Introduction

Dear Ms Meghan Quinn,

Well done to the government for investigating CSEF. I have answered the questions from the point of view of a startup founder who has concerns for the future of our country and society. Questions, which fall outside my field of knowledge, interest or expertise, have been marked so.

Some people may be complaining about the pace of action, but I think it is important to ensure that a system is fair and robust. This can only be done with adequate investigation and research. Most people are talking about the CSEF from the point of view of small business and startups. This is great, it would allow them greater flexibility is raising funds when needed. However there is an aspect that I think has been missing from the discussion so far.

A CSEF scheme could act as a much needed catalyst for societal transformation. A transformation that would see Australia become more supportive of innovators which would lead to more people wanting to become innovators and take up STEM to do so. The challenge is changing the mindset of unsophisticated investors. They look to housing or blue chips for investment, with good reason. These categories typically make returns and are relatively secure (although recent and future events have and may challenge this notion). The problem is that these investments do not encourage innovation on a broad scale. Risk is an intrinsic part of innovation, but how do we give people more appetite for it? And how can CSEF help?

I propose a system similar to the UK SEIS program I believe it will lead to a more innovative society and also spread the resulting wealth to more Australians. I will assume the reader is familiar with the SEIS. It will benefit: startups, investors and future innovation.

STARTUPS

Being a CSEF scheme it will obviously benefit startups by giving them an alternate form of investment. As I outline in this submission, this is a good form of investment because it allows small investments from multiple investors. This lessens the risk of dilution of control for the founders while still raising vital funds. It also opens up investment for startups that don't fit the VC or angel mould.

INVESTORS

If a SEIS like program is introduced, it provides tax relief for investors. This will reduce the risk of investing in startups making them more attractive. If this is done in conjunction with increasing the shareholder limit and imposing an investment ceiling, risk can be spread and liquidity increased while limiting risk. Technology could even be used to allow investing in blocks of startups, where an investment is spread over many startups - further spreading the risk of failure. Not everyone is an innovator but a scheme like this allows more people to take part and benefit from the innovation economy.

FUTURE INNOVATION

As startup investment becomes more common, instead of hearing their relatives talking about investment properties or blue chips, children will be hearing about startups. Children will be encouraged by osmosis and directly by relatives to gain the STEM skills required for entry into fields that facilitate innovation so that they can be part of the growth.

So we have: capital for startups, greater wealth being shared with more people, future innovators.

The government loses around $15B to negative gearing a year and is now talking about tax cuts to combat bracket creep. These are great for real estate, construction and workers, but they won't increase innovation. This won't drive people into STEM study or fields. This is short-term growth thinking, it won't go down in history and people won't be talking about it in decades to come.

We have an opportunity to create a focus on innovation that will improve our present and future, I hope the government isn't merely "keeping up with the Jones'" by introducing a CSEF. I hope the government takes the opportunity to prevent Australia's decline into a nation of lazy, entitled consumers and turn us again into a prosperous nation where everyone no matter their station is contributing to an innovative future through work, commitment and shared purpose.

Best wishes

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Consultation questions

Appropriateness of the shareholder limit

1
Should the law be amended to increase the permitted number of non-employee shareholders in a proprietary company and what would be an appropriate limit? Or do companies with more than 50 non-employee shareholders have a sufficiently diverse ownership base with limited access to information or ability to influence the affairs of the company to justify the greater governance requirements currently placed on them?

Yes the law should be amended. The limit should be a limit on capital raised not number of investors. A limit on capital raised gives certainty to the businesses. I understand that an investor limit is to limit risk. More investors for a given amount would actually lower the risk per investor as the amount at risk would be lower. Defining an investment limit per investor per company could be used as a risk limitation mechanism.

2
What are the benefits and risks? For example, would raising the limit expose risks to shareholder protection?

Benefits
- Raising the limit would increase the ability of business to grow without diluting their control of the business to sophisticated investors
- It could open investment up to startups that fall outside the 'formula' of VC and other sophisticated investors
- Share the opportunity to invest in high growth areas with a broader area of society instead of already wealthy investors (ie unsophisticated investors)
- More investors with smaller holding per startup may increase the liquidity of the shares, making it easier for investors to unload risk
- By raising the capital limit and /or number of investors, this would enabling investment in blocks of startups (where investors invest in a block of startups, spreading their risk across multiple startups instead of putting all their eggs in one basket) spreading investor risk

Risks
- Startups by their nature are a risk, therefore so is investing in them
- If not properly regulated/administered unscrupulous people could set up companies just to get investment, then go bust.

3
Have there been changes to market practice or the broader operating environment such that shareholders and investors now have greater access to management or information about a company's performance? What are the ways by which management now remains accountable to shareholders or shareholders otherwise have access to information about a company?

I don't have knowledge of this.
4
If the shareholder limit were increased, how should the law treat public

companies which become eligible to be registered as proprietary companies but have issued shares under a disclosure document?

Shares issued under a disclosure document should be added to the proprietary companies share register and treated as shares offered under the new system. There will need to be checks and measures to ensure everyone is treated fairly in a transition.

Small scale offerings and other exceptions to the disclosure requirements

5
Should the law be amended to increase the 20 investor limit and/or the $2 million cap? What would be an appropriate limit? Should the $2 million cap be linked to increase in line with the consumer price index (CPI)?

The law should be amended. The limit should be increased to $5 million to allow rapid growth of startups. There should be no limit on the number of investors, this will prevent dilution of control for companies and also increase liquidity of shares.

6
What are the benefits and risks of increasing the 20 investor limit and/or the $2 million cap? Who would benefit or bear the risk? Could there be unintended consequences from altering these limits, for example in terms of the definition of a sophisticated investor?

Business and investors stand to benefit. With easier access to investment in startups, unsophisticated investors will benefit from access to high growth investment. Startups by their nature are risky, so is investing in them. But with a higher number of investors, liquidity should increase making it easier to offload risk. Business will benefit from access to increased capital limit. An increased shareholder limit will mean they don't have to be as picky with their investors and can focus on growing the business.

Unintended consequences could occur if the system is left unchecked. Unscrupulous people could start businesses with the goal of raising funds to go bust.

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- It could open investment up to startups that fall outside the 'formula' of VC and other sophisticated investors
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- By raising the capital limit and /or number of investors, this would enabling investment in blocks of startups (where investors invest in a block of startups, spreading their risk across multiple startups instead of putting all their eggs in one basket) which would spread investor risk

Risks
- Startups by their nature are a risk, therefore so is investing in them
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7

Could other exceptions to the requirement to issue a disclosure document provide benefits to small proprietary companies if amended?

If the funds are raised through a certified channel (CSEF platform, accountant, lawyer, other designated professional), these channels would have to meet some form of minimum information gathering requirement to enable investors to make an informed choice.

Increasing flexibility in capital raising

8

Would increasing the shareholder limit for proprietary companies and/or expanding the small scale offerings exception to the disclosure requirements provide small proprietary companies with sufficient additional flexibility to raise capital?

Yes.

Crowd-sourced equity funding

9

Should proprietary companies be able to access CSEF? What are the implications for the corporate law framework of permitting proprietary companies to do so?

Yes they should have access to CSEF. Assessing the implications is outside my area of expertise.

10

If the shareholder limit is not changed for all proprietary companies, should proprietary companies be able to access CSEF?

If so, should the shareholder limit be changed specifically for proprietary companies using CSEF? What are the benefits and risks of this approach? Would the benefits outweigh the additional complexity of increasing the shareholder limit for a subset of proprietary companies?

If the shareholder limit were to be increased only for proprietary companies using CSEF, is 100 non-employee shareholders an appropriate cap?

I would prefer to see a funding limit than a shareholder limit. Limiting shareholders prevents the spread of risk and possibilities of increased liquidity as tech improves in this field.
It also prevents more people with small investment budgets taking part and reduces the businesses option of reducing dilution.

I'd prefer a one rule for all approach, both from a system administration point of view and the effect it would have on participants as they grow.
Benefit is:

- That it is fair to everyone
- If a business changes it's type then the same rules apply

Risk of having separate rules for proprietary business:

- If the system is unfair it may be undone in the courts
- It could create extra admin in the future for businesses as they grow/contract/split/diversify
- Extra admin for the system

11

Should any increase in the shareholder limit solely for proprietary companies using CSEF be temporary, based on time and size limits? What are the benefits and risks of this approach?

If the increased shareholder limit is temporary, what arrangements should apply when a company is no longer eligible for the higher shareholder limit (owing either to the expiry of the time limit or exceeding the caps on company size)? Should it be required to convert to a public company? Or should it have the option to conform with the general proprietary company obligations, including the non-employee shareholder limit?

Any increase in shareholder limits should have a set period of review. The benefit of a review is that if there is an issue it can be rectified. I don't think things such as time limits should be imposed with incomplete information. We don't have enough information to arbitrate time limits at this point.

I think this question is making a case for my earlier point of having one system for all. It is already adding complexity before the system has even been fully discussed. However, if the proprietary company is no longer eligible for the higher shareholder limit, they should be given a choice and time frame to either:

- Covert to a public company
- Confirm with the general proprietary company obligations

12

If permitted to access CSEF, should proprietary companies using CSEF be subject to additional transparency obligations when raising funds via CSEF?

Do you agree with the proposals for annual reporting and audit? Should these be implemented by requiring proprietary companies that have used CSEF to comply with the obligations of large proprietary companies? Should any other obligations apply?

Given the Government has committed to introducing a CSEF framework for public companies that will include certain reporting exemptions, what are the benefits of permitting proprietary companies to use CSEF when they would be subject to additional transparency obligations?

Do you agree that these obligations should be permanent?

I think a combination of limit on individual investors amount per business to limit loss and an increase in transparency would be beneficial. Ideally a CSEF system would include a reporting mechanism, either through a self managed web portal or an accountant/lawyer managed system.
I think the same system should apply to all companies, ergo the same reporting. Most companies making use of the CSEF will be looking for rapid growth, so it makes sense to have one reporting requirement so they don't have to change/learn a new system when they scale.

The advantage of the extra transparency obligations is access to funds that were hitherto unobtainable.

I think the obligations should have a set period of review with a final decision withheld until such review.

13
Do you consider that an annual fundraising cap of $5 million, and eligibility caps of $5 million in annual turnover and gross assets, are appropriate for proprietary companies using CSEF? If not, what do you consider would be appropriate fundraising caps and eligibility criteria?
I think this is reasonable and should allow a wide range of startups ample capital to grow.

14
Are there any other elements of the CSEF framework for public companies that should be amended if proprietary companies were permitted to use CSEF?

I have no visibility of this issue.

Making an annual solvency resolution

15
Should the requirement to make a solvency resolution be removed or modified? Is there a more effective way to remind directors of their obligations? For example, would aligning the timing of the resolution with tax or other obligations with fixed timing reduce the regulatory burden?

No, review time is a good time because it allows the directors to focus on the company and its responsibilities. Bundling with other activities such as tax risks reducing the resolution to a box ticking exercise.

16
What is the extent of the burden imposed on small proprietary companies to make the resolution, in terms of time and/or financial cost?

I don't have experience or knowledge of this.

17
What is the value to directors of the annual solvency resolution in reminding them of their ongoing solvency obligations?

I don't have experience or knowledge of this.

18
Would removing the requirement to make a solvency resolution be likely to increase rates of insolvency or business failure among small proprietary companies? Would unsecured creditors be exposed to increased risk? Are there other risks associated with removing the requirement?
Could the risks be mitigated adequately by ASIC reminding directors periodically (say, annually) of their duty to prevent insolvent trading by the company? Are there other ways to mitigate the risks?
It would raise the possibility of increased insolvency rates. Small companies are focused on the business and can lose track of regulatory requirements unless it is part of a defined process. The resolution requirement reminds them of their obligations and acts as a periodic refresher.

Removing the requirement could lead to a devaluing of solvency and more risky business practices.

Maintaining a share register

19
What is the extent of the burden imposed on small proprietary companies to establish and maintain a share register, in terms of time and/or financial cost?

If the number of investors is limited to 100, this would not be very burdensome. Like most administration it will come down to the individuals time management and organisational skills. If the admin is done as shareholders buy/sell, the burden would be minimal. If the business leaves the admin until it builds up, it could be quite burdensome for a condensed period of time.
20
What is the value to small proprietary companies of maintaining a share register? Would companies need to maintain similar records even if the law did not require them to?

I would see it as valuable to know the state of the business. If the business were actively trading on the CSEF, they would need to maintain records to adhere to the rules. I would do it to maintain awareness of my business and be able to respond rapidly if a shareholder incident or opportunity occurred.

21
Should the requirement to maintain a share register be removed for small proprietary companies with up to 20 shareholders, given that ASIC's records duplicate the information in the share register of such companies?

Yes, duplication is only the friend of memory and writing implement manufacturers. Small proprietary companies should be able to access the ASIC record through ASIC Connect or similar, in lieu of keeping a share register.

22

If the requirement were removed for small proprietary companies with up to 20 shareholders:

• how could share ownership be transferred? Could transfer take effect via a different mechanism, such as on notification to ASIC or on acknowledgment from the company?

• how would shareholders be able to ascertain the identity of the other shareholders of a company? Would it be reasonable to require shareholders to obtain the information from ASIC (including paying the required fee)?

Are there other situations or circumstances where small proprietary companies with up to 20 shareholders need to have an up-to-date share register?

Share ownership could be transferred using the current mechanism.

I think it would be fair for potential investors to be given access to the company share holders register. Any fees liable should be paid by the potential investor.
They need an up to date register when:

- They have a new potential investor. They need it to comply with regulations and to know the companies current position
- There is a possibility of a sale
- An investor wants to sell their share or portion of.

23

Alternatively, should the requirement for small proprietary companies to maintain a share register be modified? If so, how? For example, should small proprietary companies with up to 20 shareholders continue to retain a share register but no longer be required to notify ASIC each time shareholder details change?

Either/or. Having records with ASIC from the beginning will make growth less burdensome. However not all small proprietary companies want to grow, so they shouldn't be burdened unnecessarily. Perhaps a share register should be optional for companies up to 20 shareholders. This will give growth-oriented companies the opportunity to streamline processes early and relieve non growth companies of the burden. Also good to have an offsite record.

24

Would removing/modifying the requirement to maintain a share register be likely to increase the risk of minority shareholder or property rights disputes for small proprietary companies? Are there other risks associated with removing the requirement?

Not necessarily, it would make resolution a longer process though. Individual shareholders would have to all meet to compare their proof of ownership. There is a risk that with decentralised shareholder records error can creep into the ownership records of the business. It may be worth investigating the block chain as an method of storing ownership records.

Facilitating the execution of documents

25
Does the current law cause problems and/or increase compliance costs for sole director/no secretary companies and their counterparties in executing documents? What is the extent of the burden imposed on sole director/no secretary small proprietary companies in terms of time and/or financial cost?

I don't have experience or knowledge of this.

26
Is it appropriate to amend the law to specify that a company with a sole director and no company secretary may execute a document without using a common seal if the document is signed by the director or with a company seal if the fixing of the seal is witnessed by the director?
Are there any risks associated with this approach? Are there any alternative approaches?

This seems fair. As long as the sole director is aware of the responsibilities that would normally be carried by the secretary (or themselves if they were also the secretary). The cost saving outlined in the report seem to justify it.

27
Is there an issue regarding split execution? What is the extent of the burden imposed on small proprietary companies in terms of time and/or financial cost?
What are the benefits and risks of specifying in the law that split execution is acceptable?

It should be allowed. This should be clarified. Many businesses are located in several places. In our case, each of our team are separated by at least 100kms.

28
Is there an issue regarding the execution of deeds by foreign companies? What is the extent of the burden imposed on small proprietary companies in terms of time and/or financial cost?
Should the UK approach be adopted in the Corporations Act? Should a similar approach be taken to other bodies corporate? What are the benefits and risks?

This is not an area I have experience in. If the UK approach has proven to lessen the burden to parties involved and hasn't had a negative impact on business it should be considered.

Completing and lodging forms with the regulator

29

Could any forms which are used by small proprietary companies and prescribed by the Corporations Act or Corporations Regulations be removed, amended or streamlined to reduce the compliance burden? How much time/money would it save you?

I don't have experience or knowledge of this.

Other ways to reduce compliance costs

30

Are there any other requirements under the Corporations Act which impose unnecessary compliance burdens on small proprietary companies? What is the extent of the burden in terms of time and/or financial cost? How could the burden be reduced?

I don't have experience or knowledge of this. If we could leverage technology to reduce repetition and bring together required information it could reduce not only the workload of compliance but the emotional labour of the task. It may be worth investigating the block chain as a mechanism for record keeping.