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Submission to the CAMAC Discussion Paper on 'Crowd Sourced Equity Funding' September 2013

Submission Authors

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1. Introduction

The Australian Research Council-funded research project 'Between Social Activism and Social Enterprise: Socio-legal Support Structures for Grass-roots Responses to Climate Change' was devised to engage with a range of enterprises working inventively between the economic and social domains. Professor Bronwen Morgan and Dr. Declan Kuch together with PhD student Jarra Hicks and UK researcher Caroline Bird have, since April this year, collected data on how organisations are navigating various regulatory, business and social challenges in establishing transport, food, energy, co-working waste management and re-use enterprises. We have been tracking career paths in these spaces, mapping ways in which the enterprises encounter formal law (particularly in relation to legal entity status, risk management and gradual formalisation of diverse internal practices), and exploring both informal legal consciousness and specific legal disputes via open-ended unstructured interviews with enterprise founders and key personnel. Further information about the project can be found here.

2. Our key perspective and motivation for making a submission

Despite not having an explicit focus on finance, our research has found that the importance of sources of finance for social enterprises is an unavoidable facet of their development. This is particularly so for inventive 'hybrid' entities which are effectively small scale experiments with new ways of organising economic activity. There is a substantial and growing interest at a fairly grass-roots level in the wider community in initiatives that are sometimes grouped under the banner of a ‘sharing economy’ or ‘collaborative consumption’. We would argue that changes to fund-raising regulations could significantly benefit these kinds of initiatives, and could consequently assist in harnessing a fresh source of social innovation that is simultaneously an opportunity for business development and for reducing resource use intensity in the larger economy. In this submission, we will illustrate our points by reference to a particularly fruitful ‘sector’ for such benefits: community-owned renewable energy.

We do note that not all of the research during this initial period has been detached observation but has rather entangled us with the initiatives we have been studying in often exciting ways. However we have no direct affiliation with any of the specifically mentioned initiatives or examples discussed below. We have participated in a range of community events to deepen our understanding of the challenges faced in each sector.

3. Key submissions

3.1. We suggest that the discussion paper underplays the positive enabling role of legislative change in this area**. We would answer ‘Yes’ to the overarching Question 1 and support in principle legislative reform to accommodate CSEF.** The message of the discussion paper often gravitates towards this quotation “… it could be argued, the risks to investors, including fraud, the extremely high likelihood of loss of capital, lack of liquidity and inability to assign value easily to equity issued through CSEF, make CSEF, in general, an unsuitable form of investment to offer publicly” (p.54). We suggest this underestimates the net effect of dense social relations in sharing economy settings, and in community-owned renewable energy in particular.

3.2. These social relations potentially substitute for a legal response to many (though not all) of the risks raised by the discussion. We acknowledge that some risks raised by the discussion paper remain, particularly in relation to investor loss, but propose that a **stand-alone regime (option 5),** particularly when linked to an accreditation approach to sector-specific platforms/intermediaries **(our key response to Question 6),** could largely address such risks.

3.3. We suggest that **an experimental phase of a pilot period** could be trialled with a stand-alone model **(the latter option suggested by Question 9),** followed by review and further public comment. The pilot could be in a particular field such as community energy. Community energy projects provide an excellent opportunity to experiment with an enabling regulatory framework for existing groups. Their social embeddedness makes the risks of failure and fraud low, their rates of return have been above-average and investors’ appetite high. We note that there are existing potential platforms here (eg CleanTech discussed below), and there are distinct advantages to enabling these platforms to test ways in which the social relations of a specific community of interest and place can combat the risks of fraud. Community energy is a field with some coherence and some considerable current momentum at present which would qualify it well for such a pilot.

In the rest of this submission we lay out how, from the perspective of our research, we envisage that sectors such as community renewable energy could benefit from changes to fund-raising regulations. Where appropriate we refer back to the options and questions raised in the CSEF discussion paper.

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4. Opportunities for CSEF in community energy

Our initial findings of relevance to this inquiry include:

- Australia has a burgeoning community energy sector.
- The motivations for investor interest and involvement with this sector so far are diverse, ranging from economic concerns about rising electricity prices due to sharply increasing network charges and carbon pricing, to broader support for climate change mitigation and concerns about energy security.
- This sector comprises a range of organisational forms and fund-raising models including the donation/gifts model. Many participants in the community groups also have expertise with commercial energy project development, for example as solar pv installers. Such expertise is a defining feature of most groups.
- Wealthy investors who would meet the criteria for 'sophisticated investors' have played an important role in initial projects such as Hepburn Wind. However, many existing groups lack access to such investors yet could be considered a low risk of fraud and failure due to their embeddedness in strong local rural/regional social ties
- Wealth does not correlate with knowledge of energy systems and the risk of investment in them. Thus, restricting investors in a pilot for community energy investment to sophisticated investors would be entirely unsuitable.
- Rather than making wide-ranging exemptions to the Corporations Act, an enabling framework to foster small-scale, experimental projects explicitly aimed at existing organisations would be preferable

5. Renewable Energy Financing

5.1 Community Renewable Energy (often abbreviated to CoRE) is often defined as energy production larger than household (5kw) and smaller than commercial (around 100kw).

5.2 There are over 300 people in over 40 groups, mostly formed within the last 2 years, who are actively seeking to develop CoRE projects. These projects are at various stages of planning. Many require financing to cover site feasibility assessments, planning processing, ongoing maintenance of capital, and administration costs.

5.3 Photovoltaic solar installations of approximately 100kw are now price competitive with retail electricity rates in most states. Several actors, most notably Embark, are developing a model of 'solar-behind-the-meter' whereby local investors can finance installations on nearby buildings with local demand

5.4 Barriers to the development of community projects have been identified as access to expertise, and financing initial stages such as site feasibility. A number of intermediary support organisations are equipped to handle some of these barriers

Issuers (Project Developers)

The largest and most well-known is Hepburn Wind, a community co-operative responsible for a 4.1 MW installation of two turbines approximately 100 km north-west of Melbourne. Hepburn Wind is a co-operative owned by its members, numbering more than 1900 (as of 1 November 2011). Just over half of Hepburn Wind's members identify as local to the project. Local ownership is a priority for the board.

6. Investors and Intermediaries

6.1 Initial Australian projects such as Hepburn Wind have generally been well received by investors in the local area and their social contacts further afield seeking modest returns. Initial findings suggest these investors tend to be patient, investing for reasons beyond financial return alone. They are also engaged investors, a community of interest as well as, or as much as, a geographical community, and this provides a measure of transparency secured by social relations.

6.2 Comparatively onerous administrative requirements around investment disclosure have stifled the emergence of innovative project financing models that have been popular in the United States and the United Kingdom. Intermediary support organizations in Australia include the Community Power Agency, established "to support community groups in navigating the complex process of setting up a community owned renewable energy (CRE) project"; and Embark, established as a charity to capitalise on the lessons from developing the Hepburn Wind project.

6.3 A dedicated crowd-funding platform has emerged for Clean Energy projects in Australia called CleantechFundr: http://www.cleantechfundr.com/. Although currently offering only donation-based investment according to current rules it is clearly expressing interest in sourcing equity investment). New peer-to-peer lending businesses such as SocietyOne have developed platforms to collate and manage some project risks while still maintaining the social embeddedness of community lending. SocietyOne connects local businesses with customers through web and mobile platforms allowing fast and easy 'crowd-funding' of capital. There is strong potential to link these emerging platforms to the emerging community energy sector in a constructive experimental pilot initiative.

7. Community Share Offer

7.1 Question 10 of the Discussion Paper invites submissions to point to matters not mentioned elsewhere in the paper as relevant. We note the absence of any reference to non-company legal structures in the discussion paper. We realise that this is inevitable up to a point given the constitutional division of powers in Australia, but we note the relevance and importance of the 'community share offer' model of the UK that would seem to balance well the risk of fraud or loss with the positive opportunities of legislative reform.

7.2 The key features of this as described by Baker Brown Associates,[1] a key professional support services firm in the UK in the area of community shares, include:

5. Limitations on the amount of interest that can be paid on share capital
6. An upper limit for investors (in the region of $20,000)
7. Investors can withdraw share capital at or below the price they paid for it, subject to terms and conditions (eliminating the need for a secondary market)
8. Withdrawable share capital exempt from many specific regulatory requirements applied to the public offer of securities, making a public offer cheaper and simpler
9. One-member one-vote : this last feature arises because community shares in the UK are almost always offered by an entity using the Industrial and Provident Society legal form, which is roughly analogous to a cooperative

7.3 While the cooperative legal form in Australia is governed by state law and thus poses challenges to this particular enquiry it is submitted that the features of a community share offer as practised in the UK could still usefully inform the thinking of a standalone regulatory scheme, especially one shaped initially as an experimental pilot.

[1] Taken from *Community Investment in Community Supported Agriculture*, a pamphlet summarising a workshop led by Jim Brown of Baker Brown Associates under the UK Community Shares Programme www.communityshares.org.uk.