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STRUCTURING FOR IMPACT:
Evolving Legal Structures for Business in New Zealand

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FOREWORD

For our country to better look after our people and environment, we need innovative ways to achieve social inclusiveness and wellbeing for all New Zealanders. Some businesses, often referred to as social enterprises, have long been working for broader versions of social and environmental capital, and have significant, untapped potential to create transformative change for New Zealand, alongside traditional delivery models for social outcomes.

Social enterprise models have the potential to innovate and to create value for a triple or quadruple bottom line. In the process, jobs are created, communities are nurtured, the environment is preserved and maintained, and the economy is fostered.

We are also seeing significant growth in the number of businesses in New Zealand that operate with both an impact, as well as the traditional profit focus, as the world starts to shift towards solving the complex challenges we are all facing. What this report evidences is that New Zealand's current legal structures and financial expectations are hindering social enterprises being able to reach their full potential: Businesses that prioritise more than just financial profit are being disadvantaged in New Zealand.

New Zealand has the potential to enable business-of-the-future, and to establish a suitable, modern legal and commercial environment that does not hinder and disadvantage businesses creating social or environmental impact. The disadvantages which this report identifies, and the potential growth in wellbeing for New Zealand if these are removed, are significant. By dismantling the barriers that the current legal structures present for social enterprise, we can catalyse private sector-led solutions, and demonstrate how impact through enterprise can be achieved across the entire economy.

If we create the right settings for social enterprise, we have the opportunity to enhance the prosperity and wellbeing of generations to come in New Zealand. Therefore, we encourage the Government, Parliament and the wide range of stakeholders involved in the analysis of our current legal structures, and tasked with growing 'impact investment' in New Zealand, to consider carefully the details of this report, to seek to understand the importance of impact through enterprise, and to take action and to make those reforms that are necessary to let social enterprise achieve its full potential and impact in New Zealand.

SIR NEVILLE JORDAN, KNZM CNZM

Social enterprise models have the potential to innovate and to create value for a triple or quadruple bottom line.

EXECUTIVE SUMMARY

Social enterprise **(SE)** is about prioritising impact as well as profit. While New Zealand has legal structures which enable organisations who prioritise one or the other (i.e. charity or traditional business), SE does not fit neatly within these models, and often has only a passing resemblance to them. Instead, SE operate with a different logic. The social entrepreneurs behind SE pursue a different set of values from traditional business, with profit being only one factor in the mix, and often only as a means to achieving more impact. Based on the growth and contributions of SE to New Zealand to date, it is clear that organisations who prioritise more than profit have significant potential to positively grow New Zealand's economy in a broad sense, solving significant societal challenges along the way. Because of this, New Zealand needs a legal and policy environment that enables and encourages businesses that are trading for impact.

For the most part, however, operating a SE in this country is more challenging than running a purely profit driven business. This report finds that the legal structures currently available in New Zealand are acting as barriers for, and disadvantage to, SE. The array of issues and challenges SE face using limited liability company structures, or any other legal structure in New Zealand, stems from the reality that these structures developed from a perspective that 'doing good' is separate from 'doing business'. The distinction between doing good as charity on the one hand and doing business on the other is cemented in the prevailing attitudes of what charity as a way of doing good is allowed to be, and what doing business is required to be. This context makes doing business with impact far more difficult than standard for-profit business.

This report sets out evidence from SE about the perceived challenges associated with the current legal structures and argues that evolving legal structures to remove some of those challenges will unlock the potential of business to generate social and environmental impact at scale that grows the wellbeing of New Zealand. Doing so would also support organisations underpinned by Te Ao Māori in a way that really honours Te Tiriti o Waitangi.

All but one of the SE we spoke with in this research found that their legal structure created hurdles for their organisation. These hurdles appear to be most commonly centred around the enterprises' inability to convey and protect their mission, and the consequential challenges that any workarounds to this create. Funding was the other key disadvantage, with many SE finding accessing funding very difficult because of their structures, a hurdle which is having significant implications on the ability of these organisations, and their impact, to scale.

The world is changing. Businesses that exist for profit and purpose are now commonplace. SE prioritise people and the environment, ensuring they are looked after through business – rather than as collateral of profit-making. The way SE operate has the potential to generate significant value for New Zealand and to deliver the Government's social and environmental outcomes, and embodies the ethos of the Living Standards Framework. By making minor amendments to the Companies Act 1993, this report argues that New Zealand has the capacity to create a world first model for business that enables organisations to trade for impact. And in doing so catalyse the extraordinary entrepreneurship that is happening in the SE sector in New Zealand to unlock innovation that will create greater wellbeing for generations of New Zealanders to come.

DISADVANTAGES PERCEIVED BY SOCIAL ENTERPRISES ASSOCIATED WITH THEIR LEGAL STRUCTURES	
CURRENT LEGAL STRUCTURES:	**A SOLUTION COULD:**
MISSION	
Do not clearly signal that SE trade with impact/ mission front and centre (i.e. purpose is prioritised over profit).	Allow companies trading for-profit to opt-in to provisions that enshrine mission/impact statements in its rules/constitution.
Do not reflect the very nature and function of SE (i.e. as being neither distinctly charitable nor for-profit).	Provide a recognisable variation to the company model that is the vehicle for businesses using company structures to trade for impact. Other legal structure options would still be available for traditional charitable, cooperative or for-profit entities.
Do not recognise the value of the impact generated by SE and the higher levels of skill/efficiency required for social entrepreneurs to sustainably and at scale trade to create that level of social, cultural and environmental impact for New Zealand.	Through the involvement of central government, recognise and legitimise the value created by SE. This recognition would help SE in the tendering/ contracting process show how it can meet social, cultural and environmental outcomes.
FUNDING	
Make it difficult for SE to access equity funding, being the issuance of shares in the company in exchange for capital, because: • maintaining ownership of the shares is a way to protect the mission of the SE; • SE with charitable status cannot distribute dividends to private shareholders; • multiple classes and types of shares (including, in structures with cooperative ownership models) add complexity to structures that is expensive and makes them unrecognisable or confusing for investors.	Put mission front and centre so that SE do not need to rely on owning all of the company's shares or applying for charitable status to convey and protect the mission of the enterprise, thereby allowing social entrepreneurs to seek capital investment from external investors with confidence, and allow investors to more easily recognise the impact that they can invest in.

CURRENT LEGAL STRUCTURES:	A SOLUTION COULD:
Based on the existing binary model of charitable vs for-profit are unsuited to non-charitable entities trading for impact. This mismatch makes it difficult for SE to access philanthropic funding, which is commonly restricted to registered charities to prevent any risk of personal gain that would affect the charitable status of the philanthropic organisations.	Be a recognisable entity with appropriate reporting and accountability measures that achieves social, cultural and environmental impact that can be expressly included in grant offerings and impact investing criteria.
Have historically been used to separate 'doing good' from profit-making. Therefore, SE face difficulty using the current structures to convey the importance of their impact and commerciality. This makes it harder for SE to access funding from banks and traditional lending institutions that are also built on this traditional separation of companies trading for profit and charities delivering impact through grants and volunteer services.	Reflect the growing movement toward adopting business models that pursue multiple values (i.e. impact as well as profit). The legitimacy afforded by this public recognition may remove some of the hesitancy and caution of lenders that results in the lenders turning SE away for being too risky or not commercially sound at-a-first-glance.
INNOVATION	
Either require only basic reporting for non-charitable companies or onerous financial and performance reporting for charitable entities.	Include accountability and reporting measures that show impact, but recognise the commercial nature of the enterprise.
Being modified and adapted for SE are becoming unwieldy, expensive and administratively burdensome multiple-entity structures.	Provide a single model that has the essential requirements of SE, thus removing the need for multiple-entity structures.
Present additional burdens for SE that are not faced by for-profit companies. This status quo does not reflect the benefit, which New Zealand gains from SE generating impact addressing current social, cultural and environmental issues in New Zealand, that instead should be enabled and encouraged.	Provide an identifiable model, recognisable to stakeholders, to partner with or provide funding and support to, to achieve policy goals (for example, meeting criteria for social outcomes set out in the Government rules of procurement or the Living Standards Framework).

PART ONE: **INTRODUCTION**

1.1 Social enterprise and legal structure

Social enterprise **(SE)**[1] is about creating impact as well as profit. SE is neither distinctly charitable nor for-profit, and have in many cases only a passing resemblance to these two characterisations, instead operating with varying degrees of a different logic. SE manifest and express a different set of values from traditional for-profit business and, consequently, the value outputs of SE include a combination of human, social, cultural, and environmental capitals as well as financial capital. While business in this form is not new in Aotearoa New Zealand, the last century has seen the economy orient towards a distinct binary between for-profit business and charity. In effect, different versions of value have been allocated to one side or the other of this binary: financial value being the motivation for, and output of, for-profit business. Other forms of value (as in human, social, cultural, and environmental) are found in the domain of 'charity', being the exclusive realm for 'doing good'. In the business domain, money is made, and in the charity domain, money is received. For the most part, this distinction is supported by legal structures, and reflected in the shared societal understandings of what charity as a prescribed way of 'doing good' is allowed to be, and what doing business is required to be.

Conducting an enterprise where financial value along with other forms of value are given equal weight in the process of trading in New Zealand is possible: the increasing number of SE organisations in the New Zealand economy attest to this. But these do not exist because the available legal structures facilitate the establishment and operation of SE. Rather, SE is happening in this country despite hurdles caused by legal structures. SE in New Zealand exist because of the failure of the dominant economic system to entirely look after the social, cultural, and environmental imperatives that are integral to New Zealand society. Importantly, this is also what the introduction of the Living Standards Framework **(LSF)** from the New Zealand Government is about. The alignment between what SE has been doing for a long time, and what Government is beginning is profound – and why the development of the SE sector will unlock significant benefits for New Zealand.

Why do this research now?

In March 2018, responding to the submission of a discussion document on a new legal structure for SE in New Zealand *(Ākina 2017)*, the Hon. David Parker, Minister for Economic Development, sent a letter to Louise Aitken, Chief Executive of Ākina Foundation, stating:

> **"Ministry of Business, Innovation and Employment** (MBIE)**… agrees that acts designed for not-for-profit entities do not suit the needs of social enterprises.**
>
> **MBIE has advised, however, that it views the Companies Act to be accessible by social enterprises. It does not consider that the report provides sufficient evidence or examples of where social enterprises have been hindered or disadvantaged by the Companies Act. To understand your concerns better, we would be interested in learning about specific examples of social enterprises that have been unduly affected by the perceived challenges associated with their legal structure."**

In this report we detail specific examples of hindrance and disadvantage that arise from the current legal structures, sometimes directly, other times in more oblique ways. Our insights are based on ethnographically-informed interviews and an online survey (see Appendix C for more details on the methodology).

Structure of this report

PART ONE of this report outlines the scope of the research and provides detail about the conceptual framework that sits as background and orientates the analysis we have used. In particular, it looks at:

- Social change that is happening in New Zealand.
- The LSF that Treasury and the rest of Government are embracing, and how SE is leading the way in doing business in a way that echoes the sentiment of the LSF.
- The relationship between SE as a mode of doing business, and what 'charity' and 'for-profit business' are within New Zealand's dominant economic reality.

PART TWO of this report looks at the ways legal structure affects SE, where legal structure is a direct barrier, or a symptom of an economic system that is hindering SE in this country:

Section 2.1: Mission vs legal structure.

Section 2.2: Funding vs legal structure.

Section 2.3: Innovation vs legal structure.

PART THREE looks at what can be done to alleviate the situation and the opportunity New Zealand has to lead globally in this space.

APPENDIX A lists, with brief bios, the SE organisations and other stakeholders involved and/or associated with the SE ecosystem that we spoke with through the course of this research.

APPENDIX B comprises more detailed case studies of ten SE and their relationships with legal structure.

APPENDIX C gives more detail on the methodology and research process we have used.

1 Definition of SE and community enterprise **(CE)**: SE are purpose-driven organisations that trade to deliver social and environmental impact. CEs are purpose-driven organisations that trade to deliver social and environmental impact within the community that it was established by. Unlike SE, however, CE do not allow for private gain (beyond usual salaries). Unless specified, references to SE throughout this document will refer to both SE and CE, and any references to the singular may include the plural.

1.2 Conceptual framework

1.2.1 Social change in New Zealand

Social change is happening in New Zealand as a consequence of environmental degradation, and growing inequality. This has manifested in most aspects of life, from the increasing number of children living in poverty, to increasing rates of suicide and mental illness, to the economic and social fragmentation of communities around the country. The way the general public, the business community, and Government are responding to these realities is multifaceted out of necessity. Cliff Colquhoun from CBEC, a Community Enterprise **(CE)** operating across Northland, identifies this and notes,

> **"It's all about energy levels… it feels like that has only really kicked in in a really meaningful way in the last few years. It's almost like, when you look at corporate New Zealand, it's only been in the last two years that there's been this road to Damascus type experience for them, where suddenly you're seeing the big corporates see the light and try to genuinely do some stuff of significance… In the last election, that discomfort of people showed… the issue of poverty was raised a lot. And I think most people in New Zealand go, 'I'm not comfortable with what I see, and I want it to change.' So, that's a mind shift, no matter where you are in New Zealand, people are going, 'oh, somethings got to be done about this. We don't like New Zealand this way.'"**

The growing consumer demand for ethically, environmentally, and sustainably produced products and services is a phenomenon that is growing globally and is now discernible as 'personal social responsibility' **(PSR)**. A number of the SE we spoke with are catering for this market – and their businesses are growing. Consumer demands on corporates to do more than what has passed as standard corporate social responsibility **(CSR)** attests to the change and evolving economic parameters that SE are uniquely placed to leverage.

The Government is responding to these broader societal changes by aligning policy directives with the conceptual understanding of the prevailing socioeconomic dynamics. Treasury is looking at more nuanced frameworks to measure and develop policy. The LSF "has been developed by Treasury to consider the collective impact of policies on intergenerational wellbeing" *(New Zealand Government 2018:1)*. The approach is about the consideration and analysis of human, social, cultural, and natural capital, as well as financial capital, as contributing factors to the wellbeing of New Zealanders. The focus of Treasury is currently pragmatic and exploratory, and the set of discussion papers *(King, Hiseynli, and MacGibbon 2018; Frieling 2018; Morrissey 2018; van Zyl and Au 2018)* are about starting a conversation on the value of these different types of capital in relation to wellbeing. This report adds to this conversation.

The SE we have spoken to in this research project are now running dynamic organisations that have fully integrated multiple forms of value as they conduct their array of enterprises with mission front and centre.

Janette Searle from Achieving@Waitakere and Take My Hands (amongst other SE initiatives) put it like this,

> **"I think it's a bigger conversation, and I go back to where we place value. And how we define success, and how we define value. At the moment, a massive majority of it is around financial success and profits, and that's how we are measuring success [for business]. Because even in those places that aren't driven to generate profits, we're still not measuring their success properly. So, if we had a conversation to go 'yes, generation of financial wealth and all of that kind of stuff is one part of it, but actually, there are these other values systems that are equally important'… And I think there's a beginning of a move towards that with some of the reporting now, so have that in the conversation, and shift perceptions around financial value being the only measure of success."**

The alignment between what Treasury are starting to do, and what SE has been doing for years with sophistication and entrepreneurship is significant. Evolving legal structures to reflect this reframing of value would unlock the potential for SE to benefit the New Zealand economy.

1.2.2 The relationship between SE, and 'charity' and 'business'

In this section we seek to frame and then reconceptualise the relationship between SE and the logic where 'charity' versus 'business' is a binary. This is important because unless we understand the nature of the relationship between SE, charity, and for-profit business and how current law reflects this segmentation, the understanding of the nature of the ecosystem in which SE exists will be limited.

While Minister Parker's letter acknowledges that the not-for profit legal structures are unsuitable for SE, it is a common assertion that a limited liability company **(LLC)** (often with charitable status) should be a suitable vehicle for SE, because the assumption is that SE is a hybrid of charity and for-profit business. This logic reflects the standard representation of the relationship of SE to charity on one end

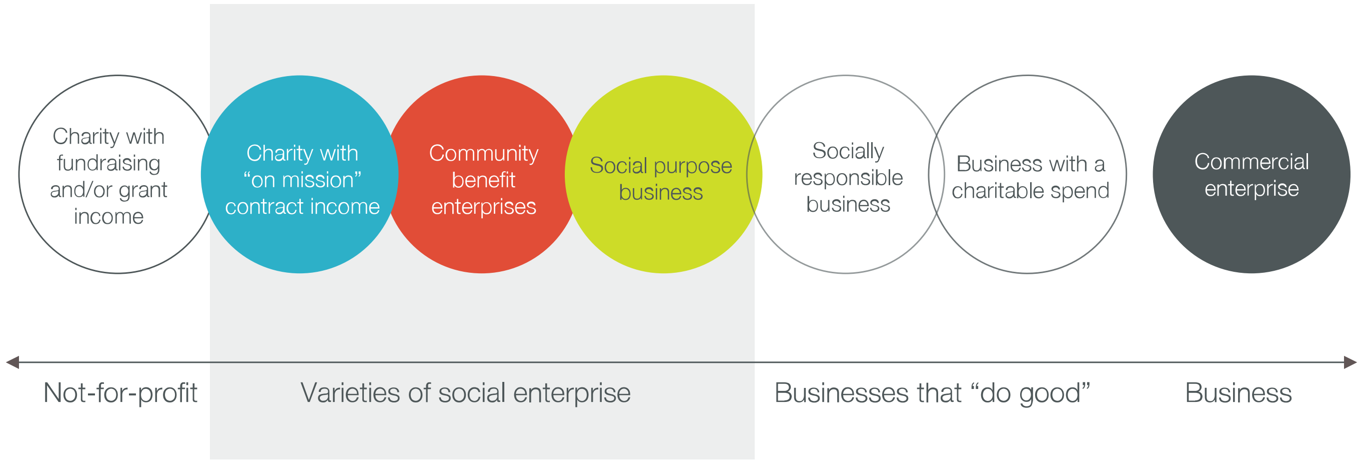

Figure 1: Prevalent charity/business spectrum, with social enterprise sitting within it.

of the spectrum and for-profit business on the other as per Figure 1.

However, while different versions of SE are represented in this schematic, the relationship of charity to for-profit business and SE is inaccurate. Many of the SE interviewed are fundamentally different to the traditional charity or for-profit business because they are founded on the basis of a different paradigm. The inclusion of financial capital along with other versions of capital as the key value outputs from SE is not merely a recipe of 'take a bit of charity and a bit of for-profit business' and combine to make SE. Rather, SE embodies a fundamental change in the motivation and methodology of doing business. We conceptualise this approach in this way:

1. Standard for-profit business and standard charity are two parts of a single whole that comprises the system called capitalism.
2. Capitalism is a subset of a broader notion of economy called 'human economy' which has a broader set of imperatives, including human wellbeing *(Hart 2015)*.

'Human economy' existed before capitalism became the dominant economic structure and remains the model of many indigenous economies including Te Ao Māori. However, the system where personal financial profit can be pursued at the expense of the environment and the wellbeing of human beings, is not the only way to do economy. SE knows this, and this notion is regaining momentum and informing the Treasury's LSF approach to achieve a more complex analysis of policy and capital output.

The segmentation of 'for-profit business' and 'charity' as two separate parts of the economy can be visualised as follows:

Figure 2: Charity/business representation.

The characteristics of for-profit business, and of charity are kept separate from each other by strict boundaries, but that these remain the only parts of the whole is reflected in our legal structures. Interaction between the two realms is regulated to maintain the distinction. Hence, the mandate of Charities Services as gate-keeper, vetting organisations that seek to enter the charities space and declining those that generate profit for personal gain.

Representing the relationship that SE has to the charity/for-profit business binary is more like this:

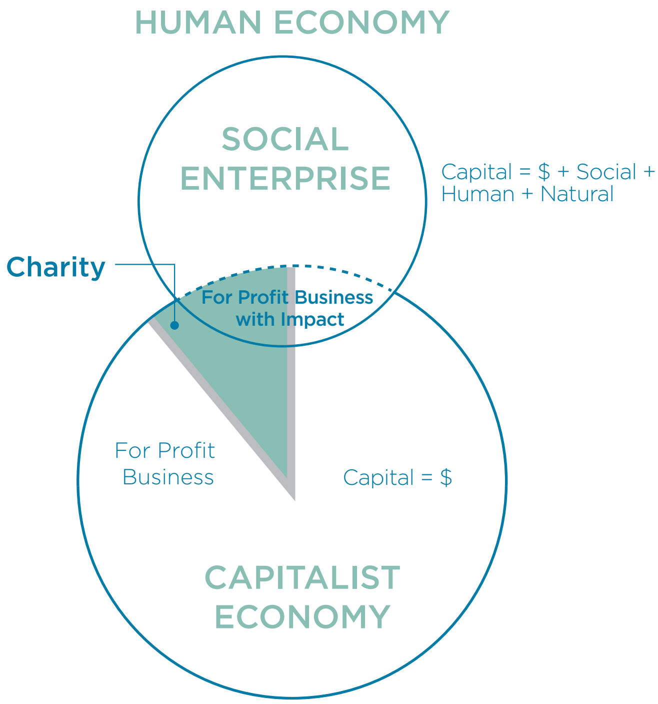

Figure 3: Representation of the human economy, and how SE sits within this.

Here, the human economy is where multiple forms of capital have value and the capitalist economy is where value is defined by financial capital alone. In this schematic, there is cross over between the charity/for-profit binary and SE which is where activity categorised as for-profit business with impact exists – these are standard businesses that do some form of good with their profit, but within the logic that dominates in the capitalist economy.

The LLC and the other legal structures available in New Zealand are products of the logic where charity and doing good are separate from doing business. Therefore, the fundamental nature of mission that is at the heart of SE is not accommodated by the LLC structure or other for-profit legal structures. While the Companies Act and the structure of the LLC is accessible to SE, in that a would-be SE can set up an LLC and get to work doing their mission as they trade, it is difficult to operate as a SE without undue hindrance, let alone thrive, without significant, entrepreneurial capacity and expensive creative legal work.

Despite this, there are some extraordinary organisations doing just that.

PART TWO: **HOW SOCIAL ENTERPRISE IS UNDULY AFFECTED BY LEGAL STRUCTURE**

In this section, we look at how legal structure affects the SE we interviewed, what the issues are that affect them, and how these are connected directly or indirectly to legal structure. For all the organisations we spoke with, the current legal structure options do not actively help or easily facilitate the process of doing SE – and for the most part the available legal structures are creating an environment where SE is the square peg in a round hole.

The vast majority of those interviewed said they are curtailed by their legal structure to varying degrees, sometimes directly, sometimes in more subtle indirect ways. A single organisation from the research cohort, Little Yellow Bird, who are a standard LLC and do not have charitable status, are neutral about their legal structure and are experiencing no hindrances derived from bigger structural forces in the economy.

Through this research, we have found three core themes that orientate the relationship that SE has with legal structure that debunk the contention that the LLC legal structure is accessible and sufficient to prevent a SE from being disadvantaged in New Zealand. We look at these three areas in turn:

- Mission vs legal structure
- Funding vs legal structure
- Innovation vs legal structure

2.1 Mission vs legal structure

2.1.1 The nature and substance of mission for SE

Difference by a matter of paradigm rather than degree

The variety of missions that the organisations we interviewed operate with are broad and far-ranging, but all address a social and/or environmental need. In one way or another, each SE wants to change the way the world is so that people and the environment are looked after through business – rather than business being to the detriment of people and environment. All the organisations we spoke with are committed to missions that displace the pursuit of profit and the harm that this can have on the environment and people's social and cultural worlds. The mission of a SE is not a derivative of what charity is. It is actually something quite different, Cliff Colquhoun from CBEC made this distinction,

> **"Most people, actually quite like the idea of what charity does, and they will choose the one they'll put their money into... So, traditionally charities are dealing with an issue or supporting the community in some way. But they're not necessarily about changing anything... and they enable people to feel good by putting money in, and this helps someone who receives assistance. Whereas we're about changing the circumstances around what's causing the problem and the need."**

SE mission is integral to their business, and is managed on top of the usual trading activities of typical businesses. Little Yellow Bird is committed to the ethical production of cotton clothing and the creation of global supply chains that specifically address the care of the environment and people at every turn and aspect of production and supply. Samantha Jones's agenda is nothing less than world changing as well, she said,

> **"My personal viewpoint is that all businesses should be operating in this whole socially respectful manner... in my opinion, every single business should have to pay the true cost of production from an environmental and social perspective."**

We asked Fraser McConnell and Alex McCall from the SE Choice how they are fundamentally orientated towards a bigger conceptualisation than merely mixing the motivations of standard charity and standard for-profit business. They said,

> **"Traditional capitalist business models are subsidised by the environment, they're subsidised by people's wellbeing and that's not what we're here to continue on with. We're here to change that direction and show that business for good can be achieved using the latest and greatest technology and by putting it in the hands of as many people as possible."**

We asked Fraser and Alex from Choice about their attitude to the differing notions of personal gain that they have as a SE – and how this could be a function of millennial exuberance, rather than a fundamental shift in their approach to doing business with mission. They said,

> **"We don't care about making any sort of money without purpose... if we want to be advancing society, and the SE industry, this is not going to happen by just continuing to do what we've always done, which is to make more and more profit... But we don't care about that, we care about serving a greater purpose for the world."**

Pānapa Ehau from Hikurangi Enterprises, an organisation that is developing bioactives from their land to generate economic development for whānau, talked about the way they combine mission, values, and business process. He said,

> **"our underlying values are that everything that we do has to benefit the land and the people and the wellbeing of those...**

> **So, our decision-making framework that sits in place is always 'does this benefit the land and our people?' And if it does, then it can move forward into the next space of, 'is it a viable commercial process?'"**

Geoff Walker from Trade Aid asserted that their mission is nothing less than changing the very nature of trading, and the essentially exploitative element that for-profit business can too easily get away with under the current system. He said:

> **"We're exhibiting the way we think all trading relationships should be, so we'll do things like we will pay 50-80% of our craft orders at the time of placing the order… We believe that this way we're balancing the power relationship we have with our trading partners because we're in a lucky position as New Zealanders and we can use our position to help balance the trading relationship."**

Michelle Sharp of Kilmarnock considers her organisation to be a not-for loss, because no organisation can be an enterprise without making money. They trade and compete efficiently, and maximise their capacity to deliver so that they can continue to win contracts as an equal player in the field. In other words, they operate just like a for-profit business but their very reasons for existing and conducting the trade that they do, are fundamentally different from a standard for-profit business – because what is different is not the amount of business acumen and strategic vision that powers the organisation, rather it is what they use their earnings for. Their workforce is comprised of around 100 people with learning disabilities. The organisation has evolved over recent years from its former guise as an IHC sheltered workshop into the SE they are now. Their mandate is to change the marginalising and undervaluing of people with disabilities that is common place in New Zealand society, and to evolve and develop models for the future of work that embrace diversity and inclusion in world-leading ways. The education and training that they do for their workforce as a matter of course – i.e. not once profit has been calculated – is life changing for the people that work at Kilmarnock and is affecting the business community that interacts with Kilmarnock by expanding their perception of what diversity can actually be.

Eat My Lunch were committed to being a trading entity from the very start. Lisa King said:

> **"Our mission is to ensure that no child in New Zealand goes to school hungry… we're not trying to solve poverty or the causes necessarily, but we want to ensure that kids are coming to school, and then when they're at school, they've actually got the right nutrition, the right fuel, to help them learn and maximise the opportunities when they're at school…[we wanted] to do something about poverty, but in a sustainable and scalable way."**

The missions that motivate all the SE that we spoke with go to the very heart of who and what they are, whereby the intent to create impact is paramount. In this regard, SE are not unlike charities with their commitment to do good. However, SE are intent on trading to achieve this because they believe that trade is the best way to ensure sustainability. What is even more important to SE – and this is what really sets them apart from standard charities and for-profit business – is their understanding about how the tools of business and business acumen combined with social/environmental mandates creates enterprise that is greater than the sum of its parts. Herein lies the key issue for SE: no currently available legal structure facilitates all these imperatives.

Ill-fitting identity and being 'the square peg in a round hole': Grappling with mission and legal Structure at the outset

According to our research, the current legal structures struggle to accommodate the fundamental differences in operation, motivating values, and the different types of capital when a trading enterprise is mission-led. A number of organisations talked us through the process of how they settled on their legal structure in their start-up phase, and how ill-fitting the set of options were.

Choice, for example, are working with an entirely different logic from a charity or for-profit business. Their mission is to subvert the payment structure of multinational electronic card transaction companies and its accompanying mechanisms that saddle merchants with steep fees, extract the fee from the New Zealand economy, and remove consumers' agency. The Choice technology reverses this. Choice are in beta phase of development of their system so they have considered how they need to be legally structured when their system goes live. Alex McCall and Fraser McConnell said of the initial decision-making process that they went through,

> **"The [available legal] structures haven't helped us a single bit… We need to figure out what is the best possible model, so that we can ensure not only that our purpose is being forefront and centre, yet also that our profit is being maximised to serve our purpose."**

Organisations like Loomio and Trade Aid are examples of where their trading operation is part of showing their mission in action. They can model ways of doing fair trade in the case of Trade Aid, and working cooperatively for Loomio. So both organisations needed structures that allowed them to express their mission. Trade Aid have ended up with a complex legal structure that has been developed over their 40 plus years in business as they continually try to put mission first. As they have expanded their operation to a structure that now comprises approximately 30 legal entities of various types, the ongoing administration and compliance costs are detracting from their capacity to innovate.

Loomio is a cooperative company giving them a built-in non-hierarchical structure, where shareholder decisions are made by the workers of the company, signaling to external observers their commitment to collaboration. This structure, although a variation of the LLC, is not well-known or understood for trading. Whilst it furthers their mission, it actually creates a barrier for their progress. More time and energy is required to explain the structure to investors, banks and other stakeholders – but the co-operative structure is important because they are showing the users of the software what collaboration looks like. Michael Elwood-Smith said:

> **"And if we do this well, what we're actually demonstrating is that we can create an organisation that grows a successful scalable business, while delivering on a social mission without, for example, an Elon Musk turning up being a gazillionaire on the back of it, and being back to the 1% of people with 99% power and wealth."**

Patu Aotearoa were encouraged to go down the charity path when Levi Armstrong and his business partners set up Patu five years ago. Levi was determined to have a standard LLC structure, because this disrupted the standard model of Māori health and wellness initiatives based on handouts and grants. Instead, Patu have developed a fitness program that harnesses the social dynamics of their predominantly Māori and Pasifika client base that works best when participants choose to pay for their fitness classes. The Patu model is about fighting against the limits and stigma of being a grant-receiving organisation. Levi said,

> **"We believe we are at war against these issues… 'Patu' is a weapon, the enemy being, not just the health issues, diabetes and obesity, but also the societal issues as well… We set up as a company, we didn't want to rely on government funding because if the [funding] tap got turned off tomorrow, there'll be nothing… we want to create revenue streams that can support us to be self-employed."**

Not registering as a charity has essentially cut Patu off from philanthropic funding and slowed their ability to scale and increase their outreach and therefore their impact. Levi said,

> **"Through the five years, we've turned down a few funding opportunities because we weren't a charity, so if we had been able to take these we probably would've had 30 sites around the country now… You know, we would've amplified our impact… we could've stopped someone from committing suicide. I mean I've had a few bros come into me and tell me, 'you know, if it wasn't for Patu I probably wouldn't be here.' There have been so many transformations…even bros getting into work."**

CBEC explicitly did not want to be classed as a charity that could be perceived as reliant on grant funding and all of their hard work and essential recycling service regarded as 'volunteer work'. As a CE, they are all about sustainable and ongoing creation of employment and community. While their membership ownership model as a cooperative society, registered under the obscure Industrial and Provident Societies Act 1908, reflects who they are as a CE, it does not come close to notifying what they can do as an expert organisation in waste and recycling amongst other things. Industrial and provident cooperative society models are rare, and are not well understood or commonly used for competitive commercial entities. So, combining that model with a trading focus has presented difficulties for CBEC. They are not taken seriously during tendering processes making it difficult to take advantage of commercial opportunities. A simple LLC structure would not work for CBEC because this would not be perceived as community-focused enough and would therefore compromise the credibility of the organisation that is so critical to driving engagement with their community. However, trading is what creates ongoing jobs and growth in the community. Cliff Colquhoun and Warren Snow set CBEC up in 1989, and Cliff relayed the advice the lawyer they consulted at the time gave them,

> **"He said, 'I don't know if it's perfect, but the cooperative legal structure is probably the most flexible and will give you the most options.' So CBEC became a cooperative society… So how has it worked for us? We've got a diverse group of enterprises, we do all sorts of stuff, and it seems to have worked for us. But some of the external things have not, which is about how we're viewed and how we're accepted, these are more a problem rather than actually implementing a legal structure to be able to trade."**

Kilmarnock is a fully operational competitive business that is growing despite the crowded contract manufacturing sector in which they are award-winning leaders. In 2011 they lost a crucial contract which was the stimulus to evolve into the high performing organisation that they are now. Michelle Sharp said:

> **"At the time [the loss of the ANZAC poppies contract] was devastating, but in retrospect, it was the best thing that ever happened to us. We went from an organisation that employed 60 odd people, who day in, day out, would just sit and make poppies, through to a contract manufacturer, who now has a strong understanding of what we excel at, and therefore in each market, how we need to sell. As a result, each relationship we make with our customers is done on an equal basis, and on an even playing field. As soon as we started trading, and spreading the word about our new mission and services, the amount of impact increased and continues to go up."**

While the idea of not-for-loss disrupts the charity/business binary, this also decentralises the importance of profit, and allows other versions of value into their conceptualisation of their operation. So, financial capital is important, but it is not their only focus. Michelle said,

> **"We just use the money capital to drive others, to enable the other forms of capital."**

All these organisations are using the tools of market as commercial enterprises to sustain and scale to achieve their missions. However, what challenged all (save Little Yellow Bird) was how to convey the primacy of mission in their commercial offering both within their organisations as well as externally. The LLC has never been the vehicle for accommodating mission in the way that SE needs. The ill-fit that the current legal structures create for SE includes perceptual barriers which undermine the legitimacy and competitiveness of SE.

Mission, the LLC structure, and the spectre of pecuniary gain and 'social washing'

As soon as a trading organisation talks about being mission led and 'doing good,' a set of assumptions come into play for consumers and the business community. One such assumption is that there will be no pecuniary gain for individuals, and that surplus profit is either absent or wholly directed towards the mission.

What also becomes relevant, is the idea that an organisation could take the narrative around 'doing good' and use it as part of their marketing without any substance, a phenomenon now referred to as 'social washing' (or 'green washing' if the false claim is about environment). This theme came up in our discussions with Peter Frawley and Stewart Donaldson from the Inland Revenue Department **(IRD)**, and Andrew Phillips from Charities Services. A function of the IRD and Charities Services is to deal with organisations and individuals who contravene the rules around conducting a charitable operation. Protecting the integrity of charitable registration and promoting public trust and confidence in the charitable sector is the reason for the existence of Charities Services.

Pecuniary gain, the different construct of profit in SE, and dishonesty on the part of some organisations that say they are doing good when they are not, came up a lot in the research interviews. What came through clearly from the SE that we spoke with, which included some of the most well established and innovative SE in New Zealand, was the marked difference in their perspective on pecuniary gain and the way they conceptualise profit, compared with standard for-profit business. This is indicative of the different paradigm where SE does purpose, profit, and pecuniary gain alongside the world configured by the charity/business binary.

In some SE (as is the case for most for-profit businesses), the potential for receiving personal gain is a strong incentive to invest the unpaid time and energy required through the start-up stages, especially where the founders are using their family assets as security for the initial funding. However, personal gain in the SE context is often criticised, despite such personal gain being limited by the other values that motivate SE and are put front and centre.

Pānapa Ehau talked about how the issue of pecuniary gain is managed within the context of Hikurangi Enterprises and the degree of accountability that is demanded by whānau. As a SE and as a Māori organisation, Hikurangi Enterprises is so intrinsically linked to the broader community within which the organisation exists geographically as well as in terms of Te Ao Māori, that the two cannot be separated. However, remuneration is important and a form of personal gain as a driver of innovation is also part of Hikurangi Enterprises' operation. Pānapa said, while the operation of the organisation is not about,

> **"Buying more Audis to put in the garage, [rather] it's about the bigger picture... but there does need to be some mechanism for some personal gain... like, two years of hard, hard slog by a couple of individuals and their own personal money that was put into that, it needs some kind of incentive and acknowledgement."**

Through the process of hui and the investment roadshow that they have conducted to get the community behind them as Hikurangi Enterprises have become established, they have been routinely challenged on how personal gain works within the organisation. Pānapa was open in saying that some level of personal gain was necessary if the work was going to get done, saying,

> **"Yeah, so we've got challenged on 'who is this person that's making an individual gain out of this whole structure?' You look at the whole structure and there's this point here where essentially resources are being taken out for an individual. And it's as simple as, if that didn't exist, none of this exists. That if this percentage of benefit doesn't go there, then none of this happens, so all the other benefit that comes out doesn't exist."**

The bigger mandate that effectively references the different paradigm that the activity of Hikurangi Enterprises operates within is indexed by the idea of 'Audis in the garage.' Pānapa said,

> **"It's like, when I went on the roadshow to do our first lot of capital raise [with whānau], that was the line that was used. It's like, 'this isn't being done so that I can have an Audi in the garage.' I'm quite happy with my 95 Toyota Corolla, although the investors that we got told us that we have to use new vehicles for financial reasons, but it's not about capitalising off individuals in our community because if we do that, the business model doesn't work because people will stop engaging with the process. It's like a fail-safe mechanism there that if you don't do what you [say you are going to] do, then the community will bug out and it won't work long-term."**

2.1.2 Enshrining mission and legal structure

The importance of having some form of mission lock

The separation of 'doing purpose' as something that is in effect, the opposite of doing for-profit business is the way the capitalist economy is set up. So, having these two modalities separated whereby they are not seen as naturally part of the same context, means that SE, as something other than the norm, carry the burden of proof to show that they are not a corruption of charity or an unsuccessful business. So, the issue of building trust looms large for SE from an external brand perspective for business with purpose, and internally, so that founders and management can show that they are holding themselves personally and publicly accountable.

There is also the need to ensure that changes in management and ownership can happen without compromising the mission, so that a SE could be sold like a standard LLC could be, but with the mission intact. An LLC is a flexible commercial vehicle that is able to set its own rules within permissible parameters, but there is nothing inherent in the LLC structure that can be used to signal mission lock. Voluntary constitutional restrictions can be adopted, but generally this doesn't convey that mission primacy publicly.

Given the background framework of the charity/for-profit binary that orientates New Zealand society, government process, and law, the perception and acceptance of these are real issues for SE. As a consequence, the lengths that SE need to go to to enshrine their mission for themselves, as well as for external observers, to tell their unique story to the market, and broadcast their authenticity as they trade with purpose, are convoluted and generally require expensive lawyering and/or marketing. These also have significant and enduring implications in terms of engineering flows of money within the organisation. The way the nature and very substance of mission is accommodated by the SE we spoke with, despite the legal structure options, is innovative in itself. In this section we relate the ways some SE are being able to create mission lock in their legal structure through creative lawyering and/or through other mechanisms that have been developed in the SE ecosystem. However, many of the organisations we spoke with are finding they are having to default to charitable structures to create a mission lock – despite the fact that these structures are not suitable for SE.

Creative lawyering work-arounds that enshrine mission lock – in the absence of specific legal options

Leading with mission is integral to how SE operate and want to exist in the world, but being a straight LLC makes it very difficult to do this – because the LLC structure does not traditionally accommodate mission, and has no rigour, let alone capacity to enshrine mission and purpose. Because of the primacy of mission for SE, the ability to entrench it to convey trust and permanency is a necessity born out of the prevailing perception of what charity and for-profit business are in the minds of the public, as well as how this is refracted into the law.

Loomio were one of the few organisations we spoke to who have been able to employ creative lawyering without applying for charitable status. Their software platform that facilitates and enshrines collaborative ways of working and versions of participatory democracy, necessarily makes it relevant that they operate the company as a collaboration that is explicitly not about command and control hierarchies. From the beginning they have been a legally-created worker-owned cooperative in terms of operation, management, and decision making, and are a cooperative company by way of legal structure. Michael Elwood-Smith from Loomio said,

> **"What it's about is sharing the ownership and the responsibility of ownership with the people who are actually working to create the thing."**

Loomio's attempt to remain and operate at all levels as a worker cooperative with explicit egalitarian principles of reaching consensus, and the need to raise funds to grow and develop in the specific way a tech company needs to do, has necessitated a process of creative lawyering. They have managed with the structure they have had since founding to develop and grow, and have used a variety of methods to raise funds and develop (including volunteer labour and open source structure, PledgeMe, issuing shares that come with no or limited ownership, and evolving their revenue stream around the platform). However they have reached a point in the development of their company where they need to raise equity (discussed further in Section 2.2.1) to take the software to the next level. In order to preserve and maintain their collaborative working structure, and not explicitly value the membership part of the company so that members can continue to come and go, they are in the process of creating – via an expensive and bespoke legal process – a holding cooperative company, that will free up Loomio as an LLC to offer ordinary equity to investors.

It has been a long, convoluted process to enshrine this aspect of their operation and their mission and avoid charitable status. Michael said,

> **"We've pioneered in so many ways. We are a little worn out from pioneering, and now focusing on making a sustainable business. However, I don't think we would have survived if we didn't have the cooperative structure and conscious development of values, culture and working practice. It's that practice of building, and the principles of collaboration that have been fundamental."**

This fatigue created by the constant requirement to work around the system was talked about by all the SE we spoke with to varying degrees. This is important because these added burdens for SE leave less time and energy for innovation (discussed further in Section 2.3).

Developments in the SE ecosystem that compensate for lack of mission in the LLC for SE

A few of the other organisations we spoke with were able to leverage other mechanisms within the SE ecosystem to signal mission to external observers in particular, whilst maintaining an LLC structure and avoiding charitable status. Others used these same mechanisms to market themselves as something other than a standard charity.

Eat My Lunch is a case in point. It is LLC who explicitly set out to not be a charity and wanted to trade to create a sustainable business that could provide enduring support to children who are routinely coming to school without lunch, as well as to the schools and teachers who are tasked with looking after and educating them. Eat My Lunch rejected the idea of being a charity or having a charitable arm because,

> **"It's restrictive, there's a lot of red tape, bookkeeping, we didn't want to have to run two sets of accounts, two sets of legal processes or literally two organisations running alongside each other. So really it was the simplicity and ease of operation that drove us to choose an LLC. And also, because we felt that that was the best way [to run our] buy-one-give-one model, so when someone buys a lunch, 'The Give' [what Lisa refers to the free lunch aspect of the model as] is intrinsic in that, so [this] always activates a give. So, we built it into the cost of goods of delivering a buy-lunch and we felt that was actually the most genuine and true to the proposition of buy-one-give-one."**

But this doesn't mean that it has been easy for them operating as an LLC and having impact. Eat My Lunch have received for the most part, very positive press and their organisation is growing. However, the fact that they are not a charity has created some controversy for them and specifically, accusations of lack of transparency and 'social washing.' Being a standard LLC and operating differently is confounding for many observers. Lisa King said,

> **"I think people have high expectations of Eat My Lunch... What I don't think people understand is that we're not a charity, after three years in business people still often refer to us as a charity because they can't get their heads around the fact that you can actually be something different... I think people are so used to that concept of a traditional charity and that they do good, whereas businesses don't do good, they make money. So, the minute you say you do something good they go 'oh well you must be a charity'... Our model hasn't really been done here before so people can't see what we do."**

What has helped Eat My Lunch remain an LLC and has been one of the reasons why they haven't had to go down the charity route, is that consumers can see the impact that they can do with their money when they purchase from Eat My Lunch. This catering to what amounts to an increasing sense of PSR on the part of more and more individuals via added dimensions to their buying power as well as the provision of the volunteer space that Eat My Lunch offer, are new components in the market that Eat My Lunch are cleverly working with.

What they are also doing is creating visibility around what they do through increased public reporting of the impact they are doing. In November 2018, Eat My Lunch published their first version of a comprehensive impact statement on their website *(Eat My Lunch 2018)*. This details how their operation works and what they are doing in terms of impact, and is portrayed in numbers: for example, close to 1.2 million lunches have been given to children. Eat My Lunch do this reporting voluntarily, and they are able to do as much or as little public reporting as they chose. Lisa was reflective on this, she said,

> **"I think it's interesting what is expected of us in terms of reporting... We've put it on ourselves to report how many lunches we give. We don't say how much that costs us, and we don't share our financials, which recently, you know the media have questioned us on that and why we aren't doing that. Because charities do it... but we are not a charity."**

The importance of impact reporting as a counter to the perception of dishonesty and as an important process of communicating and educating a public and business community that is not yet familiar with SE, is being recognised by SE across the board as essential for marketing, their business, and the ecosystem within which they sit. Loomio have produced a whole handbook about how to run a cooperative organisation *(Loomio 2016)* which doubles as both an education piece and as a version of an impact statement. For 15 years, Trade Aid have been on the vanguard of evolving impact reporting in this country. Their latest version, Trade Aid Social Accounting Statement *(Trade Aid 2018b)*, which is available online, is a comprehensive document that details how the philosophy of doing fair trade works on an operational level. The document also relates the multifaceted ways that their methodological approach to fair trade impacts their trading partners' lives. This statement is annually updated and developed to impart more and more insight around the importance of fair trade. They are also very active in speaking about what they do, and have a whole set of educational resources for schools and business about fair trade.

Some interviewees identified the lack of definition of what a SE is as problematic, with some identifying the need for an external body to certify SE as being what they claim to be. Geoff Walker said that Trade Aid were starting to use the idea that they are a SE in their branding more and more, but he identified the set of risks with this,

> **"I guess the risk for us is that because there is a lack of a wholehearted definition... we risk association with other businesses who can say they are SE but don't follow through. So, for example we have the same issue with fair trade, or with**

organic, so we pick certification bodies where we can say these entities have recognised that we actually are this, and we can certify it. So, having some degree of something that proves it, I think that's quite important."

Little Yellow Bird has a constitution which states that they won't necessarily make decisions that will maximise shareholder profit. At the moment, because Samantha Jones owns a significant majority of the shareholding, she is cognisant of her ability to hold tight to the mission of the company, but this is not set in stone. Samantha said,

> **"In a way it's difficult to say [this piece in our constitution] actually locks in our mission, because I could still change that, but we made an attempt to make that as part of our legal structure as much as we could."**

What Little Yellow Bird did opt to do, in addition to this provision in their constitution, was to become a B-Corp. Little Yellow Bird has been certified for two years, and as soon as they had been in business for a year (a requirement for certification), they started the process of acquiring B-Corp status. They opted for B-Corp because it was all encompassing, Samantha said there were so many certifications they could have gone for, but B-Corp was the most rigorous for their company and industry[2]. The B-Corp status operates as an externally bestowed identifier for Little Yellow Bird, Samantha said,

> **"I think it's important that we have at least something. A lot of people ask us, oh, what certifications do you have? ...I think people just like to be able to categorise, I think it's just this weird psychological thing."**

While there are fewer than 15 B-Corps in New Zealand, and the certification is not well known in this country, the B-Corp status does help with recognition in her industry, especially with the amount of unethical production in clothing manufacturing around the world. Marking the company as legitimately different from the mass manufacturers of clothing is integral to running the business, and the premise upon which her product is positioned in the market. As part of being a B-Corp, Little Yellow Bird produce an impact statement *(Little Yellow Bird 2018a)* annually.

However, most of the SE we spoke with found they needed to default to charitable models (either trusts or an LLC with charitable status) in order to attempt to make up the mission oriented shortfalls of the LLC structure – despite the fact that these not-for-profit structures are not suitable for SE.

The inevitability of needing to default to charitable status or have a charitable arm to be able to pursue mission

Choice have recently been through a creative and expensive lawyering process to formulate a bespoke legal structure that will allow them to pursue their mission, and be a tech company and operate with the degree of agility that this requires. For them, including a charitable trust in the mix of their organisation as one half of their structure, was in part defaulting to charitable constructs to pursue their mission, but for them at least, it is also a clever combination of the current options.

When they go operational and at scale, the plan is to set up the Choice Foundation which will be a charitable trust. This will sit alongside (rather than as a parent entity) Choice Ltd, which will stay as a standard LLC. So, transaction fee payments for the payment service will come into the organisation via the Choice Foundation, and it will be this entity that will redistribute half of the fee to Choice Ltd, and the other half as instructed by the consumer to the charity of the consumers' choice.

Currently, there is an informal mission lock on Choice Ltd by virtue of the fact that the founders retain total control. The trust deed of the Choice Foundation will govern how it derives income, how it is distributed to the nominated charities and what is paid to Choice Ltd, so the mission lock will live with the Choice Foundation. Choice Ltd can be a tech company and attract investment accordingly. This dual structure is expensive to create and complex to manage. Choice could afford the legal bills which mitigated the barriers presented by legal structure, because the individuals behind it have a track record and they have already attracted over $1 million in non-equity funding – an exceptional amount for a New Zealand start-up let alone a SE. However, other organisations are not in a position to afford bespoke legal structures or to make charitable structures work as well for them.

For Patu Aotearoa, being an LLC has been part of their mission, but being fundamentally orientated by Te Ao Māori means that the benefit of what they are doing is masked behind the charity/business divide. So, the idea that a business in the Māori wellness/fitness space could have more impact than the standard social welfare model is difficult to convey. They have done cost benefit analyses with Deloitte to generate data that reveals how their model is working, and they are now in the process of developing what they call the Meke Meter to extend their wellness model.

In order to do this, they have had to concede to setting up a charitable trust (set up pro bono by Russell McVeagh, but otherwise being a significant cost) so that they can access funding to extend what they have already shown is a good methodology to engage with whānau and others in the wellness space. Levi Armstrong said that in an ideal world, they would not have to have two entities to do the range of things they do. The whole process of setting up a charity has been about getting access to philanthropic funding and being able to not pay tax on some of the money that they are earning in their business. Patu are aware of the trade-off of the flexibility that an LLC structure gives them, versus the funding that a charity can access as well as the tax relief. Nonetheless, there is frustration for them over the way that the tax that they are paying as Patu Aotearoa can then get passed on by government to other

[2] To qualify for B-Corp status, an entity must complete a rigorous assessment which looks at all aspects of the business and allots them points depending on how they operate. If a certain total of points is reached across all the questions (that range from staff backgrounds, to ownership structures, environmental initiatives, and other key issues) then the status is granted.

organisations with charitable status that are trying to do what they do, but with less success.

Vivien Lei who was involved with Feel Good Period, a SE that was set up with a LLC structure at the outset, said that the small start-up struggled to make much head way as a SE and eventually ceased trading after a year of attempting to operate in what was construed as a charity space. Feel Good Period was intent on supplying homeless women with sanitary products via a buy-one-give-one model. The group of students who started the company found it very difficult to operate because of a lack of understanding of what SE is and the suspicion around their being an LLC without charitable status or not being a straight charity. Vivien said,

> **"People would ask 'what is it that's preventing you from getting that charitable status?'... a lot of people have never heard of SE for starters, so to them the business was just very strange... it put us under a lot of pressure because we were constantly going back and questioning ourselves going, 'okay so what should we actually be then?' It seemed like you had to choose charity or business, but I think it was quite important to us at the time that we weren't going to be just another charity. There were already existing charities, we wanted to try something different."**

The cost of setting up a charity for a group of students who were still at university was prohibitive. So, trying something different was about creating a sustainable model through trading because the ongoing need of women for these products could not be tied to the vagaries of charity and the inconsistent supply that this often created, and women who could pay for products would always pay. However, the organisation was stymied by the perception of impropriety and the lack of understanding around what SE is as reflected in complaints on their Facebook page. The comments were about how Feel Good Period was taking advantage of an issue to make money etc. In reflecting on why this happened, Vivien said,

> **"I think the public perception of companies is traditionally that their first priority is profit. And so, this notion of an organisation using business methods – but not prioritising profit first, above all – is quite unusual for most people who haven't encountered SE... it's how many people think companies have always worked... all that history is there [but] it's very different for SE. When people see a SE and they're like 'I don't know what that is,' and the closest thing you look like is a company because you're in a company structure, they will ask 'but if you're a company why are you also doing these charitable things?' and so they get a bit confused I guess."**

While Kilmarnock is managing to make the LLC structure with charitable status that is wholly owned by a charitable trust work, they too have challenges. Signalling what they are to themselves and the people who work with them as employees and as contract clients is very important to their identity. While they have strategically created a business and trading operation out of what was a sheltered workshop, they also maintain a charitable status. On the one hand, in their interactions with their clients the charitable status gives them a reputational edge, whereby the renewal of contracts that they have just been through, for example, were straightforward because their clients trust them because they perceive a charity as trustworthy. However, in every other respect, the charitable status continues to be a hindrance in their commitment to trade as part of their mission. They win business based on merit, not because they have charitable status (or were once a standard charity), and while this will keep some customers re-contracting with them in the short term, the only way they have continued to grow and expand is because they are a highly efficient, innovative company that also has a mission to embrace diversity. So, having charitable status really works against them. We asked Michelle Sharp and Tim Jones what the disadvantages of their charitable status are,

> **"Oh, unfortunately there are many, many more of those... Because in fact, we're more hindered by it... So, let's start first. What does any organisation require in order to survive? You need access to market, so you need to be able to trade, you need access to finance, either seed funding or capital for growth. You need access to R&D money from time to time, to do the things that you need to do, because you're trying to be innovative like we are. So basically, you need all the same things as any other organisation that is a full profit one. We're no different. Yet we haven't got access to any of those things, because of our status. So every time we want access to, let's say R&D money, which is the latest one. We've got a very, very exciting project to launch, but it requires some significant R&D money. I've spent a year convincing Callaghan [Innovation] that it's the right thing to do, to actually put R&D into us. Because their mandate says they can't support not-for-profits or charitable organisations.... We're helping them change that. But the point being is that it becomes very hard. It's been work, and we're prepared to do that, because we're prepared to make a change for everybody else. But a lot of the time, it feels like we do what we do kind of for the first time, and it's, it is exhausting – because there's no front door to anything that we do. And you're having to have the same conversation over and over again, which is okay, and we don't mind doing it, but we want to be seen as thought leaders in sector. So that's okay, but there is no doubt that our charitable status hinders us more than helps us, because of those things."**

So, while having the charitable status is vital for mission lock, because Kilmarnock are intent on trading competitively, the 'charity' label, and in particular, the perception of what this is meant to be in this country, is effectively curtailing their innovation. Up until several years ago, Kilmarnock were still housed in the building that they had occupied for 50 years. They decided that they needed a new purpose-built factory to accommodate their growth and expansion – and to communicate their status as a serious commercial enterprise. Michelle said,

> **"We were in an old site that we had been in for 50 years… So one of the issues with having charitable status is, if your building doesn't look like this [gesturing to the new building], immediately people assume that everything you do is bad quality, and immediately they want to pay you substandard. So, it's that kind of thinking because actually, it's the opposite… One of the things we pride ourselves on is our quality. But because our environment didn't reflect that, we weren't being given the chance to actually even have the conversations or be around the table with organisations who demanded quality. Because the charitable status, coupled with the look of the building, was actually hindering us. Whereas, in a funny way, if we were a for-profit, it might have worked to our advantage, because they'd think, 'oh well you're clearly not doing this to make a ton of money'. Yet moving here, suddenly meant that organisations are going, 'oh, you're actually real, you're a grown-up business'. We had a guy from Croxley Recycling, he turned up, and he said, 'oh, I was kind of expecting two guys in a shed with a shared hammer'. And we're going, 'no, this is a real business'. We won the deal just by him coming here and seeing our e-waste work."**

CBEC is an incorporated cooperative society with charitable status. They don't use the term 'cooperative society' publicly because it is not well understood, and the charitable status is more of a hindrance than an aid, and in particular, the whole perception piece for CBEC as a charity makes it difficult for them to compete for contracts. The community ownership model of a cooperative society reflects who they are as a CE, but not their high level of expertise, skill, and thought leadership in the waste industry for example. CE is too easily connected to the volunteer sector and the assumption that they have no skill.

When we asked Erena Kara from Te Rūnanga-Ā-Iwi O Ngāpuhi how having a parent charitable entity that owns a series of LLCs with charitable status works for them, she said,

> **"I'm not sure it does help us, I think it's just something we've had to do, and so we do it. It's relevant to the people like our CFO and our CEO who need to know about taxes and things like that. It's an imposed structure [on our Māori way of seeing and being in the world]."**

Pānapa Ehau from Hikurangi Enterprises talked about how his organisation is adept at "having a foot in both worlds" and that the legal separation of the parent entity for social purposes from the other entities which do the commercial operations was the only way they could structure their organisation,

> **"We needed two entities because you couldn't have commercial and social together."**

Māori Enterprise, charitable status, and the ongoing legacy of colonialism

While leading with the identity of 'Māori Enterprise' is now a mitigating factor that allows organisations like Hikurangi Enterprises and Whale Watch to trade more easily than other SE, the bigger context of the ongoing response to the economy is important as well.

Whale Watch, as the phenomenally successful business that it is, has the mode of operating effectively across two worlds down to a fine art, and their foundation is strong so they can "do what we want to do rather than what we have to do". While Whale Watch's legal structure is relatively complex, they have been pragmatic and have worked around and with the structures that were on offer – because they had to, and the very survival of their people depended on this. Kauahi Ngapora said,

> **"With the current legal structure that we operate in, we seem to operate fine. We're managing, there's nothing that overly concerns us. But we seem to be able to blend the two worlds together quite nicely, so rather than us sitting there complaining about how the environment is, we've just moved on. We try and work within what we have."**

There is a sense though that there is a subversive element at play in the use of legal structure by Māori enterprise to safeguard Te Ao Māori ways of doing business which is a human economy model, from Pākehā ways of doing business in a more capitalist mode. In other words, the separation of the business arm from the arm that looks after the whānau, the wider community, and the environment on multiple levels, means that the latter is effectively safeguarded by having both. While the dual structures serve to mitigate the human (i.e. not just Māori) potential for mission drift, and the legal structure looks familiar to external observers, having two entities is also working to protect Māori from the historical relationship that Māori have had with Pākehā in direct and indirect ways.

What Māori have done, as demonstrated by companies like Whale Watch, Patu, and Hikurangi Enterprises, and iwi organisations like Te Rūnanga-Ā-Iwi O Ngāpuhi, is that they have not forgotten – despite the changes to New Zealand since – how to live their values in the midst of the dominant Pākehā economic system. It is not so much that Māori have something that Pākehā don't have, rather, organisations like Hikurangi Enterprises and Whale Watch are able to see how much more scope doing business in the human economy gives them than standard for-profit business does. Kauahi Ngapora from Whale Watch said "colonisation took our peoples' mana away over time" and what is helping to return it, is the brilliant entrepreneurship of Whale Watch and the enduring capacity to work across two worlds – and arguably use legal structures as they exist at the moment to temper the potential excesses and political issues that can beset communal ownership, and create a separation of a Māori domain from what looks like a standard business domain.

So, while current legal structure options, including the LLC and the use of charitable status and trusts, along with limited partnerships are working for Māori, this is because of astute entrepreneurial design. The moulding of legal structure to support Māori-led initiatives to lift whānau out of poverty, halt suicide rates, provide meaningful employment and support, and allow people to live and thrive on ancestral lands, is a nuanced, highly entrepreneurial solution designed by Māori for their people.

2.2 Funding vs legal structure

The relationship that SE have with funding, equity, and investment is problematic – because they are neither a charity nor a for-profit business. With the legal structure environment that we have in New Zealand that effectively only recognises an organisation that does good as a charity, and one that makes a profit as a for-profit business, multiple issues arise for organisations intent on being a profit with purpose business. Structural barriers are created by the legal structure options – neither the LLC or the other options adequately enshrine mission and convey the business acumen and capacity of an organisation.

Other issues arise more circuitously, via perceptual realities that become real barriers when SE interact with institutions and individual investors and when they go looking for debt or equity. These are derived from the prevailing logic that dominates our economic system. Such perceptual constructs generate a set of assumptions that look like this:

- Business acumen – charities have none.
- Efficiency – charities have none.
- Financial profit – organisations that do good do not make a profit because they are not capable of doing so, nor should they do so either.
- Doing good – this is only done by charities. For-profit business can but it can only be superficial, or they just say they do because it's 'trendy' or it helps marketing.

Matthew Luxon from Envision talked about the position that CE organisations like CBEC and Waiuku Zero Waste still find themselves in when they are looking for investment or debt. He said they are,

> **"In a position that is counter to the mainstream which makes it hard when you're going to traditional institutions for support, such as for finance. You're on the back foot because you're not normal."**

This 'not being normal' means that the relationship that funding and investment institutions have with SE, as well as others that procure from SE or engage SE for services, are intricately wound up with legal structure as this reflects the normalised logic of charity versus for-profit business, and individuals' and organisations' perspectives of this. This also has a bearing on how cash flow works for some organisations as well.

In this section we discuss these issues in relation to organisations that are in the start-up phase versus those that are established and are intent on growth and scaling. So, the nature of the relationship that SE has with: banks; investors; and/or philanthropic funding organisations, is based on the SE legal structure to a large extent.

2.2.1 Capital raising, SE legal structure, and their mission

Banks

Being an LLC for a SE at start-up means it will likely not meet criteria to receive philanthropic funding, but it also means that if the organisation presents a business plan to the bank indicating how they intend to 'do good' this can shut doors for them as well. As a newly formed start-up and a standard LLC, Eat My Lunch tried to borrow money from the banks, but they got rejected,

> **"The bank manager said to us there's no way you're going to make money by giving away free stuff, so they didn't give us a loan, so we actually started the business without any external funds, it was all just from our own savings."**

A chance meeting with the CEO of the Bank of New Zealand **(BNZ)** ignited their relationship with a traditional bank. In terms of legal structure and getting the relationship with BNZ off the ground, Lisa King credits an alignment of values, and their sound business structure and the sustainability of their model as what formed the basis of their relationship with BNZ. However, while being a straight LLC made them more 'recognisable' to the bank, Lisa contends that it was The Give that actually makes them more robust and therefore worth lending to,

> **"If you look at our financials, and our models, and the way that we cost everything. It's way beyond what a start-up of our size and age would do, so I think because of The Give element, it actually makes us far more rigorous in our commercial model. Because we have to make sure it works, because you've got this extra cost that you have to cover."**

The negative perception on the part of banks about SE activity and the doing impact mandate is amplified if the organisation has charitable status, and affects bigger companies like Kilmarnock as well. They have found that being a charity tends to mean that their work is likely to be "substandard, [and] your quality is poor." This can apply to banks as well. Michelle Sharp talked us through how they worked around the perception of what a charity is meant to be, and the blindness of the banking community when they went looking for funding to build their purpose-built building, Basecamp.

> **"When we wanted to get funding for this $12 million new build, the bank went and looked at us on paper, and they turned us down because of our charitable status. So, it required us to go through and say, actually, you need to look at us through a different lens, you need to actually strip out all of this, because if we chose to, we'd operate as a factory, so actually, look at what a good business it is. We just have the capacity and choose to reinvest all of that for the good of everything else... We didn't meet their credit criteria, it was high risk because we were a charity. The second you say charity, they're like, 'oh, charity mentality, surely you're not underpinned by good commercial sense, you possibly have some really amazing do-gooders, but the assumption is that you're getting donations, [therefore, you're] throwing money away, or you're not being efficient ....[they think] we're really nice people who care so much about what we do, but [they think] the reality is we probably haven't got a strong commercial background."**

In fact, the reverse is true here, both Michell Sharp and Tim Jones have considerable international corporate experience. Kilmarnock did secure funding from the BNZ, but it was not a straightforward process. Michelle said – with exasperation, rather than jest,

> **"So, I had to trick someone to come out to see me from the bank for half an hour, and managed to keep him for five and a half. I didn't [actually] keep him hostage, just saying, until he met our demands.... [But I needed] to convince him. And it's like every deal like that, that we have to do, we have to go above and beyond to prove ourselves, because of the first impression [about being a charity]. We do it every time, I mean we do succeed in this, but the point is, if we were able to have some hybrid legal status that allowed us to have a mission lock, but still gave credibility as a business, that would be amazing. I mean, we carry on in spite of that, but something that was recognised would be fantastic."**

Matthew Luxon from Envision and Zero Waste Network talked about his experience with banks and CE,

> **"Our bank offers Envision lines of credit all the time. Despite the company having no real security and only surviving contract to contract, they seem comfortable lending on the basis of future earnings, and understand our legal structure (LLC with a single shareholder). On the other hand, when we've turned up with a much stronger proposition, like a community enterprise with a long-term contract from Auckland Council to operate a recycling and refuse facility, we struggle to get money from any of the banks. We can borrow against assets like a forklift or something, but not against future earnings for cashflow. All they seem to see is enthusiastic amateurs running a charity, they don't seem to recognise it as a business that will trade and needs cash just like any other business to survive. In a recent case, rather than just lending to the LLC, or even the two registered charitable trust shareholders, they wanted to have personal loans from the individual trustees of the trusts. And then we're back to the same old problem of a volunteer trustee going, 'hell no, I'm not putting my house on the line for this' – which seems like a perfectly reasonable response!"**

When a SE is trying to access debt-funding required to purchase assets, funding for the establishment phase, or getting ready for a new contract, funding institutions look for security in the form of assets or personal guarantees. For SE that use profits for impact (as opposed to retaining profits and building up equity), or construct cost to business differently and have limited or no ability to purchase assets in the first place (as grant funding often isn't available for purchasing capital assets), the requirement to provide a personal guarantee is not uncommon. But is a significant and curtailing factor in the growth of early stage SE. This requirement puts even more pressure on SE with charitable status and CE that prohibit any personal gain within their legal structure, because directors giving guarantees or offering up their assets as security are taking all the risk with no prospect of receiving a corresponding benefit beyond a market-rate salary.

SE present a conundrum for banks when approached for lending. Cliff Colquhoun from CBEC said the way banks struggle to quantify what they are, has long been an issue for them.

> **"One of the biggest issues for me has been getting people outside of the organisation to understand we can trade as a CE cooperative with charitable status, but if we want to borrow money, suddenly the doors close all over the place really quickly because CBEC has no individual owner. There's a community that owns it. And so, a bank could take that community organisation to court to get whatever they needed back from bad trading. Yes, they could maybe get to the directors and they could have to pay if the bank could prove negligence. But who's going to want to take a community organisation to court that's doing good work? So, the bank is going, 'oh, this is a very difficult situation to be in.'"**

CBEC have been in business now since 1989 so they have history and they have been able to secure lending, but banks struggle with their mission plus legal structure and the risk that this presents. Cliff indicated that it hasn't got any easier with banks – personal relationships with bankers help – but when a contract comes through and a CE needs to scale up, the perception of who they are as demarcated by legal structure, gets in the way,

> **"Banks are happy to provide banking services when your turnover is $3-5 million but when it comes to borrowing that's when the barriers come up."**

When we spoke with Julia Jackson and Sonia Harvey from Kiwibank, they concurred. They said,

> **"From a legal point of view, I don't know how you would register any security [against a charity], and while accepted charities can have assets, and they can have loans against those assets… the optics of that, of enforcing that isn't ideal for a bank. It's a reputational risk."**

The assumption is that doing good is 'not good' from a financial point of view, again as defined by what legal structures are meant to be. Julia and Sonia from Kiwibank delineated their perspective on this,

> **"Obviously company owners have the commitment to the business to make it succeed, but there's a different focus with SE. Any money that they're putting in to the business is utilised for the good. So, they're not necessarily retaining the profits whereas in a traditional lending situation we'd expect them to retain profits, increasing equity in the business. But they're running the business to free up capital to do good. As it's a different way we have to look at it, our rules and regulations around how we lend would need to change on that basis."**

Julia and Sonia also noted,

> **"What's wrong with the company structure in terms of what we're trying to do with social entrepreneurship and SE [at Kiwibank], is it's not just legislation in itself, [issues lie] in the context of what those organisations can and cannot do. So, it goes back in to charity law and ideas of issues of responsibility and what trustees are allowed to do. And so I think that's what the company structure doesn't allow for or account for, is that a SE tries and does things which fit with charitable purposes, or let's just call it impact, which isolates them from sources of capital that might achieve that."**

Kiwibank are seeing the barrier of the charity versus for-profit divide that is enshrined in law. As a financial institution, they are making intentional steps to support SE through the creation of different types of funds in order to do so. The drivers for the change that is happening in Kiwibank at least, are reflecting broader changes in society, but as Julia and Sonia indicated, it is also about the deepening experience of staff with SE and their evolving perspectives about SE. Anthony Rohan from Fairground Accounting noted a similar observation for other banks as well.

However, while banks are evolving, it tends to be at a higher level rather than at the coal face. Matthew Luxon from Envision and Zero Waste Network had a perspective on this – and how a new legal structure for SE would help. He said,

> **"If we had another legal structure… access to capital would be easier for us. While the banks have had this road to Damascus experience and have changed their tune in the last few years, it's still only at the highest level. The rhetoric around supporting SE is high, but when you actually go into a branch and fill out a loan application to get working capital for your new enterprise, it's still no different to what it was like 10, 15 years ago. So, it's taking a long time for the rhetoric to filter down…I think a new legal entity would help that process."**

Other debt-raising mechanisms

A number of the organisations we spoke with have tried alternative capital raising processes because they have had so much trouble with standard institutions. They do this to engage around their story and impact directly with would-be investors. Eat My Lunch for example did a PledgeMe debt campaign that was one of the first social bonds issued in this country. The success of this was multidimensional: while it raised funds, the education piece achieved was equally, if not more, important. Lisa King said,

> **"We did two rounds of crowd funding on PledgeMe. The second one we did was a debt lending campaign, we could have borrowed that money from the bank, it would have been way cheaper because we ended up paying 6% interest back to people who lent us money, which is quite high. But again, the reason for that was we actually wanted people to be invested in the business and for anyone to be a part of it… But for us it was also really important [to have the visibility], you know around wider community involvement… we were the first ones to do a debt lending campaign in New Zealand. And it was a social bond as well, so not only did they get interest back, they also got to give a lunch as part of that every month. So, it was quite a different, very innovative kind of crowd funding concept."**

Lisa indicated that their bank did not question their business acumen when they ended up paying more interest, rather they were comfortable being the backup option if the crowd fund didn't reach the target because they could see how this process created profile.

The equity space

In the equity space, legal structure is entwined in a complex relationship with perception on the part of investors and investor organisations, issues around giving ownership rights with share acquisition, and very creative and expensive legal advice.

Loomio are a case in point. They have reached a phase in their development as an organisation where they need significant funds to really scale in the way they are capable of – but still retain the cooperative decision-making management structure which is integral to their mission. Since their founding in 2012, they have escalated the forms of mechanisms to bring in funding and various forms of equity. Recently they have issued redeemable preference shares **(RPS).** Michael Elwood-Smith said,

> **"The RPS structure is an instrument that allows shares to be redeemed from the company back to the shareholder, rather than sold to another shareholder. They provide a capped return on investment – dividends issued at director discretion of nominally eight percent of RPS value per year and potential for bonus dividends. Preference is given to RPS holders over worker members. In the first RPS round in late 2015, we were able to raise $US475,000, and convert the social loan. In the 2018 round, we raised a further $US225,000 with similar terms to the first round. These funds enable a budget to develop the business further, however we will likely need more capital to scale the business. Our success with RPS has come with personal investors. However, the RPS structure doesn't work for most formal funding institutions, restricting the amount of capital we can raise with this instrument."**

Loomio have reached a point where change is required.

> **"And so, I think this is why it's interesting to have this conversation about legal structures now, because when we've gone out seeking investment, we've tried almost everything under the sun, except normal, ordinary equity in the company. And the feedback that has come from investors has pretty much been 'we like what you're doing, we can see the growth that's happening, we'd like to invest, but we can't invest in that structure.'"**

Their legal structure is an integral part of who they are as a SE, but it is a barrier for them. Equity is essential to allow them to compete in the highly competitive software industry, so the barrier for would-be investors is that the shares come with no controlling stake in the company (to protect the mission lock) and the dividend payable is not at the level of standard equity return in the tech space. Up to now, while Loomio have been able to bring individual angel investors into the whole story of Loomio, in order to really grow and scale, they now need serious capital. This will need to come from equity firms or bigger investors – who balk at the cooperative structure of the company. For Loomio, because of their mission, it is not enough to be an LLC – in fact it would be detrimental to their brand to merely be a standard LLC. Their need to have the worker-owned cooperative collaborative work structure is imperative.

Loomio have found a way to get equity via expensive and clever legal advice. They looked at several options, one was public listing, but they need more capacity within the business to not only grow the company to the size needed to do this, but to also launch this. Another option was to carve off the trading part from the doing good part and have a separate charity arm versus a business arm system, but this was too difficult because it still did not accommodate the need for cooperative management that is so integral to who they are. So, they are considering setting up a non-trading company called Loomio Co-op 2 which will issue the membership shares, so that Loomio, the subsidiary software company, is free to offer equity in exchange for investment. This system maintains the cooperative management and decision-making ethos, allows members to come and go without valuing the company (and having to pay or be paid out large amounts relative to this value), and allows them to operate and compete in the fast moving, highly competitive tech environment.

Choice are in the process of enshrining owner-membership-decision-making structures in a similar way to Loomio. In order to bring in investment and give equity in a way that does not allow would-be equity partners to shift the mission of the business, they are moving to what they call a stewardship model, which is similar to a worker-owned cooperative. They will have shares with no governance rights, and governance shares that will only go to select team members. While team members can have capital shares as well, and people with both types of share could compromise the mission in favour of potential profit, they will safeguard against this by building in a year-long assessment period before a team member could be offered a stake in the company. This process of making sure the people they bring on board are values-aligned, and continue to be so, is something they have given a lot of thought to.

Eat My Lunch brought in Foodstuffs North Island as an investor in late 2017. The mission of Eat My Lunch was the first line of the shareholder agreement. The capacity to scale and potentially reach their target of 25,000 Give lunches a day in the future has become viable with the partnership with Foodstuffs because they now have access to its supply chain, distribution networks and purchasing power with suppliers. The strategic partnership between Eat My Lunch and Foodstuffs is unique in this country at the moment. It has been Eat My Lunch's SE capacity and innovation that has brought this about, despite their legal structure.

The use of the limited partnership legal structure is sometimes touted as a reasonable hybrid compromise for SE to mitigate the default to charitable status that many organisations find themselves having to do to lock in mission. Hikurangi Enterprises has a limited partnership in the mix as a way of partnering with private equity and being able to retain its charitable status and the benefits that come with this in terms of tax. However, when they went looking for individual and institutional investment for the medicinal cannabis operation, they were advised by their investment advisors and investment bankers, that the limited partnership structure could curtail the amount of people that would want to engage with them if they led with this. They decided to do the equity round as an LLC, and while the limited partnership structure would have retained the tax benefits of being a charity, their broker urged them to "keep things simple." The loss of tax benefit was potentially offset by profit that they stand to make. However, while they conceded on the structure of the legal entity, they were resolute about the control of the company and what this meant for their mission lock,

> **"We brought in institutional investors to raise funds for the cannabis company. Now we gave up more than 50 percent share of our ownership, so that we could get the money that we needed. But within our subscription agreements and all the legal documents, [we have stated that] we keep control… So, what we don't want as a company, is to have investors come in and literally buy the company out and take the operations away from Ruatoria to Auckland because it costs less to produce the product there… and so we've used really good lawyers and you've got to pay ridiculous amounts of money for really good lawyers to make sure that it's watertight, because the people that we're engaging with have lots of financial backing and have really good lawyers too. You know, we need to be at the same level as them, so there's a cost incurred through the doing of that… it's just the cost of doing business [in our way] I guess."**

So, across the board, SE negotiations with debt and funding institutions are made problematic by the legal structure they have and the way they are all attempting to enshrine their mission and trade with this front and centre.

2.2.2 Philanthropic funding organisations and SE legal structure

Having charitable status means that funding from philanthropic organisations is theoretically available. However, apart from start-up funding in the early phase, this is generally not sought by SE. The irony is that the cost of setting up a charity and ongoing compliance is expensive and time consuming, and money and time are scarce commodities in the beginning of the life of any business, let alone a SE.

In the start-up phase, Whale Watch got funding to go into business via an organisation called the Mana Foundation, who according to Kauahi Ngapora, "understood marae ownership, whereas a traditional bank didn't." The grants in the early stages were crucial to the development of Whale Watch. Not being eligible for funding offered by philanthropic organisations has been an issue for Patu Aotearoa. Levi Armstrong's contention that they could have had more Patu chapters operational if they had had access to philanthropic funding earlier in their trajectory and therefore maybe saved more whānau from suicide strongly demonstrates a disadvantage of the current legal structures.

However, while philanthropic organisations are aware of the issues that are occurring with SE, they see things from a different perspective. We spoke with Raewyn Jones of WEL Energy Trust, a Waikato-focused philanthropic organisation. They, like most such organisations, are bound by their trust deed to provide grants only to charitable organisations, but they can invest in SE. Raewyn said that applications for charitable grants are oversubscribed by an estimated 300 percent. However, they see the value of seed funding and are looking for ways that grant funding could be used to support this. But the issue for an organisation like WEL Energy Trust is that seed funding does not routinely achieve what they are trying to do in terms of a blended finance model and developing investible opportunities, Raewyn said,

> **"It's great to have incubators, but to be honest not many businesses that come out of incubators become investible propositions in the short term. We're looking to find opportunities for impact investment, so for that we need organisations that have scale and are investible propositions."**

WEL Energy Trust are considering how they can respond to the changing environment in New Zealand. They want to move to a more collaborative, multi-year structure of funding which would be better for the organisations they work with. Raewyn said,

> **"What we're wanting to do is see change at scale, which means we need businesses to be encouraged to have a positive impact as well as charities. We can do that through our investments, so I think that the gap that you're trying to fill [i.e. seed funding for start-ups] is also perceived by funders, but is a difficult gap to bridge under the restrictions of community grant funding."**

Raewyn said that WEL Energy Trust is seeing more charities wanting to evolve into SE because these can ultimately be more sustainable. Janette Searle is a serial social entrepreneur and sees the value in this as well. She has tended to use both charitable trusts and entities that can attract Ministry of Education funding with the youth at risk initiative work that she has been piloting and refining with considerable success. She said,

> **"The charitable trust gave us that openness to be able to utilise philanthropic funds and grants. And with that comes the flexibility, one that you don't have to pay it back to trial whatever it is that you're doing, and quite a bit of flexibility around what you can do. And if things change and you have a really good reason why things have changed, or it's not worked so you've shifted it over to something else, there's all that freedom to be able to do that."**

Janette's expertise in working within the current system, her extensive experience in the philanthropic space, and her visionary cross-sector networking make her situation different from most start up social entrepreneurs. But it is her sentiment in effectively repurposing what charity can be for, and how it can operate in the contemporary environment that is of significance to the commentary on legal structure in this report – and the enduring, but no longer productive, exclusive separation of doing good and doing for-profit business that is enshrined in law.

While some of the SE who answered the online survey said that donee status[3] would be useful, for organisations like Trade Aid and CBEC, grant funding and donations were not sought or even wanted. Geoff Walker from Trade Aid said,

> **"To give you some context, [last year] we had a $20 million group turnover, and $1,000 of donations in there."**

Cliff Colquhoun from CBEC said that while they are eligible for charitable funding, this is an option that they actually try to avoid.

> **"And I think every community organisation wants to avoid funding, none of them want to be dependent on funding. They know they need it to start off, but they all have a desire to be funding-free, you can get locked into the view of the person that's funding you and what they are looking for, rather than following a process that you are looking for. A lot of the time, it's one-year funding. It's a one-off funding and the problem is that a lot of the things you're doing, you are just getting started after a year and you've most probably got three to five years of work to get it to a point where it's having impact."**

Kilmarnock are also eligible for funding, but Michelle Sharp is intent on evolving what funding is and what funding can do within a trading enterprise like theirs where the charitable status is there for mission lock. She said,

> **"Shifting that mindset of government thinking that they're grant givers to investing in outcomes that are real would be a really good thing... [Because] any dollar that is ever given to us will go so much further than a dollar that's going into an organisation who relies entirely on grants or donations. Because our dollar turns into something.... But how can our model gain further credibility in terms of saying this is actually the solution to some of our most complicated social and environmental issues, that traditional ways have not solved? That is how I would love to see their mindset evolve and for them to think differently."**

2.2.3 Tax, mission, and legal structure

The issue of tax came up in a lot in the interviews with SE: paying it, not having to pay it, how this is linked to charitable status and the trade-offs that this entailed, as well as the perception of this – and how this fundamentally impacted cash flow for businesses that have challenges associated with their mandates as well as all the normal business issues. Mission lock was a factor in defaulting to charitable status for a number of the organisations, but the other reason all the organisations gave was because of the tax status of charitable entities. While charitable status makes operating as a SE difficult because a 'charity' that seeks to make money and operate like a business does not make sense to many external observers, the tax relief helps SE carry out their mission by easing the financial burden.

The Trade Aid group are really a 'not-for-loss' business, and their charitable status across all their entities is part historical legacy, part mission lock that they were advised to take on when they were audited by the IRD in 1999. Geoff Walker said,

> **"[Being a charity] prevents a takeover and somebody running the business differently, you know... and I guess it forces protectionism into our constitution which is probably a really good thing."**

The tax exemption that comes with charitable status though is significant – although this depends on how you look at it. Geoff explained,

> **"Obviously income tax exemption is an advantage... Arguably though we spend money on education which most trading businesses wouldn't, so [while] we don't pay tax, we actually do a charitable purpose instead."**

However, with 30-odd entities under the Trade Aid umbrella the compliance and reporting for Charities Services is enormous. They were on the highest level of accounting reporting because of the debt instruments they had, but have since dropped to tier two. Geoff noted,

> **"But I've sometimes wondered whether our audit fees are roughly equal to our tax bill, so we could just pay tax, and not have the reporting cost of audits."**

But the reputational piece that being a charity in the contemporary business environment as opposed to an LLC for Trade Aid still outweighs this because of the assumption that charity is the entity that legitimately creates impact.

For Kilmarnock, tax concessions were part of their equation for an ideal SE legal structure. While it was not a deal breaker, and neither Michelle Sharp or Tim Jones had an issue with paying tax per se, it is actually part of a bigger reality.

> **"The tax question is interesting, I don't think that would be a reason not to move [to a new legal structure]. But I don't think it would be fair if we had to start paying full tax, the same as if we were the contract manufacturer down the road that is exploiting the world and its people."**

Tax, and paying or not paying it, was more about the fact that for their organisation, they are already doing what tax pays for in New Zealand via social spending. For them, paying tax effectively curtails what they can do in terms of impact – which is not in the interests of the community or the Government.

[3] If an organisation has donee status, a tax rebate can be claimed on any donations made to that organisation. To receive donee status from the IRD, organisations must be pursuing charitable purposes, or other benevolent, philanthropic or cultural purposes.

Samantha Jones from Little Yellow Bird said that her company is not paying huge amounts of tax at the moment because they are re-investing in growth. However, cash flow can be an issue. The set-up of the way GST is payable when a shipment comes in from overseas for example is a pressure that all importing businesses face, but because Little Yellow Bird are paying more upfront, but are still required to fulfil their GST payment obligations as per standard business, they are in a double bind. Samantha said,

> **"We had a big order come in the other day [from India], and then we had to pay $15,000 in GST upfront. Which we get back eventually, but if you've looking at structures or ways to help SE, not having to pay right then would be really handy."**

This is not a legal structure issue per SE, but this whole scenario is predicated on a particular way of conducting business as in paying the least amount up front so as to manage these sorts of cash flow issues. By operating as a SE, organisations can be disadvantaged by the tax system.

Income tax relief for CBEC is important, because the levels of surplus they generate via the way they are conducting business whereby they are not operating for maximum profit – but still not for loss – makes a difference. Cliff Colquhoun said,

> **"Recycling was never profitable in its first 15 years because we're doing it for the good of the planet. And, so if we were paying tax, we wouldn't have paid tax anyway because we were losing every year anyway. So maybe it wouldn't have been such a big issue, because in real terms, as an enterprise, we weren't making profit out of it anyway. So, was tax a big issue? I don't know, it's a good question actually. But as you grow more, then it definitely is a value, like, as an organisation, CBEC has a reasonable turnover, about $5 million a year. No, we don't make huge surplus. We might make $50,000 to $100,000 surplus which is miniscule. So that, taking a percentage out in tax really does affect our ability to do things in our town. So, yes, it does have an impact if you actually create a surplus as a profitable organisation like we are now, because as a community enterprise we put all our revenue back into our community, and that has an impact, definitely."**

The tax relief given to charity is to acknowledge that these organisations create impact. If SE do not default to charitable status under the current system, they end up having to pay tax and carry the cost of doing their mission. How does that recognise and enable the broader benefits these organisations are generating for New Zealand?

2.3 Innovation vs legal structure

The limiting of innovation and a process of stunting of growth is occurring in the SE sector in New Zealand, and therefore, for New Zealand as a whole, as a consequence of the disadvantages identified in this report. SE operates in a noticeably more challenging regulatory and funding environment, making it significantly more difficult for them to find the space and resource to be able to innovate.

SE in New Zealand are born into this challenging environment, and because of this environment only the most exceptional entrepreneurs are able to succeed. This is not caused exclusively by the legal structure options available, but if strategic changes are made in legal structure, New Zealand could potentially unleash levels of innovation in this country that could make New Zealand a leader in social, environmental, and economic development. The social entrepreneurs we have spoken with in this research are finding innovative ways to trade in sustainable and efficient ways and pursue their purpose, despite a funding environment that struggles to understand what the business activity is that SE are doing and how clever it really is. Added to this is a legal environment that delineates and maintains a way of doing economy that is fundamentally different to the ways SE operate, and the taken for granted perceptions of what business and charity have long been on the part of the public and to an extent, the Government.

This is an issue because the social entrepreneurs who are innovating in the sector in New Zealand at the moment, are making New Zealand a better place and are effectively creating a more expansive version of economy for New Zealand – which is what the LSF is all about. Many SE have arisen because of failure on the part of existing solutions to look after communities, and others as responses to social, or environmental need. All have innovatively looked to the tools of market, and the process of trading with business acumen and nuanced market strategy, but with a different set of values to motivate them. Michelle Sharp from Kilmarnock expresses what all the social entrepreneurs we spoke with feel,

> **"The tools of business are critical to solving some of our most challenging social and environmental issues."**

Janette Searle of Achieving@Waitakere and Take My Hands amongst other SE and charity initiatives, is passionate about cross-sector collaboration to create enterprise that is greater than the sum of its parts – and the crucial role that the tools of business need to play.

> **"I personally have a belief that long term sustainable social change will only happen if you get all the sectors involved, and that they're all able to work to their strengths... the role of business is not just about access to funds, it's also about the really good models and practices that you do in business that work really well – because business has been amazing at doing what it was supposed to do: generate profits for its stakeholders. So, if you shift where you place value, you can actually say this is about generating impact and there is value in the impact, and it can happen alongside financial gain too."**

Most of the interviewees identified their charitable status as a barrier to innovation. CBEC identified that the Board of Directors that their legal structure requires affects their capacity to innovate and to be entrepreneurial with new opportunities. Cliff is a serial entrepreneur in the community space, but the governance model of their legal structure, whereby directors are publicly elected, requires considerable work, because the differential between his capacity and vision, and would-be directors' understanding of the space they work in can be problematic,

> **"We have a couple of people out of our nine or ten board members that change per year. So, we have to educate the new ones each time. And if you get a few vocal people who come in who have similar backgrounds that doesn't involve taking risk [it can be difficult] because what do you think their view of risk is going to be? Very adverse, and everything we do is marginal and risky."**

One of the findings that has emerged most strongly from the research is the level of extraordinary entrepreneurship that is taking place in the SE sector in New Zealand – and that this is happening, for the most part, despite the legal structure options as they stand.

Entrepreneurs take risks, but they do this based on nuanced insights and perspectives on the market that they consider gives them the capacity to create and maintain a successful business. They take the componentry of the market – as they understand it – and reassemble these to create new ways of doing things. This componentry is broader than what a standard entrepreneur uses because social entrepreneurs understand how human economy works.

Imagine an environment where SE were enabled, where organisations were encouraged to be born into a structure that helps manifest all four capitals as expressed in the LSF. Imagine how this would deliver a noticeably greater wellbeing for New Zealand and its people – and how this could potentially encourage all business to output financial, as well as human, social, and environmental capitals. The authors of this report suggest that it is imperative for legal structures in New Zealand to evolve to be more enabling for SE to achieve this. The Treasury and the New Zealand Government are making great strides with the LSF. The next section sets out a series of solutions that could be applied to legal structures in this country to help SE continue to lead the way in doing business and create the sort of economy that the LSF envisages.

PART THREE: **SOLUTIONS**

This research has focused on communicating the evidence of challenges SE face that are associated with existing legal structures. To end this report, this section will focus on the future and what solutions to those challenges might look like. When considering possible solutions, it is important to keep in mind the growth of the SE sector and, accordingly, the value in impact created for New Zealand to date. Currently, even with the challenges as presented in this report, there are approximately 3,711 SE trading for impact in New Zealand and contributing $1 billion to the New Zealand economy *(Berl, 2018)*.

Given the growth of the SE sector even with the current challenges, it is clear that there are immense and yet unrealised benefits to be gained for New Zealand in empowering SE and the wider sector to increase the amount of everyday social, and environmental good resulting from trading for impact.

SE are making-do with the existing array of charity and for-profit legal structures, however, as this report has shown, this is most often a workaround at best, and more often than not, a barrier to both establishing and growing SE. This is because in the current system 'doing good' is systematically kept separate from 'doing business'.

Adapting the current companies framework to serve SE companies would ensure that when that light-bulb moment of a new idea for creating impact happens, social entrepreneurs don't need to innovatively adapt existing solutions, and then make do with the ill-fitting legal form that results. SE needs a new vehicle that fits better than the current legal structures we have. Resolving the challenges of the current legal structures would go a long way towards creating the right ecosystem for SE to thrive. A solution is required to the challenges faced by SE in New Zealand to enable a future where:

- Business will more effectively support society's goals as the SE sector grows and serves public needs in line with the LSF;
- Investors can intentionally invest in positive impact;
- Consumers can trust impact statements and not be worried about social washing; and
- SE can be confident in talking about their impact.

3.1 What is the solution?

Foundational work to create an ecosystem for SE to flourish in New Zealand is underway with the Social Enterprise Sector Development Programme **(SDP)** and will continue to be a process of cooperation between government and non-governmental stakeholders. However the process of unlocking the potential impact from SE will be accelerated and cohesive if government lead the way by creating the framework in law and policy that SE need to succeed. The chance here is to be a world leader by examining what is done around the world and adopting a model for SE that is bespoke, innovative and relevant for our unique New Zealand context. To refine in detail the ultimate solutions to the issues presented in this report, further research into the details of suitable solutions in partnership with government is required, however, this section will present a pathway forward focussing on what solutions could look like.

It should be clear that there will not be only one solution. Rather, it will be a combination of factors which will provide an enhanced framework for the successful development and operation of the SE sector in New Zealand. There is growing support for the impact movement already happening: within corporates; echoed in consumers exercising their choices to support causes through what they buy, and in Government as a clear driving force behind LSF, the SDP and the inclusion of SE in the recent draft Government Procurement Rules. The SE sector already exists and is growing in New Zealand and some SE are experiencing great success. However, to multiply that success, there is a need to remove or at least reduce the challenges experienced by SE. Government has the chance now to ensure that New Zealand is recognised globally as a country that enables all business to deliver impact. To do this, we propose the following steps:

STAGE 1: EDUCATION AND SUPPORT

The first stage involves continuing, but also developing and expanding, programmes of education and support for SE, funders and the general public to navigate the challenges of the existing structures.

A support programme is underway in the form of the SDP funded by Government until 2021. This programme needs to continue to be supported by Government and expanded to include other relevant stakeholders – for example, funders/investors/local government/ government departments. Stakeholders need to be educated and supported to deal with the limitations and challenges of working with SE to get to a point where the wider business sector can cohesively and actively help SE grow and deliver impact.

STAGE 2: EVOLVE THE LAW FOR A FIT-FOR-PURPOSE SE MODEL

We recommend developing the existing, flexible company structure to establish a company model fit for SE. This would involve amendments to the Companies Act 1993 to incorporate opt-in provisions for a SE model that we will refer to as an 'Impact Company'.

An Impact Company, as a variation of the existing company structure, recognises the mission primacy of SE and will provide the conditions necessary for easier flow of capital, customers and capability to impact oriented businesses in the current system. A legitimised identity will help relieve the burdens that SE must overcome to trade competitively with for-profit businesses.

The eligibility criteria for the new type of company will need to be considered and how prescriptive the criteria are may depend on whether this new vehicle unlocks further benefits for SE (i.e. access to funding or even a different tax treatment).

STAGE 3: INCENTIVISE IMPACT COMPANIES

Recognising the positive economic, social, cultural and environmental impacts generated by SE companies for New Zealand, future research should be undertaken on how best to incentivise these organisations to maximise those outcomes to achieve policy goals and serve public needs in New Zealand.

Stage 1: Education and support

Education and support provide the foundation for all further action for the continued expansion of the SE sector to:

- Help social entrepreneurs navigate legal structures and adapt the available options to establish trading entities focused on achieving impact;
- Promote the idea of SE and impact focused business in the minds of the public, business and investment communities; and
- Broaden the minds of investors to make investment in SE mainstream.

Support to adapt current structures

This stage is already underway with the SDP, a partnership between Ākina and the Government. Education programmes can help by creating resources and templates for SE to understand and adapt the available legal structure options. This would also expand the number of individuals and organisations that social entrepreneurs can work with, and who understand trading with other forms of value in the mix.

Education and support can address the challenges SE faces in tailoring ill-fitting legal structures and make the existing, complex and misunderstood processes easier, cheaper and faster to navigate. As a next step, creative lawyering that has already been done to get around the inadequacies of the current legal structures can be made more accessible by the development of the resources on the Companies Office website (including, template constitutional documents or summaries of SE status), publishing information sheets, and funding and upskilling advisors working in the sector.

Educating the wider sector to unlock funding

The evidence from the research in this report shows that:

- Impact from trading is currently not valued or understood, making it hard for SE to win high-value contracts or secure funding from top tier lenders; and
- There are on-going issues and difficulty around conveying the value behind SE business models.

SE without charitable status seeking philanthropic grants, even those meeting all other criteria of the funding and often where funders want to support the SE, are generally refused or forced to use complex structures that are difficult, expensive and time consuming to receive grants. Education and support programmes for philanthropic funders can help them understand any real limitations of providing their grant funding to SE, as opposed to the persuasive, perceived restrictions born out of historical practice of restricting grant funding to registered charities. As SE emerges more and more as a model of business for impact, offering a vehicle for achieving the outcomes that philanthropic funders are mandated to support, it is important that such funders understand any barriers to providing funding to SE and, in light of those barriers, what they can do to support SE to achieve impact outcomes.

Some forms of accreditation for businesses 'doing good' already exist, for example businesses in New Zealand meeting certain criteria can apply for B Corp status as part of the international B Corp brand. However, at the time of this report, fewer than 15 organisations in New Zealand have gained such certification. Instead, SE are resorting to expensive and time-intensive creative lawyering to attempt to convey their point of difference from for-profits and protect their mission – none of which are actually working very well for any of the SE we spoke with. To overcome the challenges SE face, more is needed than a marketing status; New Zealand needs a recognisable fit-for-purpose vehicle for SE, legitimised by Government backing, that eases access to funding and offers an alternative to the complexity and cost of adapting the existing for-profit structures.

We believe that the next step of establishing a clear, impact-oriented company model developed from the existing, flexible company structure that reflects the importance of mission for SE and is legitimised by central Government will catalyse the evolution of the SE sector.

Stage 2: Evolve the law for a fit-for-purpose Impact Company model

The most resounding disadvantages of the existing legal structures are the lack of ability to signal and protect the primacy of impact for SE and the difficulties for SE to access funding. At the moment there are only circuitous and inadequate mechanisms to signal the impact focus of SE. These mechanisms are costly to implement, add complexity, and fail to broadcast to the market the fundamental nature of maintaining the integrity and importance of impact for SE.

As well as the education and support programmes discussed above, an important step in resolving the challenges SE face is to introduce some form of government mandated SE legal structure that is recognisable and trustworthy. An identifiable SE model could be utilised to remove barriers for SE accessing funding, as funding that could be available to SE is often restricted explicitly by funder's rules or practices to SE with charitable status. A widely-accepted government mandated vehicle for SE could unlock philanthropic funding by:

1. Charities Services and Inland Revenue adopting a policy on the

treatment of donations to such entities, reducing the risk of losing charitable status; and

2. establishing a recognisable model that funders can reference in their constitutions/trust deeds so they can confidently provide grants directly to SE.

We propose a fit-for-purpose model for SE which is a variation to the existing company structure and provide some further high-level detail about what this could involve below, we refer to this model as the Impact Company.

What could an Impact Company be?

An Impact Company as a new, fit-for-purpose vehicle for impact focused businesses (including SE) which provides a way for the unique aspects of SE to be recognised, but also hold them accountable. This model could be established from relatively minor amendments to the Companies Act 1993.

Companies are commonly known and understood in the business community. Most importantly, LLCs are built for trading, and the flexibility this leads to is a strong aspect of the structure that should be maintained for Impact Companies. Similar modified-company structures for SE already exist overseas countries including UK, Canada, United States, and Italy. The key opportunity for New Zealand is to learn from those first generation models overseas, particularly their weaknesses, and jump straight into a second generation model here.

We suggest that the current framework for companies could be amended to provide that on applying to register a company founders may opt in to be an 'Impact Company' (existing LLC that meet the criteria could also opt in at any point). The key difference being that an Impact Company is a for-profit structure that prioritises impact and has the following two key elements, each discussed in further detail below:

1. impact mandate; and
2. impact reporting.

Impact mandate

Companies may adopt constitutions to set out the specific rules that apply to that entity. Each Impact Company would be required to adopt a constitution including a statement that sets out the impact the entity is seeking to achieve and the prioritisation of impact alongside distribution of profits.

The Impact Company's commitment to 'impact' through these sections of its constitution would provide the company's directors with guidance on the decisions they make. Not only that, they would be central to the organisational culture and behaviour of the company as the pursuit of impact and the development of the business, the primary means to achieve that impact, are balanced.

'Mission' and impact: Which organisations will qualify?

One of the key considerations in establishing the framework for an Impact Company would be to articulate what mission and impact are – the gateways to be eligible for the Impact Company model. Every organisation has impact of different kinds, but a set of standards or types of impact that would qualify for the new Impact Company would need to be defined to provide legitimacy to the model and criteria that applications could be assessed against. This would be similar to how charities must meet the definition of furthering charitable purposes. A defined type of impact provides certainty and clarity for which entities would be eligible to adopt the new model, however, a definition which is too prescriptive would result in an inflexible regime that becomes quickly outdated and ends up quashing the innovation that this work is trying to unleash.

Analysis of the most appropriate definition of impact for an Impact Company in New Zealand would be a core piece of future work on this issue. This is an opportunity to learn from existing approaches, where for example, impact has been defined by:

- meeting a 'community interest test', whereby the activity is regarded by a reasonable person as being in the community or wider public interest (this is the approach taken for the Community Interest Company structure in the United Kingdom);
- stating a general public benefit and 'particular' public benefits, for example, in alignment with the recommendations of The Clark Bill from the Social Impact Investment Taskforce (this is the approach taken for the Benefit Corporation structure in the United States); or
- furthering prescriptive categories of public benefit, such as charitable purposes (as defined in the Charities Act 2005).

Impact Reporting

Private for-profit companies generally have few reporting obligations, however, to ensure public confidence and trust in the SE model, it would also be important to ensure there are appropriate accountability measures, such as annual performance reporting. Many SE are already voluntarily reporting impact, because they realise that transparent reporting is key to showing the impact that SE have and that this is inextricably linked to their identity as mission-led entities.

An Impact Company would be required to prepare and publish an annual report that outlines how it has performed in achieving its impact mission, not dissimilar to the performance reports required for most charities. The research for this report revealed that releasing financial information is not considered by SE to be the most relevant measure for this, rather, information focused on impact and performance – along the lines of the existing performance reporting introduced for registered charities – is key.

Next steps

Further work is required into the details of this Impact Company, including appropriate mission criteria and understanding the amendments required to the existing companies' regime. For example, the application of directors' duties to directors of Impact Companies may be modified to include prioritising or furthering impact and stakeholder interests when considering what is in the best interests of the Impact Company. The task of formulating the final model for SE should also enable support from the wider philanthropic sector.

Once there is a framework for the Impact Company model, a Government mandated organisation able to validate impact and monitor reporting should be appointed. For example, the regulatory body for companies, another agency, or a third party mandated by Government.

Business of the future

The definition of impact must be formulated in consultation with stakeholders and in the context of understanding how the SE model could be utilised by the wider business sector (including investors and philanthropic funders) to address the issues SE is facing. This is an important opportunity to address what impact means in our distinct New Zealand context recognising Te Tiriti o Waitangi and the world-leading entrepreneurship found here.

This is a chance to adopt a definition of impact that is innovative and flexible enough to serve the businesses of the future. More and more businesses are being created which prioritise impact alongside profit, delivering strong outcomes for New Zealand's economy at the same time. Creating a more enabling environment for organisations of this nature will not only be a world first, but make it significantly easier for environmental and social innovation and impact to occur in New Zealand. The long-term potential of this structure should not be underestimated.

Stage 3: Incentivise Impact Companies

As the SE sector grows and develops in the open – rather than in the shadows behind complex legal structures – it should become more explicit that already SE is delivering impact that is a public good, including achieving goals set out in the LSF. The legitimacy gained through a new model for SE will provide space and simplicity for incentivising more SE businesses thereby multiplying the public good New Zealand receives.

There are a number of ways that this can be achieved, and robust research on international examples should be completed as part of determining the most effective approach to this stage for New Zealand. For example, incentives could include:

- Unlocking philanthropic funding to otherwise qualifying, non-charitable SE;
- Providing tax incentives to donors (learning from the Social Investment Tax Relief regime in the UK);
- Providing Kiwisaver investment incentives (such as the 90/10 scheme in France); and
- Allowing a more beneficial tax treatment for income associated with achieving public good.

Providing benefits to the donors and investors of SE recognises the public good resulting from the flow of capital into SE. Where the barriers are removed for SE to trade for impact, more investment into SE will flow into more public good generated for New Zealand.

3.2 What isn't the solution?

As well as setting out what the new model for SE would provide for, it is important to highlight those elements which the research suggests are not needed. By focusing on only the essential requirements, the model retains more of the flexibility of the company structure, and therefore will have broader applicability and success.

Caps on dividends

Charitable entities by definition cannot operate for the private gain of individuals. Using a company in its current form, caps on dividends to private shareholders can be included in a constitution or by shareholders agreement – a self-regulation that is also able to be modified by agreement of the shareholders. While some SE (and all CE) prohibit or limit distributions to shareholders (employees are still paid salaries and can receive bonuses), others are reliant upon future dividends to return their investment in the enterprise, to ensure they can attract top talent or to receive capital investment.

The real safeguard for impact comes from the prioritisation of impact alongside profit, which would be built in as the foremost consideration in making each decision, including the distribution of any dividends. Therefore, the current approach for companies, determining themselves what cap or percentage on dividends, would be retained without a high risk of misuse.

Asset lock

In the United Kingdom, the Community Interest Company model forces assets to be locked in, which means that if the company winds up, the assets need to go to another entity similar to it. This is very similar to the approach taken for companies with charitable status in New Zealand to safeguard the charitable purposes, and donations the entity received. Because forcing assets to be locked in, especially where the SE restricts dividends or does not retain profits, may limit the growth of the sector, compulsory asset lock would not be a requirement imposed on all SEs.

Tax exemption

Tax treatment was often raised by the interviewed SE, but typically not seen as a barrier. However, understanding the different tax treatment of charities and for-profit business does raise the question of what the appropriate tax treatment for SE would be. While there is strong logic for profit making entities (including SE) to pay tax, there is also a strong logic for the externalities of these organisations to be better reflected within the tax system, for example in providing incentives for impact as discussed in Stage 3 above.

Other existing structures

The organisations interviewed as part of this research were representative of a broad range of available legal structures in New Zealand, including LLCs, limited partnerships, incorporated societies, and trusts. While these all have their own advantages and disadvantages, it seems the LLC is the most suitable entity due to its simplicity and flexibility to evolve to better represent businesses of the future.

CONCLUSION

If New Zealand really does want to be "on the right side of history" *(Prime Minister Jacinda Ardern, Davos, Feb, 2019)*, evolving the legal structures in this country to help foster and support SE is imperative. The SE sector has the potential to lead the way for all businesses in this country to increase financial capital and to provide for the wellbeing of the people and the environment of New Zealand for generations to come.

The current array of legal structures available to SE in New Zealand are not helping the sector thrive. At best, these structures are neutral for SE, but for most SE, the legal structures available create an array of barriers, or reflect broader structural forces that deny the different ways that SE operate in the business space, despite that way being for the greater good of New Zealand.

In line with the LSF being developed by Treasury and the Government as a whole, Michelle Sharp of Kilmarnock said,

> **"the tools of business are critical to solving some of our most challenging social and environmental issues."**

This is about combining financial, social, cultural, and environmental capital in a way that is sustainable and viable. In a way that enables the entrepreneurial spirit that is so strong in New Zealand to combine with the efficiencies of business to tackle some our most pressing challenges. SE has created a model that demonstrates that this is possible, despite the challenges the current structures pose. The potential for New Zealand if a more enabling environment is created for organisations to pursue impact through business cannot be underestimated.

"the tools of business are critical to solving some of our most challenging social and environmental issues."

APPENDIX A: **THE ORGANISATIONS AND STAKEHOLDERS**

Below is a summary and brief bio of the individuals and organisations we spoke with. Appendix B has more detailed case studies of ten of the SE we spoke with.

SE ORGANISATION & INTERVIEWEE (IN ORDER OF INTERVIEW)	
Kilmarnock: A factory/manufacturer/processing line organisation. They have a workforce comprised of people with an array of learning disabilities, and a mandate to change the marginalising and undervaluing of people who are differently abled, and to evolve and develop models for the future of work that embrace diversity and inclusion in world-leading ways.	**MICHELLE SHARP**, CEO; **TIM JONES**, General Manager
Trade Aid: An importing and manufacturing company that retails and/or wholesale an extensive range of handicraft, food products, green coffee and chocolate products sourced via explicitly fair-trade processes from artisan trading partners from around the world.	**GEOFF WALKER**, Finance Manager of Trade Aid Importers Ltd
Patu Aotearoa: A health and fitness SE focused on engaging with Māori and Pasifika whānau in particular to decrease inactivity rates and foster wellbeing through Te Ao Māori ways of seeing and being in the world.	**LEVI ARMSTRONG**, Co-founder and CEO
Eat My Lunch: A SE that retails and delivers meals to consumers on a 'buy-one-give-one' basis. Their mission is to ensure no child at school in New Zealand is going hungry.	**LISA KING**, Founder and CEO.
Lifewise/Merge Café: Lifewise are the social services arm of the Methodist Mission Trust. They run Merge Café, an evolved soup kitchen, as a SE.	**PHILIP HARPER,** Group CFO; **RATENESH SHARMA**, Group Property Manager
Feel Good Period: A now defunct SE that was intent on supplying homeless women with sanitary products via a buy-one-give-one model. The founders have since transitioned it into an organisation that does not have business activities.	**VIVIEN LEI**, Executive Team Member
Take My Hands: A SE that collects usable spare medical equipment etc that cannot be utilised in New Zealand (and would have ended up in landfill). They coordinate the delivery of items from donors, and by utilising 'spare space' in global logistics systems, they ship the equipment to where it is needed in the Asia-Pacific region. **Achieving@Waitakere:** An organisation that works with and across sectors to ensure that all young people in West Auckland succeed in education in ways that are relative to them. Via a set of initiatives, they are leading a community collaboration to keep kids in school and provide supported employment for school leavers.	**JANETTE SEARLE**, Founder and Managing Trustee at Take My Hands; founder and Development Manager at A@W
CBEC: A CE which operates a range of businesses and environmental programmes based in Northland. These address employment and environmental sustainability as part of an overall effort to build sustainable local economies.	**CLIFF COLQUHOUN**, CEO

Envision: An Auckland based consulting company specialising in the development of community and social enterprise in the waste sector throughout NZ and the Pacific.	**MATTHEW LUXON**, Director
Loomio: A software platform that facilitates collaborative decision-making generating a more collaborative way of working for groups from grassroots community organisations to corporate and government.	**MICHAEL ELWOOD-SMITH**, Executive Director
Choice: A fintech SE who have created a globally scalable domestic payment system, which is designed to be cheaper for the retailer, retains the fee in the New Zealand economy, and enables consumers to allocate half of the fee transaction to the charity of their choice. **Squawk Squad:** A SE that aims to connect and engage New Zealand in the protection and growth of our native bird life, via a web-app that gives people the ability to collectively fund sensor-connected traps in aid of sanctuary projects.	**ALEX MCCALL AND FRASER MCCONNELL**, Co-founders of Choice and Squawk Squad
Little Yellow Bird: Producer/wholesaler/retailer of organic cotton clothing and textiles via ethical production and the creation of a global supply chain that rigorously addresses care of the environment and people at every point in production and supply.	**SAMANTHA JONES**, Founder and CEO
Whale Watch: A Māori enterprise and a sustainably-focused tourism business that runs marine tours on the waters off the coast of Kaikōura according to Te Ao Māori ways of seeing and being in the world. Set up to foster and maintain economic development, employment, and wellbeing for local whānau as well as the wider Kaikōura region.	**KAUAHI NGAPORA**, General Manager
Te Rūnanga-Ā-Iwi O Ngāpuhi: Iwi entity set up to lead the spiritual, social, cultural, environmental, and economic growth of Ngāpuhi by ensuring the self-determination and on-going sustainability of their people.	**ERENA KARA**, General Manager
Hikurangi Enterprises: A Māori enterprise set up to build and support commercial process that creates jobs and economic development in the Waiapu Valley and the wider East Coast, via Te Ao Māori principles.	**PĀNAPA EHAU**, Co-founder and Managing Director
GK Services: GK Services provide expertise and support to the community enterprise not for profit sector with respect to zero waste and energy efficiency in New Zealand.	**GARY KELK**, Director; Associate member of Zero Waste Network
Online Survey Participants: 24 anonymous individuals who responded to Ākina's online survey about legal structure and being a SE in New Zealand.	

SECTOR STAKEHOLDERS (IN ORDER OF INTERVIEW)	
Fairground Accounting: A chartered accountancy firm set up to help not-for-profits, charities, and SE succeed with their own social mission.	**ANTHONY ROHAN**, Co-founder and Chartered Accountant
Charities Services: Government regulatory body that bestows or withdraws charitable status on organisations in New Zealand.	**ANDREW PHILLIPS**, Manager Engagement and Business Improvement.
WEL Energy Trust: Philanthropic funding organisation focused on, and based in, the Waikato region of New Zealand.	**RAEWYN JONES**, CEO
Kiwibank: New Zealand-owned and operated commercial bank.	**JULIA JACKSON**, Corporate Social Responsibility Manager; **SONIA HARVEY**, Senior Commercial Manager
Soul Capital: An impact investment organisation that invests in SE and social businesses in New Zealand and abroad via the provision of loans and equity investments.	**JAMIE NEWTH**, Chief Executive
IRD: The Inland Revenue Department, the New Zealand Government's taxation agency.	**STEWART DONALDSON**, Senior Policy Advisor; **PETER FRAWLEY**, Policy Manager, Policy and Strategy

APPENDIX B: **CASE STUDIES**

In this section we detail case studies of ten of the SEs we spoke with through the course of this research process, and the challenges that they face.

CBEC

Interviewee: Cliff Colquhoun, CEO of CBEC, founder and trustee of the Zero Waste Network.

Legal Structure: An Industrial and Provident Society with Charitable status

Challenges from legal structure: They are unable to access funding from lending institutions because they are not legally owned by an individual; philanthropic funders can see them as too commercial; local government with whom they want to contract with see them as too much like a charity, totally disregarding the added value they bring to contracts.

CBEC (Community Business Environment Centre Cooperative Society Limited) are a CE based in the Northland region. They currently comprise a diverse range of ten business operations that, combined, employ around 70 people. All the enterprises are run by a senior management team, but each one is individually managed, operationally and financially, by department managers who are tasked with achieving financial targets. All employees are paid, and all profits and expenses are run through the central parent accounting structure of CBEC. Not all enterprises are profitable but in general, most cover all their costs and provide much needed services to the Far North. CBEC is very clear on its purpose; they are about providing local jobs at locally run businesses and looking after both the community and the environment in ways that verge on 'revolutionary entrepreneurship'.

In 1989, Cliff Colquhoun and Warren Snow founded CBEC, originally to establish one of New Zealand's first comprehensive recycling projects as an alternative to landfilling waste. At the time, Northland was verging on destitute, unemployment was rife, and recycling virtually non-existent. They saw the opportunity to create jobs and benefit their community that was about the very survival of people and the environment. Cliff said,

> **"We're operating in a space where there's been absolute market failure. So, New Zealand has been completely let down by the private enterprise market when it comes to maintaining local employment and minimising waste. We really operate in a place where there's been government failure as well. And so CBEC was born out of the unemployment in the regions in the late 80s, early 90s created by Rogernomics... So, CE is extremely successful in difficult times because it harnesses community spirit... the community gets in behind it and makes it happen."**

CBEC trade to achieve their mandate. So, while they have charitable status, they are explicitly not a charity. Cliff said,

> **"Most people actually quite like the idea of what charities do, and they will choose the one they'll put their money into and feel good about it, and so someone gets helped by this... So, charities are dealing with an issue in the community or supporting the community in some way. But they're not necessarily about changing economic and social structures. They're not challenging policy and political structures... Whereas we're about changing that. So, we don't want to just give people some support, we want to change the circumstances around what's causing the problem and the need."**

The on-the-ground, change-the-reality-of-the-way-people-are-living process, combined with their intent to put people and environment front and centre, is done through a particular approach to enterprise and entrepreneurship,

> **"The things we've got involved with are the things like recycling which was developed in New Zealand by the community sector. Now if you said today we aren't going to recycle anymore, everyone would say, oh you're crazy. Because we recycle now, that's what we do. But 30 years ago, we were dealt to by local government, central government, waste companies, everyone imaginable, because they thought we were a bunch of crazy nutter greenies upsetting the status quo. We weren't. We were like, actually, there's jobs here, we could create a whole lot more new ones, conserve resources, and we're going to change the whole world of waste. Because CE are about doing something, not talking about it, we identify a need, we look at that need, do a little bit of research, not as much as we most probably should do, and maybe that's a good thing. If you actually knew that you were going to have 10 years of pain before everyone clicked on to recycling being a good idea, who would do it?... So CE are practical visionaries... we see the need and we do something about it to change the situation. And along the way, we change people's mindsets.**

The operation of the organisation + the mission + the chosen legal structures

CBEC is an industrial and provident society with charitable status. We asked Cliff how well their structure works for them, he said,

> **"We've got a really diverse group of enterprises, we do all sorts of stuff, so it seems to have worked for us. But some of the external things have not worked for us, which is about how we're viewed and how we're accepted, these are more of a problem than actually implementing a legal structure to be able to trade."**

So CBEC don't use the terms "industrial and provident society" publicly because its structure is not well understood, and the charitable status is more of a hindrance to explain rather than an aid. This whole perception piece for CBEC – wholly derived from the lack of an appropriate legal structure – has a number of aspects to it that are particular to CBEC and includes their having been on the vanguard of recycling in New Zealand, as well as the enduring binary between charity and business in this country, and the way this plays out when an organisation like CBEC goes looking for finance or contracts with local government. Inevitably, problems arise with banks in particular who don't understand what CBEC is.

> **"Banks are happy to provide banking services when your turnover is $3-5 million but when it comes to borrowing that's when the barriers come up."**

The mandate of CBEC to trade with purpose, plus the realities of their legal structure are confounding for financial institutions and the specific parameters they work within.

> **"Getting people outside of the organisation to understand we can trade as a CE cooperative with charitable status is a really big issue But if we want to borrow money, suddenly the doors close really quickly all over the place because there's no individual owner. There's a community that owns it. And so, a bank could take that community organisation to court to get whatever they needed back from bad trading, they could maybe get to the Directors and they could have to pay if the bank could prove negligence. But who's going to want to take a community organisation to court that's doing good work? So, the bank is going, 'oh, this is a very difficult situation to be in.'"**

They were able to borrow up to $500,000 worth of capital, though not through a conventional bank, to start a new venture, which would not be a big deal in standard business terms, but it is a lot for a community organisation that has unpaid directors. Cliff and a number of his fellow managers ended up putting their own houses up as security for the CBEC loans. Putting a private home up as collateral for a bank loan is not an unusual practice for a standard for-profit business, i.e. risk is balanced by potential reward, but for CE personal gain is explicitly not part of the financial structure of the business. Because the whole mode of operating is so different from the standard for-profit business, Cliff said CBEC as well as other CE like Waiuku Zero Waste or Zero Waste Network are,

> **"In a position that is counter to the dominant mainstream. So, it just makes it harder from the beginning, when you're then going to traditional institutions for support, such as for finance, you know. You're on a back-foot because you're not normal."**

Their ongoing issues with banks and lending institutions has been problematic as they have expanded. In the early 2000s, Cliff said,

> **"We got so excited we won this seven-year contract to run Waiheke Island's recycling service for Auckland Council. And then we went to all the finance companies and banks saying we've got a seven-year contract, we want to buy some equipment, and we've been running recycling contracts for 10 years already, so we know what we're doing. But most said 'I'm sure you do, but we're not interested, sorry.'"**

They wouldn't even take security over the assets. Cliff indicated that even now, it hasn't got any easier with banks, while personal relationships with bankers help, but when a contract comes through and they need to scale up, the perception of who they are gets in the way.

Philanthropic funding can also be difficult to access and have its own problems. While CBEC are eligible for charitable funding, this is an option that they actually try to avoid as they were totally dependent on funding in the early years always waiting on annual funding and they didn't quite fit the charitable box.

> **"We can get grants but we don't go chasing it... you can get locked into the view of the person that's funding you and what they are looking for, rather than following a process that you are looking for. A lot of the time, it's one-year funding, and the problem is that a lot of the things you're doing, you are just getting started after a year and you've most probably got three to five years of work to get it to a point where it's having impact... and sometimes it takes one to two years to even get your complete structures for an operation going, because the service is new and untested."**

The funding model of philanthropic organisations and banks are generally problematic for SE/CE. There is a desire from some of the Foundations who have an established relationship with SE/CE to explore a different type of funding model for this sector as they recognise the sustainable positive impact SE/CE can have on disadvantaged communities but this is a work in progress at this point. Lending institutions perspective on what SE/CE are because of their legal structure hinders the flow of working capital as well. Cliff talked us through this example,

> **"Say you have convinced Council to trial for one year a completely new recycling service. You estimate the annual cost at say $200,000. A funder provides one-year funding of $100,000 because they see the employment opportunities, Council puts up $100,000 for the one-year trial. But you also need $50,000 capital for plant and equipment which you budget to pay back over three years, so you go to your bank for this capital. Now the bank goes: 'you've got one-year funding**

and a contract for one year, what happens after that? You have one year and I'm going to give you $50,000. Well, it's not going to work for us.' So even if there is a likelihood you will receive a longer-term contract from Council after the trial, the project is new, untested with small margins and the trial year is to develop the real costs of a new community service."

Neither the banks nor the philanthropic sector in general can define how CE like CBEC really work, and how they are doing great new business but also having significant impact at the same time. The issue is about measuring value, and moving beyond just financial capital and being able to quantify the output of human, social, and environmental capitals as well. Cliff said,

"Positive economic activity that grows the local economy and solves social and environment problems but at the moment, we have limited ways of measuring the value created."

Charitable status is useful for the tax rebate though. In their early years, because recycling took a long time to even break even, paying tax was not an issue, but as they grow it does become significant – so that they can continue to achieve their impact.

"We might make $50,000 to $100,000 surplus annually which is miniscule, but not unrealistic for CE. But taking a percentage out in tax really does affect our ability to do things in our town. So, yes, it does have an impact if you actually become a profitable organisation like we are now, because as a community enterprise we put all our surplus back into our community."

CBEC explicitly want to not be classed as a charity, because they want to trade. The cooperative ownership model of an industrial and provident society reflects who they are as a community enterprise, whereas a straight LLC would not be perceived as community-focused enough, therefore compromising the credibility of the organisation that is so critical to driving engagement. However, being a trading enterprise is what creates ongoing jobs and growth in the local environment, and a sustainable business – which in turn creates ongoing impact in the community. Cliff was reflective about why they do what they do,

"So why did we commit 15 years to making no surplus from running recycling services for the Far North, because New Zealand needed a model of what is possible. Now councils do expect to pay the full cost plus a margin for recycling contracts."

While local authorities are starting to understand the special role that CE can play in introducing positive change in communities and give added value over and above a standard for-profit company, currently CBEC is just treated like any for-profit contractor. Being accepted as an enterprise rather than a charity is good on one level, but the perception that they are 'just a charity' dogs them and is highly problematic in the bigger context. So, while local government are the main source of contracts for CBEC, they still struggle to get the value and capacity of their CE recognised by local government – even after they have held contracts for some time,

"We're trying to negotiate a sole provider contract for our swimming pools at the moment. Now, the council staff didn't want to negotiate a sole provider contract, they want to go to tender only. I was sitting with our mayor, and I said, 'there is another option, John. There's the sole provider contract that we could be looking at.' And he said, 'yeah, I believe you, Cliff, but I don't know'... so he said 'we'll ring the chief legal advisor of LGNZ [Local Government New Zealand]... So, John's explaining what we're trying to do, and the guy goes, 'absolutely support it, John, go for it.' He said, 'if you've got a community group or a private contractor that does more than what is expected of the contract, and are really doing a great job, why wouldn't you want to hang on to them?' And he said without any prompting, 'John, you should be giving 30% of your contracts out to local community groups, or local businesses.'"

While CBEC's efficiency as an enterprise is exemplary, and they are one of the highest performing contractors with any council in New Zealand they have worked with, they have recently lost their recycling contracts with the Far North Council – they were undercut by a private waste (i.e. not recycling) company. The tender process effectively ignored the impact they, as a local CE, have in the local community. The council did get a cheaper deal, but waste companies have a vested interest in sending material to landfill rather than recycle. Landfilling is a very lucrative business for waste companies, but terrible for the environment. The purpose of this initiative over 25 years has been lost to the community, and the desire to achieve zero waste and the inclusion of long-term unemployed and the less able bodied within community enterprise workforces, to the commitment to creating jobs locally, and creating cash flow in the local economy.

"I think the public generally don't fully understand community enterprise, but they always support it... so, it's never hard to get people to support you in your own community if you've got credibility. Even local businesses support us. They may not be totally committed to the environment or social wellbeing, but they're going, 'this is good for our community, they're doing good stuff and they feel good supporting something local.' So, it's more the banks, the central and local government, that we need to unlock resources from and get them to identify the added value CE can bring to an area."

CHOICE

Interviewees: Alex McCall and Fraser McConnell, two of the three co-founders

Legal structure: LLC and a charitable Trust

Challenges from legal structure: The available legal structures were not capable of giving primacy to mission whilst receiving investment and generating profit. They needed to create a bespoke legal structure at considerable cost in order to protect their mission and be a tech company that must attract equity to compete and scale.

Choice is a fintech that is building a globally scalable payments ecosystem that provides domestic payments infrastructure. They have a complex, fragmented domestic payments infrastructure that relies on global card schemes to function, with well-established middlemen and legislation making it hard to change. Alex McCall, Fraser McConnell, and Ossie Amir developed their system in response to what they considered an unfair construct in the market so they saw an opportunity via their system to become 'the Robin Hood of payments.'

The current system works like this: every time a consumer opts for the convenience of using contactless payments with their credit or debit card, the credit card company charges the merchant a relatively hefty fee. This fee is between 2-6% and goes straight offshore to large multinationals. This directly affects the bottom line of small business in New Zealand which comprise around 95% of the market (McCall 2018). $461million in electronic card transaction fees were charged to Kiwi merchants in 2015[4], this number is estimated to have increased significantly each year since . Many don't offer payWave anymore for this reason, hence a "no payWave" sticker at the point of sale becoming common practise. Alex, Fraser, and Ossie have developed an alternative system to this payment structure which utilises openBanking and API driven connectivity with banks and is backed by blockchain so is arguably safer and more robust. Their system works like this: Choice gives New Zealanders the ability to pay with their mobile by scanning a QR code on the terminal at the counter instead of using a debit card. The fee that they will charge is a cents based model compared to a percentage model that credit card companies currently charge, and Choice redistributes 50% of its transaction fee to a Charity of the consumers Choice while half of the fee will go to cover the operational costs of the ecosystem. The charitable allocation is at the discretion of the consumer, to a charity or (eventually) a nominated SE. So not only is the Choice ecosystem championing small business in New Zealand vis-à-vis multinational credit card companies, but the transactional fees will remain in the New Zealand economy, and charities and eventually SE, benefit from the flow of money that is directed their way by the system.

They want tech to be the mechanism through which impact can be achieved in the world, so they are not about producing and developing tech for techs sake, or for the Googles of this world. Alex and Fraser said,

> **"We're not driven by the technology, we're driven by our purpose, and whatever technology facilitates that purpose to come to the best solution to solve those problems is what's going to define us… So our purpose, our kaupapa is to inspire the world to choose purpose over profit, and we are doing that by acting in line with that. We've taken a credit card model and we've said, instead of watching billions of dollars leave New Zealand every year and go offshore to credit card companies, we're going to redistribute that to charities that need it most. And we're doing it so much so that we've said 50% of our transaction fees will be directed that way."**

So, their mandate is about redirecting funds, and linking this to helping small merchants in this country, and giving consumers the opportunity to have impact whilst they spend, as well as supporting the charitable work that is happening in New Zealand. Alex and Fraser said,

> **"So, in Aotearoa every year, there's up to half a billion dollars' worth of these fees that leave our shores. And we have significant social issues such as the highest youth suicide rate, 80% of our native birds are threatened with extinction and one in three Kiwi kids live below the income poverty line. So how do we really shift this dial in the redistribution of these funds and empowering that?"**

One of the innovations of Choice tech wise – but also in terms of their purpose – is that their system is built on blockchain which facilitates transparency in a range of different ways,

> **"The idea of our system being built on block chain infrastructure, is to ensure there's transparent and trust-based transactional value right from the person who's made that payment, [so they can see] that percentage fee going straight to a charity of their choice. And then being able to see the actual tangible impact that their fee has made over a period of time. And they can see either the number of lives that were impacted or what the actual project was that these charities were pursuing… So, they'll be able to see where the value's started all the way to where the difference has been made in the world."**

This information process that comes with the transparency afforded by blockchain, in turn powers momentum around a greater understanding of what the SE sector does because doing impact and how this can work, becomes part of people's imaginary.

> **"So, the first part is that people get what a charity is currently, but they don't understand what a SE is. Hardly anyone really knows about SE and there's not really much visibility around this. So, if we can create a SE that changes the world and the payment space of New Zealand by giving to charity, then the natural progression from there is to swing that back around and create awareness around SE."**

When we questioned Alex and Fraser about the possibility that their intent at the moment was more about youthful idealism, and that once they got older, mortgages etc, other imperatives would impinge on the mandate, they replied,

> **"The really simple one there is that we don't care about making any sort of money without purpose. It's a very old generational thought [that we will change our way of doing things], because if we want to be advancing society… and the SE industry… this is not going to happen by just continuing to do what we've always done, which is a world of trying to make more and more profit. If we really want to make something that's really serving not just Aotearoa but potentially the world, then we have got to put purpose at the heart of business. We're not interested in anything without purpose, it's boring to us. If we wanted to, we could've gone and set up a company buying things off Alibaba and selling it to Amazon and we could've been filthy rich in just two years… It's really easy to make money in this day and age when you've got technology at your fingertips. But we don't care about that, we care about serving, we care about serving a greater purpose for the world."**

Their mandate is to evolve the values that motivate business,

> **"The fact of the matter is that traditional capitalist business models are subsidised by the environment, they're subsidised by people's wellbeing and that's not what we're here to continue on with. We're here to change that direction and show that business for good can be achieved using the latest and greatest technology and by putting it in the hands of as many people as possible… And if any of the team want to know how they're supposed to reply to those sorts of remarks, they just need look to our values… all they need to ask is what would Captain Planet do?**

The Operation of the Organisation + The Mission + The Chosen Legal Structure

Currently, Choice (Choice Ltd) is an LLC with the three co-founders as directors who also currently own all the shares in this company. But legal structure has been difficult for them. Alex and Fraser said,

> **"The [available legal] structures haven't helped us a single bit. In terms of the structures, we've gone, well that's not useful for us, we need to go and figure out what we're trying to achieve in terms of our purpose. And this whole world of SE for us is really about putting purpose before profit, and we're making profit to fill our purpose. Profit is important. So, we then need to figure out what is the best possible model, so that we can ensure not only that our purpose is being forefront and centre, yet also that our profit is being maximised to serve our purpose."**

They have worked hard with their legal advisors to create a bespoke legal structure which gives them mission lock and allows them to bring investors. This has been an expensive and head-space consuming process. But the legal structure that has been created for them ensures mission lock, and while they have a charitable entity in the mix, they have managed to make this not a disadvantage.

When they go operational and at scale, the plan is to set up the Choice Foundation which will be a charitable company. This will sit alongside, rather than as a 'parent' to Choice Ltd, which will stay as a standard LLC.

Payments via the Choice ecosystem will come into the organisation via the Choice Foundation, and it will be this entity that will redistribute half of the fee to Choice Ltd via an exclusive licencing agreement, and the other half as instructed by the consumer, to the charity of the consumers' choice. The Choice Foundation holds the mandate of the organisation and is the vehicle that delivers the impact via the allocation to the nominated charity, whereas Choice, the LLC develops the technology. Because the Choice Foundation is a charity, the money coming in is not taxed so that the half of the fee that is redistributed by this entity is not taxed either.

Currently, there is a mission lock on Choice Ltd by virtue of the fact that the founders retain total control. The Choice Foundation will have a constitution around the way the money is to enter the charitable company and how it is distributed to Choice Ltd and the nominated charities. The Choice Foundation is essentially paying Choice Ltd to develop the tech and administer it, while it remains charitable, and Choice Ltd can be a tech company and attract investment accordingly.

> **"So, if we want to scale Choice, we need investments, so therefore we've left Choice, the LLC with the IP ownership of everything… we currently own it, but if we're bringing on investors, which is actually soon, then that's what we need to scale. However, having money go through the Foundation, we can ensure that half of it is always going straight to charity without being taxed."**

The creation of the bespoke and expensive legal structure has been about ensuring that the organisation could operate as a tech-based SE, but Choice are in a unique position,

[4] MBIE – Retail Payment Systems Issues Paper 2016 (https://www.mbie.govt.nz/have-your-say/retail-paymentsystems-issues-paper/).

"We're in a very fortunate position where we've got a $1 million of non-equity funding. This is the most amount of money for a seed-stage start-up in New Zealand, let alone a SE. So, we can be proactive, we can be choosy [about who we form investment partnerships with] ... We don't have to ask and ask and take any pennies that come. We can actually be proactive and therefore tell our investors how things need to be."

An additional mechanism for mission lock that they are going to implement involves bringing employees into the ownership structure via what they call "steward ownership models" which is a similar structure to a worker cooperative one,

"So basically, we've got two sets of shares. One is capital shares, so investors give money and they expect a return on investment and they will receive that return on investment. And from that investment they receive part-share of Choice's capital shares. These won't come with governance rights though, so they will not have any say on the future of Choice, and they won't have voting rights at directors' meetings... [Now] we only want values-aligned investors and we want them for their networks, we want them for their knowledge, we want them for their know-how... However, they don't have a stake in the company and therefore they're not biased, because as soon as they start taking a stake in the company, [we risk any investor] becoming more and more biased towards potentially receiving profit for themselves... so how do we ensure that that doesn't become an issue? So, for our investors, we say that we will give you capital shares but you can't choose to govern our company. Our governance shares will only be distributed throughout our team, so our team... us three at the moment. However, as team members become more integral to what we're doing, we will offer them stakes in the company, as in governance shares, over time."

Team members can have capital shares as well. While people with both types of shares could compromise the mission in the face of potential profit, Choice's conceptualising around the safeguarding of this is to build in a year-long assessment period before a worker could be offered a stake in the company. This process of making sure the people they bring on board are values aligned, and continue to be so, is something they are giving a lot of thought to. They are determined to not let this sort of scenario compromise them for example,

"An investor that you've met maybe two, three times, whatever it might be, they might think they're really values aligned, but if they've got an impact fund behind them of old grey-haired fuddy duddys, that all they really care about is the return on investment with this nice little label of impact on the top of it... Already, we are sitting down and telling big impact funds, 'it's great that you're telling us you're the most values-aligned investment within Aotearoa, however where's the proof?' These impact funds are also really young. Just 'cos you say you have to deliver on impact doesn't mean that that is [the reality], and I know that, for a fact, that the people that they're serving are just a large group of investors that are looking for a return anyway."

They are also looking at pre-emptive rights as a share option whereby such shares which will be connected to governance capacity will not be able to be freely traded, rather they will need to be returned to the company should the individual or the entity want to exit. The other provision they are considering implementing is that if an individual or an entity wanted to sell their governance shares,

"25% of those shares would go straight to the purpose, as in straight to one of our Choice charities... so knowing that actually 25% of their return of investment is going to be sacrificed straightaway, you're almost really ensuring that they're values-aligned from the start. So, a lot of this actually comes down to the trust that we have with the people that we're working with and the funds that might be behind them, which starts becoming more human than it does legal structure."

They have yet to define what the minimum level of governance people will be to ensure that they are able to hold one another accountable, however, it is likely that this will be based on share allocation. They also have a board of independent advisors who will not have shares so as to prevent bias.

They are currently in beta phase and are working towards a proof of concept trial with ASB in Wynyard Quarter in Auckland between April and May 2019, with plans to scale to a nationwide solution in the second half of 2019.

EAT MY LUNCH

Interviewee: Lisa King, Founder and CEO of Eat My Lunch

Legal Structure: LLC

Challenges from legal structure: Because they are an LLC, they continue to be disadvantaged by the perception that they are a business trying to do good, or a charity trying to make money. This has been an issue with banks as well.

Eat My Lunch is a SE that predominantly makes and delivers work-day lunches to consumers on a buy-one and we-will-provide-a-child-in-school-with-a-healthy-lunch basis. Lisa King founded the business three years ago with the help of award winning chef, Michael Meredith.

> **"Our mission is to ensure that no child in New Zealand goes to school hungry.... We estimate that there are around 25,000 kids going to school every day without food, our target is to reach all of them... We're not trying to solve poverty or the causes of poverty necessarily. What we want to do is to ensure that kids are coming to school, and then when they're at school, they've actually got the right nutrition and fuel to help them actually learn and maximise the opportunities when they're at school."**

The impetus for the business was Lisa's growing awareness of the extent of the issue of hungry kids at school in New Zealand. She wanted to do something about this in a sustainable and scalable way, and was inspired by the buy-one-give-one model of Tom's Shoes. The business model is based on three aspects: firstly, that consumers actually wanted to eat healthy lunches, but either didn't have the time to make them themselves, and/or couldn't access healthy bought food in the proximity of their workplace; secondly, they recognised that there was a growing need to give consumers the capacity to 'give back' so they could use their consumer dollars with impact; and thirdly, that providing a satisfying volunteering opportunity for the public to help out with making the give lunches could be part of a business model.

Eat My Lunch has given over 1.2 million lunches, and they routinely make and deliver as many as 3,000 lunches per day. Schools not only opt into the program by nominating themselves, they also stay in the program. Eat My Lunch is not imposing on schools what it thinks the school kids need, rather it is working with them. Most low decile schools have social workers so they decide who needs a lunch.

While Eat My Lunch provides a way for consumers to spend their money, have impact while they do so, and get a healthy lunch delivered to them, the creation of the volunteer space for individuals and groups to be involved in the actual process of making lunches for the kids is crucial.

Eat My Lunch has people literally lining up to volunteer to be the labour component for the production of the free give lunches: there is a three-month waiting list to volunteer and it has had over 16,000 volunteers help through the three and a half years it has been in business. This community-fostering element of Eat My Lunch was an aspiration at the beginning of the business. They wanted to start a social movement. Building this desire of the public to be involved in what Eat My Lunch do on a specifically volunteer basis, in terms of accounting and the variable that this potentially constitutes in the running of a business, took some thought. Lisa said,

> **"We wanted a really clear delineation between the two sides of the business so that we could actually truly cost it out as a commercial entity. So, any volunteer time, any donated goods, which is less than one percent of our food cost, goes on the give. And we make that very clear to our team and to anyone that decides to give that time."**

In terms of sustainability of demand for their product, they are aware that the buy-one-give-one model drives initial interaction with consumers, but equally, that repeat consumer choice of their product is likely to be as much about the quality of the product, if not more. So, the attention to the quality of both the bought lunch and the give one is innovative and refined. Eat My Lunch is now looking to partner with Otago Medical School to quantify the nutritional impact their give lunches are having for children and how to improve this.

The Operation of the Organisation + The Mission + The Chosen Legal Structure

Eat My Lunch was determined to have a "commercial element" to the organisation from the beginning, and that the impact that they wanted to have with their enterprise was connected to this "buy side." What they eventually set up by way of the legal structure and how they manage the accounting processes, effectively reconfigures the traditional boundary between business and charity – in true, even amplified entrepreneurial process. Lisa said,

> **"We engaged Chapman Tripp. At the time, it was just something that was not being done, and so it all became very complicated around, you know how would you gift from the commercial side to the charitable? And then how would they do the giving, and what's that cost element, what's the transfer? How does the bookkeeping work, how does the governance work? And when it came down to it, we just wanted to keep it really simple and I think, you know the governance of a charity seemed really complicated".**

So, the traditional model of having a straight forward business that was a LLC and then having a charitable arm of this by way of a trust/charitable company was rejected at the outset. Lisa said,

> **"[A charity of some form] it's restrictive, there's a lot of red tape, bookkeeping, we didn't want to have to run two sets of accounts, two sets of legal processes. You know literally two organisations running alongside each other, so really it was the simplicity and ease of operation that drove us to choose a LLC. And also, because we felt that that was the best way [to run our] buy-one-give-one model, so when someone buys one, buys a lunch, the give is intrinsic in that, so this always activates a give. So, we built it into the cost of goods of delivering a buy lunch and we felt that was actually the most genuine and true to the proposition of buy-one-give one."**

The give part of the business does not come out of profit, rather this is built into the cost structure of doing their operation – because they sell lunches and consumers buy these with the explicit understanding that a lunch will be gifted because of the sale, so the cost of the give is a bona fide and legitimate cost to business. And this is the truly entrepreneurial part of the model that they are working with, or the contentious part, depending on how you look at it. So, the cost of "the give" as Lisa calls it, is built in to the costing structure of the product, just like bread, delivery etc for the lunches bought,

> **"In terms of the structure, the fact that the give is recorded in our cost of goods means that it is absolutely intrinsic in what we do. So, there isn't a reporting of like a percentage of the profit has gone to doing this… what we've promised is when you buy a lunch you give a lunch… so in terms of an accounting process, impact is effectively a line item in the costs."**

From the IRD perspective, they effectively don't recognise that extra step of giving the give lunch away, but nor do Eat My Lunch get any benefit from feeding hungry kids in school from a business perspective.

So, while the LLC structure allows them to keep things simple, be agile, and innovative in the market as it exists at the moment, the charity aspect is something that they continue to think about regularly – because of the tax benefit that this would afford them. So, they are aware of the 'cost' of not being a charity.

Lisa said "we've definitely been disadvantaged by not being a charity" whereby they have not been able to access funding from philanthropic organisations because these entities can only give to other registered charities. While some of these organisations have found complicated ways to support Eat My Lunch, because they are so impressed with what Eat My Lunch is doing, the issue of what a charity is as the entity in New Zealand that is meant to do good, versus what Eat My Lunch is, remains an issue for them. This plays out in a number of ways, first reporting: because they have decided to remain an LLC, the onus is on them to do as much or as little reporting as they chose. Lisa was reflective on this, she said,

> **"I think it's interesting what is expected of us in terms of reporting… we've put it on ourselves to report how many lunches we give. We don't say how much that costs us, and we don't share our financials, which recently, you know the media have kinda questioned us on that and why we aren't doing that, because charities do it… but we are not a charity."**

Their impact report came out in November 2018 *(Eat My Lunch 2018)*. Secondly, the issue around lack of understanding of how they differ from standard for-profit companies as well as standard charities, and how they are effectively reconfiguring the boundaries between the two as a SE rather than enterprise alone is about the pervasiveness of the logic of capitalism and the naturalising of the binary of 'charity' versus 'business.'

> **"I think people have high expectations of Eat My Lunch, because we are like the most well-known SE. And we've really brought that concept into the public arena. What I don't think people understand is that we're not a charity, and, you know even now people still often refer to us as a charity. Because they can't get their heads around the fact that you can actually be something in the middle… so, I think people are so used to that concept of a traditional charity and that that's what charities do, is that they do good, whereas businesses don't do good, they make money. So, the minute you say you do something good they go 'oh well you must be a charity'. Because our model hasn't really been done here before so people can't see what we do."**

They are burdened by this enduring binary. Lisa said,

> **"We always revisit that charity model by the way, a couple of times a year. Because we kind of go, you know there are significant benefits for us to do that… but also significant burdens so that is what always drives us to not do it but, you know if there was a way, if there was some kind of financial benefit, some kind of legal acknowledgement, I think, of the giving which then either provides a financial benefit, or some kind of recognition… like Fair Trade, or B-Corp certification that we could go for, so we could have some kind of ability to shortcut the public's perception and, you know lead to that trust of going 'oh, okay they must be doing what they say they're doing'… so have someone's stamp of approval, that would really help!"**

Thirdly, the process of, and the perception of how Eat My Lunch have accrued investment is indicative of how the binary of charity versus business is a hindrance to them. Their shareholders agreement is not public, but they lead out with the intrinsic nature of their mission when they have gone looking for investment. So, they have not taken on investors who are not fully on board with their imperatives. As a newly formed start-up they tried to borrow money from the banks, but they got rejected,

> **"The bank manager said to us there's no way you're going to make money by giving away free stuff, so they didn't give us a loan, so we started without any external funds."**

It took a chance meeting with the CEO of BNZ to ignite their relationship with a traditional bank. In terms of legal structure and getting the relationship with BNZ off the ground, Lisa credits an alignment of values and their sound business structure and the sustainability of their model as what worked for them. While being a straight LLC made them more 'recognisable' to the bank, Lisa said it was the way they work from a business perspective to accommodate the give that "actually makes us far more rigorous in our commercial model."

They have done two rounds of successful crowd funding, via PledgeMe, which have served to evolve the public understanding around what they do as much as raising capital,

> **"We were the first ones to do a debt lending campaign in New Zealand, and it was a social bond as well, so not only did they get interest back, they also got to give a lunch as part of that every month. So, it was quite a different, very innovative kind of crowd funding concept."**

The next funding round they did was to bring Foodstuffs North Island in as an investor in late 2017. The mission of Eat My Lunch is the first line of the shareholder agreement. The relationship between the organisation and Foodstuffs is arguably brokering new ground too. While Eat My Lunch's capacity to scale and potentially one day reach their target of 25,000 give lunches a day is really viable because of this partnership, but it is also evolving the depth of CSR that Foodstuffs are able to achieve as well.

> **"Foodstuffs primary reason for investing in us is the social impact, it really aligns with their own social mission as well. They want to ensure that food isn't a privilege, and that everyone has access to that, so we are one way of supporting that and executing it for them, so if you talk to anyone at Foodstuffs and anyone on their board, that is why they bought into Eat My Lunch, but it is also about the fact that we are sound, they wouldn't have bought into us if we weren't a sound commercial business. So, Foodstuffs were interested in both the sound business model and the sound impact structure as well… We don't have a profit target, there's no stated expectation of dividends or returns either, their number one reason for partnering with us is about social impact. We start with we want to get to 25,000 kids a day, so what does that mean then in terms of how much we have to sell? And we work back from that and go, so that means the shape of this needs to look like this for us to get there. It doesn't start with how much money are we going to make? So, I think it's quite different from maybe the way a lot of other companies, or enterprises are structured, it's definitely not your traditional CSR for Foodstuffs."**

HIKURANGI ENTERPRISES

Interviewee: Pānapa Ehau, co-founder/GM of Hikurangi Enterprises Ltd

Legal Structure: Charitable trust; LLC with Charitable status; Limited Partnerships; LLCs

Challenges from legal structure: They have had to create a very complex legal structure to attract investment and operate as a competitive commercial group of companies, and look after whānau in one of the most marginalised regions in the country. The cost of set-up and maintenance of all the legal entities including the charities is a real burden and takes time and expertise away from innovation and impact.

Hikurangi Enterprises is a group of entities that operate as a SE in the Ruatoria area on the East Cape in Ngāti Porou territory. The organisation's mandate is to provide employment, community development, and wellbeing to whānau in accordance with Te Ao Māori ways of being and seeing the world. Pānapa said,

> **"We know that if you increase the level of household income, you increase the wellbeing of the people, so that's been our focus... in my world, there's effectively three things you can increase the wellbeing of the people with: house your people in affordable, accessible housing; provide them with really good food; and give them meaningful employment. If you can cover those three bases then all the other aspects can be dealt to, because those are the founding blocks of life."**

Their focus has been to elaborate productive land resources, and in particular, the native resources with a particular focus on fauna and flaura of their lands so they could move away from primary production and into full value chain, high value products. So Hikurangi Enterprises commissioned agronomists to evaluate the productive strengths of the area and assess the environmental capacity for full scale production of various natural resources. They are partnering with a wide range of public and private research institutes to do the science that will create the business cases for a variety of products including bio-extracts from kānuka, extracts from kina, and a native fungus. They have been in business for three years, and the project that has been fast-tracked, and has significant equity from local and foreign investors behind it, is the growing and processing of medical cannabis.

Their very specific combination of business process, Western science, and Māori values with the imperative to look after whānau and the whenua, is a sophisticated and nuanced response to the impoverishment of their region that has been an ongoing consequence of colonisation.

> **"Our underlying values are that everything that we do has to benefit the land and the people and the wellbeing of those... there's a whakatauākī[5] [proverb] and what that talks about is holding on to the values that have been handed down from our tupuna, our ancestors, but using the hand of the Pākehā, whether it's science or whatever it is, to enact the commercial reality of that. So, our decision-making framework that sits in place is always 'does this benefit the land and our people? And if it does, then it can move forward into the next space of, 'is it a viable commercial process?'"**

The driver for the development of the resources via Western science is mātauranga Māori (knowledge from the ancestors), but they are mindful of the implications of the commercialising of Māori knowledge and resources. Pānapa said,

> **"So, the reality is that other people are doing it anyway, and if we don't do it, then we as the people who are the kaitiaki, the guardians of those resources, will miss out. And so, we do have a programme in place around the intellectual property and where that fits and how that gets dealt with... so dealing with how the Western idea of intellectual property intersects with Te Ao Māori. So, who has the ownership of it and how is that shared to make sure that everybody is involved. So that we can commercialise things that are for the benefit of us, the people of the land, rather than the people away from our area."**

The commercialising process is challenged by their own people though, but this is also an important mechanism to keep the mandate front and centre.

The most integral feature of their business model is really the Māori way of being and seeing the world as the foundation of everything, because this is in the organisation's and whānau's very DNA.

The Operation of the Organisation + The Mission + The Chosen Legal Structure

The parent entities in the wider Hikurangi Group are the Hautaukina Trust which holds the kaupapa of the organisation, and will eventually be a distribution arm once profits flow. The other is Hikurangi Enterprises Limited which is a company with charitable status.

> **"We needed two entities because you couldn't have commercial and social together... but Hikurangi Enterprises is the one that's going to generate the funds... the legal structure, [as in] the way that the law is, especially around the charitable status, is that they have to be separate. They couldn't be deemed to be doing the same thing."**

From a Te Ao Māori perspective, the separation of business as in the means to produce what it takes to provide for whānau, and 'doing good' is problematic,

"I mean it's that they are separated, you know? It's that whole individual silo thing, from a Māori world view, everything's interconnected... If it's not going back to one person or one family making a whole lot of money, then why can't something exist that allows commercial operation for social good?... This is about a company that can be charitable, because that's the focus of what it does, so that structure is on par and recognisable with a LLC so that you can still engage in a particular way of doing business, because that's what most people know and understand... and that there's tax implications in place to allow that to happen, that you can be charitable and operational at the same time. It's actually a really interesting question to think about what legal structure could be, because we're so indoctrinated into what already exists that it's not an easy thing to think about what else could be."

For Hikurangi Enterprises, the reality of what the legal structures impose for them has meant that they have had to create a rather complex set of entities in order to do business in the way they have mandated themselves to do,

"So, the implications for that is that we have two sets of compliance, we have to have different people on those boards, it creates another level of administration."

We asked Pānapa what could have happened if there had been a more encompassing legal structure that they could have used when they got started three years ago,

"We probably could have done more than what we have done because we wouldn't have had to put so much time into stuff that didn't need to happen, whether its organisational or administration-wise... and rather than five entities, we'd only have three and all that time that we spent putting into those relationships with those five, could be done with three and then a whole lot of more value comes out of that, building relationships and those relationships become stronger. So, we could have accelerated stuff or we could've been creating more wellbeing within he community."

But because the impetus of the creation of the companies within the Hikurangi Group has been to foster community wellbeing and development amongst a group of people who have been significantly systematically marginalised, they are pragmatic about working with the current options – and the reasons why their community is so marginalised anyway,

"So, you know, with legal structure there's only a handful that exists so we do what we can and we make work whatever's there. And we just go and get the best expertise to do that. For intellectual property, we're going through that process now of, what does it look like? Here's our values, this is what we want to do, how do we make sure that it honours the land and the people over commercialisation or individual benefit?"

Hikurangi Enterprises is the workhorse of the organisation and is the vehicle that they use to leverage whānau into positions to do research and development with partners to be able to get commercial businesses up and running. They have a series of other enterprises that are LLCs, and then Hikurangi Enterprises Ltd has formed limited partnerships strategically with private equity so they could retain the charitable status and the benefits that come with this in terms of tax. However, when they went looking for individual and institutional investment for the medical cannabis operation, they were advised by their investment advisors and investment bankers, that the limited partnership structure could curtail the amount of people that would want to engage with them. They had to make a choice about their structure and the capacity to deliver their mandate,

"It was a pretty straightforward decision really... So, it was a trade-off; do we push the limited partnership, which allows us to have a tax benefit, at the cost of potentially losing really good investment partners that can bring the finances and the knowledge that we need to be successful? Or do we not even take that idea of the limited partnership to the table so that we can guarantee that we can get the best partners that we can and forego a whole lot of profit or financial resources that would flow up to the social enterprise space? So, it became a commercial decision, but actually it was more than that... the success part is about having the best partners that are available. And so just having that structure of what the operating company is was a decision based on, 'how do we get the best expertise to make sure it's successful?' because that's what we're about. It's inter-generational success, it's not a 10, 20, 30-year lifecycle of a company, for us it's how do we make sure, ongoing, we have the best people surrounding us?"

However, while they conceded on the structure of the legal entity, they were resolute about the control of the company and what this meant for their mission lock – but it cost them a lot of money.

"We bought in institutional investors to raise funds for the cannabis company. Now we gave up more than 50% share of our ownership, so that we could get the money that we needed. But within our subscription agreements and all the legal documents, [we have stated that] we keep control. So even if we end up giving away a majority of our ownership, we'll

[5] This whakatauākī is from Sir Apirana Ngata,
E tipu e rea mō ngā rā o tō ao
Ko tō ringa ki ngā rākau a te Pākehā
Hei ora mō te tinana
Ko tō ngākau ki ngā taonga a ō tīpuna Māori
Hei tikitiki mō tō māhunga
Ko tō wairua ki tō atua, nāna nei ngā mea katoa.
– Tā Apirana Ngata

Grow and branch forth for the days destined to you
Your hands to the tools of the Pākehā for the welfare of your body
Your heart to the treasures of your ancestors as adornments for your brow
Your spirit to God, who made all things
– Sir Apirana Ngata

still have control mechanisms in there that allow us to operate the company in a way that adheres to our values. So, what we don't want as a company, is to have investors come in and literally buy the company out and take the operations away from Ruatoria to Auckland because it costs less to produce the product there. Essentially, it's going to cost us twice as much to build the facilities because we're in Ruatoria, but we're happy to pay that because we are values and kaupapa-based. There's no way that you can ever take this company away from Ruatoria because that's what it's all based on: local employment, local sustainable economic development. Other things can change, other things can be discussed but that's a non-negotiable, so we've used really good lawyers and you've got to pay ridiculous amounts of money for really good lawyers to make sure that it's watertight, because the people that we're engaging with have lots of financial backing and have really good lawyers too... so there's a cost incurred, it's just the cost of doing business in our way I guess."

But in true entrepreneurial style, the reality of enshrining the social imperative of the company alongside the commercial process is actually emerging as a serious competitive advantage for Hikurangi Enterprises. From their perspective,

"the biggest and the really strongest trend that's happening is the story behind the products. So, over the next five to ten years, that's going to become a major factor in the glue, as people move away from profit being the most important thing in the bottom line of the company. So, if a company can say that we have this one structure that allows the social part to be done to look after the land and the environment and the people, then that gives more strength to the commercial aspect and that's going to become really, really important in the future... Like the cannabis company for example, anybody can grow cannabis and grow amazing cannabis around the globe, but it's actually going to be the stories, it's the whole story that sets us apart in New Zealand and globally so that we, as a Māori organisation, can be successful."

This centrality of the story and the mandate of the organisation to deliver a great product and be a sustainable business are intertwined because Hikurangi Enterprises are Te Ao Māori led and a SE, but this is also about evolving business paradigms. Pānapa talked about how the investors who have come on board are aware of this,

"The investors see the commercial benefit of the story. They see we have a longer-term plan, they understand us... they could see the integrity in it. As a business decision, for them, it's like, you guys aren't going to do a bad job with this because of the weight that you carry to make sure that you get it right. Because it's not just for you, it's for your people back home and it's for the future generations... so there's more reason for us to get it right. It's not just me doing my own business, if it falls over, oh well, the worst that happens is I go bankrupt and then start again. But that's not an option for us, because we have the hopes and dreams of a community that's been down for so long, that's been highest in all the negative statistics. We're creating hope for the living generations. We're creating hope for the future generations, there's a lot more ramifications for not getting it right. And also, commercially it makes sense, and they understand it, that in the future that's going to be a sought-after story in the commercial space."

To the extent that their story and the very essence of their social enterprise model is actually a significant strength in their business model,

"Yeah, absolutely, the story really is a competitive advantage... but it's actually really hard for people to do this if they don't walk the talk. Like, you can't talk this thing [as in their history, their mandate, their ancestral knowledge] to make it be part of your business, you actually have to do it. We've got a depth, because that's where we've come from, all the way back to literally the lands and the ancestors, so it's not just 'make sure your employees are happy,' it's about making sure the community within which the employees live is healthy, so it is much bigger. So, the reality of that is that the Hikurangi Huataukina Trust and Hikurangi Enterprises will be pouring a whole lot of its profit and its resources into making sure that the community's well so that the businesses are well. And that's as much a competitive brand thing, as it about looking after our people. Like, you can't go to a marketing company and buy that. It's probably THE biggest competitive advantage that we have as an entity in the global commercial space."

KILMARNOCK

Interviewees: Michelle Sharp, CEO and Tim Jones, GM of Growing Good

Legal structure: A Charitable Trust and a LLC with Charitable status

Challenges from legal structure: They have had to default to a charitable status to create mission lock internally and for the external market. As a consequence, they battle against the perception of what a charity is allowed to be versus what a business is meant to be, and the implications of this.

Kilmarnock Enterprises is an award-winning factory/manufacturer/processing line organisation that provides a range of services. From collating and packing, to assembly, labelling, food re-packing, shrink wrapping, woodworking, refurbishing, and electronic waste recycling, amongst other types of contracts – no job is too big, or too small. They are an agile, innovative organisation that is rapidly expanding. They are consistently winning contracts based on merit, efficiency, and accuracy because of their business acumen, visionary strategic insight, and culture of innovation.

Their workforce is comprised of around 100 people with an array of learning disabilities. Their mission is to change the marginalising and undervaluing of people who are differently abled, which is common place in New Zealand society, and to evolve and develop models for the future of work that embrace diversity and inclusion in innovative, world leading ways. Michelle said, "I believe that the tools of business are critical to solving some of our most challenging social and environmental issues."

Kilmarnock as an organisation was founded 60 years ago by Miss Christabel Robinson, who was committed to running an organisation for people with disabilities with the understanding that "everyone is uniquely valuable and deserving of compassion, support, empowerment and respect." In 2011, Kilmarnock were forced to commit to huge shifts towards commercialisation in terms of their systems, process, people, procedures, IT, and their business offering, but at the same time, they were determined to double down on always having their purpose at the core of everything that they do. What necessitated the change was the loss of their (then) main contract, which was to make ANZAC poppies.

> **"At the time that loss was terrible, but in retrospect, it was the best thing that ever happened to us. We went from an organisation who had 60 odd people, who day in, day out, would just sit and make poppies, through to a contract manufacturer, who now has a very strong commercial understanding of what our selling points are to the commercial community. And then as soon as we started trading, and spreading the word about our new mission and services, the amount of impact went and continues to go up... Our operation was turned on its head really, because we're no longer apologetic for what we do and who we are. We have a very strong understanding of what we excel at, and therefore in each market, how we need to sell. Therefore, each relationship we make with our customers is done on an equal basis, and on an even playing field... And that in itself already starts changing the whole perception of disability, because our vision is a world that values diversity."**

Michelle said that with the strategically focused commercialisation of the organisation into a trading entity, has taken them back full-circle, to hold true to Christabel Robinson's vision.

> **"But what I love about this is, we're doing it in a very different way, and in a far more possibly successful way in terms of the integration into the wider community... And beyond that, about 40% of our income comes from diverting something from landfill... so we have a huge environmental process as well... And the next thing is if we can be 100% focusing on waste management, whilst having the social imbedded, we kind of feel we could become literally the world's perfect enterprise."**

What this looks like operationally, is that the four departments in the factory, each compete for contracts in the market based on their capability, they stand on their own merit in the market and each currently has a number of contracts within them.

Kilmarnock consciously incorporates other systems of value into their operation. They also manage their impact based on work/life balance and quality of life for individuals with disabilities, but also according to a broader brief that is about the future of work for all.

Kilmarnock exists to provide "a real, tangible, exciting pathway for school leavers with disabilities, as they transition out of school," as well as meaningful work for their older employees. They provide a mixture of classroom practical training and employment, with a view to helping each individual discover themselves and their confidence in order to enable them to transition into the career of their choice through a specific pathway. As an organisation, Kilmarnock are aligned to the UN Sustainable Development Goals, so everything they do business-wise and in terms of impact is orientated by these.

The push into the environmental space is strategic and part of their capability as "perennial problem solvers." Michelle and Tim said,

> **"Right now, we're looking at all the waste issues that this country is facing, and we're going, 'this is a massive opportunity'. We're doing some of it already, we just want more of it. We had never dismantled any electronic waste, but we had an opportunity to win a new contract that was going to**

diversify our income stream at a time when we were trying to de-risk the business profile. So, we put our hands up, and we won the tender for the West Coast pilot. We built a shed, and started dismantling things. And then realised, this is remarkable, because not only is this incredibly environmentally sound, from a social perspective, this physical work is rewarding for some of our employees with behaviour issues. It's very therapeutic because they're pushing their behaviour issues into, smashing a TV for example. And suddenly after introducing this work, behaviour issues were being managed. So then, because we witnessed positive results, we set ourselves a very deliberate KPI to grow our environmental footprint."

The Operation of the Organisation + The Mission + The Chosen Legal Structure

Kilmarnock has always been a charitable trust of some kind. Fifteen years ago, changes to government policy required sheltered workshops like Kilmarnock to morph into 'businesses.' Kilmarnock chose to restructure their organisation as a response to the realities of this policy change and the risks this posed for the organisation. So, the organisation is comprised of a LLC that has charitable status which is wholly owned by the Kilmarnock Trust. In terms of governance, they have two governing boards: a board of directors and a board of trustees, and there is some crossover which has been deliberate, "so at least there was that common understanding of what we're doing."

The charitable status is extremely important to them – because this is the only way they can achieve mission lock. So, while they have very strategically created a business and trading operation out of what was a sheltered workshop, whilst marrying this with specific social outcomes, Michelle Sharp was emphatic,

> "I've been challenged many times about this, but we're not prepared to change our status to a for-profit. We call ourselves a not-for-loss, but we don't want to become a for-profit, because we want to ensure that our profits are always being reinvested towards meeting our higher purpose... Because of our charitable status, there's no risk of our profits going anywhere else."

The other advantage of having charitable status is the reputational piece, and what this confers on the organisation and who they are,

> "Charitable status does give us a reputation that people can trust... We've just had three major re-pricings in the factory, we're talking significant re-pricings. Because of who we are, people don't sit there thinking, 'oh, you're trying to just get an extra bit of money,' they just don't think that. Part of that is because of how we operate. I suspect that if we were wheeler dealers in the first place, regardless of the mission lock, they may not trust us. But there is a sense of you've got that tick in the box already, so there is an element of trust that sort of precedes the relationship."

However, this was a thin rendering of reputation in reality: we asked Michelle and Tim if this reputational part of being a charity translated in clients making concessions for Kilmarnock, or dealing with them differently because they are a charity. Michelle replied,

> "No, so this is really important, in the sense that we never win business anymore based on being a charity. We win business now, because our clients really need somebody they can rely on to outsource a particular part of either their headache, or their business, or something that's not core to them. The social/environmental is the last tick in the box, but it's the tick that's the cement. Because you can then start through engagement, seeing the value of what you do as an operator by outsourcing through your supply chain ethically... You see, Air New Zealand is the biggest employer of people with disabilities in New Zealand, they just don't really know it. Because they use us and another location in Auckland [to constitute the headsets for the inflight entertainment system]."

We asked Michelle and Tim what the disadvantages were for them of having to have charitable status. They said,

> "Oh, unfortunately there are many, many more of those... Because in fact, we're more hindered by it... So, like any organisation, we need access to market, so we are able to trade, access to finance, either seed funding or capital for growth. We need access to R&D money from time to time, to do the things that we need to do, because we're trying to be innovative. So basically, all the same things as any other organisation that is a full profit one. We're no different. Yet we haven't got access to any of those things, because of our status. So, every time we want access to, let's say R&D money, which is the latest one. We've got a very, very exciting project to launch, but it requires some significant R&D money. I've spent a year convincing Callaghan that it's the right thing to do, to actually put R&D into us, but their mandate says they can't support not-for-profits or charitable organisations... We're helping them change that. But the point being is that it becomes very hard. It's been work, and we're prepared to do that, because we're prepared to make a change for everybody else. But a lot of the time, it feels like we do what we do kind of for the first time, and it's exhausting – because there's no front door to anything that we do. And you're having to have the same conversation over and over again, which is okay, and we don't mind doing it, but we want to be seen as thought leaders in sector. So that's okay, but there is no doubt that our charitable status hinders us more than helps us, because of those things."

The thinness of the reputational aspect really became apparent when Michelle spoke about the need to get a purpose-built 'proper' factory building, which they built – eventually – after 50 years in their previous building. Their new $12 million dollar-purpose built building in Christchurch, is known as 'Base Camp.'

> **"We were in an old site that we had been in for 50 years… So, one of the issues with having charitable status, and if your building doesn't look like this [here she gestured to the new building], is immediately, people assume that everything you do is bad quality, and immediately they want to pay you sub-standardly. So, it's that kind of thinking because actually, it's the opposite… One of the things we pride ourselves on is our quality. But because our environment didn't reflect that, we weren't being given the chance to actually even have the conversations or be around the table with organisations who demanded quality. Because the charitable status, coupled with the look of the building, was actually hindering us. Whereas, in a funny way, if we were a for-profit, it might have worked to our advantage, because they'd think, 'oh well you're clearly not doing this to make a ton of money.' Yet moving here, suddenly meant that organisations are going, 'oh, you're actually real, you're a grown-up business.'"**

Michelle talked us through how they work around the reality of the 'perception of what a charity is required to be,' and the blindness of the banking community when they went looking for funding to build their purpose-built building,

> **"When we wanted to get funding for this $12 million new build, the bank went and looked at us on paper, and they turned us down because of our charitable status. So, it required us to say, actually, you need to look at us through a different lens… because actually, look at what a good business it is. We have the capacity and choose to reinvest all of that for the good of everything else… We didn't meet their credit criteria, it was high risk because we were a charity. Just the second you say charity, they're like, 'oh, charity mentality, surely you're not underpinned by good commercial sense', but the assumption is that you're getting donations, [therefore, you're not being efficient."**

They did secure funding from the BNZ, but it was not a straightforward process. Michelle said (with exasperation rather than jest),

> **"So, I had to trick someone to come out to see me from the bank for half an hour, and managed to keep him for five and a half. I didn't actually keep him hostage, just saying, until he met our demands… But I needed to convince him. And it's like every deal like that that we have to do, we have to go above and beyond to prove ourselves, because of the first impression about being a charity and a SE. We do it every time, I mean we do succeed in this, but the point is, if we were able to have some hybrid legal status that allowed us to have a mission lock, but still gave credibility as a business, that would be amazing. I mean, we carry on in spite of that, but something that was recognised would be fantastic."**

Michelle talked about the bigger ecosystem perspective of the consequence of the legal structures that are available for organisations like Kilmarnock – and their failure to confer identity and broadcast trustworthiness to the market. She said,

> **"It's about creating something that is solid enough to exist, but flexible enough to allow those who subscribe to it, to be in. But I think without a legal structure for SE, it's messy… at the very least, there has to be a strong definition that gives us credibility for what we are… So consumers, investors, everyone can kind of go, oh, right, that's a SE."**

This is also about evolving understanding about what social/impact enterprise is, and what the possibilities are for doing business in this way. Michelle has presented to 5,000 people in the last year alone and they are constantly doing tours through the factory to show people what they do. Also, changes of government affect the process of understanding so any new legal structure needs to be 'legal' enough to transcend any government. Part of the education piece for Kilmarnock has been about evolving the reporting process.

> **"How do we specifically measure the different types of value we are creating?… Well the number of our employees getting NZQA credits is a start. The number of graduations, the number of graduates. So literally, every single one of these is being tracked, so that we can kind of go, cool, you want to talk impact, well, this is what we're doing… We'll show you impact, as opposed to here's our profit and loss statement."**

This mode of reporting on success is about the array of value being created by the company, whereby the financial value is no longer divorced from the social one and individuals' lived experiences, so transparency around financials, supply chain, is all part of a bigger process.

> **"I love the fact that everything that we make, goes back into the organisation, but yet, that doesn't mean that we don't try and optimise our operation as much as we can – so long as we're not to the detriment of the people that are here. Our mindset is 'let's strive for efficiencies, let's strive to be the best and ensure that our business practice is always exceptional'. It's essential that we have a culture of continual improvement."**

LITTLE YELLOW BIRD

Interviewee: Samantha Jones, founder and CEO of Little Yellow Bird

Legal structure: LLC

Challenges from legal structure: None

Little Yellow Bird is a clothing and uniform manufacturing company that is committed to the supply of organic cotton textile clothing via a wholly ethical supply chain. This mandate means it addresses environmental, cultural, and social realities of all participants and contexts in the process, from the growing of the raw materials all the way through to the desire of consumers to buy ethically – and everything in between.

They have been in operation for just under four years and are growing. Their commitment to ensuring every dimension of the production and supply processes is as ethical as it can be, creates challenges over and beyond a standard clothing manufacturing business. These range from paying a living wage – i.e. not just the legal wage in a country like India – to minimising the environmental impact by finding ways to prevent pollution and recycle water, to paying serious, enduring attention to the wellbeing of the workforce, and providing a legitimate and authentic opportunity for consumers to buy ethically.

However, Little Yellow Bird's commitment to the intricacies of ethical production and supply, and the way they are nuancing this in more and more ways, is effectively their competitive advantage in the market. Samantha's timing around the setting up of her company has been exemplary, and this combined with her capacity to mobilise the intricate supply chain that she has and her awareness of the consumer appetite for a product like Little Yellow Bird's, is serious entrepreneurship.

The version of consumer choice that drives Little Yellow Bird's sales, is relatively new. Here a consumer is effectively opting to pay a higher price – they decide between purchasing a $10 t-shirt (say, produced from raw materials that contaminate the environment at every stage, and made by people being paid below a living wage) verses Little Yellow Bird's product that retails for around $40 – and comes with the impact story. Samantha talked us through her perspective on this.

> **"I think definitely the younger generation just naturally considers that as an expectation… if I look at myself, I just assumed that supply chains would be ethical, whereas actually the assumption should be that they're not ethical, unless you prove that they are… a lot of brands and companies, say 'oh, we met the legal requirements,' but the gap still is that people don't understand that the legal requirements in developing countries are so low. For example, the legal wage in Bangladesh is $68 a month, which isn't viable for someone to live off, but businesses get away with saying we pay the legal wage, and consumers don't automatically understand what this means which is in a way misleading. But I think that's changing, so I think that's why people are becoming more aware I guess, and asking more questions [which is good for our business]."**

One of the ways Little Yellow Bird are tackling consumers' lack of understanding around the difference between 'surface ethical commitment' and 'deep, sustaining ethical commitment' is via the reporting of their impact. This is an essential part of their business model. Their latest version, which went live in May of 2018, is a comprehensive document that lists the myriad forms of impact that they have had in India: from the numbers of fair trade hours worked (20,000), to the weight of chemicals not used in the production of the cotton they use to make their clothing because it is organic (12,000kgs), to the litres of water saved through their commitment to recycling and closed loop processing of water (12,200,000 litres), to their contributing to the education of ten young women in India (Little Yellow Bird 2018). Just after the impact report was put up on their website, Samantha also published a blog that detailed all the mistakes the organisation had made along the way, which they contend is as much about what it takes to create an ethical supply chain as it is about the uncharted territory they are doing business in, in order to be ethical.

Samantha indicated that most of Little Yellow Bird's customers are organisations or corporates (roughly 90% of turnover) who "have an ethical value or something within their business." But while the converted are getting easier to sell to, the broader market is challenging because of the cost of their product, but more importantly, because of the necessity to lead with the story in any sales process,

> **"We are up against it when we're trying to do a sales call, and trying to convey that in a two-minute elevator pitch. The main advantage we have is telling that whole story. So, where we get a lot of our leads or business from, is by talking at events, or articles that can tell the whole story. And we can explain that the water system that we use completely recirculates that water and 96% is used again and again and again. But we can only convey that if we can get in front of people and sit down with them for 20 minutes, so unless they're already on that sustainability journey, or have some sort of understanding, they don't get it. But I think the more we talk about it, the more people will get it."**

The work they have put into their supply chain is now serious intellectual property in the business, as is the know-how around how to logistically manage and set up the supply chain from the raw material production through to the manufacturing of garments and articles, and then shipping from the Indian factory. Managing this means Samantha spends a lot of time in India working with the people on the ground there. So, their capacity to form the relationships – and the deep-seated integrity they need to bring to the whole process that is the commitment to do every aspect ethically and fairly – are componentry of the market that they are entrepreneuring with to create the substance of their business. This collateral is now also being leveraged by other fashion brands and organisations, whereby Little Yellow Bird are the go-to 'out-sourced' supplier for ethical production.

The scope of their impact is multidimensional. They provide a product for consumers to purchase and consume in a conscious way, aiding and abetting the rise of personal social responsibility, and they provide products that ticks boxes for all sized businesses to fulfil corporate social responsibility imperatives, particularly larger ones. And then the way they are operating in India in terms of living wage, assistance given to their contracted workforce as well as the wider communities within which these factories exist in, including the environment in these locales, is significant. Their mandate is world changing,

> **"My personal viewpoint is that all businesses should be operating in this whole socially respectful manner... every single business should have to pay the true cost of production from an environmental and social perspective. That should just be the law."**

The Operation of the Organisation + The Mission + The Chosen Legal Structure

Little Yellow Bird is a standard LLC. Samantha owns 94% of the company and there is a silent partner, Lightening Lab, who own the other 6%.

Little Yellow Bird were the only participants in the research who were neutral about their legal structure and perceived no barriers stemming from this. Samantha talked about the process of choosing a structure,

> **"To be honest, I just thought it was the only option [when I started]... I guess charity was the other option. [But] I never actually even considered that... I'm quite vocal in saying that I didn't want this to be a charity, I feel like there's more to prove if we can say, actually, we can make millions of dollars a year, but we can do it in a way that doesn't exploit people or the planet.**

While they invest in what they consider important causes in India, they have dismissed setting up a charitable arm because there is no obvious benefit to do so. Also, the work they do in providing for people and the environment in India is part of looking after their supply chain and are really versions of costs for the mode of business that they do anyway, rather than 'charity' that is done via expenditure of profit.

> **"[Those grants and gifts] we just pay them as we're going... [because doing that] is just part of our operating, we treat it as an operating expense... I think, and I'm really conscious about this, it's important that this is something we do anyway, because it's part of our story. We say that we fund these things, so I don't think we should wait 10 years until we make a huge profit and then do it."**

At this stage of her business, revenue is the focus.

> **"We're not really driven by profit [at the moment]. I couldn't even really tell you what my profit was over the last three years, but I can tell you what my revenue is, because to me, actually that's the impact, the majority of our impact is about how much stuff we put through the factories. That's providing good employment, it also means that for every 1,000 t-shirts we produce, that's a 1,000 theoretically that aren't being produced by somebody else. We don't know if that's completely true, it's probably debatable [but it is about ethical consumption]... so my main aspiration at this point is just growing our revenue, so I mean growing the quantities that we're producing."**

We drilled down on how the mission and business acumen work together, and how this operates in the SE context for Little Yellow Bird,

> **"I think it's definitely a mix. But if I had to pick one, I think that it's probably business first, because I don't think that you can do any of that stuff well unless you have a viable business... we always lead with 'does this make business sense to do it?' We wouldn't do something that didn't make business sense. Although then there are scenarios where we will do stuff, because we're like, 'this is part of a bigger picture'... [but] there's an additional layer of difficulty with SE. You're judged, both on your business acumen, and your ability to make a difference from an impact perspective. So of course, you do have a whole extra set of things to consider, and the reality is that most of the time you'll make a decision in one area that will negatively impact another area."**

Little Yellow Bird has a constitution which states that they won't necessarily make decisions that will maximise shareholder profit. However,

> **"In a way it's difficult to say it's actually locked in our mission, because I could still change that, but we made an attempt to kind of make that as part of our legal structure as much as we could."**

At the moment, because Samantha has 94% of the shareholding, she is aware of her ability to hold tight to the mission of the company and this is what is important to her.

What has helped with mission lock for Little Yellow Bird has been the gaining of B-Corp certification which they did two years ago. Samantha said that as soon as they had been in business for a year (a requirement for certification), they started the process of acquiring B-Corp status. She opted for B-Corp because it was all encompassing, she said there were so many certifications they could have gone for, but B-Corp was the most rigorous,

> **"Not only is it a great certification, but it also actually means that I can belong to a great network as well… But the thing I like most about it is it actually genuinely shapes how we grow, by giving us a lot of best practice guidance… so I think it actually makes us a better company."**

The B-Corp status is also an identifier for Little Yellow Bird,

> **"I think it's important that we have at least something. A lot of people ask us, 'oh, what certifications do you have?'… I think people just like to be able to [categorise] I think it's just this weird psychological thing".**

The B-Corp status does help with recognition in the industry, especially with the amount of unethical production that goes on in clothing manufacturing around the world. To mark herself and her company as legitimately different to the Rana Plazas/mass manufactures of clothing of this world, is integral to running her business. While the connections and the networks that the B-Corp certification have provided are equally important, Little Yellow Bird's profile has been a product of Samantha's good marketing. She said,

> **"I'm not sure about that recognition piece [derived from being a B-Corp]… but I definitely recognise that we do get more than our fair share of recognition for what we're doing, and I think it's partly around that whole right time, right place. There's not that many competitors in our industry, so we're not competing against other similar SE as much… and the big companies don't have interesting stories, whereas we create really good content around the stories of our supply chain. So, it's easy for people to talk about our story."**

Little Yellow Bird has an advisory board which plays a big role in the conceptual running of the company for Samantha, and she stressed the importance of the three-member group who are proven experts in commercial business practice and acumen. They meet monthly for a 90-minute session to talk critical issues, strategy, and direction.

LOOMIO

Interviewee: Michael Elwood-Smith, Executive Director at Loomio

Legal structure: NZ Cooperative Company

Challenges from legal structure: They have had to embark on an expensive lawyering process to modify and tailor a less well-known company structure that accommodates and protects their worker cooperative ownership and management structure whilst enabling them to receive significant growth capital.

Loomio is a web-application that helps people facilitate participatory decision-making. It was launched in August 2012, and emerged from a collective need for more effective tools for collaborative decision-making, and specifically, by members of the Occupy Movement in 2011. Some of these activists, who provided the conceptual framework and software development, were part of the Enspiral Network, a global SE collective which has been a magnet for software developers.

Loomio's intent has been to provide a tool to facilitate and support collaboration for organisations from community groups all the way through to government and corporates to evolve what participatory and collaborative democracy looks like. This is about making a difference to how people live their lives in community, how they work collectively, and to the way business gets done in a world that needs to look after people and the planet. Part of Loomio's mission is about shaping the future of work by providing the tools for this, as well as demonstrating how this works.

> **"And if we do this well, what we're actually demonstrating is that we can create an organisation that grows a successful scalable business, while delivering on a social mission, without, for example, an Elon Musk turning up being a gazillionaire on the back of it, and being back to the 1% of people with 99% power and wealth."**

With this particular philosophical and pragmatic focus, the founders were determined that the very structure and ownership model of the company needed to reflect their mission by being non-hierarchical, which led to their developing a worker owned cooperative.

> **"We wrote a handbook of how we operate at Loomio... outlining why we chose these structures, why we've made certain decisions, how we've actually tried to implement it, where we failed, where we've corrected, where we've had to adjust on our way through... we've pioneered in so many ways. We are a little worn out from pioneering, and now focusing on making a sustainable business. However, I don't think we would have survived if we didn't have the cooperative structure and conscious development of values, culture, and working practice. It's that practice of building, and the principles of collaboration that have been fundamental."**

The organisation lives with a creative tension between the process of doing their social mission and the process of doing business, and they have found that, for the most part, legal structure has not helped work with this reality.

The Operation of the Organisation + The Mission + The Chosen Legal Structure

The legal structure of Loomio is a cooperative company, a type of LLC, where the ownership and the management model is a worker-owned cooperative. It is registered as a cooperative business to demonstrate its mission principles, and by way of a mission lock.

The company is run by a core group of members who effectively make all the decisions about the way the company operates and what it does. They currently have seven worker-members in the cooperative, and five additional staff who are part-time. Anyone working with Loomio is on a pathway to membership. Onboarding takes about a year to see if both parties share the same values. There are responsibilities that come with being a co-owner and there is not necessarily any monetary gain, so membership is optional and can be surrendered by passing back the nominal-value member share (one dollar in, one dollar out).

The intent was to set up a company structure where surplus was specifically directed to the mission rather than to personal gain – and this was as much about company integrity and brand profile as it was about the nature of the industry they are in,

> **"We have made some provisions for surplus... The intent is not to create large uncapped dividends for investors, nor for worker shareholders. Our fears are that capital growth for traditional software companies is typically through new investor shareholders who focus on maximising their return on investment and influence the company accordingly. This can be a problem for mission driven companies. And so, we feel that, in order to create a sense of trust, and respect in Loomio, that actually living our values and being very clear in terms of our structure and the importance of our mission, is critical... I mean if you're offering a collaboration software, and then, next day you're off selling the company to Google, people start really asking questions about what you're all about, and it diverts focus away from the social mission!"**

However, Loomio's attempt to remain and operate at all levels as a worker cooperative with explicit egalitarian principles of consensus reaching, and the need to raise funds to grow and develop in the specific way a tech company needs to do, has been hindered by their legal structure. They have had to enter into a process of creative lawyering to be able to bring in investors which to date has been expensive, convoluted, and has taken time and energy away from expanding their business.

In the early days of the company, they relied on donated time and commitment to the mission to operate and develop, but creating sustainability has meant they have had to develop a business model that aligned with their social mission. They decided early on that they would place no advertising in the software, nor would they sell people's data, so they have had to look for "the value our customers are willing to pay for." Over the last three to four years, they have started the transition from what was originally totally open source and free, to various versions of revenue streams around the software, which is an evolving model and has had a number of iterations with more to come. In the early days they experimented with pay-as-you-see-fit models, now they are closer to the Tom Shoes model of "buy a subscription and support an unfunded community group." Community groups can barter their story for free access to the software service which means that Loomio has access to rich stories about how people are using the software in their communities.

> **"For example, there's a group of families in Venezuela using Loomio to help organise their cooperative, trying to rebuild their economy at the local level. This is exactly the kind of story we like to tell, and the kind of group we want to be helping as part of our social mission. In contrast, we just sold a private hosted version of Loomio to the SPD Party in Germany, [the equivalent of the Labour Party]. They fully translated it into German, and we set it up on their servers, and we charged them US$8,000 for an annual subscription in recognition of their contribution. In other situations, we have charged $10,000 to $20,000, to companies and government agencies for an annual subscription."**

The number of organisations who are prepared to pay in this way is growing. This process of shifting to a revenue model is as much about the future of the company, as it is about moving on from the earlier methods of raising capital so they can actually scale.

In order to raise capital, up to now, they have done everything from seeking donations, crowd funding campaigns, and social loans, but these in particular, have been problematic, so they switched to offering redeemable preference shares **(RPS)**. This is a hybrid cross version of traditional equity funding and debt funding to effectively maintain mission lock, and to position the company as something other than a money-making exercise, and is an instrument that allows shares to be redeemed by the company from the shareholder, rather than sold to another shareholder. RPS provide a capped return on investment whereby dividends are issued at director discretion of nominally 8% of RPS value per year, with a potential for bonus dividends, and preference is given to RPS holders over worker members.

They raised $US475,000 in their first RPS round in late 2015 so they were able to convert their social loan. In the 2018 round, they raised a further $US225,000 with similar terms to the first round. These funds have enabled them to have budget to develop the business further, but the reality is that they need more capital to scale the business. So Loomio have reached a point where change is required.

> **"And so, this is why it's interesting to have this conversation about legal structures now, because when we've gone out seeking investment, we've tried almost everything under the sun, except normal, ordinary equity in the company. And the feedback that has come from investors has often been 'we like what you're doing, we can see the growth that's happening, we'd like to invest, but we can't invest in that structure.'"**

Because the logistics of running a sustainable software company in the current environment are a challenge anyway, let alone with the self-imposed principled mandates, Michael said,

> **"The hard facts are, that we're a software company, operating in one of the fastest and most fiercely competitive markets in the world. And so, when people are looking at Loomio software, they're comparing it against Slack, against Microsoft, against Google, against Facebook. The reality is that when people are choosing to implement software in their organisation, you don't have a chance to be second best, you've got to be up there, and competitive with the best. Now, to do that, means that the company needs to continually invest in developing the product. Software does not stand still. It's constantly changing. And so that's why...in retrospect, a cooperative, while it has enshrined the values, has been difficult structure to grow a software company in."**

So, the barriers for would-be investors is that the shares that are redeemable preference ones, come with no controlling stake in the company and the dividend payable is not at the expected level of return of standard equity in the tech space. While Loomio have been able to bring in individual angel investors into the whole story of Loomio and what the company is intent on doing, in order to really grow and scale, they need serious capital which will be about equity. Under cooperative law, they are able to create equity shares (so a third class of share), and issue up to 40% of the valuation or control/controlling stake to financial investors. However, this may still not be enough for a tech company that is growing a developing software for the global market – especially one that has a social mission and a commitment to have an egalitarian ownership and management structure. To grow, and scale, they are likely to need equity in the millions (as per what other comparable tech companies have required) in the future.

One option is to list the company publicly, but before they can even think of doing that, they are going to need to change their current legal structure to effectively unbundle their company structure so they can maintain the cooperative values and support, and the social mission, while freeing up the software company to be able to raise the capital as needed.

One option is to carve off the trading part and set up two entities as in a charitable trust and a standard LLC, but the mechanics of doing that are essentially too difficult. But more importantly, this does not allow for the agility that a software company needs because of what a charity is allowed to be, and the perception of what a charity is meant to be actively detracts and diminishes the real value that is inherent in Loomio software.

So, they are looking at other options, and this is where the expensive, creative lawyering has come in, because they need to find a way of creating a structure that will allow worker-membership to operate effectively. Michael said,

> **"What we're considering now is to establish Loomio Co-op Two, and shift the worker-member class of shares, so they become members and shareholders of this new cooperative. It's a non-trading company and member-shareholders own and control a stake in Loomio the software company. That frees us up to be able to issue new shares to new investors, and share control, while preserving mission-lock. We can do this through a shareholders' agreement, and by modifying the constitution of Loomio, the software company."**

So by having Loomio the co-op members in a non-trading company with a controlling stake in Loomio, the software company, they can have: members coming and going under the right circumstances and for the right reasons for the nominal $1 share value; and they can still enshrine and do their mission; and they can attract more standard equity-like investment to Loomio the software company; and do the ongoing development that they need to do as a software company in the fast moving tech industry.

When we pointed out that this whole restructure had a significant level of complexity to it and the cost of conceptualisation and setup was significant, Michael said,

> **"Yeah, I'd rather not do it… but I'm not sure if there's any legal structure that exists now that would be ideal because of all the ingredients and constraints that make it complex to both manage and administer. In some ways, by baking all of this in, we've almost crossed a line and made it less open, because we're not open to the kind of investment that we need and the investors we'd like to actually have to grow… But our current structure is not particularly inviting for investors, so we have no other option than to embark on this creative lawyering process."**

Loomio is a SE, but capital and revenue and true value exchange and recognition for their investors of the risk that they have taken alongside them are all important factors as well. So doing 'business' as in enterprise is not the issue, the polemic is around the combination of doing impact plus doing business. The persistence of the binary that is operating here between doing impact in the domain of charity, and doing business enterprise as the seemingly exclusive domain of for-profits continues to be confounding for the very operational existence of a company like Loomio. Michael was reflective on how current legal structure options have set a framework for perception that in turn, configures the way investors think and operate.

> **"What [any SE] needs is a basic structure that keeps you safe in the early days while you're working to actually prove whether you've got sufficient value in your business, and you can deliver on your social mission… I guess the block I keep running into, when I think about the structure, are the investors. The structure, even the ideal structure, won't help me, if investors are not willing to, or don't understand, or have blocks in their rules to be able to invest. So, while our structure is less than ideal, in the sense that it's running into the block with investors, a worker-owned cooperative is giving us the freedom to be able to grow and develop a SE business. The only thing that's preventing us from being able to grow and scale more rapidly, is the investment piece."**

PATU AOTEAROA

Interviewee: Levi Armstrong, co-founder and CEO of Patu

Legal structure: A LLC and a Charitable Trust

Challenges from legal structure: They have had to default to setting up a charity in order to expand and develop their impact, but this obscures the innovative impact they are achieving and consumes resources that could have been directed at more impact. While it was important to be an LLC at the outset, they have been disadvantaged by not having access to charity funding, or the tax benefit of being a charity – even though they are delivering significant outcomes for Māori health and wellbeing.

Patu Aotearoa are a health and fitness SE focused on engaging with Māori and Pacific Island whānau in particular to decrease inactivity rates in New Zealand. Currently they are making a difference in over 3,000 Māori and Pacific peoples' lives around New Zealand. They have 13 chapters that are spread throughout New Zealand from Kaikohe in the north to Christchurch in the south, and they have a Patu chapter in Brisbane, Australia. These chapters run multiple daily exercise classes for people to increase fitness and in the process, help them lose weight. Patu attendees also get to belong to a positive community when they regularly turn up to their fitness class, which in turn, because of the way Patu operates, facilitates mental, physical, emotional, and spiritual wellbeing. Patu's approach to fitness and how this is centred in people's lives is based on Te Ao Māori so they are working with the lived realities and values of their Māori clients' lives.

Patu are very clear about how wellness for Māori is about physical health, and feeling a sense of real community and connectedness, and embracing Te Ao Māori. They also have a very clear perspective on the link between inactivity, and issues to do with being overweight or obese, physical and mental illness, and the ongoing impact of colonisation for Māori in New Zealand. Levi said,

> **"We believe we are at war against these issues… 'Patu' is a weapon, created by the ancestors to give the enemy a hiding, some people take this out of context but for us, the enemy being, not just the health issues, diabetes and obesity, but also the societal issues as well… There's a lot more behind Patu than what people think. People just think gym, but no, we're fighting a huge war and a lot of our health inequities have come from European ways. The European world. A lot of our whānau haven't adapted well to the diet, to the language, to business, to a lot of things."**

Levi and his co-founders were intent on changing the handout mentality and expectations that have been a consequence of both how power structures in New Zealand have kept rolling out a colonisation process, as well some of the mechanisms that Māori have learned to survive with. Shifting this handout mentality of both Māori and the agencies that are tasked with addressing health inequalities is important to Patu. Levi said that the problem for whānau is that they,

> **"Expect it. Expect it all the time… [and then there are organisations that have business models that are set up to do this too] and a lot of organisations are sweating on who's gonna be the new government contractor. …[There's] just too many handouts, and they don't work. We've got social and housing inequities and we keep throwing money at it and it's getting worse. You know, some of the solutions are making things worse."**

Patu have a different way to do things, and part of this is about being a business – and not a charity per se. Patu attendees are encouraged to pay for their sessions, and this combined with Levi's perceptive understandings about the way Māori and Pacific people do social has led to his innovative model for a Patu chapter. The emphasis on coming together and being part of a collective is proving to be incredibly successful, because,

> **"Fitness is the vehicle but it is everything else that we surround our whānau with that lets them adjust to the western world."**

Levi has had a gang background, and because of this he understands the collectivising that is part of gang mentality. Patu does use some gang-terminology and are engaging with Māori gang members around the country, which has created some controversy in the Māori community, as well as in government agencies around how Patu is perceived. However, Patu are essentially harnessing the propensity to collectivise to bring the positive community, group elements of gangs into the structure and atmosphere of Patu fitness classes.

The day we spoke with Levi, he had run three exercise classes that morning for around 60 people: 4am, 6am, and then one for mums at 9am. He told us the story of a woman who is now a trainer in the organisation (they only recruit for new trainers from the ranks of attendees). She had lost 50kg after coming consistently to classes over 13 months.

> **"She's now getting a little bit of money as a part-time trainer as well, so creating employment opportunities and then potentially owning her own Patu site…. So, she was actually a gambler, used to be on the pokies all the time and drink a lot and stuff."**

The Operation of the Organisation + The Mission + The Chosen Legal Structure

Patu Aotearoa are a standard LLC. They currently have two directors and two shareholders who own the company. They were encouraged to become a charity at the beginning because that is what is taken as standard for those in the "Māori house, the social and equity space for Māori." But they were not interested in being a charity because they did not want to rely on funding to operate their business, or to replicate the model of support to Māori that they consider is part of the problem.

> **"We wanted to stand on our own two feet but also there was three of us at the time so we were the shareholders, so we invested a little bit of our own money into it. We ended up getting the building and then that's how Patu started. So, we are a company... [but] it's been a lot reliant on whānau actually paying their own way... [but it is hard going] ...and, you know, and over the last few years we've been offered a few opportunities for funding but we just, we don't have that charitable status. So that was a real hindrance I guess, but we're still going after five and a half years."**

Patu does partner with Whānau Ora and other agencies to deliver their version of fitness, but they have turned down contracts where funders have required them to operate differently than the Patu model.

While the LLC structure has allowed them to trade, the benefit of what they are doing is masked behind the charity/business divide. So, the idea that a business in the Māori wellness and fitness space could have more impact than the standard funding model that successive governments have subscribed to is a reality that is difficult to convey. The plans they have to really bring fitness and wellbeing together mean that they have had to default to setting up a charity. Levi said that in an ideal world, they would not have to have two entities to do the range of things they do. The whole process of setting up a charity has been about getting access to funding that they were excluded from because they were not a charity, and being able to not pay tax on some of the money that they are earning in their business. They are aware of the trade-off of the flexibility that a LLC structure gives them, versus the funding that a charity can get as well as the tax relief. And there is frustration for Levi over the way tax – that they are paying as Patu Aotearoa – can then get passed on by government to an organisation with charitable status that is trying to do what they do, but less successfully than Patu are.

But on a bigger philosophical level, it does not make sense from a Māori perspective to separate physical wellness from mental wellness. So as per the logic of the charity/business binary, the two entities have to divide the impact the organisation does, so their trust, the Meke Foundation, is tasked with looking after mental wellness and Patu just seems to look after the physical, but from a Te Ao Māori world view, this division is counter-productive at best, and just wrong at worst.

The process of setting up the Meke Foundation as the charitable arm of Patu Aotearoa has cost around $20,000, which has been provided pro bono by Russell McVeagh. We asked Levi how it felt to have to go through the convoluted process to create another organisation so they can keep doing what they already do in terms of impact in the lives of whānau, he said,

> **"Oh, you just want to give up. You just want to give up sometimes and we know, like 'cos we're hands-on, like we like to get on the ground with the whānau and, you know, support our whānau on the ground. But it's the behind-the-scenes stuff, the legal structures, the company, the business, the tax, everything else that we have to deal with. We know that we're doing a good job on the ground but it's just making sure that we've got the right structures behind us. Yeah, and at times you just want to give up."**

We asked him: So, imagine five years ago you started with this perfect structure whereby you're a company but you have a tax exemption and you're able to receive grants. How would Patu look today? His reply was,

> **"Yeah, good question. I'd be less stressed... it would have made things a lot simpler... I mean through the five years, we've turned down a few funding opportunities, so if we'd been able to take them, we probably would've had 30 sites around the country now... We could've amplified our impact... we could've stopped someone from committing suicide. I mean I've had a few bros come into me and tell me, you know, if it wasn't for Patu I probably wouldn't be here. There have been so many transformations, ...even bros getting into work...I've got a bro, he's a Mongrel Mob member who was a crack addict and now is a fitness addict, so we're actually uplifting a lot of whānau in our community."**

The need to default to a charity structure has been about struggling to convey what they are achieving as a business that is mission led. More resources could have meant more impact, so creating the Meke Foundation is the only way they can convey what their impact is – but the saving to Government and the impact on people's lives is profound.

> **"We have done cost benefit analysis with Deloitte, so knowing that whānau who have come into Patu that are paying their own way is more successful than a fully funded programme is what we are showing. So, you could do the comparisons and say that, you know, whānau that attend a gym who pay for it, get**

more value out of it than a group that hasn't paid out of their own pocket to attend the gym. So, we've seen the comparisons and the boxes are ticking themselves where we're doing a lot more impactful stuff on the ground than what a Whānau Ora agency might be doing. Our downfall is that, we lack resources, a lack of resources to support our overall health and wellbeing approach."

So, defaulting to the charity structure has been the only way to help Patu embark on a research program to get the stories of their attendees' lives and more numbers/metrics around the impact that they are having, so they can begin to really quantify their impact, out in the public domain. This has been an ongoing process over the last three and a half years and is in partnership with a research team from the Eastern Institute of Technology. It is through this process that the idea of the Meke Meter has emerged.

> "A big thing I guess for government is, if we can prove our impact, we can show them how many dollars they'd save. You know, to help someone lose 50kg's in terms of the health system, how much money would save the health system? Another guy, one of our trainers, he's been in prison for four years. He's come out, he's never committed a crime since he's been with Patu for about five years now so, you know, that's $100k a year that's been saved in the justice system. It's having this social return on investment quantified, you know, so for every dollar that's invested into Patu, how much is it saving Government as well?... That's our profit at the end of the day... that's the cultural and social capital we produce... So how can we measure that social and cultural capital?... Why not have something Xero for health, so businesses, companies, measure success through profit, so you say to your shareholders at the end of the year, 'oh yeah, cool, we made a profit of X amount of dollars, awesome'. But actually, you also saved 2,000 lives, you know, you stopped X amount of people from committing suicide. Stuff like that, ...that's what the Meke Meter is about."

So, the Meke Foundation is developing the Meke Meter, which is an app that is a way for individuals to chart fitness and wellbeing progress, but it is also a tool to measure social and cultural capital.

Patu have plans to expand. They were due to launch a Pledge Me campaign in mid-October, whereby they are effectively selling shares in Patu Aotearoa, the LLC (around 5-6% in total), and the pitch is: join the Patu gym and become a shareholder at the same time, so all about making gains socially as well as financially, and keeping the local economy going.

> "But we also, you know, there could be investors that want to invest that aren't local and they've already got gym memberships and stuff. But their gym membership could be offered to a whānau in need. So, it's a hands-up approach, it's kind of like Eat My Lunch's buy-one-give-one."

They are planning to use the money raised via the crowd funding to create shipping container gyms.

> "We're actually looking at transforming shipping containers into gyms. So yeah, we're actually going to take Patu to the people so we want to set Patu up in local parks and potentially even schools... [a bit like] Bikes in Schools...we want to load these containers up with equipment and actually deliver Patu into communities of need and get local councils on board, local DHBs on board as well. And that's a big reason of our impact, to actually prove, hey, this is what we do. That's us....so we pay big overheads with our leases and stuff and our buildings and actually, you know, a lot of the stuff we have in a small confined space. But I've got a mate who's an engineer, we're gonna have, like, a hydraulic door so it opens up and yeah, we'll open it up to the public. They can come down and have a session and get Patu-ed up."

This current crowd fund campaign is a small one, but they have plans to go 24/7 in the future with their gyms so they will do another round eventually. The motivation is not about profit,

> "No, no, not profit for us, but I think for some of the investors it is and I guess we're trying to change that language. And knowing that, yeah, they might get a financial return out of it, and we need to prove that, you know, making sure we've got enough members and stuff coming through and all that due diligence, so we're mindful of that. But also, if we can get some kind of cost benefit and social return analysis with the likes of Deloitte who could actually, you know, transfer some of these figures into dollar signs, then I'm sure our investor wouldn't mind that as well... So, I'm pretty sure if we get the right model and the right fix, then yeah, we can continue to change more and more lives."

TRADE AID

Interviewee: Geoff Walker, Finance Manager of Trade Aid Importers Ltd.

Legal structure: 30 different trusts, one of which is an Incorporated Society, others are LLCs.

Challenges from legal structure: They have had to default to charitable status to confer legitimacy and achieve mission lock, so they can only access debt, and even then, only under stricter conditions that add burdens to innovation and growth. This has added to the significant compliance burden they face.

Trade Aid is a SE founded in 1973. They import and then retail and/or wholesale an extensive range of handicraft, food products, green coffee and chocolate products sourced via explicitly fair trade processes from 65 artisan trading partners from around the world. Based in Christchurch, they have a network of 29 retail stores throughout the country which sell their product, and are staffed by paid employees and volunteers. They also have over 1,000 wholesale customers. Trade Aid is accredited by the World Fair Trade Organization's Guarantee System, the first international fair trade system that verifies organisations' compliance with all principles of fair trade. Trade Aid remains one of the most trusted SE brands in New Zealand, and have effectively pioneered the process of teaching New Zealanders how to consume ethically.

The organisation combines a particular stance on development via a commitment to trade to "use business to build a better world" *(Trade Aid 2018a)*. Geoff said,

> **"Our relationships with our partners are based on trade, and that's how together we are making a difference for the makers. We're exhibiting the way we think all trading relationships should be, so we'll do things like we will pay 50-80% of our craft orders at the time of placing the order, because we know that although its common in New Zealand to have access to business finance, it's just not that easy in developing countries. We believe that this way we're balancing the power relationship we have with our trading partners because we're in a lucky position as New Zealanders and we can use that position to help balance the trading relationship."**

Through the whole process of ethical trade, Trade Aid is also having an impact in New Zealand. By educating the New Zealand public as well as business about what fair trade looks like and why it is important by actually demonstrating what fair trade is, the organisation's mandate is to drive change in consumption habits to make fair trade the norm.

> **"Every time people buy our products, they're starting to get the story of why fair trade is important, they're starting to believe in fair trade, and hear about it, coffee is an example of that... when you go into our stores you see the stories, you hear about how fair trade is a good economic model... You can pick up any of our products in most of our stores and you can scan them via our in-store kiosks, and you can access the stories and videos of the people behind those products. We also speak in the community, and have education resources for high schools to get the message out there."**

Trade Aid are pursuing their education mandate via their reporting as well, and have been on the vanguard of evolving impact reporting in this country for 15 years. The latest version, Trade Aid Social Accounting Statement (Trade Aid 2018b) is available online, and is a comprehensive document that details how the philosophy and praxis of doing fair trade works on an operational level and in the lives of their trading partners. This statement is annually updated and is evolving to nuance the messaging about the importance of fair trade.

The Operation of the Organisation + The Mission + The Chosen Legal Structure

The organisation was established by Vi and Richard Cottrell who spent a year in India in 1969 supporting a group of Tibetan refugees, via legal advice (Richard is a lawyer) and business support to help them find markets for their traditional handcrafted carpets. The Cottrell's experience was life changing, and when they returned to New Zealand, they found like-minded people to join with who were equally determined to continue supporting producers like those they had been working with. They organised an exhibition of the Tibetan refugees' carpets in Christchurch which sold out almost immediately. This success encouraged them to set up an importing business, but after supplying a department store in Christchurch with carpets, they discovered that the lack of uniformity and vagaries of supply were inconsistent with standard retail models in New Zealand at the time, so they changed their strategy. They found that church groups around the country connected to the Council of Organisations for Relief Service Overseas network were interested in stocking the products that Trade Aid New Zealand Inc **(TANZ)**, the incorporated society that the Cottrells formed in 1973, had begun to import. In the beginning, all such stores traded under their own names and were for the most part, separate entities to Trade Aid, however, this has changed over time – in a large part, because of the lack of legal structures that exist to accommodate Trade Aid's mission and operational processes.

In 1983, Trade Aid formed a trading company called Trade Aid Importers Limited. This was originally (and still is) fully owned by the parent entity, TANZ. This LLC is the importer and wholesaler business. By the mid-1990s, the organisation was an eclectic array of entities, some of the shops were branded differently, or had different names, and the collection of stakeholders would only get together annually at a conference to discuss, learn and support each other. The structure was decentralised, so the shops would always pay their wage bills, rent etc first, and Trade Aid Importers last. This meant they were carrying a lot of the debt burden which was problematic for an importing business that needed cash flow. So in the 1990s, the organisation agreed to formalise a centralised system whereby from an operating point of view, Trade Aid Importers acts like the shops' 'bank' so all of their cash comes through the central entity on a daily basis. They settle all the shops' bills for them, pay their staff, and then on-charge these to the shops because they sell them the majority of their trading stock. This gives Trade Aid Importers cashflow, and the shops' paid and volunteer staff more time for the mission of the organisation in the form of selling fair trade goods and educating about the importance of fair trade.

Currently, there are 25 shop trusts which are running 27 stores in the Trade Aid family of entities. The parent entity is TANZ, the incorporated society, and this entity owns Trade Aid Importers Ltd, which in turn owns another LLC called Sweet Justice Ltd which is the manufacturer of the Trade Aid range of fair trade organic chocolate.

The relationship between the stores and the parent entities is not one of ownership, rather the parent entities set the terms of trade so they are a family of entities connected by the mission of the organisation. The governance structure of the whole organisation is equally complex, but also unified by mission. Every individual connected to Trade Aid, including the paid and volunteer workforce are members of the incorporated society and each trust – shop trusts, TANZ, Trade Aid Importers Ltd, and Sweet Justice – has a board, so some of the trustees of TANZ are made up of shop trust members. But neither TANZ nor Trade Aid Importers have representation on the boards of the shop trusts. Geoff said,

> **"It is a messy model… it's an imperfect model… at last count we had about 127 trustees connected to all of these trusts around the country. TANZ has ten trustees and we have a commercial Board at Trade Aid Importers with seven directors."**

Up until 1999, TANZ and Trade Aid Importers Ltd were both tax-paying registered entities, however after an IRD audit 1999, they opted to default to charitable status for the whole group so they could continue to trade as a SE. So, the structure of the Trade Aid organisation is complex, almost unwieldy at times, and with 30 trusts, the compliance and reporting obligations of the company are unrelenting. Geoff noted that he and two others spend at least half their time on compliance from various versions of financial compliance, to Health and Safety, Food Safety, Organic Certification and Fair Trade compliance, as well as Charities Services compliance. New Charities Services reporting came in in 2016 where they were required to group consolidate their financial statements – however, Geoff still files 30 individual charitable trust returns a year, it also means that,

> **"The trustees of TANZ are actually signing financial statements that include all of the sum of the parts, and that becomes a really big ask of them. We accept that this is from our own making, but it's an interesting by-product of this new reporting system is that these people in TANZ who are volunteers, must sit there and sign off the financial statements for a complex large entity."**

So charitable status has its pros and cons. The tax exemption that comes with charitable status is significant – although this depends on how you look at it. Geoff explained,

> **"Obviously income tax exemption is an advantage… Arguably though we spend money on education which most trading businesses wouldn't, so while we don't pay tax, we actually do a charitable purpose instead… but Charities Services compliance is horrendous because we are a group. We were initially reporting to the highest accounting standard you possibly could get, IPSAS tier one, because of the debt instruments we utilised. We've now dropped down to IPSAS tier two, which is great, but I've sometimes wondered whether our audit fees are roughly equal to our tax bill, so we could just pay tax, and not have the reporting cost of audits."**

While the Trade Aid group are really a not-for-profit, and their charitable status is more a pragmatic means to an end to enshrine mission and asset locks, whereby,

> **"[Being a charity] prevents a takeover and somebody running the business differently, … I guess it forces protectionism into our constitution which is a really good thing."**

But their charitable status is also a forced concession made necessary because of the particular way for-profit business exists in relation to charity in this country. So, for Trade Aid, the shared understanding of what a LLC is as opposed to a charity in the contemporary business environment in New Zealand would work against Trade Aid's mission if they were just LLCs,

> **"Having a company owned by an incorporated society provides the protection. This also means under the Companies Act we are required to exist for the benefit of our shareholder, our shareholder says we're a charity, we're not wanting an economic return, we're not wanting you to pay us dividends, so that's fine."**

Because Trade Aid have been in the market in New Zealand for over 40 years and they have a stellar reputation, having a charitable status – and what this can broadcast in terms of trustworthiness – sits alongside what Trade Aid have achieved in the New Zealand environment. Geoff explained, "We do get looked upon favourably by commercial businesses for products, so I certainly find we can use providers such as Tech Soup to access heavily discounted IT software. Our bank gives us favourable rates, and I think our suppliers enjoy working with us because of 'Trade Aid' the brand and what we do, so there is a feel-good factor for staff and for businesses that we deal with."

Trade Aid have been able to scale because of the contributions from all the stakeholders in their community, inside and outside the organisation, from the public who recognised that fair trade coffee is a good idea and worth paying a bit more for, to buy-in from government which has come in the form of support from MFAT, and the five hundred volunteers who donate their time to work in the shops. But they have to lead with being a charity rather than an extremely well-run business entity, because this is the only way they can be made sense of by the consuming public, for example, Geoff contends that "if we were just a private company, I don't think we would get those volunteers working with us."

The disadvantages of being driven by mission, and being a trading enterprise, and having charitable status really comes into play when they need investment to grow. While the organisation can access donations, this is really contrary to what they are about as a business, and it is not what will sustain a company the size of Trade Aid,

"We're an entity that doesn't actively search out donations. We get them from time to time, but I think in the last financial year, to give you some context, we had a $20-million group turnover, and $1,000 of donations in there. In prior years it's been a little bit higher but it's not a big thing for us."

So, they are first and foremost a commercial entity, and they trade on commercial terms, but because they have charitable status, they can,

"Only access debt, so growth is either funded through retained earnings which charities are not meant to have because they're meant to spend everything, or grant donations or debt funding… Definitely the inability to take on capital funding is a disadvantage… there's only so far you can take funding a business through debt, especially if you've got growth ambitions."

Because of those growth ambitions – that go hand in hand with their mission mandate – they have needed to be very creative around how to acquire investment in the form of debt. Historically there were advantages around debt raising for charities, but these have been significantly curtailed. In 1993, Trade Aid decided to invest in their Christchurch building that acts as the distribution and packaging base for all the imported handicraft and food lines. They decided the easiest ways to do that was to form a debt vehicle, which was called the Trade Aid Ethical Investment Trust. In 1993, when interest rates were running at between 15-20%, this trust was a means to allow their supporter base to invest in the organisation, but with returns that were well below market rates. Basically, this entity was an early version of an impact investing fund,

"The Trade Aid Ethical Investment Trust took deposits from the public. We had a real range, I think the smallest investment was $300, the biggest was $142,000, and at its peak I think it probably had about $600,000 of deposits… It lent all that money to us, so it was basically just a debt instrument type entity… We've since wound that up [in 2016] and it's simply because of compliance and risk, the compliance work required to keep that going was huge and it was getting to be really, really difficult."

They now take direct deposits into the organisation under a specific set of conditions via a new vehicle for debt acquisition known as a Small Offer Exemption. Through this process they are explicitly prevented from actively soliciting in the market; any would-be investor has to have an existing relationship with them; the amount they can receive has to remain under $2 million dollars in total; and they can have no more than 20 investors. Investors do get a return, nominally the equivalent to that accrued through a term deposit, and while there is no tie-in with governance structures, there are no barriers as such for this. But what Trade Aid provide by their very existence and the way that they are wholly committed to their mission is values alignment for these sorts of investors. They are effectively a 'clean place' to invest in. However, the obligation to not solicit for investment means that while there are more and more angel investors around now, Trade Aid cannot go looking for them.

When Trade Aid set up Sweet Justice Ltd, their chocolate manufacturing company that comprises a factory in Christchurch, and is wholly owned by Trade Aid Importers Ltd, they opted to have this entity carry charitable status as well because of the need for mission lock and to be consistent across the group. Geoff said,

"There's an interesting discussion there whether that was the right move because one of the limitations is that we can't take investments into that entity… there is an argument out there that to fund the growth of our organisation it could've been ideal to have external capital investment into there, rather than Trade Aid Importers Ltd be the source… that's something we have self-limited by setting it up as a charitable company."

But in the current legal environment, which reinforces the conceptual understanding on the part of the market about what charity as a prescribed way to 'do good' is allowed to be, versus what doing business is required to be, Trade Aid actually have no choice but to default to charitable status to trade as a SE.

WHALE WATCH

Interviewee: Kauahi Ngapora, GM of Whale Watch Kaikōura Ltd; Director, Board of Tourism Industry Aotearoa and Tourism New Zealand; Panel Member, Tourism Infrastructure Fund

Legal structure: Charitable Trust and LLC with Charitable status

Challenges from legal structure: They work around the legal system and find ways to make it work for them – because their community's very survival is at stake. The legal system is an imposed structure on Te Ao Māori, rather than complimentary to it.

Whale Watch is a sustainably-focused Māori enterprise and tourism business that runs marine tours on the waters off the coast of Kaikōura to show tourists the abundant marine life in the area and specifically, the multiple species of whales that live/migrate through there. Along with this experience, Whale Watch talks the world view and values of Ngāti Kurī and Ngāi Tahu as these pertain to the marine environment, but also to the lands of Ngāti Kurī and their history. The combination of spectacular marine environment, the backdrop of the geographical splendour of the Southern Alps, along with local Māori guides, ships crew and land-based personnel, creates a powerful and specifically New Zealand tourist experience that is world renowned. Because of its success, Whale Watch is "viewed nationally as a tuākana in terms of a Māori tourism business."

Whale Watch is a CE because of its mandate to look after whānau in and around Kaikōura, and also the wider Kaikōura community and environment. The company has up to 75 staff (which reduces to around 50 in the off season) who run the operation in Kaikōura and another 10 who are running a Whale Watch on the Gold Coast in Australia. Whale Watch is a multi-million-dollar business and their growth has been impressive. It began in the late 1980s after the privatisation of the railways happened,

> **"[When we started Whale Watch] it was about employment and creating an economic base for local Māori so they could be empowered. But then it morphed into empowering the whole community, it created self-determination and a bit of control of our community's destiny... the railways were a massive employer for local Māori. They were driving and crewing the trains, working on the tracks. Privatisation resulted in huge unemployment for over 90% of the Māori population... Back then, Māori didn't really own any businesses, and Kaikōura was what you would call a red neck town, so at that time, Māori being employed by some of these long established Pākehā families just didn't happen... so with unemployment comes all the nasty things around drugs and crime and a failing education system. A lot of families had to leave Kaikōura, because they couldn't find work here... So, some local whānau said we need to somehow take control of our destiny and get our people off social welfare, because everyone was just living on the dole, week to week."**

A couple of the founders of Whale Watch attended a workshop in Dunedin, and they heard about indigenous whale watching ventures in North America,

> **"So that's where the idea sort of started. They had some challenges in the early years, because obviously it was a Māori business... so no traditional financial institute was actually prepared to back the idea... And tourism in Kaikōura at the time was a dirty word: so first it was 'no one does tours, it's not going to work,' then it was 'who's going to drive to Kaikōura in the middle of nowhere to watch whales?' So that was the advice and the feedback that our founders were getting from the so-called experts of the time."**

Prior to the beginning of Whale Watch, the founders of the company along with other whānau negotiated the return of the land to rebuild the local Takahanga Marae. This lead to the founding of Whale Watch, which was owned by this marae. The original mortgage financing came from the Mana Foundation who,

> **"Understood marae ownership, whereas a traditional bank didn't. So, they were no different to a bank, but they understood how Māori worked. They were prepared to fund the founders to start the business. But that required them, like any other bank, to mortgage up their houses... those four families mortgaged their houses. So, they put everything they had on the line for a dream and a vision for something better for their people. So that's true entrepreneurial spirit, putting everything on the line with no guarantee of success."**

The business was beset by racial prejudice from non-Māori in the town in the beginning, but as the company grew, the whole community benefited.

> **"The company actually ended up employing members of those Pākeha families... which would probably be the first time in Kaikōura's history where Māori were employing non-Māori... Then these large non-Māori families started to be very supportive of the business, and this flowed through to other sections of the community, now Whale Watch are the largest employer in Kaikōura."**

The Operation of the Organisation + The Mission + The Chosen Legal Structure

In 1995, it was decided to move the ownership of what was then Kaikōura Tours out of the marae, so the company became Whale Watch Kaikōura Ltd. This entity was incorporated and also became a registered charity. This LLC then became owned by two charitable trusts: the Tukere Charitable Trust that represents the local founding families, and has the majority shareholding at 56.5%, and Ngāi Tahu, via its holdings business, Ngāi Tahu Capital, owns 43.5%. Shareholders have representatives at board level and the company pays annual distributions out to support the mandates of both trusts.

Running Whale Watch as a LLC minimises risk to the owner/operators, but the structure of the separate entities and the ownership model is important too. Kauahi said,

> **"The good thing about the trust arrangement, and this is going back to feedback I got from the founders, was that the charitable trust status removes, how do I say it, the individual drive to make your wallet fat... We're here for bigger reasons."**

However, the way Māori values are integral to the community enterprise that is Whale Watch is not because the entity is a charitable trust.

> **"I think, even if we were not a charitable trust, we would still merge our values in. I think it's more about how we approach supporting the wider community, as a business to go out there and support a whole raft of things as part of why we exist although we want to keep running as a viable and well run, exceptional business, there's other things that drive us than just the bottom-line result."**

Kauahi talked through the way the Māori values have been embedded in the DNA of the organisation and how these sync with Pākehā business speak. He articulated this through a set of concepts that bridged Māoridom and Pākehā conceptualisations. These "5Cs" and their corresponding Māori concepts that Kauahi called "the tangas" are the organisation's guiding values as a business and as a Māori enterprise[6]. So, these duel concepts speak to, and merge Te Ao Māori ways of seeing the world with business acumen.

The issue in the early days for Whale Watch was about getting funding and acquiring the business skills to build a sustainable business: "Māori stuff was normal; the 'not normal' stuff was actually trying to be a business person." So legal structure was something that they just worked with, they basically had no option because they were fighting for the very survival of their whānau and their community. The sense that the legal system is an imposed structure that they as a Māori enterprise have worked around is a reality. Kauahi said,

> **"You know, I can't recall any discussions about legal structure by the directors or my chair where they actually pinpointed the legal structure as a challenge to Whale Watch moving forward. They just always found a way... they had this unflinching commitment to make this thing work. So, they just found ways to make things happen. There may have been some along the way, but no one's actually raised or highlighted them to me."**

Their charitable structure has been the mechanism that they have worked with – in the absence of any other mechanism – to create mission lock, and this allowed them to move the ownership of the organisation out of the marae, and enshrined the "drive to not just purely make money."

Whale Watch, as the phenomenally successful business that it is, has the mode of operating effectively across two worlds down to a fine art, and their business acumen combined with Te Ao Māori foundation is strong so they can "do what we want to do rather than what we have to do." So for Whale Watch, while their legal structure is relatively complex, they have been pragmatic and have worked around and with the structures that were on offer – because this allows them to merge their "two worlds." Kauahi said,

> **"Rather than us sitting there complaining about how the environment is, we've just moved on. We try and work within what we have. I think it's really important, because you can have all the values in the world, but if you don't have the means to act on it, it means nothing... if you're running a business, it has to be successful. It has to be well run. So you need to create your Māori foundation, make sure it's strong, so that you can go off and do all the things that you like to do, rather than just having to live from day to day, week to week, this is what the law says, I have to do this and this... But as a Māori business actually, we are in a position where we can go beyond that and do more, because we have a strong foundation, you can't do business and Māori values separately... in the current legal structure that we operate in, we seem to operate fine. We're managing, we seem to be able to blend the two worlds together quite nicely."**

[6] **Tino Rangatiratanga**	"company is really about ensuring that you have a really strong base and foundation, so that you're able to go out and do the things you want, rather than what you have to do... it's about empowerment, being able to have control of your own and our community's destiny."	Company
Manaakitanga	"we're a very service, customer focused business. We're taking out people to watch whales, so that's all about hosting, looking after them as you would do with your own family. That's very important for a business of our nature."	Customer
Iwi Whānui	"we view the community as being as much a part of Whale Watch as Whale Watch is a part of the community. And whatever we're trying to do, we want to bring the community along for the ride. That's not just Māori, that's anyone that makes up our community."	Community
Kaitiakitanga	"we talk about conversation, which is about guardianship, and that's doing what we can today to minimise any adverse impacts we may have on the environment and people so future generations can enjoy it too."	Conservation
Whakapapa	"And then we have culture... which is acknowledging our history, who we are as Māori. It's always good to reflect on what's happened before, as you create your pathway for the future."	Culture

From his perspective, the legal issues were more about Māori having control over the representation of Māori in the Tourism market,

> "So, I think entities that represent New Zealand, so let's say it's Tourism New Zealand, or industry associations, or something like that, especially in the realm of tourism, you know, Māori culture is quite important. Because it really is, as a New Zealander, not just a Māori, Māori culture is our unique point of difference in this world. That's what makes Kiwis Kiwis, it's the culture. And we just need to embrace that… from a tourism perspective, everyone has a nice lake, everyone's got a glacier, everyone's got mountains that are much bigger than New Zealand's. And there's whales in other parts of the world. But when you add the story, the cultural story, that lake is where our tīpuna did this, or that mountain is our ancestor. These whales, you know, they're our kaitiaki. It just adds a whole new layer of enrichment to a whole bunch of things… It's really about what makes us unique as Kiwis, and that's our culture, because this culture is nowhere else in the world.

APPENDIX C: **METHODOLOGY**

In the research process, we took an anthropologically informed ethnographic approach *(Bibler Coutin and Fortin 2015; cf. Bear 2018; Boeger 2018; Boeger and Villers 2018; Cetindamar 2018; Holmes and Marcus 2006; Morgan 2018; Riles 2011)* to investigate the relationship that SE have to their legal structure as they trade with mission leading. Conceptually, this was simultaneously about the analysis of the structures of economy that SE sit and work within, as well as the dominant mode of economy that characterises New Zealand society. Methodologically, this allowed us to draw an array of participants into the interview process to look at the way current legal structure options are working for SE in New Zealand at the moment, as well as what is needed in terms legal structure going forward.

The research process had two components to it:

- 20 x Ethnographic interviews of around 1.5 hours each with SE and stakeholders in the SE ecosystem.
- An industry-wide digital survey that was sent out by Ākina to its database to provide quantitative data from the broader sector.

Ethnographic Interviews

From a methodological point of view, this research has been about how SE encounter and work with, work around, settle for, or are effectively curtailed by the parameters of the legal structure(s) they have opted for. For this reason, we sought to include the multiplicity of voices from the sector from participants who had set up and were running SE, through to those who support the SE sector in some capacity, to representatives of Government agencies tasked with regulating the charity sector and taxation.

We spoke with 27 individuals across the 20 interviews, this is the range of participants:

- 16 individuals from 20 organisations that ran a SE or a parent organisation that had more than one SE in their group. These organisations were a variety of size, stage, location and impact area.
- 3 x individuals from three Charities who have an entity that is currently trading as a SE or have plans to evolve their charitable entity into a SE.
- 1 x accountant from an accountancy firms who have predominantly SEs, not-for-profits, and charities as their clients.
- 1 x official from Charities Services.
- 2 x officials from the IRD who deal with SE from the tax perspective.
- 2 x individuals from a commercial trading bank
- 1 x individual from a philanthropic funding agency
- 1 x individual from an impact investing organisation.

Participants were provided with a Participant Information Sheet ahead of the interview, and signed a Consent Form after the interview. The interviews were recorded and a copy of the transcript was sent to the participants. As the analysis section of this report was compiled, we went back to participants to get quote clearance on specific quotes to make sure they were comfortable with the way we were representing them. We compiled case studies of ten of the organisations and we entered into a collaborative process with them to again make sure that they were comfortable with how we were representing them. We invited them to add more insights, delete others, and edit the case study with us so we could best explain their experience of operating as a SE with the array of legal structures available in New Zealand.

In each of the 20 interviews, a lawyer was included as both participant and interviewer. The lawyers were (in order of appearance):

- **Steven Moe**
  Senior Associate, Parry Field
- **Sean Durkin**
  Solicitor, Russell McVeagh
- **Phillipa Wilkie**
  Special Counsel, Chapman Tripp
- **Greer Fredricson**
  Senior Associate, Chapman Tripp
- **Gareth Worthington**
  Special Counsel, Russell McVeagh
- **Amber Hoskings**
  Solicitor, Russell McVeagh
- **Briar Peat**
  Solicitor, Te Waka Ture, Chapman Tripp
- **David Patterson**
  Partner, Chapman Tripp

Dr Jane Horan, an economic anthropologist, was present at all the interviews, Jackson Rowland, Director of Ākina Invest, was at most of the interviews, and Louise Aitken, CE of Ākina Foundation was part of the interview with Charities Services. We had a close-to-end-of-project think-tank facilitated by Alanna Irving to determine the possible solutions of the issues that we were seeing emerging through the research process.

The range of questions covered in the interviews included:

- How organisations are currently working with the parameters of the LLC as a SE, and/or what other legal structures the organisation has opted for and why.
  - And how legal and accounting experts and organisations are able to work with SE to achieve this.
- How organisations find ways to work around or settle for aspects of the legal structure they have opted for, and/or how

they are being held back or curtailed by their legal structure.

  - And how legal, accounting, funding, and Government individuals see this.

- What could the realities and possibilities be for SE in terms of their financial bottom line and impact if an alternative, purpose-built legal structure was made available for SE?
  - And how do legal, accounting, funding, and Government experts and organisations see this?
- From SE organisations' perspectives, and the viewpoint of other participants in the sector, what could the broader environment of New Zealand business, as well as New Zealand society (within which business sits) look like and be if changes were made to the available legal structures (compared with no changes being made)? What could those changes be from the organisation's perspective?
  - And how do legal, accounting, funding and government experts and organisations see this?

The strength of the research process that we undertook was the combination of the anthropological and legal perspectives in both the methodological approach and the conceptual problematising that the combined capacities of the research team and participants brought to the project.

Digital Survey

The survey was launched in October 2018 after we had completed half of the ethnographiclly informed interviews. The survey was made available to the public and 24 anonymous individuals responded.

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