

23 February 2015

Business Set-Up and Closure in Australia
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

Sent via email to: business.inquiry@pc.gov.au

Dear Sir/Madam,

We are grateful for the opportunity to provide a submission in response to the Issues Paper, *Business Set-up, Transfer and Closure*.

Master Electricians Australia (MEA) is a dynamic and modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

The continued success of electrical contracting businesses is a priority for MEA and we are eager to contribute to this discussion to ensure the current obstacles to the growth of the electrical and communications industry can be addressed. We have detailed below some of the obstacles encountered by electrical contractors as they set-up, transfer and close businesses.

Barriers to business set-up

Licensing Red Tape

To remain competitive in the marketplace an electrical contractor needs to be more than just a company that provides power points and light switches. Most electrical contractors now provide data cables, smoke alarms, TV antennas, solar PV and solar hot water, and in some cases security systems. To achieve this, the average contractor needs no fewer than six worker licenses and two business licenses in order to commence trading.

There are substantial amounts of duplication in the criteria for these licenses, and the processes for applying and maintaining each and every license has become extreme. Many contractors fail to keep up with all the license renewals for all staff and the company in addition to managing cash flow, tax and other legislative requirements. Obtaining and renewing each license requires undertaking training, meeting certain criteria, often obtaining insurance and extensive administrative time.

In addition, there are numerous different state and federal, private and Government bodies that have to be engaged with to monitor and achieve a fully licensed outcome. With national occupational licensing no longer being pursued by government the issue of licensing continues to be a significant barrier to the set up of an electrical contracting business. This is particularly so for those businesses operating across state lines.

In order to address this issue it is imperative that introduction of new licenses by State or Federal Government be predicated on a comprehensive impact and efficiency assessment, and integrated into existing licenses where possible. Licensing authorities should also work towards being better aligned in order to minimise the administrative and financial burden faced by start-up businesses.

Barriers to the transfer of a business

Workplace laws

The complexity surrounding workplace laws is problematic for business owners at the best of times. However, when transferring ownership of a business this complexity is intensified. The broad scope of the 'transfer of business' rules of the Fair Work Act are common areas that have created obstacles for business owners seeking to transfer their business. Below are examples of how the application of these laws can impact upon employers involved in a transfer of business:

Example one

An electrical employer had an Enterprise Bargaining Agreement (EBA) with conditions of employment most relevant to large construction works, which was in fact only a small portion of the works that they undertook. The company understood that the EBA applied to that company so they started a new company to tender for other types of work on a more competitive basis. They did so by shifting employees between the two companies as the work became available; in effect swapping between the EBA and the modern award.

However, the employer was not aware that the EBA is a transferrable instrument and should have continued to apply to the employees that were being swapped between the two companies. Situations like this can amount to an inadvertent breach of the *Fair Work Act* and potentially subject employers to penalties under the Act. The above is only one example of the complexities of workplace legislation and the impact that this can have on an employer seeking to transfer ownership of a business.

Example two

A company purchased a business premises and equipment from the previous owner. The company employed a part-time shop attendant to work in the store for them. The employee had previously worked for the other company but was made redundant from their employment when the business was wound up. They were employed shortly afterwards by the new company who had not made any arrangements with the other company with regard to staff. The new employment occurred within 3 months of the termination from the previous employer.

When the employer terminated the employee a short time later the period of the employee's previous service counted towards their 'continuity of service'. Accordingly, they were eligible to make an unfair dismissal claim against the employer.

This was because the 'transfer of assets' between the two businesses created a 'connection' within the meaning of the Act and therefore the employee was considered a transferring employee.

Example three

A company who manufactured coffins also had operations where they transported the deceased prior to funerals/services. When they took on the EBA that covered the employees they were given representations by the previous owner that there was no overtime applicable under the agreement and that the previous owner had not paid overtime in the past. However, when they received advice about the agreement and its application they became aware that the agreement did provide for overtime and they had been underpaying their 'transport' workers.

The company alleged that because of the previous owner's misinterpretation of the business they had misrepresented the position of the business financially. They sought to sue the previous owners of the company.

The above examples demonstrate the need for employer education concerning the interaction between workplace issues and transfer of business laws. We urge government to commit to undertaking a targeted educational campaign for businesses to ensure they understand their obligations. This is critical not only for business confidence but also to ensure employees rights are protected and they receive the accruals they are entitled to. With support from government, industry groups could play an important role in providing this information directly to the employers who need it most.

Barriers to closure of a business

Government intervention

Government programs and subsidies can act as a barrier to the closure of businesses by allowing unprofitable and failing businesses to remain operational.

A relevant example of this situation concerns the Home Insulation Program (HIP). The introduction of the HIP in 2009 as part of the Federal Government's Energy Efficient Homes Package. The final report from the Royal Commission into the HIP stated that the number of insulation installation businesses operating increased from approximately 200 prior to the HIP to 8,359 registered businesses after the program was introduced. Many of these would have been pre-existing businesses who decided to begin offering insulation installation solely because of the significant increase in demand flowing on from the Energy Efficient Homes Package. It is also not unlikely that some of these businesses were being kept in operation based largely on the revenue they were receiving from insulation installation. Supporting Australian business is undoubtedly important for the economy. However, subsidising failing businesses with temporary government intervention only acts as a barrier to the closure of ineffective businesses. In the case of the HIP, the intervention had more serious consequences when five young insulation workers participating in the scheme were killed for a number of reasons, which, according to the final report, included a lack of supervision and training by their employer.

We are in no way suggesting that government stop providing financial support to business; only that the provision of subsidies be subject to set criteria to ensure money is being directed effectively. We recommend that industry be consulted in determining such criteria before programs such as the HIP are introduced. This would ensure that any financial support is being directed to businesses who will be able to properly utilise the injection of funds and contribute to economic growth in the long term.

Conclusion

There are clearly barriers to the entry, transfer and exit of businesses in the electrical and communications industry. While a number of strategies could serve to overcome many of these barriers, it is essential that government conduct direct consultations with the affected industries to ensure any measures are accurately targeted. MEA would be eager to participate in any such discussions on behalf of the electrical and communications industry.

Yours faithfully,

Malcolm Richards
CEO