

Social Entrepreneurs: An Evaluation of the Pty Ltd Company from a corporations law and taxation law perspective

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ABSTRACT

Social entrepreneurs are a new breed of business owners. They have social impact or social justice issues as their focus but they face a range of challenges. While the social impact entrepreneurs' care about the bigger picture, some of their investor/shareholders may want dividends/profits/capital gain/return on investment. Further, since a lack of business capital is often an issue, the entrepreneurs have a need to rely on a 'lean' business structure to ensure that the creation of the legal structure doesn't stifle their ability to increase their scale due to limited funds. Other issues that arise is the requirement that the social impact aim is 'locked in' to the entity so that subsequent investors don't turn a social impact organisation into a profit making entity, how income (including any taxable profits) can be reinvested into the social purpose, control of decision making, raising capital and maximising social impact.

With these aims in mind, how do such business developers structure the business that they wish to grow? This paper considers the needs of social entrepreneurs in the context of their use of a proprietary limited company structure. This structure has been chosen as it is the most common form of business entity used in Australia. Further, it is the simplest to understand and the least expensive to establish and operate. The paper will discuss corporation law advantages, disadvantages and requirements such as limited liability of companies, responsibilities of board members, raising capital, reporting and so on in the context of the requirements of social entrepreneurs. It will undertake the same discussion in respect of the income tax obligations and requirements for a corporate entity. It will conclude with an evaluation of these two complex areas of law in respect of the needs of social entrepreneurs.

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Bio:

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Fiona is an Associate Professor at the University of New South Wales Business School. She is an internationally recognised expert on taxation issues relating to charities and not-for-profits. She has published extensively in this area and on income tax issues relating to indigenous Australians who receive mining payments, the goods and services tax and taxation issues relating to real estate. Her doctoral research was awarded the International Fiscal Association research prize and the CCH/ATTA Doctoral Series Award. Her

other areas of research include international human rights and legal education and she has published many scholarly articles in these areas. She has been the recipient of several University teaching awards including the QUT Vice-Chancellors Award for University Teaching.

Marina Nehme:

Marina is a Senior Lecturer in the Faculty of Law at the University of New South Wales. She is currently the director of Learning and Teaching. Marina's research interests are in securities markets regulation, corporate law, financial services law, indigenous corporations and legal education. She has completed a PhD on the use of enforceable undertakings by the Australian Securities and Investments Commission. Her thesis is entitled: An Analysis of the Australian system of enforceable undertakings to determine an improved theory of negotiated settlements. Marina has received in 2011 a Citation for Outstanding Contributions to Student Learning from the Australian Learning and Teaching Council.