

Small Business Restructuring

Levi

Benefits of restructure and viability.

Helping Your Clients Regain Control - The Benefits of Small Business Restructuring (SBR)

As a trusted adviser, you're often the first to recognise when a client is in financial distress. Early intervention can make a real difference - helping them protect value, preserve relationships, and restore business viability.

That's where we can assist. We'll chat with you and your client to review the company's balance sheet, trading performance, and available options - at no cost. This preliminary review is practical, commercial and focused on your client's best interests.

Whether the right course is to close the business, undertake a Small Business Restructure (SBR) or explore other pathways, we'll provide clear, confidential and pragmatic guidance. Throughout this process, you'll be kept informed so that together we can support the client's best possible outcomes.

For a step-by-step overview, see the SBR process flowchart on page 6, and explore five practical case studies on pages 11-15 showing how SBR has helped real businesses achieve turnaround and viability.

Booklet revised November 2025

Consultation at no cost

Company directors and advisers are welcome to call David Levi for an initial consultation that will not incur a fee on **0418 602 466**. Training for advisers in relation to these and other topics can also be arranged via videoconference. Levi Consulting services all Australian States and Territories.

1.0 Background facts and figures

ATO is owed \$50 billion from small business arising from unpaid SGC, unpaid income tax and also, unpaid BAS debt.

ATO Firmer Action is driving the rise in insolvencies especially

- >Construction
- >Accommodation and food services
- >Other services including professional, scientific, technical, administrative and support services
- >Retail
- >Manufacturing

2.0 ATO Recovery Tools

Prevention
Help and assist
Firmer action
Stronger action

2.1 Prevention

SMS reminders | How to pay information readily available | ATO online payment methods | Pre-payment of obligations

2.2 Help and assist

Outbound phone contact is attempted | Warning letters are issued | Clients should not wait for ATO to contact taxpayer and are encouraged to proactively engage with the ATO to avoid recovery action

2.3 Firmer action

Garnishee notice | DPN | Disclosure of tax debts to credit reporting bureaus | Direction to pay SGC

2.4 Stronger action

Overseas departure prohibition order | claims or summons | bankruptcy notice | creditors petition | statutory demand | wind-up action

2.5 Understanding DPN regime - Lockdown v non-lockdown DPN

Standard director penalty notice (non-lockdown DPN)

Lockdown director penalty notice

Standard director penalty notice (non-lockdown DPN)

A standard director penalty liability will automatically be remitted (cancelled or extinguished) on appointment of a restructuring practitioner (provided that the appointment of the practitioner is before 21-day expiry of date of DPN.)

A director penalty that has been remitted on appointment of a restructuring practitioner cannot be reinstated if the restructuring plan is not accepted or terminated.

Lockdown director penalty notice

A director penalty which has become locked down will continue to operate regardless of the appointment of a restructuring practitioner.

The director is personally liable for the director penalty which is separate to that of the company.

The director penalty exists parallel to the liability of the company, meaning, that if an amount is paid toward either the company liability or the director liability, the other liability is reduced to the same extent.

If a director is liable to a lockdown penalty and the ATO subsequently receives a payment of less than 100 cents in the dollar for the company's underlying liability under the restructuring plan, the director's parallel liability will remain undischarged despite the company's underlying liability having been extinguished under the plan.

2.6 ATO Garnishee regime

A garnishee notice issued by ATO prior to the SBR appointment will remain effective.

The notice will continue to operate on the relevant amounts.

The third party is under a legal obligation to comply with the garnishee notice and must do so despite the appointment of the restructuring practitioner.

2.7 Petition to Court for court winding up for failure to pay tax debt

ATO can commence winding-up proceedings against a company for failure to pay tax debt.

2.8 Notification to credit bureau

ATO can issue notification to credit agencies where a company owes more than \$100,000 to ATO. Suppliers and customers will become aware from the credit bureau. ATO will provide notice of intention to advise credit bureau.

3.0 Restructuring options in Australia for companies

Informal workout
Members' voluntary liquidation
Creditors' voluntary liquidation
Voluntary deregistration
Safe harbour
Deed of Company Arrangement (DOCA) following
Voluntary administration
Creditors' scheme of arrangement
Small business restructure (SBR)

4.0 Small Business Restructuring

From 1 January 2021, the Federal Government introduced a simplified debt restructuring process for eligible small businesses under Corporations Act 2001 Part 5.3B which allows companies to:

- > retain control of the business, property, and affairs of the company while it develops a plan to restructure the company's affairs with the assistance of a restructuring practitioner, and enter into a restructuring plan with creditors
- > enter into a restructuring plan with creditors.

5.0 Features of SBR

Eligibility

Control retained by directors

Role of Restructuring Practitioner

Restructuring Plan

Creditor voting

Protection from legal action for company

Summary

5.1 Eligibility

>The Company must have total liabilities of less than \$1m

>All tax lodgements must be up-to-date.

>Employee entitlements (superannuation and wages) must be paid.

5.2 Control retained by directors

Unlike other insolvency procedures, the directors remain in control of the company throughout the SBR process.

5.3 Role of Restructuring Practitioner

A registered liquidator is appointed as the Restructuring Practitioner to assist the directors in developing a Restructuring Plan and oversee the SBR process.

5.4 Restructuring Plan

A plan is proposed to creditors outlining how the company will address its debts, typically offering a lump sum payment, or payment over time.

5.5 Creditor voting

>Creditors vote on the proposed plan without requiring a meeting.

>A plan is accepted if > 50% by value that vote, vote to accept the plan.

>Related party creditors are not entitled to vote on a restructuring plan

5.6 Protection from legal action for company

While the plan is being developed and voted on, the company is protected from certain legal actions by creditors.

5.7 Features - Summary

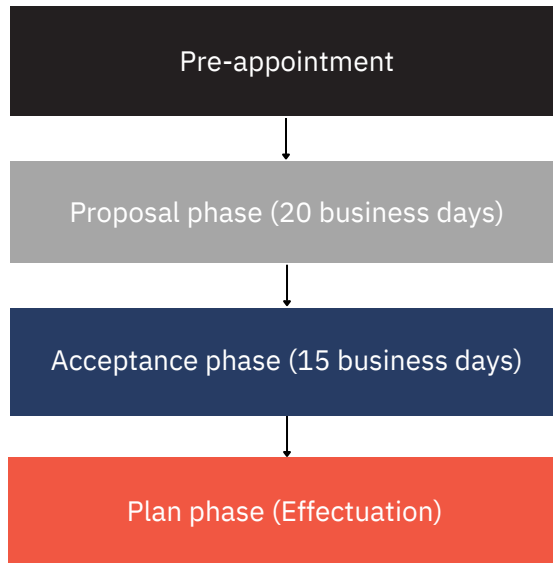
SBR is cost-effective.

SBR preserves value.

SBR promotes recovery to address financial distress and return to viability.

SBR is particularly suited to sectors like construction, hospitality, retail and services.

6.o Overview of SBR process



6.1 Pre-appointment

- >Assessment of viability of business and eligibility for restructuring process.
- >Incorporated under Corporations Act 2001.
- >Total liabilities do not exceed \$1 million (excluding employee entitlements).
- >Is insolvent or likely to become insolvent.
- >No director (current or in previous 12-months) or company has undergone restructuring or simplified liquidation last 7-years.

>The company must ensure employee entitlements are paid and all tax reporting obligations are substantially complied with.

>A company is prevented from obtaining the benefit of SBR if they have unpaid employee entitlements (including a SGC debt to the extent to which it would have priority under Corporations Act 2001) and have not substantially complied with each tax lodgement.

>The substantial compliance test applies to each tax return and lodgement. The company would need to demonstrate steps had been taken to meet lodgement requirements but factors outside of their control prevented them from doing so.

6.2 Proposal Phase (20-business days)

- >Begins when directors appoint a restructuring practitioner (RP).
- >Proposal Phase can be extended up to 10-business days by RP or longer by Court.
- >Directors develop restructuring plan with assistance of RP.
- >All admissible debts and claims rank equally under a restructuring plan.
- >Company must have paid all employee entitlements that are payable and brought all tax lodgements up to date before the plan is proposed to creditors.

6.3 Acceptance Phase (15-business days)

- >Commences when creditors given initial notice of proposal, or 5-business days after notice of variation (or such other period as allowed by the Court).
- >Verification of creditor claims or debts, if disputed.
- >Creditors vote on plan (related party creditors are not entitled to vote).
- >Plan accepted if majority in value of creditors that are voting, vote in favour.
- >No legislative mechanism to amend or vary a plan during acceptance period.

6.4 Plan Phase (up to 3 years)

- >If approved by creditors, plan is taken to have been made on day after end of the Acceptance Phase.
- >Plan binding on admissible creditors.
- >RP for company becomes RP for plan unless company resolves otherwise.
- >Plan applied (maximum of 3 years beginning on the day that the plan is made).
- >Plan ends when effectuated or terminated.
- >A plan may only be varied by the Court.

7.0 Information required by ATO to consider SBR plan

Overview - information required by ATO

Director loan accounts

Loan account debtor

Loan account creditor

7.1 Overview - information required by ATO

>Last 3 years historical profit and loss accounts and balance sheets.

>Details of assets as at the date of appointment.

>The estimated dividend to creditors in a hypothetical liquidation.

>Where there has been a material loan to or from directors, shareholders or related entities, ATO will request copies of the relevant transaction listing reports.

>A summary of the prospective financial information and assumptions relied upon for the restructuring plan.

7.2 Director loan accounts

>Issues in relation to director's loan accounts are considered carefully by ATO where the impact on creditors is material.

>For example, where creditors could have received a significantly higher return but for the director drawing funds from the company, this would be a relevant factor in considering a restructuring plan.

7.3 Loan account debtor

Has there been a material increase in the amount of a loan to a director during the period the ATO debt was increasing?

Instead of paying down the tax debt, has company money been used to fund the director's lifestyle expenses? If so, the plan contribution is to be higher.

7.4 Loan account creditor

Has there been a material decrease in the amount of the loan owed to a director at a time the ATO debt was increasing?

Instead of paying down the tax debt, has the money been used to repay the directors loan?

8.0 Creditors' claims

- >The SBR process does not provide for differential treatment of creditors.
- >Standard terms for a restructuring plan include among other things that all admissible debts and claims rank equally and are paid proportionally (if unable to be paid in full).
- >A restructuring plan is void to the extent that it is inconsistent with any of the standard terms.
- >An admissible debt or claim is essentially a debt provable if the company had been wound up (excluding employee entitlements)
- >All admissible debts or claims (including those of a related entity) must be included in the restructuring plan.

9.0 Plan contributions

The main sources of plan contributions are typically from the directors and or director-related entities or parties.

A lump sum payment is preferred. However, payment from future trading profits of the company is possible.

Plan contributions - typical combinations

- >Cash contribution from directors or related party.
- >Future trading profits.
- >Cash contribution plus future trading profits.
- >Company assets and cash contribution.
- >Company assets plus future trading profits.

10.0 Fees payable to RP | estimated dividend

>A fixed fee must be agreed by directors prior to the appointment of the SBRP - before the start of the Proposal Phase (first phase).

>The fixed-fee is typically \$10,000-\$20,000 with an average fee of \$15,000 plus GST. In some matters the fixed fee will be higher.

>In addition the SBR Practitioner will charge a percentage of the dividend distribution if plan accepted by creditors, typically 10%-15% plus GST of the dividend distribution.

If the distribution is \$100,000 then at 10%+GST the SBRP will be paid \$11,000 out of the \$100,000.

Statistics indicate that the dividend distribution is 10-20c in the dollar in about half of SBRs nationally; 20-30c in the dollar in about one-third of SBRs nationally.

This provides guide on typical dividend distributions.

11.0 Success rate SBRs

>Over 90% of restructuring plans presented to creditors are being approved.

>Some, but relatively few SBRs are being terminated during the Proposal Phase (first phase) if the company was not eligible, or the directors ended the restructuring appointment.

>The process is successful in helping small business restructure their debts and reach agreement with their debts and reach agreement with their creditors.

A: Case study 1 Consultancy services

Assets	
Cash and debtors	\$4,500
Directors loan	\$483,000
Liabilities	
Preferential	
SGC	\$0
Employees	\$0
Unsecured	
ATO	\$142,000
Other	\$57,000
Proposed Plan	
Cash contribution	\$23,900
Proposed dividend	12.01 cents in the \$
Issues	
But for the directors loan, the company would have been able to pay creditors in full. The loan balance had been increasing as the tax debt was continuing to grow. The loan was not adequately addressed in the Plan.	
Outcome	
Failed. ATO voted against the Plan.	

B: Case study 2 Teaching college

Background

>Business acquired for non-cash consideration from a related entity shortly before it was liquidated (related entity has significant tax debt). 8 consecutive BAS lodged late (average 108 days late).

>Less than \$18,000 paid in tax over 3.2 year period.

Assets

Cash and debtors	\$15,000
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Liabilities

Preferential

SGC	\$0
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Employees	\$0
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Unsecured

ATO	\$437,000
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Related creditors	\$34,000
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Other	\$10,500
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Proposed Plan

Cash contribution	\$88,000 over 24 months
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Proposed dividend	16.47 cents in the \$
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Issues

Evidence of a potential illegal phoenix operation involving the acquisition of the business of the predecessor company.

Poor tax compliance history.

Outcome

Failed. ATO voted against the plan on basis of matters of public interest.

C: Case study 3 Accommodation and food services

Background

- >Business has been loss making since commencement in 2018.
- >Failed to lodge any BAS on time and did not make any payments in respect to BAS liabilities.
- >Likely insolvent since June 2019.
- >Business ceased trading on appointment of RP.

Assets

Cash and inventory	\$5,800
Related party loan	\$192,000

Liabilities

Preferential

SGC	\$0
Employees	\$0

Unsecured

ATO	\$458,000
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Proposed Plan

Cash contribution	\$100,000 over 3 months
Proposed dividend	20.5 cents in the \$

Issues

Poor tax compliance history.

Outcome

Failed. ATO voted against the plan on basis of matters of public interest.

D: Case study 4 Construction

Background

- >Historically profitable business adversely affected by the COVID pandemic and unfavourable weather conditions.
- >Increasing related-party loan receivable and growing tax debt (although regular payments were being made during FY19-FY22).
- >During FY23, a significant amount of the loan balance was repaid and funds used to pay down part of the tax debt.
- >BAS lodgements generally on time.

Assets

Cash and inventory	\$85,000
Related party loan	\$98,000

Liabilities

Preferential

SGC	\$0
Employees	\$0

Unsecured

ATO	\$916,000
Other	\$35,000

Proposed Plan

Cash contribution	\$200,000 within 5 business days of proposal approval.
Proposed dividend	20.4 cents in the \$ Compares to 2.58 cents in the \$ in liquidation.

Issues

Some concerns about compliance history, but offset by approach to dealing with related party loan and low execution risk of plan payment.

Outcome

Approved. ATO voted in favour of the plan.

E: Case study 5 Labour hire

Background

>Company had been making regular payments in respect of tax debt, but began to fall into arrears following the commencement of COVID pandemic, as clients incurred losses on fixed-price contracts and were unable to pay in full for services.

>BAS lodgements generally on time.

>Company has ceased providing services to loss making clients and is now only providing labour to historically profitable clients.

>Ongoing contracts are based on cost plus 20%.

Assets

Related party debtors	\$383,000
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Liabilities

Preferential

SGC	\$0
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Employees	\$0
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Unsecured

ATO	\$908,000
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Other	\$78,000
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Proposed Plan

Cash contribution	\$249,000 in 24-monthly instalments (supported by cash flow forecast).
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Proposed dividend	23 cents in the \$ (nil recovery in hypothetical liquidation)
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Issues

Some concerns about compliance history and intercompany debt, but offset by positive changes to business model and assurances company will deal with ongoing obligations on time.

Outcome

Approved. ATO voted in favour of the plan, subject to quarterly reporting that company is operating a cost plus model and is meeting its monthly instalments under the restructuring plan.

12.0 Support from Levi Consulting

Small businesses across various industries have utilised small business restructuring, particularly in construction, accommodation and food services (cafes, restaurants, and takeaways), retail, manufacturing, transport, education, and other services.

Our process begins with a free, no-obligation pre-appointment assessment (30-60 minutes) to explore the feasibility of an informal workout. If an informal approach isn't viable, we assess the business' eligibility for small business restructuring or another formal process.

	Option	When is it suitable?
1	Informal Workout	Whenever informal solutions with creditors are feasible.
2	Members' Voluntary Liquidation, alternatively, corporate simplification	Solvent deregistration of a company that had trading activity.
3	Voluntary Deregistration	Solvent deregistration of a company with no or limited trading activity (e.g. a holding company or dormant company).
4	Voluntary Administration	Key mechanism for businesses in financial distress to explore restructuring or sale options while under the protection of a moratorium.
5	Safe Harbour	Safe harbour provides a defence for directors personally against a claim by a liquidator for insolvent trading.
6	Deed of Company Arrangement (DOCA) following Voluntary Administration	A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts.
7	Creditors' Scheme of Arrangement	Another flexible formal insolvency restructuring tool - more cumbersome to implement than a DOCA, but with the advantage of being able to bind secured creditors. Ideally suited to financial restructuring of large/complex debt stacks.
8	Small Business Restructuring Plan	For small and micro businesses (less than \$1,000,000 in total debts) - a quick and straightforward alternative to a DOCA.
9	Creditors' Voluntary Liquidation	Best suited to a terminal liquidation of a failed/insolvent company - where an attempt at restructuring through administration and DOCA would be unlikely to work.
10	Court Liquidation	Effective in instances of shareholder/management failure (e.g. in a failed or dysfunctional joint venture). Also commonly used by creditors to attempt to force an involuntary liquidation on a debtor company that has failed to pay its debts.
11	Receivership	A receiver is appointed by the court or alternatively by a secured creditor to take control of all or part of the assets and business of a company or partnership. Court-appointed receivers are common for partnership disputes.
12	Section 66G	When co-owners are in a dispute over jointly owned property the court can appoint trustees using s 66G of the <i>Conveyancing Act 1919</i> (NSW) to sell the property and distribute the proceeds.

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