

An aerial photograph of a stunning New Zealand landscape. In the foreground, a steep, rugged mountain slope with yellowish-brown vegetation descends towards a vibrant blue lake. The lake is nestled between dark, forested mountains. In the background, more mountain ranges are visible under a bright blue sky filled with fluffy white clouds. The overall scene is majestic and scenic.

Social Enterprises in New Zealand

A legal handbook

Where we are,
where we are not, and
a few things it is nice to know.

Steven Moe
 Parry Field Lawyers

Social Enterprises in New Zealand

***A legal handbook and
update ahead of the
Social Enterprise
World Forum 2017
in Christchurch, New Zealand***

Steven Moe

August 2017

First Edition

These materials may be used by others but please acknowledge the source (Steven Moe). If you would like a digital copy email me at stevenmoe@parryfield.com.

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Comments from others

This is where comments from others will go about this project. Will include a one or two sentence quote and the name and organisation they are from (where appropriate).

Introduction

This short book compiles together a lot of information that is relevant for those involved with Social Enterprises in New Zealand. It is not trying to be more than what it is - an attempt to speak the language of social enterprise, raise awareness and stimulate discussions.

You may not agree with every point made here or position taken - that's a good thing. For the sector to advance and grow we need a diverse range of voices speaking out about their experiences. That includes not just advisers like me but also the practitioners who are out getting their hands dirty with these concepts and business models. What works and what doesn't?

Let's tell the stories that will encourage each other and ensure that this movement is more than just a passing fad but instead becomes the new reality demanded by the next generation who will follow us.

That's all. For now.

Steven Moe

Christchurch

August 2017

stevenmoe@parryfield.com

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[Add list]

PART A

Options for Social Enterprises in NZ

1 - What is a Social Enterprise?

Introduction

The Social Enterprise World Forum will be held in Christchurch this September. More than half of the 1,200 available tickets are already taken, with participants gathering from dozens of countries around the globe to be involved. In a relatively new sector like social enterprise there are often assumptions about what is actually being talked about. For example, what exactly does the term ‘social enterprise’ really mean in a New Zealand context? Is it another term for a charity that makes some money with an op shop or is there something more to it?

In seeking to understand and analyse this there are a lot of concepts and ideas that will be thrown on to the table in this article – some of them contradictory. However, it is hoped that by doing this there will be a clearer understanding about the issues involved in understanding and defining ‘social enterprise’ in a NZ context, and that that will foster better discussion and understanding.

How is the term used overseas?

The term “social enterprise” has different meanings for different people, depending on the background and experience of the person hearing that term for the first time. As one objective reference point outside of New Zealand, it is useful to see how the European Social Enterprise Law Association defined it in their paper, “Developing legal systems which support social enterprise growth”.

They said there were three key elements:

- entrepreneurial dimension: engagement in continuous economic activity;
- social dimension: primary and explicit social purpose; and
- governance dimension: mechanisms to ensure priority of social purpose.

They conclude that a good definition is: “an autonomous organisation that combines a social purpose with entrepreneurial activity”. It is interesting in this definition that there is no mention of the organisation being exclusively not for profit or for profit.

Canada has many similarities to New Zealand, so it is good to look at some of the thinking going on in that jurisdiction as well. The Canadian Community Economic Development Network includes a description on their website (<https://ccednet-rcdec.ca>). It gives a slightly different angle with more of an emphasis on the non-profit nature: “The term “social enterprise” is used to refer to business ventures operated by non-profits, whether they are societies, charities, or co-operatives. These businesses sell goods or provide services in the market for the purpose of creating a blended return on investment, both financial and social. Their profits are returned to the business or to a social purpose, rather than maximizing profits to shareholders.” It goes on to say: “Others use a broader definition that includes privately owned ventures that have a very strong blended financial and socially responsible return on investment.”

How about in New Zealand?

Closer to home, Ākina Foundation (www.akina.org.nz) has been

working for years to promote social enterprise in New Zealand. The definition they put forward on their website seems to focus more on a distinction between an entity which is “for profit” and one which is “for purpose”. They summarise this down to: “Social enterprises are purpose-driven organisations that trade to deliver social and environmental impact”. Ākina doesn’t comment on whether the organisation is a not-for-profit or not which would be an assessment of structure. Instead they focus on the “purpose-driven” aspect and the main intention for the entity.

Is there a spectrum of ‘goodness’?

All these definitions are helpful but focusing on the point of difference, it seems to come down to some part of the entity being involved in an aspect that is more than just the traditional goal of making a profit for shareholders. But there is clearly a spectrum ranging from “self focused” to “other focused” and it is worth asking at what point an organisation crosses over and can be given the label of a social enterprise. For example, is there a certain percentage of “good” that they need to be involved in – and how is that defined? How do you reconcile this focus on a “purpose” with the fact that simply providing employment for people is very important as that helps individuals provide for their families and communities to thrive. Where are the cut-off points?

Turning to that idea of a spectrum on which different legal forms of entity sit, it can perhaps be described like this – with some overly broad characterisations thrown in as headings to make the point.

Really ‘good’

Not for profit – these are usually traditional charities and do not exist to create a profit but instead help disadvantaged or

others.

‘Good’

Social enterprises – these have community purposes at their heart but operate as businesses and do make profits that support their purpose.

Pretty ‘good’

Businesses which donate – these are companies focus on profits but do set aside a proportion of their profits for some community purpose as well.

Not as ‘good’

Profit focused companies – these have no charitable or community purpose (except perhaps a token gift to disaster relief from time to time).

Is such an analysis really fair? It seems to overly weight the “goodness” of some organisations over others. There is a danger of going too far either way. Obviously the above is a really crude analysis, but it has been done through certain lenses. As mentioned above, the fact that an organisation offers employment to staff and contributes some product surely has immense positive value. So the challenging point is perhaps to take these lenses off and not to think in these sorts of terms at all. Instead, can we work out how to encourage all organisations to begin to take on board some of the concepts underlying social enterprise motivations. Even a “for profit” company could switch its sourcing of products and services in order to help some social enterprises become economically viable. How do you increase engagement with such companies, so it is not just left to “social enterprises” to be the ones who are seen to have some responsibility in this area?

How does B Corp status fit into this?

One example of a label which some companies are applying for to show where they fit on the spectrum is “B Corporations”. It is worth describing them in some detail as it is another dimension to consider. The B stands for “Benefit” and it involves a certification system for companies which meet certain criteria that show they have a focus on more than just profits. B Corporations are certified by B Lab which is a not for profit organization, and in some states in the USA there are dedicated Benefit Corporation legal structures that takes the certification further. Probably the most famous example of a company which has become a B Corporation is Ben & Jerry’s ice cream. The B Corporation website says: “B Corps meet the highest standards of verified social and environmental performance, public transparency, and legal accountability, and aspire to use the power of markets to solve social and environmental problems”. In New Zealand there are around a dozen companies who have taken the step to become B Corp certified and it will be interesting to see if it takes off.

A way forward

When you first become involved in this sector the terms and concepts can be confusing so this article has explained some of the things to consider regarding what a “social enterprise” actually is. The great part is that this is a growing and evolving area so it is actually possible to be part of the debate and even shape what happens next in New Zealand and globally. In a New Zealand context it will be important to look at all the different definitions and discussions overseas and use these as a basis for constructive dialogue about defining and enabling

more Social Enterprise in Aotearoa. In the next chapter we will turn from this discussion of what a social enterprise is and look at whether the legal framework in New Zealand that exists is enough to support their development or if a new legal structure would help.

2 - Legal structure options in NZ

Alice: Would you tell me, please, which way I ought to go from here?

The Cheshire Cat: That depends a good deal on where you want to get to.

Alice: I don't much care where.

The Cheshire Cat: Then it doesn't much matter which way you go.

Lewis Carroll in Alice in Wonderland

In the last section we looked at what social enterprises are. While the definition is still not set, essentially these are entities that combine both the desire to act “for purpose” with the desire to be “for profit”. The next generation of entrepreneurs is increasingly focused on more than just profit and whether they know it or not, they will probably fit in the definition of “social enterprises”. In this article we look at how that social enterprise concept fits within the existing legal framework in New Zealand and also examine what options some are proposing for change to help the growth of this sector.

On 9 December 2016 Cabinet released a paper called, “Social Enterprise and Social Finance: A Path to Growth”. It did not have concrete reform plans for the social enterprise sector, but instead it emphasised a cross-agency working group, the collection of statistics for further analysis and studying ways to encourage investment. That is important and there is a lot of time and energy currently being spent on ways to create a better ecosystem for social enterprises. However, some are arguing that more fundamental change might be needed if there is to be a growth in social enterprises.

The UK, Canada and the United States have all developed new types of social enterprise entities in the last decade. The

key paper that started the process in the UK was issued in 2002, 16 years ago, so this is not a new concept. However, in New Zealand it seems like we may let the ‘number 8 wire’ approach take over and simply make do and work within the existing frameworks. What can we learn from those overseas experiences and what alternatives might they suggest be considered for New Zealand?

The current options for social enterprises

For social enterprises a common structure is to set up a charitable trust which (eventually) incorporates a limited liability company as a subsidiary to run its profit making trading arm. There is limited research on this, but the Department of Internal Affairs in 2012 published a paper on this topic and pointed to 421 respondents which it had surveyed. Of those 52% were set up as charitable trusts. Incorporated societies made up 37% while limited liability companies made up only 7%.

The three most common “vehicles” used for setting up a social enterprise are:

- Incorporated charitable trust: A charitable trust needs to have a charitable purpose at its core and profit is not distributed to private individuals. It can register with Charities Services and apply for donee status so that donations are not taxed. This approach can limit the scope of what such an entity does since it is constrained by staying within those purposes.
- Incorporated societies: The Incorporated Societies Act 1908 provides that members can form a society which requires a minimum of 15 members. The constitution or rules must set out its objectives. This option is sometimes chosen by social

enterprises.

- Limited liability companies: In a company profit is typically distributed to shareholders but it is possible to “write in” (by restrictions on activities) some social enterprise purposes in the constitution of a company and companies (with charitable purposes) can also register as a charity.

Other structures which may be used are Co-operative companies, Maori land trusts, Limited Partnerships and Industrial and Provident Societies but these are more rarely seen.

Difficulties with available structures for social enterprises

One of the main issues for any new business is access to capital. If a charitable trust structure is adopted then that lends itself to approaching individuals and groups for philanthropic grants or donations (particularly if it has tax exempt status). However, it is more difficult to attract private investors who share the risk since these entities do not return profits to shareholders and remain “charitable” under the Charities Act 2005.

On the flip side of this dilemma, a limited liability company may struggle with attracting such private funding since there is an assumption that it is “for profit” because of the form of entity which is being used – whereas in fact it may have other objectives beyond returning a profit. Even if charitable purposes are built into the constitution, this is still something which needs to be explained and the default assumptions of investors will need to be clarified.

3 - Company or Trust: Which one to choose?

As we saw in the last section with the overview of some commonly used forms, one of the most confusing aspects about setting up a social enterprise is getting the legal structure right.

You might have thought the hard work was done when you had the great idea that you hope can become a self funding business that also achieves good in the community. In fact that is just the beginning of the journey because you also need to find the right type of entity (separate to you as an individual) which can move the idea forward.

In New Zealand there is currently no legal structure which is specifically aimed at being a vehicle that social enterprises can use with confidence. In another article this lack has been discussed in more detail and that issue can be further explored here. For now, we need to make do with the legal structures which are available and the two most common are setting up as a company, or setting up as a trust. This article looks at both of those options.

One of the key points to consider before we look at the detail of each option is to remember that you need to “tell your story” in a compelling way to future investors, funders and the community. Choosing the right structure is therefore really important because that becomes a fundamental part of that story. Will it be easy to explain to funders who offer grants that you have a company structure and are the sole shareholder?

Probably not. If you want investors who are seeking returns on their investment then will they easily understand that you have set up as a trust? You get the idea. So thinking through who your story needs to be told to will be important when thinking through the structure that is most appropriate.

Why set up as a Company?

A company structure offers a model which is well known and is easily explained. We see this used quite a lot in New Zealand not just in “for profit” scenarios. The word “limited” at the end of all company names in New Zealand is there for a reason - it is an effective way of limiting and containing liability that the entity may incur. That provides comfort for shareholders who will not be personally liable if the venture does not succeed. The contrast with trying to run a social enterprise in your personal name should be obvious - in that situation you have 100% control but could also be personally liable for debts that are incurred.

One of the other main advantages of this structure relates to governance. The founders who had the great idea can also be the shareholders and therefore retain control over the direction of the company. The company will have a board made up of at least one director and they are usually appointed by the shareholders which again offers another level of control to those who founded the company.

One of the downsides of setting up as a company has been hinted at earlier: people assume that a company structure is being used because there is a desire to make a profit. If your strategy is to approach foundations or other groups who might provide large scale funding for your idea then that can

make it tough to explain. One of the ways to deal with this is to try and hard wire your purpose into the company structure itself by stating clearly in the founding document (in the case of the company, the Constitution) what the purpose of the company will be. This will be essential if you decide to apply for registration of the company as a charity with Charities Services because they will look at the purposes which are set out there to decide if your entity meets the criteria to be registered as a charity. For more on these issues see [this article here](#).

Why set up as a Trust?

Setting up a trust is probably the most common form that is used in New Zealand. It is a structure which is easily explained and because there are no “shareholders” as such it provides a clean story to explain to people. There is something of an inbuilt assumption that if you are a trust then it is automatically assumed that this is a “for good” type of entity. This is in contrast to the company structure where there can be an assumption that there is a “for profit” element as a main objective.

A trust does not have shareholders and is instead guided by trustees who form a Board. In some ways this might be seen as providing less control to the original founders. However, in practise the founders will choose trustees who share the vision for the trust so that they can ensure it follows in the direction intended. One of the key decisions at an early stage is how to make decisions about replacement trustees - will they be shoulder tapped by current trustees, elected or some combination of both those options? Governance issues will sooner or later become a key point for the trust so it is best to get this sorted early. This aspect and the issues involved is explored further in [this article about governance here](#).

The purpose is also safeguarded by the founding document for a trust, the Trust Deed, which will have a “purposes” section that sets those out clearly. It is really important to make sure that the purposes decided on accurately reflect what the trust is intended for. As with a company structure if you go to Charities Services this will be really important when they decide to register you as a charity (or not). One of the weaknesses we see is that people do not define the purpose using terminology and ways of describing what they will do so that they fit within one of the four recognised charitable purposes.

What about two for one?

As can be seen each of the most commonly used structures has both pluses and minuses. One option we have seen people do is to set up using both structures in order to try and get the unique advantages that each provide. In that scenario there is usually a trust which has been registered as a charity and has donee tax status. When telling the story to funders and donors that is a structure that can be easily explained and they can get on board with.

At the same time the trust may have a trading arm which is set up as a company. Usually the shareholder will be the charitable trust. The income that is generated by the business of that company then usually will go back to the trust for it to continue carrying on its charitable purposes. But having the company may provide more flexibility such as a vehicle to enter into joint ventures with other entities or seek other investors into the company. Like most structuring it is important to get good accounting advice on some of the tax and accounting implications of setting up in this way as well.

Conclusion

We hope that this overview of two of the main options for social enterprises in New Zealand has provided some clarity over why each structure might be used. Ultimately it would be great if there could be a new form of entity which took the best aspects of both the company and trust structures and that could be used going forward. For now though we need to make do with what is available and adapt the structures that we can use in order to further advance social enterprises in New Zealand.

4 - How to set up a Social Enterprise as a Charitable Trust

Introduction

So you have a great idea that just might make a difference in the world, but are wondering about how to formalise a legal structure that would help you do that? A charitable trust is one of the most commonly used options in New Zealand. This chapter describes the steps to set up a charitable trust and key points to consider if you are a social enterprise.

Advantages of a charitable trust

A charitable trust can provide a number of advantages. For example:

- **Reputation:** Funders and donors tend to gain comfort if the entity is a charitable trust (rather than a private business or individual). Where a company sets up a charitable trust and invites staff to participate, they will be motivated by the charitable purposes.
- **Tax status:** There can be tax advantages in registering as a charitable trust with Charities Services (see below).
- **Longevity:** A trust is not dependent on one individual and can go on long after the founder ceases to be involved, in “perpetuity” in fact.

Great examples of charitable trusts in New Zealand include

World Vision, The New Zealand Breast Cancer Foundation, and Ronald McDonald House.

Key points before setting up

To set up a charitable trust you will need a founding document for the Trust – called a Trust Deed. This is the legal document which sets out the key elements of the Trust. The questions you should answer before you see your lawyer are as follows:

- What are your purposes? A charitable trust must be charitable. That may sound basic but it isn't necessarily as easy as having a good idea – for example if you want to develop a new type of transport that is safer than a car then it sounds great but by itself that purpose won't be "charitable". You need to fall within one of the following categories to count as a charity:
- Alleviate poverty: This does not just apply to the destitute but could be for those that fall below the ordinary standard of living. It could be achieved through financial means but also through practical means such as providing food and shelter;
- Promote education: Whether something is deemed to be charitable under this category will depend on its usefulness and its educational value;
- Promote religion: This is about the promotion of a wide range of spiritual teachings. Charitable purposes under this heading could range from the provision and maintenance of ministers/religious leaders to the provision of buildings for worship. However, it does not include just the promotion

of certain ethics.

- Other charitable purposes beneficial to the community: This in a way is a “catch-all” provision. It can include such purposes as the promotion of health and recreational facilities. However, a trust will not be deemed charitable under this category if it is not for some public benefit.

Whether your purposes will fit the definitions is something that we can discuss with you.

Other questions to answer

Are political purposes okay? One of the historical fundamental aspects of charitable trusts is that they are not underpinned by some political purpose. However, as of 2014, the New Zealand Courts have found that if a charitable trust has an ancillary (secondary) purpose that is political in nature, then that does not automatically exclude the trust from being charitable if there is still some public benefit. What is important to remember is that this political purpose must be secondary to the main charitable purpose and whether or not the trust is deemed charitable will be decided on a case by case basis.

What will be your activities? Once you have purposes it is important to think about the practical side of how you will implement those purposes. Will that involve running seminars and workshops? Providing scholarships? Promoting participation by volunteers? Jot down all your ideas so they can be incorporated in the Trust Deed

What will your name be? Usually charitable trusts will have a name that reflects their charitable purposes or what they

aim to achieve. However, before finalising a name you have to be certain that your trust will be able to use that name. The name cannot be the same or similar to the name of another charitable trust or any other corporate body. If you do decide to use a name similar to that of another trust or corporate then you may need to have the written consent of that trust or corporate to use it.

Who will the trustees be? The trustees are those who meet and guide the Trust in the future. They can also be great ambassadors for the cause. Choose them wisely and consider having a variety of people involved who bring different skills. For example a charity focussed on education of young people should try to have teachers involved but also those with other skills.

Incorporation. Trustees can apply to the Registrar at the Companies Office for incorporation as a board. The benefits of doing this include:

- The Trust becomes a separate legal entity with separate legal liability. This generally means that the trustees are not personally liable for the legal commitments of the Trust.
- If the Trust owns real estate or other registered assets, it does not need to update the title or ownership register every time the trustees change.

Tax status and whether you want to apply for tax exemption. If you want to have the benefit of a tax exemption and the ability to issue charitable receipts for donations, you will need to register your charitable trust with Charities Services.

Practical considerations, cost and timing involved

Before you take the next steps it is worth knowing a few practical points, which include:

- Writing the Trust Deed – particularly the charitable purposes can take a few weeks to get all trustees on board and an agreement. Important issues such as the statement of purposes, who hold the power to appoint and remove trustees, are best decided before the trust deed is signed.
- Time frames involved to get decision – a few days for Companies Office, a few weeks/months for Charities Services.
- Registering with Companies Office – this is a free application which must be signed by all trustees. In addition one trustee must sign a statutory declaration in support of the application and attach a certified copy of the trust deed.
- Time frames for incorporation – 1-2 days once application documentation signed.
- Cost for application – this is a free online application on the Charities Services website.
- Application requirements – the application form is reasonably detailed. It must be accompanied by a statutory declaration from one of the trustee applicants. Charities Services, when considering your application, will want to see good evidence of the Trust's existing or intended charitable activities so that it can satisfy itself the actual

activities are genuinely charitable.

- Time frames for registration – this can take up to three months from the time Charities Services receive application.
- Time frame for tax exempt status – Charities Services should notify IRD directly once your charitable registration is approved, but it can take a few weeks for your trust to show up on the IRD's list of donee organisations.
- The availability of trustees to sign documents – this can depend on where your trustees are.

Although setting up a charitable trust can take time, it is often a most worthwhile structure to have in place. We have helped many charities over the years and would be happy to discuss your situation with you.

5 - Four questions before raising money from family and friends for your Social Enterprise start-up

If you have a start up Social Enterprise one of the first things you need to find is money to fund the research and development of your new idea.

Rather than turning to a bank sometimes founders look instead to their friends and family for financial contributions. What are some of the key things to think about if you want to go down that route and seek contributions from them?

1. Will this ruin the relationship?

The first point is not a legal consideration as such - more of a home grown truth: money has a unique way of affecting relationships (often in a bad way). You may think your relationships are above this and of course there is 100% certainty your new idea will be the next Facebook. But if whatever your friend or family member invested was lost how would this impact that relationship?

If you can foresee that there could be hard feelings and resentment then you need to seriously weigh up if it is worth risking that relationship.

2. What Contribution Will They Make?

Second, think about what form the contribution will take. Will you be seeking loans from people with a fixed end date and payment of interest? Or do you actually want to bring people on board as

shareholders in the company and involve them in the future success that you will hopefully enjoy?

Most people who are approached will realise it is a risky business but want more upside than just some interest on a loan. What will fit best for you and the future of your company?

3. How involved will they be?

Third, consider what level of say each person will have in the decision making for the company. How involved will these people be in the decision making or are they simply silent investors with limited rights – these points should be clearly agreed and documented. This is usually done in a shareholders' agreement.

4. Do I need to comply with the Financial Markets Conduct Act?

Fourth, understand the rules relating to fundraising and what exclusions might apply – some of these are outlined below. The Financial Markets Conduct Act 2013 is incredibly long and detailed but the basic policy approach is that you will be caught by it and need to provide disclosure of information to investors unless there is an exemption for what you want to do.

What are the key exclusions that might apply?

Some of the most relevant exemptions in the context being discussed in this chapter would be:

Close business associates

Offers to people who already know the business are subject

to an exclusion because they would be unlikely to need full disclosure before making an informed decision about whether to invest or not. They need to be able to assess the merits of the offer and obtain information from the person making the offer.

Whether a person actually is a close business associate will need to be assessed on the facts but the term is defined to include situations such as the person being a director or senior manager of the company, holding 5% or more of the votes of the company, is a spouse, partner or de facto partner of a person who is a close business associate (these are just some of the examples to show the nature of the relationships caught).

Relatives

Along similar lines to the last exclusion, offers can be made to relatives. They are defined to include the following: A spouse, civil union partner, de facto partner, grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, first cousin. The list also includes spouses, partners and de facto partners of those people listed as well as whether or not they result from a step relationship or not. Also included are trustees of a trust where one of the above is a beneficiary.

We had an interesting one recently where a person said that their Godfather wanted to invest – there was a close relationship but they were not a “relative” under this definition, so you need to objectively think about things each time and not just make assumptions that someone is a relative as they need to fit the definition.

Small Offers

A small offer must be for debt or equity securities and for up to a maximum of 20 investors and raising a maximum of \$2 million in any 12 month period.

Such offers need to be a “personal offer” which can only be made to certain individuals, such as those who are likely to be interested in the offer (eg some previous connection and interest known), a person with a high annual gross income (at least \$200k in each of last two income years) or someone who is controlled by such a person.

Some other key points:

- Small offers also have an advertising prohibition so it is important to check what you will do to get the word out and make sure it is not going to breach that requirement.
- Notification is required of certain information about the offer to the FMA within one month of the end of the relevant accounting period that the small offer was made.
- A warning needs to go on the front of documents which looks like this:

“Warning

You are being offered [name of financial product type (for example, ordinary shares)] in [name of issuer].

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because it is a small offer. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”

Other Exclusions

This chapter has been focused on investments by family and friends so has not looked at every possible exclusion. In fact the above are the ones that we see most commonly being used in most situations. However, for more detail on other exclusions have a look at the FMA site.

PART B

**What might Social Enterprise reform
involve?**

6 - What would options for reform look like?

There is value in social enterprises because they do not rely on government funding or donations and instead operate as a business which employs people. However, their goals are not traditionally profit driven and instead may work to advance cultural, environmental, educational, social or other goals. They may also employ marginalised people and build locally based businesses, which can contribute to particular geographic areas more than mass market or franchise models.

There are many barriers for social enterprises to overcome before they can flourish. It is easy to become distracted by all of those important issues (lack of specialised incubation, mentoring, funding options, financial and business experience, and immature support networks). The list is a long one although it is getting better. One could well argue that those issues need to be addressed prior to focusing on any development of a new legal structure. However, some are suggesting that changes made now might mean that social enterprises do not need to twist themselves around in order to fit within current legal structures.

So, what are some of the options being discussed?

Option A: Do nothing?

One option is to do nothing and continue to allow new social enterprises to pull out the no. 8 wire and make do with existing structures available to them. That might be where things end up, but instead of making do with what we have, some are saying that a bold and innovative new approach is required (see options

B and C below). This would place the debate about social enterprise and what it is at the top of the list on the table for discussion. It would raise awareness and ensure this was also front of mind for those who are creating such businesses. This would also ensure that the broader community and traditional “for profit” businesses could be challenged in their thinking and assumptions about their own business as well, such as where they source their suppliers.

Option B: New legal structure?

Other countries have adopted legal structures specifically with social enterprises in mind. In the UK these are “Community Interest Companies” and in the United States there are “Benefit Corporations” and in Canada there are “Community Contribution Companies”.

The fact that there is not a greater call for a change may be a symptom of people facing other more pressing day to day challenges and not knowing that there might even be another option. Proponents of a new legal structure argue that if new structures were available that might also be a way to address those pressing concerns regarding sourcing investors and funding, explaining the vision of a social enterprise and raising awareness of this sector.

To be specific, a new form of legal entity introduced could have the following key elements:

- **Clear name:** A name for the new form of entity which makes it clear it is not a traditional limited liability company but also not a trust or incorporated society. This would assist to alert investors and others as to what type of entity it is.

- Purposes: Requirement for clear articulation of the purposes (social, environmental, cultural etc) which show how they align with the social good while wrestling with the tension of also being a business.
- Capped dividends: Restrictions in place on returning profits to investors to ensure that profit making is not the 'primary' objective.
- Tax exemptions: Make the structure flexible enough so that for those who wanted to do so, and meet criteria, could still apply for tax exempt status, at least for the non-profit portion of their income.
- Reinvestment: Profit/surplus to be reinvested into the purpose. Consider if there is a guideline or percentage fixed of what must be reinvested or it is left as a dynamic tension.
- Reporting: Include a requirement for reporting not just on profit making goals but also on other social benefit goals.
- Director duties: Reform of the duties so directors consider new objectives beyond profitability.

Many of these concepts are foreign to traditional “for profit” business models and would take time to be discussed and understood. That there could be something more than maximising financial returns will take time to penetrate into the consciousness of society. The publicity around the new form of legal entity might raise awareness of social enterprises in New Zealand. As a result, they would gain a new level of legitimacy.

In addition, investment would be encouraged so they can grow because investors would understand this option.

Option C: A new legal status?

If a new legal structure is going too far then another option is a new legal status. This status could be granted by the Government to those entities which satisfy certain criteria along the lines of those set out above in terms of reinvestment, entrenched social purposes and reporting. Some would argue that this is the appropriate first step rather than trying to reform the entire sector by introducing a new legal structure.

A new legal status might be akin to a “B Corp” which was discussed in the article last month – it would give a level of credibility to those social enterprises which satisfied the criteria. But then again, why reinvent the wheel, maybe there should be no change and those who want to can just go through the B Corp assessment instead.

Conclusion on the options

Where are we, and where do we want to be? This article has outlined the current legal structures in New Zealand used by social enterprises and has looked at a few of the options that could be considered to introduce reform. A 2002 report on charities in the UK which still seems to resonate here said:

“Much of the legal context for charity and voluntary action is now outdated ... law and regulation have not kept pace with developments ... There is also insufficient recognition in the legal system of the particular needs of social enterprises, a rapidly growing group of businesses carrying out a wide

range of activities for the benefit of society rather than the individual. This report sets out a package of measures which will modernise the law ...”

The result in the UK was the introduction of a new form of legal entity more than a decade ago. Is now the right time for social enterprises to be given a new framework in which to operate here? Not unlike Alice in the quote earlier in this book, we first probably need to work out where we want to go. How we get there will be complicated as there are many competing interests and points of view. Further discussion and engagement on this issue is important. With the social enterprise world forum being hosted in Christchurch in September, now might be the right time to consider this issue more.

It will be interesting to see what is announced at the SEWF 2017 coming up in Christchurch.

7 - Lack of demand for reform?

Why isn't there more of a demand for a new legal structure in New Zealand specifically designed for social enterprises?

One of the arguments I have heard raised on this topic is that those involved in social enterprises are themselves not saying that they need a new legal structure. That may be true - at least right now - but I think we need to examine this assertion in depth and work out the underlying reasons why this might be so. In fact, there are complex reasons which can explain why there is not a greater demand for a new legal structure specifically designed for social enterprises. Three of those are outlined here.

The first is that New Zealanders are proud of the number 8 wire mentality of making do with what you have. My Grandmother loved the phrase, "If life gives you lemons... make lemonade", and certainly there is great truth in that. But I think often the founder of a social enterprise is merely choosing between the less than optimal legal structures on the table and adapting whichever is chosen to best suit their needs. They themselves don't necessarily think of lobbying or demanding for a new structure because they are already checking how much number 8 wire they have in their back pocket. In other words, we are a nation of innovators and are adept at making do.

The second reason is simply lack of awareness of what might be possible. Most of us are not following the developments in Europe or North America or studying what benefit corporation

legislation is being adopted in other jurisdictions. We are too busy starting or sustaining a business in the here and now in Aotearoa. This education piece is therefore critical (and is one of the primary reasons for writing this resource). Hopefully the interest of people can be triggered and they begin to explore for themselves. If people were more aware of what other countries have adopted then they might be more willing to ask for that here.

Thirdly, I think there is such a push at the moment at simply raising awareness about what a social enterprise is in itself that having a much bigger vision of pushing for a new legal structure is just too difficult. Instead there is a focus on more seminars, more networking groups, more incubators - all in the name of raising the awareness and profile of social enterprises. But all this seems to be taking place on the fringes and will have difficulty in making an impact on the overall culture both of investors and entrepreneurs, as well as the person walking down the street, without more fundamental change.

What is actually needed to counter those three points is the open discussion of New Zealand leading the world in adopting a truly disruptive legal structure for social enterprises. Not merely following in the footsteps of the UK, Canada, Scotland ... but taking the best parts of their solutions and going a step further than they did.

If that could be done imagine the fundamental shift in the culture that might occur when people began to really understand that a “social enterprise company” now existed and was an option. A structure that put “for purpose” mission at the forefront of the entity while still providing a way for the investors to make some profit and, dare I say it, providing for

some favorable tax treatment for the portion of the business that was actually benefiting society in some way. That would be a game changer - it would put 16 All Blacks on the field for social enterprise. Now, I'd like to see what that looked like.

8 - The ideal elements of reform

In the last few parts we have looked at some of the different options for reform.

Here is what I think a best case scenario might look like:

- There is full consultation and discussion at all levels with the various stakeholders in this sector.
- We look in detail at what has been done overseas and take the best parts of their reforms while learning from their mistakes.
- We end up with a new legal form which takes the best elements of existing structures used for social enterprises - in particular from companies, trusts and incorporated societies.

The new structure would have the following key elements:

Clear name

Called “Social Enterprise Companies”

Purposes

Requirement for clear articulation of the purposes and the specific parts which promote social good.

Capped dividends

Restrictions in place on returning profits to investors to ensure

that profit making is not the 'primary' objective.

Return to investors

Bearing in mind the tension, allow return of profits to founders/ shareholders - this will encourage them to start these form of businesses if they can actually make a living from it!

Tax exemptions

Make the structure flexible enough so that for those who wanted to do so, and meet criteria, could still apply for tax exempt status. Perhaps this could be for the non-profit portion of their income?

Reinvestment

Profit/surplus to be reinvested into the purpose. Consider if there is a guideline or percentage fixed of what must be reinvested or it is left as a dynamic tension.

Reporting

Include a requirement for reporting not just on profit making goals but also on other social benefit goals.

Director duties

Reform of the duties so directors consider new objectives beyond profitability.

This is a wish list - perhaps we will end up with a legal status instead (see earlier chapter). But if some or all of the above could be achieved it would be a game changer.

PART C

**Useful Resources for Social
Enterprises**

9 - Questions to ask before joining a Social Enterprise board

Making the decision to join the board of a charity or trust or social enterprise is often a choice which is made without much information. Often this is simply because the person who may become a trustee is not sure what sort of questions it is that they might want to consider asking. Below we have set out some of the points which you may want to raise prior to agreeing to join a board.

This list originated from the first Legal Mashup we held in early May as it was something that people who came along were asking about. Obviously whether or not the questions are relevant or not will depend on the particular situation of the entity - so bear in mind and be aware that one that is in start-up phase will have completely different answers to one that has been going for 5 years...

While we wrote this with a social enterprise or charity in mind many of these questions would be equally applicable in other contexts such as joining a board of directors.

Before joining the Board I would like to ask for your responses to the following questions:

1.A copy of the Trust Deed/Constitution can be accessed _____.

2.The purposes of the Trust/Social Enterprise are _____.
Any differences in actual activities (compared to the purposes)

are _____.

3. Our plans for the future include _____.
Major projects on at present are _____ Any activities overseas?

4. There is an indemnity for board members contained in the Trust Deed/Constitution: Yes / No. We have taken out insurance for board members: Yes / No. What insurance is in place generally particularly if holding events?

5. Potential liability can result from the following key risk areas (eg health & safety): _____.

6. Our meetings are: monthly / quarterly / half-yearly. In addition to scheduled meetings we also expect board members to _____.

7. What is the management structure? How does self-governance work for board members eg compulsory retirement after 3 years?

8. What is the legal entity of the organisation (eg Incorporated Society, Company, Charitable Trust)? Does it have charitable status?

9. Are the financial statements available to view? Are they audited or reviewed by an accountant?

10. For verbal discussion rather than in writing: Any employment disputes in last 3 years? Describe. Any third party disputes over provision of services in last few years?

We hope that this list is helpful for those who may be wondering about what topics they should be thinking through before joining a board. You could print this page and give it to your contact to run through the answers with you. Our intention is that it helps all those involved (both current trustees and the new trustee) to ensure there is clear communication from the outset regarding expectations, plans and the status of the organisation. If you are already on a trust then it might also trigger some thoughts for you about whether you need to undertake a strategic review to ensure you have clear answers to some of those questions.

10 - Statements of Service Performance for Social Enterprises

I attended a webinar by Charities Services on the new reporting standards. There were 1,700 participants in the webinar so there was a lot of demand from people to learn more about the statement of service performance.

The main points which were covered included:

- An overview of the new reporting standards;
- The purpose of the statement of service performance; and
- How the service performance standards might benefit charities.

The new changes came in relatively recently and introduced new standards for the not-for-profit sector. This seminar focused on the following two tiers which have different requirements:

- Tier 3: Under \$2 million (accrual based accounting required); and
- Tier 4: Under \$125,000 (cash based accounting).

In the past there were no requirements regarding financial information submitted – the new standards require that Charities provide a “Performance Report”. This includes both financial and non-financial reporting.

Non-financial information includes describing the entity and what it does. The second part involves a statement of service performance. The purpose of that is to “tell your story” – the

both “outputs” and “outcomes” can be reported on. They distinguished those as follows:

- Outputs – what was done eg goods or services provided (likely statistics will show this eg number of people helped); and
- Outcomes – why it seeks to do or achieve that – this will be linked to the purpose of your charity.

They mentioned that graphs, charts and pictures can be used to show what you do. There is a template on the Charities Services website. Note that tier 4 only needs to record the outputs whereas tier 3 needs to record both outputs and outcomes.

The standards also require that previous years be compared to eg “100 attended” vs last year “90 attended” – this is not needed in the first year the report is done.

The webinar emphasised the positive aspects of preparing the document – it can be used for strategic planning, improving governance and marketing purposes. Clearly because it is new there must be many who are feeling like this is an added obligation on them and so they are trying to emphasise why it can assist a charity. More information is available on Charities Services website.

As the report is now compulsory for registered charities it is good to be aware of the requirements and get up to speed with these new requirements. If you have any questions about what is required then let us know as we are seeing some examples coming through and happy to share some ideas about preparing them.

11 - Reasons for a Trust Board to incorporate

Reasons for a Trust Board to incorporate

It is very common for the board of a charitable trust to apply for incorporation under the Charities Act 1957. To do this certain forms must be submitted to the Registrar of Societies - information and access to those forms are on their website.

But why bother??

Well, incorporating a charitable board means that a group of trustees has a single identity in the eyes of the law – it then “exists” as a form of legal entity. The technical term is a ‘body corporate’ and – separately to the trustees who make up the board – it can be sued, can sign contracts (with a common seal, yes you need one) and can own property.

A board (once incorporated by the trustees of the charitable trust) will not end until certain events occur so it can then administer the trust going forward (whether or not trustees come or go).

Perhaps the biggest reason for trustees to incorporate is that the board itself will then enter into contracts and obligations – if things go wrong the incorporated board is liable for that (rather than the individual trustees). That is important safeguard for the trustees to have in place. Also, since it can hold trust property in its own name that does not need to be held in the names of the trustees themselves.

Having said all that, it is not a legal requirement to incorporate a trust board. If that is not done then the property of the trust is held in the personal names of the trustees.

If you have any questions about the process of incorporating a Trust Board or would like to discuss your situation we are happy to have a chat with you.

12 - The case of CDC and whether it was a charity (or not)

Social Enterprises sometimes want to register as a charity - but can they always do so? A fascinating case which came before the courts just a few years ago provides a great lesson and insight in to what makes a “charity”. Canterbury Development Corporation (CDC) is a great organisation doing a lot of good things in Canterbury and it challenged Charities Services over its decision not to allow CDC to be registered as a charity. CDC eventually lost the case in the High Court to be registered and have tax exempt status. This is an interesting case to understand because it is likely that other community focussed groups could also be in the same boat as the CDC.

CDC helps to promote economic development in the Canterbury region. CDC was therefore arguing that it acted for charitable purposes – specifically the relief of poverty, advancement of education and the beneficial effect to the community (due to the development of industry and commerce). The case analysed whether CDC could come within one of the four charitable heads contained in the Charities Act 2005 (the only head not argued was that of advancing religion).

The court concluded that CDC was not a charity. Looking first at education, It decided that this was provided not to a broad section of the public but to a narrow group who met strict eligibility criteria. The Judge said:

“The objects and work of the CDC are commendable. Its

intention is to help fledgling businesses. By itself this does not establish CDC as having the necessary focus on charitable intent ... These are essentially the provision of help to individual businesses in the hope they will grow. Not all businesses who ask for or indeed need help are offered it. Only those within a narrow band. This help may promote these individual businesses. It may make them more profitable. This promotion and profitability is not incidental to the work of CDC. It is at its core. This illustrates how the spirit and intendment of charitable purpose is not central to CDC's function and thereby cannot be charitable."

Regarding whether CDC promoted the relief of poverty through job creation the judge said:

"What is illustrated by this analysis is that the purpose of the CDC is not relief of poverty through providing those who are unemployed with jobs. It is to improve the general economic wellbeing of the area. In that sense, therefore, CDC's purpose cannot be the relief of poverty. The possibility of helping someone who is unemployed is too remote for it to qualify as the charitable purpose of relief of poverty."

Regarding public benefit, the Judge said:

"In CDC... the pursuit of the objects is focused on the development of individual businesses. The provision of support to those businesses is done in the hope and belief that their economic success would be reflected in the economic wellbeing of the Canterbury region...any public benefit therefore from CDC's purpose and operations is in my view too remote to establish CDC as a charity. Public benefit is not the primary purpose of CDC's objects or operation. It's

primary purpose is the assistance of individual businesses. The creation of jobs for the unemployed, as opposed to jobs for those who are employed and not in need, is the hoped for, but remote and uncertain, result of the way in which the CDC approaches its task.... The general economic lift for the Canterbury region from CDC's work is the hoped for result of helping individual businesses. It is remote from the purpose and operation of CDC. Public benefit is not at the core of CDC's operation."

This case and the conclusions reached are important for other organisations which may have a broad purpose to assist a region by helping individual businesses in that region. Just because there is good work being done and there may be positive results it does not mean that the organisation will necessarily be able to register as a charity. It pays to think about this sooner rather than later if you are at the early stages of forming your Social Enterprise as a charity.

13 - How useful does research need to be in order to be charitable?

There was a fascinating case that came out at the end of 2016. The reason it is interesting is that the Judge had some frank words about the process that the Charities Registration Board had followed when looking at applications from two related groups for charitable status. In her conclusion the Judge notes that, “The Board has simply made mistakes”. Let’s have a look at what went on in more detail and see what we can learn from what happened. Most important let’s see what conclusions this may have for social enterprises who are charities involved in research of some kind and whether they can (or cannot) obtain charitable status.

Two entities had applied for incorporation as charities. They were involved in research into “cryonics” and the extension of human life through preservation of humans and their reanimation in the future. They applied for charitable status in late 2011 and were declined in July 2013. There were many requests for additional information in between the application and the decision. The key finding by the Board was that:

“...the Foundation is not qualified to be registered as a charitable entity ... we consider that the Foundation pursues an independent purpose to fund cryonics research (research into the cryopreservation and reanimation of people). This purpose does not advance education and or any other purpose that is charitable at law. Further, we are also not satisfied that the Foundation’s purposes provide sufficient public benefit, which is a requirement for charitable status.”

So what was the reasoning behind this conclusion? The Board felt that cryonics research was not an “accepted academic discipline” or that it was an area of “current science” or had any benefit to be researched. The Judge noted that in coming to this conclusion there had been independent research by the Board of material on the internet which helped it to come to that decision. The Judge had a dim view of that extra research which went beyond the information that had been provided by the applicants – this could be the subject of a whole article itself but the following quote gives the flavour: “...the perils of the internet are legend. It is possible to obtain web support for almost any proposition one cares to name... I consider the Board was wrong to put any store in the information obtained from the internet by the chief executive here.”

As for the conclusion regarding their educational purpose and whether there was sufficient usefulness of the research being done, the Judge disagreed on the conclusion and commented on why:

“...what all the authorities make clear is that “usefulness” as that term is applied in the cases constitutes a minimal standard designed only to exclude the “nonsensical” – areas of research and study that are demonstrably devoid of merit. While the concept of merit may raise more difficult, subjective, issues of “taste” where (for example) literature or art is the focus of an educational advancement analysis. I would think that such difficulties are much less likely to arise in matters of science. There may be some areas of research whose objects are so at odds with provable reality that purported scientific pursuit of them can be dismissed as nonsensical or an exercise in certain futility. Attempting to prove that the earth is flat might be one such endeavour. But absence of merit of that sort will be

easy to establish (or refute) by reference to objective evidence. The existence of scientific or academic controversy in a particular area is far from determinative. Nor is an acknowledgement that the goals of the research might only be achieved in the relatively distant future. By way of example only, the mars Society New Zealand Charitable Trust, whose purposes are to encourage and inspire space science and research leading to New Zealand's participation in the exploration and settlement of Mars, was registered as a charity ... the pursuit of such long term goals is likely to yield much useful knowledge along the way, regardless of whether the endpoint is ever achieved. And if that research that will be undertaken in order to work towards such a goal is likely to advance the sum of human knowledge the "usefulness" threshold will be met."

This analysis is very helpful because it shows just what the Court will view as being "useful" – clearly it is to be interpreted in its widest sense. This is helpful to understand for any charities which may be involved in research and wondering if what they do will qualify. Having performed that analysis above, the Judge turned to the facts of the particular case before her and concluded:

"The evidence is that the proposed research is likely to lead to advances in areas such as organ transplant medicine, in vitro fertilisation, stem cell research, treatment of a range of diseases and disorders and enabling biodiversity...in the absence of clear evidence that cryonics research is "nonsense" and will not advance human knowledge, it matters not whether such research is presently "accepted academic discipline" or "current science" (whatever those terms may actually mean)... In my view the Board erred in its interpretation and application

of the “usefulness” test.”

The Judge also concluded based on this that the purposes were clearly charitable under the “advancement of education” head of charitable purposes.

I hope this summary is useful and will help to better understand what research will qualify as being useful. If you have any questions about it feel free to contact us to discuss your situation.

14 - Key points from “You have the Power to Change Stuff: Chapter One” by Daniel Flynn

This is a book about social enterprise which is a really interesting and challenging read. I think it will be relevant to a lot of people involved in charities and not for profits as well as those looking to start one. There are a lot of concepts and thoughts in this book which align well with many of our social enterprise clients (even if many of our clients may not realise that is what they are). The traditional words for them have been “not for profit” or “charity” and they probably have never called themselves “social enterprises” but that is really what they are!

So turning to the book it is “different” in a few distinctive ways. For one, when I bought it the person at the store said, “How much do you want to pay?” It seems that you can choose the price. The money then goes towards funding “Thankyou” which is the organisation the author co-founded. On a communication from them when I joined their newsletter it says about this price: “It’s sold at a pay what you want price to fund the future of Thankyou and so far, has crowd-funded the launch of Thankyou New Zealand! WIN!”

The other distinctive is when you open the book all the text is opposite to the usual format for a book. It runs from left to right across the page so you have to turn it 90 degrees onto its side and read it almost like a flip chart. So from the outset you can tell that the author is trying to do something different. Trying to challenge the status quo. He acknowledges this a little later when talking about this format:

“Once you get out of your comfort zone, you begin to actually ask questions - and you start thinking and challenging what you’ve always accepted as the norm. The reality is that stepping out is uncomfortable. Even as you read this book ‘the wrong way around’ in airport lounges, on public transport, on your way to school or work or around friends, there’s a chance you’ll feel uncomfortable. Why? Because there is the possibility that people will notice you’re doing something differently. We live in a world where we can blend in fairly easily, that is until the moment you take a risk and attempt something that perhaps no one has done before.”

The story itself centres on three young people who had an idea in Australia that has resulted in “Thankyou”. They started it when they were just 19 years old. The back cover describes what they did as beginning with the world water crisis and how to end it but that “has developed into award-winning consumer goods brand that empowers millions of people to fight poverty with every munch of muesli, sip of water or pump of hand wash”.

Essentially they brand around 35 products and then the funds raised from the sale of those products goes to support, for example, water projects in Africa (from sale of water), health projects (from sale of body care products) and food programs (from sale of food products). You can read more about them online at <https://thankyou.co/>. As noted above it looks like they will be launching in NZ soon.

The book is called Chapter One because the author acknowledges up front that their story is just beginning. He uses that as an encouragement to try and say that we can try

things as well because they are just at the start of their journey. He plans to write a “Chapter 2” in a few years time when they are further down the road. The opening page makes this a call to be included on their journey as he writes, “Our world doesn’t need another book; it needs an idea that could change the course of history. Write with us.” He writes later:

“This book is written as we go, to show you that any one individual, any group of people, can make their ideas and dreams a reality. You may not have ‘made it’ yet (and neither have we), but everything we have learned along the way we want to share with you, In the hope that it will encourage you, inspire you and empower you.”

The 13 chapters have catchy headings like “Turning stumbling blocks into stepping stones”, and “Build a great team to achieve a great dream”. In each chapter anecdotes and stories are told about the experiences of the author. What I found helpful was the honesty about their journey - not trying to pretend that they have “made it” but instead writing in a way to try and encourage others to try something new. The book is full of challenges to the status quo and trying to do things differently. An example of this is the following quote:

“Some people don’t think the game will ever change. But it always does. And if you aren’t convinced the game will change, it’s probably best to keep those thoughts to yourself, otherwise years later you might find yourself mentioned in a quote like this: “the iPhone is nothing but a niche product” - then CEO of Nokia in 2008.”

There are many quotes like this and there are several direct reference to New Zealand as well. For example, when

describing why they want to launch Thankyou in New Zealand he writes:

“We want to empower New Zealanders, the way we’ve empowered Australians, to show the world that consumers have the power to change stuff. Many of the biggest brands in the world trial ideas in New Zealand because it’s widely known that if a concept works in New Zealand, it will work globally. So we’ve invited New Zealand to help take this movement to the next level. The thing is, we’re not just launching Thankyou Australia into New Zealand. Instead, we’re launching Thankyou New Zealand from scratch. We’ll be setting up a local team, local suppliers and local impact partners. Coinciding with this book arriving on shelves, we launched our boldest and most ambitious campaign yet, inviting both Australians and New Zealanders to make a choice - to either help launch Thankyou New Zealand or not to. Will it work? We can’t guarantee that it will. But I love this thought: if it does, then together two of the smallest countries in the world (at times underestimated), who both bat above their weight globally in sport, entertainment and music, could go not to do something the likes of which the world has never seen before.”

Is this book a world changer? No. But that would be too much to ask of anything. What it does provide is a call to move in the right direction. What is needed is for many people to start questioning the way things have always been done and this book is good because it does that. It also is empowering because it shares a journey that the author is just starting which makes it seem more possible to join in some way. Perhaps the sentiment was best summed up in one of my favourite books as a child, “The Lorax”, where Dr Seuss ends with the following lines:

*“Unless someone like you cares a whole awful lot,
Nothing is going to get better. It’s not.”*

And that is really the theme of this book too. We need to care. We need to demand change. We need to be the change. I would recommend this book to people who are looking for an inspiring and ultimately challenging read. It will definitely be interesting to see how Thankyou goes in New Zealand since we will have a front row seat on their launch here.

15 - Key points from “Zero to One” by Peter Thiel

It is hard to look past the credentials of Peter Thiel, who co-founded Pay Pal and was one of the original investors in Facebook and LinkedIn. It has endorsements on the back from Mark Zuckerberg and Elon Musk. The book came out in 2014 so has been out for a while and this article will pull out just some of the best and most challenging bits from it. This can form a cheat sheet for those who haven't read it or a set of good reminders for those who have.

The basic premise is: “It’s easier to copy a model than create something new: doing what we already know how to do takes the world from 1 to n, adding more of something familiar. Every new creation goes from 0 to 1. This book is about how to get there.”

Thiel was directly participating in the dot-com crash around 2000 and early in the book he draws four conclusions that people took from it:

1. Make incremental advances – small steps are the best way forward.
2. Stay lean and flexible – operate without definite plan and be able to adapt.
3. Improve on the competition – build on what others have already done.
4. Focus on product, not sales – develop an excellent product that will sell itself.

He then contrasts some of those conclusions with these four statements of what he has observed:

1. It is better to risk boldness than triviality
2. A bad plan is better than no plan
3. Competitive markets destroy profits
4. Sales matter just as much as product.

His conclusion here is that we need to be careful about broad brush conclusions reached as a result of mistakes like the dot-com crash. Instead he says, “to build the next generation of companies, we must abandon the dogmas created after the crash ... the most contrarian thing of all is not to oppose the crowd but to think for yourself”.

There is an interesting story that he tells in the book which I relate to since it involves Thiel’s background studying law. As a lawyer myself it is interesting to read about his experience and I do often think about the fact that having a role as an advisor means that I myself am less likely to branch out into something new like a start-up. In actual fact that is not true any more as our law firm has looked at disruption and what it means for law firms and is the co-founder of a start-up that I have been actively involved in setting up. But this story is illustrative of a general point about what we settle for and what we think will make us happy:

“The highest prize in a law student’s world is unambiguous: out of tens of thousands of graduates each year, only a few dozen get a Supreme Court clerkship. After clerking on a federal appeals court for a year, I was invited to interview for clerkships with Justices Kennedy and Scalia. My meetings with the Justices went well. I was so close to winning this last

competition. If only I got the clerkship, I thought, I would be set for life. But I didn't. At the time, I was devastated. In 2004, after I had built and sold PayPal, I ran into an old friend from law school who had helped me prepare my failed clerkship applications. We hadn't spoken in nearly a decade. His first question wasn't "How are you doing?" or "Can you believe it's been so long?". Instead, he grinned and asked, "So, Peter, aren't you glad you didn't get that clerkship?". With the benefit of hindsight, we both knew that winning that ultimate competition would have changed my life for the worse. Had I actually clerked on the Supreme Court, I probably would have spent my entire career taking depositions or drafting other people's business deals instead of creating anything new. It's hard to say how much would be different, but the opportunity costs were enormous. All Rhodes Scholars had a great future in their past."

Thiel then has a really interesting few chapters about pessimism and optimism and how that has played out in different cultures and eras. In his view this has shaped the way that we think about entrepreneurs as being lucky vs having a plan. He comments that "indefinite optimism" means there is a general feeling that things will improve but no plan or direction for how to get there – so it involves cultivating and maintaining what we have rather than creating something new. He comments that this short term thinking is evident in politics too where we are concerned about predictions of elections for what the future will look like in a few weeks or months but lack the focus on 10 or 20 or 30 years from now. Ultimately his conclusion on this topic is that design trumps chance and there needs to be a lot of thinking and planning when involved in a start-up. He states: "Long term planning is often under valued by our indefinite short term world."

This theme is emphasised more in the middle chapters of the book: “It does matter what you do. You should focus relentlessly on something you’re good at doing, but before that you must think hard about whether it will be valuable in the future.”

He also spends time towards the end of the book analysing founders and the “big characters” that they tend to be (like Steve Jobs) and asks if they create their own images, if the media helps glorify certain aspects of them or if they are actually just naturally that way inclined. He seems to conclude it is a combination of all of those things and that the social media world we live in now leads to an emphasis on certain attributes compared to the past.

There is a really interesting section where he talks about clean green companies and social entrepreneurship that it might be worth throwing out to see what others think.... While I don’t agree with all his thoughts it is interesting to read opinions of others like this and be challenged about what we do think. Here is what he says:

“Cleantech entrepreneurs aimed for more than just success as most businesses define it. The cleantech bubble was the biggest phenomenon – and the biggest flog - in the history of “social entrepreneurship”. This philanthropic approach to business starts with the idea that corporations and nonprofits have until now been polar opposites: corporations have great power, but they’re shackled to the profit motive; nonprofits pursue the public interest, but they’re weak players in the wider economy. Social entrepreneurs aim to combine the best of both worlds and “do well by doing good.” Usually they end up doing

neither.

The ambiguity between social and financial goals doesn't help. But the ambiguity in the word "social" is even more of a problem: if something is "socially good", is it good for the society, or merely seen as good by society? Whatever is good enough to receive applause from all audiences can only be conventional, like the general idea of green energy.

Progress isn't held back by some difference between corporate greed and non-profit goodness; instead, we're held back by the sameness of both. Just as corporations tend to copy each other, nonprofits all tend to push the same priorities. Cleantech shows the result: hundreds of undifferentiated products all in the name of one overbroad goal.

Doing something different is what's truly good for society – and it's also what allows a business to profit by monopolizing a new market. The best projects are likely to be overlooked, not trumpeted by a crowd; the best problems to work on are often the ones nobody else even tries to solve."

One aspect I do agree with is the idea kind of implied here that if we could move the dial on the "for profit" companies and get them to take more notice of social impacts then there could be a big change. I do worry that people may abdicate their responsibility in these areas by saying, "well, that's what social enterprises do or think about so I don't need to take any action and think about my own sourcing, staff policies, use of profits etc".

We ourselves have a startup at Parry Field Lawyers where we are working to develop an innovative and new product

offering focused on the legal market so a lot of this book really resonated with our experience. The biggest takeaway for me was the basic point that founding a company that does something new is a lot of hard work and you need to be purposeful about choosing what you get involved in and who you choose to work with you. This type of book is useful in that it reminds us of some fundamental points about startups from a person who has had direct involvement in many of them.

16 - Key points from “The Mission Driven Venture” by Marc J Lane

I have been reading “The Mission Driven Venture” by Marc J. Lane. The sub title is: “Business solutions to the world’s most vexing social problems”. It provides an overview of many different topics relevant in the social enterprise sector including examples where new ways of doing things have been tried and been successful. From my perspective as a lawyer it is interesting because the author is an attorney in the United States so there is often mention of legal structures.

The preface contains an overview of what comes as the author argues that new business strategies are solving social problems in education, health care, poverty and the environment. He writes: “For-profit, social purpose businesses are defining success in terms of both financial and social returns. Nonprofits are becoming entrepreneurial, supplementing charitable donations and government grants with revenue earned by the businesses they own and run, instrumentalities of mission in their own right. Progressive nonprofits are partnering with each other, and even with for-profits, breaking down cultural barriers, leveraging their competencies, and gaining economies of scale. A growing number of passionate social entrepreneurs are deploying invested capital to test and develop business opportunities intended to drive positive social change.”

He goes on to give the following specific examples: “Newly validated business models and entity forms that invite collaboration are emerging, including the low-profit limited

liability company (L3C), which, by law, places mission above profits and facilitates foundation funding of charitable and educational businesses, and the benefit corporation, which requires its managers to make decisions not only to enrich its shareholders, but also for the good of society as a whole. Social impact bonds - futures contracts on social impact - provide long term funds for promising social interventions, transfer risk to private capital markets, and tap into public coffers only when specific social benefits are achieved, Microfinance and microcredit are helping the poorest of the poor become self-sufficient business owners. And worker-owned co-operatives are converting the disenfranchised into self-reliant entrepreneurs”

Some of the most interesting examples I found in the book that were given were as follows:


- the section on where to begin for those who have a good idea was a nice overview of some of the key considerations that a founder needs to think through. It is certainly one thing to have a groundbreaking and unique idea it is a rare combination to have the right experience, drive and team to be able to implement that idea.
- the section on the Nobel peace prize winner Mohammed Yunus (who visited Christchurch April 2017 and who I went along to listen to) went into a lot of depth about not just the Microfinance industry and Grameen Bank but also about the social business ideas that he advocates. It was also interesting to read more about his theory that a social business may profit but its investors must not - am not sure I agree with that.
- the section about co-operatives in Europe and in particular Spain where many companies have risen which are owned

by their workers. This was interesting to read about but not sure if it would be transferable to other places which did not have the history of them going back several decades.

- the section on impact investing was interesting to read and gave glimpses of the possibilities - this quote summarizes that: "Impact investing is investing with a mission. It's an investment strategy that merges profit-seeking with philanthropy. When an impact investor invests, he or she seeks a financial return and a social return - to make money and help clean the air we breathe, or feed the hungry, or build better schools. An impact investor does not put profit in conflict with social progress."
- three chapters at the end are devoted to how to assess impact investing and work out what it has achieved. As he states: "Unlike the traditional profit-driven business, an enterprise isn't the business of producing an intangible bottom line - social good - cannot measure success in terms of dollars alone. In addition to demonstrating profitability - or at least financial sustainability - mission-driven ventures must show that they're making progress toward achieving their social missions. They must demonstrate their social impact." But how do they actually do that - what metrics will they report on? How will you compare an organisation focusing on alleviating poverty with one focussed on reintegration of prisoners into society? These are the challenges that these chapters deal with as they wrestle with what "social metrics" might look like.
- I did feel like the book was overly weighted to examples and discussion from the United States but that is understandable since that is the context the author knows best. It would be really interesting to read the equivalent of this for other parts of the world such as one that focussed on South America, or on Asia.

To conclude this overview of the book I think it achieves the purpose the author set out in the preface - "...the Mission Driven Venture recounts the life stories of modern day heroes, people who, for very personal reasons, took on a social challenge as their own and vowed to overcome it through the prudent application of sound business principles. The lessons they learned and the successes they won translate into models worth replicating and adapting. My hope is that their thought leadership will help inform your decisions and inspire your actions."

I would recommend this book to anyone who wants to get a really good overview of the state of social enterprise around the world today and gain a glimpse into what the future might look like at the same time.



This book provides an update on the state of Social Enterprises in New Zealand. It starts with an examination of the current position and options for Social Enterprises in terms of their legal structures. Then it looks at the possible options for reform and barriers to that occurring. It ends with a variety of topics that are relevant for Social Enterprises, including some reviews of key books on start-ups that have come out recently.

I am interested in engaging with others who are following the current state of social enterprises - you can connect with me at stevenmoe@parryfield.com or on the websites:

www.changeforgood.parryfield.com
www.stevenmoe.com



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