RISK PROTECTOR

Your First Line of Defence Against Director Liability, ATO Enforcement and Asset Exposure

BUSINESS & DIRECTOR RISK IDENTIFIER TOOL — NO. 15

Statutory Demand
First Response Plan

What I must do before Day 21 — the actions that determine whether your company survives

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BEFORE YOU BEGIN — READ THIS FIRST

A Statutory Demand served on your company under Section 459E of the Corporations Act 2001 is one of the most time-critical legal documents a director will ever receive. You have 21 days from the date of service — not the date you found it, not the date you read it — to either pay the debt in full, reach an agreement, or apply to the Court to have it set aside.

If you do nothing within 21 days, the company is deemed insolvent by law. The creditor can then apply to wind up your company without further notice and without proving insolvency in any other way. You do not get a warning. The 21-day period does not pause because you were busy, overseas, unwell or unaware.

This plan tells you what to do immediately — in the right order — so that you protect your company, your personal position and your options before the deadline expires.

HOW TO USE THIS PLAN

Work through every step in order. Tick each one when complete and record the date and time. The 21-day clock is already running. Every step you delay reduces your options. Do not skip any step — the sequence matters.

PHASE 1 — Secure & Verify — Establish Exactly What You Are Dealing With

Day 1 — Complete these steps before the end of the day you receive the Demand

STEP	Action Required	Done	Completed
1 CRITICAL	**Secure the Statutory Demand document and do not misplace it** Photograph or scan the entire document immediately. Email the digital copy to yourself so it is timestamped. Retain the envelope with postmark intact — the service date is critical and may be challenged. Write down the date and method by which you received the document.	☐ DONE	Date / Time
2 CRITICAL	**Confirm the date of service — this is Day 1 of your 21-day window** Service is deemed to occur on the date the document was delivered — not when you first read it. If served by post, service is deemed two business days after the date of postage. If hand-delivered, service is the date of delivery. Write the calculated Day 21 deadline date here and do not lose it: Day 21 expires on ___ / ___ / ___.	☐ DONE	Date / Time
3 CRITICAL	**Read the entire document — identify the creditor, the debt claimed and the amount** Who is the creditor serving the demand? What is the debt they claim is owed? What is the exact dollar amount? What is the basis for the debt — invoice, judgment, loan, lease? Is there supporting documentation attached? Write all of this down clearly.	☐ DONE	Date / Time
4 CRITICAL	**Check whether the debt claimed is genuinely owed and whether the amount is correct**	☐ DONE	Date / Time

	Is this a debt your company actually owes? Is the amount correct? Is there an offsetting amount or cross-claim that reduces or eliminates the debt? A genuine dispute about the debt — if it exists — is the basis for a Court application to set aside the Demand. You must identify this immediately.		
5 CRITICAL	**Do NOT contact the creditor or their solicitors without advice** Do not call the creditor to discuss the debt. Do not email their solicitors. Do not make partial payment without understanding whether it resolves the Demand or leaves a residual amount that keeps the clock running. Any informal contact can inadvertently reset your position or create admissions.	☐ DONE	Date / Time

Creditor name: _____________ | Amount claimed: $____________ | Date of service: __ /__ /__ | Day 21 deadline: __ /__ /__ | Debt genuinely owed: YES / NO / DISPUTED

PHASE 2 — Assess Your Position — Know Your Options Before the Clock Runs Down

Days 1 to 7 — Gather information and engage advisers immediately

STEP	Action Required	Done	Completed
6 CRITICAL	**Engage a solicitor immediately — this is a legal document requiring legal advice** A Statutory Demand is a formal legal document under the Corporations Act. You need a solicitor who understands corporate insolvency law to advise you on your options. Contact a solicitor today — not tomorrow, not next week. Ask them specifically: Is there a genuine dispute or offsetting claim? Should we apply to set this aside? What is the deadline to file that application?	☐ DONE	Date / Time
7 CRITICAL	**Contact your accountant for a current financial position — information only at this stage** Ask your accountant these specific questions: What is the company's current cash position? What are the current outstanding liabilities? Is the company solvent — can it pay its debts as and when they fall due? Do NOT ask them to contact the creditor or negotiate on your behalf at this stage. You need facts.	☐ DONE	Date / Time
8 CRITICAL	**Contact Risk Protector before anyone acts on your behalf** Before your solicitor files anything, before your accountant negotiates anything, contact Risk Protector for a free A13 Structural Exposure Assessment. A Statutory Demand does not exist in isolation — your personal director exposure, your asset protection position, and the structural vulnerabilities that led to this point all need to be understood before any response strategy is finalised.	☐ DONE	Date / Time
9 CRITICAL	**Identify whether a genuine dispute or offsetting claim exists** A Statutory Demand can be set aside by the Court if there is a genuine dispute about whether the debt is owed, or if the company has an offsetting claim against the creditor. This is your most powerful option if it exists. Discuss this with your solicitor on Day 1. If the application to set aside must be filed, it must be filed within 21 days of service — there is no extension.	☐ DONE	Date / Time
10 IMPORTANT	**Assess whether paying the debt in full is possible and advisable** Can the company pay the full amount before Day 21? If yes — is paying it the right decision, or does it create a preference payment	☐ DONE	Date / Time

	that could be challenged if the company later goes into liquidation? Seek advice before paying. Paying a creditor in the 6 months before insolvency can result in the payment being clawed back by a liquidator.		

Solicitor engaged: YES / NO | Dispute or offsetting claim exists: YES / NO | A13 assessment requested: YES / NO | Company solvent: YES / NO / UNCERTAIN

PHASE 3 — Protect Your Personal Position — Regardless of What Happens to the Company

Days 7 to 21 — Your personal exposure does not end when the company's does

STEP	Action Required	Done	Completed
11 CRITICAL	**Assess your personal director liability exposure from any unpaid PAYG or superannuation** If the company has unpaid PAYG withholding or superannuation guarantee obligations, a Director Penalty Notice can follow regardless of the outcome of the Statutory Demand. These are personal liabilities — not company liabilities. Identify immediately whether these obligations are current. See Tool No. 11.	☐ DONE	Date / Time
12 CRITICAL	**Review your personal asset protection position before the company position worsens** If the company is wound up following this Statutory Demand, creditors and liquidators will examine director conduct. Is your family home protected? Are your personal assets quarantined from company liabilities? Are there personal guarantees that survive the company? The time to understand this is now — not after winding up commences.	☐ DONE	Date / Time
13 CRITICAL	**Do not resign as director thinking it removes your liability** Resigning as director after a Statutory Demand has been served does not remove liability for obligations that already existed. PAYG and superannuation DPN liability runs from the date the obligation was due — not from your resignation date. Resignation at this point may actually trigger a non-lockdown DPN, accelerating your personal liability.	☐ DONE	Date / Time
14 IMPORTANT	**Document all decisions and communications from the date of service** Keep a written record of every step taken, every conversation had and every decision made since receiving the Statutory Demand. This record demonstrates good faith conduct and is critical evidence in any subsequent director duty examination or ASIC inquiry.	☐ DONE	Date / Time
15 CRITICAL	**Confirm with your solicitor what happens if the 21-day period expires without action** If no payment is made and no Court application is filed within 21 days, the company is deemed insolvent and the creditor may apply to wind it up. Confirm this position with your solicitor before Day 21 arrives. Know exactly what your choices are and the consequences of each one before the deadline expires.	☐ DONE	Date / Time

PAYG / super current: YES / NO | Personal guarantees identified: YES / NO | Asset protection reviewed: YES / NO | Options confirmed with solicitor: YES / NO

WHAT NOT TO DO — ACTIONS THAT WILL MAKE YOUR SITUATION WORSE

✕ Do NOT ignore the Statutory Demand or assume it will go away. Ignoring a Statutory Demand is the single most catastrophic mistake a director can make. After 21 days, the company is deemed insolvent by law. No warning. No extension. No second chance. The clock runs whether you engage with it or not.

✕ Do NOT assume disputing the debt verbally stops the 21-day clock. Calling the creditor and saying you dispute the debt does not stop the clock. Sending an email saying you disagree does not stop the clock. Only a formal Court application filed within 21 days stops the clock. Verbal disputes are legally irrelevant.

✕ Do NOT make a partial payment thinking it resolves the Demand. Paying part of the amount claimed does not satisfy a Statutory Demand. The demand remains valid for any unpaid balance. The clock continues running. Only full payment or a formal Court application deals with the Demand.

✕ Do NOT transfer assets or restructure after the Demand is served. Any transfer of company assets after service of a Statutory Demand can be challenged as a voidable transaction or insolvent trading if the company is subsequently wound up. This includes paying related-party debts, transferring equipment, or distributing trust income.

✕ Do NOT wait until Day 15 to engage a solicitor. Court applications to set aside a Statutory Demand take time to prepare and file. Engaging a solicitor on Day 15 leaves insufficient time to build a proper application, gather supporting evidence and file correctly. Day 1 is the right day to engage a solicitor.

This tool is a self-awareness resource only. It is not legal or financial advice and does not replace professional advice. Seek qualified legal assistance immediately when dealing with a Statutory Demand.

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