

11 December 2020

Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Via email [fintech.sen@aph.gov.au](mailto:fintech.sen@aph.gov.au).

To whom it may concern,

**Re: ABSIA's submission to the Senate Select Committee on Financial Technology and  
Regulatory Technology**

The Australian Business Software Industry Association (ABSIA) welcomes the opportunity to make this submission on behalf of our members and the software industry. This submission has been prepared with input from ABSIA members. ABSIA's membership includes many large and small DSPs, add-on developers, software companies, financial institutions, individuals and organisations that advocate for the interests of software developers across the region and promote and encourage the digitisation of the Australian economy.

This submission answers relevant points from the issues paper and raises additional issues from our perspective. In summary:

- R&D tax incentives should be more readily available to software developers;
- The ACCC and Treasury should take a step back and consider how the proposed rules for intermediaries will effect them and take time to better consult with intermediaries;
- The 2020 Cyber Security Strategy does not provide sufficient support for SMEs. There is an opportunity for the Government to better support SMEs with cyber security;
- The most appropriate place to starting implementing rules as code is the calculation of employee entitlements;
- ABSIA supports the development of the accreditation or a rating system for RegTech products offering award interpretation functionality;
- The industry needs a better way to communicate with the Fair Work Commission and the Fair Work Ombudsman to clarify ambiguous clauses. We have laid out options that could achieve this; and
- The over regulation and duplication of existing frameworks and standards is a barrier to entry for software developers and startups looking to participate in many initiatives. The focus for regulators should be on re-use and not re-invent to avoid putting regulatory burdens on software developers.

ABSIA would appreciate the opportunity to engage further on these. For further information about this submission, please contact Maggie Leese, ABSIA Marketing and Membership.

Yours faithfully,

**Chris Howard,**  
**President & Director, ABSIA.**

## Research & Development

Encouraging R&D activity comes hand in hand with being able to access R&D tax incentives in the first place. While there has been reform since the initial issues paper was released, many software developers who are significantly innovating and providing economic benefits are still not able to easily access R&D incentives as innovating off existing technology is not categorised as R&D activity.

Considering that over the course of this year many software developers have been disrupted through needing to provide solutions for Government stimulus measures including JobKeeper and JobMaker, they are in need of support to better enable them to provide innovative products and solutions over the coming years. Providing further clarity on and perhaps widening the definition of what constitutes as R&D to include innovation off existing technology should be considered to better support FinTechs, RegTechs and software developers from the business software industry.

## Consumer Data Right

Overall, ABSIA supports the original intent of the Consumer Data Right (CDR) to spark innovation and the development of new products and solutions across the economy starting with the banking industry. ABSIA's main concern, along with many in the industry, is that CDR has moved far beyond this intent and in the process, the ACCC have captured groups that were not originally intended to be regulated under CDR such as intermediaries.

Intermediaries were only introduced into CDR in February 2020 and there have been only two consultation papers in the lead up to developing rules for them. In contrast, the banking industry was consulted over a much longer period before Open Banking came into effect. Intermediaries have not been properly engaged or consulted with to better understand the different types of intermediaries and how they currently share data. Many in the industry are concerned about complex rules being introduced that will significantly impact on how intermediaries currently operate. These rules, without proper industry consultation, may set the participation barrier too high for intermediaries, which may be the biggest risk to CDR and its overall success.

ABSIA also understands that the banks are not currently ready to facilitate CDR data transfers to Accredited Data Recipients (ADRs). Without the banks ready, software developers cannot

begin to adapt their products or develop their own APIs to make this data available to their clients. When the banks are ready, the software industry will require at least 12-24 months lead time to complete this work and this does not take into account other work, such as STP Phase 2, that will take significant time and effort from those in the industry. Further, additional time will need to be given to the intermediary community so that software and professional associations can educate users, accountants and bookkeepers on what these changes mean to them.

With the industry and intermediaries looking for more consultation and the fact that the banks are not currently ready, ABSIA believes that the ACCC and Treasury should take a step back from developing these rules and undertake this consultation. Here, we believe that it is important to consider whether the inclusion of intermediaries and the level of rules being applied to them meets the original intent of CDR.

ABSIA understands that the rollout of CDR in energy is taking a different approach to Open Banking. While this may be appropriate considering how this sector operates differently, in past CDR submissions, ABSIA has highlighted the need for consistency across CDR implementations, including how ADRs and intermediaries are treated. This consistency is particularly important for some software providers, like accounting software providers, as they may deal with CDR data from a range of industries and can potentially face being regulated by different sets of CDR rules. Further, as CDR expands, it should be consumer focused rather than sector focused to make it easier for consumers and ensure that they are experiencing the benefits intended for them.

## Data Standards and Blockchain

ABSIA is planning to respond to the Digital Transformation Agency's consultation on Digital Identity Legislation which will be exploring options to expand the use of Digital ID in the private sector. We believe that there are huge benefits to allowing the private sector to utilise government Digital ID options, such as myGovID. Developing customer verification capabilities is expensive and often problematic and therefore beyond scope for SME service providers. Allowing software providers to leverage myGovID will be a much more cost effective way for them to offer secure customer verification and log in processes.

On cyber security, while we cannot speak for all in the industry, ABSIA believes that more work is needed to improve cyber security practices for software developers as a whole. There has been important work over the last few years in the Digital Service Provider (DSP) and add-on community space with the development and continued revision of the ATO DSP Operational Framework and the creation of the Security Standard for Add-on Marketplaces (SSAM). There is potential for the SSAM to be adopted in other areas to improve the security of applications in general but specifically for those that connect to other software products or their marketplaces via API.

On a broader scale, the Government's newly released Cyber Security Strategy does not provide sufficient support for SMEs. Rather, it relies on large organisations to manage their supply

chains and ensure the cyber resilience of all those parties. While this may be beneficial for some SMEs, it does not assist those that fall outside of these supply chains. To make up for this oversight, the Government needs to give more consideration to how they can best support the cyber security skills of SMEs and their adoption of secure products.

## Rules as Code

In the interim report for this inquiry, the committee supported initiatives that would help small businesses to comply with industrial awards. When considering areas to implement rules as code, ABSIA believes that the calculation of employee entitlements is the perfect place to start. There are already multiple vendors who have software solutions that apply pay rules in modern awards to their customers' employees' timesheets. As a result, there is already significant, and tested, progress towards a rules as code approach in this area that further support from the Government could accelerate.

ABSIA notes that Government agencies are already providing initial support for a rules as code approach to the calculation of employee entitlements. In consultation with ABSIA and its members, the Fair Work Commission is currently undertaking work to develop an API that provides the pay rates contained in the 154 modern awards to software who wish to consume it. In future versions of this API, the FWC will look to codify more datasets and make this information available through APIs. ABSIA looks forward to the outcome of such work and working with the software industry on this.

The interim report noted two proposals that the Government could explore for accelerating a rules as code approach to the accurate calculation of employee entitlements, namely the accreditation or rating of existing RegTech solutions. Such an accreditation or rating is important for employers so they can have confidence in the software products that they are choosing. Another benefit to this type of approach is that the Government can leave the creation of the rules as code vision to private enterprise, while still identifying the extent to which the coded rules match the Government's expectations.

In accelerating a rules as code vision for the calculation of employee entitlements, there is an opportunity for better collaboration between the industry, the Fair Work Commission (**FWC**) and the Fair Work Ombudsman (**FWO**) to address the ambiguities contained in modern awards. Software vendors in this area regularly identify ambiguous clauses and are well positioned to raise these with the FWC and FWO. However, no channels exist for that purpose. ABSIA recommends that the FWC and/or the FWO establish a forum within which vendors may raise ambiguities in modern awards. If the FWC considered that an ambiguity may exist, it would then be open to the FWC to make a determination to correct the error on its own initiative.

## Know Your Customer

Further to our comments on cyber security above, allowing software developers to leverage government Digital ID capabilities such as myGovID will allow them to significantly increase their customer verification effectiveness at a cost they can most likely sustain.

## Regulatory Culture

A major concern for many in the industry is the over regulation of software providers and the high barriers to participation for various initiatives such as CDR. As the need for more regulation across different sectors has arisen over the past few years, software providers have found themselves being regulated by multiple government and industry frameworks and/or standards in order to continue running their products and services. In some cases this has resulted in the duplication of regulatory requirements. On the other hand, it has also led to the creation of requirements that are far too complex or costly for software providers to realistically implement.

While regulation and adherence to these frameworks and standards is important, more focus should be given to avoiding the duplication of existing regulatory requirements. Instead, the focus should be on recognising existing standards and frameworks for different sectors to lessen cost and time burdens.