

# MEANING BUSINESS

News & Information on Small Business Sales

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## DIFFERENT WAYS THAT A BUSINESS SALE CAN BE TRANSACTED.

When transacting a business sale  
which path should you choose?

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# EIGHT NEW BROKERS

Joined our **fast growing team!**



## Brett Buckley

Brett Buckley has a long established record of success in leading and managing organisations within the sectors of large private organisations, publicly listed organisations and local government.



## Anthony Saric

Anthony is in his final year of his Bachelor of Business (Accountancy) at RMIT. In 2015 Anthony discovered his true passion in accountancy was the business sale process.



## Michelle Brown

Michelle Brown specialises in the sale of hair and beauty salons (including skin and laser clinics) in Melbourne and the wider Victorian market.



## Puneet Verma

Puneet Verma knows what it's like to start at the ground roots of a business, and has also made the life-changing decisions enabling him to be a successful owner and operator of a number of businesses in Australia and overseas.



## Lily Small

Before becoming a professional business broker, Lily successfully ran her own business within the Fashion Wholesale Supplier Industry.



## Derek J Wallbridge

Derek holds Associate Diplomas of the Real Estate Institute of Australia (AREI) and the Australian Institute of Conveyancers (AAIC), Fellow of the REIQ (FREIQ).



## Clyde Smith

Clyde has been working in industrial construction in various capacities for the past 14 years and is now a highly motivated successful business broker.



## Chris Daly

Chris has worked in the hospitality industry for over 25 years and has held middle and senior management positions. Chris has successfully run a small business in QLD.



# DIFFERENT WAYS THAT A SALE CAN BE TRANSACTED

When transacting a business sale, there are two basic ways that a sale can be completed. The two options are;

1

## An Asset Sale

(The assets and goodwill of the business are being sold)

**An asset sale** involves the sale of all of the assets owned by the entity which controls the business. The assets being sold in the transaction include fixed assets, land, plant and equipment, work-in-progress, stock and intangible assets including goodwill and intellectual property. The sale will not include Debtors as the debtors and creditors are usually the responsibility of the Vendor.

The assets being sold will be identified in the sale agreement.

All businesses will be owned by either a partnership, sole trader, a company or a trust. In an Asset Sale the purchaser will not be buying the company or the trust, the purchaser will acquire only the business assets. Therefore the purchaser will not be liable for any debts or liabilities that the previous owner, company or trust may have acquired. In an Asset Sale the purchaser will (usually) buy a business that is unencumbered.

The Asset Sale is the most common form of business sale transaction, and the commonly used contract to document the terms of the transaction is the REI Standard Contract.

## What to Consider in an Asset Sale

**Employees:** When selling the assets, the employment relationship cannot be 'transferred' from the vendor to the purchaser as employment contracts are personal in nature. It will therefore be necessary for the vendor to terminate the employment contract with the employee, and for the purchaser to decide if they wish to enter into a new employment contract with each individual employee. The vendor must ensure that employees receive the benefit of any accrued entitlements.

**No Assignment:** Any third party contracts may require third party consent to be assigned, or may not be assignable at all, thereby reducing the value of the business to the purchaser. For example, the consent of landlords or finance companies may be required for transfer of any property or plant & equipment leases.

**Apportionment:** The purchase price must be apportioned between various classes of assets, including plant and equipment, land and buildings, stock, and goodwill if applicable. This can cause a conflict between a seller's preference to adopt their book value and a purchaser's preference to adopt a higher value to maximise tax benefits.

**Goods and Services Tax (GST):** Depending upon the details and nature of the transaction, the sale may be deemed as the sale of a 'going concern' - or not. This will result in no GST being payable on the transaction. Alternatively, where the asset sale cannot be categorised as a going concern, a GST liability may arise.

**Duties:** Stamp duty or land tax may be payable on the transfer of land and other real property, depending upon the state in which the assets are located. Stamp duty is generally higher on transfer of assets than shares.

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## A Share Sale

(The company shares are sold)

**A share sale** is slightly more complex than an Asset Sale, because with the shares comes a range of potential liabilities, many of which will vary in value from day to day, and which may not be identified on the balance sheet of the entity.

Share sales involve the sale of the shares in a trading entity, related entities and occasionally units of a unit trust. Where a purchaser acquires 100% of the shares in an entity, the purchaser takes control of the entity and all of the assets and liabilities and past history of that company. Generally this is done with the Sellers guarantees and warranties, which may include some security from the Seller.

When conducting a Share Sale the sale agreement must be produced by an experienced legal team, and these documents can be complicated. Share sale agreements must contemplate many variables including adjustment at settlement for profit, liabilities, and asset changes.

## What to Consider in a Share Sale Transaction

**Continuity:** In a share sale transaction the business continues to be carried on by the same entity with the shareholders of that company changing. In some instances, customers and suppliers may not even realise that there has been a change of ownership. Employees: Usually employees remain with the entity and purchaser in a share sale. Apart from possible provisions in the sale and purchase agreement that may provide for redundancy of specific staff or specific benefits to be paid upon change of control of the business, the legal identity of the employer remains the same.

**Assignment:** Conditions which prevent assignment of certain contracts (such as leases) may not arise as the contracting party remains the same. This means that it may be easier to sell the shares than re-assign or novate a large number of contracts or licences. Some agreements often have a 'Change of Control' clause which may have implications for the purchaser. This needs to be addressed by the purchaser under due diligence.

**Tax consequences:** the company being sold may have franking credits, tax losses or undisclosed tax liabilities present. Remember that the purchaser of shares inherits all the "skeletons in the cupboard" of the entity acquired, and warranties in the share sale agreement may be of little future value if the vendor has dissipated the funds received, or has moved to another country.

**Unrecorded liabilities:** There may be tax liabilities or warranties that the vendor has made, which may not be evident to the purchaser. It is important to ensure tax, legal and accounting due diligence is undertaken in an effort to identify these liabilities prior to completion.

**Stamp duty:** The opportunity to minimise Stamp Duty in a share sale transaction often makes it more attractive for the purchaser to acquire the shares than the assets. Each state in Australia has different stamp duty rates

**Warranties:** The purchaser should ensure they obtain relevant warranties from the purchaser to ensure they are not left with unresolved liabilities at completion such as unpaid fringe benefit tax or payroll tax.

## Summary

Regardless of whether the transaction is structured as an asset sale or a share sale it is essential to ensure that both a seller and a purchaser have undertaken sufficient due diligence to ensure there are no unpleasant surprises following the sale/purchase.

All purchasers will require specific tax and related asset protection/succession advice to ascertain which option is best.

# SOLD

# STATE OF THE MARKET REPORT

Quarter 2, 2016

Category	Demand*	Rule of Thumb	Approx. ROI	State of the Market
Accountancy Practices	=	Cent per \$	N/A	Steady demand continues
Bakers (non franchise)	↘	Year P/EBITDA + P & E	50-100%	Demand still down
Speciality Franchise Bakeries	=	10-14 x weekly sales	35-40%	Sales volume critical to profitability
Cafes/Coffee Lounges - 5 Day	=	1.5-3 times Nett	33-80%	CBD locations are very popular
Cafes/Coffee Lounges - 7 Day	↘	1-2 times Nett	50-100%	Some premium locations still sought by buyers
Caravan Parks Freehold	↗	Bank Valuation	10-16%	Alternate use drives value. Demand up
Caravan Parks Leasehold	=	Bank Valuation	15-20%	Demand is steady
Child Care Centres	↘	4 to 4.5 x EBIT	17-22%	Demand exceeds supply
Cleaning Businesses	↗	2 to 3 x EBIT	30-55%	Managed business are sought after
Courier Services	↘	Van Plus Goodwill	100%	Buy a job demand has reduced
Food Franchises	=	Times P/EBITDA	35-50%	Depends upon brand
Food Hall Businesses	↘	1 years Nett + P & E	50-100%	Unpopular
Gymnasiums	↗		25-100%	Popularity has increased - again
Hair & Beauty	=		50-100%	Managed businesses are most popular
Home Services Franchises	=		40-80%	Demand is much lower than ten years ago
IT & Communications	=		40-50%	Hard to secure listings
Ice Cream Parlours	↘	1 years Nett	50-100%	Location dependant
Manufacturing	↗		34-45%	Big demand for profitable businesses
Mechanical Workshops	=	1 years Nett + P&E	100%	Franchised operations in demand
Motels	=		16-20%	Rural demand cooling. Freeholds popular
Newsagencies	↘	2.0 x PEBITDA	50-70%	Hard to sell
Post Office	↘		22-50%	Values have declined
Printing	↘	10%-15% T/O	P & E +	Capital intensive
Professions	=	Cent per \$	Variable	Demand declined
Real Estate Offices	↗	\$ for \$		Very strong demand
Restaurants	↘		50-100%	Cafes are much more popular
RTOs	↘		22-40%	Government changes have reduced demand
Serviced Offices	=		35-40%	Steady values
Service Stations	↗	2 times Nett +/-	28-50%	Independents still popular
Storage Complexes	↗		13-18%	Demand rising
Supermarket (large)	↗	11-14 times weekly sales	20-30%	Very strong demand
Supermarket (small)	↗	10-12 times weekly	30-40%	Migration buyers favour this sector
Surf Retail	↘		50-100%	Big retailers have killed this category
Taxi Plates	↘		18-23%	Uber has killed this category
Transport Businesses	=	P & E + Goodwill	30-40%	Businesses with contracts are sought after
Travel Agencies	↘	\$25k per million	100%	Interest is low
Wholesale	↗		25-30%	Very strong demand

\* ↗ Increasing Demand      = Stable      ↘ Decreasing Demand

# BUSINESS CATEGORY

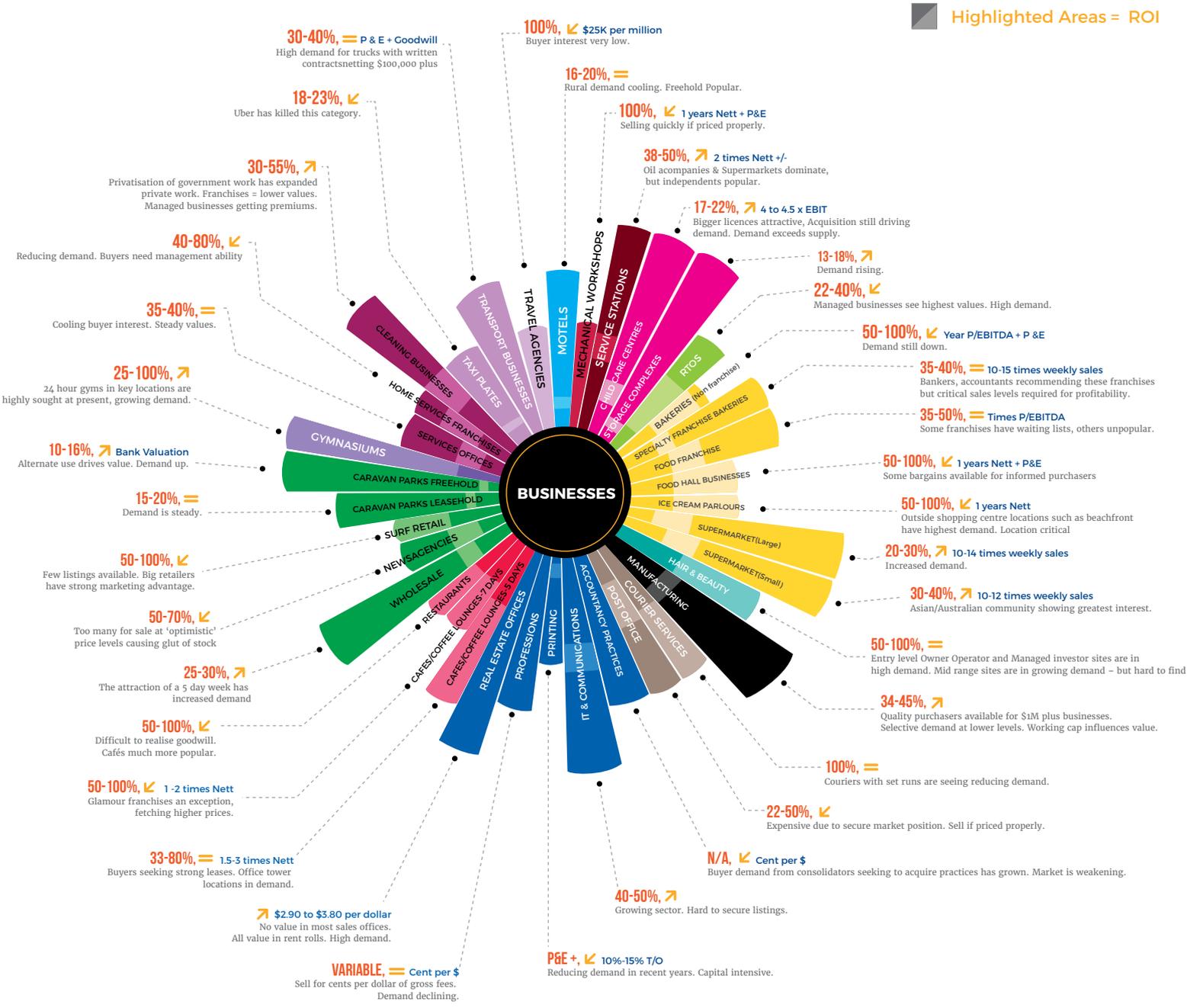
- Accommodation (1)
- Automotive (2)
- Domestic Services (2)
- Education & Learning (1)
- Food & Beverages (7)
- Hair & Beauty (1)
- Manufacturing & Agriculture (1)
- Media & Communication (2)
- Professional Services (5)
- Restaurants (3)
- Retail Shopping (5)
- Sports & Recreation (1)
- Trades (3)
- Travel & Transport (3)

# COLOUR CODE

- Demand
- Rule of Thumb
- Approx ROI
- State of The Market

# DEMAND

- ↗ INCREASING DEMAND
- ↘ DECREASING DEMAND
- ▬ STABLE



WE VALUE YOUR BUSINESS, YOU'LL VALUE OUR EXPERIENCE.

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