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**22 December 2016**

Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee,

**Inquiry into the Corporations Amendment (Crowd-sourced Funding) Bill 2016 [Provisions]**

Thank you for providing the opportunity for interested parties to provide comment on the *Inquiry into the Corporations Amendment (Crowd-sourced Funding) Bill 2016 [Provisions]* ("bill").

LPA takes this opportunity to reiterate views raised in our submission to the Consultation Paper issued by the Treasury on *Facilitating crowd-sourced equity funding and reducing compliance costs for small businesses* (dated 31 August 2015 and attached).

**CAPITAL INVESTMENT IN THE LIVE PERFORMANCE INDUSTRY**

In the live performance industry, provisions on capital raising and investment will typically affect commercial theatre producers. LPA notes that in nearly all cases, commercial producers that seek capital investment offer a share of profits in return for investment, rather than crowd sourcing equity in shares and debentures. Producers typically undertake capital raising for theatrical productions through a combination of small scale personal offers and sophisticated investors.

LPA (then trading under our registered name of the Australian Entertainment Industry Association) was involved in the Corporate Law Economic Reform Program and proposed the introduction of the "sophisticated investor" exemption. This provides a simpler and lower cost fundraising avenue for producers than the Prospectus model, while also protecting the general public from unscrupulous schemes.

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LPA's 2015 submission to the Treasury strongly voiced that our primary concern is that existing arrangements of small scale personal offers and sophisticated investor exemptions be preserved in the event that Crowd-sourced Funding (CSF) arrangements are introduced for proprietary companies.

Under the proposed bill only public companies limited by shares are eligible to become a CSF company and make CSF offers. Therefore, we are pleased that the small scale personal offer and sophisticated investor exemptions remain unchanged for proprietary companies.

It is our understanding that the Government has expressed views to expand the scope of CSF eligibility to proprietary companies in future. LPA supports the introduction of CSF for proprietary companies under the condition that current capital raising exemptions that exist for proprietary companies will not be removed or significantly altered.

On the face of it there is no reason why CSF could not work in parallel to existing small scale personal offers and sophisticated investor exemptions. While it is difficult to see CSF having a significant impact in the live performance industry, we recognise that facilitating easier CSF can potentially provide issuers with a more effective means for providing online offers of equity and appeal to an expanded network of potential investors. It is also possible that new and innovative productions and business models will emerge to take advantage of such arrangements.

The majority of LPA Members that may benefit from crowd-sourced funding are proprietary companies and therefore under the current bill ineligible to make CSF offers. Although the bill provides certain corporate governance and reporting concessions for up to five years for companies that register as, or convert to, a public company limited by shares after the commencement of the CSF regime, the significant burden of becoming a public company would most likely be prohibitive for our members.

#### **EXTENDING CSF TO PROPRIETARY COMPANIES**

In the case that the CSF framework is expanded to include proprietary companies, LPA makes the following recommendations:

1. For a CSF arrangement to work effectively the current shareholder limit of 50 for proprietary companies would have to be increased. In implementing such an increase, reform would be necessary to ensure proprietary companies are not subjected to onerous administrative and reporting requirements - for the simple reason that many small businesses do not have sufficient resources to meet those requirements, and the reform would become counterproductive.

2. The current bill sets an investor cap of \$10,000 per CSF issuer within a twelve month period. LPA submits that a blanket cap is inappropriately restrictive for a system that will apply to such a wide range of investors and issuers. We believe the New Zealand CSEF provision for voluntary investor caps, in which the level of disclosure is dependent upon the level of any voluntary caps and the amount of funds the issuer is seeking to raise, would be a more appropriate model. This method provides flexibility both for the investor and issuer, while simultaneously providing a sliding scale of protection for the investor. The ability for issuers to trade off the level of voluntary investor caps with the level of disclosure will appeal to a wider range of investors, while providing the appropriate level of protection in each case.
3. LPA supports the amendments in the current bill that sets the CSF issuer cap at \$5 million in any 12-month period with a regulation-making power to adjust the cap in the future. We further note that the \$2 million cap and \$5 million cap in certain circumstances on funds that can be raised under the small scale offer exemption has not been reviewed since it was introduced in the *Corporations Act 2001*. Therefore, the cap has lowered significantly in real value terms over the past fourteen years. LPA submits that the issuer caps for small scale personal offer exemption should be reviewed and adjusted to ensure they are reflective of the real value that was intended when introduced in 2001.

LPA would be pleased to assist the Senate Committee by providing further information about fundraising within our industry should it be required. If you have any queries regarding our submission please do not hesitate to contact me.

Yours sincerely

**Evelyn Richardson**  
Chief Executive

**Enc:** LPA Submission (31 August 2015) to Treasury consultation paper on *Facilitating crowd-sourcing equity funding and reducing compliance costs for small businesses*.

#### **ABOUT LPA**

LPA is the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities. LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia.



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31 August 2015

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

Dear General Manager,

## **Facilitating crowd-sourced equity funding and reducing compliance costs for small businesses – Consultation Paper August 2015**

### **Live Performance Australia Submission**

Thank you for providing the opportunity for interested parties to provide comment on *Facilitating crowd-sourced equity funding and reducing compliance costs for small business – Consultation Paper August 2015* (“**Consultation Paper**”).

#### **ABOUT LPA**

LPA is the peak body for Australia’s live performance industry. Established in 1917 and registered as an employers’ organisation under the Fair Work Act, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to commercial entities. LPA has a clear mandate to advocate for and support policy decisions which benefit the sustainability and growth of live performance in Australia.

#### **CAPITAL RAISING IN THE LIVE PERFORMANCE INDUSTRY**

Prior to commenting on the Consultation Paper, LPA notes that in nearly all cases, LPA Members offer a share of profits in return for capital investment, rather than crowd sourcing equity in shares and debentures. Our Members typically undertake capital raising for theatrical productions through a combination of small scale personal offers and sophisticated investors. LPA (then trading under our registered name of the Australian Entertainment Industry Association) was involved in the Corporate Law



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Economic Reform Program and proposed the introduction of the “sophisticated investor” exemption. This provides a simpler and lower cost fundraising avenue for producers than the Prospectus model, while also protecting the general public from unscrupulous schemes.

LPA does not support removal of or any significant changes to the current model of small scale personal offer and sophisticated investor exemptions.

Accordingly, while we have made comment on the Consultation Paper below, our primary concern is that existing arrangements are preserved, in the event that Crowd-sourced Equity Funding (CSEF) arrangements are introduced for proprietary companies.

On the face of it there is no reason why CSEF could not work in parallel to existing small scale personal offers and sophisticated investor exemptions. While it is difficult to see CSEF having a significant impact in the live performance industry, we recognise that facilitating easier Crowd-sourced Equity Funding (CSEF) can potentially provide issuers with a more effective means for providing online offers of equity and appeal to an expanded network of potential investors.

It is also possible that new and innovative productions and business models will emerge to take advantage of such arrangements. For that reason, LPA supports the introduction of CSEF for proprietary companies – provided current capital raising mechanisms are also maintained.

## **RESPONSE TO CONSULTATION PAPER QUESTIONS**

We have not provided exhaustive responses to all questions raised in the Consultation Paper, but have instead grouped our comments under the broad headings provided by the Consultation Paper which have relevance for our industry.

### ***1. Appropriateness of the shareholder limit (Questions 1 – 4)***

Striking a balance between accessing a wider pool of potential investors and ensuring those investors/shareholders are informed and protected is clearly a major consideration for any potential CSEF arrangement and, as noted in the Consultation Paper, an increase in the shareholder limit for proprietary companies has the potential to make public companies eligible for registration as proprietary companies.

LPA is not in a position to recommend an ideal shareholder limit – this is an area that lies outside of our knowledge or expertise, but we do believe that for a CSEF arrangement to work effectively, then the current shareholder limit of 50 would have to be increased. In implementing such an increase, reform



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would be necessary to ensure proprietary companies are not subjected to onerous administrative and reporting requirements - for the simple reason that many small businesses simply do not have sufficient resources to meet those requirements, and the reform would become counterproductive.

**2. *Small scale offerings and other exceptions to the disclosure requirements (Questions 5-7) and;***

**3. *Increasing flexibility in capital raising (Question 8)***

Issuer caps and thresholds should be consistent with those offered for the small scale personal offer exemption. Furthermore, the \$2 million cap and \$5 million cap in certain circumstances on funds that can be raised under the small scale offer exemption has not been reviewed since it was introduced in the *Corporations Act 2001*. Therefore, the cap has lowered significantly in real value terms over the past fourteen years. LPA submits that as part of this process the issuer caps for both a CSEF scheme and the small scale personal offer exemption should be reviewed to ensure they are reflective of the real value that was intended when introduced in 2001.

LPA submits that the New Zealand CSEF provision for voluntary investor caps, in which the level of disclosure is dependent upon the level of any voluntary caps and the amount of funds the issuer is seeking to raise, should be given serious consideration. This method provides flexibility both for the investor and issuer, while simultaneously providing a sliding scale of protection for the investor. The ability for issuers to trade off the level of voluntary investor caps with the level of disclosure will appeal to a wider range of investors, while providing the appropriate level of protection in each case. The application of a blanket rule, as proposed by the CAMAC model, is inappropriately restrictive for a system that will apply to such a wide range of investors and issuers.

**4. *Crowd-sourced Equity Funding (Questions 9 -14)***

Overall, we believe that the CAMAC model for a CSEF regulatory framework is most appropriate for the Australian market, with the proviso that the small scale personal offer and sophisticated investor exemptions for proprietary companies remain.

The voluntary investor caps in the New Zealand model should be adopted within the CAMAC model as a more effective means for balancing protection and flexibility for issuers and investors.



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### **LPA General Statement**

Development of a new regulatory regime for CSEF may prove confusing and difficult to manoeuvre for would be fundraisers and investors alike. The Treasury should ensure that any CSEF legislation clearly outlines the eligibility, compliance and maximum fundraising requirements for CSEF.

The draft legislative framework for a CSEF model should make clear that the current exemptions that exist for proprietary companies will not be removed or significantly altered as a result of introducing legislation for CSEF.

LPA would be pleased to assist the Treasury by providing further information about fundraising within our industry should it be required. If you have any queries regarding our submission please do not hesitate to contact me.

Yours sincerely

**Evelyn Richardson**  
Chief Executive