RISK PROTECTOR

Your First Line of Defence Against Director Liability, ATO Enforcement and Asset Exposure

BUSINESS & DIRECTOR RISK IDENTIFIER TOOL — NO. 34

Trust Structure False Security Guide

Is Mine Actually Protecting Me?

Read this guide if you believe your family trust is protecting your assets — before you find out it is not

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WHAT THIS GUIDE DOES — AND WHAT IT DOES NOT DO

A family trust is one of the most commonly used asset protection structures in Australia — and one of the most commonly misunderstood. Many directors believe that having a trust automatically protects their assets. It does not. A trust that has not been set up correctly, administered properly, documented consistently or reviewed in recent years may provide far less protection than assumed — and in some cases, no protection at all.

This guide helps you assess whether the trust you rely on for asset protection is actually functioning as a protective structure — or whether it has gaps that would allow a determined creditor, the ATO or a liquidator to reach through it. It does not replace a formal legal review of your trust deed. What it does is tell you whether the signals are present that warrant that review urgently.

1	Answer each question based on what you actually know about your trust — not what you assume or have been told by others. If you need to retrieve your trust deed before answering, do so.
2	The verdict panel beside each answer tells you what that answer means for the integrity of your trust's protection. UNSURE answers are treated the same as NO — if you do not know, the protection is unconfirmed.
3	Each question targets a specific vulnerability that is commonly exploited by the ATO, liquidators and creditors to reach assets held in trusts. These are not theoretical risks — they are the exact pathways used in actual enforcement.
4	If you cannot answer most of these questions with certainty, your trust is almost certainly not providing the level of protection you believe it is. That gap between assumed protection and actual protection is the most common structural vulnerability Risk Protector identifies.

SECTION 1 — Trust Deed & Control

Who actually controls this trust — and is that control properly documented?

1 Do you know who the Appointor of your trust is — and is that person different from the Trustee?

☐ YES —	☐ NO —	☐ UNSURE —
You understand the control structure of your trust. The Appointor holds ultimate power — the ability to remove and replace the Trustee. Knowing who holds this role is fundamental to understanding who actually controls the trust.	You do not know who the Appointor is, or the Appointor and Trustee are the same person or entity. If the Appointor and Trustee are the same, the control separation that protects the trust from creditor attack is weakened significantly.	You are not certain about the Appointor position or whether it is properly separated from the Trustee. This is a foundational question about your trust's structure. Locate your trust deed and confirm before proceeding.

2 Has your trust deed been reviewed or updated within the last seven years?

☐ YES —	☐ NO —	☐ UNSURE —
Your trust deed has been reviewed relatively recently. Trust law and tax law change — a deed reviewed within seven years is less likely to contain outdated provisions that create vulnerability.	Your trust deed has not been reviewed in more than seven years — or you have never had it reviewed. An outdated deed may contain provisions that are inconsistent with current law, create unintended tax consequences, or fail to provide the protections you assume are in place.	You are not certain when the trust deed was last reviewed. Locate the deed and check the date. If no review has occurred within the last seven years, treat this as a NO.

3 Is there a documented Successor Appointor provision in your trust deed?

☐ **YES** — Your trust deed provides for succession of the Appointor role. Without this, the death or incapacity of the Appointor can create a control vacuum — and in some cases, allow a creditor or court to step into that vacancy.	☐ **NO** — No Successor Appointor is documented. On the death or incapacity of the current Appointor, control of the trust becomes uncertain. This is a structural gap that courts and creditors have used to challenge trust integrity.	☐ **UNSURE** — You are not certain whether a Successor Appointor is documented. This answer is in your trust deed. If you cannot confirm it is there, treat as NO and have the deed reviewed.

SECTION 2 — Administration & Compliance

Is the trust being administered in a way that preserves its legal integrity?

4 Are trust distribution resolutions prepared and signed before 30 June each financial year — every year without exception?

☐ **YES** — Annual distribution resolutions are being executed correctly and on time. A distribution made without a properly executed resolution can be challenged as invalid — potentially creating a tax liability or undermining the trust's distribution history.	☐ **NO** — Annual resolutions are not being prepared on time or at all. The ATO actively targets trusts where distributions are not supported by contemporaneous documentation. An invalid distribution can be recharacterised, creating unexpected tax assessments.	☐ **UNSURE** — You are not certain whether resolutions have been prepared correctly and on time every year. Check with your accountant for every year the trust has operated. A single missing resolution can create a vulnerability for the entire distribution history.

5 Has the trust distributed income to a range of beneficiaries — rather than consistently to the same one or two individuals — over the last three years?

☐ **YES** — Distribution patterns show appropriate spread across beneficiaries. Consistent narrow distributions to the same individuals attract ATO scrutiny under trust distribution integrity provisions and Part IVA anti-avoidance rules.	☐ **NO** — The trust has consistently distributed to the same one or two individuals over the last three years. This pattern is one of the ATO's primary targets in trust distribution reviews. It does not automatically mean a problem — but it requires careful documentation of the commercial rationale for each year.	☐ **UNSURE** — You are not certain of the distribution pattern over the last three years. Ask your accountant to provide a summary of distributions by beneficiary for each year. This is information you should know as a trustee.

6 Are all Unpaid Present Entitlements — trust distributions declared but not physically paid — properly documented and managed under Division 7A loan agreement frameworks?

☐ **YES** — UPEs are being managed correctly. Undocumented UPEs — particularly those owed to companies — can be treated as Division 7A loans by the ATO, creating deemed dividends taxed at top marginal rates.	☐ **NO** — UPEs are not being documented or managed under Division 7A frameworks. This is one of the most common and most expensive trust compliance failures. The ATO has been actively pursuing undocumented UPEs for several years.	☐ **UNSURE** — You are not certain what UPEs exist or how they are being managed. Ask your accountant for a UPE schedule showing all outstanding entitlements and their current treatment. Contact Risk Protector for their take on the subject.

SECTION 3 — Asset Protection Integrity

Does the trust actually quarantine assets from creditors and enforcement action?

7 Were the assets currently held in the trust transferred into it at market value — with proper documentation — rather than gifted or transferred at undervalue?

☐ **YES** — Assets were transferred at market value with proper documentation. Transfers at undervalue or gifts into a trust can be challenged as uncommercial transactions or voidable preferences, allowing creditors to claw back the assets.	☐ **NO** — Assets were transferred at undervalue, gifted, or the transfer documentation is incomplete. Any transfer that did not occur at arm's length and at market value is vulnerable to challenge. A determined creditor or liquidator can apply to have these transfers reversed.	☐ **UNSURE** — You are not certain how assets were transferred into the trust or whether the documentation is complete. This is a fundamental question. Without proper transfer documentation, the asset protection the trust appears to provide may not withstand legal challenge.

8	Is the Trustee of the trust a corporate trustee — a company — rather than an individual acting as trustee?		
	☐ **YES** — A corporate trustee provides cleaner structural separation between the trust assets and the personal liabilities of any individual. It also provides continuity of trusteeship without the complications of individual trustee death or incapacity.	☐ **NO** — An individual acts as trustee. This creates direct exposure between the trustee's personal position and the trust. If the individual trustee is sued personally, the trust assets may be at risk depending on the nature of the claim and the trust deed provisions.	☐ **UNSURE** — You are not certain of the trustee structure. Check your trust deed. The identity of the trustee is one of the first things a creditor or the ATO examines when assessing whether trust assets are reachable.

9	Are the assets held in the trust genuinely separate from the trading operations of any company you direct — no assets used in the trading business without a formal commercial agreement in place?		
	☐ **YES** — Trust assets are genuinely separated from trading operations with commercial agreements in place. This separation is what makes the trust defensible — assets that are informally used in the business blur the line between trust and trading entity.	☐ **NO** — Trust assets are used in the trading business without formal commercial agreements. An asset held in a trust but used freely in the trading company without a lease, licence or service agreement can be treated as a company asset by creditors and the ATO. The protection the trust appears to provide may not hold.	☐ **UNSURE** — You are not certain whether commercial agreements are in place. Check whether any trust assets — property, IP, equipment — are being used in your trading business. If yes, ask whether formal agreements exist. Contact Risk Protector for their take on the subject.

SECTION 4 — Your Overall Situation Assessment

Based on your answers — is your trust actually protecting you or providing false security?

✓✓ MOSTLY YES — TRUST INTEGRITY APPEARS MAINTAINED

Your answers suggest the trust is being administered correctly and the core structural protections are in place. Control is properly documented, resolutions are current, distributions are appropriate, and assets are genuinely separated. This does not mean no review is needed — trust law changes, circumstances change, and a trust that was properly structured five years ago may need updating today. Review this guide annually and have the deed formally reviewed every five to seven years.

☐ MIXED ANSWERS — GAPS PRESENT THAT REDUCE PROTECTION

Your answers reveal gaps in one or more of the key areas that determine whether a trust actually protects assets. A gap in control documentation, an outdated deed, inconsistent distribution practices, or undocumented UPEs can each individually undermine the trust's protection in enforcement proceedings. Before sitting down with any adviser to discuss your trust, best practice is to get a free A13 Structural Exposure Assessment from Risk Protector first — so the full picture of your structural gaps is understood before any remediation is undertaken.

✗ MOSTLY NO OR UNSURE — SERIOUS STRUCTURAL GAPS — PROTECTION MAY BE ILLUSORY

Your answers indicate the trust you rely on for asset protection has serious structural, administrative or documentation gaps that a determined creditor, the ATO or a liquidator could exploit to reach the assets inside it. The protection you believe you have may not be the protection that actually exists. Before engaging any adviser to review or remediate the trust, best practice is to get a free A13 Structural Exposure Assessment from Risk Protector first — so the complete picture of your structural exposure is mapped before anyone starts making changes that could create new vulnerabilities.

IF THIS GUIDE HAS RAISED QUESTIONS ABOUT YOUR TRUST

A trust does not exist in isolation. It connects to your trading company, your personal position, your director obligations and your overall asset protection strategy in ways that interact with each other. The Risk Protector A13 Structural Exposure Assessment maps that complete picture — so that any review or remediation of your trust is informed by everything that surrounds it.

The Risk Protector A13 Structural Exposure Assessment

Free. Confidential. The only forensic structural assessment of its kind available to Australian directors.

Visit **www.riskprotector.com.au** and click the **GET MY FREE A13 ASSESSMENT** button.

No obligation. No cost. Absolute discretion.

This tool is a situation awareness guide only. It is not a diagnostic, not advice and does not replace a professional structural assessment. Risk Protector Pty Ltd provides strategic advisory services only. Not legal or financial advice. Covered by $50M Professional Indemnity Insurance.

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