Consultation Paper 372: Guidance on insolvent trading safe harbour provisions:

Update to RG217

Submission by SV Partners
26/10/2023

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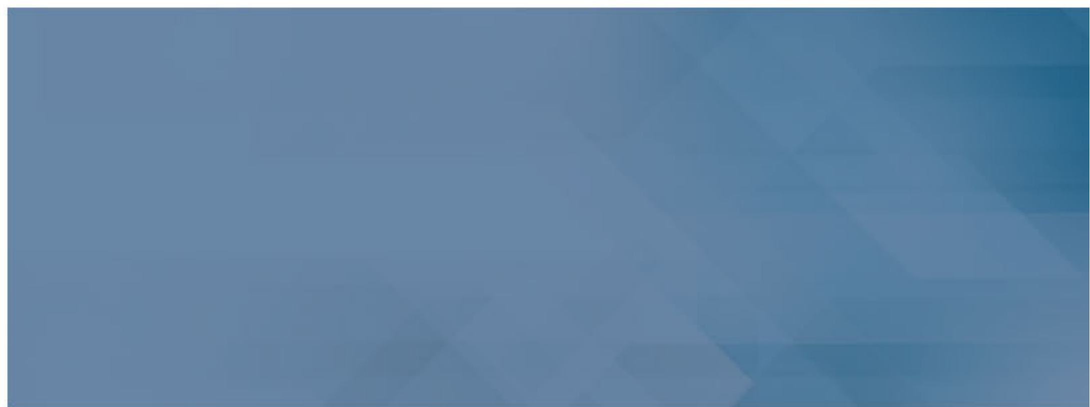

1.0 Introduction

We welcome the opportunity to provide feedback to the Australian Securities and Investments Commission (ASIC) on its consultation into the proposed updated RG 217.

To assist in reviewing CP 372 and the proposed updated RG 217, and in preparing this submission, SV Partners convened an internal committee of professional staff (the names of whom are listed at the end of this submission).

It is our view that the draft updated RG 217 is a handy guide for specialist relevant professional advisers and directors of medium-to-large businesses (subject to the suggested amendments contained in paragraph 2 (inclusive) of this submission).

For the reasons given at questions B1Q4, B1Q5 and B2Q8 of our submission, we do not agree that the draft updated RG 217 is relevant to micro or small-to-medium businesses (collectively, SME) or non-specialist relevant professional advisers and instead recommend that ASIC prepare a short-form (no longer than 2 pages) guidance that adopts Legal Design Theory (LDT) (see B1Q5 in paragraph 2.1 of our submission for further information about LDT).

Key Recommendations

A. ASIC should undertake a broad awareness campaign to help SME directors understand their obligations (for example, when potentially trading whilst insolvent or facing financial concerns) and rights (for example, how to deal with shareholder/director disputes and the use of safe harbour). Our proposals in relation to this broad awareness campaign are set out in our submissions at B1Q5. This campaign should be funded from increasing the price of annual company return invoices and not by increasing the ASIC levy on registered liquidator's; and

B. ASIC must adopt LDT to design a modern, user-friendly, guide on insolvent trading and safe harbour for SME's;

Insolvent trading:

C. ASIC should use stronger language in its description of what is an appropriate adviser to give advice to a company (or its director(s)) suffering financial difficulties. It should not be left open to interpretation that unqualified, uninsured pre-insolvency advisers meet ASIC's description; and

D. ASIC's list of proposed insolvency indicators is widely used by the profession and is a helpful resource. We have proposed to ASIC in B1Q3 a few extra indicators that it may consider including in its list; and

1.0 Introduction

Safe harbour:

E. ASIC must highlight that safe harbour applies to an individual director (not necessarily the collective) and, therefore, Legal Professional Privilege (LPP) is a key consideration that all directors must be aware of when utilising s 588GA of the Corporations Act 2001 (Cth) (Act);

F. ASIC must use clear language in determining who it believes can provide "appropriate advice" under s 588GA(2)(d) of the Act. It should not be left open to interpretation that unqualified, uninsured pre-insolvency advisers meet ASIC's description;

G. ASIC should consider developing precedent best practice checklists and handouts that professional advisers or SME's can adopt;

H. ASIC should provide better clarity around its interpretation of the meaning of the phrase "reasonably likely" to lead to a better outcome under s 588GA(1)(a) of the Act. The final sentence in RG 217.75 is not sufficiently helpful to SME's (or most readers of RG 217) to understand their obligations; and

I. ASIC should remind the Minister that the Final Report into the Review of the Insolvent Trading Safe Harbour was handed down nearly 2 years ago. Despite the government at the time agreeing to most of the recommendations contained within, no amendments have been made to s 588GA of the Act since its incorporation approximately 6 years ago.

2.0 SV Partners Submission

2.1 Guidance on insolvent trading

Section 5.2 of the Final Report into the Review of the Insolvent Trading Safe Harbour identifies that insolvent trading laws are in place to (inter alia) regulate directors conduct as to: (i) protect creditors; (ii) preserve assets; and (iii) encourage responsible directorial action.

In our experience, despite the severe consequences of insolvent trading, many directors take a nonchalant view to their duties. Many of whom would not even be able to tell what all of the director duties owed to a company are. This may be because of the significant costs required for a liquidator to incur to bring such proceedings and the lack of criminal insolvent trading prosecutions under ss 184 or 588G(3) of the Act. Therefore, we have proposed below that ASIC should undertake a broad awareness campaign to help SME directors understand their obligations and have suggested that Part D of RG 217 be re-drafted so as to explain, in simple terms, when ASIC will prosecute a criminal offence under s 588G(3) of the Act.

We suggest that ASIC make it abundantly clear to directors (possibly at RG 217.8) that an insolvent trading offence is a misnomer in that it does not require actual trading of a business (in all circumstances). There are some circumstances where the business of the company may have ceased trading, but the director nonetheless can be found liable under s588G(2) of the Act if debts (ie. ongoing lease obligations, rent, interest expenses, etc) are subsequently incurred at a time when the company is (or becomes) insolvent.

The following table contains our responses to each of the six questions posed by ASIC in Part B1 (numbered B1Q1 to B1Q6):

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
B1Q1	RG 217.1 to RG 217.29	Overall, we believe that the scope and nature of the guidance continues to be relevant and adequate, subject to our specific comments below in relation to CP question B1Q1.
	RG 217.5	SVP's proposed amendment (in red): "A registered liquidator of a company or a creditor of a company (with the consent of the company's liquidator or the court, after the end of 6 months beginning when a company begins to be wound up in accordance with s588R, s588S and s588T) …" The guidance otherwise appears to suggest that creditors may, by automatic right, commence proceedings for insolvent trading, which is not correct.
	RG 217.11	We believe that the word 'already' in sub-paragraph (b) and (d) should be removed. The word is redundant and may lead to confusion. It is also not clear why the first reference to 'already' is italicised; it should not be.

2.0 SV Partners Submission

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
	RG 217.13	We believe that it may be beneficial to users of RG 217 for an example to be provided under sub-paragraph (a) 'compensation order'. The example may read: *"The Liquidator of XYZ Pty Ltd may seek a compensation order from Mr X (the sole director of XYZ Pty Ltd), which can be calculated (but not always) by the sum of all of the debts incurred by XYZ Pty Ltd after it becomes insolvent that remains outstanding when the external administrator is appointed to XYZ Pty Ltd."*
	RG 217.16	SVP's proposed amendment (in red): "A director has a defence under s588G(2) if it is proved that…"
	RG 217.18	SVP's proposed amendment (in red): *"Generally, a company is insolvent if it is unable to pay all its debts when they fall due and payable …"* As s 95A of the Act expressly uses the phrase "due and payable," and although case law is conflicting, there is no definitive authority that establishes whether 'due' and 'payable' are to be treated as the same.
	RG 217.20	The end of sub-paragraph (c) requires the same proposed amendment as in RG 217.18.
	RG 217.22	Keeping proper financial records is not the sole requirement for a director under s 286 of the Act. Those records must also be accurate (ie. without material misstatement)[1], such that they may enable true and fair financial statements to be prepared and audited. Many directors we speak to appear to be under the mistaken impression that they may simply maintain a Xero or MYOB accounting file and rely on their accountant or bookkeeper to enter in relevant financial information.
	RG 217.25	We believe that this paragraph should be deleted and replaced with a direction for readers to turn to Part C of RG 217.
B1Q2	RG 217.30 to 217.58	Overall, we believe that the scope and nature of the key principles continues to be relevant and helpful, subject to our specific comments below in relation to CP question B1Q2.
	RG 217.35	Within Example 1, ASIC has provided three sub-examples of how a director may be excused from remaining fully informed. We believe that the third sub-example should go first (ie. the example starting: *"A director will not be excused if they rely on others to monitor…"*). In our experience, this is a common excuse raised by director's as to why they are not fully informed on the financial affairs of their company. SVP's proposed amendment (in red): *"A director will not be excused if they rely on others (like their accountant, bookkeeper or another business owner) to monitor…"* These references, may help directors become more familiar with their obligation to not simply rely on 'others'.

1 Adelaide Brighton Cement Limited, in the matter of Concrete Supply Pty Ltd v Concrete Supply Pty Ltd (Subject to Deed of Company Arrangement) (No 4) [2019] FCA 1846.

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
	RG 217.37	ASIC may consider adding the following two further examples of where directors should ensure that are fully informed about: • Meeting their taxation obligations (including lodgement, compliance and payment); and • Meeting their employee entitlement obligations (including lodging single touch payroll reports on time, paying superannuation and wages and ensuring that all employee entitlements are accurate.
	RG 217.41	SVP's proposed amendment (in red): *"To rely on the information provided by a particular person, the director should first establish that the person is suitably qualified, appropriately insured (where the third party is an external advisor), competent and reliable..."* We refer ASIC to our comments at RG 217.46 in relation to the importance of this addition.
	RG 217.43	We believe that Example 2 is pitched by ASIC at SME directors and may not be a genuine reflection of the concerns/conflicts a larger business director may face when relying on multiple sets of information from multiple third parties at different times. Given our submission that the draft updated RG 217 is a handy guide for specialist relevant professional advisers and directors of medium-to-large businesses, we do not believe that Example 2 is relevant or a good use of space.
	RG 217.46	SVP's proposed amendment (in red): *"...a director should consider obtaining appropriate advice from a suitably qualified, appropriately insured, competent and reliable person..."* We believe that the insertion of appropriately insured into this requirement will solve, for the following reasons, the issue of describing who is an appropriate person that a director should obtain advice from, in that: • it removes the need to carve-out unqualified, uninsured pre-insolvency advisers or other non-specialist advisers; • only certain lawyers, turnaround specialists and insolvency practitioners have the ability to access appropriate professional indemnity insurance with insolvency services coverage; • directors may have the right to call upon this insurance if the advice received is not competent or reliable; • it removes the need for ASIC to provide further guidance on what it means by the phrases "suitably qualified", "competent" and "reliable". If this suggestion is not adopted by ASIC, we believe that ASIC should provide further guidance on what it means by the phrases "suitably qualified", "competent" and "reliable".

Consultation Paper Question	**SVP Response**	
	RG 217 pinpoint	**Commentary**
	RG 217.47	This paragraph should be deleted in full. It contradicts the scope of the appropriate professional advice that a director should obtain as laid out in RG 217.46. RG 217.46 (when amended per SVP's submissions above) contains a careful scoping of who ASIC should be promoting as providing professional advice in insolvency circumstances. ASIC should not appear to be promoting unqualified, uninsured pre-insolvency advisers through the use of its language in this paragraph.
	RG 217.50	We believe that RG 217.50 should be deleted (or significantly re-worded), as it otherwise reads as if a director should only act in a timely manner upon receiving advice.
	RG 217.52	SVP's proposed amendment (in red): *"...may include obtaining further advice, seeking the appointment of an external administrator (in appropriate circumstances) or preventing the company from incurring further debts..."*
	RG 217.55	We are concerned that (similar to RG 217.47) the loose language used by ASIC here may be perceived as promoting the use of unqualified, uninsured pre-insolvency advisers. SVP's proposed amendment (in red with relevant deletions marked with a strikethrough): "This may involve obtaining further advice from *a suitably qualified, appropriately insured, competent and reliable person* ~~an accountant or lawyer or other person who ordinarily provides advice on~~ as to how to deal with companies in financial distress."
	RG 217.56	ASIC should consider adding in a right to apply to court as a fifth step that may be available to a director in the circumstances. The court application may be for a just and equitable winding-up (under s 461(1)(k) of the Act) or some other court application (like an injunction).
	RG 217.58	Example 5 is helpful and raises an important consideration for directors to be aware of. However, the last sentence in paragraph 2 suggests that accountants can provide advice on director's duties and obligations. Although, practically speaking, an accountant may work in tandem with a lawyer to provide holistic advice to a director, only a lawyer can provide such legal advice.
	RG 217.67	We agree with the use of the connecting word "and", as RG 217.67 should be treated as best practice guidance and not a statutory list of possible alternative best outcome indicia.
	RG 217.82	This paragraph appears to imply that safe harbour protection ends when "that plan is implemented." This is not correct.
	RG 217.88	SVP's proposed amendment (in red with relevant deletions marked with a strikethrough): *"Despite obtaining ~~the~~ any advice ..."*

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
B1Q3	Appendix	We refer ASIC to paragraph 2.3 of our submission.
B1Q4	N/A	We refer ASIC to paragraph 1 of our submission, insofar as we believe that RG 217 is handy guide for specialist relevant professional advisers and directors of medium-to-large businesses, but not so for SME's or non-specialist relevant professional advisers. We hold this opinion because RG 217: • is too long and is not likely to be read or understood by the vast majority of SME business owners; • does not comply with LDT (see our comments at B1Q5); • is not easily accessible and/or SME owners would not even know of its existence; and • should not be pitched at SME owners – it is a handy guide in its own right.
B1Q5	N/A	SVP submits that a suite of supporting resources should be created by ASIC to help promote relevant guidance to SME owners. This suite of supporting resources should include: • a one-to-two page short-form guidance that adopts LDT; • modern, user-friendly, videos posted to the ASIC website and the MoneySmart YouTube page and website; • regular (modern) social media posts (on all socials, including Instagram, TikTok, LinkedIn and Snapchat) that promotes ASIC's suite of SME resources; • insights (written, podcasts, videos, etc) from relevant ASIC commissioner(s), deputy commissioner(s) and senior staff on their approach to enforcement of director duties, insolvent trading, etc; • develop precedent checklists and handouts that professional advisers or SME's can adopt to meet ASIC's proposed 4 Key Principles; and • identify opportunities in which ASIC can engage more regularly with SME's throughout the year. For example, when ASIC issues its annual review fee invoice to companies, it could provide a QR code that directly links to its resource hub. ASIC should consider adopting the approach of the Australian Financial Security Authority (AFSA) in the use of its helpful resources to SME's when it comes to bankruptcy, debt agreements and Personal Property Securities Register issues. Examples of these helpful resources can be found at <https://www.ppsr.gov.au/education-hub> (accessed 24 October 2023) and <https://www.youtube.com/@AFSAGovAu> (accessed 24 October 2023). ASIC should consider creating a training course on its website that directors (whether newly appointed or seasoned) can voluntarily undertake to learn about their duties, responsibilities, obligations, risks, etc, in a practical way. We welcome the opportunity to discuss this further with ASIC.

<table>
<tr><th rowspan="2">Consultation Paper Question</th><th colspan="2">SVP Response</th></tr>
<tr><th>RG 217 pinpoint</th><th>Commentary</th></tr>
<tr><td></td><td></td><td>Legal Design Theory (“LDT”)

We believe that LDT is a fundamentally important tool for ASIC to use in connecting with SME’s. At its simplest point, LDT involves redesigning legal documents/guidance to become more human-centric (ie through improving approachability, readability, understandability, etc).

We have suggested to ASIC that a two-page guide should be developed for SME’s. The guide should adopt the visual design mechanics of LDT, but then encourage directors to ‘find out more’ or ‘engage with further resources’ through the use of product design mechanics.

The visual design mechanics could include: signifiers, colours, flowcharts, graphics, caricatures, emoji’s[2], simple practical examples, more information about the intent or structure of the information being provided and simple language.

The product design mechanics may include: the suite of supporting resources (as explained above), online training courses, interactive examples/games, use of senior business leaders, etc.

For further information on LDT, we suggest reading the work of Margaret Hagan ‘Legal Design’[3] and the Australian Law Reform Commission’s ‘the Design of Everyday Law’.[4]</td></tr>
<tr><td>B1Q6</td><td>RG 217.28 to RG 217.29 and Related</td><td>We agree that retaining information about holding company liability to insolvent trading is necessary and should be retained in the final version of the updated RG 217.

In addition, we believe that the following case reference should be included at the end of the case list on page 36 of RG 217. The case reference is Giovanni Maurizio Carrello as Liquidator of Perrinepod Pty Ltd (In Liq) v Perrine Architecture Pty Ltd [2016] WASC 145, which is the most recent case (that we could find) on holding company liability for insolvent trading.</td></tr>
</table>

2 https://www.alrc.gov.au/news/should_we_use_emojis_in_legislative_drafting/
3 https://lawbydesign.co/legal_design/
4 https://www.alrc.gov.au/news/design_of_everyday_law/

2.2 Guidance on safe harbour

Safe harbour as an individual tool, not solely collective

RG 217, in our view, does not provide sufficient clarity that safe harbour is an individual director's tool as much as it is a collective tool. What we mean by this is that if a liquidator was to consider whether to commence proceedings against a group of directors for insolvent trading, the liquidator will do so by considering the merits of their claim against each individual director.

Therefore, although RG 217 should of course recommend that directors work together in developing a better outcome plan, it should also encourage directors to seek their own personal advice (in appropriate circumstances).

In a perfect world, a director ought pay for, and source, personal legal advice in relation to the use of safe harbour. That way the director can maintain LPP without the risk of losing same if they:

- go directly to an accountant or other adviser;
- use company funds to pay for said advice;
- engage experts as a collective group; and/or
- a liquidator is appointed to their company.

Information regarding this important point should be included in RG 217 under the heading 'Obtain appropriate advice.'

Incidence of safe harbour for SME's

We can glean from section 7.3 of the Final Report into the Review of the Insolvent Trading Safe Harbour that there had been, by that time, approximately 100 such safe harbour engagements undertaken by professional advisers since its inception approximately 6 years ago. Many of which appear to be in relation to ASX-listed companies or other large private companies. The incidence of SME usage of safe harbour is not possible to tell, but, in our experience, directors either do not know about its availability or do not have the means to pay for such advice.

Feedback we received from lawyer's that SV Partners has an ongoing commercial relationship with suggests that the average fee to undertake this advice work for a lawyer is between $5k-10k (plus GST) for SME's and around $30k (plus GST) for larger businesses. Adding on further work conducted by an experience insolvency practitioner or turnaround specialist may easily add a further doubling of this cost.

If ASIC can develop easy-to-read guides and easy-to-use precedents/checklists, it may be possible for SME's to gain access more readily (and cost efficiently) to this tool. In this regard, we point ASIC to our submission at B2Q8 (below).

2.0 SV Partners Submission cont.

The following table contains our responses to each of the eight questions posed by ASIC in Part B2 (numbered B2Q1 to B2Q8):

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
B2Q1	RG 217.24 to RG 217.27 and Part C	Overall, we believe that the scope and nature of the guidance is adequately explained, subject to our specific comments in this table. We believe that RG 217.24 to RG 217.27 should be amended by simply referring the reader to Part C. This saves duplication and removes the chance of uncertainty or inconsistency in interpretation. In addition, we recommend that ASIC consider our comments in the opening parts of paragraph 2.1 (see page [5] of our submission).
B2Q2	RG 217.61	Yes, we believe that this guidance is helpful. However, ASIC may consider our comments above in relation to LDT.
B2Q3	RG 217.65 to RG 217.77	Yes, we believe that this guidance is helpful (subject to our following comments). We suggest that ASIC develop two example case studies that can be added into after RG 217.73. These case studies should focus on the following two alternative scenario's, namely: (1) an example of how company director's can work together with their suitably qualified, appropriately insured, competent and reliable professional advisor to develop a plan to achieve a better outcome; and (2) an example of company director's not working together (or working in competition with each other) to develop the plan(s). The second case study can deal with the helpful insights ASIC proposed at RG 217.56. We repeat our recommendation in the opening parts of paragraph 2.1 (see B1Q5 of our submission) that ASIC should work on developing a precedent checklist and handouts that professional advisers or SME's can adopt to help understand how they may meet this better outcome requirement.
	RG 217.72	ASIC may also insert "(i) *sale of the company's non-core and/or core business (in appropriate circumstances)*" as an additional course of action that may be available to directors.
	RG 217.73	The use of the words "*wound up,*" at the end of that paragraph, should be re-placed with the word "*liquidated*."
	RG 217.75	We do not agree that ASIC has provided sufficient guidance to explain what the phrase "reasonably likely" means. The final sentence in RG 217.75 is not sufficiently helpful to SME's (or most readers of RG 217) to understand their obligations. We recommend that ASIC: • carefully consider and adopt (where appropriate) the comments at section 8.2 of the Final Report into the Review of the Insolvent Trading Safe Harbour; and • provide practical examples of how ASIC believes this phrase should be interpreted, using the Mr X analogy.

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
B2Q4	RG 217.83 to RG 217.88	We believe that this guidance is helpful (subject to our following comments), but not accurate.
	RG 217.83	We repeat our comments (and reasoning) above in relation to RG 217.46. SVP's proposed amendment (in red): *"A director should consider obtaining appropriate advice from a suitably qualified, appropriately insured, competent and reliable person…"*
	RG 217.85	We believe that sub-paragraph (e) is a necessity and should not be treated as a relevant discretionary factor (for the reasons explained in RG 217.46).
	RG 217.86	Legal Professional Privilege is an additional consideration for directors that should be listed here. This is particularly so when multiple director's seek advice from multiple advisers. Further information about this was provided in the opening part of paragraph 2.2 of this submission.
	RG 217.87	ASIC has proposed the phrase "other adviser with significant insolvency experience". We have significant concerns about the use of this phrase and the potential for unqualified, uninsured pre-insolvency advisers to exploit same. Take, for example, Mr X who is a previous bankrupt and a previous director of a liquidated company. If Mr X was to hold himself out as an adviser, he would clearly have significant (actual) insolvency experience. On any plain reading of ASIC's phrasing, Mr X could be interpreted as being such an adviser that ASIC is suggesting a director seek advice from. Instead, we suggest deleting the words "*with significant insolvency experience*" and replacing same as "*with suitable qualifications, appropriate insurance, competence and reliability.*"
B2Q5	RG 217.90 to RG 217.92	Yes, we believe that this guidance is helpful. However, ASIC may consider giving practical examples of when RG 217.92 may apply. A director is not likely to understand what the phrase "give information about the company" means in a practical sense. It may be that an example or case study should be developed by ASIC to explain what ASIC's expectations are here. It may also then link into the enforcement work ASIC is doing in relation to non-assistance to liquidators and non-submission of the Report on Company Activities and Property (**ROCAP**).
B2Q6	Table 2	We believe that Table 2 is helpful, however, ASIC needs to ensure that each of the points raised in this table are consistent with the contents of Part C and consistent with the proposed changes in our submission.
B2Q7	N/A	Subject to the comments and suggestions we have made throughout this submission, we believe that the guidance contained in RG 217 is helpful. ASIC should consider providing separate, easy to understand (and access), guidance on the pitfalls and dangers of using unqualified, uninsured pre-insolvency advisers or seeking assistance/advice from unqualified persons.

2.0 SV Partners Submission cont.

Consultation Paper Question	SVP Response	
	RG 217 pinpoint	**Commentary**
B2Q8	N/A	We believe that ASIC needs to take a proactive step in raising greater awareness about insolvent trading and safe harbour provisions, particularly in relation to SME business owners. SVP submits that a suite of supporting resources should be created by ASIC to help promote relevant guidance to SME owners. This suite of supporting resources should include: • a one-to-two page short-form guidance that adopts LDT; • modern, user-friendly, videos posted to the ASIC website and the MoneySmart YouTube page and website; • regular (modern) social media posts (on all socials, including Instagram, TikTok, LinkedIn and Snapchat) that promotes ASIC's suite of SME resources; • insights (written, podcasts, videos, etc) from relevant ASIC commissioner(s), deputy commissioner(s) and senior staff on their approach to enforcement of director duties, insolvent trading, etc; • develop precedent checklists and handouts that professional advisers or SME's can adopt; and • identify opportunities in which ASIC can engage more regularly with SME's throughout the year. For example, when ASIC issues its annual review fee invoice to companies, it could provide a QR code that directly links to its resource hub. ASIC should consider adopting the approach of the Australian Financial Security Authority (AFSA) in the use of its helpful resources to SME's when it comes to bankruptcy, debt agreements and Personal Property Securities Register issues. Examples of these helpful resources can be found at <https://www.ppsr.gov.au/education-hub> (accessed 24 October 2023) and <https://www.youtube.com/@AFSAGovAu> (accessed 24 October 2023).

2.3 Other suggested amendments to RG 217 (including additional insolvency indicators

Other areas of suggested amendments include:

- Part D should be replaced with guidance on ASIC's approach to the criminal offence of insolvent trading under s 588G(3) of the Act. Otherwise, we do not find Part D to be helpful and ought to be deleted;

- Key terms definitions:

  - The definition of creditor should adopt the definition in the Act, so that it may include contingent and prospective creditors;
  - The word 'also' in the note section of the definition for director should be deleted; and
  - The word 'also' in the note section of the definition for insolvent person should be deleted;

- Key cases list on the current numbered page 36 of RG 217, should be updated to include:

  - Holding company liability (under s 588V of the Act) case: *Giovanni Maurizio Carrello as Liquidator of Perrinepod Pty Ltd (In Liq) v Perrine Architecture Pty Ltd* [2016] WASC 145; and
  - Safe harbour (under s 588GA of the Act) cases:
    - *Re Balmz Pty Ltd (in liq) [2020] VSC 652*; and
    - *Copeland v Murace [2023] FCA 14; and*

- The insolvency indicators table should be updated to include the following further indicators of potential insolvency:

  - Lack of diversification of customers and loss of contracts;
  - Inability to secure relevant insurances;
  - Data breaches, unpreventable and preventable (under investment in cybersecurity, especially small business);
  - Key person risk is not adequately provided for;
  - Current ratio is below 1 (ie the sum of realisable current assets is less than the sum of current liabilities); and
  - Directors are drawing out director loans from the company, and not properly recording same as a wage.

3.0 Concluding comments

We welcome the opportunity to discuss this submission further with ASIC. Our best contact details are [redacted] or [redacted].

SV Partners Internal Committee Members & contributors to this submission

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- [redacted] - Executive Director (New South Wales)
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About SV Partners

SV Partners is an expert accounting and specialist advisory firm focused on supporting businesses and individuals in financial stress.

SV Partners has been working with small to medium businesses across industries to help with financial stress for almost 20 years. We work hard to ensure the best possible outcome by carefully considering the full circumstances, addressing concerns and providing tailored solutions.

Every situation is different and our team ensures that clients understand all of the options available to them in navigating through financial stress. We deliver superior outcomes by focusing on exceptional service delivery, respecting our clients, exceeding their expectations and working effectively as a team.

National Strength with Regional Capability

SV Partners is a national practice represented across Australia by a team of over 150.

In addition to our metro offices, SV Partners maintains a strong regional focus in QLD and NSW with offices in Mackay, Rockhampton, Townsville, Sunshine Coast, Toowoomba, Gold Coast, Newcastle, Dubbo and Tamworth.

Our experience has allowed us to develop expert skills and apply them across small and large scale matters across all industries.