



**ASIC**

Australian Securities & Investments Commission

**REPORT 430**

# **ASIC regulation of registered liquidators: January to December 2014**

April 2015

## **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 2014.

### 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

Report number	Report date
REP 389	April 2014
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) and the Corporations Regulations 2001 (Corporations Regulations).

## ASIC's strategic priorities

- 2 ASIC's strategic framework focuses on three strategic priorities or outcomes:
  - (a) promoting investor and financial consumer trust and confidence;
  - (b) ensuring fair, orderly and transparent markets; and
  - (c) providing efficient and accessible registration.
- 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.
- 5 In October 2014, we published our Strategic Outlook for 2014–15 setting out key risks to markets, including corporate insolvency, and how we will respond. We identified pre-insolvency advisers, particularly their relationship with registered liquidators, as an example of a key risk concerning gatekeepers. We proposed identifying business models of unregulated operators who provide pre-appointment insolvency advice designed to defeat creditors' interests (including advice aimed at facilitating illegal phoenix activity). We will respond through appropriate enforcement action where we identify wrongdoing.

## Key terms used in this report

- 6 This report uses a number of terms that have special meaning and are important for understanding the context of the statistics: see Table 1. 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)
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> ( <a href="#">INFO 151</a> )
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 65–67 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

- 7 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.

- 8 In 2014, we continued our focus on the following areas of concern:
- (a) *Competence*: This includes 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. Our focus included disclosure by registered liquidators 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.
- 9 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.
- 10 In 2014, we:
- (a) successfully appealed the decision in *ASIC v Franklin (liquidator), in the matter of Walton Construction Pty Ltd* [2014] FCA 68 to the Full Court of the Federal Court of Australia (see paragraphs 106–109);
  - (b) initiated six proactive practice reviews and 75 transaction reviews;
  - (c) completed six proactive practice reviews and 87 transaction reviews;
  - (d) completed 45 reviews of declarations of relevant relationships and indemnities, and 41 reviews of remuneration reports issued to creditors by registered liquidators;
  - (e) reviewed the lodgement history of over 175 registered liquidators as part of a scheduled two-year industry-wide project testing all registered liquidators' compliance with the requirement to publish notices on ASIC's published notices website and to lodge forms with ASIC; and
  - (f) commenced 14 formal investigations or enforcement actions concerning registered liquidator conduct (see Table 3 in Section A).
- 11 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 2014 (the reporting period).

## Inquiries and reports of alleged misconduct

- 12 Inquiries made to ASIC and reports of alleged misconduct involving registered liquidators (received and assessed by our Misconduct and Breach Reporting team) continue to fall—with 384 in 2014, 446 in 2013 and 477 in 2012.
- 13 An initial assessment by the Misconduct and Breach Reporting team categorised the inquiries and reports as follows:
- (a) *Conduct related* (15%): The information provided to ASIC suggested a serious breach of the Corporations Act which could be seen as deliberate.
  - (b) *Procedural based* (21%): Although serious, the information provided to ASIC suggested the misconduct may have been inadvertent.
  - (c) *Educational* (64%): 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.
- 14 The outcome of the inquiries and reports of alleged misconduct showed that:
- (a) in 69 matters (20%), 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 207 matters (59%), there was insufficient evidence of an offence, or the registered liquidator did not breach the Corporations Act, and/or ASIC assisted to resolve the inquiry. We did not pursue the matter further; and
  - (c) in 77 matters (22%), we took no action for reasons including that the matter did not advance or support an existing investigation or regulatory action.

Note 1: Percentages shown in this report are rounded to the nearest unit. This means that percentages may not add up to 100% because of rounding.

Note 2: The total number of inquiries and reports of alleged misconduct of 384 listed in Figure 10 differs from the 353 inquiries and reports of alleged misconduct listed as finalised in Figure 11. The difference results from the merging of activities where there are multiple inquiries and reports about the one issue for a registered liquidator. Section B of this report contains a detailed analysis of the outcomes of the 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:

- formal investigation and enforcement action (see paragraphs 16–53);
- surveillance (see paragraphs 54–81);
- guidance (see paragraphs 82–89);
- education (see paragraphs 90–92);
- engaging with industry and stakeholders (see paragraphs 93–111); and
- policy advice (see paragraphs 112–118).

### Overview of key outcomes

- 15 During 2014, we continued our focus on three primary areas of concern: competency, independence and improper gain. Table 2 summarises our outcomes for 2014 in each area of concern.

**Table 2: Key outcomes for 2014 by area of concern**

<b>Competence</b>	<ul style="list-style-type: none"> <li>• The CALDB cancelled the registration of Sydney-based registered liquidator, Mr Pino Fiorentino.</li> <li>• The CALDB suspended the registration of Sydney-based registered liquidator, Mr William James Hamilton, for six months.</li> <li>• The CALDB suspended the registration of Sydney-based registered liquidator, Mr Alan Godfrey Topp, for six months.</li> <li>• We accepted an enforceable undertaking with Perth-based registered liquidator, Mr Simon Roger Coad.</li> <li>• We agreed to a negotiated resolution with five separate registered liquidators.</li> <li>• We commenced a formal investigation or enforcement actions in relation to eight registered liquidators.</li> <li>• We conducted a review of 175 registered liquidators as part of an industry-wide compliance activity to test all registered liquidators' compliance with the obligation to publish notices on ASIC's published notices website (formerly known as the 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>• The Full Court of the Federal Court of Australia upheld ASIC's appeal and removed and replaced the liquidators of the Walton Construction Group on the grounds of a perceived lack of independence.</li> <li>• We commenced formal investigations or enforcement actions in relation to three registered liquidators.</li> <li>• We filed an application with the CALDB to cancel the registration of a registered liquidator.</li> <li>• We completed 45 reviews of registered liquidators' declarations of relevant relationships and indemnities, identifying 18 declarations as inadequate and requiring reissuing to creditors. We reviewed 22 declarations as part of our independence project and an additional 23 declarations as part of our other project work.</li> </ul>
<b>Improper gain</b>	<ul style="list-style-type: none"> <li>• The Commonwealth Director of Public Prosecutions (CDPP) filed charges against Sydney-based former liquidator, Mr Mark Darren Levi, following ASIC's investigation. The CALDB had previously cancelled Mr Levi's registration.</li> <li>• We commenced formal investigations or enforcement actions in relation to three registered liquidators.</li> <li>• We completed 41 reviews of registered liquidators' remuneration reports to creditors. We reviewed five reports as part of our remuneration project and an additional 36 reports as part of our other work.</li> </ul>

## Formal investigation and 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.

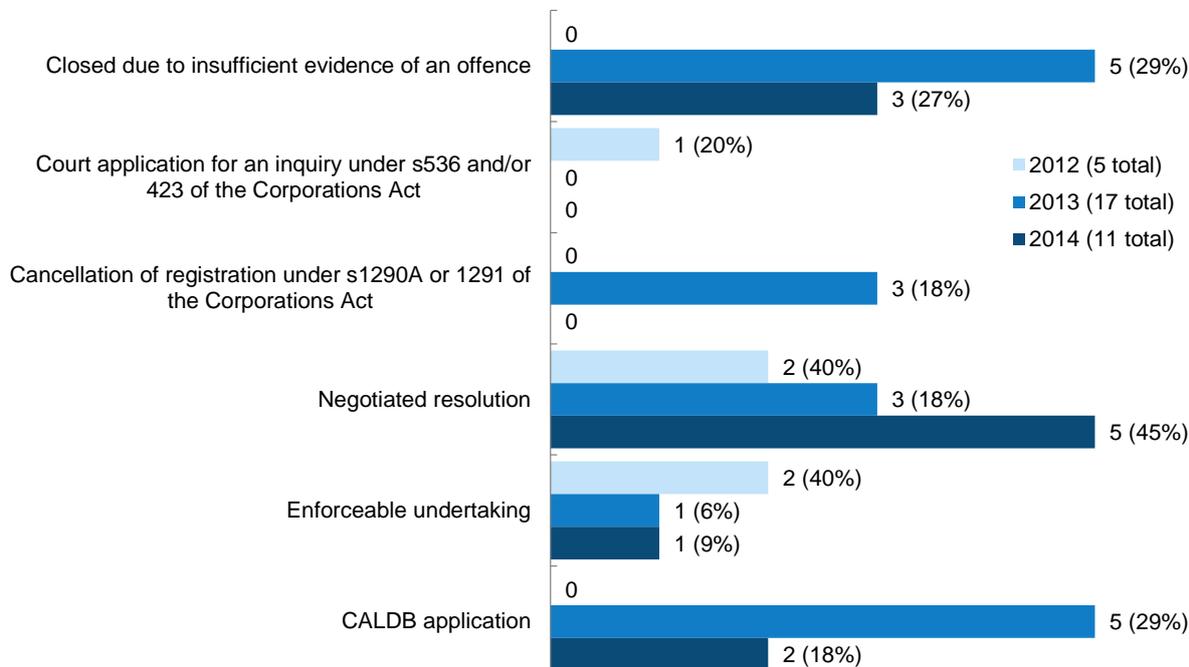
**Table 3: Registered liquidators subject to formal investigation or enforcement action (2012–14)**

	2012	2013	2014
Open matters at 1 January	10	21	19
Formal investigations or enforcement actions commenced during the year	13	11	14
Formal investigations or enforcement actions finalised during the year	(2)	(13)	(11)
Open matters at 31 December	21	19	22

Note: The 14 matters referred for formal investigation or enforcement action during 2014 arose from four proactive practice reviews, eight transaction reviews and two other referrals. The 22 open matters at 31 December 2014 relate to 21 registered liquidators, with one having multiple matters.

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 (2012–14)**



### Mr Pino Fiorentino

- 18 The CALDB cancelled the registration of Sydney-based registered liquidator, Mr Pino Fiorentino, following an application by ASIC to the CALDB. The cancellation took effect from 24 June 2014.
- 19 The CALDB found Mr Fiorentino dishonestly used his position as the liquidator of ERB International Pty Ltd (ERB), failed to act in good faith in the best interests of the company and its creditors, lacked competence and failed to comply with his legal requirements.
- 20 Mr Fiorentino's failures arose in circumstances where pre-appointment transactions demanded a full investigation such that ERB's creditors had confidence that he acted solely in their interests in maximising the return to them.
- 21 The CALDB found, among other things, that Mr Fiorentino:
- (a) signed a deed of settlement—on behalf of creditors—with ERB and its directors without adequately and properly assessing necessary information; and
  - (b) procured invalid proxies and used them to vote in support of a resolution to approve his fees. Significantly, it found that Mr Fiorentino

actively sought to undermine a claim by the NSW Office of State Revenue, a major creditor, to pursue another entity to recover its debt.

22 Overall, the CALDB found in favour of 20 out of 25 of ASIC's contentions.

23 During the course of the CALDB proceedings, Mr Fiorentino made several unsuccessful applications to the Administrative Appeals Tribunal (AAT), the Federal Court of Australia and the Supreme Court of New South Wales.

24 On 26 June 2014, Mr Fiorentino filed an application with the AAT for review of the CALDB's decision to order cancellation of his registration as a registered liquidator, as well as an unsuccessful application to prevent the CALDB's decision taking effect. We expect the application to be heard later this year.

### **Mr Mark Darren Levi**

25 The CDPP filed charges against Sydney-based former liquidator, Mr Mark Darren Levi, following an investigation by ASIC. The CALDB had previously cancelled Mr Levi's registration.

26 Mr Levi has appeared before Downing Centre Local Court charged with two counts of obtaining money by deception, two counts of making a false instrument, two counts of using a false instrument and two counts of making a false document.

27 The deception offences carry a maximum penalty of five years jail. All the other offences carry a maximum penalty of 10 years jail.

28 ASIC alleges that in April and October 2009, Mr Levi used approximately \$92,000 to pay two personal tax assessments by deceiving his then employer to sign two cheques from a receivership account of Biseja Pty Ltd (receiver and manager appointed). The amounts of the two cheques were inflated to a higher amount in order for Mr Levi to use the money to pay his personal tax liability. At the time, Mr Levi's employer was the appointed receiver for Biseja Pty Ltd.

29 ASIC alleges Mr Levi altered and used two Business Activity Statements to induce his employer into signing the cheques, and that he altered the books and records of Biseja Pty Ltd to cover up his alleged conduct.

### **Mr William James Hamilton**

30 The CALDB suspended the registration of Sydney-based registered liquidator, Mr William James Hamilton, for six months following an application by ASIC to the CALDB.

31 The suspension started on 3 June 2014 and ended on 2 December 2014.

- 32 ASIC's application to the CALDB followed an investigation into Mr Hamilton's conduct as a joint liquidator of ERB from 2 April 2008.
- 33 The CALDB found Mr Hamilton did not adequately and properly perform his duties as a joint liquidator.
- 34 In reaching this view, the CALDB agreed with ASIC's submission that in carrying out the office of liquidator, a joint liquidator who does not have main carriage of a matter must still have an adequate and proper involvement in the liquidation.
- 35 Specifically, the CALDB found Mr Hamilton did not adequately and properly perform his duties as a joint liquidator by:
- (a) entering into a deed of settlement and release with the directors of ERB and a director-related company to accept an amount which had not been properly assessed and no proper investigation had been made as to the financial capacity of the directors and related company to pay or what their true indebtedness was;
  - (b) failing to seek the approval of the court or a resolution of creditors before entering into the deed of settlement and release; and
  - (c) failing to seek legal advice about entering into the deed of settlement and release.
- 36 The CALDB further held that reports to creditors lacked meaningful information to enable creditors to make an informed assessment of the reasonableness of the liquidators' remuneration, and that the liquidators failed to adequately account to creditors regarding the conduct of the winding up of ERB.
- 37 Lastly, the CALDB found that Mr Hamilton failed to lodge a report with ASIC in circumstances where possible offences by the directors had been identified.
- 38 In addition to his suspension, Mr Hamilton was required to enter a number of undertakings with which he must comply before accepting any new appointments as a liquidator. These undertakings focus on professional development and peer review, and specifically include:
- (a) completing courses and professional development training agreed in advance with ASIC; and
  - (b) retaining a qualified independent consultant, agreed in advance with ASIC, to analyse the risk management and compliance procedures in place at Mr Hamilton's firm.
- 39 Mr Hamilton has complied with these undertakings.

40 Mr Hamilton also undertook to submit the first four company external administrations conducted to an independent review by a person approved by ASIC. We will monitor Mr Hamilton's compliance with this undertaking.

### **Mr Alan Godfrey Topp**

41 The CALDB suspended the registration of Sydney-based registered liquidator, Mr Alan Godfrey Topp, for six months following an application by ASIC to the CALDB.

42 The suspension started on 1 May 2014 and ended on 31 October 2014.

43 Mr Topp failed to lodge more than 300 documents with ASIC over a period of almost four years. The documents related to 61 different companies and included Form 524 *Presentation of accounts and statement*, which helps to show the progress of an external administration.

44 The CALDB also required undertakings from Mr Topp to:

- (a) lodge with ASIC all outstanding statutory lodgements by 1 May 2014;
- (b) make arrangements for the appointment of replacement liquidators on all of his current administrations by 1 May 2014; and
- (c) for the next six months following the six-month suspension period, not accept or hold any appointment as an external administrator except as a joint appointee with a registered liquidator or registered liquidators.

45 Mr Topp has complied with the undertakings given to the CALDB, and the requirement to take only joint appointments will expire at the end of April 2015.

### **Mr Simon Roger Coad**

46 ASIC accepted an enforceable undertaking from Perth-based registered liquidator, Mr Simon Roger Coad, following concerns that he failed to adequately and properly carry out his duties as a registered liquidator. We identified the concerns from our regular liquidator surveillance activities. We reviewed several of Mr Coad's external administrations.

47 We formed the view that Mr Coad, among other things:

- (a) did not have appropriate operational procedures in place to properly conduct external administrations;
- (b) incorrectly continued with a deed of company arrangement that had been terminated;
- (c) had not provided creditors with remuneration reports or compliant remuneration reports for prospective remuneration;

- (d) had not provided compliant declarations of independence, relevant relationships and indemnities to creditors;
- (e) either had not undertaken proper investigations or had not adequately documented his investigations;
- (f) had not held annual meetings with creditors;
- (g) had not lodged statutory documents with ASIC; and
- (h) had not properly maintained various files.

48 Mr Coad acknowledged ASIC's views, admitted to the failings we identified and took steps to improve his quality control systems after being notified of our concerns.

49 Under the enforceable undertaking, Mr Coad agreed to improve his systems and procedures for insolvency services and have his practice reviewed twice over a period of approximately six months by an independent quality reviewer.

50 We monitored Mr Coad's conduct through reports prepared by the quality reviewer and Mr Coad has now successfully completed the terms of the enforceable undertaking.

### **Negotiated resolutions**

51 We identified a variety of concerns during our surveillances of five firms in the reporting period. We subsequently 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](#).

52 A sole practitioner with health issues agreed to request that ASIC cancel his registration as a liquidator after transferring all external administrations to other practitioners.

53 Four 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. One of those practitioners also agreed to request that ASIC cancel his registration as a liquidator after completing all outstanding lodgements and finalising all external administrations.

## **Surveillance**

54 We undertake surveillances of registered liquidators by either reviewing a specific transaction or external administration (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. This, in turn, allows us to assess whether a registered liquidator remains a fit and proper person to be registered.

55 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.

56 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

57 In 2014, we initiated six proactive practice reviews (11 initiated in 2013): see Figure 2. The reviews covered New South Wales (three reviews), Victoria (one review), Western Australia (one review), and South Australia (one review).

**Figure 2: Proactive practice reviews by region (2012–14)**



58 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.

59 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, intelligence gathered from our project work and any reports of alleged misconduct received.

60 Of the six proactive practice reviews finalised during 2014 (see Table 4 and Figure 3):

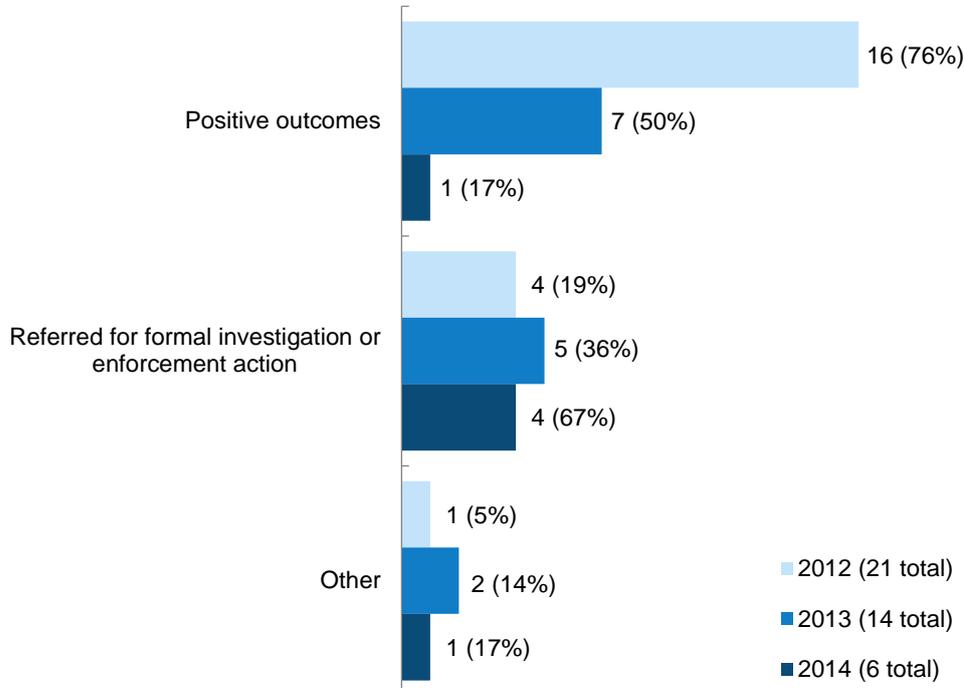
- (a) four matters were escalated to a formal investigation or an enforcement action was initiated; and
- (b) we achieved a positive outcome in one matter and referred one other matter for a future review.

Note: A positive outcome is recorded where we identify 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.

**Table 4: Proactive practice reviews (2012–14)**

	2012	2013	2014
Reviews open at 1 January	20	10	7
Reviews commenced during the year	11	11	6
Reviews finalised during the year	(21)	(14)	(6)
Reviews open at 31 December	10	7	7

**Figure 3: Outcomes of finalised proactive practice reviews (2012–14)**



Note: In 2014, the outcome ‘Other’ reflects one review where we flagged the registered liquidator for a future review.

### Transaction reviews

61 In 2014, we initiated 75 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 intelligence gathering.

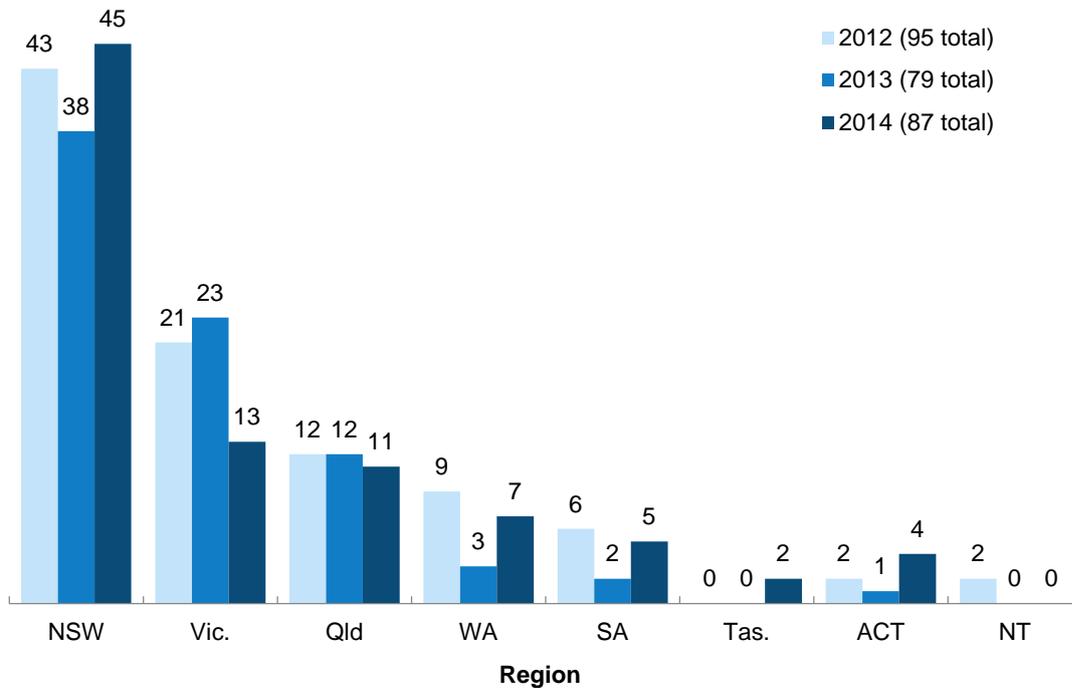
62 When undertaking a transaction review, we examine the whole of the transaction in question to ensure the registered liquidator has adequately and properly performed their duties and functions—complying with the Corporations Act and the Corporations Regulations, and the professional standards relevant to that transaction.

**Table 5: Transaction reviews (2012–14)**

	2012	2013	2014
Reviews open at 1 January	24	25	31
Reviews commenced during the year	96	85	75
Reviews finalised during the year	(95)	(79)	(87)
Reviews open at 31 December	25	31	19

63 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 the availability of evidence.

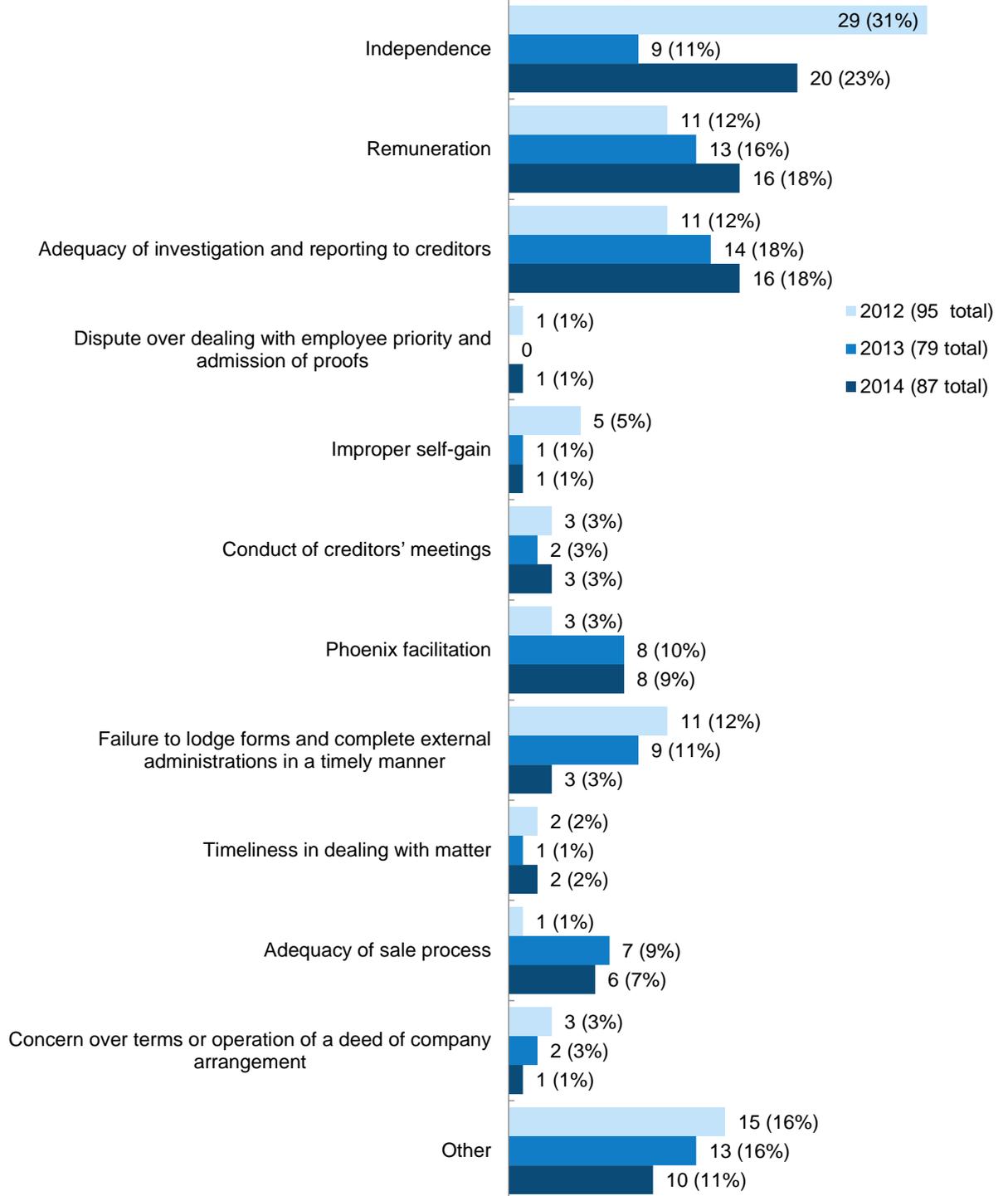
**Figure 4: Finalised transaction reviews by region (2012–14)**



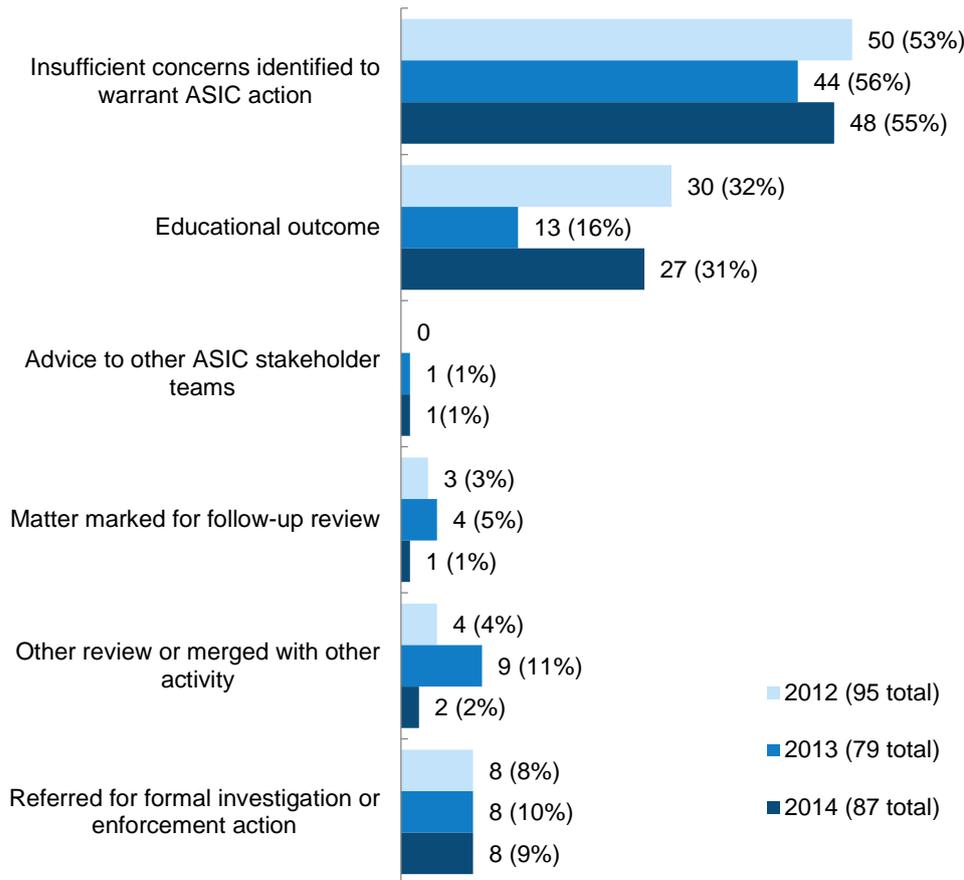
64 Figure 5 summarises the nature of the concerns identified in the 87 transaction reviews finalised during the year and Figure 6 summarises the outcomes of those reviews.

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

**Figure 5: Areas of concern in finalised transaction reviews (2012–14)**



**Figure 6: Outcomes of finalised transaction reviews (2012–14)**



**Proactive transaction reviews**

- 65 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.
- 66 In early 2014, we made a strategic decision to focus our resources on current enforcement matters. We concluded two reviews during 2014: see Table 6.

**Table 6: Proactive transaction reviews concluded (2012–14)**

	2012	2013	2014
Reviews open at 1 January	0	5	1
Reviews commenced during the year	18	38	1
Reviews finalised during the year	(13)	(42)	(2)
Reviews open at 31 December	5	1	0

67 We may recommence the proactive transaction review program depending on resources and priorities. ASIC undertakes other activities targeting illegal phoenix activity that might involve registered liquidator misconduct.

## Industry-wide compliance projects

### Declarations of relevant relationships and indemnities

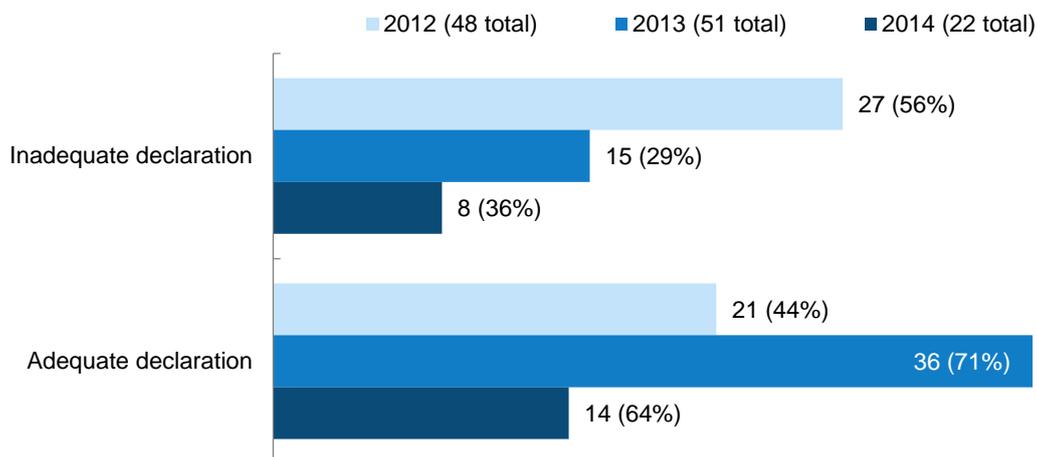
68 On appointment, a voluntary administrator is required under the Corporations Act to prepare a declaration of relevant relationships and a declaration of indemnities (declarations), while a creditors' voluntary liquidator is required only to prepare a declaration of relevant relationships.

69 We continue to monitor declarations because independence is a key concern for ASIC.

70 In 2014, as part of this project, we completed 22 reviews (51 in 2013) and found that eight declarations (15 in 2013) were inadequate: see Figure 7. In each case, we required the registered liquidator to reissue the declaration.

71 In 2014, we reviewed an additional 23 declarations as part of our other project work. Of those additional declarations, 13 (57%) were adequate and 10 (43%) were inadequate. The outcomes of the additional reviews are not recorded in Figure 7.

**Figure 7: Outcomes for declarations of relevant relationships and indemnities (2012–14)**



### Remuneration

72 Our remuneration monitoring project focused primarily on disclosure, but also considered the reasonableness of external administrator remuneration.

73 In early 2014, we made a strategic decision to suspend the project and focus our resources on current enforcement matters and our project to test all registered liquidators' compliance with the obligation to publish notices

on ASIC's published notices website and to lodge forms with ASIC. We concluded the five open remuneration reviews started in 2013 that remained open at the start of 2014. Of those remuneration reports, three (60%) were adequate and two (40%) were inadequate

74 In 2014, we reviewed 36 remuneration reports as part of our other project work. Of those remuneration reports, 28 (78%) were adequate and eight (22%) were inadequate.

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

75 In 2014, we reviewed 677 annual returns lodged with us by registered liquidators (Form 908 *Annual statement by a liquidator*). Of those, we identified no issues of concern in 577 (or 85%) of annual returns.

76 Where we had a concern, we contacted the registered liquidator to clarify and address that concern.

#### *Sufficient capacity*

77 During 2014, we continued our focus on whether registered liquidators demonstrated that they had sufficient capacity within their practice to administer their external administration appointments. We reviewed the number of staff available to assist on appointments relative to the number of external administrations accepted by the registered liquidator.

#### *Inactive registered liquidators*

78 Part of our review included contacting inactive registered liquidators. We understand that our contact acted as a catalyst to nine registered liquidators voluntarily seeking cancellation of their registration.

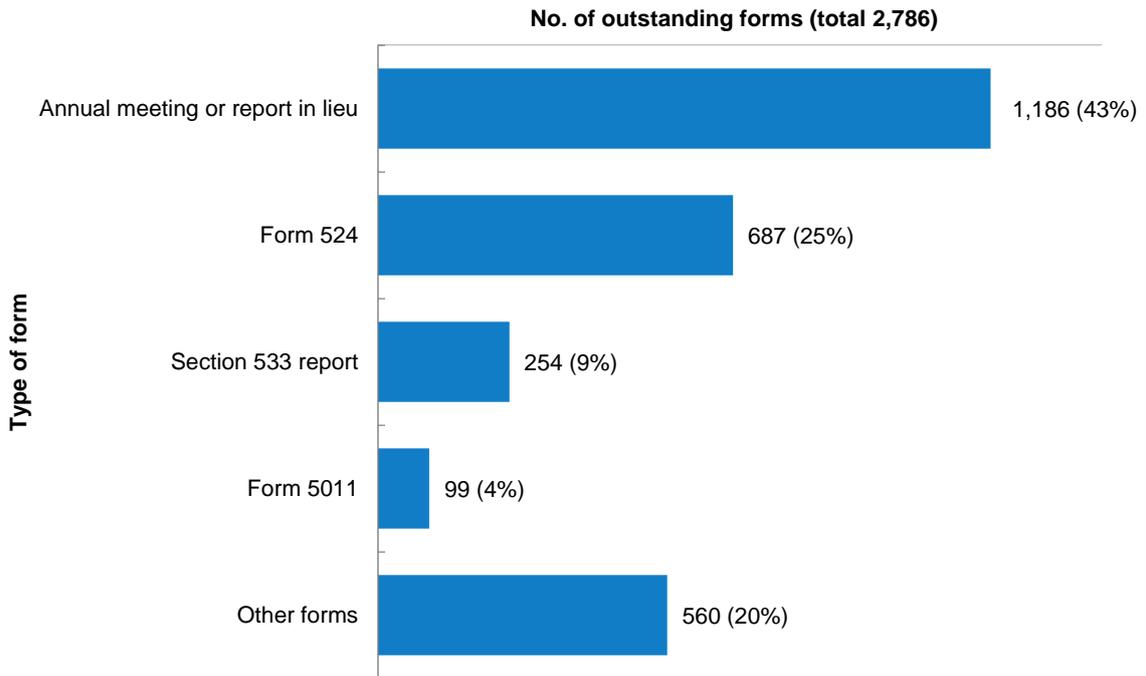
#### **Publishing notices on ASIC's published notices website and lodging forms with ASIC**

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

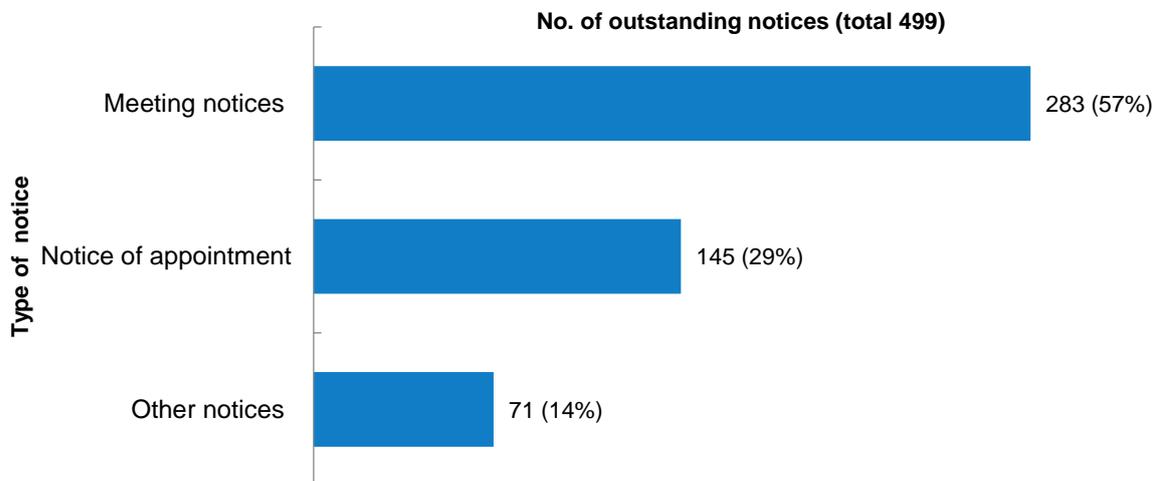
- (a) publish certain notices on ASIC's published notices website; and
- (b) lodge forms with ASIC (e.g. Form 505 *Notification of appointment or cessation of an external administrator*, Form 524 *Presentation of accounts and statement* and Form 5011 *Copy of minutes of meeting*).

80 At 31 December 2014, we had completed the review of the current external administrations of 175 registered liquidators. We identified that 2,786 forms (6%) were outstanding out of a total of 48,111 forms lodged: see Figure 8. We also identified 499 notices (7%) outstanding out of a total of 7,574 notices published on ASIC's published notices website: Figure 9 .

**Figure 8: Outstanding forms at 31 December 2014**



**Figure 9: Outstanding notices at 31 December 2014**



81 We contact registered liquidators directly where we identify non-compliance and seek that they remedy the non-compliance where possible. Where we identify systemic non-compliance, we consider whether or not disciplinary action is warranted.

## Guidance

### Regulatory guides

- 82 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.
- 83 Regulatory guides 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.
- 84 On 18 December 2014, we completed our review of Regulatory Guide 16 *External administrators: Reporting and lodging* (RG 16) and reissued Schedule B only.
- 85 The review followed concerns that 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.
- 86 The reissued Schedule B aims to provide ASIC with more qualitative information about alleged insolvent trading, and let us focus on instances suggesting more serious breaches of the Corporations Act that might warrant enforcement action in line with [INFO 151](#).
- 87 On 25 August 2014, we issued Consultation Paper 223 *Relief for externally administered companies and registered schemes being wound up—RG 174 update* (CP 223).
- 88 We are consulting on proposals on whether we should:
- (a) expand our policy to exempt insolvent registered schemes being wound up from financial reporting;
  - (b) expand our policy to exempt public companies from the obligation to hold an annual general meeting (AGM) if the company has a liquidator appointed; and
  - (c) update our guidance on the circumstances in which we will provide individual relief, including narrowing the circumstances in which we give exemption relief and expanding the circumstances in which we give deferral relief.
- 89 Submissions closed on 20 October 2014 and we expect to update RG 174 in the first half of 2015.

## Education

- 90 Our direct activities (proactive practice reviews, 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 educate the market by writing articles for industry publications.
- 92 During 2014, ASIC authored the following four articles, which appeared in the *Australian Insolvency Journal*—the quarterly journal of the Australian Restructuring Insolvency & Turnaround Association (ARITA):
- (a) ‘ASIC Update: The Senate inquiry into the performance of ASIC’ (vol. 26, issue 1);
  - (b) ‘ASIC Update: Recent CALDB decisions guide the profession’ (vol. 26, issue 2);
  - (c) ‘ASIC Update: Independence: A regulator’s perspective’ (vol. 26, issue 3); and
  - (d) ‘ASIC Update: Schedule B reports: What we do with them and improving outcomes’ (vol. 26, issue 4).

## Engaging with industry and stakeholders

- 93 We engage with registered liquidators and other stakeholders through:
- (a) our liquidator assistance program;
  - (b) the Assetless Administration Fund (see paragraphs 137–141 in Appendix 3);
  - (c) regional liaison meetings;
  - (d) liaison meetings with ARITA, Chartered Accountants Australia and New Zealand (CAANZ) and Certified Practising Accountants, Australia (CPA);
  - (e) liaison with government and statutory bodies;
  - (f) eligible applicants;
  - (g) court applications;
  - (h) court intervention or acting as *amicus curiae* (i.e. a friend of the court); and
  - (i) court proceedings.

### 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 April and October 2014.

### **ARITA, CAANZ and CPA liaison meetings**

96 ARITA is the main body representing registered liquidators. The CAANZ and CPA are the main professional accounting bodies whose members form a significant part of ARITA membership. We regularly meet, and otherwise liaise with, ARITA and the accounting bodies to discuss current market issues, law reform and other regulatory developments. These liaison meetings are important in promoting an understanding of each other's views on a range of issues and influencing action.

### **Liaison with government and statutory bodies**

97 We regularly meet with Treasury, the Australian Financial Security Authority (AFSA), the Australian Taxation Office (ATO), the Department of Employment and Fair Work Australia to discuss law reform, regulatory action and emerging issues relating to the efficient operation of the insolvency industry. We assist, and receive assistance from, these agencies.

### **Eligible applicants**

98 We received 25 applications during 2014 from receivers and managers and other parties asking us to authorise the applicants as 'eligible applicants'.

99 If ASIC grants authorisation, 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 The Insolvency Practitioners team assessed 43 court applications in 2014. 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 Our Insolvency Practitioners team also considers other court applications that are not served on ASIC but come to our attention as a result of their public profile or nature. These applications require specialist insolvency knowledge to properly understand and assess the implications of the application.

## Court intervention and *amicus curiae*

102 If the circumstances warrant, ASIC has the power to intervene in any  
proceeding relating to a matter arising under the Corporations Act (s1330),  
or we may seek leave to appear as *amicus curiae* in proceedings where we  
consider that the court would be assisted by hearing from ASIC.

103 During 2014, we did not intervene in any cases.

104 We appear as *amicus curiae* in proceedings where we can assist the court in  
cases on insolvency law and practice. We did not appear as *amicus curiae* in  
any proceedings during 2014.

105 The Federal Court requested ASIC appear as a contradictor where the  
receivers sought the court's approval of their remuneration in the winding up  
of various schemes: see *ASIC v Letten (No. 22)* [2014] FCA 681.

## Court proceedings

106 In December 2013, ASIC applied to the Federal Court to remove Messrs  
Glenn Franklin, Stirling Horne and Jason Stone, of the Melbourne firm,  
Lawler Draper Dillon (now PKF Lawler), 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).

107 The court refused ASIC's application: see *ASIC v Franklin (liquidator), in  
the matter of Walton Construction Pty Ltd* [2014] FCA 68. ASIC appealed  
the decision.

108 In a unanimous decision in *ASIC v Franklin (liquidator), in the matter of  
Walton Construction Pty Ltd* [2014] FCAFC 85, the Full Court upheld  
ASIC's appeal and held that a reasonable fair-minded observer might  
reasonably apprehend that, because of the liquidators' prior referral  
relationship with the Mawson Group, who had influenced their appointment  
as liquidators of the companies, and the liquidators' interest in not  
jeopardising their future income, they might not discharge their duties with  
independence and impartiality. The court noted that it was unfortunate that  
the liquidators did not recognise the conflict of interest at the time it was first  
raised.

109 The court set aside the trial court's orders and removed Messrs Franklin,  
Horne and Stone and ordered that they all pay ASIC's costs of \$23,188 and  
their own costs personally, and that they not be indemnified out of the  
companies' assets: see Media Release ([14-167MR](#)) *ASIC's appeal upheld in  
Walton liquidators' independence case* (18 July 2014).

## Liquidator assistance program

- 110 Through our liquidator assistance program, we help registered liquidators to achieve company officer compliance with their obligations to prepare a report on a company's affairs, provide books and records, and assist liquidators.
- 111 Details of prosecutions under the program are on our website at [www.asic.gov.au](http://www.asic.gov.au).

## Policy advice

### Law reform

- 112 In 2014, 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 2014 (on 7 November 2014).
- 113 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), released following the Senate's inquiry into the insolvency profession;
  - (b) an options paper released by Government, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* (2 June 2011); and
  - (c) a proposals paper jointly released by the Parliamentary Secretary to the Treasurer and the Attorney-General, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia* (14 December 2011).
- 114 In November 2014, the Financial System Inquiry issued its final report: see Murray Inquiry, *Financial System Inquiry: Final Report*. It recommended, among other things, that the Government consult on possible amendments to the external administration regime to provide additional flexibility for businesses in financial difficulty and commented on other aspects of Australia's insolvency regime.
- 115 On 20 November 2014, the Government requested the Productivity Commission undertake a public inquiry into barriers to setting up, transferring and closing a business, and identify options for reducing barriers where appropriate. The Productivity Commission released an issues paper, *Business set-up, transfer and closure*, on 19 December 2014. ASIC made a

public submission, *Productivity Commission review of barriers to business entries and exits in the Australian economy*, on 20 February 2015.

### **Administrative power to wind up a company**

- 116 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.
- 117 In January 2013, we released Regulatory Guide 242 *ASIC's power to wind up abandoned companies* (RG 242). The guide sets out how we will exercise this new administrative power.
- 118 During 2014, we ordered the winding up of 32 companies (compared to six in 2013), where we identified that there were, in aggregate, 99 employees who were owed an estimated \$1.4 million in unpaid entitlements.

## B Inquiries and reports of alleged misconduct

### Key points

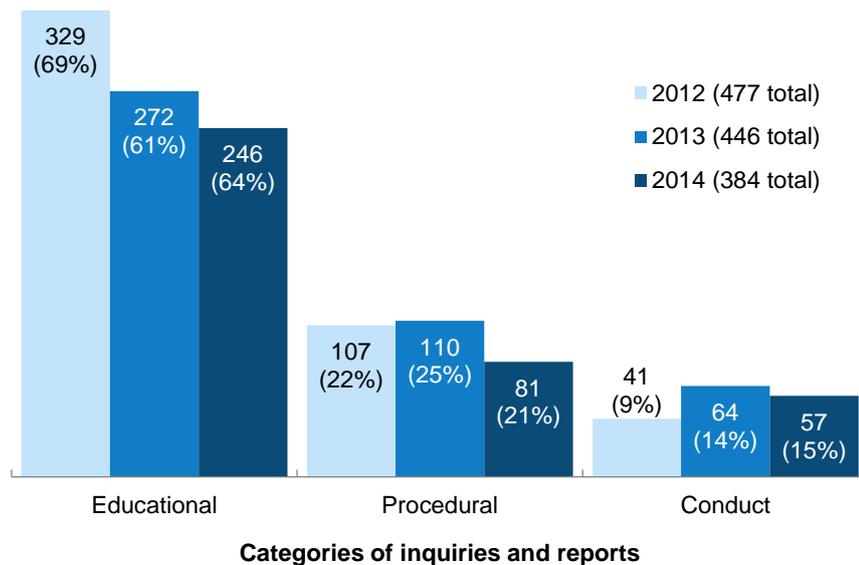
This section contains a detailed analysis of the outcomes of the inquiries and reports of alleged misconduct that we received in 2014.

- 119 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.
- 120 Reports of alleged misconduct against registered liquidators remained stable at 3% of the total reports we received during the financial years 2012–13 and 2013–14: see p. 60, *ASIC Annual Report: 2013–2014*.

### Categories of inquiries and reports of alleged misconduct

- 121 Figure 10 shows an analysis of the nature of the inquiries and reports of alleged misconduct relating to registered liquidators that we received in 2014. Overall reports continue to fall (from 446 in 2013 to 384 in 2014). Conduct-related reports fell marginally from 64 to 57 and reports relating to procedural matters fell from 110 to 81.

**Figure 10: Inquiries and reports of alleged misconduct received by category (2012–14)**



Note: The total number of inquiries and reports of alleged misconduct for 2014 in Figure 10 is 384, compared with 353 inquiries and reports of alleged misconduct listed as finalised in Figure 11. 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**

- 122 ‘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 and with the aim of defeating the creditors’ interests.

### **Procedural matters**

- 123 ‘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.

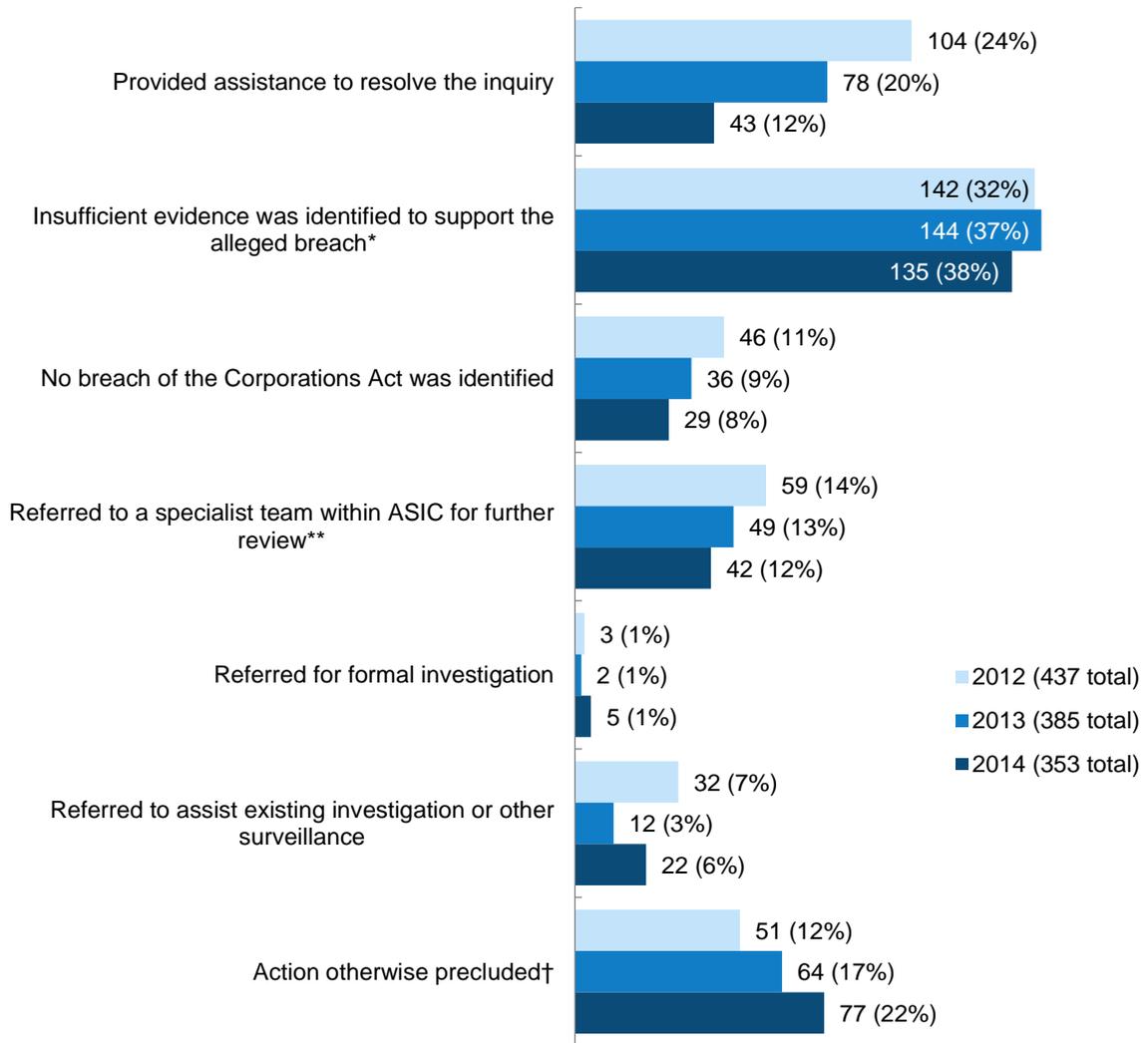
### **Educational matters**

- 124 ‘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**

- 125 Figure 11 summarises the outcomes of the 353 inquiries and reports of alleged misconduct by registered liquidators.
- 126 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 11: Outcome of inquiries and reports of alleged misconduct (2012–14)**



\* 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 42 matters received by the Misconduct and Breach Reporting team in 2014, all 42 were referred 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

127 As at 31 December 2014, there were 705 registered liquidators in Australia (of which 602 were also official liquidators): see Table 7.

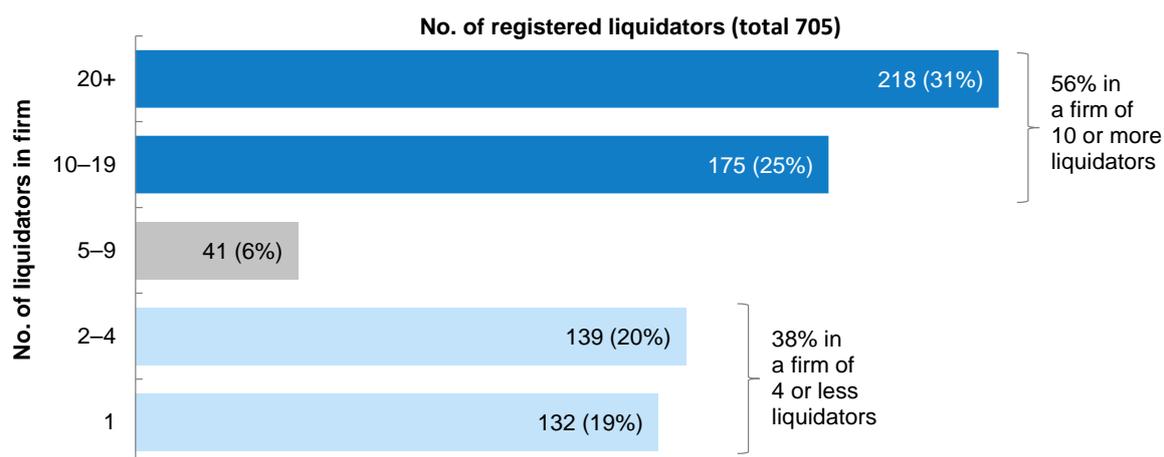
**Table 7: Number of registered liquidators and official liquidators as at 31 December 2014**

	Registered liquidators			Registered liquidators who are also official liquidators		
	2012	2013	2014	2012	2013	2014
Registered at 1 January	671	682	<b>689</b>	525	557	<b>583</b>
Registered during year	43	40	<b>32</b>	48	47	<b>31</b>
Cancelled during year	(32)	(33)	<b>(16)</b>	(16)	(21)	<b>(12)</b>
Registered at 31 December	682	689	<b>705</b>	557	583	<b>602</b>

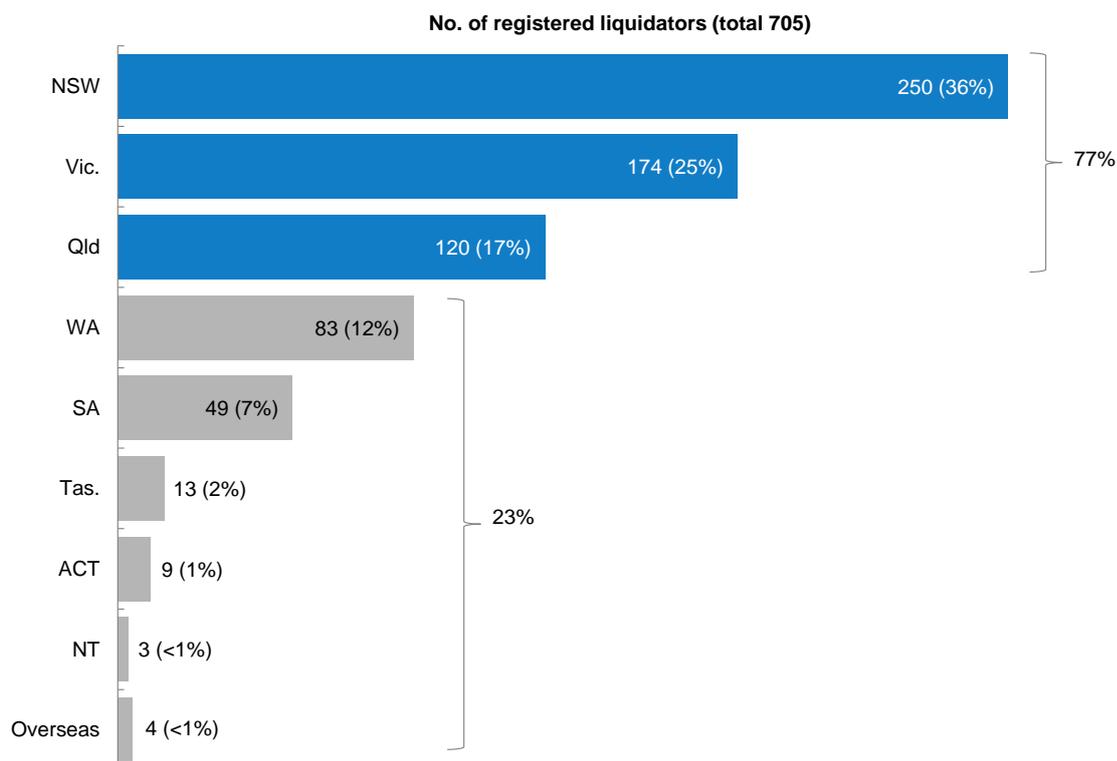
Note: Official liquidators conduct court-appointed windings-up. All official liquidators are registered liquidators but a registered liquidator may not be an official liquidator.

128 As Figure 12 shows, 56% of registered liquidators operate in a firm of 10 or more practitioners.

**Figure 12: Number of registered liquidators by firm size as at 31 December 2014**



129 As Figure 13 shows, 77% of registered liquidators operate predominantly in the eastern states of New South Wales (36%), Victoria (25%) and Queensland (17%).

**Figure 13: Number of registered liquidators by region as at 31 December 2014**

## Registration of liquidators

- 130 Under the Corporations Act, ASIC must 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).
- 131 We may register a natural person who is a registered liquidator as an official liquidator under s1283 of the Corporations Act.
- 132 As set out in Regulatory Guide 186 *External administration: Liquidator registration* (RG 186) and Information Sheet 34 *Liquidator registration kit* (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.
- 133 To form the view as to whether a person is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered, 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.

134 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

135 Most appointments involve small-to-medium proprietary limited companies. Table 8 summarises key data for the financial year 2013–14, sourced from Report 412 *Insolvency statistics: External administrators’ reports (July 2013 to June 2014)* (REP 412).

**Table 8: Profile of companies in external administration in 2013–14**

Description	Percentage of companies
Less than 20 full-time equivalent employees	81%
Assets of \$100,000 or less	86%
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

136 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>Liquidator registration kit</i>
INFO 39	<i>Insolvency information sheets</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

- 137 ASIC administers the Assetless Administration Fund which the Australian Government established in 2005.
- 138 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.
- 139 We reported an amount of \$2.132 million (\$2.203 million in 2012–13) paid from the fund in 2013–14 in the *ASIC Annual Report: 2013–2014* (see Note 18), and provided details of applications received and outcomes achieved on our website at [www.asic.gov.au](http://www.asic.gov.au).
- 140 Table 11 shows the number of applications received and the outcome of those applications.

**Table 11: Applications to the Assetless Administration Fund in 2014**

	Director banning application (EX02)	Other application (EX03)
Applications received	462	121
Applications approved	164	64
Applications rejected	260	49

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.

- 141 We are currently investigating the relatively high rejection rate, with the aim of improving the fund's operation. We also continue to streamline internal processes to improve the efficiency of processing applications.

## Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
<i>amicus curiae</i>	Friend of the court
ARITA	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
CAANZ	Chartered Accountants Australia and New Zealand
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
CPA	Certified Practising Accountants Australia
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

Term	Meaning in this document
INFO 151 (for example)	An ASIC information sheet (in this example numbered 151)
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 <a href="#">INFO 151</a>
official liquidator	A person registered by ASIC under s1283 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 take control of some or all of the 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), 473(11)–(12) or 499(6)–(7) 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

<b>Term</b>	<b>Meaning in this document</b>
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), 93AA

Corporations Act, Pt 2D.6, Pts 5.3A-5.9, s532(8), 536, 1282(2), 1282(4), 1283 and 1330

Insolvency Law Reform Bill 2014

*Corporations Amendment (Phoenixing and Other Measures) Act 2012*

### Cases

*ASIC v Franklin (liquidator), in the matter of Walton Construction Pty Ltd* [2014] FCA 68

*ASIC v Franklin (liquidator), in the matter of Walton Construction Pty Ltd* [2014] FCAFC 85

*ASIC v Letten (No. 22)* [2014] FCA 681

### Reports

*ASIC Annual Report: 2013–14*

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

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

REP 389 *ASIC regulation of registered liquidators: January to December 2013*

REP 412 *Insolvency statistics: External administrators' reports (July 2013 to June 2014)*

## Submission to government

ASIC, *Productivity Commission review of barriers to business entries and exits in the Australian economy*, February 2015

## Consultation paper

CP 223 *Relief for externally administered companies and registered schemes being wound up—RG 174 update*

## Media releases

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

14-029MR *Decision in Walton liquidators independence hearing*, 13 February 2014

14-080MR *CALDB suspends NSW joint liquidator for six months*, 16 April 2014

14-088 MR *ASIC to suspend liquidator from industry*, 29 April 2014

14-089MR *ASIC accepts enforceable undertaking from Perth liquidator*, 29 April 2014

14-128MR *NSW liquidator ceases practice*, 16 June 2014

14-160MR *ASIC removes liquidator from industry*, 8 July 2014

14-167MR *ASIC's appeal upheld in Walton liquidators' independence case*, 18 July 2014

14-211MR *Updated ASIC policy for externally administered companies and registered managed investment schemes being wound up*, 25 August 2014

14-219MR *SA liquidator successfully completes quality review program*, 1 September 2014

14-314MR *Former liquidator charged with obtaining money by deception*, 25 November 2014

## ASIC forms

Form 505 *Notification of appointment or cessation of an external administrator*

Form 524 *Presentation of accounts and statement*

Form 5011 *Copy of minutes of meeting*

Form 908 *Annual statement by a liquidator*

## Information sheets

See Table 10 in Appendix 2 of this report.

## Non-ASIC documents

ASIC, 'ASIC Update: The Senate inquiry into the performance of ASIC', *Australian Insolvency Journal*, vol. 26, issue 1, 2014

ASIC, 'ASIC Update: Recent CALDB decisions guide the profession', *Australian Insolvency Journal*, vol. 26, issue 2, 2014

ASIC, 'ASIC Update: Independence: A regulator's perspective', *Australian Insolvency Journal*, vol. 26, issue 3, 2014

ASIC, 'ASIC Update: Schedule B reports: What we do with them and improving outcomes', *Australian Insolvency Journal*, vol. 26, issue 4, 2014

Murray Inquiry, *Financial System Inquiry: Final Report*, November 2014

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

Parliamentary Secretary to the Treasurer and the Attorney-General, *A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia*, proposals paper, 14 December 2011

Productivity Commission, *Business set-up, transfer and closure*, December 2014