

# Chapter 1

## Introduction and overview of the bill

### Referral and conduct of the inquiry

1.1 On 24 November 2016, the Treasurer introduced the Corporations Amendment (Crowd-sourced Funding) Bill 2016 (the bill) into the House of Representatives. On 1 December 2016, the provisions of the bill were referred to the Economics Legislation Committee for inquiry and report by 13 February 2017.<sup>1</sup>

1.2 The committee advertised the inquiry on its website and received 20 submissions. A list of submissions received is at Appendix 1. The committee did not hold any public hearings for this inquiry.

### Terminology

1.3 Crowd-sourced funding (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.<sup>2</sup>

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.

### Previous committee inquiry

1.5 The bill is similar to the Corporations Amendment (Crowd-sourced Funding) Bill 2015 (the 2015 bill) which was introduced in the previous Parliament. The 2015 bill was referred to the Economics Legislation Committee and the inquiry report was tabled on 1 March 2016.<sup>3</sup> The 2015 bill lapsed at the dissolution of the Senate and the House of Representatives on 9 May 2016 for a general election on 2 July 2016.<sup>4</sup>

1.6 In its report, the committee examined the extensive reviews and public consultation processes that had informed the proposed CSF framework outlined in the 2015 bill. The committee also considered the following matters which were raised in submissions:

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1 *Journals of the Senate*, No. 23—1 December 2016, p. 752.

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

3 Senate Economics Legislation Committee, *Corporations Amendment (Crowd-sourced funding) Bill 2015 [Provisions]*, 1 March 2016.

4 Corporations Amendment (Crowd-sourced Funding) Bill 2015  
[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bId=r5588](http://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r5588) (accessed 2 February 2017).

- eligible CSF issuers—the requirement to be a public unlisted company and the asset test;
- eligible offers—the cap placed on the amount that can be raised—\$5 million—and the three-month period during which the offer is open;
- offer documents and their required contents—consent requirements, warnings on risk, restrictions on advertising;
- intermediaries—the requirement to hold an Australian financial services license (AFSL) and their gate keeping responsibilities;
- investors and investor protection—the cap on amount that can be invested, cooling-off period and financial literacy; and
- monitoring and reviewing of the legislation.<sup>5</sup>

1.7 The committee recommended that the bill be passed, with the government to monitor carefully the implementation of the legislation and undertake a review of the legislation two years after its enactment.

## Overview of the bill

1.8 As the committee noted in its previous report, 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.

1.9 A number of recent reviews have identified CSF as a means of giving emerging, innovative businesses access to the capital they need to establish and grow.<sup>6</sup> The purpose of the bill is to facilitate crowd-sourced equity funding in Australia. The Explanatory Memorandum (EM) 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.<sup>7</sup>

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.<sup>8</sup>

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5 Senate Economics Legislation Committee, *Corporations Amendment (Crowd-sourced funding) Bill 2015 [Provisions]*, 1 March 2016.

6 Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2016 (hereafter 'Explanatory Memorandum'), p. 7.

7 Explanatory Memorandum, p. 3.

8 Explanatory Memorandum, p. 10.

1.11 The bill's EM 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.<sup>9</sup>

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 of facilitating crowd-sourced equity funding. It is a key feature of the government's *Growing Jobs and Small Business* package.<sup>10</sup>

1.14 Schedule 1 of the bill would amend the Act and establish a regulatory framework to facilitate CSF 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.<sup>11</sup>

1.15 Schedule 1 also seeks consequential amendments to the ASIC Act to expand the range of financial services covered 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.

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9 Explanatory Memorandum, p. 8.

10 See <http://www.business.gov.au/small-business/Pages/jobs-and-small-business-package.aspx> (accessed 2 February 2017).

11 Explanatory Memorandum, p. 3.

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

### ***Amendments to the proposed CSEF framework***

1.18 Following the introduction of the 2015 bill into Parliament in December 2015, this committee's inquiry into the 2015 bill and broad government consultations, including with its FinTech Advisory Group, the government decided to adjust the CSEF framework.<sup>12</sup>

1.19 In March 2016, the government indicated that it was considering two potential amendments to the CSEF framework: increasing the eligibility cap from \$5 million to \$25 million and reducing the cooling-off period from five working days to 48 hours.<sup>13</sup> Following further consultation, the government decided to proceed with these amendments.<sup>14</sup>

### ***Commencement***

1.20 The amendments in schedules 1 and 2 to this bill will commence on a day to be fixed by Proclamation. If the amendments do not commence within six months from the date of Royal Assent, they will commence on the day after the end of the period of six months after Royal Assent. The amendments in schedule 3 will commence on the day after Royal Assent.<sup>15</sup>

### ***Main Stakeholder Groups***

1.21 The EM notes that there are three main stakeholder groups with an interest in the development of a framework that removes the regulatory impediments to CSEF:

- Companies seeking to raise funds stand to benefit from the establishment of a CSEF framework. This is particularly the case for innovative firms and start-ups, which typically have more difficulty obtaining bank debt finance than established firms, but for whom existing equity fundraising is prohibitively expensive. These companies would be issuers of CSEF offerings.
- Individuals seeking new opportunities to invest stand to benefit from the increased range of financial products that CSEF would present. These individuals would be able to diversify the range of products they invest in, and would be investors in CSEF offerings.
- A number of organisations are seeking to establish and operate a platform that allows issuers to list their CSEF offerings, bringing

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12 Explanatory Memorandum, paragraph 9.65.

13 See <http://fintech.treasury.gov.au/files/2016/03/Fintech-March-2016-v3.pdf> (accessed 7 February 2017).

14 Explanatory Memorandum, paragraph 9.139.

15 Explanatory Memorandum, p. 4.

together issuers and potential investors. These organisations would operate as intermediaries in the CSEF market.<sup>16</sup>

## Scrutiny of bills

1.22 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.

1.23 The Standing Committee for the Scrutiny of Bills (the standing committee) examined the Bill, referring a question to the Treasurer. That the committee was primarily concerned with the delegation of legislative power effected by the proposed new paragraph 738G(1)(f), which allows the regulations to prescribe other requirements in relation to the securities or the CSF offer. The committee notes that the standing committee drew attention to this provision, stating that it may be considered to delegate legislative powers inappropriately and noted that the explanatory materials should clearly explain the rationale for the delegation of legislative power.<sup>17</sup>

1.24 In his response to the standing committee, the Treasurer advised that:

...the regulation making power is necessary as there may be a need for flexibility, and a quick response, to prescribe additional eligibility requirements for CSF offers, and different types of securities, depending on how the market develops.<sup>18</sup>

1.25 The standing committee requested that the key information provided by the Treasurer be included in the EM, noting the importance of these documents as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation. In light of the information provided and the fact that the regulations will be subject to parliamentary disallowance, the standing committee made no further comment on this matter.<sup>19</sup>

1.26 The committee notes that the bill contains provisions designed to ensure that the legislation can be applied flexibly to the rapidly changing CSF environment.

## Regulation impact statement

1.27 The bill's EM states:

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16 Explanatory Memorandum, paragraph 9.7.

17 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 10 of 2016*, 30 November 2016, pp. 2–3.

18 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, p. 53.

19 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2017*, 8 February 2017, p. 53.

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.<sup>20</sup>

1.28 Furthermore, the EM notes that the CSF model in the bill is likely to have the highest net benefit of the options considered by the government and has 'lower estimated aggregate regulatory costs'.<sup>21</sup>

### **Human rights**

1.29 According to the EM, 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'.<sup>22</sup> The Parliamentary Joint Committee on Human Rights made no comment on the provisions of the bill.<sup>23</sup>

### **Acknowledgements**

1.30 The committee thanks all groups and individuals who took the time to make a written submission.

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20 Explanatory Memorandum, pp. 4–5.

21 Explanatory Memorandum, paragraph 9.129.

22 Explanatory Memorandum, paragraph 10.11.

23 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report*, Report 10 of 2016, 30 November 2016, p. 8.