



ASIC

Australian Securities & Investments Commission

REPORT 479

ASIC regulation of registered liquidators: January to December 2015

June 2016

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 2015 (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
REP 430	April 2015
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).
- 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 Despite 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, transparent and efficient 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 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.
- 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 October 2014, we published [ASIC'S Strategic Outlook 2014–15](#), which sets 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.

- 9 In August 2015 we released [ASIC’s Corporate Plan 2015–16 to 2018–19: Focus 2015–16](#) which sets out our strategic priorities for the four year period. We will report against those priorities in future reports.

Key terms used in this report

- 10 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 we accept an enforceable undertaking under s93AA of the ASIC Act)
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 Information Sheet 151 <i>ASIC’s approach to enforcement</i> (INFO 151)
Proactive practice review	A review of a registered liquidator’s whole practice, including systems and procedures, and a detailed review of multiple external administration appointments. The aim is to assess whether the registered liquidator is adequately and properly performing their duties and generally complying with the law

Term	Meaning in this report
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

- 11 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.
- 12 In 2015 (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.
- 13 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

- 14 In 2015, we:
- (a) initiated one proactive practice review and 67 transaction reviews;
 - (b) completed six proactive practice reviews and 57 transaction reviews;

- (c) completed 31 reviews of declarations of relevant relationships and indemnities, and 21 reviews of remuneration reports issued to creditors by registered liquidators;
- (d) reviewed the lodgement history of 281 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 published notices website (PNW) project); and
- (e) commenced five formal investigations or enforcement actions concerning registered liquidator conduct (see Table 3 in Section A).

15 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 2015 (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.

16 Table 2 summarises our outcomes for 2015 in each area of concern.

Table 2: Key outcomes for 2015 by area of concern

Competence	<p>We filed applications for the court's inquiry into the conduct of:</p> <ul style="list-style-type: none"> • Adelaide-based registered liquidator Peter Ivan Macks; and • Melbourne-based registered liquidator Ross McDermott. <p>We accepted an enforceable undertaking from:</p> <ul style="list-style-type: none"> • Adelaide-based registered liquidator Anthony Christopher Matthews; • Melbourne-based registered liquidator Colin Tuckwell; and • Perth-based registered liquidator Ross Thomson. <p>We cancelled the registration of Adelaide-based registered liquidator Darrell Charles Emerson as part of a negotiated resolution.</p> <p>We commenced a formal investigation or enforcement action in relation to three registered liquidators.</p> <p>As part of the PNW project, we:</p> <ul style="list-style-type: none"> • reviewed 281 registered liquidators; and • negotiated resolutions with seven registered liquidators. Three agreed to cancel their registration and four agreed to initiate both an independent peer review and undertake firm-wide training to remedy identified systemic non-compliance and promote a compliance culture.
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Independence	<p>The CALDB admonished Queensland-based registered liquidator Jonathon McLeod.</p> <p>We filed an application with the CALDB to cancel the registration of a registered liquidator.</p> <p>We accepted an enforceable undertaking from Sydney-based registered liquidator Adam Edward Patrick Farnsworth.</p> <p>We commenced formal investigations or enforcement action in relation to two registered liquidators.</p> <p>We completed 31 reviews of registered liquidators' declarations of relevant relationships and indemnities as part of our other surveillance work.</p> <p>We successfully removed Victorian-based registered liquidator Gideon Rathner of Lowe Lippman as administrator of Planet Platinum in proceedings initiated in the Supreme Court of Victoria. In April 2016, the court declared the appointment void.</p>
Improper gain	<p>We completed 21 reviews of registered liquidators' remuneration reports to creditors as part of our surveillance work.</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 is focused on the following areas:

- inquiries and reports of alleged misconduct (see paragraphs 17–27);
- formal investigation and enforcement action (see paragraphs 28–34); and
- surveillance (see paragraphs 35–62).

Inquiries and reports of alleged misconduct

- 17 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 2013–14 and 2014–15: see ASIC’s [Annual report 2014–15](#), p. 73.
- 18 However, inquiries made to ASIC, and reports of alleged misconduct involving registered liquidators, continue to fall—from 446 in 2013 and 384 in 2014 to 364 in 2015.

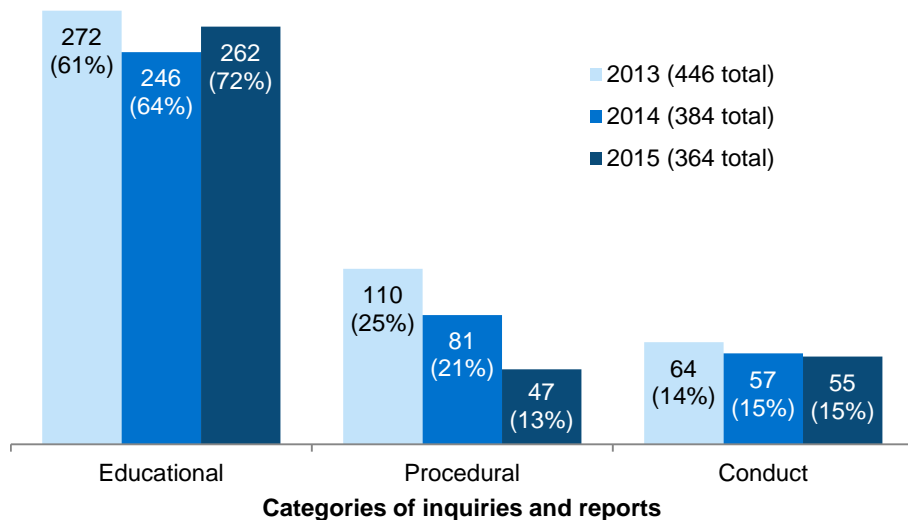
Categorisation of inquiries and reports

- 19 Our Misconduct and Breach Reporting team receives and conducts an initial assessment of all inquiries and reports of alleged misconduct against registered liquidators.
- 20 An initial assessment by the Misconduct and Breach Reporting team categorises 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* (13%): Although serious, the information provided to ASIC suggested the misconduct may have been inadvertent.
 - (c) *Educational* (72%): 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%.

21 Figure 1 shows an analysis of the nature of the inquiries and reports of alleged misconduct relating to registered liquidators that we received in 2015. Overall reports continue to fall (from 384 in 2014 to 364 in 2015). Conduct-related reports fell marginally from 57 to 55, and reports relating to procedural matters fell from 81 to 47.

Figure 1: Inquiries and reports of alleged misconduct received, by category (2013–15)



Note 1: See Table 15 in Appendix 3 for the complete data used in this figure (accessible version).

Note 2: The total number of inquiries and reports of alleged misconduct for 2015 in Figure 1 is 364, compared with 349 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.

Conduct matters

22 ‘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

23 ‘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.

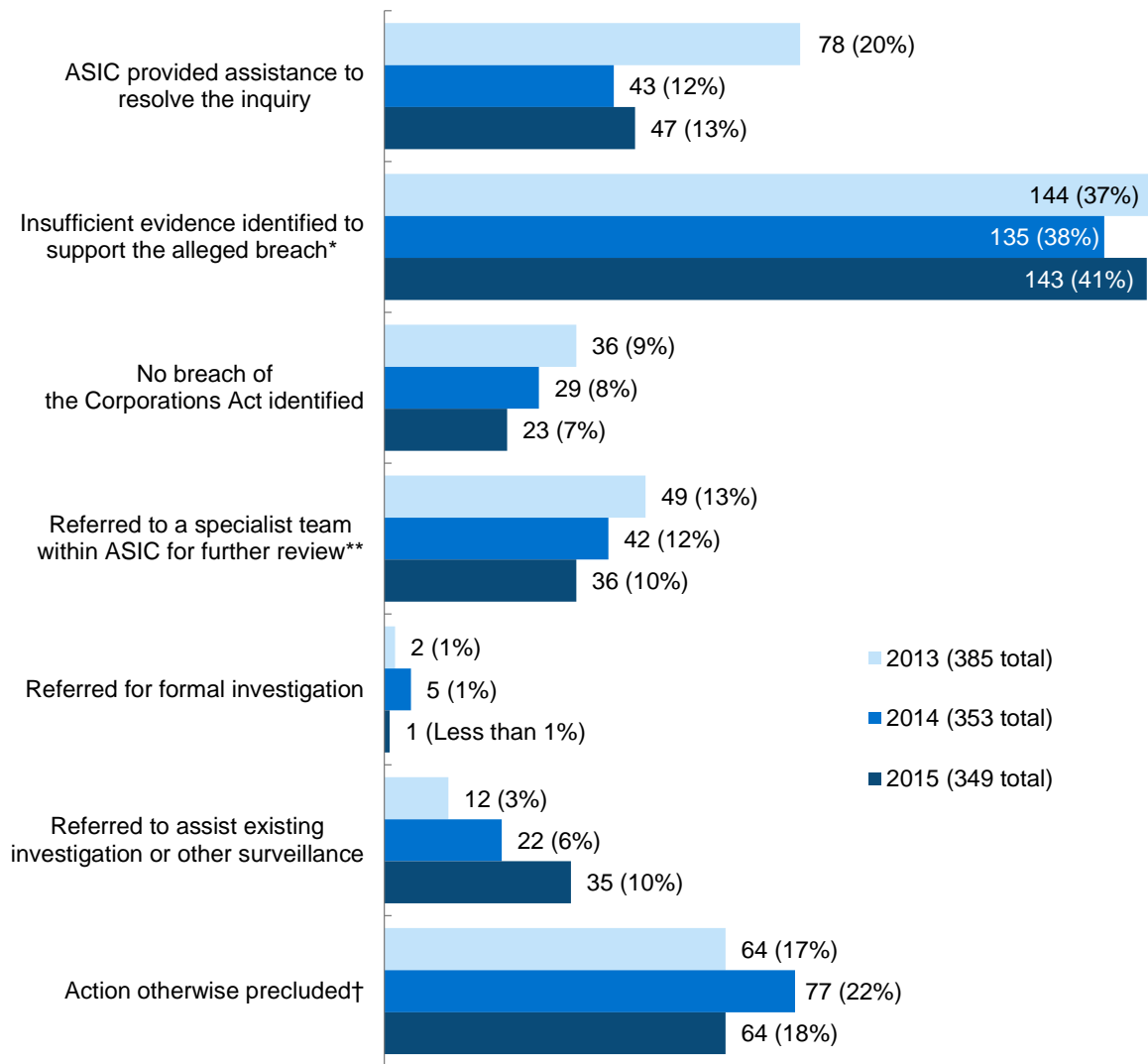
Educational matters

- 24 '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 of alleged misconduct

- 25 The outcome of the inquiries and reports of alleged misconduct showed that:
- (a) in 72 matters (21%), 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 213 matters (61%), there either was insufficient evidence of an offence or the registered liquidator did not breach the Corporations Act. Generally we assisted to resolve the inquiry and did not pursue the matter further; and
 - (c) in 64 matters (18%), we took no action for reasons including that the matter did not advance or support an existing investigation or regulatory action.
- 26 Figure 2 summarises the outcomes of the 349 inquiries and reports of alleged misconduct by registered liquidators.
- 27 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 (2013–15)



* 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 36 matters received by the Misconduct and Breach Reporting team in 2015, all 36 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.

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

Formal investigation and enforcement action

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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 (2013–15)

Status of matter	2013	2014	2015
Open matters at 1 January	21	19	22
Formal investigations or enforcement actions commenced during the year	11	14	5
Formal investigations or enforcement actions finalised during the year	(13)	(11)	(9)
Open matters at 31 December	19	22	18

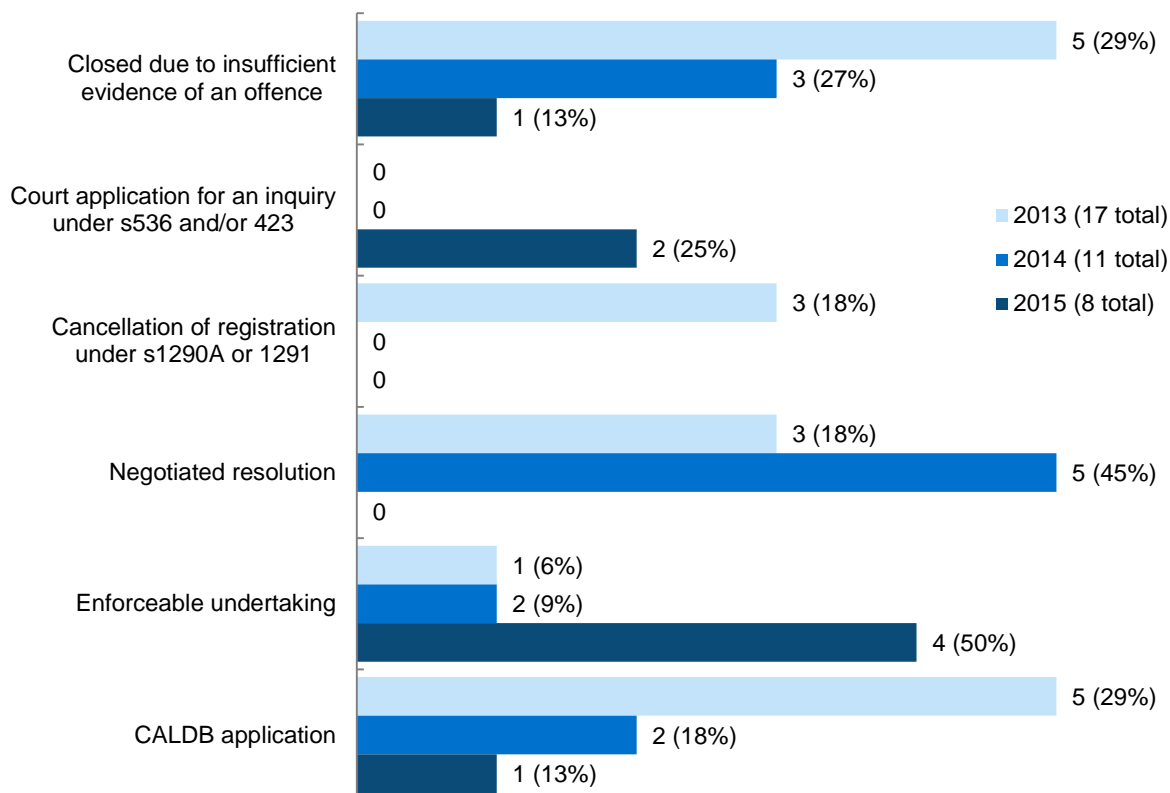
Note: The five matters referred for formal investigation or enforcement action in the reporting period arose from four proactive practice reviews and one transaction review. The 18 open matters at 31 December 2015 relate to 16 registered liquidators, with two having two separate matters under investigation.

We previously recorded four of the nine matters finalised in the reporting period as outcomes for the previous year (i.e. 2014 in Figure 3). These comprised one CALDB application and three negotiated resolutions.

We recorded outcomes (Figure 3) against five matters shown as open at 31 December 2015: two negotiated resolutions (2014), one CALDB application (2015) and two s536 applications (2015).

29

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 (2013–15)

Note 1: See Table 17 in Appendix 3 for the complete data used in this figure (accessible version).

Note 2: The CALDB application and two separate s536 applications in Figure 3 remain open investigations. Two negotiated resolutions remained open to monitor compliance and are not shown as closed matters in Table 3.

Table 4: Outcomes of formal investigations or enforcement actions in 2015

Registered liquidator	Firm	Outcome	Media release
Peter Ivan Macks	Macks Advisory	Applied for a court inquiry (s536)	Media Release (15-111MR) ASIC intervenes in proceedings against South Australian liquidator (15 May 2015)
Ross John McDermott	Ross McDermott Chartered Accountant	Applied for a court inquiry (s536)	Media Release (15-394MR) ASIC acts against Melbourne liquidator (17 December 2015)
Jonathon McLeod	McLeod & Partners	CALDB decision	Media Release (15-159MR) CALDB admonishes Queensland liquidator (26 June 2015)
Adam Edward Patrick Farnsworth	Farnsworth Shepard	Enforceable undertaking	Media Release (15-396MR) EU for NSW liquidator after failure to discharge duties (18 December 2015)
Anthony Christopher Matthews	Anthony Matthews & Associates	Enforceable undertaking	Media Release (15-369MR) ASIC accepts EU from South Australian liquidator (7 December 2015)
Ross Stephen Thomson	Red2Black Accounting Solutions	Enforceable undertaking	Media Release (15-079MR) ASIC accepts EU from Western Australian liquidator (14 April 2015)
Colin Roland Tuckwell	APL Insolvency	Enforceable undertaking	Media Release (15-030MR) ASIC accepts enforceable undertaking from Victorian liquidator (19 February 2015)
Daryl Charles Emmerson	Chancellor Group	Negotiated resolution	Media Release (15-232MR) ASIC cancels South Australian liquidator's registration (27 August 2015) We recorded this matter as a negotiated resolution in the 2014 reporting period in Figure 3

Negotiated resolutions

- 30 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.
- 31 These outcomes are not recorded in Figure 3 or Table 4. For details on the PNW project, see paragraphs 60–62.

Court proceedings

- 32 We successfully sought a declaration, in proceedings commenced in the Supreme Court of Victoria under s447A of the Corporations Act, that the appointment of Victoria-based registered liquidator Gideon Rathner of Lowe Lippman as administrator of Planet Platinum, on 4 May 2015, was invalid, void and of no effect. The application was part of proceedings commenced in

2015 seeking the winding-up of Planet Platinum on just and equitable grounds, initiated by ASIC before the appointment of the administrator: see *ASIC v Planet Platinum & Anor* [2016] VSC 120 (1 April 2016).

- 33 In making the declaration, the court found that the directors appointed Mr Rathner for an improper purpose and that Mr Rathner failed to satisfy himself that his appointment was valid. The court found that the directors did not form an opinion that the company was insolvent or was likely to become insolvent (this being a prerequisite for the appointment of an administrator).
- 34 In August 2015, we formally intervened in proceedings brought by liquidators John Sheehan and Ian Lock of Sheehan Lock who applied to the South Australian Supreme Court to fix their remuneration. The proceedings continue.

Surveillance

- 35 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 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.
- 36 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.
- 37 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

- 38 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.

39 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.

40 In 2015, we initiated one proactive practice review in Victoria.

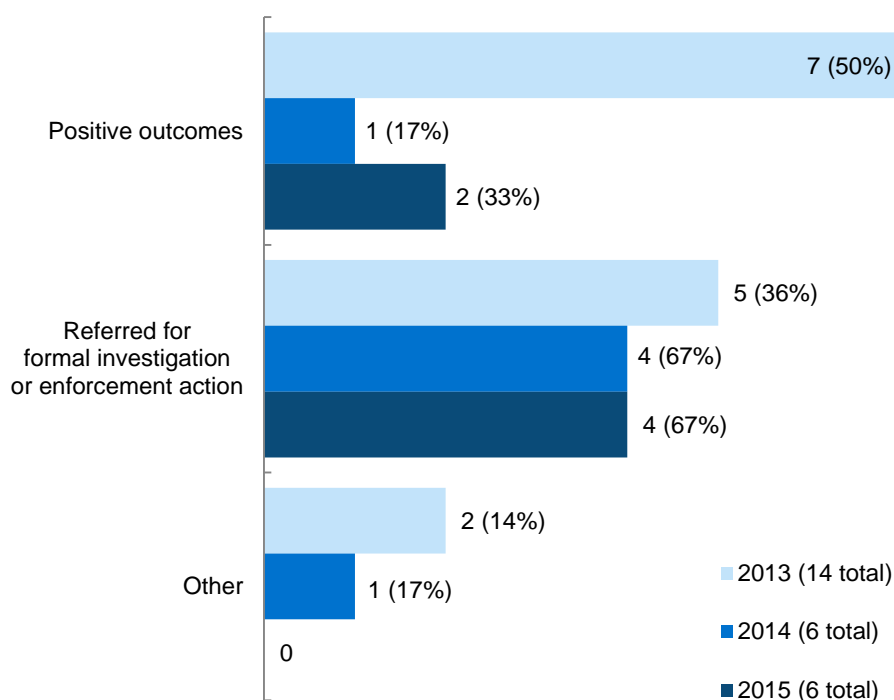
41 Of the six proactive practice reviews finalised during 2015 (see Table 5 and Figure 4), we:

- (a) escalated four matters to a formal investigation or initiated enforcement action; and
- (b) achieved a positive outcome in two matters.

Note: We record a positive outcome 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 5: Proactive practice reviews (2013–15)

Review status	2013	2014	2015
Reviews open at 1 January	10	7	7
Reviews commenced during the year	11	6	1
Reviews finalised during the year	(14)	(6)	(6)
Reviews open at 31 December	7	7	2

Figure 4: Outcomes of finalised proactive practice reviews (2013–15)

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

Transaction reviews

42 In 2015, we initiated 67 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.

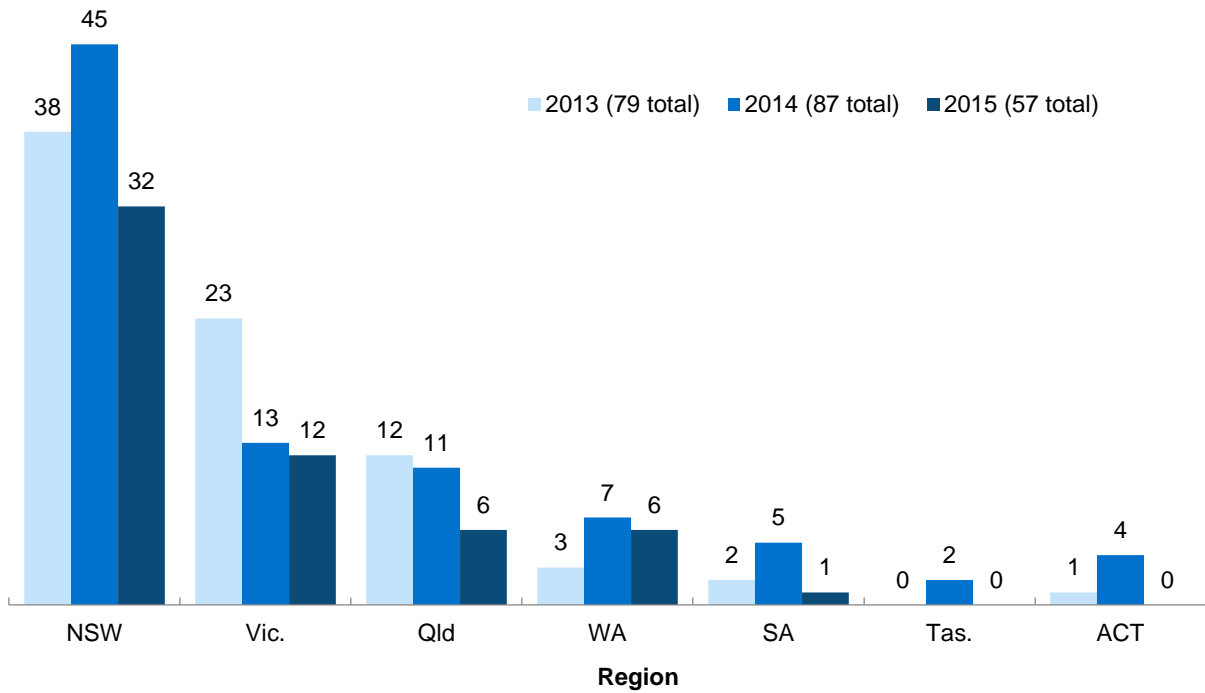
43 When undertaking a transaction review, we examine the whole of the transaction in question to ensure the registered liquidator has adequately and properly performed their duties and functions—complying with the Corporations Act and the Corporations Regulations, and the professional standards relevant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

Table 6: Transaction reviews (2013–15)

Review status	2013	2014	2015
Reviews open at 1 January	25	31	19
Reviews commenced during the year	85	75	67
Reviews finalised during the year	(79)	(87)	(57)
Reviews open at 31 December	31	19	29

44 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 (2013–15)



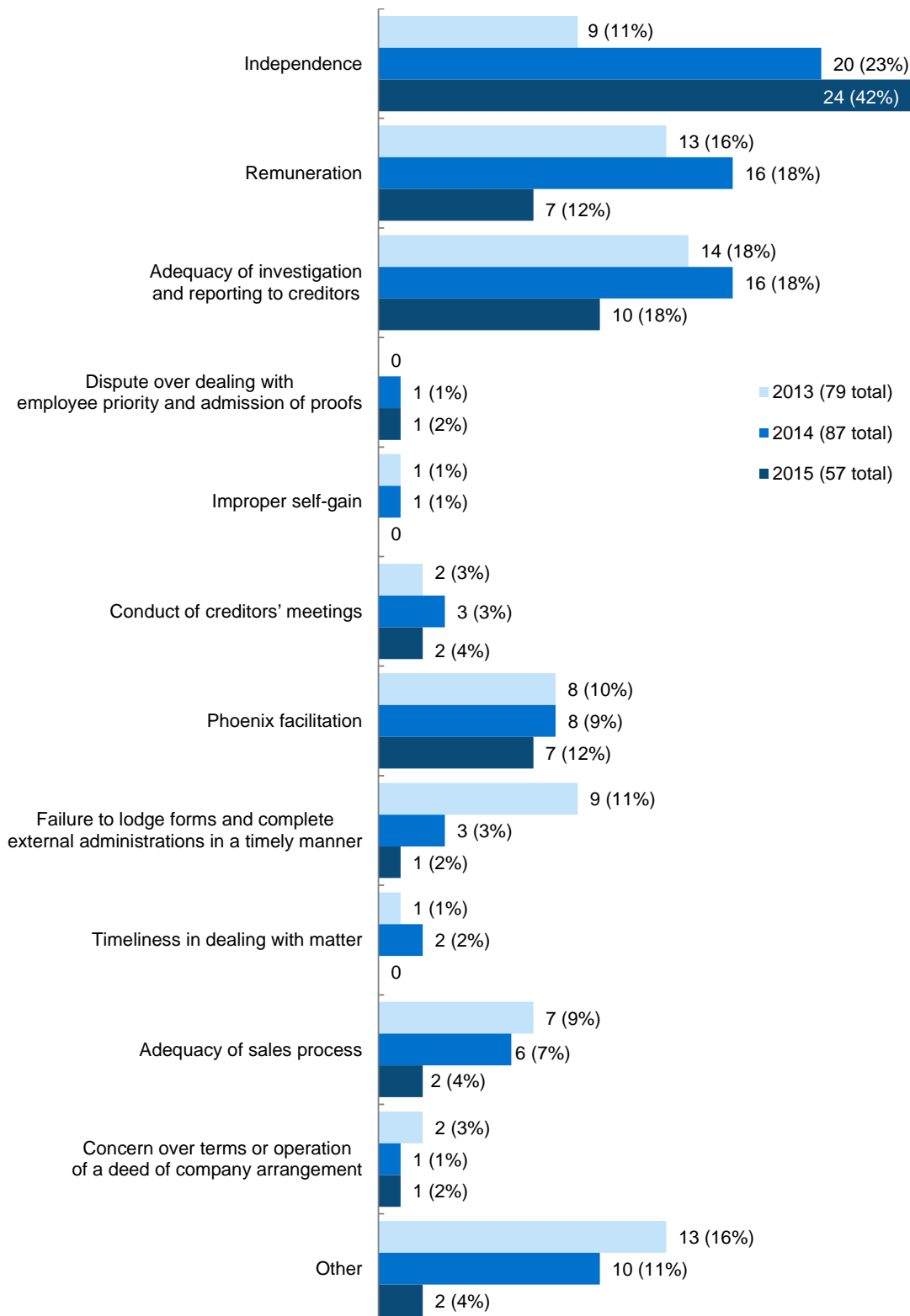
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Figure 6 summarises the nature of the concerns identified in the 57 transaction reviews finalised in the reporting period and Figure 7 summarises the outcomes of those reviews.

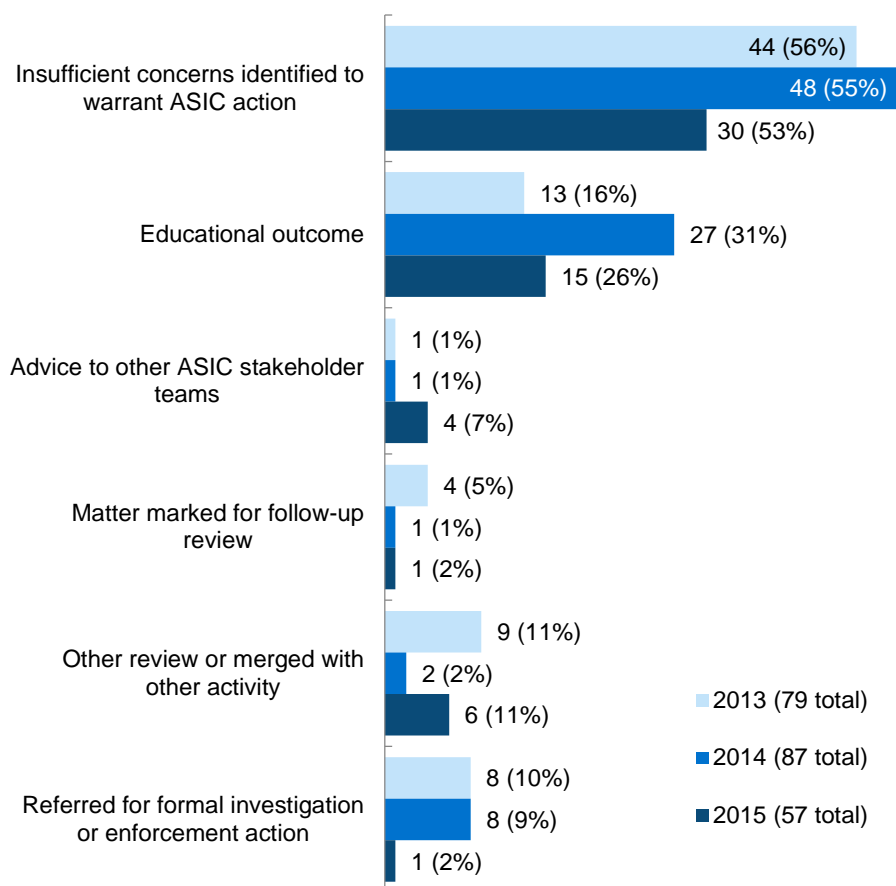
Note 1: See Table 19 in Appendix 3 for the complete data used in this figure (accessible version).

Note 2: The area of concern identified is only the primary concern. Our review may include multiple areas of concern.

Figure 6: Areas of concern in finalised transaction reviews (2013–15)



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

Figure 7: Outcomes of finalised transaction reviews (2013–15)

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

- 46 In early 2014, we made a strategic decision to suspend our declarations of relevant relationships and indemnities (DIRRI) project and focus our resources on current enforcement matters and the PNW project.
- 47 In 2015, we reviewed 31 (23 in 2014) declarations as part of our other project work. Of those declarations, 17 (55%) were adequate and 14 (45%) were inadequate.
- 48 We continue to monitor declarations because independence is a key concern for ASIC.

Remuneration

- 49 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.

50 In 2015, we reviewed 21 remuneration reports as part of our other project work. Of those remuneration reports, 15 (71%) were adequate and six (29%) were inadequate.

Annual returns—Form 908

51 In 2015, we reviewed 712 annual returns lodged with ASIC by registered liquidators, using [Form 908](#) *Annual statement by a liquidator*. Of those, we identified no issues of concern in 471 (66%) of annual returns.

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

Sufficient capacity

53 During 2015, 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

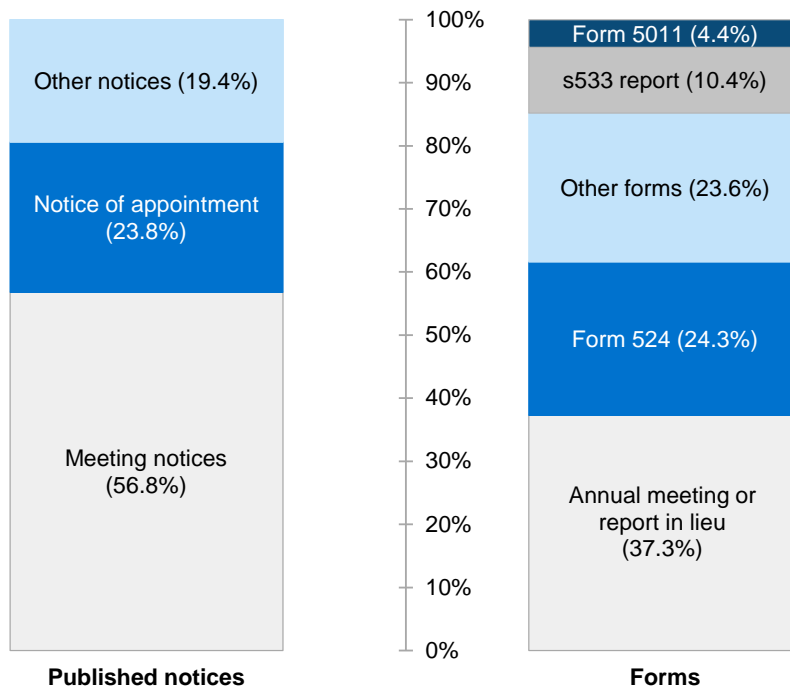
54 Part of our review included contacting inactive registered liquidators. We understand that our contact acted as a catalyst to 16 registered liquidators voluntarily seeking cancellation of their registration.

PNW project

55 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*).

56 At 31 December 2015, since the project commenced, we had completed reviewing the current external administrations of 456 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 2015

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

- 57 We contact registered liquidators directly where we identify non-compliance and seek that they remedy the non-compliance where possible, including by lodging outstanding forms, reporting to creditors, publishing notices and the payment of fees generated by subsequent lodgement.
- 58 Identifying non-compliance provides registered liquidators with the opportunity to address any systemic deficiencies and/or train staff.
- 59 Where we identify systemic non-compliance, we consider whether or not disciplinary action is warranted.
- 60 During 2015, we successfully negotiated with:
- (a) three registered liquidators to voluntarily cancel their registration (see Table 7); and
 - (b) four 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 2015

Registered liquidator	Firm	Media release
Christopher Fawcett	Sole practitioner	Media Release (15-224MR) ASIC cancels registration of liquidators (24 August 2015)
Christopher McCroary	Sole practitioner	15-224MR
Brendan Marchesi	Bent Cogle	Media Release (15-389MR) ASIC accepts voluntary undertakings from three Victorian liquidators (16 December 2015)
Keith Sutherland	Bent Cogle	15-389MR
Hamish MacKinnon	Bent Cogle	15-389MR

- 61 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 2016).
- 62 A New South Wales-based registered liquidator agreed to engage an independent registered liquidator to undertake a 'quality control peer review program', and for the reviewer to report back to ASIC. We expect to issue a media release in the first half of 2016 after the completion of the quality review program.

B Guidance, education and policy advice

Key points

During the reporting period, we:

- reviewed and updated our guidance (see paragraphs 63–67);
- provided education to the industry (see paragraphs 68–71);
- engaged with industry and stakeholders (see paragraphs 72–80); and
- provided policy advice (see paragraphs 81–90).

Guidance

Regulatory guides

- 63 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.
- 64 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.
- 65 On 27 May 2015, we reissued [Regulatory Guide 174](#) *Externally administered companies: Financial reporting and AGMs* (RG 174), which provides revised guidance on financial reporting relief to externally administered companies and to registered managed investment schemes being wound up. We consulted on our revision of RG 174 in [Consultation Paper 223](#) *Relief for externally administered companies and registered schemes being wound up—RG 174 update* (CP 223).

Information sheets

- 66 In the first half of 2016, we expect to reissue [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.
- 67 We expect our further guidance on how and when to lodge forms will help address the concerns identified in our PNW project: see paragraphs 55–62.

Education

- 68 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.
- 69 We also educate the market by writing articles for industry publications. During 2015, we authored the following three articles, which appeared in the *Australian Insolvency Journal*—the quarterly journal of the Australian Restructuring Insolvency & Turnaround Association (ARITA):
- (a) ‘ASIC update: From little things, big things grow—lodging and publishing’ (vol. 27, issue 1);
 - (b) ‘ASIC update: RATA project, revised guidance on financial reporting relief’ (vol. 27, issue 2); and
 - (c) ‘ASIC update: Capability and culture’ (vol. 27, issue 3).
- 70 We also co-authored an article entitled, ‘At what cost? ASIC is concerned by the proliferation of pre-insolvency advisers’. The article appeared in the November 2015 edition of *Inpractice*—the monthly journal of CPA Australia.

Broadcast email service

- 71 We maintain a database of contact email addresses for all registered liquidators that allows ASIC to communicate easily with them. We sent 11 separate emails to registered liquidators on various topics of interest throughout the year.

Engaging with industry and stakeholders

- 72 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

- 73 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.
- 74 We held these meetings in March and October 2015.

ARITA, CA ANZ and CPA liaison meetings

- 75 ARITA is the main body representing registered liquidators. The CA ANZ 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

- 76 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.
- 77 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*

- 78 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.
- 79 During 2015, we intervened in the proceedings to support an application to remove Peter Macks as liquidator of the companies Bernsteen Pty Ltd and Newmore Pty Ltd, and to appoint a new liquidator. On 15 April 2015, Justice Kourakis of the Supreme Court of South Australia made those orders. Mr Macks appealed against orders made in the proceedings.
- 80 We did not appear as *amicus curiae* in any proceedings during 2015.

Policy advice

Insolvency law reform

- 81 In 2015, 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 2015 (on 7 November 2014).
- 82 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*.

Industry funding model

- 83 In November 2014, the Financial System Inquiry issued its final report: see Murray Inquiry, [Financial System Inquiry: Final report](#). The report recommended the Government introduce an industry funding model for ASIC and provide ASIC with stronger powers: see Recommendation 29.
- 84 We subsequently participated in Treasury’s round table consultations with industry (Insolvency & Audit) on the government’s proposed industry funding model.

Productivity Commission

- 85 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 to identify options for reducing barriers where appropriate. The Productivity Commission released [Business set-up, transfer and closure: Productivity Commission issues paper](#) on 19 December 2014. We made a public submission, [Productivity Commission review of barriers to business entries and exits in the Australian economy](#) (PDF 314 KB), on 20 February 2015.
- 86 Following the release of [Business set-up, transfer and closure: Productivity Commission draft report](#), we made a second public submission on 8 July 2015: see [Productivity Inquiry into business set up, transfer and closure: ASIC’s supplementary submission](#) (PDF 424 KB).

Senate inquiry into construction industry insolvency

- 87 On 4 December 2014, the Senate referred an inquiry into insolvency in the Australian construction industry to the Senate Economics References Committee, to report by 11 November 2015. On 15 September 2015, the Senate granted an extension to the committee to report by 3 December 2015.

- 88 We made a written submission in April 2015—see [Senate inquiry into insolvency in the construction industry: Submission by the Australian Securities and Investments Commission](#) (PDF 254 KB)—and appeared at the inquiry on 28 September 2015.

Parliamentary Joint Committee—Hearing into impairment of customer loans

- 89 On 4 June 2015, the House of Representatives referred an inquiry into the impairment of customer loans to the Parliamentary Joint Committee on Corporations and Financial Service (PJC), to report by 31 March 2016. This deadline was subsequently extended until 20 May 2016.
- 90 We made a written submission in August 2015—see [PJC inquiry into the impairment of customer loans: ASIC submission](#) (PDF 676 KB)—and appeared before the PJC on 23 November 2015 to give evidence.

C Industry profile

Registered liquidators

91 As at 31 December 2015, there were 710 registered liquidators in Australia (of which 621 were also official liquidators): see Table 8 and Table 9.

Table 8: Number of registered liquidators (2013–15)

Liquidator status	2013	2014	2015
Registered at 1 January	682	689	705
Registered during year	40	32	30
Cancelled during year	(33)	(16)	(25)
Registered at 31 December	689	705	710

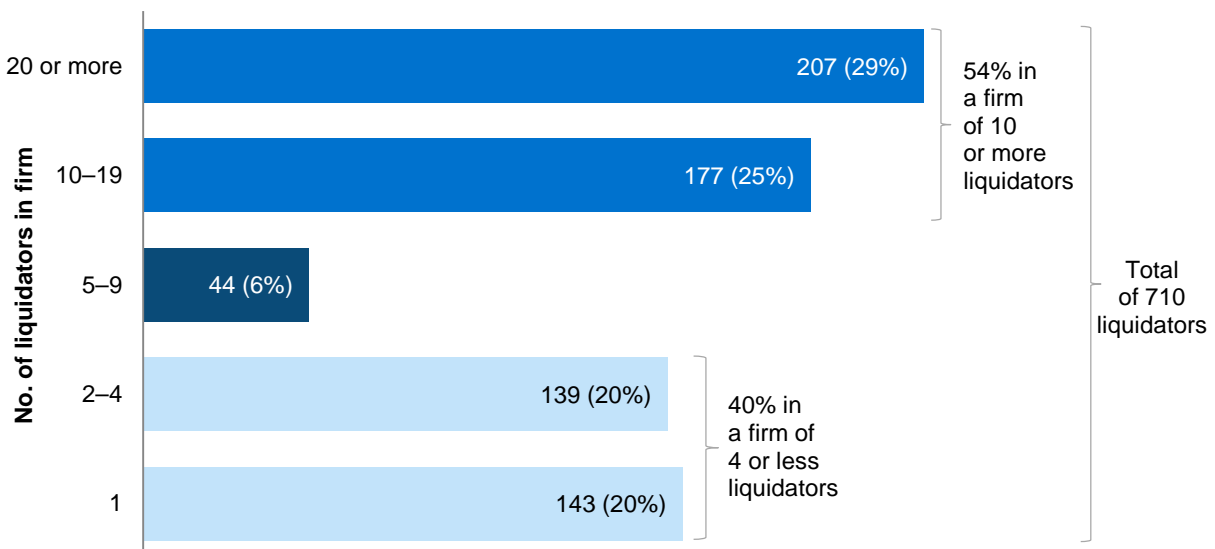
Table 9: Number of official liquidators (2013–15)

Liquidator status	2013	2014	2015
Registered at 1 January	557	583	602
Registered during year	47	31	35
Cancelled during year	(21)	(12)	(16)
Registered at 31 December	583	602	621

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

92 As Figure 9 shows, 54% of registered liquidators operate in a firm of 10 or more practitioners.

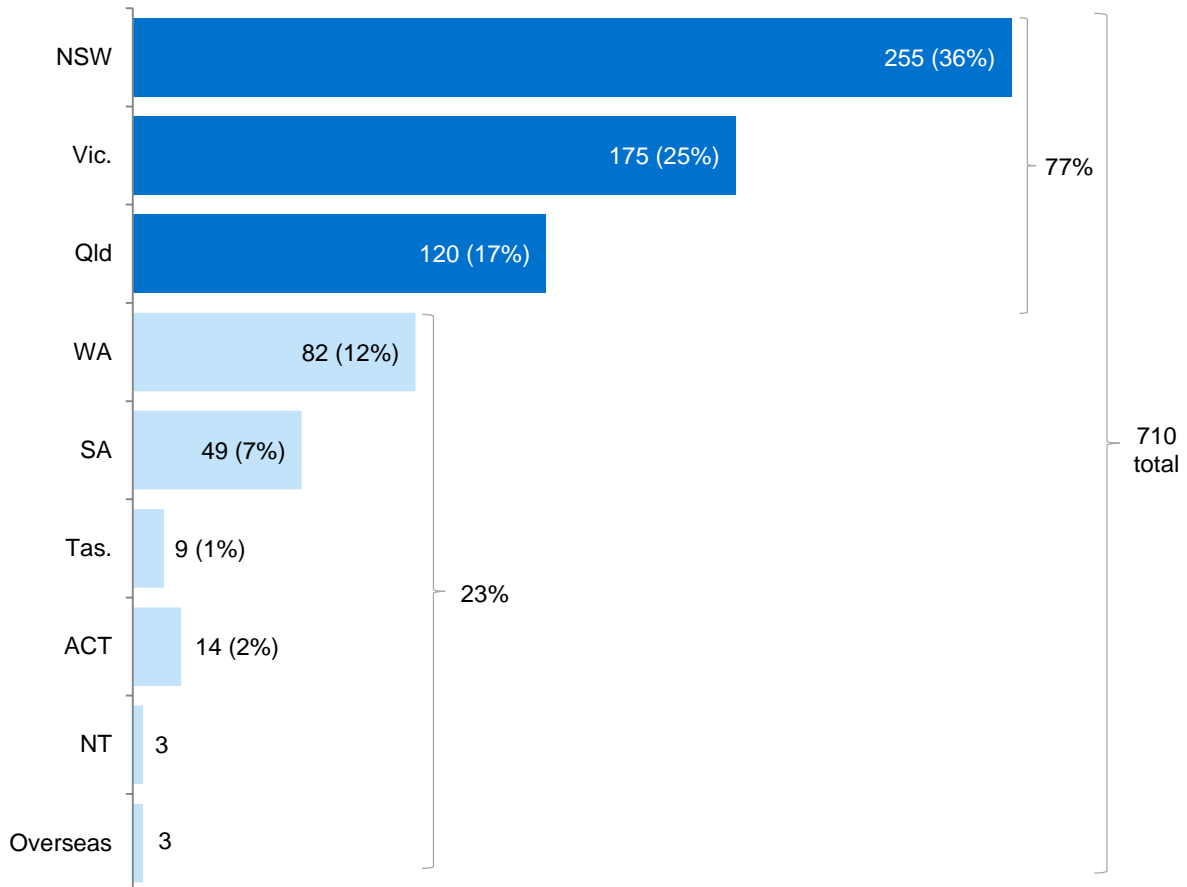
Figure 9: Number of registered liquidators by firm size, as at 31 December 2015



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

93 As Figure 10 shows, 77% 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 2015



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

94 There are 54 female registered liquidators (7.6%) in Australia. They are located in the following states/territory:

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

Registration of liquidators

- 95 Under the Corporations Act, 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).
- 96 We may register a natural person who is a registered liquidator as an official liquidator under s1283 of the Corporations Act.
- 97 As set out in [Regulatory Guide 186](#) *External administration: Liquidator registration* (RG 186), 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.
- 98 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:
- (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.
- 99 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

- 100 Most appointments involve small-to-medium proprietary limited companies. Table 10 summarises key data for the 2014–15 financial year, sourced from [Report 456](#) *Insolvency statistics: External administrators' reports (July 2014 to June 2015)* (REP 456).
- 101 External administrators prepare the reports as a product of their investigations into a company's failure. Besides assisting creditors, the reports allow ASIC to produce a statistical profile on corporate insolvency in Australia.

Table 10: Profile of companies in external administration in 2014–15

Description	Percentage of companies
Less than 20 full-time equivalent employees	79%
Assets of \$100,000 or less	85%
Unsecured creditors owed \$250,000 or less	41%
Asset deficiency of \$500,000 or less	64%
Dividends to unsecured creditors of less than 11 cents in the dollar	97%

Form 5047

- 102 In July 2013, we amended [Form 5047](#) *Copy of deed of company arrangement* to allow ASIC to collect some key information about deeds of company arrangement from registered liquidators. We expect to report publicly on the information collected in 2016.

Form 524

- 103 In July 2014, we introduced a new platform to allow registered liquidators to lodge Form 524 with ASIC in structured data. Structured data (when fully adopted) will allow ASIC to efficiently collect and report on some key information about external administrations.
- 104 Lodgement in the new format is not compulsory. Practitioners lodged approximately 42% of Forms 524 in the new structured data format during December 2015.
- 105 At this point, the adoption rate by registered liquidators of the new format is too low to allow us to report meaningful information to the market. We continue to communicate with registered liquidators to encourage them to use the new format.

Appendix 1: ASIC's work with registered liquidators

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

- pre-insolvency advice (see paragraphs 107–110);
- the liquidator assistance program (see paragraphs 111–113);
- the AA fund (see paragraphs 114–119);
- eligible applications (see paragraphs 120–121);
- court applications (see paragraphs 122–123; and
- winding up companies (see paragraphs 124–127).

Pre-insolvency advice

107 [*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.

108 The pre-insolvency advice market is a growing and largely unregulated, unlicensed market. Not all pre-insolvency advice is bad or improper. However, we are concerned some advisers may aid and abet directors in breaching their duties and promote illegal phoenix activity that will undermine market confidence and reduce the assets that might otherwise be available for creditors in a formal external administration.

109 We have sought to better understand these advisers and the business models they use. We have progressed our understanding through:

- (a) market intelligence from registered liquidators;
- (b) assisting registered liquidators to obtain information and records through the liquidator assistance program;
- (c) assisting registered liquidators' investigations, including through public examinations funded through the AA Fund. This helps the liquidator recover assets for the creditors' benefit and report fully to ASIC and, in turn, helps our investigations and legal action;
- (d) liaison with other regulators, including AFSA, the Department of Employment and the ATO. ASIC participates in the Phoenix Taskforce (created 17 November 2014) and the Serious Financial Crime Taskforce (created 1 July 2015). One of the benefits of the task force is that it facilitates information sharing that assists ASIC to identify phoenix activity; and
- (e) conducting our own investigations into corporate failures where we are aware and concerned about the activities of pre-insolvency advisers.

110 We currently have a number of matters under formal investigation and expect to take action through the court or the CALDB where evidence exists of offences that reflect illegal phoenix activity.

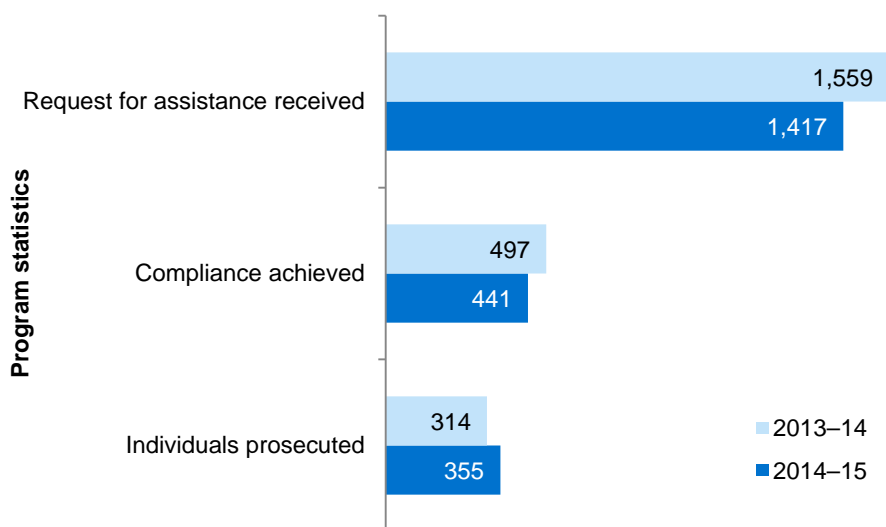
Liquidator assistance program

111 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 aids our supervision of registered liquidators.

112 We received 1,417 requests for help from external administrators in the 2014–15 financial year, compared to 1,559 requests in the 2013–14. Following our intervention, 441 (497 in 2013–14) individuals then complied with their obligations to assist the liquidator.

113 We prosecuted 355 individuals for 680 strict liability offences in the 2014–15 financial year for failing to help, resulting in around \$914,675 in fines and costs. In the previous financial year, we prosecuted 314 individuals for 609 strict liability offences, which resulted in around \$768,000 in fines and costs.

Figure 11: Liquidator assistance program statistics for 2013–14 and 2014–15



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

AA Fund

114 We administer the AA Fund, which the Australian Government established in 2005.

115 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.

116 We reported an amount of \$3.067 million (\$2.132 million in 2013–14) paid from the fund in 2014–15 in ASIC's *Annual report 2014–15* (see Note 16), and provided details of applications received and outcomes achieved on our website at www.asic.gov.au.

117 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)*; and
- (b) another application, using [Form EX03](#) *Assetless administration funding request (matters other than s206F—Director banning)*.

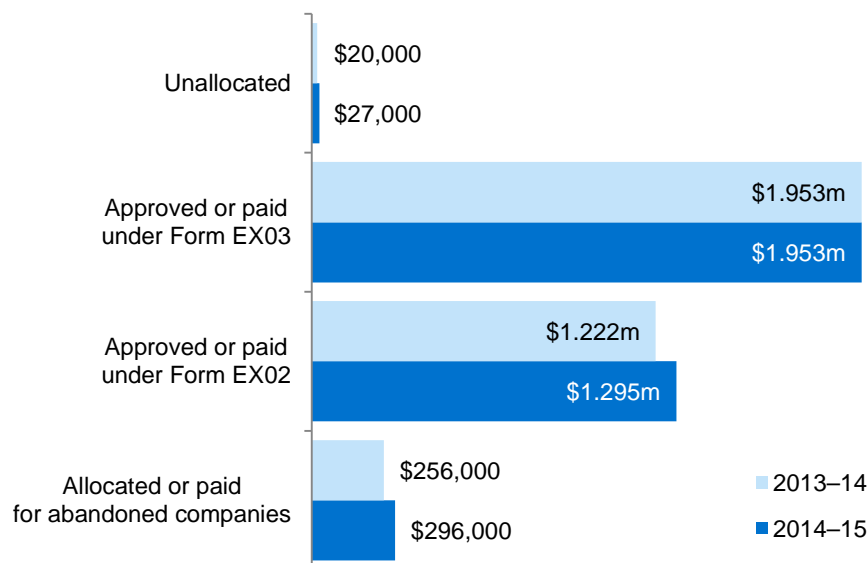
118 Table 11 shows the number of applications received and the outcome of those applications.

Table 11: Applications to the AA Fund in (2014–15)

Application status	Director banning application (Form EX02)	Other application (Form EX03)
Applications received	569	136
Applications approved	194	66
Applications rejected	412	59

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.

119 We continue to investigate the relatively high rejection rate for director banning applications from registered liquidators, with the aim of improving those applications and the fund's operation. We also continue to streamline internal processes to improve the efficiency of processing applications.

Figure 12: Allocation of funding from AA Fund in 2013–14 and 2014–15

Note 1: See Table 26 in Appendix 3 for the complete data used in this figure (accessible version).

Note 2: 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 124–127.

Eligible applicants

- 120 We received nine applications during 2015 from receivers and managers and other parties asking us to authorise the applicants as ‘eligible applicants’.
- 121 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

- 122 The Insolvency Practitioners team assessed 90 court applications in 2015. Most 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 we receive sufficient notice of the application, our Insolvency Practitioners team considers each one.
- 123 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

- 124 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.

- 125 However, some employees that are owed entitlements cannot access FEG because the companies' directors either cannot discharge their duties or have abandoned their insolvent companies without putting them into liquidation.
- 126 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. 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.
- 127 During 2015, we ordered the winding-up of 30 companies, where we identified that there were, in aggregate, 87 employees who were owed an estimated \$1.671 million in unpaid entitlements.

Table 12: Profile of companies wound up by ASIC (2013–15)

Statistics	2013	2014	2015
Companies wound up	6	32	30
Employees affected	71	99	87
Estimated unpaid entitlements	\$0.783m	\$1.4m	\$1.671m

Appendix 2: Regulatory guides and information sheets

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

Table 13: 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 14: Information sheets

No.	Title
INFO 29	<i>External administration: Most commonly lodged forms</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>
INFO 54	<i>Receivership: A guide for creditors</i>
INFO 55	<i>Receivership: A guide for employees</i>

No.	Title
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: Accessible versions of figures

This appendix provides accessible table data for the figures presented in this report.

Table 15: Inquiries and reports of alleged misconduct received, by category (2013–15)

Category	2013	2014	2015
Educational	272 (61%)	246 (64%)	262 (72%)
Procedural	110 (25%)	81 (21%)	47 (13%)
Conduct	64 (14%)	57 (15%)	55 (15%)
Total received	446 (100%)	384 (100%)	364 (100%)

Note: This is the data contained in Figure 1.

Table 16: Outcomes of inquiries and reports of alleged misconduct (2013–15)

Outcome of inquiry or report of alleged misconduct	2013	2014	2015
ASIC provided assistance to resolve the inquiry	78 (20%)	43 (12%)	47 (13%)
Insufficient evidence identified to support the alleged breach 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.	144 (37%)	135 (38%)	143 (41%)
No breach of the Corporations Act identified	36 (9%)	29 (8%)	23 (7%)
Referred to a specialist team with ASIC for further review Note: Of the 36 matters received by the Misconduct and Breach Reporting team in 2015, all 36 were referred to the Insolvency Practitioners team.	49 (13%)	42 (12%)	36 (10%)
Referred for formal investigation	2 (1%)	5 (1%)	1 (<1%)
Referred to assist existing investigation or other surveillance	12 (3%)	22 (6%)	35 (10%)
Action otherwise precluded 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.	64 (17%)	77 (22%)	64 (18%)
Total processed	385 (100%)	353 (100%)	349 (100%)

Note: This is the data contained in Figure 2.

Table 17: Outcomes of formal investigations and enforcement actions (2013–15)

Outcome of formal investigation or enforcement action	2013	2014	2015
Closed due to insufficient evidence of an offence	5 (29%)	3 (27%)	1 (13%)
Court application for an inquiry under s536 and/or s423	0	0	2 (25%)
Cancellation of registration under s1290A or s1291	3 (18%)	0	0
Negotiated resolution	3 (18%)	5 (45%)	0

Outcome of formal investigation or enforcement action	2013	2014	2015
Enforceable undertaking	1 (6%)	2 (9%)	4 (50%)
CALDB application	5 (29%)	2 (18%)	1 (13%)
Total number of investigations or actions	17 (100%)	11 (100%)	8 (100%)

Note: This is the data contained in Figure 3.

Table 18: Outcomes of finalised proactive practice reviews (2013–15)

Outcome	2013	2014	2015
Positive outcomes	7 (50%)	1 (17%)	2 (33%)
Referred for formal investigation or enforcement action	5 (36%)	4 (67%)	4 (67%)
Other	2 (14%)	1 (17%)	0
Total finalised reviews	14 (100%)	6 (100%)	6 (100%)

Note: This is the data contained in Figure 4.

Table 19: Finalised transaction reviews by region (2013–15)

Region	2013	2014	2015
New South Wales	38	45	32
Victoria	23	13	12
Queensland	12	11	6
Western Australia	3	7	6
South Australia	2	5	1
Tasmania	0	2	0
Australian Capital Territory	1	4	0
Total finalised reviews	79	87	57

Note: This is the data contained in Figure 5.

Table 20: Areas of concern in finalised transaction reviews (2013–15)

Area of concern in finalised transaction review	2013	2014	2015
Independence	9 (11%)	20 (23%)	24 (42%)
Remuneration	13 (16%)	16 (18%)	7 (12%)
Adequacy of investigation and reporting to creditors	14 (18%)	16 (18%)	10 (18%)
Dispute over dealing with employee priority and admission of proofs	0	1	1 (2%)
Improper self-gain	1 (1%)	1	0
Conduct of creditors' meetings	2 (3%)	3 (3%)	2 (4%)

Area of concern in finalised transaction review	2013	2014	2015
Phoenix facilitation	8 (10%)	8 (9%)	7 (12%)
Failure to lodge forms and complete external administrations in a timely manner	9 (11%)	3 (3%)	1 (2%)
Timeliness in dealing with matter	1 (1%)	2 (2%)	0
Adequacy of sales process	7 (9%)	6 (7%)	2 (4%)
Concern over terms or operation of a deed of company arrangement	2 (3%)	1 (1%)	1 (1%)
Other	13 (16%)	10 (11%)	2 (4%)
Total finalised reviews	79 (100%)	87 (100%)	57 (100%)

Note: This is the data contained in Figure 6.

Table 21: Outcomes of finalised transaction reviews (2013–15)

Outcome of finalised transaction review	2013	2014	2015
Insufficient concerns identified to warrant ASIC action	44 (56%)	48 (55%)	30 (53%)
Educational outcome	13 (16%)	27 (31%)	15 (26%)
Advice to other ASIC stakeholder teams	1 (1%)	1 (1%)	4 (7%)
Matter marked for follow-up review	4 (5%)	1 (1%)	1 (1%)
Other review or merged with other activity	9 (11%)	2 (2%)	6 (11%)
Referred for formal investigation or enforcement action	8 (10%)	8 (9%)	1 (2%)
Total finalised reviews	79 (100%)	87 (100%)	57 (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 2015

Published notices	Forms
Meeting notices (57%)	Annual meeting or report in lieu (37.3%)
Notice of appointment (24%)	Form 524 (24.3%)
Other notices (19%)	s533 report (10.4%)
	Form 5011 (4.4%)
	Other forms (23.6%)

Note: This is the data contained in Figure 8.

Table 23: Number of registered liquidators by firm size, as at 31 December 2015

Number of liquidators in firm	Liquidators	Percentage of total
1	143	20%
2–4	139	20%
5–9	44	6%
10–19	177	25%
20 or more	207	29%

Note 1: 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 2015

Region	Liquidators	Percentage of total
New South Wales	255	36%
Victoria	175	25%
Queensland	120	17%
Western Australia	82	12%
South Australia	49	7%
Tasmania	9	1%
Australian Capital Territory	14	2%
Northern Territory	3	Less than 1%
Overseas	3	Less than 1%

Note 1: There were 710 liquidators in total.

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

Table 25: Liquidator assistance program statistics for 2013–14 and 2014–15

Program statistic	2013–14	2014–15
Requests for assistance received	1,559	1,417
Compliance achieved	497	441
Individuals prosecuted	314	355

Note: This is the data contained in Figure 11.

Table 26: Allocation of AA Fund funding in 2013–14 and 2014–15

Category	2013–14	2014–15
Unallocated	\$20,000	\$27,000
Approved or paid under Form EX02	\$1.953m	\$1.953m
Approved or paid under Form EX03	\$1.222m	\$1.295m
Allocated or paid for abandoned companies	\$256,000	\$296,000

Note: This is the data contained in Figure 12.

Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
AA Fund	Assetless Administration Fund
<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
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
declaration of indemnities	Has the meaning given in s9 of the Corporations Act
declaration of relevant relationships	Has the meaning given in s60 of the Corporations Act
deed administrator	An administrator of a deed of company arrangement
enforceable undertaking	Undertakings under s93AA of the ASIC Act
enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to the CALDB), or where the parties reach a negotiated outcome (e.g. where ASIC accepts an enforceable undertaking under s93AA of the ASIC Act)
external administration	The corporate insolvency that the external administrator has been appointed to administer
external administrator	A liquidator, receiver, voluntary administrator or deed administrator
formal investigation	A formal investigation under s13(3) of the ASIC Act

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 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)
reporting period	1 January to 31 December 2015
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)

Term	Meaning in this document
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 1 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

Cases

ASIC v Planet Platinum & Anor [2016] VSC 120

Reports

[Annual report 2014–15](#)

[REP 456](#) *Insolvency statistics: External administrators' reports (July 2014 to June 2015)*

See also p. 2 of this report

Submissions to government

[Productivity Commission review of barriers to business entries and exits in the Australian economy](#) (PDF 314 KB)

[Productivity Inquiry into business set up, transfer and closure: ASIC's supplementary submission](#) (PDF 424 KB)

[Senate inquiry into insolvency in the construction industry: Submission by the Australian Securities and Investments Commission](#) (PDF 254 KB)

[PJC inquiry into the impairment of customer loans: ASIC submission](#) (PDF 676 KB)

Consultation paper

[CP 223](#) *Relief for externally administered companies and registered schemes being wound up—RG 174 update*

Media releases

[15-030MR](#) *ASIC accepts enforceable undertaking from Victorian liquidator*

[15-079MR](#) *ASIC accepts EU from Western Australian liquidator*

[15-111MR](#) *ASIC intervenes in proceedings against South Australian liquidator*

[15-159MR](#) *CALDB admonishes Queensland liquidator*

[15-224MR](#) *ASIC cancels registration of liquidators*

[15-232MR](#) *ASIC cancels South Australian liquidator's registration*

[15-369MR](#) *ASIC accepts EU from South Australian liquidator*

[15-389MR](#) *ASIC accepts voluntary undertakings from three Victorian liquidators*

[15-394MR](#) *ASIC acts against Melbourne liquidator*

[15-396MR](#) *EU for NSW liquidator after failure to discharge duties*

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 1 of this report.

Articles

ASIC, 'ASIC Update: From little things, big things grow—lodging and publishing', *Australian Insolvency Journal*

ASIC, 'ASIC Update: RATA project, revised guidance on financial reporting relief', *Australian Insolvency Journal*

ASIC, 'ASIC Update: Capability and culture', *Australian Insolvency Journal*

ASIC/CPA, 'At what cost? ASIC is concerned by the proliferation of pre-insolvency advisers', *Inpractice*, CPA Australia

Non-ASIC documents

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

Productivity Commission, [*Business set-up, transfer and closure: Productivity Commission draft report*](#)

Productivity Commission, [*Business set-up, transfer and closure: Productivity Commission issues paper*](#)