Concepts & Results

Free Resource

The Director Is Gone - Now What?

Why Every Company Needs a Contingency Plan

Make Money **Pay Less Tax** **Build Wealth**

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www.cr.com.au | admingroup@cr.com.au | 03 9569 5676

The death or incapacity of a company director isn’t just a family tragedy—it’s a business crisis.

For companies with a sole director or one controlling director, their sudden absence can trigger a complete operational standstill. Banks freeze access. Staff can’t get paid. Decisions stall. And the family is left in legal limbo.

The solution? A Successor Director Strategy. This blog explains the critical role this simple but powerful strategy plays in ensuring business continuity—and why ignoring it can cost everything you’ve built.

Business Continuity is Not Automatic

Many business owners assume:

- "My spouse will take over."
- "My kids will just step in."
- "My accountant can manage it."

But here’s the truth: **none of that is automatic**. Unless you’ve legally appointed a Successor Director:

- Your company is left without an authorised representative.
- ASIC does not recognise informal handovers.
- Banks and institutions will not release funds or allow decisions to be made.

A formal contingency plan is essential—and the best time to implement it is *before* you need it.

The Fragility of a Sole Director Company

In Australia, over 60% of private companies are run by a single director. This structure is simple and efficient—until something goes wrong. Without another appointed director or provision in the company constitution, there is:

- No one authorised to act on behalf of the company.
- No capacity to approve or sign contracts.
- No access to accounts.
- No ability to lodge tax or compliance documents.
- No legal power to keep the company running.

This is where the Successor Director Strategy steps in.

The Cost of Inaction

When there's no Successor Director and the director dies or loses capacity, the fallout can include:

💸 **Financial Loss**
With frozen accounts and unpaid bills, cash flow dries up. Business opportunities are lost.

⚠️ **Legal Exposure**
Statutory deadlines may be missed—triggering penalties or tax audits.

😟 **Family Stress**
Even if the family owns the company shares, they may not have the right to step in. This creates distress, confusion, and conflict.

🧱 **Reputational Damage**
Delays in decision-making erode trust with customers, suppliers, and staff.

Real Case – The Bakery That Couldn't Bake

Case Example: Sole Director Dies Unexpectedly

Julie owned a successful artisan bakery in Melbourne. She was the sole director and shareholder. When she died suddenly, her daughter (an informal manager) assumed she could continue operations. But:

- The bank froze all company accounts.
- Suppliers refused to deliver flour or stock without payment.
- Staff couldn't be paid.
- The business lost $47,000 in the first two weeks.

It took **7 weeks** for probate to appoint an executor who could legally act—and by then, the bakery had lost most of its wholesale clients.

All of this could have been avoided with a Successor Director appointment.

Understanding the Role of a Successor Director

A **Successor Director** is a person (or people) nominated to step in and manage a company **immediately** if the existing director:

- Dies
- Becomes incapacitated (medically or mentally)
- Is otherwise unable to act

The role is interim or permanent, depending on the circumstances and legal documentation. This person is appointed in advance via:

- Company constitutional amendment
- Supporting director resolution and/or legal documents
- Shareholder agreement (if applicable)

What Makes a Good Successor Director?

This isn't about replacing the business owner long-term—but about ensuring continuity during a crisis.

Your Successor Director should be:

- Competent and financially responsible
- Aware of the business operations (or able to get support)
- Trusted by you and your family
- Willing to act swiftly and responsibly in a difficult moment

Common choices include:

- Spouse or adult child
- Co-founder or business partner
- Accountant, adviser, or external director

How the Successor Director Strategy Works

Our strategy ensures you have a legal, compliant, and executable system in place.

Step 1: Review the Constitution
We check whether your current company constitution provides for successor appointments. Most don't.

Step 2: Draft Amendments
We draft an updated constitution with Successor Director clauses that align with the *Corporations Act 2001*.

Step 3: Appoint Your Successor(s)
You legally appoint one or more Successor Directors, with the correct authority and scope.

Step 4: Document Everything
We provide documentation and ASIC-compliant wording that allows your business and family to act without delay if something happens to you.

Benefits of a Successor Director Appointment

☑ **Business Continuity**
Keep payroll running, suppliers paid, and operations stable.

☑ **Family Protection**
Gives your family the ability to manage or wind down the business safely.

☑ **Reputation Preservation**
Avoid delays or disruption that could affect how your business is viewed externally.

☑ **Compliance and Control**
Avoid ASIC penalties, tax breaches, and loss of governance.

☑ **Peace of Mind**
You know your company won't be left in chaos if the worst happens.

Myth Busting

MYTH #1 – "My Power of Attorney covers this."
Not unless your POA specifically includes the right to act as a director—and even then, ASIC and banks may not recognise it without constitutional backing.

MYTH #2 – "My family owns the company—they'll be fine."
Shareholders do not automatically become directors. Only directors can legally act for the company.

MYTH #3 – "I have life insurance to cover emergencies."
Insurance helps with financial support—not business operations. Without a legal director, no one can access the insurance payout for the company's benefit.

How to Get Started

We make it easy for you. With our **Successor Director System**, you'll receive:

- Legal review of your constitution
- Customised successor strategy and appointment
- Guidance on appointing the right person
- Documentation ready for execution
- Instructions for notifying ASIC (if required)
- Support for your family if the plan needs to be activated

Planning for the Worst Is How You Protect the Best

No one wants to imagine being incapacitated or gone. But if you've built something valuable, you owe it to yourself, your family, and your staff to protect it.

One simple step can make all the difference.

OFFICE:

Email: admingroup@cr.com.au

Phone: (03) 9569 5676

OFFICE ADDRESS:

612 Warrigal Road,

East Malvern VIC 3148

POSTAL ADDRESS:

PO Box 61,

East Malvern VIC 3148

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