



BUSINESS | Issue No. 5 | *New legislation proposed for crowd funding*

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A research project by *Crowdsourcing.org* stated that crowd funding platforms globally had raised just under \$3 billion in 2012. This was an increase from \$1.5 billion the previous year. There is no doubt this steep increase is only going to continue as crowd funding becomes more and more prevalent within Australia and globally.

Bruce Billson MP, the Minister for Small Business, announced earlier in February 2015 that he intends to introduce new legislation in the spring session of Parliament to relax the fundraising disclosure requirements for small start-up companies under the *Corporations Act 2001* (the Act).

The changes are expected to be largely in line with the recommendations made by the Corporations and Markets Advisory Committee (CAMAC) report released in May 2014 on crowd sourced equity funding. These recommendations would allow a large number of small scale retail investors to invest up to \$10,000 per year through an equity crowd funding intermediary across at least four companies (e.g. \$2,500 per year each in four different enterprises). The cap of \$2 million per year for each company would continue to apply.

The current exemptions to the costly and prescriptive fundraising disclosure requirements under the Act apply to wholesale or sophisticated investors, existing shareholders and senior management within the organisation or where a company raises funds from no greater than 20 investors in any 12 month period. Clearly, these exemptions do not cater, nor were they designed, for the current trend in start-ups raising small amounts of capital across a broad base of investors.

Amongst other recommendations made by the CAMAC report, it would like to see included in any proposed legislation:

- A new exempt public company with watered down disclosure obligations being created for this purpose;
- Crowd investors having cooling-off and other withdrawal rights;
- Investors would need to acknowledge risks and receive appropriate disclosure;
- Appropriate controls being placed on approved advertising (no direct advertising); and
- Issuers can only issue through one intermediary website and this intermediary would need to be licensed.

These recommendations are all about striking the correct balance in the new crowd funding environment between investor protection and freeing up capital for investment in start-up companies. The licensing of intermediary websites is likely to be a large obstacle as currently, websites such as *Kickstarter*, *Pozible*, *OzCrowd* and the like are not subject to any licensing requirements and the costs that will certainly follow as a result.

It is unclear exactly how the federal opposition is going to respond to the introduction of the new legislation, however, a policy paper released in December 2014 titled *Making CSEF a reality in Australia* indicates that the opposition would welcome these changes. As for now, it is simply a matter of waiting for the introduction of the legislation to see what is proposed.



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