

Robyn Donnelly

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Dear Mr Kluver,

Please find attached my brief submission in relation to the Discussion Paper on Crowd Sourced Equity Funding.

You will note from my submission that the focus relates to the relationship between funding regulation for cooperatives in so far as this is impacted upon by the funding regulation under the *Corporations Act, 2012*.

My professional background over the last 20 years has been as an academic at a regional University, as well as an employee within the Registry of Cooperatives & Associations (part of Fair Trading in New South Wales). Indeed the last 8 years of my professional career I was involved with the development of the inter government agreement for a Uniform Cooperatives Law and the drafting and passage of the template Cooperatives National Law and Regulations in New South Wales. The law relating to cooperatives is closely linked with the Corporations Act and indeed community equity fundraising is the principle tool for cooperatives to commence their operations.

I have retired from full time professional work however I have a strong ongoing interest in the cooperative sector in a private capacity, providing training and other advisory services for cooperatives.

Please accept my submission and I look forward to reading further material and deliberations regarding this important topic from the Committee.

Yours sincerely,

Robyn Donnelly
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The CAMAC Review of crowd sourced equity funding (CSEF) is a welcome initiative.

General comments

Funding for new or start up entities has been a longstanding problem. The recent success of various crowd funding internet platforms both here and overseas for new start ups is a strong impetus for a regulatory approach that facilitates these fundraising methods.

Existing regulatory restrictions for CSEF are not facilitative and fail to recognise the ability of individual investors to both assess and accept risk for small start ups.

In simple terms, doing nothing is not an option. Rather, permitting or facilitating CSEF activity is necessary in a manner that results in a low transactional cost for new start ups and the requirement to clearly and simply state the risks for ordinary investors. Whilst it may be necessary to place an upper limit on the amount that can be raised through CSEF either as a total or by way of an upper limit on individual investment commitment levels, in truth the more important regulatory refinement of CSEF would be to require a plain English statement to specify the risk attached to any such investment.

Specific comments

My interest in the CAMAC Review arises from my experience and role in the cooperatives sector.

Cooperatives are incorporated bodies that are well suited to community investment and social business enterprises. The number of cooperatives in Australia is small compared to the number of companies, however they have a significant presence in the agricultural sector where they have a proven track record in increasing the sustainability in rural and regional areas. Cooperatives in more recent times are developing a presence in renewable energy generation and the development of local produce networks. Cooperatives have broader purposes than the pure investment or economic return focus of companies and research in the UK shows that they are a good 'fit' for community equity fundraising platforms¹. Just like companies, they experience difficulty in marshalling start up capital, although the regulatory regime for this is in some respects not as restricted as for companies.

Changes to the regulatory regime to accommodate CSEF for companies will have an impact upon the ability of cooperatives to offer shares to new members, because of the interaction of laws governing cooperatives and the *Corporations Act, 2001*.

Fundraising regulation for cooperatives

The division of regulatory power between the Commonwealth and States is such that States (including Territories) govern cooperatives and the Commonwealth governs companies. However, the Commonwealth power over companies also includes power over the financial markets and as a result, fundraising (both equity and debt) by cooperatives within a State is governed by that State, but fundraising across a State border will attract the additional regulatory control of Chapter 6D of the *Corporations Act 2001*.²

A cooperative is an incorporated body with the same powers as companies, including the power to issue shares and debt instrument. Each State and Territory has a *Cooperatives Act*, however in March 2014, a new template legislative scheme will commence in New South Wales and Victoria, with other jurisdictions following. The new template law is referred to as the Cooperatives National Law, and its development has been progressed through the COAG Consumer Affairs Forum. A driver for the development of the Cooperatives National Law has been the need to remove competitive barriers for cooperatives who are currently required to register as 'foreign cooperatives' in other jurisdictions in order to carry on business outside their home jurisdiction. Under the Cooperatives National Law there will be mutual recognition of cooperatives in each jurisdiction in recognition of the fact that cooperatives compete with companies in the Australian market, which is a national market.

Community equity fundraising by cooperatives

Cooperatives face similar difficulties to companies in raising start up capital, however, for cooperatives access to capital or funding is exacerbated by the fact that it is an entity type that is not well understood by funders or professionals.

As already noted, cooperatives are empowered to issue both equity and debt instruments. My comments in relation to CSEF apply principally to equity or share offers by cooperatives³ The disclosure requirements under State laws for equity are different because a share in a cooperative is substantially different from a share in a company.

Shares in a cooperative are not investment interests in the same way that shares in a company are. In particular they :

- have a fixed par value,
- cannot be traded on a public stock exchange,
- can only be issued to a member,
- do not carry a vote, as the vote (one vote only) is a right attaching to membership, and
- are withdrawable or repayable if the membership ceases or the member asks that the cooperative repay them.

Typically the share capital required to establish membership is modest, because the *raison d'être* of the cooperative is the expected cooperative interaction between the cooperative and its members.

Accordingly, the disclosure regime in respect of share offers is a disclosure statement that is more about the member relationship rather than the

investment potential of any share capital in the cooperative. State regulation requires that the disclosure statement must be current and there are penalties and liabilities for misstatements and omissions. Typically, cooperatives do not engage in a specified public offer to raise a specified amount of capital, although there are instances of this in start up cooperatives in renewable energy. The nature of a cooperative as an entity that is open to all persons who are able to utilise the services of the cooperative means that its disclosure is ongoing. It is continually open to new members who 'buy in' by purchasing shares. The disclosure statement is continuous because of the statutory obligation that it must be current.

Less risk associated with cooperative share offers

The nature of cooperative shares is such that the risks are low compared to the risk in investing in company shares. Whilst there is no statutory limit on the amount of shares that a cooperative might require for a person to establish membership, there is no immediate benefit in buying a large parcel of shares as there is no capital gain component and no additional voting rights.

Cooperatives adhere to the international cooperative principles⁴, which require them to be open to any person who is able to use their services and to work towards the sustainable development of their communities. These principles make cooperatives a good fit for crowd sourced or community equity funding models that look to the broad community for small investments and offer either small returns in kind or to satisfy desires to help develop new or community enterprises.

Need for competitive neutrality

Cooperatives would benefit from the access to funding through internet crowd funding platforms, but are subject to a competitive disadvantage because of the operation of the fundraising provisions on cooperative shares when they are offered outside their home jurisdiction. Furthermore, the fundraising provisions under Chapter 6D of the Corporations Act are designed to protect investors from risks associated with company shares; risks that are very different from the risks that attach to shares in a cooperative. Cooperatives already operate at a competitive disadvantage to companies by having to comply potentially with two distinctly different disclosure regimes to offer shares across a State or Territory border.

If the regulatory regime for equity funding through crowd funding platforms is relaxed for companies, without recognition of the existing restrictions on cooperatives, then the competitive disadvantage will be significantly increased.

Conclusion

It is my proposal that the CAMAC review of crowd sourced equity funding

- a. takes note of the impact of any changes to the Corporations Act disclosure requirements on share offers by cooperatives, and

- b. that it recommends that existing disclosure provided for these securities under the Cooperatives National Law (and existing State and Territory laws) is sufficient to enable cooperatives to raise equity funds outside their home jurisdiction without the need for any additional regulatory control under Chapter 6D of the Corporations Act.

I am happy to supply any further information to the Review regarding the regulatory requirements and constraints affecting cooperative share offers.

¹ Brown, J., *Community Investment Using Industrial and Provident Society Legislation*, 2008, Co-operatives UK

² Division of regulatory power is governed by the Corporations Agreement. Securities of a cooperative are exempt when issued within a cooperative's home State: ss66A and 708(21) *Corporations Act 2001*.

³ Disclosure requirements for the public offer /issue of debt securities is modeled on Chapter 6D of the Corporations Act.

⁴ Section 10 Cooperatives National Law: The Cooperatives National Law is an Appendix to the *Co-operatives (Adoption of National Law) Act NSW 2012*