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# A TSUNAMI AND SOME ELEPHANTS

Submission to the Productivity  
Commission Inquiry into Business  
Set-up, Transfer and Closure

**JULY**  
**2015**

## About GRG Momentum

GRG Momentum is a specialist business exit advisory firm.

We provide strategic advice and value building programs to private business owners looking to maximise their business value in order to successfully exit their business.

We believe a good private business sector is the lifeblood of our economy and the key driver of much of the innovation that enriches and improves our lives, families and communities.

Over the years we have seen far too many business owners achieve disappointing outcomes when they come to exit their business. This is usually due to a lack of preparation, no clear exit strategy or a poorly executed business exit.

Our mission is to help business owners build valuable businesses and get rewarded for their blood, sweat and tears through successful business exits.

We are one of the few advisory firms in Australia focussing solely on business exits.

## About the Author

Geoff Green is the founder and managing director of GRG Momentum and one of Australia's leading business exit strategists.

Over a 30 year career in business advisory and corporate law, Geoff has worked with numerous business owners on their exit strategies.

As one of only a handful of certified Value Builder System advisers in Australia, Geoff specialises in advising business owners how to maximise the value of their business to achieve a profitable business exit.

Geoff has been involved in establishing a number of businesses and holds various director and advisory board positions. In particular, he was a co-founder and managing director of Bendigo Stock Exchange, which was established as a start-up and sold 5 years later to NSX for \$7.75M.

Geoff writes regularly for a range of mainstream and online media. He also presents as a key note speaker on high growth business strategies and high value business exits.

He recently released his highly regarded new book, *The Smart Business Exit: Getting Rewarded for your Blood, Sweat and Tears*.

## Note

We have used a handful of key terms in our submission. For the Commission's assistance, we use "business exit" to mean any way in which a business owner sells their business, "succession" to mean passing on a business to family and "viable business" to mean a business which is profitable (or readily capable of becoming profitable) and is not artificially supported (eg by government grants).

## Introduction

GRG Momentum welcomes the opportunity to provide a submission on the Productivity Commission's draft report on Business Set-up, Transfer and Closure.

As we specialise in business exits and succession, the aspect of the inquiry which is of particular interest to us is business transfers. We focus on that aspect in our submission.

While we follow market developments and research in business exits and succession closely, our submission is primarily based on three decades of experience working with business owners and high growth businesses on their business exits. Where we are aware of relevant research or information that may be of assistance to the Commission we have included references to it at the end of our submission.

We have also had the opportunity to collaborate with some other organisations in preparing our submission including, in particular, Mills Oakley's Private Advisory team with whom we work closely in the area of business exits and succession.

In our submission, we highlight the significant issues we believe need to be addressed in the area of business exits and succession, the consequences of those issues and why we believe they are fundamental to the key purposes of the inquiry. We also make a range of suggestions on how those issues could be addressed.

## Importance of the Inquiry

We commend the government for commissioning the inquiry. It comes at a particularly important time in the evolution of Australian business.

Australian business has changed dramatically in recent decades, particularly as a result of the opening up of our economy under many of the Hawke/Keating government initiatives, the Internet, the GFC, the rapid development of Asian economies, particularly China, and increasing levels of industry disruption, often as a result of technology.

The private business sector is often rightly described as the "engine room of our economy". It is therefore critical for Australia to ensure our businesses are, and continue to be, competitive, innovative and efficient to ensure we have a productive and resilient economy.

The joint media release issued by the Treasurer and Minister for Small Business announcing the inquiry emphasised these points in the following comments:

"The review [will] identify ways to improve Australia's productivity performance by encouraging entrepreneurship, innovation and increased efficiency of Australian business.

This review is about increasing competition, improving Australia's productivity and building a more flexible and resilient economy.

The inquiry is vital to improving Australian living standards by giving small business every opportunity to build upon their role as the engine-room of the Australian economy."

A key element to having a productive and resilient economy is ensuring there are no barriers to innovative entrepreneurs starting new businesses and no barriers to businesses that are no longer profitable and competitive, or are being artificially maintained, being closed.

Some of the best early thinking on dynamic economies, where businesses come and go for the greater good of a productive and competitive economy, came from Joseph Schumpeter, a leading Austrian-Hungarian-American economist and political scientist, in the early 1900s.

In Schumpeter's view entrepreneurs emerge from the population on demand when required. They become industry leaders because they see opportunities which they are well-positioned to take advantage of and which others fail to identify.

Schumpeter saw entrepreneurs as innovators. He popularised the use of the phrase "creative destruction" to describe the role entrepreneurs play in changing business norms. By creative destruction he meant the often significant changes caused when entrepreneurs introduce a new process, service or product to the marketplace.

The Institute of Public Affairs, in its submission of February 2015, sums up well this type of dynamic economy:

"The free market passes entrepreneurs, businesses and ideas through a selection process. A fundamental tenet of a free society is that the productive, innovative and efficient businesses will enter markets, expand and prosper, while their unproductive counterparts will shrink, fail and exit. This process needs to occur continuously in all industries. It is only through free markets, clear property rights and strong rule of law that this evolving process can take place. The outcome is higher productivity, economic growth and improved living standards."

In our view this is a good articulation of how the Australian economy should operate and the role of business entry, transfer and closure within it.

## Business Exits and Succession

While we agree with the focus on business set-up and closure in the inquiry, and there has been good debate and input on these issues in public submissions, we have some issues with the approach taken in the area of business transfers (or what we generally refer to as business exits and succession in our submission).

In particular:

1. There appears to be a view that the focus should mostly be on encouraging the set-up of new businesses, particularly businesses which are highly entrepreneurial in nature.

While we generally support this view, it's important to remember that businesses that are truly entrepreneurial are relatively rare. And businesses that go from the garage to being world leading companies like Steve Jobs and Apple are very rare. Encouragingly though, Australia is quite capable of producing successful, innovative businesses – Computershare, Resmed, Cochlear, CSL, Boost Juice, Seek and Carsales.com – to name a few.

By their very nature, entrepreneurial businesses tend to crash through or crash. As a society we are not particularly kind in either event. If you are very successful as an Australian entrepreneur the tall poppy syndrome tends to quickly kick in and if you fail everyone wants your scalp. There is little admiration for the fact you had a go.

In our view, a balanced approach needs to be taken in this area. A good business community should have a range of businesses - small, medium and large, some more entrepreneurial, some more conservative and stable and across a range of industry sectors, provided they are competitive. Focussing too much on setting up new businesses can potentially lead to undervaluing what we already have in the market place in terms of existing businesses.

2. There appears to be a view that a lot of older Australian businesses should probably just be shut down if they don't sit comfortably with way the Australian economy is evolving.

In our view this underestimates the inherent value in existing businesses. If a business has been around for a long time and is profitable it is clearly doing a lot of things right, as business is as competitive now as it's ever been.

While it's difficult to obtain precise details on start-up failure rates there is no doubt they are high in the early years. Businesses that have operated profitably for a long time have usually built up good management teams and work forces, good client bases, strong relationships with their key suppliers and have needed to innovate and develop in response to industry, technology and other changes. In our view, these qualities are often undervalued.

In short, if a business has been around a long time and is still profitable we don't believe there should be government pressure, either explicit or implied, to close. From our experience, the market place is particularly efficient at letting business owners know once their business is no longer profitable and competitive.

3. One underlying theme in the Commission's draft report is that closing businesses can be an effective way to reallocate resources to more productive use in the economy.

In our view, this reflects dated thinking on the issue of business value and how it's best allocated within the broader economy. While in days gone by it may have been useful to think of a business as effectively being made up of its hard assets and its workforce, in today's world, and as we head further into the knowledge economy, a lot of business value is intangible in nature. It's reflected in brands, IP, the skills, experience and knowledge of management teams and workforces and customer and supplier relationships.

These are the key elements of business value that buyers work so hard to ensure they actually secure when they buy a business. Securing the hard assets is generally straight forward in comparison.

When a business owner reaches a point where they want to exit, close or they are forced to close via formal insolvency, we are of the view that the most effective way to "reallocate" the business's value back into the economy is, in order, as follows:

- (a) A voluntary business exit by way of a sale to a new owner or by way of succession during which care is taken to ensure the full value of the business is passed on to the new owner.
- (b) A forced business exit (ie where forced to sell by a financier or other creditor). The level of business value transferred in this case will generally be lower than the above due to the forced nature of the exit.
- (c) Closing the business. In this case, it will generally just be a realisation of the hard assets of the business and usually at substantially discounted value. The intangible value will be lost both to the business owner and the economy as a whole.
- (d) By way of formal insolvency. While outcomes in this situation are more variable, they are often similar to closing the business. In our experience, very few formal insolvencies result in intangible value being reallocated back into the economy in any meaningful way and, as with business closures, any hard assets are generally liquidated at substantially discounted value.

The most effective way then to ensure good business value is not lost to the broader economy is to ensure owners of viable businesses are able to efficiently and effectively transition them to a new owner via a business exit or succession.

## The Baby Boomer Business Exit Tsunami

There are a range of factors leading to what a number of commentators around the world are describing as the “baby boomer business exit tsunami”.

These factors are:

1. Up to 80% of private businesses in developed economies are owned by baby boomers. As it's estimated the Australian private business sector has a value well in excess of \$1.5 trillion, baby boomer business owners therefore currently own businesses which collectively are worth many billions of dollars.
2. The average age of business owners is steadily increasing.
3. Many business owners who planned to exit their business before the GFC put off their exit plans due to a lack of buyers and reduced business values. Many have still not exited which will steadily increase the level of pent up “exit demand”.
4. The last of the baby boomers turn 50 this year, so the baby boomer generation is well and truly heading towards retirement.

To many people the term “baby boomer business exit tsunami” probably sounds alarmist. However, on the basis of the above factors, which are drawn from the handful of business exit and succession reports that are available (including the Commission's draft report), it's hard to see anything other than a “baby boomer business exit tsunami” occurring over the next 10 to 15 years.

Some commentators have reached the conclusion that this will lead to the greatest transfer of private business wealth in history. The alternate view, which we lean to for the reasons set out in our submission, is it's more likely to lead to the greatest evaporation of private business wealth in history (and all the flow on consequences of that).

While time will tell exactly how the baby boomer business exit tsunami unfolds, we believe it will have the following key features:

1. As baby boomer business owners reach retirement age they will look to sell their business or pass it on to family leading to much higher numbers of businesses hitting the market place than usual in a relatively short period of time.
2. The number of businesses passed on to the next generation has been steadily declining for some time. Fewer children are interested in taking over family businesses. From our experience, children who are entrepreneurially minded often prefer to start their own business.
3. The flow on consequence from the above is more buyers will be required to buy the increased number of businesses available for purchase. We believe it's unlikely there will be sufficient buyers at various time to satisfy the likely selling demand.
4. As a result, many private business owners will be faced with the prospect of selling their business for a substantially lower amount than they want or, in many cases, won't be able to sell their business at all.

## Implications of a Baby Boomer Business Exit Tsunami

If the baby boomer business exit tsunami and its consequences are not adequately addressed, we believe it will have significant implications for Australian business and the Australian community generally.

In particular, it's likely to lead to a higher level of businesses closing or failing than would normally be the case. This will inevitably lead to, among other things:

1. job losses;
2. a lessening of competition in various markets;
3. the loss of innovation associated with failed or closed businesses;
4. the inability of many private business owners to adequately fund their retirements (which will effectively move this financial burden back to government); and
5. the removal of key services in some sectors such as professional advisory and health services (in which a disproportionately high level of baby boomers tend to own most of the smaller businesses) and in rural and regional areas.

## The Elephant in the Room

We work with a lot of baby boomer business owners and often find there is “an elephant in the room”: they entered into their business pretty easily many years ago but now don’t know how to get out again.

Deep down most business owners know they should be doing something about their eventual business exit, but most of them have no exit plan and don’t know how to go about working towards a business exit or passing their business on to the next generation.

These views are well supported by the research that is available and which reaches some sobering conclusions in this area. In particular:

1. More than 70% of private business owners have no business exit or succession plan.
2. Most private business owners are not exit ready (ie they haven’t got their business in shape to sell in the event they did receive an unexpected approach or offer from a potential purchaser).
3. Good business exits and succession arrangements take far longer to complete than most business owners realize (often a number of years).

In addition, the anecdotal feedback we get from business brokers is that, at best, only three to four businesses in 10 that they see are in a condition to be sold.

## What are the Key Issues?

The combined effect of a baby boomer business exit tsunami and most business owners not being prepared for a business exit or succession is a significantly concerning scenario.

In our view, the key areas that need to be focussed on are:

1. Why most business owners aren’t prepared for business exit or succession as outlined above.
2. The lack of research and available information on business exits and succession. This is a significant issue and we comment on it further later in our submission.
3. The fact that the Australian advisory community is under developed in terms of expertise and experience on business exits and succession. While we have good transactional experience and expertise in our advisory community, we lack a lot of specific business exit and succession experience and expertise.

Apart from a handful of firms, few Australian professional advisory firms focus solely on business exits and succession. By contrast, in North America there is a much stronger trend towards professional advisory firms specialising in business exits and succession.

4. The changed legal, financial and commercial environment for business exits. Due to buyers wanting to minimise risk, most private business exits these days occur by way of a sale of business rather than a sale of the entity that owns the business. In practice this means sale contracts need to deal with virtually every aspect of the business – assets, liabilities, debtors and creditors, government approvals and licences, employees, property leases, finance leases, finance securities etc. These factors significantly complicate the way in which business exits now generally occur.
5. Business succession also now occurs in quite a changed legal, financial and commercial environment. A major issue with family businesses is the difficulty current owners have in passing on control and ownership to the next generation without incurring significant stamp duty and tax.

While in the past the next generation were generally prepared to continue working in the family business, often at below market salaries, on the expectation of eventually owning the business, with the increasing number of family and will disputes they are now much less likely to want to do so.

We provide a number of specific suggestions later in our submission on how these issues could be addressed.

## Overseas Experience

As there is little reference in the Commission's draft report to overseas experience on business exits and succession, we felt it may assist the Commission if we provided some observations based on our experience with overseas jurisdictions.

While we don't follow business exit and succession developments on a world scale, we do monitor developments in some parts of the world quite closely. We have also developed good working relationships with a number of business exit advisers in other countries, particularly the US, Canada and the UK.

It appears to us that business exit and succession issues are evolving in a similar way in many Western economies, particularly the US, Canada, United Kingdom, parts of Europe, Australia and New Zealand.

While it appears to us many other countries are also yet to address in a substantive way the impending baby boomer business exit tsunami and its implications, there is some useful experience and initiatives in North America which we believe the Commission should consider.

The exit planning industry in North America is far more advanced than in Australia. There is a much greater general awareness of the broad range of issues involved in preparing for and achieving successful business exits and succession.

One of the key players in the development of the North American exit planning industry is Peter Christman, a highly regarded US mergers and acquisitions adviser. He wrote the groundbreaking book, *The \$10 Trillion Opportunity*, over 10 years ago and is co-founder and chairman of the Exit Planning Institute, the world's leading exit planning organisation.

*The \$10 Trillion Opportunity* was the first book to clearly identify the coming baby boomer business exit tsunami. Perhaps even more importantly, it identified the fact that the US advisory community was ill prepared to cope with both the specialist services required in the areas of business exits and succession as well as the sheer volume of work to be done as the baby boomer generation of business owners transition out of their businesses.

The Exit Planning Institute has chapters across the US, provides an intensive certified exit planning program and continuing education events and programs. Its membership is open to advisers in other countries and there are a small number of Australian members of the Exit Planning Institute.

We believe there would be benefit in the Commission looking at the work of the Exit Planning Institute. Also, the US based Business Transition Academy and Successful Transition Planning Institute as well as the work of two Canadian thought leaders on business exits, John Warrillow, developer of The Sellability Score and The Value Builder System, and Basil Peters of Successful Exits Corp.

For the Commission's assistance we have included details of the organisations and people noted above in our list of key organisations and industry bodies at the end of our submission.

## Who Should do What?

If the Commission and the government reach the view that the issues raised in our submission do require attention the next question is who should deal with them.

While government has an important role to play, we believe a range of groups, organisations and bodies need to take steps to address the issues we have raised in our submission. In particular, there are important roles to be played by business owners themselves, the professional advisory community, relevant industry organisations and relevant academic organisations as well as all levels of government.

### Business Owners

Ultimately, achieving a successful business exit is the responsibility of business owners. While it's reasonable that they look for good quality expertise and experience from their advisers and general assistance from industry organisations and government, business owners need to take more pro-active steps to learn about their business exit and succession options and get properly prepared to transition their businesses to new owners.

### Advisory Community

As noted earlier in our submission, the Australian professional advisory community currently lacks the depth of experience, specialist knowledge and expertise to adequately service the growing demand for business exit and succession advice and assistance. Unless steps are taken to address this issue, the situation will only get worse as the number of baby boomers seeking to exit their businesses increases.

We believe there is substantial scope for the existing advisory community, particularly accountants, lawyers, corporate advisers and financial planners, to expand their service offerings to include business exits and successions. There is also scope for advisers to

build practices that specialise only in business exits and succession work, drawing on specialist input from other advisers as required.

In our view, the Australian advisory community could usefully look at developments overseas, particularly those in North America which we covered earlier in our submission.

### Industry Organisations

We are aware of a number of industry bodies that regard business exits and succession as an important issue for their members.

We were therefore surprised that virtually no industry bodies commented in any substantive way on business exits and succession in their public submissions to the inquiry.

In our view, there are a number of industry bodies that can provide a key role in improving knowledge and awareness of business exit and succession issues and provide relevant courses and programs for their members.

The 2013 KPMG and Family Business Australia survey (which is referred to in the Commission's draft report) is a good example of the sort of useful work that industry bodies can do in this area (in that case together with a leading advisory firm).

### Academic Organisations

There has always been a strong and mutually beneficial relationship between business and academia. Academic institutions are often in a much better position than individual businesses to analyse trends, develop new business theories and develop programs that are highly beneficial, particularly to senior business people.

Australia has an extensive range of business schools. Relatively few, however, include business exits and succession in their programs despite the fact that transitioning out of their business is usually one of the most significant events for business owners during their business journey.

As a consequence, there is relatively little academic research in Australia in the area of business exits and succession. As indicated earlier in our submission, one of the most significant issues with business exits and succession is the lack of information and research.

We can point the Commission to two good examples of the sort of work we believe is extremely useful.

First, the recent research papers prepared by Pitcher Partners and Swinburne University on business exits and succession (references to which are attached to our submission).

Secondly, the substantive body of work on high growth business strategies and business exits produced over many years by Dr Tom McKaskill. Dr McKaskill is a unique blend of successful entrepreneur, leading academic and prolific author. For a number of years he held the Richard Pratt Chair in Entrepreneurship at Swinburne University. Dr McKaskill has made a substantive contribution to research and knowledge in the areas of high growth business strategies and business exits not just in Australia but worldwide. Reference details for Dr McKaskill's work are attached to our submission.

While the above are good examples of the sort of work that is possible via academia there is a great deal more that can usefully be done on business exits and succession.

## Government

In our view there are 3 key ways in which government (and here we mean all levels of government) can assist with business exit and succession issues.

First, government is uniquely placed, through bodies such as the Productivity Commission, to commission substantive research in the area of business exits and succession.

Secondly, government is well placed to work with a range of organisations including industry regulators, industry bodies and academic institutions to facilitate many of the initiatives on business exits and succession we have suggested in our submission.

Finally, there are a number of substantive changes government can make in legal and regulatory areas that would substantially reduce a number of the current barriers to business transfers. See our suggestions later in our submission.

## The Invisible Elephant

Earlier in our submission we highlighted the “elephant in the room” for most business owner’s, particularly baby boomers, - how will I successfully exit my business?

At least business owners know their elephant is there. The more insidious elephant is the “invisible elephant” – a set of factors that have major implications but no-one has joined the dots to make the impending scenario visible.

One of the biggest challenges for government, government agencies, industry bodies and individual businesses is forecasting what is likely to happen in the future so they can prepare effective policies or courses of action to deal with those developments.

The risk is if you don’t forecast well you end up with an invisible elephant capable of wreaking havoc and you are unprepared for it.

While the Commission’s draft report refers to some of the reports that point to the evolving baby boomer business exit tsunami issue, neither the Commission nor any of the public submissions seem to regard this, or more importantly the flow on consequences, as a significant issue.

We find this puzzling given a key focus of the Commission’s inquiry is business transfers. In that regard, we note that the original title of the inquiry was actually changed early on to include a specific reference to business transfers.

The Commission’s initial issues paper and draft report focus a lot on business start-ups and the formal insolvency regime. This has, in turn, been reflected to a significant extent in the content of public submissions received by the Commission to date.

The inquiry also seems to have evolved, at least partially, into an inquiry into the overall adequacy of Australia’s formal insolvency regime. While the level of debate and input in this area has been of high quality, the level of focus on this aspect appears odd to us given the

inquiry's Terms of Reference and the fact that only 6% of business closures are the result of formal insolvency (page 279 of the Commission's draft report).

In contrast, there has been little focus on business exits and succession in either the Commission's issues paper or draft report or in public submissions received by the Commission. Only one short 25 page chapter is devoted to business exits and succession in the Commission's 468 page draft report.

Again, in contrast to the many draft findings and recommendations made in relation to start-ups and the formal insolvency regime, the Commission only makes three recommendations on business exits and succession in its draft report. Two of the recommendations essentially just repeat recommendations previously made in the Harper Review and the Henry Tax Review.

While the Commission may have felt constrained in its approach to the inquiry by the somewhat odd framing of the inquiry's Terms of Reference, we feel a significant opportunity has potentially been lost to look more closely at the important issues that are emerging in the area of business exits and succession, particularly as the baby boomer generation heads towards retirement.

We believe there is a very big invisible elephant present - the combination of a baby boomer business exit tsunami, its likely consequences and the fact baby boomers business owners, the advisory community, industry bodies and government aren't ready for it.

A key aim of our submission has been to join the dots, make the elephant more visible and provide some suggestions on how to deal with the implications.

## Recommendations and Suggestions

In our view, the aim of the Commission's recommendations on business transfer should be to **reduce the barriers to owners of viable businesses efficiently and effectively transferring them by way of business exit or succession to new owners.**

The Commission's recommendations on business transfers in its draft report would need to be significantly expanded to achieve that objective.

The following are our comments on the Commission's draft recommendations on business transfer and our suggestions on steps that could be taken to remove a number of the current barriers to business exits and succession. Our suggestions are not exhaustive and could no doubt be usefully expanded and refined with further work.

### Productivity Commission's Draft Recommendations on Business Transfer

1. Draft recommendation 12.1, that the ACCC implement more streamlined formal merger exemption processes, is sensible and we support it. We do note, however, that these provisions in practice are only relevant to a very small number of private business transfers.
2. We generally support draft recommendation 12.2, that the small business capital gains tax concessions should be rationalised and simplified. We comment further on the small business capital gains tax concessions in our suggestions below.

3. Draft recommendation 12.3 states as follows:

“Planning for business exit is largely a commercial matter for business owners, the buyers or next generation of owners and their advisers. Governments should provide general guidelines for business and business advisers on exit requirements and provide information on commercial matters only when a market failure in private provision is clearly demonstrated and Government provision would be effective.”

It’s not clear to us what this recommendation is intended to achieve. Our reading of it is the Commission has reached the view there are no significant issues in the area of business exits and succession. Accordingly, governments don’t need to take any action at this stage. And, even if a need arose at a later stage due to market failure, it should be limited to providing general guidelines and information on exit requirements.

We disagree with this position in two respects. First, as we have argued in our submission, there are significant issues in the area of business exits and succession that need to be addressed now. These issues will only become more significant as baby boomer business owners head towards retirement. Secondly, governments are in the position to provide much more substantive assistance than just issuing general guidelines and information.

## Our Suggestions on Business Transfers

As noted above, our suggestions are based on the key principle that measures should be taken to **reduce the barriers to owners of viable businesses efficiently and effectively transferring them by way of business exit or succession to new owners.**

### General Suggestions

1. The government should commission further research into the issue of business exits and succession. This should include a particular focus on:
  - (a) gaining a better understanding of the barriers that currently prevent many business owners from successfully transitioning their businesses to new owners by way of business exit or succession, including the reasons why business owners generally fail to develop exit strategies and prepare adequately for exit or succession;
  - (b) the broader consequences to the business sector and the community generally of businesses closing rather than transitioning to new ownership, particularly in light of the looming baby boomer business exit tsunami. This should include a particular focus on the impact in sectors such as professional advisory and health services (where are disproportionately high level of baby boomers tend to own most of the smaller businesses) and in rural and regional areas;

- (c) how prepared our current professional advisory community is in terms of expertise and experience to deal with the broad range of issues associated with business exits and succession;
- (d) the initiatives that could be taken by government at all levels to facilitate better understanding of business exits and succession and the sort of programs that could be put in place to facilitate the advisory community providing better advice and guidance to business owners on business exits and succession; and
- (e) the sort of changes that could be made to legal and regulatory systems (including taxes and stamp duty) to remove some of the current barriers to effective and efficient business transfer.

This research could be carried out by the Commission, other relevant government agencies or in conjunction with relevant academic or private organisations. The initial work done by the Commission in this inquiry and the recent studies by Pitcher Partners/Swinburne University and KPMG could be taken as useful starting points for this further research.

2. All levels of government and relevant regulators such as ASIC should take steps to provide better access to information about business exits and succession and also play a role in facilitating programs and forums, particularly at a local government level, to better disseminate this information.
3. All levels of government should work more closely with relevant industry bodies and academic institutions to encourage and facilitate a stronger focus on research and programs on business exits and succession. In particular, this should include the various accounting bodies, law societies, Family Business Australia, the Financial Planning Association and the Australian Institute of Company Directors.
4. There are a range of government programs that provide grants to businesses to assist them obtain advice and assistance to improve particular aspects of their business. In our submission we have highlighted the range of key policy reasons why it's important that business owners exit their businesses effectively and efficiently.

We therefore suggest that governments consider programs that would encourage and assist business owners to obtain advice to help them better plan their business exit or succession. There are many well established models for these types of government programs. We are also aware of at least one government program that has provided assistance of this nature to help older farmers properly plan passing on their farms to the next generation.

### Specific Business Exit and Succession Suggestions

1. As noted earlier in our submission, a major issue with family businesses is the difficulty current owners have in passing on control and ownership to the next generation without incurring significant stamp duty and tax which would otherwise not be payable or would be deferred if the business was passed on by way of

inheritance. We suggest that governments look at ways to remove these current barriers to effective business succession.

A possible model for this approach is the specific stamp duty exemptions in various states for transfers between family members (and related entities) of primary production farm land.

2. As noted above, we generally support the Commission's draft recommendation that the small business CGT concessions should be rationalised and simplified. The broad policy behind introducing the small business CGT concessions was to effectively provide a level of reward to small business owners for their blood, sweat and tears in building their businesses. It was also intended to recognize that many small business owners don't adequately provide for their own superannuation and often see their business as their "super fund".

Some describe the concessions as generous. In our view, they are appropriate given the risks and effort private business owners take in setting up and running their businesses, often over decades, and the range of contributions they make back to the broader community. We are not supportive of any watering down of the current level of benefit provided to business owners during any simplification of the concessions.

From the time they were introduced the small business CGT concessions have been constantly criticized as being horrendously complex. No doubt this is beneficial to accountants and tax lawyers who derive substantial fees from helping clients work through the complexity of the concessions. However, for business owners, the complexity of the concessions effectively constitutes another barrier to efficiently planning for and completing business exit and succession events and obtaining the benefit the legislature intended business owners to have in those circumstances.

3. Despite the planned for, and anticipated, removal of many state based stamp duties when the GST regime was introduced in 2000 there are still a complex array of stamp duties that apply to most business exit and succession transactions. These provide barriers to the effective transfer of businesses in two important respects.

First, they often impose significant additional costs on transactions to the point where some transactions don't proceed once the full level of stamp duty costs involved in a potential transaction become clear.

Secondly, stamp duties are state based and the duty provisions that apply to many business transfers vary considerably between the states. For businesses that operate in multiple states, which is common, this adds considerable complexity and cost to business transfers. Once again, the main beneficiaries of this complexity are accountants and tax lawyers who need to guide their clients through it.

While we appreciate the practical difficulties of progressing issues of this nature given it involves both federal and state governments, the current stamp duty regimes and

how they are applied are a real barrier to the effective and efficient transfer of businesses.

One recent positive development is the South Australian's government's announcement to abolish a range of stamp duties that apply to businesses. Of itself though, it's only a step in the right direction.

We strongly urge the Commission to recommend that steps be taken to remove or reduce barriers to business transfers in the area of stamp duties.

4. As noted earlier in our submission, most private business exits these days occur by way of sale of business rather than a sale of the entity that owns the business. In practice this means sale contracts need to deal with virtually every aspect of the business – assets, liabilities, debtors and creditors, government approvals and licences, employees, property leases, finance leases, finance securities etc.

We believe there would be merit in looking at possible statutory mechanisms that enable some of these aspects to be dealt with more simply and thereby remove some of the complexity which now needs to be included in sale contracts. This should probably be done on an "opt-in" basis so parties could choose to avail themselves of the mechanisms if they wish to do so.

For example, most business sales involve the assignment of at least some contracts. In practice, it's generally difficult to achieve a completely effective assignment of all aspects of a contract to a buyer despite the complex provisions which are often included in sale contracts. An appropriate statutory mechanism could assist in this area.

Another notoriously difficult area in business sales is the transfer of employees to the new buyer. Again, this is an area where some appropriate statutory mechanisms could assist both buyers and sellers.

If implemented, we believe the approach outlined above could be particularly helpful in the case of smaller sale transactions. We also appreciate that there would need to be a good level of co-operation between various levels of government to implement this approach effectively.

## Conclusion

For the reasons set out in our submission, we believe it's critically important that government, government agencies, industry groups, the advisory community and, of course, business owners themselves move to address and prepare for the significant issues which are emerging in relation to business exits and succession.

We believe it's highly likely Australia will see something akin to a baby boomer business exit tsunami over the next 10 to 15 years. If the issues associated with this are not adequately addressed we believe it will have significant implications for Australian business and the

Australian community generally. In particular, it's likely to lead to a higher level of viable businesses closing or failing than needs to be the case.

As noted earlier in our submission, this will inevitably lead to, among other things:

1. job losses;
2. the inability of many private business owners to adequately fund their retirements (which will effectively move this financial burden back to government);
3. the loss of key innovation to the Australian market place as a result of businesses failing or closing.
4. a loss of key services in some industry sectors and rural and regional areas.

The Commission's inquiry into Business Set-up, Transfer and Closure provides an important opportunity to highlight the current and emerging issues in the area of business exits and succession and develop solutions to address them.

We strongly urge the Commission to consider adopting the suggestions we have made in our submission.

We trust our submission is of assistance to the Commission in finalising its report to the government. We would also be pleased to engage further with the Commission on the issues and suggestions we have put forward in our submission if it would be of assistance.

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## Key Organisations and Industry Bodies

BizExchange, [www.bizexchange.com.au](http://www.bizexchange.com.au)

Business Transition Academy, [www.businesstransitionacademy.com](http://www.businesstransitionacademy.com)

Dr Tom McKaskill, [www.tommckaskill.com](http://www.tommckaskill.com)

Exit Planning Institute, [www.exit-planning-institute.org](http://www.exit-planning-institute.org)

GRG Momentum, [www.grgmomentum.com.au](http://www.grgmomentum.com.au)

Mills Oakley Private Advisory, [www.millsokely.com.au](http://www.millsokely.com.au)

Strategic Exits Corp, [www.exits.com](http://www.exits.com)

Successful Transition Planning Institute, [www.successfultransitionplanning.com](http://www.successfultransitionplanning.com)

The Sellability Score, [www.thesellabilityscore.com](http://www.thesellabilityscore.com)

The Value Builder System, [www.valuebuildersystem.com](http://www.valuebuildersystem.com)