

Safe Harbour Laws Explained for 2026: How Australian Directors Can Reduce Personal Liability Risk

Personal liability for insolvent trading is one of the most serious legal risks facing Australian company directors in 2026.

SYDNEY, NSW, AUSTRALIA, April 7, 2026
/EINPresswire.com/ -- Personal liability for insolvent trading is one of the most serious legal risks facing Australian company directors in 2026 — yet one of the key legal protections designed to manage that risk remains widely misunderstood and underutilised. For directors of companies experiencing financial difficulty, understanding the safe harbour regime is not a technical nicety. [It may be one of the most consequential things they can learn.](#)

ReStructure Partners helps Australian directors navigate every stage of ATO and financial distress, from overdue BAS and tax debt through to Director Penalty Notices, restructuring solutions, voluntary administration, and broader insolvency options. The firm regularly assists directors in assessing whether safe harbour protection may be available and what steps are required to establish and maintain it. The firm's advisers support directors facing insolvency risk across Australia, helping them understand their legal obligations and the options that may assist depending on the circumstances.



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The Problem Safe Harbour Was Designed to Solve

Before the safe harbour regime was introduced in 2017, Australian directors of companies approaching insolvency faced a stark legal dilemma. The insolvent trading provisions of the Corporations Act impose personal liability

on a director who allows a company to incur a debt at a time when the company is insolvent, or when there are reasonable grounds to suspect insolvency.

In practice, this created a perverse incentive: directors who were genuinely trying to rescue a struggling business could face personal liability for every debt incurred during that period, even where their efforts were reasonable and their intentions sound. Safe harbour addressed this by providing a legal defence for directors who are pursuing a genuine and credible course of action aimed at achieving a better outcome for the company than an immediate formal insolvency appointment.



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- Rising ATO pressure → demand for restructure options
- Early intervention can save companies from restructure options

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The Legal Test

The core legal test for safe harbour is whether the director was taking one or more courses of action that were, at the relevant time, reasonably likely to lead to a better outcome for the company than an immediate administration or liquidation. This is an objective test — it is not enough for the director to genuinely believe the course of action will succeed. A reasonable person in the circumstances must be able to regard it as likely to produce a better outcome.

Importantly, the company does not need to ultimately succeed in its recovery for the protection to apply. A director who followed a well-developed and credible recovery plan but ultimately failed may still be protected, provided they met the other requirements of the regime throughout the relevant period.

The Conditions That Must Be Met

Safe harbour protection is not unconditional. The legislation specifies that certain requirements must be satisfied. These include:

- Paying employee entitlements — wages, leave, and superannuation — as they fall due
- Taking steps to ensure the company is meeting its tax obligations, or actively engaging with the ATO regarding any arrears
- Pursuing a properly documented course of action informed by appropriately qualified advice

The requirement for qualified advice is one of the most important practical elements of the regime. A director pursuing a restructuring strategy based on their own assessment alone, without the input of an experienced adviser, is unlikely to have a robust safe harbour position. Directors can access information on how safe harbour may apply to their circumstances at <https://restructurepartners.com.au>.

Safe Harbour and ATO Debt

A question that arises frequently in 2026 is whether a director carrying ATO debt can qualify for safe harbour protection. The answer is that ATO debt does not automatically disqualify a director — but it does create specific requirements. The director must be engaging with the ATO regarding the outstanding debt, whether through a current payment arrangement, an objection process, or a broader restructuring plan.

Simply carrying ATO debt while pursuing a recovery strategy is not necessarily inconsistent with safe harbour. Simply ignoring it is.

Directors who are managing ATO arrears alongside operational recovery efforts may find that safe harbour provides meaningful protection during that period, depending on the circumstances. Specific guidance on Director Penalty Notice exposure and the interaction with safe harbour is available at <https://restructurepartners.com.au/director-penalty-notice>.

ReStructure Partners works with Australian directors and business owners experiencing financial pressure, including ATO debt, cash flow issues, and creditor stress. The firm provides support across the full spectrum of financial distress, from early-stage tax arrears and compliance issues through to Director Penalty Notices, small business restructuring, voluntary administration, and other insolvency pathways, depending on the circumstances.

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