RISK PROTECTOR

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

BUSINESS & DIRECTOR RISK IDENTIFIER TOOL — NO. 19

Director Resignation
First Response Plan

What to do before you sign anything — resignation has consequences most directors never see coming

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BEFORE YOU BEGIN — READ THIS FIRST

Director resignation is the most misunderstood protective action in Australian corporate law. The overwhelming majority of directors who resign under financial pressure do so believing that resignation ends their liability. It does not. In most cases, resigning at the wrong time — or without taking the right steps first — makes the director's personal position significantly worse, not better.

Director liability for PAYG withholding and superannuation guarantee obligations under the Director Penalty Notice regime is assessed at the date the obligation was due — not at the date of resignation. Resigning after those obligations fell due provides no protection from DPN liability whatsoever. In some circumstances, resignation actually triggers the conversion of a Non-Lockdown DPN to an immediately enforceable liability.

This plan tells you what to assess, what to resolve, and what to confirm before you sign a resignation — so that if you do resign, you do so with your eyes fully open and your position properly protected.

HOW TO USE THIS PLAN

Work through every step in order before you sign or lodge any resignation document. Tick each one when complete and record the date and time. Do not sign anything until this plan is complete. The steps apply whether you are considering resignation voluntarily, under pressure from co-directors, or because you believe the company is in financial difficulty.

PHASE 1 — Understand What Resignation Does and Does Not Do

☐ **Before you proceed — know the legal reality of director resignation in Australia**

STEP	Action Required	Done	Completed
1 CRITICAL	**Confirm that resignation does NOT remove liability for obligations that already exist** PAYG withholding obligations and superannuation guarantee obligations that were due before your resignation date remain your personal liability under the Director Penalty Notice regime regardless of when you resign. Resignation after the due date of those obligations provides zero protection. Write down the date of your contemplated resignation and compare it to when those obligations fell due.	☐ DONE	Date / Time
2 CRITICAL	**Identify whether any Non-Lockdown DPN obligations exist that resignation could accelerate** A Non-Lockdown DPN for PAYG withholding or SGC obligations can be avoided if the relevant BAS or SGC is lodged before the DPN is issued, even if unpaid. However, if a director resigns before lodgement is made, that defensive option may be lost for the resigning director. Identify immediately whether any PAYG or SGC obligations are unlodged and unpaid before proceeding.	☐ DONE	Date / Time
3 CRITICAL	**Identify all companies and entities in which you currently hold a directorship** List every company in which you are currently a director — including dormant companies, trustee companies, shelf companies and	☐ DONE	Date / Time

	companies in which you hold a directorship in name only. Director obligations and DPN liability apply to every company in which you hold a directorship. Resigning from one does not affect obligations in others.		
4 CRITICAL	**Confirm whether resignation is your decision or is being requested or pressured by others** Are you being asked to resign by co-directors, shareholders, a bank, a creditor, or another party? If yes — why? What benefit does your resignation provide to them? Requests for director resignation under financial pressure are sometimes structured to shift liability, remove a director's access to company information, or prevent a director from taking protective action. Understand the motivation before agreeing.	☐ DONE	Date / Time
5 CRITICAL	**Do NOT sign any resignation document until this entire plan is complete** A signed resignation lodged with ASIC takes effect on the date specified. Once lodged it cannot easily be undone. Director resignation is a one-way door. Signing under pressure, signing without understanding the consequences, or signing as part of an agreement that has not been fully reviewed by your solicitor can result in consequences that cannot be reversed.	☐ DONE	Date / Time

Contemplated resignation date: __ /__ /__ | PAYG / SGC obligations current: YES / NO | Unlodged BAS periods: ____________ | Resignation pressure from others: YES / NO

PHASE 2 — Resolve or Confirm Outstanding Obligations Before You Resign

Before signing — clear your exposure or confirm exactly what you are carrying forward

STEP	Action Required	Done	Completed
6 CRITICAL	**Confirm the lodgement status of all BAS and SGC obligations for every company you direct** Ask your accountant to confirm in writing: Are all BAS statements lodged and current for every company you direct? Are all superannuation guarantee charge obligations lodged and current? If any are not — this is your most urgent pre-resignation task. Lodging outstanding returns before resignation can preserve important defensive options under the DPN regime. Not lodging cannot be undone after resignation.	☐ DONE	Date / Time
7 CRITICAL	**Obtain a written statement of the company's ATO position from your accountant** Ask your accountant for a written summary of the company's current ATO position: total debt outstanding, periods covered, any payment arrangements in place, any DPN notices issued or pending, and any ATO correspondence in the last 12 months. This statement is information only at this stage — do not ask them to contact the ATO or negotiate on your behalf yet.	☐ DONE	Date / Time
8 CRITICAL	**Contact Risk Protector before instructing any adviser to proceed with resignation** Before your solicitor prepares a resignation letter, before your accountant lodges an ASIC form, before you sign anything, contact Risk Protector for a free A13 Structural Exposure Assessment. Resignation changes your structural position across every entity and obligation simultaneously. Understanding the full picture before you resign is the difference between protecting yourself and unknowingly accelerating your liability.	☐ DONE	Date / Time

9 CRITICAL	**Identify and review all personal guarantees that will survive your resignation** Personal guarantees you have signed in your capacity as director do not automatically terminate when you resign. Review every guarantee you have signed: bank facilities, lease agreements, trade credit accounts, equipment finance, supplier agreements. Confirm with your solicitor which guarantees survive resignation, which may be released on resignation, and which require the lender's consent to be discharged.	☐ DONE	Date / Time
10 IMPORTANT	**Confirm your access to company books, records and financial information before resigning** Once you resign as a director, your right to access company financial records, correspondence, bank statements and other company information is significantly reduced. Before you resign, ensure you have obtained and retained copies of all records relevant to your directorship period — financial statements, board minutes, correspondence, ATO notices, bank statements. You may need these to defend yourself after resignation.	☐ DONE	Date / Time

All BAS lodged: YES / NO | ATO position statement obtained: YES / NO | A13 requested: YES / NO | Guarantees surviving resignation: $____________ | Records retained: YES / NO

PHASE 3 — If You Proceed — Resign Correctly and Protect What Follows

After completing Phases 1 and 2 — the steps that matter after the decision is made

STEP	Action Required	Done	Completed
11 CRITICAL	**Engage a solicitor to review the resignation and any associated agreements before signing** Do not resign using a template letter or an online ASIC form without legal review. If your resignation is part of a broader agreement — a deed of release, a settlement, a shareholder agreement amendment, or any other document — that entire package requires solicitor review. What you sign alongside a resignation can be as consequential as the resignation itself.	☐ DONE	Date / Time
12 IMPORTANT	**Ensure your resignation is properly lodged with ASIC within the required timeframe** Director resignation must be notified to ASIC within 28 days using Form 484 or the equivalent online notification. Failure to notify ASIC does not mean you remain a director indefinitely — but it can create confusion about the effective date of resignation, which matters significantly for DPN liability assessment. Confirm with your solicitor that the ASIC lodgement is correct and timely.	☐ DONE	Date / Time
13 CRITICAL	**Obtain written confirmation from remaining directors of the company's obligations at the date of your resignation** At the date of your resignation, obtain written acknowledgement from the remaining directors or the company secretary of: the total ATO debt outstanding, all creditor obligations, all personal guarantees you have signed that remain outstanding, and the current solvency status of the company. This contemporaneous record protects you from later claims that you resigned knowing the company was insolvent without disclosing that to creditors.	☐ DONE	Date / Time
14 IMPORTANT	**Monitor the company's post-resignation conduct for obligations that may still affect you** After resignation, continue to monitor whether the company lodges outstanding BAS and pays outstanding SGC — because if it does	☐ DONE	Date / Time

	not and the ATO issues DPNs, your liability as a former director for obligations that existed at your resignation date remains live. You cannot monitor what you are not watching. Set a diary reminder to check ASIC records and ATO correspondence for 12 months post-resignation.		
15 CRITICAL	**Seek independent confirmation of your post-resignation liability position in writing** After resignation is complete, obtain a written opinion from your solicitor confirming: what obligations you retain personal liability for as a former director, what obligations have been extinguished, what guarantees survive, and what monitoring you should maintain. This written record is your baseline for managing post-resignation exposure. Do not rely on verbal assurances.	☐ DONE	Date / Time

Solicitor reviewed resignation: YES / NO | ASIC Form 484 lodged: YES / NO | Written confirmation from co-directors: YES / NO | Post-resignation liability confirmed in writing: YES / NO

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

✕ **Do NOT resign believing it removes your liability for existing PAYG and superannuation obligations.** This is the most dangerous misconception in Australian director law. Resignation does not remove DPN liability for obligations that existed at or before your resignation date. The ATO can issue a DPN against a former director for obligations that fell due during their directorship regardless of when they resigned.

✕ **Do NOT resign without first lodging all outstanding BAS and SGC obligations.** Lodging outstanding BAS and SGC returns before resignation preserves your ability to use the lodgement defence under the DPN regime. Resigning before lodgement removes that option for the period of your directorship. This is an irreversible consequence of the sequencing of your resignation.

✕ **Do NOT sign a resignation as part of a package of documents without reading and understanding every document in that package.** Resignations are sometimes presented as part of broader arrangements — deeds of release, settlement agreements, personal guarantee modifications, shareholder buy-outs. Every document in that package has consequences. Signing without reading is not a defence to those consequences.

✕ **Do NOT assume that resigning from a trustee company has no consequences for the trust.** Resigning as a director of a corporate trustee — the company that acts as trustee of a family trust — can trigger trust deed provisions requiring a new trustee to be appointed, can affect the trust's tax position, and can impact the trust's ability to distribute income. Check the trust deed before resigning from a trustee company.

✕ **Do NOT resign and then continue to act as if you are still a director.** Acting in the capacity of a director after resignation — signing documents, making financial decisions, instructing staff on behalf of the company — can result in you being treated as a shadow director, with all the liabilities that accompany that status. Once you resign, cease all director-level conduct immediately.

YOUR MOST IMPORTANT NEXT STEP

Director resignation changes your structural position across every entity, every obligation and every personal guarantee simultaneously. The consequences are permanent and in most cases irreversible. Before you sign anything, you need to understand your complete exposure — not just in the company you are leaving, but across your entire director and structural footprint. That understanding starts with the A13.

The Risk Protector A13 Structural Exposure Assessment

Free. Confidential. The only forensic structural assessment of its kind available to Australian directors.

Visit **www.riskprotector.com.au** and click the **GET MY FREE A13 ASSESSMENT** button.

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