital, will spur Australian blockchain innovation and have right of place in an increasingly digitised economy with blockchain-based infrastructure. Without a native cryptographic token blockchain-based infrastructure which has to integrate with NPP infrastructure for payments is the "workaround". While it is theoretically possible now, no start-up or business has pursued it commercially to date, noting that the NDIS project has described NPP integration at a high level.

## 2.2 Digital Assets Framework

### Recommendation #3

The Australian 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.

A taxonomy that we use regularly in our Blockchain & Digital Assets practice, which deals with legal and tax issues across a number of legal practice areas, covers:

- (a) Cryptocurrency (other terms include payment tokens, exchange tokens), which is used like money (often with merchants that accept cryptocurrency as payment) and as a speculative asset (often when traded on digital currency exchanges).
- (b) Crypto-assets (other terms include virtual assets, digital assets), which comprise:
  - (i) Utility tokens (with and without restrictions)
  - (ii) Tokenised securities (where the equity or debt instrument is registered with the traditional legal system and the interest is tokenised)
  - (iii) Security tokens (the interest only exists digitally by virtue of the token holding and includes governance tokens whether voting rights are delegated or not, Liquidity Provider tokens and certain Non-Fungible Tokens)
  - (iv) Stablecoins (fiat-, crypto-, algorithmic-, hybrid-collateralised).
- (c) Sovereign Digital Currencies, including CBDCs and government-issued or government-mandated cryptocurrencies.
- (d) Privacy coins, which seek to conceal the sender and / or recipient details to a transaction.
- (e) Multi-characteristic tokens which include features from one or more categories above, where there may be multiple concurrent intentions and uses of the token and where the legal characterisation and taxation event is more appropriately determined upon disposal or use rather than upon by reference to the issuing entity and time of issue.
- (f) Multi-tiered token economies which may include at least a governance token and a cryptocurrency for the network to function.
- (g) Data and media assets including online account logins, digital twins, branding and as consumers can control more of their data, identification vaults and curated data vaults.

#### Intended outcomes

- Signal clarity and certainty from regulators to Australians and Australian businesses to operate within the framework or more easily identify when they are operating outside the framework.
- A working document to allow for the framework to be added to or amended in a more dynamic manner, reflective of market trends.
- Develop a common language/understanding to facilitate discussions among and between business and Government.

#### Reasons

There is no globally agreed taxonomy or set of definitions for digital assets. Some countries have legislated some definitions and are characterised as “blockchain-friendly” jurisdictions.

Blockchain-friendly jurisdictions have quickly become the kind of place that a blockchain project team would consider moving to for more legal certainty around their project than if they were to develop and launch the project from Australia. A number of start-ups and those thinking about innovation in this space are stifled by Australia's lack of leadership in this area that their business cases do not adopt Australia-first perspectives to legal compliance or launching here. A working and dynamic multi-agency digital assets taxonomy would be a clear signal to the global market that Australia is attempting to be a more friendly jurisdiction to encourage innovation.

### 3 Tax issues

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

##### Recommendation #4

The Australian Government consider the design and introducing of an opt-in micro tax for digital transactions that allows a tax amount to be collected from all digital transactions and automatically remitted to the Australian Taxation Office (**ATO**). Existing corporate tax, individual tax and GST regimes would then switch off. The design should have regard to the following transaction types: peer to peer; business to consumer; business to employee or contractor; and business to business.

##### Intended outcomes

- Signal tax certainty and simplicity to global markets to attract founders working on digital business models to Australia, as well as investment capital.
- Learn from and transition to a tax model fit for the digitalised and decentralised global economy.
- Certainty of tax revenue collection and amount of tax payable for taxpayers.
- ATO compliance efforts become proactive to ensure micro-tax is implemented correctly into technology design, rather than reactive identification of non-compliance which is costly and time consuming to enforce.

##### Reasons

As countries move to connect digital identity with digital money, digital micro-taxing will become a necessary mechanism to collect taxes effectively, efficiently and fairly in a digital economy.

Australia's corporate tax settings are neither competitive nor simple to administer. In addition, international corporate tax settings are struggling to keep pace with the digital economy and digital business models. The work being undertaken as part of the OECD's BEPS Action 1 (Addressing the Tax Challenges of the Digital Economy) project is ongoing, is highly political and does not deal with a number of taxation issues that arise because of the digitalisation and decentralisation of business models.

With respect to at least the financial services industry, the global corporate tax base and revenue collected from interest, dividend and royalty withholding taxes are each being eroded due to decentralised business models that do not have a central legally recognised entity that makes profits on which to levy corporate tax in any jurisdiction. Decentralised autonomous organisations (**DAOs**) are designed such that cryptocurrencies (i.e. payment tokens and sovereign digital currencies, including central bank digital currencies) and crypto-assets (i.e. stablecoins, utility tokens and tokenised securities) can be held within a smart contract which can be interacted with but not controlled by any one person.

Australia is a common law country and therefore most familiar and comfortable with progress by way of slow and incremental change. However, COVID-19 has shown that significant policy reform can be legislated with bipartisan support if the reasons for significant change are compelling. As decentralised finance (**DeFi**) and openX business models (i.e. openfinance, openhealth, and openeducation) accelerate, so too will there be an accelerating erosion of the

global corporate tax base collected from the financial services industry as well as other industries as they transition to blockchain-based and open marketplaces.

### 3.2 Attractiveness and usefulness of Australia's investment and fundraising regimes

#### Recommendation #5

The Australian Government consider amending at least the following laws to ensure that existing investment and fundraising regimes and tax incentives aligned with those regimes are broad enough to cover investments in digital assets (defined above) and to attract capital to innovative Australian projects.

#### Early Stage Venture Capital Limited Partnership (ESVCLP) regime

- Sections 118-425 and 118-427 of the *Income Tax Assessment Act 1997* Cth (**ITAA 1997**), which define the meaning of an “eligible venture capital investment” for investments in companies and investments in unit trusts, respectively, and which limit investments to:
  - investments that are shares in a company, options originally issued by a company to acquire shares in the company, or convertible notes that are not debt interests issued by a company unless Industry Innovation and Science Australia (**IISA**) makes a determination that something else may be an eligible venture capital investment; and
  - companies that must meet “Australia requirements” unless IISA makes a determination that the “Australia requirements” do not apply.
- These sections should be amended to clearly include certain digital assets as “eligible venture capital investments”, in particular digital assets which, by their design, fluctuate in value: security tokens, tokenised securities, governance tokens, multi-characteristic tokens, cryptocurrencies, some utility tokens.

#### Crowd-sourced equity funding (CSEF) regime

- 6D.3A.01 of the *Corporations Regulations 2001* Cth (**Regulations**), which limits the class of securities that can be offered in a crowd-sourced equity funding to fully paid ordinary shares.
- The Regulations should be extended to include tokenised securities (i.e. tokenised ordinary shares) and security tokens (i.e. natively digital tokens that carry voting, dividend and capital rights or have features that would be characterised as a security under the *Corporations Act 2001* Cth).

#### Attribution Managed Investment Trust (AMIT) regime

- Section 275-105 ITAA 1997, which defines “covered assets” (i.e. investments eligible for deemed capital account treatment) and where deemed capital account treatment removes the need for continuous and arduous revenue versus capital analysis for each digital asset investment and disposal.
- This section should be amended to clearly include cryptocurrencies, crypto-assets, sovereign digital currencies and multi-characteristic tokens.

#### Listed Investment Company (LIC) regime

- Section 115-290(4) ITAA 1997, which defines “permitted investments” and where permitted investments are a prerequisite for a LIC to avail itself of Sub-division 115-D tax relief (which seeks to put LICs on equal tax footing as LITs insofar as LITs provide flow-through tax treatment).
- This section should be amended to clearly include cryptocurrencies, crypto-assets, sovereign digital currencies and multi-characteristic tokens.

#### Controlled Foreign Entity (CFE) provisions

- Section 317 of the *Income Tax Assessment Act 1936* Cth, which defines “tainted asset” in relation to a company by providing a list of included assets and a catch-all provision “any similar financial instrument” as well as a list of non-included assets.
- There are a number of amendments that should be made to the CFE provisions which we would be pleased to provide more detail upon request.

NB: The above is a non-exhaustive list of the headline laws and regulations that could be amended to encourage capital inflows into Australian investment vehicles. Consequential amendments to other laws and regulations will also be necessary.

### **Intended outcomes**

- Expanded scope of eligible investments that can be made through ESVCLPs, as well as AMITs and LICs, to include digital assets.
- International market certainty around Australian tax implications for digital asset investments through ESVCLPs, an already internationally competitive and attractive investment vehicle.
- Greater inflow of capital through ESVCLPs to innovative Australian projects that include a digital asset in their design.
- Expanded scope of securities that can be offered in crowd-sourced equity funding to include:
  - ordinary shares and a tokenised version of the ordinary share;
  - ordinary shares and / or tokenised ordinary shares and a digital wallet for the investor to receive digital assets by way of airdrop subsequent to the issue of the ordinary shares and / or tokenised ordinary share; and
  - a security token that is convertible into another digital asset upon certain events (i.e. token genesis sale) or milestones occurring.
- Clarity around the types of digital assets and use of digital assets (such as staking, returns received for delegating staking and governance rights, and bot-driven digital asset products and services) that fall foul of the CFE provisions and result in attribution of income to Australia prior to the income actually being distributed to the Australian controllers.

### **Reasons**

#### ESVCLP regime

The ESVCLP program aims to stimulate the early stage venture capital sector in Australia and is recognised as an internationally competitive regime. However, the meaning of “eligible venture capital investment” is limited and to extend it on a fund by fund basis requires a general partner of an ESVCLP to make an application in the approved form to IISA. IISA has been granted “determination powers” in Division 25 of the *Venture Capital Act 2002* Cth which allow IISA, upon application by the general partner of an ESVCLP, to make a determination about eligible venture capital investments, that requirements under sections 118-425 or 118-427 of the ITAA 1997 do not apply or in relation to the “Australia requirements”. However, determinations are not published by IISA or the ATO. This is in contrast to the ATO’s extensive publishing of rulings and guidance sought by taxpayers and the Commissioner’s reasons.

The time lag, effort, and cost involved in applying to IISA to have a determination made is a friction point deserving of removal for certain digital assets. Amending the ESVCLP provisions would encourage more free flow of capital to projects where the digital assets, rather than the traditional equity, is where the value is expected to reside.

Australian taxation of individuals and individuals that are entrepreneurs is not competitive internationally and tax reform priorities have not given sufficient attention to this lever. As a result, entrepreneurs are increasingly being lured overseas or attracted to a “digital nomad” lifestyle. Therefore, it is difficult for a company, let alone any project team, to meet the “Australia

requirements” and will likely become more difficult if entrepreneurs are not incentivised to remain or return to Australia. In addition, IISA should consider making a standing binding order under section 25-10 of the *Venture Capital Act 2002* Cth in respect of blockchain projects that plan to transition to a decentralised model of governance that the “Australia requirements” do not apply to the company (or rather, to the DAO and governance tokens or other tokens that would be held by the ESVCLP).

### CSEF regime

Treasury’s Issues Paper acknowledges that an initial coin offering has similarities to crowd-sourced funding but that the legislated CSEF regime requires official fiat currency be used to purchase an equity stake in the company in the form of ordinary shares. Despite having willing Australian teams, we have been unable to leverage the CSEF regime to offer participants an ordinary share *and* digital wallet address where the project’s utility token would be airdropped to the digital wallet subsequent to the equity crowd-fund. Licensed crowdfunding platforms were hesitant to list this sort of offering unless and until an early engagement process had been undertaken with ASIC, which added approximately another six months and at least \$50,000 to the start-up’s costs on top of the costs of partaking in the CSEF regime. Such time, effort and cost made the CSEF regime uncommercially attractive and without sufficient prospects of regulatory clarity to “take the bet”.

With respect to the above amendments identified, please refer to the fuller reasons and examples set out in Miss Pirovich’s Hall & Wilcox submission to Treasury’s consultation on initial coin offerings dated 1 March 2019. Miss Pirovich has since left Hall & Wilcox and should now be contacted via her Mills Oakley contact details.

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

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### **Recommendation #6**

The Australian Government consider adding the following categories to the existing Research & Development (R&D) Tax Incentive:

- A Special R&D Tax Incentive for areas of innovation that are critical for Australia’s growth and prosperity, such as renewables, health and critical digital infrastructure. This category would allow the R&D entity to receive a greater benefit than current rates and incentivise traditional businesses to undertake or participate in R&D in these critical areas where they otherwise would not have.
- A Simple R&D Tax Incentive which requires upfront authorisation of the activity/ies as eligible R&D activity/ies by IISA.
- A Software R&D Tax Incentive which requires upfront authorisation of the activity/ies as eligible R&D activity/ies by IISA and which makes explicit that the costs for all developers involved in the activity/ies in the first 2 years will be treated as eligible R&D expenditure.

### **Intended outcomes**

- Encourage innovation and investment in areas of critical importance for the Australian economy.
- Tax certainty and simplicity for Australian start-ups, regardless of the area of innovation.
- Tax certainty and simplicity for software R&D, as opposed to further and more extensive regulatory guidance which to date has not helped improve the administration of the R&D Tax Incentive nor the willingness of start-ups to apply for it.
- If Australian corporate tax rates remain at non-competitive rates, the attractiveness of the R&D Tax Incentive program rates could be used to keep and attract innovative businesses in areas of strategic national importance for Australia.

## Reasons

Action on climate change and sustainable business and personal practices continues to be politicised in Australia when leading countries around the world have already demonstrated progress and with bipartisan support. A Special R&D Tax Incentive would signal to domestic and international capital that their dollar will go further in Australia (despite the high corporate tax rate) than if their investment is deployed overseas.

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.

## 5 Regulation

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### 5.1 Consumer Data Right (CDR) / Privacy

#### Recommendation #7

The Australian Government consider temporarily suspending the more onerous CDR and privacy obligations for xTech during a defined 'start-up period' where they:

- do not deal with "sensitive information";
- limit the number of individuals involved to 1,000;
- apply clear 'minimum standard privacy rules; and
- only deal with the personal information of those who, after being clearly informed of the 'reduced privacy regime', consent to this for a specified period/product.

#### Intended outcomes

- Allowing fully informed consenting adults who wish to be involved to agree to a lower privacy standard for a period to reduce establishment, operating costs and red tape until such time as the xTech product is proven.
- Provide a means to build an xTech product without the significant CDR / privacy infrastructure costs in a 'safe place' and thus reduce the upfront costs of innovation until the xTech product is proven.

### 5.2 Digital Identity and MyGov + Data security

#### Recommendation #8

The Australian Government consider requiring regulators and government agencies to make clear statements in relation to their approach to regulating as well as steps to endorsement or accreditation of decentralised technology solutions such as decentralised identity (**DID**).

#### Intended outcomes

- Encourage Australian innovation in critical digital economy areas such as DID and second and third order innovation that follows from DID (including how government could streamline interactions of businesses and individuals with government and how it could be used to support novel applications). Currently Europe is leading the way and talented Australians have greater prospects of regulatory support and commercial uptake of their solutions in Europe than in Australia.
- Encourage discussion of decentralised technologies at the regulatory level, which in turn helps educate the public about DID technology as well as steps they can take to manage their personal data in a cyber secure way.
- In an information and digital age, encourage regulators to play an active role in educating and enabling Australians to be well-informed about the digital economy, its opportunities and its risks, particularly DeFi.

## Reasons

The Consumer Data Right has been developed, and its “future directions” are being viewed, through the lens of centralised legal entities (like commercial banks) collecting consumer data and the arrangements that are then necessary in order for that consumer data to be owned and controlled by the consumer, or third parties as the consumer directs. Similarly, the Trusted Digital Identity Framework (**TDIF**) administered by the Digital Transformation Agency (**DTA**) has been prepared through the lens of centralised legal entities rather than decentralised technology networks.

Decentralised identity (**DID**) starts with the foundation that an individual owns and controls their identity and the data in connection with that identity (which can be stored in a decentralised manner and / or have various permissions and encryption to protect the data). DID could assist individuals to become more resilient to cyber-attacks rather than less. Blockchain technology, particularly when combined with zero-knowledge proofs (**ZKPs**), is an enabler of an individual being able to accept algorithms to query their data to return a “Yes” or “No” response (e.g. that they are eligible for a product or service without actually revealing their personal data to a supplier or multiple third parties) or of an individual only sharing data and personal information that is required to have access to a product or service.

The process to seek accreditation under TDIF allows for requests to be made to the DTA to exclude certain of the technical requirements from operating. Whilst a start-up or any business working on DID could seek accreditation under TDIF and request that the technical requirements not compatible with DID solutions be excluded, no start-up or business has yet made such an application despite us making a few projects aware of this avenue. Therefore, to promote DID innovation in Australia there is merit in the DTA providing upfront clarification about their approach to DID.

More generally, accreditation under TDIF has been required to provide a digital channel to government services and the accreditation process has not been undertaken by any Australian start-up due to the cost and effort involved. This feedback should be considered seriously by the Committee in terms of the development and expansion of the Federal Budget funding allocating for the development and expansion of Digital Identity. Instead, start-ups and scale-ups are more attracted to provide identity services in a non-government context and align themselves with Australian Payments Network TrustID Framework as the Framework has been prepared more consultatively with the industry and therefore easier for industry to engage with.

We encourage you to discuss with Chami Akmeemana, CEO of Convergence.tech; John Phillips, Partner at 460degrees and Chris Were, Founder at Verida for more practical insight around the points made above.

Competition for the Australian financial services sector, and data surveillance capitalism sectors, will not purely arise from Big Tech companies that start to offer banking or other financial services in Australia. DeFi, which is enabled by blockchain technology and digital assets, is democratising access to financial products and services, as well as providing higher returns through products that look and feel as simple as earning a return from a bank account or term deposit. Google- or Facebook-offered financial products and services may be the gateway for everyday consumers although it remains to be seen whether centralised entity offerings (Google, Facebook and existing commercial banks) can retain and compete with the attractive returns and variety offered by DeFi).

The news media bargaining code also assumes that centralised digital platforms, specifically Google and Facebook, will continue to be the business model of preference in the digital economy. Please see further points made below at Recommendation 12 in relation to the use of blockchain-based, token-enabled technology as a form of market self-regulation.

## Recommendation #9

The Australian Government consider requiring the Digital Transformation Agency to update its technology procurement guidelines to include ethical and sustainable technology principles, particularly in relation to digital identity software including digital credentials.

### Intended outcomes

- Equip businesses seeking to issue digital credentials to understand whether the technology applies “privacy by design” principles.

### Reasons

We encourage you to discuss with Chami Akmeemana, CEO of Convergence.tech for more practical insight around the points made above.

## 5.3 Rules as Code

### Recommendation #10

The Australian Government consider funding a pilot to implement a basic company constitution (i.e. replaceable rules) using ‘Rules as Code’.

### Intended outcomes

- Enable the creation of a company (governing rules) to be a purely digital experience.
- A purely digital company incorporation experience would be consistent with the move towards digital identity, director identification numbers, single touch payroll.
- Second, third and fourth order company compliance activities could also be made purely digital and assist entrepreneurs to reduce cost and time in the compliance aspects of running a business – including things like implementing employee share schemes that can take advantage of the start-up concession; generating a shareholder agreement; generating business appropriate terms and conditions and privacy policies; digital and automated employment contracts and contractor agreements, etc.

### Reasons

Start-ups can be faced with legal, accounting and professional costs of upwards of \$30,000 in the first few years of business to cover incorporation and compliance costs. Such a pilot could be useful learning exercise for the initial, and second, third and fourth order benefits of investing in ‘Rules as Code’.

## 5.4 Data standards and blockchain

### Recommendation #11

The Australian Government consider allocating part of the \$6.0 million in funding to the Reserve Bank of Australia to actively participate in, experiment with and help coordinate opensource projects and research on CBDC standards which is being undertaken through the Bank of International Settlements Innovation Hub and the Digital Currency Global Initiative (**DCGI**). Part of this funding could be provided to approved blockchain-based projects to use a prototype eAUD as recommended at 2.1(b).

### Intended outcomes

- Strengthen Australia’s role in international standard-setting which promotes interoperability of sovereign digital currencies.
- Encourage commercial testing and use of an eAUD.
- Assist with the coordination of opensource software projects.

### Reasons

Before standards are globally accepted, they need commercial, in-flight testing by a number of parties. Investment of time and effort towards opensource projects is enabling of commercial innovation, and perhaps even more so than government spending on R&D incentives.

Assisting with the coordination of opensource software projects (i.e. sharing the time and cost burden with start-ups and entrepreneurs), is a form of government investment in standards innovation in that opensource projects are by their nature global and would allow Australian start-ups to be best placed to innovate and commercialise upon opensource software.

## Recommendation #12

The Australian Government consider commencing a consultation 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.

### Intended outcomes

- Commence discovery process of regulation need and fit for the decentralised digital economy and how Australia should be adapting its regulatory frameworks now to be future-fit.
- Initial findings from the consultation could assist in informing a regulatory approach that harnesses blockchain technology to achieve optimal market outcomes, rather than existing and outdated regulatory approaches such as the news media bargaining code.

### Reasons

Policy and law-making processes are struggling to cope with identifying and correcting market failures in an ever-increasing and fast-paced technology-enabled market. Research should be undertaken as a compliment to, and to encourage, private sector RegTech innovation into how either or both technology and regulation be used to change the incentive structure or reallocation of resources to correct market failures in the digital economy. In the near future, if not already, the role of regulation might and should evolve in the context of token-enabled, blockchain-based, self-regulating networks.

We have seen the launch of blockchain-based privacy-first internet browser technology from Brave which is token-enabled with Basic Attention Token (**BAT**). The Brave-BAT combination has introduced the information and advertising market to a new, self-regulating incentive structure enabled by the advent of blockchain technology. The Brave-BAT model turns the traditional digital platform data collection and advertising revenue model on its head by enabling users to earn BAT while browsing (i.e. for their attention) and allowing those users to reward content creators and publishers with BAT. Most importantly, users' data is not collected or shared with third parties by the Brave browser. From a regulatory perspective, we have seen various efforts around the world to regulate the seemingly unbridled power of the digital platforms. Efforts have ranged from extensive privacy and competition focussed enquiries and consultations, to legislatively mandated action including Australia's CDR Regime and news media bargaining code that requires the likes of Google and Facebook to negotiate with Australian media companies to pay for news content and notify them of algorithm changes. The success of these multi-year regulatory efforts to correct market failures and introduce law to ensure the optimal and efficient allocation of resources is yet to be seen. However, the number of users switching from Google Chrome browser and Google Search to the likes of a Brave browser and Duck Duck Go search engine is increasing.

## 5.5 Blockchain applications + KYC regulations (insofar as they relate to AML/CTF reporting)

### Recommendation # 13

The Australian Government consider actively engaging with opensource blockchains, particularly as a validator node in a blockchain with a Proof of Work consensus mechanism and as a forger in a blockchain with a Proof of Stake or Delegated Proof of Stake consensus mechanism.

### Intended outcomes

- Government to appreciate that they can already participate in blockchain-based systems (both public and private) as a node and potentially take advantage of block rewards (awarded to the node that validates a block) which may be a source of new revenue for government.
- Government to understand the difference between probabilistic finality blockchains and deterministic finality blockchains, in that regulators could play a greater role in enforcing or freezing suspicious transactions undertaken on probabilistic finality blockchains.

- Government to appreciate that regulatory oversight could be achieved more efficiently and effectively by negotiating or requiring that a regulator node be included in the design of a blockchain-based system to receive data and / or play a role in deploying “compliance by design” smart contracts that are reviewed by the regulator/s before being deployed.
- Government to appreciate the transparency and integrity of smart contract functionality, particularly in terms of collecting tax revenue, transparently allocating it to tax expenditure areas, and reporting on the social impact (in dollar terms) of that tax expenditure. In other words, a much more informative “tax receipt” than what taxpayers currently receive upon lodging their tax return.

## **6 Skills and Culture**

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### **6.1 Regulatory culture**

#### **Recommendation #14**

Regulators, in particular ASIC, are encouraged to make public statements on encouraging the adoption of RegTech solutions even while they are in their development phase.

#### **Reasons**

While RegTech solutions are developing, their effectiveness may be limited, however their development will be accelerated by companies utilising them.

Regulators can be critical of RegTech products while they are in development, however even while their effectiveness is limited, if used to augment existing regulatory compliance practices they can be an important step in building a technology enabled compliance approach in a company as well as contributing to the growth of the RegTech ecosystem as a whole.

We consider that by testing new RegTech products, companies are also demonstrating a strong compliance culture.

Regulators could enhance the development of RegTech solutions by making a public statement about the value of adopting new RegTech solutions as a gradual augmentation to existing procedures and as a step to developing a technology enabled compliance framework.