



**ASIC**

Australian Securities & Investments Commission

**REPORT 532**

# **ASIC regulation of registered liquidators: January to December 2016**

June 2017

## **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 from 1 January to 31 December 2016 (reporting period).

### 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 |
|-------------------------|-------------|
| <a href="#">REP 479</a> | June 2016   |
| <a href="#">REP 430</a> | April 2015  |
| <a href="#">REP 389</a> | April 2014  |
| <a href="#">REP 342</a> | May 2013    |
| <a href="#">REP 287</a> | 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).
- 2 This report focuses on our work in supervising registered liquidators through our assessment of reports of misconduct, and through our surveillance and enforcement activities: see Section A.
- 3 Notwithstanding this focus, it is also important to note the work we do with registered liquidators. Appendix 1 outlines our collaborative work undertaken with registered liquidators.
- 4 Registered liquidators perform an important function in winding up or restructuring insolvent companies. We assist liquidators in this work, through our liquidator assistance program and the Assetless Administration Fund (AA Fund), by helping them to obtain records or funding their preliminary investigations to enable them to report to ASIC. These reports from registered liquidators support ASIC's own investigations and, where appropriate, ASIC action, including litigation against directors and others.

## ASIC's strategic priorities

- 5 ASIC's strategic priorities are to:
  - (a) promote investor and financial consumer trust and confidence;
  - (b) ensure fair, orderly and transparent markets; and
  - (c) provide efficient and accessible registration.
- 6 An area of our 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 a fair and orderly way so they receive the maximum possible return of their money, recognising that the liquidator is entitled to reasonable remuneration and costs incurred.
- 7 To this 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.
- 8 In August 2015, we released [ASIC's corporate plan 2015–16 to 2018–19](#), and we subsequently released, in August 2016, [ASIC's corporate plan 2016–17 to 2019–20](#). Our corporate plan sets out our strategic priorities for a four-year period. This report describes how we addressed the priorities in the corporate plan.

## Key terms used in this report

- 9 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 Australian Securities and Investments Commission Act 2001 (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 we accept an enforceable undertaking under s93AA of the ASIC Act)<br><br>Note: CALDB was renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the <i>Insolvency Law Reform Act 2016</i> that took effect on 1 March 2017. |
| External administration   | The corporate insolvency that the external administrator administers   |
| External administrator    | A liquidator, receiver or voluntary administrator  |
| 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 <a href="#">Information Sheet 151</a> <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   |
| 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

- 10 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.
- 11 In the period from 1 January to 31 December 2016 (i.e. the ‘reporting period’), 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.
- 12 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.

### Overview of key outcomes

- 13 In 2016, we:
- (a) initiated two proactive practice reviews and 68 transaction reviews;
  - (b) completed three proactive practice reviews and 79 transaction reviews;
  - (c) completed 36 reviews of declarations of relevant relationships and indemnities, and 17 reviews of remuneration reports issued to creditors by registered liquidators;
  - (d) reviewed the lodgement history of 238 registered liquidators as part of an industry-wide project testing all registered liquidators’ compliance with the requirement to publish notices on our published notices website and to lodge forms with ASIC (the PNW project); and

- (e) commenced six formal investigations or enforcement actions concerning registered liquidator conduct (see Table 3 in Section A).
- 14 Section A of this report describes in more detail the work undertaken and outcomes we achieved in supervising registered liquidators in the reporting period. Section B describes our work in providing guidance and education to registered liquidators and Section C provides a profile of the corporate insolvency market in Australia.
- 15 Table 2 summarises our outcomes for 2016 in each area of concern.

**Table 2: Key outcomes for 2016 by area of concern**

|                      |   |
|----------------------|---|
| <b>Competence</b>    | <p>We accepted enforceable undertakings from New South Wales-based registered liquidators:</p> <ul style="list-style-type: none"> <li>• Peter George Burton;</li> <li>• Brian Hugh Allen; and</li> <li>• Clifford John Sanderson.</li> </ul> <p>We accepted a voluntary undertaking from New South Wales-based Schon Gregory Condon as part of a negotiated resolution.</p> <p>As part of the PNW project, we:</p> <ul style="list-style-type: none"> <li>• reviewed 238 registered liquidators; and</li> <li>• negotiated resolutions with six registered liquidators.</li> </ul> <p>All agreed to initiate both an independent peer review and undertake firm-wide training to remedy systemic non-compliance and promote a compliance culture.</p> <p>We commenced formal investigations in relation to one registered liquidator.</p> |
| <b>Independence</b>  | <p>The CALDB suspended the registration of Victoria-based registered liquidator Stan Traianedes.</p> <p>We filed an application for the court's inquiry into the conduct of New South Wales-based registered liquidators Andrew Wily and David Hurst.</p> <p>We cancelled the registration of a New South Wales-based registered liquidator as part of a negotiated resolution. ASIC did not issue a media release.</p> <p>We commenced formal investigations or enforcement action in relation to four registered liquidators.</p> <p>We completed 36 reviews of registered liquidators' declarations of relevant relationships and indemnities as part of our other surveillance work.</p>  |
| <b>Improper gain</b> | <p>We completed 17 reviews of registered liquidators' remuneration reports to creditors as part of our surveillance work.</p> <p>We commenced formal investigations or enforcement action in relation to one registered liquidator.</p>   |

## A Supervision of registered liquidators

### Key points

This section details the work we undertook, and the outcomes we achieved, in supervising registered liquidators during the reporting period. Our work focused on the following areas:

- inquiries and reports of alleged misconduct (see paragraphs 16–26);
- formal investigation and enforcement action (see paragraphs 27–31); and
- surveillance (see paragraphs 32–58).

### Inquiries and reports of alleged misconduct

- 16 Reports of alleged misconduct arising from external administrations conducted by registered liquidators remained stable at 3% of the total reports we received during financial years 2014–15 and 2015–16: see ASIC’s [Annual report 2015–16](#), p. 91.
- 17 Inquiries made to ASIC, and reports of alleged misconduct involving registered liquidators, rose in 2016 to 401 after previously falling from 446 in 2013 to 384 in 2014 and 364 in 2015.

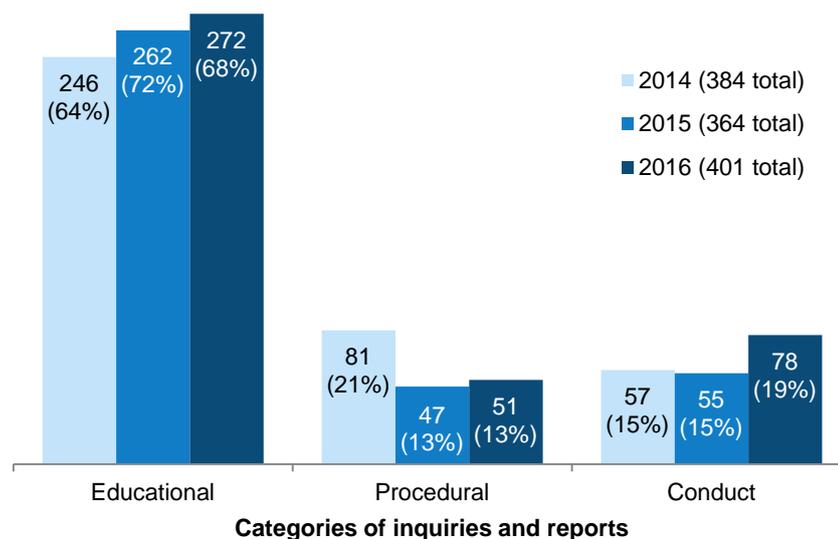
### Categorisation of inquiries and reports

- 18 Our Misconduct and Breach Reporting team receives and conducts an initial assessment of all inquiries and reports of alleged misconduct against registered liquidators.
- 19 An initial assessment by the Misconduct and Breach Reporting team categorised the inquiries and reports as follows:
- (a) *Conduct related* (19%): The information provided to ASIC suggested a serious breach of the Corporations Act, which could be seen as deliberate.
  - (b) *Procedural based* (13%): Although serious, the information provided to ASIC suggested the misconduct may have been inadvertent.
  - (c) *Educational* (68%): 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.

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

20 Figure 1 shows an analysis of the nature of the inquiries and reports of alleged misconduct relating to registered liquidators that we received in 2016. Overall reports increased in 2016 following falls in the previous two calendar years. Conduct-related reports rose from 55 to 78, and reports relating to procedural matters rose marginally from 47 to 51.

**Figure 1: Inquiries and reports of alleged misconduct received, by category (2014 to 2016)**



Note 1: The total number of inquiries and reports of alleged misconduct for 2015 in Figure 1 is 401, compared with 367 inquiries and reports of alleged misconduct listed as finalised in Figure 2. The difference is the result of merging activities where there are multiple inquiries and reports about the one issue for a registered liquidator.

Note 2: See Table 15 in Appendix 3 for the complete data used in this figure (accessible version).

### Conduct matters

21 ‘Conduct’ matters are those involving an alleged deliberate, or at least conscious, act or omission by the registered liquidator, with 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

22 ‘Procedural’ matters involve circumstances where a registered liquidator, by inadvertent act or omission, fails to do something, but is less significant than a ‘conduct’ matter. This relies on there being no intent on the part of the registered liquidator, or the registered liquidator admitting fault and seeking to make amends. 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.

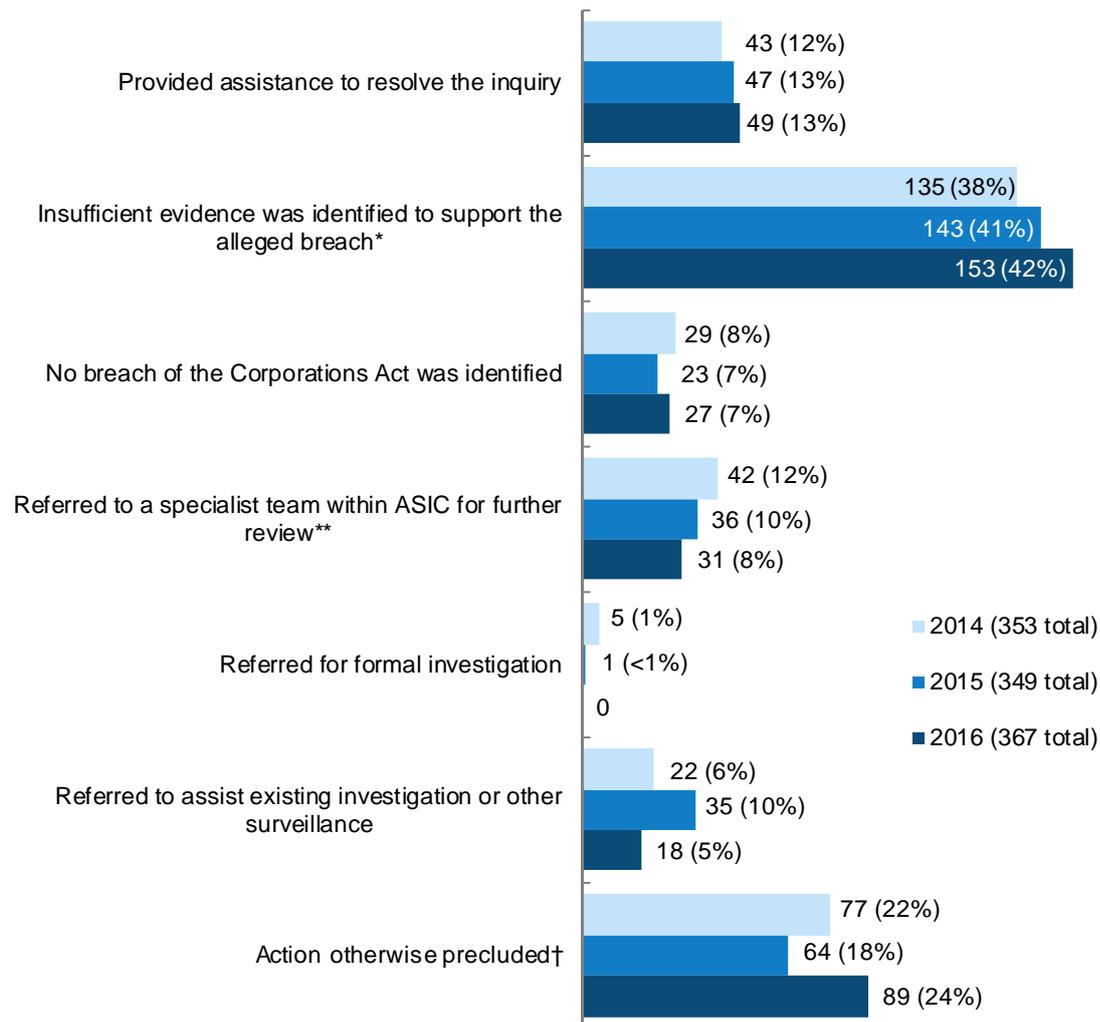
### **Educational matters**

- 23 'Educational' matters involve circumstances where the outcome or resolution of the inquiry or allegation of misconduct educates the person (usually a creditor) about the applicable law or practice, or provides information about the normal practice in the insolvency process. For example, a person may allege that a registered liquidator refused to advise the value of certain assets. It may simply be that the liquidator's refusal arose out of a concern not to disclose commercially sensitive information which could compromise sale negotiations, resulting in a lesser return for creditors.

### **Outcomes of inquiries and reports**

- 24 The outcome of the inquiries and reports of alleged misconduct showed that:
- (a) in 49 matters (13%), 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 229 matters (62%), there was either insufficient evidence of an offence or the registered liquidator did not breach the Corporations Act. Generally, we assisted with resolving the inquiry and did not pursue the matter further; and
  - (c) in 89 matters (24%), we took no action for reasons including that the matter did not advance or support an existing investigation or regulatory action.
- 25 Figure 2 summarises the outcomes of the 367 inquiries and reports of alleged misconduct by registered liquidators.
- 26 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 2: Outcomes of inquiries and reports of alleged misconduct (2014 to 2016)**



\* 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.

\*\* In 2016, the Misconduct and Breach Reporting team referred all 31 matters 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.

Note: See Table 16 in Appendix 3 for the complete data used in this figure (accessible version).

## Formal investigation and enforcement action

27 Table 3 shows the number of registered liquidators 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 (2014 to 2016)**

| Status of matter   | 2014 | 2015 | 2016 |
|--|------|------|------|
| Open matters at 1 January  | 19   | 22   | 18   |
| Formal investigations or enforcement actions commenced during the year | 14   | 5    | 6    |
| Formal investigations or enforcement actions finalised during the year | (11) | (9)  | (7)  |
| Open matters at 31 December  | 22   | 18   | 17   |

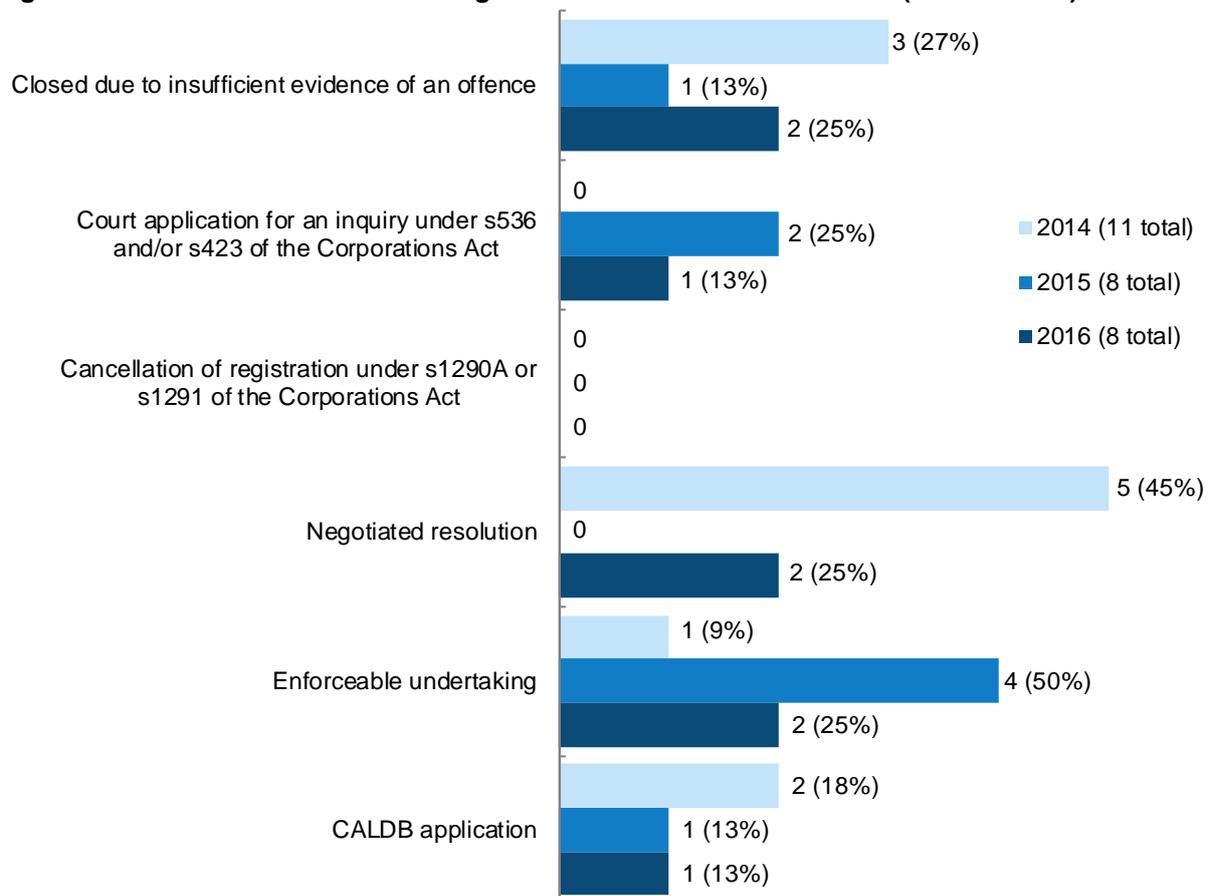
Note: The six matters referred for formal investigation or enforcement action in the reporting period arose from two proactive practice reviews and four transaction reviews. The 17 open matters at 31 December 2016 relate to 16 registered liquidators, with one having two separate matters under investigation.

We previously recorded one of the seven matters finalised in the reporting period as outcomes for the previous year (i.e. 2015 in Figure 3). This comprised an s536 application for 2015. We also finalised two matters against one registered liquidator but recorded only one outcome—a CALDB application—in Figure 3.

We recorded outcomes (Figure 3) against two matters shown as open at 31 December 2016—that is, one CALDB application and one s536 application.

28 Figure 3 shows details of the outcomes of the formal investigations or enforcement actions during the reporting period.

**Figure 3: Outcomes of formal investigations and enforcement actions (2014 to 2016)**



Note: See Table 17 in Appendix 3 for the complete data used in this figure (accessible version).

**Table 4: Outcomes of formal investigations or enforcement actions in 2016**

| Registered liquidator   | Firm                                    | Outcome                            | Media release  |
|-------------------------|---|------------------------------------|--|
| Ross John McDermott     | Ross McDermott Chartered Accountant     | Court inquiry (s536)               | <a href="#">Media Release (16-345MR)</a> <i>Federal Court prohibits Melbourne liquidator from accepting new appointments for three years (11 October 2016)</i> |
| Andrew Hugh Jenner Wily | Armstrong Wily                          | Applied for a court inquiry (s536) | <a href="#">Media Release (17-014MR)</a> <i>ASIC requests inquiry into conduct of Sydney liquidators (24 January 2017)</i>                                     |
| David Anthony Hurst     | HoskingHurst                            | Applied for a court inquiry (s536) | <a href="#">Media Release (17-014MR)</a> <i>ASIC requests inquiry into conduct of Sydney liquidators (24 January 2017)</i>                                     |
| Mark Darren Levi        | Titan Advisory                          | Criminal sentencing                | <a href="#">Media Release (16-178MR)</a> <i>Former liquidator pleads guilty to dishonestly using his position (3 June 2016)</i>                                |
| Randall Clinton Joubert | Joubert Insolvency                      | CALDB decision                     | <a href="#">Media Release (16-241MR)</a> <i>NSW liquidator's registration cancelled, but orders temporarily stayed pending appeal (29 July 2016)</i>           |
| Schon Gregory Condon    | Condon Associates                       | Negotiated resolution              | <a href="#">Media Release (16-104MR)</a> <i>NSW liquidator completes quality review program (4 April 2016)</i>   |
| Stan Traianades         | S & Z Insolvency                        | CALDB decision                     | <a href="#">Media Release (16-453MR)</a> <i>Victorian liquidator suspended (20 December 2016)</i>  |
| Peter George Burton     | Burton Glenn Allen Chartered Accountant | Enforceable undertaking            | <a href="#">Media Release (16-161MR)</a> <i>NSW men prevented from acting as registered liquidators for five years (26 May 2016)</i>                           |
| Brian Hugh Allen        | Burton Glenn Allen Chartered Accountant | Enforceable undertaking            | <a href="#">Media Release (16-161MR)</a> <i>NSW men prevented from acting as registered liquidators for five years (26 May 2016)</i>                           |
| Clifford John Sanderson | Dissolve Pty Ltd                        | Enforceable undertaking            | <a href="#">Media Release (16-361MR)</a> <i>ASIC accepts EU from NSW liquidator (25 October 2016)</i>  |

Note 1: Outcomes for McDermott, Levi and Joubert were included in the outcomes for 2015 in Figure 3.

Note 2: Outcomes for Wily and Hurst were included in the outcomes for 2016 in Figure 3 as the application was filed in December 2016.

Note 3: The enforceable outcomes for Burton and Allen were recorded as only one outcome in Figure 3.

Note 4: No media release was issued for one voluntary undertaking outcome disclosed in Figure 3.

## Negotiated resolutions

- 29 We negotiated alternatives to other enforcement remedies with seven registered liquidators 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.
- 30 Figure 3 and Table 4 do not record these outcomes. For details on the PNW project, see paragraphs 52–58.

## Court proceedings

- 31 We continue to be a party to proceedings brought by liquidators John Sheehan and Ian Lock of Sheehan Lock who applied to the South Australian Supreme Court to fix their remuneration. We formally intervened in the proceedings in August 2015. The court scheduled a hearing for 11–19 September 2017.

## Surveillance

- 32 We undertake surveillances of registered liquidators either by 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 adequately and properly performs their duties and functions, and complies 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.
- 33 Following a surveillance, we assess whether we should refer the matter to our dedicated enforcement teams for a formal investigation. The issues we consider in our assessment are:
- (a) the extent of any 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.
- 34 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

- 35 Proactive practice reviews focus on the following key compliance areas:
- (a) independence;
  - (b) remuneration disclosure and approval;
  - (c) the quality of investigations;
  - (d) reporting to creditors and to ASIC;
  - (e) asset realisations; and
  - (f) the adequacy of practitioners' practice systems.
- 36 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.

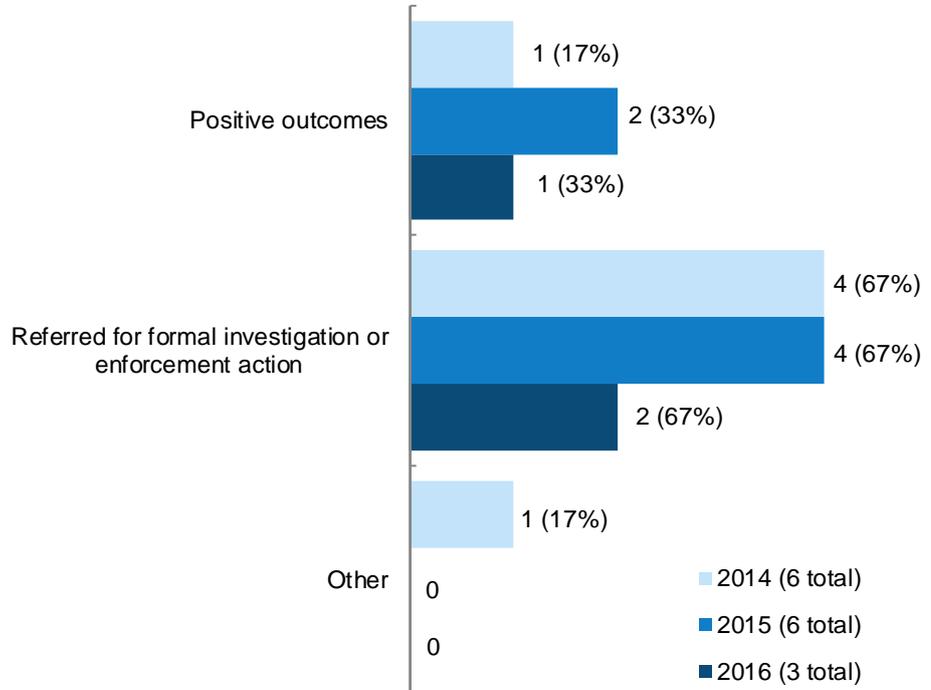
- 37 In 2016, we initiated two proactive practice reviews in New South Wales.
- 38 Of the three proactive practice reviews finalised during 2016 (see Table 5 and Figure 4), we:
- (a) escalated two matters to a formal investigation or initiated enforcement action; and
  - (b) achieved a positive outcome in one matter.

Note: We record a positive outcome where we identify issues or behaviours that do not warrant a formal investigation or enforcement action, but the registered liquidator voluntarily agrees to amend their systems and procedures to resolve our concerns.

**Table 5: Proactive practice reviews (2014 to 2016)**

| Review status                     | 2014 | 2015 | 2016 |
|-----------------------------------|------|------|------|
| Reviews open at 1 January         | 7    | 7    | 2    |
| Reviews commenced during the year | 6    | 1    | 2    |
| Reviews finalised during the year | (6)  | (6)  | (3)  |
| Reviews open at 31 December       | 7    | 2    | 1    |

**Figure 4: Outcomes of finalised proactive practice reviews (2014 to 2016)**



Note: See Table 18 in Appendix 3 for the complete data used in this figure (accessible version).

### Transaction reviews

39 In 2016, we initiated 68 transaction reviews: see Table 6. Third parties prompt our review by bringing an issue to our attention (see Figure 1) or from our own intelligence gathering.

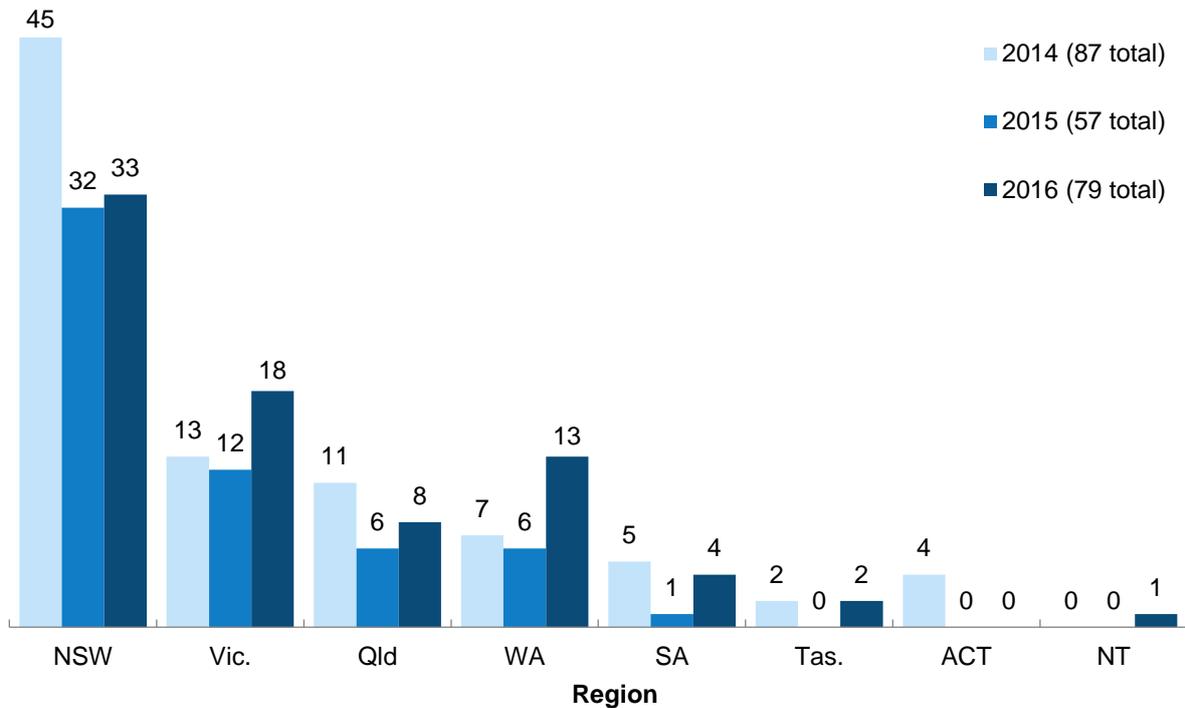
40 When undertaking a transaction review, we examine the whole of the transaction in question to ensure the registered liquidator has adequately and properly performed their duties and functions—in compliance with the Corporations Act and the Corporations Regulations, and the professional standards relevant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

**Table 6: Transaction reviews (2014 to 2016)**

| Review status                     | 2014 | 2015 | 2016 |
|-----------------------------------|------|------|------|
| Reviews open at 1 January         | 31   | 19   | 29   |
| Reviews commenced during the year | 75   | 67   | 68   |
| Reviews finalised during the year | (87) | (57) | (79) |
| Reviews open at 31 December       | 19   | 29   | 18   |

41 Figure 5 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 5: Finalised transaction reviews by region (2014 to 2016)**

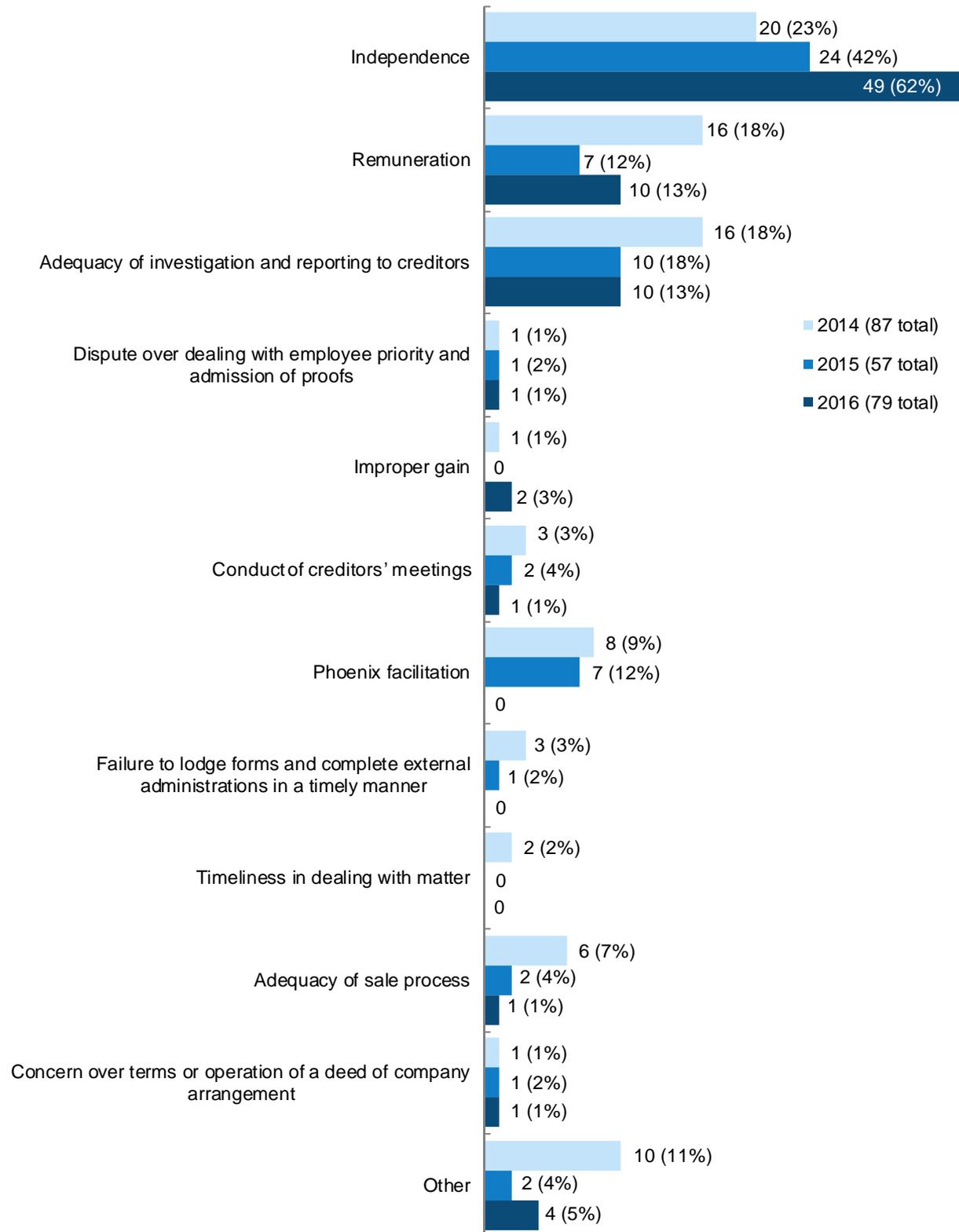


Note 1: The area of concern identified is only the primary concern. Our review may include multiple areas of concern.

Note 2: See Table 19 in Appendix 3 for the complete data used in this figure (accessible version).

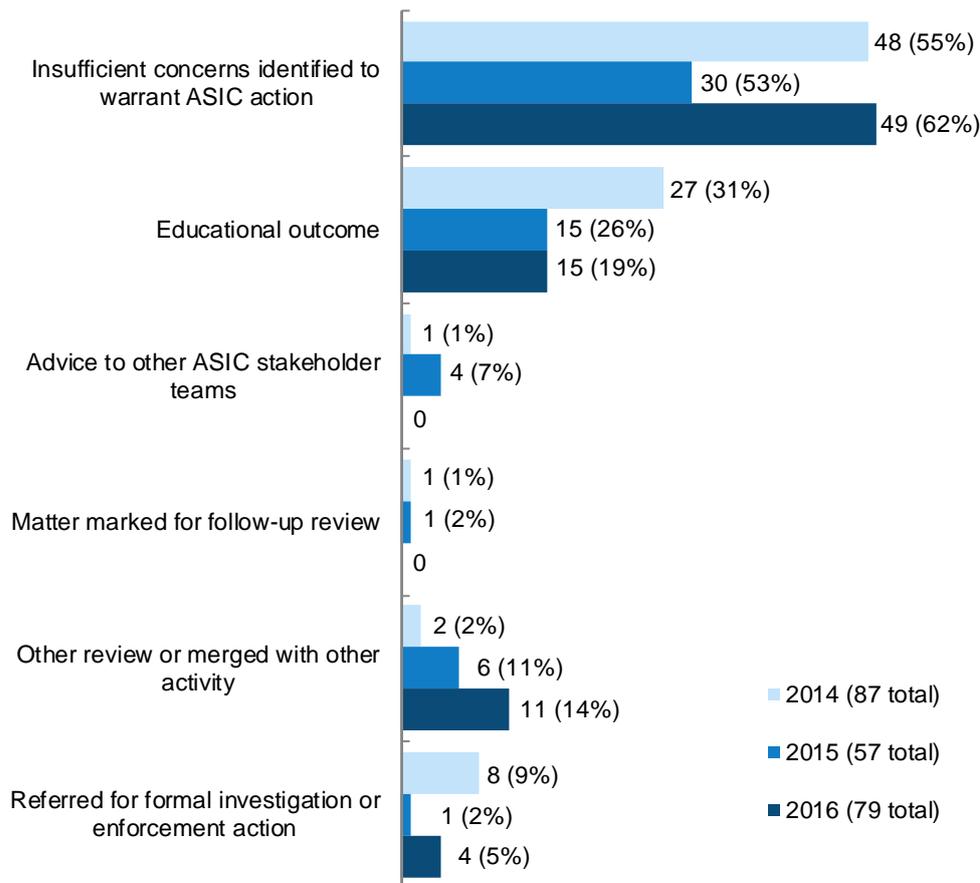
42 Figure 6 summarises the nature of the concerns identified in the 79 transaction reviews finalised in the reporting period, and Figure 7 summarises the outcomes of those reviews.

**Figure 6: Areas of concern in finalised transaction reviews (2014 to 2016)**



Note: See Table 20 in Appendix 3 for the complete data used in this figure (accessible version).

**Figure 7: Outcomes of finalised transaction reviews (2014 to 2016)**



Note: See Table 21 in Appendix 3 for the complete data used in this figure (accessible version).

## Industry-wide compliance projects

### Declarations of relevant relationships and declarations of indemnities

- 43 In early 2014, we made a strategic decision to suspend our declarations of relevant relationships and indemnities project and focus our resources on current enforcement matters and the PNW project.
- 44 In 2016, we reviewed 36 (31 in 2015) declarations as part of our other project work. Of these declarations, 19 (53%) were adequate and 17 (47%) were inadequate.
- 45 We continue to monitor declarations, given that independence remains a key concern for ASIC.

### Remuneration

- 46 In early 2014, we made a strategic decision to suspend our remuneration project and focus our resources on current enforcement matters and the PNW project.

47 In 2016, we reviewed 17 remuneration reports as part of our other project work. Of these remuneration reports, 10 (59%) were adequate and seven (41%) were inadequate.

#### **Annual returns—Form 908**

48 In 2016, we reviewed 685 annual returns lodged with ASIC by registered liquidators, using [Form 908](#) *Annual statement by a liquidator*. We identified no issues of concern in 458 (67%) of these annual returns.

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

#### *Sufficient capacity*

50 During 2016, 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*

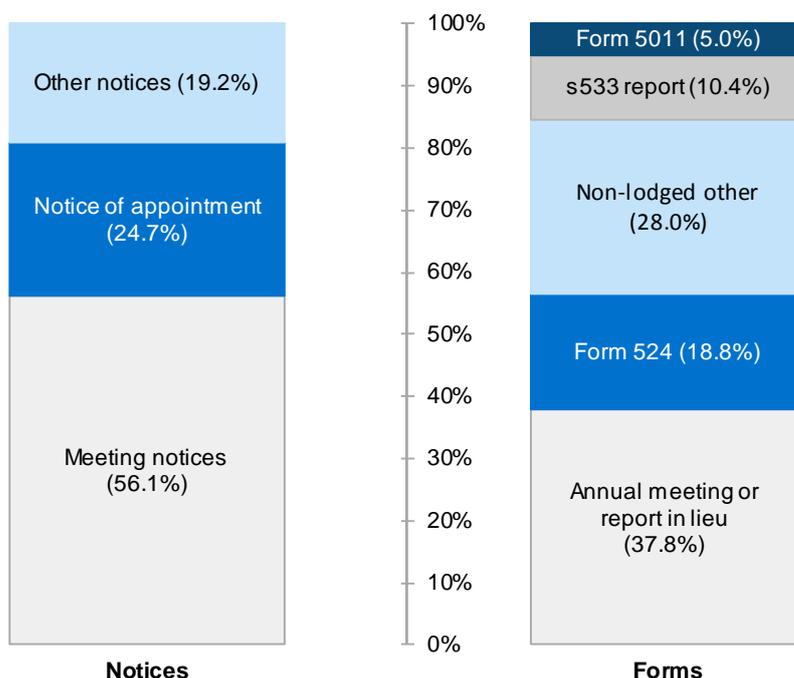
51 Part of our review included contacting inactive registered liquidators. We understand that our contact acted as a catalyst to 19 registered liquidators voluntarily seeking cancellation of their registration.

#### **PNW project**

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

- (a) publish certain notices on [ASIC's published notices website](#); and
- (b) lodge certain 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*).

53 At 31 December 2016, since the project commenced, we had completed reviewing the current external administrations of 694 registered liquidators. See Figure 8 for a breakdown of the types of forms not lodged and notices not published.

**Figure 8: Breakdown of forms not lodged and notices not published as at 31 December 2016**

Note: See Table 22 in Appendix 3 for the complete data used in this figure (accessible version).

- 54 Where we identify non-compliance, we contact registered liquidators directly and seek that they remedy the non-compliance if possible, including by lodging outstanding forms, reporting to creditors, publishing notices and the payment of fees generated by subsequent lodgement.
- 55 Identifying non-compliance provides registered liquidators with the opportunity to address any systemic deficiencies and/or train staff.
- 56 Where we identify systemic non-compliance, we consider whether or not disciplinary action is warranted.
- 57 During 2016, we successfully negotiated with seven registered liquidators to engage an independent registered liquidator to undertake a 'quality control peer review program' and report back to ASIC, and to implement compliance-based staff training.

**Table 7: Negotiated resolution outcomes for 2016**

| Registered liquidator  | Firm                    | Media release  |
|------------------------|-------------------------|--|
| Stephen Hathway        | Helm Advisory           | <a href="#">Media Release (16-039MR)</a> ASIC accepts voluntary undertaking from Sydney liquidator (18 February 2016)  |
| Chris Chamberlain      | Chamberlain's SBR       | <a href="#">Media Release (16-146MR)</a> NSW liquidator successfully completes independent peer review (17 May 2016)   |
| Gregory Stuart Andrews | GS Andrews & Associates | <a href="#">Media Release (16-261MR)</a> ASIC accepts voluntary undertaking from Victorian liquidator (18 August 2016) |

| Registered liquidator         | Firm                                | Media release  |
|-------------------------------|-------------------------------------|--|
| Riad Tayeh and David Solomons | deVries Tayeh                       | <a href="#">Media Release (16-385MR)</a> ASIC accepts voluntary undertakings from NSW liquidators (10 November 2016) |
| George Lopez and Evan Verge   | Melsom Robson Chartered Accountants | <a href="#">Media Release (16-400MR)</a> ASIC accepts voluntary undertakings from WA liquidators (21 November 2016)  |

Note: ASIC entered into the voluntary undertaking with Mr Chamberlain in 2015 but did not issue the media release until completion of the undertaking in 2016.

- 58 In addition to the negotiated outcomes disclosed in Table 7, a sole practitioner agreed to ASIC cancelling their registration as a liquidator after completing all of their external administrations (expected to occur in 2017).

## B Guidance, education and policy advice

### Key points

During the reporting period, we:

- reviewed and updated our guidance (see paragraphs 59–63);
- provided education to the industry (see paragraphs 64–67);
- engaged with industry and stakeholders (see paragraphs 68–76); and
- provided policy advice (see paragraphs 77–88).

### Guidance

#### Regulatory guides

- 59 Regulatory guides assist registered liquidators by explaining when and how ASIC exercises specific powers under legislation (primarily, the Corporations Act), how we interpret the law and the principles underlying our approach.
- 60 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.
- 61 We did not issue consultation papers or amend regulatory guides during 2016 relating to either corporate insolvency or our regulation of registered liquidators.

#### Information sheets

- 62 In April 2016, we reissued [Information Sheet 29](#) *External administration: Most commonly lodged forms* (INFO 29). The revised information sheet provides practical and enhanced guidance on what forms need to be lodged in an external administration, including flowcharts for each type of external administration.
- 63 We aimed this further guidance at helping address the concerns identified in our PNW project: see paragraphs 52–58.

### Education

- 64 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.

- 65 We also educate the market by writing articles for industry publications. During 2016, we 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: Better communication, insolvent trading and notices to creditors’ (vol. 28, issue 1);
  - (b) ‘ASIC update: Releasing liquidator reports under FOI, action against pre-insolvency advisor’ (vol. 28, issue 2);
  - (c) ‘ASIC update: Disrupting untrustworthy pre-insolvency advisors and improving information for creditors’ (vol. 28, issue 3); and
  - (d) ‘ASIC update: Law reform changes and our corporate plan’ (vol. 28, issue 4).

### **Corporate insolvency update**

- 66 In August 2016, we published our first quarterly e-newsletter, titled ‘Corporate insolvency update’. Any person with an interest in corporate insolvency can subscribe to this publication. We published a second issue in December 2016.

### **Broadcast email service**

- 67 We maintain a database of contact email addresses for all registered liquidators, which allows ASIC to communicate easily with them. We sent eight separate group emails to all registered liquidators on various topics of interest throughout the year.

## **Engaging with industry and stakeholders**

- 68 We engage with registered liquidators and other stakeholders through:
- (a) our liquidator assistance program;
  - (b) the AA Fund;
  - (c) regional liaison meetings;
  - (d) liaison meetings with ARITA, Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia;
  - (e) liaison with government and statutory bodies;
  - (f) eligible applications;
  - (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

- 69 We hold meetings twice a year with registered liquidators and other stakeholders in the insolvency market in the capital city of each state and 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.
- 70 We held these meetings in April and October 2016.

## ARITA, CA ANZ and CPA Australia liaison meetings

- 71 ARITA is the main body representing registered liquidators. CA ANZ and CPA Australia 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

- 72 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. Our liaison includes engagement through both the 'Phoenix Taskforce' (created 17 November 2014) and the 'Serious Financial Crime Taskforce' (created 1 July 2015).
- 73 We also liaise with other statutory bodies, such as The Insolvency Service in the United Kingdom and the International Association of Insolvency Regulators, so that each of the regulators better understands the regulatory developments in our respective jurisdictions.

## Court intervention and *amicus curiae*

- 74 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.
- 75 During 2016, we appeared as *amicus curiae* in an application for leave to appeal, and appeal, brought by Clifford Sanderson as the liquidator of Sakr Nominees Pty Ltd against an order made by Brereton J, determining his remuneration as liquidator of the company in an amount of \$20,000: see *Sanderson as Liquidator of Sakr Nominees Pty Ltd (in liquidation) v Sakr* [2017] NSWCA 38.
- 76 We did not intervene in any proceedings during 2016.

## Policy advice

### Insolvency law reform

- 77 The Government introduced the Insolvency Law Reform Bill 2015 into Parliament on 3 December 2015. Parliament passed the Bill on 22 February 2016 and it received royal assent on 29 February 2016: see the *Insolvency Law Reform Act 2016*.
- 78 In 2016, we continued to assist the Australian Government on policy issues—in particular, by providing input following the Government’s release for public comment of the draft Insolvency Practice Rules (Corporations) 2016, which were subsequently made on 12 December 2016.

### Industry funding model

- 79 On 7 December 2014, the Financial System Inquiry issued its final report: see Murray Inquiry, *Financial System Inquiry: Final report*. The report recommended that the Government introduce an industry funding model for ASIC and provide ASIC with stronger regulatory tools: see Recommendation 29.
- 80 On 20 April 2016, the Government announced that it would introduce an industry funding model for ASIC, commencing in the second half of 2017. As part of that announcement, the Government committed to consulting with industry to refine and settle the model prior to implementation.
- 81 On 7 November 2016, the Government released a revised model for consultation, developed with the benefit of stakeholder consultation.
- 82 ASIC assisted Treasury to develop modelling of possible levy metrics for registered liquidators, to support the introduction of an industry funding model for ASIC.

### National Innovation and Science Agenda

- 83 In April 2016, the Government released a proposals paper—*Improving bankruptcy and insolvency laws*—as part of the National Innovation and Science Agenda. The paper sought views on:
- (a) introducing a ‘safe harbour’ for company directors from personal liability for insolvent trading if they appoint a restructuring adviser to develop a turnaround plan for the company;
  - (b) making *ipso facto* clauses, which allow contracts to be terminated solely due to an insolvency event, unenforceable if a company is undertaking a restructure; and

- (c) reducing the current default bankruptcy period from three years to one year.

84 ASIC made a confidential submission on 17 June 2016.

### **Senate inquiry into the causes and consequences of the collapse of listed retailers in Australia**

85 On 4 February 2016, the Senate referred an inquiry into the causes and consequences of the collapse of listed retailers in the Australian retail industry to the Senate Economics References Committee for inquiry and report by 12 May 2016.

86 On 18 April 2016, the committee was granted an extension to report by 14 September 2016.

87 We made a written submission in March 2016: see [\*Senate inquiry into the causes and consequences of the collapse of listed retailers in Australia: Submission by the Australian Securities and Investments Commission\*](#) (PDF 220 KB).

88 The inquiry lapsed on the dissolution of the 44th Parliament.

89 On 11 October 2016, the Senate agreed not to re-refer this inquiry in the 45th Parliament.

## C Industry profile

### Registered liquidators

90 As at 31 December 2016, there were 710 registered liquidators in Australia (of which 638 were also official liquidators): see Table 8 and Table 9.

**Table 8: Number of registered liquidators (2014 to 2016)**

| Liquidator status         | 2014 | 2015 | 2016 |
|---------------------------|------|------|------|
| Registered at 1 January   | 689  | 705  | 710  |
| Registered during year    | 32   | 30   | 32   |
| Cancelled during year     | (16) | (25) | (32) |
| Registered at 31 December | 705  | 710  | 710  |

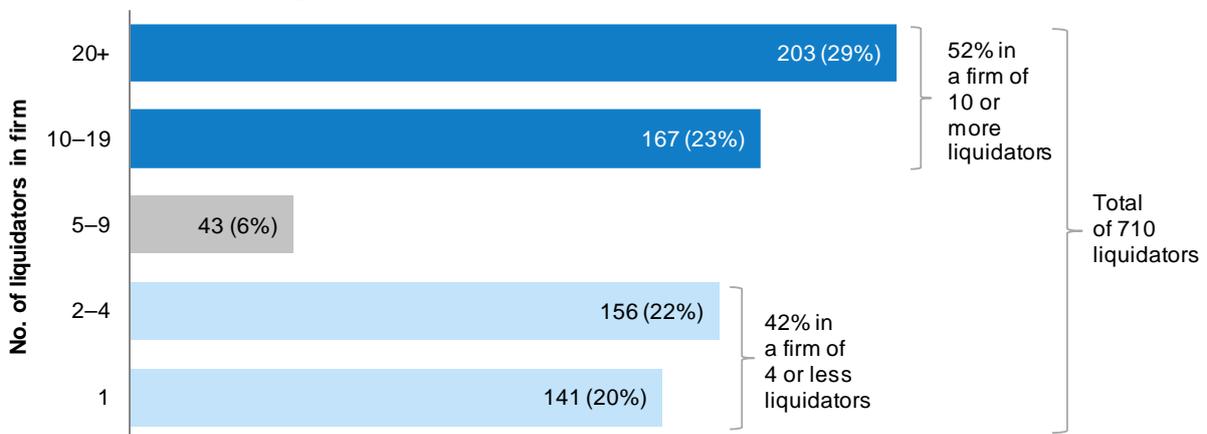
**Table 9: Number of official liquidators (2014 to 2016)**

| Liquidator status         | 2014 | 2015 | 2016 |
|---------------------------|------|------|------|
| Registered at 1 January   | 583  | 602  | 621  |
| Registered during year    | 31   | 35   | 35   |
| Cancelled during year     | (12) | (16) | (18) |
| Registered at 31 December | 602  | 621  | 638  |

Note: Official liquidators conduct court-appointed windings-up. All official liquidators are registered liquidators but a registered liquidator may not be an official liquidator. Also, from 1 March 2017, the *Insolvency Law Reform Act 2016* removed the 'official liquidator' designation.

91 As Figure 9 shows, 52% of registered liquidators operate in a firm of 10 or more practitioners.

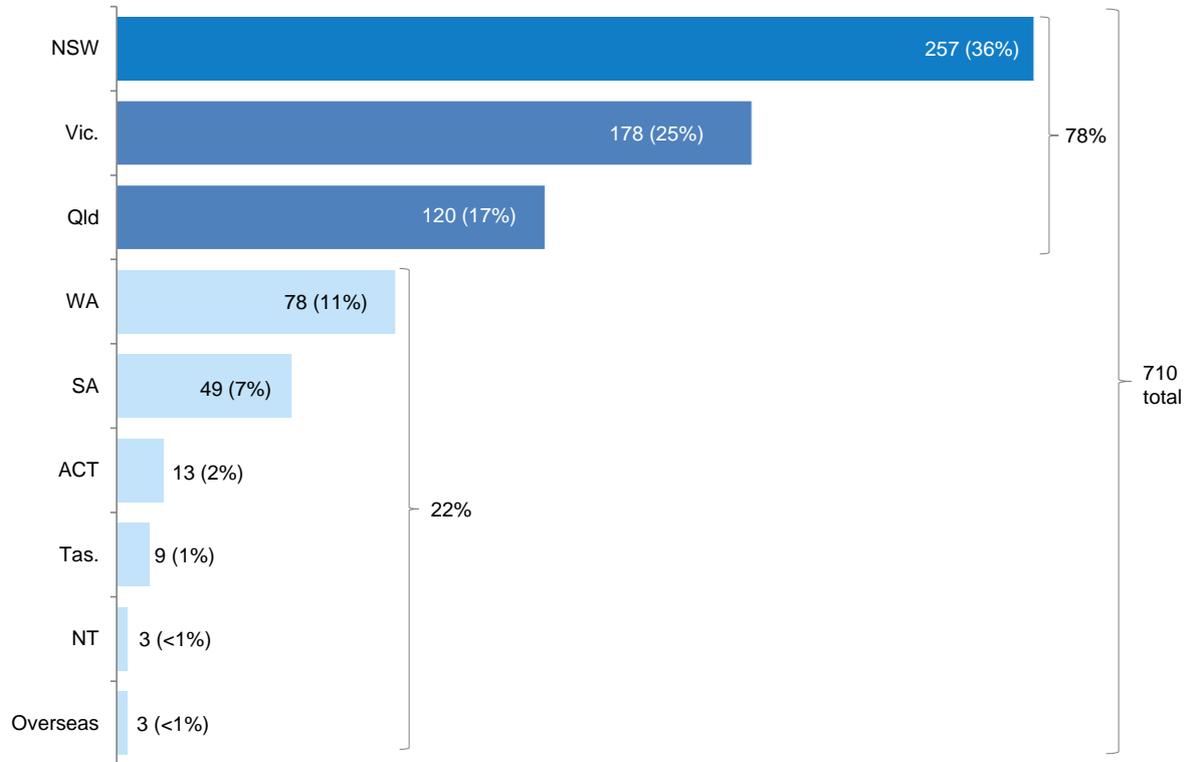
**Figure 9: Number of registered liquidators by firm size, as at 31 December 2016**



Note: See Table 23 in Appendix 3 for the complete data used in this figure (accessible version).

92 As Figure 10 shows, 78% of registered liquidators operate predominantly in the eastern states of New South Wales (36%), Victoria (25%) and Queensland (17%).

**Figure 10: Number of registered liquidators by region, as at 31 December 2016**

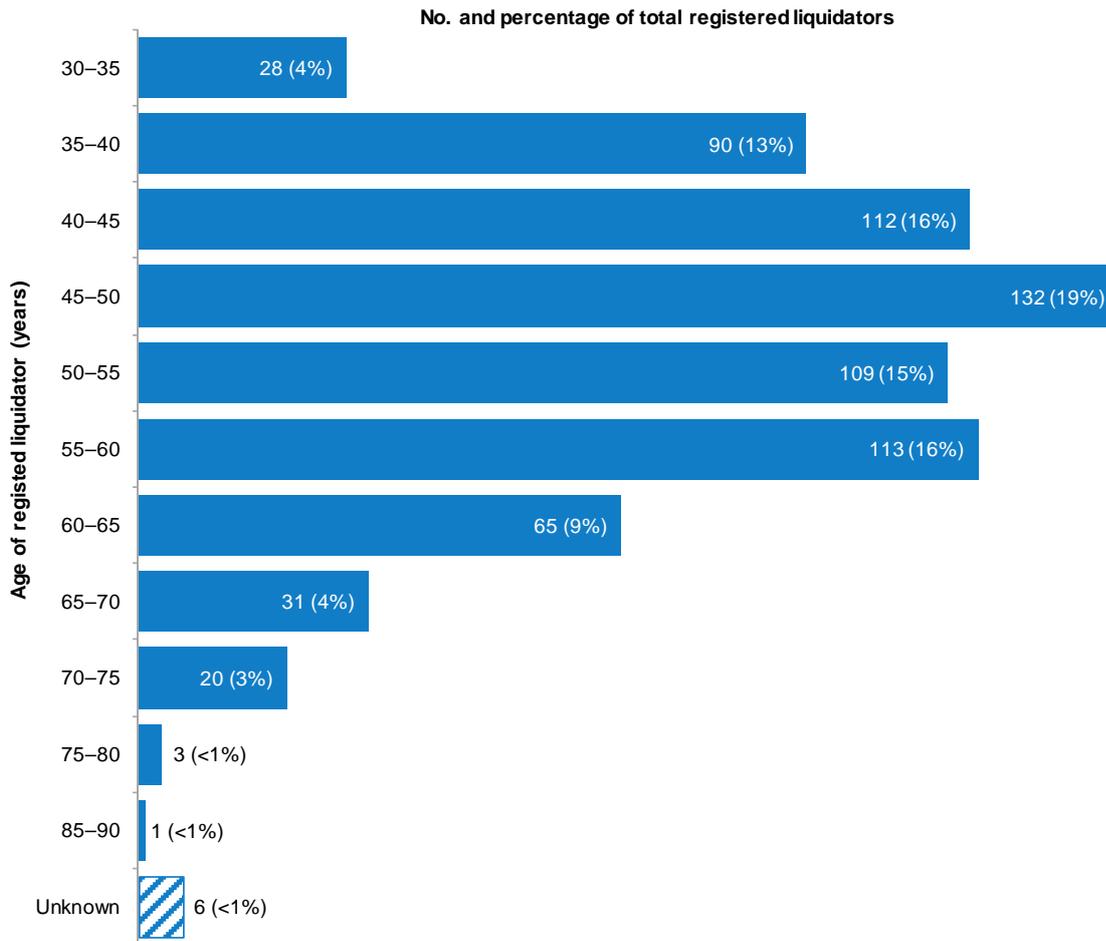


Note: See Table 24 in Appendix 3 for the complete data used in this figure (accessible version).

93 As at 31 December 2016, there were 53 female registered liquidators (7.5%) in Australia—one less than in 2015. They are located in the following states/territory:

- (a) New South Wales (19);
- (b) Victoria (13);
- (c) Queensland (13);
- (d) Western Australia (four);
- (e) South Australia (two);
- (f) Australian Capital Territory (one); and
- (g) Tasmania (one).

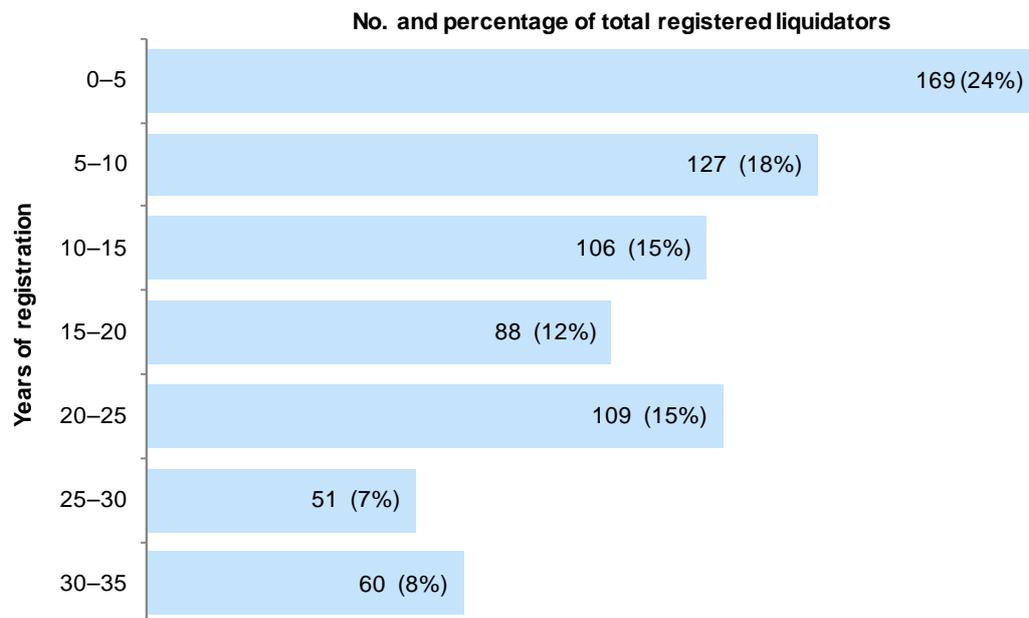
**Figure 11: Age of registered liquidators, as at 31 December 2016**



Note 1: The 'Unknown' category arises as a result of the date of birth not being captured until after the first Form 908 is completed and lodged following the anniversary of a person's registration.

Note 2: See Table 25 in Appendix 3 for the complete data used in this figure (accessible version).

**Figure 12: Years of registration, as at 31 December 2016**



Note: See Table 26 in Appendix 3 for the complete data used in this figure (accessible version).

## Registration of liquidators

94 Under the Corporations Act (before 1 March 2017), we 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).

95 Under s1283 of the Corporations Act, we may register as an official liquidator a natural person who is a registered liquidator.

96 As set out in [Regulatory Guide 186](#) *External administration: Liquidator registration* (RG 186), we will only determine an applicant to be a fit and proper person under s1282(2)(c) of the Corporations Act if we are satisfied about their honesty, integrity, good reputation and personal solvency.

Note: ASIC withdrew RG 186 to reflect changes to the law enacted by the *Insolvency Law Reform Act 2016*. On 1 March 2017, ASIC issued new guidance in [Regulatory Guide 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258).

97 To form a 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:

- (a) the applicant's experience with corporate insolvency, focusing on the length of their experience and their 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.

98 The conduct of registered liquidators is governed by:

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

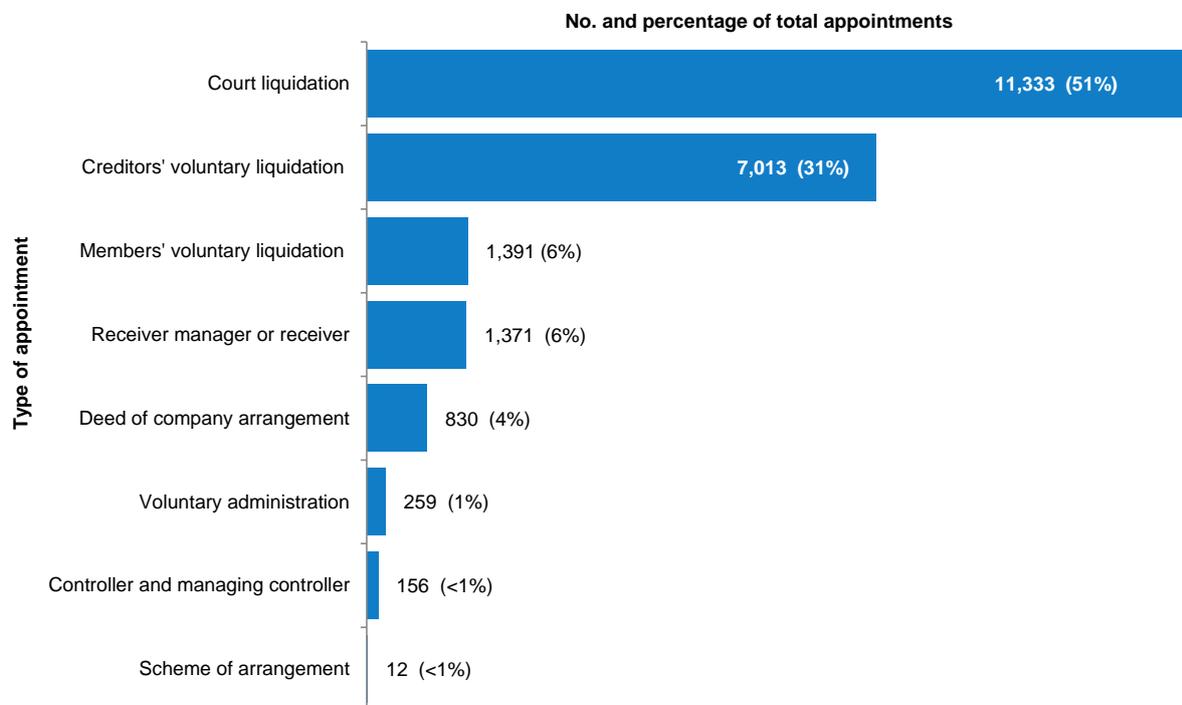
## Profile of companies in external administration

- 99 Most appointments involve small-to-medium proprietary limited companies. Table 10 summarises key data for the 2015–16 financial year, sourced from [Report 507](#) *Insolvency statistics: External administrators' reports (July 2015 to June 2016)* (REP 507).
- 100 External administrators prepare reports as a product of their investigations into a company's failure. Besides assisting creditors, these reports allow ASIC to produce a statistical profile on corporate insolvency in Australia.

**Table 10: Profile of companies in external administration in 2015–16**

| Description  | Percentage of companies |
|--|-------------------------|
| Less than 20 full-time equivalent employees                          | 79%                     |
| Assets of \$100,000 or less  | 86%                     |
| Unsecured creditors owed \$250,000 or less                           | 46%                     |
| Asset deficiency of \$500,000 or less                                | 68%                     |
| Dividends to unsecured creditors of less than 11 cents in the dollar | 97%                     |

**Figure 13: Appointments by type, as at 31 December 2016**



Note 1: 'Court liquidation' includes 11 provisional liquidations; 'receiver manager or receiver' includes 97 receiverships; and 'controller and managing controller' contains 19 managing controllerships.

Note 2: See Table 27 in Appendix 3 for the complete data used in this figure (accessible version).

### Form 5047

- 101 In July 2013, we amended [Form 5047](#) *Copy of deed of company arrangement* to allow ASIC to collect some key information from registered liquidators about deeds of company arrangement. We now expect to report publicly in 2017 on the information previously collected.

### Form 524

- 102 In July 2014, we introduced a new platform to allow registered liquidators to lodge Form 524 *Presentation of accounts and statement* with ASIC in a structured data format. Structured data (when fully adopted) will allow ASIC to efficiently collect and report on some key information about external administrations.
- 103 Lodgement in the new format is not compulsory. Practitioners lodged approximately 50% of Forms 524 in the new structured data format during December 2016.
- 104 The current adoption rate by registered liquidators of the new format needs to be higher to allow us to report meaningful information to the market. We continue to encourage registered liquidators to use the new format.

Note: An annual administration return and end of administration return will replace Form 524 from 1 September 2017 (subject to transitional provisions in the Corporations Act). Lodgement of the annual administration return and end of administration return will be in the structured data format only.

## Appendix 1: ASIC's work with registered liquidators

105 During the reporting period, our work with registered liquidators covered the following areas:

- (a) pre-insolvency advice (see paragraphs 106–111);
- (b) the liquidator assistance program (see paragraphs 112–114);
- (c) the AA Fund (see paragraphs 115–120);
- (d) eligible applications (see paragraphs 121–122);
- (e) court applications (see paragraphs 123–124); and
- (f) winding up companies (see paragraphs 125–128).

### Pre-insolvency advice

106 [\*ASIC's corporate plan 2015–16 to 2018–19: Focus 2015–16\*](#) identified pre-insolvency advisers—particularly their relationship with registered liquidators—as an area of focus.

107 In 2016, we commenced writing to directors of companies where a winding-up application had been lodged (Form 519) to highlight the risks posed in obtaining advice from unqualified advisers.

108 We also obtained a conviction against Stephen Charles Hall, a director of Eagle Business Solutions Pty Ltd (EBS), following an investigation by ASIC. Mr Hall was ordered to pay a fine of \$6,600 for dishonestly aiding, abetting, counselling or procuring another director to breach their director duties.

109 ASIC's investigation found that Mr Hall had 'cold called' a company director who had received a winding-up notification from the ATO. After being engaged by the director, Mr Hall aided the director to dishonestly use his position as a company director to conceal the actual ownership of company assets from the liquidator appointed to his company.

110 In doing so, the director attempted to prevent the liquidator from realising the assets of the company that could have been used to pay outstanding debts owed to creditors. The director also attempted to gain a benefit when he continued to assert control over the company assets for his own benefit. The period of Mr Hall's misconduct took place between 10 September 2013 and 20 December 2013.

111 We continue to:

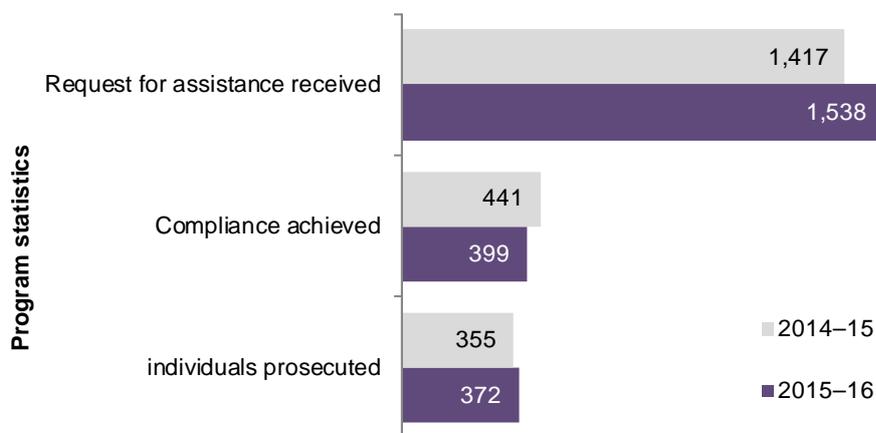
- (a) obtain market intelligence from registered liquidators;
- (b) assist registered liquidators to obtain information and records through the liquidator assistance program;

- (c) assist registered liquidators’ investigations, including through public examinations funded through the AA Fund. This helps liquidators to recover assets for the creditors’ benefit and report fully to ASIC—which, in turn, helps our investigations and legal action;
- (d) liaise with other regulators, including AFSA, the Department of Employment and the ATO. ASIC participates in the Phoenix Taskforce and the Serious Financial Crime Taskforce. One of the benefits of these task forces is that they facilitate information sharing, which helps ASIC to identify, and act on, illegal phoenix activity; and
- (e) conduct our own investigations into corporate failures where we are aware and concerned about the activities of pre-insolvency advisers.

### Liquidator assistance program

- 112 We assist registered liquidators, through our liquidator assistance program, to ensure that company officers comply with their obligations to prepare a report on a company’s affairs for the liquidator, provide books and records, and generally assist liquidators. The program also assists with our supervision of registered liquidators.
- 113 We received 1,538 requests for help from external administrators in the 2015–16 financial year, compared with 1,417 requests in 2014–15. Following our intervention, 399 (441 in 2014–15) individuals then complied with their obligations to assist the liquidator.
- 114 We prosecuted 372 individuals for 754 strict liability offences in 2015–16 for failing to assist the liquidator, resulting in \$1,019,336 in fines and costs. In the previous financial year, we prosecuted 355 individuals for 680 strict liability offences, which resulted in \$914,675 in fines and costs.

**Figure 14: Liquidator assistance program statistics for 2014–15 and 2015–16**



Note 1: ASIC reports publicly on the liquidator assistance program on a financial year basis.

Note 2: See Table 28 in Appendix 3 for the complete data used in this figure (accessible version).

## AA Fund

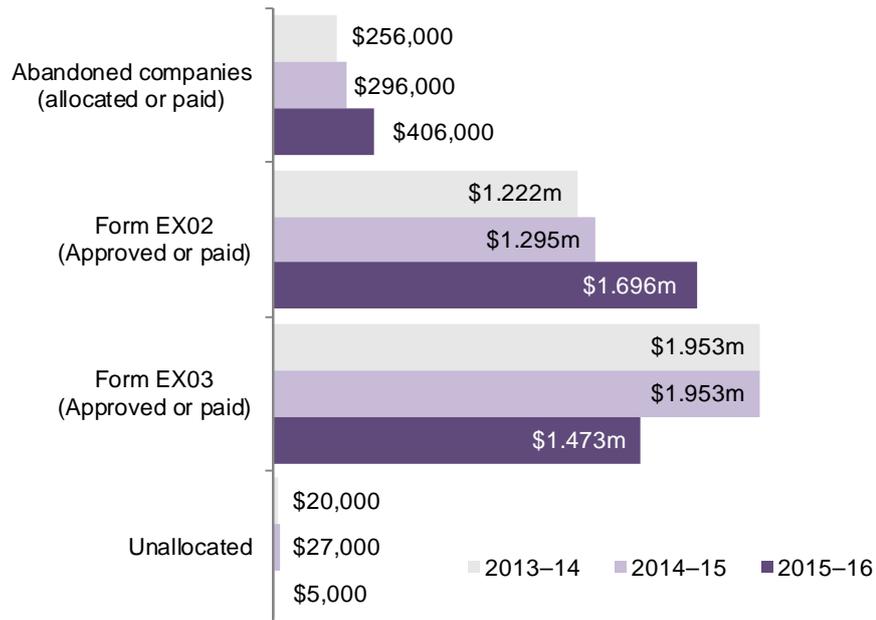
- 115 We administer the AA Fund, which the Australian Government established in 2005.
- 116 The purpose of the fund is to finance preliminary investigations and reports by registered liquidators into the failure of companies with few or no assets, and where it appears to us that enforcement action may result from the liquidator's investigation and report. A particular focus of the fund is curbing illegal phoenix activity.
- 117 In ASIC's *Annual report 2015–16* (see Note 16), we reported an amount of \$3.574 million paid from the fund in the 2015–16 financial year (\$3.067 million in 2014–15). We provided details of applications received and outcomes achieved on our website at [www.asic.gov.au](http://www.asic.gov.au).
- 118 There are two types of application a liquidator can make to the AA Fund:
- (a) a 'director banning' application, using [Form EX02](#) *Assetless administration funding request (s206F—Director banning)*; or
  - (b) another application, using [Form EX03](#) *Assetless administration funding request (matters other than s206F—Director banning)*.
- 119 Table 11 shows the number of applications received and the outcome of those applications.

**Table 11: Applications to the AA Fund in 2015–16**

| Application status    | Director banning application (Form EX02) | Other application (Form EX03) |
|-----------------------|--|-------------------------------|
| Applications received | 561                                      | 153                           |
| Applications approved | 198                                      | 68                            |
| Applications rejected | 368                                      | 78                            |

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 financial year.

- 120 We continue to investigate the relatively high rejection rate of applications received from registered liquidators, with the aim of improving these applications and the fund's operation. We also continue to streamline internal processes to improve the efficiency of processing applications.

**Figure 15: Allocation of funding from AA Fund (2013–14 to 2015–16)**

Note 1: Funds allocated, or paid, in administering abandoned companies is part of the funding ASIC provides to the liquidators of companies wound up by us using our administrative power under s489EA of the Corporations Act: see paragraphs 125–128.

Note 2: See Table 29 in Appendix 3 for the complete data used in this figure (accessible version).

## Eligible applicants

121 We received eight applications during 2016 from receivers and managers and other parties asking us to authorise the applicants as ‘eligible applicants’.

122 If we grant 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. In turn, this assists the receivers and managers in recovering assets and reporting fully to ASIC. We can then fully determine whether we need to conduct our own investigations and take enforcement action.

## Court applications

123 The Insolvency Practitioners team assessed 105 court applications in 2016. Most related 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 we receive sufficient notice of the application, our Insolvency Practitioners team considers each one.

124 Our Insolvency Practitioners team also considers other court applications not served on ASIC but which 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.

## Administrative power to wind up a company

- 125 The Fair Entitlements Guarantee (FEG) is a legislative safety-net scheme funded by the Australian Government. It is designed to assist employees owed unpaid employee entitlements because of their employer company's liquidation or the company directors' bankruptcy.
- 126 However, some employees that are owed entitlements cannot access FEG because the company's directors either cannot discharge their duties or have abandoned their insolvent companies without putting them into liquidation.
- 127 ASIC appoints a liquidator from a panel of registered liquidators. ASIC makes a grant of up to \$8,000 plus GST from the AA Fund. The funding covers the liquidator for the basic tasks required to wind up the company. This includes quantifying employee entitlements and access for employees to the FEG scheme.
- 128 During 2016, we ordered the winding-up of 16 companies. We identified that there were, in aggregate, 32 employees owed an estimated \$912,270 in unpaid entitlements: see Table 12.

**Table 12: Profile of companies wound up by ASIC (2014 to16)**

| Statistics                    | 2014   | 2015     | 2016      |
|-------------------------------|--------|----------|-----------|
| Companies wound up            | 32     | 30       | 16        |
| Employees affected            | 99     | 87       | 32        |
| Estimated unpaid entitlements | \$1.4m | \$1.671m | \$912,270 |

## Appendix 2: Regulatory guides and information sheets

129 The following regulatory guides (see Table 13) and information sheets (see Table 14) apply to registered liquidators.

**Table 13: Regulatory guides**

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

Note: ASIC withdrew RG 186 and RG 194 on 1 March 2017, replacing them with RG 258.

**Table 14: Information sheets**

| No.                     | Title   |
|-------------------------|---|
| <a href="#">INFO 29</a> | External administration: Most commonly lodged forms   |
| <a href="#">INFO 39</a> | Insolvency information sheets   |
| <a href="#">INFO 41</a> | Insolvency: A glossary of terms   |
| <a href="#">INFO 42</a> | Insolvency: A guide for directors   |
| <a href="#">INFO 43</a> | Insolvency: A guide for shareholders  |
| <a href="#">INFO 45</a> | Liquidation: A guide for creditors  |
| <a href="#">INFO 46</a> | Liquidation: A guide for employees  |
| <a href="#">INFO 53</a> | Providing assistance to external administrators: Books, records and RATA<br>Note: 'RATA' means a report as to the affairs of the company. |
| <a href="#">INFO 54</a> | Receivership: A guide for creditors   |

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

Note: ASIC withdrew INFO 59 on 1 March 2017.

## Appendix 3: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying data for each of the figures presented in this report.

**Table 15: Inquiries and reports of alleged misconduct received, by category (2014 to 2016)**

| Category       | 2014       | 2015       | 2016       |
|----------------|------------|------------|------------|
| Educational    | 246 (64%)  | 262 (72%)  | 272 (68%)  |
| Procedural     | 81 (21%)   | 47 (13%)   | 51 (13%)   |
| Conduct        | 57 (15%)   | 55 (15%)   | 78 (19%)   |
| Total received | 384 (100%) | 364 (100%) | 401 (100%) |

Note: This is the data contained in Figure 1.

**Table 16: Outcomes of inquiries and reports of alleged misconduct (2014 to 2016)**

| Outcome of inquiry or report of alleged misconduct  | 2014       | 2015       | 2016       |
|---|------------|------------|------------|
| ASIC assistance resolved the inquiry  | 43 (12%)   | 47 (13%)   | 49 (13%)   |
| Insufficient evidence identified to support the alleged breach  | 135 (38%)  | 143 (41%)  | 153 (42%)  |
| Note: Before closing a matter on this basis, 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. |            |            |            |
| No breach of the Corporations Act identified  | 29 (8%)    | 23 (7%)    | 27 (7%)    |
| Referred to a specialist team within ASIC for further review  | 42 (12%)   | 36 (10%)   | 31 (8%)    |
| Note: Of the 31 matters received by the Misconduct and Breach Reporting team in 2016, all 31 were referred to the Insolvency Practitioners team.  |            |            |            |
| Referred for formal investigation   | 5 (1%)     | 1 (<1%)    | 0          |
| Referred to assist existing investigation or other surveillance   | 22 (6%)    | 35 (10%)   | 18 (5%)    |
| Action otherwise precluded  | 77 (22%)   | 64 (18%)   | 89 (24%)   |
| Note: This 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.   |            |            |            |
| Total processed   | 353 (100%) | 349 (100%) | 367 (100%) |

Note: This is the data contained in Figure 2.

**Table 17: Outcomes of formal investigations and enforcement actions (2014 to 2016)**

| Outcome of formal investigation or enforcement action   | 2014      | 2015     | 2016     |
|---|-----------|----------|----------|
| Closed due to insufficient evidence of an offence       | 3 (27%)   | 1 (13%)  | 2 (25%)  |
| Court application for an inquiry under s536 and/or s423 | 0         | 2 (25%)  | 1 (13%)  |
| Cancellation of registration under s1290A or s1291      | 0         | 0        | 0        |
| Negotiated resolution                                   | 5 (45%)   | 0        | 2 (25%)  |
| Enforceable undertaking                                 | 1 (9%)    | 4 (50%)  | 2 (25%)  |
| CALDB application                                       | 2 (18%)   | 1 (13%)  | 1 (13%)  |
| Total number of investigations or actions               | 11 (100%) | 8 (100%) | 8 (100%) |

Note: This is the data contained in Figure 3.

**Table 18: Outcomes of finalised proactive practice reviews (2014 to 2016)**

| Outcome   | 2014     | 2015     | 2016     |
|---|----------|----------|----------|
| Positive outcomes                                       | 1 (17%)  | 2 (33%)  | 1 (33%)  |
| Referred for formal investigation or enforcement action | 4 (67%)  | 4 (67%)  | 2 (67%)  |
| Other   | 1 (17%)  | 0        | 0        |
| Total finalised reviews                                 | 6 (100%) | 6 (100%) | 3 (100%) |

Note: This is the data contained in Figure 4.

**Table 19: Finalised transaction reviews by region (2014 to 2016)**

| Region                       | 2014 | 2015 | 2016 |
|------------------------------|------|------|------|
| New South Wales              | 45   | 32   | 33   |
| Victoria                     | 13   | 12   | 18   |
| Queensland                   | 11   | 6    | 8    |
| Western Australia            | 7    | 6    | 13   |
| South Australia              | 5    | 1    | 4    |
| Tasmania                     | 2    | 0    | 2    |
| Australian Capital Territory | 4    | 0    | 0    |
| Northern Territory           | 0    | 0    | 1    |
| Total finalised reviews      | 87   | 57   | 79   |

Note: This is the data contained in Figure 5.

**Table 20: Areas of concern in finalised transaction reviews (2014 to 2016)**

| Area of concern in finalised transaction review                                 | 2014      | 2015      | 2016      |
|---|-----------|-----------|-----------|
| Independence  | 20 (23%)  | 24 (42%)  | 49 (62%)  |
| Remuneration  | 16 (18%)  | 7 (12%)   | 10 (13%)  |
| Adequacy of investigation and reporting to creditors                            | 16 (18%)  | 10 (18%)  | 10 (13%)  |
| Dispute over dealing with employee priority and admission of proofs             | 1 (1%)    | 1 (2%)    | 1 (1%)    |
| Improper gain   | 1 (1%)    | 0         | 2 (3%)    |
| Conduct of creditors' meetings  | 3 (3%)    | 2 (4%)    | 1 (1%)    |
| Phoenix facilitation  | 8 (9%)    | 7 (12%)   | 0         |
| Failure to lodge forms and complete external administrations in a timely manner | 3 (3%)    | 1 (2%)    | 0         |
| Timeliness in dealing with matter   | 2 (2%)    | 0         | 0         |
| Adequacy of sales process   | 6 (7%)    | 2 (4%)    | 1 (1%)    |
| Concern over terms or operation of a deed of company arrangement                | 1 (1%)    | 1 (1%)    | 1 (1%)    |
| Other   | 10 (11%)  | 2 (4%)    | 4 (5%)    |
| Total finalised reviews   | 87 (100%) | 57 (100%) | 79 (100%) |

Note: This is the data contained in Figure 6.

**Table 21: Outcomes of finalised transaction reviews (2014 to 2016)**

| Outcome of finalised transaction review                 | 2014      | 2015      | 2016      |
|---|-----------|-----------|-----------|
| Insufficient concerns identified to warrant ASIC action | 48 (55%)  | 30 (53%)  | 49 (62%)  |
| Educational outcome                                     | 27 (31%)  | 15 (26%)  | 15 (19%)  |
| Advice to other ASIC stakeholder teams                  | 1 (1%)    | 4 (7%)    | 0         |
| Matter marked for follow-up review                      | 1 (1%)    | 1 (2%)    | 0         |
| Other review or merged with other activity              | 2 (2%)    | 6 (11%)   | 11 (14%)  |
| Referred for formal investigation or enforcement action | 8 (9%)    | 1 (2%)    | 4 (5%)    |
| Total finalised reviews                                 | 87 (100%) | 57 (100%) | 79 (100%) |

Note: This is the data contained in Figure 7.

**Table 22: Breakdown of forms not lodged and notices not published, as at 31 December 2016**

| Notices                       | Forms                                    |
|-------------------------------|--|
| Meeting notices (56.1%)       | Annual meeting or report in lieu (37.8%) |
| Notice of appointment (24.7%) | Form 524 (18.8%)                         |
| Other notices (19.2%)         | s533 report (10.4%)                      |
|                               | Form 5011 (5.0%)                         |
|                               | Other forms not lodged (28.0%)           |

Note: This is the data contained in Figure 8.

**Table 23: Number of registered liquidators by firm size, as at 31 December 2016**

| Number of liquidators in firm | Liquidators | Percentage of total |
|-------------------------------|-------------|---------------------|
| 1                             | 141         | 20%                 |
| 2–4                           | 156         | 22%                 |
| 5–9                           | 43          | 6%                  |
| 10–19                         | 167         | 23%                 |
| 20 or more                    | 203         | 29%                 |

Note 1: Fifty-two per cent of liquidators were in a firm of 10 or more practitioners, while 42% were in a firm of four or less liquidators. There were 710 liquidators in total.

Note 2: This is the data contained in Figure 9.

**Table 24: Number of registered liquidators by region, as at 31 December 2016**

| Region                       | Number of liquidators | Percentage of total |
|------------------------------|-----------------------|---------------------|
| New South Wales              | 257                   | 36%                 |
| Victoria                     | 178                   | 25%                 |
| Queensland                   | 120                   | 17%                 |
| Western Australia            | 78                    | 11%                 |
| South Australia              | 49                    | 7%                  |
| Tasmania                     | 9                     | 1%                  |
| Australian Capital Territory | 13                    | 2%                  |
| Northern Territory           | 3                     | Less than 1%        |
| Overseas                     | 3                     | Less than 1%        |

Note 1: Seventy-eight per cent of liquidators operated in New South Wales, Victoria and Queensland combined, while 22% operated in the remaining states and territories or overseas. There were 710 liquidators in total.

Note 2: This is the data contained in Figure 10.

**Table 25: Age of registered liquidators, as at 31 December 2016**

| Age of registered liquidator (years) | Number of liquidators | Percentage of total |
|--------------------------------------|-----------------------|---------------------|
| 30–35                                | 28                    | 4%                  |
| 35–40                                | 90                    | 13%                 |
| 40–45                                | 112                   | 16%                 |
| 45–50                                | 132                   | 19%                 |
| 50–55                                | 109                   | 15%                 |
| 55–60                                | 113                   | 16%                 |
| 60–65                                | 65                    | 9%                  |
| 65–70                                | 31                    | 4%                  |
| 70–75                                | 20                    | 3%                  |
| 75–80                                | 3                     | Less than 1%        |
| 85–90                                | 1                     | Less than 1%        |
| Unknown                              | 6                     | Less than 1%        |

Note 1: The 'Unknown' category arises as a result of the date of birth not being captured until after the first Form 908 is completed and lodged following the anniversary of a person's registration.

Note 2: This is the data contained in Figure 11.

**Table 26: Years of registration, as at 31 December 2016**

| Years of registration | Number of registered liquidators | Percentage of total |
|-----------------------|----------------------------------|---------------------|
| 0–5                   | 169                              | 24%                 |
| 5–10                  | 127                              | 18%                 |
| 10–15                 | 106                              | 15%                 |
| 15–20                 | 88                               | 12%                 |
| 20–25                 | 109                              | 15%                 |
| 25–30                 | 51                               | 7%                  |
| 30–35                 | 60                               | 8%                  |

Note: This is the data contained in Figure 12.

**Table 27: Appointments by type, as at 31 December 2016**

| Type of appointment                | Number of registered liquidators | Percentage of total |
|------------------------------------|----------------------------------|---------------------|
| Court liquidation                  | 11,333                           | 51%                 |
| Creditors' voluntary liquidation   | 7,013                            | 31%                 |
| Members' voluntary liquidation     | 1,391                            | 6%                  |
| Receiver manager or receiver       | 1,371                            | 6%                  |
| Deed of company arrangement        | 830                              | 4%                  |
| Voluntary administration           | 259                              | 1%                  |
| Controller and managing controller | 156                              | Less than 1%        |
| Scheme of arrangement              | 12                               | Less than 1%        |
| Total appointments                 | 22,365                           | 100%                |

Note 1: 'Court liquidation' includes 11 provisional liquidations; 'receiver manager or receiver' includes 97 receiverships; and 'controller and managing controller' contains 19 managing controllerships.

Note 2: This is the data contained in Figure 13.

**Table 28: Liquidator assistance program statistics for 2014–15 and 2015–16**

| Program statistic                | 2014–15 | 2015–16 |
|----------------------------------|---------|---------|
| Requests for assistance received | 1,417   | 1,538   |
| Compliance achieved              | 441     | 399     |
| Individuals prosecuted           | 355     | 372     |

Note: This is the data contained in Figure 14.

**Table 29: Allocation of funding from AA Fund in 2013–14 to 2015–16**

| Category                                  | 2013–14   | 2014–15   | 2015–16   |
|---|-----------|-----------|-----------|
| Allocated or paid for abandoned companies | \$256,000 | \$296,000 | \$406,000 |
| Approved or paid under Form EX02          | \$1.222m  | \$1.295m  | \$1.696m  |
| Approved or paid under Form EX03          | \$1.953m  | \$1.953m  | \$1.473m  |
| Unallocated                               | \$20,000  | \$27,000  | \$5,000   |

Note: This is the data contained in Figure 15.

## Key terms

| Term                                  | Meaning in this document  |
|---------------------------------------|---|
| AAT                                   | Administrative Appeals Tribunal   |
| AA Fund                               | Assetless Administration Fund   |
| AGM                                   | Annual general meeting  |
| <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  |
| CA ANZ                                | Chartered Accountants Australia and New Zealand   |
| CALDB                                 | Companies Auditors and Liquidators Disciplinary Board<br>Note: CALDB was renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the <i>Insolvency Law Reform Act 2016</i> that took effect on 1 March 2017. |
| 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   |

| <b>Term</b>                  | <b>Meaning in this document</b>  |
|------------------------------|--|
| external administrator       | A liquidator, receiver, voluntary administrator or deed administrator  |
| formal investigation         | A formal investigation under s13(3) of the ASIC Act  |
| GST                          | Goods and services tax   |
| 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 INFO 151   |
| official liquidator          | A person registered by ASIC under s1283 of the Corporations Act  |
| PJC                          | Parliamentary Joint Committee  |
| PNW project                  | Published notices website and non-lodgement project  |
| 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 456 (for example)        | An ASIC report (in this example numbered 456)  |

| <b>Term</b>             | <b>Meaning in this document</b>  |
|-------------------------|--|
| reporting period        | 1 January to 31 December 2016  |
| 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 13 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

Corporations Regulations

*Insolvency Law Reform Act 2016*

Insolvency Practice Rules (Corporations) 2016

### Cases

*Sanderson as Liquidator of Sakr Nominees Pty Ltd (in liquidation) v Sakr* [2017] NSWCA 38

### Reports

[REP 507](#) *Insolvency statistics: External administrators' reports (July 2015 to June 2016)*

See also p. 2 of this report

### Media releases

[16-039MR](#) *ASIC accepts voluntary undertaking from Sydney liquidator*

[16-104MR](#) *NSW liquidator completes quality review program*

[16-146MR](#) *NSW liquidator successfully completes independent peer review*

[16-161MR](#) *NSW men prevented from acting as registered liquidators for five years*

[16-178MR](#) *Former liquidator pleads guilty to dishonestly using his position*

[16-241MR](#) *NSW liquidator's registration cancelled, but orders temporarily stayed pending appeal*

[16-261MR](#) *ASIC accepts voluntary undertaking from Victorian liquidator*

[16-345MR](#) *Federal Court prohibits Melbourne liquidator from accepting new appointments for three years*

[16-361MR](#) *ASIC accepts EU from NSW liquidator*

[16-385MR](#) *ASIC accepts voluntary undertakings from NSW liquidators*

[16-400MR](#) *ASIC accepts voluntary undertakings from WA liquidators*

[16-453MR](#) *Victorian liquidator suspended*

[17-014MR](#) *ASIC requests inquiry into conduct of Sydney liquidators*

### **ASIC forms**

[Form 505](#) *Notification of appointment or cessation of an external administrator*

[Form 524](#) *Presentation of accounts and statement*

[Form 908](#) *Annual statement by a liquidator*

[Form 5011](#) *Copy of minutes of meeting*

[Form 5047](#) *Copy of deed of company arrangement*

### **Information sheets**

See Table 14 in Appendix 2 of this report.

### **Other ASIC documents**

[ASIC annual report 2015–16](#)

[ASIC's corporate plan 2015–16 to 2018–19](#)

ASIC, 'ASIC update: Better communication, insolvent trading and notices to creditors', article, Australian Insolvency Journal

ASIC, 'ASIC update: Releasing liquidator reports under FOI, action against pre-insolvency advisor', article, Australian Insolvency Journal

ASIC, 'ASIC update: Disrupting untrustworthy pre-insolvency advisors and improving information for creditors', article, Australian Insolvency Journal

ASIC 'ASIC update: Law reform changes and our corporate plan', article, Australian Insolvency Journal

### **Non-ASIC documents**

Murray Inquiry, [Financial System Inquiry: Final report](#)