

Farm Succession Planning



The screenshot shows the 'rural Law Online' website. The header features the site's logo and the tagline '...a guide to the law for rural Victorians'. A search bar is located on the left. The main content area is titled 'Feature Issue Forums' and highlights the 'Farm Succession Planning Forum'. A notice states that the 'Succession Planning Forum Is Now Closed', but all material will remain available for viewing. Below this, a text box explains the importance of succession planning and encourages users to view information or participate in the discussion forum. Further down, there are sections for 'Overview', 'Resource Package', 'Interviews', and 'Discussion Forum', each accompanied by a small image and a brief description of the content.

rural Law Online
...a guide to the law for rural Victorians

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Feature Issue Forums

Farm Succession Planning Forum

Succession Planning Forum Is Now Closed

All material will continue to be available for viewing. However new postings to the Discussion Forum will no longer be accepted.

 Planning for succession is a very important part of managing the farm business. View the information provided or go to the discussion forum to discuss your issue with people working in the field

 **Overview** - A summary of the main points you need to consider.

 **Resource Package** - A detailed document outlining issues and suggested processes for dealing with succession planning.

 **Interviews** - A selection of audio and video interviews about succession planning.

 **Discussion Forum** - Ask a question to forum 'facilitators' working in this area throughout Australia, or share your ideas online with others. **Your contact details remain confidential unless you authorise.**

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DISCLAIMER

The views expressed within this report are those of the author and should not be attributed to the Victoria Law Foundation, the Rural Law Online Reference Group or anyone who may have contributed their expertise and advice in the development of the website or the Farm Succession Planning Forum.

As all circumstances will be different, information provided on this website should not be used as individual legal advice. No responsibility will be taken for any omissions or errors which may exist within this report.

Executive Summary

Rural Law Online is a website managed by the Victoria Law Foundation, providing plain language information on the law for rural Victorians. With over 200 topics of law covered by the site and a number of other components including web based interactive discussion forums on major topics of concern to rural communities, Rural Law Online has proven to be a valuable resource with 100,000 visitors to the site and 1.6 million 'hits' in the 12 months since its inception in January 2005.

Following consultations with key individuals and organisations in primary industry and law from around Australia, Rural Law Online decided to establish an internet based Forum on Farm Succession Planning. Funding for the project was provided by the Department of Transport and Regional Services – Regional Partnership Program, as one of a series of Forums on legal issues for rural Australians.

Farm Succession Planning is becoming recognised as a major issue for primary industry. A number of factors have come into play, which have resulted in the 'traditional' methods of inheritance no longer being a viable way to manage the intergenerational transfer of the family farm. However, prerequisites for successful succession include good communication between all parties and a planned process based on a broad knowledge of the options available. In too many cases this is not effectively implemented.

The main objective of the Forum was to encourage discussion nationally between those who are undertaking or are considering a succession process, to share their experiences and to provide them with the opportunity to draw on the expertise of 16 Forum Facilitators, selected from around Australia. The Forum also provided an 'Information Resource Package' on issues to consider and the steps involved in succession planning.

Interest in the Farm Succession Planning Forum was high, with an estimated 6000 visitors to the site, viewing Forum pages over 32,000 times (25,000 or 75% of Page Views were received by the online Discussion component of the site) and the posting of 100 comments and queries, during the three months it operated. A more detailed statistical analysis is available in Appendix 3.

The Forum proved to be an excellent medium for the presentation of this topic, allowing participants to seek out information on the site, voice their opinions and queries in confidence if they wished, while enabling professionals within this field to provide often quite detailed information in response. The Discussion Forum further enabled the vast majority of visitors to the site who did not post comments, to read about the experiences of others and share valuable insights and suggestions from both the Facilitators and other participants.

Comments and queries posted to the Discussion Forum highlighted a number of common issues experienced by farming families from around Australia. These have been presented within a number of broad themes, including:

Communication between all parties was a common issue raised by many of the postings to the Forum

Communication is integral to a successful 'change management' process for any business. Add the elements of family dynamics, competing expectations and complex legal structures, and the importance of good communications is compounded.

Issues of effective communication were raised, not only in relation to family members, but also between each of the services providing assistance and between these services and the family. For this reason facilitation of the communication process between all parties, is an important tool for successful succession planning.

Greater support and encouragement for the integration of facilitation as a process to improve communication between parties and foster positive outcomes for family members, should be provided by government and professional services assisting clients in succession planning.

Access to practical, high quality and independent information was also seen as limited for people embarking on or considering succession planning. Access to practical information and providing that information early in the succession planning process, when younger generation family members are considering their careers and at a time when there is a capacity to prepare appropriate succession structures, was regarded as essential.

Educational institutions providing agriculture-related courses, rural industry bodies and government should all consider their role in providing information and encouraging early planning for succession.

Rural Law Online has played an effective role in delivering information services and brokering access to expertise on this topic. This role could continue with ongoing funding for Rural Law Online.

Improving professional services – The dissatisfaction of a number of Forum participants with the services provided suggests that the uniqueness of family farming businesses and the inherent issues arising in succession planning, requires a broader range of skills and expertise than is currently available..

To ensure a consistency of roles, a high standard of service, and quality of information provided, professional development programs specific to farm succession planning should be offered by peak bodies representing professional services practising in this area, including lawyers, accountants, financial advisors, rural counsellors and agribusiness consultants.

Consideration should also be given to the inclusion of units of study on farm succession planning, within relevant tertiary level courses.

Work is required to further clarify the issues and set in place strategies to improve farm succession planning services. This includes providing further opportunities for professional services working in this area and farmer representative bodies to come together to lead this process.

It is hoped that this Forum has provided an impetus for progressing further action by government and industry to improve the delivery of services in this area and increase the farming communities' knowledge of the options and associated processes available to them for succession of the family farming business.

Richard Coverdale
Rural Law Online
Website Manager

Introduction

Rural Law Online (RLO) provides rural and regional Victorians with access to comprehensive, plain language legal information on over 200 subjects. The website has proven popular with rural communities since its inception in January 2005, with approximately 100,000 unique visits, 500,000 page views and 1.6 million 'hits'.

The website also contains a number of other features including, a directory of over 1,500 law, advice and support services, and interactive *Feature Issues* discussion forums.

The first national *Feature Issues Forum* delivered via Rural Law Online was on Farm Succession Planning. The major package elements included:

- Overview – A five page overview which presented a summary of the major points that need to be considered when planning for succession.
- Resource Package – A detailed document outlining issues and suggested processes for dealing with succession planning. This document could be viewed online or accessed in PDF format (25 page document) and included links to other information pages on the website and external sites.
- Interviews – A selection of audio and video interviews on succession planning
- Discussion Forum – Rural Law Online visitors could ask the 16 Forum facilitators drawn from around Australia, question about succession planning or share their ideas and experiences with others.

Why a Forum on Farm Succession Planning?

A number of factors have come into play, which have resulted in the 'traditional' methods of inheritance no longer being a viable way to manage the intergenerational transfer of the family farm.

The economy of scale required to generate sufficient income from most forms of farming, the tighter margins and higher land values which make buying-out siblings difficult, the 'traditional' forms of resolution (generally the farm going to the oldest son) no longer being accepted or sustainable, conflicting expectations of family members and a growing complexity of laws which impact on the transfer of assets, are just some of the issues which now need to be dealt with when managing farm succession.

The need for Farm Succession Planning has progressively become recognised as a major issue for primary industry. Over the last few years, seminars and workshops on the topic have become a regular feature in rural and regional centres, initiated by both private business and government.

A co-ordinated approach to the issue by government and relevant professions however appears to be lacking and the prerequisite for successful succession, being a planned process evolving over a number of years is, in too many cases, the exception rather than the rule.

Consultations with key individuals and organisations in primary industry and law, lead to a decision by Rural Law Online to establish an internet based Forum on Farm Succession Planning. Funding of the project was provided by the Department of Transport and Regional Services – Regional Partnership Program, as part of a series of Forums to be developed by Rural Law Online.

The Forum was initially proposed to run for one month, from the 1st to the 31st of August. The main objective of the Forum was to encourage discussion nationally between those who have undertaken or are currently working through a succession planning process, to share their experiences and to seek information from specialists with expertise on the topic from around Australia. The Forum also provided a 'Resource Package' of information on issues to consider and the steps involved in succession planning.

It was also hoped that this Forum will provide an impetus for progressing further action by government and industry to improve knowledge of succession options and processes and improve the delivery of services in this area.

Methodology

The Farm Succession Planning Forum was the first forum conducted by Rural Law Online. The experience gained in establishing and running this Forum has been a valuable reference for the development of proposed future national Forums. The Forum was comprised of a number of components, which are outlined below.

Forum Facilitators and Moderators

Sixteen Forum Facilitators were chosen from around Australia to assist in responding to queries raised by site users and to raise issues themselves and share their experiences within the Discussion component of the Forum.

Facilitators were selected on the basis of recommendations by others known in the field and as a result of researching the issue prior to the forum's commencement. All Facilitators gave their time freely and, while actual contributions varied, all were enthusiastic about the concept and very positive about the effectiveness of the Forum.

The use of Facilitators practicing in this area has proven to be a valuable way of linking individuals with specialist information on the topic with people wishing to take a first step or who seek to have their experiences told.

The Forum also created a channel for practitioners to share information and strategies nationally as part of their professional development.

Exactly 100 postings were made to the Discussion Forum and, with almost 25,000 page views recorded on this component of the site which constitutes approximately 75% of all page views, this was the most popular component of the Forum.

Three Forum Moderators oversaw postings to the Discussion Forum and referred queries when required. Moderators included Wes Obst – Senior Lecturer in Business and Law, at Deakin University, John King - Lawyer and Project Manager, at the Victoria Law Foundation and Richard Coverdale, Rural Law Online Website Manager.

The Forum Facilitators included: Peter Arkle, Greg Arthur, Bill Beard, Chris Cooper, Geoff Cunningham, Richard Dwyer, Tim Jacobs, Brian Healey, John Lawrance, Peter Marks, Nigel McGuckian, Mike Stephens, Lyn Sykes, Bill Thompson, Geoff Tually, Dr Malcolm Voyce. Facilitator details are provided in Appendix 1 of this report.

The input provided by Forum Facilitators is greatly appreciated.

Information Resource Package

The Information Resource Package was comprised of a 25 page document outlining considerations and recommended processes for successful succession planning. The document was a practical introduction to the topic with case studies, checklists, quotations and cross references to other content on the site and a list of other more detailed reference material on the topic.

First draft content for the Resource Package was produced by Geoff Tually, retired Senior Lecturer, Institute of Land and Food Resources, The University of Melbourne.

Subsequent redrafts were produced following feedback from Richard Dwyer, Senior Partner, Dwyer Willet Lawyers and Wes Obst, Senior Lecturer, Business and Law, Deakin University, Warrnambool.

A five page Overview document was also provided which summarised information contained within the Resource Package.

The final document was also offered as a PDF Download, enabling Forum participants to print out the Resource Package for later reference. Nearly 4000 page views were received by the Resource Package and approximately 500 site visitors accessed the printable PDF download option. A further approximately 1500 page views were received by the Overview section of the Forum

The Farm Succession Planning Resource Package is included as Appendix 4 to this report.

Interviews

As a way of engaging site users and introducing them to the topic, four audio visual interviews were undertaken, both with people going through the process of succession planing and those with an expertise in the topic.

This component received approximately 400 page views over the course of the Forum.

Promotion of the Forum

As part of the process of promoting the Farm Succession Planning Forum, press releases were developed for each State and Territory. The press releases were forwarded to over 600 rural newspapers, community radio stations, Regional ABC radio and commercial radio stations, regional and ABC television, rural press publications, Rural and Financial Counselling Services, key state and national farming bodies, Community Legal Centres, Chartered Practicing Accountant state representatives, Agricultural Colleges and state Law Societies.

Press releases were tailored to the particular sector being targeted, for example radio, newspapers or industry journals etc, and to the particular State.

Promotional activities were undertaken with the assistance of a PR/Marketing consultant who was contracted to provide promotional services, develop a media contact lists, distribute the press releases and liaise with the media.

The services of Forum Facilitators were also utilised, to act as spokespersons in their State, and respond to media requests. Radio interviews were conducted by the Website Manager and Facilitators. Over 20 radio interviews were undertaken, including stations in Victoria Western Australia, South Australia, New South Wales and Queensland. The majority of interviews were conducted with ABC 'Country Hour' and country news services. At least six interviews were also conducted with commercial radio stations.

The extent of newspaper and journal coverage is uncertain, though some site users referred to their local paper as the source of their awareness of the forum. Sample press clippings are attached as Appendix 5 to this report.

Extending the Forum

Although the Forum was intended to run for the month of August only, at the end of that period, interest in the Forum was strong. The Forum Facilitators agreed to continue their services and with the support of the Department of Transport and Regional Services, it was decided to extend the Forum until the end of October 2005.

Again a press release was developed and distributed to all media outlets and relevant organisations. The second round of press releases highlighted outcomes of the Forum to date and invited continued patronage.

Promotion of a National Succession Planning Conference

Soon after the commencement of the Forum, a request was made by the organisers of a national farm succession planning conference, to promote the conference on the Rural Law Online website. The conference 'Many Paths' occurring in May 2006, has been funded by the Rural Industries Research and Development Corporation.

The banner on the Rural Law Online website promoting the conference was accessed 203 times by Forum participants

Observations and Analysis

General Observations

In the period between 1 August 2005 and 31 October 2005 the Rural Law Online website attracted 32,497 visits, provided 146,402 page views and recorded more than half a million hits (563,446). Over the three-month period, areas specific to the Farm Succession Planning Forum were accessed 31,601 times, by an estimated 6000 visitors. The highest level of utilisation was recorded during August 2005.

Utilisation of the Discussion component of the Forum accounted for more than 75 percent (24,276 page views) of the overall utilisation of the Forum, during the three-months to 31 October 2005.

There were exactly 100 posting to the website during the Forum period. Fifty postings were made by interested individuals and 50 by website facilitators and moderators, largely responding to the queries and comments raised.

Of the 24 individual topics presented on the Forum, 11 were provided by women and 13 by men. Four topics were initiated by Forum Facilitators and Moderators and the remainder by individual contributors.

While this is not sufficient a sample to make any categorical statements as to trends, Farm Succession is clearly an issue of concern and there is a consistency of observations made by contributors in relation to farm succession planning.

Perhaps most importantly the Forum postings highlighted the emotional trauma, financial loss and the often irrevocable damage sustained to family relationships, which can occur where planned succession is not an integral part of managing the farming business.

Even on the basis of the anecdotal information which these Forum postings provide, it may be argued that, potential and actual litigation between family members, dysfunctional family businesses, and lack of purposeful planning and open communications will result in a significant and direct financial loss not only to individual farming families but also to Australian primary industry as a whole.

Many challenges are ahead for the family farming business, including those associated with creating sustainable agriculture and responding to the ever variable markets and weather. Without solid business practices, of which succession planning is an integral part, the future of family run agricultural enterprises is threatened.

The *Australian Bureau of Statistics* in its report, *Australian Social Trends - 2003* indicates that:

The number of farming families in Australia decreased by 22% between 1986 and 2001.

"Farms in Australia have traditionally been family businesses, passed on to successive generations.¹ However, since the 1950s, the introduction of new technologies, the globalisation of commodity markets, and the removal of protective tariffs, have contributed to the restructuring of the agricultural industry.² Due to efficiencies associated with economies of scale, for most commodities increasing farm size is linked to higher rates of return, making larger farms more economically viable than small farms.³ The amalgamation of properties as some farming families leave the industry has resulted in an increase in average farm sizes.³ The reduction in the number of farms and farming families has been one contributor to the population declines in the small towns that have traditionally serviced the farm sector.

For some farming families, farm income has reduced due to declining profit margins, and can be highly variable, requiring some farmers and family members to obtain off-farm employment to supplement and stabilise the family income.² Stress, overwork and reduced time for family and community activities can affect the wellbeing of farmers and their families.⁴"

Specific Observations

Below is a selection of issues arising from the web based Discussion Forum. Not all issues raised within the Forum are canvassed here.

Issues have been selected on the basis of the frequency with which they were raised and those which have broader implications for improving the process and outcomes of succession planning for farming families.

Communicating and understanding expectations

The ‘bush culture’, of laconic characters keeping things close to the chest, has very real consequences when planning the future of the family farm.

At a general level, poor communication tended to be at the core of the problem for many who had experienced an unsatisfactory generational transfer or selling of the family farm. A constant theme which ran through many of the comments was that there were unspoken expectations or informal promises made in relation to the future of the family farm, only to be dashed when circumstances brought the matter to a head.

A ratio of over 30,000 ‘hits’ recorded to the Succession Planning Forum and 100 postings, translates to approximately one comment/query posted to the site for every 60 site visits. It could be argued that this is indicative of the hesitation people have when discussing the sensitive issue of succession planning, both within the family and more broadly.

For those who shared their positive experiences of farm succession planning in the Forum, the opportunity and ability of family members to effectively communicate, was seen as paramount to their success.

It was not only communication between members of the farming families which was deemed essential but also communication between the relevant professional services working to assist them and between those services and family members. Several comments were made in relation to inappropriate arrangements being instigated by services and poor communications by service providers with their clients.

While on some limited occasions, the level of expertise of the ‘professional’ advisors were brought into question, the majority of criticism related to poor communication, on the part of service providers and therefore differing expectations of all parties involved. This issue is further explored under – *The role of professional services*, below

Availability of information on processes and broad options

For a number of Forum participants there was an assumption that the process of succession and the possible solutions available to them were quite limited.

It would seem that a number of Forum participants and their parents or children, carried these assumptions for many years, until the point at which the consequence of that strategy, (a division of assets which would render the farm unsustainable, or selling off the farm) were brought home to them.

Forum facilitators and others involved in succession planning suggested a number of ways of managing the process and optional succession structures which at least in part would respond to the various interests of family members. The introduction of a succession planning process early in the management of the family farm, it was argued, provides a basis for modification as circumstances change, and encourages communication to all who have an interest in the farm, thereby fostering more realistic and aligned expectations, and much more satisfactory outcomes for all.

The early initiation of succession planning was also seen as enabling the ‘younger generation’ to participate in the process at a point in time when they could consider their career options, rather than entering into a process after already committing a large part of

their life the family farm and having few options available to them but to accept a proposed division of assets or litigate.

It is therefore imperative that information on the broad options for managing succession are made available and promoted broadly, as a basis for considering and developing individual succession plans early in the management of family farms.

Ideally this information should be developed through the support of government, agricultural courses, farmer organisations, and other industry associations and removed from commercial influences which may, through the offer of particular products, limit the options made available.

The roles of professional services

A number of key professions provide services in farm succession planning, including lawyers, accountants, agribusiness consultants and facilitators/mediators. While, as indicated, the postings are not necessarily representative of the broader community, issues of quality of service, conflicting advice and conflict of interest, frequently arose.

One of the more frequently raised areas of confusion and frustration was in relation to the role of the *'family lawyer'*, with a number of 'younger generation' participants in the Forum initially assuming that the interest of all family members would be represented. When it became clear that their interests had not been given equal consideration, they felt that a conflict of interest had occurred and that they were powerless to respond.

It was also noted that in many of the circumstances relayed, conflict came to a head after often many years of working on the family farm for 'pub money' leaving many by then unable to change their career path and without the financial means or leverage to negotiate from an equal position.

One lawyer participating in the Forum was very clear on his role and who he was representing, indicating that he has *"always practised on the basis that fairness is what the parents say is fair!"* However it would seem from the postings received that there is confusion for some family members, who have an expectation that the 'Family Lawyer' will represent the interests of the broader family. Professionals providing succession planning services may not always make it clear as to whom they are providing their services. This is particularly critical when positions on matters between family members may not be aligned and there is a potential imbalance in capacity to negotiate.

While representing the wishes and best interest of the client (which may be conflicting objectives in themselves), are cornerstone of the legal profession, determining the most appropriate approach for the future of a family managed business, often involving complex relationships and varying perceptions and expectations, may not be best served by the 'traditional' lawyer client approach.

It was suggested by several participants that the responsibility for managing intergenerational succession requires the expertise of a number of disciplines, including those of facilitators/mediators whose role it is to draw out the issues and assist the clients in investigating options and determining a course of action. Once determined, only then should the services of other specialists be sought.

In other instances it was suggested that either the facilitator or one other of the ‘team’ assisting with a succession plan should take responsibility for ensuring a co-ordinated approach between the various players and disciplines.

Given the size of the assets often being dealt with, the potentially complex nature of the legal and financial arrangements, together with the need for effective communications, to ensure the best outcomes are negotiated between all parties, facilitation skills are an important asset to the process. Those providing professional succession planning services should therefore be familiar with the principles of facilitation and be aware of when the expertise of those with such skills are needed to assist in the development of farm succession plans.

It also follows that services practicing in this area should have recognised qualifications within the relevant disciplines. To enhance skills, knowledge and professional development, programs specific to farm succession planning should be offered by peak bodies representing professional services practising in this area, including lawyers, accountants, financial advisors, rural counsellors and agribusiness consultants.

Such professional development programs should address the issues raised by participants in this Forum, with a particular emphasis on improving communications between clients, their families and professional services, expanding the knowledge of options available to those embarking on succession planning and emphasising it as a long term and inclusive process.

Conclusion

Interest in the Farm Succession Planning Forum was high, with an estimated 6000 visitors to the site during the three months it operated.

The Rural Law Online website has provided an opportunity for people from around Australia to participate in a Forum on this topic. Many may be living in isolated areas, or would not otherwise have shared their experiences or learnt of the experiences of others, within a more public format, established at one geographic location.

Postings to the Discussion Forum ranged from specific queries in relation to areas of law relevant to farm succession to general and often quite heart wrenching experiences of dashed expectations, litigation and breakdowns in family relationships. As the ‘Observations’ above indicate, there are a number of core components necessary for successful farm succession planning. .

The areas of critical importance arising from the Forum postings can be summarised as follows:

Communication across professional services and between these services and all family members participating in the process, is essential.

Access to practical, high quality information is necessary early in the succession planning process, when younger generation family members are embarking on their farming careers.

While services in the area of succession planning are generally of a high standard, the dissatisfaction of several Forum participants with the role of professional services suggests that the uniqueness of family farming businesses and the inherent issues arising in succession planning, requires a range of specialist skills.

Farm Succession Planning

Summary - Discussion Forum Postings

Below is a table summarising the 100 postings received by the Forum. The table is divided into the 24 topics raised by participants and summarises their queries/comments and the responses to the topic made by others.

Posting Title	Summary Query/Comment	No of Responses	Responses
1. Family Trust	Requested information on Family Trust structure and tax implications and raised concerns regarding possible Land Tax in Vic	2	Distinction between “Legal Owner” and “Beneficial Owner” provided
2. Centrelink	Statement provided by Financial Counsellor in South Australia regarding importance of registering with Centrelink to ensure understanding of the relationship between Centrelink rules and Succession Planning		
3. Promises Promises	Posting by ex-Farmer in Western Australia who is now a Financial Counsellor and states that “ <i>as a young man I delayed pursuing a further career and worked for several years on my parents' farm for minimal wages on assurances from my father that I would receive my fair share of capital either on his death or when the farm was sold. This, of course, never happened.</i> ” .		
4. Equal and Fair Treatment	Statement that equal treatment does not necessarily mean fair treatment in Farm Succession	3	<ul style="list-style-type: none">- Comment that legal advisor should be directed by his/her client as to what is fair.- Comment that sustainable farming is becoming more difficult and that it is important to understand and work toward affective succession planning if the notion of a “family farm’ is to be sustained, as opposed to “blue gum and corporate farming”

5. Family Dispute	<p>Statement regarding a son working the family farm for many years without formal agreement as to ownership or succession. Father, who is semi retired continues to impose decisions and threatens son with removal from the farm.</p> <p>Questions included. <i>“Is he able to sell the farm from under him? He does not pay his wages, so how does this mean he can 'sack' him? Does anyone know my partners rights? Does 16 years of working the land not come into the argument? Can he get rid of him that easily?”</i></p> <p><i>A further two postings responded to the initial posting and relayed stories of unfair succession planning arrangements.</i></p> <p>One posting from Western Australia raised the issues of unfair arrangements for non farming members of the family and particularly the plight of women in the process. Her final comment was, <i>“I feel resentful that I am not to be part of the family farm or house in any way... “I have grown up looking at a sign entering our farm with the titlefamily & sons and it still makes me sick!”</i></p>	10	<ul style="list-style-type: none"> - Several comments highlighted this as an example of why formal written agreements and clear formalised business arrangements were critical. - Information provided on possible legal relationship between father and son. - Several comments stated this posting highlighted the necessity to distinguish between the role of a Will and the role of Succession Planning with one posting indicating that <i>“Disputes between family members can become extremely bitter-there are many farming families who no longer spend Christmas together. The consequence of farming inheritance disputes is not confined to broken family relationships. There are often very significant financial costs for the legal battle which may take years to resolve.”</i> - Several comments in relation to obligations to non-farming siblings where inconclusive. - Several recommended that the parents should be approached by the ‘next generation’ to raise their concern, while others thought this may create problems in some circumstances - One recommended that the feelings of both farming and non farming siblings should be on the table. <i>“The outcome may not be what you want, but at least you will know where you stand and you will also know that your parents are making the decisions for their estate planning themselves knowing how you feel”</i>
6. Will To Destroy	<p>Son moved back to the family farm on the understanding that he would be in partnership with his father and eventually inherit the farm. During the partnership funds were provided by the father to other siblings from the partnership without the</p>	5	<ul style="list-style-type: none"> - One comment was that on-farm siblings should be better protected. - Another commented on the role of advisors (lawyers and accountants) indicating that the owner of the assets not the advisor should be making the decisions

	<p>knowledge of the on farm son. After 32 years of working on the farm, the father died in an accident it was found that another sibling was gifted partnership assets.</p> <p>Issues were also raised in relation to both the family lawyer and family solicitor withholding documents requested by the on farm son, including a copy of the partnership agreement</p>		<p>regarding division and management of property/assets</p> <ul style="list-style-type: none"> - preferably with the assistance of a mediator and, once determined, advisors should then be brought in to assist - Information was provided on the various ownership options and the necessity to confirm current ownership arrangements through a title search - Recommendations for further reading also provided
7. Law Changes Needed	<p>Suggestion that succession planning often happened too late, when sibling(s) had already made a commitment to the farm and were vulnerable to the whim of parents and that without the ability to negotiate from a strong position legislation is needed to protect them. <i>“There are a lot of young farmers that fear pushing the subject of succession planning may be a catalyst for their eviction from the family business. It is a very vulnerable position to be in”.... “It was their choice or actions that brought us into the world but it should not give them the right to manipulate us for their own gain. Legislation should prevent this.”... “I am sure a lot of parents have good intentions when they initially promise their young son or daughter the world if they come home and work for Mum & Dad. But for various reasons they all too often choose to resile from their position.”</i></p>	2	<ul style="list-style-type: none"> - No response was given to the suggestion of establishing legislation to protect on-farm siblings - Both respondents indicated the frequency of issues raised within this posting. One stating that...<i>“As yours and Sue's stories show, this is an issue that is not just an isolated situation that happens to a small number of the farming population. Your situation is being played out in every rural community and as a counsellor in rural areas I have come across many others who have been through the stress that you have been through.”</i> - Comments were also made on: <ul style="list-style-type: none"> o the need for education of farm family members o the inappropriateness of advisors with a conflict of interest advising all members of the family o the frequent lack of awareness between professions assisting with succession process (eg solicitors, accountants, farm consultants) in relation to understanding each others discipline, role and recommendations
8. Capital Gains Tax	<p>Issue raised regarding the complexity of a situation in which land was accumulated over time and held by a Trust with some property purchase prior to and some after Sept 1985, being the date at which Capital Gains Tax was introduced. The subsequent</p>	7	<ul style="list-style-type: none"> - Information was provided in relation to possible concessions available where the property is an ‘active asset’ - a working farm and valued under\$5 mil - The complexity of CGT and Taxation law was raised making it extremely difficult for people to understand

	<p>sale of one parcel of land resulted in an unexpected CGT bill</p> <p>An additional query was raised where the farm asset was valued at over \$5 mil which did not qualify the seller to the CGT Concessions for small business</p>		<p>the consequences of selling property.</p> <ul style="list-style-type: none"> - Additional information was provided in relation to other tax minimisation options for land with a net value over \$5mil - Variations between stamp duty between states was also raised.
9 Estate Planning and DIY Super	Posting by a facilitator suggested Self Managed Superannuation Funds as an important tool in Succession Planning and diversifying Investment Arrangements	7	Discussions ensued between forum facilitators in relation to way in which SMSF can be used in Succession Planning
10 Vendor Terms Deceased Estate	<p>Proposal was raised in which a Vendor Terms agreement with parents will be used to manage a farm succession. It was suggested that this would provide flexibility in terms of paying of the principle as well as avoiding CGT. Information was sought on how to deal with a situation where the Vendor parents passing away.</p> <p>An issue was also raised in relation to “Life Interest” agreements as a way of managing succession</p>	10	<ul style="list-style-type: none"> - Comments presented by a number of facilitators as to the unlikelihood of avoiding a CGT debt using Vendor Terms. - Also raised the potential consequences for the Vendor having no title to the property once sold, and possible inequity of terms for other beneficiaries in the event of a death - Value of ‘life Interest’ arrangements discussed with a view that they are useful in certain circumstances, but not where receiving a pension is regarded as a priority. “<i>One size does not fit all, in Farm Succession or Pension Planning.</i>”
11. Succession Planning A Must for All	A positive experience of good planning and communication between family members reinforced the importance of open discussion between family members and the critical importance of good, clear documentation.		
12. Managing and Tracking Holding Structures	Issue raised in relation to keeping track and managing different structures in unison e.g. succession planning, estate planning, Centrelink applications, finance applications	1	Response indicated that there was a product available which integrated information allowing the tracking of ownership of land and assets within family.
13. Stamp Duty Exemptions	Issue was raised regarding the confusion created by significant variations in stamp duty exemption	6	Responses received as to criteria for exemptions from Victoria, New South Wales, Northern Territory, South

	criteria in each state and territory. A request was made for details of exemptions in each State and Territory		Australia, and Western Australia
14. Family Meeting Facilitators	A Facilitator who is an accountant working in the area of Succession Planning raised a query in relation to how to access a skilled facilitator to assist with the process of succession planning	5	A number of responses raised the importance of facilitation within the succession planning process and the need to acknowledge the limitations of other professions in carrying out that role.
15. Asset Protection	A query was raised in relation to the effectiveness of Family Trusts in protecting from issues arising from divorce and separation. Posting also raised the possibility of 'Binding Financial Agreements' as a useful tool		Comment on Family Trusts and Binding Financial Agreements posted in following responses to other queries.
16. Stamp Duty on Land Transfer	A query was raised regarding an obligation to pay Stamp Duty on the transfer of farming land to sons	1	Response suggested that stamp Duty would not be payable in this situation
17. Business Structure	Suggestions sought as to the best structure to enable the transfer of farming assets and liabilities to four siblings with one managing the farming business		General responses provided in Facilitator postings to previous and subsequent queries.
18. Tenants in Common	A subdivision was created to allow mother to own a house and surrounding land and daughter would own the majority of the farming land. A query was raised in relation to establishing a 'Tenants in Common' agreement and Capital Gains Tax obligations	1	Response indicated that CGT was a likely consequence of the transfer of the land, whether gifted or sold. An outline of other possible arrangements was provided which minimised CGT including 'Granny Flat Agreements' and 'Small Business Concessions'. Considerations around retaining a pension were also discussed.
19. Succession Planning – Why you need to consider.	The posting warned of the naïve expectations of owning the family farm by the son who had worked on the property for several years... <i>“How blind and trusting was I. As a youngest son I made the mistake of ignoring the issue and believing the more I worked for the family that this would be recognised. My foolishness cost myself and parents dearly. This difficult issue has to be discussed in every enterprise</i>	5	Responses acknowledged the ongoing nature of the problem of establishing a succession outcome which ensured the ongoing viability of the business when other siblings also need to be considered.

	<p><i>and on a regular basis.”</i></p> <p>Another posting indicated that poor advice, which recommended they divide the assets equally, had nearly cost them the farm, but because of good communication between the six siblings and “<i>my husbands siblings think it is really important that the farm is always there to get a bit of dirt under their own children's nails</i>”, they were able to manage a successful transfer</p>		
20. Family Partnership Disolvment	<p>The posting told the story of two sons working a property with the older son managing the books, providing little information to the younger son or the elderly parents. When the younger son decided he was unable to continue under the current arrangements, - “<i>The books suddenly showed that he was entitled to nothing at all, and the document he signed to dissolve the partnership excluded him from EVER benefiting from the farm in the future.</i>” The corresponded asked if at this stage there was anything they could do</p>	2	<p>Responses reiterated the importance of communication, open and agreed strategies and the need to know under what arrangements you are working.</p> <p>It was also suggested that the Partnership Agreement documentation and Financial Statements should be checked by a lawyer to determine if any recourse is available.</p>
21. Free Seminar Farm Succession	<p>Promotion of Free Farm Succession Planning Seminars held in Victoria</p>		
22. Beware of the Family Lawyer	<p>“Franks” posting raised concerns about the potential for a conflict of interest when the ‘Family Lawyer’ is providing advice on succession. The correspondence view was that the assumption of the younger generation is that the ‘family lawyer’ is acting for the family as a whole, but argues that in fact they are only acting for the older generation and “<i>realise it is in their best interest to keep the account payer happy at all costs.</i>”</p> <p><i>“There are far too many horror stories where under</i></p>	6	<p>Responses to this query varied considerably, from those who believed Franks comments “<i>were bitter and cynical</i>” to others who empathised with his experience.</p> <p>- One respondent highlighted the need for the independent role of a facilitators in these situations, who is trained to be unbiased and mediate difficult emotional situations and assist with the ‘process’ rather than acting as an ‘advisor’. She further stated that “<i>Bringing the younger generation into the family farm</i></p>

	<p><i>instruction from the older generation the "family lawyer" deceives the younger generation that the appropriate arrangements are in place to secure their future only to find out when it is too late that they have no legal right to anything."</i></p> <p>A second contributor supported the experience of "Frank" and stated that ...<i>"My father worked for 15 and myself for 7(years) for "pub money" to bring my grand parents farm back from the brink of bankruptcy". He further indicated that his father then had to payout the grandparent for the farm and the prospect of his doing the same was unviable. His final statement was " I've seen too many of my mates walk away only to here them say they might have been poor but they miss the life style, and after all its not about money when your the one doing the morning milking on Christmas day at 0430am"</i></p>		<p><i>is a business decision and should be treated as such. If you were to bring in a share-farmer you would not expect that they would not have their own accountant and other advisers who are working for them with their best interests at heart. Yet as Frank rightly says many sons or daughters are brought in and accept blindly that the accountant and solicitor and their parents and siblings will 'do the right thing'. As has been shown many times, this is not the case when there is so much emotional expectation involved."</i></p>
23. Money	<p><i>'Jim' stated that he was willing to "step up to the plate" and run the family farm. However he said,.. "I'm not an only child and I've already been told by siblings that it will be sold at the first opportunity. As I'm sure you have read in most of the letters on the forum this is the norm in the world we live in now."</i></p> <p><i>He then states that ... "as labourer I don't have that(\$600,000) in my cheque book - does any one know of a bank or Gov Dept that can help."</i></p>	3	<p>A response suggests that arrangements other than buying out the father may be possible and that these may satisfy the father and preserve the assets.</p>
24. Our Experience	<p><i>'Sue' shares her and her husbands experience of a farming partnership and with her husband parents. The expectation after 32 years of farming with the father was that the property would be passed on to her husband after his father's death. This did not</i></p>		

	<p>occur and subsequently when attempting to ascertain the true state of affairs, believes she and her husband have be thwarted by the family lawyer and family accountant acting on behalf of Sues mother-in-law.</p> <p>'Sue' further indicates that legal action has been taken by her husbands non-farming brother for moneys from the sale of land which was jointly owned.</p>		
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Appendix 1

List of Forum Facilitators

Forum Facilitators	
Richard Dwyer Solicitor Dwyer and Willet Lawyers Ocean Grove Vic	Geoff Cunningham Solicitor Payne, Butler, Lang Bundeberg Qld
Mike Stephens Agri Business Management Mike Stephens and Associates Yendon Vic	Brian Healey Solicitor McCullough Robertson Brisbane Qld
Nigel McGuckian McGuckian Consulting Group Bendigo Vic	Chris Cooper Cain Growers Assn – CJ Cooper Solicitors Qld
Bill Beard Director Bird Cameron Accountants Ballarat Vic	John Lawrance Lawrance and Associates - Accountants Wynyard Tas
Geoff Tually Ass Prof (Ret), Melbourne University Vic	Peter Marks Marks Solicitors Perth WA
Dr Malcolm Voyce Senior Lecturer Law and Business Macquarie University, Sydney NSW	Greg Arthur Meloar Olson Solicitors Adelaide SA
Bill Thompson Commings Hendriks Solicitors Coolamon/Wagga Wagga NSW	Tim Jacobs, Ward Keller Solicitors Darwin NT
Lyn Sykes Consultants/Facilitator Dubbo NSW	Peter Arkle Policy Manager – Rural Affairs National Farmers Federation Canberra ACT

Appendix 2

Feedback on the Forum

Below are sample quotations received through Forum postings. No negative comments were received as to the value of the Forum, or the effectiveness of its implementation or management.

“WOW - what a fantastic site!! I only wish that my husband and I had known of it several months ago. He (my husband) was part of a family farming partnership, with his eldest brother, and parents. Sadly, as in many situations - it did not work. Is there something we can do through this forum to start a change in legislation?”

“A sincere thanks for providing this forum. I have really enjoyed reading other people's experiences. I'm not sure why I am so amazed at how messy things can get between families and can see very clearly how many things can be taken for granted. I really like the story about the milk, whilst it is amusing it describes too many real life situations.”

“This forum has been a great initiative and I am sure it would receive a much bigger response if we could advertise it more and ensure that those who need to remain anonymous can do.”

“The Victoria Law Foundation did a great job back in 2002 in producing the excellent hard cover book, Rural Law, and now Richard has done equally well in this project.”

“Thank you to all involved for the information provided on Farm Succession Planning on Rurallaw On-Line. It is an excellent overview of a very difficult and often sensitive area - the information is presented very clearly and the site is easy to access.”

“Congratulations, and it is hoped that by sharing experiences and knowledge as your site encourages, life improves for future generations.”

“I would like to congratulate and thank Richard Coverdale for his huge effort in getting the project to the post.”

“Finally, I wish to acknowledge the work carried out by Richard Coverdale in developing the RLO Farm Succession site. Without Richard's foresight this site may not have eventuated.”

“The information provided by this web site is vital.”

“I hope that this forum will help to start change happening and I thank both yourself and Sue for having the courage to put your stories onto the site. By doing this you are allowing others to see

that they are not alone in this issue and by supporting you may be able to help someone confront this rather than be too scared to bring it up.”



Appendix 3



Rural Law Online

Farm Succession Planning Forum Statistics

1 August – 31 October 2005

Prepared by:
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14 December 2005

CRICOS Provider Number 00103D



Succession Planning Forum Statistics

Introduction

This report provides an overview of the Farm Succession Forum's utilisation during the period between 1 August and 31 October 2005 during which areas specific to the Feature Issues Forum were accessed 31,601 times.

The information has been prepared by the University of Ballarat's Centre for Electronic Commerce and Communications to assist the Project Manager in reporting on the impact of Rural Law Online initiatives.

Glossary

The following definitions have been drawn from the Webalizer Quick Help Guide at http://www.mrunix.net/webalizer/webalizer_help.html. Webalizer is the program that is used to generate the Rural Law Online statistics. This glossary is included to assist readers in interpreting the information contained in this report.

Entry/Exit pages are those pages that were the first requested in a visit (Entry), and the last requested (Exit). These pages are calculated using the Visits logic below. When a visit is first triggered, the requested page is counted as an Entry page, and whatever the last requested URL was, is counted as an Exit page.

Files represent the total number of hits (requests) that actually resulted in something being sent back to the user. Not all hits will send data, such as 404-Not Found requests and requests for pages that are already in the browsers cache.

Hits represent the total number of requests made to the server during the given time period (month, day, hour). When hits are examined for a specific URL (for example a content pages such www.rurallaw.org.au/forum) the hits recorded are equivalent to same number of page views.

KByte (KB) is 1024 bytes (1 Kilobyte). Used to show the amount of data that has transferred between the server and the remote machine, based on the data found in the server log.

Pages are those URLs that would be considered the actual page being requested, and not all of the individual items that make it up (such as graphics and audio clips). Some people call this metric page views or page impressions, and defaults to any URL that has an extension of .htm, .html or .cgi.

Referrers are those URLs that lead a user to your site or caused the browser to request something from your server. The vast majority of requests are made from your own URLs, since most HTML pages contain links to other objects such as graphics files.

Sites are the number of unique IP addresses/hostnames that made requests to the server. Care should be taken when using this metric for anything other than that. Many users can appear to come from a single site, and they can also appear to come from many IP addresses so it should be used simply as a rough gauge as to the number of visitors to your server.

URL - Uniform Resource Locator. All requests made to a web server need to request *something*. A URL is that *something*, and represents an object somewhere on your server, that is accessible to the remote user, or results in an error (for example: 404 - Not found). URLs can be of any type (HTML, Audio, Graphics, etc...).

Visits occur when some remote site makes a request for a page on your server for the first time. As long as the same site keeps making requests within a given timeout period, they will all be considered part of the same Visit. If the site makes a request to your server, and the length of time since the last request is greater than the specified timeout period (default is 30 minutes), a new Visit is started and counted, and the sequence repeats.



Farm Succession Planning Project Overview

Farm Succession Planning was the first *Feature Issues Forum and Resource Package* delivered via Rural Law Online.

The package elements included:

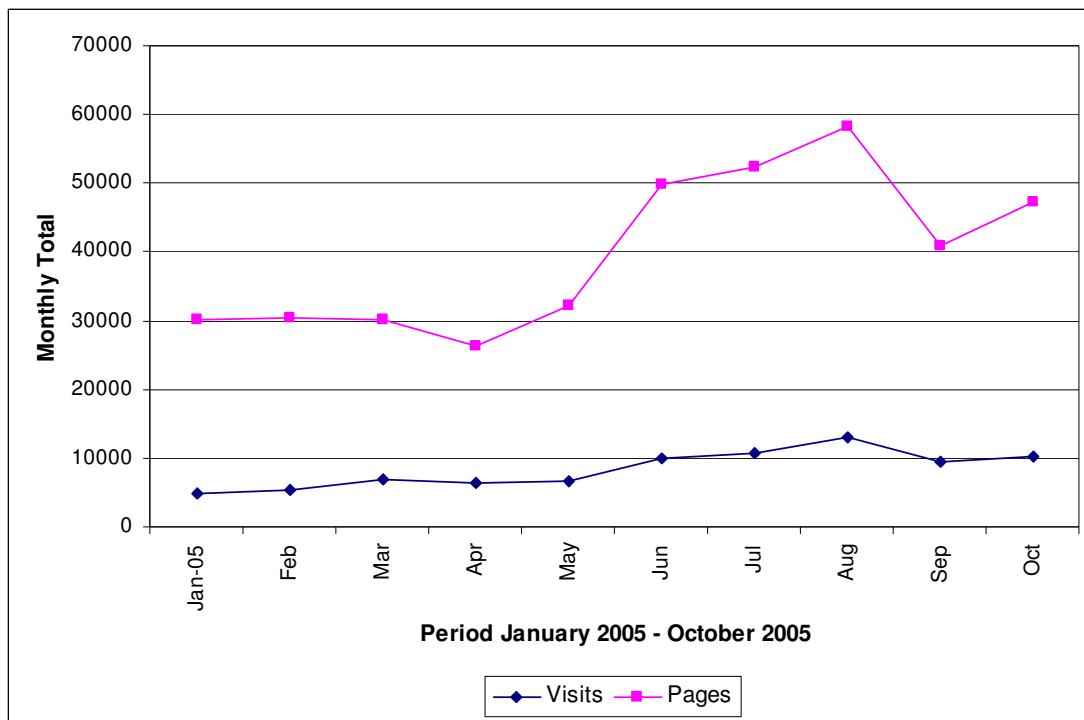
- Overview – A five page overview that could be viewed online which presented a summary of the major points that need to be considered when planning for succession.
- Resource package – A detailed document outlining issues and suggested processes for dealing with succession planning. This document could be viewed online or accessed in PDF format (25 page document).
- Interviews – A selection of audio and video interviews on succession planning
- Discussion forum – Rural Law Online visitors could ask forum facilitators questions about succession planning or share their ideas and experiences with others.

This report provides an overview of the utilisation of Rural Law Online and the Farm Succession Planning forum during the period between 1 August 2005 and 31 October 2005.

Utilisation of Rural Law Online

Rural Law Online recorded new utilisation peaks during the period when the Farm Succession Planning Feature Issues Forum was being actively promoted. In the period between 1 August 2005 and 31 October 2005 it attracted 32,497 visits, provided 146,402 page views and recorded more than half a million hits (563,446). Figure 1 confirms that utilisation peaked during August 2005 with 12,975 visits and 58,154 page views recorded.

Figure 1. Utilisation of Rural Law Online



Content in the 'Law Topics' area of Rural Law Online has been drawn from the *Rural Law Handbook*, an extensive paper-based resource with over 400 pages in its paper-based format. The *Rural Law Handbook* was first published by the Victoria Law Foundation in 2002. It was designed as an extensive and practical resource, providing plain-language legal information for Victorian farmers and their families and also to other people living and working in rural communities.

In the three months to 30 November 2005 the 'Law Topics' area of Rural Law Online recoded the highest utilisation. The website utilisation statistics confirm that 'Law Topics' chapter content attracted 35,461 hits. Figure 2 illustrates utilisation for the three months and confirms that use of handbook content is continuing to trend upwards.

The largest increase in utilisation was for the content contained in:

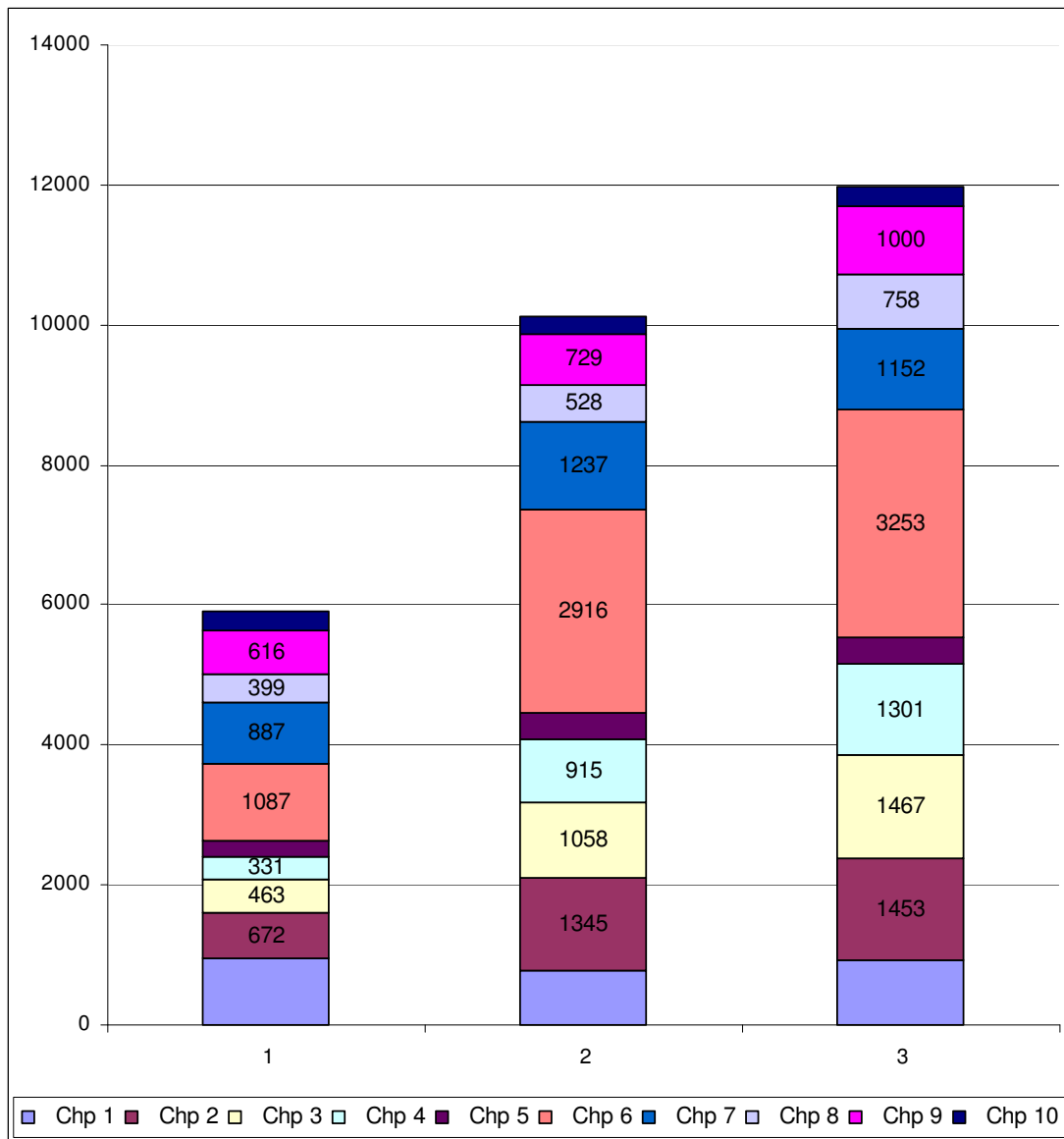
- Chapter 6 – Business and Finance.

The resource package for the Farm Succession Planning Forum contained a range of links to the Business and Finance Chapter with site visitors referred to content on business structures, partnerships and companies; social security; taxation and income tax. Utilisation of these Chapter Sections is considered later in this report. Other Chapters which have attracted significant increases in utilisation include:

- Chapter 2 – Land and its uses
- Chapter 3 – Environment and planning

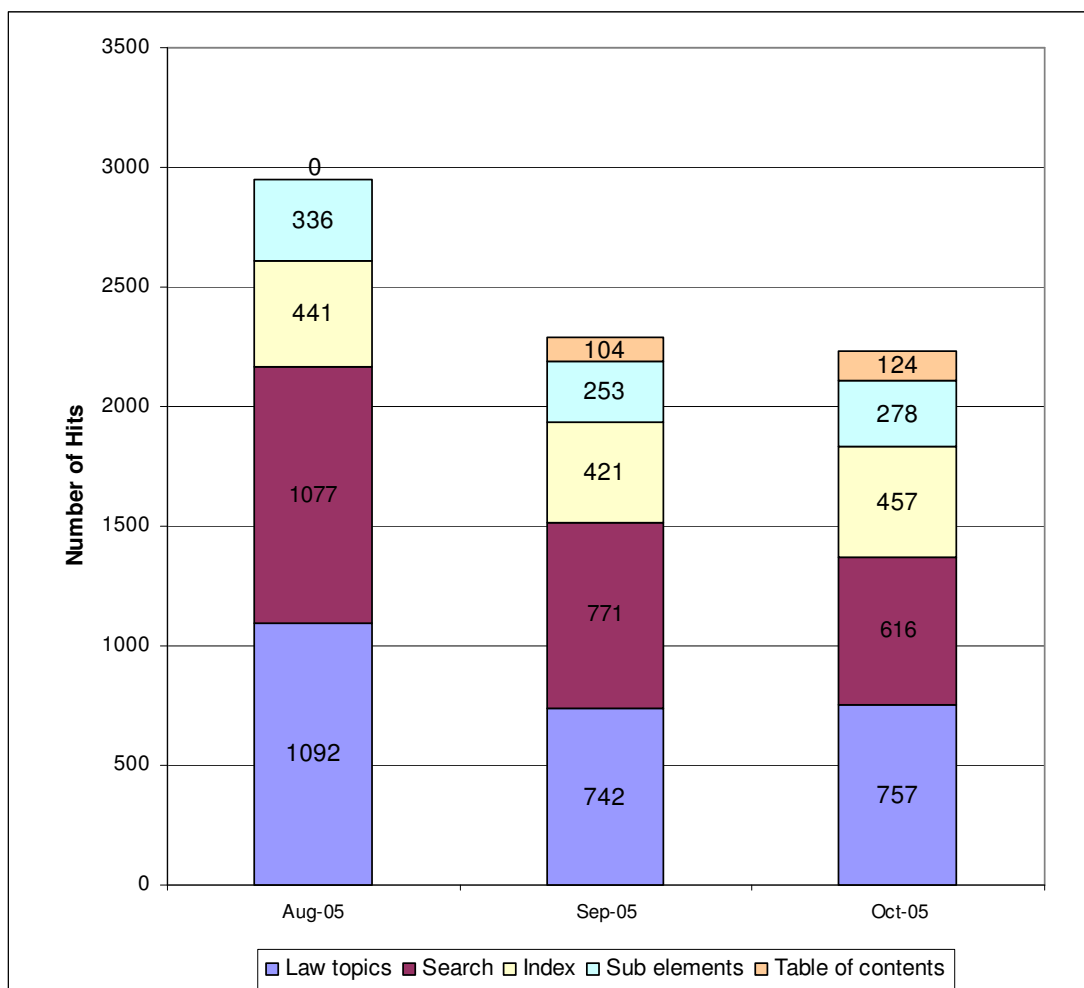
- Chapter 7 – Vehicles and firearms
- Chapter 9 - Law and families

Figure 2. Rural Law Handbook: Chapter utilisation (Page Views)



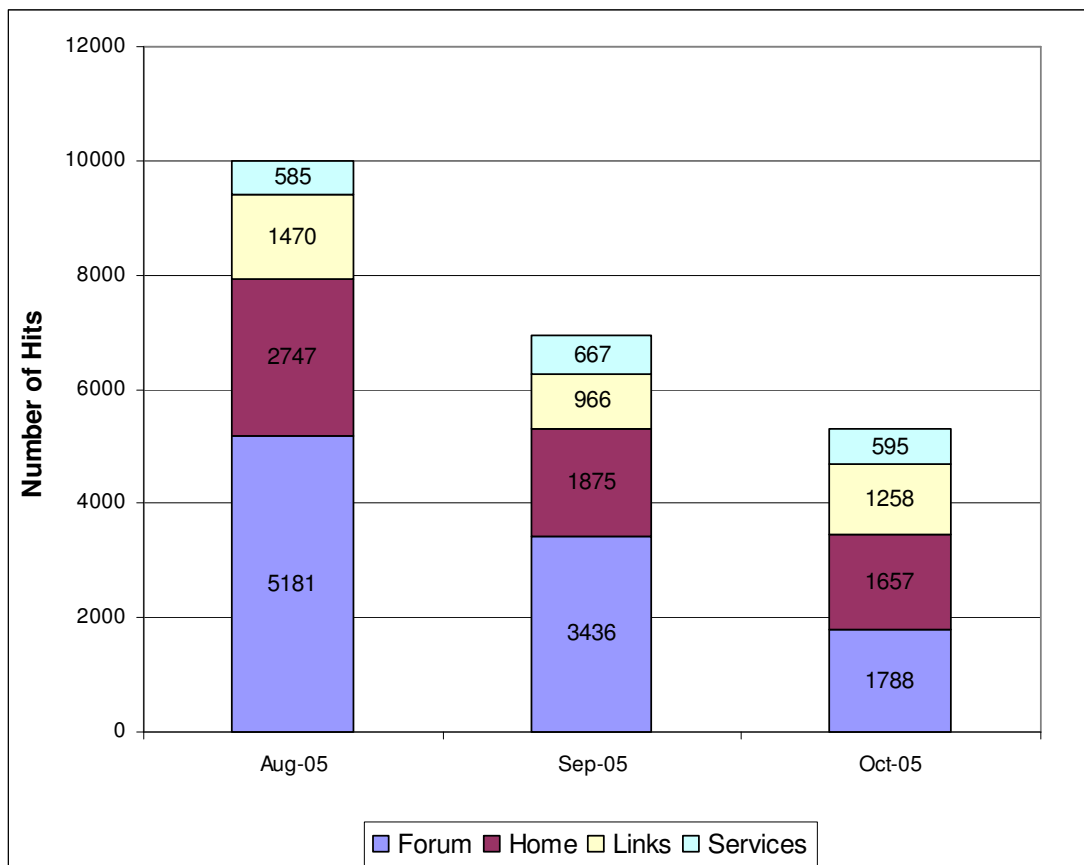
A number of Handbook related features also received significant utilisation during the August to October 2005 period. These included the Law Topic, Search, Index, Handbook Sub Elements (being content that appears in a pop-up window such as checklists, case studies, multimedia elements) and Table of Contents. Utilisation of each of these website areas is illustrated in Figure 3 below.

Figure 3. Rural Law Handbook: Other feature utilisation (Hits)



Other areas of significant utilisation during the three-month period included the Forum (10,405); Home page (6,279); Links (3,694) and Services (1,846) areas of Rural Law Online. Monthly utilisation of these website areas is illustrated in Figure 4.

Figure 4. Utilisation of other website areas (Hits)



Feature issues forum utilisation

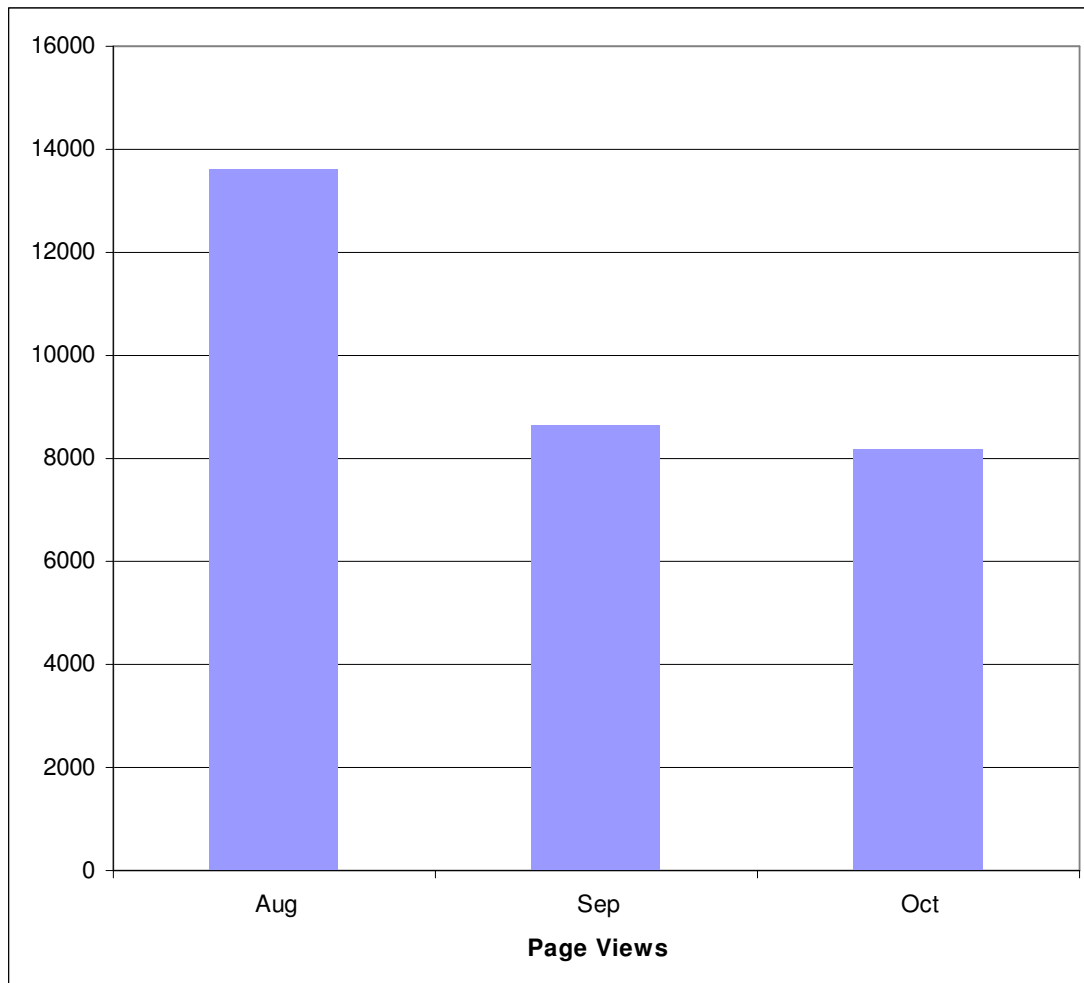
The key objective of this report is to examine how various aspects of the Feature Issues Forum have been utilised. The major components of the Farm Succession Planning Forum, as illustrated in Figure 5 below, include the Overview, Resources Package, Interviews and Discussion features.

Figure 5. Feature issue forum



Figure 6 illustrates overall utilisation of the Farm Succession Planning Feature. Over the three-month period areas specific to the Feature Issues Forum were accessed 31,601 times with the highest level of utilisation recorded during August 2005.

Figure 6. Utilisation of core forum components (page views)



Utilisation of the discussion area of the Farm Succession Planning Feature accounted for more approximately 75 percent (24,276 page views) of the overall utilisation of the succession planning feature during the three-months to 31 October 2005.

Figure 7. Feature issue forum – discussion area



...a guide to the law for rural Victorians

search this website

Law Topics Go

- Home
- Law topics
- Find a service
- Discussion forums
 - Feature Issue Forum
 - My Forum
- News & features
- Web links
- Publications
- About this website
- Feedback

Enlarge text size

Feature Issue Forum

Ask a question, share your experiences or respond to any of the existing comments. Register to participate in the forum or you just read the contributions of others.

Those listed as 'Facilitators' work in the field of Farm Succession Planning from all over Australia and have been invited, during the week 1st - 7th August 2005, to participate in the Forum and respond to comments and queries raised. Others working in the field of Succession Planning are also encouraged to share their ideas and experiences.

Please indicate in your comment or query, which State you are from.

Important Notice:

Information provided within the Forum may not be accurate or appropriate to your situation and should not be relied upon. The views of discussion forum 'facilitators' and other participants are not necessarily those of Rural Law Online. See our [Disclaimer](#) and [Discussion Forum - Terms of Use](#), for further details.

[New Topic](#) | [Search](#) | [Log In](#)
[Older Messages](#)

Topics	Author	Replies	Last Post
Capital gains tax and succession planning <small>new</small>	Forum Moderator	8	13/12/2005 15:47
Our experiences	sue	0	31/10/2005 16:32
Money	jim Ford	3	31/10/2005 16:29
Beware of the Family Lawyer	Frank	6	27/10/2005 23:46
Free Seminar , Farm Succession	sue	0	26/10/2005 01:47

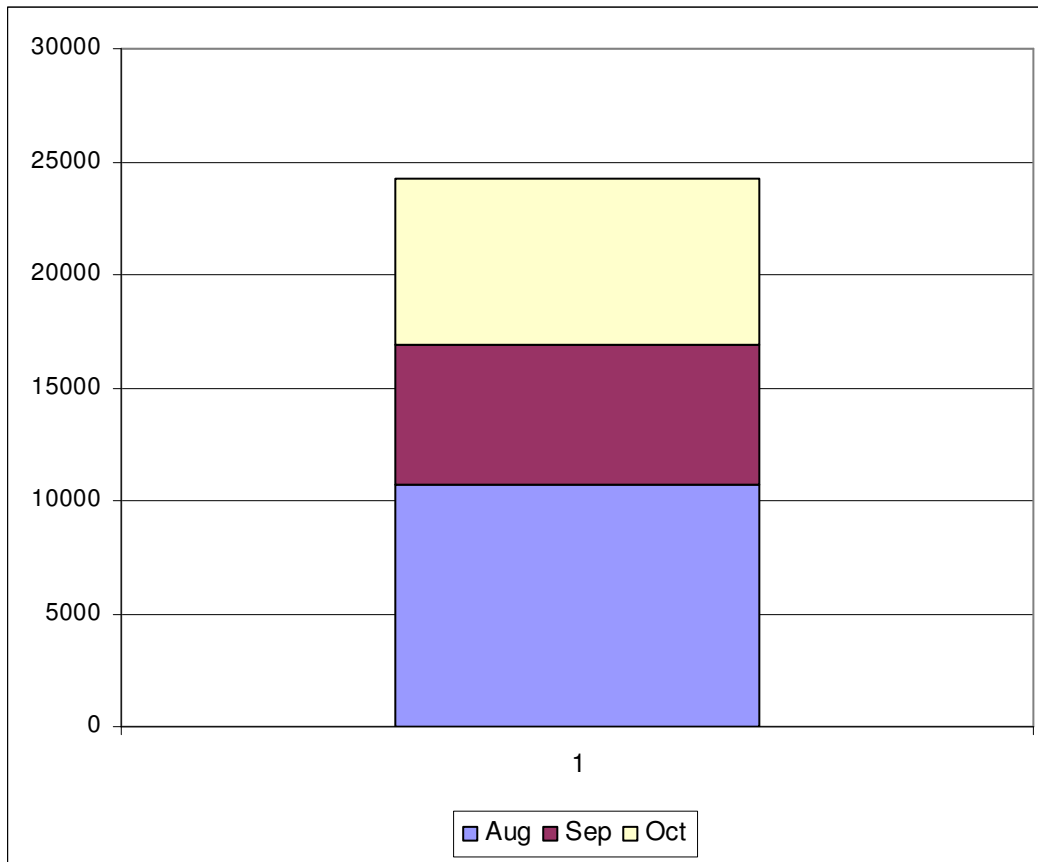
In terms of forum postings there were exactly 100 posting during the 3 month period with 50 postings from site visitors and a total of 50 postings by website facilitators and moderators. The analysis in Table 1 below confirms that the 'read' action was the most commonly utilised. This same information is then visually presented in Figure 8.



Table 1: Utilisation of discussion (page views)

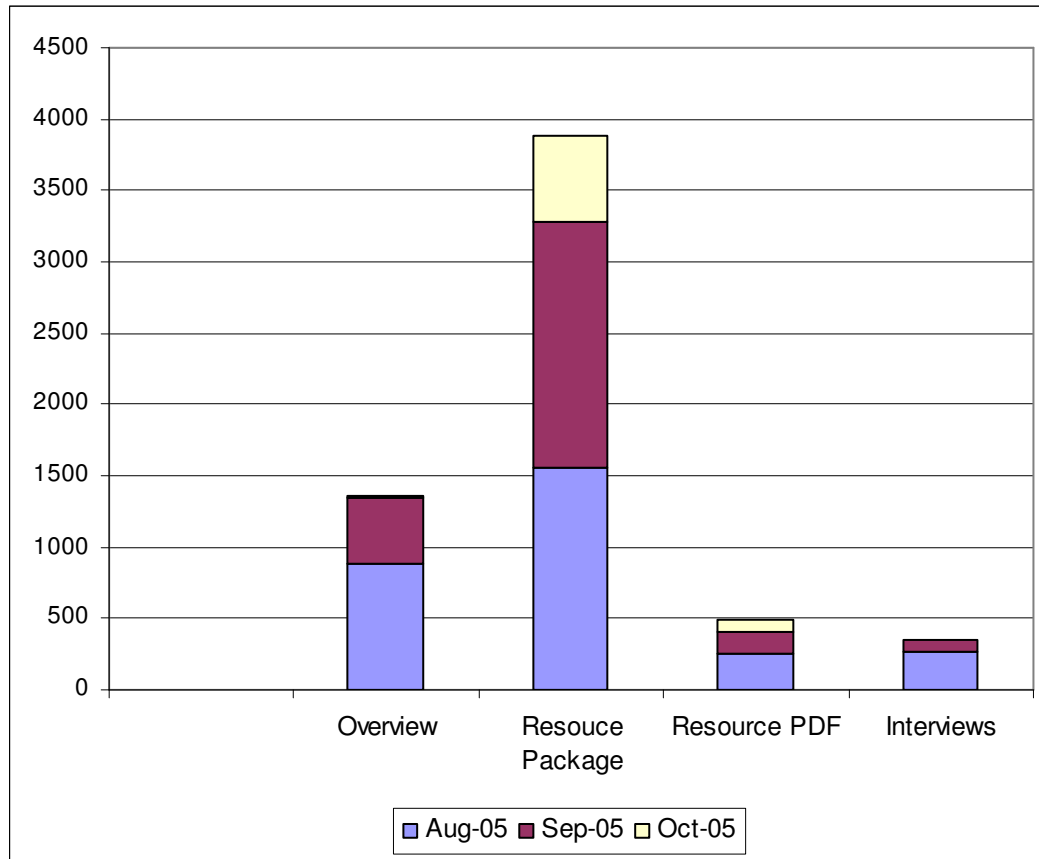
Rural Law Online	Aug 05	Sep 05	Oct 05
/discussion.php	542	278	275
/discussion_terms.php		74	89
/forum/	1438	557	421
/hot_topics.php	281	119	153
rlo_phorum/read.php	4069	3489	4673
/rlo_phorum/list.php	3386	1143	1155
/rlo_phorum//read.php	323	280	146
/rlo_phorum/profile.php	259	123	271
/rlo_phorum//list.php	183	35	130
/rlo_phorum//profile.php	59		
/rlo_phorum/index.php		59	31
/rlo_phorum/login.php		47	
/rlo_phorum/register.php	157	31	
Total	10697	6235	7344

Figure 8. Feature discussion (page views)



A Further 19.25 percent of the utilisation of the Farm Succession Forum was shared between Resource Package (online) which accounted for 12.29 percent of utilisation, Overview, Resource Package (PDF or print version) and Interviews components. Figure 9 provides a visual summary of the utilisation of these areas. Some of these areas of the Farm Succession Forum receive further consideration below.

Figure 9. Other elements of Farm Succession Forum (Page Views)



Overview

Visitors to the overview area of the Farm Succession Planning Forum could progress through a five-page introduction to the topic.



Resources package

The online version of the Resource Package outlined why farm succession planning was important. It contained content on barriers to succession planning, steps in developing a succession plan and other factors to consider. The resource package content also contained links to various areas of the Law Handbook content.



In this section utilisation statistics for Rural Law Online are reviewed to see whether the strategy of linking to content in the handbook assisted online visitors in navigating easily to related content. All numbers quoted relate to page views.



Social Security

Utilisation of the social security content contained in Chapter 6 (<http://www.rurallaw.org.au/handbook/xml/ch06s35.php>) was fairly limited during the three-months to 31 October 2005

URL	Aug	Sep	Oct
/handbook/xml/ch06s35.php		64	88
/handbook/xml/ch06s35s21.php			67
/handbook/xml/ch06s35s22.php			99
Total Hits	0	64	254

Taxation, income tax

The Farm Succession Planning Forum contained links to the taxation <http://www.rurallaw.org.au/handbook/xml/ch06s30.php> and income tax sections <http://www.rurallaw.org.au/handbook/xml/ch06s34.php> of the Rural Law Handbook.

URL	Aug	Sep	Oct
/handbook/xml/ch06s34.php			67
/handbook/xml/ch06s34s05.php		76	134
/handbook/xml/ch06s34s10.php		71	81
/handbook/xml/ch06s34s17.php	222	138	136
/handbook/xml/ch06s34s18.php	176	110	155
/handbook/xml/ch06s34s21.php		74	109
/handbook/xml/ch06s34s24.php			67
Total Hits	398	496	749

Business structures

Links were also included to information on business structures, partnerships and companies.

Business Structures			
/handbook/xml/ch06s09.php		69	71
Partnerships			
/handbook/xml/ch06s10.php	215	188	119
/handbook/xml/ch06s10s02.php		98	67
/handbook/xml/ch06s10s03.php		121	
/handbook/xml/ch06s10s04.php		81	
/handbook/xml/ch06s10s05.php		93	98
/handbook/xml/ch06s10s06.php		74	68
Companies			
/handbook/xml/ch06s11.php		103	90
/handbook/xml/ch06s11s02.php		87	80
/handbook/xml/ch06s11s03.php			66
Total Hits	215	914	659



Wills and farm transfer planning

Information on utilisation of the wills and farm transfer planning sections of the Rural Law Handbook (<http://www.rurallaw.org.au/handbook/xml/ch09s07.php>) is summarised in the table below.

	Aug 05	Sep 05	Oct 05
Wills and farm transfer planning /handbook/xml/ch09s07.php		111	102
/handbook/xml/ch09s07s09.php		62	
Total Hits	0	173	102

Superannuation and family communication

There were no visits during the period to the superannuation section of the Employment Law Chapter (<http://www.rurallaw.org.au/handbook/xml/ch08s11.php>) or Family Communication (<http://www.rurallaw.org.au/handbook/xml/ch09s08.php>) section of the Law Handbook content.

Interviews

The Interviews section of the Farm Succession Planning resources was accessed on 308 occasions – 226 times during August and 82 times during September ([/forum/cb_pages/interviews.php](http://www.rurallaw.org.au/forum/cb_pages/interviews.php)).

Printable version of Farm Succession Planning package

Website visitor were able to access to a printer friendly version (PDF version) of the Farm Success Planning package. This access was provided to make it easy for individuals to printout and retain information. The more comprehensive Information Resource Package materials (25 page document) was accessed more frequently than the Overview information. The option to access the printable version of the Resource Package materials was selected by nearly 500 website visitors.

	Aug 05	Sep 05	Oct 05
/forum/docbook/fo/rlo_feature_issue.pdf	256	146	94

Link to First National Succession Planning Forum



April 2006
(click for details)

More than 200 visitors to the Features Issues Forum have clicked on the above link to find out more about the First National Succession Planning Conference.

	Aug 05	Sep 05	Oct 05
http://www.cecc.com.au/programs/content_builder/accounts/rlo_forum/pages/national_conference.php	127	53	33

Origin of visitors to components of the forum

CECC does currently enable statistical features which would provide country information based on the *top level domain* of the requesting site. It is resource intensive to gather this information which is somewhat questionable, as there is no longer strong enforcement of domains. A .COM domain may reside in the US, or somewhere else. An .IL domain may actually be in Israel, however it may also be located in the US or elsewhere. A large percentage may also be shown as *Unresolved/Unknown*, as a fairly large percentage of dialup and other customer access points do not resolve to a name and are left as an IP address. Even if this feature was enabled it would not be possible to track the origin of visitors utilising particular components of a website.

State of origin of Forum contributors

To enable analysis of the origin of forum contributors it would be necessary to require users to provide State of Origin information at the time of their initial registration.

Appendix 4

Succession Planning Resource Package

Feature Issue Forum

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Farm Succession Planning

Why is succession planning so important?

Planning for succession is a very important part of managing a farming business and the process should be an ongoing topic for families. There are many questions that must be answered along the way, such as how to hand the farm on to the next generation so that families can continue to farm and build on what the parents have spent many years, possibly a lifetime, building. Failure to plan for succession can cause significant business and family problems. For example, it can lead to the sale of farming assets to settle estates leaving families feeling very bitter and at worst causing breakdown in family relations.

Benefits of a plan

Planning for farm succession allows you to anticipate and prepare for traumatic events such as early deaths, divorce, desertion or a family member deciding to quit farming. Good plans provide:

- enough time to generate an income for the retirement of those leaving the business;
- enough time to develop the farm to support the incoming generation;
- plans that can help to see the family farm continue as a viable business;
- strong motivation for the younger generation to contribute thought and energy into the farm with an eye to the future; and
- incentives to explore and develop off-farm alternatives for children who will not pursue an alternative career off the farm.

A positive motivation for planning is that some parents do not wish their children to go through the trauma they experienced taking over the family farm from their parents, especially if the process involved breakdowns in family relations.

The following comment expresses some of the frustration that is caused by lack of succession planning.

Quote

"The idea of each generation having to buy the farm-having to buy out a brother's explains why so many farm families that have been farming for three generations have been struggling. The son inheriting the farm and buying out his brother's is really in no better position than the previous generation.

There needs to be some new thinking in terms of business structures to allow the million-dollar asset to provide a better standard of living for farm families. There's got to be a better way, surely?"

What is succession planning?

Some farmers see succession as an event that happens at some particular point in time, perhaps when they are becoming too frail to manage the property and are considering handing over management to the younger generation. However, this approach is almost certainly too late as it takes time to plan for and develop a succession plan that meets family objectives.

Sound succession planning should be ongoing, starting when family members are learning farming practices and becoming involved in the family farming business. Starting out as an informal process, it should be consciously discussed over an extended period of time.

If you have been thinking about when to begin the answer is now. Delaying will only reduce the time you have to put your plan into action.

The barriers to starting a succession plan

The task of beginning to plan for succession of the farm business can seem very daunting. The seemingly insurmountable problems is one of the many reasons that people avoid starting a plan. However, facing the problems and recognising them as issues that need to be discussed is a very important step in beginning the process. Some of the common barriers are mentioned below.

Too many children for too few assets?

There are relatively fewer problems when there is only one child in the farming family who will maintain the family farm into the next generation. Even so, the transfer must be carefully planned and well timed.

Where there are more children the issues can be much harder to resolve. The dilemma of treating the children equally is often raised as a problem for parents when children have different ambitions and plans for their own lives.

Putting it off?

In many cases parents delay handing over their farms because they do not want to feel redundant or dependent on their children. Problems arise when people fail to discuss matters (if at all) until it is much too late. In these circumstances, children and parents can take too much for granted and misunderstand what was expected or intended. Often, families rely too heavily on the use of their wills to solve farm succession issues, which can get caught up in destructive, time-consuming and costly disputes.

See also: Wills and farm transfer planning [<http://www.rurallaw.org.au/handbook/xml/ch09s07.php>]

Treating family members fairly and equitably

The question of how to treat all members of the family fairly and equitably seems like an impossible task. How do you compare the resources put into a child who wishes to return to the family farm with one that wishes to become an accountant or lawyer? This dilemma may seem so difficult that people avoid facing up to it and therefore avoid starting to plan for the succession of the business.

The steps in developing a succession plan

Breaking down the process into a set of clearly defined steps makes planning for succession more achievable and not so daunting. It is also important to keep in mind that the process takes time and that it is not going to be resolved by one trip to the family lawyer or accountant.

Do consider using family meetings as a mechanism to open the lines of communication. While consultations with the whole family to try and achieve a consensus may seem daunting, inevitably decisions made will impact on all family members. Having everyone take ownership of the decisions and understanding how they were arrived at, will impact positively on the process you are embarking on.

There are also services and resources available to help with the process. Professionals with experience in facilitation and understand the range of issues involved, as well as people with expertise in the related management problems associated with the agricultural industry, taxation, accounting and the law, can provide specific succession planning advice and assistance.

Do's and Dont's of Succession Planning

Below are some do's and don'ts to help you think about the issues and process of succession planning.

Do's

- Do think of succession planning as a process rather than an event. It takes time and effort.
- Do start planning now. The earlier planning begins, the greater the number of options.
- Do keep the big picture in mind (long-term, strategic direction) along with a positive attitude. These can make all the difference.
- Do a financial analysis of the past and present farm business along with some financial projections. Look seriously at profitability. If the farm is not making money now, what can be done to make it profitable? Is the farm business viable in the long run? Profitability is the "show stopper" when it comes to developing a succession plan.
- Do become educated about the subject - participate in workshops and seminars, read articles, complete self-assessment questionnaires related to succession - become an active participant in the planning process.
- Do consider using a "family meeting" mechanism to open the lines of communication among family members. An objective, third party facilitator can help ensure that the initial meetings run well and everyone has an opportunity to voice their interests and concerns.
- Do develop a strategic plan for both the family and for the business at the start of the process. This plan includes a long-term vision of what you want to happen to the business. Write it down and plan towards this vision.
- Do discuss family and business goals and objectives as part of the strategic planning process.
- Do communicate with family members about plans, strategies, issues and problems.
- Do discuss the issue of fair (equitable) vs. equal division of the farm early in the process - especially if there are off-farm family members involved.
- Do prepare a legal will early. A will can provide guidance on how the estate should be settled.
- Do develop a "successor development plan" for any family member(s) who is (are) planning to take over the business. This is a plan to train and develop the successor(s), so he/she has the appropriate skills and knowledge to successfully run the business.
- Do continue to generate and discuss various options - be creative. These will need to be narrowed down to just a few ideas.
- Do assemble a "team" of professional advisors (e.g., a lawyer, accountant, financial planner, banker) and work with them; communicate and ensure they fully understand what is wanted. Once there are some clear ideas of how the transfer might take place, the team of advisors can assist in looking at the pros and cons of certain ideas. The family members involved will decide upon the best plan and strategies for their situation. The advisors can then help document and fine-tune this plan.
- Do consider the advice and ideas of different advisors as the plan develops. Each advisor will have a slightly different perspective to consider. Remember, this is the family's plan, not the advisors. Family members have to buy-into the plan for it to be successful.
- Do consider the tax implications, but don't emphasize them as the most important thing. For example, "We don't want to pay any taxes."

Don'ts

- Don't procrastinate - start talking about succession now.
- Don't be afraid to ask questions and listen carefully to the answers - even though you might not like them.
- Don't assume you know how others feel about the process or what they want to achieve from the succession plan. Listen carefully and ask questions if you don't understand.
- Don't be afraid to share responsibilities. Both generations will need to work together to ensure the transfer of labour, management and assets. A plan to ensure the next generation has the skills, abilities and knowledge to successfully operate the business can help.
- Don't define one's life as the business. There is more to life than work - family, friends, leisure enjoyment, sports, hobbies, etc.
- Don't put all your eggs into one basket. Plan ahead, think early about retirement, save and invest

off-farm, so that you will have some options in the future.

- Don't rely on just one professional advisor. While each individual is important to the process, one person cannot possibly provide all of the answers to everything involved in a farm succession plan.

Source: *Peter Coughler - Succession Planning & Business Agreements Canadian Ministry For Agriculture, Food and Rural Affairs website*

Step 1: What are family members' goals and aspirations?

The goals that need to be explored to commence the farm succession planning process are the personal, financial and business goals of all family members. Although these three main areas need to be separated for discussion purposes it is also important to appreciate that they are closely related and cannot be looked at in isolation.

To assist with identifying these goals it is useful to write them down and express how important they are. The checklist provided can be a helpful start to this process.

Goals checklist

Consider all the goals that should be taken into account and use this list as a starting point, adding and deleting as required. Separate goal sheets could be developed for each of the three categories discussed.

- ☒ Security for parents
- ☒ Allow growth in business through equity capital
- ☒ Allow for off farm income provided to business to be recognised
- ☒ Flexible legal structure
- ☒ Confidentiality of business financial position
- ☒ Minimise capital gains effects when membership of business changes
- ☒ Provide children experience in ownership
- ☒ Superannuation contributions maximised
- ☒ Control of business with lowering ownership share
- ☒ Averaging of farm business income
- ☒ Primary producer status
- ☒ Minimise tax paid on income
- ☒ Retain capital gain tax position on family home
- ☒ Minimise legal liability for other members activity
- ☒ Add additional issues relevant to your situation

Personal goals

Most parents seek to provide the best environment and opportunities for their children and reduce the trauma that they experienced, if any, at the time of taking over the farm from their parents. They might also want to assist their children to purchase a home or develop an alternative business pursuit.

Many parents go without to achieve these goals, including saving for an inheritance for the children who will not stay on the farm, because they want to see all their children well set up in life.

Most parents would like to see the family business carried on and to keep the family together in some way, even when it might not be possible for all of the sons and daughters to make a living from the family farm. On their own behalf, parents want to provide for their own enjoyable and fulfilling retirement.

All children and marriage partners need to express their personal goals so that parents are quite clear about how they see their future. If this is not done parents may misunderstand how others in the family see their future. There are many examples of parents planning for their children to take over the farm only to be disappointed to discover that they are not interested in farming as a career.

The importance of all family members setting down their goals is to make all members aware of what others have planned for the future and to identify any conflict that might exist among these goals. Where goals are in conflict there must be open and frank discussion about how family members can reconcile differences (see also Step 2: Family conferences).

See also: Family communication [<http://www.rurallaw.org.au/handbook/xml/ch09s08.php>]

Business goals

In addition to personal goals, members of the family need to express what goals they have in mind for the farming business. These goals may be expressed in the form of production goals, enterprise goals, business growth goals etc. It is important to convey these goals as they will impact any financial goals that need to be considered.

Financial goals

The need for reliable and regular cash flow is perhaps the most important influence in deciding what must be done as opposed to what you would like to do. Cash flow needs increase as the family grows and, where two generations are farming together, cash will be a significant aspect in the relationship between the generations, not to mention the spouse relationships.

Cash flow budgets are therefore a vital part of the planning process so that the cash requirements for all family members are recognised. This will include consideration of:

- education costs
- contributions to retirement funds
- normal living expenses; and
- sufficient funds for farm operation and any possible cash expansion.

A five year cash plan should be developed for each family member and for the business. Longer budgeting periods could be unreliable and difficult to forecast or realise. However, planning beyond five years can still be expressed more generally without the need to try and place dollar values on these plans.

Non farm income must also be taken into account in the cash flow budget as the aim is to understand all family members' needs. For example, income earned outside the farm business by a son, daughter or by a daughter or son-in-law will be important in determining the cash needs of all parties.

Financial goals may also relate to the development of capital growth or the reduction of debt so it is important that these objectives are taken into account in the preparation of relevant cash flow

budgets.

The following observations were made during a family member discussing personal goals. It illustrates the sort of misunderstanding that can arise if these matters are not discussed openly.

Quote

Sally said that she felt it was expected that her brother, Joe, would inherit their family farm and her parents did not want the farm split up. However, she also said that she felt very much attached to the farm. When asked to comment on her parents' obligation to provide an inheritance for each of their children Sally said, '[t]hey don't have to do this by passing on the farm business, they could do it by helping to provide support for establishing a different business if that's what people wanted'

Step 2: Family conferences

A family conference should be held to start the process of discussion and clarification of issues in the minds of any family member. It should occur regularly as ideas and opportunities change over time and should not be just a one off event.

Preparing for the family conference

All family members must be involved, including spouses, but if they cannot attend they must be provided with all the paperwork, before and after the conference.

All family members, within a reasonable time, should be informed of:

- the reasons for the conference, e.g. to set out where we are now and to discuss some options for the future;
- any opportunity to provide suggestions of how the family conference will be conducted, e.g. with or without a facilitator;
- what is to be prepared for the conference, e.g. what they need to ask or contribute; and
- a timeline for making suggestions or comments about any of the above points.

The meetings must be recorded in some way - either with a tape recorder or by a scribe keeping notes on important outcomes. This may seem very formal, but this is an extremely important family meeting.

What is the best venue for the family conference?

Venue location will depend on the wishes of family members, but having the conference away from home may assist in highlighting the significance of what needs to be achieved. Once the process has commenced, later family meetings could be held at home or wherever the family decides.

Should a professional facilitator be involved?

A facilitator can provide a neutral perspective and be able to explore issues that family members may or may not have thought about or know. They are able to ask quieter family members for their input and keep the meeting on track. However, where good communication exists and all family members feel comfortable in discussing the issues, a facilitator may not be necessary.

There will be a cost associated with employing a professional facilitator, but this needs to be viewed in terms of the value of assets and personal relationships at stake.

Family members should have input into deciding whether or not to involve a professional facilitator. Some families may consider involving their accountant or solicitor as the facilitator as they have been involved with the family and are aware of some family concerns. If the closeness of the family accountant or solicitor is an issue, it may be a good idea to seek an outside person to carry out the role.

A common problem and possible solution can often be expressed in the following way.

What if a family member says, 'I am not having a facilitator'? Do you respect this position? Consider the following suggestion.

If one member doesn't want a facilitator, I think the other parties have really got to respect that ... and balance the potential outcomes of the conference, with a facilitator and without one. If they go ahead ... and don't have a facilitator, then they've got to be prepared to try and have their questions maybe beforehand. Or maybe you put some conditions on the meeting by saying, 'we'll go along with not having a facilitator, but we've got to agree to go and get professional advice to answer the questions afterwards'.

Experience and skills needed by a facilitator

Ideally, a facilitator should have knowledge and skills in all three major components of the family farm: family, ownership and business.

However, where a facilitator with these skills is not available, someone with skills in the family area would be preferred, such as a rural counsellor. Whilst a rural counsellor may not have the necessary skills in the ownership and business areas, the information set out in the goals statements will provide a blueprint to follow. Accountants, solicitors, farm consultants and other rural advisors can provide technical support as needed.

How should a facilitator be used?

Once someone suitable has been located, the following points may assist as background for an initial discussion with the facilitator:

- explain the purpose or reason for contacting them;
- explain the family background;
- explain that you have read material on farm succession and especially the information presented here;
- explain how you think a facilitator may be of benefit to you and your family, i.e. how you propose to involve the facilitator; and
- agree on the facilitator's fee and any other costs.

Discussion of goals and plans

Family goals and ambitions should be discussed first and these must be carefully thought through before the meeting. To begin, the following questions may be put to the family:

1. Where you are now?
2. What does each member of the family want for the future?

Family members should not shy away from feelings and preferences, as people need to know how each generation feels about what others are trying to do. For example, younger family members may be concerned that their parents are being too hard on themselves and paying too high a sacrifice for the sake of their children's future.

Step 3: Seek professional advice

Armed with the a good understanding of the goals of all family members the current business owners need to consider the primary goals of their succession plan and then seek professional advice and determine how this may be achieved.

Farm succession planning is always a highly personal and sometimes very emotional process - people's livelihoods are at stake and so are family relationships. You are talking about the future but the family's history is important too. As a result succession plans cannot be reduced to a few legal formulae and a bit of number crunching. However, it is important to have good legal advice to avoid legal pitfalls.

Each situation will be different but there are some important general concepts that are discussed later in this material. Professionals experienced in this area can also be a good source of ideas and options that may not have previously been considered. At the end of the day, all the decisions are yours and your family's to make. But professional advisers can help you make those decisions with the confidence that you have brought the best information to bear on the problem and that you have considered the pros and cons of all your options.

Professionals that may be able to help to a greater or lesser degree include:

- solicitors
- farm consultants
- rural counselors
- financial planners
- bank managers
- insurance agents
- family facilitators
- Centrelink FIS officers
- registered valuers.

Example - Gamble and Blunden

Gamble and Blunden (Grains Industry Development Corporation website [<http://www.grdc.com.au/growers/gc/gc49/agribusiness.htm>]) recommend that if you do use a variety of advisers with specific expertise, you should appoint one adviser to have an integrating and coordinating role over other advisers. It is most common to use your solicitor or accountant for this role.

Choosing a Consultant

You should feel comfortable with any advisor you choose to use. It's important that you feel able to talk to this person. You should feel that you're on the same wavelength.

Specific attributes the advisors should display include the following:

- Up-to-date knowledge of their field of expertise.
- A history of practical experience.
- A willingness to communicate openly with all family members.
- An ability to explain all technical terms in understandable language.
- An understanding of how families work.
- A desire to ask questions and probe where the business is going in the future.
- A willingness to work with other advisors.
- An ability to be honest, even if saying certain things may ruffle the client's feathers.

Source: *Peter Coughler - Succession Planning & Business Agreements Canadian Ministry For Agriculture, Food and Rural Affairs*

Sample Interview Questions

Selecting the right person to assist you through the process of planning for succession is critical. Below are a number of questions which can assist you in choosing the right person for you.

1. What kind of training do you have?
2. What certification do you have? (Law, Accounting, AgriBusiness Degrees, Financial Planning Accreditation, etc).
3. How long have you been doing this kind of work?
4. What experience do you have in working with farm businesses similar to ours?
5. Give them examples of situations in your business that you would like the consultant to deal with. Ask them how they would approach these situations.
6. Ask for references and check with them.

Source: *Peter Coughler - Succession Planning & Business Agreements Canadian Ministry For Agriculture, Food and Rural Affairs website*

Step 4: Implement the plan

Planning is pointless unless the necessary steps are taken to put the plan into action. This process could involve:

- review professional and finalise the succession plan;
- establishing a time frame for implementation;
- employ professionals to establish the necessary business and ownership entities (see discussion on choosing suitable entities);
- transferring assets to the new structure;
- establishing management structures and responsibilities.

Step 5: Ongoing revision and discussion

Once the plan has been set in action it is vital that it is not forgotten. Circumstances change, e.g. new grand children, and changes in the goals and ambitions of family members. It is therefore important to continue to review the plan and have regular family meetings to determine what circumstances may have changed and how this may affect the current succession plan.

Succession planning is an ongoing process.

Factors to consider in developing a succession plan

During the succession planning process it is necessary to consider the numerous considerations that can affect the achievement of a plan that takes into account the goals and aspirations of the farm owners and their family members. Some of these considerations include:

- planning for retirement;
- superannuation;
- different business structures for the ownership and operation of the business;
- income tax;
- wills;
- pensions and social security; and
- equity and fairness.

The following information will help you understand some of these issues that may arise.

Separating farm business from the ownership of the business assets

Viewing the farm business and the ownership of the farm assets as two connected but separate issues impacts significantly on business management by providing more flexibility in succession planning and helping to protect assets in the case of business failure. For example, the business can continue unaffected regardless of the ownership of the assets and the farming operations can be more clearly highlighted as the source of income. This separation also highlights the different processes needed to transfer responsibility for the management of farm enterprises and the processes need for transfer of the ownership of the assets.

Making this distinction between the business operation and the ownership of the assets may seem like a rather minor point. However, taking this step can significantly change the view of how the farm is managed and how the succession plan may operate. It is a vital part of the process of protecting assets in the case of business failure.

A farmer put it this way:

'We want our children to understand that they are in business. If they love farming, it's got to be a separate mentality to the ownership of the land. I want them to come to realise that value is there because of the things we're doing - so there is a reason for them to want to learn.

'[Taking] the land away from the business - it's going to make me look at a completely new ball game now. Because I sort of had the view that land was my business. That's my income. But I'm now looking at it in a different way, and because of that, [it] opens up a whole chapter...'

Choosing a structure for conducting the farm business

Choosing an appropriate structure for the conduct of a farming business requires each farming family to consider their taxation situation, level of management control and the costs associated with the business structure as well as farm succession options. Given the complexities of these issues it is important to obtain sound advice from advisors that understand the income tax and succession planning effects of the different structures. It is also helpful if you have a general understanding of the different characteristics of the main business structures that may be used.

The structures are:

- sole trader
- partnership
- family trust
- company

Each of these business structures offers different advantages and disadvantages. It is important to note that no single structure is always the best solution. The best business structure will vary depending on the business circumstances and may in fact be a combination of two or more of these structures. More detail on the effect of running your business using any of these structures, including income tax, can be obtained by linking to the Business and Finance section on Rural Law Online.

Some specific succession planning characteristics of each of the structures are mentioned below.

See also: Taxation [<http://www.rurallaw.org.au/handbook/xml/ch06s30.php>], Income tax [<http://www.rurallaw.org.au/handbook/xml/ch06s34.php>] and Business structures [<http://www.rurallaw.org.au/handbook/xml/ch06s08.php>]

When considering alternative structures available for the operation of the business the following factors should be considered:

- ease and flexibility of changing ownership;
- ability to raise funds for the farming business (e.g. providing a structure where family members,

not directly be involved in the operation of the farm, can invest in the business);

- children's involvement in management so that they can gain experience in the management of the business;
- protection of personal assets from the liabilities of the farm business;
- consideration of the management structure created and how this will cope with conflicts of interest and the decision-making process;
- ability of the structure to cope with the effects of death, divorce and relationship break down;
- suitability of entity types to asset ownership and business operation;
- dealing with non-farm income in the succession plan; and
- the capacity of new members to buy into the business.

Sole Trader

A sole trader enterprise is the simplest of all business structures and exists where the farming business is conducted by one person.

Advantages:

- one person controls all decisions; and
- easy to set up and operate.

Disadvantages:

- this structure does not really lend itself to succession planning as by its very nature, it does not allow for others to be involved.

Partnership

The most common business structure used by farmers is a partnership, which is simply defined as an agreement between members of the family to share profit from the business. A partnership is a relatively simple structure to administer and therefore will be less expensive to operate than some other structures. The nature of a partnership relies on partners being able to work together in a cooperative and trusting manner.

Advantages:

- provides the opportunity for shared management;
- simple and cheap to operate but stamp duty issues must be checked;
- provides joint ownership of assets; and
- existing assets can be transferred to family members entering the partnership.

Disadvantages

- partners are liable for the debts of the partnership to the extent of their private assets (therefore personal assets should be protected from this potential liability);
- may not provide a clear distinction between personal and business activities;
- assets contributed to partnership may cause capital gains tax problems;
- a partnership does not own assets. Each member of the partnerships shares the ownership of partnership assets which can cause problems on the death of a partner and the possibility of challenges to the will.
- if land is included in the partnership assets and it is owned as joint tenants, then the land will automatically pass to the remaining joint tenants on your death (i.e. not affected by your will); and
- partnerships end whenever the membership changes, which makes it relatively inflexible for changing membership.

See also: Partnerships [<http://www.rurallaw.org.au/handbook/xml/ch06s10.php>]

Family Trust

A trust is a relationship (usually expressed in the form of a deed) where the trustee (a person or another entity) controls a business and/or assets to the benefit of the beneficiaries (the people or entities

receiving the profits). The trustee is the legal owner of the trust's assets but these assets can only be dealt with according to the powers given in the trust deed.

Most family businesses that use a trust structure operate the trust as a discretionary trust. This means that the trustee has total power to determine how the income and/or assets of the trust are to be distributed to the beneficiaries. The other most common form of the trust structure is the unit trust where unit holders (for example individuals or several Discretionary Family Trusts) hold units in the trust (similar to shares in a company), which entitles each Unit Holder a determined share of income and/or capital.

Establishing a trust requires experienced legal advice so that the trust deed reflects the will of the family members. One of the important considerations is the appointment of the trustee. To protect the assets of the trustee and provide a structure where the family can manage the business, a company is normally formed to act as trustee. This means that family members can control the company (and therefore the decisions of the trustee) by holding shares in the Company and as Shareholders, appointing family members as Company Directors, who in turn make the decisions effectively as the Trustee of the Trust.

Advantages:

- the trustee retains control of management and assets (this separates management from ownership);
- privacy of business information;
- protection of beneficiaries' assets from the liabilities of the trust (business);
- flexibility of income distribution with a discretionary trust;
- flexibility of entry and exit with a unit trust;
- fixed term or as per the trust deed;
- trust assets are outside the wills of family members unless the trust is a unit trust (this reduces the risk of challenges to a will); and
- a company is normally used as the trustee, allowing opportunity for providing children experience with parents as directors.

Disadvantages:

- sole manager of trust property by the trustee # if a company is used as trustee the family members can take this role as directors of the trustee company;
- higher establishment costs than for partnerships, including the possibility of stamp duty;
- capital gains tax may be due if land is transferred to the trust;
- trust deed must be carefully drawn up; and
- beneficiaries are not legal owners of trust property and therefore cannot will these assets.

See also: Trusts [<http://www.rurallaw.org.au/handbook/xml/ch06s13.php>]

Proprietary Limited Company

A proprietary limited company is commonly known as a private company and is created through legislation.

A company is a separate legal entity and makes all of its decisions and enters into all contracts associated with operating the farm business through its directors. The company may also own the assets of the business although this is not always necessary as they could be leased from another entity.

The participants in the business would hold shares in the company, which will give them rights to business profits through the payment of dividends, the power to elect directors and the right to share in the capital of the company on liquidation. Shareholders do not have the right to participate in day-to-day decisions and they have no direct right to the assets of the company while it is still operating.

Private companies are not commonly used for the operation of family farming businesses unless the Company is acting as the Trustee of a Family Trust. The private company structure may be suitable for the operation of large pastoral holdings, but this is beyond the scope of the discussion of succession planning.

Advantages:

- ownership of assets can be transferred through the sale of shares without affecting the operation of the business;
- limited liability of shareholders can protect the private assets of family members;
- the business survives the death of family members;
- shared management where two or more directors are involved;
- more suitable for larger farming operations where non-family members are involved in the ownership of the business; and
- capital gains tax on the transfer of assets to the company can be deferred.

Disadvantages:

- cost of setting up the company will be higher than a partnership;
- lack of privacy of financial information;
- directors may be held liable for company debts in some circumstances;
- the transfer or sale of shares can be difficult in a private company;
- ownership of allotments of land held by the company cannot be transferred to individual members, only shares in the company can be transferred; and
- not normally suitable for smaller family farming businesses.

See also: Companies [<http://www.rurallaw.org.au/handbook/xml/ch06s11.php>]

Inheritance - Passing on the farm property

It is not possible to state categorically when is the best time for handing over the management of the farm or the best time to hand over the ownership of assets. However some important considerations are:

- the health and goals of the current owners of the farm business;
- the maturity, skills and knowledge of the younger generation and therefore their readiness for the handover;
- the psychological readiness of all parties for establishing new relationships;
- the success in implementing a plan for a 'seamless' transfer with a minimal disruption to the farm as a business; and
- security of income for the older generation

Equity and fairness

Inheritance is one of the more difficult matters facing farming families, especially for large families because it raises the perennial issues of fairness and equality. There are many different views on the subject. Some people challenge the very idea of inheritance while others see it as their sacred duty.

Further, they do everything in their power to pass on the farm completely free of debt.

The following are some opinions that relate to how different farmers and their families view farm succession and the issues of fairness and equality.

Opinion 1 Why this obsession with treating all the kids equally? If one or two put their whole life into the farm (so far) and the others have been educated (paid for by the farm) and have their own lives and no interest in farming, why should it be split up to pay them out? Too many farmers have got into serious, inextricable debt over this kind of practice! Comment: Not everyone thinks that all children deserve an equal inheritance in the farm, or that it is fair and reasonable to split up the farm.

Opinion 2 A commitment to pay family members off- farm at the commencement of a partnership with those on the farm will mean the remaining members do not have to pay the capital improved value later on. It also means all parties benefit from the parents' assets at the same time and all parties must contribute to the welfare of their parents at retirement. Comment: *This provides a practical way around this issue of treating the children equally, by doing so at the start of the farm succession process. The proviso is a requirement that in return, all the children must contribute to looking after their parents when they retire.*

Opinion 3 Instil in children that a good education and a university degree and opportunity to establish

a life for themselves is equally as valuable as receiving land. You can lose your assets in a divorce, but your education cannot be taken away. Comment: Education is regarded as a gift equal in value to receiving an inheritance. Besides, no one can take your education away from you but you could lose your farm.

Opinion 4 I can't afford an inheritance for all four of my kids so I've just got to make the hard decision to make the farm out to my oldest boy. It's the only way to keep the farm in the family. Two of the girls will probably get married to farmers so they'll be OK. The younger boy doesn't seem to be interested in the farm anyway # life's all about football and cricket for him. Comment: Some people do find it hard to leave a significant inheritance especially when the farm is small. However, decisions do not have to be black-and-white. There may be wisdom in this case in keeping an open mind # circumstances can change and plans should be adjusted when they do.

Opinion 5 I expect my brother will inherit the family farm # boys always do. I don't think it's fair but I don't want the farm split up. However, it's also not right for girls to miss out altogether either. Parents don't have an obligation to provide an inheritance for all their children, but I think if they told the truth, they would like it very much. It would be expected. Comment: Do parents feel obliged to provide their children with an inheritance? If they do, perhaps providing children with an opportunity as an alternative to an inheritance is an option worth exploring?

Farming families have to deal with practical realities especially when an apparently equal and fair division of the land between members of their family could result in hardship for all because of the inability of the subdivided farm to yield a living for the inheritors.

Treating your children equally is what most parents want, like giving children the same opportunities to get an education or teaching children business skills to give them a degree of independence.

However, when we are talking about farm succession and inheritance, equality has to be seen in a different light because land ownership has two components:

- earning capacity; and
- asset or resale value.

It is these dual components of land that causes the problem in considering equality. These two values are not necessarily equally important at any given time. For example, during times of high property value inflation rates, the rate of return from the farming business may seem very low. This can make the decision to sell land very tempting. As a result, treating children equally in inheritance is sometimes near impossible, as the focus of asset use is an essential part of the farm business, and dividing assets between children can render the business unprofitable.

One of the reasons why parents agonise over farm succession is the fact that they do not consider it fair that one or two children take over the family farm, and the other children are only able to receive a far smaller amount of inheritance. Buying a farm for each of the children may solve the fair or equal problem for parents. However, for many farm families this is not a realistic option. Many parents build up off-farm assets such as share portfolios, superannuation and houses in town in order to provide the non-farming children some level of inheritance.

Fairness is very difficult to quantify and if the farm is too small, parents may consider that providing an education to enable the opportunity to pursue other careers could be a reasonable alternative to inheritance of farm assets. However, this does not mean that children intending to return to the land should not also have the opportunity to higher education. A sound education is a very important foundation for good farm management and can also provide an alternative career if farming does not prove viable.

How might the family assist those not involved physically and/or financially in the family farm?

Financial assistance for family members not involved in the farming business may be considered as a means of adjusting equity in inheritance. This assistance could take the form of:

- financial assistance towards education costs that increase income earning capacity in other professions;
- financial assistance in setting up business not connected to the farm assets;
- assisting with a deposit or part deposit on a house; and
- assisting with the purchase of other investment assets such as shares or property.

Planning for retirement from farming

Security of income is the main issue for family members retiring from active involvement in the farm business. This issue must be planned as part of the succession planning process well before retirement. Planning for retirement income could involve consideration of the following:

- maintaining an income only interest in the farming business;
- income generating investments such as shares or rental property;
- pension and related benefits; and
- superannuation.

Maintaining an income only interest in the farm

An income only interest in the farm may be retained after a family member retires. This can be achieved through beneficial interest in a trust or through a non-management interest in a partnership. However, the danger with this approach is that it may erode the capital available for the operation of the farm. Also, as the financial needs of the younger generation grow, either the income from the farm must grow to match changing needs or other sources of income must be found.

Pension and related benefits

Part of the succession planning process should take into account the possible receipt of a pension or other social security benefits in retirement. Unfortunately the rules governing these entitlements are constantly changing and you should seek advice from a professional that has up-to-date knowledge for these rules.

Entitlement to the age pension (and other benefits) is subject to asset and income tests, and for most retiring farmers the assets will be the biggest concern.

Three common situations may lead to the loss of pension entitlements:

- joint ownership of assets: if your investments in real estate, term deposits, shares or managed investments are held jointly, then on the death of your spouse the whole of the value of the assets becomes assessable against you;
- mutual wills: if you make your will so that your assets pass to your surviving spouse this may have a negative impact on your surviving spouse's pension rights; and
- life assurance: if a surviving spouse owns the matured value of a life policy on the life of the first deceased, the survivor's assets will be substantially increased, with consequent loss of pension.

The issue of wills is dealt with in more detail later but it is important to note here that your best intentions could actually put your surviving spouse in a worse position in relation to the pension.

When you are making your will, you should get sound advice about any impact your legacy might have on your spouse's pension entitlements.

For further information on the Income and Assets tests, see 'Social security' under 'Business, finance and income'.

See also: Social security [<http://www.rurallaw.org.au/handbook/xml/ch06s35.php>]

Superannuation

Farmers have traditionally been reluctant to 'lock up' cash in superannuation because they are conscious of the need for cash reserves in lean times such as drought. However, many are now seeing the importance of superannuation in generating income later in life.

There is now a growing interest in the value of self-managed superannuation funds (SMSF) in farm succession planning. Superannuation offers significant tax advantages, especially for those with high taxable incomes, and SMSFs can be an excellent long-term land holding succession structure for the reasons outlined below:

- income tax concessions;
- transfer of interests in farming land as contributions to a SMSF;

- membership of SMSFs can now sign what is called a Binding Death Benefit Nomination, which ensures that any farming land held in the SMSF will, on the death of parents, pass down to the farmer's successor; and
- land held in a SMSF is 'outside' your will and is therefore protected from any will challenge, provided a valid Binding Death Benefit Nominations had been signed by the members of the Superannuation Fund.

The creation and operation of a SMSF is very complex and should not be attempted without legal and taxation advice. Also it is important to appreciate some of the disadvantages of tying assets up in superannuation funds. Incorporating farm assets into a SMSF:

- reduces the diversity of investments because failure of the farming business may also devalue the superannuation fund;
- prevents funds and assets being accessed except as a result of death, retirement or disability;
- means that assets cannot be mortgaged and so the opportunity to borrow is restricted;
- will result in increased legal and accounting costs to operate the farming business; and
- requires adherence to very strict legal and accounting requirements.

Where the parents have no farming successors and propose to lease the land out on their retirement, the use of SMSFs to hold land offers enormous income tax advantages because of the low tax rate and the fact that once pensions are commenced, the superannuation fund pays no income tax on its earnings upon the members' retirement. Also, as there is no Capital Gains Tax payable on any asset sold by a Superannuation Fund once its members have commenced to draw Pensions from the Fund, this can be a significant advantage.

Wills and power of attorney as part of the succession planning

Several of the case studies mention the problems associated with dying without an up-to-date will or any will at all. A person that dies without a will is subject to the relevant state laws of intestacy and this situation must be avoided. Similarly it is unwise to prepare your own will as there are many legal traps that may not be obvious to the non-professional. It is therefore very important to seek legal advice on the preparation of all wills and appropriate powers of attorney for all the people involved in the succession plan. Wills must be prepared to complement the succession plan.

Generally, wills should not just be used to transfer ownership of a person's real and personal assets to others. They should also be used to compliment the succession plan.

It is also important to routinely review your will about every five years or sooner if significant asset changes occur.

The limits of wills as a succession tool

Apart from the fact that family members can challenge your will and, if successful, overturn your wishes, there are other limits to the use of wills as the main tool for succession planning:

- it is too late to put into place a well structured success plan;
- unlike succession planning, wills may not involve all members of the family and may not be regularly revised as part of an ongoing planning process.;
- you can only leave in a will what you own at the time of death. For example, the assets of a discretionary trust cannot be dealt with by an individual's will;
- challenges to wills can be very expensive and divisive; and
- equity and fairness issues are difficult to deal with via a will. It is better to deal with these issues before death.

See also: Wills and farm transfer planning [<http://www.rurallaw.org.au/handbook/xml/ch09s07.php>]

Case studies

Case 1: Father died - son 22 years of age; two daughters at university.

- Father's up-to-date will provided for the son to have use of all farm land.
- Mother was given a life interest in the land owned by her husband. This land went to the son who signed an agreement - as requested in the father's will - to give a defined share to two siblings on the death of their mother. The defined share took into consideration the value of the education received by the siblings as the farm paid for their education.
- Mother received jointly-owned land (with her husband) and this land was leased to the son. Later the land was transferred to the son in return for being cut out of his mother's will;
- Mother's will provided for the siblings.

Comment: This was an arrangement that provided for the son to develop his 'career' without financial burden. It also provided for the mother's financial and security requirements and took into consideration the value of the education provided to the siblings. Importantly, it kept the family talking together. It could be considered an equitable arrangement as the son had only been working with the father for five years and would not have had a major impact on the development of the parents' farm assets. An asset value base was established, which took into consideration the cost of the education of the daughters, paid for by the farm during the time the son was working on the farm with his father. This value base provided for how much the son was to pay his sisters, at the time of their mother's death.

Case 2: Both parents died intestate

- Three sons inherited equal shares of the farm by operation of the state law related to dying intestate (dying without a will).
- The farm was too small for all three to operate.
- One son had farmed with his parents.
- Farm paid for the university education of the other two sons who transferred ownership to the farming brother.

Comment: This arrangement between the brothers was finalised amicably before any were married. The two off-farm siblings regarded university education as a benefit that was equal to a share of the family farm. The son at home was working with the parents whilst his brothers were away at university. The situation could have been different if one or more of the brothers were married, as security may have become an issue for a married brother.

See also: If you are without a will, please refer to the Glossary
[<http://www.rurallaw.org.au/glossary.php>]

Case 3: Elderly father died after long partnership with son.

- The son had been farming for over 30 years with his father who repeatedly told him that the farm would be his.
- A written partnership agreement was made with the son as equal partner in the farm business, which included land purchased by the partnership, but father held all documents and financial records and paid his son a 'wage'.
- Father's will provided for the distribution of farm assets, owned by him, between his wife and children. The will included partnership assets instead of partnership share.
- A will challenge took considerable time during which the value of the land increased considerably. The son had to buy back 'his' farm at market value giving him less than 60 per cent equity

and less than 75 per cent of the original farm. Deceased's family maintenance complicated the 'buy back'.

Comment: This case illustrates lack of equality in farm succession practice. The son had assisted in building up the farm assets, both partnership assets and partnership assets positioned on land owned by father. He also provided major labour as his father was aged and left the farm management to his son. The son was an equal partner but was not involved in financial management until the death of his father.

This is also an example of the potential income from investing the proceeds from the sale of the land, being greater than the income that could be generated from farming the land, thus complicating the will distribution in terms of equality of asset distribution. A property of this value should have used a trust and provided for the son, who had worked in the partnership for a long time, but finished up being treated in a similar way to his siblings. The son should have been provided annual financial statements and a copy of the partnership agreement.

Case 4: Farm debt free and parents did not wish to go into debt to grow the farm.

- The daughter was farming with her parents, but the farm was too small for two families without borrowing to increase the size of the farm.
- The daughter was paid a wage and talked to her parents about increasing the farm size.
- Her parents were not interested in borrowing, but said they had no objection to their daughter borrowing. However, she had no collateral on which to borrow.
- The daughter felt trapped - she was in her forties with a young family and no other skills and no asset backing.
- Her siblings considered her lucky, as she was to inherit the farm.

Comment: The farm daughter was no better off than working as labourer for another family farm. Security is often a major issue for both generations farming together, with some parents having a goal of transferring a debt free farm while their children want to expand the business. The pursuit of security in this case favours the parents and disadvantages the daughter, especially if the parents' will is challenged by the siblings.

Should both parents die intestate(as in Case 2), the daughter would be no better off than her siblings, even though she spent some 20 years helping to build up her parents' assets. She would receive no more than an 'equal' share with her siblings, hardly 'fair' under the circumstances.

Case 5: Parents encouraged their son and his two sisters to seek off-farm careers.

- The son later decided to return home to farm with his parents.
- The parents sought a solution whereby their son could take over the farm but not disadvantage his sisters should he later sell the farm and keep all the proceeds.
- On becoming aware of the option of separating the land from the farm business, with the son taking over the farm business and the parents keeping ownership of the land, the son commented, 'you have just solved my problem. I thought that the land was my business'.

Comment: Dividing the business from the land - and having a separate ownership structure for each - provides greater flexibility for parents. Having the business and land in the same ownership structure, e.g. parents' partnership, is often the reason farm succession is delayed as many parents believe that to hand over management to the succeeding child also requires handing over ownership at the same time. Handing over ownership at a time when parents need greater security is not wise. The parents could set up a unit trust for owning the land and would achieve their aims of preventing the son from selling the land at a later date and keeping all the money. Parents could use a company as the trustee and be the directors of the company trustee. The son could be made a director, as this would give him experience with ownership structures and how they operate.

The trust would lease the land to the farming partnership, which would include the son so when the parents were ready to retire in some 15 or more years, they would continue to receive an income from their units. The parents' units could be sold to the son over an extended period of time, as well as provide for their daughters, if this were the parents' preferred option. This option does not prevent the parents assisting their daughters when they are younger and in most need of financial assistance.

Case 6: A family unit trust that failed to provide flexibility.

- Four beneficiaries had one unit each in the trust.
- Three worked the farm and wished to buy out the fourth beneficiary.
- The fourth beneficiary refused, saying that to sell would create a significant capital gains tax (CGT) problem for her.

Comment: Minimising CGT and building flexibility are two good reasons why a unit trust should be set up with multiple units (e.g. 40 units) with 10 units allocated to each beneficiary. This would allow both beneficiary buyer and seller the flexibility of buying or selling over a period of time, minimising cash flow problems for the buyer and minimising CGT for the seller.

This case also illustrates the importance of family discussions over time so that all parties can see the pros and cons of the arrangements being proposed. Decisions with serious impacts should not come as a surprise, nor should they be decided upon without reasonable opportunity to think through the consequences.

Other resources

Courses in farm succession and retirement planning

The Commonwealth and state governments have jointly funded **FarmBis** to provide a number of subsidies training courses for farm families. Many of these courses deal with farm succession and retirement processes. You can get a list by contacting FarmBis or the details, including application forms for enrolments, can be downloaded from their website. Visit <http://www.farmbis.gov.au/> and follow the links.

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