

Social Impact Bonds (SIBs) – Workshop 2

Wednesday, 21 September 2016

10:00am – 12:30pm

Welcome

Steven Harris

Department of Treasury and
Finance (DTF)

Agenda

10:00 – 10:05	Welcome	Steven Harris Department of Treasury and Finance (DTF)
10:05 – 10:50	Developing and Measuring Outcomes	Les Hems Ernst & Young (EY)
10:50 – 11:30	Financial Structure and Payment Models	Trevor Danos AM
11:30 – 11:45	Morning tea	
11:45 – 12:15	Joint Development Phase (JDP) and Contract Templates	Miranda Forehan DTF
		John Eagleton Chris Dynon King & Wood Mallesons (Mallesons)
12:15 – 12:25	Next Steps	Miranda Forehan DTF
12:25 – 12:30	Close	Steven Harris

Welcome and house keeping

- Welcome to the second social impact bond workshop!
- This workshop is a follow on from Workshop 1 and will cover the more technical parts of being involved with SIBs.

Developing and Measuring Outcomes

Les Hems

Ernst & Young (EY)

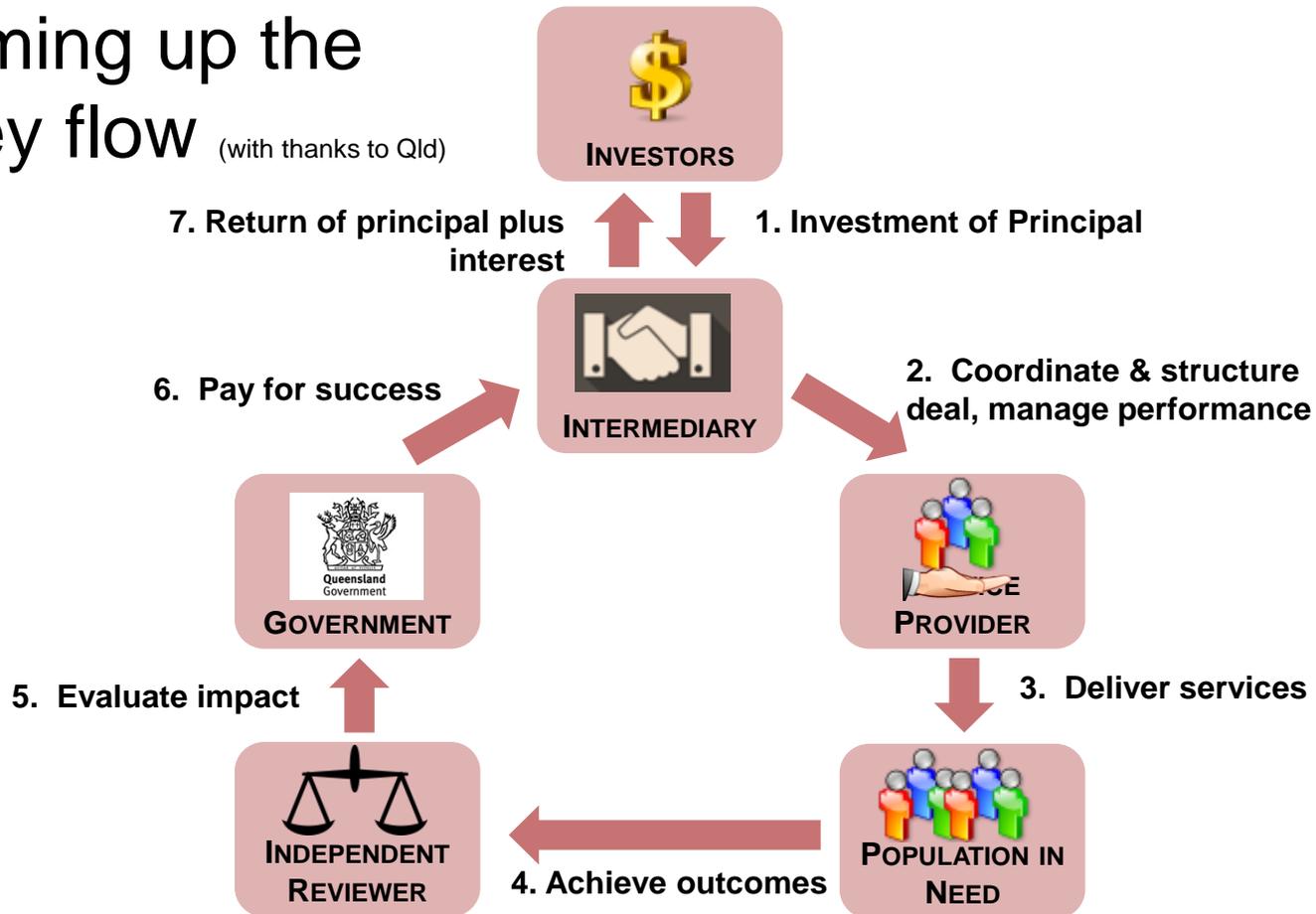
Q&A



Financial Structure and Payment Models

Trevor Danos AM

Summing up the money flow (with thanks to Qld)

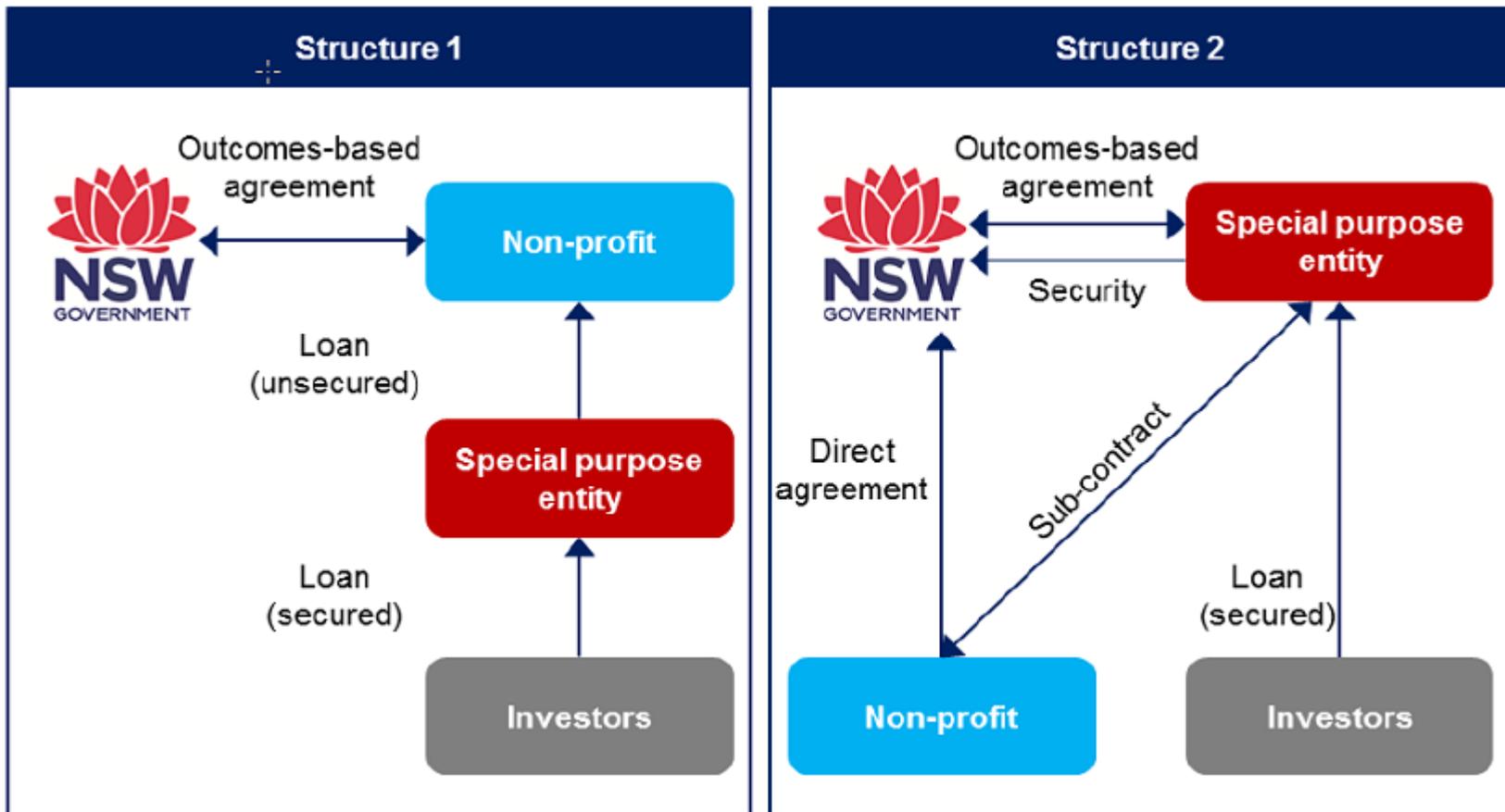


Source: Adapted from Brookings (2015)

SIB Structures – some basics

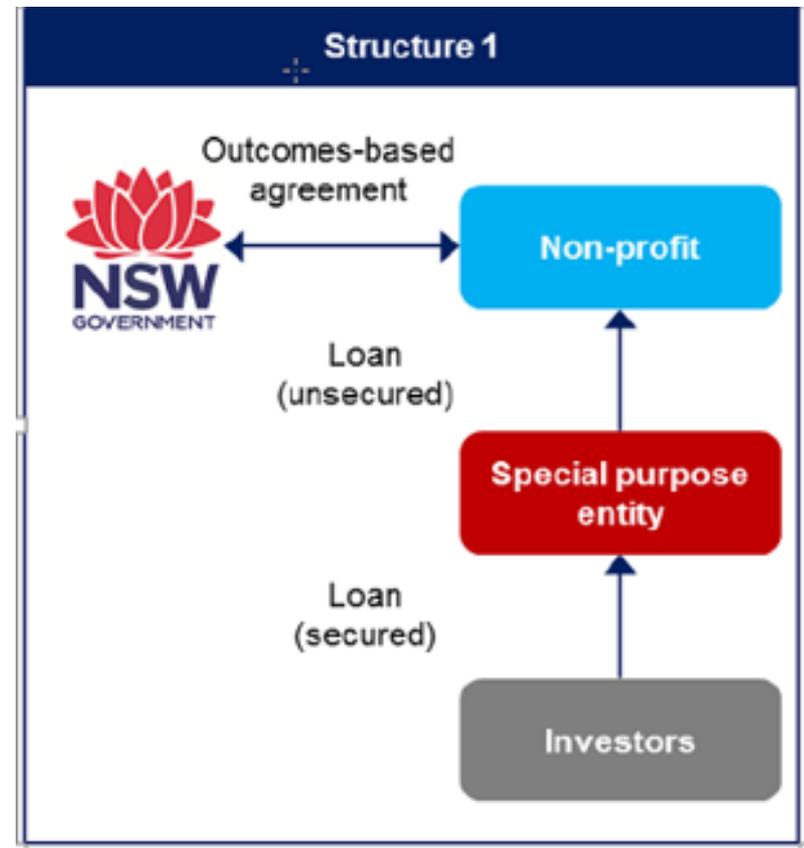
- Governments are generally open to the participation of intermediaries and the use of SPEs but needs to:
 - perform due diligence on them and understand their respective roles, ownership/control structures, contractual obligations and resourcing constraints and the implications for conditions precedent
 - be satisfied that there is full transparency including for fees
 - be satisfied on risks (actual and incremental structural, performance, payment flows including application and use of funds, solvency and/or reputation) and the implications for the Implementation Agreement and for termination rights
 - be satisfied on tax neutrality
- No SIB structure is generally mandated or preferred by governments.

Available SIB structures (with thanks to NSW OSII)



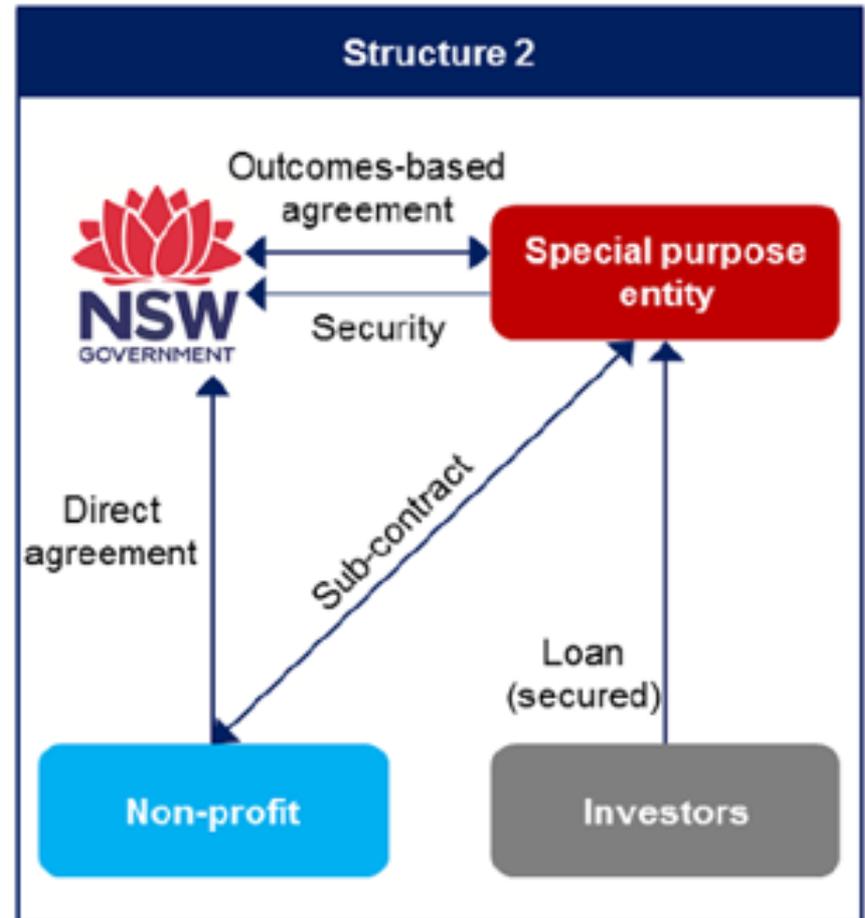
Structure 1

- Simpler structure
- State contracts with NGO ie service provider
- Not a mini-PPP
- No step-in rights
- Fundraising of lesser interest to the State (other than CPs)



Structure 2

- More complex structure
- State contracts with SPE
- Subcontract required (to be approved by State)
- Direct Agreement required
- Not a mini-PPP
- No step-in rights



Payment mechanism

- The payment mechanism and the financial model must reflect an appropriate sharing of risk, deliver value-for-money and ultimately relate back to the community in need
- Outcome payments will usually be capped
- Outcome payments will be paid against an agreed “look-up” table
- The State will make outcome payments if and only when the specific contractual outcomes are achieved, as verified by the Independent Certifier
- The State will not agree to guarantee any particular rate of return or repayment of principal to investors

Standing Charge

- The State may agree to a Standing Charge (SC) to assist the NGO i.e. service provider with its cash flow needs
- A SC is not as an essential or automatic feature of a SIB
- Governments are generally neutral on a SC for evaluation purposes so long as the SC is reasonable and non-excessive
- The State will require adequate security in relation to the repayment of any unapplied amount of any SC
- A SC is, in effect, an advance payment by the State and is netted off against outcome payments
- A SC is not some form of guarantee payment for investors

Termination Payments

- A Termination Payment may be payable by the State
- Trigger events include termination for breach, termination for convenience, termination through the passage of time, termination for Force Majeure and other agreed termination events such as certain agreed tax law changes
- Termination payments will vary in nature and amount across different trigger events
- There may be agreed break costs in some circumstances

A final word

- As good as the financial structure and payment model might be, success depends on:
 - Meaningful outcomes that are attractive to investors and that can be audited
 - A simple and workable measurement system with supporting data and an evidence base
 - Reasonable time horizons
 - Real savings that can be quantified and shared
 - An absence of distortions
 - Delivering value-for-money

Q&A



Morning Tea

Joint Development Phase (JDP) and Contract Templates

Miranda Forehan

DTF

John Eagleton

Chris Dynon

King & Woods Mallesons
(Mallesons)

Joint Development Phase (JDP)

- Legal advisors preparing a suite of template contracts
- Key templates to be released with RFP are JDP Agreement and Implementation Deed.
- Other template contracts and documents will be made available on the SIBs website.

Who will you be contracting with?

- **Project arrangements with the State**
 - Development, implementation and operational agreements
 - These are the core legal arrangements for any SIB
- **Consortium / organisational** arrangements
 - How the parties forming the consortium are arranged
 - Who performs what role and who bears what risks
 - May include a special purpose entity (company or trust)
- **Private investor** arrangements
 - Raising and servicing private funding
 - May be bonds (debentures), although no form is mandated or preferred (and so could be equity or loan funding)

Making things easier – some good news

- **Template documents** will be made available

- Project implementation
- Special purpose entity (charitable trust)
- Bond issue
- Security arrangements

These will be made available for free use via the SIBs website

- Project implementation / State documents will be required
- Use of other documentation is not being mandated, but should be considered if your transaction involves that feature

Arrangements with the State

- **As part of the RFP**, you'll need to be looking at
 - Joint Development Phase Agreement
 - Implementation Agreement (the core agreement)
 - Direct Agreement

In particular, there are obligations, liabilities and risks that arise for your organisation in these documents, which may not be shared or borne by others in the consortium

- For development in the **Joint Development Phase**, there will be
 - Operations Manual
 - Security arrangements (if applicable)
 - Conditions precedent

Can't we all just get along?

- We're here to **collaborate** and **innovate** together
 - Everyone is heading in the same direction and all parties want these transactions to succeed
 - With the different backgrounds of the stakeholders at the table – public sector, charity & NFP and private (for-profit) sector – and SIBs being 'new', we may all be saying the same things, but differently
 - Open dialogue and learning on all sides will be key
 - Time will be better used on working through the more 'bespoke' aspects – performance measures, program structuring and service delivery – than on being tied up on documents
- These principles will underpin how the contracting work-streams are conducted

'Other' considerations

- **Other things** not directly involving the State you should be thinking about include
 - Consortium, third-party and investor relationships
 - Target investors and what is required to sell the bonds (or other financial products) to them
 - Are the proposed services legally able to be provided?
 - Establishment and registration of any special purpose entities
 - Licences (including any requirements to hold an Australian financial services licence)
 - Taxation and stamp or mortgage duties
 - Insurances (and what steps you may need to take to meet the State's requirements)

Q&A



Next Steps

Miranda Forehan
DTF

Data availability

- Cost and activity data in the two priority policy areas will be provided with the release of the RFP.
- Work is underway to prepare cohort specific data from a range of different datasets, to inform the Joint Development Phase.
- The release of this data will be subject to appropriate approvals to safeguard privacy and the sharing of sensitive information.

Update on timing of RFP release

Q&A



Close

Steven Harris

Further information

- More information about the market engagement process is available via www.dtf.vic.gov.au/socialimpactbonds
- You can also submit questions to socialimpactbonds@dtf.vic.gov.au

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