RISK PROTECTOR

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

BUSINESS & DIRECTOR RISK IDENTIFIER TOOL — NO. 5

Trust Structure Reality Check

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WHAT THIS TOOL DOES — AND WHAT IT DOES NOT DO

A family trust is one of the most powerful asset protection and tax planning tools available to Australian business owners — but only when it is correctly structured, currently compliant and properly maintained. Many directors operate under the assumption that their trust is protecting them when in reality it contains silent vulnerabilities that could strip that protection away entirely. This tool is designed to help you identify whether your trust is actually doing its job.

This is not a diagnostic. It does not measure the severity of what it finds or tell you how to fix it. What it does is reveal whether your trust structure has weaknesses that the ATO, a creditor or a legal challenge could exploit. Your score at the end will tell you whether this needs to go further.

1	Read each question and tick **YES**, **NO** or **UNSURE** honestly. If you do not know a detail about your own trust — that gap in knowledge is itself a risk signal worth noting.
2	The **RISK column** shows the consequence level if your answer is NO or UNSURE. HIGH means a direct structural vulnerability in your trust that can be exploited. MEDIUM means a developing issue that needs attention.
3	Count your NO and UNSURE answers in the Score Summary at the end. Your HIGH risk gap total is your most important result.
4	If RED or AMBER risk gaps are present the next step is clear, free and waiting for you at the end of this tool.

SECTION 1 — Trust Deed Currency & Compliance

Is your trust deed still legally sound — or has the law moved on and left it dangerously out of date?

#	Question	YES	NO	UNSURE	RISK
1	Has your trust deed been formally reviewed by a specialist in the last three years — specifically for current ATO compliance requirements?	☐	☐	☐	HIGH
2	Was your trust deed established after 2010 — or if earlier, has it been updated to reflect legislative changes since it was first created?	☐	☐	☐	HIGH
3	Does your trust deed specifically address the ATO's Section 100A provisions regarding trust distributions to adult beneficiaries?	☐	☐	☐	HIGH
4	Are you confident that your trust deed has not been inadvertently varied or breached by actions taken in your business over recent years?	☐	☐	☐	MEDIUM
5	Do you hold a current signed copy of your trust deed and all subsequent deed amendments — accessible and ready to produce if required?	☐	☐	☐	MEDIUM

SECTION 2 — Appointor & Trustee Control

Does the right person control the trust — and is that control protected if something happens to them?

#	Question	YES	NO	UNSURE	RISK
6	Do you know who the named Appointor of your trust is — the person with the power to appoint and remove the trustee?	☐	☐	☐	HIGH
7	Is there a named Successor Appointor documented in your trust deed — someone who takes over the Appointor role if the current Appointor cannot act?	☐	☐	☐	HIGH
8	Is your trust administered by a Corporate Trustee — a company specifically established to act as trustee — rather than an individual trustee?	☐	☐	☐	HIGH
9	If your trust uses a Corporate Trustee, does that company have more than one director — protecting against loss of control if one director is incapacitated?	☐	☐	☐	HIGH
10	Is the Appointor role held by someone other than — or in addition to — the primary beneficiary, providing separation between control and benefit?	☐	☐	☐	MEDIUM

SECTION 3 — Distribution Pattern & ATO Compliance

Is your distribution history creating an ATO challenge risk under Section 100A?

#	Question	YES	NO	UNSURE	RISK
11	Are trust distributions varied across multiple beneficiaries each financial year — rather than being paid consistently to the same one or two people every year?	☐	☐	☐	HIGH
12	Are all trust distributions accompanied by a resolution passed before 30 June each year — properly documented and retained?	☐	☐	☐	HIGH
13	Are there any Unpaid Present Entitlements in your trust — amounts declared as distributed in prior years but never physically paid out to beneficiaries?	☐	☐	☐	HIGH
14	If UPEs exist, have they been formally documented through compliant loan agreements or sub-trust arrangements to satisfy ATO requirements?	☐	☐	☐	HIGH
15	Have distributions to adult children or low-income beneficiaries been reviewed for Section 100A exposure — specifically whether a genuine economic benefit was received?	☐	☐	☐	HIGH

SECTION 4 — Asset Protection Function

Is your trust actually quarantining your assets from risk — or just appearing to?

#	Question	YES	NO	UNSURE	RISK
16	Are the key assets you intend to protect — including the family home, investments and significant personal property — actually held inside the trust rather than in personal names or the trading company?	☐	☐	☐	HIGH
17	Is your trust structured so that a creditor attack on your trading company cannot reach assets held inside the trust?	☐	☐	☐	HIGH

18	Has the asset holding structure of your trust been reviewed by a specialist to confirm it would withstand a fraudulent conveyancing challenge?	☐	☐	☐	HIGH
19	Are trust assets clearly separated and documented from trading company assets — with no commingling of funds, liabilities or operations between entities?	☐	☐	☐	MEDIUM

SECTION 5 — Trust Administration & Ongoing Compliance

Is your trust being administered correctly — or are administrative failures quietly undermining its legal integrity?

#	Question	YES	NO	UNSURE	RISK
20	Does your trust lodge its own annual tax return — separate from the trading company — and are all lodgements fully current with no outstanding years?	☐	☐	☐	MEDIUM
21	Are minutes, resolutions and distribution records for your trust maintained properly each year — stored and accessible in the event of an ATO review or legal challenge?	☐	☐	☐	HIGH

YOUR SCORE SUMMARY

Count your answers and enter the totals below. Your HIGH risk NO and UNSURE answers are the most important number on this page.

✓ YES ANSWERS	✗ NO ANSWERS	? UNSURE ANSWERS
_____	_____	_____
questions ticked	*questions ticked*	*questions ticked*

HIGH RISK QUESTIONS ANSWERED NO OR UNSURE — QUESTIONS 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 21

My count: _____ out of 16 HIGH risk questions

Each HIGH risk gap means your trust has a structural or compliance vulnerability that can be directly exploited by the ATO, a creditor or a legal challenge — often silently and without warning until formal action begins.

WHAT YOUR SCORE MEANS

Score	What It Means
0 HIGH gaps	Your trust structure shows no obvious HIGH risk vulnerabilities based on your answers. Review this tool every 12 months or immediately if your trust administration, distribution pattern or beneficiary arrangements change.
1 to 3 HIGH gaps	Your trust has identifiable structural or compliance vulnerabilities that a determined creditor or the ATO could exploit. Trusts that appear to be working correctly can be legally challenged and stripped of their protection by a single point of failure — an out-of-date deed, a missing resolution or an unchallenged distribution pattern. Fixing these gaps correctly requires specialist trust expertise that goes well beyond routine accounting and legal advice.
4 to 8 HIGH gaps	Multiple serious vulnerabilities exist in your trust structure simultaneously. Each one creates a separate pathway through which your trust's protection can be undone. The ATO's Section 100A powers, fraudulent conveyancing provisions and trustee liability rules are all actively used against trusts that have not been properly maintained. The combined effect of these gaps can result in the complete unwinding of your asset protection position.

9 or more HIGH gaps	Your trust structure carries critical vulnerabilities across multiple dimensions at the same time. The protection you believe your trust is providing may not exist in the way you think — and the consequences when that becomes apparent are severe. Distributions can be recharacterised, asset transfers can be reversed and trustee liability can attach personally. This is not a situation that resolves with time or routine maintenance. It requires immediate forensic structural attention.

IF YOUR SCORE HAS IDENTIFIED RED OR AMBER GAPS

The trust vulnerabilities this tool has helped you identify do not sit in isolation. They connect directly to your personal guarantee position, your ATO obligations, your trading company structure and your personal asset protection. A trust that has not been correctly maintained can expose everything it was designed to protect — and it often does so silently until a formal challenge makes the damage impossible to reverse.

There is one clear, free and completely confidential next step available to you right now.

The Risk Protector A13 Structural Exposure Assessment

The A13 is the only free forensic structural assessment of its kind available to Australian directors and business owners. It examines your trust in the full context of your entity structure, your personal guarantee obligations, your ATO position and your director liability — and tells you precisely what the gaps are and what a solution pathway looks like.

HOW TO GET STARTED — IT IS FREE AND THERE IS NO OBLIGATION:

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

We will send the A13 Structural Exposure Assessment form directly to you.

No obligation. No cost. Absolute discretion.

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This tool is a self-awareness resource 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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