Voluntary Administration (VA) vs Small Business Restructuring (SBR)

This brochure contrasts Voluntary Administration (**VA**), where control shifts to an independent administrator, with Small Business Restructuring (**SBR**), where directors retain control while restructuring the business. VA is suited for larger, more complex restructures, while SBR offers a cost-effective, streamlined option for small businesses with liabilities under $1 million. Both processes aim to provide the best outcome for creditors, but the key difference lies in the level of control maintained by directors and the scope of the restructuring plan.

Overview

VA is a formal insolvency process in Australia, introduced in 1993, to assist financially distressed companies. It provides a mechanism for companies to restructure and potentially survive or, if necessary, proceed to an orderly liquidation. In VA, an independent administrator is appointed, taking control from the directors, with the goal of achieving the best possible outcome for creditors through restructuring or asset liquidation.

In contrast, the SBR process, introduced in 2021, is a streamlined, debtor-in-possession restructuring option for businesses with liabilities of less than $1 million. Under SBR, directors retain control of their business while working with a Small Business Restructuring Practitioner (**SBRP**) to propose a restructuring plan for creditors. The key distinction between VA and SBR is that in VA, the administrator takes control of the company, whereas in SBR, directors continue managing day-to-day operations throughout the restructuring process.

Initiation

VA can be initiated by:

1. **Directors** who believe the company is insolvent or likely to become insolvent.
2. **Secured creditors** holding a charge over the company's assets, if the company is in default.
3. **Liquidators** or **provisional liquidators** who believe that VA could provide a better outcome for creditors.

SBR can only be initiated by the directors of eligible companies. These companies must meet specific criteria, including having liabilities of less than $1 million.

Supervision and Control

In VA, the administrator assumes control of the company, making all decisions about its operations, assets, and financial affairs. The directors lose management authority during the process. In a SBR, the directors retain full operational control of the business, while the SBRP oversees the restructuring process and ensures that the restructuring plan is in the best interests of creditors.

Stages and Timing

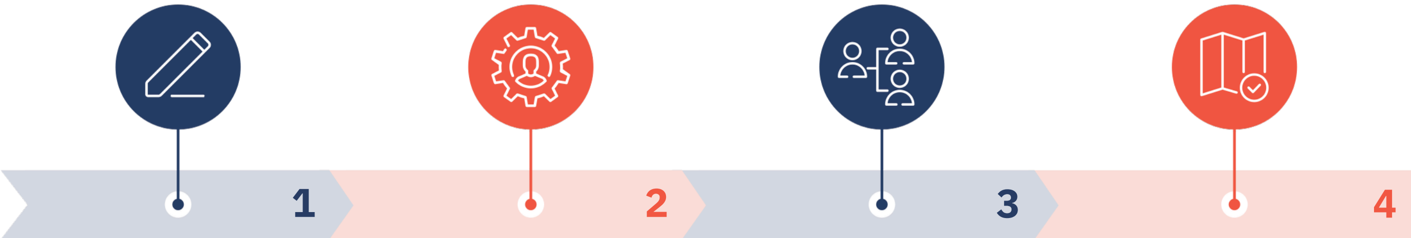
Voluntary Administration

1. *Appointment:* The administrator is appointed, and they immediately take control of the company.
2. *First Creditors' Meeting:* Held within eight business days of the appointment, creditors decide whether to form a creditors' committee to consult with the administrator.
3. *Investigation:* The administrator investigates the company's financial affairs and viability for restructuring.
4. *Second Creditors' Meeting:* Held within 25 business days, where creditors vote on the company's future:
    - Returning the company to its directors.
    - Approving a Deed of Company Arrangement (**DOCA**).
    - Liquidating the company

Small Business Restructuring

1. *Appointment of SBRP:* Directors appoint an SBRP to guide the process and ensure fairness for creditors.
2. *Restructuring Plan Proposal:* Directors work with the SBRP to propose a restructuring plan within 20 business days.
3. *Creditors' Vote:* Creditors vote on whether to approve the restructuring plan.
4. *Plan Implementation:* Once approved, the plan is implemented, allowing the company to continue operating under its new terms.

The restructuring process



A company appoints an SBR practitioner in writing after consent from the practitioner

Directors remain in control, and the company continues to trade

The appointed SBR practitioner does not manage the day-to-day affairs, but provides advice on the restructuring, assists in the development of a restructuring plan, and reports to creditors and directors

Affected creditors review the plan and make a declaration as to whether it should be accepted

Moratorium

Upon the appointment of a voluntary administrator, a moratorium automatically takes effect. This legal protection halts creditors' claims or enforcement actions against the company, allowing the administrator time to evaluate the company's future without creditor pressure.

In SBR, a similar moratorium applies. Creditors cannot pursue claims while the company works with the SBRP to finalise a restructuring plan.

Ipso Facto Stay

Both VA and SBR benefit from an ipso facto stay, which prevents contract counterparties from terminating agreements solely because the company has entered administration or restructuring. This ensures that critical business relationships, including supply agreements, remain intact during the restructuring process.

Operation of the Business

In a VA, the administrator may choose to continue operating the business if it is likely to preserve or increase value for creditors. The administrator has full authority over all trading activities and decision-making.

In a SBR, directors continue to manage the business as usual, with the SBRP providing oversight. This allows the business to maintain stability while a restructuring plan is developed.

New Money Funding

In VA, the administrator may seek additional funding, or “new money,” to keep the business running during the administration process. This funding typically takes priority over other unsecured claims, as it directly supports the company’s continued operation.

In SBR, new funding can also be sought, but it is generally more limited due to the smaller scale of eligible businesses. The SBRP may assist in securing this funding as part of the restructuring process.

Business and Asset Sales

In VA, the administrator has the authority to sell some or all of the company’s assets to fund the administration or maximise returns to creditors.

In SBR, asset sales must align with the restructuring plan proposed by the directors and approved by creditors. The SBRP ensures that any asset sales comply with the terms of the plan and benefit creditors.

Implementation of a Reorganisation or Restructuring Plan

In a VA, if creditors approve a DOCA at the second creditors’ meeting, the company continues to operate under the terms of the DOCA, restructuring its debts and working towards recovery.

In a SBR, once creditors approve the restructuring plan, the company implements it under the oversight of the SBRP. The plan binds all creditors, ensuring the company can address its financial challenges while continuing to operate.

Set off

In both VA and SBR, creditors may exercise their right to set-off, which allows them to reduce their claim against the company by the amount the company owes them, potentially decreasing the overall claims against the company.

Voting

In Voluntary Administration, voting occurs at two key meetings:

1. *First Creditors' Meeting:* This meeting takes place within eight business days of the administrator's appointment. Creditors vote on whether to form a committee of creditors and may also vote to replace the current administrator.
2. *Second Creditors' Meeting:* Held within 25 business days of the appointment, creditors decide the company's future by voting on one of three options:
    - Return control of the company to its directors.
    - Approve a DOCA.
    - Place the company into liquidation.

Voting is conducted by value of debt and number of creditors. For a resolution to pass, it must have a majority in both categories. If there is a majority in number but not value, or vice versa, the administrator has a casting vote to determine the outcome.

In a SBR, creditors vote on the proposed restructuring plan. Approval requires more than 50% of creditors voting by value, excluding related-party creditors. Once approved, the plan binds all creditors.

Effect on Stakeholders

- *Creditors:* In VA, creditors can influence the company's future by voting at the second creditors' meeting. In SBR, creditors vote on the restructuring plan proposed by directors. Both processes aim to provide creditors with the best possible return.
- *Employees:* Employee entitlements, such as unpaid wages and superannuation, are given priority in both VA and SBR.
- *Directors:* In VA, directors lose control of the company to the administrator, though they may regain control if creditors return the company to them. In SBR, directors retain control throughout the process, ensuring continuity in day-to-day operations.
- *Shareholders:* In VA, shareholders' interests may be diluted, particularly if the company enters liquidation. In SBR, shareholders retain their interests, though they may face some dilution depending on the restructuring plan's terms.

End of procedure

The VA process can conclude in one of three ways:

1. DOCA: Creditors approve a DOCA, allowing the company to restructure and continue operating.
2. Liquidation: The company is wound up, and its assets are sold to repay creditors.
3. Return to Directors: Creditors may decide to return the company to the control of its directors if they believe this is in their best interest.

In SBR, the process ends with either:

1. Successful Restructure: The company implements the approved restructuring plan and continues trading under the new terms.
2. Failure to Restructure: If creditors do not approve the restructuring plan, the company may enter voluntary administration or liquidation.

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's eligibility for small business restructuring or another formal process.

Below are the available options for informal workouts (reconstruction) and formal procedures in Australia. Levi can assist clients with situation assessment, strategic planning, and effective implementation of the most appropriate restructuring strategy.

	Option	Solvent or Insolvent?	Directors or Creditors	When is it suitable?
1	Informal Workout	Solvent or insolvent	Directors or Creditors	Whenever informal solutions with creditors are feasible.
2	Members' Voluntary Liquidation	Solvent	Shareholders	Solvent dissolution of a company that had trading activity.
3	Voluntary Deregistration	Solvent	Directors or Shareholders	Solvent dissolution of a company with no or limited trading activity (e.g. a holding company or dormant company).
4	Safe Harbour	Insolvent or near-insolvent	Directors	A support tool for enabling directors of a distressed company to continue to trade while working on an informal workout or planning for a formal solvency.
5	Deed of Company Arrangement (DOCA) following Voluntary Administration	Insolvent	Directors	A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts.
6	Creditors' Scheme of Arrangement	Insolvent	Creditors	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.
7	Small Business Restructuring Plan	Insolvent	Directors	For small and micro businesses (less than $1,000,000 in total debts) - a quick and straightforward alternative to a DOCA.
8	Creditors' Voluntary Liquidation	Insolvent	Directors	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.
9	Court Liquidation	Solvent or Insolvent	Directors or shareholders	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.

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.