4 Proven Ways To Get Out Of Business Debt

(Legally & Ethically)

Andrew Quinn

CEO / Founder

My Business Path

mybusinesspath.com.au

1300 656 94

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Approximately 1,500+ companies fall into some type of insolvency appointment every month across Australia.

Which to a majority of the population is far more consistent than what they think.

Being in a situation like this is an extremely stressful period for any business owner as there may be many contributing factors as to how they got to this point.

Adding to this, the business may be responsible for a number of staff.

Whether it's 10 or 110, they rely on this business to help put food on the table.

Business owners are now faced with a predicament. How do they make it out the other side of this situation without losing everything and potentially doing wrong by everyone involved?

Here at My Business Path we get asked one common question – what are my options?

Fortunately, there are steps businesses can take to avoid these circumstances, or at least minimise the risk.

During this guide, we will cover four key (legal and ethical) ways to help fix a situation and help you move towards a more positive future – no matter how tough it feels right now.

We'll discuss:

1. **Business Restructure**
2. **Personal Asset Protection**
3. **Voluntary Administration**
4. **Voluntary Liquidation**

If you're in a situation where you have business debt over $100,000 and want to talk with a member of our team about your business sooner rather than later – please call us directly on 1300 656 945.

All the best,

Andrew Quinn
CEO / Founder
My Business Path

1. Business Restructure

This involves re-organising the internal structures of a company to better match its present or future needs, reduce tension between stakeholders and debtors and address debt repayment.

Put simply, a restructure aims to get you back in the black without losing money. One of the ways we can help you to achieve this is through a process called **debt restructuring**.

This process is different for every company as every financial situation is unique, however it usually involves a reorganisation of your liabilities and negotiations with your creditors to reduce your debt or extend repayment terms. This is a debt solution with a great outcome for all parties as the company in debt can manage cash flow more easily and creditors are more likely to be able to recuperate more of what they are owed.

Debt restructure is a more favourable option than insolvency or liquidation, allowing you to satisfy your creditors and continue to trade.

4 TIPS FOR A SUCCESSFUL RESTRUCTURE

1. Focus on your core activities - When reshaping your business structure, make sure you don't lose sight of the core products or services that make your company what it is. Often, as pressure mounts due to sudden growth or a need to generate more revenue, a company diversifies its offerings which can cause financial difficulty.

2. Keep it simple - You don't need too fancy or complicated when it comes to creating your new organisational design. The more complex it is, the more room there is for error. Not only that, but complex structures and processes tend to increase the financial burden on your company resources and overwhelm staff.

3. Aim for clarity - Without clear roles and responsibilities for your staff, straight-forward operating procedures and a simple business structure, confusion and ambiguity over duties and responsibilities can quickly become costly to a company and you could find yourself back in financial difficulty.

4. Be flexible - Make sure you have adequate resources to cope with the new structure, especially in the early stages. As you and your staff adapt to their new roles and operating procedures, you will experience teething problems and gaps that need to be addressed. Make sure you're flexible enough to bridge the gaps and have patience as your team adjusts.

2. Personal Asset Protection

A fundamental consideration for any business owner, personal asset protection is best implemented before your assets are threatened but we can also help protect your assets at any stage.

It's a terrifying thought for any business owner, that when faced with financial difficulty, the personal assets you have worked so hard for could be lost as a result of your business' financial situation.

It's important to act to protect your assets long before your debts become a problem, but we understand that's not always possible with third parties and creditors sometimes forcing your hand. If demand for what you sell has changed, your revenue is decreasing, your debtors are taking longer to pay you, or you're relying increasingly on credit, your debt will mount. Without adequate protection, **your personal assets may be used** to pay creditors and third parties.

As a savvy business owner, it's likely that you've had thoughts (however fleeting) about protecting your hard-earned wealth and you may have already taken steps to protect it. However, many business owners do not have a complete picture of the potential threats to their assets.

We asked 37 businesses from varying industries and of various sizes to identify the risks they may need protection from.

Here are their answers:

- public and product liability
- debt/creditors (e.g. insolvency)
- negligence
- employees (e.g. industrial action)

Whilst all of the above are very real threats to business owners, there were a number of risks that weren't identified, potentially leaving the business owners' personal assets unprotected.

What other threats are there?

Have you considered how your business would be affected by the following:

- business partners through (in)action or incapacitation (e.g. serious illness)
- fraud (internal or external)
- external relationship pressure (e.g. divorce)

With years of experience protecting Australian businesses just like yours, we know the risks but more importantly, we know how to safeguard your business against them.

3. Voluntary Administration

Voluntary administration is a very **measured solution** for a company that's in serious financial trouble. Unlike liquidation, which involves the breaking up and re-distribution of the business and its assets, companies that enter administration often come out of the process with a restructured business that is **still trading**.

Where a liquidator's job is to liquidate a company and its assets to recuperate as much of the debt owed to creditors as possible; an administrator's job is to find the **best possible solution** for the company and its creditors.

It is often the best choice for a struggling business. During administration, except in very unusual circumstances, **creditors can't enforce claims** whether they be personal, unsecured, or a charge over company property. Not only that, but owners of property occupied by the business cannot commence recovery actions nor can a court application for liquidation be commenced.

The process begins with a decision by the directors, creditors and a liquidator to appoint a 'voluntary administrator, whose role is to investigate the affairs of the company and provide a report to the creditor(s). The administration process **usually lasts around a month**, at the end of which, the administrator makes a recommendation regarding the steps that need to be taken to return the business to a satisfactory state of solvency (where assets of the company exceed its liabilities).

IT DOESN'T ALWAYS MEAN THE END FOR YOUR COMPANY

Once an administrator has finished assessing the company, depending on their findings, they will usually recommend one of the following three courses of action:

1. It is recommended that the company is returned to the directors.

This option will be recommended if the administrator decides that the directors are capable of satisfying their creditors by continuing to run the business as usual. Usually this will mark the end of the administrator's involvement.

2. It is recommended that the company enters liquidation.

This is usually when a business appears to have no chance of returning to solvency. It is recommended that the business is handed over to a liquidator (a separate process) and the business should be systematically dismantled to repay the creditors.

3. It is recommended that the company should enter a binding arrangement in which the administrator takes operational control.

In order to return the business to a satisfactory state, the administrators retain control of the business until the point it is ready to be returned to the directors. This is known as a deed of company arrangement or DOCA.

4. Voluntary Liquidation

Sometimes the only remaining option is to break a company down and re-distribute its assets. Not as intimidating as it sounds, it can be a relatively pain-free method of repaying creditors.

When a business is in severe financial difficulty and it seems as though there is **no chance of maintaining solvency** (where the company's assets exceed its liabilities), sometimes the only remaining option is to break the company down and re-distribute its assets. This process is known as **liquidation**.

Under a liquidation, the company **ceases trade** and operations, is **deregistered** and its assets are sold off to repay its creditors. Often, a liquidation is entered into involuntarily - the business owner holds off until the creditor takes them to court and the magistrate orders the liquidation - **but a liquidation can be voluntary**. Directors might apply to save themselves the time and expense that goes with a court case.

HOW DOES LIQUIDATION WORK?

There are actually three different types of liquidation and the process is different for each type.

1. Members' voluntary liquidation - This is for companies who wish to cease trading and do not want to sell the company. It is also known as 'winding up' a business and is **not suitable for companies that are facing insolvency** as the company must be able to pay its debts in entirety within 12 months of winding up the company. Once the majority of a company's members have signed a solvency declaration, members are given a 21-day notice period. Following this notice period, a majority vote is taken to continue and the liquidation process can begin. This type of liquidation is suited to companies facing an uncertain future and wish to avoid financial trouble.

2. Creditors' voluntary liquidation - This type of liquidation is used when members of a company **decide that a company is, or will become, insolvent**. It involves a similar process to members' voluntary liquidation, where a special resolution of the members of the company is made and the 21 days' notice period begins. Members will then vote and a majority agreement will see the appointment of a registered liquidator. This method of liquidation is for companies who are facing insolvency and wish to disband the company and its assets.

3. Court appointed liquidation - This form of liquidation is for companies and assets that are deemed at risk from third parties or directors of a company it can be **initiated by a creditor who is seeking payment**. Although it sounds scary, it is actually a safe way to secure the company from further loss and financial damage whilst the situation is assessed. If the court decides that the company should be liquidated, the court will appoint a liquidator.

In the following section, we'd like to share case studies showcasing clients who have enlisted our help to turn their situation around.

Client Case Study #1

SMALL GYPROCKING BUSINESS - SYDNEY

The financial situation:

This small gyprocking business came to My Business Path as it was under pressure from a number of creditors including the ATO (Australian Taxation Office). They owed around $160,000 to creditors overall, $110,000 of which was owed to the ATO. The company's assets included a truck and tools of the trade. If the company were to fold, both the business and the creditors stood to lose money and while the sale of assets would have generated some money for the creditors, they would have received well below true value for them.

The solution which saw creditors paid and the company continue to trade:

My Business Path stepped in to assist the business during a four-week period. We had a registered valuer value the business, including all assets and goodwill (which boosted the valuation) for their true market value. We then set the client up with a new ACN and registered the new company for GST. The new ACN purchased the assets and the goodwill of the old company for the true value, as per the registered valuer's valuation. This meant that not only did the creditors recover the true value of the assets, including goodwill, but the client was able to continue trading and thus continue to provide for his family and service his other creditors (including the ATO). We worked closely with the company to help the client put a new business structure in place that would better meet the needs of his business and his creditors and avoid ending up in a similar financial situation again.

Client Case Study #2

CONTRACTOR LABOUR HIRE COMPANY

The financial situation:

This contractor labour hire company working with Queensland, New South Wales and Victoria rail lines came to us with an overall debt of $1.4 million, just under half of which was owed to the ATO. This company had more than 200 staff and $1 million in unencumbered assets. They had just received a winding up application.

The solution which reduced their debt by 84% and retained their 200 staff members:

First and foremost My Business Path arranged an adjournment to push back the client's hearing date. This gave them eight extra weeks to prepare and gave us enough time to obtain financing through a lease/buy-back arrangement using the assets in the company. The company was then placed into voluntary administration and the DOCA was signed. The funds obtained from the finance arrangement were used to pay out creditors at a dividend of 16c to the dollar, a reduction in debt for the company of 84% - or a much more manageable $224,000.

The terms laid out in the DOCA were successful and the company managed to continue trading, but more importantly, their 200 staff members remained employed. We also implemented a restructure of the company to refocus the business on their core activities and enabled leaner and less complicated operations for smoother and more efficient financial dealings in the future.

But the best part of this story came almost halfway through our six months of working with the company - during the restructure, we discovered that almost 60% of the company's staff were Indigenous Australians, which meant they had the option to obtain government grants totalling almost $600,000 to better train their staff and grow their business. A fabulous story and a truly happy outcome for the company and their staff. It's small details like this that make working with debt experts a worthwhile experience.

Client Case Study #3

LARGE INDEPENDENT SUPERMARKET - RURAL WA

The financial situation:

This business came to us with an average annual turnover of around $10m and two commercial properties. They owed a total of $437,000 to unsecured creditors, including a tax debt of $312,000. They had received a winding up application from the ATO and faced enormous pressure from a major bank to sell not just their two commercial properties, but also the company owner's personal property to pay out their bank loan.

The solution which saved their properties and paid off $1 million total debt:

My Business Path worked with the client for two years until the company was back on its feet. We placed the company into voluntary administration and through this process, we were able to negotiate with creditors to repay the debt over a 12 month period, which reduced the monthly contributions to approximately $20,000. This meant that not only did the company have a viable future with a relatively unaffected cash flow due to a lower repayment amount, it also meant that the creditor (who faced losing the entire loan property amount should the company go under) also made their money back.

We also secured a stable, debt-free and profitable future for the business by:

- facilitating negotiations with one of the company's major suppliers who we discovered had been overcharging them for close to 8 years.
- recovering $1.05 million during the administration process through close examination of another of the company's creditors
- working with the financial ombudsman to keep the major bank away for 12 months, allowing us to assist in the refinancing of the company property - which the client didn't need to sell as a result.
- successfully paying off close to $1 million of debt, including the $437k owed to unsecured creditors. Priority (employee) creditors were owed $45k and secured creditors $520,000. The cost to the company was only $240,000 as a result of negotiations.

After working closely with the business owners, we left the company in a far better financial situation than we found it in. Following our involvement, the ongoing structure and operations of the company are smoother and more financially capable than ever before.

MyBusinessPath

Do you have over $100,000+ in business debt right now?

If you have business debt and need help figuring out how you're going to manage it - we invite you to book a confidential 1:1 call with our CEO / Founder Andrew Quinn.

Here's what you'll get on the call:

- ✔ Honest advice on what you need to do
- ✔ No obligation to use our services, if you want to take the advice and do it yourself that's totally fine. If you want more help, we are available.
- ✔ An action plan to help you successfully move forward, manage the debt and protect your personal assets.

To get started - call us directly on **1300 656 945**.