



# **CPA AUSTRALIA**

## **Submission to the Senate Employment, Workplace Relations and Education References Committee**

### **Inquiry into small business employment issues**

**16 May 2002**

---

## Submission to the Senate Employment, Workplace Relations and Education References Committee –

### Inquiry into small business employment issues

## TABLE OF CONTENTS

	<b>Page</b>
Executive summary	3
1.0 Introduction	5
2.0 Special needs and circumstances of small business	5
2.1 Information needs	5
2.2 Employment opportunities and staff retention	6
2.3 Special needs of family business	7
3.0 Factors that impact on small businesses' capacity to employ	8
3.1 Perceptions about employees	8
3.2 Workflow and flexibility – casuals and contractors	9
3.3 Compliance with regulation	10
4.0 Regulatory Environment	11
4.1 Taxation	11
4.2 Superannuation	12
4.3 Occupational health and safety and Workers Compensation	12
4.4 Unfair dismissal legislation	12
4.5 Maternity leave	13
4.6 Impact on small businesses' ability to raise finance	14
5.0 Complexity and duplication inhibits growth	14
5.1 Fragmentation of regulatory oversight role	14
5.2 Poor understanding of legal status of employment relationships	14
5.3 Role of advisers	15
6.0 Conclusions and recommendations	15
6.1 Better information resources for small business	15
6.2 Better resources for advisers	16
6.3 Minimising regulatory compliance burden	16
6.4 Maintaining flexibility of small business workplaces	16
6.5 Help to move employees from casual to permanent	17
6.6 Cost/benefit analysis and risks	17
6.7 Better understanding of small business needs	17
6.8 Unfair dismissal legislation	18
6.9 Education strategies	18
6.10 Needs of family businesses	18
 <b>APPENDICES</b>	
1. Senate Employment, Workplace Relations and Education Reference Committee – Terms of Reference	19
2. CPA Australia Media Releases	20
3. CPA Australia article – Effective Business Structures	23
4. CPA Australia Small Business Survey Employment Issues March 2002	28

## ***Executive summary***

CPA Australia is Australia's largest professional association with more than 97,000 members in finance accounting and business. Around 18,000 members are in public practice providing advice predominantly to small business clients. Increasingly, small businesses are looking to their accountant for advice on employment issues from taxation and superannuation, to performance management and termination.

In March 2002, CPA Australia conducted a survey of 600 small businesses and 105 CPAs on small business employment issues. CPA Australia is also undertaking research into the role of accountants on providing employment advice in order to ensure our members remain at the forefront of relevant small business issues.

The CPA Small Business Survey found that for 52 per cent of small businesses, the major barrier to employment was a shortage of skilled, motivated and reliable employees. There is a need for improved links and communication between small businesses and job-seekers to ensure that the skills sought are those being developed. Government and small business can work together to close this skills gap.

Small businesses are employing more casuals and contractors despite a belief that full-time employees care more for their business and their customers. This trend is driven by the need for a flexible workforce to respond to fluctuating workloads, the increase in the compliance burden and reduced profitability.

Small businesses still feel they are a poor cousin to big business when it comes to attracting and retaining staff. They see themselves as a training ground for staff who lack loyalty. Better recruitment processes and an understanding of employment offers would assist small business attract staff, however any increase the differential between small and large businesses is unlikely to benefit the sector in the long run.

There has been much debate over whether one such carve-out should be with respect to unfair dismissal laws. CPA Australia's survey showed clearly that more than a third (42 per cent) of small businesses don't know how to dismiss staff in line with the legislation. Sixty-two per cent believe that the process is complicated and 30 per cent believe they will always lose an unfair dismissal claim.

The unfair dismissal laws are one example of an employment system that is becoming more complex. Today, with around 40 per cent of the workforce in casual, contract, labour-hire and other non-traditional employment, the small business employer has a much more complex, legalistic environment to navigate.

There are opportunities to improve access to information, reduce the compliance burden, improve flexibility and provide assistance to the small business sector to enhance their capacity to employ. This paper outlines some of these issues and recommends that:

- Information resources for small business be improved making access intuitive and compliance requirements are used to add value to the businesses;
- Better use be made of business advisers to communicate with small business and appropriate resources be made available;

- The complexity of the employment system be reduced through a seamless front-end ‘virtual department’ to meet small business needs;
- The needs for flexibility in small businesses be recognised and strategies developed to assist them manage their workforce accordingly;
- Assistance be provided to help small business move employees from casual to permanent;
- A cost-benefit analysis tool be developed to help small business identify the optimum employment relationship for their business;
- A better link between small business needs and pre-vocational education be established, particularly in training unemployed persons;
- Develop simple guidelines on the processes and procedures involved in terminating staff in order to provide small business with certainty and remove unnecessary concerns;
- Develop uniform training materials for small business on human resources and industrial relations and disseminate the materials through multiple distribution channels;  
and
- Understand and support the unique needs of family businesses and their different employment relationships.

## **1.0 Introduction**

CPA Australia is Australia's largest professional association with more than 97,000 members in finance accounting and business. Nineteen per cent of these, around 18,000 are in public practice providing advice predominantly to small and medium sized businesses. Small businesses generally prefer to have one primary source of advice, and therefore use their accountants as a sounding board for a multitude of issues from tax compliance, investment advice, business management to human resource management.

CPA Australia's 1999 survey of micro-business (businesses with five or less employees) showed that 89 per cent of micro-businesses use an accountant for business needs and around 80 per cent of these visit their accountants more than once a year. Respondents sought advice from their accountants in the following areas:

- taxation advice - 96 per cent,
- small business advice - 55 per cent,
- business planning advice - 27 per cent,
- superannuation - 25 per cent, and
- cost management - 15 per cent.

In 2002, CPAs were asked the extent to which their clients sought advice on issues relating to employment. Over 90 per cent of CPAs were asked advice on superannuation arrangements and compliance obligations, employment tax obligations and workcover issues. More than 80 per cent were asked for advice on wage and salary rates and conditions, payroll functions, succession planning and structuring employment arrangements. Other common areas of advice sought from more than half the CPAs were recruitment, performance management and termination of employees.<sup>1</sup>

These figures clearly demonstrate the extent to which small businesses seek advice relating to employment issues. CPAs are increasingly involved in the employment aspect of their client's businesses, particularly as employment relationships and associated compliance obligations have become more complicated for the business operator over the past decade.

## **2.0 Special needs and circumstances of small business**

### **2.1 Information needs**

Small business operators are generally skilled in the function of the business rather than in business management, hence the idiom – *small business owners are too busy working in their business to work on their business*. A recent Australian Bureau of Statistics profile of small business<sup>2</sup> shows that 14 per cent of small businesses are less than one year old and that 35 per cent are between one and five years old. Forty-one per cent of business operators have no additional educational qualifications beyond school education and an additional 38 per cent are educated to certificate level. This data indicates that a large number of business operators are likely to have minimal business experience or formal qualifications.

Generally small businesses seek information when a trigger in the business occurs rather than seeking advice before the event. For example, most would only seek information about employing when they decide to take on an employee. They would only seek information

---

<sup>1</sup> *Small Business Survey Program – Employment Issues* CPA Australia March 2002

<sup>2</sup> *Australian Bureau of Statistics Characteristics of Small Business 2001* Cat No 8027.0 Canberra

about terminating an employee when the need arose within their business. One of the concerns for many small business operators is that they don't know what they need to know. They can operate in some areas unaware of their compliance obligations. This is particularly the case for changes in awards and conditions of employment where a business does not belong to an employer association. Often ignorance of compliance obligations only surfaces after a business has made and implemented a decision that breaches requirements.

Small businesses need to obtain information during the ordinary course of their business. Businesses that employ interact with many organisations, some government, and some private sector, from which the business can gain information. These organisations include the Australian Tax Office (ATO), superannuation funds, health and safety organisations, workcover, unions, employment agencies as well as accountants. Being able to access relevant information at these points of contact and others like them would assist small business. It should not be difficult to find out about one's compliance obligations – it should be intuitive.

## 2.2 *Employment opportunities and staff retention*

Small business are concerned about staff retention with many businesses considering themselves as a training ground for big business, especially in service industries. Small businesses often complain that they lose the investment they make in training if their staff leave. Many small business employers feel staff use their firm to gain the experience but don't stay long enough to return the investment. The finding in CPA Australia's survey that 8 per cent of small business consider the lack of loyalty in employees is a major barrier to employment supports this concern.

Today's workforce is far more mobile than years ago. Many larger employers have an expectation that a significant proportion of their workforce will turn over every two to three years. Small businesses generally do not have the same expectations, wanting a more significant commitment from their staff. This is one of the factors behind many small businesses' preference for employing family members.

Small business workplaces are becoming more flexible. CPA Australia's survey (below) showed the small businesses are offering alternatives to their staff similar to those offered in larger businesses.

### **Employment conditions and rewarding good performances by staff**

	<b>Small business (461) %</b>	<b>* CPA SB clients (96) %</b>
<b>Employment conditions...</b>		
Offer flexible working hours	59	29 [73]
Pay for off-site training or work-related education	45	32 [76]
Have an incentive scheme	35	12 [50]
Offer job sharing or part-time work	32	19 [51]
Offer salary packaging	28	16 [61]
Allow staff to work from home	20	5 [46]
(None of above)	(16)	(10) [10]
<b>Reward good performance by...</b>	(461)	(96)
Praise and recognition	82	54 [85]

Bonus or incentive system	57	22 [77]
Increase to salary	51	41 [84]
Additional time off	27	19 [59]
Promotion	24	20 [61]
Special training seminar or conference	22	16 [61]

Small businesses need to better differentiate the offer they are making to employees. Many small businesses do not feel they can compete for staff by offering higher wages. However, the flexibility of a small business' work environment provides opportunities to attract staff using other incentives such as flexible hours, family friendly environments, job sharing, training and development opportunities, equity incentives, management responsibilities and succession options.

### 2.3 *Special needs of family businesses*

Many small businesses are family businesses and their employment relationships and needs are often different to non-family entities. CPA Australia's 1999 survey of micro-business showed that 56 per cent of the employing businesses employed full-time family members. The 2002 survey showed 53 per cent of businesses had a spouse or family member in the business, mostly working full-time and paid. Clearly, in many cases family relationships overlap employment relationships.

The magnitude of the family business sector is often unappreciated. The 1997 Monash University Australian Family Business Survey<sup>3</sup> indicated that family businesses form a significant part of the Australian economy. The survey found that family business represented 83 per cent of all private sector firms, and employed more than 50% of the work force. Therefore, any issue that significantly affects family businesses will impact on 90 per cent of small businesses.

Studies on the longevity of family businesses around the world have come to a similar conclusion – that between two-thirds and three-quarters of family businesses either die or are sold out of the founding family during the first generation's tenure. Only 5-15 per cent continue into the third generation in the hands of the descendants. These figures compare unfavourably with the staying power of equivalent non-family controlled companies. This fragility is a cause for concern.

Some possible reasons for the lack of longevity include:

- Family businesses are the most complex form of business organisation as they are composed of two inherently incompatible systems: a family and a business. The family's primary social function is to assure the care and nurturing of its members, and social relations are structured to satisfy the various developmental needs of family members, while a business is established to generate wealth.
- In addition to the problems and challenges facing any corporation, family businesses have problems specific to themselves. These include the need for continuity through succession, competence through professionalism and course of direction through governance.

<sup>3</sup> Smyrnios K, Romano C et al *The Australian Family and Private Business Survey 1997*, Melbourne Monash University

- The inability to manage conflict, especially in the ownership, management and succession of ownership is one of the most important reasons for the fragility of family enterprises. The transfer of power from the first generation to the second is the most critical transition in a family business.

Some of the disincentives for the growth and expansion of family businesses, and subsequent employment growth, include:

- Capital Gains Tax (CGT) on succession - so that the business is not adversely affected by the effect of taxation. The complexity and potential pitfalls associated with the current small business CGT concessions are discussed in an article *Effective Business Structures* in September 2001 issue of Australian CPA magazine (Appendix 3). One of the traps highlighted in the article is that the easiest way to access the various concessions is for assets to be held in individual's names. This however, is inconsistent with the need for the owners to be able to access benefits such as asset protection, family succession planning and income splitting which can only be done via the use of entities such as companies and/or trusts. Other pitfalls include ensuring there are controlling individuals in the case of a discretionary trust and that the 50 per cent discount is not available to companies.
- Complexity of superannuation - an example of the complexity and confusion is discussed in the Business Review Weekly Article - Small Fry, Big Deal (May 2-8, 2002, pp 54-57)
- Lack of assistance for family business including start-up, transition and sustainability;
- Lack of on-going assistance and training for family businesses and their advisers to better deal with specific family business issues.

### **3.0 Factors that impact on small businesses' capacity to employ**

#### **3.1 Perceptions about employees**

Many small businesses have mixed views about employment and their staff. Fifty per cent of businesses believe full-time staff care more about their business and their clients, yet increasingly small business are employing casuals and contractors.

The impact a staff member can have in a small workforce is significant in many areas including morale, productivity, customer relations and sales. Small business people appear to rate certain personal qualities as highly as skills when looking for employees. CPA Australia's small business survey found that small business people felt that the lack of suitable applicants was one of the greatest barriers to employment. Lack of skills and experience was quoted by 25 per cent of respondents as the greatest barrier to employment, 12 per cent cited lack of motivated people or good work ethic and 8 per cent found employees lacked loyalty, reliability and trust. A further 7 per cent claimed the training required for employees was a barrier.

Small businesses require employees with initiative and the ability to take on responsibility. With a small staff, multi-skilling is important and problem-solving skills are essential. It is in these areas that employers are being let down.

Further work needs to be done on understanding the type of skills and attributes small business employers are seeking in their employees, if the potential employment capacity of



the sector is to be maximised. It appears that schools, training programs and employment programs are not meeting small business employer needs, and small employers are not articulating their needs to these groups.

Small businesses also need to develop a more long term view about employment and appreciate the benefits of investing in staff rather than adopting short term alternatives like employing casuals and contractors.

### 3.2 *Workflow and flexibility - casuals and contractors*

Many small businesses operate on small margins and with highly variable income. Industries that rely on contract work such as transport and building and construction and those that are seasonal such as hospitality or tourism need a flexible working environment. They need to be able to increase and decrease capacity in line with changing demand. A slowing economy and less work, cyclical and unpredictable work and lack of demand were cited by 24 per cent of small businesses as the main barriers to employment in their industries.

CPA Australia's survey showed that 35 per cent of small business employ casuals and 24 per cent of these will employ more casuals next year. Factors influencing the employment of casuals include:

Varying work:

- Because business income varies – 65 per cent
- Because of shift work and changing work patterns – 63 per cent
- Not enough work for permanents – 60 per cent
- Work is seasonal – 10 per cent
- Flexibility of hours – 7 per cent

To reduce costs:

- To reduce costs – 52 per cent
- Permanents have too many non-wage benefits like maternity leave – 43 per cent
- The cost of worker's compensation and other on-costs – 39 per cent
- Holiday issues – 3 per cent

To reduce the compliance burden:

- Less paperwork with casuals – 33 per cent
- The time to manage permanents does not return enough income to make it viable – 33 per cent

Other reasons:

- Because employee prefers casual employment – 31 per cent
- To avoid unfair dismissal issues – 30 per cent

Around 24 per cent of businesses outsource some work to contractors. Seventy-one per cent of businesses felt contractors required less supervision than employees, and 48 per cent believed they cost less. This perception about contractors reinforce the position that small businesses are looking for flexible, low cost, fast solutions to deal with varying work and income flows.

### 3.3 *Compliance with regulation*

Most small businesses find the time taken from running the business to complete paperwork and other activities required to comply with government regulations is a concern. When the activity is beyond the capability of the small business and they need to pay for external assistance and advice, the burden is exacerbated.

Taxation compliance remains the most time consuming activity undertaken by small business, however those that are employers have reported an increase in the time and complexity of compliance burden associated with employment. The need to deal with different jurisdictions and departments for different aspects of employment adds to the difficulty.

CPA Australia's survey showed that of the 23 per cent of small businesses that had no employees, 57 per cent had made a conscious decision not to employ. While the question was not asked of the respondents, anecdotal responses suggest that the compliance burden is a major deterrent against employing. The other common reason is that employees do not generate net gains - that is, the cost of supervising the employee combined with the wages and on-costs cannot be recovered in additional sales. Many small business people strongly advocate that they would never employ again after having experience being an employer.

Factors that would encourage non-employing businesses that have not made a conscious decision against employing (10 per cent) to take on staff include:

- More work – 32 per cent
- Reduction in on-costs and paperwork – 25 per cent
- A better work ethic – 15 per cent
- Less complicated system – 10 per cent
- Changes to the unfair dismissal laws – 3 per cent

#### **4.0 Regulatory environment**

##### **4.1 Taxation**

Much of the time small business dedicate to compliance revolves around taxation. When a business employs, it may be involved with:

- PAYG tax;
- Payroll tax;
- Fringe Benefits Tax;
- Superannuation funds; or
- GST for contractors.

Small businesses are generally concerned about the time spent in tax compliance, and this view has been strengthened by the additional burden placed on them as a result of the GST. There is a common view that small businesses are unpaid tax collectors on behalf of the government.

The CPA survey looked at small business attitudes to payroll tax. Forty per cent of small businesses and 45 per cent of CPAs considered payroll tax to be a barrier to employment in the sector.

<b>Small business</b>	<b>CPAs</b>
-----------------------	-------------

	%	
<b>See payroll tax as barrier to employment in small business</b>		
Yes	40	45
No	56	54
Don't know	4	1
<b>If 'yes', feel payroll tax..</b>	(237)	(47)
Rate itself is too high	80	83
Rate should be lowered and apply to all employment	65	38
Is passed onto customers in form of higher prices	77	72
<b>Would prefer payroll tax eliminated if also meant increase in another tax...</b>	(237)	(47)
Yes	46	51
No	43	47
Don't know	11	2
<b>If 'yes', which tax should increase to allow payroll tax elimination?</b>	(108)	(24)
GST	37	38
Company tax	30	46
FBT	20	13
Personal income tax	31	29
Don't know	3	4

Small businesses and CPAs who feel payroll is a barrier to employment are usually of the view that the rate is too high and/or it is passed onto customers as higher prices.

There was also a fairly polarised view among these small businesses and CPAs that payroll tax should be eliminated if it means a rise in another tax(s). Small businesses with 1 to 2 staff and those with 10 to 19 staff are equally likely to see payroll tax as a barrier to employment and being too high.

Surprisingly, the survey showed that 71 per cent of smaller businesses that are unlikely to pay payroll tax currently believe the threshold should be removed and a lower rate of tax applied to all employment, while fewer businesses with 10-19 staff (52 per cent) agreed with this approach. It is possible that some respondents were confused by this question as it is unlikely very small businesses would advocate an increase in taxation for their business. The payroll tax threshold not only relieves smaller businesses of the tax obligation, it also relieves them of the compliance burden.

#### 4.2 *Superannuation*

Many small businesses find their superannuation obligations confusing. This view was supported by CPA Australia's survey. Thirty-eight per cent of small businesses and 45 per cent of CPAs felt superannuation requirements act as a barrier to employment. This view is most strongly held among small businesses with only 1-2 employees (44 per cent) and where the owner is aged 40-59 (47 per cent).

Those with such a view are nearly all critical of the high cost, but there are also concerns expressed about complexity, paperwork, compliance issues and employee attitudes towards the superannuation requirements.

### 4.3 *Occupational Health and Safety and Workers Compensation insurance*

Many small businesses are unaware of their occupational health and safety obligations to their employees. In a focus group conducted by CPA Australia on employment issues, participants occasionally referred to the view that employees chose to be employed as casuals in order to gain higher wages, but sought compensation when injured. This view was tested in the CPA survey by asking whether respondents agreed or disagreed with the following two statements.

Statement	Agree	Disagree
Staff want casual rates to get better pay but look for entitlements if they injure themselves	43	29
Occupational health and safety requirements apply to all staff regardless of their employment status	91	2

The results show a lack of clear understanding about employee entitlements. While 91 per cent of businesses agreed that all employees are entitled to basic safety standards, 43 per cent implied that casual staff are not entitled to coverage at work if they are injured.

Small business also find workers compensation insurance to be a concern. One in four small businesses see it as a barrier to employment. Criticism about the high cost of workcover insurance was aired by almost all those who see workcover as such a barrier. However, many also express concern about complexity, paperwork and employee attitudes.

### 4.4 *Unfair dismissal legislation*

Small businesses have been subject to termination of employment legislation since 1993. There has been debate over reforms to improve the law and whether small business should or should not be exempt from the laws, however little has been done to address the confusion in the sector. After almost ten years, more than a third (42%) of small businesses don't know how to comply with the unfair dismissal law according to CPA Australia's survey. This is supported by 76 per cent of CPAs advising small business, who believe their clients are confused over termination procedures.

While 58 per cent of small businesses said they were confident about dismissing staff under the federal unfair dismissal law, only half of these were very sure they knew how to comply.

Sixty-two per cent of small business and 81 per cent of CPAs surveyed believe the process involved in dismissing staff is complex. Thirty per cent believe they will always lose unfair dismissal claims under the current legislation.

Only 5 per cent of small businesses rated fear of breaching the unfair dismissal law as the primary barrier to employment, however another 30 per cent consider it a key factor in their decision to employ casuals over permanent staff.

Spurred on by anecdotal stories rather than fact, more than half of small business believe they cannot terminate the services of an employee, even if found guilty of theft or if the

business was failing. These perceptions of small business are as much a barrier to generating long-term employment as the operation of the law itself.

The survey findings clearly show there is an urgent need to simplify the compliance processes and introduce educational initiatives to support the understanding of the rights and obligations of small business. The procedural requirements of unfair dismissal legislation are complex and ill defined. Lack of clear guidelines make it difficult for small business with few in-house resources to access up-to-date, useful information.

Any strategies to assist small business in relation to unfair dismissals should first address misinformation and improve understanding of the complexities of the law. An extensive and well-resourced education campaign is well overdue. A focus on best-practice staff management, better recruitment processes and performance management is equally important.

Given that over half of small businesses saw the lack of suitably skilled and motivated employees as the main barrier to future employment, there is a concern that any legislative response that increases the divide in conditions between small and large businesses may ultimately work against small business in the long run.

It is important also to ensure that business advisers understand the law and are able to either provide advice themselves or have fast and accurate referral services to provide their clients.

#### **4.5 *Maternity leave***

Small business clients often raise the issue of maternity leave with their accountant. Many small businesses have, over time, registered a view that they would prefer not to employ women eligible for maternity leave. With the possibility of compulsory paid maternity leave being discussed, small businesses have responded even more strongly. If small businesses were required to fund the full cost of maternity leave, employment opportunities for young women would be severely affected. This would be more difficult for women in regional areas where employment opportunities outside small business are more difficult to find.

Other issues raised by small business in relation to maternity leave are:

- The difficulty faced by the business created by the ability of the absent staff member to return at any time with one months notice; and
- Disruption caused by the lack of notice provided by some staff about changes to return to work dates.

#### **4.6 *Impact on small businesses' ability to raise finance***

In some circumstances, small businesses may face difficulties raising external finance if they have a high exposure to workers' entitlement liabilities. In assessing an application for finance, most financial institutions would determine a business' recoverable assets and reduce this amount by its statutory employee obligations such as liability for long service leave.

### **5.0 *Complexity and duplication of regulation inhibits growth***

#### **5.1 *Fragmentation of regulatory oversight role***

The number of government agencies and departments that have a role in regulating aspects of employment confuses many small business operators and creates difficulties for their advisers. Many small businesses don't appreciate the difference between state and federal jurisdictions and are unaware of which jurisdiction covers their employment relationships.

Different agencies, and sometimes different areas within one agency, are responsible for various issues that impact on employers from taxation, training, recruitment, apprenticeships, insurance, OH&S, industry specific requirements, wages and entitlements and superannuation. This may result in businesses receiving conflicting information.

While considerable efforts have been made to bring much of this information together in internet based resources, small businesses often have little experience on how to access the information efficiently.

### **5.2 *Poor understanding of legal status of employment relationships***

There is confusion amongst small business and many of their advisers about definitions of employees for tax and employment purposes. For example, many accountants have a better understanding of the employee/contractor tests under the Alienation of Personal Services Income regime rather than the employment tests under the Workplace Relations Act.

CPA Australia's focus groups have shown that often small businesses have little real understanding about the employment status of their employees. One area of confusion was the understanding of the definition of a casual employee. Small business employers often referred to their staff as casuals when it was more likely from the description that the staff were permanent part-time employees. Fixed-term workers are often misclassified as contractors.

Employers often assume that non-standard workers, such as casuals and contractors, have few rights and that they owe such workers few obligations normally associated with employment. Many businesses are surprised to find they have responsibility for workers' compensation, safety and equal opportunity or anti-discrimination rights to contractors. Fixed-term workers have superannuation, long service rights and protection on minimum and maximum hours of work.

There is little real knowledge of the extent of the confusion as many concerns only come to light if there is a dispute. As the employment environment becomes more complex, and employees are as confused about their status as their employers there is ample opportunity for difficulties to arise despite best intentions on the part of the small business employer.

### **5.3 *Role of advisers***

Business advisers are playing an increasingly important role in the area of employment. The rise in non-standard employment has added complexity to an already complex environment. Small businesses are exposed to additional risk if they employ without advice.

Increasingly, small business are approaching their accountants for strategic and compliance advice on employment issues. CPA Australia is conducting research into the role accountants are playing, particularly in relation to non-standard employment. Focus groups conducted have identified a number of issues of concern including:

- Non-standard employment is increasing amongst CPAs SME clients;

- Accountants' advice ranges from referrals and informal advice to counselling on risks, benefits and costs;
- Many advisers are unsure of the distinction between different forms of employment;
- Some advisers expressed concerns about the possibility of exposure to legal liability by the acts of their clients; and
- There is a general dissatisfaction about current information sources.

Further research will clarify the issues of concern and direct CPA Australia's professional development for members.

## **6.0 Conclusions and recommendations**

### **6.1 Better information resources for small business**

Small businesses need to be able to access information about their employment obligations in the course of doing business. Small businesses often don't know what information they need. Ideally, a strategic information campaign should be established, allowing information to be accessed when a business needs it. For example, resources could be provided to businesses when they register for PAYG.

Compliance obligations can be linked to management information so that the information collected for compliance can be used to add value to the business. For example, businesses with employees could be given industry employment benchmarks or guidance on performance management.

Government sets the rules for compliance but is often slow in giving practical guidance about the implications or implementation of those rules. Perhaps in the employment field, a system of rulings similar to the ATO approach could give clearer guidance to small businesses struggling to understand their employment obligations.

### **6.2 Better resources for advisers**

Communicating with the small business sector is difficult because of its diversity and fragmentation. While a number of businesses belong to industry organisations, many have no professional or trade affiliations. However, the majority of small businesses use an accountant at least once a year.

Business advisers such as accountants are an important conduit to the small business sector and can be a cost-effective way of ensuring dissemination of information about compliance obligations. However, there is little incentive from the government to ensure that information is distributed in this manner. Ensuring that advisers have fast and easy access to information and resources that they can use in servicing their clients is a more cost-effective strategy than attempting to reach small businesses directly. As most accountants are time-poor, it is essential that any service to meet their needs offers direct support. Like small businesses, many accountants do not have time to web-surf to find information or to chase from agency to agency.

### **6.3 Minimising the regulatory compliance burden**

There is little practical opportunity to address the issue of multi-jurisdictions that regulate various aspects of employment. It is appropriate that the ATO deal with tax issues and industrial relations be dealt with by employment departments. It is important to ensure government operate efficiently with the ability to develop specialised areas of expertise and not attempt to duplicate functions across many agencies. However, there is the potential to develop a ‘virtual department’ drawing on each specialised areas as a single resource for small business.

A longer term objective may be to bring all employment on-costs together into a single monthly payment made to one entity which is subsequently distributed to appropriate agencies – both state and federal. This would assist small business with planning and cash flow management. Appropriate trust funds could be established for regular contributions to employee entitlements as part of this process where the funds remain an asset of the business.

#### **6.4 *Maintaining flexibility of small business workplaces***

Small businesses need flexibility in their workforce. Fluctuating work and income levels require an ability to vary costs accordingly. However, they need to take a more strategic view of their workforce.

One option to assist small business may be to establish schemes for employment similar to the group apprenticeship schemes where a community-based organisation acts like a labour hire firm, taking the responsibility and compliance obligations of employment and the business pays a premium for the employees’ time. They could also provide training and advice on employment issues to small business.

#### **6.5 *Moving employees from casual to permanent***

If employment opportunities in small business are to be maximised, small businesses need to be encouraged to take a long term view about their staff and the appropriate investment required to ensure a strong and competitive workforce.

Case studies and examples of return on investment for e-business have been prepared with government funding to encourage small business to move on-line. Similar examples and studies could be funded to cover small business employment with the focus on bottom-line returns to the business.

Community-based programs such as the examples considered above might also work with small employers to assist them develop strategies to move from casual to permanent employees.

#### **6.6 *Cost-benefit analysis and risks***

Small businesses do not generally conduct a systematic cost benefit analysis on the most appropriate form of employment for their business. Many advisers are also unable to



conduct such an analysis, as they do not have the information available on the rights and obligations of all forms of employment.

The government has invested in information resources on the internet. While these resources provide some information on wages and conditions, they do not help a business answer the question, "What is the best form of employment for my business?" The development of a tool that helps an employer work through all the issues relating to employment and produces a compliance template, risk analysis and management information would be extremely useful. Such a tool could be disseminated to industry associations, business advisers and through other networks to provide small business with the management information that is currently missing.

#### **6.7 *Better understanding of small business needs***

The lack of skilled and motivated employees is seen by small business as the greatest barrier to employment. The needs of small business do not seem to be well understood by job seekers and those that prepare them for employment.

A job in a small business is often seen by job seekers as less attractive than large corporations or even government. This perception needs to change to encourage more successful skilled employees to small business.

Employment agencies, education institutions and small business organisations need to actively promote small business employment opportunities. A better understanding of the needs of small business employers needs to be achieved and these needs addressed in vocational employment education and training.

## 6.8 *Unfair dismissal legislation*

Small businesses have a poor knowledge of the application of the unfair dismissal laws and are swayed by misinformation. They generally have little knowledge about which jurisdiction covers their employees.

Small businesses need clear guidelines on how to comply with the law that varies from jurisdiction to jurisdiction. They want security and predicability and the knowledge that if they follow a particular process, then they have acted properly. Such a checklist or guidelines could be prepared for each jurisdiction with input from courts and industrial relations authorities. This certainty, coupled with better information on how to recruit and manage employees to avoid termination problems, is likely to have a significant impact on small businesses' attitudes to unfair dismissals.

## 6.9 *Education strategies*

One lesson from the education campaign conducted to assist small business in the transition to the GST is that an effective strategy is to develop core information resources centrally and use as many diverse channels to disseminate the information. This approach can be applied to employment issues with central resources being produced with government support, then make these resources available to all organisations that have members or clients that would benefit from the information.

## 6.10 *Needs of family businesses*

The majority of small businesses are family where family relationships overlay employment relationships. Family businesses have additional challenges on top of their commercial challenges. Some suggested courses of action that may assist family businesses include:

- Greater recognition of the different situations facing family businesses particularly in employment relationships.
- Adequate statistical information on family businesses and the unique employment relationships within them to ensure the regulatory environment can accommodate aspects of family relationships.
- Review of the small business CGT concessions to make them more easily accessible to a family business.
- Encouragement for the establishment of specific training and support services for family businesses.

## **APPENDICES**

1. Senate Employment, Workplace Relations and Education Reference Committee Inquiry into Small Business - Terms of Reference
2. Media releases
3. CPA Australia article – Effective Business Structures
4. CPA Australia Small Business Survey

## **APPENDIX 1**

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
REFERENCE COMMITTEE****INQUIRY INTO SMALL BUSINESS EMPLOYMENT****TERMS OF REFERENCE**

The terms of reference for the inquiry are:

- (a) the effect of government regulation on employment in small business, specifically including areas of workplace relations, taxation, superannuation, occupational health and safety, local government, planning and tenancy laws;
- (b) The special needs and circumstances of small businesses, and the key factors that have an effect on the capacity of small business to employ more people;
- (c) The extent to which the complexity and duplication of regulation by commonwealth, state and territory governments inhibits growth or performance in the small business sector;
- (d) Measures that would enhance the capacity of small business to employ more people.

## **CPA AUSTRALIA MEDIA RELEASES**

Lack of skilled and motivated staff is major barrier to employment – CPA Australia  
13 March 2002

Small business still in the dark on unfair dismissals – 13 March 2002

**13 March 2002**

## **LACK OF SKILLED AND MOTIVATED STAFF IS MAJOR BARRIER TO EMPLOYMENT – CPA AUSTRALIA**

A shortage of skilled and motivated employees is a major barrier for small business, according to an Australia-wide survey of small business conducted by Australia's leading accounting body, CPA Australia.

Half (52%) of Australia's small businesses shunned filling full time positions, citing a lack of skill, motivation and reliability as well as the burden of training new staff.

Another factor contributing to small business' reluctance to employ was a lack of confidence in their ability to comply with the unfair dismissal legislation, with more than 42 per cent not knowing which procedures to follow.

Casualisation of the labour force was occurring at the expense of full-time employment. Thirty five per cent of small businesses employ casuals, despite 50 per cent believing that full time employees cared more about the business than casual staff.

The casualisation of labour by Australian small business is expected to grow in line with international trends with twenty four per cent planning to employ more casuals than permanent staff in the coming 12 months.

CPA Australia interviewed 600 small businesses (independent and employing fewer than 20 staff) and 105 CPA accountants (CPAs) across Australia in February 2002.

CPA Australia's Chief Executive Officer, Greg Larsen, says there is clearly a demand to employ full time staff, but it is alarming that half of Australian small business cannot find the appropriate candidates.

"This presents a significant challenge to business and government in the fight to reduce unemployment. Government and small business need to work together to fill the skills gap – to make sure that the training and education available matches the skills required by small businesses.

"This survey clearly demonstrates Australia has work to do on these fronts, if Australia is going to sustain its current buoyant economic outlook against our global competitors.

"Governments, along with business groups, must seriously address the factors of skill and motivation by developing an entrepreneurial culture supported by education and training.

"Small business must also sharpen its role by fully understanding their regulatory obligations. Adopting a systematic way to recruit and retain full time staff is another issue they must address if they are to become employers of choice.

"Job seekers looking for full-time employment need to reconsider and even update their skills, if they want to seize the opportunities offered by Australia's 1.2 million small businesses. School leavers should also be encouraged to consider small business as a viable and long-term employment option," says Mr Larsen.

**Unfair dismissal laws cause further confusion and barriers to employment**

The unfair dismissal legislation is still causing a problem for small business, says CPA Australia's Business Policy Adviser Judy Hartcher. "The legal requirements are complex and ill-defined and are not suited to small businesses that often have limited in-house resources.

"The survey findings clearly show there is an urgent need to simplify the compliance processes and introduce educational initiatives to support the understanding of the rights and obligations of small business.

"We are confident these educational initiatives will lead to better outcomes for small business, removing a major barrier to the growth of Australian small business," she says.

**Payroll tax**

Forty per cent of small businesses found payroll tax a barrier to employment. Chair of CPA Australia's Small Business Centre of Excellence, Greg Hayes, says CPA Australia is opposed to payroll tax, as it is viewed by members as a tax on jobs and a disincentive to both employment and business growth.

"The abolition of payroll tax should be seen as a long term objective. There maybe, however, some merit in reviewing the threshold for payroll tax. This can act as an artificial barrier to employment, with companies encouraged to ensure their payrolls remain below the threshold," Mr Hayes says.

*The full survey and a summary of the key findings are available on CPA Australia's website at [www.cpaonline.com.au](http://www.cpaonline.com.au) from 13 March 2002.*

-ends-

---

**Media enquiries:**

**Kathy Chang, Communications Manager (03) 9606 9817 or 0409 865 376**

Judy Hartcher, Business Policy Adviser (03) 9606 9808 or 0414 676 991

---

**CPA Australia is one of the world's largest accounting bodies with more than 97,000 finance, accounting and business advisory professionals.**

**13 March 2002**

## **SMALL BUSINESS STILL IN THE DARK ON UNFAIR DISMISSALS**

Almost ten years after the introduction of the unfair dismissal legislation, more than a third (42%) of small businesses don't know how to comply with the unfair dismissal law, according to an Australia-wide survey of small business conducted by CPA Australia.

This is supported by the finding that 76 per cent of their closest business advisers, CPAs, believe their small business clients are confused over termination procedures.

Of the 58 per cent of small business who said they were confident about dismissing staff under the federal unfair dismissal law, half of these indicated they weren't overly confident that they understood the law.

Sixty-two per cent of small business and 81 per cent of CPA Australia members surveyed believe the process involved in dismissing staff is complex. Thirty per cent believe they will always lose unfair dismissal claims under the current legislation.

For five per cent of small businesses, the fear of breaching the unfair dismissal law is the primary barrier to employment. For another 30 per cent, it is a key factor in the decision to employ casuals over permanent staff.

Spurred on by anecdotal stories rather than fact, more than half of small business believe they cannot terminate the services of an employee, even if found guilty of theft or if the business was failing.

CPA Australia's Business Policy Adviser Judy Hartcher says the perceptions of small business are as much a barrier to generating long-term employment as the operation of the law itself.

"While there is much debate over reforms to improve the law and whether small business should or should not be exempt, little has been done to address the confusion that has reigned for a decade," Ms Hartcher says.

"The survey findings clearly show there is an urgent need to simplify the compliance processes and introduce educational initiatives to support the understanding of the rights and obligations of small business.

"The procedural requirements of unfair dismissal legislation are complex and ill defined. Lack of clear guidelines make it difficult for small business with few in-house resources to access up-to-date, useful information.

"Any strategies to assist small business in relation to unfair dismissals should therefore first address misinformation, and improve understanding, of the complexities of the law.

"We are confident these educational initiatives will lead to better outcomes for small business, removing a major barrier to the growth of Australian small business," she says.

CPA Australia interviewed 600 small businesses (independent and employing fewer than 20 staff) and 105 CPA (CPAs) accountants across Australia in February 2002.

**-ends-**

**APPENDIX 3**

*Australian CPA September 2001*

**Effective business structures**

*What's the best way for SMEs to access CGT concession? Paul Drum FCPA, CPA Australia's senior tax counsel and Michael J. Parker senior associate at Hall and Wilcox Lawyers consider the business structure options.*

Even though most of the small business CGT changes started on at least 21 September 1999, this year may be the first where you actually need to consider their application to disposals made by one of your clients or even yourself. And you have not planned, you may be in for a nasty surprise. Effective business planning is critical to ensure you and your clients are able to access many of the small business CGT concessions in the future.

It helps to consider some of those legislative changes in the context of effective business and investment structures, including taking into account the various small business CGT concessions and the further announcements made on the treatment of trusts for tax purposes.

**CGT risk management**

CGT has always presented inherent dangers, for example:

- It is typically triggered by an isolated event
- There can be a magnified effect for even seemingly straightforward transactions
- The result cannot be modified after the event
- There is not always synergy between the time of the resulting tax liability and cashflow released from the transaction
- Clients do not always consider the consequences of the disposal of an asset.

These factors demonstrate the need to be up to date with CGT and effective business structures to maximise opportunities provided by the small business CGT concessions.

**What are the small business CGT concessions?**

The relevant concessions which are found in the 1997 Income Tax Assessment Act are the:

1. 50% discount for individuals and trusts – s115
2. small business 15 year retirement exemption – s152-B
3. small business 50% active asset exemption – s152-C
4. small business retirement roll-over – s152-D
5. small business active asset roll-over – s152-E

**Which structures should be considered?****Individuals**

The easiest way to access the various CGT concessions is to hold assets in individuals' names. Individual taxpayers acquiring appreciating CGT assets will be entitled to the full range of concessions if the various tests such as the active asset test and the \$5 million net



asset threshold test are satisfied. However, the problem of holding assets in your own name is that you do not have access to the benefits of asset protection, family succession planning or income splitting afforded by other options. Therefore it is important to consider your position before making hasty decisions as an entity may provide you with a better 'whole of business' result. But there are other traps and pitfalls along the way that you also need to be aware of.

## **Trusts**

### **A. Discretionary trusts**

If asset protection, family succession planning and income-splitting are important then a discretionary trust should be considered. If utilised correctly they can provide equal access to the CGT concessions available to an individual but also meet the above key criteria.

Traps and pitfalls include ensuring there are controlling individuals (those who have at least a 50% interest in the income and capital of the trust distributions).

Where assets are held by a discretionary trust, the concessions will be available provided distributions are made to controlling individuals (with at least a 50% interest in the income and capital distributions made in the year of the gain). As the proposed entity tax regime has been scrapped, the limitations that would have been imposed on non-fixed trusts, by way of them being treated similarly to companies, are now a thing of the past, and doubtful to ever return.

### **B. Fixed trusts**

These are also very useful in the right circumstances. In fact, the announcement by the Treasurer's office on 22 March this year provides further concessional relief from CGT for fixed trusts. From 1 July 2001, where a fixed trust claims the 50% general CGT discount and distributes the non-assessable amount of the capital gain to individual beneficiaries there is no longer the requirement to write down the cost of the units in the trust as was the case previously. However, you should watch this space, as it's not clear how broad (or narrow) the definition of fixed trust will be or whether it will change at all.

### **Partnership of discretionary trusts**

If there is more than, say one family group involved in a family business then a partnership of discretionary trusts should also be considered, with a company acting as the nominee for the partnership.

## **Companies**

Companies are less advantageous than either discretionary trusts or even holding assets in your own name. For example, companies do not get access to the 50% general discount. However, the CGT small business retirement roll-over is available to companies provided there is a controller of the company in the year of the gain. The 15 year retirement exemption is also available to companies, provided there is a controller of the trust or company at all times. By contrast, the active asset roll-over is available to a company (or a trust) even if there is no controller.

Also where the relevant disposal asset is a share in a company, the company must have a controlling individual if a shareholder is to access any of the small business concessions. This precludes the availability of the concessions to multi-tiered groups. For example, if a discretionary trust owns shares in a company, a capital gain realised on those shares will not be eligible for any of the small business concessions. However, the 50% discount would be available.

**Best order of access**

While not totally a choice, to maximise you or your client's potential benefits under these measures they should be applied where possible in the following order:

1. small business 15 year exemption
2. small business 50% reduction
3. the small business rollover
4. the small business retirement exemption

**Small business CGT concessions available by entity where there is a controlling individual**

	<b>Individual disposes of a business</b>	<b>Discretionary trust disposes of a business</b>	<b>Fixed trust disposes of a business</b>	<b>Company disposes of a business</b>	<b>Owners dispose of a business</b>
50% general discount	Yes	Yes	Yes	No	Yes
50% active asset exemption	Yes	Yes	Yes*	Yes**	No
Small business retirement roll-over	Yes	No	No	No	No
Small business active asset roll-over	Yes	Yes	Yes	Yes	No
15 year retirement exemption	Yes	No	No	No	No

\*Some of the exemption will be clawed back under CGT event E4 (capital payment fro trust interest) when distributed by the fixed trust.

\*\*On distribution to the owner(s) the amount will be an unfranked dividend. It would be possible to get some of the benefit of the exemption if the company was liquidated.

**Small business CGT concessions available by entity where there is no controlling individual**

	<b>Individual disposes of a business</b>	<b>Discretionary trust disposes of a business</b>	<b>Fixed trust disposes of a business</b>	<b>Company disposes of a business</b>	<b>Owners dispose of a business</b>
50% general discount	Yes	Yes	Yes	No	Yes
50% active asset exemption	Yes	Yes	Yes*	Yes**	No
Small business retirement roll-over	Yes	No	No	No	No
Small business active asset roll-over	Yes	Yes	Yes	Yes	No
15 year retirement exemption	Yes	No	No	No	No

\* Some of the exemption will be clawed back under CGT event E4 (capital payment fro trust interest) when distributed by the fixed trust.

\*\* On distribution to the owner(s) the amount will be an unfranked dividend. It would be possible to get some of the benefit of the exemption if the company was liquidated.

**Summary**

Where asset protection, succession planning and income splitting necessitates the use of an entity for holding assets, a trust (or even a partnership of trusts) is clearly preferable to a company. A corporate beneficiary can be included if it is desirable to shelter income at the corporate tax rate. However, in the year of a capital gain, care must be taken to distribute all income and capital to individual controllers in order to access the Division 152 small business concessions.

**APPENDIX 4**

**CPA AUSTRALIA SMALL BUSINESS SURVEY  
EMPLOYMENT ISSUES  
MARCH 2002**

**ATTACHED**