



BUSINESS | Issue No. 9 | Crowdfunding legislation update

November 2015

In our February 2015 Business edition (Issue No. 5) we reported on the Corporations and Markets Advisory Committee's (CAMAC) discussion paper proposing changes to the *Corporations Act 2001* given the increased popularity in crowd sourced equity funding. Since then we have had a change in leadership and as a result Bruce Billson has been replaced by Kelly O'Dwyer as the Minister for Small Business.

It has recently been announced that new legislation will be put forward towards the end of 2015 to facilitate "mum and dad investors" in start-ups. Such changes may include a five day cooling off period and an increase in the allowable cap on funds to be raised to \$5 million.

As it stands, the majority of successful crowdfunding projects that we hear about are reward-based where a consumer is either pre-paying for a product (subject to the requisite funds being raised) or is otherwise providing funds in exchange for some form of reward or benefit. There is no ownership or equity being provided by the issuer.

The *Corporations Act 2001* was not designed to facilitate large numbers of shareholders providing smaller amounts of capital and therefore equity based crowd funding as we know it is still not possible.

Whilst we await confirmation of the proposed changes in the law from the Australian Government, Malcolm Turnbull had previously indicated (prior to becoming PM) that he favoured the model adopted by New Zealand in mid-2014.

This model maintains the \$2 million cap within a twelve month period, however, the number of potential investors is uncapped and not limited to twenty. This enables a larger number of investors to buy smaller amount of equity in any incorporated company in New Zealand which is much more conducive to the crowdfunding model.

The consumer protection aspect of the legislation is that investors must go through appropriately licensed crowdfunding platforms and these platforms need to undertake a high level due diligence on the proposal to

prevent misleading or deceptive conduct. Furthermore, consumers are strongly encouraged to seek their own advice on the potential investment and make their own decisions with a risk acknowledgements statement being signed to this effect as part of the investment process.

Just over a year on and twenty-one New Zealand companies have successfully raised \$12.4 million dollars with an average commitment per investor of approximately \$4,100. Given the population of around 4.5 million people, this appears to be a successful first year and the potential benefits for Australian start-ups and investors if similar laws were adopted are obvious.

For now, though, we must wait until December for the Australian Government's next move.



David Callaghan

Associate

Mullins Lawyers

t +61 7 3224 0265

dcallaghan@mullinslaw.com.au



David Williams

Partner

Mullins Lawyers

t +61 7 3224 0270

dwilliams@mullinslaw.com.au

