

Response to Social Impact Investment Discussion Paper

Thank you for the opportunity to provide a submission in response to the Discussion Paper seeking to explore ways the Australian Government might develop the social impact investing market.

This is a joint submission from McCullough Robertson Lawyers (which has a team of lawyers which specialises in the law relating to social infrastructure) and the Community Services Industry Alliance (CSIA). CSIA aims to increase the capacity and viability of community service organisations and secure a prosperous future for the Industry. CSIA's Foundation members represent organisations that deliver human and social services across a wide range of areas including health, aged care, disability services, child protection services, housing and homelessness and more.

In preparation for this submission round table discussions were held with various community organisations in Brisbane and Sydney and with hosts Hall & Wilcox (Lawyers) in Melbourne. The organisations which were represented through attendances at the round table meetings are set out in schedule 1. We acknowledge and thank these organisations and the people that attended the sessions for their significant contribution to this submission and ask that you note their interest in being included in future discussions about the issues.

Introductory overarching comments on the Discussion Paper are:

- The Australian Government's release of this Discussion Paper delivers a strong message about the Government's determination to be a participant in this market recognising the real potential that social impact investment may contribute to social issues.
- The growth of social impact investment is likely to increase the sophistication of policy makers and service providers in designing outcomes, investment stewardship, and data management.
- The Discussion Paper indicates that in its considerations Government may be too focussed on the supply side (capital) aspects of the development of social impact investment. The participants to this Submission urge that much more consideration be given to the demand side including:
 - the capacity of community services and social enterprises to make use of the capital effectively to ensure scalability and sustainability;
 - the identification of the projects that are to be identified for this style of investment; and
 - the outcomes that are to be prioritised as a result.
- Private investors will bring an important set of skills and capacities including in the areas of financial structuring and investment analysis and performance which skills when leveraged on the the skills and capabilities of the existing social service sector will enable this market to build from a

strong foundation. Those same investors are also likely to be interested in the development of the policy framework that will identify and oversee the attainment of the outcomes sought.

- Fundamental to the success of social impact investment will be an overall review of what do Australians regard as of social value and how this might be achieved so that there are clear parameters around what is measured and why.
- The Government is urged to review any approach which concentrates on a concept of what is an ‘intractable’ problem and to ensure that priorities are identified that pursue incremental but measurable outcomes.
- The Australian Government is urged to build on the information and learnings from the Social Enterprise Development Fund to assist in the continued development of the social impact investment market in Australia including the principle of co-designing any model with the intended recipient.
- Overly focussing on innovation fails to build on existing programs which may be very effective if capitalised appropriately to scale.

In response to specific questions, our submissions are set out below.

1 What do you see as the main barriers to the growth of the social impact investing market in Australia? How do these barriers differ from the perspective of investors, service providers and intermediaries?

Social impact investment has a long history in Australia. More than 200 years ago Churches and faith based organisations began negative screening their investments. Activists have used shareholder resources to finance social action movements and micro-enterprise and micro-finance is a multi-billion dollar business across the developing world. Community finance emerged as a response to market failure in the US and social investment emerged at scale in the Blair years in the UK. The concept of social impact investment has had a resurgence in Australia as investors and community service organisations seek resource diversification. Fiscal concerns limit investment in social services as concurrently demand grows and many are looking to engage the private sector and others to invest in socially beneficial projects. The experience arising from activity in this area has led to an understanding of the foundations required to support a successful social investment market. The following table outlines these elements and analyses the current status in Australia.

Element	Current State Analysis
Dedicated Government Structure/unit	<ul style="list-style-type: none"> • No dedicated government structure/unit, except in New South Wales. • New Zealand has a dedicated Department and Minister for Social Impact Investment.
Social investment market at scale	<ul style="list-style-type: none"> • Both supply and demand sides have developed but not in alignment or concurrently. • Approximately five years ago the social impact investment market

	<p>in Australia was characterised by high demand and low supply. Currently as capacity grows there are high supply options and lower demand (offset by better quality).</p> <ul style="list-style-type: none"> • There needs to be congruency across the supply/demand equation. • There should also be a commitment to the development of capacity across the system.
Industry Body	<ul style="list-style-type: none"> • There is no clear definition of the social impact investment “industry” and multiple players are disparate and unconnected. This problem could be addressed with a unique focus on the development of a niche industry. • An Industry Body needs to be established to provide a platform for engaging and partnering with governments to support coherent policy and consistent and comprehensive market and industry planning and development.
National Social Investment Policy Framework	<ul style="list-style-type: none"> • There is no nationally consistent approach to social impact investment in Australia. • There is engagement and interest from a range of sectors and governments are open to creating a policy environment conducive to impact investing. For example, the work of Impact Investing Australia and the Australian Advisory Board on Impact Investing. • There is a need for a consistent and coherent policy approach that provides nationally consistent policy development, leadership and implementation; market development and industry partnerships. The Wealth Beyond Welfare Policy Framework of the Blair and Brown Government in the UK is a useful reference point. This policy articulated a policy a set of policy goals (increased employment outcomes, entrepreneurship, placed based or regional investment) to which impact investment could be applied. In this example investment, like with all funding, is the enabler of policy outcomes, rather than the point of policy making.
Specialist intermediaries	<ul style="list-style-type: none"> • There is a need for more and differentiated intermediation. Specialist skills are a feature of work in this space both on the supply and demand side. • In the US and UK investment has gone into the development and support of these specialist intermediaries. • Clear articulation of what is required by intermediaries to progress

investment proposals will support this.

It is considered that a barrier to further development of social impact investment in Australia is a lack of strategy about what is valued by the Australian community. What is to be achieved, what is a successful outcome and how it is to be analysed and measured ought to be driven from the base point of what is value by Australian society. This would then determine what is being measured and why and what is a 'successful social outcome'.

Politics and regular government turn over and policy change is a barrier. Economic policy contributes to social issues. Sustainable social outcomes take time. Social impact investment needs to be built on a non-partisan solid framework and any investment given enough time and risk (associated with policy change and budgetary cycles) limited. A number of independent initiatives have emerged that could play a role in the development of policy which is not adversely impacted by political cycles. CEDA (Council for Economic Development in Australia) and ANDI (Australian National Development Index) are examples whose work should be supported and profiled.

There is a lack of knowledge and understanding in the marketplace about what is social impact investment and how it can benefit society.

The traditional paradigm of measuring outputs does not translate well into social outcomes which are sustainable.

We urge that the Government needs to recognise that social impact investment is not a panacea to social problems and that it cannot replace government funding in other forms.

Investment in successful social issues will require a change in mindset away from risk adverse models.

There is a lack of agreed benchmarks about what is to be measured.

2 What do you see as the future for social impact investing in Australia: for example, can you foresee the development of new structures for social impact investing?

It is important to generate common understanding about the intent, and objectives of developing the social impact investing market in Australia. Social impact investing is an opportunity to grow the resources of the community services industry to do its work. It should not be seen as an alternative to existing investment in social or community programs. Social impact investment is not the panacea for all complex social issues and a sophisticated mix of approaches are required. Social impact investment should complement existing models used to deliver social and community outcomes.

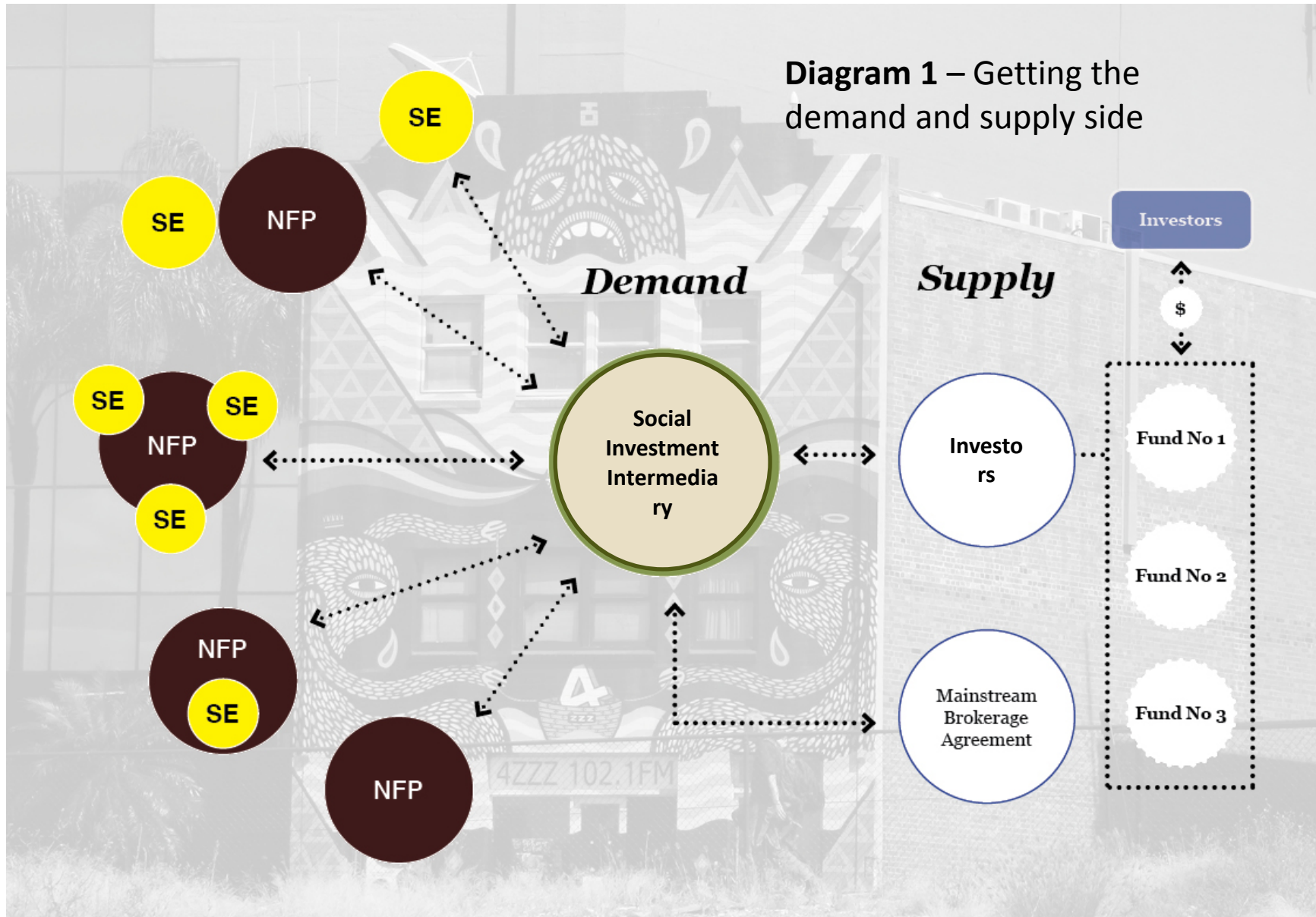
Social impact investment will be most effective where its strongest features are capitalised upon. Internationally, investment methodologies such as bonds have provided an effective opportunity to implement social interventions which require significant up-front capital commitment, and which can deliver equally (or usually greater) savings in the medium to long term. In addition, social impact investment is most compelling where there is a

substantial evidence base for a social intervention which delivers tangible and measurable outcomes. While the evidence base is growing, these interventions are still the exception rather than the rule.

Policy development based on growth of social investment is a different proposition to that which aims to deliver better outcomes from existing investment. A dedicated Government structure can provide nationally consistent policy development and implementation, assist with market growth and development and develop industry partnerships. To complement a government structure a social impact investment industry body is required to partner with governments to enable coherent policy and consistent and comprehensive market and industry planning and development. Specifically the role of an Industry Body might include:

- Building industry capacity for social impact investment including investment readiness;
- support to organisations to implement appropriate business and funding instruments;
- build connections between investors and suppliers and within industry; and
- raise awareness of the impact investing market.
- Partnering with governments to develop the market; and
- Identifying national and international developments and sharing good practice.

Diagram 1 – Getting the demand and supply side



3 Are there any Australian Government legislative or regulatory barriers constraining the growth of the social impact investing market?

We endorse the 2013 report IMPACT – Australia: Investment for social and economic benefit which identifies the need to clarify and streamline regulatory system to make investment easier. Specifically it recommends:

- Resources and information on legal forms and set up models;
- Guidelines for trusts and foundations (including PAFS) on impact investments, including fiduciary duty;
- Creation of a new DGR type 1 category (CDFI) to enable trusts and foundations to invest; and
- Appropriately structured tax incentives.

Consideration of the impact of regulatory requirements and tax criteria on existing charities which wish to invest in or raise capital by this social impact investment will be needed. For e.g. restrictions presented by the requirement that responsible persons of charities and trustees need to be prudent in investment when there is an element of risk required to build capital.

Restrictions imposed by inflexible government probity and procurement processes need to be considered.

The restrictions imposed by contractually imposed conditions of confidentiality for example the fact that recipients of the SEDF could not disclose information which restricted their ability to leverage on their collective learnings.

Consideration of the impact of consumer protection laws which are based around protection in a competitive marketplace and the appropriateness of that to remote and regional Australia.

Restrictions on investment by SMSFs and by government bodies.

4 What do you see as the role of the Australian Government in developing the social impact investing market?

The role of the Australian Government is to build an environment conducive to social impact investment by establishing a dedicated Government structure that provides nationally consistent policy development and implementation; supports market growth and development; build partnerships with industry; identifies and shares good practice and international developments; and investment in data to measure social outcomes. This includes working with:

- **Industry** - to develop and implement a conducive regulatory and legal environment for social impact investment; develop data sources to measure social outcomes; raise awareness of the social impact investment market and build industry capacity for investment;

- **State and territory governments** - to develop and implement nationally consistent policy;
- **International governments** - to identify global partnerships, new developments and lessons from international experience and understand and share good practice; and
- **Within government** – to build internal capacity to engage with social impact investment.

The Australian Government is also well positioned to identify and communicate priority areas to guide social impact investment. These priorities are well defined in the discussion paper.

Contributing to the market as a participant e.g. broker of services.

Assisting to provide an environment of understanding of the market – education and training.

Providing incentives for investment by private investors e.g.

- tax incentives; and
- for industry superfunds guaranteeing the difference between market return and return achieved on social investment.

(Note as an example, the NRAS – National Rental Affordability Scheme – framework acted as an incentive to private investors but has been overly bureaucratic, inconsistent in its policy and implementation and has generally not gained the confidence of either participants or investors).

Providing a conduit for network, communication, information sharing.

Helping to create and build capacity in existing service providers to take advantage of economies of scale to ensure sustainability and growth.

Promoting a formula of funding which includes an acceptance that there must be an inbuilt component for the research of what needs to be measured and how.

Contributing to learnings on existing models.

Enabling community and other resources to work together to achieve outcomes.

5 Do you see different roles for different levels of government in the Australian social impact investing market? For example, the Australian Government as co-funder with State and Territory Governments continuing to take the lead in developing social impact investments?

Inconsistent policy development and implementation will further fragment the social impact investment market. Consistent approaches by federal, state and territory governments is required to support growth of social impact investing in Australia.

In approaching this task there are different roles for different levels of government. The Australian Government has an important role to play in:

- Setting a clear and consistent policy framework.
- Establishing signals and incentives for the market.
- Supporting an enabling regulatory environment as the Government responsible for regulation in banking and investment.
- Leading the development of impact investment linked to other large scale policy reform at a commonwealth level – the National Disability Insurance Scheme, Consumer Directed Care Reforms in Aged Care and Affordable and Social Housing Policy.

The states and territories:

- Continue to structure impact investment in areas of core responsibility i.e. child protection (see Social Impact Bonds in Queensland and NSW).
- Engaging and building the capacity of community organisations and social enterprises.
- Leveraging the underutilised data both in government and across community services and social enterprises.
- Ensuring an enabling policy environment i.e. housing and child protection.

Further on some issues like housing and the environment there is also a role for local government to play.

Enabling wide consultation about society issues and what is valued and bench marks for measurement.

Where there is no competitive market, creating a service provider or working with an existing provider to provide a service in a remote or regional area that meets the public interest considerations but is undertaken in an efficient and sustainable way from the perspective of the service provider.

6 Are there areas where funding through a social investment framework may generate more effective and efficient policy outcomes than direct grant funding?

This question risks conflating issues that are interconnected but should be treated separately. Efficiency and effectiveness (productivity in human services), public policy (process and design) and better outcomes from grant funding. There is a raft of reform work occurring in each of these areas regardless of a focus on social impact investment.

It is important to generate a common understanding of the intent of growing the social impact investment market in Australia. The achievement of social outcomes should be the focus rather than the funding mechanism. Grant funding, contracting, outsourcing and impact investment are all used as mechanisms to achieve social outcomes and should complement each other. As previously stated they are a means to an end rather than the end itself. There is benefit in expanding the resource base available to implement effective and efficient social outcomes through social impact investment.

The question of effective and efficient policy in the social and community outcomes stands alone as a task to tackle through high quality public policy debate. Many commentators, advocates and policy makers across the social and community sectors agree that a better approach to directing investment is required. Learnings from the disciplines of impact investment can and should act as a catalyst for a broader discussion on current approaches to grant funding.

Grant funding can lead to a philosophy which recognises quick deliverables and compliance whereas the measurement of social impact which is sustainable and which makes real change to culture takes time. It brings an additional degree of robust oversight that is often not expected or found in grant funding contexts.

7 What Australian Government policy or service delivery areas hold the most potential for social impact investing? Are there any specific opportunities you are aware of?

We endorse the specific areas identified in the Discussion Paper as a focus for social impact investment and note that there are several existing examples across these areas.

We endorse the use of impact investment which supports the capacity of non-profit organisations to modernise their business operations, so that consistent with the private sector both debt and equity are used to transform and grow business capability.

Social impact investment could also be used to expand access to capital for investments in the arts and culture and environment sectors.

Other identified areas include:

- Housing – social and affordable.
- Housing for indigenous.

- Indigenous education to prepare individuals for employment.
- Early childhood intervention.
- A place based pilot in a rural or remote community which provides services across all sectors such as housing, health and education.
- The provision of an agreed social cost benefit analysis tool which identifies and puts a value and a cost on a project.

In developing the concept of 'intractable' as a criteria for investment, care should be taken to ensure that programs have demonstrable and incremental improvements as their goals, rather than expecting 'solutions' by reason only of the investment mechanism that is applied to it.

8 Are there opportunities for the Australian Government to collaborate with State and Territory Governments to develop or support joint social impact investments?

Partnership between the Federal Government and States and Territories occurs in relation to funding many other social and community issues and therefore there is not reason why it cannot apply in this case. Noting that delays in decision making and bureaucracy between the jurisdictions will not be conducive to the innovation required to grow the impact investment market.

It is important that cross jurisdiction collaboration has an effective governance framework and is sufficiently resourced to enable the participants to effectively engage with the framework.

9 What are the biggest challenges for the implementing the Australian Government's public data policy in the social impact investing market? What can do the Australian Government do to address these challenges?

The lack of a process to obtain an understanding about what society values so that there can be benchmarks developed.

An agreed model for society and building a framework that identifies how to meet those needs and what data is required available to or needs to be collected to measure outcome.

There are no agreed bench marks against which data is measured. Different organisations measure different things and rate the outcomes differently.

Lack of harmonisation of data collected.

Restrictions around sharing of data for example the data collected by the ACNC, Centrelink, Medicare and Aged Care service providers if harmonised could be used to great advantage in this space.

10 Are there opportunities for the Australian Government to form data sharing partnerships with State and Territory Governments, intermediaries and/or service providers?

Taking question 9 and 10 together. It is a widely-held view that privacy is a major issue in terms of access to and use of data. There are a range of other issues for consideration:

1. For what purpose is the data required – an outcome focus is critical to shaping use of data policy in this space.
2. It should not be assumed that the government is the only holder of data – community organisations and the private sector also have valuable data that is often underutilised.
3. Is the data that we have useful in answering questions of performance in an outcomes framework? In some instances, we may need to invest in new approaches to data gathering.

It is critical that state and territory governments work together on policy in this space. Some bridging of data gaps will be possible with a cooperative approach. This is important because although we often have data we have not always used it to help define a problem and may therefore only have a partial picture.

11 We are seeking your feedback on the four proposed Principles for social impact investing outlined in this section.

In general, the principles are sound and consistent with the work that has occurred in other jurisdictions such as New South Wales. The language used in the principles is loaded (fair, intractable etc.) and has the potential to attract judgement. This use of the language within the principles either needs to be defined or removed.

Some further questions on the principles include:

- Whose actions are they meant to inform – government alone or the broader ecosystem?
- To what end are they focussed? Is there scope to develop a broader policy framework as previously referenced in this submission to direct the focus and use of the principles. Principles should not be a replacement for policy.

Some comments on the principles are as follows:

- 'value for money' is a very subjective descriptor and should focus on preservation of capital as the core 'value' proposition, with income return being proportionate to the 'social value' that might be returned.
- 'fair sharing of risk and return' should be reflective of the nature and risk relative to the activities involved.

- A ‘missing’ principle is that there should be a concept of ‘co design with stakeholders’.
- the principles should also recognise the benefits of complementary grant funding for appropriate activities.

23 What guidance would be of assistance to superannuation trustees on impact investing

There is a concern that investing in a social impact investment would be in conflict with the requirement that the trustees must make decisions in the best interests of the members and its sole purpose of providing a retirement benefit or death benefits to the member or members. While larger superannuation funds have some limited discretion within existing regulatory frameworks, there is greater potential for contributions from:

- industry superannuation funds; and
- self managed Superannuation funds,

where some further regulatory allowances are contemplated.

How the conflict might be addressed and examples of how any existing funds have approached this issue without risking non compliance would be beneficial. In addition, further investigation of the benefits that could flow, and the mechanisms to achieve this, is warranted.

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Schedule 1

Represented Organisations at Roundtable Discussions Brisbane, Sydney and Melbourne

Sydney – 21 February 2017

- Basmala Academia
- Uniting NSW.ACT
- The Uniting Church in Australia
- White Ribbon Australia
- Deloitte Australia
- Aftercare
- SEFA Partnerships Limited
- Social Enterprise Finance Australia

Brisbane – 27 February 2017

- Brisbane Women's Club
- Deaf Services Queensland
- Savills Australia
- Philanthropy Australia
- Epic Good Foundation Pty Ltd

- Hear and Say Centre
- Mental Illness Fellowship of Queensland
- MICAH Projects

Melbourne – 2 March 2017

- Victorian Pride Centre
- Uniting (Victoria and Tasmania)
- Epworth Healthcare
- Hall & Wilcox (Lawyers)
- Australian National Development Index Limited
- CPA Australia

ⁱ Addis, R, McLeod, J, Raine, A; IMPACT- Australia: Investment for social *and* economic benefit; 2013, Department of Education, Employment and Workplace Relations, JBWere, Canberra