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## Legislation extending Crowd-sourced Equity Funding to proprietary companies

We are pleased to write in support of amending the *Corporations Act 2001* to extend the crowd-sourced equity funding (**CSEF**) regime to proprietary companies as it will improve access to finance for start ups and innovative small businesses. We have one suggested amendment to the draft legislation.

### About Not-for-profit Law

Not-for-profit Law is an Australia-wide service of Justice Connect (a registered charity). Not-for-profit Law provides free and low cost legal assistance to not-for-profit community organisations and social enterprises – information, advice and training, as well as brokering referrals for pro bono assistance from our member law firms and barristers.

**Not-for-profit Law provides advice to many social enterprises, with a particular focus on not-for-profit organisations seeking to start or scale a social enterprise.** We also provide advice to social enterprises and not-for-profits seeking impact investing. We work with non-legal professional providers to match the pro bono commitments made to social enterprises by lawyers. We also run education programs for lawyers and other professionals to build their capacity to advise social enterprises and not-for-profits on common legal concerns regarding social enterprises, impact investing and fundraising.

In addition to advising social enterprises, **we have lived experienced as we run our own social enterprise:** Not-for-profit Law's [Customised and In-house Training](#)<sup>1</sup>.

### Our submission

**We are pleased to support the proposed reforms. They implement the recommendation made in our submission to the Government's Social Impact Investing Discussion Paper<sup>2</sup> to extend access to CSEF to proprietary companies.**

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<sup>1</sup> <https://www.justiceconnect.org.au/our-programs/not-for-profit-law/training/customised-and-house-training>

<sup>2</sup> Available at <https://www.justiceconnect.org.au/our-programs/not-for-profit-law/law-and-policy-reform/response-discussion-paper-social-impact-investment>

Of those social enterprises established using a 'for-profit' structure (which includes those using a hybrid model with both not-for-profit and for-profit structures), the majority are proprietary companies. Therefore, access to this new form of equity fundraising (a wide public offering of low-value shareholdings to non-sophisticated investors for packages worth, say, \$2 000 each) may be the difference between one of these enterprises getting up and running, or not.<sup>3</sup>

There are a number of platform providers in Australia ready to facilitate CSEF fundraising exercises and we expect the removal of this legislative barrier will kick-start this new stream of funding for social enterprises.

As noted in the draft Explanatory Memorandum, without this legislative amendment, not-for-profit social enterprises face difficulties running CSEF campaigns as they can only be undertaken by a public company which enlivens significant regulatory disclosure burdens necessitating extensive professional advice.

In terms of the detail of the proposed legislative amendments, we note the range of protections included for CSEF shareholders, such as annual financial and directors' reports, audited accounts where more than \$1 million is raised from CSF offers, and the application of the related party transaction provisions. We support the range of protections proposed.

**One additional protection we recommend is the requirement of a minimum of three directors, not just two.**

Public companies have this requirement and we do not believe it is an onerous one to also apply to proprietary companies making CSF offers. While having three directors (like having two directors) does not guarantee protection against unreasonable related party transactions or other improper governance, we are of the view that is a useful protective mechanism. Having three directors takes the governance model at least one step further than what can be common in closely-held ('husband and wife') proprietary companies.

Thank you for considering our submission.

Yours sincerely



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<sup>3</sup> See for example, the successful crowd equity fundraising undertaken by Zookal: <http://www.startupsmart.com.au/advice/legal/first-equity-crowdfunding-deal-in-australia-for-2016-raises-more-than-675000/>