



9 January 2017

Committee Secretary
Crowd-sourced Funding Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee,

CORPORATIONS AMENDMENT (CROWD-SOURCED FUNDING) BILL 2016

Thank you for the opportunity to comment on provisions of the Corporations Amendment (Crowd-sourced Funding) Bill 2016.

As the Australian Small Business and Family Enterprise Ombudsman, I strongly support measures, such as this Bill, to increase the range of funding options available to small businesses seeking capital to establish, develop and bring their products and services to market.

Access to affordable, flexible finance is an ongoing and significant hurdle for small business in Australia. Traditional debt finance can be difficult to obtain, even in relatively modest amounts, and concentrates risk of failure on the borrower. In addition, the venture capital market in Australia is less mature than other developed economies. Crowd-sourced equity funding has the potential to fill the gap in Australian capital markets by providing high-risk venture capital to small businesses. At the same time it could expand opportunities for profitable early stage investment by retail investors (including other small businesses) in high growth start-ups. In our view, access to crowd-sourced equity funding should be as simple and widely available as possible, balanced with the need to give adequate protection to investors.

Promoting confidence in the crowd-sourced equity market

In February 2016, the former Office of the Australian Small Business Commissioner made a submission to this Committee's previous inquiry into the Corporations Amendment (Crowd Sourced Funding) Bill 2015. That submission emphasised the need to provide strong investor protections as part of the regulatory framework, noting that a crowd-sourced equity market can be expected to attract small, relatively

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unsophisticated and inexperienced investors to high-risk, generally illiquid venture capital-style projects.

It made the point that strong measures are needed not only to protect such investors individually, but also to maintain confidence in the crowd-sourced equity funding market and small business investing generally. If short-term growth is achieved but the market is not seen to have integrity, then the long-term result could be to reduce overall funding available for small business across the board.

Costs to be borne by intermediaries

For a small business seeking to use crowd-sourced equity funding, a key question is who should bear what proportion of regulatory costs, including investor protection measures. For example, under the proposed legislation, the cost of training, compliance, insurance and dispute resolution to be provided by intermediaries may create a significant barrier to entry which may dissuade new participants.

If the costs to be borne by intermediaries are too high not enough intermediaries will be attracted to the market to ensure healthy growth and competition. Established traditional financing entities, who have already acquired the appropriate licenses and insurance, would be at an advantage to simply offer crowd-sourced equity funding as an additional service on terms that are not, in fact, more affordable or flexible than the options already available to small businesses and innovative start-ups. This in turn will stunt the growth of a distinct market providing crowd-sourced equity funding services and deny a genuine additional source of funding for small businesses.

Ultimately, intermediaries will pass on substantial costs to businesses seeking to raise funds, making crowd-sourced funding less accessible and attractive. For small businesses seeking to access alternative funding the costs should be kept as low as possible.

Supporting demand for crowd-sourced equity funding

No matter how well designed the regulatory framework around crowd-sourced equity funding, it is still true that 'it costs money to raise money'. For a crowd-sourced funding market to be sustainable as a relatively low-cost niche in the financing landscape, the cost of accessing funding opportunities must be within the reach of businesses at the smallest, newest end of the scale.

Such businesses are typically under financial and human resources pressure to meet a formidable list of strategic and operational objectives, simply in order to survive long enough to be able to use any capital they raise. For this reason, fostering demand in a new crowd-sourced funding market depends on consideration being given to the whole context in which small and start-up businesses operate. The overall business environment must provide sufficient support and incentives to emerging businesses to help them get to the point of being ready to engage in fundraising in the first place.

Access for proprietary companies and timing of amendments

Proprietary companies participating in crowd-sourced equity funding is especially complex. As noted in the prior consultation papers around 99% of Australian companies are proprietary companies and a majority are small businesses. Hence, any effective regulatory framework to enable crowd-sourced funding as an option for small Australian businesses must extend to those that are now structured as proprietary companies.

The current proposed amendments apply only to unlisted public companies with additional regulations to be developed that will affect how these amendments will operate. The government has indicated that a further round of amendments addressing the participation of proprietary companies is likely to be forthcoming in the next few months.

This means that the vast majority of potential small business users of the new framework must wait for another, soon-to-be-announced round of amendments and regulations before they can begin to make the necessary decisions and adaptations, including possibly taking the decision to switch legal structures and become a public company. The incomplete nature of the current proposal imposes a burden of uncertainty on small businesses who may wish to avail themselves of new fundraising opportunities.

Thus, while we do support this legislation, if a further round of amendments is indeed only months away, we believe it would be simpler, more certain and more straightforward for small business if the current amendments were held off so that the full package of amendments were introduced at the same time.

We hope these comments assist you and would be happy to discuss these matters further.

Yours sincerely,

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman