



Australian Government

**Australian  
Small Business  
Commissioner**

4 September 2015

Ms Meghan Quinn  
General Manager  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Ms Quinn

**FACILITATING CROWD-SOURCED EQUITY FUNDING AND REDUCING COMPLIANCE COSTS FOR SMALL BUSINESSES**

Thank you for the opportunity to comment on Treasury's consultation paper on the above topic.

We welcome opportunities to improve the funding options for small businesses. The Australian Small Business Commissioner provides advocacy and representation for small business interests and concerns to the Australian Government. Small businesses in Australia need a collective voice that can express their interests and concerns nationally about important matters which affect them. In this capacity, in February 2014, we made a submission to Treasury's earlier discussion paper on this topic, and it is pleasing to note that there has been progress on ensuring that access to crowd-sourced equity funding is simple, and available to as many small businesses as possible – while also protecting investors.

Small business owners who wish to expand their businesses, or are experiencing cash flow problems, often face difficulties in obtaining finance – especially in the conditions prevailing in the post-mining boom economy. Boosting the small business sector is one Government policy which can assist with this, and policymakers should create the right policy settings – including an appropriate regulatory framework supported by effective institutions. It follows that burdens should be reduced for small proprietary companies raising capital.

Small business' difficulties obtaining finance stem frequently from ordinary bank loans having restrictive conditions. The Harper Review (the Competition Policy Review of 2015), recommended an "effects test", in relation to section 46 of the Competition and Consumer Act 2010 (Cth) (misuse of market power). Restrictive lending practices could be perceived as a misuse of market power. Implementing the "effects test" recommendation could aid small businesses that are disadvantaged in their dealings with large financial institutions but, of course, might result in the unintended consequence of having financial institutions become even more risk averse, and increase the restrictions on credit. Any "effects test" would need careful consideration to help make doing business in Australia more efficient for small businesses. We also note that the Joint

Parliamentary Committee on Corporations and Financial Services, in its 2013 report on Family Businesses in Australia, noted, with respect to the 50 non-employee shareholder rule in section 113 of the *Corporations Act 2001* (Cth):

that family companies with successive generations of shareholders can exceed 50 shareholders, which unfairly forces them to relinquish family control and triggers reporting obligations.

Small businesses, particularly small family businesses, should not be forced to change their business model and become public companies (more than 50 shareholders), with additional associated costs, simply to raise capital. A higher shareholder limit would allow businesses to continue operating as proprietary companies – notably the 64 per cent of family businesses that intend to keep 100 per cent of their businesses owned by the family when the businesses are transferred to the next generation (see *Family Business Survey 2015*, KPMG and Family Business Australia).

In our previous submission on this issue, in February 2015, we noted that the Corporations and Markets Advisory Committee had recommended that eligibility to become, and remain, “an exempt public company” be limited to companies with turnover below \$5 million per annum and capital of less than \$5 million. We went on to comment that we were not aware of a turnover of less than \$5 million being on the statute book as a definition of a small business – and this was correct at that time. We also noted there had been calls for the Australian Taxation Office’s threshold for small business to rise to \$5 million. We were, of course, supportive of the \$5 million threshold, since it would allow access to crowd sourced equity funding for more businesses.

We now draw your attention to the Australian Small Business and Family Enterprise Ombudsman Bill 2015. This Bill will establish the office of the Australian Small Business and Family Enterprise Ombudsman (the successor to my office of Australian Small Business Commissioner). The Bill, at clause 5, states that:

A business is a small business at a particular time in a financial year ... if:

...

(i) its revenue for the previous financial year is \$5,000,000 or less ....

The Bill passed the Commonwealth Parliament on 18 August 2015, and is currently awaiting Royal Assent. It should also be noted that the Bill provides that the Ombudsman will be able to refer businesses to alternative dispute resolution services – which might assist small businesses which are having difficulties with their capital raising endeavours.

We will continue to pursue matters concerning crowd-sourced equity and other funding for small businesses, as well as relevant regulatory issues. We hope that these comments assist your work, and would be happy to discuss these matters with you further. Please feel free to contact Patrick McCormack of my Office (telephone: 02 6263 1561; email [patrick.mccormack@treasury.gov.au](mailto:patrick.mccormack@treasury.gov.au)).

Yours sincerely



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