

**Australian Government Response to the report of the
Parliamentary Joint Committee on Corporations and Financial Services:**

Family Businesses in Australia – different and significant: why they shouldn't be overlooked

Introduction

The report of the Parliamentary Joint Committee on Corporations and Financial Services, *Family Businesses in Australia – different and significant: why they shouldn't be overlooked*, was tabled in Parliament in March 2013. The report made 21 recommendations on a wide variety of matters relating to Australia's family businesses.

The Government thanks the Committee for its work in preparing the report as well as those who made submissions and appeared before the Committee. The report has made an important contribution to building a greater understanding of the value of family businesses and the challenges they face.

The Government agrees in principle to most of the recommendations of the report and is pleased to provide its response to these recommendations below.

| Joint Committee Recommendations | Government Response to Recommendations |
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| Inter-Departmental Committee (Recommendations 1, 2, 3, 4, 7, 8, 9, 10 and 11) | |
| <p>Recommendation 1</p> <p>The committee recommends that an Inter-Departmental Committee (IDC) be established to identify the policy issues facing family businesses that are not adequately captured within the existing policy framework and with existing Australian Bureau of Statistics (ABS) data collection. The IDC should include: the Department of Industry, Innovation, Science, Research and Tertiary Education; the Treasury; the Australian Taxation Office; the Australian Bureau of Agricultural Resource Economics and Sciences; the Department of Resources, Energy and Tourism, the Department of Regional Australia, Local Government, Arts and Sport; and the Department of Employment, Education and Workplace Relations. The ABS should also participate in the IDC.</p> | <p>Agreed in principle.</p> <p>The Government agrees that family businesses are a significant and enduring feature of the Australian economy.</p> <p>The Government is committed to establishing a Small Business and Family Enterprise Ombudsman. The Ombudsman will be a Commonwealth-wide advocate for smaller enterprises, a contributor to making Commonwealth laws and regulations more small business friendly and a concierge for dispute resolution. Public consultations on the scope of the Ombudsman's role and powers were conducted in April and May 2014. The views and information gathered in these consultations will inform how the Government can best equip the Ombudsman to make a difference and help small businesses and family enterprises have the best chance of success. One of the first tasks of the Ombudsman will be to systemically examine the Committee's recommendations to increase public and government awareness of the role played by family businesses.</p> <p>In its report, the Committee noted that, while family businesses can and do come in all sizes, most family businesses are small and medium sized enterprises. The Government is committed to recognising the importance of small businesses to the economy and for this reason responsibility for small business policy now resides in the Treasury. This will ensure that the views and issues of small business are considered as part of the usual policy development processes of the Australian Government.</p> |

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| | <p>The transfer of small business policy to a central agency, namely Treasury, will see many of the activities proposed for the Inter-Departmental Committee carried out as part of ongoing small business policy development by Treasury in liaison with other Government departments and agencies, including those suggested by the Committee. Treasury's role as a central agency provides strong connections to other departments which will be drawn upon to progress the work recommended by the committee.</p> |
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Recommendation 2

The committee recommends that the initial focus of the Inter-Departmental Committee (IDC) must be on the specific public policy need for these agencies to identify a family business as distinct from a non-family business. In terms of the policy rationale for a survey (and a definition of family business), the committee recommends that the IDC carefully consider the following issues:

- (a) the need for policy makers to identify the number of family businesses that are small businesses, and if so, whether the definition of small business should be based on the threshold used for tax purposes (annual turnover of less than \$2 million) or the ABS's threshold of fewer than 20 employees;
- (b) the extent to which a definition of family business needs to capture employment data, and the possible effect that different thresholds in the definition will have on the number employed;
- (c) the importance of succession as a policy objective and the need for a definition to identify whether the owners could pass the business on, whether they intend to pass it on, whether they have a formal plan to do so;
- (d) the need for policy makers to identify first, second, third and later generation family businesses;
- (e) the need for policy makers to identify the industry and location of the family business;
- (f) the need for policy makers to identify the number of family businesses from culturally and linguistically diverse communities;
- (g) the need for policy makers to identify the number of non-employee shareholders in a family business and, therefore, the need for data on

Agreed in principle.

The Government agrees that consideration should be given to the need for policy makers to collect appropriate data on family businesses. This consideration will be undertaken as part of Treasury's small business policy work.

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| <p>the number of family businesses that are proprietary companies as opposed to unlisted public companies; and</p> <p>(h) the need for policy makers to collect data on the superannuation arrangements of family businesses, particularly the evidence that female family members do not have adequate superannuation arrangements in place.</p> | |
| <p>Recommendation 3</p> <p>The agencies represented on the Inter-Departmental Committee should periodically consult with key stakeholder groups to seek their input and feedback on the issues it is discussing. These groups should include Family Business Australia, the Australian Chamber of Commerce and Industry, the Council of Small Business of Australia and the National Farmers' Federation, and consider engaging other peak bodies that may be nominated to represent family businesses of differing sizes.</p> | <p>Agreed in principle.</p> <p>The Government agrees with the need for consultation. Treasury will provide opportunities for consultation with a wide range of stakeholders as part of its ongoing policy development process, especially in relation to small business and family enterprise policies.</p> |
| <p>Recommendation 4</p> <p>The committee recommends that the Inter-Departmental Committee report its findings to the Minister for Industry and Innovation within six months of it being established.</p> | <p>Agreed in principle.</p> <p>As a result of the transfer of small business policy to the Treasury portfolio, Treasury will provide the Minister for Small Business with advice on the progress of family business policy considerations within six months of this response.</p> |
| <p>Recommendation 7</p> <p>The committee recommends that as part of its deliberations, the Inter-Departmental Committee (see recommendation 1) should examine the findings on the wealth transfer survey conducted in 2012 by the accounting firm BDO Australia.</p> | <p>Agreed in principle.</p> <p>The findings of the wealth transfer survey will inform Treasury's policy development processes.</p> |

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| <p>Recommendation 8</p> <p>The committee recommends that in its deliberations on the specific public policy need to identify a family business, the Inter-Departmental Committee should consider the need for data on the economic contribution of family businesses. This should include the need for data on the contribution of family businesses to Gross Domestic Product, export earnings and employment, both in aggregate and by sector.</p> | <p>Agreed in principle.</p> <p>Data needs will be considered as part of Treasury's usual policy development processes.</p> |
| <p>Recommendation 9</p> <p>The committee recommends that the Inter-Departmental Committee consider the policy need for data on issues including the profits and growth of family businesses of different sizes, and the labour and capital productivity of these businesses.</p> | <p>Agreed in principle.</p> <p>Data needs will be considered as part of Treasury's usual policy development processes.</p> |

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| <p>Recommendation 10</p> <p>The committee recommends that the proposed Inter-Departmental Committee assess whether data should be gathered to measure the key characteristics and behaviours of family businesses. In particular, consideration should be given to:</p> <ul style="list-style-type: none"> • the value of assets on balance sheets; • debt to equity ratios; • the tenure of Chief Executive Officers; • the average number of years of employee service to the business; and • philanthropic contributions, as reported to the Australian Taxation Office. | <p>Agreed in principle.</p> <p>Data needs will be considered as part of Treasury’s usual policy development processes.</p> |
| <p>Recommendation 11</p> <p>The committee recommends that the proposed Inter-Departmental Committee consider the need to quantify the extent to which family businesses will be transferred or closed in the coming decade as a result of the retirement of the baby boomer generation, and the policy implications for the economy.</p> | <p>Agreed in principle.</p> <p>The Government acknowledges the committee’s finding that there is insufficient longitudinal data available to assess the likely quantity of family business operators retiring over the next decade. The potential economic impacts of these retirements need to be considered within the setting of existing and emerging trends in the Australian economy, including in demographics. Treasury will include in its report to the Minister for Small Business (see response to recommendation 4) advice on the need for data in determining the appropriate policy response in this area.</p> |

**Collection and provision of data by the Australian Bureau of Statistics
(Recommendations 5 and 6)**

Recommendation 5

The committee recommends that when collecting official data based on a formal definition of family business, the Australian Bureau of Statistics should incorporate a set of clear and targeted questions into the Business Characteristics Survey. The intent must be to deliver the survey as efficiently as possible, including to limit the time taken by respondents to complete the survey.

Recommendation 6

The committee recommends that the Australian Bureau of Statistics inquire into whether the Business Longitudinal Database can be sufficiently de-identified so as to be made available for research purposes on request.

Agreed in principle.

A majority of family businesses fall into the small business category, on which statistics are currently collected and published.

The Australian Bureau of Statistics (ABS) has a work programme which is established in response to the current and emerging statistical priorities. The ABS considers new work and changes to surveys in the context of this broader work programme and competing priorities, within the limitations of the resources allocated to it. There are a number of areas where there is pressure to increase the statistical coverage provided by the ABS. The ABS has in place processes, such as statistical user group forums, that attempt to identify and prioritise these pressures.

In relation to the Business Longitudinal Database, de-identified data is available through the ABS Remote Access Data Laboratory. The ABS advises, however, that questions relating to family business were collected only once in this survey (in respect of 2004-05).

***Income Tax Assessment Act 1936 and
Income Tax Assessment Act 1997
(Recommendations 12, 13, 14 and 18)***

Recommendation 12

The committee recommends that as part of its current inquiry into Division 7A of the Income Tax Assessment Act 1936, the Board of Taxation closely review the evidence gathered through this inquiry about the effect of Division 7A on Australia's family business sector. In considering the evidence, the Board of Taxation should consider what measures can be taken to support Australian family businesses, and by extension the Australian economy, while giving due regard to appropriate taxation obligations.

Agreed.

The Government has extended the terms of reference and reporting date for the Board of Taxation Review of Division 7A. Under the extended terms of reference the Board is examining the broader taxation framework in which Division 7A operates and within this context the tax implications of private business structures. The Board released a second discussion paper in March 2014 and sought submissions from a wide range of stakeholders, including those in the family business sector and their advisors.

Recommendation 13

The committee recommends that the government publicly release the Board of Taxation's report into the operation of Division 7A of the Income Tax Assessment Act 1936.

Agreed in principle.

The Board will report to Government by 31 October 2014 and the Government will make a decision about releasing the report at that time.

Recommendation 14

The committee recommends that as part of the current analysis of options to reform the Division 6, Part III of the *Income Tax Assessment Act 1936* the Department of the Treasury review the evidence gathered through the committee's inquiry into family businesses in Australia and consult with representatives of the family business sector.

Noted.

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| <p>Recommendation 18</p> <p>The committee recommends that the Department of the Treasury review the evidence gathered through the committee's inquiry into the family business sector in Australia and consider consulting the stakeholders identified through this inquiry about the sector's concerns about the effect of Division 83A of the <i>Income Tax Assessment Act 1997</i> on their capacity to engage suitably qualified executives. Treasury should advise government about whether appropriate support can be provided, whether through amendments to Division 83A or other mechanisms, to address the challenges faced.</p> | <p>Agreed.</p> <p>The Government is committed to addressing the concerns that have been raised by startups in relation to Employee Share Schemes. In relation to this, the Government undertook direct consultations with interested stakeholders from 28 January to 7 February 2014.</p> <p>Issues that have been raised in relation to Employee Share Schemes are being considered within the context of the Prime Minister's Taskforce established to develop a National Industry Investment and Competitiveness Agenda.</p> |
| <p>Rule against perpetuities (Recommendation 15)</p> | |
| <p>Recommendation 15</p> <p>The committee recommends that the Council of Australian Governments, or its relevant Ministerial Council, inquire into whether the rule against perpetuities can be abolished in each jurisdiction, or whether its scope can be limited to appropriately exclude commercial arrangements. In undertaking this review, the Council should consider how many trading trusts are likely to be affected in the next two decades. It should also consider the effect that abolishing the rule against perpetuities in South Australia has had on trading trusts operating in the State.</p> | <p>Agreed in principle.</p> <p>The Minister for Small Business will raise the issues identified by the committee regarding the rule against perpetuities for trusts, and the implications for family businesses, with the relevant state Ministers.</p> |

**Operation of section 113 of the *Corporations Act 2001*
(Recommendations 16 and 17)**

Recommendation 16

The committee recommends that the Department of the Treasury consult with representatives of the family business sector about the effect of section 113 of the *Corporations Act 2001* on large, multigenerational family businesses.

Recommendation 17

The committee recommends that the Australian Bureau of Statistics collect data on the effect of section 113 of the *Corporations Act 2001* on Australian businesses.

Agreed in principle.

Treasury welcomes consultation with the family business sector on corporations law and will advise the Government on the case for making any amendments to section 113 of the *Corporations Act 2001*.

**Information that the Australian Securities and Investments Commission provides to business operators
(Recommendations 19 and 20)**

Recommendation 19

The committee recommends that the Australian Securities and Investments Commission consult with family businesses to gauge their understanding of the *Corporations Act 2001*, in particular directors' duties and liabilities, and work with Family Business Australia and other interested organisations that represent family businesses to disseminate information through education and training. Information could also be usefully provided in plain terms on the MoneySmart website.

Recommendation 20

The committee recommends that the Australian Securities and Investments Commission review information available on the MoneySmart website about private equity investments, and design information that would assist family and non-family businesses to determine whether it is appropriate for their business to seek private equity finance.

Agreed in part.

The Australian Securities and Investments Commission (ASIC) is committed to engaging with Family Business Australia to identify the most appropriate means of tailoring communication and engagement with Family Business Australia's members. Family Business Australia is currently a member of ASIC's Business Advisory Committee. This forum provides a mechanism for the organisation to provide direct feedback to ASIC in respect of registration and corporate register functions.

ASIC undertakes a range of work to educate those in business, and help improve national financial literacy. The Government thanks the Committee for its recommendations on education and training, and will take them under advisement.

ASIC has established partnerships with key small business stakeholders, including other regulators, business associations and business advisors. ASIC will continue to progress these partnerships and build further ones with a view to increasing small businesses knowledge about the role of ASIC and their compliance obligations.

The Government notes that ASIC currently provides information about the obligations of company officeholders under the Corporations Act through its website, www.asic.gov.au. With respect to directors' duties and liabilities, there are also various sources of publicly available information including through the Australian Institute of Company Directors website and Chartered Secretaries website.

The Government has established www.business.gov.au as a whole-of-

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| | <p>government service which provides essential information on planning, starting and growing a business in Australia. While the website currently provides information about business financing options, including both debt and equity finance, the Government will consider the recommendation for the publication of further materials on accessing private equity.</p> <p>The Government does not agree that it is ASIC's role to give commercial advice on the appropriateness of certain types of fund raising activities to particular businesses or types of businesses.</p> |
| <p>Family business representatives on the Reserve Bank of Australia's annual small business panels (Recommendation 21)</p> | |
| <p>Recommendation 21</p> <p>The committee recommends that the Reserve Bank of Australia include representatives of the family business sector on its annual small business panels as an interim measure.</p> | <p>Agreed in principle.</p> <p>As an independent central bank, the Reserve Bank of Australia (RBA) is responsible for determining the makeup of its advisory panels, including the Small Business Finance Advisory Panel. The Government notes that there are currently a number of family business representatives on the Small Business Finance Advisory Panel. In determining the constitution of such panels, the RBA is mindful of the need to select representatives from a cross-section of the small business sector, including family businesses.</p> |