

**Submission  
No 72**

**SUPPORT FOR DROUGHT AFFECTED COMMUNITIES IN NEW SOUTH  
WALES**

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The Hon Mr Phil Donato MLC  
123 Byng St  
Orange  
NSW 2800

By e-mail: [orange@parliament.nsw.gov.au](mailto:orange@parliament.nsw.gov.au)

Dear Phil,

**Submission to Committee on Investment, Industry and Regional Development**

Further to my recent attendance at a meeting held in Orange by the Committee on Investment, Industry and Regional Development in relation to support for drought affected communities in NSW, I would like to make the following submission.

1. I am currently a consultant with Worrells, a forensic accounting and liquidation firm with offices throughout Australia and in particular in Orange, NSW.
2. I have seen the effect of the drought as it filters down to town and rural based businesses and have presented a paper to the Orange Business Chamber recently which I have please in attaching. This paper addresses some considerations for managing company solvency and was prepared by a partner at Worrells. In particular, I wish to address the need for Strategic Planning by businesses, especially in hard times which the drought has presented recently.
3. I have previously established and run the consulting divisions of 2 medium sized accounting firms in Sydney where I worked with clients specifically on strategic planning.
4. In developing the strategic planning for clients there needs to be an emphasis on creating a simple action plan, implementing that plan and measuring the results of that implementation.
5. My submission is that the NSW government support the roll out of a consistent Strategic Action Plan process throughout regional NSW. I believe that the best way to accomplish this is through the allocation of funding for a private consulting firm or firms to work with small and medium business in this process.
6. I note that the NSW Innovation & Productivity Council Business size report (June 2019) defines 'Other Small Business' as between 5 – 19 FTE employees. It is this size business

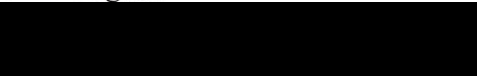
that I believe needs targeting in regional areas. In my experience, it is these sized business that have enough size to be able to implement Strategic Action Plans, both as to the necessary human resources and financial ability. Through my consultancy with Worrells, I have found that the demise of these sized businesses have an immediate effect on direct employees and a multiplier effect on those business with whom they trade.

7. I propose that if say \$25m was allocated to such a process, then there would be potential benefits measured as follows:
  - a. Of the \$25m, let's say that \$20m is spent directly with the consulting company working directly with the regional business, then there is an immediate input of that amount into the local regional economies, especially if the consultancy organization(s) were regionally based – which I recommend.
  - b. If the allocated amount per business with whom the consultancy organization worked was say \$10,000, then there would be 2,000 such businesses directly assisted in this manner. If the average FTE employees for these businesses is 10 then there are potentially 20,000 employees directly assisted.
  - c. The multiplier effect of this on other smaller businesses, including micro businesses, in Regional areas of NSW would be much larger.
  - d. There is a perception 'in the bush' that although farmers are getting assistance that the town folk have been left to their own devices. Such a plan as I am suggesting here would help alleviate that perception. It is also a fact that we perceive that when super expensive infrastructure projects such as inner city road networks and stadiums are being invested in that 'the bush' is once again being ignored.
  - e. I suggest that each business that is funded is required to make a contribution to the consulting firm(s). This creates buy in and helps ensure that this is not just another hand out.

The purpose of this very brief submission is to bring to the attention of the NSW Government an idea which may have to be further developed, but which needs consideration.

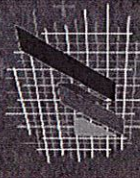
I am happy to discuss further and assist with developing these ideas into something of substance should you wish.

Kind Regards



Rob Campbell





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PRESENTED BY ROB CAMPBELL SENIOR CONSULTANT, WORRELLS

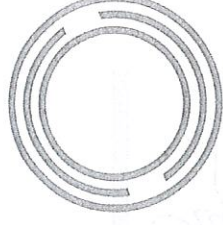


**SOME CONSIDERATIONS FOR  
MANAGING COMPANY SOLVENCY**



# Disclaimer

All material contained in this paper is written by way of general comment. No material should be accepted as authoritative advice and any reader wishing to act upon material contained in this paper should first contact Worrells for properly considered professional advice, which takes into account specific situations.



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# **SOLVENCY**

## **Definition in Section 95A of the Act:**

- 1. A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.**
- 2. A person who is not solvent is insolvent.**

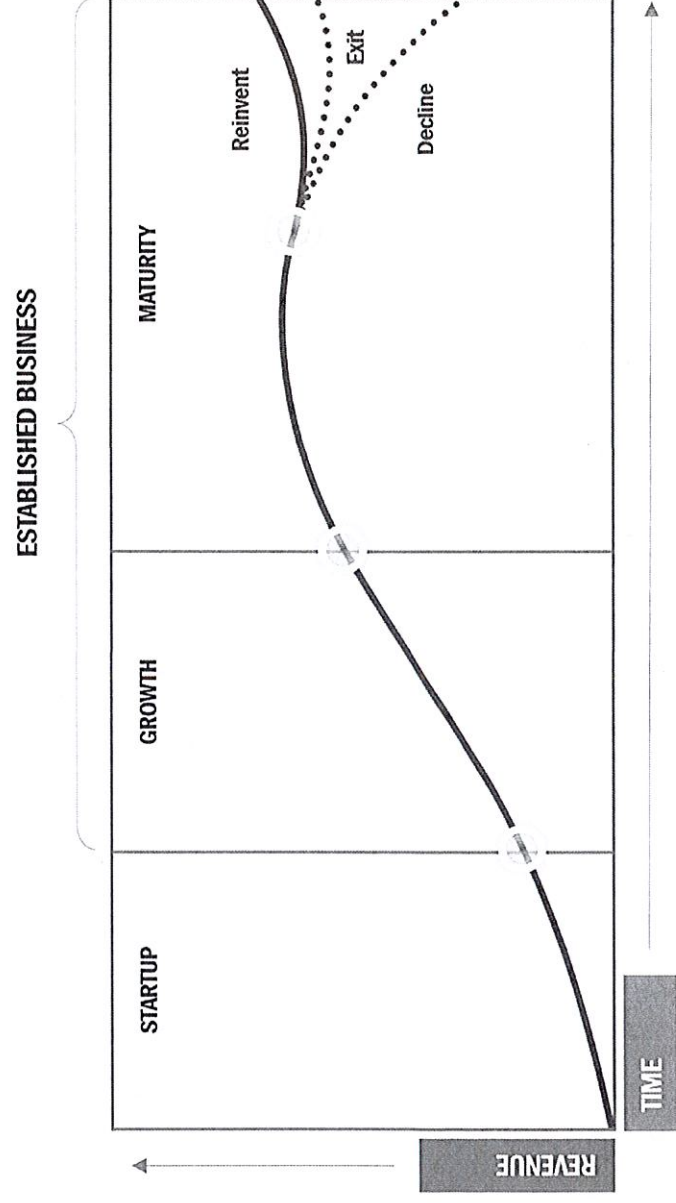


# **CHANGE MANAGEMENT**

## **- Identifying the need for change**

- Areas to review to identify the need for change:
  - Strategic Plan
  - Resources
  - Performance
  - Compliance
  - Risk
  - Accountability
- Are you too busy on the tools?/ Should you be spending more time on the tools?
- Do you need assistance?

# Know Your Business' place in the Life Cycle





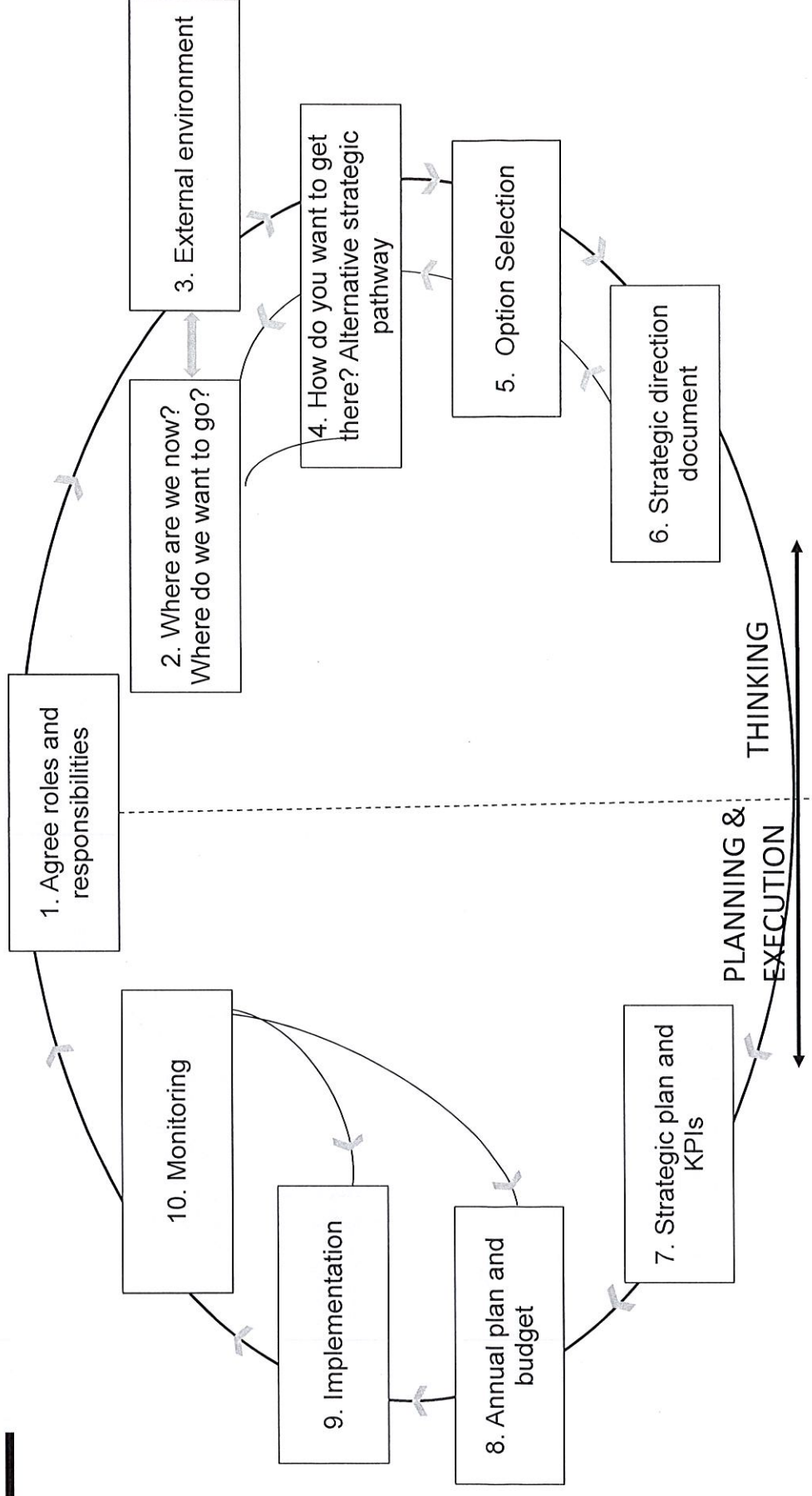
# **CHANGE MANAGEMENT**

## **- Identifying the need for change**

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- Be clear on the purpose of the organisation.
- Establish the right culture.
- Consider short term and long term views.
- See the big picture.
- Seek awareness of the forces for change, new ideas and technologies.
- Understand the business
- Be proactive in the strategic process.
- Make strategy and strategic conversation an ongoing activity.

# STAGES FOR STRATEGIC PLANNING





# REASONS FOR COMPANY FAILURE

## - Core Issues *Versus* Strategies for Resilience

CORE ISSUES	STRATEGIES FOR RESILIENCE
Ineffective Planning	<ul style="list-style-type: none"><li>• Set aside a dedicated annual session to build a proper strategy.</li><li>• Review strategy regularly.</li><li>• Communicate strategy to employees.</li><li>• Be prepared to make changes to strategy.</li></ul>
Stakeholder Disputes	<ul style="list-style-type: none"><li>• Clear legal documentation around resolution.</li></ul>
Skillset of Director	<ul style="list-style-type: none"><li>• Ensure appointment of an appropriate director.</li><li>• Undertake additional training – AICD course.</li><li>• Non executive director experts.</li></ul>
Dysfunctional Directors	<ul style="list-style-type: none"><li>• Act in a timely manner.</li><li>• Seek an intermediary to deal with dysfunctionality.</li></ul>
Prevent Trading Whilst Insolvent	<ul style="list-style-type: none"><li>• Stay informed about the company's financial position.</li><li>• Regularly assess the company's solvency.</li><li>• Obtain appropriate professional advice.</li><li>• Act in a timely manner.</li><li>• Consider safe harbour provisions.</li></ul>

# REASONS FOR COMPANY FAILURE

## - Core Issues *Versus* Strategies for Resilience

CORE ISSUES	STRATEGIES FOR RESILIENCE
Inability to Change	<ul style="list-style-type: none"><li>• Undertake difficult discussions around the need to change and action any decisions made.</li><li>• Identify necessary changes through regular review.</li></ul>
No Strategy	<ul style="list-style-type: none"><li>• Ensure a strategy is developed every year.</li><li>• Prepare a strategy for a one year, three year and a five year period. Update annually</li><li>• Quarterly review of strategic goals.</li></ul>
Poor Communication	<ul style="list-style-type: none"><li>• Regular and meaningful communication.</li><li>• Transparent</li><li>• Honesty</li></ul>
Industry Changes	<ul style="list-style-type: none"><li>• Digital disruption</li><li>• New competitors</li><li>• Regulation &amp; legislation</li></ul>



# **The Need for Change Capital**

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So your business has debt problems and needs change, how do you pay for that?

- Equity
- Debt
- A business partner

# **FINANCE OPTIONS**

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- Overdraft Facility
- Trade Credit
- Debtor Factoring / Export Factoring / Invoice Factoring
- Inventory Finance / Purchase Order Finance
- Short Term Loan
- Unsecured Finance
- R & D Funding
- Credit Cards
- Equity Capital



# **TOOLS AVAILABLE TO A DIRECTOR WHEN A BUSINESS BECOMES DISTRESSED**

## **Safe Harbour**

- Safe Harbour legislation was introduced in September 2017 which allowed directors a 'safe harbour' from financial liability arising from insolvent trading.
- To enter into safe harbour, the following conditions must be fulfilled:
  - All employee entitlements have been paid and will continue to be paid as and when they fall due.
  - All tax reporting obligations have been met; and
  - The directors are fulfilling their obligations to provide assistance in the event of administration or liquidation.
- Once in safe harbour, directors need to devise a restructure plan that aims to achieve a 'better outcome' than the outcome that would result from a formal, external administration scenario.
- It is sensible for directors to pass a resolution declaring the fact that the company is in safe harbour.

## **Restructuring**

- Where directors and their company are unable to qualify for safe harbour, they are still able to undertake an informal restructure plan. An informal restructure plan is in essence the same as safe harbour however the directors are not afforded the protection from insolvent trading.
- It is sensible to pass a resolution for the company disclosing the fact the company is undertaking a restructure plan and engaging an expert to assist with the process.



# **TOOLS AVAILABLE TO A DIRECTOR WHEN A BUSINESS BECOMES DISTRESSED**

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## **Winding Down**

- Director/directors have decided that they no longer want to be involved in the business and investors wish to avoid placing the company into voluntary administration or insolvent liquidation.
- It is likely that directors have exhausted refinance, sale of business and an informal restructure – business closure is the last resort.
- There should be a costing assessment done prior to closure by the directors (and their advisers) and the necessary funding which would involve related party funders.
- Usually the final step in the winding down is a solvent liquidation of the entity.
- Often there is external funds injected to complete the wind down.

## **Distressed Sale of Business**

- An urgent, distressed sale of business that would usually occur in conjunction with safe harbour protection or an informal restructure plan.
- Engaging a restructuring expert to assist in the sale is advisable. Directors may also reach out to distressed private equity or private financiers who specialise in investing in distressed businesses.

# EXTERNAL ADMINISTRATION FOR WHEN A BUSINESS BECOMES DISTRESSED

There are four types of appointments available when there is a concern that insolvency might exist or has occurred:

APPOINTMENT	APPOINTED BY	ROLE
Administrator	The directors (but can be appointed by a liquidator or a provisional liquidator or secured creditor). The ATO is also a major appointer of administrators.	The voluntary administrator is appointed to pay off the debts of the company and attempt to continue trading.
Receiver	A secured creditor such as a mortgagee where power to appoint a receiver exists under the loan agreement or in certain circumstances by the court. The ATO is also a major appointer of receivers.	The receiver can either dispose of one or more of the company's assets to recover the loan or find another way of settling the loan and continue to trade the business, in which case the receiver is considered a receiver and manager.
Liquidator	Appointed either voluntarily by directors, by the creditors or the shareholders, or by the court.	Liquidates the company in an orderly manner.
Provisional Liquidator	Appointed by the court.	Considers whether liquidation or some other action such as voluntary administration or returning to the control of the directors is appropriate.

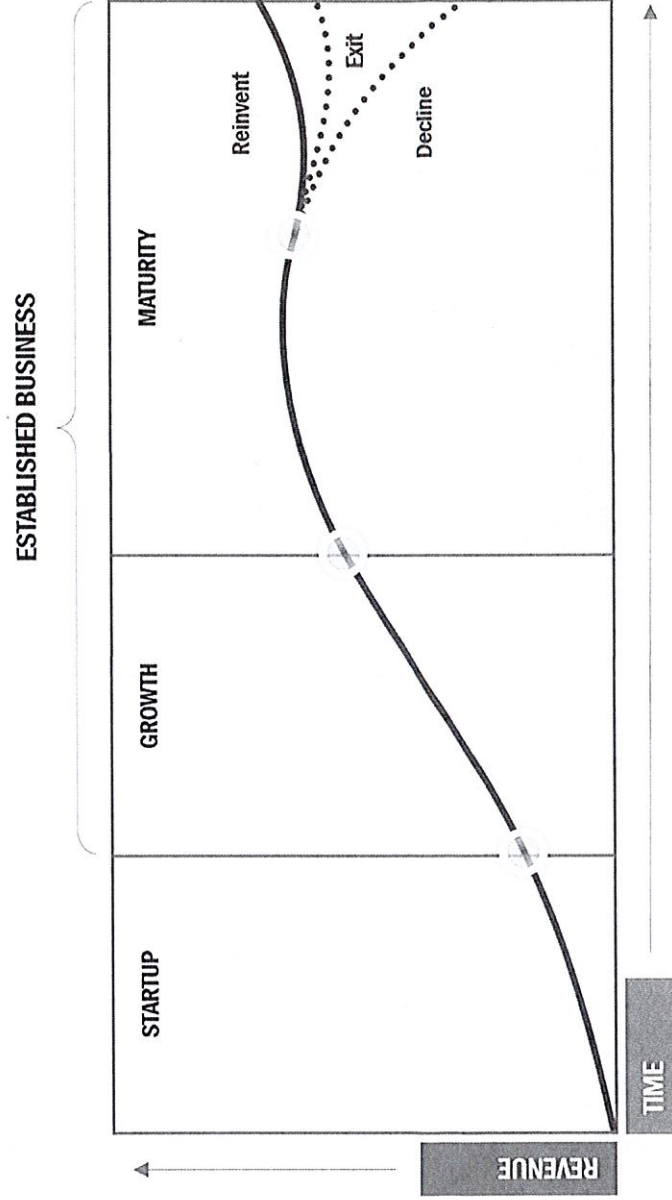


# TOOLS AVAILABLE TO A DIRECTOR WHEN A BUSINESS BECOMES DISTRESSED

## External Administrator

ADVANTAGES	DISADVANTAGES
Debt is crystallized and all creditors treated in accordance with their priorities under the Corporations Act.	The administrator conducts investigations and reports these to creditors and to ASIC. These findings could be quite adverse;
Investigations will be conducted into the affairs of the company and its officers which is then reported to ASIC and creditors.	Directors who hold this post at the time of appointment or up to 12 month prior are recorded as being a director of a failed company with ASIC. This may impact their ability to see personal financing;
A Deed of Company arrangement (DOCA) can be put forward which provides for a greater return to creditors than an insolvent liquidation and/or allows the company to continue trading under a restructured balance sheet.	Investigations conducted are very public and all offenses and outcomes reported to ASIC are able to be downloaded by interested parties.
	If a DOCA is not put forward, the company will most likely enter into an insolvent liquidation which then provides significant powers to the liquidator to pursue insolvent trading claims and voidable transactions (if they exist).

# KNOW WHEN TO GET OUT



**Resourced nationally,  
focused locally**



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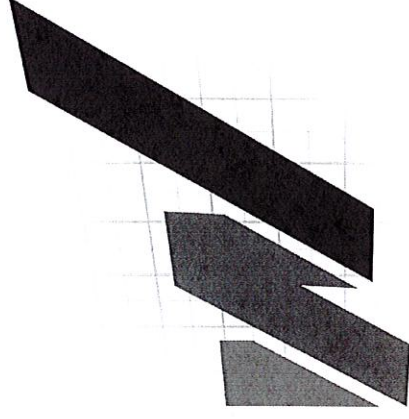
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