

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into Family Business in Australia

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About Pitcher Partners

Pitcher Partners is a leading accounting firm serving family business in Australia. The firm was created in 1991 with the express purpose of bringing 'big firm' technical expertise to what was termed the middle market, which includes family owned and operated businesses. Our predecessor firms have a long history of dedicated service to these businesses and, as a consequence, we have a depth of understanding of the sector that is first rate.

In the mid 1990's we undertook continuous quarterly research in conjunction with Monash University entitled 'Pitcher Partners Family Business Index'. This was an innovative initiative that has been replicated since. At the time it was widely acknowledged as a reliable source of information on the sector, its views, and the challenges it faced. The results were regularly reported by mainstream media and, on occasions, in Hansard.

Today Pitcher Partners boasts continuous relationships with some of its family business clients that extend over 50 years having advised them on multiple transfers of control from one generation to the next. A current international research project is being conducted in conjunction with Swinburne University and our international affiliate, Baker Tilly International, into family business succession across the globe.

In addition to research, Pitcher Partners has frequently adopted the role of advocate for the sector having dedicated Partner and senior staff resources to participation in Federal Government forums over more than two decades such as the Tax Design Advisory Panel, National Taxation Liaison Group, the Board of Taxation Advisory Panel, and various other subcommittees and consultative committees. Frequently, we are the sole voice representing family businesses.

Furthermore, we have supported the contribution of one of our Partners as a member of the Australian Auditing and Assurance Standards Board over the past 8 years, bringing a focus on governance and risk as it relates to privately owned entities.

This advocacy role represents a significant annual cost to the firm with minimal publicity or related benefit and is illustrative of the commitment that we have to the sector.



The definition of family business

The term "family business" suffers from a lack of understanding and adoption. Family businesses are without doubt a sub-set of businesses that are privately held. But many businesses that are privately owned and managed will not describe themselves as family businesses.

In our experience, they regard the term as being applicable to any business where several members of the same family are employed or are much smaller concerns than their own. So, a business where only the main breadwinner is engaged (or even a husband and wife but no children) as an example, could fail to identify itself as a family business. Similarly, a business that is of a size approaching a turnover of \$50 million or more could regard the term as only being applicable to small business in the same way that such a business will not identify itself as an SME (small to medium enterprise).

The definition adopted by the Australian Bureau of Statistics in its Business Characteristics Survey in 2004-05 should theoretically have been broad enough to capture businesses in the sector. However the results obtained were unsatisfactory with the consequence that the question was dropped from future surveys. We suggest that a contributing factor will be the absence of identification by the users that they fit the term.

It should also be noted that businesses change their character over time. A business where no children are currently employed may not describe itself as a family business even though it is family controlled and managed. Later in its life, when children enter the business and take up full time roles within it, it may then describe itself as a family business. In essence though, the business is unlikely to have changed materially. In terms of its policy needs from Government, there has been no effective change other than perhaps to recognise that a future generational succession of ownership may occur in the near future.

Accordingly, we would argue that so far as Government is concerned and its policy settings, "family business" should not be a term that is used. Rather, Private Businesses or Private Enterprises are going to be terms that will be more readily understood and adopted in the community - importantly, by the affected businesses themselves.

For the purposes of this and subsequent sections of this submission, the term family business is used in reference to privately owned and operated businesses but excludes entities that access public capital markets or are unlisted public companies or trusts.



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Contribution of family business to the Australian economy

Characteristics of family business

Family businesses are characterised by certain unique attributes:

- An entrepreneurial approach;
- A preparedness to take risks to achieve outcomes;
- A dedication and commitment to a vision;
- Self-belief;
- Innovative and efficient;
- Highly energetic, motivated, and prepared to work extraordinary hours;
- Constant reinvestment back into the business;
- Rapid decision making ability;
- Limited training and expertise;
- Limited resources both financial and in terms of human capital.

This drive, inspiration, and preparedness to take risks has provided substantial rewards for the Australian economy and community at large.

In order to continue to provide these benefits it is incumbent upon Governments at all levels to provide an environment within which these attributes can thrive. Family businesses are entrepreneurial. They typically do not expect handouts from the rest of the community. They back themselves to earn an income and grow their businesses with the scarce resources that they have at their disposal.

Regulatory burdens and impacts

Invariably however, increasing Government regulation rarely recognises the limited resources that smaller family businesses have at their disposal. The flip-flopping by successive Governments on unfair dismissal laws is a case in point. Only the large private firms will have a separate human resources function. That human resources function, where it exists, may well only have basic levels of skill and not the higher-level, multiple-discipline expertise found in larger companies. Only the very largest will have in-house legal counsel. Yet regulation will often impact private firms at a similar level to the large and well-resourced public entities.

For example, from a tax perspective, private enterprises of all sizes are subjected to the exact same tax provisions that apply to the top 100 listed entities. There are few carve-outs or administrative short-cuts provided for them. The highly technical nature of these provisions, the penalties imposed for non-compliance, and the sheer volume of legislative measures that apply to private enterprises results in a disproportionate compliance burden. In almost all cases, the same revenue could be collected from private enterprises, while providing short-cuts or administrative concessions that allow for voluntary compliance.



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Furthermore, where taxation provisions are aimed at family business, the provisions are often very complex and require significant financial resources in order to comply. For example, the capital gains tax provisions for small business entities are amongst the most complicated provisions in our taxation system. This is evidenced by the significant number of tax cases that have come before the Courts over the last two years involving disputes on the application of those provisions and the high audit activity of the ATO. The same can be said for other tax provisions that apply to family businesses, including those dealing with trusts and with loans from private companies.

In terms of financial reporting, family business in Australia is increasingly subject to international reporting standards ("IFRS"). Pitcher Partners supports the application of IFRS to the family business sector as it ensures that they are in possession of reliable financial information upon which they can make informed decisions. However, where the businesses are not complex, the full application of IFRS can be of little relevance to meeting their own needs or those of their external stakeholders such as financial institutions. Presently, businesses have some flexibility with this reporting as they are able to prepare special purpose financial reports or apply the reduced disclosure regime that go some way to mitigating these issues. However, this flexibility is under constant review and threat of removal. This should be resisted.

The objective of reducing 'red tape' and 'regulatory burden' is well founded when used to remove a 'one-size-fits-all' approach to regulation. However, in a growing economy it is important that certain checks and balances remain in place, so that growing businesses establish good management practices as they become economically significant.

For example, the annual audit for a small or medium sized business provides opportunity for an owner-manager to receive an external "health check" on the reliability of the financial information used for decision-making purposes. However, the need for audit is fragmented and determined by such things as type of structure, size, and in some cases the age of the business.

A regulatory approach which promotes good governance practices such as appropriate external audit not only reduces the risk of business failure but also equips smaller businesses with an understanding of how to develop management practices that enable them to grasp opportunities while mitigating risk. These skills are essential for continued growth and prosperity in a vibrant private business market.

While it is acknowledged that differentiation between categories of businesses on the basis of size can create two classes or standards within society, is this worse than the economic cost of stifling entrepreneurship? Due recognition must be given by our Governments to the precious resource that exists in Australian family business and nurture it rather than smother it.



Recommendations

In order to facilitate the continued growth and contribution of family businesses to Australia's economy it is recommended that:

- Recognition be given to the negative impact that unnecessary regulation can have on their competitiveness and that any increased burdens should be preceded by a rigorous examination of the consequences.
- Where new regulation is to be introduced, we recommend that Government impose mandatory internal requirements to consider the impacts on family businesses and whether concessionary compliance measures can be introduced to ensure compliance costs are minimised for family business (e.g. via a small business regulation impact summary).
- A systemic review should be conducted of the taxation provisions to identify areas where such provisions can be simplified for family business with the aim of reducing unnecessary compliance costs of family business.
- The flexibility that presently exists in relation to the application of international reporting standards should be maintained and the requirement for audit should recognise the value that it brings to improving the reliability of information and good governance of economically significant enterprises in the sector.



Structural, cultural, organizational, technological, geographical and governance challenges facing family business

Business succession

The succession of family businesses is a critical unrecognised challenge that will confront the Australian economy over the next decade.

Pitcher Partners in partnership with Swinburne University of Technology, and with the support of the Australian Research Council, are undertaking a 3 year research project (completing in 2013) to examine the dynamics, barriers and success strategies for family business succession in Australia.

Family business succession is often experienced as something very private and personal, yet family businesses in Australia often don't know what is common or unique about their succession practices. This is because there is almost no research on the issue in the Australian context.

As you are aware family businesses are among the most important contributors to wealth and employment creation in virtually every country in the world. They are a critical part of the Australian economy. It is forecast that family businesses valued at some \$3.5 trillion+ will change hands over the next decade as the baby boomer generation pass their businesses on. The smoothness of this transfer will impact the prosperity of the Australian economy but no government policy exists to support the effectiveness of this transfer.

Commonly cited statistics from The MGI Family and Private Business Survey 2006 are:

- 97% of businesses are privately owned
- Average age of owners is 55 years of age (and therefore in 2012, the average age will be closer to 60 years)
- Percentage intending to retire in the next 10 years is 81% (but most likely delayed by GFC)
- Owners with no exit strategy is 75%

And when considering the demographics of the Baby Boomer Generation:

- Comprises persons born between 1946 -1964
- In 2012 their ages range from 48- 66 years of age
- In 2020 they will be between 56 74 years of age with the weighting heavily towards the higher end.

Over the next 8 to 10 years the majority of baby boomer business owners will be faced with the realisation that they must now transfer their business and can no longer defer their decision.

Succession planning is often thought of only in the context of transferring a business within a family. However succession takes many forms and can comprise the outright sale of the business to third parties, merging the business with others and the sale of the composite business, the sale of the business to a management team and employees, the closure of the business and sale of assets, or in some cases doing nothing and facing the gradual decline of the business.



Our comments in the other sections of our submission regarding the taxation treatment of trusts and the willingness of Banks to fund private/family businesses are relevant to the question of effective succession.

It is particularly noted here that the present taxation of employee share arrangements is particularly restrictive with the consequence that employee equity participation in the family business sector is virtually non-existent in Australia. This is to be contrasted with the USA for example, where greater flexibility has enabled a much wider take up of these initiatives with the consequence that a succession of the business to employees is more common where family succession is not pursued.

Research outcomes

Our research to date has identified:

- A high degree of sensitivity around the issue of succession and a great deal of uncertainty, and therefore lack of willingness, to engage in the conversations with family members to facilitate effective succession.
- An overwhelming view that children are not expected to follow in the family business and that they do have a choice, combined with the belief that they also do not have a natural entitlement to ownership and control. These views create uncertainty on both the part of the exiting and new generation with neither being sure what the future holds.
- A strong sense that wealth should pass along family lines with lineal descendants being the recipients and the wealth being protected for future generations from the breakdown of relationships and marriages.
- An uncertainty and hesitation regarding the inclusion of spouses in the succession process in an attempt to simplify the process. However, the uncertainty relates more to an uncertainty about how to include spouses in the process and how to engage them in the discussion.
- Husbands are inclined to want continuity of the business along family lines, while wives are more inclined to express their reservations about the impact of the business on the children's wellbeing.
- Succession is seen as a process of fairness and not equality where recipients receive a fair but not necessarily equal entitlement depending on their contribution to the business.

The summation of this research to date is a hesitation about succession, a reluctance to engage in what are seen as uncomfortable discussions, uncertainty about how to proceed, and a resulting delay in commencing or engaging in a meaningful way in the process of succession. These initial findings support the need for greater effort in supporting effective succession.



Recommendations

In order to address the issues arising from the transfer of family businesses over the next decade, it is recommended that:

- The Government continue to fund research into strategies for family business succession and have regard to how policy may support the execution of these strategies.
- The impediments to employee share participation should be examined with particular emphasis on the impact of Australia's taxation regime.



The role of family trusts in facilitating family business

Why use trusts?

Family trusts play a valuable role in permitting family business to make the contribution that it does because trusts enable an orderly succession of ownership without incurring potentially crippling capital gains tax on the accumulated capital value of the business.

They are an imperfect solution however, as trusts generally have a maximum life of 80 years in all States other than South Australia. Furthermore, where there are changes to the constitution and composition of a trust, there is a risk that a trust may be "resettled". The consequence of this is that the existing trust may be seen as coming to an end, with the creation of a new trust. Where this occurs, there are significant tax and stamp duty ramifications that can occur.

Apart from the benefits of succession planning, trusts are often favoured to companies from a tax perspective, as they are able to access capital gains tax concessions that are not available to companies. This can be an important consideration when establishing a family business, as the disposal of the business at a later date will often result in a capital gain.

At the same time, a family business will legitimately need to reinvest its working capital in order to sustain growth. As part of the significant taxation reform that has occurred in Australia, the corporate tax rate has been reduced from 49% to 30% for companies since 1987. This reduction has been aimed at supporting the ability to retain working capital for reinvestment in a business operated by a company. However, this reduction in tax rate for business trusts has not been acknowledged, whereby the tax rate that ordinarily applies to business trusts that retain working capital is currently 46.5%. In order to remain competitive, business trusts have sought to take advantage of a lower corporate tax rate for working capital purposes by using corporate beneficiaries. (See the below section on access to finance).

Both of these concessions (i.e. the capital gains concession and the reduced corporate tax rate for retaining working capital) are legitimate and ought to be readily available to family business. However, in order to take advantage of them both simultaneously, complex business ownership structures must be created. These structures have become even more complex to deal with because of recent ATO activity in relation to trusts and corporate beneficiaries. The technical aspects of this have been dealt with extensively in other submissions so we will not repeat those here other than to record our agreement with them. However, we do note that this distortion and the consequent reaction to it has been *created* by our policy makers.



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Reform needed

A significant reform that is very easy to implement is to eliminate this distortion and allow access to both capital gains tax concessions and a corporate tax rate for trading businesses. Such a reform will save the family business sector considerable costs that arise now in terms of distraction of senior management and administrative resources, unnecessarily incurred professional fees, higher interest and funding costs, and lower retention of profits. We believe that such reforms would result in the same tax outcomes that are available under the current system, without the need for complex structuring to achieve the outcome.

A further inhibitor to generational change in ownership is the imposition of State stamp duty (on transfers of land and in some cases, business goodwill) and capital gains tax (on the transfer of assets). While the use of trusts can help to avoid these costs on intergenerational changes, there are circumstances where that is not possible. An example is where a family has more than one child working in the business but it is not practical to maintain joint ownership as they may both want autonomy in respect of different parts of the business. In this event, the best outcome may be to split the business with control of separate parts going to different individuals. A single trust will not allow this to occur and so a transfer of business from one trust to another will be necessary. Such a transaction would potentially result in significant stamp duty and capital gains tax under our current law, even though the change of ownership is occurring within the same family. As such costs are so significant, they can effectively result in a barrier to growth for family businesses seeking to expand through a second generation.

Accordingly, rollover relief from capital gains tax and stamp duty would be of great assistance in facilitating appropriate changes in control and growth of family business. To be effective, such relief should be provided where the assets are transferred from one trust to another trust. From an integrity perspective, such rollover should be limited to members of a defined family group.

Recommendations

In order to assist family businesses pass the business to future generations and to facilitate a fairer taxation system the following recommendations are made:

- A review should be conducted into taxation policies that apply to family business use of trusts. In particular it should focus on accessing capital gains tax concessions and the corporate tax rate in a simplified manner that will enable greater retention of profit and hence re-investment into active businesses and allowing changes to trust deeds without risking a re-settlement. It should also examine the case for exemptions to taxes where ownership of a business is being restructured within the same family.
- The maximum life for trusts (which is generally 80 years) should be critically examined for its potential impacts on preventing future generational transfers of ownership of family businesses.



Access to, and the cost of, finance and insurance for family business

Capital for private business is scarce. Typically family businesses will start with only a modest amount of capital and frequently this will involve pledging private assets such as a family home as security. For those who have not risked everything in this way, they cannot comprehend the stresses involved in taking such risks to pursue a goal.

Reinvestment of profits

Because family businesses start with such limited capital their owners must inevitably re-invest profits back into the business to fund its growth. This may be to finance additional trade debtors and inventory, or new plant and equipment and other hard assets. Such assets may be able to be partially funded through the banking sector but rarely will all of the needs be met. In particular, funding of inventory by external financiers is almost impossible. Consequently, after–tax profit must be retained to grow the business.

Furthermore, re-investment of profit is the only way that soft assets such as intellectual property, research and development, innovation and so forth can be developed. In our experience, it is not uncommon for family businesses to make enormous sacrifices in terms of personal financial compensation and time commitment over many years as the business grows.

Speaking for family business, they are not after handouts or free kicks – simply understanding. So when tax changes are introduced that make it harder to retain profits in a business this slows down family business innovation and growth. In this respect, recent changes to the taxation treatment of trusts and loans associated with them have had a significant impact on family business. While such measures may be warranted in very limited cases where private assets are involved, there are no policy grounds or tax mischief that warrants the introduction of such measures where they apply to the working capital of an ordinary business. Such policy decisions are an inhibitor on the economy. This demonstrates a lack of empathy or understanding by the regulators of simple business facts and is a very current example of Government getting in the way of private enterprise.

Debt funding and other sources of capital

With access to debt funding, there is a current lack of competition in the banking sector that acts as an impediment to family business. The loss of St George into Westpac and Bankwest into CBA during the immediate aftermath of the GFC removed two emerging and competitive financial institutions from the market place. This void is slowly being filled again but it will take many years for rising institutions to reach sufficient critical mass to be truly competitive and have the breadth of finance options available.



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Many would argue that four strong banks should be sufficient for Australia's economy. We would argue to the contrary. In our experience four quickly becomes one or two when institutions reach prudential exposures to certain industries or sectors and the relationship with the incumbent has broken down. In addition, during the aftermath of the GFC, many family businesses were, and are still, striking maximum lending limits that capped a bank's exposure to any one customer. These limits were often arbitrary and did not reflect the size of the business or its prospects.

Examples have also been noted of what could be described as a brinkmanship approach by financiers to re-negotiation of facilities at a time when alternative options are few. The lack of competition therefore has a real cost to family business and influences its competitiveness.

The impact on the sector of the availability and cost of debt finance is of paramount importance as this is a lifeline for the growth of family businesses. Most family businesses do not wish to take on financial partners or venture capital because the objectives and values of these alternate providers may not be in alignment. They also fear a loss of control and a measure of accountability to others they find unacceptable. Family business succession also becomes problematic where other equity participants exist.

The sector could gain a significant boost if it had access to patient capital. This is becoming less available through traditional banking. Bank facilities are typically provided for only short periods of two to three years and are subject to annual review. This is not an environment for investment in long-term assets, so there is a gap that must be filled if family business is to grow and prosper and survive future economic shocks. Rather than seek an alternative to bank funding, effort should be directed at finding a pathway to access longer term funding through existing channels.

Consequently, we recommend a review of the operation of the banking sector in this respect.

Insurance

So far as insurance is concerned, we make the observation that many businesses are underinsured as a consequence of cost cutting and possibly a lack of understanding of how insurance works. For example, family business will often have adequate cover over physical assets but will not take business interruption cover in conjunction with the asset insurance. In most cases this will be because of cost considerations but also, they will not understand that the absence of business interruption cover could mean the proceeds from asset insurance could be held up for long periods as insurers have little incentive to settle claims quickly.

In most cases there is sufficient competition in the market to ensure a range of options are available but the commission structure and multi-layered distribution of insurance means that perhaps it costs more than it should.



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An exception to this is the State Government based monopoly providers of workers' compensation insurance. Workers' compensation is a significant cost to family business and frequently has ambiguous industry classifications that do not adequately reward individual businesses for their efforts in minimizing workplace injury. It is beyond our expertise to comment on anything other than the outputs of this system but recommend in the interests of business efficiency and competitiveness a formal review by parties more qualified.

Recommendations

In order to assist family businesses access reasonably priced finance and insurance, it is recommended that:

- A review should be conducted into taxation policies that apply to family business. In particular it should focus on accessing capital gains tax concessions and the corporate tax rate in a simplified manner that will enable greater retention of profit and hence re-investment into active businesses.
- A review should be conducted into the banking services provided to the sector to determine measures that may be taken to encourage the provision of long term finance.
- A review should be conducted into workers compensation insurance to establish whether the current system provides an efficient and cost effective solution.



Family business responses to the challenges of the GFC and post GFC resilience

Prevention of business failure

Like all business cycles that have preceded it, the GFC and post-GFC era has, and will continue to, claim victims among family businesses in Australia. Family businesses accept the risks of failure at these times but that knowledge does not ease the pain, suffering and personal anguish that is experienced when it actually happens. Business failure will often cause the break-down of the family unit leading to divorce, extreme financial hardship, and division of families.

In many cases, such a failure is the direct result of poor decision-making or a lack of capital. When the economy deteriorates, the business does not have the reserves necessary to see through the tough times. It loses the confidence of its bankers and so the inevitable happens.

It is impossible to create a free enterprise economy that would eliminate these outcomes. They are, in many respects, an economic equivalent of Darwin's theory of evolution and should not be tampered with. However much can be done to prevent the preventable failures. Some examples of measures that would assist include:

- Strategic business planning assistance;
- Business mentoring assistance;
- Maintenance of voluntary administrations and deeds of company arrangement to permit a re-constructed business to continue; and
- Research into family business failure to better understand prevention measures that could be taken.

Availability of credit

A significant contributor to collapse during these periods is that the availability of credit generally falls at a time when the opposite is needed. Banks have their own issues to deal with at these times, but the inevitable consequence of a credit squeeze is that they will call in debt that cannot be paid because they fear a deteriorating position. Banks often appear to lack the patience and foresight to see a business through a tough period and so immeasurable damage is done to the economy when a business is closed and its capital value and intellectual property is extinguished.

No alternative financier is generally available because bank policies for new lending will mean that a new bank will not accept the risk where the business is being administered within its current "bad bank" – or asset management area. This is a change in banking that has arisen since the recession in the early 1990's and is a retrograde step so far as the broader economy is concerned. Many good businesses were saved in the early 1990's to become outstanding businesses today because there was a bank willing to take risk if they were satisfied the core business was sound. This is notably absent today and one must ask why this is the case.



As a general rule the Australian banks do their job well. However, when the country needs them to stand up most in difficult times, they do not - or are not able to. The root cause of this should be examined.

Expanding markets

Apart from financial aspects, the response of family businesses during these periods of adversity is typically to knuckle down and work harder. Optimistic by nature, family business owners will see opportunity where others may see pending calamity. Cutbacks will be made to save money but relationships with key employees will typically be retained until there is no alternative. Business efficiency will be pursued with vigour and so will customer retention initiatives. New markets may also be explored and in this respect family business is increasingly looking northward towards Asia for new opportunities. Significant assistance is already provided by Austrade and various State Government agencies. It is essential this continues and is expanded rather than suffering cutbacks.

Market power impacts

Mistakes will also be made. The temptation to give way to price wars and margin erosion will have long-term impacts. This can be particularly true where competitors are large corporates intent on holding market share or where key customers impose their market power on smaller suppliers. At the extremes, the market power used in these circumstances appears to any independent observer to be unethical at the least but unconscionable conduct laws seem to provide no protection. Perhaps a review of these may be warranted.

Currency factors

A feature of the post-GFC era has been the strength of the Australian dollar and its impacts on our economy. Clearly, import competing industry and exporters competing on the international stage are suffering more than is usual in harsh economic times. In the past our economy has received a boost following a weakening of our currency. This has not occurred this time and it remains to be seen what long term impacts will be felt because of this. While family businesses are nimble and efficient, the best of them can be challenged by such a structural shift. In this respect it is pleasing to note that the Reserve Bank has recently noted the potential for long-term damage to some sectors of the economy as a consequence of its actions in maintaining relatively high interest rates at this time.

In summary, the attributes that family businesses possess come to the fore during tough times enabling them to emerge stronger and more competitive. However, the ability of family business to survive adverse economic circumstances is largely determined by the amount of capital that they can access in times of need. There is an absence of avenues to such capital in Australia at the present time.



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Recommendations

In order to assist family business survive events such as the GFC it is recommended that:

- A review should be conducted into the banking provided to the sector with a focus on establishing the reasons for restrictive banking policies in more difficult economic times and how they might be changed.
- Assistance provided by Austrade and State Government agencies to family businesses looking to expand internationally should be at least maintained and increased if possible.
- A review should be conducted into anti-competitive behaviour and misuse of market power to establish whether sufficient protection is provided to family business.
- Avenues should be explored to provide family businesses with opportunities to access strategic business planning services and business mentoring services to assist them to avoid costly mistakes.
- Research into family business failures should be conducted to establish the dominant reasons for their failure and to identify measures that could prevent them.
- Any further watering down of measures such as voluntary administrations and deeds of arrangement with creditors should be avoided to provide an opportunity for distressed businesses to restart.