



How to Thrive

The 3-Step Business Recovery Process

Contents

Introduction	03	Step 2: Explore Your Options	11
Using This Guide	04	Step 2: Explore Your Options	12
		1. Get Tax Relief	13
Step 1: Understand Your Situation	05	2. Review and Negotiate Your Lease	14
Step 1: Understand Your Situation	06	3. Review Your Insurance Policies	15
What's Your Exposure?	07	4. Reduce Overheads	16
Total Current Liabilities	08	5. Finance Your Assets	17
Break Costs	09	6. Review Informal Creditor Arrangements	18
Critical Holding Costs	10	7. Safe Harbour Protection and	19
		8. Insolvency Law Changes	20
		Pre-Pack Sale	
		9. Voluntary Administration and DOCA	21
		10. Small Business Restructure	22
		11. Liquidation and Simplified Liquidation	23
		Step 3: Take Action	24
		Step 3: Take Action	25

Introduction

If your business has experienced a lot of change lately, you're not alone. Every business hits a rough patch at some point during their life cycle.

At the same time, changes to the way everyday Australians work and live have disrupted the economy, shifted buying behaviours, and impacted consumer sentiment.

Even some of the most stable, successful, and solid businesses are facing massive disruption.

While we've seen some encouraging signs of recovery and Australia is in a better position than most, we're still in a period of uncertainty. The economic and business environment is constantly changing.

If you're facing uncertain times, you may find yourself asking:

- What's our exposure if recovery takes longer than expected?
- Do we need to make drastic changes to our business structure so we can adapt?
- What's our recovery plan?
- Should we wind up the business entirely to minimise losses?
- How can we make sure we're less exposed to risk in the future?
- What are our options?

If you're asking these questions, it's a good sign that you're switched on and paying attention. The sooner you act, the more options you'll have, and you'll likely get better outcomes for the business.

Every business hits a rough patch, let's overcome it.



Using This Guide

We've created this guide to help walk you through your options and answer some of the most common questions among business owners and executives currently (in everyday language that's simple to understand).

When you're facing challenges in your business, you need to work through 3 key steps:

Step 1 – Understand your situation

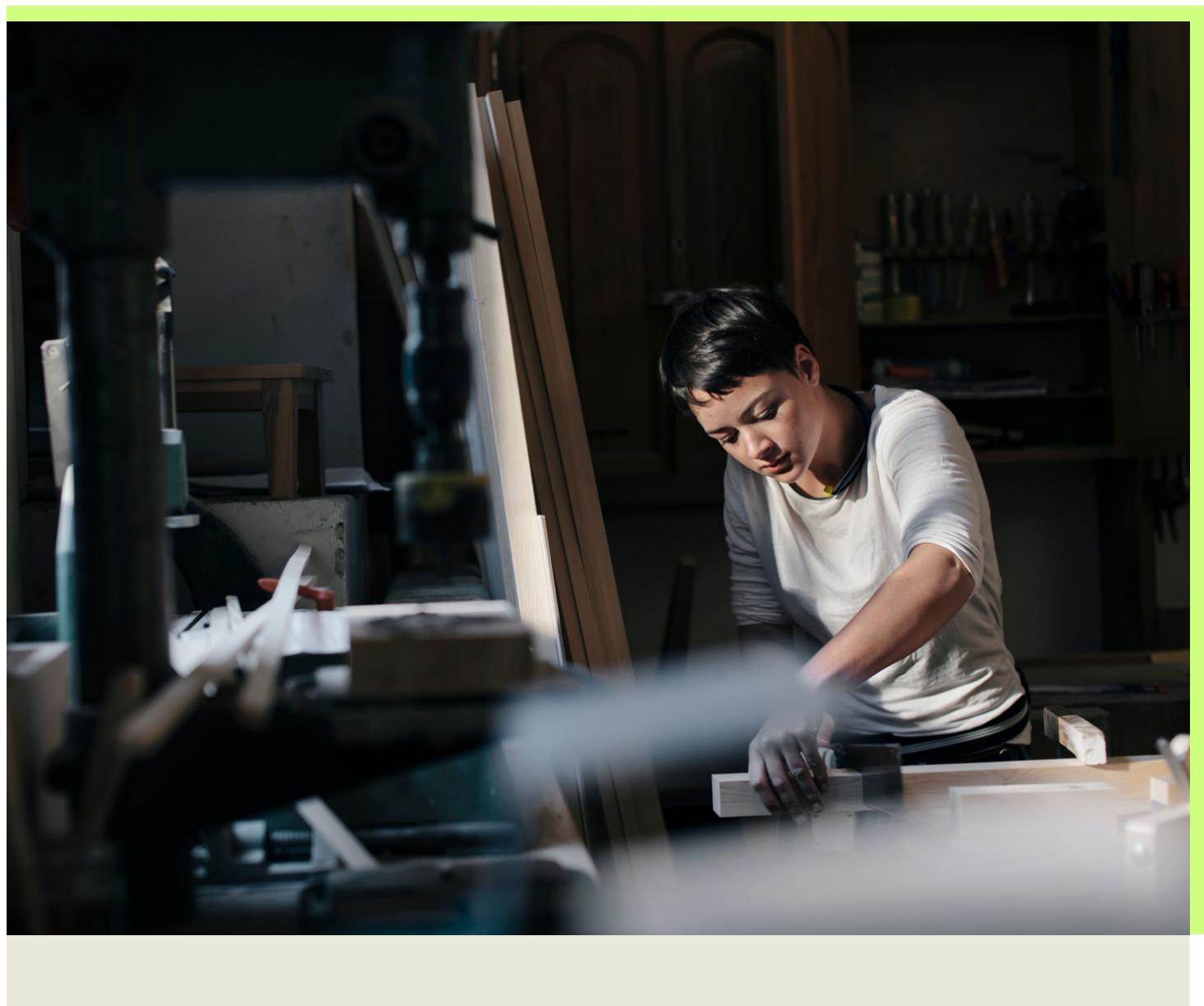
Step 2 – Understand your options

Step 3 – Take action

Set aside some time to work through the steps and understand your options. Talk to your team and when you're ready, reach out to professionals for help. You can set up a meeting with your accountant or a restructuring expert to start charting a course back to where your business needs to be, whether it's recovery or liquidation.

We're here if you need anything, so once you've finished this guide, please consider reaching out to our team for a complimentary and confidential consultation. We'll see how we can help you take the right step forward - and come out stronger than ever

Step 1: Understand Your Situation



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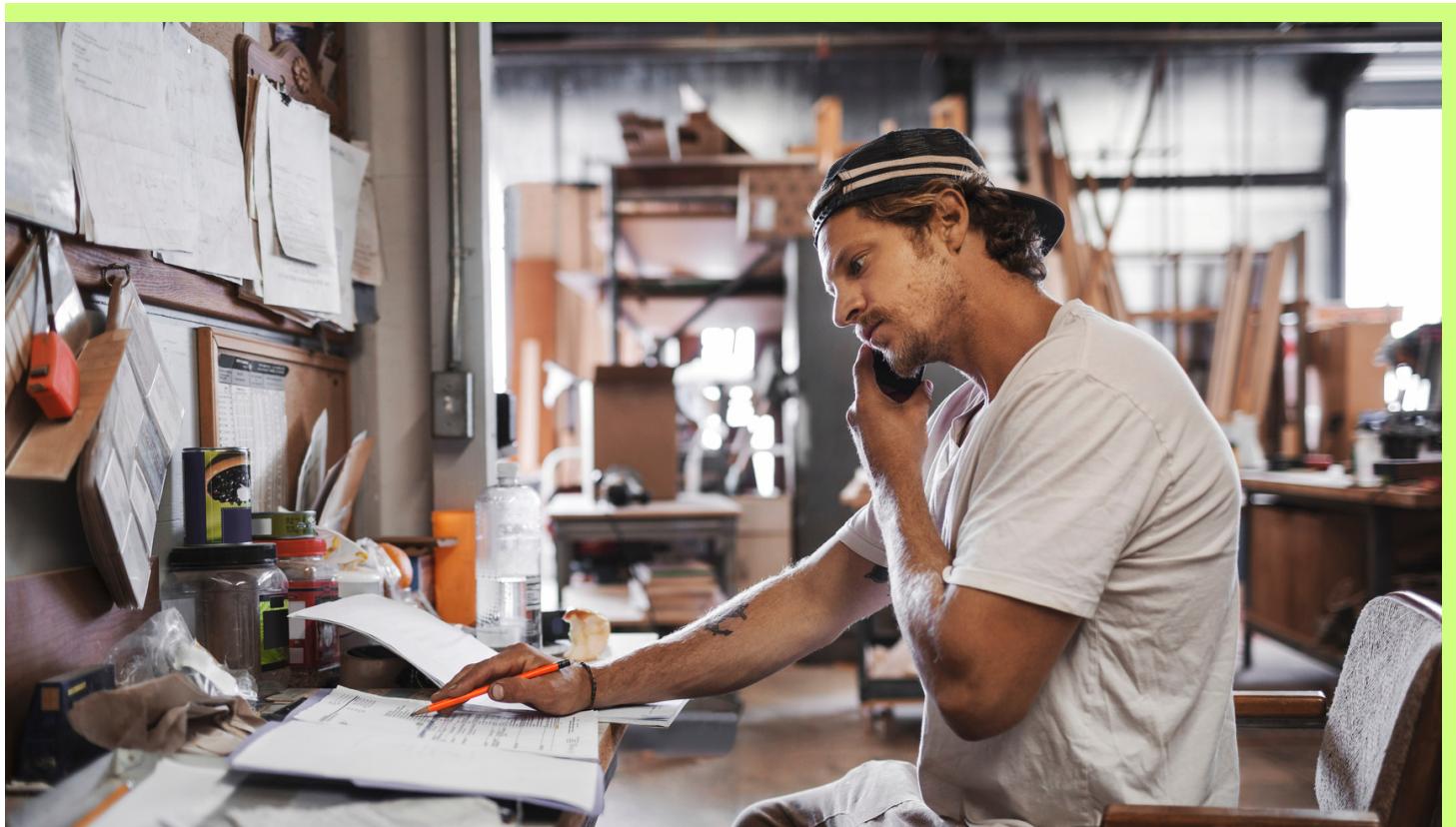
Your business and financial situation may have evolved significantly or at a slow pace.

Your company's situation may continue to shift as stimulus measures come and go, the ever-changing economy, and consumer needs change.

Despite making it through the year that was 2020, you may be feeling unsure about what's next for your business.

While reviewing your situation might be a little scary, don't be tempted to stick your head in the sand (fortunately, since you're reading this guide, you're probably not that kind of person). So, let's start by assessing or reassessing your situation so that you can face any problems head on.

We need to first check whether your business can sustain a period of reduced revenue in line with the current/expected circumstances. Then we can look at whether you can realistically repay the liabilities once things start to go back to normal.



What's Your Exposure?

If you haven't already, it's time to re-examine your situation.

Chat to your accountant or call our team for help calculating your exposure. You can also run some numbers yourself. Here's a simple formula to help you figure out your exposure:

Total Current Liabilities

+ Break Costs
+ Critical Holding Costs
= Exposure

Note: every business and circumstance is different - your needs might be a little more complex than this. But it's a good starting place for quickly running some numbers before you chat to a professional.

Your exposure is made up of liabilities, break costs, and critical holding costs. So, let's take a closer look at what each of these means and how you can find out the information you need to calculate your exposure.

**Chat to your accountant
or call out team for help
calculating your exposure.**



Total Current Liabilities

Your total current liabilities are your creditors (people/businesses that you owe money) for payments that are due and payable now. You should already have this information handy in your bookkeeping system, or chat to your bookkeeper about generating a list of liabilities and outstanding bills, including:

- Accounts payable
- Mortgages
- Wages
- Loans
- Expenses



Break Costs

If your business is struggling financially, you may need to restructure your systems, stand down employees, end agreements, and close down some accounts to reduce your ongoing expenses. But ending a relationship with some of your creditors may incur break costs, which your creditors may be entitled to legally claim. Common break costs include:

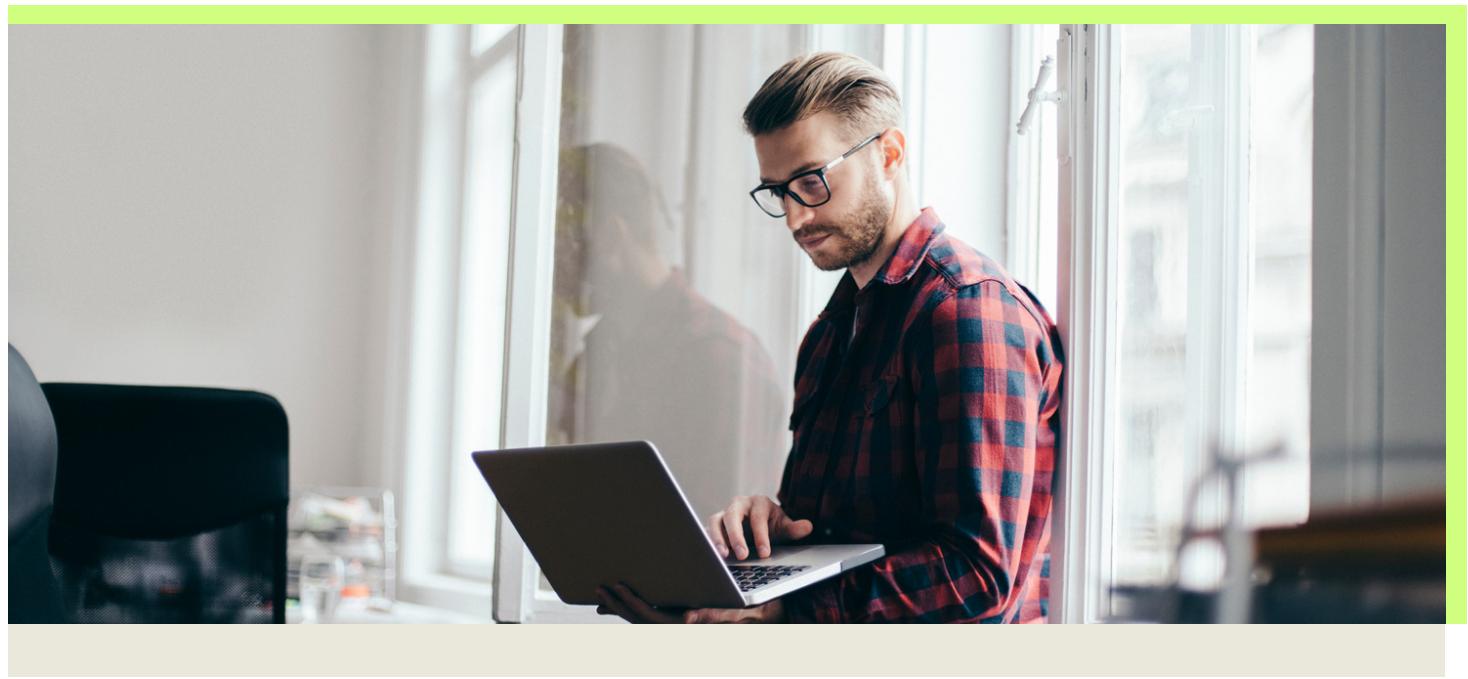
Employee claims - If you need to stand employees down, you may incur redundancy and employee entitlement claims. Although your employees would be unable to commence recovery proceedings for 6 months (under the new legislation), these liabilities would need to be paid.

Supply agreements - If you've agreed to buy a minimum amount of goods or services but breach your agreement, you may incur break costs.

Contractual agreements - If you've signed a contract that states you'll deliver a certain volume or type of goods or services and you breach your agreement, you may incur break costs.

Contractual leases - Common lease agreements include property, plant equipment, and vehicles. If you don't keep up with regular payments, you risk defaulting or may have your lease terminated. If you decide to end your lease ahead of schedule, you may need to pay break costs stated under the agreement.

Banking facilities - If you don't repay your loans on time, you cause an overdraft, or you borrow more than the allowed amount, you may be in breach of your agreement with your bank. This could cause you to default.



Critical Holding Costs

You need to know your critical holding costs in order to assess whether your business can survive the coming months - and then recover to thrive in the coming years.

The tricky part about estimating holding costs is that no one knows when the current situation will end. Smart business owners will assume the downturn will last a significant amount of time, with a slow, gradual recovery.

This means you'll need to develop a cash flow forecast that assumes lower income and the minimal holding costs for a reasonable period (we recommend 6 months).

In other words, figure out how much it will cost you to keep your business "alive" until the current situation is likely to improve.

Critical holding costs usually include:

1. Employees - Wages and superannuation
2. Insurance - Workers compensation, building insurance, liability insurance, and more
3. Leases - For equipment and property that stores critical assets, such as stock
4. Utilities - Electricity and phone accounts
5. Banking - Minimum repayments and reporting covenants
6. IP - Maintaining licencing, trademarks, and systems

If you're concerned about your ability to cover any of your critical holding costs, know that you're not the only one. Many service providers are open to negotiating payment terms and may have developed special allowances for businesses struggling due to challenges like supply chain disruption or a temporary drop in demand. For the best possible negotiation, try to talk to your suppliers as soon as possible to work out a payment plan, rather than waiting until the payment is overdue.

Once you have established your "holding costs", prepare a simple (but flexible) weekly or monthly cashflow forecast for the ext 12 months.

Now you have everything you need to understand your exposure and work out what your options are to move forward.

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Step 2: Explore Your Options



Step 2: Explore Your Options

What are your options? What strategies can you use to help your business recover and thrive, or rapidly wrap things up to minimise risk and losses?

The best options for you will depend on whether your assets and capital on your balance sheet are enough to cover your exposure. If your assets can cover your exposure, that's great! You should be able to continue your business operations and recover, although you may still benefit from looking at your options to minimise risk moving forward.

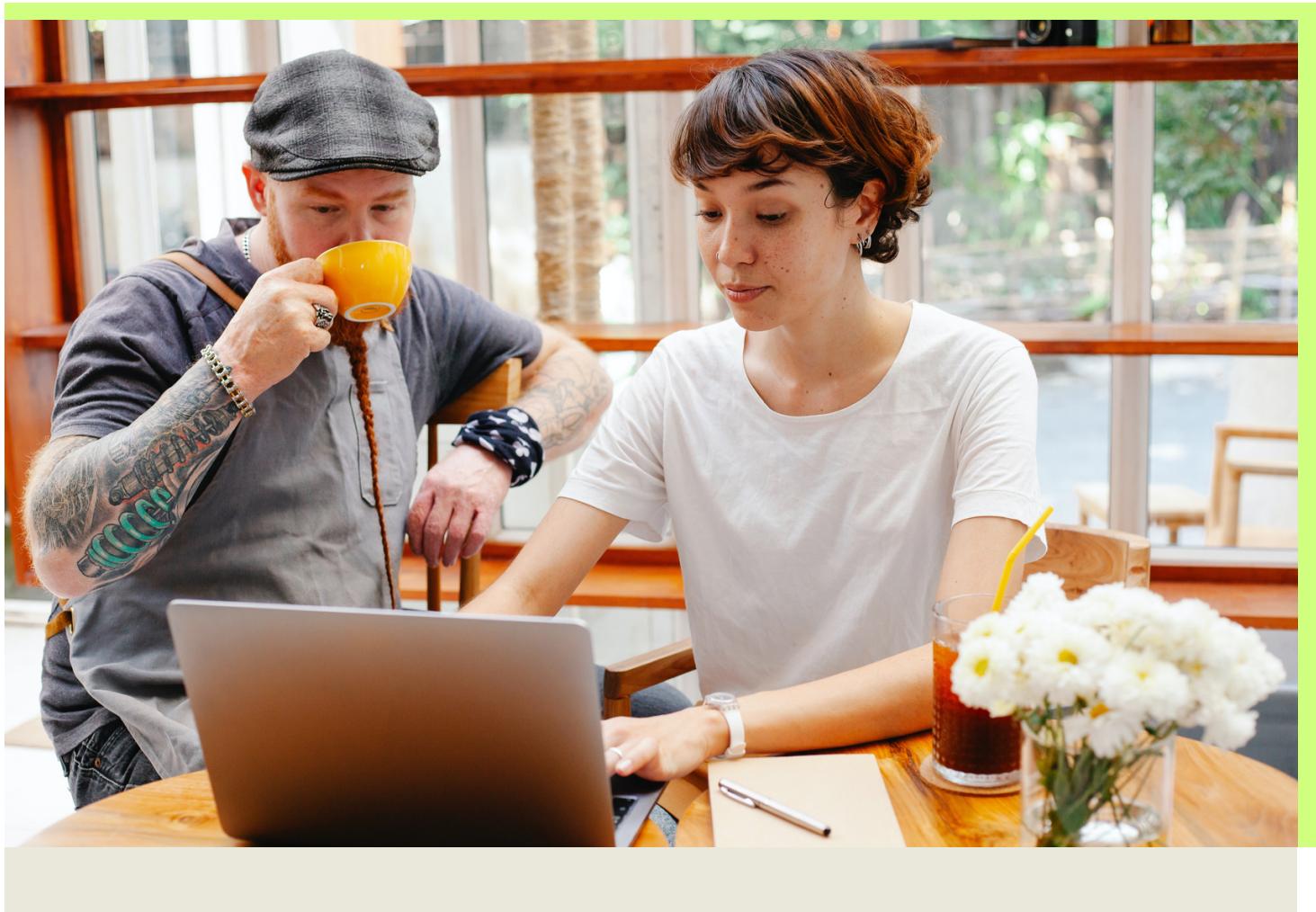
If you're unable to cover your exposure, you'll need to look at some other ways to cover your costs and liabilities over the coming months.

Fortunately, there are 12 options available to businesses that are in distress:

1. **Seek Government funding relief**
2. **Obtain ATO support**
3. **Review your lease and negotiate with your landlord**
4. **Review your insurance policies**
5. **Reduce overheads**
6. **Finance your assets**
7. **Review informal creditor arrangements**
8. **Safe Harbour Protection and Insolvency Law changes**
9. **Pre-Pack Sale**
10. **Voluntary Administration and DOCA**
11. **Small Business Restructure**
12. **Liquidation and Simplified Liquidation**

You may need just one or a combination of strategies to help your business maximise cash flow and get ready to recover from the downturn. So, which is right for you? Let's go through each of the options in detail.

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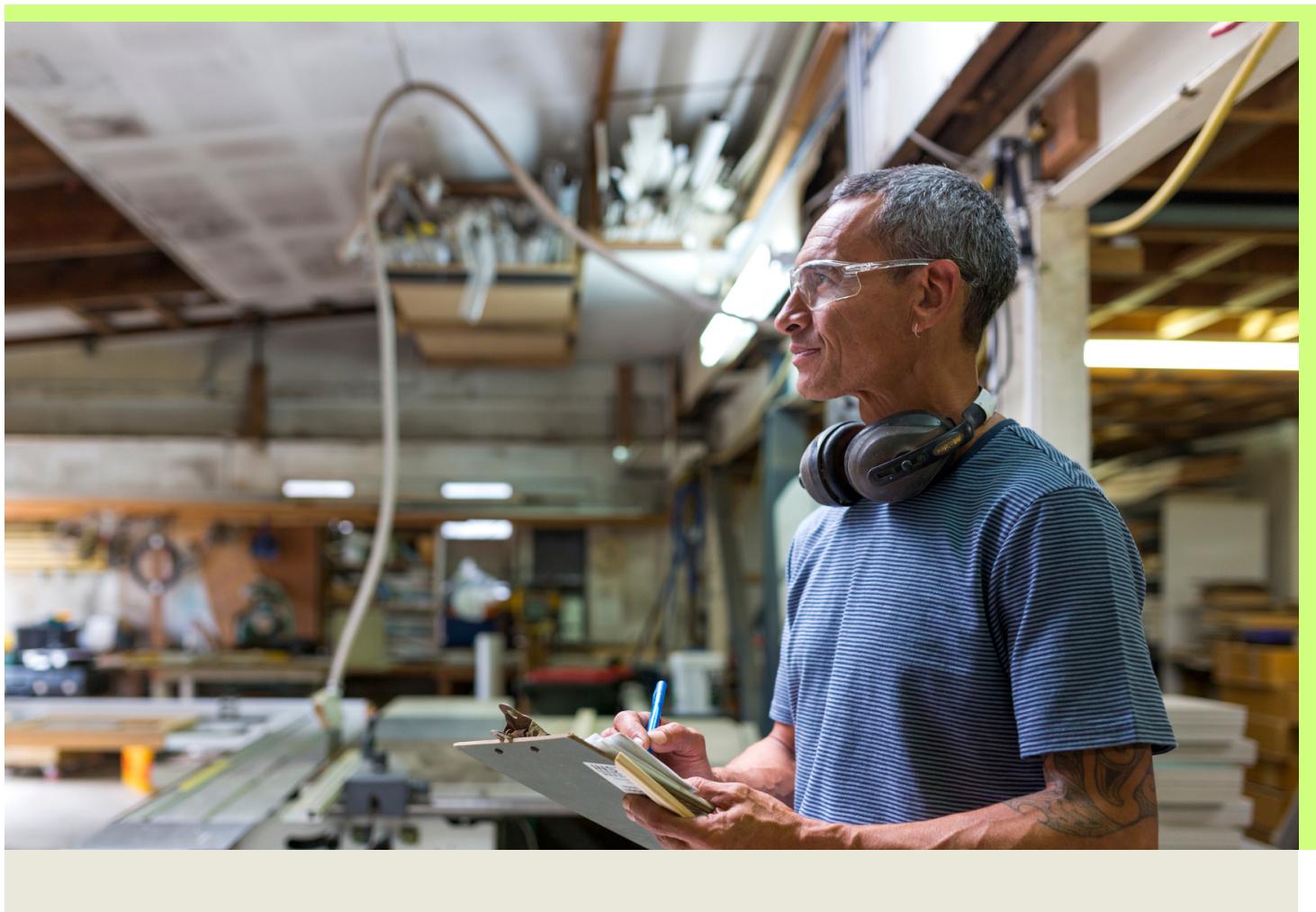
1. Get Tax Relief

The ATO offers several options that may give your business more time to pay your tax, minimise penalties, and get back credits sooner. These include:

- Payment deferrals - Your Income Tax, FBT and Excise payments may be deferred for a limited period
- PAYG variation - Your Pay as You Go instalments for the financial income year may be varied. The ATO will not apply penalties or charge interest to varied instalments for this period when you have made your best attempt to estimate your end of year tax liability
- Faster GST payment cycle - You may change your GST reporting cycle to monthly to process GST credits quicker (side note: if you need to write off unpaid customer debts or invoices, this can result in a GST credit)

- Reduced penalties - You may remit interest and penalties for any tax liabilities
- Interest-free tax payment loans - Small businesses that owe activity statement amounts may be able to pay these off interest-free over 12 months

If you'd like to access any of these relief options, you or your accountant will need to contact the ATO Emergency Support Infoline on 1800 806 218. Head to the ATO website to see more details on their [support for businesses and employers](#) and the latest on how they're helping to [assist small business through COVID-19](#).



2. Review and Negotiate Your Lease

The pandemic has changed the way many businesses operate. Perhaps some of your team have switched to working from home and you now need less physical office space (or even none at all). Or perhaps you're seeing fewer customers at your premises due to the ever-changing economy landscape.

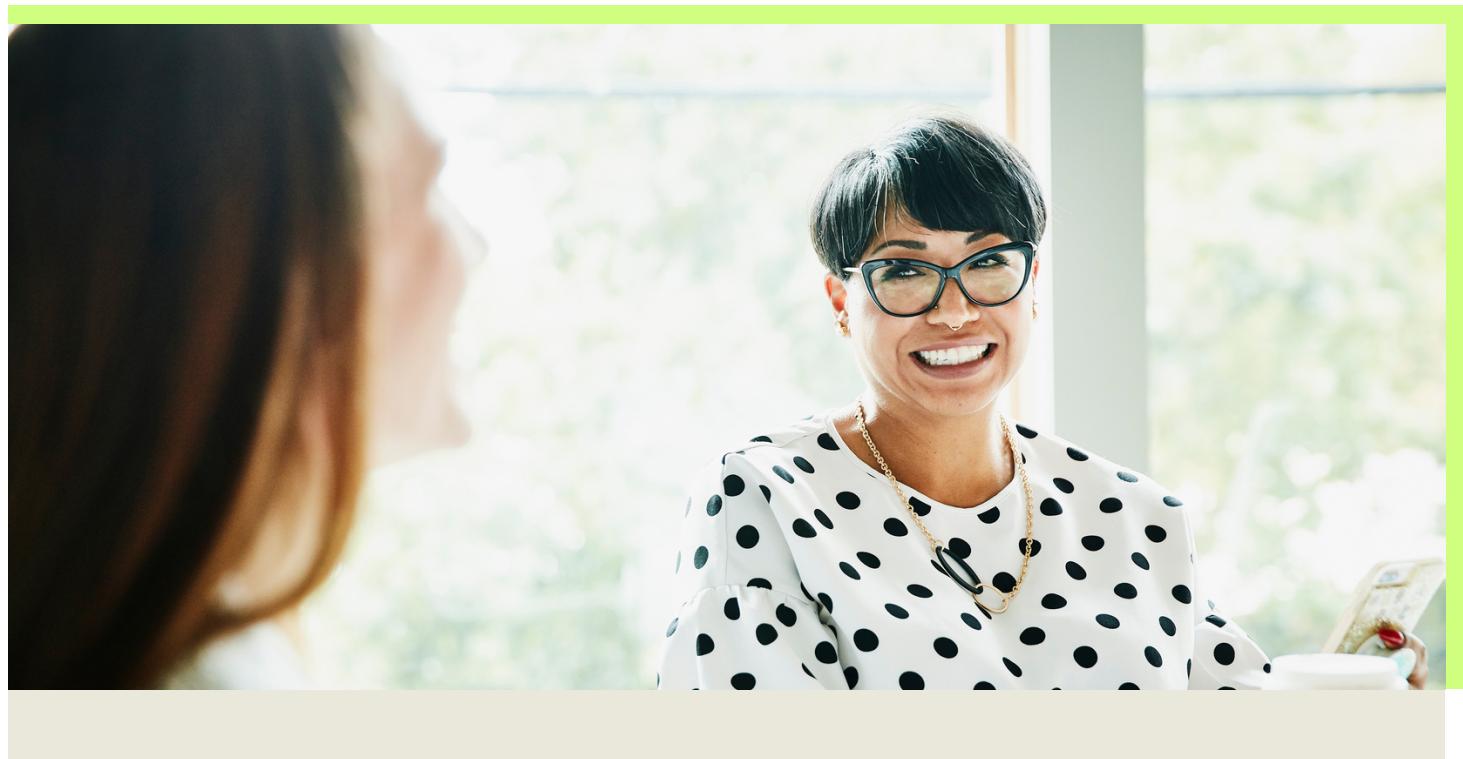
These changes may present an opportunity to reduce your expenses without impacting your overall output. Or they may have impacted your ability to run your business and/or serve customers, leading to a drop in revenue.

Although the [Mandatory Code of Conduct - SME Commercial Leasing Principles During COVID-19](#) has come to an end, you can still negotiate with your landlord to achieve lease conditions or rates that are more sustainable for your business.

It's also worth checking your local government websites to see what support is available for landlords and tenants in your state or territory.

Finally, consider your commercial space needs moving forward. If your team has adapted to working from home, or you've been able to serve most of your customers online, you may not need a commercial space (or as much commercial space) in future.

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your overall output.**



3. Review Your Insurance Policies

It's a good idea to regularly review your insurances - and the current challenges serve as a good reminder that you need to plan for what might go wrong in future.

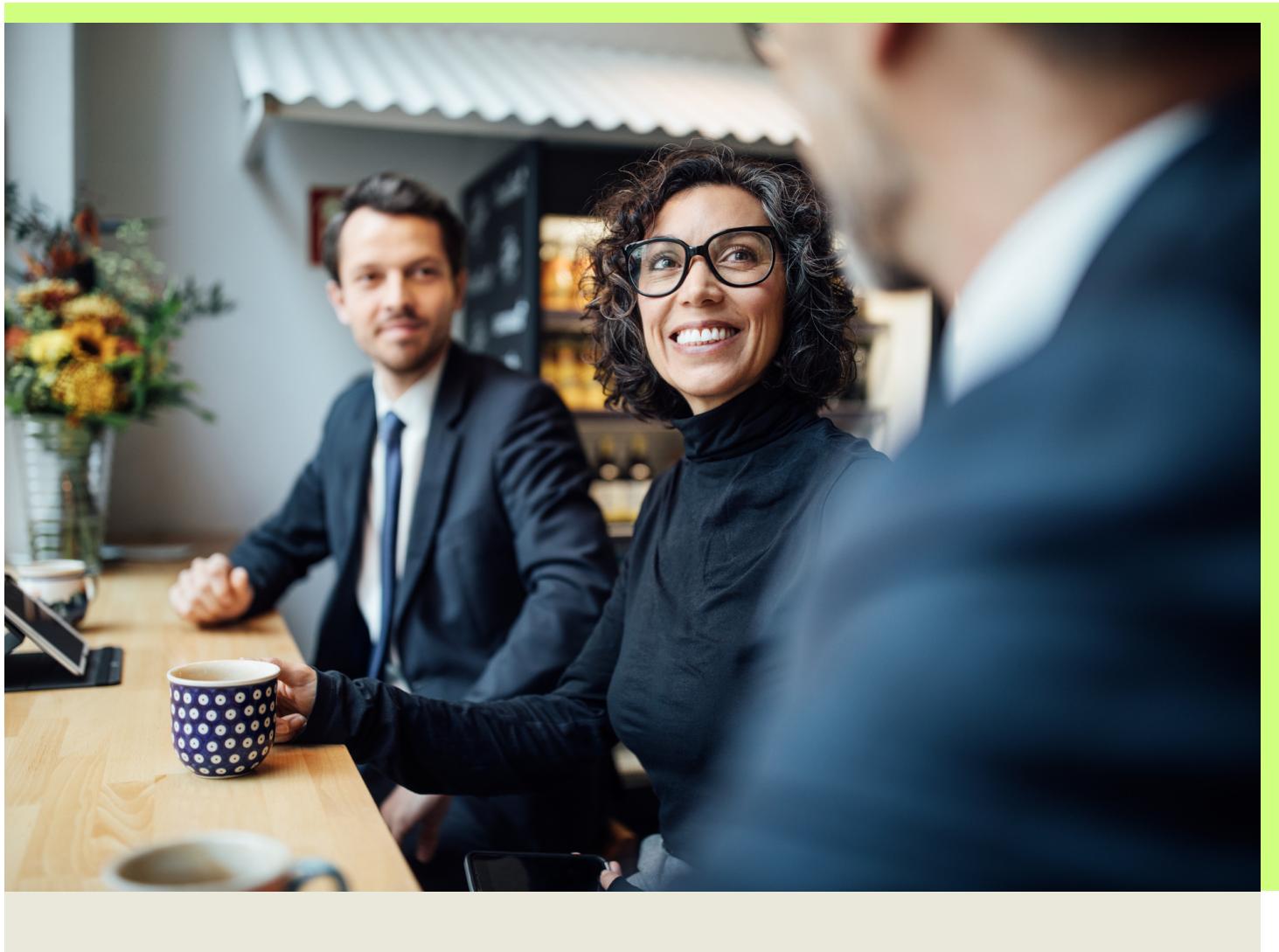
Some questions to consider:

- Do your insurances cover you for losses relating to unforeseeable circumstances?
- Do you have a Business Interruption Insurance Policy and is it adequate?

Business Interruption Insurance covers the income you've lost as a result of disruptions to your operations. If you already have this insurance policy and have been affected, you may be eligible for an insurance pay-out.

When reviewing your insurance policies, you'll need to take a close look at the terms and conditions of your insurance policies, and understand the circumstances surrounding the losses you intend to claim. This will determine whether or not you're covered, and show you what options you might have to minimise the financial impact of disruptions to your business.

If you think your policy may cover you for unexpected losses, contact your broker or insurer and request guidance to help prepare your claim and calculate losses



4. Reduce Overheads

Remember how we talked about critical holding costs? It's time to look at your overheads and decide what expenses are truly critical and necessary over the coming 6-12 months as we move through the economic recovery period. You may need to:

- Review all your costs
- Reduce any non-essential expenses
- Delay planned activations or product extensions
- Consider reducing your headcount

Try to pare things back as much as possible without negatively impacting your ability to deliver your product or service to customers, and without preventing your staff from doing their work safely and efficiently



5. Finance Your Assets

Financing your assets can give you a short-term cashflow boost by using your balance sheet assets (like inventory and accounts receivable) to borrow money. Banks and non-bank lenders in Australia granted \$150 billion+ funding from the RBA to promote new lending at significantly lower interest rates, so this could be a relatively low-cost way to buy your business some time to get back on its feet.

Depending on your balance sheet, here are some of the finance products you might be eligible for:

- Bank loan
- Bank overdraft
- Real property loan
- Plant and equipment finance
- Trade finance
- Debtor finance

But it's important to note that if you're thinking about financing your assets to increase cashflow through the downturn, you must be confident that your business is sustainable and will become profitable on the other side. Otherwise, you risk lowering the equity of your business and exposing your director's personal wealth through personal guarantees. So, before you go down the asset financing path, make sure you fully understand your situation, explore other options, and seek advice.



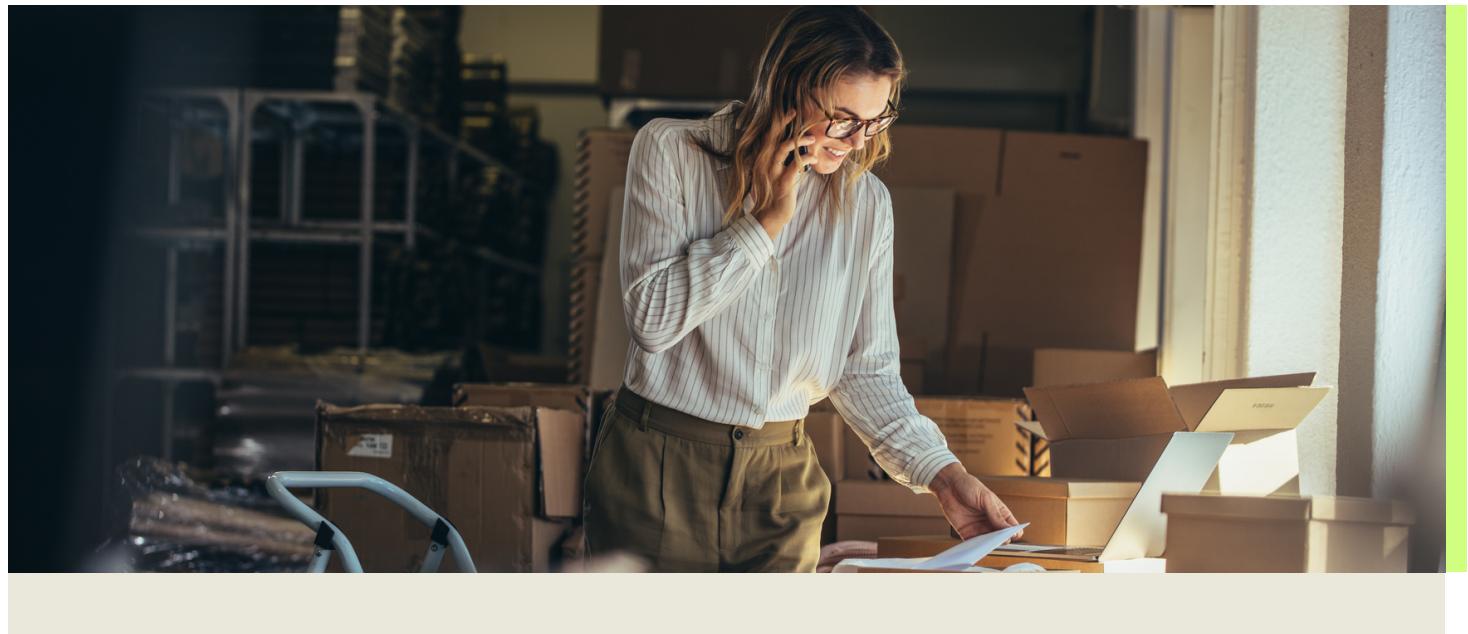
6. Review Informal Creditor Arrangements

Need a little more time to pay your invoices, rent, or loans? It's a good idea to set up a chat with your suppliers, banks, and other creditors to see if they're open to more flexible payment terms. They might be more understanding than you think, since they may have found themselves in a similar position. Plus a reasonable payment plan is probably their best chance of getting paid.

If you enter into a new, informal creditor arrangement that's different to your original payment terms, it's a good idea to get it down on paper. Negotiate the plan and then document it in writing, showing that both parties accept the new agreements, and that they don't breach any other agreements.

Start talking to your creditors right away if you think you'll need this option for your business. The sooner you're upfront about your financial position and plans, the more opportunities you'll have to negotiate new terms that are fair to everyone.

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7. Safe Harbour Protection and Insolvency Law Changes

Looking ahead, is it possible that your business could become insolvent? As in, you may be unable to pay your debts or with more liabilities than assets on your balance sheet? If so, you won't be the only one in this situation.

Safe Harbour Protection was introduced in 2017 as part of the Insolvency Reform Law Act. It ensures that directors will not be personally liable for debts incurred after the date of insolvency, as long as they can show that these debts were incurred in order to (hopefully) lead to a better outcome for the company and its creditors than the alternatives (immediate administration or liquidation).

The COVID-19 Safe Harbour Protections amended the original Safe Harbour provisions, offering extra protections to directors between March 22 and December 31, 2020. Although this period has now expired, the original Safe Harbour provisions still apply.

This can provide some relief and give you time to assess your company's position before you move forward with either a turnaround plan and restructure, or liquidation.

Not everyone will be eligible for Safe Harbour protection. You'll need to tick the following boxes:

- Books and records in order and financial position determined
- Compliance with employee and tax reporting obligations

- Up to date employee entitlements
- Advice sought from an appropriately qualified advisor
- The directors have properly informed themselves of the company's financial position
- The directors must develop, implement and document the restructuring plan that should result in better outcomes than winding up the business or voluntary administration

In addition to Safe Harbour provisions, the government has also reversed temporary changes made to statutory demands. During the pandemic, creditors could only issue statutory demands for debts over \$20,000, with 6 months to pay. From January 1, 2021, this reverted back to \$2000, with 21 days to pay. The level of debt for a bankruptcy notice to be issued has also returned to \$5,000, with 21 days to respond to this notice.

As we move through the recovery period, other protections and options may become available to businesses. With hundreds of otherwise healthy businesses likely facing insolvency due to current economic conditions, these additional protections will give them the time they need to get back on their feet. But for others, it won't be enough. It's important to look at all your options first, and seek professional advice as early as possible to give your business the best chance of success.



8. Pre-Pack Sale

Perhaps your business was doing really well but then 2020 happened... and things went south rather quickly. In some cases, your business has been through so much that the best option is to wipe the slate clean and start afresh.

A Pre-Pack sale involves transferring your business to a new entity and engaging a liquidator to deal with the old company shell that owned the assets. This is a perfectly legal strategy and can have a number of advantages because while you get the chance to start things from anew, you can likely keep many of the intangible assets, like ideas, values, goodwill, customers, and even staff. As a result, it will often give you a better return than immediately closing the business.

In order to be successful with this strategy, you'll need:

1. Your assets and business to be valued by a registered valuer
2. Your assets and business sold at fair market value (which will likely be much lower than before the downturn)
3. Employee entitlements properly transferred to the new entity
4. All financial leases and PPSR creditors properly dealt with
5. The sale documented by a sale agreement
6. To ensure the sale is the best outcome for creditors
7. The sale to be ratified by an insolvency practitioner after their appointment*

*Note: Your insolvency practitioner must not advise on the sale before you appoint them. Otherwise, they won't be considered independent when investigating the sale. That's why it's a very good idea to consult with your accountants and lawyers before the sale.



9. Voluntary Administration and DOCA

If you're in a position where you're unsure if your business should continue to operate, or whether it needs to be liquidated, this option could make sense for you.

Voluntary administration is where an independent administrator assesses your business to figure out the best way forward. After taking the time to investigate your situation, they'll recommend one of the following plans:

- Return control of the company to the directors
- Enter into a Deed of Company Arrangement (DOCA) or Holding DOCA
- Liquidate the company to pay creditors

When you enter into voluntary administration, your company is given the time needed to assess the situation. Creditors, landlords, and other stakeholders (who could otherwise take action for non-payment) can't make any claims against you, and trading is temporarily paused.

Voluntary administration can help you avoid or reduce the impact of some pretty unpleasant consequences, including:

- Severe Director Penalty Notices (DPN) from the ATO, where the director can become personally accountable to tax liabilities immediately (in rare cases, DPNs may extend this timeframe to 21 days)
- Liquidation, where the company has no choice but to be wound-up and have all assets redistributed to creditors

- Landlords taking possession of leased property
- Creditors pursuing personal guarantees against directors

Holding DOCAs can be a good plan while market conditions are a little shaky (like they are right now) because they allow your business to continue operating, while freezing creditor claims. This can give you time to look into other options over a longer period of time than the usual voluntary administration process allows. You might look into different recapitalisation and restructuring options, while also watching the market for indications of how and when it will stabilise, to give yourself the best chance of recovery and your stakeholders the best chance of a return.

Voluntary administration
is where an independent
administrator assesses
your business to figure out
the best way forward.



10. Small Business Restructure

One option that might make sense for your business is a restructure.

The Federal Government's insolvency package reform came into effect on December 10, 2020. New laws enable eligible small businesses to access a 'debtor-in-possession' restructuring process, where a restructuring plan can be proposed to deal with creditor claims. This means directors can restructure their debts, while remaining in control of the business (although some limitations around transactions do apply).

Eligible businesses must have less than \$1 million in liabilities – this includes secured and related-party debt, but excludes employee entitlements.

The debt restructuring process involves:

- Passing a resolution that the company is insolvent or likely to become insolvent
- Appointing a registered liquidator to act as a restructuring practitioner
- Working with the practitioner to prepare and propose a restructuring plan (within 20 business days) to creditors
- Ensuring all employee entitlements are paid
- Ensuring all tax lodgements are up to date
- Inviting creditors to vote on the restructuring plan, aiming for a majority acceptance
- Implementing the plan (if accepted)
- Distributing funds to creditors



11. Liquidation and Simplified Liquidation

After looking into all your other options and getting professional advice, it might become clear that liquidation is the logical choice. You might choose to liquidate if your company isn't in a position to recover from the challenges it's facing. Or perhaps you're uncomfortable with the risk (and further debt) it would take to sustain your business currently, with an uncertain timeframe around economic recovery.

Liquidation can be a tough choice, but if you've explored all your options, you can be confident that you're making the right choice. Doing it as early as possible will help to minimise your risks and losses, and ensure staff and stakeholders can move on to other opportunities. After liquidating a company that you know is no longer viable, you'll probably feel quite relieved.

Liquidation involves:

- Lodging appropriate documents with ASIC
- Advising the ATO and other government organisations
- Paying off debts using the company's assets
- Writing off additional debts that aren't covered by these assets
- Generating reports and holding meetings
- Closing down the company and deregistering it with ASIC

Note that the process isn't always as simple as this. Placing your company in liquidation may expose the directors for insolvent trading and personal guarantee exposure for debts they have personally guaranteed. It's important to talk to an insolvency advisor to understand your exposure and how liquidation might impact your future plans before you go down this track.

That said, as part of the Federal Government's insolvency package reform (from December 10, 2020), eligible small businesses can now access a new simplified liquidation process. This removes some of the requirements that form part

of a standard liquidation. As with the new debt restructuring processes, your business must have less than \$1 million in liabilities to be eligible for simplified liquidation. You must also have all tax lodgements up to date.

With simplified liquidation, there are no creditor meetings and fewer mandatory reporting requirements. However, there are some safeguards to prevent misuse, like ensuring that simplified liquidation cannot continue if the company or director is found to have engaged in dishonest conduct that may negatively impact creditors.

Here's how simple liquidation works:

- The directors declare their eligibility to the liquidator within 5 business days of commencing the wind up
- The liquidator confirms whether they meet the criteria
- Notice is given to creditors, explaining the process and giving them the opportunity to object
- If 25% of creditors (by \$ value) are against simplified liquidation, the liquidator must return to the standard process

Liquidation can be a tough choice, but if you've explored all your options, you can be confident that you're making the right choice.

Step 3: Take Actions



Step 3: Take Action

We could finish up here, but first, we wanted to really emphasise the importance of taking action.

The sooner, the better

Too many businesses right now are stuck in steps one and two, and this will negatively impact their outcomes. We don't want you to stay stuck. Indecision could be catastrophic for your business, and it could be the difference between surviving and thriving... or coming to a rather messy end.

The sooner you take action, understand your situation, explore your options, and get professional advice, the better.

This work is important

Stop and take a deep breath. Reading about the steps you might need to take can feel a little heavy, negative, and overwhelming, especially if your business hasn't experienced financial difficulty or disruption in the past.

We want to acknowledge that the work you're doing right now is not easy, but it is very important. Possibly the most important thing for your business. You've already come a long way just by working to understand your options, so keep going.

You're not alone

Hundreds, probably thousands, of Australian businesses are in the same situation as you. They're facing challenges that they'd never dreamed of, and through no fault of their own, they're facing some pretty tough decisions.

Many of your suppliers and creditors will understand and empathise with what you're going through – whether you need to negotiate or restructure. Know that you're not alone, and don't hesitate to reach out for support and advice when you need it.

Get help

One of the best things you can do is get professional help (as much of it as possible) from:

- Accountants
- Lawyers
- A trusted and registered restructuring specialist

Insolvency practitioners (like our team at Mackay Goodwin) have deep knowledge in restructuring and all the options that may help your business get through a period of uncertainty. We've got decades of experience with helping businesses like yours recover from sticky situations, negotiate with stakeholders, and (when needed) smoothly wrap things up.

If you know you need to take action, don't leave it any longer. Give us a call on 1300 750 599 for an initial free consultation. We'd be happy to answer any questions that have come up while you've read through this guide.

Get free expert advice

We're ready and waiting, so take the first step and give us a call on 1300 750 599!

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