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Revised Edition

Getting your not-for-profit back on track

A turnaround & insolvency prevention guide for directors, CEOs, and board or committee members of charities and not-for-profits.

RAPSEYGRIFFITHS

TURNAROUND + ADVISORY

Contents

A turnaround & insolvency prevention guide for directors, CEOs, and board or committee members of charities and not-for-profits.

WE ARE RAPSEY GRIFFITHS.

We're not your average insolvency firm. We're experts in business turnaround, crisis management, unmanageable debt and solving complex financial problems - and work collaboratively with you.

EXPERIENCE & AUTHORITY TO ACT

Founded in 2013 by Chad Rapsey and Mitch Griffiths, we're experts in developing strategies to help companies and individuals recover from financial distress. We provide our clients with honest and transparent assessments of their situation, clearly outlining their options and associated implications.

We've helped businesses across Australia and are committed to 'turning around' organisations and making them profitable again. If turnaround isn't possible, we act positively to implement strategies to minimise losses to all stakeholders.

Our team has extensive experience across all areas of business turnaround, including insolvency administration, liquidations, voluntary administrations, receiverships and bankruptcy. As registered liquidators and registered trustees in bankruptcy, we have the expertise and authority to act.

We do things differently

- ✓ Collaborative
- ✓ Solution-minded
- ✓ Cost-conscious
- ✓ Flexible
- ✓ Digitally connected

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INTRODUCTION

An increasing number of not-for-profits are facing financial challenges. This is not surprising, given the challenges faced by the sector as a whole. The good news is, by keeping track of your finances and taking swift action if difficulties hit, your organisation can thrive.

According to a report by The Australian, approximately 3,000 new charities emerge every year, all chasing a limited pool of funds. Add to this the National Disability Insurance Scheme (NDIS) roll-out in July 2016, which made things even more competitive, and NFPs have had to up their game to survive.

For NFPs paddling into financial hot water, in particular, disability service providers, the risks are real. Not only is there a danger of having to wind things up to the detriment of a good cause, but NFPs and their directors, like any business, face legal threats for trading while insolvent.

The insolvent trading laws in Australia are severe and wide-reaching. While directors of NFPs may value mission over management, they face the same insolvency liability as directors of for-profit companies when times get tough.

In this e-book, we take an in-depth look at the challenges NFPs face and provides our recommendations on how you can turn things around if you're experiencing financial difficulties. We also cover the worst-case scenario – insolvency – looking at both your legal obligations and formal appointments.

WHAT IS A NOT-FOR-PROFIT?

Generally, a not-for-profit, or non-profit, is an organisation that provides services to the community and which does not operate for the profit, personal gain, or other benefit of its individual members. All profits must go back into the services the organisation provides.

CHARITIES

A charity is a not-for-profit that has a charitable purpose and operates for the public benefit (except where the charitable purpose is the relief of poverty).

OTHER NOT-FOR-PROFITS

These include most sporting and recreational clubs, community service organisations, professional and business associations, and social organisations.

58,017

Registered charities in Australia in 2020

600,000+

Not-for-profits operating in Australia.

CHAPTER 1
MANAGING THE RISKS

Being a not-for-profit often means relying on grants and/or goodwill fundraising. However, shortfalls for operational costs and the social and economic ebb and flow of the fundraising cash stream, mean financial struggles are an everyday reality.

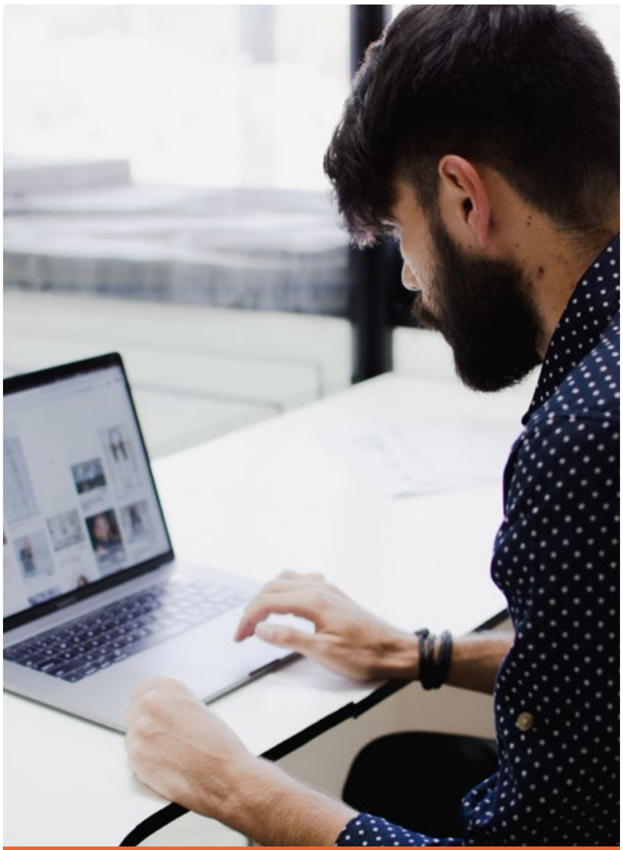
TOP FINANCIAL CHALLENGES FOR NOT-FOR-PROFITS

- **RESTRICTIONS ON FUNDING**
  Grant givers often prefer to support direct delivery or service of programs, forgetting infrastructure and operational costs. This means NFPs are unable to invest or keep financial reserves, placing you in greater danger in tough times.
- **TOO MANY MASTERS (AKA FUNDERS)**
  Securing revenue from a range of sources is necessary for the not-for-profit model. However, this can divert you from your core mission as you try to meet the varying demands and interests.
- **LACK OF GROWTH FUNDING**
  To be sustainable, your not-for-profit has to have enough capital not only to operate but to grow. The reality is, most grants are too small or short to support this growth.
- **ARDUOUS PAPERWORK PROCESSES**
  Grantmakers often place big burdens on not-for-profits, including making them complete complex application and reporting forms – a process they have to repeat year-on-year. This can also be made more complicated internally if a systematic approach is not applied.
- **KNOWLEDGE GAPS**
  Employees and volunteers of not-for-profits are generally hired for their expertise in a specific area, not their financial capabilities. This specifically includes a lack of understanding around not-for-profit finance.
- **OVERSERVICING**
  Doing work that's outside of the scope of your services and setting inappropriate client expectations can threaten profitability.
- **RELUCTANCE TO CEASE OR REDUCE SERVICES**
  If a service doesn't make a sufficient margin to sustain related overheads, deciding to stop offering it can be difficult because it's supporting people who need it.
- **INSUFFICIENT REVENUE DIVERSIFICATION**
  Creating heavy reliance on one or two funding bodies increases volatility when funding rules, pricing, and requirements change due to the impact on operations and ultimately cash flow.
- **IDENTIFYING COMMERCIAL REVENUE**
  Finding non-funding reliant sources to support operational costs and contribute to growth funding.

MINIMISING THE RISKS

In addition to ensuring you're financially clued-up, there are several other actions you can take to help reduce the risk of running into financial strife:

- **KEEP ACCURATE, UP-TO-DATE RECORDS** – In addition, closely monitor your performance at all times. This can help ensure you're always fully aware of your financial situation, helping you avoid any overspends or missteps.
- **LEARN FROM YOUR AUDITS** – Instead of seeing them as something to get through. Plus, work with your auditor, listen to their recommendations and make sure no obvious deficiencies are overlooked – this can cause more serious problems down the track.
- **BUILD A CASH RESERVE** – A cash reserve can help you maintain financial stability and enable your club to continue to meet its commitments even in tough times. It can also be used to invest in new programs, initiatives, or infrastructure.
- **IMPROVE YOUR PROCESSES** – This means streamlining, for example, automating things like your accounting, reporting, and forecasting with fit-for-purpose systems. You might even consider outsourcing. You should also look at your operational efficiency.
- **BOOST YOUR FUNDING PROSPECTS** – Competition for funding can be tough, but there are several things you can do to get your application to the top of the file. Be sure to tell a good story, use images, be specific about your work, list a few figures on your impact, and detail other donors who support you.
- **CHECK YOUR INSURANCES** – Having the right insurances in place is vital to protecting your people and assets. These include general liability, directors and officers liability, assets and contents, and volunteer protection.



HIRE, ESTABLISH & MAINTAIN FINANCIAL CAPABILITIES

Every director, CEO, and board member of a charity or not-for-profit should have a solid level of financial understanding. This includes being able to read and understand financial information. If you don't, you should consider undertaking some appropriate training and stay informed.

When hiring any senior member of your NFP, conduct informed, evidence-based interviews to assess financial skills and experience. If possible, form a collaborative partnership with a reputable financial organisation who can provide experts to sit in on the interviews.

These tactics to managing the risks can help keep you out of trouble in the first place. But what do you need to do if your NFP or charity is already facing financial difficulties?

PRACTISING GOOD GOVERNANCE

The Governance Institute of Australia has released a Good Governance Guide Starter Pack for NFPs, which covers the key areas of good governance. There are also guides available through ACNC, NDIS, and other bodies.

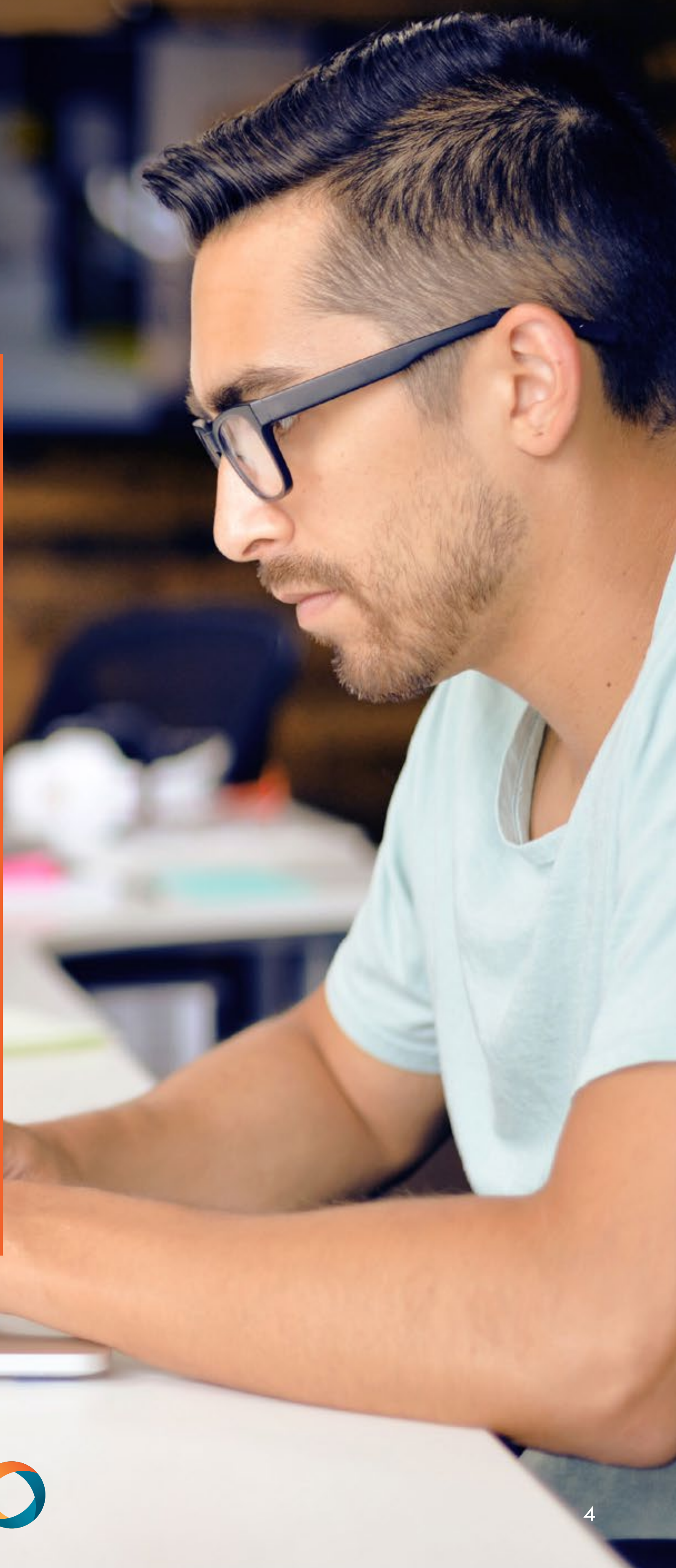
THE IMPACT OF THE NDIS: INCREASED RISKS & GOOD GOVERNANCE

Since the rollout of the NDIS and the shift to a consumer-driven, payment in arrears model of social and community services, risks to registered providers have increased.

These risks include NDIS budget management issues such as overspending your allocated budget so you run out of funding during your plan, underspending, and providing services without payment or the confidence that payment will be forthcoming.

By creating these additional risks, the scheme has placed new responsibilities and demands on boards and CEOs. These new demands call for adjustments in the skills and mindsets of those responsible for leading and managing NFPs.

Poor governance in this landscape puts your organisation at risk of commercial failure and financial and legal problems for directors and trustees. To avoid these risks, you need to be business savvy and implement practices of good governance.



CHAPTER 2
TURNING YOUR NOT-FOR-PROFIT AROUND

If your not-for-profit is financially struggling, you need to be proactive and act fast. The sooner you act, the better your chances of turnaround and survival. Engaging a turnaround expert will make the process easier and can result in better outcomes.

FIRST STEPS

- Thoroughly investigate your financial difficulties
- Keep accurate records and stay informed as to your club's financial situation
- Seek help from a qualified advisor (e.g., an accountant) to determine your position

ENGAGING A TURNAROUND EXPERT

If your NFP is showing signs of distress, as well as speaking to your accountant, it's a good idea to call in an independent turnaround and insolvency expert. They can help you undertake a business and financial review, identify challenges, and develop next-step strategies. The sooner you do this, the better.

Finding an experienced turnaround expert that understands your NFP is vital to the success of any turnaround strategy.

We're always available for a free confidential consultation to talk through your turnaround options and how the process could work for your club – 1300 727 739 | enquiries@rgia.com.au

3 STEPS TO TURNAROUND

STEP 1: ANALYSING THE SITUATION

Is your NFP or charity is in imminent danger of failure, do you have substantial losses but survival is not yet threatened, or are you simply in a declining business position?

For your NFP to be deemed viable, you must have:

- one or more viable core businesses
- adequate available financial resources, and
- sufficient organisational resources.

If these requirements are met, a detailed assessment of your strengths and weaknesses should be undertaken and stakeholder communication increased. If the above requirements are not met, go to page 13 to consider other options for your business.

STEP 2: DEVELOPING A STRATEGIC TURNAROUND PLAN

Your turnaround plan should have specific goals and detailed function areas. Management must also be accountable to deliver on these goals.

STEP 3: IMPLEMENTING THE PLAN

If the review identifies that your club has any major financial issues, your turnaround plan must be implemented.

The seven key ingredients of a successful turnaround strategy are crisis stabilisation, new leadership, stakeholder focus, strategic focus, organisational change, critical process improvements and financial restructuring.

Your turnaround plan might involve:

- Determining your current labour requirements and making redundancies
- Changing your management team and structure
- Eliminating any unprofitable services your business offers
- Identifying any surplus assets (non-core assets) and determining if they can be realised in a timely manner
- Identifying assets that can be maximised for further value
- Eliminating any unnecessary capital expenditure or considering and prioritising capital expenditure that maximises return on investment
- Improving your membership offering (process is convenient and effective)
- Focusing on your cash flow
- Communicating with your financiers, staff, creditors and members

Every situation is different, so will require different strategies. You might look at improving efficiencies and rationalising resources – such as by engaging in cost-cutting activities, calling in outstanding debts, and increasing fundraising activity.

Working in the not-for-profit sector, you may not have physical assets to sell to meet short term demands, so cash flow management is key.

Importantly, these courses of action should be properly recorded. This means having a **written turnaround plan**, a business review document, and advice prepared by an expert.

The best time to consider safe harbour is as soon as you suspect your company is approaching insolvency. The sooner you access it, the better protected you are.

ENTERING 'SAFE HARBOUR' – AVOIDING INSOLVENT TRADING LIABILITY

Under Section 588GA of the Corporations Act 2001 (the Act), if your NFP is taking actions to improve its financial situation (turnaround), you can access 'safe harbour'.

Safe harbour is a form of legal protection that provides a defence from insolvent trading liability for directors (see Chapter 4). Importantly, safe harbour is only available where a genuine turnaround attempt is being made, and you meet the eligibility criteria referred to as the 'better outcome test'.

To stay protected, you must be able to answer yes to the following questions:

- Are you informed about the financial position of your NFP?
- Are you taking appropriate steps to prevent misconduct?
- Are you taking appropriate steps to ensure your company is keeping proper financial records?
- Are you seeking advice from an appropriately qualified expert?
- Are you developing or implementing a plan for restructuring your NFP?

In addition to answering yes to all of these questions, you must also ensure your employee entitlements and superannuation are paid, and your ATO returns are lodged on time.

CASE STUDY – TURNAROUND

"One of the key elements for a board or committee to effectively govern an organisation is the visibility of its financial position, performance and operations. This visibility enables issues to be identified early and plans to be implemented to rectify the situation."

— MITCH GRIFFITHS (CO-FOUNDER / DIRECTOR)

BACKGROUND

The long-serving CEO of a not-for-profit charity had recently left the organisation and new committee members had recently been appointed. The incorporated association was registered with the ACNC and provided varying services to individuals living with a disability and/or the elderly. We were called in to provide crisis management.

CORE PROBLEM

When the CEO left, he took his knowledge with him throwing the organisation into uncertainty. The committee didn't have a clear picture of its operations or financial situation, meaning they weren't confident in taking on their new management role, and the stability and success of the organisation was in question.

THE SOLUTION

Given the issues that the organisation was experiencing, we took the following actions:

- A solvency review that was subsequently reported to the committee
- A review of operations followed by a report to the committee on issues and options to deal with the issues identified
- Assisted the board in the implementation of a plan, delivering detailed milestone reporting

THE OUTCOME

Following the review, it was found that the organisation was solvent, and the committee members weren't at risk of trading while insolvent. In addition, the issues identified in the report allowed the committee to implement the required changes and stabilise the organisation.

The organisation is currently trading profitably and has expanded its service offering and overall market share.

We deal with many not-for-profit clients, in particular, disability providers, who are facing financial issues and insolvency. The solutions we deliver are highly-tailored to individual circumstances. If you feel your organisation could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options – 1300 727 739 | enquiries@rgia.com.au

SMALL BUSINESS RESTRUCTURING PLAN (SBRP)

If you're a small business experiencing financial difficulties, as of January 1 2021, you may be able to access the small business restructuring plan. This new formal turnaround option – part of the government's COVID small business rescue reforms –offers an easier way to reduce debt and avert crisis, whilst remaining in control of your business.

SBRP PROCESS

The small business restructuring plan is a formal restructuring option; it's a simplified, lower-cost formal appointment. The purpose of this new process is to support more small businesses to survive, meaning better outcomes for businesses, creditors, employees and the economy.

ELIGIBILITY CRITERIA

To take advantage of this process, you must:

- ✓ be operated by an incorporated entity;
- ✓ owe less than $1 million in liabilities (excluding liabilities to employees of the NFP);
- ✓ all outstanding employee entitlements, including superannuation, must have been paid (this does not include entitlements not yet due for payment, such as annual or long service leave);
- ✓ all tax lodgements for the company must be up to date.
- ✓ not have previously done a small business restructuring or used simplified liquidation in the past 7 year

Current and former directors (acting in the past 12 months) also cannot have been a director of a company that has done a small business restructuring or used simplified liquidation in the past 7 years.

HOW THE SBRP PROCESS WORKS

STEP 1: APPOINTING A QUALIFIED SMALL BUSINESS RESTRUCTURING PRACTITIONER

After announcing the decision to access restructuring, a qualified small business restructuring practitioner must be appointed. Their first job is to assess your situation and determine if your company is eligible to access the restructuring process.

STEP 2: DRAFTING A SMALL BUSINESS RESTRUCTURING PLAN

You and your practitioner have **20 days from the appointment to prepare a small business restructuring plan in the approved form**.
The plan must:

- Identify the property that is being dealt with and how it will be dealt with (this could be via third party contribution, proceeds from the sale of assets, future trading profits or refinance)
- Provide remuneration for the SBRP appointment
- State the date on which it was executed

Your practitioner must review and verify the information provided in the plan.

STEP 3: SERVING OF THE BUSINESS PLAN TO CREDITORS

Your practitioner must serve the plan and relevant papers to affected creditors. **Note** all employee entitlements must be paid and all tax reporting obligations up to date before this can happen.

STEP 4: ACCEPTANCE OR REJECTION OF THE PLAN

Once your creditors have received the plan, they have **15 days to vote on it** via a written statement.

If disputed: A creditor must provide specifics of the dispute. Your practitioner may reject the dispute or proposed variation to the proposal.

If the majority in value of creditors accept it: The plan will be approved, binding all unsecured creditors. It will then be administered as you continue to trade as normal.

If rejected: Control of the company returns to the directors. The directors may choose to appoint a liquidator or voluntary adminstrator(see Chapter 5).

Rapsey Griffiths are experienced small business turnaround and restructuring practitioners. We can guide you through developing and administering a small business restructuring plan.

Contact us –
1300 727 739 | enquiries@rgia.com.au

CHAPTER 3
TACKLING INSOLVENCY

Insolvency is the greatest fear for many business owners. Unfortunately, it's a very real risk faced by many today, and not-for-profits are no exception. But what exactly is insolvency, and what are the signs you need to watch out for?

WHAT IS INSOLVENCY?

Insolvency is the state of being insolvent or unable to pay your debts as and when they are due and payable. If you're facing it, it's a daunting reality.

(1) A person (or company) is solvent if, and only if, the person (or company) is able to pay all the person's debts as and when they become due and payable."

(2) A person (or company) who is not solvent is insolvent —**Section 95A of the Corporations Act 2001 (Cth) (the Act).**

WARNING SIGNS OF INSOLVENCY

Determining insolvency isn't always easy. A forward-looking cash flow test (page 12) can help you assess your NFP's ability to pay its debts as and when they become payable. However, you also need to consider your company's wider financial position.

INSOLVENCY CHECKLIST

- Continued losses over recurring financial reporting periods
- Inability to borrow money or obtain loan approvals
- Overdue taxes
- Poor liquidity ratios
- Inability to produce timely and accurate information on your NFP's performance and financial position
- Dishonoured and post-dated cheques
- Special arrangements with certain creditors
- Sales of non-current assets (e.g., land, vehicles or equipment) to fund working capital deficiencies
- Inability to meet employee payment obligations (e.g., superannuation payments)
- Replacing standing creditor payment terms with discretionary decisions on when and which creditors will be paid
- Absence of any budget or basic financial plan/goals (e.g., seasonal periods may cause reductions in service hours/revenue and need to be planned for operationally to reduce expenses to prevent hours being spent on post-analysis of suspected revenue loss)

If your NFP organisation is facing any of the above, you should take immediate action to turn things around (see Chapter 2).

It's important to note the difference between a temporary lack of liquidity (you may still be solvent) and an endemic shortage of working capital. To figure out which applies to your NFP, use the balance sheet test (to the right of the page).

CASH FLOW TEST

A cash flow test looks at whether your company can pay its liabilities, as and when they fall due. Because lengthy payment terms are typical in the construction industry due to the nature of big projects, these should be taken into account.

BALANCE SHEET TEST

A balance sheet test involves looking at your balance sheet to work out whether your company would have more assets or liabilities if it were immediately wound up. In the construction industry, work-in-progress (WIP) is considered an asset.

If you don't have the expertise to do these tests internally, consider seeking help from an external, independent expert.

A successful turnaround with safe harbour protection (see Chapter 2) can steer you back to solvency and protect you from liability. But what are your legal obligations when it comes to insolvency?

CHAPTER 4
UNDERSTANDING DIRECTORS' DUTIES

Under insolvency law, directors of all companies, including not-for-profits, are bound by a series of statutory, common law and equitable obligations owed primarily to the company that employs them. These are called directors' duties.

DUTY TO PREVENT INSOLVENT TRADING

One of the duties imposed on directors of NFP companies is a duty to avoid insolvent trading. This duty falls under common law, the Corporations Act 2001 (the Act), and the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (the ACNC Act).

WHO IS A DIRECTOR?

The definition of 'director' under the Act includes shadow and de facto directors or any alternate director that is appointed and acts in that capacity.

NFPs may call them directors of the board, members of the management committee, the governors, or trustees. In the ACNC Act, they are described as 'responsible entities'.

COMMON LAW DUTIES

Under common law, directors have a duty to:

- act in good faith and the best interests of the company;
- act with care and diligence;
- to avoid conflicts of interest; and
- to not improperly use company information.

If you allow your NFP to get into financial hot water or realise you are insolvent or facing insolvency and fail to act, you are failing to meet these duties.

THE CORPORATIONS ACT 2001 (THE ACT)

The common law duties are reinforced in the Act, which includes a duty to act with care and diligence (section 180 (2)) and in good faith, and a requirement for directors to not improperly use their position or information.

The Act also makes specific provisions relating to insolvency, contained in Sections 588G-Z. The obligation to avoid insolvent trading falls under Section 588G.

ACNC ACT (2012)

Directors of ACNC registered charities are also subject to 'Governance Standards' they must comply with to become and remain registered.

These duties are largely consistent with the Act. They include a duty to ensure your charity's financial affairs are managed responsibly and not to allow it to operate while insolvent. You also have a responsibility to ensure the relevant people understand and fulfil their duties.

PENALTIES FOR BREACHES OF DUTY

INCORPORATED ASSOCIATIONS

- Penalties of up to $40,000
- Imprisonment of up to four years
- Committee members may be held personally liable for debts incurred or to compensate for any losses incurred (if they allowed the company to incur debts while insolvent)

COMPANIES LIMITED BY GUARANTEE

Contravening the insolvent trading principles of the Act can lead to:

- Civil penalties of up to $200,000 (where there were reasonable grounds the director suspected insolvency and failed to act)
- Compensation proceedings for amounts lost
- Criminal charges of up to $220,000 or imprisonment for up to 5 years, or both (in cases where the director suspected insolvency and failed to act)

REGISTERED CHARITIES

- Warnings or directions from the ACNC Commissioner demanding compliance
- Additional enforceable ongoing oversight and regulation by the ACNC (may result in court orders to cover losses or the paying back of benefits gained as a result)
- Suspension and prohibition of a relevant person from participating in governing the charity (which, if breached, could result in civil and criminal penalties)
- Deregistration of your charity

POTENTIAL DEFENCES

As a director, you have several defences open to you. These include reasonable grounds to expect solvency, reasonable reliance on information provided by others, absence from management, and reasonable steps to prevent incurring of debt(s).

However, these defences shouldn't be relied on. Instead, you should take reasonable steps to identify the causes of your financial difficulties and take swift action.

CHAPTER 5
WHEN TURNAROUND ISNT AN OPTION

If your NFP is already insolvent and a turnaround plan isn't viable, your next move is a formal insolvency appointment. For this, you should engage reputable and qualified experts registered with ASIC and ARITA to assist you.

The two main formal insolvency appointments available to your NFP are voluntary administration and liquidation.

VOLUNTARY ADMINISTRATION

If your NFP or charity is believed to be insolvent (or likely to become insolvent), you can appoint an independent administrator to take control. They will assess your businesses viability moving forward and undertake a range of other activities such as:

- Complying with statutory obligations (such as the ATO)
- Communicating with governments, authorities and employees
- Procuring funding
- Engaging external experts to review your internal controls and implementing measures to ensure its integrity.
- There is a moratorium on creditors enforcing their claims during this period

An administrator can also help you draw up a Deed of Company Arrangement (DOCA).

Working through insolvency is a daunting task. We're always available for a free, confidential consultation to talk you through the process and how it could work for your organisation –
1300 727 739 | enquiries@rgia.com.au

WHAT IS A DOCA?

A Deed of Company Arrangement (DOCA) is a binding arrangement between a company and its creditors governing how its affairs will be dealt with. It maximises the chances of a company continuing while providing a better return for creditors than winding up. (ASIC)

A DOCA will allow the organisation to continue trading while paying creditors a cents in the dollar return on their outstanding debts.

Your DOCA proposal may involve:

- A third party injecting cash into your business to partially repay creditor claims
- Your business contributing to a fund (managed by a deed administrator from trading surplus) to partially repay creditor claims

When drawn up, your DOCA will be proposed and considered at a meeting of your company's creditors. If your creditors accept it, you, as director, will generally resume control of your organisation.

The voluntary administration process typically takes 25 business days – enough time to get some clarity. However, the issues in a DOCA are generally not resolved in this timeframe.

Once the DOCA terms have been complied with, your organisation is released from administration and creditors can no longer recover any unpaid debts from prior to the administration.

CASE STUDY – VOLUNTARY ADMINISTRATION

"In circumstances of insolvency, voluntary administration provides an organisation with breathing space to determine its future while protecting directors or committee members from personal liability for breach of directors' duties or insolvent trading. While the outcome of voluntary administration for this organisation was positive, if we had been called in earlier, turnaround may have been possible."

MITCH GRIFFITHS (CO-FOUNDER / DIRECTOR)

BACKGROUND

The committee of an ACNC registered disability support organisation providing services to 400 individuals had concerns about the solvency and ongoing viability of the organisation, personal liability, and expending government funding. We were called in to assess the situation and, subsequently, to act as administrators.

CORE PROBLEM

The organisation had losses exceeding $1m that had been incurred in the previous two financial years. Losses of approximately $200k had been incurred in the 2.5 months prior to our appointment. A forecast indicated further losses of $740k would occur in the next financial year, and there was no clear turnaround plan in place.

THE SOLUTION

After assessing the organisation's current financial situation and the risk it posed to the committee in continuing to trade, we were appointed as administrators.

Our role involved:

- Taking control of the organisation for over three months while it continued to trade to ensure its survival or to achieve better returns to creditors
- Exploring options to either restructure the business to enable it to trade profitably moving forward
- Seeking expressions of interest (EOI) for third parties to acquire or merge with the business

THE OUTCOME

We were successful in securing a sale/transfer of the majority of the organisation's business to another organisation.

As a result:

- The EOI campaign resulted in an estimated $324k benefit to creditors compared to a shutdown scenario.
- 55 employees transitioned to the new organisation allowing for the potential transition/continuation of services to approximately 276 participants/clients.
- Employee entitlements were paid in full.
- Ordinary unsecured creditors received a return of 42 cents in the dollar.
- Employees and clients that didn't transition to the new structure were helped to secure new employment and/or an alternate provider.
- Committee members avoided any risk of personal liability as a result of insolvent trading and breach of directors' duties.

We deal with many not-for-profit clients, in particular, disability providers, who are facing financial issues and insolvency. The solutions we deliver are highly-tailored to individual circumstances. If you feel your organisation could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options – 1300 727 739 | enquiries@rgia.com.au

In many cases of liquidation or voluntary administration, an organisation can be sold or merged with another organisation, preventing redundancies.

LIQUIDATION

Liquidation is usually considered the last resort but offers a more conclusive outcome. If your NFP goes into liquidation, it's ultimately because your NFP can't pay its debts or you want to wind things up.

THE WINDING UP PROCESS

During liquidation, control of your NFP is handed to a liquidator. The process involves selling off your assets, winding up your financial affairs, breaking up your organisation's structure, and figuring out what happened. In addition, accounts are frozen, and any employees are usually made redundant.

ACNC DEREGISTRATION – CHARITIES ONLY

Before winding up your charity, you must request voluntary revocation (cancellation) of your registration with the Australian Charities and Not-for-profits Commission (ACNC).

HOW DO I PAY LAID OFF EMPLOYEES?

If there's not enough money to pay employees their entitlements in a liquidation scenario, these are covered by the Fair Entitlements Guarantee. Entitlements include unpaid wages, annual leave, long service leave, and redundancy pay.

CASE STUDY – CREDITORS' VOLUNTARY LIQUIDATION

"When an organisation is insolvent or likely to become insolvent, early action can protect directors or committee members from personal liability. Liquidation offers a managed wind down of operations and gives people time to transition to a different organisation."

MITCH GRIFFITHS (CO-FOUNDER / DIRECTOR)

BACKGROUND

The long-serving CEO of a children's disability provider based in regional NSW (a registered provider under NDIS) had recently left the organisation. As a result, an interim CEO was in place, operating with limited support. The committee had concerns regarding solvency, viability, personal liability, and its inability to meet employee entitlements.

CORE PROBLEM

The committee's concerns over the future viability of the organisation were due to losses of approximately $150k that had been incurred in the previous two financial years. As a result of these sizable losses, the organisation was under significant cash flow pressure. We were called in to assess the situation and come up with a solution.

THE SOLUTION

Given the issues that the organisation was experiencing, we recommended that the organisation wind down its operations in an orderly manner and be placed into liquidation.

THE OUTCOME

As a result of implementing our recommendation, the organisation achieved the following:

- An orderly wind down of operations undertaken by the CEO and the committee that allowed time for participants to transition to other service providers and staff to find other employment
- Assigned the lease of their premises to a sister organisation and sold the remaining assets and equipment to this organisation, enabling the ongoing presence of service in a regional area
- Compliance with their directors' duties and avoidance of any ongoing liability for trading while insolvent
- Employee access to the government's Fair Entitlements Guarantee Scheme to pay outstanding entitlements
- A partial return to employees for their unpaid superannuation entitlements

We deal with many not-for-profit clients, in particular, disability providers, who are facing financial issues and insolvency. The solutions we deliver are highly-tailored to individual circumstances. If you feel your organisation could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options –
1300 727 739 | enquiries@rgia.com.au

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ADDITIONAL RESOURCES

Not-for-profit organisations | ATO

Insolvency checklist

Insolvency: A guide for directors | ASIC

Corporate turnaround: What you need to know

Insolvency | Australian Charities & Not-for-profit Commission

Managing charity money | ACNC

National Disability Insurance Scheme | NDIS

Good Governance Guide Starter Pack | GIA

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