Co-designing social enterprise legal models in Australia: a user-centered approach

Abstract

Whether social enterprises need a special legal structure has been a long-running debate in the Australian third sector. When establishing a social enterprise, founders are presented with a critical challenge: adopt a not-for-profit (NFP) legal form and access philanthropic grants or take the for-profit path and access equity investments. Decisions made during the early stages of a social venture’s life-cycle can have lasting implications: once an entity adopts a legal structure it is difficult to reverse the process.

In response to similar challenges, the United Kingdom has established the Community Interest Company (CIC): a business with primarily social objectives, but whose surplus is principally reinvested in mission. The CIC is effectively a hybrid legal structure with an asset-lock similar to NFPs, which prevents the company from distributing assets when wound up, while allowing it to issue shares and deliver returns to investors subject to a dividend cap. In the United States, most states have adopted the Benefit Corporation: a modified for-profit structure that enables directors to consider interests of stakeholders other than shareholders.

Although the issue of a legal structure has been debated there is limited existing empirical research on the needs of end-users: namely social enterprises. Efforts to address the problem have been top-down and focused on supplanting the current framework with models adopted in other jurisdictions without substantive consultation.

This research project attempted to bridge this gap by using a unique co-design technique – Lego Serious Play – and working with end-users in a participatory process to develop contextually
appropriate legal structures for Australian social enterprises.

It reports on the findings of two co-design workshops. In the first workshop social enterprise founders, executives and managers (n = 25) worked through the challenges presented by the wider legal, regulatory and institutional settings including the challenges in establishing a stand-alone social enterprise or establishing one within an existing structure.

Participants were drawn from diverse industries and legal forms and collaboratively worked through the systemic challenges faced by social enterprises as well as the role of other actors and institutions in the ecosystem (including intermediaries, funders and government). The workshops were audio recorded and transcribed, artefacts photographed and labelled, and specialist graphic designers developed diagrams of group outcomes for the second workshop. In the second workshop participants developed legal structures that aimed to meet their complex needs. The project makes two unique contributions that are salient to both practice-based and scholarly audiences. The first contribution is to the literature and scholarly debates on social enterprise legal structures. We offer new empirical insights into end-user perspectives on the current system and the reform preferences of end-users. This presents alternative, participatory and bottom-up views of end-user needs. The second contribution is methodological. Co-design has been used extensively in policy design – and in particular service design – by governments and the third sector. However, it has not been applied widely to technical questions of law and regulation. The project therefore offers a unique application of these methods and insights into use of co-design in a complex field of public policy.

**Keyword**

Social enterprise; legal structures; co-design; third sector