

29 January 2016

Manager  
Financial Innovation and Payments Unit  
Financial System Division  
The Treasury  
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PARKES ACT 2600  
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Dear Manager of the Financial Innovation and Payments Unit,

I write to you on behalf of the Australian Retail Credit Association (ARCA) in relation to the *Corporations Amendment (Crowd-sourced Funding) Bill 2015*, 'the Bill'. The Bill was introduced into the Federal Parliament on 3 December 2015 by the Minister for Small Business and Assistant Treasurer, the Hon. Kelly O'Dwyer MP. Following introduction of the Bill, interested parties were invited to make a submission on the Bill.

As the peak representative body for the consumer credit industry, ARCA's membership comprises some of Australia's most trusted organisations, including banks, credit reporting bodies, mutuals and finance providers. Our membership also includes peer-to-peer (marketplace) lenders RateSetter and MoneyPlace.

Our primary feedback relates to *Section 738G* of the Bill. The purpose of the Bill, as stated by the Minister, is to provide a framework for crowd-sourced equity funding, encouraging Australians to innovate and invest.

The overarching purpose of the Bill relates to equity. Feedback has been raised by industry that the overarching purpose of the Bill, as applied within the legislation, might conflict with the *Corporations Act 2001 (Cth)*.

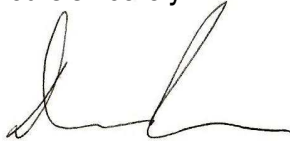
*Section 738G* of the Bill provides that the provisions of the new regime are eligible to offers of securities. *Section 92* of the *Corporations Act* provides definition to 'securities' and includes shares, debentures, interests, legal or equitable rights and options. In short, the definition in the *Corporations Act* extends beyond equity and includes debt.

There has been feedback that if the reference in the Bill is not changed, the Bill might be used by companies as a means of avoiding well established legislative requirements for issuing debt securities and in particular that the Bill could be used as a way to provide peer-to-peer lending services to retail investors whilst avoiding the need to comply with the requirements and consumer protections provided for in *Chapter 7* of the *Corporations Act*.

Further, it should be noted that crowd-sourced equity funding and peer-to-peer lending are significantly different activities which pose substantially different risk profiles for investors, and consequently the regulation of each should be kept distinct.

I appreciate the opportunity to provide feedback on the Bill. For further information on this submission, please contact James Newbury, ARCA Public Affairs Manager on 03 9863 7856 or email [jnewbury@arca.asn.au](mailto:jnewbury@arca.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'D. Paull', written in a cursive style.

**Damian Paull**  
Chief Executive Officer