RISK PROTECTOR

Find Your Exposure. Protect Your Personal Assets. Protect Your Business.

TOOL No. 5 - BUSINESS AND DIRECTOR RISK IDENTIFIER

Your Trust Structure Reality Check

Risk Identifier

WHAT THIS TOOL DOES AND WHY IT MATTERS

One purpose: finding out whether your trust is actually protecting you or just appearing to. No legal advice. No reassurance. Just the questions most directors have never faced and a clear picture of where the vulnerabilities sit.

Most directors assume their trust is protecting them. Most have never had it tested. Silent compliance failures and structural gaps can strip that protection away entirely before anyone realises it's gone.

Answer each question honestly. YES, NO or UNSURE.

Each question describes a real exposure. YES means it applies to you. UNSURE means you can't rule it out. Both count.

At the end, YES and UNSURE answers combine into a total risk score.

Pay particular attention to Sections 2 and 3 on trustee control and distribution compliance. A single YES or UNSURE answer there is critical and demands immediate action.

SECTION 1: Trust Deed Currency and Compliance

Your deed was drafted at a point in time. These questions test whether it still holds up.

#	Question	YES	NO	UNSURE
1	Has your trust deed been formally reviewed by a specialist in the last three years for current ATO compliance?	☐	☐	☐
2	Has your trust deed been updated to reflect legislative changes since it was first created?	☐	☐	☐
3	Does your trust deed specifically address the ATO's Section 100A provisions on trust distributions to adult beneficiaries?	☐	☐	☐
4	Could actions taken in your business over recent years have inadvertently varied or breached your trust deed?	☐	☐	☐
5	Do you hold a current signed copy of your trust deed and all amendments, ready to produce if required?	☐	☐	☐

SECTION 2: Appointor and Trustee Control

Control of your trust sits in one role. These questions test whether that role is protected.

#	Question	YES	NO	UNSURE
6	Do you know who the Appointor of your trust is and what power that role gives them?	☐	☐	☐
7	Is a Successor Appointor named in your trust deed to take over if the current Appointor can't act?	☐	☐	☐
8	Is your trust administered by a Corporate Trustee rather than an individual trustee?	☐	☐	☐
9	If your trust uses a Corporate Trustee, does that company have more than one director?	☐	☐	☐
10	Is the Appointor role held by someone other than the primary beneficiary?	☐	☐	☐

SECTION 3: Distribution Pattern and ATO Compliance

Section 100A doesn't announce itself. These questions test whether your distribution history has already created the risk.

#	Question	YES	NO	UNSURE
11	Are your trust distributions genuinely varied across beneficiaries each year rather than going to the same people every time?	☐	☐	☐
12	Are trust distribution resolutions passed before 30 June each year and properly documented?	☐	☐	☐
13	Are there Unpaid Present Entitlements in your trust that have never been physically paid to beneficiaries?	☐	☐	☐
14	If UPEs exist, have they been formally documented through compliant loan agreements or sub-trust arrangements?	☐	☐	☐
15	Have distributions to adult children or low-income beneficiaries been reviewed for Section 100A exposure?	☐	☐	☐

SECTION 4: Asset Protection Function

A trust that appears to protect and a trust that actually protects are not the same thing. These questions find out which one you have.

#	Question	YES	NO	UNSURE
16	Are the assets you intend to protect actually held inside the trust rather than in personal names or the trading company?	☐	☐	☐
17	Could a creditor attack on your trading company reach assets held inside your trust?	☐	☐	☐
18	Has your trust's asset holding structure been reviewed by a specialist to confirm it would withstand a fraudulent conveyancing challenge?	☐	☐	☐
19	Are trust assets clearly separated from your trading company with no commingling of funds, liabilities or operations?	☐	☐	☐

SECTION 5: Trust Administration and Ongoing Compliance

The legal integrity of your trust depends on what happens every year without fail. These questions test whether it has.

#	Question	YES	NO	UNSURE
20	Does your trust lodge its own annual tax return with no outstanding years?	☐	☐	☐
21	Are minutes, resolutions and distribution records maintained and accessible in the event of an ATO review or legal challenge?	☐	☐	☐

YOUR SCORE SUMMARY

Add your YES and UNSURE answers in the left block. Add your NO answers in the right block. Both blocks together should equal 21.

YES and UNSURE Answers ______ out of 21	**NO Answers ______ out of 21**

IMPORTANT QUESTIONS TO REVIEW SEPARATELY

Questions 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18 and 21 carry the highest individual risk. A YES or UNSURE on any of them requires immediate action regardless of your total score.

WHAT YOUR SCORE MEANS

Score Range	What It Means
0 out of 21	No trust vulnerabilities identified across this tool. Review it every 12 months and immediately if your trust administration, distribution pattern or beneficiary arrangements change.
1 to 3 out of 21	You've identified structural or compliance vulnerabilities in your trust that a determined creditor or the ATO could exploit. A trust can appear to be working correctly and still be legally challenged and stripped of its protection by a single point of failure. Get the A13 completed before that point is reached.
4 to 10 out of 21	Multiple serious vulnerabilities exist in your trust structure at the same time. Each one creates a separate pathway through which your trust's protection can be undone. The ATO's Section 100A powers, fraudulent conveyancing provisions and trustee liability rules are all actively used against trusts that haven't been properly maintained. Get the A13 completed now.
11 to 21 out of 21	Your trust structure carries critical vulnerabilities across multiple dimensions. The protection you believe your trust is providing may not exist in the way you think. Distributions can be re-characterised, asset transfers can be reversed and trustee liability can attach personally. The window to act before this becomes irreversible is open right now. Don't leave it.

WHAT TO DO NEXT

The exposures this tool has identified are real. These gaps sit on directors' files across Australia every day. They're more common than most advisers realise. Resolving any one of them requires a clear picture of how your entire position fits together.

The good news is that all of it can be addressed.

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