RISK PROTECTOR

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

BUSINESS & DIRECTOR RISK IDENTIFIER TOOL — NO. 17

Potential Insolvency
First Response Plan

What to do right now if you believe your company may not be able to pay its debts

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BEFORE YOU BEGIN — READ THIS FIRST

Insolvent trading is one of the most serious personal liabilities a company director faces in Australia. Under Section 588G of the Corporations Act 2001, a director is personally liable for debts incurred by a company at a time when the director knew — or ought reasonably to have known — that the company was insolvent or would become insolvent by incurring that debt.

There is no grace period. There is no protection for directors who simply did not know because they did not look. The law imposes an obligation to know. A director who continues to incur debts — paying suppliers, taking on new orders, making commitments — while the company cannot pay its existing debts as and when they fall due, is trading insolvent.

The moment you suspect insolvency — not confirm it, but suspect it — your obligations as a director change. This plan tells you what to do from that moment to protect yourself, your assets, and wherever possible, the company.

HOW TO USE THIS PLAN

Work through every step in order. Tick each one when complete and record the date and time. This plan applies from the moment you first suspect insolvency — even if you are not certain. Do not wait for certainty. Waiting for certainty is itself a breach of your director duties.

PHASE 1 — Stop & Assess — Establish the True Financial Position Right Now

Day 1 — Complete before incurring any further obligations on behalf of the company

STEP	Action Required	Done	Completed
1 CRITICAL	**Stop incurring new debts until you know the company's true position** Do not place new orders. Do not make new commitments to suppliers. Do not sign new contracts. Do not take on new customers if fulfilling their orders requires the company to incur costs it may not be able to pay. From this moment, every new debt the company incurs is a potential personal liability for you as a director if the company is insolvent.	☐ DONE	Date / Time
2 CRITICAL	**Determine the company's current cash position — not estimates, actual figures** What is the exact balance in every company bank account right now? What invoices are outstanding and genuinely collectible within 30 days? What confirmed income is expected in the next 30 days? Write these figures down. This is your liquidity picture. Do not rely on last month's figures or your accountant's last report.	☐ DONE	Date / Time
3 CRITICAL	**List every debt the company owes that is currently due or will fall due in the next 30 days** Include: ATO obligations (BAS, PAYG, super, income tax), supplier invoices overdue or due within 30 days, lease and hire purchase payments, loan repayments, employee wages and entitlements, credit card balances. Write the total. Compare it to your cash	☐ DONE	Date / Time

	position from Step 2. If the debts exceed the cash available, the company may be insolvent.		
4 CRITICAL	**Apply the cash flow test — can the company pay its debts as and when they fall due?** Insolvency in Australia is primarily a cash flow test, not a balance sheet test. The question is not whether the company has assets that exceed its liabilities on paper. The question is whether the company can pay what it owes when it is due. If the answer is no — or if you are not certain the answer is yes — the company may be insolvent.	☐ DONE	Date / Time
5 CRITICAL	**Do not pay one creditor ahead of others without advice** Paying a creditor — including the ATO, a bank or a related party — in preference to other creditors while the company is insolvent is a voidable preference transaction. If the company later goes into liquidation, that payment can be clawed back by the liquidator. Do not prioritise payments without obtaining advice first.	☐ DONE	Date / Time

Cash available now: $____________ | Debts due 30 days: $____________ | Shortfall: $____________ | Company solvent: YES / NO / UNCERTAIN | New debts halted: YES / NO

PHASE 2 — Protect Your Personal Position — Your Liability Is Separate from the Company's

Days 1 to 3 — Understand your personal exposure before the company position worsens

STEP	Action Required	Done	Completed
6 CRITICAL	**Identify every personal guarantee you have signed that could be called if the company fails** Review every loan agreement, lease, bank facility, trade credit account and supplier agreement you have signed personally. Which of these have personal guarantees attached? If the company cannot pay and those creditors call the guarantees, what is your total personal exposure? Write the figure down. This is what you are personally at risk of losing.	☐ DONE	Date / Time
7 CRITICAL	**Identify whether PAYG withholding and superannuation obligations are current** If the company has unpaid PAYG withholding or superannuation guarantee obligations at the time it becomes insolvent, the ATO can issue a Director Penalty Notice making you personally liable for those amounts. Check immediately whether these are current. If they are not, this is your most urgent personal liability threat. See Tool No. 11.	☐ DONE	Date / Time
8 CRITICAL	**Contact Risk Protector before instructing any adviser to act** Before your accountant recommends a payment arrangement, before your solicitor prepares anything, before you make any decisions about the company's future, contact Risk Protector for a free A13 Structural Exposure Assessment. Your full director exposure — structural vulnerabilities, personal guarantee position, asset protection gaps, DPN risk — needs to be understood before any strategy is chosen.	☐ DONE	Date / Time
9 CRITICAL	**Assess whether your personal assets are protected from company creditors** Is your family home in your personal name or in a protected structure? Are your personal savings at the same bank as the company's accounts? Do you have personal assets that could be reached directly by company creditors through personal guarantees	☐ DONE	Date / Time

	or DPNs? If you are uncertain about any of these, that uncertainty must be resolved now — not after the company collapses.		
10 CRITICAL	**Do not resign as director thinking it protects you from existing liabilities** Resigning as a director after the company is insolvent — or suspected to be insolvent — does not remove personal liability for debts already incurred or obligations already outstanding. Insolvent trading liability is assessed at the time the debt was incurred, not at your resignation date. Resignation may accelerate DPN liability rather than prevent it.	☐ DONE	Date / Time

Personal guarantee exposure: $____________ | PAYG / super current: YES / NO | A13 requested: YES / NO | Personal assets protected: YES / NO / UNCERTAIN

PHASE 3 — Assess Your Options — Know What Is Available Before the Window Closes

Days 3 to 7 — The options available to you narrow quickly as insolvency deepens

STEP	Action Required	Done	Completed
11 CRITICAL	**Engage an insolvency solicitor or registered liquidator for independent advice** You need advice from a professional who specialises in corporate insolvency — not your general business solicitor or your tax accountant. An insolvency specialist will assess whether voluntary administration, a deed of company arrangement, or creditors' voluntary liquidation is appropriate, and what the implications are for you personally under each option.	☐ DONE	Date / Time
12 IMPORTANT	**Understand the three formal options available to an insolvent company** Voluntary Administration: An administrator takes control to assess whether the company can be rescued or whether a better outcome exists than immediate liquidation. Creditors' Voluntary Liquidation: The company is wound up in an orderly manner under director control rather than forced liquidation. Court-Ordered Winding Up: A creditor applies to the court — this removes director control entirely. Each has different personal liability implications for directors.	☐ DONE	Date / Time
13 CRITICAL	**Assess whether the company is genuinely viable with restructuring or additional funding** Is the insolvency temporary — caused by a specific event, a large unpaid invoice or a short-term cash gap — or is it structural? A temporary cash flow crisis may be resolved without formal insolvency proceedings. A structural insolvency — where the business model itself cannot generate sufficient cash flow — requires a different response. Be honest in this assessment.	☐ DONE	Date / Time
14 IMPORTANT	**Contact your accountant for a solvency assessment — information and analysis only** Ask your accountant to prepare a current solvency assessment: balance sheet position, cash flow position, outstanding obligations by creditor and amount, and any assets that could be realised to meet obligations. This is information gathering for your decision-making. Do NOT ask them to contact creditors, make payment proposals or negotiate on your behalf at this stage.	☐ DONE	Date / Time
15 CRITICAL	**Document every decision made and the basis on which it was made from this point forward**	☐ DONE	Date / Time

	Every decision you make as a director from the moment you suspected insolvency will be scrutinised in any subsequent liquidation, ASIC investigation or creditor action. Document: what you knew, when you knew it, what advice you sought, what options you considered and why you made each decision. This record is your primary defence against insolvent trading claims.		

Insolvency specialist engaged: YES / NO | Insolvency type: TEMPORARY CASH FLOW / STRUCTURAL | Preferred option: VA / CVL / RESTRUCTURE | Decision log started: YES / NO

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

✕ Do NOT continue trading and incurring debts while the company is insolvent. Every new debt incurred while the company is insolvent is a potential personal liability under Section 588G. This includes paying wages, placing orders, signing leases and making any commitment the company cannot meet. Stop first. Assess. Then decide.

✕ Do NOT pay the ATO, the bank or a related party in preference to other creditors. Preferential payments made while the company is insolvent can be clawed back by a liquidator. This includes voluntary ATO payments made to avoid a DPN, paying out a director loan, or paying a family member's invoice ahead of arms-length creditors.

✕ Do NOT transfer company assets to yourself, a family member or a related entity. Asset transfers made while the company is insolvent — or in the period leading up to insolvency — can be challenged as uncommercial transactions or voidable preferences. This includes transferring equipment, assigning intellectual property or paying down a director loan account.

✕ Do NOT borrow more money to pay existing debts without insolvency advice. Taking on new debt — from a bank, a related party or a director's personal funds lent to the company — while the company is insolvent compounds the insolvency and may increase personal liability. Get advice before injecting any further funds.

✕ Do NOT delay seeking advice because you are hoping the situation will improve on its own. Every day of delay narrows your options, increases your personal exposure and reduces the likelihood of a successful restructure. Insolvency does not improve with time. The directors who protect themselves best are those who act earliest.

This tool is a self-awareness resource only. It is not legal or financial advice and does not replace professional advice. If you believe your company may be insolvent, seek qualified legal and financial advice immediately.

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