

# *Stephen Park & Mel Adams*

*Pacer Legal - Role of succession planning  
in defining your place*





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# Finding Your Place

# An Evolving Industry

- Not small family businesses anymore.
- Agribusiness is embracing technology.
- Children are entering the family business at much later life stages.

# An Evolving Industry

- Participants have greater exposure to pre-farm tertiary education.
- Increased focus on up skilling.
- Increased availability and use of; professional advisors and industry organisations.

# Regulatory Challenges

The farm enterprise faces increasing challenges:

- Criminality of OH & S liability for the reckless/deliberate disregard of workplace safety.
- Regulation of conditions of farm employees' entitlements and dismissals.

## Legal Challenges

- Succession planning with expanding interpretations of Family Provision obligations and principles relating to equitable claims.
- Divorce and its effect of the viability of farming enterprises.<sup>92</sup>

## **Finding My Way Means**

- navigating my way through someone else's world.
- challenges of living and working in proximity with extended family.
- being asked to compromise more often than is fair.

## **Finding My Way Means**

- establishing my own identity.
- setting barriers and guidelines between business and private matters, whilst contributing to a generational business.
- an opportunity to use my skills in advancing the farm.



## **Finding My Way Means**

- learning to politely listen, respectfully disagree if necessary; and then moving forward as a family unit.
- creating an environment where good family communication can take place.

## **Finding My Way Means**

- its about gaining the trust of family.
- backing your partner and telling them how incredible they have been and not letting them underestimate their contribution to me and the business.

## Co-CEO's?

Old CEO model replaced with:

- Working together with a joint vision.
- Identifying different strengths and utilising these effectively.
- Allocating or sharing duties and responsibilities according to skill sets.

## Better Together

- Benefit of different approaches and thinking.
- Sharing the management demands of the farming business.
- Early identification of 'burnout' and managing mental, 98 emotional and physical exhaustion.

## Finding Your Place Is Generational

Step 1 – Parents run business.

Step 2 - Child joins business and needs to find their place (FTP).

Step 3 – Child's partner joins business and needs to FTP.

Step 4 – Parents transition to retirement and need to FTP again.

Step 5 – Child and partner are now “the parents”.

# Finding Your Place

- Its everyone all the time so have a plan.
- Plan that contemplates how stakeholders 'find their place' is a family moral obligation.

## Finding A Place

- Stakeholder agreement consider both management and succession.
- Often include deeds of family arrangement, Wills and partnership and/or shareholder agreements.

## **Finding A Place/Succession**

- Proforma agreements are guides to start you on the way to a 'fit for purpose' agreement.
- Stakeholders determine the business guidelines adopted, the rules to facilitate communication and how decision making takes place to suit <sup>102</sup> your circumstances.



# Stakeholder Agreements

- Identify:
  - Who is responsible for what?
  - Who third parties communicate with and are accountable to (particularly employees).
  - How and when farm enterprise funds are accessed.

## Stakeholders Agreement

- Authority to contract.
- Employment contracts?
- KPI's for stakeholders?
- Dispute resolution provisions.
- Succession goals initially and then binding<sup>104</sup> formal succession plans over time.

# Succession

- Implement from day one with a timeline (trigger points) for review.
- Avoid delaying for the future 'one big succession plan' as stakeholder expectations may become misaligned.

# Succession

- Don't overlook when negotiating, the valid concern of parents as to what is/will be "their place".
- They also are likely to have ongoing similar concerns as child/partner on farm, how to ensure all their children are provided for.

1. Planning	2. Assess	3. Prepare	5. Transition	6. Measure
<p><b>Stakeholders goals - Are we aligned?</b></p> <p><b>Communicate openly</b></p>	<p><b>Identify roles</b></p>	<p><b>Prepare successors for transition by providing resources for improving skills.</b></p>	<p><b>Be open to discussing concerns with process</b></p>	<p><b>Tweak the plan if necessary, but within the bounds of the agreement</b></p>
<p><b>Set realistic goals/strategy/timeline for progress.</b></p>	<p><b>Assess competencies and honestly evaluate performance and potential</b></p>	<p><b>Reconsider goals, strategy and timelines to confirm if viable.</b></p>	<p><b>Implement the Plan, which may include beginning to transition successor to new roles</b></p>	
<p><b>Review farm business structures and understand them.</b></p>	<p><b>Analyse how to address shortfalls in competencies or skills</b></p>	<p><sup>107</sup> <b>Formalise the Stakeholders agreement and succession plan if appropriate</b></p>		

## **Succession Planning Best Practices**

- 1. Ensure successors have option of accessing independent advisors to improve their knowledge and protect their interests**
- 2. Identify competencies required and identify if any weaknesses in skills/personality.**
- 3. Create development plans for successors**
- 4. Hold people accountable**
- 5. Define metrics to verify performance, progress**
- 6. Have a formal succession plan**
- 7. Review and update plan if necessary**

## Succession Planning

- Involves ongoing honest disclosure of expectations by all parties from the outset.
- Requires informed decision making by all stakeholders.

## Succession Planning

Stakeholders need to understand the business structure and consider:

- Is assuming liabilities but not control, equitable?
- Asset protection.
- Personal director liability.
- Trustee personal liability.



# Succession Planning

- Effect of Trust UPE's.
- Partnerships:
  - Joint and severable liability;
  - Effect on partnership drawings on death;
  - Benefits of a partnership deed.
- Is business structure tax effect?

# Succession Planning

- Finding your place may ultimately mean leaving the farm or splitting from it.
- It's a moral obligation of parents that leave children in a joint business structure, to provide an exit strategy.

# Getting Better at Succession?

- Current generation is far better equipped than previous generations to address farm succession.
- However, often past succession failures whilst not forgotten, are repeated.

## Causes of Succession Failure

- Failure to manage expectations initially and on an ongoing basis.
- Arises from compromises made because:
  - Don't want hard conversations;
  - Are dealing with emotions and want to continue the legacy.
- Personality clashes.

## Moving the Goalposts

- Stakeholders seek to revisit the agreement.
- Often triggered by ill health, age, failure of stakeholders to meet expectations or the success of farming enterprise.
- Is passive capital growth, windfarms and mining a windfall?

## Final Thoughts

- Be wary of advisor who purport to act for all parties but does not acknowledge the conflict.
- Advisors advise, the stakeholders make the decisions.
- Compromise will have its time and place.
- Stakeholder concerns need to be acknowledged.
- A Stakeholders 'place' is not static.

# Finding My Place

- How do I juggle contributing to the farm business, advancing my career in a regional town, have the 'mum' life and contribute to my local community?
- What is the right <sup>117</sup> amount of time to allocate to each?

# Finding My Place

- What is my place at Pacer and how can I continue to contribute, given my new circumstances?
- What is right for me and my family now and how might this change with time?



Thank you