Corporations Amendment (Crowd-sourced Funding) Bill 2015

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Date introduced: 3 December 2015
House: House of Representatives
Portfolio: Treasury

Commencement: Schedules 1 and 2 of the Bill will commence on a day to be fixed by Proclamation or six months after Royal Assent, whichever occurs first. Schedule 3 will commence on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.
Purpose of the Bill
The Corporations Amendment (Crowd-sourced Funding) Bill 2015 (the Bill) seeks to amend the Corporations Act 2001 (Cth) to:

• establish a framework to facilitate crowd-sourced equity funding (CSF) offers by small unlisted public companies
• provide new public companies that are eligible to crowd fund with temporary relief from reporting and corporate governance requirements that would usually apply, and
• enable the Minister to provide that certain financial market and clearing and settlement facility operators are exempt from specified parts of the Australian Market Licence and clearing and settlement facility licensing regimes.

The Bill seeks to amend the Australian Securities and Investments Commission Act 2001 (Cth) to make consequential amendments.

Structure of the Bill
The Bill has three Schedules. Schedule 1 to the Bill seeks to amend the Corporations Act to create a framework to facilitate CSF in Australia. The new framework covers:

• 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. 2

Schedule 1 to the Bill also seeks to make consequential amendments to the Australian Securities and Investments Commission Act 2001 (ASIC Act) to include ‘crowd-funding service’, as defined in the Corporations Act, in a range of financial services covered by the ASIC Act. 3

Schedule 2 to the Bill seeks to amend the Corporations Act to provide new public companies that are eligible to crowd fund with temporary relief from the reporting and corporate governance requirements that would usually apply. 4

Schedule 3 amends the Corporations Act to provide greater flexibility in the Australian Market Licence (AML) and clearing and settlement facility licencing regimes. 5

Background
Crowd-sourced equity funding (CSF) is a relatively new concept, and is enabled by the rise of internet technologies. As the name suggests, it allows businesses to obtain capital from a large number of investors (that is, a crowd) through an online platform, where each investor typically contributes a small amount of money in return for an equity stake in the business. At its most basic level, CSF allows people to invest in unlisted shares issued by businesses.

Assessments of Crowd-sourced funding in Australia
Consultations on the provisions of the Bill began in late 2014, following the release of the Treasury Discussion Paper on Crowd-sourced Equity Funding. 6 This paper sought to canvass stakeholder opinions of two alternative models for a CSF framework, and presented the impact analysis of both models as well. The first of these is the

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1. The term ‘Crowd-sourced funding’ also refers to public appeals for financial support for a wide range of activities and mechanisms. This Bill is confined to equity funding only.
3. Ibid.
4. Ibid.
5. Ibid.
model implemented in New Zealand, while the second is the model proposed by the Corporations and Markets Advisory Committee (CAMAC) in its Crowd Sourced Equity Funding Report.\(^7\)

Over 40 submissions were received in response to the Treasury discussion paper, and two stakeholder roundtables were organised to discuss the design of the framework. Overall there was broad support for an integrated model that combined elements from both New Zealand’s and CAMAC’s models. The proposed framework was outlined in a separate Treasury consultation paper in August 2015.\(^8\)

In addition to the initial stakeholder submissions and roundtables, targeted consultations were also undertaken on the draft legislation, and further public consultation was undertaken by the Senate Economics Legislation Committee following the introduction of the legislation into Parliament.\(^9\)

The CAMAC review into CSF in Australia found this form of funding is currently costly and impractical for businesses, mainly due to regulatory impediments in the Corporations Act, which imposed high compliance costs for small and start-up businesses.\(^10\)

According to the CAMAC report Crowd-Sourced Equity Funding:

> There is no legal definition of [crowd-sourced equity funding]. However, in practice, the concept refers to a form of corporate fundraising that envisages start-up or other smaller companies (issuers) obtaining seed or other capital through small equity investments from relatively large numbers of investors, with online portals (intermediaries) publicising and facilitating these equity offers to online users (the crowd).

> Typically, the amount of equity capital to be sought by an issuer in a particular period through [CSF] would be relatively modest. [CSF] does not cover large-scale public offers by larger corporations.\(^11\)

**Policy and Economic Rationale**

The main policy rationale\(^12\) for CSF is to promote and facilitate innovation in the Australian economy, particularly by small firms and new start-ups. Innovation is highly dependent on access to adequate levels of finance. It is a common assertion that it takes $1 to research an idea or concept, $10 to turn that into a marketable product, and $100 to successfully commercialise it. The funding needs typically are for either of the latter two stages, but a given amount will have a proportionally smaller impact in the commercialisation stage than in the product development stage.

There is evidence that inadequate access to finance is the biggest impediment to innovation for small and medium enterprises. As shown in the recently released report by the Australian Council of Learned Academies, Securing Australia’s Future: Australia’s Comparative Advantage, a 2012 survey by the Australian Bureau of Statistics (ABS) on constraints to innovation showed that 43 per cent of small firms and 20 per cent of medium-sized firms identified funding as the biggest impediment to innovation; this contrasted with only 12.5 per cent of large firms that noted funding as a constraint.\(^13\) However, for innovation-active firms, the constraints are even more acute. Relative to the all firms-case\(^14\), 66 per cent of innovating small firms considered financing to be the biggest impediment to innovation. The corresponding responses for medium and large firms were 25 per cent and 15 per cent, respectively.\(^15\)

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11. CAMAC, Crowd sourced equity funding report, op. cit., p. 5.
12. The policy rationale refers to the importance of addressing this issue, and the follow-on consequences or problems that might arise if this does not happen.
14. Firms that are innovation-active and those that are not actively engaged in innovation.
Despite the fact that innovation helps to improve productivity, competitiveness and growth, this smaller segment of the market typically finds it extremely difficult, if not impossible, to access the traditional sources of financing that are available to the more established firms. The CAMAC report refers to the ‘capital gap’, where an enterprise is in need of finance to continue to its next stage of development, but cannot attract further funding from traditional financing sources and is not yet able to conduct an initial public offer of its securities.\(^{16}\)

The \textbf{economic rationale}\(^{17}\) for the Bill arises from the problems associated with imperfect information, externalities\(^{18}\) and the regulatory burden inherent in the \textit{Corporations Act}. Probably the biggest impediment to finance arises from information asymmetry problems. Any kind of investment is inherently and unavoidably risky, in that business failure would result in the total loss of investment. Traditional sources of finance like banks and stock markets manage this risk by requiring a ‘track record’ of successful past performance, which, all else being equal, would indicate the ‘quality’ of the application and increase the probability of continuing success in the future. In this context, this means that most small firms or start-ups would not have the track record to obtain funding. Their inability to indicate their ‘quality’ to banks is a problem of information asymmetry that was identified by Nobel laureate George Akerlof as a major cause for market collapse and lost opportunities.\(^{19}\)

One of the respondents to the CAMAC discussion paper described this problem as the ‘valley of death’:

The valley of death represents the stage in the growth cycle of an early stage business at which those early stage businesses have, on balance, not yet matured in their networks and risk profile to identify and attract sufficient capital from external sources to enable them to commercialise their products and services to a level at which the risk profile is sufficiently improved to enable sophisticated investors and professional investors to risk their capital in such companies.\(^{20}\)

Increased innovation would create knowledge spill-over effects, which is a form of positive externality. According to standard theory, this would lead to under-provision of innovation by businesses; that is, they would be less willing to make the necessary investment if they are not able to appropriate all or most of the benefits associated with this investment. This is an example of market failure where government intervention to rectify the failure would be justified.

Finally, as shown in the responses to the CAMAC discussion paper that preceded its report, the current capital raising provisions of the \textit{Corporations Act} were designed for more substantive capital raising activities by large, established public firms, and the regulatory (corporate governance) and compliance (reporting) requirements associated with those would be prohibitively expensive for small, start-up firms.\(^{21}\)

While CSF is technically legal in Australia and there are currently a small number of operators of online platforms offering investment in Australian start-ups and small businesses, the current legislative arrangements outlined above significantly limit the type of service they can offer, and do not fulfil the ‘crowd’ element of CSF.

Thus the Bill is primarily intended to alleviate the financing constraints facing small and start-up firms, subject to certain requirements being met.

\footnotesize{16. CAMAC, \textit{Crowd sourced equity funding report}, op. cit., p. 6.}  
\footnotesize{17. The economic rationale refers to the underlying causes of the problem.}  
\footnotesize{18. Externalities refer to the cost or benefit that affects a party who did not choose to incur that cost or benefit. In other words, this refers to the impact of one party’s actions on another, even though the latter did not have anything to do with the original action.}  
\footnotesize{20. CAMAC, \textit{Crowd sourced equity funding report}, op. cit., pp. 11-12.}  
\footnotesize{21. CAMAC, \textit{Submissions}, Crowd sourced equity funding [inquiry], CAMAC, Sydney, accessed 30 April 2016.}
Committee consideration

Senate Economics Committee

On 3 December 2015 the Bill was referred by the Senate to the Senate Standing Committee on Economics Legislation Committee for inquiry and report by 29 February 2016. The main reason for referral was to thoroughly consider the issues surrounding the impact of this legislation on the start-up sector. The Economics Committee reported on 1 March 2016.

The Committee report reviewed and summarised several preceding reports that considered the issue on its own, or as part of a broader agenda dealing with productivity and innovation. A key point recognised by the report was the importance of balancing the financing needs of businesses with appropriate investor protections.

The need for striking a balance was also recognised by all the submitters to the Committee; however there was a divergence of views on the correct balance. Some respondents felt that the entry barriers for companies were too high, and that the proposed CSF regime would prevent deserving companies from raising much-needed finance. On the other hand, others considered the responsibilities and obligations imposed on intermediaries as too onerous, which would discourage people from providing this service. (The views of some submitters are considered under ‘Position of major interest groups’, below.)

The Committee noted the Government’s extensive consultation process undertaken prior to the introduction of this Bill, and also alluded to the fact that given this is a new policy issue around the world, and therefore without robust results and lessons, a predominantly cautious approach taken in this early stage is prudent. The crux of the question, according to the Committee, is whether it would provide a good starting point to build the necessary legislative framework. The Committee Report responded in the affirmative. The Committee also noted that the legislative framework would benefit from subsequent review and ‘fine-tuning’.

The two main recommendations of the Report were:

- that the government monitor carefully the implementation of the legislation and undertake a review two years after its enactment with special attention to the matters detailed in the report and
- that the Senate pass the Bill.

The Labor Senators on the Committee issued a Dissenting Report that focused on the perceived costs and complexities of the Bill. According to this Report, the Committee had failed to take account of concerns expressed in several submissions that the requirement to take a company public in order to access CSF would place an onerous financial burden, often running into thousands of dollars. There was concern that many small companies would not have the resources or the capabilities to implement such a change, despite the proposed exemption period from some of the obligations usually imposed on public companies.

A key recommendation of the Dissenting Report was that the Bill should be amended to remove the restriction that limits CSF to unlisted public companies. It further stated:

> In its place, the Bill should merely allow small firms to access the Bill’s Corporations Law exemptions from the point at which they enter into a legally enforceable agreement with an intermediary (crowdfunding platform) to hold an equity crowdfunding campaign.

A second recommendation was that the asset and turnover cap should be raised from $5 million to $10 million, in order to increase the number of firms that can access CSF.

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24. Ibid., p. 5.
26. Ibid., p. 40.
27. Ibid., pp. 39–40.
28. Ibid., pp. 42–43.
29. Ibid., p. 43.
30. Ibid.


**Senate Standing Committee for the Scrutiny of Bills**

The Committee dealt with the Bill in the Alert Digest No. 1 of 2016 and sought advice from the Assistant Treasurer on a number of issues. The Assistant Treasurer responded to the Committee’s comments in a letter received on 18 February 2016. The relevant extracts from the Alert Digest, and the Assistant Treasurer’s responses to those, are contained in the Second Report of 2016 of the Committee.

The Senate Scrutiny of Bills Committee raised concerns that provisions in the Bill inappropriately delegate legislative power and reverse the burden of proof.

**Proposed section 738F** provides for certain rules in Chapter 7 of the *Corporations Act* (which regulates financial services and markets) to apply in a modified way to new Part 6D.3A of the *Corporations Act* (which will regulate CSF). **Proposed subsection 738F(3)** then allows regulations to be made to further modify the application of the relevant Chapter 7 rules in specified situations. In short, regulations may be made to modify the application of the primary legislation. This is an example of a ‘Henry VIII clause’, which enables delegated or subordinate legislation to override the operation of legislation that has been passed by the Parliament. The Scrutiny of Bills Committee raises concerns in regards to such clauses when the rationale for their use is not provided or is insufficient as ‘such clauses may subvert the appropriate relationship between the Parliament and the Executive branch of government’. In this instance the Committee noted that the Explanatory Memorandum to the Bill did not provide any justification of the provision and sought advice on the matter from the Assistant Treasurer. The Assistant Treasurer advised that an equivalent regulation-making power was provided in Chapter 7 of the *Corporations Act* and therefore was required in the Bill to ensure consistency. The Committee asked for this information to be included in the Explanatory Memorandum to the Bill.

The Committee also requested further information from the Assistant Treasurer on provisions that would place an evidential burden of proof on a defendant seeking to rely on certain defences. The relevant provisions are **proposed section 738Z** (which sets out exceptions to the offences relating to defective offer documents) and **proposed section 738ZG** (which relates to prohibited advertising of a CSF offer). The Minister advised the Committee that the approach was consistent with that taken in Chapter 6D of the Corporations Act and ‘fully consistent with the principle in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* which establishes the general rule that a defendant should only bear an evidential burden of proof for an offence-specific defence’. The Committee asked for this information to be included in the Explanatory Memorandum to the Bill.

**Policy position of non-government parties/Independents**

The Labor Senators on the Economics Committee offered qualified support for the Bill. Their Dissenting Report, while noting that they did not intend to block the Bill, nevertheless called for a ‘lighter regulatory touch’, and the ‘need to remove a major barrier to small firms accessing equity crowdfunding platforms’. Their position was based on concerns raised in several submissions and testimonies that the demand for small firms to convert into unlisted public companies in order to access CSF would potentially add regulatory and financial impost on start-ups and crowdfunding platforms.

An additional concern was that the Bill would not meet the capital needs of start-ups and small firms, and while the various exemptions from obligations usually imposed on public companies would provide some relief, these would be hardly enough to overcome the costs associated with becoming a public company.

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34. Ibid., pp. 9–10.
38. Ibid., pp. 69–72.
40. Ibid.
The Dissenting report made two main recommendations to improve access by start-ups and small firms to CSF. The first related to the requirement that limits eligibility to unlisted public companies. Specifically, the Dissenting report recommended:

Section 738H(1)(a) should be amended to remove the restriction that limits CSF to unlisted public companies. In its place, the Bill should merely allow small firms to access the Bill’s Corporation Law exemptions from the point at which they enter into a legally enforceable agreement with an intermediary (crowdfunding platform) to hold an equity crowdfunding campaign. 41

The second major change called for in the Dissenting report was that the current cap on assets and turnover should be increased from $5 million to $10 million. This would increase the number of firms that can access CSF.

Senator Wong has proposed amendments to the Bill to action the Dissenting report’s recommendations. 42

In his second reading speech on the Bill, Adam Bandt of the Australian Greens echoed the concerns about the regulatory burdens associated with a company going public, and was appreciative of the exemptions offered to small firms and the protections offered to retail investors. 43 Overall, he was supportive of the Bill but emphasised the importance of striking a good balance between the need for innovation and appropriate investor protections.

Position of major interest groups

The Economics Legislation Committee received 22 submissions, which generally favoured the idea of introducing a CSF regime. 44 The Australian Stock Exchange (ASX) was generally very supportive of the Bill, and considered that the final regulatory settings in the Bill struck a reasonable balance between making CSF an attractive and feasible option for companies seeking to raise funds, and maintaining appropriate protections for investors. 45

However, some submitters expressed concerns relating to the compliance burden and costs that this Bill would impose. 46

The first of these concerns related to the requirement that companies wishing to access CSF convert to a public company. According to VentureCrowd, an equity crowd-funding business, this would impose a significant regulatory, administrative and compliance burden on the companies. 47 It also noted:

The Corporations Act requires a proprietary company with 50 or more shareholders to become a public company. In the expectation that a start-up who accesses ECF [equity crowd funding] will gain 50 or more shareholders, the Bill requires that start-up to convert to become a public company (whether or not it ever exceeds the 50 shareholder limit).

The public company regime was introduced to regulate large, well-funded and well-resourced companies that were either listed on a stock exchange or of equivalent private stature. Start-up businesses, without revenue and resources, could not have been further from the minds of those who wrote the legislation. 48

The Australian Small Scale Offerings Board (ASSOB) took a contrary view, and insisted that ‘issuer companies convert to public companies prior to listing … to learn to be compliant and accountable to investors from the

41. Ibid.
42. P Wong, ‘Corporations Amendment (Crowd-sourced Funding) Bill 2016 – Amendments to be moved by the Opposition’, Senate, sheet 7865, 2016.
44. Senate Standing Committee on Economics, Submissions, Inquiry into the Corporations Amendment (Crowd-sourced funding) Bill 2015 [Provisions], The Senate, Canberra, accessed 30 April 2016.
48. Ibid., pp. 2-3.
start’. However, ASSOB expressed concern about the compliance and regulatory burden on intermediaries, especially for fundraising efforts below $500,000. ASSOB’s position regarding public companies was echoed by Chartered Accountants Australia and New Zealand, which expressed a view that CSF framework concessions may have a negative impact on investor rights and may also not achieve the desired result of reducing the regulatory burden.

The Australian Private Equity and Venture Capital Association Ltd (AVCAL), while generally supporting the Bill, raised concerns about some specific provisions relating to the exclusion of investment companies from CSF. Additionally, restrictions on the revenue and assets limits (of $5 million each), and the prohibition of eligible CSF companies and related parties having more than one concurrent offer were also objected to. The underlying argument was that these restrictions would potentially hinder promising start-up companies and exclude them from the crowd-funding pool.

Financial implications

The proposed measures were included as part of the 2015-16 Budget. According to the Explanatory Memorandum, the measure has the following financial impact on the Budget (see Table 1):

Table 1: Financial impact

<table>
<thead>
<tr>
<th>Year</th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact</td>
<td>-$2.6m</td>
<td>-$1.8m</td>
<td>-$1.7m</td>
<td>-$1.6m</td>
</tr>
</tbody>
</table>

Source: Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, p. 4.

According to the Explanatory Memorandum, the compliance costs associated with this Bill are $54.0 million for the CSF model, and a further $0.6 million for the changes to the Australian Market Licence (AML) regime. This has been fully offset from within the Treasury portfolio.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

The Government identifies only one potential impact on human rights, which arises from the provisions in the Bill that seek to protect retail clients from advertisements that could induce them to make investment decisions without having all the necessary information. The Government considers that, to the extent that the Bill thereby restricts the freedom of expression, this is justified because it is a reasonable, necessary and proportionate consequence of protecting investors by ensuring that they can access sufficient information about the CSF offer.

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.

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50. Ibid., p. 1.
53. Ibid., pp. 2–3.
54. Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, op. cit., p. 4.
55. Ibid.
56. The Statement of Compatibility with Human Rights can be found at page 99 of the Explanatory Memorandum to the Bill.
58. Ibid., p. 100.
Key issues and provisions

The legislative and regulatory frameworks for crowdfunding in Australia are quite new, while several other advanced countries have had a lead time of several years in this area. While this means that Australia has some catching up to do, it gives Australia the chance to cherry-pick the best aspects of different plans and introduce additional modifications/features.

**Item 14 of Schedule 1** to the Bill inserts a new Part 6D.3A into the *Corporations Act* to create a framework to facilitate CSF in Australia. Very basically, without new Part 6D.3A, companies seeking to raise funds by issuing securities would need to comply with the more stringent information disclosure requirements set out at Part 6D.2 of the *Corporations Act* and the prohibitions, liabilities and remedies relating to offers of securities, set out at Part 6D.3 of that Act.

The Bill includes provisions governing:

- the eligibility of companies to crowd-fund (item 14 of Schedule 1, proposed section 738H)
- the role and eligibility of a CSF intermediary, defined at proposed section 738C (item 14 of Schedule 1) as a financial services licensee who is authorised to provide a crowd funding service
- investor protections (Division 6 of proposed Part 6D.3A of the *Corporations Act*, at item 14 of Schedule 1 to the Bill) and
- regulatory obligations for issuers and intermediaries.

**Eligible CSF company**

One of the requirements that must be fulfilled before an offer of securities may be made under proposed Part 6D.3A of the *Corporations Act* (referred to as a ‘CSF offer’—proposed section 738B) is that the company seeking to issue the securities is an ‘eligible CSF company’. ‘Eligible CSF company’ is defined at proposed section 738H as a company that:

- is an *unlisted* public company limited by shares
- has its principal place of business and majority of directors in Australia
- satisfies gross asset and turnover caps.

Proprietary companies cannot come within this definition, as they are explicitly excluded from the definition of ‘public company’ at section 9 of the *Corporations Act*.

**CSF intermediary**

Under the proposed CSF regime, all CSF offers must be made through a ‘CSF intermediary’ (proposed section 738L). As a result, CSF intermediaries occupy ‘a central role in the CSF regime’ and are required to comply with a number of obligations, including a requirement to ensure that a prominent risk warning appears on all CSF offer platforms (proposed section 7382A).

A person or company wanting to act as a CSF intermediary must acquire an appropriate Australian Financial Services Licence (AFSL) (proposed section 738C).

**Overview of features of the proposed CSF regime**

As explored in the ‘Background’ section of this Digest, the New Zealand CSF law has been cited as a justification and model for possible emulation in Australia. While the New Zealand law offers a readymade model, the CAMAC report proposed an alternative framework for CSF in Australia. During consultations regarding the Bill, concerns were raised that the New Zealand model would increase flexibility but would not provide enough protections for investors, while the CAMAC model would increase the overall complexity of crowdfunding.

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60. Explanatory Memorandum, Corporations Amendment (Crowd-sourced Funding) Bill 2015, op. cit., p. 23.
61. In New Zealand, crowd funding is covered by the *Financial Markets Conduct Act 2013* (NZ).
The current Bill amalgamates aspects of both the New Zealand and CAMAC approaches. Unlike the New Zealand case, the Bill imposes a $10,000 limit on investment by individuals over a 12-month period (proposed section 738ZC). However, unlike the CAMAC model (which placed the onus on issuing companies), the Bill follows the New Zealand approach of mandating the licencing and gatekeeper obligations for intermediaries, who would bear the bulk of the responsibility for ensuring compliance with the relevant rules, as well as providing the appropriate risk information to retail investors. Some asset-testing requirements for various exemptions and reduced disclosure requirements (for example, proposed subsection 738H(2)) also follow the New Zealand model.

Unlike both the New Zealand and CAMAC models (which impose an annual cap of $2 million per year), the current model will allow up to $5 million per year to be raised through CSF (proposed section 738G). While businesses wishing to access CSF must be public companies, transitioning to a public company structure and complying with the corporate governance and reporting obligations can be onerous. As such, the Bill provides a holiday of up to five years from these key requirements (proposed section 738ZI at item 14 of Schedule 1, and Schedule 2 of the Bill).

Conclusion

The Bill can be reasonably expected to meet its intended goals. However, there are other, broader issues and problems that may be regarded as inadequately dealt with:

1. The limited information that is available from other countries indicates that equity crowd-funding has been successful, if measured in terms of the total amounts raised. In fact, most of the published information focusses only on how many fund raising campaigns take place, the money actually raised per year through this, and the growth in this. The absence of alternative data, for example on successful outcomes, prevents a more thorough analysis.

   However, the available information does not indicate what the success rate is: that is, how many companies would like to raise funds and how many are actually achieving their fund-raising goals, and how beneficial these ventures are for their investors. Related to this, it is difficult to ascertain what other constraints may exist for other firms.

2. In addition to the performance in raising money, there is also the issue of the sustained operational success of the firm. Unlike the former, this would require effective management, marketing, and governance capabilities, which are quite independent of the initial need for funds.

   It is also too early to determine the overall, long-term success or profitability of firms, how many of these would actually survive over a five year period, or how effectively the interests of individual investors can be safeguarded against fraud or poor governance. This in turn would make it difficult to determine the average rate of return for investors or how this would compare with the returns from traditional stock-market indices like ASX, FTSE or the Dow. Another unresolved issue appears to be the level of representation or feedback that individual investors can expect from the companies that they invest in.

   A more significant problem appears to be the role played by crowdsourcing intermediaries. As illustrated by a UK example of a company purporting to manufacture palm-sized drones, this can lead to problems when crowdfunding platforms fail to do proper due diligence on the companies seeking to raise funds, or inadvertently give an impression to retail investors that they are involved in the development of the project/product itself. In this case, the company raised 20 times the amount that was initially targeted, but failed to manufacture the advertised product. It eventually went into voluntary liquidation, and investors effectively lost their entire investment.

The Bill seeks to impose certain obligations and restrictions on intermediaries. This would seem appropriate, since in more traditional areas like bank lending or stock markets, the banks and stock exchanges would be expected to conduct due diligence and act with an appropriate duty of care towards those whose funds they administer.

3. Finally, as alluded to by Australian Private Equity and Venture Capital Association Limited (AVCAL) in its submission to the Financial Services Inquiry, the funds raised by CSF are likely to be limited to small amounts only. This is consistent with the pattern observed internationally. What this effectively means is that the funds raised through CSF are only a small part of what would otherwise be needed over the longer term for the growth of firms. In other words, it would help them 'get off the ground but not fly'. It is to be expected that the small firms or start-ups would use these funds to get to a point where they could approach venture capital firms, stock markets or banks for more substantial equity or debt-based funding. The position of CSF as simply a step in a larger process is something that must be borne in mind when contemplating the likely effects of the Bill.

While Australia, like many other countries, will have a high failure rate for start-ups, it is not possible to say which of these failed due to lack of financing (even though they deserved financing) and which failed due to poor management and operations. It is also likely, as seen in the UK example mentioned above, that firms may fail despite getting impressive levels of funding through crowdsourcing.

So while the Bill would address some of the information asymmetry problems that preclude the more established sources of finance, it will not be addressing these broader and longer-term problems associated with start-up ventures, including the financial constraints they face.
