

2024 Year in Review

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.



Levi Consulting Introduction

What we do

- Restructuring
- Insolvency
- Advisory

How we do it

- Use our three-step approach to ask open questions.
- Determine the client's commercial challenges.
- Obtain an understanding of the client's business model.
- Agree on strategy to navigate and resolve commercial challenges, and where possible preserve and realise value, and enhance overall performance and business continuity.

Outcomes

- We are trusted by our referrers to deliver outcomes.
- Understanding the client's business current and future business model, financial and non-financial key indicators and knowledge of the professionals supporting the client are game-changers in being able to deliver outcomes.
- We make ourselves accessible.
- We play to win-win.

About David Levi

David Levi, founder of Levi Consulting Pty Ltd brings over 30 years of experience in three areas:

- Restructuring including Safe Harbour and Small Business Restructuring
- Insolvency
- Advisory including Special Situations

He is supported by an experienced team of professionals.

He holds registration from the Australian Securities & Investments Commission to conduct corporate insolvency and restructuring. Further details are at www.leviconsulting.com.au.

David makes himself available to accountants, lawyers and their clients, and also, to business owners.

David is dedicated to understanding his clients' needs and consistently advocates for optimal outcomes.

This year in our blogs, we aimed to cover pressing issues across industries while providing actionable insights. Whether it was tackling ATO debt, resolving property disputes, or helping small businesses restructure, our blogs reflected Levi Consulting's expertise and commitment to assisting clients during challenging times. We have extracted a few blogs from our website on topics likely to be relevant to the reader and included them in this brochure.

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1.0 ATO Debt Recovery and Director Penalty Notices (DPNs)	The pressure from the ATO on businesses has intensified in 2024, as it continues to enforce aggressive debt recovery policies. Several of our blogs explored this trend, offering insights into the options available to businesses facing ATO scrutiny.	5
2.0 Small Business Restructuring (SBR): A Lifeline for Struggling Businesses	The SBR process continues to provide small businesses with a streamlined alternative to traditional insolvency mechanisms. Throughout the year, we shared case studies and practical guides to help businesses better understand and utilise SBR.	7
3.0 Section 66G: Resolving Co- Ownership Property Disputes	Co-ownership disputes often seem intractable, but the use of Section 66G of the Conveyancing Act 1919 (NSW) offers a powerful solution. This year, we published several blogs highlighting how s 66G can help resolve disputes, particularly in cases involving inherited properties, investment disagreements, and divorce settlements.	9
4.0 Corporate Simplification: Streamlining for Efficiency	In today's dynamic business environment, eliminating surplus entities and streamlining group structures is critical to improving efficiency and reducing costs.	12
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1.0 Responding to Director Penalty Notices

What is a Director Penalty Notice (DPN)?

A DPN is a Notice that the ATO can send a director. A DPN can make that director personally liable for three types of tax debts of a company:

1. Pay As You Go (PAYG)
2. Superannuation Guarantee Charge (SGC) liabilities
3. Goods and Services Tax (GST)

The issuance of a DPN can place significant financial responsibility on directors, compelling them to address their company's tax obligations or face personal liability. There are two types of notices:

1. Lockdown DPN: If a company fails to pay taxes and also fails to lodge the required documents for PAYG, BAS, GST or SGC, a lockdown DPN may be issued. This makes the director immediately liable for the tax debt with no relief available except for paying the debt in full.
2. Non-lockdown DPN: Alternatively, if the company has lodged the required documents but has not made payments, a non-lockdown DPN may be issued. Directors have 21 days to pay the debt, appoint a Voluntary Administrator, appoint a Small Business Restructuring Practitioner (SBRP) or appoint a Liquidator.

Steps to Take if You Receive a DPN

Call us directly. You will speak directly with a Director of our firm, with more than 30-years experience. We can explain all issues about DPNs and personal liability.

We can explain the options.

The response to the DPN will be influenced by the current circumstances of the company. We will cover that with you.

Consequences

Failure to comply with a DPN can have severe consequences, including personal liability for the company's tax debts. Directors are responsible for ensuring their company's tax and super obligations are reported and paid on time.

If the company has an overdue debt with the ATO and doesn't pay the amount owing or contact the ATO to make alternative arrangements, the ATO may issue a DPN. DPNs are issued to current directors and anyone who was a director at the time the company failed to pay. If the ATO issues a DPN, immediate action is essential. Ignoring a DPN or failing to take appropriate steps within the specified timeframe can lead to significant financial and legal repercussions.

DPNs can have significant impacts on small business owners. There is already an increased number of DPNs being issued post-Covid.

Reach out

At Levi Consulting, we understand the challenges businesses face when dealing with ATO enforcement actions like DPNs. For tailored advice on navigating DPNs, consult an experienced insolvency professional. David Levi is a Registered Liquidator and can act as an Administrator, Liquidator or SBRP. Reach out via DM or call him on 0418 602 466 for a confidential discussion on any issues whether you are a director, accountant or lawyer.

2.0 ATO's Response to Small Business Restructuring

What is SBR?

Navigating financial distress is a daunting challenge for a small business. However, the Small Business Restructuring (SBR) process, established under Part 5.3B of the *Corporations Act 2001*, provides a practical and structured solution for eligible businesses to address their financial difficulties while continuing to operate.

This article covers recent updates in the SBR space, insights into the Australian Taxation Office's (ATO) approach, and practical case studies highlighting Levi Consulting's expertise in helping small businesses through this process.

Recent Updates in the SBR Space

Australia's economic tightening has made tax-related debts a significant contributor to insolvencies. On 6 November 2024, ATO Commissioner Rob Heferen indicated that there has been a slowing in ATO debt growth, but collectable debt remains at around \$50 billion.

To address this mounting debt, the ATO has ramped up enforcement measures, including court wind-up applications and director penalty notices (DPN). However, the ATO has also demonstrated support for businesses opting to restructure under the SBR process, being a creditor in 99.5% of SBRs and approving about 91% of proposals. As of June 2024, there were 1,424 SBR appointments, being 13% of all insolvency appointments.

Insights from the ATO

The ATO has shown a collaborative and commercial approach to working with businesses that pursue SBR. ATO Commissioner Rob Heferen highlights that proposals that offer tangible benefits to creditors while demonstrating good faith and compliance are often supported.

Businesses in industries like construction, accommodation, food services, and personal services have particularly benefited from SBR, which allows them to retain control while negotiating a sustainable path forward.

How the SBR Process Works

The SBR process is designed for businesses with liabilities under \$1 million and a commitment to compliance. Here's how it works:

1. Eligibility Check

- o Liabilities must be less than \$1 million.
- o Superannuation and employee payments must be up to date or rectified promptly.
- o Tax lodgements must be current or addressed.

2. Proposing the Plan: Businesses work with a Small Business Restructuring Practitioner (SBRP) to prepare a restructuring plan, which outlines repayment terms and demonstrates why the proposal offers creditors better outcomes than liquidation.

3. Creditor Voting: Creditors, including the ATO, review the plan and vote. A majority in value must approve for the plan to proceed.

4. Operational Continuity: The business continues trading under director control throughout the process, which typically concludes within two months.

Case Study: A Small Café's Restructuring Journey

A café facing \$200,000 in liabilities, including \$180,000 in unpaid taxes, opted for SBR. After meeting the eligibility requirements, it proposed a \$30,000 repayment plan, offering creditors 15 cents in the dollar.

The plan was supported by creditors, including the ATO, who recognised the better recovery rate compared to liquidation. Once the plan was executed, the café's remaining debts were extinguished, allowing the business to stabilise and continue trading.

How Levi Consulting Can Help

With extensive experience in insolvency and restructuring, Levi Consulting offers tailored solutions for small businesses considering SBR. David Levi, a Registered Liquidator, will prepare and present a compelling restructuring plan, and liaise with creditors, including the ATO.

Our track record includes assisting businesses across diverse sectors to achieve successful outcomes through SBR, enabling them to focus on growth and recovery. Contact David Levi on 0418 602 466 for a confidential discussion on how we can help you navigate this process successfully.

3.0 Guide to Resolving Co-ownership Property Disputes Using Section 66G Conveyancing Act 1919 (NSW)

What is section 66G?

Section 66G of the *Conveyancing Act 1919* (NSW) establishes a formal process for the appointment of trustees for the sale of a property in circumstances where co-owners are in an irreconcilable dispute.

People purchase or inherit residential or commercial property together for a variety of reasons. Disputes arise when one co-owner wishes to sell or divest their interest while the other co-owner does not want to sell or is unwilling or unable to buyout the co-owner.

In such disputes, section 66G can be of great assistance.

The commencement or threat of section 66G proceedings is often pivotal in ending disputes between co-owners of real estate. Co-owners could agree to sell, or one co-owner could agree to acquire the interest of the other.

In section 66G matters where we have consented to act as trustees, in the absence of a commercial resolution, section 66G Orders are made by the Court.

We provide a general overview of the process and the steps a co-owner should take for the appointment of trustees to a property.

When is section 66G typically used?

Disputes over the sale of co-owned assets commonly arise in the following situations:

- A co-owner becomes bankrupt, and their share in the property vests in their trustee in bankruptcy.
- A breakdown occurs in the personal or business relationship between co-owners, resulting in a desire to separate their property interests.
- Co-owners simply cannot agree on a sale process or sale price.

If co-owners cannot resolve their dispute privately, a co-owner can apply to the Supreme Court of New South Wales (or the Federal Court of Australia in cases of a bankrupt co-owner) for an order appointing trustees for sale of the property under section 66G of the *Conveyancing Act 1919*.

An order under section 66G is discretionary. However, if the application is prepared and presented carefully, and consent from experienced trustees is obtained, it is highly likely to succeed, leading to the sale of the property.

The Court will not appoint trustees for sale or order the sale of a property if:

- The co-owners have made a contrary agreement.
- It would be unconscionable to make the orders.
- The co-owners hold the property on trust, and the trust instrument contains its own procedure for sale.

The Court usually orders that the legal fees for making the Court application, along with the trustees' expenses and fees, are to be paid out of the sale proceeds upon completion of the sale. It is vital that the application to Court seeks appropriate orders to minimise the risk of disputes and simplify the processes for approval and payment of expenses and fees. This approach can shorten the time taken to complete the job and minimise the costs associated with it.

How Levi Consulting can help

Levi Consulting has extensive expertise and industry connections to support co-owners whose property is in dispute. Before you or your lawyer files your application to the Court, Levi Consulting will prepare an outline of tasks we intend to complete from the day of appointment to the completion of the sale. We will also put forward a proposed fee scale. David Levi is a Registered Liquidator with deep experience in section 66G appointments. Levi personnel will consent to act as Trustees.

Court orders

When a Court orders trustees to be appointed to sell the property, we typically take the following steps to preserve, protect and sell the property:

- Communicate with the Parties
- Familiarise ourselves with the Orders
- Become registered on title
- Obtain vacant possession of the property if necessary
- Obtain insurance (as the appointment may trigger a default on existing insurance)
- Collect rent, if rented, between the time of appointment and completion of the sale, from any tenants, and lease the property if appropriate
- Determine the most suitable real estate agent to market and sell the property
- Devise a sale strategy with the agent to achieve market value through auction
- Obtain an independent valuation from a registered valuer
- Monitor the sale campaign, determine interest, set an auction reserve, and attend auction

- Exchange contracts, attend to settlement, pay out costs of sale, mortgages and caveats on title, expenses and fees of the trusteeship, legal costs of the application (if ordered), and distribute net proceeds to co-owners
- Consider tax issues including capital gains tax, goods and services tax, and lodgement of an income tax return for the trustees
- Attend to any other Orders made by the Court

The legislation refers to trustees rather than trustee.

Recovering your money

As trustees, after the settlement of the sale, we would hold the sale proceeds on trust for the co-owners in proportion to their ownership interests. Subject to the Court Orders, we would then report to the co-owners and the Court, and distribute the net sale proceeds proportionately among the co-owners according to their interests as shown in the title details for the property, including information related to taxes relevant to the sale.

It is important to note that there can be exceptions and adjustments where a co-owner has:

- Contributed disproportionately to the purchase price or mortgage repayments relative to their interest in the property recorded on the title (e.g. where one co-owner has paid the entire purchase price or made all the mortgage repayments)
- Paid rates, strata levies or utilities disproportionately to their interest in the property recorded on the title
- Made improvements to the property that have benefitted all co-owners by increasing the value of the property
- Occupied the property without compensating other co-owners and is liable to pay an occupation fee as a result.

Seek professional help

When it comes to disputes over selling a co-owned property, it is important to seek professional help and expertise.

Don't hesitate to seek the help of a trustee and also, a lawyer if you are facing a co-ownership dispute. It could save you a lot of time, money, and stress in the long run.

David Levi is a registered liquidator.

Contact David Levi on 0418 602 466 for a free chat or Zoom session.

4.0 Optimising Corporate Structure

Our Experience

Levi was appointed as Liquidator for multiple solvent subsidiaries within a corporate group. The Liquidation process of these entities culminated in a successful corporate simplification endeavour. Levi facilitated tax-efficient asset distribution and maximised stakeholder value amidst complex regulatory landscapes.

The Elements of a Successful Corporate Simplification

Corporate simplification is a strategic initiative aimed at streamlining operations, reducing costs, and optimising resources. Key elements include:

1. Conducting a thorough evaluation of subsidiary entities to identify solvent and dormant companies suitable for liquidation or deregistration. Removing redundant entities simplifies group structures, reduces unnecessary compliance costs and enhances profitability.
2. Ensuring strict compliance with ASIC guidelines and local regulatory requirements to facilitate liquidation processes and timely deregistration.
3. Structuring asset distribution and liquidation processes to minimise tax liabilities, thereby maximising returns for shareholders and stakeholders. This includes obtaining tax clearances and managing asset distribution efficiently through a Members' Voluntary Liquidation (MVL).
4. Prioritising clear and transparent communication with stakeholders throughout the simplification process, ensuring alignment with corporate objectives and managing expectations effectively.

How to do a Corporate Simplification

Achieving a successful corporate simplification involves a detailed, multi-stage process:

1. Conduct a thorough assessment of the group's operations, regulatory compliance, taxation, human resources, finance, legal matters and governance. This assessment helps in defining the optimal corporate structure.
2. Gather comprehensive details on all entities within the organisation, including current business activities, assets, liabilities, employee details, and trading history. Utilising workshops and questionnaires can streamline this data collection process.
3. Formulate a detailed plan to tackle identified issues. This includes reviewing tax standings, statutory records, third-party approvals, supplier agreements, employee contracts, intellectual property considerations, and determining the appropriate method for asset transfers.
4. Execute the Liquidation. This involves asset transfers, liability settlements, advising authorities and interested parties, transferring employees, realising remaining assets, and obtaining necessary consents and exemptions. Prepare documentation to advise regulatory authorities of voluntary liquidation and deregistration.

5. Upon completing the MVLs, proceed with applying for voluntary deregistration. The company must satisfy specific criteria, including cessation of business operations, possessing assets valued under \$1,000, settling all financial obligations and penalties, and not being involved in any legal proceedings.

Why choose us?

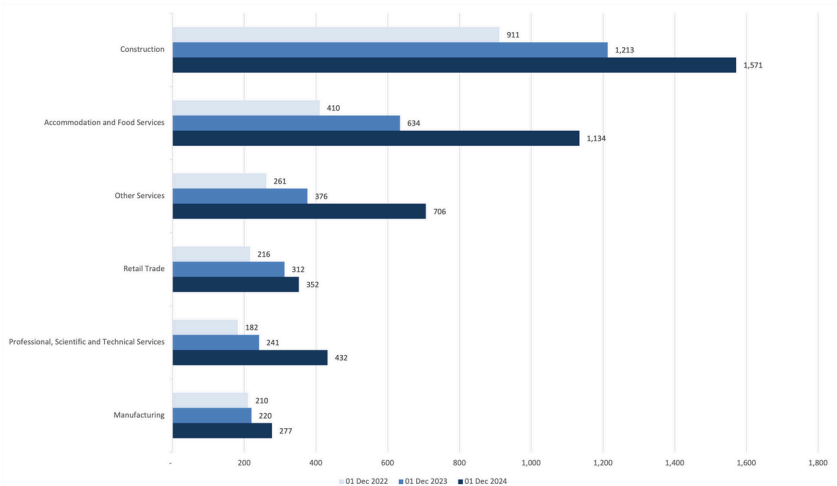
At Levi Consulting, our experience in managing complex corporate simplification projects is unmatched. We have successfully navigated numerous liquidation and deregistration processes, delivering tangible benefits in efficiency and cost savings.

For further insights into our expertise in corporate simplification matters, view our brochure on the website.

5.0 Update on the Building and Construction Industry

What is Happening in the Building and Construction Industry?

The building and construction industry is facing a significant increase in insolvencies, raising concerns among industry professionals. As of 25 August 2024, the Australian Securities and Investments Commission (ASIC) reported 2,162 insolvency cases since 30 June 2024, reflecting a 22% increase from the previous year. While insolvency appointments in the building and construction sector have decreased compared to the same period last year, they are expected to surge later in the year due to the growing number of Small Business Restructuring (SBR) cases.



ASIC Australian Insolvency Statistics, Chart 1.2: The first time a company enters external administration or has a controller appointed – Industry type (Released 16 December 2024)

Unpacking the Causes of Insolvency

Insolvencies in construction often result from a mix of factors including fixed-price contracts, failures in quoting, and difficulties in recovering costs. The post-COVID environment has made things worse, with rising material and labour costs putting extra strain on already thin profit margins. Many companies have overextended themselves beyond the capacity of management and internal personnel, creating cash flow problems.

Residential home builders in particular have been affected by supply chain disruptions that began during the pandemic. Limited access to essential building materials, combined with higher costs, has caused delays in completing projects, further straining finances. These challenges increase the risk of insolvent trading, where companies continue to take on new debts even when they can't pay their current obligations.

Directors' Duties

Directors are obligated under Section 588G of the *Corporations Act 2001* (Cth) to prevent insolvent trading and to act in the best interests of their company and its creditors. Failure to do so can result in personal liability for debts incurred during insolvency.

Mitigating Insolvency

1. *Monitoring Financial Position:* Directors must be proactive in monitoring their company's financial health. Regular reviews of cash flow, profitability, and financial obligations are crucial for early detection of potential insolvency issues.
2. *Seeking Professional Advice:* When red flags arise, seeking professional advice is essential. Registered liquidators, such as David Levi, are experienced in assessing financial situations and devising strategies to navigate financial challenges.

Strategic Actions for Builders and Suppliers

Builders – 3 steps to success

- *Work with experienced accountants:* Skilled financial oversight is key. Regular reviews of cash flow and profitability are critical to avoid getting caught off guard by financial issues.
- *Renegotiate contracts:* Where possible, negotiate more flexible contract terms to allow adjustments for cost fluctuations. Avoid fixed-price contracts during times of economic volatility.
- *Seek professional advice early:* Don't wait for problems to worsen. Engaging restructuring or insolvency professionals early can help you explore legal and financial options like SBR or safe harbour provisions.

Suppliers – 3 steps to protection

- *Assess client risk:* Before extending credit, carefully evaluate the financial health of builder clients. Monitor credit risk to anticipate potential insolvencies.
- *Negotiate better payment terms:* Shorten payment cycles or secure personal guarantees to reduce the risk of becoming an unsecured creditor if a builder becomes insolvent.
- *Consult experts:* Professional advice on how to manage risk and structure your business dealings can help safeguard your business against client insolvencies.

Support from Levi Consulting

Levi Consulting offers expert support in business recovery, corporate turnaround, restructuring, and insolvency. With a wealth of experience in assisting builders and suppliers, particularly in states like NSW, VIC, QLD, and TAS, Levi Consulting is well-equipped to help businesses across Australia navigate these difficulties.

David Levi, a registered liquidator and member of key professional associations like the Australian Restructuring Insolvency & Turnaround Association (ARITA) and the Turnaround Management Association Australia (TMA Australia), is available for consultation. For personalised advice and a path forward, contact David Levi at 0418 602 466 for a free chat or Zoom session.

6.0 How Levi Consulting Helps Fintech Lenders

Understanding the Fintech and P2P Lending Market

Peer-to-Peer (P2P) lending, also known as marketplace lending, has become a go-to for borrowers seeking quick approvals, especially those who don't meet traditional bank criteria. Through online platforms, investors lend directly to borrowers at competitive rates. Although P2P lending is regulated differently than traditional financial institutions, lending platforms must still hold both an Australian Financial Services Licence and an Australian Credit Licence.

At Levi Consulting, we help P2P lenders by conducting due diligence, negotiating with borrowers, and resolving disputes. Our focus is on managing risk and maximising returns for lenders and investors.

Solutions for Distressed Loans

Our team identifies early warning signs of loan distress and work with lenders to implement strategies that prevent losses. Whether the issue stems from a borrower's personal life changes, macroeconomic disruptions, or the nature of high-interest lending, we provide the guidance needed to mitigate losses.

We've seen how factors like loan delinquency, high interest rates, and external market shifts can lead to distress. We step in early with strategies to recover loans or resolve disputes while keeping borrowers compliant.

Our approach to loan recovery is minimally invasive but adaptable. When intervention is needed, we secure assets and protect the lender's position. Our work often involves negotiating with voluntary administrators, acting as receivers, or offering strategic advice to avoid formal appointments.

Case Examples

In one case, we were appointed as receivers for a parts and distribution business in administration. Within 24 hours, we determined the costs of receivership outweighed the benefits and resigned but continued to work with the administrator to minimise the lender's exposure.

In another case, our industry connections enabled us to secure a favourable outcome for a fashion retailer, protecting our client's first-ranking security during a voluntary administration.

Support from Levi Consulting

With years of experience working with fintech and non-bank lenders, Levi Consulting has developed a reputation for delivering effective solutions in challenging circumstances. Our projects have spanned loans ranging from \$100,000 to over \$100 million. We are committed to long-term relationships with our clients and take an outcome-focused approach to every situation.

David Levi, a registered liquidator and member of key professional associations like the Australian Restructuring Insolvency & Turnaround Association (ARITA) and the Turnaround Management Association Australia (TMA Australia), is available for consultation. Contact David Levi at 0418 602 466.

See our brochure on how we support fintech, peer to peer and non-bank lenders online.

Support from Levi Consulting

As always, we remain available for discussion virtually or face-to-face. Reach out to David Levi at 0418 602 466 for a confidential conversation about your unique circumstances.

	Option	When is it suitable?
1	Informal Workout	Whenever informal solutions with creditors are feasible.
2	Members' Voluntary Liquidation	Solvent dissolution of a company that had trading activity.
3	Voluntary Deregistration	Solvent dissolution of a company with no or limited trading activity (e.g. a holding company or dormant company).
4	Safe Harbour	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	A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts.
6	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.
7	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.
8	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.
9	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.

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