



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

6 June 2017

Ms Laura Llewellyn  
Manager  
Financial Innovation and Payments Unit  
Financial System  
The Treasury  
Langton Crescent  
PARKES ACT 2600

BY EMAIL: [csef@treasury.gov.au](mailto:csef@treasury.gov.au)

Dear Ms Llewellyn,

**RE: EXTENDING CROWD-SOURCED EQUITY FUNDING (CSEF) TO PROPRIETARY COMPANIES**

The Office of the Australian Small Business and Family Enterprise Ombudsman strongly supports the proposed legislation to allow crowd-sourced equity funding for proprietary companies.

Our prior submissions, particularly the submission dated 9 January 2017, set out in detail our concerns on the original legislation. We note that existing laws, rules and frameworks to regulate publically sourced equity funding have served the Australian economy well. However, they lack functionality in response to evolving business practices.

Innovative small businesses, particularly start-ups, are competing fiercely with better-resourced local and global competitors to commercialise their ventures into profitable businesses that support and grow the Australian economy. Many of these small businesses adopt the structure of proprietary companies that face existing prohibitions on public fundraising. There are a number of reasons for doing this including greater privacy and control over business affairs as well as less regulatory and administrative burden for reporting.

For small businesses which adopt this legal structure, they are able to access traditional sources of funding through loans from licensed financial institutions or equity raising through private investors (with a cap of 50 non-employee shareholders providing a limit to equity funding ). We welcome this proposed legislation as it remove barriers to growth faced by these small proprietary companies seeking access to new sources of finance.

We consider the proposed amendments to allow proprietary companies the ability to raise equity from the public through crowd-sourced equity funding as an essential next step to support small businesses. We recognise that access to public funding by

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small businesses must also be weighed against the requirement for public protections. These protections exist in the *Corporations Act (C'th) 2001* (the Act) and require these businesses to be public companies meeting disclosure and reporting obligations. These requirements allow the Australian Securities and Investment Commission (ASIC) and investors sufficient transparency to make informed investment decisions and monitor risks.

### ***Proposed Amendments***

Having reviewed the explanatory memorandum and the proposed legislative amendments we consider the proposed amendments in the bill provide a reasonable balance between the needs for small businesses to raise crowd-sourced equity funding and the need to protect the interests of these investors. The extension of the requirements of Chapter 2E from the Act to these proprietary companies provides investors with strong protections against related party transactions and any actual or perceived conflict of interest between decisions by company directors and the interests of their investors. Furthermore the extension of some shareholder protections to crowd-sourced investors is appropriate.

We would seek to raise concerns about potential outcomes regarding the sale of crowd source equity shares after the original offer. Our concern rests on the outcome if the securities are sold or transferred as the new holders of those securities will no longer be crowd sourced funding (CSF) shareholders under the proposed amendments. Consequently, these shareholders will be considered within the 50 non-employee shareholder threshold under the Act. This could be a trigger to force a proprietary company to transform its legal form to a public company. Such a transformation may not be in the interests of the company and can carry a significantly greater financial and administrative burden.

Such a trigger could be used, either unconsciously or maliciously, to force a company in a direction it may not wish to take simply because a CSF shareholder wished to divest themselves of their offering shares. The bill should consider a mechanism which would allow CSF shareholders to divest shares at a later point without creating a trigger to change the company's legal form. This could be requiring the shareholder to divest the shares only at subsequent CSF events (additional funding) or allowing a subsequent investor to be also classified as a CSF shareholder.

In addition, we remain concerned that the cost of crowd-sourced equity funding for proprietary companies should remain proportionate to the benefits. To be a real alternative to debt financing, we strongly advocate for well-considered and limited administrative burden to minimise the costs of using this form of funding.

The decision to extend this financing option to proprietary companies is a significant step. The policy and regulatory challenge is to maintain a sensible framework to enable access by proprietary companies and protect their investors without imposing the regulatory burden of a publically listed company.

We trust these comments will assist you and we welcome the opportunity to discuss these matters with you further if required. Please feel free to contact either myself or Mr James Strachan, by telephone 02 6263 1537 or email [james.strachan@asbfeo.gov.au](mailto:james.strachan@asbfeo.gov.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kate Carnell', written in a cursive style.

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman