

## Submission to the Victorian Social Enterprise Strategy Consultation.

The term social enterprise was 'invented' by Freer Spreckley in his innovative research work on social accounting in 1981. As a 'movement', social enterprise started developing momentum in the 1990's, with the creation of Social Enterprise London. Government and public interest commenced shortly thereafter, culminating in a series of excellent reports and strategy documents on the topic released by the then UK Government at the beginning of the century.

So in relation to the 'Themes' selected for this review of social enterprise in Victoria, it would be useful to consider these in relation to the original 'big picture' strategies for social enterprise developed shortly after 2000 - strategies which focussed on social enterprise as a platform for 'industrial, economic and social reform'.

Given this guiding focus, it will be important to show how social enterprise development in Australia can be linked to the larger and more comprehensive 'original' strategies which were defined in the UK Government's seminal report on the topic, **"Social Enterprise – A Strategy for Success"** in 2002.

To do this, you can access a copy of this report – and the other key reports/documents from that era - on the web-page of the Australian Social Enterprise Legal Models Working Group at:  
<http://www.employeeownership.com.au/social-enterprise-legal-models/> .

In viewing this report, you will see that the original 'strategic vision' for social enterprise is defined on page 7 of the report (PM Tony Blair provided the "Foreword"), to quote as follows:

### **"Our strategic vision**

The Government's vision is of dynamic and sustainable social enterprise strengthening an inclusive and growing economy.

Successful social enterprises can play an important role in helping deliver on many of the Government's key policy objectives by:

- helping to drive up productivity and competitiveness;
- contributing to socially inclusive wealth creation;
- enabling individuals and communities to work towards regenerating their local neighbourhoods;
- showing new ways to deliver and reform public services; and
- helping to develop an inclusive society and active citizenship.

The strategy sets out a programme for the next three years illustrating how, working with other stakeholders, we will promote and sustain social enterprise activity. Key partners in the delivery of the strategy will include central government and its agencies, Government Offices, the devolved administrations, Regional Development Agencies, local authorities, the Co-operative Movement, the Social Enterprise Coalition, practitioners and intermediaries, as well as other key stakeholders in the social enterprise sector."

This 'big picture' vision has been largely lost in the social enterprise sector in Australia.

Towards reversing this, we could take heed of Patricia Hewitt's (the then UK **Minister for Trade and Industry**) statement in her Introduction to the above report, to quote:

"I want to ensure that we do more to encourage, grow and sustain social enterprises – to ensure that social enterprise is not seen as a 'side show' to the 'real' economy but rather an integral and dynamic part of it."

The main thrust of the strategy - as the Minister stated - is "to challenge the established models - financial, legal and regulatory - so that we unlock the potential in the social economy".

The current review of the Victorian Social Enterprise Strategy must therefore seek to (i) resurrect the broad ‘reform’ objectives for social enterprise and (ii) guide social enterprise more towards the mainstream of the Australian economy, especially through ‘challenging the established financial, legal and regulatory models’ prevailing within it.

Some important work in these directions is underway to shape social enterprise towards greater roles in mainstream economies, post the pandemic, both here and in other countries. Some of this work is outlined below. Much of this research and development work could be considered for inclusion in the Victorian Social Enterprise Strategy (though the work underway – and the initiatives involved with it – are not necessarily dependent on such an outcome).

**1. Rebuilding Business For Society** - on the topic of alternative social enterprise legal models and the broad vision for social enterprise, this excellent report has just been released in the UK. It is sponsored by Coops UK, Employee Ownership Association (UK), Building Societies Association, Social Enterprise UK and the Association of Financial Mutuals. You can see the report at: <https://employeeownership.co.uk/wp-content/uploads/Rebuilding-Business-for-Society-FINAL.pdf> (each of the org sponsors has it on their web-site ). This report would be a valuable contribution towards bringing the public policy debate on social/community enterprise back into the ‘reform of the way we do business’ field in Australia. It is highly recommended, especially for the data contained within it.

**2. An Analysis of the Social Enterprise Sector in the UK – An ANZSOG Occasional Paper** - further on the ‘broader vision’ topic, you will find this excellent Australian research report useful. It was published last year by the Australian and New Zealand School of Government, following a study tour of larger scale social enterprises in the UK by ANU research fellow, Zahra Maronesy. It is an important contributor towards the debate on the scale, depth and breadth of current developments in the social enterprise sector and provides some excellent case studies of operating, large scale employee owned, cooperative and NFP social enterprises and public service mutuals (PSMs), many of which could be – and are being - emulated in Australia. For a list of some of these local developments and for a separate analysis of the situation regarding ‘scaled up’ employee and cooperatively owned social and community enterprises, see attachment 1 below. You can download a copy of the ANZSOG report at: <https://www.anzsog.edu.au/documents/5482-anzsog-occasional-paper-maronesy>.

**3. The breadth and diversity of legal models operating in the social enterprise space in other economies** - for more on this topic, check out these two recently published reports by Social Enterprise UK. These should be useful contributors of evidence towards transforming our approach to social enterprise development and governance in this country, along the lines supported in other nations.

- (i) **Capitalism in Crisis - Transforming our economy for people and planet.** The link is: <https://www.socialenterprise.org.uk/state-of-social-enterprise-reports/capitalism-in-crisis-transforming-our-economy-for-people-and-planet/>. Note the graph on numbers of social enterprises by existing legal models (including cooperatives and CICs) on page 13.
- (ii) **Social Enterprise - The Hidden Revolution** – see the link at: <https://www.socialenterprise.org.uk/policy-and-research-reports/the-hidden-revolution/> and note the huge increase in ‘performance’ in the social enterprise space when cooperatives and mutuals are added into the mix.

**4. Does business structure influence social impact? Early insights and practical implications for donor agencies** - on the relationship between legal structure and ‘results’ in the social impact space, check out this excellent, well received Oxfam report at: <https://www.enterprise-development.org/wp-content/uploads/Does-business-structure-influence-social-impact-OxfamDCED-Briefing-Note.pdf> . No surprise that cooperatives and employee ownerships come out on top !

**5. Review of Social Enterprise Legal Models** – the “Final Report” of the Social Enterprise Legal Models Working Group in Australia - which discusses the main issues with capital raising in various legal forms of social enterprise - can be seen at : <http://www.employeeownership.com.au/social-enterprise-legal-models/> . This work was expanded upon by the Prime Minister’s “Community Business Partnerships” group (see attachment 2 below), and more recently by the Australian Law Reform Commission’s consideration of a social enterprise legal model as a priority for its 2021 Plan – see: <https://www.alrc.gov.au/news/legal-structures-for-social-enterprises-a-nationwide-conversation-on-law-reform/> . The need for a social enterprise legal model along the lines of the Community Interest Company (CIC) in Australia has been under consideration for some years - see: <http://www.employeeownership.com.au/a-community-interest-company-structure-in-australia/>.

Of course, employee ownership would benefit from such a structure, as many CICs are also employee owned. For instance, more than 50% of all the employee owned 'public service mutual' forms of social enterprise in the UK are incorporated as 'community interest companies' (CICs) – see more of the evidence on this in attachment 1 below.

For an 'info brief' which has been circulating in Australia on the CICs model/law/regulation in the UK, see attachment 3 below. It provides background to the issues of 'asset lock', capital raising and compliance through a specific legal form which is missing in Australia.

**6. Cooperatives as social enterprises** – Employee Ownership Australia also supports the development of the cooperative form of social enterprise, as advocated by our sister body, the Business Council of Cooperatives and Mutuals (BCCM), given that many of these are also employee owned. The case for this form has just been launched (October, 2020) by the BCCM – see: **Discussion Paper: Co-operatives and Mutuals as Social Enterprises** <https://bccm.coop/wp/wp-content/uploads/2020/10/BCCM-Social-Enterprise-Discussion-Paper-2020.pdf>. This report was also linked in this article published in Pro Bono News, along with the launch – see: **Co-operatives – the slow food of social enterprise?** at: <https://probonoaustralia.com.au/news/2020/10/co-operatives-the-slow-food-of-social-enterprise>. To quote : “social enterprises hold great potential to make our world better. To realise this transformative potential, we must ensure the fullness and diversity of this sector is recognised and embraced – including co-operatives, writes Antony McMullen”. This approach offers both greater levels of community self-help and ownership in the social enterprise sector, as well as a model which – through existing legislation – offers defined social purpose and an embedded regulatory compliance system.

## Conclusion

I hope this submission is useful towards the review of the Victorian Social Enterprise Strategy and its need for a more diverse range of legal models to be considered as part of the sector.

Such diversity could see a greater level of performance in each of the 'Themes' offered for discussion, as indicated in the various research reports and articles above.

In adopting this, the strategy would also offer a bolder alternative to that in place now, and draw in wider support and a broader vision for the development of an eco-system for social enterprise across Australia, similar to that of the most successful social enterprise consortium in the world, the Mondragon Cooperative Consortium in Spain. For more on that, see my article **Building community wealth: Are Mondragon's cooperative ideas transferable to Australia?** at: <https://probonoaustralia.com.au/news/2020/02/building-community-wealth-are-mondragons-cooperative-ideas-transferable-to-australia/>

Thank you for the opportunity to participate in your consultation.

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## Attachment 1: 40% of the largest employee owned businesses in the UK operate in the 'social economy'

On the topic of 'for purpose' social enterprise - and the scale which could be achieved in Australia in this regard - it is interesting to consider what the "Top 50" list of employee owned social businesses in the UK - which has just been released – indicates on this. You can download the report at: <https://employeeownership.co.uk/resources/what-the-evidence-tells-us/>.

The following analysis of the businesses mentioned in that report is useful, given that we are now moving in that direction in Australia as well (see list of local examples below).

There are three social enterprise cooperatives listed on the “Top 50” employee ownership list – Greenwich Leisure (number 4 – 100% employee owned with 10,593 employees), Care Plus Group (number 25 – 100% employee owned with 711 employees) and Leading Lives Ltd (number 36 – 100% employee owned with 522 employees). **Leading Lives** is a highly innovative disability service/social enterprise. You can see its web-site at: <https://www.leadinglives.org.uk/>.

On the “Top 50” employee owned list, there are 10 businesses which would be classed as the social enterprise form called ‘**public service mutuals**’, incorporated in various ways (often as community interest companies - CICs). These are:

1. Greenwich Leisure (4 – 10,593 staff)
2. City Health Care CIC (10 – 2571 staff)
3. Central Surrey Health (12 – 1632 staff)
4. Medway Community Healthcare CIC (13 – 1614 staff)
5. Bromley Healthcare CIC (22 – 875 staff)
6. East Coast Community Healthcare CIC (24 – 806 staff)
7. Care Plus Group (25 – 711 staff)
8. Spectrum Community Health CIC (33 – 594 staff)
9. Leading Lives (36 – 522 staff)
10. First Community Health and Care CIC (49 – 387 staff)

Also on the “Top 50” employee owned list, the following 8 class themselves as ‘**social enterprises**’

1. Childbase Partnership (11 – 1922 staff - also, awarded “Best UK Workplace”, 2020)
2. Locala Community Partnership (15 – 1536 staff)
3. Provide CIC (18 – 991 staff)
4. Anglian Community Enterprise CIC (21 – 881 staff)
5. Be Caring Together Ltd (23 – 808 staff)
6. Riverford Organic Farmers Ltd (28 – 699 staff)
7. Highland Home Carers (41 – 470 staff)
8. Sunderland Home Care Associates Ltd (48 – 399 staff).

So with nearly 40% of the largest employee owned businesses in the UK operating in the ‘social economy’, we have much to learn from – and potentially to emulate - in this country.

A good start in this area has been made in Australia however. There is one ‘public service mutual’ – in the disability space – operating in Australia – Kudos Services in Adelaide – with 100+ employee owners.  
See: <https://kudoservices.com.au/>.

There are also six employee owned home care services operating, the largest being Co-operative Life in Sydney with 80 staff – see : <https://www.lifecoop.com.au/>. This one is just starting in South Australia – see: VIVA Mutual – at: [www.vivamutual.org](http://www.vivamutual.org).

There is also a worker cooperative owned and operated by people with a disability – Nundah Community Enterprises Cooperative – which has been operating for 15 years – see: <http://www.ncec.com.au/> (and was named “Social Enterprise of the Year in 2015” in Australia).

## **Attachment 2: PM’s “Community Business Partnership’s” work on social enterprise legal models**

Are new hybrid legal structures needed? Or is clearer ASIC guidance enough?

Hybrid structures and new alliances allow different ways of sharing profits that can be made in delivering social outcomes

The key issues were identified as:

- clarity for the consumer, investor and the organisation is critical; and
- a diverse flourishing economy requires diverse legal forms.

Legal frameworks in other countries enable investment. Australia won't be able to compete for that investment. We need to consider longer term objectives.

There are different objectives to meet in relation to legal models:

- For purpose, mission lock and asset lock;
- For purpose and mission lock;
- For purpose and asset lock;
- For purpose; and
- For profit.

ASIC Guidance for Directors would provide a clear position of Director's liabilities in considering other positive outcomes besides the shareholder interest.



### **Attachment 3. The Community Interest Company Model, legislated for in 2005 in the UK.**

For a start, check out the UK CICs Commissioner's tweet (see:

<https://twitter.com/CICRegulator/status/1135833459442814976>) on the count for new 'community interest companies' (CICs) being registered per month in the UK – a record was set in May, 2019 at 432. The numbers of CICs show a very rapid pace in growth of social enterprise via that legal form in that country, though of course not all commence, and some don't last (the same for any business), and a few are 'de-registered' each year if they fail to comply with the CIC Laws. There are now 15,700 CICs operating in the UK – see:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823460/CIC\\_Annual\\_Report\\_2019\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823460/CIC_Annual_Report_2019_v2.pdf).

This growth path could be replicated in Australia, while providing for an independent, functioning 'compliance' system to operate for social enterprise in this country ('compliance' is a key piece of the system currently lacking in this country).

The key features prescribing what is to operate within a CIC are:

1. Adoption of a social objective,
2. Annual reporting (in a prescribed format) against that objective,

3. Limited returns to investors (primarily in the form of capital gains, though also limits returns as a 'dividend' to investors to around that of the current bank rate on business loans), and
4. An asset lock (use of assets in perpetuity for the social objective, ie: can't be wound up or sold for personal gain).

You can see more on the CICs UK web-site at: <https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies> .

It seems that numbers 3. and 4. above maybe the most prominent in comparison to other 'model' options being considered for social enterprise.

These issues are covered in Chapter 6 "The Asset Lock" of the UK Government's Guidance Notes for CICs, specifically in the section below:

"6.5. Redemption and repurchase of shares and reduction of capital – see page 9 at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416360/14-1089-community-interest-companies-chapter-6-the-asset-lock.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416360/14-1089-community-interest-companies-chapter-6-the-asset-lock.pdf)".

Basically, this says that so long as the share price is set at it's paid up value, then the CIC can do anything it likes with the share – though of course this excludes "redemption" at a value including capital gain (which may or may not satisfy the "social investor", depending on what their motivations are). So a CIC is different to an ordinary company (and a B-Corp) in this respect, and while it can importantly accept capital through 'equity funding', its governance is not so different to say to a non-distributing cooperative or a not-for-profit.