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Senate Standing Committees on Economics
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Australian Business Growth Fund Bill 2019 (Cth)

Dear Committee Chair and Members

Thankyou for the invitation to comment on the *Australian Business Growth Fund Bill 2019*.

I write as a legal academic in the area of the regulation of financial markets and financial services going back to the first corporate regulation by the Commonwealth in the 1980s. I have researched and published widely in the area of self-regulation, co-regulation, and de-regulation of the financial sector and financial markets for almost 40 years and was originally at Monash University. I spent two sabbaticals under the previous Law Council Exchange Scheme working and researching at the Attorney-General's Department in Canberra and at the forerunners of ASIC.

I am surprised that a Coalition government would propose the interventionist approach recommended in this Bill. The documents state that banks are reluctant to finance start-ups due to high risk, so there should be no role for the Commonwealth to go where banks fear to tread.

In addition, I have little confidence in this proposal as it reads. The supporting documents are brief. The timeframe for submissions and hearings is rushed. There is no time for considered law reform.

There is no evidence that the stated equivalent schemes in the UK and Canada are successful, or that they are even equivalent to the proposed scheme.

There is little supporting information, so at this stage my comments are equally rushed and are in the nature of requesting more information on the proposed Bill.

(1) Does Coalition policy support the Commonwealth entering business by becoming a financier by joining banks to lend to start-ups?

The documents state that business faces difficulties in borrowing \$100,000 without security. No evidence is provided to support this. Was it written some months ago in the aftermath of the Hayne Royal Commission in 2019, and have things changed today one year later? The Minister's Second Reading speech refers to a report of the Reserve Bank of Australia in 2018 which outlined the difficulties that Australian SMEs face in accessing finance. Is this still current two years later, or is the Bill now based on out-of-date data?

I am surprised that the Coalition plans such intervention in the market. Has it abandoned its policy that governments do not engage in business and that markets unleash innovation, propel investment, spur jobs and foster prosperity? The Bill goes against Liberal Party policy which states that 'government should not compete with an efficient private sector; and that businesses and individuals - not government - are the true creators of wealth and employment'.

The Bill authorises the Commonwealth to participate in forming, and acquiring shares in or debentures of, the proposed Australian Business Growth Fund (BGF), and plans to appropriate \$100 million for that purpose. Four major banks will contribute the same amount with some smaller contributions from some smaller banks. The documents do not consider whether this will create a partnership or a joint venture, and there is no discussion on how the profits and losses will be shared.

The Explanatory Memorandum says that the BGF will be 'profitable for investors'. If so, why is the private sector not offering such finance and taking the profit? As said above, why would the Commonwealth rush in where banks fear to tread?

I am surprised that the government would plan to pay 'to eligible Australian businesses where they have generated annual revenue between \$2 million and \$100 million and can demonstrate three years of growth and profitability'.

This is 'investing on hope' and if there are losses, there will be selling at a loss or 'selling on fact'.

Offering finance to start-ups seems like wishful thinking and an attempt to back 'winners'. No evidence is presented on how the 'winners' will be picked, and that this plan can and will deliver. The proposal would be strengthened if there were data from the UK and Canadian schemes which are mentioned and asserted to be the same but are not examined.

Is the proposed BGF similar to the GO NSW Equity Fund, and if so, has the Committee examined its successes and failures? It is currently being wound up because of problems with decisions and investments of the fund. Comparative data is needed.

(2) Is there a role for government in providing retail banking and financial services?

This Bill makes the Commonwealth a member of a company to be set up under the Corporations Act, a move which goes against Coalition policy that ‘governments don’t run a business’.

Would this money be better spent in other sectors such as investment in IT, NBN, education and skills, and infrastructure and social services to boost the economy?

(3) Can details on governance and operation of the fund be provided?

The BGF is to be administered by a company set up under the Corporations Act and with this comes rights and responsibilities, regulated by ASIC. No details are provided on the management of the proposed company as it will be subject to the standards set out in the Corporations Act.

However, power over the company and the funds is in the hands of the Minister. There is no information on government accountability for decision making by the Minister beyond historic reporting in the Annual Report and after a period of three years.

Selection criteria

There is nothing in the documents on the pre-requisites for a grant of finance, and the documents set out no ‘selection criteria’ for a successful application for finance.

Objective and impartial standards must be set. The documents state that the funding decision is to be made by the Minister. This may have been unremarkable until the unexpected and disappointing evidence of the politicisation of grants revealed in Ministerial allocations in the recent ‘sports rorts scandal’.

The documents do not mention standards of conduct, accountability and integrity in the awarding of grants. Will grants be awarded by governments of either side assisted by a coloured spreadsheet to reward donors and those in marginal seats?

There is no mention that the proposed corporation administering the BGF will be subject to standards of conduct set out in the Corporations Act including the FOFA reforms, the need to act in the best interests of the client and the statutory obligation for those in the financial sector to act efficiently, honestly and fairly.

There is no mention whether the proposed corporation may need an Australian Credit Licence (ACL) and whether it will be subject to the rules of responsible lending.

(4) Is the proposed corporation engaging in banking business, and if so, will it be subject to the Banking Act administered by ARPA?

There is no mention in the documents whether the proposed corporation is engaging in banking business, and if so, whether it will be subject to the Banking Act administered by ARPA.

Is the proposed company an authorised deposit taking institution (ADI, such as a bank) to be licensed by and administered by APRA?

(5) A people's bank?

Governments of both persuasions (Keating and Howard) were responsible for the privatisation of the CBA, the people's bank, which was set up in 1911 for just this purpose. The documents state that banks will not lend to start-ups, and if so, the fact that the privatised CBA will not provide such finance takes us back to 1911 and the need for the creation of a 'people's bank'.

Does this proposal show that there is still a need for a 'people's bank' which will put the needs of customers ahead of profits?

Is the Committee aware of the reestablishment in New Zealand of a people's bank, the Kiwi Bank, which operates from branches in NZ post offices?

(6) To conclude – too big, too fast and too soon with no lessons from overseas

This is an interesting proposal, with examples in the UK and Canada which are asserted to be the same left unexplored and undocumented. There is no mention of the GO NSW Equity Fund and lessons arising.

At this stage, this proposal needs further information on how to ensure integrity and accountability by the Minister. It is too rushed and I can predict another Royal Commission in years to come to examine the likely unpaid debts of the BGF and poor lending decisions.

The sports rorts scandal of recent months indicates the politicisation and the unaccountability of the role of the Minister in similar circumstances. The proposed role of the Minister requires integrity, disclosure and independent accountability to a Commonwealth ICAC.

Yours faithfully

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