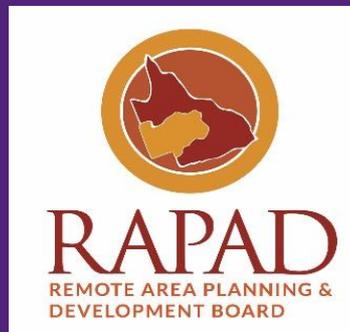


Business structures and access to cash



*RAPAD region policy solutions and
business innovation for farmers and small businesses*

Pilot study

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Our collaboration

The **TC Beirne School of Law** at The University of Queensland (**UQ**), **RAPAD** and **Rural Financial Counselling Services North Queensland (RFCSNQ)** have joined forces in a three-year pilot study that will benefit farmers and small businesses across Central West Queensland.

The research will provide much needed **evidence-based findings** to inform policy and development of the RAPAD-region economy, and **valuable insights** into cash flow optimisation; the impact of income tax on small firms and their participants; the impact of rural financial counselling service; and firm succession in a regional economy dominated by small firms.

In doing so, the study will:

- **Benefit** businesses in Central West Queensland by developing integrated business and policy solutions that fit the unique features of the region
- **Make a contribution** to the rural financial counselling services delivered by RFCSNQ by building capacity and specialisation
- **Provide assistance** to firms experiencing financial hardship in the RAPAD-region by developing practical cash flow-focused optimisation strategies that meet the specific needs of small firms and small family firms in agriculturally dependent, climatically affected areas
- **Play an important role in the national debate** about the important role of rural financial counselling services in facilitating change
- **Express** the unique business narrative of innovation, resilience, connection to the land, and integration between farms, town businesses and communities in the council areas of Barcaldine, Barcoo, Blackall-Tambo, Boulia, Diamantina, Longreach and Winton.

Set within the RAPAD-region, the purpose of the pilot study is to investigate:

- i. the differences between the legal structures adopted to conduct farming and small business,
- ii. participants' practical access to business-generated cash,
- iii. the way capital is raised, and
- iv. how existing ownership is transferred in family firms.

The pilot study commences in February 2019, and forms part of a larger TC Beirne School of Law research project: **Small Australian firm business structures**.



Mulla Mulla on the road to Windorah

Why are we working together to conduct the pilot study in the RAPAD-region?

The partnership between **UQ**, **RAPAD** and **RFCSNQ** provides a **comprehensive approach** to understanding small firms, small family firms, family farming, and businesses experiencing financial hardship across Central West Queensland that considers the unique economy and challenges in the region.

UQ is a **research intensive university** ranked among the world's top 50 universities.

The **TC Beirne School of Law** (UQ) is **ranked among the world's top 40 law schools**. Research at the TC Beirne School of Law is addressing national and global issues to make a significant and lasting contribution to the understanding and development of law, the effectiveness of law as a discipline, and to provide a better understanding of its interaction with other fields, and within communities.

RAPAD is a **peak regional economic development body**. RAPAD's **voice is heard** as it speaks up for communities in one of the most beautiful, but sparsely populated and remote regions of Australia. RAPAD-region-focused policy development will receive attention on national fora.

The services provided by **RFCSNQ** **play a pivotal role** in many farms and small businesses across the RAPAD-region. The confidentiality, professionalism and service excellence of RFCSNQ rural financial counsellors should be supported and showcased.

The research from this pilot study aims to provide evidence-based solutions to inform economic policy development; and develop strategies and tools that optimise prosperity for farmers and small businesses in the region.

Together, we recognise the important role that **trust** plays within businesses, financial counselling, and across communities. This pilot study safeguards privacy and confidentiality by adhering to ethics standards, privacy legislation, and formalised research protocols.

'As we face challenging times, RAPAD's positive outlook and commitment to deliver vital programs for our communities and local businesses continues to prove invaluable.'

– Cr Rob Chandler, RAPAD Chairman.¹



Hot air balloons over Birdsville

The *Small Australian firm business structures* research project in a nutshell

This pilot study forms part of a larger TC Beirne School of Law research project: **Small Australian firm business structures**.

Small businesses account for 97 per cent of all firms in Australia. It is estimated that 70 per cent of all Australian firms are family owned. Small firms and small family firms are extremely important to Australia's economic prosperity and exist within a legal framework of rights and obligations associated with the formal legal structure adopted to conduct the business. In Australia, there are four main business structures: sole trader, partnership, company, and trust.

These structures drive a number of interrelated aspects of the business, including: the ways in which participants are able to benefit from the business through ownership interests, employment rights or discretionary entitlements; the formality of business decision; the taxation of economic benefits; the reporting of business, tax and participant transactions; the extent to which a merging of firm and personal finances is appropriate; the availability of after-tax cash flow; participants' personal liability for firm debts; and methods to introduce new capital or transfer existing ownership rights.

This TC Beirne School of Law study investigates the differences between business structures, participants' practical access to business-generated cash, and the way capital is raised and existing ownership transferred in the context of small firms and small family firms in Australia.

Using a multi-faceted theoretical framework, four research themes are explored:

1. The factors that drive business structure selection.
2. Participants' understanding of the legal nature of their firm participation rights.
3. The merging of firm and participant personal finances.
4. Tools and strategies to plan for, manage and take advantage of the business structure adopted.

Research project phases

The research project will be conducted over a five year period, starting in February 2019.

Table 1: Research project phases

Phase	Description	Period
Pilot study	Longitudinal pilot study of small firms and small family firms in the local council areas of Barcaldine, Barcoo, Blackall-Tambo, Boulia, Diamantina, Longreach and Winton in Central West Queensland, commonly known as the RAPAD-region	3 Years, starting February 2019
Phase 2	A study of small firms and small family firms more generally across Australia	5 Years, starting February 2019

In phase 2, the research project will first focus on small firms and small family firms in remote, rural and regional Australia. This approach enables researchers to develop focused and appropriate policy that recognises the critically important contribution that small family firms make in the farming sector and in remote and rural economies.

The rationale behind the research

By virtue of its sheer ubiquity, small firms are extremely important to economic prosperity in Australia. Yet, research on these firms typically focuses on start-ups, reasons for small firm failure, or on single aspects within small firms, such as marketing practices, brand identity, energy efficiency or information technology use (see ARC website detailing grant funding from 2001). Little integrated research exists about small firm structures in Australia. No in-depth research has been published about the whole-of-firm impact that any particular business structure has on Australian small firms.

Family owned businesses are an established and enduring feature of the Australian business landscape.² In the agriculture sector, data show that 99 per cent of farm businesses are family owned and operated.³ Yet, there is very little research about family firms in Australia and little attention has been paid to this extremely important sector of the Australian economy from a policy perspective. This position is due to the lack of a definition of 'family firm', the focus of successive Australian governments on the promotion and support of small, medium and micro enterprises in which family firms are regarded as merely a subset of this population, and a lack of data about family firms and their business structures.⁴

Small firms and small family firms exist within a legal framework of rights and obligations associated with the formal legal structure adopted to conduct the business. In Australia, there are four main business structures: sole trader, partnership, company, and trust.⁵

The legal structure of a business:

- Frames the three ways in which participants who bear business risk are able to benefit from the business. Firstly, through ownership interests. These may involve direct asset ownership as sole trader, partnership entitlement rights, or share ownership in a company. Secondly through employment rights as employees, that may be linked to future ownership interests as part of a family firm succession plan. Thirdly, through discretionary entitlements if the business is operated using a trust or through a business structure that incorporates a trust.
- Dictates the formality with which business decisions ought to be taken, and in some cases, the timing of these to be income tax effective.
- Limits the extent to which firm participants who bear business risk are able to merge their personal finances with firm finances on the one hand, or necessitates a merging of the two on the other hand to collateralise firm debt with personal assets or to self-fund working capital.
- Determines the legal nature of family member entitlements to cash generated by a family firm to fund their personal expenses, how these are recorded for accounting and income tax purposes, and their personal liability for firm debt.
- Drives the taxation of economic business benefits, the availability of after-tax cash flow to fund working capital, springboard business growth and innovation, and to meet the personal financial needs of participants.
- Provides the platform for new capital investments, and facilitates firm succession.

It is undeniable that these aspects sit at the core of each firm's operations. But, the interrelationship between the factors are complex and difficult to understand without some legal background or training. Firm participants face significant challenges to take advantage of any particular business structure over the long term due to ongoing regulatory and income tax law changes in the small firm and small family firm sphere.⁶ Determining the cash flow implications of business restructure from one legal form to another is equally complex.⁷ Navigating the vastly different accounting rules and income tax models that apply to different business structures is likewise challenging. Keeping up to date with regulatory and tax changes takes time. Seeking professional advice costs money. Participants in small firms and small family firms can ill afford either.

The purpose of this study is therefore to investigate the differences between business structures, participants' practical access to business-generated cash, and the way capital is raised and existing ownership transferred in the context of small firms and small family firms in Australia. The study focuses particularly on cash flow as the life-blood of small firms, and on the position of participants who bear business risk, or will bear business risk in the future through family firm succession plans.

The study is timely due to:⁸

- The lack of integrated research into small firms and small family firms in Australia.
- The importance of small firms and small family firms to the Australian economy.
- Significant recent changes and proposed changes to income tax legislation and tax policy for small firms and small family firms, driven largely by contemporary Australian politics.
- The importance of business success and continuity in family farming in remote and rural areas of Australia to sustain rural economies.
- The lack of research about the differences between family firms and other firms, and the policy implications of these differences.

'Small businesses are key to sustaining and generating jobs in regional economies. Regions with many small businesses are more likely to grow than those with a few large businesses. Understanding how regions create and support resilient business ecosystems are therefore key to their social and economic prosperity. Research into the barriers and enablers of small businesses can help to support business owners, but importantly, can provide the information needed for evidence based policies for regions.'

- Prof Martie-Louise Verreyne

Diamantina River at Birdsville



Why is small business research in the RAPAD-region relevant?

The economy of the RAPAD-region is almost entirely focused on small firms. In reference to current income tax legislation, one definition for a 'small business entity' is that it has an annual turnover below \$10 million.⁹ In the RAPAD-region, nearly *all* businesses have a turnover of less than \$10 million – Table 2.¹⁰

Table 2: RAPAD-region total number of businesses by turnover

Turnover →	Zero to < \$50k	\$50k to < \$200k	\$200k to < \$2m	\$2m to < \$5m	\$5m to < \$10m	\$10m or more	Total
Longreach	153	216	219	22	5	0	615
Barcoo	17	19	26	3	0	0	65
Blackall-Tambo	80	121	139	13	0	0	353
Boulia	3	3	19	0	0	0	25
Barcaldine	108	149	233	25	5	3	523
Diamantina	3	4	15	3	0	0	25
Winton	57	72	98	15	0	0	242
Total	421	584	749	81	10	3	1 848

The RAPAD-region is agriculturally dependent.¹¹ Data also show that 99 per cent of farm businesses are family owned and operated.¹² The economy of the RAPAD-region is thus well-suited to study small family firm characteristics and behaviour compared to other small firms, and the impact of related policy development on family farming. Farming is historically important to Australia. Whether it is due to the fact that Australia's economy and history was 'built on the sheep's back', or because family farms remain the dominant form of farm organisation across Australia (as is the case across the economically developed world), there is more academic literature available on what constitutes a family firm in a farming context than in any other sector.¹³

It is only in respect of farming, that reliable country data is available about the preference for any particular business structure used to conduct a family business, allowing for meaningful comparisons to farming firms in the RAPAD-region. Australian Bureau of Agricultural Resource Economics and Sciences ('ABARES') data suggest that partnership structures are dominant in family farming, sole traders make up roughly 20 per cent of family farms, and trusts and corporate structures are used to a lesser extent.¹⁴

The RAPAD-region is also well suited to study small firm and small family firm behaviour using a cash flow perspective due to the fact that the RAPAD-region is suffering the worst droughts in the history of white settlement in Central West Queensland, leading to significant destocking and high stock feed costs. The impact of the prolonged drought in the RAPAD-region is not limited to agribusiness.¹⁵ Town businesses have suffered reduced turnover and profitability, and population numbers have decreased dramatically. The cash drought of farming firms has thus spilt over into the rest of the RAPAD-region's business sector.¹⁶

The impact of unprecedented flooding in February 2019 across the north of the Winton shire will add to this dynamic. Having fewer people in the RAPAD-region is a community problem that takes a toll on the sustainable development of the region. Outmigration reduces spending in the local economy, reduces employment, depletes social resources, and causes a generational shift to an older population.¹⁷ The outcomes of this project will help small firms to optimise their cash flow, which in turn holds benefits for the Central West Queensland region.

In this regard, the project is also aligned with federal government perspectives that strategies to retain families on farms must include establishing career paths that are financially sustainable for family firm participants to support strong and vibrant regional communities.¹⁸

The dominance of family farming across the agriculture sector means that firm succession may be studied more closely in the RAPAD-region. Studies have shown that family firm succession is negatively impacted by poor financial returns, especially as a result of drought conditions, which also has the knock on effect of increasing debt levels in firms.¹⁹ In reference to the broader research question of the business structures most suited to conduct small firm and small family firm business, it is common for farm succession plans to be built around discretionary trusts. Discretionary trusts are also an attractive vehicle to minimise income tax across a family.²⁰ The wide adoption of discretionary trusts as a business structure more generally, stands in stark contrast to significant concerns that trust law is not well understood by business owners and that legal questions may arise if the trust is not administered according to trust law and the trust deed.²¹

Reflecting again on the agriculture dependence of the RAPAD-region, farmers are generally reluctant to seek professional advice.²² Under severe drought conditions, farming firms often do not have the cash available to pay for professional advice even if they were to overcome the barriers to access advice.²³ It may be that small firm participants find themselves in a similar position. Across the RAPAD region, the stark reality is that 40 per cent of small business owners do not take a wage,²⁴ and an increasing number of farm families rely on the Farm Household Allowance to afford the necessities of life.²⁵ An ever-increasing number of farming firms and small businesses therefore have 'no viable alternative sources of impartial support',²⁶ and no viable alternative sources of financial advice and information, except to turn to the free services provided by federally and state funded rural financial counsellors.²⁷ This project seeks to make a meaningful contribution to the services provided by RFCSNQ. Working together with RAPAD, the project will build capacity and specialisation, and showcase and disseminate the best-practice used by RFCSNQ.

'Small businesses, whether agricultural in nature, or town based, are the life blood of rural communities. At a time of significant natural disasters such as we are experiencing now, never has the need for support for these businesses, and our communities, been greater. This research being undertaken by Dr Thea Voogt has come at an opportune time. What we learn from Thea's work will be instrumental in supporting the individual client and whole communities, through the work we undertake through Rural Financial Counselling Service North Qld and RAPAD.'

– Mr David Arnold, RAPAD CEO

The TC Beirne School of Law project team acknowledges the generous in-kind support of office space, internet access and accommodation facilities, provided by the partners of Ringrose Button Chartered Accountants in Longreach.

www.rbca.com.au

Ringrose Button
chartered accountants

Who are the researchers?

Dr Thea Voogt is a chartered accountant and chief investigator on the project. She holds a doctorate in financial management and a Master's degree in International Commercial Law from The University of Queensland. She brings significant business experience to the team, gained from three extended breaks in her academic career as CEO (Principal Officer) of large superannuation and disability funds, as tender and contracts manager, and as institutional risk manager. Dr Voogt specialises in income tax law and corporate governance. Her integrated business experience, knowledge of the taxation of business income and of the law of trusts and corporations law, and her commitment to being present in the RAPAD-region to conduct the pilot study is key to the project.

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🔗 <https://researchers.uq.edu.au/researcher/12003>

<https://www.linkedin.com/in/thea-voogt-ca-d-com-61363169/>



Prof Martie-Louise Verreyne is a world leader in her field of small firm strategy, innovation and resilience. Martie-Louise is currently the Deputy Dean of the UQ Business School. She is an experienced research project manager and data analyst, and currently holds two ARC grants. She has also completed three other Category 1 grants focused on agricultural firms. She is a regular contributor to leading entrepreneurship, strategy and interdisciplinary journals. She has also published in all three main small business journals, and serves as Associate Editor to the Journal of Small Business Management. She actively works with industry to create research impact and has received several awards in recognition of this work. Her significant expertise in business strategy and innovation is key to the project, as is her significant experience in developing web-based research instruments.

🔗 <https://researchers.uq.edu.au/researcher/1685>



Prof Grantham holds the degrees of Bachelor of Civil Law from Oxford University, and Master of Laws (Honours) from Auckland University and LLD from UQ. Prof Grantham is a leading private law scholar with significant court citations in the United Kingdom, Australia and New Zealand. His significant academic contributions extend to corporations, trusts, property law, and corporate governance, and regulatory theory. Prof Grantham's insights into trust law and his strong commentary on the negative impact that the proceduralisation of Australian corporations law has on business is key to the project's focus on the small firm regulatory environment.

🔗 <https://researchers.uq.edu.au/researcher/1421>



Protecting participants' privacy and confidentiality

This study adheres to the Guidelines of the ethical review process of The University of Queensland and the National Statement on Ethical Conduct in Human Research.



Institutional Human Research Ethics Approval Number: **2019000030** [Duration to 28/2/2024].

The pilot study will involve interviews, case studies, document analysis and observation.

- Participation in the pilot study is **voluntary**
- Every potential participant will receive an **easy-to-understand information sheet**
- Every participant will **sign a consent form** before they participate
- Every participant **can withdraw** at any time before data analysis starts
- Participants and their businesses **will not be identified in any publications**, unless they give their express permission to be identified
- The project **will not collect personal data**, except age, gender, position in a firm and business-education background
- Every participant will get a copy of the findings report
- Every participant can **contact the chief investigator** at any time
- **Data will be de-identified**, summarised, combined, analysed and aggregated
- The privacy of **RFCSNQ clients is already legally protected** by a client confidentiality agreement
- The **project team is not allowed to share its data** with anyone, only its aggregated findings.

Who can take part in the pilot study?

The pilot study is focused on small firms with a turnover of less than \$10 million per year. These firms can be owner-operated as a sole trader business, or as a partnership. They may also be registered as companies, or involve a family trust.

Invitations to participate in the pilot study will be advertised and communicated through RAPAD and the RFCSNQ.

The project team **values and respects the trust** that exists between community members and RAPAD and RFCSNQ. The project team is legally bound to protect the confidentiality and privacy of all participants.

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