



Employee Ownership
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Making it your business

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To: Senate Standing Committees on Economics

PO Box 6100

Parliament House

Canberra ACT 2600

20th January 2016

Dear Senators

Please note that this submission acts as an addendum to Alan Greig's letter dated 5th January

Employee Ownership Australia Ltd (EOA) has a role in encouraging and assisting new forms of business ownership in this country - including community owned social businesses - Employee Ownership Australia Ltd would like to submit the following Addendum to the "Inquiry into the provisions of the Corporations Amendment (Crowd-sourced Funding) Bill 2015".

EOA has been involved in and been responsible for assisting a number of smaller organisations in Crowd Sourced Equity fund raising discussions and understands the key issues that are raised in the process. The issue for crowd sourced equity funding also has some bearing on small business and their abilities to become fully or partly employee owned.

The key principle is that small entities: some start-up; some in first years of operation; some with a longer history; some at conception often need funding to take their idea or early stage idea to the next stage. Generally, these entities maybe too small or too unsophisticated for Angel or venture capital and so they rely on accessing funds from their community.

In order to fulfil the commitment to innovation, jobs and growing an energised economy it is imperative that businesses have access to the wider community and to raise capital that way. In essence what this results is a large number of investors, sometimes submitting small amounts of funding to assist the particular cause or entity, in return for equity. There are essentially two key barriers at the moment for those entities:

1. **50 non-employee shareholders limit in the Corporations Act 2001 s113:** This is a key barrier and only applies to non-public companies (so most Pty entities. Given the nature of crowd funding it can be prohibitive for the entities involved because the 50 shareholder cap could be relatively low if the fundraising amount is quite significant.
2. **The Prospectus Exemption from 20 individuals to 50 individuals:** When a company is looking to raise capital through equity issues they would need to either file a prospectus (at significant cost between \$30 – 100,000) or seek to rely on an exemption from the prospectus filing requirements in s708 of the Corporations Act, namely s708(1) (or less frequently the sophisticated investor exemption for high net worth individuals in s708(8). Note that these provisions apply to any entity including cooperatives. Most of the entities

seeking funding through crowd sourcing do not have the funds to file a prospectus or lesser disclosure statement.

In our previous letter one of the key points was to ensure that the overall measures reduce cost and complexity as a priority. Below are some important points to consider:

1. **Why there is concern in relation to the Public Company requirement:** Most companies only move themselves into the public company domain as a precursor to listing or when they reach a size that they are equivalent to a listed company. The key reason for this is the increased requirements on the company around reporting, disclosure, financials etc and the costs associated with this. One of the key costs is the requirement to have an auditor and audited accountants (which smaller companies may not need). This can be significant costs for a smaller organisation, from \$15,000 per annum. The financial statement and content requirements also may cause some concerns for entities that do not wish to give full disclosure for competitive advantage.
2. **Focus on the Key Issues and amend them rather than impose a new regime:** Rather than create a new public company regime for equity crowd funding it would seem less complex and easier for companies to implement to remove the key barriers to companies by amending sections 113 and 708(1). By amending them sensibly there would be a useful exemption to prospectus filing requirements and also a new non-employee shareholder limit that is more in line with the future shift to community funding models. The EOA has done some research with our expert's panel and there was general agreement to raise the number to 50 would meet market need. **EOA would recommend that the current cap in s708(1) be increased to 50 investors in 12 months up to a \$3 million cap.** In essence this would still amount to a small scale offering as the amount raised is limited to \$3 million. This would reduce the risk of misuse but still be in line with providing entities with sufficient access to working capital. The non-employee limit would also increase marginally.
3. **Overseas sources are easier and the risk is that companies will go offshore:** The barriers to raising capital are significantly less in other countries for example in New Zealand the Equitise platform used to raised capital has significantly less barriers to entry and has raised approximately \$580,000 for each of the 6 companies that have used it. In the US there is a \$1million raising in a 1 year period with no investor cap or \$5 million in any 12 month period provided that only 35 individuals are not accredited investors or a certain safe harbour offer with no cap, but some disclosure for less sophisticated investors and a cap on their number to 35.
4. **The amendments would also fulfil on the commitment to review employee share schemes in the Innovation Statement:** Both of the proposal in point 2 above also have reliance for employee share schemes and would help fulfil the commitment made in the Innovation agenda.

EOA would like to thank the Government for the opportunity to participate in this important Inquiry.

Yours sincerely

Angela Perry

Chair

Employee Ownership Australia Ltd

www.employeeownership.com.au