

Dissenting Report by Labor Senators

1.1 Labor has long recognised the importance of early stage innovation to drive economic growth in Australia.

1.2 Australia's start-ups have already proven their potential here and abroad and we need to encourage the growth of successful start-ups—especially considering that the majority of jobs to be created over the next decade and beyond will be in companies that do not exist today.

1.3 That is why it is important to have policies in place that help grow as many more of these companies as possible—policies that help remove some of the barriers to growth, particularly a lack of capital.

1.4 While traditional sources of funding for early stage innovation and start-ups have come from venture capital and angel investors, equity crowdfunding has emerged as an alternative way of raising capital.

1.5 This Bill amends the Corporations Act 2001 and the *Australian Securities and Investments Commission Act 2001* to facilitate crowd-sourced equity funding in Australia. A series of proposed regulations to help enact the Bill were also released on 22 December 2015.

1.6 Labor has had a strong interest in the value of equity crowdfunding as a way of supporting the capital needs of early stage businesses.

1.7 The origins of this Bill sit within a decision taken in 2013 by the previous Labor Government: where the Corporations and Markets Advisory Committee (CAMAC) was tasked to advise on the appropriate framework to allow equity crowdfunding to operate in Australia.

1.8 Since then, Labor has consulted with the start-up community and heard their views on what will make for a productive regulatory framework. These consultations and the work of CAMAC have influenced Labor's approach to this policy area.

1.9 While we understand that equity crowdfunding will not be used by all start-ups and small businesses, we recognise that the overall legal framework for equity crowdfunding should trigger confidence in the value of this fundraising mechanism for these small firms.

1.10 Having reviewed the submissions and taking note of the views expressed at the Committee's public hearing, it is very clear that the Government's proposals have drawn a mixed reaction.

1.11 While industry stakeholders have welcomed progress in bringing equity crowdfunding laws closer to reality, many have expressed disappointment in the Government approach, some arguing that it has completely ignored concerns about aspects of the framework that will potentially add regulatory and financial impost on start-ups and crowdfunding platforms.

1.12 Many stakeholders argued the Bill adopts a heavy regulatory approach that will be costly and act as a disincentive, preventing many small businesses from

accessing the new system. We note claims made in the submissions and list some of the concerns below. For example, one crowdfunding platform—CrowdfundUP—details a repeated criticism of this Bill:

In its present form, the...Bill would not be attractive to start-up companies due to the onerous requirement for a company to become a public company.¹

1.13 The Faculty of Law at the University of New South Wales stated:

Currently the Bill excludes over 99.7% of companies from accessing CSF.²

1.14 Additionally the Law Council argued that it:

...is concerned that the CSEF Bill is too complicated to be easily understood by start-ups and early stage companies seeking to take advantage of CSEF and may give rise to too high a regulatory burden for intermediaries to readily embrace the establishment of CSEF platforms.³

1.15 The Business Council of Co-operatives and Mutuals does not support the key aspects of the Bill because they:

A. do not serve the capital needs of small or start up enterprises, particularly co-operative or social enterprise models and

B. impose unwarranted regulatory imposts on the disclosure regime for the offer of securities by co-operatives governed by state and territory laws.⁴

1.16 Notably, legal firm Pitcher Partners recommended changes to the Bill because:

...to ensure that (equity crowdfunding) platforms are economically viable, it is important to consider expanding the customer base of the proposed regime to existing and future private companies.⁵

1.17 Again, the overall submissions—along with the public hearing into the Bill—focussed on key shortcomings of the Government's proposed equity crowdfunding framework. Specifically, there appeared to be considerable concern around the demand for small firms to convert into unlisted public companies in order to access crowdfunding. The concerns centre on the cost and complexity.

1.18 During the public hearing, Treasury did acknowledge the concerns surrounding cost, recognising that start-ups and small businesses would be required to absorb costs in the 'thousands' to take the necessary steps to convert into a public company.

1 *Submission 15*, p. 5.

2 *Submission 7*, p. 2.

3 *Submission 8*, p. 2.

4 *Submission 10*, p. 3.

5 *Submission 12*, p. 4.

1.19 While we do accept the Bill provides limited regulatory relief from some of the burdensome consequences of being a public company, some of the submissions argue that this is hardly enough to overcome the cost.

1.20 The Government should embrace a lighter regulatory touch. It is for this reason the Opposition submits a dissenting report, as the substantive report failed to address the very real concerns raised with the Committee.

1.21 The Opposition believes it is important to usher in a new equity crowdfunding framework in Australia. We do not intend to block the Bill. However we do need to remove a major barrier to small firms accessing the equity crowdfunding system.

1.22 Section 738H (1)(a) should be amended to remove the restriction that limits crowdfunding to unlisted public companies. In its place, the Bill should merely allow small firms to access the Bill's Corporations Law exemptions from the point at which they enter into a legally enforceable agreement with an intermediary (crowdfunding platform) to hold an equity crowdfunding campaign.

1.23 The second change that should be made to increase the number of firms that can access equity crowdfunding would focus on lifting the assets and turnover caps, taking them from \$5m to \$10m.

1.24 As the Committee heard, the current \$5m cap on assets and turnovers concentrates risk and encourages retail investors to place their money in the highest risk early stage start-ups, losing all the benefits of diversification.

1.25 Labor agrees with the report recommendation to submit the equity crowdfunding laws to a review two years after the Bill receives Royal Assent.

Senator Chris Ketter

Deputy Chair

