



30 April 2019

Nathania Nero
Senior Policy Adviser
Consumer and Corporations Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: ESSreforms@treasury.gov.au

Employee Share Scheme Consultation Paper 2019

Culture Amp Pty Ltd (**Culture Amp**) welcomes the opportunity to provide feedback in relation to the Government's consultation paper on employee share schemes released in April 2019 (**Consultation Paper**).

Culture Amp is a Melbourne-based employee engagement and performance SaaS software business with offices in San Francisco, New York and London. Incorporated in 2011, Culture Amp currently has 385 employees and approximately 2,000 customers globally. It successfully conducted Series D funding in 2018.

1. Consolidating and simplifying existing exemptions and ASIC relief

Culture Amp supports the simplification of statutory exemptions. Our own experience has been that navigating the plethora of regulation in order to establish an ESS requires significant professional advice (which comes at a significant cost) and administrative resources.

However, we also recognise the need for flexibility and agility to allow the regulatory landscape to continue to evolve and develop over time. The industry continues to change, particularly in the context of businesses (like Culture Amp) with a significant portion of their employees located in overseas jurisdictions such as the US and the UK. The challenge of trying to develop an ESS which both complies with multiple regulatory regimes and meet employee and market expectations for ESS (which have traditionally been different in Australia and the US, but which are becoming increasingly consistent over time) is complex and important.

Culture Amp supports a simplified regime so long as that regime (proposed to be set out in the Corporations Act) maintains flexibility with regard to elements such as (for

example and without limitation) the limit on the amount of offers (currently \$5,000, proposed to be increased to \$10,000); and the limitations on the current types of financial products able to be offered under ESS.

Without this flexibility, any advantage received or burden eased through the simplification process will ultimately be ineffective.

2. Increasing the Offer Cap per employee

Culture Amp strongly supports increasing the offer cap per employee from the current cap of \$5,000. Our recommendation would be that this cap is increased to \$20,000.

As set out in the Consultation Paper, we agree that the administrative costs in implementing and managing an ESS are significant. The per employee cap of \$5,000 makes those costs very hard to justify and simply doesn't allow us to provide an incentive through the ESS which meets market needs.

Culture Amp believes in being, wherever possible, up-front and transparent with our employees. We understand and appreciate the Government's concern to manage employee risks and we support the existing ESS prescribed minimum employee disclosures. As the industry matures, ESS is becoming a normal (or even expected) employee benefit. This needs to be subject to appropriate regulation in order to properly protect employees. It also needs to allow growth and flexibility within that regulated environment. In our view, the current environment does not sufficiently allow for such growth and flexibility. In particular the \$5,000 value cap under CO 14/1001 for offers made to employees of unlisted bodies is a significant limitation which limits the benefit of this relief instrument. As a result, we risk lagging behind our international competitors and failing to attract the best candidates, both globally and in Australia.

Increasing the per employee cap to \$20,000 gives enough scope for company growth whilst continuing to meet market expectations around ESS. Senior Managers should continue to be excluded from this cap (the rationale behind this exclusion makes sense).

3. Facilitating the use of Contribution Plans

Culture Amp supports the ability for contribution plans to be used to fund the acquisition of financial products for an ESS of unlisted companies.

Any tool or mechanism which allows the industry to attract and retain the best employee talent in a highly competitive global environment is welcome.

In our view, a cap on contribution similar to the employee cap discussed above, would make sense, as would a valuation requirement above a prescribed cap.

4. Expanding the exemption from public access to disclosure documents

Culture Amp supports all of the proposed expansions set out in Table 2 on page 15 of the Consultation Paper. The expansions address our existing concerns, particularly relating to the 10 year incorporation period. We agree that this period is restrictive and often does not accurately reflect the real age of the business. Turnover is a better way to determine eligibility.

Thank you for considering the feedback contained in this submission. Please contact me or Culture Amp's General Counsel, Sarah Tinsley, on 0412 004 642 or sarah.tinsley@cultureamp.com with any questions, if you require further information or wish to discuss any issues raised in this submission.

Yours sincerely

Didier Elzinga
Founder and CEO
Culture Amp