



**INFOCUS**

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**SUCCESSION  
MATTERS**

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# FOREWORD

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Just talking about succession planning has never been an easy task for any business – but for family farms, the issue is particularly emotionally charged.

It involves the business, the family home, complex family financial and emotional relationships, and the notion of being equitable through the balance of long-held farming assets, off-farm assets and cashflow risk and opportunity.

But while these discussions are rarely met with enthusiasm, as rural land values continue to increase, they are increasingly critical to a farming businesses's survival.

The fact that succession planning is important is not new news – many families have a basic plan or an informal understanding in place about who is interested in farming – but it is crystal clear that this alone is not sufficient.

A formal, written and communicated succession plan is required to avoid the traps and pitfalls into which many farming businesses can fall in the succession process. Without a formal process, businesses are subject to changes in the law and the court's interpretations – making the final outcome highly uncertain. And without clear understanding, intention and engagement from all relevant family members (whether they are on the farm or not), the farm business and, indeed, the interrelationships, may be compromised.

Once a family or business partners agree that a formal process and outcome are needed, there is then a number of conditions which should be met to ensure a sustainable outcome.

We have talked to a number of experts in the field of succession planning and all are unanimous on the importance of open and honest communication as the basis for all succession plans. It's crucial that all parties understand not only their own motivations, goals and aims, but those of their family and other business partners.

Long-lasting succession plans are not based on one party 'winning' a negotiation – instead it's about agreeing on an outcome which all parties are content with.


Crucially, succession planning isn't just about reaching a single, point-in-time agreement – it's about creating a flexible agreement where parties' changing priorities and circumstances can be recognised and incorporated.

Succession planning is a complex process and there is no obvious single solution for every scenario. We hope that in addition to your own trusted network, the insights and experiences of our experts here can help guide you in your decision-making and in reaching a strong and functional plan for the future of your farming business.



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## WHY IS SUCCESSION PLANNING SO IMPORTANT?

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“Succession planning is not just about succession; it’s actually about business continuity...”

“...Generally speaking we are talking about the succession of family businesses – whether they are farming or non-farming businesses. The complexity comes when we add the word family into the mix,” says Nigel Pannett of Compass Agribusiness.

The issue of succession has, for many generations past, been unspoken between family members, with many families relying on tradition to guide them. While this seems unspeakably outdated today, the use of succession planning as a tool to help guide inheritance issues in families has only become the norm in recent decades. Today, a succession plan is considered to be a fundamental part of a strong business plan.

The average age of the Australian broadacre farmer is now 61 – representing a five-year increase in age over the past two decades – and off-farm income is growing in importance to the family business. Combine our ageing agricultural workforce with growing global demand for food, increasing land prices and a shift in our domestic economy from ‘mining to dining’, and agriculture is becoming an increasingly attractive opportunity for younger generations.

Succession is not only an issue for families – it also has significance for the overall demographics of the Australian agricultural industry and regional Australia. Historically, many inheritances were dealt with by dividing family farms between children to ensure all children were looked after. This allowed for continuation and growth of small rural communities, supporting local schools, sporting clubs and retail outlets. However, with the ongoing trend towards consolidation in Australian agriculture, and the growing profitability of larger farms against stagnant profit growth for small farms, this option is often no longer economically viable for many, and we are seeing fewer farming entities carrying the business forward.

Ben Cameron, Managing Partner of Bentleys Queensland, says that while succession is not necessarily more important in agriculture it is typically more difficult due to the nature of the assets (illiquid and normally one large asset) and the multi-generational connection to the land. Succession in agriculture [also] becomes more difficult due to the highly unpredictable nature of agribusiness and volatility of earnings.

Succession planning is important for many reasons – not only to ensure stability and certainty, but also to build and grow a farm business throughout the process and provide a launching pad for future growth.

Ian Anderson, Former Managing Director of Moore Stephens, Adelaide, believes that without a succession plan, especially in family-owned operations, family members have no certainty about their future and that of their own family unit of spouse and children and, for that matter, grandchild. “Without certainty the business runs the risk of those facing the uncertainty of their future leaving the business,” he says. “Alternatively, that generation stays, however it is a fractured and, at times, bitter relationship which invariably leads to less than efficient and effective results for the business and the assets under its control”.

### THE CHANGING STATE OF THE LAW

A key risk for families who haven’t developed a succession plan is that the outcome is far from certain once legal proceedings are required. The approach that a Will can provide certainty for the future has not been the case for some time, and a failure to develop an agreed and implementable succession plan can leave the farm assets at the mercy of a court decision. In recent years, a number of different legal avenues have grown in usage which provide children and their partners with an opportunity to contest a Will’s provisions.



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## A WILL IS NOT A SUCCESSION PLAN — IAN ANDERSON

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Under various pieces of State legislation, all Wills must provide spouses, partners, children and other eligible people with 'adequate provision' for their proper maintenance, education or advancement in life under the terms of the Will.

While this legislation does not give any ability for the courts to reflect on the fairness or equity of a Will, the increasing use of equity law provisions, including the doctrine of promissory estoppel and constructive trusts, has become a commonly used mechanism to revisit a parent's distribution of property. Broadly speaking, under equity law if a parent either makes a promise to pass property over to a child or any other person, which the person then relies on to their detriment, or the child/person contributes significant amounts of money or labour to a farm without that contribution being recognised under the Will, the courts can alter the distribution of property in favour of the aggrieved party.

In recent years, the courts have shown greater willingness to exercise their powers under equity law to alter property distribution, overriding their previous policy that the owner has full right to distribute their property as they see fit.

Patrick Barrett of Walsh & Blair Lawyers states that many of the legal issues that arise from succession planning matters or family provision matters come about due to a lack of transparency in explaining and documenting the role that a younger generation has on a farm.

"It can be difficult to retrospectively calculate the contribution that a person has made to a farm correctly," he says. A calculation completed many years down the track does not take into account all the little jobs and overtime that a person may undertake because they live on the farm, nor does it account for the reduced remuneration that person may have received in hard times.

As a result, when a Will is contested or a transition of assets is being undertaken it is difficult for off-farm siblings and partners to realise just how much the person on the farm has contributed and why there may be an unequal distribution in their favour. This has become more prevalent in recent years as the value of land has increased exponentially in comparison to the revenue many properties can produce. However, if each member of the family is informed of the contribution made by the younger farming generation and their role in the farming business from the outset of that person's employment, then any issues can be worked through as part of the process of planning rather than as part of the court process in years to come.

In short, relying on a Will alone to determine the distribution of a farm and its assets is highly fraught, often easily contestable and may consume considerable amounts of the estate in the process.

### SUCCESSION AS AN OPPORTUNITY — NOT A RISK

While the process of succession planning can be seen as a potentially emotional and vulnerable time, in reality it represents a significant opportunity for the business. Not only does succession represent the chance to analyse and reposition the farming operation to take advantage of changing circumstances and market conditions, it's also an opportunity for all generations involved to take an active interest, whether working on farm or in its management. The process of planning for succession creates an opportunity for farms to build momentum, utilise additional resources and set themselves up for future growth.

Some farmers may view succession planning as a process of 'corporatising' family farming, which may be an unfamiliar and challenging concept for more traditional family-run operations. With more and more farms utilising the benefits of corporate structures, those farmers who don't identify the best structures for their business risk losing out on competitive advantages which other farmers make best use of. Adopting a corporate structure, which is growing in popularity with larger farmers, creates possible tax benefits, allows farms to more easily access external investment and capital and also enables children to own shares while not being the primary 'farmer'. Succession planning allows farmers to 'reset' their structure and build for future growth.

"Structuring becomes important in succession planning because traditionally many family farming businesses have traded from structures which don't easily allow new investors or partners to be a part of the business," says Ben Cameron.

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# GETTING THE SETTINGS RIGHT, BEFORE YOU START

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A succession plan is only as good as the mutual agreement and commitment to the plan.

There are a number of things to get right before starting discussions over a plan – the right people, a common goal to document a plan goals and open communication are all essential to have in place before assets or money are even broached.

### GETTING THE RIGHT PEOPLE — THE ROLE OF ADVISER AND MEDIATORS

Succession is one area where advisers have a crucial role to play. Even in cases where families have a clear understanding of planned asset distributions or have reached agreement on their solution, advisers can help to implement the plan smoothly, utilising the most effective and sound structures. Getting the right advice from the right people at each stage is critical to success.

Increasingly, farming businesses are utilising an advisory board to guide decision-making including succession planning. Advisory boards are similar to, but more informal than, a board of directors. Advisory boards are made up of professionals across a range of disciplines whose role is to keep the business focused on the bigger, strategic picture and direction. Advisory boards are seen by many in the industry as the next, natural step from the retention of a range of advisers and consultants on an ad-hoc basis. Instead, advisory boards retain knowledge of the staff, goals, strengths and weaknesses of a farming business and serve to keep a business 'on track'. In relation to succession, advisory boards have the advantage of knowing the structure and nature of a business and its long-term goals, as well as the personnel involved in order to advise the best structure for transition.

In an area where many professionals are looking to add value to their clients, it's important for advisers to understand where their individual skills can assist. However, succession advice should not be separated from business performance. Rather than being an end in itself, succession should be a means to continue the success of the business, so succession advisers need to understand both business performance and how to assist families achieve succession.

"We need to remember that the process of letting go of the one thing that has defined you for 10, 20, 30 years or longer strikes at the very core of a farmer's being. The person letting go is likely to be very insecure about doing so – and what the future will hold for them once they do. Worse still, after 20 or 30 years at the helm, the owners are just at the point where they have some freedom and the business should be giving them a tidy income – and then they get told it is time to 'give it all away' just when they were ready to enjoy the fruits of their labour.

"It is the role of the advisers to give reassurance, to show them the path that they can follow to achieve their aim. The advisers need to be flexible and think on their feet, as there will be sudden turns as plans change due to changing needs. You need one of the advisers to take the lead role and champion the process. It generally works best when all the advisers are working together," says Dom Papaluca of Rise Solutions.

In some circumstances advisers alone are not sufficient for parties to reach a mutual and agreed outcome. In these cases, the retention of an independent mediator can provide a circuit breaker for potential conflict. Independent mediators play the role of a neutral party to negotiations who assists parties to reach a mutually agreed solution. Mediators will help to facilitate discussions between parties as well as explore each party's issues and concerns in depth, with an eye to reaching understanding between parties.

In all circumstances, the 'where' parties meet for negotiation can be just as important as the 'who' is involved. Meeting on neutral ground will ensure no party has an implicit upperhand, and negotiations can occur with all parties on an equal footing without which the longevity and sustainability of any agreement cannot be assured.



## **BUILDING A STRONG AND PROFITABLE BUSINESS – SUCCESSION-READY IS ALSO INVESTMENT-READY**

For both commercial and agri businesses, successful transition is difficult if the business isn't profitable. This is becoming more of an issue because the outgoing generation is likely to live longer and require more income for retirement, and therefore needs to take more capital out of the business.

Ben Cameron states that the business needs to be of a scale that is still commercially viable and that there is sufficient equity to be a sustainable business.

A profitable business isn't just one that ends the year in the black. It is a business that generates sustainable annual cash surpluses that can either be reinvested in the business or taken as dividends. The cash surplus is important because it gives owners more options for succession. If outside money is needed to fund change of ownership, profitability makes it easier because potential investors or lenders can clearly see where the business has been and where it is heading.

Profitable businesses also have a manageable level of debt, strong planning around the business's cash flow, a clear understanding of the break-even costs, and the risks and opportunities within the business.

It can also mean benchmarking against other businesses (particularly in the agri sector), scenario planning for a range of possible eventualities and identifying areas for improvement.

If a business isn't profitable, the question has to be asked, 'what is being achieved from succession?' In particular, farm assets have shown strong appreciation in recent years, which is not necessarily linked to cashflow performance. How to balance the equity between capital value and cashflow value across a range of interested parties is particularly complex.

For businesses that aspire to be a family business but have family members who are unsure of their future role (or too young to decide), instilling the necessary processes and disciplines to improve profitability is one step that owners can take now to assist with their succession planning.

Succession-ready businesses are also investment-ready businesses. A major pitfall in the succession process is often due to an inability to raise finance to either 'buy out' another party, or expand operations to be able to support multiple family members at one time. Being investment-ready means having a strong business with a clear direction, clearly defined roles and governance and transparent accounts.

## **STRONG COMMUNICATION AND CLEAR, MUTUAL GOALS**

All the experts agree that starting the process of developing a succession plan is difficult if all parties don't start on the same page – and to do that, they all need to know what their own goals are and are comfortable to communicate those goals to their family members.

Ian Anderson believes that the largest component to any succession plan is open and honest communication. "Advisers can play a very large role here if they have the appropriate people skills. Without open and honest communication the process of succession planning will always stall. Experience shows that succession planning instigated by the recipient generation has less chance of success than those plans instigated by the exiting generation," he says.

Dom Papaluca agrees. "The absolute critical thing that is at the heart of a successful succession plan is the clear and purposeful leadership of the owners. The difficult succession issues are usually caused by fuddled leadership at the top. The difficult succession issues are usually caused by impatient kids, confused parents or an overbearing family member. The technical issues are not that difficult to get around – it is the personalities that cause the problems."

Understanding each others' motivations, goals and concerns is central to ensuring honest communication, says Dom. "Empathy on all sides is key. The parents have to realise that the kids are now in their thirties and have kids of their own. The kids have to realise that the parents have just got to where they want to be in life."

It is also crucial that no one makes any assumptions about anyone else's goals, so much so that Dom will send parties to see a counsellor prior to negotiating a plan, and will obtain permission for the counsellor to share pertinent information with him to ensure that even unspoken and hidden issues are considered in the planning process. This can often involve uncovering the influence of family history and tradition on issues which present as 'non-negotiable', such as the long-term family ownership and management of the farm. Just because the farm has been run for generations by the same family, doesn't mean that the next generation will want to do the same. Nor does it mean that the asset can't remain in family hands with the introduction of the right on-farm management and separation of ownership and management responsibilities.

Honest and open communication will also ensure that children's spouses and partners are adequately considered and that their goals and skill set are considered and utilised in any succession plan.

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– DOM PAPALUCA

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## BEING INVESTMENT READY — WHAT DOES IT MEAN?

Investment will only come to businesses that have strong financial management and reporting, as well as capable farm management. Businesses that are successful in these areas will signal to external parties and other farmers that they are serious businesses and attractive for investment and partnerships.



### PHYSICAL FARMING

- Precise control of manageable factors to optimise operations
- Having processes in place to ensure that this is done well all of the time
- Detailed business plan in terms of the day-to-day management of the property.



### FINANCIAL MANAGEMENT

- Transparent and accurate accounts
- Accurate budgets and forecasts
- Cost of production known and controlled
- Ventures need to be able to present information in a way that allows them to be scrutinised and compared alongside other industry and investment sectors. Investors are often looking for a return of approximately 10 per cent, comprising 5 per cent in growth and 5 per cent in yield.



### OPERATIONAL CAPABILITY

- Use of technology
- Relationships within the supply chain
- Positive information signals to external parties
- Collaboration to achieve success with those within the community.

## NEGOTIATING A STRONG SUCCESSION PLAN

“No succession plan is bullet proof, whether that be from the failure of the next generation in their profitability, or from the other matters that often preclude succession planning being enacted, such as marital disputes in the recipient generation...”

“...A plan that separates the financial wellbeing of the exiting generation from the financial success of the farm is vitally important,” says Ian Anderson. “Likewise one that may protect family assets from erosion via Family Law court matters.”

Once everyone is ready to come to the table, knowing their own mind and with the shared goals, the process of developing a plan can commence.

Nigel Pannett outlines a number of distinct steps in developing a solid succession plan:

Step 1 is to agree that there needs to be a formal plan in place. The next step is to understand all the subsequent steps involved:

- Initial discussions and introduction to business transition planning;
- Meeting with individual family members with discussions and questionnaires being completed;
- Meeting where all family members are brought together to discuss outcomes from previous meetings – this may have to happen three or four times to get to a point where agreement and consensus is reached;
- Documented outcomes of the family meetings to cover roles, communication, estate plan, decision-making, financial agreements, tax advice, wills, ownership structures, individual benefit, incomes, housing, management, exit plans, equity, inheritances and so forth.

In this process there are a number of key questions which must be addressed if a succession plan is to be robust and remain in place in the longer-term.

1. What are the parties' best skills and how can they be utilised in different (and often separate) roles?
2. What is the retirement plan for the exiting generation?
3. How much income does the retiring generation need to retain to live comfortably, and where do they intend to live?
4. Who is the successor, if there is only one, and what are the rights of any off-farm children?
5. Does the governance structure of the business need to be altered?
6. What are timelines on any change? Will every party be ready and comfortable to meet those timelines – both financially and emotionally?
7. What are the key risks and opportunities facing the business?
8. Does everyone consider the outcome to be fair and equitable? How do you consider the time, labour and opportunity cost for on-farm children that may not have been considered otherwise?

Dom Papaluca also believes that developing a strong plan requires strong leadership from the older, exiting generation; no succession plan would get off the ground without it and discussion between children could devolve into pure asset distribution.

Ian Anderson agrees that the family's exiting generation can play a unique role in developing a succession plan by offering their insights into the new generation's capabilities and which individuals in their family may be more suited to certain roles. Such a discussion is inclusive and respectful of the wisdom gleaned over generations, and might go some way in avoiding roles being assigned based merely on age or worse, gender.





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## A SUCCESSION PLAN IS ONLY THE FIRST STEP

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It might appear that once a formal succession plan has been agreed, that the hard work is finished.

However, developing a plan is only the beginning – any succession plan is only ever as good as the communication, cooperation and flexibility that follows it. It is important for all parties to recognise that a succession plan is a point-in-time understanding; priorities and goals change, as does the farming business itself. It is often useful for parties to instil regular and ongoing reviews and discussions over how the succession plan is being implemented, whether any flaws or omissions are being realised along the way, or whether parties want to increase or decrease their role in the business.

### SUCCESSION PLANNING — A BANKER'S VIEW

Bankers are just one of the suite of advisers and stakeholders in a farming operation's succession planning, but for a banker, strong succession planning is one of the key indicators of a well-managed and run farming operation. For the most part, banking is a matter of risk. Those operations with fewer risks to their profitability and sustainability are more likely to receive finance than those with unresolved issues facing it.

For instance, banks will use agricultural land as a security on most loans to farming operations. If the long-term ownership of that security remains contestable or undetermined, it becomes risky to use that asset as security for a long-term goal.

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**FOR THE MOST PART, BANKING IS A MATTER OF RISK. THOSE OPERATIONS WITH FEWER RISKS TO THEIR PROFITABILITY AND SUSTAINABILITY ARE MORE LIKELY TO RECEIVE FINANCE THAN THOSE WITH UNRESOLVED ISSUES FACING IT.**

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# OUR EXPERTS

ANZ would like to thank the following experts in the field of succession planning whose depth of experience and insight have been a valuable contribution to this publication.

## IAN ANDERSON

Former Managing Director, Moore Stephens Adelaide

Ian Anderson is a Chartered Accountant and former Managing Director of a mid-tier tax and accounting firm with local, national and international exposure.

A large portion of Ian's client base revolves around agribusiness, predominately cattle or sheep operations.

His specialty areas of practice include business services, strategic business consulting including coaching and mentoring, taxation, agribusiness, succession planning, acquisitions and divestments, and family-owned SMEs.

## PATRICK BARRETT

Director, Walsh & Blair Lawyers

Patrick has more than 10 years' experience in commercial and agribusiness law and specialises in rural matters including succession planning, wills and estates, business mergers and acquisitions and conveyancing. Patrick has assisted many farming families to transition through generations and maintains a current understanding of the complexities of farming businesses from running his own family property in the southern Riverina region of NSW.

## DOM PAPALUCA

Director, Rise Business Solutions

Dom Papaluca spent the first 10 years of his accounting career working for large listed companies and then switched to public practice in 1990. His 'big business' experience has helped him teach his clients to take a strategic planning perspective around business growth, succession planning and cash flow management.

## NIGEL PANNETT

Managing Director, Agribusiness Specialist, Compass Agribusiness

Nigel Pannett has more than 16 years' experience in the financial advisory and agricultural consultancy sectors working with Agricultural clients on, financial modeling, establishing farm partnerships, capital raising and growth and development strategies and assisting businesses with the transition of ownership and management in farming businesses.

A graduate from Lincoln University in Canterbury, New Zealand, Nigel spent seven years in agricultural financial services with a major bank (in both New Zealand and Australia), establishing farming partnerships for both farmers and investors. Previous roles included agronomist, regional manager for a specialist seed production company, and agribusiness consultant.

## BEN CAMERON

Managing Partner, Bentleys Queensland

Ben Cameron is the Managing Partner of Bentleys Queensland.

As a trusted adviser and business confidant, he works with highly successful businesses and family groups across multiple sectors, including farming operations in the beef (including feed lotting), grain, horticulture, cotton and other primary production industries, family business, corporate organisations, property companies, the finance sector, manufacturers and professional services.

Ben heads up the firm's team of specialist agribusiness advisers who work with a mix of agribusiness clients, financiers, corporate and family-owned industry participants and other rural industry operators, such as stock agents and sales yard operators. Ben is a thought leader in business advisory and solutions for the rural industry.

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