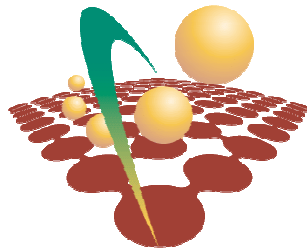


Structures for Wildlife Enterprises

**Report to Rural Industries R & D Corporation
on UNE-92A**



INSTITUTE FOR **Rural Futures**



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April 2004

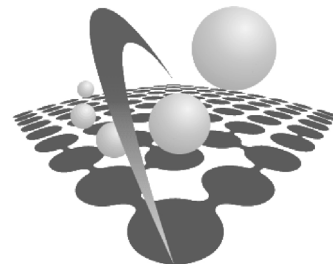
David Brunckhorst
Institute for Rural Futures, UNE

Phillip Coop Richard Stayner
Institute for Rural Futures, UNE

John Malcolm
Malcolm & Assoc.

**Institute for Rural Futures
University of New England
Armidale, NSW 2351**

Tel: 02 6773 2220
Fax: 02 6773 3245
Email: irf@metz.une.edu.au
Web: <http://www.ruralfutures.une.edu.au>



*... learn from the past, try to understand the present, and feel inspired to help plan a better future for all
Australians.*
Herb Wharton, retired Aboriginal drover and author

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STRUCTURES FOR WILDLIFE ENTERPRISES

The Project

RIRDC Reference No.: UNE 92A

Project Title: *Wildlife Management Conservancy Structures*

Working Title: *Structures for Wildlife Enterprises*

Date of report: 2 April

Contact Details

Chief Investigators: Professor David Brunckhorst and Dr Phil Coop, Institute for Rural Futures, University of New England

Tel: (02) 6773 2220

Fax: (02) 6773 3245

E-mail: david.brunckhorst@une.edu.au
phil.coop@une.edu.au

Additional advice: Mr John Malcolm (Malcolm and Assoc.; Accountants and Corporate Investment Advisors)

Organisation: Institute for Rural Futures, and UNESCO Centre for Bioregional Resource Management, University of New England, Armidale, NSW, 2351

Project Objectives

The RIRDC UNE92A Project Schedule states:

The project objective is “to recommend the most appropriate and effective organisational structures to be trialled in the proposed wildlife management conservancies”.

Assumptions

There are three important underlying assumptions in our analysis.

Firstly, that wildlife enterprises are to be trialled and developed in a “learning by doing” approach (active adaptive management; see Brunckhorst 2000) for

the purposes of improved land management and biodiversity outcomes.

Secondly, while it is expected that the enterprises become profitable longer term, a wildlife enterprise would be successful if it efficiently ‘pays its way’ and in doing so, contributes improved sustainable land management and biodiversity conservation benefits at property, cross-property and landscape scales.

Thirdly, that developing mutual trust, and understanding facilitates cooperation. Over time, improved sustainability might include increased social capital (community cohesion and trust for making joint decisions).

These three factors (further discussed below) also suggest that wildlife enterprise arrangements will evolve with time and place, and with positive change in landscape ecological indicators (providing feed back and additional incentives to landholders).

Caveats

It should be noted that this work is a preliminary scoping nature and is not to be construed as legal, accounting or investment advice. Other considerations not dealt with extensively and requiring further consideration include corporate governance, property law and possible licensing issues.

In the final analysis, it will be up to individual landholder groups to seek such professional advice and to adapt a structure with which they are personally comfortable and meet their particular contextual requirements.

Introduction

Human institutions – ways of organising activities – affect the resilience of ecological systems. Future sustainability will require systems of resource governance¹ that mediate the relationship between society and the economy on one

hand, and continuation of ecosystem functional processes on the other. Numerous case studies (eg, Ostrom 1990, Berkes and Folke 1998) demonstrate that locally evolved institutional arrangements governed by stable communities and buffered from outside forces have sustained resources successfully for centuries. Unfortunately, ideal conditions for governance are becoming rare while there is an increasing occurrence of sudden, rapid pressures of change.

The human dimensions of landscapes need to be integrated with policies, administrative frameworks and plans to repair and sustain ecological systems. The purpose of future sustainable wildlife enterprises will be to provide income from wildlife that provides positive environmental outcomes and externalities across properties and landscapes. Some enterprises might not return any profits, but could play a substantial role in “paying their way” for land recovery and improved ecosystem services as ‘restorative industries’ (e.g., see Bookmark Biosphere case study in Brunckhorst, 1999 2000)

The RIRDC emerging strategies for Wildlife Enterprises envisages broad social, ecological and economic effects at multiple (large) property or landscape scales. Different community levels of participation in decision making and broadly inter-connected ecological systems and resource uses need a mutual geography that brings together shared natural resource issues (McKean 1996) and their stakeholders at appropriate scales of engagement – both in sustainable land management and enterprises (Brunckhorst and Coop 2003).

An important institution for regional resource management is civic interest and engagement in local affairs, including resource and land use issues. Local civic engagement has traditionally been structured around local government. More recently, attempts have been made to extend this to decision-making bodies based on land-care groups or catchment management groups.

Wildlife enterprises will require similar attributes for success, though at a finer

scale. That is, strong local identity and ‘place’ attachment with the local landscape and neighbours.

Indigenous Australians also have traditional social group structures which are important in capacity building for collective decision making on NRM issues, including wildlife use, which may or may not be commercial (see Wilson 2003). Specific enterprise structures for Aboriginal or Torres Strait Islander communities are not considered separately in the present work. The structures discussed here are most likely to be adaptable for use by Indigenous Australian communities.

An important feature of successful locally based resource governance arrangements are unofficial institutions (accepted ways of doing things) developed amongst people who have interacted regularly for some time and expect to share a future together. Communities that maintain frequent face-to face contact and close social networks increase the potential for trust and cooperative behaviour. This social capital allows people to more freely express and see emotional reactions to distrust and lower the costs of decision-making, monitoring and compliance (Ostrom 1990; Dietz et al. 2003). Other important characteristics of successful locally based resource governance arrangements include informal operational rules that are accepted and adhered to; monitoring of these activities and, correcting individuals who might stray from the rules; monitoring environmental responses and making management corrections; and, making collective (group) decisions. Indeed, these features are often characteristic of successful, enduring Common property resource management Institutions (CPRIs) (see Ostrom 1990, Coop and Brunckhorst 1999, 2001; Brunckhorst 2003).

These two related characteristics are particularly important to evolving wildlife enterprises and their structures. One is learning together and the other is further development of social cohesion and trust – both facilitate cooperation.

Communities of Practice

Groups Learning and Doing in Practice

Formal organisational structures, such as companies, can be useful entities to manage risk, trading, profits and losses and other business arrangements. Unfortunately, however, such structures can reduce flexibility and capacities for learning and adaptation. These latter features are important in evolving wildlife enterprises. Knowledge provides competence with respect to something that is valued – such as playing a musical instrument in tune. Knowing is participative, that is, active engagement in the world. Together these provide an ability to change and adapt. Meaning is the strong personal and collective value we place on this (active learning) experience in terms of enjoying a meaningful life (Wenger 1998, Brunckhorst 2000, 2002).

The development of these characteristics over time is important to how we might engage individually and collectively in developing a Wildlife Enterprise and the required constituent legal or corporate structures for its operation so that learning and adaptation can occur – mistakes become positive learning experiences (Walters and Holling 1990). Our historical and social context and perspectives also give rise to our identity (understanding who we are; where we've come from) and, why we do things a certain way – practice. Practice is a process of interactive learning that enables newcomers to insert themselves into existing “groups”. Indeed it is the learning of mature or “experienced” members and their communities that invites the learning of newcomers – engagement is in mutual, active learning (Reeve 1997; Wenger 1998; Shannon 1992, 1998; Stayner et al. 2000).

Such characteristics will shape the way different landholders in different places will view various structural options, but it is also important that any structure does not inhibit mutual respect, understanding,

learning and adaptation for adaptive management, which in turn will contribute flexibility and resilience.

Social Capital

The foundation for this socially resilient civic engagement lies in the community networks of trust and reciprocity, termed social capital, which greatly enhances the mobilising of resources within a community (Pretty 2003). It also relates to the degree of investment that residents or neighbours are prepared to make in cooperating with each other in a particular area (Marshall 2001).

This ‘sense of place’ or ‘place capital’ includes the attachment by residents to the particular characteristics of a regional cultural and natural landscape (Brunckhorst 2002). The creation of a resource governance institution that draws on these social resources and matches them to the local ‘territory’ provides a logical and well-grounded context from which to build corporate or other governance arrangements and structures (Coop and Brunckhorst 1999, 2001).

The success of groups of people who come together to form collective wildlife enterprises will depend on the existence of mutual trust and social cohesion in the first place and how it is maintained and enhanced.

NRM and Land Management

Humans and their institutions shape landscapes. The rapid post-settlement evolution of Australian landscapes is a combination of its policy history and the activity of people and institutions in shaping the land. Wildlife enterprise arrangements will also evolve with time and place, and with (positive) change in landscape ecological indicators providing

feed-back and additional incentives to landholders. This is deliberative landscape change towards positive environmental (as well as social) outcomes (Figure 1).

One of the key purposes of the strategy to develop sustainable wildlife enterprises is to take pressure off landscape ecosystems. For example, through reduced grazing pressure (and/or reduced hoofed stock impact), rehabilitation of degraded lands, increasing ground, mid- and over-story native vegetation where appropriate and, generally assist the evolution of the landscape towards a more resilient system while maintaining biodiversity. It would be expected that monitoring will also demonstrate ecological health benefits (ie, cleaner water) and improved, functional ecosystem services across the landscape and to human communities (see for example Industry Commission Report No.60, 1998).

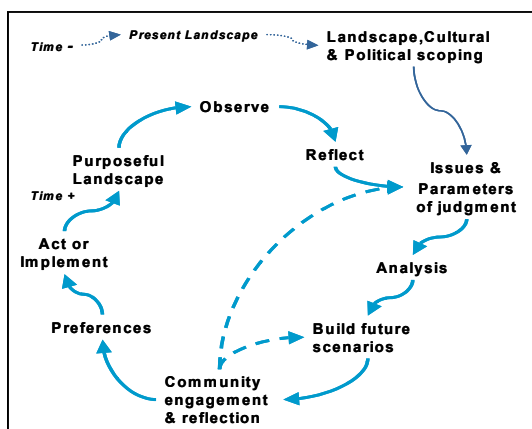


Figure 1. Humans and their institutional arrangements for sustainable wildlife enterprises can provide a positive, deliberative landscape re-design function contributing towards increased social and ecological resilience (after Brunckhorst 2002).

It is hoped that the wildlife enterprises become profitable in the long term. However, a wildlife enterprise would be successful if it efficiently 'pays its way' and in doing so, contributes improved sustainable land management environmental rehabilitation, and biodiversity conservation benefits, at property, cross-property and landscape scales.

Evolving Landscapes and Structures

Australian farmers and landholders, like their counterparts around the world, tend to be individualist. The process of settlement and shaping of the "rugged" individualist of the outback has exacerbated and institutionalised narrow views on property rights (see Reeve 1997; Dovers 2000; Brunckhorst 2000, 2002). Individual landholders, though community minded, may not necessarily be willing to jump into a group or collective enterprise with out considerable thought (possibly based on some observation - 'over the fence') and encouragement. Long term association and mutual respect (social capital) with potential partners will help considerably in adjustments towards working together and making shared decisions.

This might well take varying degrees of time in different situations. Neighbours will observe improvements in native pasture cover or other environmental and economic benefits before wanting to become involved. Model projects will encourage others to join or get together with others to form their own collective enterprise.

Types of wildlife enterprises and forms of business structures might evolve over time. The enterprises themselves are likely to change or new endeavours added to the business. Some processing of value adding might become an interest of some producer groups themselves; or, by a separate, but still local group (a nested arrangement building further on community social capital).

It is most likely that wildlife enterprises will develop over time from an individual level with neighbours, through to other partners and then formation of collective groups. This process could at least partially follow positive changes within and across properties at a landscape scale. Indeed just as human activities based on past policies have shaped Australian landscapes since settlement, the evolving

institutional arrangements for wildlife

industries having positive environmental benefits may also follow an evolutionary path towards more resilient social-ecological systems of the future (Figure 2).

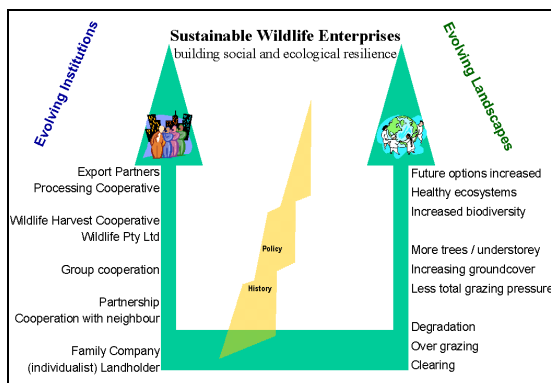


Figure 2. Evolving Institutions, and Business structures for positive landscape futures.

Landcare and related institutional arrangements

Landcare has been successful in raising awareness about environmental issues and in developing community group cohesion and collective action in some places. However Landcare and Catchment Management (ICM & TCM) have not equipped landholders with the ability to manage land sustainably. Such programs have encouraged reliance on financial support from governments for action to take place. Landcare is a single dimensional approach that does not have regard to social and economic stability.² The assumption that communities cannot manage their resources locally leads to the establishment of government management regimes, which in fact ensure that they cannot.³ Holistic integrated planning has often failed because the implementation is fragmentary, single function and government directed without landholder co-ordination⁴ (Gunderson et al 1995).

Landcare and Catchment Management essentially rely on goodwill of

landholders. There is no legal duty of care to prevent environmental harm to surrounding landholders.⁵ For those individual landholders who choose not to participate in Landcare or similar groups, there are limited consequences even though he or she benefits from the contributions of others.⁶ The effects of one person's non-participation are borne by all in the catchment. Private property exacerbates this 'anti' catchment behaviour because it encourages individuals to act in their own interest. This is reflected in legal actions related to private property: private litigants are not usually motivated to take action unless their property values have been affected.⁷

Catchment management despite rhetoric about co-operation and co-ordination is very much a "do-it-yourself" business.⁸ Landcare and Catchment Management approaches have not overcome the 'free rider' problem, which is why some catchments resemble what has become known as the 'tragedy of the commons'. This famous phrase derives from Hardin's article that demonstrated the 'ruin' that ensues from unconstrained resource use.⁹

Landcare groups do not have the robust institutional development, risk management and "ownership" capacities required for a wildlife enterprise business. Established as an incorporated association a Landcare group could possibly run a non-profit enterprise, but would be limited in its trading ability (see further discussion below). Such an institutional arrangement may however, be a very useful parallel arrangement to a more formal legal (business enterprise) structure by providing the means for complimentary environmental works and land rehabilitation.

Non-Profit Organisations

Undertaking environmental works as a collective is greatly enhanced through the formation of a non-profit environmental organisation. Such an organisation provides the institutional vehicle that can access funding for a variety of charitable and environmental works. Membership in

this organisation may extend beyond those directly involved in the projects undertaken, generating interest and involvement by a larger 'community' thereby increasing awareness in the issues being addressed. Table 7 summarises the features of some non-profit entities.

Establishing an environmental organisation requires registration on the Register of Environmental Organisations. Section 30-260 of the ITAA requires that an environmental organisation must be one of the following:

- 1) a body corporate (generic term for incorporated entities such as associations)
- 2) a co-operative society; or
- 3) a trust; or
- 4) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory

Essentially the qualifying organisational form requires a non-profit status, incorporated or unincorporated entity. Within all these forms there are strict rules relating to membership and restrictions on distributions to members. The following provides detail on several suitable organisational forms.

Associations

An association allows a small non-profit community based group an easier and relatively inexpensive means of establishing a legal entity rather than forming a co-operative or a company. Associations are restricted from carrying on a business with the view to making a profit. Associations may be either unincorporated or incorporated.

Unincorporated associations require two or more members and are usually created for social or sporting applications. Whilst an unincorporated association is easy and inexpensive to set up, and no administration by any government agency the entity provides few advantages. It is not a legal identity distinct from its members therefore cannot sue or be sued, enter into contracts in its own right, cannot own property or goods in its own name. Members may be liable for the debts of the association. For these reasons

the unincorporated associations are inappropriate organisational forms for representing the interests of members wishing to undertake activities as a collective.

Incorporation of an association provides a distinct and separate legal entity under State legislation. They provide limited liability for members, can sue or be sued, can hold property in its own right, can enter into contracts, can employ and can invest, raise or borrow money in its own name.

The costs associated with establishing an Incorporated Association are minimal. In NSW this involves registering a name (\$35.00) and an incorporation fee (\$94.00). In addition the on-going administration of the entity requires a membership registry, a set of rules, appointment of committee members and the lodgement of the annual return (in the range \$40.00 - \$63.00). The NSW governing agency for Associations is the NSW Office of Fair Trading. Table 1 summarises the main features of Incorporated Associations.

Co-operatives

The Co-operative is a business form that exists to deliver benefits to their members. They can be structured so that the profits are either returned to the co-operative or distributed to members. They are therefore suitable for both commercial and non-commercial activities.

The formation of a Co-operative requires a minimum of 5 members. The two major types of Co-operative are the Trading and Non-Trading forms. The distinguishing features between these forms are not the types of activities they undertake, rather the ability to distribute profits by way of dividends. The Non Trading Co-operative is prevented from distributing profits to members making this business form suitable for non-profit activities.

A Non-Trading Co-operative is a separate legal entity and therefore is able to provide limited liability for its members, own assets, raise funds, employ etc.

Like the Association, it is the Constitution or Rules of a Co-operative that are the guiding document.

The costs associated with establishing a Non-trading Co-operative in New South Wales is \$131.00. The on-going administration requirements are the appointment of Directors and Secretary and the Annual General Meeting. In NSW there is no fee for lodgement of the Annual Return however a late penalty may apply.

The Co-operative provides a useful organisational form for collectives to undertake a range of activities. In particular, each member of the Co-operative is provided one vote in the collective decision making of the organisation.

Trust

A Trust is an obligation whereby the trustee holds property (money, some object, a business etc.) for the benefit of another for the advancement of a specific purpose. It is possible for community organisations to establish a trust. The Trust is characterised by the relationship that exists between the Trustee (the entity, such as a Company, responsible for the Trust property) and the beneficiaries (the one's benefiting from the Trust). The Trustee may be a corporate entity allowing for a (higher-level) collective decision-making in the management of the trust property. The Trust Deed is the guiding document for the Trust entity. Trusts share similar characteristics, establishment costs and administration requirements to that of a Company and are usually formed under a Company or similar entity.

Application of this organisational form to a wild harvest collective may not provide an ideal context for effective collaborative decision making.

Common Property Institutional Arrangements

Common Property Resource management Institutional arrangements (CPRI) may be a way to overcome the non-compliance problem and so avoid the tragedy (Coop and Brunckhorst 1999). They are based

around a mix of informal institutions and rules built on trust and social cohesion, together with more formalised arrangements to manage risk, investment and business operations in a variety of shared different natural resource and social contexts (McKean 1996).

The "Tilbuster Commons", a CPRI first started as a 3 year experiment in 1999, is now an on-going business enterprise demonstrating social, economic and environmental benefits to the participants. It brought together the entire ecological and other resource capacities of four neighbouring land titles on the New England Tablelands, NSW. Landholders retain their own property titles, but the Tilbuster Commons Company manages the land and production enterprises (Figure 3). Landholders make collective decisions as directors of the company, which means there is a deliberate, but balanced, "conflict of interest" between making good decisions for one and all.

New enterprises are planned, but so far have consisted of running a single jointly owned mob of cattle across all properties with share issues and returns reflecting land area and other landholder contributions (Coop and Brunckhorst 1999, 2001; Brunckhorst 2003, Brunckhorst and Coop 2003; Williamson et al 2003).

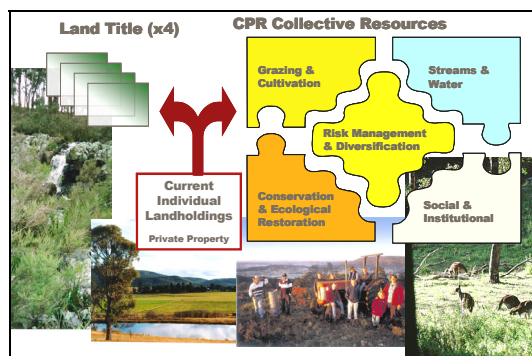


Figure 3. A 'triumph of the Commons', Tilbuster Commons demonstrates cross-property landscape scale environmental restoration, conservation and production (after Brunckhorst and Coop 2003).

CPRI are also a self-directed business however the returns are better because there is a vested economic interest and far less opportunity to "free ride" (Powell et

al, 1982; Williamson et al, 2003). It is easier to encourage neighbours to work together for their own financial and environmental benefit rather than "gambling" that landholders at the top of a catchment will act in the best interests of unfamiliar landholders separated by distance and social groupings at the bottom of the catchment (McKean 1996, Dietz et al. 2003).

Landholders, who come together to form a CPRI need to also form a management structure to run a CPRI. A group of landholders who combine resources and time require a structure that provides for business efficacy and legal stability (Brunckhorst and Coop 2003). CPRIs for collective action, decision-making, learning and business enterprise development and management can have a variety of forms and legal structures to suit various situations (see Williamson et al. 2003; Brunckhorst and Coop 2003).

A CPRI can provide an appropriate institutional arrangement for managing resources across property boundaries by considering the ecological elements represented by individual titles as a single resource base (Coop and Brunckhorst 1999, Dietz et al 2003). When coupled with an appropriate corporate structure, while allowing landholders to retain title to their properties, it can then provide a business and trading entity with appropriate risk management arrangements; Williamson et al 2003; Powell et al. 1982).

Business Structures and Corporate Entities for Wildlife Enterprises

The previous examination of organisational forms was constrained to institutional arrangements for managing collective land management activities of a group or, non-profit entities that were created for the specific purpose of undertaking charitable or environmental activities by a group of members. Their non-profit status is a pre-requisite for registration on the Registry of Environmental Organisations. Their purpose and strengths, in a wild harvest context, lie in their ability to attract funding to undertake environmental activities while adequately representing the interests of its members in these endeavours. The following assessment does not examine property law arrangements such as resource titling, body corporate or communal title arrangements.

The examination of organisational forms now moves to those entities that are suitable for conduct of business associated with wildlife harvesting. The imperative shifts towards risk management and operation of a profitable business.

Each entity is briefly described and refers to a summary table on the following pages. Table 8 briefly summarises the features of three entities which might be useful for wildlife enterprises.

Individual Sole Trader

The Sole Trader business structure is the simplest and most inexpensive form to establish. This business form enables an individual to trade under their own name. However, if additional words are to be included in the business trading name then the business name must be registered through the State agency responsible for this maintaining this registry.

The registration of a business name does not create a separate legal entity. The business owner, as sole trader, remains responsible for the actions of the business

and personally incurs the liability for all business debts. Taxation of the business activities occurs with the individual. The business owner also maintains ownership of any assets acquired for commercial activities of the business.

The fees associated in registering a business name by the NSW Office of Fair Trading are \$126.00.

The Sole Trader business form does not provide for the representation of more than a single individual and as such is not a suitable business form for a collective (group of landholders) wishing to undertake a wild harvest enterprise. It is included here for completeness and comparison only. Table 1 summarises the main features of a Sole Trader business.

Partnership

The Partnership business form is the association between at least two persons carrying on business in common with a view to profit. Like the Incorporated Association and Co-operative it is the Partnership Agreement that states partner responsibilities and reduces potential disputes.

Unlike the Incorporated Association and Co-operative, the establishment of a Partnership does not create a separate and distinct legal entity. At the death of a partner the Partnership is dissolved and a new Partnership comes into existence, unless the partnership agreement provides otherwise. This characteristic does not provide for flexibility to transfer membership in the Partnership easily.

Reflecting the absence of the separate Partnership entity, this business arrangement does not provide a risk management structure and partners face unlimited liability incurred by the partnership. In addition a partner may bind the other partners to a contract without their authority. This characteristic

of Partnerships may question their usefulness for application in a collective decision making context.

Profits and losses generated by the Partnership activities are distributed to the partners who are responsible for the tax.

The costs associated with the establishment of a partnership are minimal. They involve the registration of a business name with the State based agency. In NSW the agency that maintains this responsibility is the NSW Office of Fair Trading and the business name registration fee is \$126.00.

Recent reform by the Federal Government provided for the Limited Partnership. This structure distinguishes the general partners with unlimited liability and the investors with limited liability. This reform sought to provide partnerships with the enhanced opportunity to access venture capital. Table 2 summarises the main features of a Partnership.

Company

The Company structure is a popular and flexible corporate form through which commercial activities may be undertaken. The Company exists as a separate legal entity in perpetuity; provides limited liability to its members, and the interests in the Company are easily transferred.

There are several type of Company structures, which include the Companies limited by shares, and those limited by guarantee. Companies limited by shares include Proprietary Companies (Pty Ltd), Unlimited Proprietary (Pty), and Limited Companies (Ltd). In addition there are No Liability (NL) Companies.

For the purposes of establishing a wildlife harvesting enterprise the Proprietary Company is the most common organisational form. Proprietary Companies are robust organisational forms that provide flexibility, allow for participative decision making, ease of transfer of membership, limited liability.

The Company, as a separate legal entity, is responsible for the taxation of its profits. Shareholders receive their entitlements to profits by way of dividends. Tax paid by the Company is able to be passed to the shareholders by way of franked dividends.

The Company structure achieves flexibility in ownership and decision making by the collective shareholders through the ability to issue a range of shares that contain various characteristics. For example voting may or may not be attached to financial interests of shareholders in the organisation.

Management of the Company is the responsibility of the elected Board while shareholders

The costs associated in establishing a Company are moderate, at around \$1,600 including the professional advice.

Table 4 summarises the main features of a Company structure.

Trust

The business structure of the Trust has been explored in the non-profit section of this report.

A Trust can be defined as an arrangement binding a person or corporation (named a Trustee) to administer an asset (property, money, some object, a business etc.) for the benefit of a person or corporation (the beneficiary).

Trust asset is owned dually. The beneficial owner is the real owner and gets the "benefit of ownership". However, the Trustee is the actual or legal owner. For community organisations, this can often take on the form of the Local Shire (Trustee - legal owner) holding a building (asset) in Trust for a specific community group (beneficiary - real owner).

The general rules of establishing a Trust are:

There must be a difference between the legal ownership of the asset and the beneficial ownership, there must be property for which the Trust exists, and all parties to the Trust must know and understand the obligations regarding the

Trust. Trustee is subject to the Trustee Act and the beneficiaries are subject to the Trust Deed.

There are three basic types of Trusts:

Fixed Trust. The beneficiaries are fixed, the beneficiaries' entitlements are fixed, and often the asset is fixed.

Discretionary Trust. Beneficiaries are generally determined, but the Trustee is given discretion as to the distribution of entitlements.

Unit Trust. The entitlements of the beneficiaries are divided into specific and defined units similar to the shares in a proprietary or limited company.

As with the non-profit organisational arrangement mentioned previously the Trust is an organisational form that does not lend itself to wildlife harvesting enterprises. This is because of the need for the beneficiaries to be involved in the decision making of the enterprise, a role normally confined to the trustee.

Establishment costs for a Trust are normally similar to that of a Company. Additional costs would be required to establish a corporate trustee and this arrangement would normally require professional assistance.

Other business arrangements not dealt with in detail include Joint Ventures, Affiliations and Agencies. These are primarily contractual arrangements between the parties involved in a specific undertaking. They are arrangements that do not possess the flexibility and capacity to represent collectives considering a wild harvest enterprise. Table 5 summarises the main features of Trusts.

Co-Operative

The Co-operative is a business form that exists to deliver benefits to their members. Co-operatives are distinctive for fostering a democratic style of work, pooling of resources to be more competitive, and sharing skills. The Trading Co-operative is structured so that the profits are able to be distributed to members. They are

therefore suitable for commercial organisations.

The formation of a Co-operative requires a minimum of 5 members. Trading Co-operatives are more similar in form to the Company business structure. Like a Company there are no restrictions on trading, however in contrast to the Company, the Trading Co-operative distinguishes between the shareholding and voting rights of members. Each member of a Trading Co-operatives is entitled to a single vote regardless of the financial interests in the Co-operative through their shareholding, representing their financial interests in the Co-operative.

As with Associations and Partnerships it is the Rules of the Co-operative that provide the guiding document for the Co-operative. However, unlike these other business forms the role of the Rules is to establish and define the relationship between members and the Co-operative entity. The Rules therefore provide an effective description of the requirements and expectations of membership. The Rules therefore provide a distinct advantage over other business forms in that the institutional culture and the responsibilities of members are clearly defined from the outset, rather than being assumed and evolving over time. This is not a constraint to the evolution of the Co-operative culture as the Rules may be altered over time.

The on-going costs associated with maintaining the Co-operative include fees that apply when amending these Rules. There is no Annual Return fee however a payment penalty applies for late submission of the Annual Return. The administration requirements of a Co-operative primarily involve the maintenance of the usual registers such as meeting minutes, membership, assets etc. The costs associated with establishing a Trading Co-operative in New South Wales is \$113.00

The Australian Taxation Office views the trading co-operative as a 'co-operative company' and assesses these entities at the same taxation regime of a Company. However, unlike a Company the

dividends paid to members are deductible, providing an incentive to distribute all profits to members. More recently Co-operatives have been granted the opportunity to frank part of their dividends assisting in taxation planning of its members.

A major overhaul of the State's co-operative legislation in 1992 resulted in a development that enabled Co-operatives to raise additional capital from non-members. This was achieved through the use of Co-operative Capital Units (CCU). These CCU's are flexible instruments that allow them to be designed to contain elements of both equity (representing ownership in the Co-operative) and debt. Table 4 summarises the main features of Cooperatives as business structures.

General Considerations

Wild harvesting is likely to be qualify as a primary production activity as it includes 'maintaining animals for the purpose of selling them or their bodily produce' (ITAA 97 sec 995-1(1)). In this regard, the 'management' of animals is likely to be interpreted similarly to that of the fishing industry. Importantly the wild harvest business structure is likely to maintain a primary producer status rather than the members or shareholders of the entity.

There are several concessions provided to primary producers through the taxation system, however of these the two that are likely to provide benefits for wild harvest activities are the Energy Grant Credit Scheme and the Deductibility for Environmental Protection programmes.

The Energy Grant Credit Scheme (formerly the Off Road Diesel Scheme) is likely to be available to some degree to wild harvest activities by way of a rebate on fuel used for eligible activities using an eligible fuel. The Deductibility for Environmental Protection Scheme may provide an opportunity to claim a deduction for capital works involved with environmental works.

The RIRDC report, 'Taxation of Primary Producers and Landholders' (Ashby and

Polkinghorne, 2004) also identifies taxation issues related to the commercial use of wildlife. In particular the lack of mention in the Act of wild harvesting and therefore the exclusion of impediments and incentives for the commercial use of wildlife.

Some key points to consider include:

- ❖ How to value wildlife and the associated impacts of increasing or decreasing these 'livestock' (trading stock) on assessable income.
- ❖ The apparent conflict that arises where the State claims ownership of wildlife, yet a taxpayer requires ownership for commercial activities
- ❖ The remaining uncertainty as to whether a taxpayer 'manages' wildlife is a primary producer - particularly if the goals are to reduce impact.
- ❖ The tax implications of (legitimate) trading in endangered species.
- ❖ Broader questions relate to the treatment by the ATO (incentives, impediments) for landholders seeking improved environmental outcomes.

Future developments of government policies for wildlife enterprises are likely to be based on fisheries and the existing kangaroo industry. The latter, however, needs some overhauling of regulations to provide appropriate, but easier flows of products from harvest, through value adding, to markets.

Beyond the Farm Gate.

For products that are completely new to the market place, a processing, distribution and marketing system beyond the farm gate (the 'value adding' or supply chain) will not exist. In these cases, landholders might need to become involved and create such a value chain.

This is usually a very difficult, time consuming, expensive and risky exercise, and requires an array of skills and motivations not generally shared by many landholders (see Stayner and Doyle, 2003). After all, farmers' special skills and

interests lie in raising and growing things and in land management, rather than in off-farm business and marketing. Stayner and Doyle found that the post-farm gate activities were frequently hived off into separate businesses, with the flexibility to respond to the competitive pressures of their own markets, and increasingly operating at arm's length from the farming operations. Indeed, in order to achieve the objectives of the sustainable wildlife enterprises it will be important for landholders to continue to focus primarily on designing and managing the farm level production systems.

Nevertheless, it will be important for landholders to consider closely the sorts of relationships they will have with the other participants in the value chain beyond the farm gate. This will include the possibility of negotiating supply contracts or agreements with wholesalers or processors. These could reduce the uncertainty and risks of producing a novel commodity, provided landholders believe they can have sufficient control over production volumes and qualities at various times of the year to enter into such contracts. These agreements might take a year or more to devise.

Landholders have in recent years experimented with various forms of producer alliances that establish relationships of one sort or another with the supply chain. Perhaps the most experience has been gained by beef producer alliances (see Pinnacle Management, 2000). Funding for a facilitator experienced in the formation of beef producer alliances might be necessary.

The group of landholders is also likely to recognise the need for sharing information on a range of other matters, such as

- ❖ the methods, costs and benefits of modified land management, such as reducing the stocking rate of domestic stock
- ❖ native species management and production
- ❖ effects on the ecosystem of altered land management.

Protocols for the generation, collection and sharing of this sort of information are likely to be necessary.

Counterpart Organisations

Some organisational and institutional arrangements might provide synergies for both economic and environmental benefits. Parallel Landcare / business organisations might contribute an additional benefit of highlighting or “tying together” - in the minds and actions of participants - the close relationship between the environment, resource base and enterprises in socio-ecological system sustainability (Figure 4).

Separate, but parallel complementary organisations could provide some advantages for integrating wildlife enterprise businesses with environmental rehabilitation and education. Incorporated Association arrangements that some Landcare groups work under, or other non-profit environmental organisations (possibly even a Foundation) that are registered under Environment Australia’s Register of Environmental Organisations (REO) could play a valuable role in several ways.

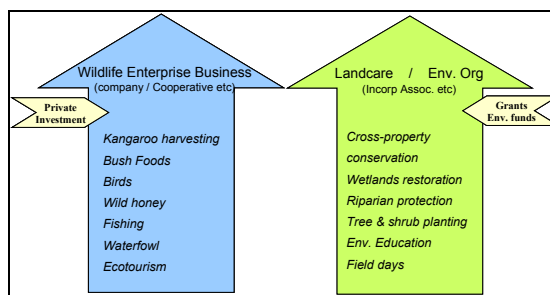


Figure 4. Complementary parallel arrangements to maximise synergies between wildlife enterprise businesses and environmental outcomes.

Conclusions

A Company structure will work well for wildlife enterprise establishment, governance, trading and profit distribution. It requires more formalised procedures and reporting (eg, ASIC requirements). It can also have a Trust or

Incorporated Association allied with it providing non-profit charitable or environmental activities, or it can act as a corporate Trustee. The Company structure has worked well for the Bookmark Biosphere Reserve enterprises and the Tilbuster Commons model, both of which utilise an allied non-profit environmental organisation.

A Trading Co-operative would appear to provide the same benefits as a company structure, but provide additional flexibility. A Co-operative has less establishment and on-going costs associated with its operation. They provide equity in decision-making processes (i.e., one vote per member regardless of the level capital investment).

Peculiar to the Co-operative are the Rules that define the relationship between the individual members and the Co-operative entity. The Co-operative Rules provide a useful definition the responsibilities and expectations of members and clearly state the requirements of membership.

This characteristic distinguishes a Co-operative entity from the Company

structure because of the relationship of the shareholders and members representing the collective and the legal entity. Whilst a Company can be structured in a way to provide participatory decision making by shareholders it is the responsibility of the Company Board to undertake the management of the Company activities. The Co-operative also elects a Board but the relationship between members and the Co-operative is clearly described and establishes the conditions of membership.

This formal recognition of member responsibility is likely to improve the social capital aspects of collective decision-making, however if individuals do not like this separation, a company structure will need to be considered.

Both the Company and Trading Co-operatives provide similar risk management (e.g., limited liability for members).

A Trading Co-operative together with an Incorporated Association for environmental works could provide an efficient vehicle for sustainable wildlife enterprises.

Summary tables of the features and initial costs of various entities

Table 1. Sole Trader

<u>Feature</u>	<u>Sole Trader</u>
Ease of Establishment	Minimal
Establishment Costs	\$126 to register a business name – if other than individual's name (NSW)
Charter document	None required
Assets	Owned by individual
Distribution Taxation Implications	Individual and enterprise are one – profits taxed at the level of the owner.
Voting - Membership	Individual makes own decisions, limited to individual
Risk Management	Individual maintains full liability
Governing Legislation	NA
Other	Able to obtain 50% Capital Gains Tax discount

Table 2. Partnership

<u>Feature</u>	<u>Partnership</u>
Ease of Establishment	Minimal
Establishment Costs	\$126.00 (registration of business name NSW)
Charter Documents	Yes, verbal agreement sufficient, Partnership Agreement more appropriate
Assets	Jointly owned by partners
Distribution Taxation Implications	Profits calculated at the Partnership level, each partner responsible for their own tax distributed from Partnership
Voting - Membership	Minimum 2, maximum 20 partners. Partnership agreement defines roles of parties Independent members easily admitted as parties
Risk Management	Partners face full liability for all debts incurred
Governing Legislation	Partnership Act (in each State)
Other	In addition to conventional approaches in raising capital, provision may be available under Limited Partnerships for investors. Able to obtain 50% Capital Gains Tax discount

Table 3. Incorporated Associations

<u>Feature</u>	<u>Incorporated Associations</u>
Ease of Establishment	Minimal. Requires Rules, membership, appointment of office bearers
Establishment Costs	\$35 Registration of Name, \$94 incorporation fee, Annual lodgement fee \$40-\$63
Charter document	Rules or Constitution
Assets	Owned by Association
Distribution Taxation Implications	No distribution to members, surplus remains in association
Voting - Membership	Members entitled to a vote. Min 5 members – no upper limit
Risk Management	Limited liability for members
Governing Legislation	Associations Incorporation Act 1984 (NSW)
Other	Typical arrangement for Landcare groups

Table 4. Co-operative

<u>Feature</u>	<u>Co-operative</u>
Ease of establishment	Minimal, establish Rules, elect office bearers.
Establishment Costs	\$113 Non-Trading Co-operative, \$171 Trading Co-operative
Charter Document	Rules – form contract between members and Co-operative
Assets	Owned by Co-operative
Distribution Taxation Implications	No distribution to members in Non-Trading Co-operatives. Profits distributed to members, including franking available in Trading Co-operatives, dividends deductible in calculation of Co-operative tax.
Voting - Membership	One vote per member regardless of the level of investment in the enterprise
Risk Management	Limited liability for members
Governing Legislation (State)	Co-operatives Act 1992 (NSW)
Other	Use of CCU's to attract capital to enterprise Unable to obtain 50% Capital Gains Tax discount

Table 5. Company

<u>Feature</u>	<u>Company</u>
Ease of establishment	Moderate – generally requires professional assistance
Establishment Costs	Moderate – around \$1600 including professional advice.
Charter Document	Constitution
Assets	Owned by Company managed by Board.
Distribution Taxation Implications	Company pays own tax – dividends to shareholders may be franked
Voting - Membership	One vote usually associated with each share, may or may not be associated with level of equity represented in the Company
Risk Management	Limited liability
Governing Legislation	Corporations Act 2001 (C'w'ith)
Other	Unable to obtain 50% Capital Gains Tax discount

Table 6. Trust

<u>Feature</u>	<u>Trust</u>
Ease of establishment	Moderate
Establishment Costs	Varies – costs of trust are similar to that of Company however Corporate Trustee could be as much again. Possibly >\$2000
Charter Document	Trust Deed
Assets	Held in Trust, managed by Trustee for Beneficiaries
Distribution Taxation Implications	Distributed to beneficiaries of the Trust, concessional tax rates may apply
Voting - Membership	Trustee manages the trust property. (May be corporate Trustee)
Risk Management	Trustee bears risk (may be corporate Trustee for risk management)
Governing Legislation	Trustee Act 1925

Table 7. Summary of selected business structure forms that might provide suitable attributes for Non-Profit Entities for environmental land management purposes of wildlife enterprises.

<u>Feature</u>	<u>Incorp. Association</u>	<u>Co-operative (Non-Trading)</u>	<u>Trust</u>
Potential Role of Entity	Non-profit Environmental Purpose	Non-Profit Environmental Purpose	Non-Profit Environmental Purpose
Establishment costs	\$130-150	\$113	\$1,600 - 2,000
Represents Collective interests in decision making	Yes, one vote per member	Yes, one vote per member	Depends, Trustee Manages Trust, however collective decision making may be achieved through Corporate Trustee
Primary Guiding Instrument	Rules	Rules	Trust Deed
Risk Management	Limited Liability for members	Limited Liability for members	Trustee liability – may be mediated through Corporate Trustee
Membership	Minimum 5. No upper Limit	Minimum 5. No Upper Limit	No limit
Governing Legislation	Associations Incorporation Act 1984 (NSW) [similar for other States]	Co-Operatives Act 1992 (NSW) [similar for other States]	Trustee Act 1925

Table 8. Summary of features of corporate structures that might be suitable for wildlife enterprise business entities.

<u>Feature</u>	<u>Partnership</u>	<u>Co-operative (Trading)</u>	<u>Company</u>
Potential Role of Entity	Primary Trading Entity	Primary Trading Entity	Primary Trading Entity
Establishment costs	\$126	\$171	\$1,200-1,600
Represents Collective interests in decision making	Yes	Yes – rule of one vote per member Relationship between Co-operative and its members	Yes – through entitlement issued with voting share
Primary Guiding Instrument	Partnership Agreement	Rules	Constitution
Risk Management	Provide no risk protection to partners. Except venture capital partners limited to investment	Limited liability	Limited liability
Membership	Minimum 2, maximum 20	Minimum 5, no upper limit	No limit
Governing Legislation	Partnership Act [in each state]	Co-Operatives Act 1992 (NSW) [similar for other States]	Corporations Act 2001 (C'wlth)
Taxation Implications	Each partner responsible for own tax. Losses unable to be distributed.	Co-operative pay tax on profits, may frank dividends. Dividends tax deductible.	Company pays tax on its profits. Dividends issued to shareholders, able to be franked.
Management undertaken by;	Partners	Members	Board of Directors

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Endnotes

¹ "Governance is the capacity of self-organizing systems to govern themselves, and includes not only formal government authorities and agencies, but also an array of private sector and non-governmental organizations as well as communities. Stewardship is the expression of this capacity in the form of "responsible custody" of human ecosystems, and therefore requires competence, vigilance, and ethics of responsibility and accountability for the sustainability of human ecosystems" (Francis and Shannon, 1999 www.ublaw.buffalo.edu/org/governance) [from Shannon 2000]

² Capacity building refers to the bringing together an integrated application of a variety of capabilities, training and expertise, finance, human resources and other elements or tools required to successfully develop and complete a project. Such capacity building establishes long-term foundations. The National Heritage Trust is an example of a capacity building tool, but like many programs suffers from political expediency and a lack of co-ordination, integration and, long-term planning.

³ L Kasdan, "Market rationality, productive efficiency, environment, and community: The relevance of local experience", (Paper presented at the International Congress on Ecology, Hermosillo, Mexico, April 15-17, 1993).

⁴ C H Green and S M Tunstall, "Water Management: a natural case of co-operation?", (Keynote Address, UNESCO conference, "Water: an imminent crisis?", Paris, June 1998).

⁵ The possibility of imposing a duty of care on landholders to prevent environmental harm was raised in the Industry Commission's Report, *A Full Repairing Lease: Inquiry into Ecologically Sustainable Land Management*, (Report No 60, AGPS, Canberra 1998), explored and endorsed by G Bates, in his report, *A Duty of Care for the Protection of Biodiversity on Land*, Consultancy Report, Report to the Productivity Commission, (AusInfo, Canberra, 2001); and recommended by the House of Representatives Standing Committee on Environment and Heritage in their report, *Public good conservation: Our challenge for the 21st Century*, Interim Report of the Inquiry into the effects upon landholders and farmers of Public Good Conservation Measures imposed Australian Governments, September 2001.

⁶ There are over 3000 Landcare groups in Australia representing more than a third of all farmers: See D Mercer, *A Question of Balance: Natural Resources Conflict Issues in Australia*, (Federation Press, Sydney, 3rd edn, 2000), at 84. Of that proportion, a significant number are inactive within their own Landcare group. See also I Reeve, "Property and participation: an institutional analysis of rural resource management and Landcare in Australia", in S Lockie, and F Vanclay, (eds) *Critical Landcare*, (Centre for Rural Social Research, Charles Sturt University, 1997). A Black and I Reeve, "Farmers' Attitudes to Environmental Issues: An Australian Study", in P Ester and W Schluchter, (eds) *Social Dimensions of Contemporary Environmental Issues: International Perspectives*. (Tilberg University Press, Tilberg, 1996) at 189-213.

⁷ G Bates, at 5 above.

⁸ J Burton, "Integrated Catchment Management and its Links with Public Works Facilities", (Paper presented to the Asia-Pacific Public Works Congress, Brisbane, 5 September 1991).

⁹ The "Tragedy" occurs when there is free and open access to a limited resource leading to over use and the resource system crashes or considerable degradation occurs followed by social consequences. G Hardin, "The tragedy of the commons" (1968) 162 *Science* 1243.