

Special Session

Legal and organisational structures for social enterprises in NZ - where to next?

Panel Participants:

Joanne Harland, Legal Adviser, David Clendon, MP (Green Party), Morna Haist, Social Entrepreneur, Pete Russell, CEO of Oooby

Description of a session

In this special session, the panel will spark a conversation with attendees about the legal and organisational structures currently being used by social enterprises in New Zealand, whether they are adequate, and what are New Zealand's next steps in this area to allow social enterprises to thrive. Rather than providing answers, the co-organisers have come with a series of questions to move forward the discussion. We hope to use input from the sector during this session to inform our thinking in this area.

The legal structures that are available in New Zealand were created long before social enterprises were on the horizon. Do these structures adequately support and encourage social enterprise? Or do social enterprises just make themselves fit into what is available?

Added to this is the layer of charities commission registration which is again based on historical concepts of charity created long before social enterprises emerged. Many social enterprises struggle to meet charitable status guidelines which can restrict access to certain types of funding such as grant funding. Also, charitable status is promoted as a tool for the general public to use to ascertain worthy projects to fund through their donations. Further, charities are more easily able to obtain tax benefits from the Internal Revenue Department. Is the fact that social enterprises do not fit with the concept of "charity" limiting their effectiveness? Is it hindering their ability to communicate their community benefit mission and social values to the public? Do we need another way of recognising our social enterprises that suits their unique characteristics?

It is interesting to note that the United Kingdom has in the last decade enacted legislation to create specific legal entities for charities and social enterprises, such as community interest companies, community benefit societies and charitable incorporated organisations. Is this a route that New Zealand should be investigating? Many social enterprises end up adopting a dual structure that includes a charitable entity (often a charitable trust or incorporated society) and a trading entity. Is this efficient? Some of the UK structures also include asset lock provisions ensuring that assets owned by the entity are locked in for community benefit and cannot be sold. At the moment this is only possible in New Zealand through bespoke drafting in the rules of an entity, which can then be amended by members of the entity.

Extending theory to practice, how is the process working for social enterprises in New Zealand right now? Is the perceived theoretical need for more legal structure options a real issue for New Zealand's social enterprises? Is legislation the answer? Or are the current options adequate? What is the process that social enterprises go through currently to select a legal structure? Is this stifling innovation in the sector or preventing social enterprises from starting up?

Perhaps some of these issues could be resolved by creating new organisational structures and ways of working together? Is it possible to enable innovative cultures through new approaches to organisational processes, hierarchies and policies? Should this be the focus instead of legal structure reforms, or should it be an adjunct to such reforms?

Biographical sketch

Joanne Harland: After qualifying as a solicitor in 1998 Joanne worked for a Federal Court Judge in Australia and in large private practices in Australia, Japan and Hong Kong before moving to Auckland. Joanne became involved in Playcentre with her two sons which inspired her to use her legal skills in the community benefit sector where she is now Vice-President of Auckland Playcentres Association and graduate of the Not-For-Profit Diploma in Management and Leadership. After chatting with David Clendon at the Community Economic Development Forum Joanne realised they have a joint interest in appropriate legal structures for social enterprises which she is currently researching.

David Clendon: Of Ngapuhi/Te Roroa and Pakeha heritage, David has been with the Green Party since 1990 and an MP since 2009. David has a BA in Education and Politics from the University of Auckland, an MSC (Hons) in Resource Management from Lincoln University, and a Certificate of Higher Education from Unitec. Before entering Parliament, David worked at the coalface of eco-enterprise as a Sustainable Business Network business advisor. Prior to that, he spent fifteen years as an academic, initially teaching in the Political Studies department at Auckland University and then teaching resource management at Unitec NZ. David, who has a long history of involvement with environmental protection groups and community organisations, lives in Auckland with his partner, and has an adult daughter.

Morna Haist: At the core of Morna's work is the desire to co-create and drive a new social architecture, one that moves us beyond our top-down, transactional society towards transformational innovative and vibrant communities and workplaces. Morna is the Immediate Past President of the Auckland Playcentres Association an organisation that she credits with teaching her almost everything she knows about community, leadership and innovation. She has spent the last 6 years teaching in the NZQA Diploma in Adults and Children's Learning, teaching adults how to work together cooperatively and concepts of facilitative leadership. Morna is a facilitator and innovation specialist, who works with people, organisations and communities seeking to address today's complex and interconnected issues and discover inspired new ways of working together. Morna lives in Kingsland with her husband and two young daughters.

Pete Russell:

Pete always had entrepreneurial genes but only recently moved into the social sector. He started-up a string of businesses in Sydney from manufacturing bath bombs to children's books and music video animations. By 2007 he was the managing director and founding shareholder of a food logistics company that was importing more than \$1 million of frozen bread and pastry into Australia every month. He moved to New Zealand planning to start up a similar business here but attending a talk by Green Party MP and food campaigner Sue Kedgley made him question the environmental values of his work. So instead he decided to start up a local food distribution system as a social enterprise called Ooooby ("Out of our own backyards"). The key idea of Ooooby is to connect the tradition of growing our own food with social networking to link growers and buyers. It launched in 2008 with Pete as the CEO.