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Six steps in COVID-19 emergency plans for companies

 [Foulsham & Geddes \(/author/746\)](#)  1 April 2020

The federal and state governments are taking appropriate steps to mitigate the spread and impact of COVID-19. Further restrictions and stimulus packages are announced almost every day, and this article is based on an understanding of the environment until 24 March 2020.

The impact of these restrictions and rules on businesses and individuals will be severe, with some welcome opportunities.

Duties of directors and steps for business owners over the coming months

Businesses and particularly directors of corporations need to take steps now to deal with these restrictions and should incorporate government policy into their planning. This is important because even though the government has announced a moratorium on personal action against directors for insolvent trading, they may still face some kind of personal liability for their company's debts if they do not act in accordance with [their duties under the Corporations Act \(http://www.fglaw.com.au/what-are-director-duties/\)](#) over the coming months.

Below is a summary of recent announcements by the government. Based on these announcements, we recommend the following actions be taken immediately:

Step 1 – Develop a cash flow plan

Review your cashflow situation:

- Assess the revenue you expect to receive from ordinary business over the next three months, with three different scenarios (best, expected, worst case).
- Consider reducing expenditure which is not critical to the operation of your business.
- Obtain advice about the amount of government stimulus/assistance you may be eligible to receive over the coming months.
- Develop a cash flow forecast which incorporates your superannuation payment obligations, business activity statements, and regular reoccurring expenditure.
- If you operate on an accruals accounting basis, consider writing off bad debts so the business can take advantage of GST credits in the next lodgement.
- Consider the lodgement of BAS on a monthly basis, rather than quarterly.

Step 2 – Navigate HR issues

Review your employment situation:

- Determine if your business falls within the definition of "small business" within the meaning of the Fair Work Act. ["Small businesses" are treated differently when it comes to redundancy and unfair dismissal laws. \(http://www.fglaw.com.au/what-is-the-small-business-fair-dismissal-code/\)](#)
Generally, a business with 15 employees by headcount (including casuals) is a small business.
- Review employment contracts and any relevant Awards applicable to employees to ascertain your responsibilities with regard to stand down, redundancy, change to work arrangements and agreed leave arrangements.
- Consider the needs of your business and the following possibilities relating to employees:
 - Working from home
 - Arrangements for taking of leave
 - Possible 'stand down'

- Redundancy
- Always consult with employees before committing to making changes in the workplace. If it is not a requirement under an Award or the Fair Work Act, it is just good practice.
- Be aware that workplaces in NSW are subject to the Work, Health and Safety Act (and equivalent legislation in other states) and employers have a duty to ensure the safety of employees. Appropriate systems and processes need to be put in place in the event of an employee contracting COVID-19. The NSW government has published materials to assist businesses in this regard (see: <https://nsw.gov.au/covid-19/businesses-and-employees> (<https://preview.nsw.gov.au/covid-19/businesses-and-employees>)).

Step 3 – Consider key areas of risk

Review continuing contracts with suppliers and customers, including leases.

- What obligations are there to your landlord? Watch for updated announcements, especially rent amnesties.
- Do your contracts with suppliers or customers contain a *force majeure* clause that allows termination in the event of a pandemic? If so, what impact does that have on your business? Can you enact such a clause to your benefit?

Step 4 – Finance

Review your financial situation:

- If your business has finance, you should review your loan and security documentation to determine what your obligations to your financier are. For instance:
 - Is it a condition of your finance facility that you do not enter into payment arrangements with the ATO or creditors without notifying the bank first?
 - Generally, what do your security and loan agreements say about situations where the business is interrupted due to external events beyond your control?
- Ask for assistance from your bank including:
 - Reduction in interest rates and ongoing charges.
 - Deferral of repayments and interest.

Step 5 – Negotiate

Develop a plan to deal with payments to third parties over the coming months:

- Consider discussing your finance facilities with your bank and proposed steps.
- If appropriate, enter into discussions with your landlord regarding payments under your lease.
- Discuss payment arrangements with the ATO, provided that in doing so you are not inadvertently breaching conditions of your finance facility.

Step 6 – Insolvency/winding up

Consider if more drastic steps such as voluntary administration or winding up are more appropriate.

Because of recent government policy concerning actions for debts against companies, at this stage, a company should only consider voluntary administration if it is facing imminent court winding up by creditors. Voluntary administration gives a company the benefit of all court proceedings being suspended for a period of time, so as to allow the company to get its affairs in order and to come to an agreement with creditors. Such an arrangement is usually embodied in a Deed of Company Arrangement (DOCA).

Summary of key areas of government policy

Expansion of 'Safe Harbour' exceptions to insolvent trading?

For the next six months at least, directors of corporations will benefit from reduced personal liability in the case of insolvent trading by a company. Normally, a company will be insolvent if it cannot pay its debts as and when they fall due and directors may be personally liable for debts incurred by an insolvent company. These are the words of the federal Treasurer Josh Frydenberg on 22 March 2020:

"We will also provide relief from directors, from personal liability, where the company is trading while insolvent."

Directors should not assume that they have 0% risk of liability if they do nothing.

Depending on how they are applied, the rules make it clear that in order to obtain the benefit of safe harbour, action that is reasonably likely to lead to a better outcome for the company and its creditors (than the appointment of an administrator or liquidator to the company) must be taken.

Restrictions on enforcement of debts

The federal government has announced that the threshold to initiate insolvency processes against corporations has been increased to \$20,000.

This means, for the next six months at least, a creditor cannot issue a statutory demand to a corporation unless the debt is more than \$20,000.

If a statutory demand is issued, the debtor will have six (6) months to comply before a creditor can take action for winding up through the Courts.

Cash flow measures for business

The government is providing up to \$100,000 to eligible small and medium-sized businesses, and not-for-profits (NFPs) that employ people, with a minimum payment of \$20,000.

Small and medium-sized business entities with aggregated annual turnover under \$50 million and that employ workers are eligible. NFPs, including charities, with aggregated annual turnover under \$50 million and that employ workers will now also be eligible.

Under the enhanced scheme, employers will receive a payment equal to 100 per cent of their salary and wages withheld (up from 50 per cent), with the maximum payment being increased from \$25,000 to \$50,000. In addition, the minimum payment is being increased from \$2,000 to \$10,000.

An additional payment is also being introduced in the July – October 2020 period. Eligible entities will receive an additional payment equal to the total of all of the Boosting Cash Flow for Employer payments they have received. This means that eligible entities will receive at least \$20,000 up to a total of \$100,000 under both payments.

Temporary relief for financially-distressed businesses

The economic impacts of the coronavirus and health measures to prevent its spread could see many otherwise profitable and viable businesses temporarily face financial distress. It is important that these businesses have a safety net to make sure that when the crisis has passed, they can resume normal business operations. One element of that safety net is to lessen the threat of actions that could unnecessarily push them into insolvency and force the winding up of the business.

The government is temporarily increasing the threshold at which creditors can issue a statutory demand on a company and the time companies have to respond to statutory demands they receive. The package also includes temporary relief for directors from any personal liability for trading while insolvent and providing temporary flexibility in the Corporations Act 2001 to provide temporary and targeted relief from provisions of the Act to deal with unforeseen events that arise as a result of the coronavirus health crisis.

The ATO will tailor solutions for owners or directors of business that are currently struggling due to the coronavirus, including temporary reduction of payments or deferrals, or withholding enforcement actions including Director Penalty Notices and wind-ups.

Quick and efficient access to credit for small business

The government is cutting red tape by providing a temporary exemption from responsible lending obligations for lenders providing credit to existing small business customers. This reform will help small businesses get access to credit quickly and efficiently.

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This information is current as at 24 March 2020. Circumstances are changing rapidly and therefore the contents of this document may be out of date.

◆ [business strategy \(/tag/business-strategy\)](#), [coronavirus \(/tag/coronavirus\)](#), [governance \(/tag/governance\)](#), [management \(/tag/management\)](#), [recovery \(/tag/recovery\)](#).



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