Employee Ownership Australia *Making it your business*

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Submission on Employee Ownership in the Social Care Sector

1 Introduction

Employee Ownership Australia ('**EOA**') welcomes the opportunity to make a submission on how employee ownership structures can be effectively used in the Australian social care sector.

EOA was formed in July 2011 to ensure ongoing advocacy for broad based employee ownership and dynamic workplace participation in Australian companies.

It engages with and assists companies that have or aim to implement employee ownership or employee share plans, whilst also being a key advocacy body for broad based employee ownership. EOA is independent and entirely member funded, and is the only independent, dedicated advocacy and education group in this space in Australia.

We advocate for tax and corporate regimes that promote, not prevent, the ability of business to engage in employee ownership.

These submissions set out how employee ownership structures can be effectively used in the Australian social care sector, based on the experience of similar employee ownership structures in the United Kingdom.

There is an opportunity and need for employee ownership structures to be given further prominence in policy development for the Australian social care sector.

In EOA's view it is appropriate that there be steps taken to facilitate advice and support programs for social care organisations seeking to convert their underlying business model to an employee ownership structure.

We welcome the opportunity to engage further with the Department of Health and Aged Care in relation to our above observations and submissions.

2 Opportunities and challenges in the Social Care Sector

2.1 Overview

Australia has a world class health system but there are systemic problems

Australia has a world class health system which is supported by universal and affordable access to high quality medical and pharmaceutical services.

In light of the Final Report of the Royal Commission into Aged Care Quality and Safety, it has become clear that there are systemic problems stemming from the design and operation of the aged care system,[1] and the broader social care sector.

A key difficulty is attracting and retaining highly skilled employees

One of the problems that arises in the social care sector is the difficulty in attracting and retaining highly skilled employees. This is often due to a combination of the following issues:

- low wages and poor employment conditions;
- a lack of investment in staff and training;
- limited opportunities to progress or be promoted; and
- no clear pathway to exploring roles within an organisation.

Problem exacerbated by the GIG economy

More recently, the emergence of 'gig workers' has further exacerbated these problems.

New market entrants in the social care sector are deploying technology to 'connect' local workers to their clients. Local workers tend to have fewer identifiable skills in the home care field.

The model is said to enable maximum care hours at the lowest fees possible. Yet, these 'uber-like' arrangements do not ameliorate the identified problems in the social care sector.

Instead, it removes the opportunity for workers to receive supervised and skilled employment. In turn, this can engender a culture which provides little support, no opportunities for progression and therefore, ensures workers are not driven to provide the best quality care for their clients.

Development of career paths for social care workers is critical

To address these issues, it is necessary to create fulfilling and financially rewarding career paths for social care workers.

2.2 Ownership challenges in aged and social care

Current ownership structures of aged and social care businesses limit the creation of career paths

One of the challenges in creating fulfilling and financially rewarding career paths are the ownership structures of aged and social care businesses.

In Australia, the *Aged Care (Living Longer and Better) Act 2013* (Cth) (**ACA**) promoted private sector involvement in the provision of aged care services and homes.

The ACA reflected similar developments in other countries, such as the United Kingdom (**UK**), Sweden, Japan and Canada to increase private sector involvement in aged care. The overriding argument as to the utility of private care involvement has been that private sector provision will enhance efficiencies and in turn, will facilitate higher standards of patient care within existing financial constraints.

Problematically, over time, for-profit private sector involvement has gradually increased at the expense of government and not-for-profit provision. Within private sector provision, the role of private equity has become steadily more important.

A key issue posed by private equity is the expectation that private equity funds will deliver above-market returns ('alpha') to their investors and in a relatively short timescale.

[1] Aged Care Royal Commission Final Report (73) (Summary of Final Report).

As labour intensive organisations, pressure for higher short-term returns will inevitably place downward pressure on labour standards in aged and domiciliary care providers. There is also evidence of greater propensity for re-sale of private equity-backed investments, adding to instability in the management of aged care homes.

These issues have been shown to bring about lower quality employment in private providers (relative to public providers) such as fewer staff, less experienced carers, greater use of agency staff, and higher employee turnover.

2.3 Ownership opportunities

Employee ownership can provide a better model and outcomes

Employee ownership potentially provides a better model than other private for-profit models (and especially private equity-based provision) for several reasons:

(a) Employee ownership potentially gives employees a share of the profits, thereby boosting employee remuneration and thus assisting employee recruitment and retention;

(b) Employee ownership facilitates employee involvement in the governance of care home and service provision, potentially leading to more effective patient care via, for instance, more investment in staff training; and

(c) Due to a combination of (a) and (b) employee ownership can enhance employee motivation and engagement leading to higher quality patient care.

Employee ownership can therefore provide:

(d) an effective means for resolving or at least mitigating the staffing issues in the sector and lead to higher quality care; and

(e) an exit route for existing private providers (as an alternative to sales to private equity).

A unique opportunity to consider business models with employee ownership which best suits the needs of the broader social care sector

The Department of Health and Aged Care is presented with a unique opportunity to consider business models which best suits the needs of the broader social care sector, including in both the aged care and the disability sector.

As alluded to above, one such model is the use of employee ownership structures (‘**EO**’).

Employee ownership trusts would be the catalyst for improving competition and greater accountability in the social care sector

EOA is seeking to introduce a ‘third force’ in the social sector through a combination of employee ownership alongside not-for profit and privately owned services. The introduction of such a model would be the catalyst for improving competition and improving greater accountability (and governance) in the social care sector.

It is EOA’s position that the ‘third force’ which can promote greater engagement and talent in the social care sector is an ‘employee ownership trust’ (**EOT**). This is because it provides employees (through the EOT) with a custodial interest and a share in the financial success of the business, which in turn produces greater employee engagement, retention and governance.

These submissions will draw upon the UK’s rapid growth of employee ownership trusts in the social care sector to highlight the benefit of utilising EOTs.

3 Employee Ownership Trust

3.1 What is an EOT?

An EOT is a structure that is used to facilitate employee ownership of a company. Essentially, the trustee of the EOT holds a long term, significant sized shareholding in an operating company for the benefit of employees.

The structure does not depend upon specific shares being held by particular employees from time to time and no employee has any particular entitlements to any shares in the operating company. Rather, the EOT holds its rights and shares for the benefit of all present and future employees of the company. Accordingly, as beneficiaries of the EOT, the employees are indirect owners of the company.

The trustee of the EOT takes on a custodial role in relation to the conduct of the company and therefore has the power to exercise its share rights to ensure the underlying operating company is a successful, independent professionally managed trading company with an employee ownership ethos.

Annexure 1 of this document sets out further detail in relation to the operation of the EOTs.

4 The United Kingdom's Experience

4.1 How have EOT's been used in the UK?[2]

UK experience provides insight into the use of EOTs in the Australian social care sector

The UK's experience of implementing employee ownership structures provides valuable insights into the benefit of deploying EOTs in the Australian social care sector. [3]

Focus on inability to attract and retain high quality employees

One of the key challenges in the UK social care sector has been the inability to attract and retain high quality employees in circumstances where government funding was constrained. During the early parts of the 21st century, the aged care sector experienced a tightening of regulations as a result of the Care Quality Commission imposing stringent requirements on workforce capabilities. At the same time, funding constraints inhibited operators' ability to invest in staff and provide employees with attractive and financially rewarding careers.

Impact of growth of private sector as a provider

A further challenge in the UK has been the growth of private sector provision at the expense of local authority provision. Around 85 per cent of care home beds are now operated by private providers. Within the private sector, private equity is now a significant player.

4.2 UK response to create different ownership structures: EOTs

In response to these challenges, owners of various social care organisations have deployed employee ownership structures as an alternative.

Domiciliary care industry

In the domiciliary care industry, a number of care providers for the elderly and disabled have implemented various forms of employee ownership:

- Sunderland Home Care Associates, which employs approximately 220 staff members, utilised an employee benefit trust ('**EBT**') alongside tax approved share schemes (such as Share Incentive Plans) to distribute shares to employees.

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2 Information provided by Andrew Pendleton, Professor of Employee Ownership and Reward, UNSW Sydney.

3 See also the Canadian Government's 28 March 2023 budget which proposes to introduce new rules to facilitate the use of EOTs in Canada.

- BeCaring which provides domiciliary care in large cities north of England and employs approximately 800 staff. BeCaring initially implemented an EBT and subsequently moved to an EOT.
- Highland Home Carers, based in Inverness, employs approximately 300 staff and utilises an EBT which distributes free shares using a Share Incentive Plan. The company also emphasises, amongst other benefits, good employment conditions, including good annual leave provisions and mileage payments.

Although the above-mentioned domiciliary care providers utilised an EBT (their formation pre-dated the statutory introduction of the EOT), this is of little consequence as an EOT is essentially a special form of an EBT. In any event, the above example highlights the attractiveness of switching to an EOT as BeCaring replaced their EBT with an EOT structure.

Residential aged care sector

Similarly, EOT's have also been successfully implemented in the residential aged care sector:

- Shaw Healthcare which employs approximately 3200 employees and operates 55 care homes throughout England and Wales, utilises an EOT structure. Shaw Healthcare has approximately 76% equity in its EOT. Shaw emphasises its commitment to staff training and the provision of good employment practices such as staff discounts, EAP support and long service awards. It pays the 'real living wage' to its employees (unusual in the aged care sector) and all employees received a bonus of 500 pounds in 2021-22.
- Middleton Retirement Village located in Darlington has recently converted to an EOT structure. Middleton emphasises lower patient/staff ratios, shorter shifts, staff discounts, access to various well-being facilities, and good annual leave provisions.
- Stoneywood Care Services in Scotland is an 100% employee-owned organisation with all 107 employees having a stake in the business. The driving forces for implementing the EOT structure was the desire for the business to retain its identity and purpose. In doing so, the business sought to secure a future in the local community as well as rewarding its loyal employees. Notably, Scotland is the third largest growth region in the UK for employee-owned businesses.

Non-Social Care Sectors

The use of EOTs in aged and social care mirrors the widespread adoption of EOTs throughout the UK economy since its introduction in 2014. It is estimated that there are around 1,400 EOTs currently, with around 300 new EOTs created each year.

This growth arises from the success of the EOT in providing a flexible form of business succession that maintains company independence, stability, and growth. This success has also led the Government of Canada to introduce an EOT structure in its March 2023 Budget.

As an example, as recent as March 2023, the owners of freight forwarded 'Warrant Group' sold 90% of their shares to an EOT. Although far from the realm of providing health care services, Warrant Group designed multi-modal logistics and delivered exact fit requirements to its customers on a global scale, turning over £82.7 million in 2022.

The EOT was formed with the goal of sustaining Warrant Group's independence and to secure the long-term future of the business. Former owner and managing director (now a non-executive on the board), stated that he felt 'an EOT fitted perfectly with our company ethos to secure the long-term future of the business. This will ensure that our core values, culture, and legacy will continue for many years to come'.

4.3 What other forms of EO have been used?

The UK has also implemented other forms of employee ownership such as public service mutuals in community health services. Public service mutuals arose as a 'spin off' from the NHS between 2010 and 2015. These service providers were developed in response to a central government policy allowing staff in the public sector to 'spin out' from the public system. The spin out process was typically initiated by senior managers in collaborations with employees.

These organisations provide a range of health services, including in the occupational health and sexual health disciplines.

Public service mutuals are generally, not-for-profit social enterprises and are registered in most cases as 'Community Interest Companies'. In the UK, the vast majority of public service mutuals are employee owned. The membership structure is based on one person-one vote. An employee would pay a token amount to become a member with approximately 50-75% of employees joining the public service mutual. It is typical for employee representatives to join the company board and/or for employees to have some control rights via an employee council.

Examples of public sector mutuals include:

- Leading Lives, providing social care support for those with learning disabilities and complex needs in Suffolk. This is a not-for-profit social enterprise with 420 employees. This company pays the 'real living wage' and distributes any surplus to its employees. It is pays good mileage and sleep-in rates to its employees.
- City Health Care, providing community health services (spun out of the local NHS trust) in Hull and East Yorkshire. This company, with nearly 2,500 employees, has relatively generous leave provisions and flexible working and benefits.

Although the public services mutual model could be utilised, the UK experience indicates that only a minority of these structures are fully employee owned.

4.4 Benefits of the EOT

The UK's implementation of EOTs demonstrates the utility of EOTs in the social care sector.

Establishes an effective succession arrangement for private sector aged care and in home support service businesses

The UK experience highlights how EOTs can be used to establish an effective succession arrangement for private sector aged care and in home support service businesses.

The EOT model provides a more stable and long-term structure for employee ownership. Unlike direct share ownership, founders and employees do not face the pressure of needing to 'cash out' upon leaving the company. Rather, as owners 'sell down' their interest to the EOT, they are gradually rewarded through periodic payments.

This form of deferred financing of the ownership conversion sidesteps the challenge of raising capital from employees or financial institutions that often bedevils the formation of worker co-operatives, not only as start-ups but also as a succession solution.

In Australia, over the past ten years, many private businesses have been formed to operate in the aged care and disability sectors (particularly in relation to the NDIS). These businesses have been set up by experienced operators who are now currently at the point of seeking to transition out from their ownership role.

The value of the EOT in this scenario can readily be ascertained. For instance, rather than a 'mature' business owner selling their company to a larger corporate, the EOT provides an effective employee focused business succession plan. As a result, where more business owners move towards an EOT, it avoids the problem of a concentrated marked, dominated by a couple of large corporations.

The recent acquisition of Japara by Calvary, and Bolton Clarke's acquisition of Alllity highlights just one example where larger providers are increasing their influence and thereby, further concentrating ownership in the residential aged care sector. Unlike these large corporate acquisitions, implementing an EOT does not require public or private investment as the EOT is a self-financing model.

Accordingly, the EOT is the superior model for taking over existing private companies as it avoids the concentration of large corporate ownership and instead replaces it with employee driven ownership.

EOA understands that as of 2022, ten providers in the residential and home care sector maintains almost 25% of market share in Australia. It is expected that these providers are large company's or non-for-profit organisations.[4] To reiterate, these types of entities are not considered ideal candidates for transitioning to an EOT. Rather, as mentioned above, the small to medium enterprise and family-owned businesses are the key market participants that could benefit from the use of an EOT.

Given an EOT model it suited towards a particular size and kind of enterprise, it is important to further understand the market participants who are primed to transition to an EOT. It is conceivable that existing providers (i.e., brownfield sites) of residential or home care services may be more comfortable transferring to a co-operative ownership rather than an EOT.

For completeness, we note that with the assistance of the Department of Health and Aged Care, it would be useful to further identify the type and magnitude of businesses currently at the 'mature' stage of their corporate lifecycle.

EOTs increase the economic benefits of employee ownership regimes

By creating an employee council to elect employee representatives to the board of the EOT trustee, the EOT model provides a vehicle for employees to make their collective voice heard throughout the company.

As a result, the EOT promotes greater engagement and talent in the company due to the employee centric ethos. In turn, this ensures employees are less likely to leave the company and are more likely to remain with their employer. Related to these matters is Employee Ownership Australia's submission to the 'Jobs and Skills Summit' last year which details the positive data and impacts of employee ownership in economies everywhere in relation to 'better wages and improved job security'.

Similarly, given the EOT model is primarily focused on its employees, it is important to note that the model ensures employees are offered direct, supervised and skilled employment to its workers as 'care givers'. These workers are motivated and trained to perform as an employee for their employer and critically, as a care giver to their clients. In EOA's view, where employers and employees collaborate to improve the performance of their business, they will jointly share the rewards from their efforts, including better job security, higher wages and improved career enhancement.

EOTs are broad, flexible, simple and cost-effective structures

The EOT model eliminates the concern surrounding the financing of ESS arrangements by way of loans or financial assistance by the company, resulting in greater participation and less regulatory and compliance costs for the company.

4 KPMG, 'Analysis of Australia's top 25 home care and residential aged care providers', *Aged Care Market Analysis 2022* (1 September 2022), 3.

This also ensures the ability to participate is not based on the financial status of the employee. It also avoids generational frictions from employees 'buying high' or 'buying low' under ESS arrangements (indeed, share prices do not always go up).

The company retains a wide discretion to determine the terms of the all-employee bonus plan, as informed by the concerns of the employee representatives, and this largely avoids the current complexities associated with designing a concessional ESS arrangement.

5 Conclusion

The successful deployment of the EOT structure in the UK provides a blueprint for implementing such structures in the Australian social care sector.

We believe that EOTs can provide the most beneficial and appropriate model to encourage greater employee engagement and retention of highly skilled workers.

Similarly, it is appropriate that there be steps taken to promote the use and prominence of EOTs in the Australian market in the manner discussed in the report of the Tax Revenue Committee. The benefits of employee ownership which are being achieved by EOA should be supported and appropriately funded in order to facilitate and promote the uptake of EOTs in Australia. In doing so, this will ensure not just the social care sector, but also, the wider Australian economy reaps the benefits of EOTs.

There is a specific benefit in advice and support programs being developed and funded which enables the conversion of existing and new social care enterprises to employee-owned operations. This support will enable such organisations to obtain the productivity and operational efficiencies that are currently being achieved through employee ownership in the social care sector of other jurisdictions.

To facilitate the smooth operation and conversion of enterprise into employee ownership structures, it will be necessary to work alongside regulatory bodies.

We would value the opportunity to work with the Department of Health and Aged Care to further develop and promote a framework which advances employee ownership in the social care sector.

Interestingly, we note the importance of employee ownership has been acknowledged in Canada with the recent introduction of a specific legislative format to further promote employee ownership.

If there are any queries arising from these submissions, please contact Andrew Clements, Chair of Employee Ownership Australia at andrew.clements@employeeownership.com.au.

Yours sincerely

Andrew Clements

Chair of Employee Ownership Australia

Annexure 1 Employee Ownership Australia

1 EOTs in Operation

The purpose of Annexure 1 is to set out how EOTs operate, and the various rights granted to employees.

1.1 Operation of the EOT

The EOT operates through a series of contractual arrangements which entrench the rights of the employees. These arrangements generally include an agreement between the company and the EOT which sets out the information and notification rights, as well as the matters over which the EOT may veto (‘**EOT Agreement**’).

The specific scope of these rights can be fine-tuned according to what is considered appropriate according to the circumstances of a particular business. Generally, the EOT will have direct veto rights over matters such as changes to the employee bonus plan, significant changes to the business plan or operating model, and changes to culture (i.e., through changes to a statement of values). The EOT Agreement facilitates the EOT’s ability to influence the operating company.

1.2 Nature of Employees Interest

As the EOT exercises rights for the collective benefit of the employees, the underlying trust deed includes an equal representation provision. This provision provides that the benefits which accrue under the EOT accrue for the employees equally. Hence, the EOT provides benefits to the employees on a non-discriminatory basis.

There is no fixed or specific entitlement of an employee to a particular asset of the trust or interest in the trust. The economic benefit from the conduct of the business is passed on to the employees under a type of cash bonus plan. Generally, payments are made by the company to employees as a cash bonus.

The cash bonus plan can be entrenched by way of the Agreement with the EOT and can provide for particular entitlements for employees by reference to specific criteria such as period of service, level of seniority and team performance.

1.3 Employee Rights

The rights exercised for the collective benefit of employees are generally in relation to:

- access to information;
- rights to seek information;
- the requirement for the EOT to consent to certain significant corporate events; and
- to entrench the employee bonus arrangements and the employee ownership ethos.

An EOT model is generally predicated on seeking greater employee representation and, in addition to the creation of an EOT and exercising the rights outlined above, may include:

- appointment of employee representatives to the board of the operating company;
- creation of an employee council to provide a forum for enhanced employee engagement. This council may be responsible or engaged in the appointment of employee directors to both the operating company and to the trustee of the EOT; and
- entrenchment of an employee ownership ethos and broad-based equity like cash bonus arrangements.

1.4 Acquisition of Shares by EOT

In Australia, it is common for shares to be acquired by way of:

- the acquisition of a small number of shares by the EOT; and
- the company conducting a share buyback programme over a number of years in which founders of the company dispose of some or all of their shares. As a result of share buy back the proportion of shares that the EOT owns will increase

The shares would be held on an unallocated basis for the employee beneficiaries of the EOT. The shares held by the EOT are not allocated to particular employees. The interest of the employee is as a mere object of the trust and there is no fixed or specific entitlement of a participant to a share in the company.

1.5 Administration of EOT

The EOT is administered by the trustee who is generally a company limited by guarantee. It is not recommended for a professional trustee company or a funds administrator to take up this role.

Rather, EOA's position is that the Board of the EOT would generally be comprised of some of the existing shareholders or directors, representatives appointed by the employee council and an independent chair.

The administration of the EOT is essentially the exercise of the powers vested in the EOT either by virtue of direct share ownership or by virtue of the incidental influence rights vested in the EOT via the EOT Agreement. The major changes to the operation of the company derive principally from the increased level of engagement of employees in the management and disclosure of information. The extent of these changes depends on the nature of the obligations which will be determined as part of the development of the arrangement and the terms of the control rights vested in the EOT.

1.6 Arrival and Departure of Employees

As the EOT retains the long-term shareholding and does not hold any specific interest for individual employees, the arrival and departure of employees does not raise any issues nor require any specific changes to the administration of the EOT. There is no need for each generation of employee to pay for their ownership stake or sell their stake upon exiting the company.