

# Business Set-up, Transfer and Closure

**SUBMISSION by the OFFICE OF THE AUSTRALIAN SMALL BUSINESS  
COMMISSIONER**

**February 2015**

This is a submission by the Office of the Australian Small Business Commissioner (the ASBC)<sup>1</sup> to the Productivity Commission Issue Paper into *Business Set-up, Transfer and Closure*.

This submission is informed by our ongoing engagement with the business community, including dealings with individual small businesses and their representatives and, as such, our submission is focused on the areas of:

- education and access to information;
- the cumulative compliance burden (particularly licensing schemes and awards and penalty rates);
- access to finance; and
- family businesses.

## General comments

The ASBC is supportive of the initiatives and efforts that have been made by government to provide essential information and assistance to small business on planning, starting, growing and transferring or closing a business. Resources such as [business.gov.au](http://business.gov.au) and the Australian Securities & Investments Commission's (ASIC's) Small Business Hub, provide small business with simple and convenient access to government information as well as online tools.

Despite these resources, feedback received by the ASBC has revealed that dealing with government agencies about commencing, transferring or closing a business is often a frustrating experience. There are many different agencies that need to be contacted and these agencies often use very different terminology and require duplicate information to be provided.

These issues are often increased due to small business operators not differentiating between the three levels of Government (ie. federal, state and local). Dealing with the three levels and overlapping obligations, creates further impediments that small business is forced to navigate. For

---

<sup>1</sup> The role of the ASBC is to provide information and assistance to small businesses, represent small business interests and concerns to the Australian Government, and work with industry and government to promote a consistent and coordinated approach to small business matters. The Australian Government is committed to transforming the ASBC into the Australian Small Business and Family Enterprise Ombudsman that will be a:

- Commonwealth-wide advocate for small businesses and family enterprises;
- Concierge for a dispute resolution service;
- Contributor to the development of small business friendly Commonwealth laws and regulations; and
- Seamless link with the Government's Single Business Service to help small businesses easily find out about other Government services and programmes, including general business advice.

example, when starting up a café, the small business operator is required to work with all levels of government:

- federal government for business registration, ABN and tax related issues;
- state government for workplace relations, OHS and WorkCover requirements; and
- local government for licensing and health regulations.

Overlapping obligations also create real barriers for small business in transitioning from being a non-employer to an employer. We are therefore very supportive of the Australian Government's deregulation and red tape reduction program, since regulation and the compliance burden imposed by government at all levels is identified by small business as being a major impediment to starting, growing and closing a business.

In addition to the impact of red tape, there are a number of specific issues that restrict the ability of small business to start, transfer and close (dealt with further below):

1. It is critical that small business has ready access to affordable finance to ensure that it has the opportunity to establish and develop, including removing regulatory barriers for the use of Crowd-sourced Equity Funding. Access to finance has particular benefits for small business start-ups and the development of innovative new products.
2. Family enterprises face similar problems to small business, although family enterprises have an additional layer of complexity in relation to how the business operates alongside a family's values system and planning for the future generations of the business (succession planning). However, there is not always sufficient attention given to issues of family governance whilst Family Business Australia has estimated that less than 30% of family businesses have formal succession plans for management, control and ownership<sup>2</sup>.

Some other issues that are commonly raised with our Office (but are not specific business set-up, transfer and closure issues) include:

- Government procurement requirements limiting small business' ability to compete (eg. high public liability insurance requirements);
- Different record keeping requirements and periods depending on the government agency; and

---

<sup>2</sup> The Australian, 2 June 2012 at <http://www.theaustralian.com.au/business/wealth/succession-and-retirement-planning-vital-for-business-owners/story-e6frgac6-1226380822294>

- Government agency active engagement and response to small business issues in the development and implementation of policy.

We would be happy to provide further detail on these issues if relevant. Also, we would welcome the opportunity to be involved in other additional consultation relating to this inquiry, particularly regarding how any recommendations relate to and can assist small businesses.

## **Education and access to information**

Commencing and registering a new business is often a frustrating experience for small business operators. The process involves interaction with multiple Commonwealth agencies that use different terminology and have different processes and timeframes.

Feedback received by this Office has revealed:

- Information is spread over multiple websites that are difficult to navigate;
- Agencies have different registration processes and requirements;
- The same information has to be entered multiple times; and
- Applications can generally take up to 28 days to process.

A comment that we commonly receive is that:

‘I found having to complete separate processes at different websites confusing. I’d prefer to be able to complete all registrations in the one place’.

Last year, this Office participated in the second Australian Taxation Office (ATO) led Fix-it Squad. A recommendation of this group was to simplify the registration process for new businesses by enabling the core registrations (ABN, ACN, TFN, Business Name and Company Name) to be completed in the one place, with clear, well designed instructions. It was also recommended that businesses should be offered an alternative to the AusKey software (which users have issues with when using cloud based software or mobile devices). The alternative would be the option of a simple user-ID password authentication via SMS (similar to that used by the banks).

Selling or closing a business can be a very complex process and many small business operators lack the understanding, skills, time and resources to navigate this process. This, of course, includes fulfilling the requirements of the three levels of government. For example there is:

- Transferring the business name;
- Transferring or cancelling business licences;

- Cancelling the ABN and any other tax related matters;
- Calculating employee entitlements; and
- Satisfying all other reporting requirements.

Whilst there is government assistance available, many small business operators are reluctant to seek this assistance as this may highlight non-compliance issues of which they are unaware.

Another impediment is that the language used by government advisory services to assist small business is often inconsistent and difficult for small business to understand. This can especially be the case if English is not the first language spoken by the small business operator.

Our office has a conviction that no business should fail through lack of access to information. We believe that it is a core responsibility of government to facilitate access to or directly provide information to the small business sector. A recommendation of the Fix-it Squad was for the government to provide a free accredited online software accounting package to new small businesses. This could potentially reduce duplication and effort for small business to meet government and business record-keeping and reporting needs. Also, when selling the business, it would position the new owner with the right tools to follow best practice in record keeping. This could also increase the uptake of electronic channel and data quality for government reporting.

The provision of this software could be accomplished in partnership with accounting software developers. The developers could provide low or no cost software to small business with a view to the small business purchasing more sophisticated software and services as the business grows.

## **Cumulative compliance burden**

An easy approach for a regulator is to concentrate effort on law enforcement rather than educating businesses on the reasons for compliance. The majority of businesses want to comply with the laws that regulate their industry and non-compliance, especially in the case of small business is often associated with their inexperience, lack of understanding or poor management practices.

A crackdown on non-compliance by pecuniary or disciplinary measures may be effective in some instances. However, it is our view that in the majority of cases non-compliance is better addressed by a facilitative approach of educating business to comply rather than punishing non-compliance.

In the vast majority of cases, we believe that the first approach should always be education.

Consideration should be given to requiring a business to undergo a training course on compliance with the relevant regulatory scheme (potentially at the business' expense) for first-time/sporadic

non-compliance and for small business in their infancy. In this way, rather than being punished for non-compliance, the business can learn about compliance and the likelihood of a repeat incidence of non-compliance should be reduced.

The emphasis on educating to comply has the potential to positively benefit the quality of the business environment and have positive consequences for the economy.

## Licensing schemes

Regulators of licensing schemes have particular opportunities to contribute to red tape reduction.

It is characteristic of small business that, whilst accepting requirements to comply with regulation, small business wishes to have as little as possible contact with regulators. Consequently, regulators should look for opportunities to reduce the amount of contact that small business have with them. For example, where a licensing scheme calls for annual renewal of licences, regulators could investigate whether longer licence periods may be appropriate, such as five or ten year licences. This has been the approach successfully undertaken in modern times for motor vehicle licensing.

Another initiative in the licensing field is for regulators to consolidate core licences so that licensees do not have to seek regular variations to their licences. For example, if a restaurant applies for and is granted a temporary extension of their liquor licence trading hours on New Year's Eve, or any other annual recurring event, it would be reasonable for the regulator to have the variation placed permanently on the core licence of the restaurant. This removes the bureaucratic need for the licensee to reapply every year for the same variation. Initiatives of this nature impact both on the administrative efficiency of the regulator and the compliance costs of small business.

It should also be remembered that significant benefit can be attained by tailoring business regulation to the needs and context of business – regulations do not need to be made on the basis that one size should fit all. Nor should it be assumed that compliance should be identical for all sizes of business in a particular regulatory scheme. There is considerable scope for flexibility, both in making regulations and in regulators' administration of regulations.

Alongside approaches like tailored regulation can be personalised small business visits. For example, the ATO has a structured system of small business visits that permits officers to spend 1:1 time with business operators to assist compliance. This can be further supported by approaches such as those adopted by the Fair Work Ombudsman and ATO where the

organisations stand by any advice provided to business. This provides certainty for small business.

## **Awards and penalty rates**

A common issue raised with the ASBC by small business operators is the cost and compliance of the Award system and penalty rates. Many small business operators find the system to be complex and a major impediment to them employing more staff or transitioning from being a sole trader to a small business employing staff. This is an important issue.

There is an argument that employee wages, including penalty rates and other employee costs, can be viewed as a business cost and should be treated that way by small business. Some argue that if a small business is not able to operate on a weekend due to penalty rates paid to employees, then that is a business decision that the small business needs to make. However, there are some industries, such as the franchising sector where franchisees are contractually bound to abide by particular operating hours and trade on weekends and public holidays. Our office has dealt with cases where this has proved problematic, particularly in areas of regional Australia that lack the customer base of metropolitan areas. Despite this, franchisees may be obliged to operate under the same trading hours as the metropolitan stores and pay penalty rates to staff when they are not making sales.

We note that the Productivity Commission is undertaking an inquiry into the *Workplace Relations Framework* to which the ASBC will be making a submission and will explore this topic further in that submission.

## Access to finance

We consider that small business finance can be divided into two categories: that to which a small business is entitled (payment of invoices or monies owed) and that which the small business is not entitled to but would like to have (equity, overdrafts, loans, credit).

Too often we see examples of small businesses not being paid or paid on time for the products or services that they have provided. This can be due to poor business practices and/or aggressive cash-flow management of other businesses, or a business' own poor contract management practices. We encourage small business to adopt professional contract management to ensure payment of what is due in a timely fashion.

As for the second category, obtaining finance to establish or grow is critical and generally the finance sector in Australia is able to manage this with minimal Government intervention. However, with the exit of some non-bank financing streams (such as finance companies) as a result of the Global Financial Crisis, as well as immature alternative financing options compared to other countries (such as venture capital and crowdfunding), access to finance still rates as a concern for many small businesses. In our experience, this is particularly the case for start-ups and those with minimal or no collateral.

For start-ups, the issue is that there is not a financial history in the particular business. For businesses lacking collateral, the issue is that the bank cannot leverage existing property as security. In both these instances good, viable and profitable businesses can fail to obtain debt funding as a result of the inflexibility of financial institutions and a failure to investigate and give weight to business viability. Certainly, the alternative of equity funding is present, but this can result in small business entrepreneurs not being able to realise the sort of values from their innovation that they can achieve after further development.

Internationally there are a number of innovative initiatives to improve access to finance for start-ups that may not traditionally be successful in obtaining debt finance. One example is the Start-Up Loans Company in the United Kingdom. This is a Government funded initiative that provides start-up support in the form of a repayable loan together with a business mentor for entrepreneurs across the UK. Since January 2013, almost £98m has been lent to over 19,000 people with an average loan of £5,000. In our consultations with the UK Government we have been advised that one the most pleasing aspects of the initiative has been that around 50% of the loans have gone to



medium to long term unemployed people. This has the added benefit to the Government of reducing welfare payments and increased tax revenue for those coming into business and employment.

## Family business

It is important to understand the place of family enterprise in the business environment, and the particular issues that family business encounter. Family businesses account for around 70% of all Australian businesses,<sup>3</sup> have an average turnover of \$12 million per annum<sup>4</sup> and employ over 50% of Australia's workforce – averaging 37 people<sup>5</sup>. While family businesses are prevalent and their potential synergies and advantages allow them to thrive, there is no guarantee of success. It was highlighted by Lansberg<sup>6</sup> that only 10% of family firms make it through to the third generation. The key reason for this is attributed to intra family conflict, mainly in relation to succession and differences between family branches.

Family businesses have additional layers of complexities that add to how a business operates and its continuing success for future generations. Non-family businesses tend to put the business first, in that they run a business, as a business. However, family businesses need to be able to fit how a business operates within a family's values system. In saying this, family businesses see the family being just as important as the actual business, and the family group must be considered in each step of the way in making a business decision. Investing in the family business for the future and future generations tends to be a long-term and considered investment. The decision-making processes for family business have a longer term approach than most other organisations.

Succession planning and the encouragement and development of the next generation are seen as long-term investments for family businesses. It is essential that succession planning is established and in place to be executed quickly, as circumstances can change overnight which will affect the family business and its operation. As noted, Family Business Australia has estimated that less

---

<sup>3</sup> KPMG (2009), *KPMG and Family Business Australia Survey of Family Businesses*, 2009

<sup>4</sup> MGI (2010), *The MGI Australian Family and Private Business Survey 2010: From the dining room to the board room – Family business in focus* (in conjunction with RMIT University)

<sup>5</sup> Smyrnios, K. X. and Dana, L (2006), *The MGI Family and Private Business Survey 2006*, RMIT University 2006

<sup>6</sup> Lansberg, I (1999), *Succeeding generations: Realising the dream of family in business*, Boston MA: Harvard Business School Press

than 30% of family businesses have formal succession plans for management, control and ownership.<sup>7</sup>

As evidenced in the *Pitcher Partners Succession Reset Report 2014*<sup>8</sup>, the Baby Boomer generation is now facing significant challenges in succession planning. As highlighted in this report, succession planning and exit strategies is now gathering further attention as the inevitable challenge of passing on the business to the next set of owners is quickly approaching.

If this transition is not handled well it may impact the prosperity of the many economies in which these businesses operate. A failing in effective transition could see decades of business experience being lost and the competitiveness of businesses being weakened. Succession has been slow to emerge in the Australian markets but its presence is now clearly evident, it carries with it risk but it may also deliver great rewards. It should not be ignored<sup>9</sup>.

An owner's reluctance to properly consider succession can be caused by many different factors:

- While many business owners are very good at running their business, they are poor planners. Often, they require professional advice and expertise to assist them to think in the long term.
- Succession in family businesses can also be an emotional issue for business owners. It is natural that these owners can be reluctant to relinquish control of their creation. Quite often, the owner has identified their sense of self-worth to the business that they fear for their future without it.
- Succession planning is not usually structured or documented.
- Family members often disagree about succession options, which can lead to a particularly difficult time for the family. This includes the strong desire for long-established family businesses to keep control of the business within the family, even though successors from within the family may not be the best for the business.
- External suppliers have built up a rapport and strong relationship with the current generation. These attributes need to be earned by the next generation, not causing irreparable damage to the business relationship.

---

<sup>7</sup> The Australian, 2 June 2012 at <http://www.theaustralian.com.au/business/wealth/succession-and-retirement-planning-vital-for-business-owners/story-e6frgac6-1226380822294>

<sup>8</sup> Pitcher Partners (2014), *Succession Reset: Family Business in the 21st Century Report 2014*, in conjunction with Swinburne University, page 6

<sup>9</sup> Ibid

Too often businesses find themselves too far down the track to be able to make rational decisions for the longevity of the business. They are unable to see a way out and may decide on a quick solution. Unfortunately, not many businesses are aware of their options for when looking to exit a business, and are unsure of where to turn to for planning and assistance.

It is evident that family businesses need to put succession plans in place early, when establishing a business. This allows for a longer and more considered implementation, rather than decisions being made that might not be the best for the longevity and success of the business. The average time that it takes to transition the business from one generation to the next takes seven years. By not having a succession plan in place, a lifetime of hard work and commitment to developing and growing a successful business is easily lost if the owner has failed to plan for succession on their retirement or exit from the business.

We have taken the time to set out the circumstances of family business, since in starting, growing and passing on family business there are certain governance and succession issues that may be more critical than for other business. Any approaches that are taken to assist business around starting, running and transferring business should take into account these particular issues and support family enterprise governance and succession planning.

## **Conclusion**

We are supportive of initiatives to improve the information and assistance that can be provided to small businesses when planning, starting, growing and transferring or closing a business.

In summary, our key observations are:

- Small business in its dealings with government when setting up, transferring or closing a business wants simple, straightforward transactions via the one portal;
- There is a lack of understanding by small business operators on how and where to seek information and assistance from government agencies and initiatives can be undertaken to improve this;
- Small business still considers regulation and compliance to be the foremost impediment to running a business and consideration should be given to the reduction of the cumulative compliance burden in areas such as the extension of licensing periods;

- Access to finance still rates as a concern for many small businesses (particularly start-ups and those with minimal or no collateral) and further work can be done on debt financing to ensure that viable businesses obtain appropriate funding; and
- Due consideration should be given to family business interests particularly concerning the need for governance and succession planning when designing approaches that apply across the business environment.