Managing Director Compliance Checklist

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How to use this checklist

Work through this checklist each quarter and record the date you did it in the board minutes. It covers the personal-liability risks for the Managing Director of a small proprietary company: a private Queensland mining services business with under $5M revenue.

- **Part 1** covers the ten Corporations Act areas most likely to cause trouble.
- **Part 2** covers other laws that make directors personally liable, and in practice often hurt more than the Corporations Act.
- **Parts 3 to 6** turn those duties into a calendar, early warning signs, records and governance habits, and a penalty summary.

Tick each item when it's true *today*, not when it was true last year. An unticked item is a task for the next board meeting.

> This is general information, not legal or financial advice. Penalty figures change with indexation each 1 July. Have a Queensland corporate or insolvency lawyer review it against your company's constitution and circumstances.

Part 1: Corporations Act, the top 10 risk areas

These are listed roughly in order of how often they cause personal liability for SME directors.

1. Insolvent trading (s 588G) and safe harbour (s 588GA)

- I can say with evidence that the company can pay its debts as and when they fall due (cash flow, not just the balance sheet).
- A rolling 13-week cash flow forecast is updated at least monthly.
- If there's any doubt about solvency, I get written advice from a qualified restructuring adviser *before* taking on new debt.
- Safe harbour preconditions are met: employee entitlements (including super) are paid, and tax lodgements are up to date.
- The board minutes record the solvency discussion and any turnaround plan.

2. Care and diligence (s 180)

- I read and understand financial statements, major contracts and tenders before approving them.
- Big decisions are minuted with the information considered and the reasons. This supports the business judgment rule in s 180(2).

- Where I rely on advisers or managers, I've checked they're competent and I've thought about their advice myself (s 189).
- Risk registers cover safety, contract, client concentration and cash flow risk.

3. Good faith, proper purpose and misuse of position or information (ss 181 to 184)

- No company opportunity, contract or client is diverted to me, my family or another entity I control.
- Confidential company information (pricing, tenders, client data) isn't used outside the company.
- Decisions are made for the company's benefit, not to entrench control or favour one shareholder.

4. Conflicts of interest (s 191)

- Every material personal interest is disclosed to the other directors and minuted. Examples: related-party leases, equipment hire from my entities, family employees or subcontractors.
- A register of directors' interests is kept and reviewed each year.
- Related-party transactions are on arm's-length terms and documented.
- Sole director/shareholder companies: decisions are recorded in signed resolutions (s 248B).

5. Financial records (s 286)

- Books correctly record and explain transactions, financial position and performance.
- Records are kept for 7 years, in English or readily convertible.
- Bookkeeping and BAS are reconciled monthly.

Poor records allow a liquidator to presume the company was insolvent (s 588E(4)). That makes an insolvent trading claim against you much easier.

6. Taking money or value out of the company

- Dividends are paid only when assets exceed liabilities, the payment is fair to shareholders, and it doesn't materially prejudice paying creditors (s 254T).
- No capital reduction or buy-back without following ss 256B to 257J.
- The company doesn't fund anyone's purchase of its own shares unless s 260A is complied with.
- Director loans, drawings and benefits are documented, approved and on commercial terms. This also manages Division 7A tax risk.
- Director remuneration is authorised under the constitution or by shareholders.

7. Creditor-defeating dispositions and phoenixing (ss 588FDB, 588GAB, 596AB)

- No assets, contracts or staff are moved to another entity for less than market value while the company is under financial pressure.
- No arrangements are designed to avoid paying employee entitlements.
- Any restructure is done on independent advice and at documented market value.

8. ASIC annual review and notifications

- The annual statement is reviewed and the fee paid on time.
- The solvency resolution is passed within 2 months of the review date, *only* if it's true (s 347A). Otherwise ASIC must be notified.
- Changes to officeholders, addresses, principal place of business, shares and members are notified within 28 days.
- The company name and ACN or ABN appear on invoices, contracts and public documents (s 153).
- Registers of members, the share register and constitution are current.

9. Director ID (s 1272C)

- Every director holds a director ID, and new directors get one *before* appointment.

10. Honesty with ASIC, auditors and administrators (ss 1307 to 1309)

- Nothing false or misleading goes into any lodged document or statement to ASIC.
- No company books are destroyed, concealed or falsified.
- If an administrator or liquidator is ever appointed, I hand over books and property promptly and complete the report on company activities and property within the time required.

Part 2: Beyond the Corporations Act

For a mining services MD, safety laws and tax debts are where personal exposure is highest. The safety laws include possible imprisonment.

Safety: mining safety acts and WHS (officer due diligence)

On Queensland mine sites, the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999* apply to you as a contractor. Off-site work falls under the *Work Health and Safety Act 2011* (Qld). Officers must exercise due diligence personally, and Queensland's industrial manslaughter offence extends to mining.

- I keep up to date on the hazards and risks of our work, and I've been to site recently.
- The company has adequate resources, systems and competent people to manage those risks.

- Incidents, near misses and HPIs are reported to me promptly, and I can see they're acted on.
- Our safety management system lines up with each client's site SHMS, and contractor obligations are clear.
- Notifiable incidents are reported to the Mines Inspectorate / RSHQ within the time required.
- I can show that safety performance is a standing item at every board meeting.

Tax: Director Penalty Notices (Taxation Administration Act 1953, Sch 1 Div 269)

- PAYG withholding, GST and super are paid on time, every time.
- BAS, IAS and super reporting are lodged on time, even when we can't pay. Late lodgement turns a DPN into a "lockdown" DPN, which can't be cleared by appointing an administrator.
- Payday Super (from 1 July 2026): super is paid with each pay cycle and payroll systems are set up for it.
- My address on the ASIC register is current, because a DPN is effective when posted.

Employment: Fair Work Act 2009

- Award classifications, overtime, allowances and penalty rates are checked against the applicable mining or other awards and any enterprise agreement.
- Pay records and payslips meet requirements and are kept for 7 years.
- Contractors are genuinely independent, not sham contracting.
- I know that I can be personally liable as an accessory to underpayments (s 550). Intentional underpayment is now a criminal offence (wage theft, from 1 January 2025).

Other laws worth checking

Law	Why it matters here	What to check
Privacy Act 1988	The small business exemption ends at $3M annual turnover, so the company is likely covered	Privacy policy, a data breach response plan and Notifiable Data Breaches reporting
Australian Consumer Law	Misleading claims in tenders and capability statements; large penalties for unfair contract terms in standard-form contracts with small businesses	Tender claims are accurate; our standard terms are reviewed
Queensland Environmental Protection Act 1994	Executive officers can be liable for company environmental offences	Spill, waste and contamination controls on our scope of work

Criminal Code (bribery)	Failure to prevent foreign bribery is a company offence; facilitation payments are risky	Anti-bribery and gifts policy, especially for any overseas work
Modern Slavery Act 2018	Reporting is required only above $100M revenue, but tier-one clients will ask for supply chain information	Supplier due diligence ready for client questionnaires
Payroll tax and workers' compensation (Qld)	Thresholds, grouping with related entities, WorkCover premiums	Grouping with my other entities assessed; WorkCover wages declared correctly

Part 3: Compliance calendar

Most liability builds up quietly between board meetings, so these tasks run on a fixed rhythm. Confirm the exact due dates with your accountant: BAS dates depend on whether you lodge monthly or quarterly and whether you use a tax agent.

How often	Task	Owner
Each pay cycle	Pay wages and super together (Payday Super); remit PAYG withholding	Payroll / MD sign-off
Monthly	Management accounts, bank reconciliation, aged debtors and creditors, 13-week cash flow update	Finance / MD
Monthly	Safety performance report: incidents, HPIs, corrective actions, inspections	HSE / MD
Monthly or quarterly	Lodge and pay BAS (GST, PAYG) on time	Accountant / MD
Quarterly	Board meeting: solvency, safety, risk register, conflicts, legal and contract issues, minuted	Board
Quarterly	Work through Part 1 and Part 2 of this checklist	MD
Annually (ASIC review date)	Review the annual statement, pay the fee, pass the solvency resolution within 2 months	Company secretary / MD
Annually (after 30 June)	Prepare financial statements; review director loans (Div 7A) and dividends	Accountant / board
Annually	Review the policies (Code of Conduct, Safety, Environment, privacy, anti-bribery), the D&O insurance renewal and the register of interests	Board
Annually	Payroll tax and WorkCover declarations; award and pay-rate review after the 1 July Fair Work increase	Finance / HR
Within 28 days	Notify ASIC of changes to officeholders, addresses, shares	Company

of a change or members secretary

Part 4: Early warning signs of financial distress

If two or more of these apply, treat it as a solvency question and act within days, not months. Courts and ASIC use similar indicators when deciding whether a director should have suspected insolvency.

- Tax debts building up, or relying on an ATO payment plan
- Super or PAYG paid late, or not at all
- Creditors paid outside their trading terms; suppliers asking for COD or upfront payment
- Overdraft at its limit, or the bank asking for more security
- Losing a major client contract, or heavy reliance on one or two mine site clients
- Clients paying late, or disputing large variations and progress claims
- Postdated cheques, dishonoured payments, or juggling which creditors get paid
- Letters of demand, statutory demands or legal action from creditors
- Ongoing trading losses, or management accounts that are late or unreliable

What to do:

1. Get an up-to-date picture: a current balance sheet, aged creditors, and a 13-week cash flow forecast.
2. Keep lodging every BAS and super report on time, even if you can't pay, to preserve safe harbour and avoid lockdown DPNs.
3. Get written advice from a qualified restructuring adviser or insolvency lawyer.
4. Put a documented plan in place that is reasonably likely to lead to a better outcome than immediate administration, and minute it (safe harbour, s 588GA).
5. Consider formal options early. Small business restructuring (Part 5.3B) is only available while lodgements are current and liabilities are under $1M.
6. Don't move assets, pay out related parties first, or take new credit you can't repay.

Part 5: Records, governance and personal protection

Written records are your best defence. Most director defences fail for lack of evidence, not lack of good intentions.

Records to keep (7 years minimum):

- Board minutes and written resolutions, signed within one month (s 251A)
- Financial records, management accounts and cash flow forecasts

- Registers of members, shares and directors' interests
- Contracts, tenders, variations and client correspondence
- Safety records: risk assessments, incident investigations, training and competency records
- Payroll records, timesheets and employment contracts
- Advice received from lawyers, accountants and restructuring advisers

Governance habits:

- Board meetings are held at least quarterly with a standing agenda: solvency, safety, risk, conflicts, compliance.
- Delegations of authority are written down (who can sign what, up to what value).
- The constitution is reviewed: it suits the current shareholding and allows electronic meetings and signing.
- A shareholders' agreement covers deadlock, exit and valuation, if there's more than one owner.
- The Code of Conduct, Safety, Environment, privacy, anti-bribery and whistleblower policies are current and staff are trained on them.

Protecting yourself personally:

- D&O insurance is in place. I've checked the limits, exclusions (insolvency, safety, fines) and run-off cover.
- A deed of access, insurance and indemnity gives me access to board papers after I leave and requires the company to keep insuring me.
- I understand which personal guarantees I've signed (bank, leases, equipment finance, suppliers) and the total exposure.
- Personal and company finances are kept strictly separate.

Part 6: Penalties at a glance, and when to get advice

The most serious personal exposures are imprisonment under the safety and wage theft laws, and unlimited personal liability for company debts under insolvent trading and DPNs. Figures are indicative; penalty units are indexed each 1 July.

Breach	What can happen to you personally
Insolvent trading (s 588G)	Pay compensation equal to the debts incurred; civil penalty up to 5,000 penalty units (over $1.6M) or 3 times the benefit; disqualification; criminal charges if dishonest
Directors' duties (ss 180 to 183)	Civil penalties, compensation orders, disqualification; criminal charges under s 184 if reckless or dishonest

Creditor-defeating dispositions	Civil and criminal penalties; transactions undone by a liquidator; disqualification
Industrial manslaughter (Qld mining and WHS laws)	Up to 20 years imprisonment
Serious safety duty failures (officers)	Large fines and imprisonment for reckless conduct
Wage theft (Fair Work Act)	Up to 10 years imprisonment; accessorial liability for underpayments
ATO Director Penalty Notice	Personal liability for unpaid PAYG, GST and super; lockdown DPNs can only be cleared by payment
ASIC admin and record-keeping failures	Fines, late fees, and grounds for ASIC to disqualify you (s 206F)

Get advice straight away if:

- You receive a DPN, a statutory demand, or an ASIC or regulator notice (the DPN clock starts when it's posted, giving 21 days)
- Part 4 warning signs appear
- There's a serious safety incident or a regulator investigation
- You're planning a restructure, a new entity, asset transfers, dividends or share changes
- A shareholder dispute or a director exit is coming

Sources

- Boss Lawyers: Insolvent trading in Queensland, director liability in 2026
- Boss Lawyers: 1 July 2026 changes for company directors
- Boss Lawyers: ASIC's 2026 enforcement priorities for Queensland directors
- Astris Law: Director penalty notices in Australia
- Astris Law: Lockdown DPNs

Other statutory references are to the *Corporations Act 2001* (Cth) unless stated, and are given from general knowledge. Check them with your lawyer.