

LENDER BRIEFING / ATO ENFORCEMENT / OCTOBER 2026

Two ATO notices. Two different problems for your borrower.

When a company falls behind on its tax and super, two ATO notices matter most to a lender. A **Director Penalty Notice** is the formal step that lets the ATO pursue directors personally for the company's unpaid PAYG withholding, GST and super, a liability the law may have imposed on them well before the notice arrives. A **Direction to Pay** leaves the super debt with the company but makes failing to pay it a criminal offence, for which directors can also be prosecuted. The two are routinely confused, they can arrive in close succession, and each one changes how a board behaves over the following three weeks. For a lender, either notice means the ATO has stopped asking and started acting.

TOPIC

Direction to Pay and
Director Penalty Notices

PREPARED FOR

Credit, workout and
portfolio teams

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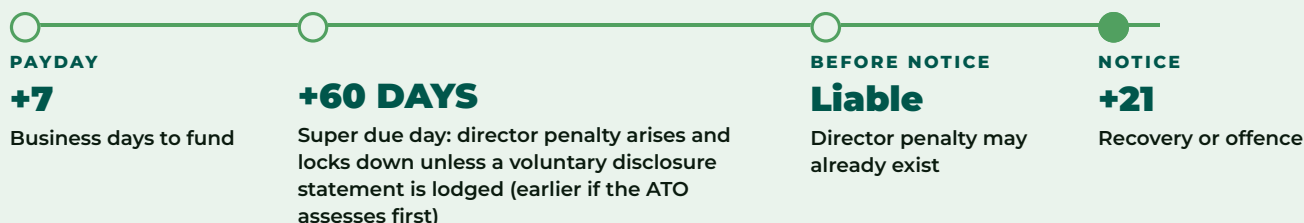
DATE

27 October 2026
Rebound Advisory

21
DAYS

Both notices run on a 21 day clock

The ATO can commence court recovery proceedings against a director once **21 days have passed after it gives the DPN**. The notice counts as given when the ATO posts it or leaves it at the director's address, not when it is received or opened. A Direction to Pay must give **at least 21 days**, after which non-payment is an offence. Since Payday Super started on **1 July 2026**, super is generally due within seven business days of each payday, so a missed super payment can become apparent much sooner than under the old quarterly system.



AT A GLANCE

84,000+

Director Penalty Notices issued to directors in FY2024-25.

Up 136% on the prior year, for directors of around 64,000 companies.

\$1.73^{bn}

super guarantee charge raised by the ATO in 2024-25

Covering about 855,000 employees, including penalties and \$172m of interest.

Up to **\$91,000**

maximum fine for a company that does not pay the amount in a Direction to Pay by the deadline.

That is 5 times the 50 penalty unit maximum of \$18,200 for an individual (penalty unit \$364 for offences on or after 1 July 2026). Individuals face up to 12 months' imprisonment, and directors can be deemed to commit the company's offence.

25%

late payment penalty on assessed SG charge not paid by the deadline in the ATO's notice

Rising to 50% for a repeat within 24 months. Separate from the administrative uplift, which can be reduced.

THE NUMBERS BEHIND THE NOTICES

SECTION ONE

THE TWO NOTICES SIDE BY SIDE

	Direction to Pay SUBDIV 265-C, SCH 1 TAA 1953	Director Penalty Notice DIV 269, SCH 1 TAA 1953
Covers	Unpaid super guarantee charge , or an ATO estimate of it. Nothing else.	Unpaid PAYG withholding, GST and super guarantee charge .
Directed at	The employer (for a company borrower, the company). Directors can be deemed to commit the offence under TAA s 8Y.	Each director personally , including recently appointed and departed directors.
What it does	Creates no new debt. It makes non-payment a criminal offence once the deadline passes.	Gives the ATO the right to recover from directors personally . The penalty itself arises under the legislation, often before the notice.
When it is used	A firm step for serious non-compliance : repeated underpayment, poor engagement, or withheld or misleading information.	Common . Often the first formal step once a debt is reported and unpaid.
Time to act	The period set in the notice, at least 21 days . An objection extends it.	21 days after the notice is given . Court recovery proceedings can begin after that.
How it ends	The debt is paid in full by the deadline, by anyone . The ATO can vary or revoke it. It reduces if the liability is reduced, and is revoked if the liability falls to nil.	Within 21 days of the notice : the company pays, appoints an administrator or small business restructuring practitioner, or begins to be wound up. Payment of the company's debt in full remits the penalty at any time. For locked-down amounts, an appointment does not help: only payment , a reduction of the debt or a defence will clear them.
If ignored	Strict liability offence. For an individual, up to 50 penalty units, 12 months' imprisonment , or both. For a company, a fine of up to 250 penalty units (TAA s 8ZF). Directors and others in management can be deemed to commit the offence, subject to a defence (TAA s 8Y).	Personal recovery: garnishees, offset of the director's refunds , court action and potentially bankruptcy.
Defence	Narrow. The employer must show it took all reasonable steps , both before the direction and before the deadline.	Narrow. Illness or other good reason for not taking part in management; all reasonable steps (or none possible); or, for super and GST, a reasonably arguable position taken with reasonable care. Strict time limits apply to providing supporting information.

SECTION TWO

What the notices tell you *about the borrower*

Borrowers rarely volunteer either notice, and by the time one reaches a credit file the 21 days are often half gone. These are the four things we look at straight away.

01

A Direction to Pay usually signals serious ATO concern

The ATO has to weigh the employer's compliance history, the size of the debt against the business and any steps taken to pay or dispute it. In practice it is used in **particularly serious cases** of non-compliance, including repeated failures and poor engagement.

If one has been issued, the relationship with the ATO may well have broken down before anyone told the bank.

Ask when the ATO correspondence started, what was answered, and who at the company is dealing with it.

02

A payment plan does not make a DPN go away

Directors often believe that once a plan is agreed the personal exposure has gone. It has not. While a payment plan covering the company's debt is in force, the ATO cannot start or continue court proceedings against directors for that penalty, but it can still issue a DPN, and **the plan does not remit the penalty**. If the plan ends or defaults, the ATO can move against the directors.

Ask whether any DPN sits behind the plan, for which periods, and what the plan's default history looks like.

03

Your guarantor now has another creditor

The ATO's claim is unsecured and does not displace a registered mortgage, but it competes for the same equity, shares and savings that make a guarantee worth having. The ATO can also **offset the director's own tax refunds** and, for amounts that are locked down, reach directors who thought an appointment would protect them.

Re-test guarantor capacity net of the directors' ATO exposure, not on the statement of position you hold on file.

04

Lockdown changes who gets paid first

Once an amount is locked down, appointing an administrator or liquidator no longer relieves directors of that personal liability. **In practice it is cleared only by payment of the company's debt (by anyone), a reduction of the underlying liability, or a statutory defence.** PAYG withholding and GST lock down if they are not reported to the ATO within 3 months after the due day. For super from 1 July 2026, the amount locks down unless the company lodges a voluntary disclosure statement for that payday by the 'due day'. The due day is 60 days after payday, or the day the ATO assesses the charge if that is earlier. The directors therefore have a

powerful personal incentive to prioritise the ATO over other creditors, including the bank, and that incentive may conflict with the company's interests as insolvency approaches.

If the company later goes into liquidation, those payments may be recovered as unfair preferences. If the ATO is ordered to repay PAYG withholding (or an ATO estimate of unpaid super), each person who was a director when the payment was made must indemnify the ATO under s 588FGA, subject to the defences in s 588FGB. This indemnity does not extend to GST.

Watch for ATO payments larger than the plan requires, funded from the operating account or a director loan.

By the time either notice reaches a credit file, the directors have often already decided whose debt gets paid first, and the personal assets behind your guarantees may already be in play.

BRENDAN RICHARDS · REBOUND ADVISORY

SECTION THREE

SIX QUESTIONS WORTH ASKING THIS WEEK

- 01** Has the company received a **Director Penalty Notice or a Direction to Pay** in the last 24 months? Which periods and amounts?
- 02** For **PAYG withholding and GST**, which amounts were reported within 3 months of the due date? For **super**, for which paydays was a voluntary disclosure statement lodged by the due day? Which amounts are locked down?
- 03** Has super reached the funds within the **statutory deadline for every payday** since 1 July, allowing for exceptions? Show us the receipts.
- 04** What does the **ATO integrated client account** show, taken direct from the portal, including every plan and default?
- 05** What **personal ATO exposure** do the guarantors now carry, and what equity is left behind their guarantees once it is counted?
- 06** Has each director had **independent advice** on what the 21 days require of them, and what did they decide to do?

WHERE REBOUND COMES IN

Twenty-one days is enough time *if the work starts on day one.*

When a borrower is holding an ATO notice, we work with the lender to establish the real position quickly: the full ATO account, what is locked down, what the directors' exposure means for the guarantee, and a **13-week cash flow** that shows whether the business can meet payroll, super and its facility in the same weeks. From there we put a credible plan in front of credit, or tell you plainly that there isn't one.

Talk to us about a file

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SOURCES

Taxation Administration Act 1953 (Cth), Sch 1, Subdiv 265-C and Div 269 (legislation.gov.au); Corporations Act 2001 (Cth), ss 588FF and 588FGA; Crimes (Amount of a Penalty Unit) Instrument 2026. ATO: *Firmer action we may take and Director penalties* (ato.gov.au/individuals-and-families/paying-the-ato/if-you-don-t-pay); *Super guarantee annual employer compliance results 2024-25* (\$1.73bn, 855,000 employees, \$172m interest); *Payment deadlines for Payday Super* (ato.gov.au/businesses-and-organisations/super-for-employers). DPN volumes FY2024-25: Inspector-General of Taxation and Taxation Ombudsman, *Review of the ATO's administration of Director Penalty Notices* (2026). Treasury Laws Amendment (Payday Superannuation) Act 2025 (Cth); Superannuation Guarantee (Administration) Act 1992 (Cth) Part 7; ATO PS LA 2011/18.

Prepared by Rebound Advisory for credit, workout and portfolio teams.

General information only, current at 27 October 2026 (legislation as compiled at 1 October 2026). Rebound Advisory is not a law firm or tax agent and this briefing is not legal, tax, financial or insolvency advice. It does not take account of any borrower's or lender's circumstances and must not be relied on as a basis for any credit decision. To the extent permitted by law, Rebound Advisory accepts no liability for any loss arising from reliance on it. Statistics are taken from the ATO and the Inspector-General of Taxation and Taxation Ombudsman and have not been independently audited. Lenders should obtain advice from their own lawyers. Directors who receive either notice should promptly get independent advice from a lawyer, registered tax agent or registered liquidator. The Payday Super rules are new. The basic super lockdown rule is set by statute, but how it applies to amended or incomplete voluntary disclosure statements has not yet been tested; take specific legal advice on any lockdown question.