

Chapter 1

Introduction

Reference

1.1 On 3 December 2015, the Assistant Minister to the Treasurer introduced the Corporations Amendment (Crowd-sourced Funding) Bill 2015 (the bill) into the House of Representatives. On the same day, the provisions of the bill were referred to the Economics Legislation Committee for inquiry and report by 22 February 2016.¹ The committee's reporting date was subsequently extended to 29 February 2016.²

1.2 The committee advertised the inquiry on its website and received 22 submissions. A list of submissions received is at Appendix 1.

1.3 A public hearing was held in Canberra on 23 February, 2016. The witness list is at appendix 2.

Terminology

1.4 The committee notes that the bill employs the term 'crowd-sourced funding' (CSF) instead of the more widely used term 'crowd-sourced equity funding' (CSEF). Both terms are used in this report.

Purpose of the bill

1.5 Productivity is one of the core drivers of economic growth. Recognising this, governments have sought to foster innovation as a means of unlocking productivity. The continuing growth of the internet, in particular, offers new opportunities to boost productivity through innovative ways to raise funds. Crowd sourced funding (CSF) is one such method of online fundraising for innovative start-up and other small enterprises that lack access to finance to develop their business at a critical early stage.

1.6 CSF, also known as equity crowdfunding or investment-based crowdfunding, is an evolving concept in corporate capital-raising. Broadly, the term describes a company seeking funds—particularly start-up or early-stage capital—online from 'the crowd'. In exchange for cash, the company offers its equity. Equity offers are published through an online portal, also known as a funding portal; that is, a website.³

1.7 CSF allows entrepreneurs to raise funds in small amounts from a large number of investors, instead of relying on large capital outlays from one or more investors.

1 *Journals of the Senate*, No. 134—3 December 2015, p. 3624.

2 *Journals of the Senate*, No. 138—22 February 2016, p. 3758.

3 Corporations and Markets Advisory Committee (CAMAC), *Crowd sourced equity funding*, May 2014, p. 1.

1.8 A number of recent reviews have identified CSF as a means of giving emerging, innovative business access to the capital they need to establish and grow. The bill aims to further the objective of encouraging innovation and stimulating economic growth by facilitating funding for emerging businesses.⁴

1.9 The purpose of the bill is to facilitate crowd-sourced equity funding in Australia. The Explanatory Memorandum described crowd-sourced funding as:

...an emerging form of funding that allows entrepreneurs to raise funds from a large number of investors. It has the potential to provide finance for innovative business ideas and additional investment opportunities for retail investors, while ensuring investors continue to have sufficient information to make informed investment decisions.⁵

1.10 If enacted, the bill would also provide companies that are eligible to crowd fund with temporary relief from otherwise-applicable reporting and corporate governance requirements.

1.11 The bill's explanatory memorandum details why this legislation is necessary, as existing legislative arrangements may be a barrier to small businesses, or start-ups, making securities offers:

- For proprietary companies, a limit of 50 non-employee shareholders and prohibitions on making public offers of securities mean such companies are not able to access the large number of small-scale investors that would typically be targeted under an equity CSF campaign.
- Public companies are not subject to these restrictions, but must comply with substantially higher corporate governance and reporting obligations that may be too expensive to be an option for small business. Public companies making equity or debt offers must generally also use a disclosure document, which can be costly and time consuming to prepare.⁶

1.12 The bill seeks to remove the regulatory barriers to CSF.

Key provisions of the bill

1.13 The bill comprises three schedules setting out amendments to the *Corporations Act 2001* (the Act) and consequential amendments to the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), with the objective

4 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, (Explanatory Memorandum) p. 7.

5 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, p. 3.

6 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, p. 8.

of facilitating crowd-sourced equity funding. It is a key feature of the government's *Growing Jobs and Small Business* package.⁷

1.14 Schedule 1 of the bill would amend the *Corporations Act 2001* (the Act) and establish a regulatory framework to facilitate crowd-sourced funding by small, unlisted public companies. The proposed regime would include:

- eligibility requirements for a company to fundraise via CSF, including disclosure requirements for CSF offers;
- obligations of a CSF intermediary in facilitating CSF offers;
- the process for making CSF offers;
- rules relating to defective disclosure as part of a CSF offer; and
- investor protection provisions.⁸

1.15 Schedule 1 also seeks consequential amendments to the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) to expand the range of financial services covered by the ASIC Act to include a crowd-funding service, as defined by the Corporations Act.

1.16 Schedule 2 of the bill would provide eligible new public companies with temporary relief from reporting and corporate governance requirements. This would reduce potential barriers to adopting the required public company structure.

1.17 Schedule 3 introduces provisions aimed at providing greater flexibility in the Australian Market Licence (AML) and clearing and settlement facility licencing regimes.

Scrutiny of bills

1.18 Under Senate standing order 25(2A), a legislation committee, when examining bills or draft bills, shall take into account any comments on the bills published by the standing committee for the Scrutiny of Bills. The standing committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.19 The Standing Committee for the Scrutiny of Bills examined the bill, referring a number of questions to the Assistant Treasurer.⁹ That committee was primarily concerned with the delegation of legislative power effected by certain sections of the bill. The committee notes that the standing committee drew attention to these provisions, stating that the provisions may be considered to delegate legislative powers inappropriately. The Standing Committee for the Scrutiny of Bills was also

7 See <http://www.business.gov.au/small-business/Pages/jobs-and-small-business-package.aspx> (accessed 22 February 2016).

8 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, p. 3.

9 Senate Standing Committee for the Scrutiny of Bills, Alert Digest No. 1 of 2016, pp. 9–11.

concerned with provisions reversing the onus of proof. That committee again drew attention to these provisions, noting that they may be considered to trespass unduly on personal rights and liberties.

1.20 In its subsequent report, the standing committee included the Minister's response to the matters raised, which included noting the evolving nature of CSF and the importance of being able to adjust quickly as the market develops and investors become more familiar with the sector.¹⁰ The specific matters raised by the standing committee, outlined in full its report, were not considered as part of this current inquiry. The committee notes, however, that the bill contains provisions designed to ensure that the legislation can be applied flexibly to the rapidly changing CSF environment.

Regulation impact statement

1.21 The bill's Explanatory Memorandum states:

It is expected that the overall 'per business' compliance costs for issuers that participate in crowd-sourced funding will decline. However, given the likely growth in the number of businesses raising funds through these arrangements, the aggregate compliance burden over the economy is expected to increase.¹¹

1.22 The Explanatory Memorandum noted that the CSF model in the bill is likely to have the highest net benefit of the options considered by the government and a 'lower estimated aggregate regulatory cost'.¹²

Human rights

According to the Explanatory Memorandum, the bill is compatible with human rights as 'it seeks to protect retail clients from advertisements that could induce them to make investment decisions without having all the necessary information'.¹³ The Parliamentary Joint Committee on Human Rights made no comment on the provisions of the bill.¹⁴

Acknowledgements

1.23 The committee thanks all those who contributed to the inquiry.

10 Senate Standing Committee for the Scrutiny of Bills, Second report of 2016, 24 February 2016, pp. 64–67.

11 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, p. 5.

12 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, paragraph 9.24.

13 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, paragraph 10.11.

14 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Thirty-third report of the 44th Parliament, 2 February 2016, p. 2.