



**ASIC**

Australian Securities & Investments Commission

**REPORT 389**

# **ASIC regulation of registered liquidators: January to December 2013**

April 2014

## **About this report**

This report is for registered liquidators and other interested stakeholders.

It summarises the work undertaken and outcomes achieved by ASIC in supervising registered liquidators in the period 1 January to 31 December 2013.

### About ASIC regulatory documents

In administering legislation, ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Previous reports on ASIC's regulation of registered liquidators

Report number	Report date
REP 342	May 2013
REP 287	May 2012

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## Overview

- 1 ASIC is responsible for the registration and supervision of registered and official liquidators who accept formal appointments as external administrators of companies in Australia. We supervise their compliance with the *Corporations Act 2001* (Corporations Act).

## ASIC's strategic priorities

- 2 ASIC's strategic framework focuses on three strategic priorities or outcomes:
- (a) confident and informed investors and financial consumers;
  - (b) fair and efficient financial markets; and
  - (c) efficient registration and licensing.
- 3 An ASIC focus is to promote creditors' confidence in the proper administration of insolvent companies and in our supervision of registered liquidators. Creditors are entitled to expect a liquidator to wind up an insolvent company in an orderly and fair way so they receive the maximum possible return of their money—recognising that the liquidator is entitled to reasonable costs incurred.
- 4 To that end, registered liquidators must be competent and efficient. They must bring an independent mind to their task. They cannot use the creditors' funds entrusted to them to improperly advance their own interests.

## Key terms

- 5 There are a number of terms used in this report that have special meaning and are important for understanding the context of the statistics. For a full list of terms used in this report, see the 'Key terms' at the end of the report.

**Table 1: Meaning of key terms used in this report**

Term	Meaning in this report
Enforceable undertaking	Undertakings under s93AA of the <i>Australian Securities and Investments Commission Act 2001</i> (ASIC Act)
Enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to the Companies Auditors and Liquidators Disciplinary Board (CALDB)), or where the parties reach a negotiated outcome (e.g. where ASIC accepts an enforceable undertaking under s93AA of the ASIC Act)

Term	Meaning in this report
Formal investigation	A formal investigation under s13(3) of the ASIC Act
Negotiated resolution	Negotiated alternatives to other enforcement remedies where these can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see Information Sheet 151 <i>ASIC's approach to enforcement</i> (INFO 151)
Proactive practice review	A review of a registered liquidator's whole practice, including systems and procedures and a detailed review of multiple external administration appointments. The aim is to assess whether the registered liquidator is adequately and properly performing their duties and generally complying with the law
Proactive transaction review	An industry-wide compliance activity targeting specific external administrations that appear to exhibit risk criteria suggesting, for example, potential illegal phoenix activity, possible director misconduct and/or independence concerns: see paragraphs 59–63 for more details
Surveillance	Transaction reviews, proactive transaction reviews, proactive practice reviews and industry-wide compliance projects
Transaction review	A review of the conduct of a registered liquidator in relation to a specific transaction or external administration

## Key activities, issues and outcomes

- 6 We aim to achieve our three strategic priorities through a combination of:
- (a) enforcement action;
  - (b) surveillance;
  - (c) guidance;
  - (d) education;
  - (e) engaging with industry and stakeholders; and
  - (f) policy advice.
- 7 In 2013, we continued our focus on the following areas of concern:
- (a) *Competence*: This includes, but is not limited to, issues such as practice capacity, timeliness, adequacy of investigations, statutory reporting, poor asset realisation, and failing to maintain proper books and records.
  - (b) *Independence*: A registered liquidator must be independent and also be seen or perceived to be independent. Registered liquidators must make full and relevant disclosure of relevant relationships and indemnities as required by the Corporations Act.

- (c) *Improper gain*: This includes, but is not limited to, excessive remuneration, drawing remuneration before obtaining appropriate approval, and entering into inappropriate transactions with related parties.
- 8 A significant portion of our supervision activities result in educational outcomes. This is consistent with our objective to communicate to the market our expectations for insolvency practitioners on specific issues or behaviours. Our supervision and intervention often provide the catalyst for registered liquidators to change their behaviour and internal systems. However, we use enforcement action where warranted and when other action cannot achieve the required outcome.
- 9 In 2013, we:
- (a) initiated 11 proactive practice reviews, 85 transaction reviews plus 38 proactive transaction reviews;
  - (b) completed 14 proactive practice reviews, 79 transaction reviews plus 42 proactive transaction reviews;
  - (c) completed 80 reviews of declarations of relevant relationships and indemnities, and 61 reviews of remuneration reports issued to creditors by registered liquidators;
  - (d) initiated an industry-wide project, expected to last two years, to test all registered liquidators' compliance with the requirement to publish notices on ASIC's insolvency notices website and to lodge forms with ASIC; and
  - (e) commenced 11 formal investigations or enforcement actions in relation to registered liquidator conduct (see Table 3 in Section A).
- 10 Section A of this report describes in more detail the work undertaken and outcomes we achieved in supervising registered liquidators between 1 January and 31 December 2013 (the reporting period).

## Inquiries made to ASIC and reports of alleged misconduct

- 11 In 2013, our Misconduct and Breach Reporting team received 446 inquiries and reports of alleged misconduct involving registered liquidators. This represented a decrease on 2012 (477).
- 12 An initial assessment by the team categorised the inquiries and reports as follows:
- (a) *Conduct related* (14%): The information provided to ASIC suggested a serious breach of standards, which could be seen to be deliberate.

- (b) *Procedural based* (25%): Although serious, the information provided to ASIC suggested the misconduct may have been inadvertent.
- (c) *Educational* (61%): These matters involved circumstances where the outcome or resolution of the inquiry or allegation of misconduct was educating the person (usually a creditor) about the applicable law or practice, or providing information about the normal practice of the insolvency process.

13 The assessment of the inquiries and the reports of alleged misconduct showed that:

- (a) in 63 matters (16%), legitimate conduct concerns existed and the matter was referred internally for further review, primarily by our Insolvency Practitioners team, or to another team within ASIC to support an existing surveillance or enforcement action;
- (b) in 258 matters (67%), there was insufficient evidence of an offence, or the registered liquidator did not breach the Corporations Act, and we did not pursue the matter further; and
- (c) in 64 matters (17%), we took no action for other reasons after consideration of matters such as the extent of harm or loss suffered and the availability of other remedies.

Note: Percentages shown in this report are rounded to the nearest unit. This means that percentage totals may not equal the sum of individual values shown because of rounding.

14 Section B of this report contains a detailed analysis of the outcomes of the general inquiries and reports of alleged misconduct received.

## A Activities and outcomes

### Key points

This section describes the work undertaken and outcomes we achieved in supervising registered liquidators—in the reporting period—in the following areas:

- enforcement action (see paragraphs 16–47);
- surveillance (see paragraphs 48–82);
- guidance (see paragraphs 83–89);
- education (see paragraphs 90–92);
- engaging with industry and stakeholders (see paragraphs 93–112); and
- policy advice (see paragraphs 113–117).

- 15 During 2013, we continued our focus on three primary areas of concern: competency, independence and improper gain. Table 2 summarises our outcomes for 2013 in each area of concern.

**Table 2: Key outcomes for 2013 by area of concern**

<b>Competence</b>	<ul style="list-style-type: none"> <li>• The court prohibited Melbourne-based registered liquidator Andrew Leonard Dunner from applying to be registered as a liquidator for five years following conclusion of the court's inquiry into his conduct.</li> <li>• We entered into an enforceable undertaking with Sydney-based registered liquidator Ian Lawrence Struthers.</li> <li>• We used our administrative powers to cancel the registration of registered liquidators Peter Roger Grealish, Paul Anthony Pattison and Peter George Biazos.</li> <li>• We filed an application with the CALDB to cancel the registration of an unnamed Sydney-based registered liquidator.</li> <li>• We agreed to a negotiated resolution with three separate registered liquidators.</li> <li>• We commenced a formal investigation or enforcement action in relation to seven registered liquidators.</li> <li>• We initiated a new industry-wide compliance activity to test all registered liquidators' compliance with the obligation to publish notices on ASIC's insolvency notices website and to lodge forms with ASIC.</li> </ul>
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<b>Independence</b>	<ul style="list-style-type: none"> <li>• We commenced formal investigations or enforcement actions in relation to four registered liquidators.</li> <li>• We completed 80 reviews of registered liquidators' declarations of relevant relationships and indemnities, identifying 23 declarations as inadequate and requiring reissuing to creditors. We reviewed 51 declarations as part of our independence project and an additional 29 declarations as part of our other project work.</li> </ul>
<b>Improper gain</b>	<ul style="list-style-type: none"> <li>• The CALDB cancelled the registration of Sydney-based registered liquidator Mark Darren Levi.</li> <li>• We cancelled the registration of Melbourne-based registered liquidator Avitus Thomas Fernandez.</li> <li>• We filed an application with the CALDB to cancel the registration of two Sydney-based registered liquidators.</li> <li>• We completed 61 reviews of registered liquidators' remuneration reports to creditors. We reviewed 17 reports as part of our remuneration project and an additional 44 reports as part of our other project work.</li> </ul>

## Enforcement action

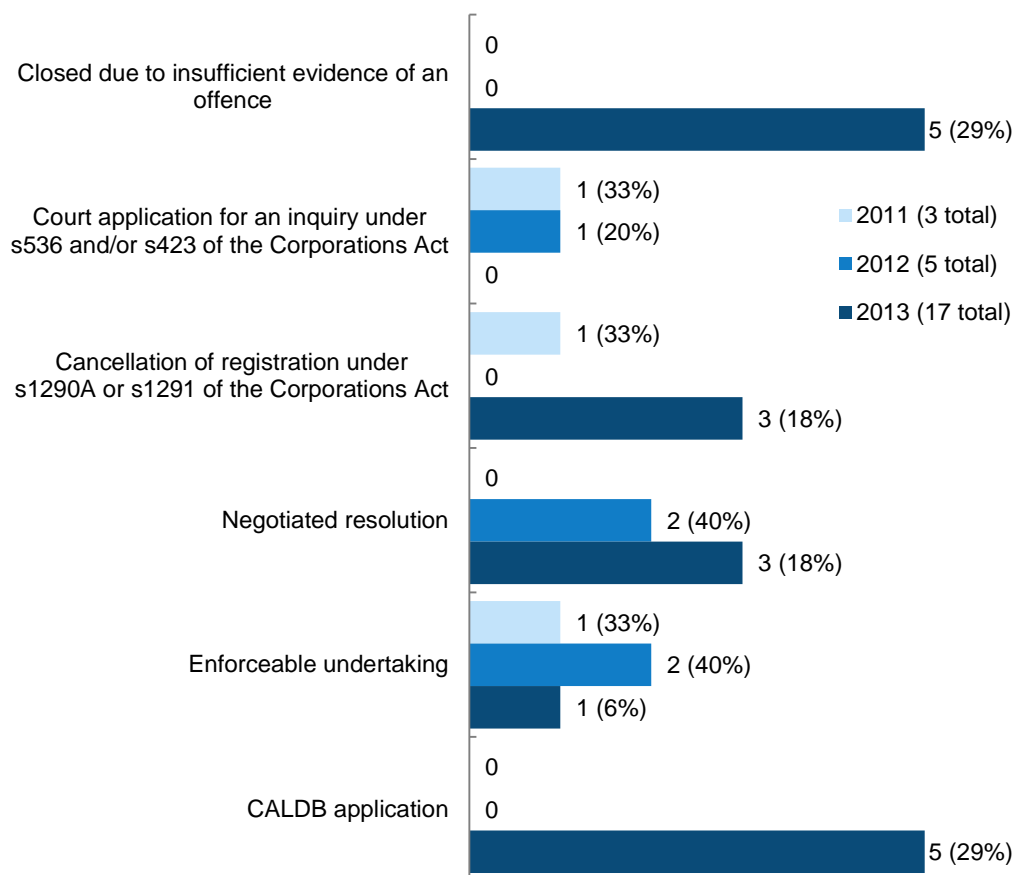
16 Table 3 shows the number of registered liquidators who were subject to either a formal investigation or an enforcement action during the reporting period.

**Table 3: Registered liquidators subject to formal investigation or enforcement action (2011–13)**

	2011	2012	2013
Open matters at 1 January	4	10	21
Formal investigations or enforcement actions commenced during the year	8	13	11
Formal investigations or enforcement actions finalised during the year	(2)	(2)	(13)
Open matters at 31 December	10	21	19

Note: The 11 matters referred for formal investigation or enforcement action during 2013 arose from five proactive practice reviews and six transaction reviews. Two other transaction reviews were merged with an existing investigation.

17 Figure 1 shows details of the outcomes of the formal investigations or enforcement actions during the reporting period.

**Figure 1: Outcomes of formal investigations or enforcement actions (2011–13)**

### Andrew Leonard Dunner

- 18 On 23 September 2013, the Federal Court ordered that Melbourne-based liquidator Andrew Leonard Dunner:
- (a) be prohibited from applying to be registered as a liquidator for five years; and
  - (b) repay in excess of \$600,000 drawn as remuneration without appropriate approval or adequate supporting documentation: see Media Release ([13-239MR](#)) *Federal Court indicates Melbourne liquidator should be banned for 5 years* (30 August 2013).
- 19 On 26 April 2012, ASIC applied to the Federal Court to inquire into the conduct of Mr Dunner concerning the performance of his duties as liquidator or receiver and manager of 11 companies: see Media Release ([12-93MR](#)) *ASIC acts against Melbourne liquidator* (15 May 2012).
- 20 Justice Middleton found that:
- (a) Mr Dunner had failed to adequately investigate the circumstances and affairs of companies to which he was appointed, and had inaccurately reported to ASIC and creditors; and

- (b) Mr Dunner’s conduct indicated ‘...a systemic failure of administration and internal protocols, as well as (in a number of instances) extremely poor professional judgment. In this way, Mr Dunner has failed to satisfy the high standards of conduct required of his offices’.

### **Mark Darren Levi**

- 21 We cancelled the registration of Sydney-based liquidator Mark Darren Levi following a successful application to the CALDB: see Media Release ([13-227MR](#)) *ASIC to remove liquidator from industry* (23 August 2013).
- 22 The CALDB made its decision on 2 July 2013 but a series of orders sought by Mr Levi in the Supreme and Federal Courts and the Administrative Appeals Tribunal (AAT) delayed the reporting of the cancellation.
- 23 The CALDB found that in 2009 Mr Levi misappropriated \$92,000 from Biseja Pty Ltd while it was in receivership and under the control of a registered liquidator.
- 24 The CALDB found that Mr Levi:
- (a) was persistently and seriously dishonest and, therefore, not a fit and proper person to remain registered as a liquidator; and
  - (b) engaged in serious dishonesty in misappropriating the funds, in falsifying records to disguise the misappropriation and in putting forward a false version of events after having admitted the misappropriation to the receiver.
- 25 The CALDB ordered that Mr Levi’s registration be cancelled from 30 July 2013. The cancellation did not take effect until ASIC removed Mr Levi from our register, which we did not do until Mr Levi had been replaced as liquidator of his three current external administrations. The application to replace Mr Levi was heard on 26 August 2013 in the NSW Supreme Court and orders were made replacing him as liquidator.
- 26 On 24 December 2013, Mr Levi withdrew his application to the AAT for a review of the cancellation. As a consequence, the application was dismissed by the AAT, and Mr Levi’s registration as a liquidator remains cancelled.

### **Avitus Thomas (Tom) Fernandez**

- 27 We cancelled the registration of Melbourne-based liquidator Avitus Thomas (Tom) Fernandez—effective from 28 November 2013—following a successful application to the CALDB: see Media Release ([13-308MR](#)) *ASIC to remove liquidator from industry* (12 November 2013).
- 28 The CALDB’s order to cancel Mr Fernandez’s registration followed his appointment as the administrator of Willmott Forests Ltd and its subsidiaries (Willmott) in September 2010.

- 29 We alleged a \$200,000 payment to Mr Fernandez by Willmott to cover his costs was not disclosed or given to the receivers and managers who were entitled to it, and not disclosed to creditors or the administrators who replaced him in October 2010. Mr Fernandez ultimately disgorged the funds to the receivers and managers.
- 30 The CALDB found that Mr Fernandez's conduct demonstrated a serious lack of judgement, insight, expertise and ability, and, therefore, that he was not a fit and proper person to remain registered as a liquidator.
- 31 Mr Fernandez did not exercise the right to appeal to the AAT for a review of the CALDB's decision.

### **Ian Lawrence Struthers**

- 32 On 20 February 2013, we accepted an enforceable undertaking from Sydney-based liquidator Ian Lawrence Struthers, who agreed to the cancellation of his registration as a liquidator for a minimum of three years: see Media Release ([13-034MR](#)) *ASIC accepts undertaking from Sydney liquidator* (25 February 2013).
- 33 As part of our liquidator compliance program, we reviewed 45 external administrations to which Mr Struthers was appointed. We formed the view that Mr Struthers failed to properly carry out his duties as a registered liquidator, including:
- (a) in 16 external administrations, the failure to provide remuneration reports to creditors under s499E(7) and, in 13 of those administrations, drawing \$120,500 in unapproved remuneration;
  - (b) in two external administrations, drawing in excess of the \$5,000 maximum limit under s499(3A);
  - (c) in 20 external administrations, lodging liquidator's accounts under s539 that were not accurate as they disclosed nil receipts and payments where, in fact, money had been received and paid out;
  - (d) in 20 external administrations, the failure to open a general liquidator's account; and
  - (e) the failure to lodge various forms with ASIC, including accounts of receipts and payments, minutes of meetings, notices of meetings, annual reports and s533 reports.

- 34 Mr Struthers acknowledged that our views were reasonably held.

### **Peter Roger Grealish**

- 35 We cancelled the registration of Peter Roger Grealish, of Sydney, as a registered liquidator and as an official liquidator: see Media Release ([13-132MR](#)) *ASIC cancels registration of Sydney liquidator* (5 June 2013). We

made this decision following the sentencing of Mr Grealish to 12 months imprisonment by the District Court of New South Wales on 26 April 2013.

36 Under s1290A of the Corporations Act, ASIC is empowered to cancel the registration of a liquidator if a person becomes disqualified from managing a corporation. There are various instances where a person is disqualified from managing a corporation. One of these is where a person is convicted of an offence that involves dishonesty and is punishable by a term of imprisonment of at least three months.

37 On 26 April 2013, Mr Grealish was sentenced to an aggregate term of imprisonment of two years to commence on 26 April 2013 and expiring on 25 April 2015 with a non-parole period of one year. The sentence followed guilty pleas to one count of giving false or misleading evidence at a hearing of the Police Integrity Commission, and four counts of making a false statement to obtain a financial advantage, to avoid fines for various traffic offences.

### **Paul Anthony Pattison**

38 We cancelled the registration of Paul Anthony Pattison, of Melbourne, as a registered liquidator on 7 February 2013: see Media Release ([13-033MR](#)) *ASIC cancels Melbourne liquidator's registration and bans him from managing corporations* (25 February 2013).

39 We made this decision following orders made on 17 December 2012 in the Federal Court of Australia, which resulted in Mr Pattison becoming a bankrupt. Under s1290A(1) of the Corporations Act, ASIC may cancel the registration of a liquidator if a person becomes insolvent under administration.

40 In a separate decision on 21 January 2013, Mr Pattison was disqualified by ASIC from managing corporations for four years following our inquiries into three failed companies of which he was the sole director.

41 On 21 February 2013, ASIC received Mr Pattison's application to the AAT for a review of ASIC's decision to disqualify him from managing a corporation for four years.

42 On 6 March 2013, ASIC received Mr Pattison's application to the AAT for a review of ASIC's decision to cancel his registration as a liquidator.

### **Peter George Biazos**

43 We cancelled the registration of Peter George Biazos, of Brisbane, as a registered liquidator and an official liquidator on 2 September 2013.

44 We made this decision following Mr Biazos becoming a bankrupt on 24 July 2013 as a result of the Official Receiver accepting a debtor's petition presented by Mr Biazos against himself. Under s1290A(1) of the

Corporations Act, ASIC may cancel the registration of a liquidator if a person becomes insolvent under administration.

### Negotiated resolutions

- 45 We identified a variety of concerns during our surveillances of three firms in the reporting period, and negotiated alternatives to other enforcement remedies where we determined that we could achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see INFO 151.
- 46 A sole practitioner agreed to request that ASIC cancel their registration as a liquidator after completing all outstanding lodgements and finalising all external administrations.
- 47 Two other sole practitioners agreed to engage an independent registered liquidator to undertake a 'quality control peer review program', and for the reviewer to report back to ASIC.

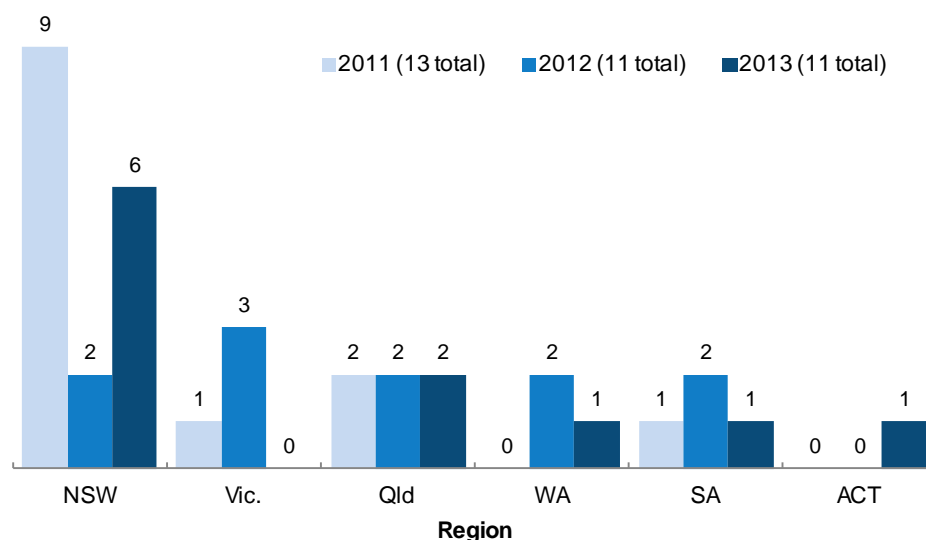
## Surveillance

- 48 We undertake surveillances of registered liquidators by either reviewing a specific transaction or appointment (transaction review), or by undertaking a targeted review of a registered liquidator's practice (proactive practice review). Our surveillances allow us to objectively assess whether a registered liquidator is adequately and properly performing their duties and functions, and is complying with the Corporations Act and Corporations Regulations 2001 (Corporations Regulations). This, in turn, allows us to assess whether a registered liquidator remains a fit and proper person to be registered.
- 49 Following a surveillance, we assess whether the matter should be referred to our dedicated enforcement teams for a formal investigation. The issues we consider in making the assessment are:
- (a) the extent of harm or loss;
  - (b) the benefits of pursuing the misconduct, relative to the expense;
  - (c) the impact of other issues, including the type and seriousness of the misconduct and the evidence available; and
  - (d) the availability of alternative courses of action.
- 50 The specific factors we consider vary according to the circumstances of the case. INFO 151 provides further guidance about the issues we consider when determining what action, if any, we may take.

## Proactive practice reviews

51 In 2013, we initiated 11 proactive practice reviews (11 initiated in 2012): see Figure 2. The reviews covered New South Wales (six reviews), Queensland (two reviews), Western Australia (one review), South Australia (one review), and Australian Capital Territory (one review).

**Figure 2: Proactive practice reviews by region (2011–13)**



52 Proactive practice reviews focus on the following key compliance areas:

- (a) independence;
- (b) remuneration disclosure and approval;
- (c) quality of investigations;
- (d) reporting to creditors and to ASIC;
- (e) asset realisations; and
- (f) adequacy of practice systems.

53 We select practitioners for review based on a risk-weighted model that considers several factors, including the number and profile of external administrations, the number of staff, any intelligence gathered from our project work and any reports of alleged misconduct received.

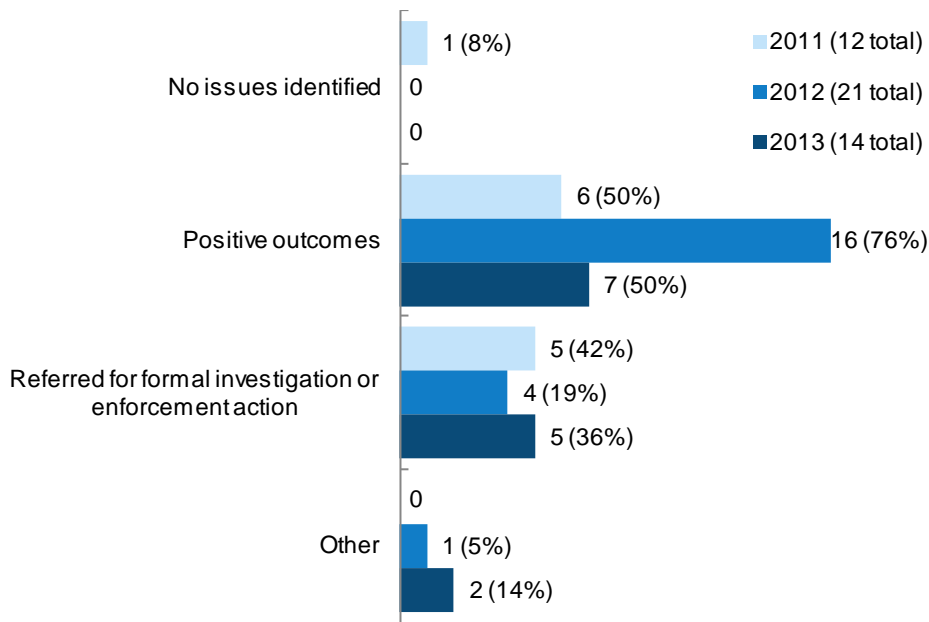
**Table 4: Proactive practice reviews (2011–13)**

	2011	2012	2013
Reviews open at 1 January	19	20	10
Reviews commenced during the year	13	11	11
Reviews finalised during the year	(12)	(21)	(14)
Reviews open at 31 December	20	10	7

- 54 Of the 14 proactive practice reviews finalised during 2013 (see Figure 3):
- (a) five matters were escalated to a formal investigation or an enforcement action was initiated; and
  - (b) we achieved a positive outcome in seven other matters.

Note: A positive outcome is recorded where we identified issues or behaviours that did not warrant a formal investigation or enforcement action, but the registered liquidator voluntarily agreed to amend their systems and procedures to resolve our concerns.

**Figure 3: Outcomes of finalised proactive practice reviews (2011–13)**



Note: In 2013, the outcome 'Other' reflects two reviews where the registered liquidators were identified for a future review.

### Transaction reviews

55 In 2013, we initiated 85 transaction reviews: see Table 5. These reviews are prompted by third parties bringing an issue to our attention (see Figure 10 in Section B) or from our own research.

56 When undertaking a transaction review, we fully examine the whole of the transaction in question to ensure the registered liquidator has adequately and properly performed their duties and functions in compliance with the Corporations Act and the Corporations Regulations for that transaction.

Note: The area of concern identified is only the primary concern and our review may include multiple areas of concern.

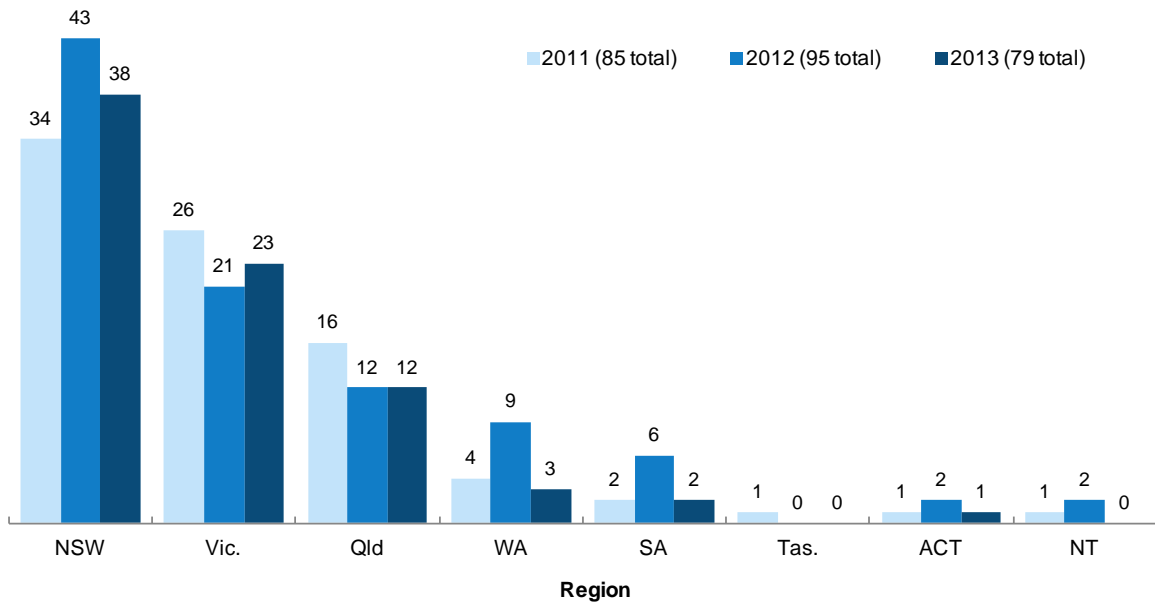


**Table 5: Transaction reviews conducted (2011–13)**

	2011	2012	2013
Reviews open at 1 January	44	24	25
Reviews commenced during the year	65	96	85
Reviews finalised during the year	(85)	(95)	(79)
Reviews open at 31 December	24	25	31

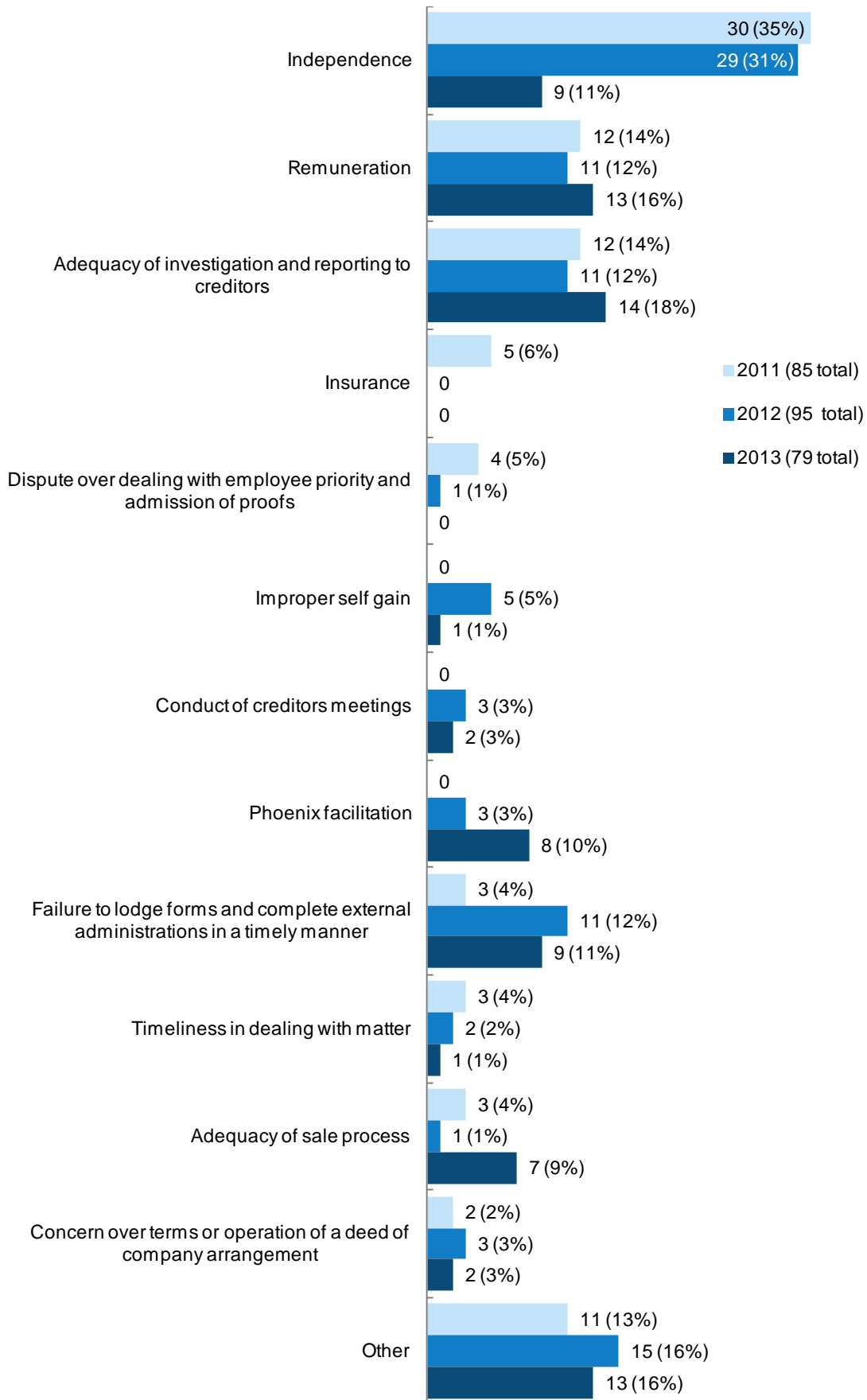
57 Figure 4 sets out an analysis of transaction reviews by region. In deciding on a transaction review, we consider the nature of the allegation and availability of evidence.

**Figure 4: Finalised transaction reviews by region (2011–13)**

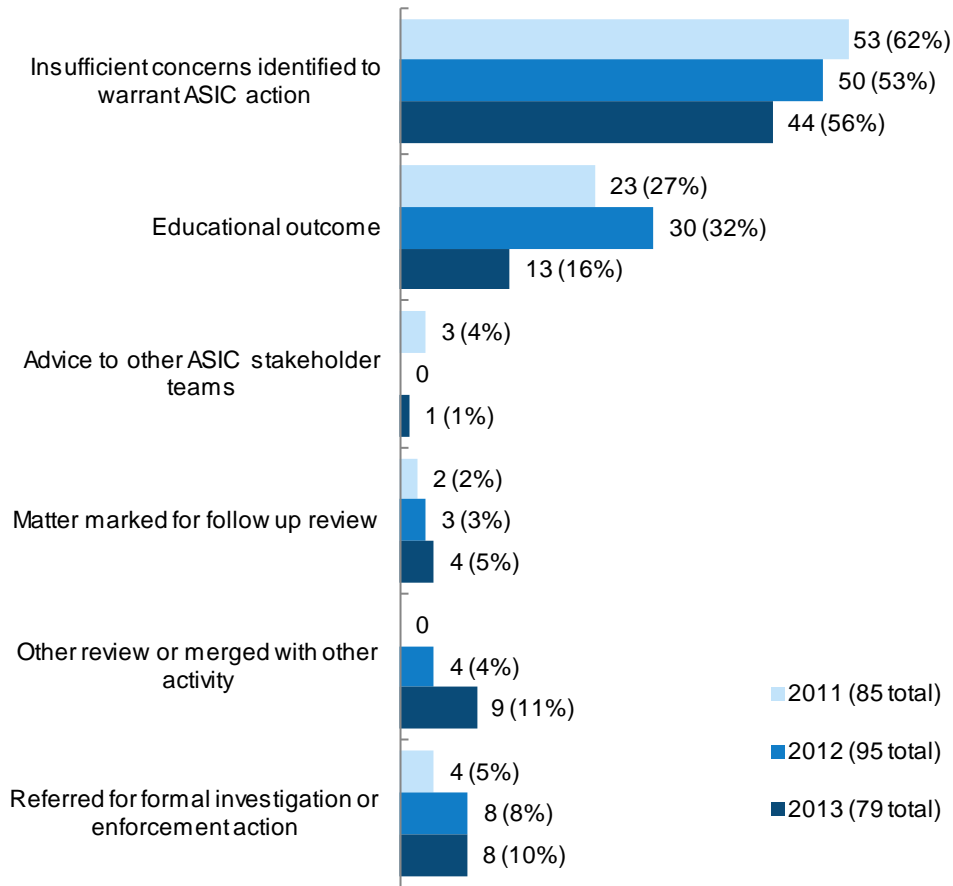


58 Figure 5 summarises the nature of the concerns identified in the 79 transaction reviews finalised during the year and Figure 6 summarises the outcomes of those reviews.

**Figure 5: Areas of concern in finalised transaction reviews (2011–13)**



**Figure 6: Outcomes of finalised transaction reviews (2011–13)**



**Proactive transaction reviews**

59 Our proactive transaction reviews focused on external administrations that appeared to exhibit risk criteria suggesting potential phoenix activity, related party transactions, possible director misconduct and/or independence concerns.

60 We considered 840 external administrations (228 in 2012) for inclusion in the proactive transaction review project, before selecting 38 (18 in 2012) for full review. We concluded 42 reviews during 2013: see Table 6.

**Table 6: Proactive transaction reviews concluded (2012–13)**

	2012	2013
Reviews open at 1 January	0	5
Reviews commenced during the year	18	38
Reviews finalised during the year	(13)	(42)
Reviews open at 31 December	5	1

- 61 After identifying an external administration for a proactive transaction review, we contacted the registered liquidator and asked them to complete a questionnaire. As a minimum, we reviewed independence, remuneration, initial creditor reports (in particular, reports to creditors under s439A of the Corporations Act) and other issues specific to the appointment.
- 62 We initiated proactive transaction reviews at the initial stage of an external administration to highlight to the registered liquidator that we actively review their conduct.
- 63 The majority of proactive transaction reviews required further discussion with the registered liquidator to give us a fuller understanding of what had occurred with the company and the action taken (or to be taken) by the registered liquidator. In a number of reviews, we brought matters to the attention of the registered liquidator that they were unaware of. This subsequently resulted in the registered liquidator lodging reports of misconduct with ASIC under s533 of the Corporations Act.

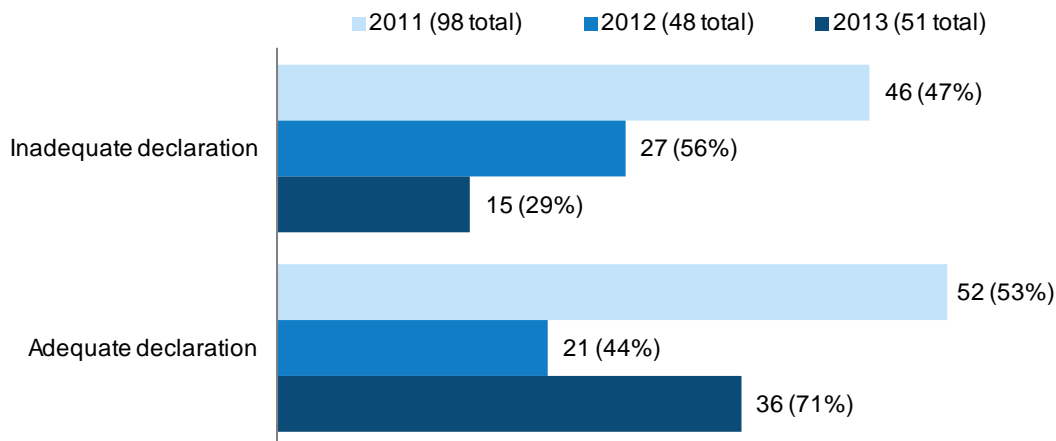
## **Industry-wide compliance projects**

### **Declarations of relevant relationships and indemnities**

- 64 On appointment, a voluntary administrator is required under the Corporations Act to prepare a declaration of relevant relationships and a declaration of indemnities (declarations), while a creditor's voluntary liquidator is required only to prepare a declaration of relevant relationships.
- 65 We continue to monitor declarations because independence is a key concern for ASIC.
- 66 In 2013, as part of this project, we completed 51 reviews (48 in 2012) and found that 15 declarations (27 in 2012) were inadequate: see Figure 7. In each case, we required the registered liquidator to reissue the declaration.
- 67 To address some concerns about our sampling, from 1 July 2013, we changed our sampling by not excluding previously reviewed registered liquidators or their firms. The 2013 results indicate an improvement in compliance compared with the 2012 results.
- 68 Generally, declarations were identified as inadequate when there was a failure to:
- (a) disclose a relevant relationship in pre-appointment dealings and/or, where such a relevant relationship had been identified, adequately explain why it did not create a conflict of interest (seven out of 15 inadequate declarations);
  - (b) provide adequate disclosure of indemnity or upfront payment received (three out of 15 inadequate declarations);

- (c) provide adequate disclosure of prior relationships (four out of 15 inadequate declarations); or
- (d) disclose all companies involved in appointments to a group of companies, and whether or not circumstances existed between the group entities that may give rise to a conflict and, if so, how the appointees would manage those issues (one out of 15 inadequate declarations).

**Figure 7: Outcomes for declarations of relevant relationships and indemnities (2011–13)**



69 In 2013, we reviewed an additional 29 declarations as part of our other project work. Of those additional declarations, 21 (72%) were adequate and eight (28%) were inadequate. The outcomes of the additional reviews are not recorded in Figure 7.

### Remuneration

70 Our remuneration monitoring project focuses primarily on disclosure but also considers the reasonableness of external administrator remuneration.

71 In 2013, as part of this project, we performed an initial review of 296 external administrations (335 in 2012), selecting 20 (40 in 2012) for a more detailed review.

72 Where appropriate, we sought corrective action in relation to disclosure and approval concerns, which involved the registered liquidator taking steps such as:

- (a) reissuing remuneration reports;
- (b) adjourning creditors' meetings so that the registered liquidator could provide creditors with better disclosure about the proposed remuneration;
- (c) tabling ASIC's letter of concern at creditors' meetings; or
- (d) correcting the registered liquidator's remuneration approval procedures.

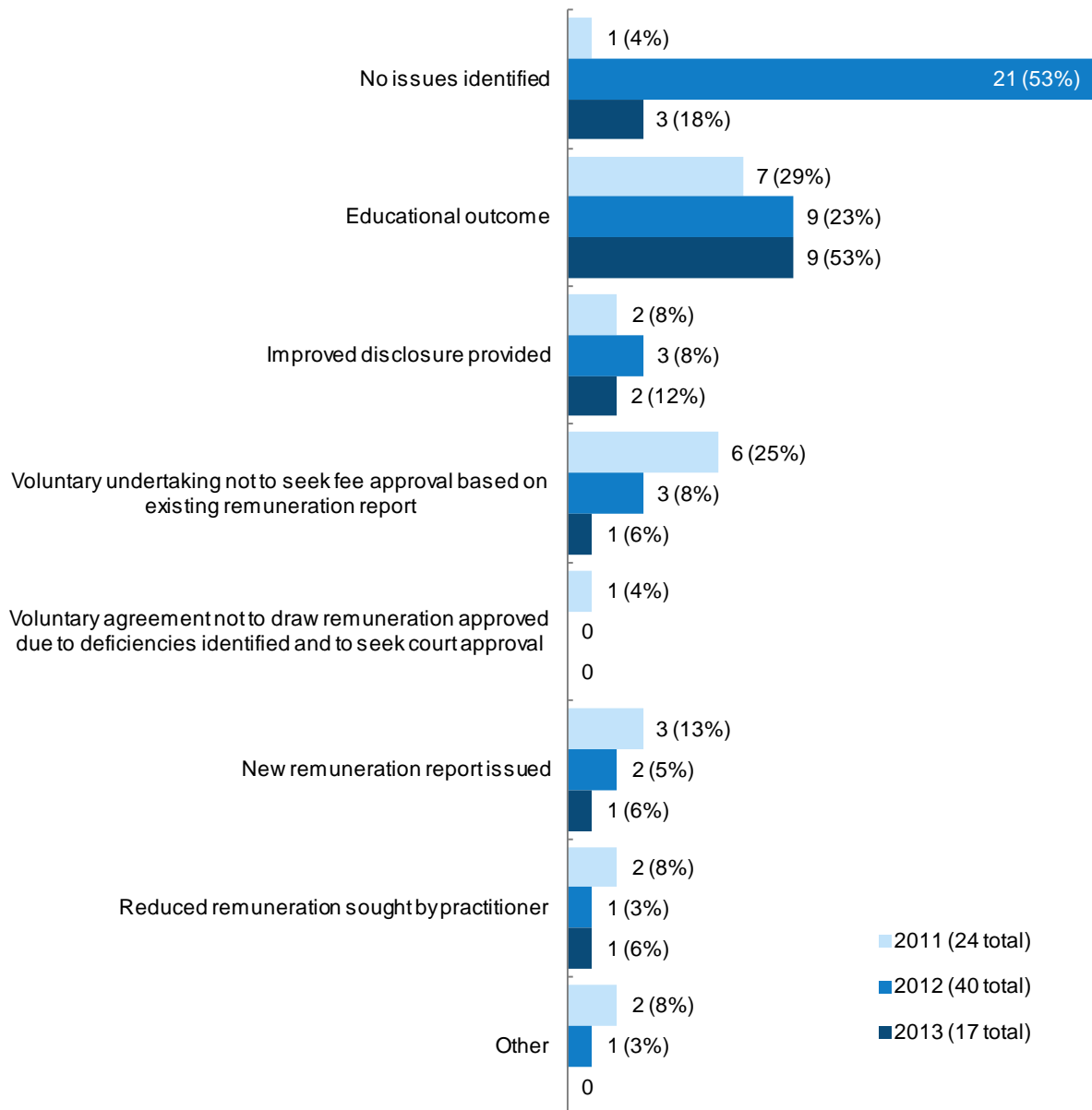
73 We believe the project has a significant educational benefit for registered liquidators. However, where we form a preliminary view that remuneration

may be unreasonable, we undertake a further detailed review and consider what action is then warranted. Also, where we identify material concerns, we refer these matters for formal investigation and consideration of enforcement action.

74 We commenced fewer reviews in 2013 than in 2012. This was due to a decision to focus on larger, more complex remuneration reviews in 2013. We note that, in both 2012 and 2013, we identified no matters of sufficient severity in this project to warrant a formal investigation or enforcement action.

75 Figure 8 sets out a more detailed comparative analysis of the outcomes of the remuneration monitoring project in 2011, 2012 and 2013.

**Figure 8: Outcomes of remuneration monitoring project (2011–13)**



Note: We commenced 20 reviews in 2013 but only 17 outcomes are recorded as three reviews were ongoing.

76 In 2013, we reviewed an additional 44 remuneration reports as part of our other project work. Of those additional remuneration reports, 33 (75%) were adequate and 11 (25%) were inadequate. The outcomes of the additional reviews are not recorded in Figure 8.

#### **Annual returns: Form 908**

77 In 2013, we reviewed 660 annual returns lodged with us by registered liquidators (Form 908 *Annual statement by liquidator*). Of those, 449 (or 68%) had no issues of concern identified.

78 Where we had a concern about the information in a registered liquidator's Form 908, we contacted the registered liquidator for further clarification.

79 Our focus during 2013 remained on whether registered liquidators demonstrated that they had sufficient capacity within their practice. For this, we looked at the number of staff available to assist on appointments relative to the number of external administrations accepted by the registered liquidator.

80 Another outcome of our review was that we contacted inactive registered liquidators. We understand that our contact acted as a catalyst to 10 persons voluntarily seeking cancellation of their registration.

#### **Publishing notices on the insolvency notices website and lodging forms with ASIC**

81 In late 2013, we advised registered liquidators that we had commenced a compliance project to test all registered liquidators' compliance with the requirement to:

- (a) publish certain notices on ASIC's insolvency notices website; and
- (b) lodge forms with ASIC (e.g. Forms 505, 524 and 5011).

82 The project is expected to run over a two-year period. We will advise registered liquidators directly where we identify non-compliance and seek that they remedy the non-compliance where possible. Where systemic non-compliance is identified, we will consider whether or not disciplinary action is warranted. We will report on the project outcomes in next year's report.

## **Guidance**

### **Regulatory guides**

83 Regulatory guides give guidance to registered liquidators by explaining when and how we will exercise specific powers under legislation (primarily the Corporations Act), how we interpret the law and the principles underlying our approach.

- 84 They also give practical guidance—for example, describing the steps of a process (such as applying for registration), or giving practical examples of how regulated entities may decide to meet their obligations.
- 85 A new regulatory guide was issued in January 2013: Regulatory Guide 242 *ASIC’s power to wind up abandoned companies* (RG 242).
- 86 During 2013, we reviewed Regulatory Guide 16 *External administrators: Reporting and lodging* (RG 16). At present, a high percentage of reports we receive from registered liquidators allege a civil offence for insolvent trading, but the registered liquidator advises in their report that either:
- (a) there is no evidence in their possession to support the offence; or
  - (b) the matter does not warrant further action.
- 87 We seek more accurate statistics about alleged insolvent trading, and aim to focus on instances suggesting more serious breaches of the Corporations Act where evidence exists to support enforcement action.
- 88 By undertaking a review of RG 16, we aim to give registered liquidators clearer guidance on the standard of reporting we expect and, in turn, improve the quality of the information received from registered liquidators for alleged offences under s588G(2)–(3) of the Corporations Act. We expect to issue an updated version of RG 16 in the second half of 2014.
- 89 We note that the Australian Restructuring Insolvency & Turnaround Association (ARITA) (known as the Insolvency Practitioners Association of Australia until the end of December 2013) issued a third edition of its code of professional practice—effective from 1 January 2014. We provided feedback to ARITA on the amendments to the code.

## Education

- 90 Our direct activities (proactive practice reviews, transaction reviews, proactive transaction reviews and other industry-wide compliance projects) are a means of communicating to the industry our expectations on a range of issues, and achieving educational outcomes.
- 91 We also provide education to the market by writing articles for industry publications.
- 92 During 2013, ASIC authored the following four articles, which appeared in the *Australian Insolvency Journal*—the quarterly journal of ARITA:
- (a) ‘ASIC Update: Engaging with industry’ (vol. 25, issue 1);
  - (b) ‘ASIC Update: The role of registered liquidators and directors in a fair and efficient market’ (vol. 25, issue 2);
  - (c) ‘ASIC Update: Responding to the profession’ (vol. 25, issue 3); and
  - (d) ‘ASIC Update: The basics do matter—Lessons from recent enforcement action’ (vol. 25, issue 4).



## Engaging with industry and stakeholders

- 93 We engage with registered liquidators and other stakeholders through:
- (a) regional liaison meetings;
  - (b) liaison meetings with ARITA and the Institute of Chartered Accountants Australia (ICAA);
  - (c) liaison with government and statutory bodies;
  - (d) eligible applicants;
  - (e) court applications;
  - (f) court intervention or acting as *amicus curiae* (i.e. a friend of the court);
  - (g) our liquidator assistance program; and
  - (h) the Assetless Administration Fund (see paragraphs 136–139 in Appendix 3).

### Regional liaison meetings

- 94 We hold meetings twice a year with registered liquidators and other stakeholders in the insolvency market in the capital city of each state and the Australian Capital Territory. The meetings provide an opportunity to communicate our priorities and our regulatory action. They also provide a forum to obtain feedback from the marketplace on emerging issues.
- 95 We held meetings of these groups in March and October 2013.

### ARITA and ICAA liaison meetings

- 96 ARITA is the main industry organisation representing registered liquidators. The ICAA is one of the main professional accounting bodies whose members form a significant part of ARITA membership. We regularly meet, and otherwise liaise with, ARITA and the ICAA to discuss current market issues, law reform and other regulatory developments. These liaison meetings are important for ASIC and stakeholders to understand each other's views on a range of issues.

### Liaison with government and statutory bodies

- 97 We regularly meet with Treasury, the Australian Financial Security Authority (known as the Insolvency and Trustee Service Australia before 15 August 2013), the Australian Taxation Office (ATO) and other government agencies to discuss law reform, regulatory action and emerging issues relating to the efficient operation of the insolvency industry, and we provide assistance where required.

## Eligible applicants

- 98 We received 12 applications during 2013 from registered liquidators and other parties asking us to authorise the applicants as ‘eligible applicants’.
- 99 If authorisation is granted, the applicant can seek a summons from the court to conduct a public examination of relevant persons regarding the examinable affairs of the company.

## Court applications

- 100 We were served with, and assessed, 78 court applications in 2013. Most applications relate to matters in Pts 5.3A–5.9 of the Corporations Act, many of which must be served on ASIC under the various court rules. Provided that sufficient notice of the application is received, each one is considered by our Insolvency Practitioners team.
- 101 Other court applications, which are not served on ASIC but come to our attention as a result of their public profile or nature, are also considered by our Insolvency Practitioners team. These applications require specialist insolvency knowledge to properly understand and assess the implications of the application.

## Court intervention and *amicus curiae*

- 102 In December 2013, ASIC applied to the Federal Court of Australia to remove Glenn Franklin, Stirling Horne, and Jason Stone—of the Melbourne firm, Lawler Draper Dillon—as liquidators of the Walton Construction Group for a perceived lack of independence: see Media Release ([13-362MR](#)) *ASIC challenges liquidators on independence* (23 December 2013).
- 103 The court refused ASIC’s application: see *Walton Construction Pty Ltd (in liq); ASIC v Franklin* [2014] FCA 68. ASIC appealed the decision. The appeal court hearing is scheduled for 5 May 2014.
- 104 If the circumstances warrant, ASIC has the power to intervene in any proceeding relating to a matter arising under the Corporations Act (s1330), or may seek leave to appear as *amicus curiae* in proceedings where we consider that the court would be assisted by hearing from ASIC.
- 105 During 2013, we did not intervene in any cases. A decision was made in a case in which we intervened in 2012: *P Hindle & Co (WA) Pty Ltd (in liq)* [2013] FCA 1105.
- 106 We intervened in this matter on the question of whether, in the circumstances, the chairperson’s use of the casting vote on a resolution to fix their own remuneration as liquidator was appropriate. We were aware of this

matter due to a transaction review which had already commenced when the application was made to the court.

107 In intervening, our interests lay in, first, attempting to represent and protect creditors' interests by highlighting to the court the importance of external administrators acting impartially and independently. We further queried the propriety of the liquidator's actions in exercising a casting vote on the particular resolution.

108 The Federal Court of Australia ruled it was inappropriate for the liquidator to use their casting vote, saying the liquidator should have applied for court approval of their fees. Justice Barker J said:

There appears to me to have been a lack of appreciation, as revealed by both the minutes recording the reasons for the exercise of the casting vote in favour [of] the resolution as well [as] in the elaborated account of why he acted as he did ... that the plaintiff was in a fiduciary relationship which needed to be born steadily in mind when deciding whether or not to exercise the casting vote.

109 In Report 342 *ASIC regulation of registered liquidators: January to December 2012* (REP 342), we reported on *ACN 121 708 316 Pty Ltd (subject to deed of company arrangement) (formerly known as Glowclose Pty Ltd) and Others*. Following on from our intervention in that matter, we have in a separate action secured a criminal conviction against Graeme Alexander Dwyer: see Media Release ([13-356MR](#)) *Former Gold Coast businessman pleads guilty to charges of creating a phantom company director and obstructing ASIC* (20 December 2013).

110 We appear as *amicus curiae* in proceedings where we can assist the court in cases on insolvency law and practice. We did not appear in any proceedings during 2013.

### **Liquidator assistance program**

111 Through our liquidator assistance program, we help registered liquidators to obtain compliance by company officers with their obligations to prepare a report on a company's affairs, provide books and records, and assist liquidators.

112 Details of prosecutions under the program are on our website at [www.asic.gov.au](http://www.asic.gov.au).

## Policy advice

### Law reform

- 113 In 2013, we continued to assist the Australian Government on policy issues—in particular, by providing input to law reform following the Government’s release for public comment of the Exposure Draft of the Insolvency Law Reform Bill 2013 (on 19 December 2012).
- 114 The exposure draft was preceded by:
- (a) a report by the Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: The case for a new framework* (14 September 2010), which was released following the Senate’s inquiry into the insolvency profession;
  - (b) an options paper prepared by Treasury, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* (2 June 2011); and
  - (c) a proposals paper issued by Treasury, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* (14 December 2011).

### Administrative power to wind up a company

- 115 The *Corporations Amendment (Phoenixing and Other Measures) Act 2012* amended the Corporations Act to give ASIC an administrative power to order the winding up of a company in certain circumstances.
- 116 In January 2013, we released RG 242. The guide sets out how ASIC will exercise this new administrative power.
- 117 During 2013, we ordered the winding up of six companies, where we identified that there were, in aggregate, 71 employees who were owed an estimated amount of \$783,124 in unpaid entitlements.

## B Inquiries and reports of alleged misconduct

### Key points

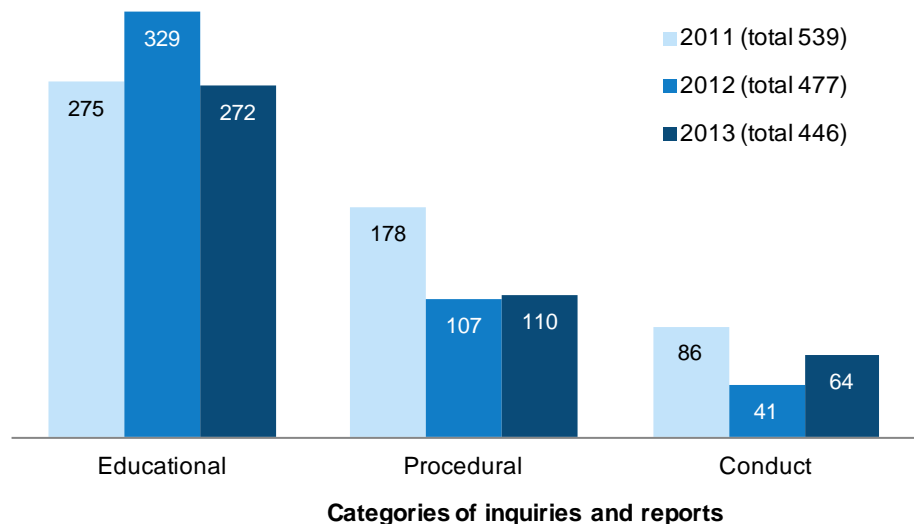
This section contains a detailed analysis of the outcomes of the general inquiries and reports of alleged misconduct that we received in 2013.

- 118 Our Misconduct and Breach Reporting team receives and conducts an initial assessment of all inquiries and reports of alleged misconduct arising from external administrations conducted by registered liquidators.
- 119 Reports of alleged misconduct against registered liquidators remained stable at 3% of the total reports we received during financial years 2011–12 and 2012–13: see p. 55, *ASIC Annual Report: 2012–2013*.

### Categories of inquiries and reports of alleged misconduct

- 120 Figure 9 shows an analysis of the nature of the inquiries and reports of alleged misconduct relating to registered liquidators that we received in 2013. While overall reports fell marginally (from 477 to 446), we note that conduct-related reports increased from 41 to 64, and that procedural matters increased marginally from 107 to 110.

**Figure 9: Inquiries and reports of alleged misconduct received by category (2011–13)**



Note: The total number of inquiries and reports of alleged misconduct for 2013 in Figure 9 is 446, compared with 385 inquiries and reports of alleged misconduct listed as received in Figure 10. The difference is the result of merging activities where there are multiple inquiries and reports about the one issue for a registered liquidator.

### Conduct matters

- 121 ‘Conduct’ matters are those involving an alleged deliberate, or at least conscious, act or omission by the registered liquidator, which has significant ramifications for the complainant or other stakeholders. An example is an allegation that the liquidator of a group of companies assisted a director in illegal phoenix-type activity, involving a transfer of assets to related entities for no consideration.

### Procedural matters

- 122 ‘Procedural’ matters are those relating to circumstances where there has been an inadvertent act or omission by the registered liquidator, which is less significant than a ‘conduct’ matter. This relies on there being no intent on the part of the registered liquidator, or where there may be an indication that the registered liquidator admitted fault and sought to make good. An example would be where a person alleges that the practitioner did not return their telephone calls, or failed to report on a timely basis, and our subsequent inquiries resulted in improved communication and acceptable explanations.

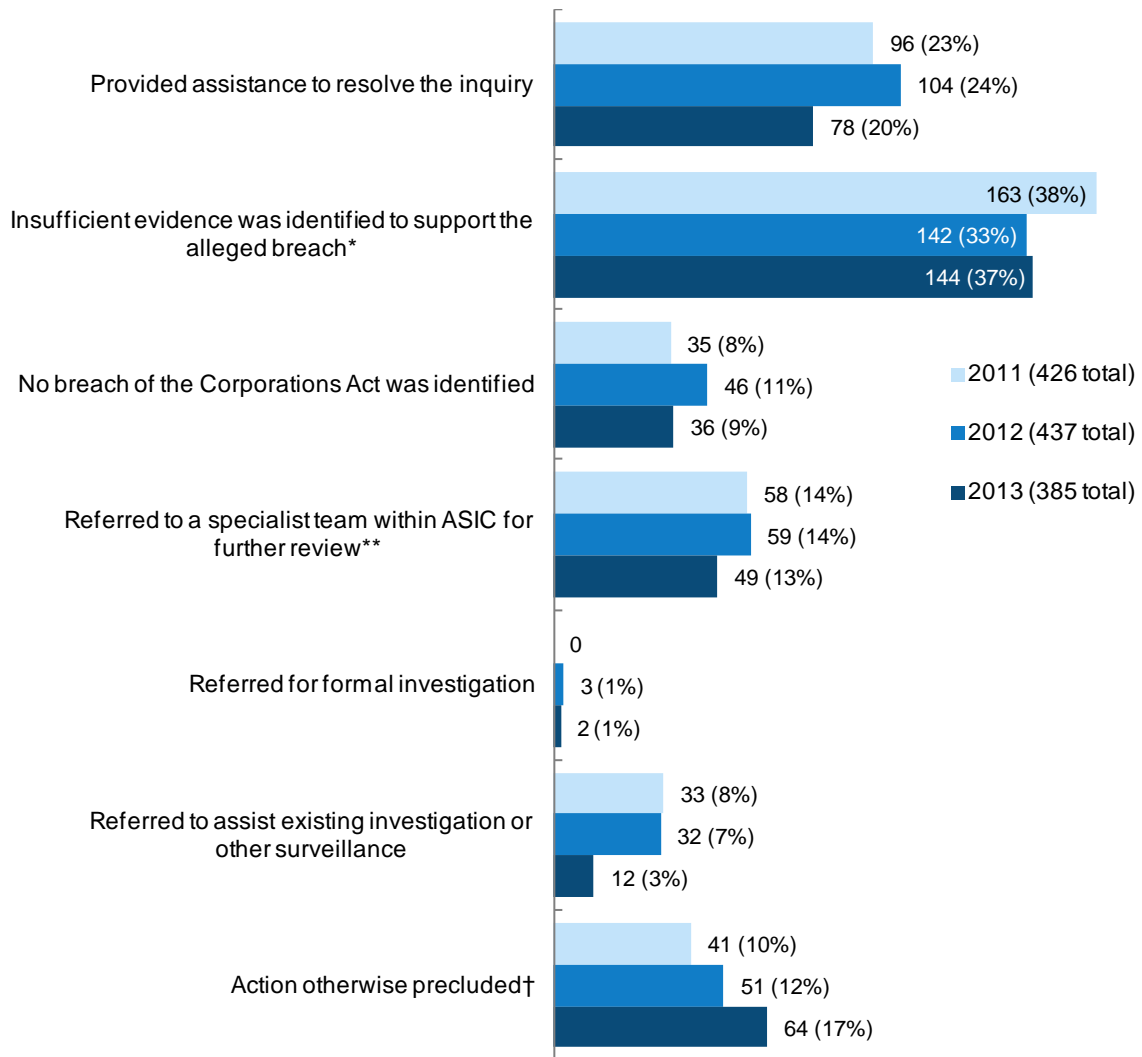
### Educational matters

- 123 ‘Educational’ matters are those involving circumstances where the outcome or resolution of the inquiry or allegation of misconduct is educating the person (usually a creditor) about the applicable law or practice, or providing information about the normal practice of the insolvency process. For example, a person may allege that the registered liquidator refused to advise them of the value of certain assets. It may simply be that the liquidator was reluctant to disclose this information because it was commercially sensitive and, if disclosed, could compromise sale negotiations resulting in a lesser return for creditors.

## Outcomes of inquiries and reports of alleged misconduct

- 124 Figure 10 summarises the outcomes of the 385 inquiries and reports of alleged misconduct by registered liquidators.
- 125 The Insolvency Practitioners team individually assesses conduct matters referred to it internally. Where the team determines that a matter does not warrant a referral for a formal investigation, we record the information obtained as part of our profiling of registered liquidators.

**Figure 10: Outcome of inquiries and reports of alleged misconduct (2011–13)**



\* Before closing a matter on the basis that there is insufficient evidence to support an allegation, we make relevant inquiries. This normally includes speaking to the person to obtain further information (including documents), reviewing lodgements with ASIC and speaking to the registered liquidator.

\*\* Of the 49 referrals by the Misconduct and Breach Reporting team in 2013, 48 were to the Insolvency Practitioners team.

† 'Action otherwise precluded' is a result of the matter already being subject to investigation or some other regulatory action that has been assessed and does not assist the existing action.

# Appendix 1: Industry profile

## Registered liquidators

126 As at 31 December 2013, there were 689 registered liquidators in Australia (of which 583 were also official liquidators): see Table 7.

**Table 7: Number of registered liquidators and official liquidators as at 31 December 2013**

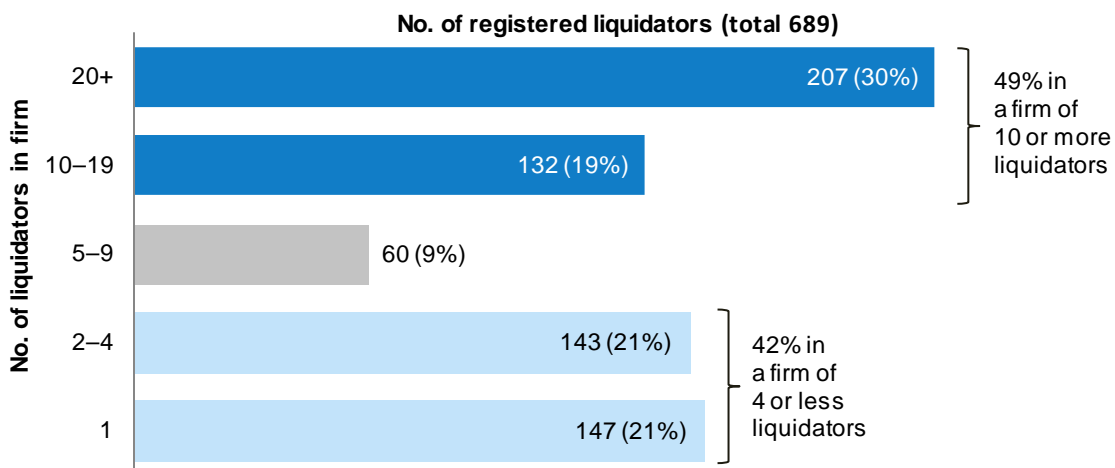
	Registered liquidators			Official liquidators		
	2011	2012	2013	2011	2012	2013
Registered at 1 January	668	671	<b>682</b>	517	525	<b>557</b>
Registered during year	29	43	<b>40</b>	25	48	<b>47</b>
Cancelled during year	(26)	(32)	<b>(33)</b>	(17)	(16)	<b>(21)</b>
Registered at 31 December	671	682	<b>689</b>	525	557	<b>583</b>

Note 1: Official liquidators conduct court appointed windings-up. All official liquidators are registered liquidators but a registered liquidator may not be an official liquidator.

Note 2: Report 287 *ASIC regulation of registered liquidators: January to December 2011* (REP 287) stated that there were 523 official liquidators when there were 525 official liquidators.

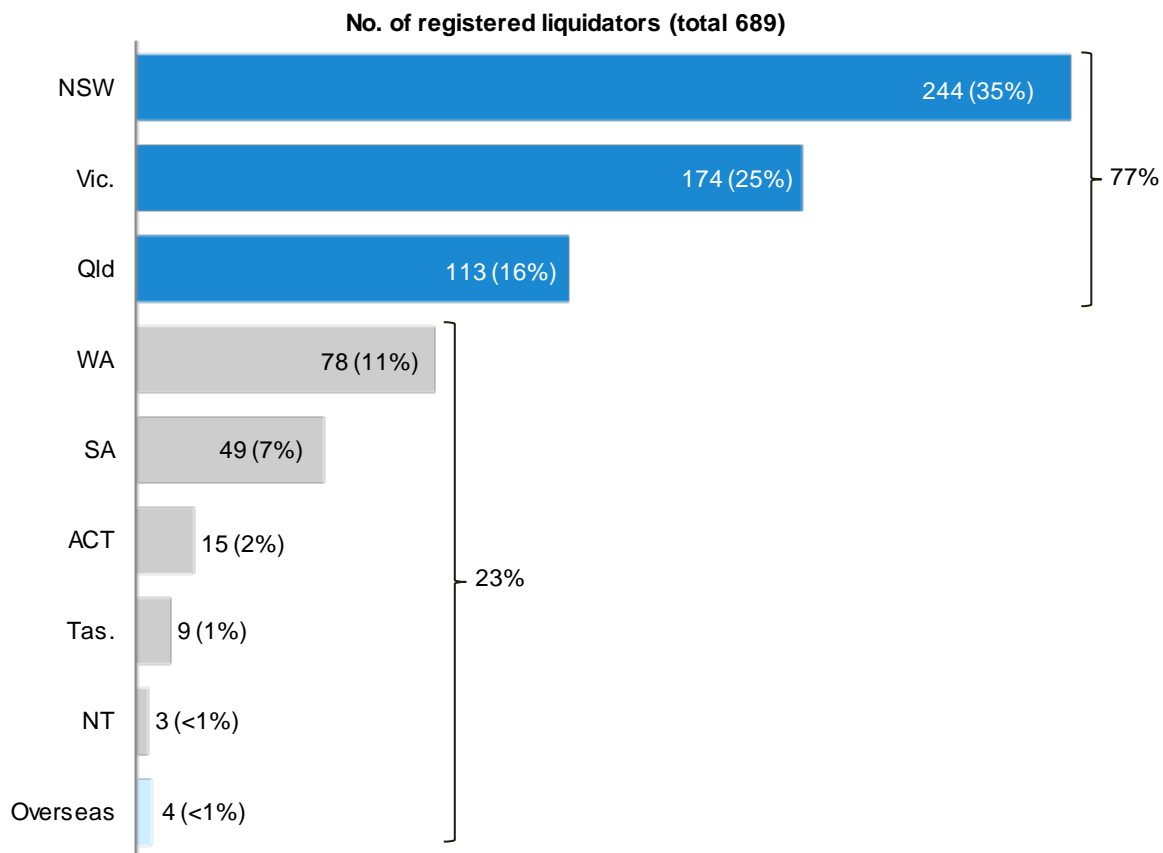
127 As Figure 11 shows, 49% of registered liquidators operate in a firm of 10 or more practitioners.

**Figure 11: Number of registered liquidators by firm size as at 31 December 2013**



128 As Figure 12 shows, 77% of registered liquidators operate predominantly in the eastern states of New South Wales (35%), Victoria (25%) and Queensland (16%).



**Figure 12: Number of registered liquidators by region as at 31 December 2013**

## Registration of liquidators

- 129 Under the Corporations Act, ASIC may only register as liquidators natural persons who satisfy the criteria listed in s1282(2) and are not disqualified by s1282(4). Registered liquidators are eligible to be appointed to all types of external administration referred to in Ch 5 of the Corporations Act, except the role of court-appointed liquidator or provisional liquidator: see s532(8).
- 130 We may register a natural person who is a registered liquidator as an official liquidator under s1283 of the Corporations Act.
- 131 As set out in Regulatory Guide 186 *External administration: Liquidator registration* (RG 186) and Information Sheet 34 *How to apply for registration as a liquidator* (INFO 34), under s1282(2)(c) of the Corporations Act, we will only determine an applicant to be a fit and proper person if satisfied about their honesty, integrity, good reputation and personal solvency.
- 132 To form this view, we take into account the following:
- (a) the applicant's experience with corporate insolvency, focusing on length of experience and seniority;

- (b) two referees attesting to currency and depth of liquidation experience, competency, integrity and reputation (i.e. whether the applicant is ‘fit and proper’);
- (c) proof of relevant qualifications;
- (d) historical searches on the status of the applicant (i.e. whether they are the subject of any previous adverse decisions); and
- (e) the statement by the applicant declaring that they are not:
  - (i) an insolvent under administration;
  - (ii) convicted of a criminal offence;
  - (iii) the subject of disciplinary action by their professional body or the ATO; or
  - (iv) disqualified from managing corporations under Pt 2D.6.

133 The conduct of registered liquidators is governed by:

- (a) the Corporations Act;
- (b) common law; and
- (c) professional standards.

## Profile of companies in external administration

134 Most appointments involve small-to-medium proprietary limited companies. Table 8 summarises key data for the financial year 2012–13, sourced from Report 372 *Insolvency statistics: External administrators’ reports (July 2012 to June 2013)* (REP 372).

**Table 8: Profile of companies in external administration in 2012–13**

Description	Percentage of companies
Less than 20 full-time equivalent employees	81%
Assets of \$100,000 or less	85%
Unsecured creditors owed \$250,000 or less	43%
Asset deficiency of \$500,000 or less	65%
Dividends to unsecured creditors of less than 11 cents in the dollar	97%

## Appendix 2: Regulatory guides and information sheets

135 The following regulatory guides (see Table 9) and information sheets (see Table 10) apply to registered liquidators.

**Table 9: Regulatory guides**

No.	Title
RG 16	<i>External administrators: Reporting and lodging</i>
RG 81	<i>Destruction of books</i>
RG 82	<i>External administration: Deeds of company arrangement involving a creditors' trust</i>
RG 109	<i>Assetless Administration Fund: Funding criteria and guidelines</i>
RG 174	<i>Externally administered companies: Financial reporting and AGMs</i>
RG 186	<i>External administration: Liquidator registration</i>
RG 194	<i>Insurance requirements for registered liquidators</i>
RG 217	<i>Duty to prevent insolvent trading: Guide for directors</i>
RG 242	<i>ASIC's power to wind up abandoned companies</i>

**Table 10: Information sheets**

No.	Title
INFO 29	<i>External administration: Most commonly lodged forms</i>
INFO 34	<i>How to apply for registration as a liquidator</i>
INFO 39	<i>Insolvency information for directors, employees, creditors and shareholders</i>
INFO 41	<i>Insolvency: A glossary of terms</i>
INFO 42	<i>Insolvency: A guide for directors</i>
INFO 43	<i>Insolvency: A guide for shareholders</i>
INFO 45	<i>Liquidation: A guide for creditors</i>
INFO 46	<i>Liquidation: A guide for employees</i>
INFO 53	<i>Providing assistance to external administrators: Books, records and RATA</i>

<b>No.</b>	<b>Title</b>
INFO 54	<i>Receivership: A guide for creditors</i>
INFO 55	<i>Receivership: A guide for employees</i>
INFO 59	<i>Registration of official liquidators</i>
INFO 74	<i>Voluntary administration: A guide for creditors</i>
INFO 75	<i>Voluntary administration: A guide for employees</i>
INFO 78	<i>Winding up a solvent company</i>
INFO 80	<i>How to interpret ASIC insolvency statistics</i>
INFO 84	<i>Independence of external administrators: A guide for creditors</i>
INFO 85	<i>Approving fees: A guide for creditors</i>
INFO 151	<i>ASIC's approach to enforcement</i>
INFO 160	<i>Disputes about employee entitlements</i>
INFO 163	<i>Financial reporting compliance by administrators of insolvent public companies</i>

## Appendix 3: Assetless Administration Fund

- 136 ASIC administers the Assetless Administration Fund, which the Australian Government established in 2005.
- 137 The purpose of the fund is to finance preliminary investigations and reports by registered liquidators in relation to the failure of companies with few or no assets, and where it appears to us that enforcement action may result from the liquidator's investigation and report. A particular focus of the fund is curbing illegal phoenix activity.
- 138 We reported an amount of \$2,203,000 (\$1,823,000 in 2011–12) paid from the fund in 2012–13 in the *ASIC Annual Report: 2012–2013* (see Note 17), and provided details of applications received and outcomes achieved on our website at [www.asic.gov.au](http://www.asic.gov.au).
- 139 Table 11 shows the number of applications received by the fund and the outcome of those applications.

**Table 11: Applications to the Assetless Administration Fund in 2013**

	Director banning application (EX02)	Other application (EX03)
Applications received	426	102
Approved	197	41
Rejected	239	70

Note: The combined number of applications approved and rejected does not match the number of applications received because some applications were received in the previous year or were still under consideration at the end of the year.

## Key terms

Term	Meaning in this document
<i>amicus curiae</i>	Friend of the court
ARITA	The Australian Restructuring Insolvency & Turnaround Association (known as the Insolvency Practitioners Association of Australia until the end of December 2013)
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATO	Australian Taxation Office
CALDB	Companies Auditors and Liquidators Disciplinary Board
CDPP	Commonwealth Director of Public Prosecutions
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
declaration of indemnities	Has the meaning given in s9 of the Corporations Act
declaration of relevant relationships	Has the meaning given in s60 of the Corporations Act
deed administrator	An administrator of a deed of company arrangement
enforceable undertaking	Undertakings under s93AA of the ASIC Act
enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to the CALDB), or where the parties reach a negotiated outcome (e.g. where ASIC accepts an enforceable undertaking under s93AA of the ASIC Act)
external administration	The corporate insolvency that the external administrator has been appointed to administer
external administrator	A liquidator, receiver, voluntary administrator or deed administrator
formal investigation	A formal investigation under s13(3) of the ASIC Act
ICAA	Institute of Chartered Accountants in Australia
INFO 151 (for example)	An ASIC information sheet (in this example, numbered 151)

Term	Meaning in this document
insolvency practitioner	A generic term to describe registered liquidators generally, regardless of whether they have been appointed to one or more specific external administrations
liquidator	An insolvency practitioner appointed under Ch 5 of the Corporations Act to wind up the affairs and distribute the property of a body corporate
negotiated resolution	Negotiated alternatives to other enforcement remedies where these can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see INFO 151
official liquidator	A person registered by ASIC under s1282(2) of the Corporations Act
proactive practice review	A review of a registered liquidator's whole practice, including systems and procedures and a detailed review of multiple external administration appointments. The aim is to assess whether the registered liquidator is adequately and properly performing their duties and generally complying with the law
proactive transaction review	An industry-wide compliance activity targeting specific external administrations that appear to exhibit risk criteria suggesting, for example, potential illegal phoenix activity, possible director misconduct and/or independence concerns
receiver	An insolvency practitioner appointed under an instrument or by the court to receive property of a body corporate
registered liquidator	A person registered by ASIC under s1282(2) of the Corporations Act
remuneration	Remuneration paid to the external administrator for services rendered in conducting an external administration
remuneration report	A report prepared in accordance with s449E(5)–(7) or 473(11)–(12) of the Corporations Act
REP 297 (for example)	An ASIC report (in this example numbered 297)
RG 186 (for example)	An ASIC regulatory guide (in this example numbered 186)
s9 (for example)	A section of the Corporations Act (in this example numbered 9)
surveillance	Transaction reviews, proactive transaction reviews, proactive practice reviews and industry-wide compliance projects
transaction review	A review of the conduct of a registered liquidator in relation to a specific transaction or external administration
voluntary administrator	An administrator of a company but not a deed of company arrangement

## Related information

### Headnotes

alleged misconduct, compliance projects, education, enforcement outcomes, engaging with industry and stakeholders, external administration, guidance, insolvency practitioners, policy advice, registered liquidators, surveillance

### Regulatory guides

See Table 9 in Appendix 2 of this report.

### Legislation

ASIC Act, s13(3), 93A, 93AA

Corporations Act, Pt 2D.6, 5.4C, s423, 438D, 439A, 532(8), 533, 536, 588G(2), 588G(3), 1282(2), 1282(4), 1283, 1291 and 1330; Corporations Regulations; *Corporations Amendment (Phoenixing and Other Measures) Act 2012*

Insolvency Law Reform Bill 2013

### Cases

*ACN 121 708 316 Pty Ltd (subject to deed of company arrangement) (formerly known as Glowclose Pty Ltd) and Others*

*P Hindle & Co (WA) Pty Ltd (in liq)* [2013] FCA 1105

*Walton Construction Pty Ltd (in liq); ASIC v Franklin* [2014] FCA 68

### Reports

*ASIC Annual Report: 2012–13*

REP 287 *ASIC regulation of registered liquidators: January to December 2011*

REP 342 *ASIC regulation of registered liquidators: January to December 2012*

REP 372 *Insolvency statistics: External administrators' reports (July 2012 to June 2013)*

### Media releases

12-93MR *ASIC acts against Melbourne liquidator*, 15 May 2012

13-033MR *ASIC cancels Melbourne liquidator's registration and bans him from managing corporations*, 25 February 2013



13-034MR ASIC accepts undertaking from Sydney liquidator, 25 February 2013

13-132MR ASIC cancels registration of Sydney liquidator, 5 June 2013

13-227MR ASIC to remove liquidator from industry, 23 August 2013

13-239MR Federal Court indicates Melbourne liquidator should be banned for 5 years, 30 August 2013

13-308MR ASIC to remove liquidator from industry, 12 November 2013

13-356MR Former Gold Coast businessman pleads guilty to charges of creating a phantom company director and obstructing ASIC, 20 December 2013

13-362MR ASIC challenges liquidators on independence, 23 December 2013

## ASIC forms

Form 908 Annual statement by liquidator

## Information sheets

See Table 10 in Appendix 2 of this report.

## Non-ASIC documents

ASIC, 'ASIC Update: Engaging with industry', *Australian Insolvency Journal*, vol. 25, issue 1, 2013

ASIC, 'ASIC Update: The role of registered liquidators and directors in a fair and efficient market', *Australian Insolvency Journal*, vol. 25, issue 2, 2013

ASIC, 'ASIC Update: Responding to the profession', *Australian Insolvency Journal*, vol. 25, issue 3, 2013

ASIC, 'ASIC Update: The basics do matter—Lessons from recent enforcement action', *Australian Insolvency Journal*, vol. 25, issue 4, 2013

Senate Economics Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: The case for a new framework*, report, 14 September 2010

Treasury, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*, options paper, 2 June 2011

Treasury, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*, proposals paper, 14 December 2011