



ASIC

Australian Securities &
Investments Commission

REPORT 756

Review of small business restructuring process

January 2023

About this report

This report outlines the findings from our review of small business restructuring practitioner appointments from 1 January 2021 to 30 June 2022. It also sets out our observations on ASIC form lodgements by restructuring practitioners.

This report will be of interest to registered liquidators, industry bodies, academics and policy makers.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

| | |
|---|-----------|
| Executive summary | 4 |
| Summary of key findings | 5 |
| A Restructuring practitioner appointments | 7 |
| By state/territory | 7 |
| By industry | 8 |
| Restructuring practitioners appointed | 8 |
| Outcome of restructuring practitioner appointments | 9 |
| B Restructuring plan analysis | 14 |
| Creditors | 14 |
| Plan contributions | 17 |
| Age of ongoing plans | 18 |
| Remuneration | 19 |
| Dividends | 23 |
| Dividends to remuneration | 25 |
| C Observations on ASIC lodgements by registered liquidators .. | 26 |
| Observations on ASIC lodgements | 26 |
| Information on ASIC lodgements | 27 |
| Appendix: Accessible versions of figures | 28 |
| Key terms | 35 |
| Related information | 37 |

Executive summary

- 1 In 2020, the Australian Government introduced legislation which changed Australia's insolvency framework for small businesses from 1 January 2021. These changes included a new simplified debt restructuring process for eligible small businesses and a new type of registered liquidator. Importantly, the new small business restructuring process was the first type of formal insolvency appointment which left the control of the insolvent company in the hands of the directors—not the appointed registered liquidator.
- 2 Small business restructurings occur in two phases:
 - (a) appointing a registered liquidator as the restructuring practitioner for a company:
 - (i) directors of a company appoint a restructuring practitioner if the company meets the eligibility criteria and the directors resolve that the company is insolvent or likely to be insolvent and that a restructuring practitioner should be appointed; and
 - (ii) a restructuring proposal period of 20 business days commences where the company proposes a restructuring plan; and
 - (b) entering into a restructuring plan (if one is approved by creditors).
- 3 This report outlines the findings from our review of:
 - (a) the ASIC company register and forms lodged with ASIC for all 82 small business restructuring practitioner appointments from 1 January 2021 to 30 June 2022 (review period); and
 - (b) the outcomes of those 82 appointments based on forms lodged with ASIC up to and including 30 September 2022.
- 4 We noted in our submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Corporate Insolvency in Australia (PJC Inquiry):

Anecdotal evidence obtained from ASIC's stakeholder engagement activities indicates the initial slow uptake may be because:

 - the eligibility threshold of \$1 million owing to creditors is too low;
 - the requirement to comply with taxation law lodgement requirements prevents companies that might otherwise be candidates for restructuring and return to viability, or suitable for the simplified liquidation process, from accessing these processes (ASIC notes the previous government enacted amendments to the regime following its commencement so that only substantial compliance with taxation obligations is required);

- the processes are too complex and do not provide a simple, reduced cost process;
- there are concerns that the appointment of a restructuring practitioner may void a company's existing business insurances and the automatic insurance cover maintained by the registered liquidator does not apply as the directors remain in control of the company;
- in some states, appointing a restructuring practitioner to a company may void licences required to operate a business, e.g. a builder's licence.

- 5 In this report, we set out general statistics on restructuring practitioner appointments, analyse the restructuring plans accepted by creditors and provide our observations on ASIC form lodgements by restructuring practitioners.
- 6 Data presented in this report about the number of restructuring plans accepted by creditors will not reconcile with ASIC published statistics or our submission to the PJC Inquiry. This is because we have analysed forms lodged with ASIC up to and including 30 September 2022 to determine the outcome of all appointments of a restructuring practitioner to a company made up to and including 30 June 2022, even though the outcome of the appointment was not determined until after that time (e.g. affected creditors accepted a restructuring plan between 1 July 2022 and 30 September 2022 in relation to the appointment of a restructuring practitioner to the company made up to 30 June 2022).

Summary of key findings

- 7 There were 82 restructuring practitioner appointments during the review period. From those appointments, 78 proposals were sent to affected creditors of which 72 transitioned to restructuring plans. The 10 remaining appointments were either terminated on the basis the company was not eligible, creditors rejected the proposed plan or the directors ended the restructuring appointment.
- 8 All registered liquidators appointed as restructuring practitioners during the review period were those registered to practise as external administrators of companies (including as restructuring practitioners), receivers and receivers and managers. To date, one person has been registered as a registered liquidator to practise only as a restructuring practitioner for a company or for a restructuring plan.
- 9 Based on information reviewed to 30 September 2022 we identified that:
- (a) creditors approved the majority (72) of the 78 proposed restructuring plans sent to affected creditors (92%);

- (b) where a restructuring plan was accepted, 47 plans were effectuated (65%), one plan was terminated (2%) and 24 plans were ongoing at 30 September 2022 (33%);
- (c) the majority of companies where a restructuring plan was effectuated or was ongoing appear to be continuing to operate their business (66%);
and
- (d) the Australian Taxation Office (ATO) was a creditor in 89% of companies which entered a restructuring plan and was a major creditor in 79% of those companies.

A Restructuring practitioner appointments

Key points

The main states where restructuring practitioner appointments were made during the review period were New South Wales (44%), followed by Victoria (34%) and Queensland (12%).

The main industry groups for restructuring practitioner appointments were accommodation and food services (21%), construction (20%) and retail trade (16%).

All registered liquidators appointed as restructuring practitioners during the review period were those registered to practise as external administrators of companies. Since 1 January 2021, only one person was registered as a liquidator to practise only as a restructuring practitioner.

Most restructuring plans proposed were accepted by affected creditors (92%).

The majority of restructuring plans (65%) commenced during FY2020–21 and FY2021–22 were effectuated as at 30 September 2022.

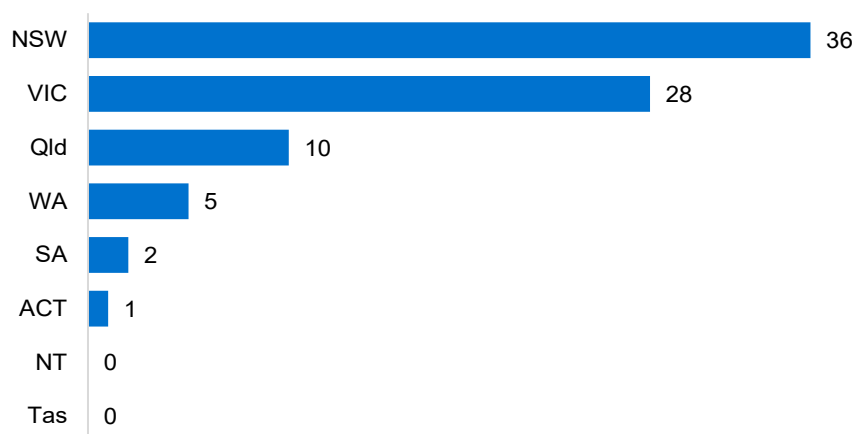
Where a restructuring plan was effectuated or was ongoing in FY2020–21 or FY2021–22, we determined a business was ongoing in the majority of those companies (66%).

- 10 The following sections include our analysis of the basic demographics of the affected small businesses, the profile of appointments by registered liquidator and the outcome of restructuring practitioner appointments for the review period.

By state/territory

- 11 The main states where small businesses accessed restructuring during the review period were New South Wales (44%), Victoria (34%) and Queensland (12%). This corresponds with the main regions of external administration and controller appointments during FY2021–22. The number of restructuring practitioner appointments by state/territory is shown in Figure 1.

Figure 1: Number of restructuring practitioner appointments by state/territory (for review period)



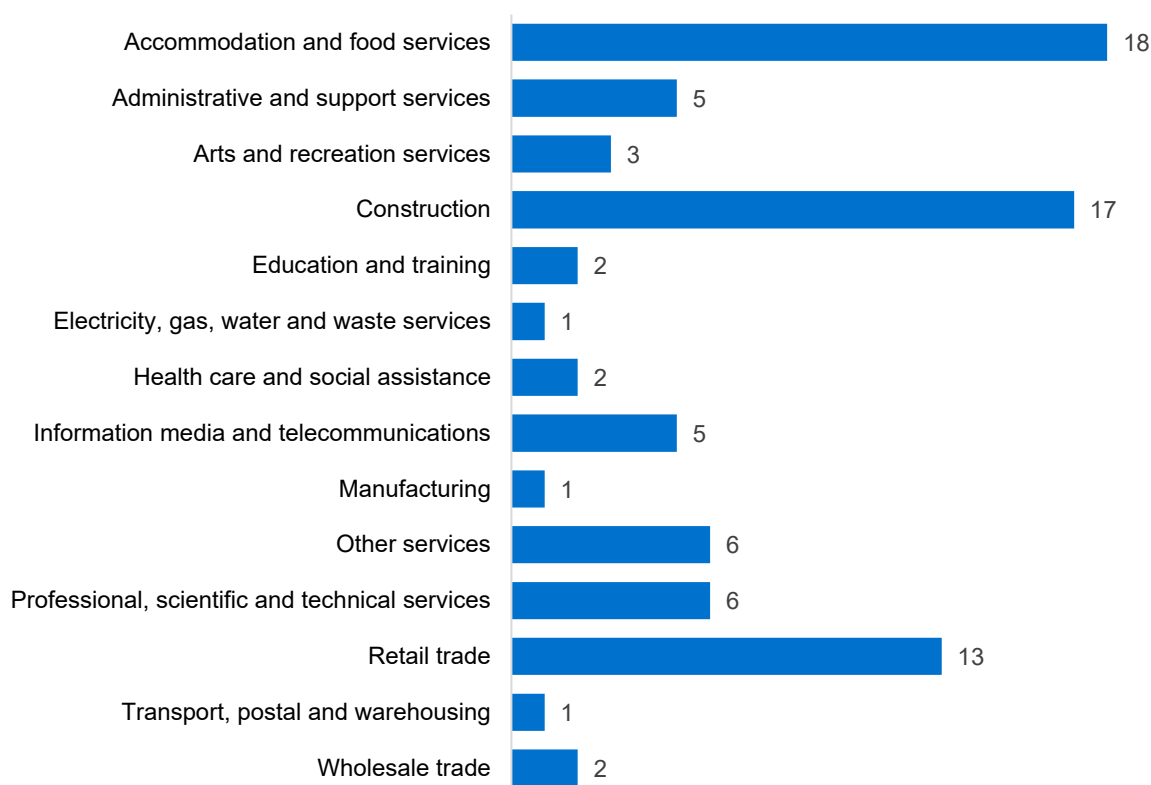
Source: [ASIC Series 1](#) published insolvency statistics data for restructuring practitioner appointments for the period 1 January 2021 to 30 June 2022.

Note: See Table 11 for an accessible version of this figure.

By industry

12 The main industry groups that accessed restructuring during the review period were accommodation and food services (21%), construction (20%) and retail trade (16%). During FY2021–22, external administration and controller appointments were primarily in construction (26%), accommodation and food services (15%) and other services (14%): see [ASIC Series 1A](#) published insolvency statistics data. Figure 2 shows restructuring practitioner appointments by industry.

Figure 2: Number of restructuring practitioner appointments by industry (for review period)



Source: [ASIC Series 1A](#) published insolvency statistics data for restructuring practitioner appointments for the period 1 January 2021 to 30 June 2022.

Note: See Table 12 for an accessible version of this figure.

Restructuring practitioners appointed

13 Since the commencement of the small business restructuring process on 1 January 2021, there has been one person registered as a liquidator to practise only as a restructuring practitioner for a company or for a restructuring plan. While there were six other applicants, the committees convened by ASIC for the purpose of considering their applications decided they should not be registered.

- 14 All registered liquidators appointed to the 82 restructuring practitioner appointments during the review period were those registered to practise as external administrators of companies (including as restructuring practitioners), receivers and receivers and managers.
- 15 The number of restructuring practitioner appointments per registered liquidator ranged from one to six for the review period as shown in Table 1. As at 30 September 2022, there were 651 registered liquidators and, as at 30 June 2022, 6% had taken appointments as restructuring practitioners. Based on the increasing number of restructuring appointments, we anticipate this proportion will increase for FY2022–23.

Table 1: Number of restructuring practitioner appointments per registered liquidator during the review period

| Restructuring practitioner appointments per RL | Number of RLs |
|--|---------------|
| 1 | 21 |
| 2 | 8 |
| 3 | 6 |
| 4 to 6 | 6 |

Source: [Form 505 Notification of appointment or cessation of an external administrator](#) commenced during the period 1 January 2021 to 30 June 2022.

Outcome of restructuring practitioner appointments

- 16 The main outcome following the appointment of a restructuring practitioner was acceptance by creditors of the proposed restructuring plan (88%) and the majority of restructuring plans proposed were accepted by affected creditors (92%): see Table 2.
- 17 The figures in Table 2 may differ from the PJC Submission, as we analysed the outcomes of all 82 restructuring practitioner appointments that commenced during the review period, while the PJC Submission was based on lodgements for each financial year.

Table 2: Outcome of restructuring practitioner appointments commenced during the review period

| Outcome | FY 21 | FY 22 | Total |
|---|-------|-------|-------|
| Restructuring ended by directors | 1 | 0 | 1 |
| Restructuring ended as company not eligible | 0 | 3 | 3 |

| Outcome | FY 21 | FY 22 | Total |
|---|-----------|-----------|-----------|
| Restructuring plans not accepted by creditors | 1 | 5 | 6 |
| Restructuring plans accepted by creditors | 10 | 62 | 72 |
| Total | 12 | 70 | 82 |

Source: [EX05](#) (Form 5608) *Notice of ending of restructuring* and [Form 505](#) lodged with ASIC for restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

- 18 The median number of days from the appointment of the restructuring practitioner to the commencement of the accepted restructuring plan was 50 days.
- 19 Companies executed the majority of restructuring plan proposals (81%) within the initial proposal period of 20 business days beginning on the day the restructuring began. We identified one restructuring plan that contravened the *Corporations Act 2001* (Corporations Act) as the plan was executed by the company one day outside of the allowable extension of the proposal period: see Table 3. This restructuring plan was subsequently effectuated (i.e. a dividend was paid to creditors).

Table 3: Analysis of restructuring plans and the proposal period

| Restructuring plan | FY 21 | FY 22 | Total |
|---|-----------|-----------|-----------|
| Plans made by the company within initial proposal period | 10 | 53 | 63 |
| Plans made by the company with extension of proposal period | 1 | 12 | 13 |
| Plans made by the company outside of the maximum extension of proposal period | 0 | 1 | 1 |
| Plans made by the company— not lodged with ASIC (via Form 5614) | 0 | 1 | 1 |
| Total | 11 | 67 | 78 |

Source: Analysis of all restructuring practitioner appointments during the review period including lodgement of [Form 505](#) and [EX04](#) (Form 5614) *Copies of restructuring documents given to affected creditors* up to 30 September 2022.

Note: Table 3 excludes four restructurings that were ended by the director or due to ineligibility.

- 20 Of the restructuring practitioner appointments commenced in FY2020–21 and FY2021–22, the majority of accepted restructuring plans were effectuated (65%), one plan was terminated (2%) and 24 plans were ongoing (33%) as at 30 September 2022: see Table 4.
- 21 The median number of days from restructuring plan commencement to effectuation was 20 days with an average number of days of 56.8.
- 22 The figures in Table 4 may differ from the PJC Submission, as we analysed the outcomes of the 78 plans that were proposed from the 82 restructuring practitioner appointments for the review period. The PJC Submission was based on lodgements for each financial year.

Table 4: Outcome of restructuring plans proposed as at 30 September 2022

| Outcome of restructuring plan | FY 21 | FY 22 | Total |
|---|-----------|-----------|-----------|
| Plans effectuated | 5 | 42 | 47 |
| Plans ongoing | 4 | 20 | 24 |
| Plan terminated (external administrator appointed) | 1 | 0 | 1 |
| Plans not accepted by creditors | 1 | 5 | 6 |
| Total | 11 | 67 | 78 |

Source: [Form 505, EX05](#) (Form 5608) and [EX06](#) (Form 5610) *Notice of termination of restructuring plan* lodged with ASIC for restructuring practitioner appointments that commenced during the period 1 January 2021 to 30 June 2022.

- 23 The Australian Government introduced the small business restructuring process to help more small businesses survive—meaning better outcomes for businesses, creditors, employees and the economy.
- 24 To understand its effectiveness so far, we analysed whether there was an ongoing business where a restructuring plan commenced for those companies in the review period. This included reviewing the ASIC company register and publicly available information. Table 5 sets out our analysis of the business continuity of companies with restructuring plans proposed in the review period.

Table 5: Analysis of business continuity for restructuring plans as at 30 September 2022

| Company status | FY 21 | FY 22 | Total |
|---|-----------|-----------|-----------|
| Ongoing business | | | |
| Plans effectuated | 1 | 27 | 28 |
| Plans ongoing | 3 | 16 | 19 |
| Total | 4 | 43 | 47 |
| Business appears ceased or unable to identify ongoing business | | | |
| Plans effectuated (see Note 1) | 4 | 15 | 19 |
| Plans ongoing (see Note 2) | 1 | 4 | 5 |
| Total | 5 | 19 | 24 |
| Other | | | |
| Plan terminated or not accepted by creditors | 2 | 5 | 7 |
| Total | 11 | 67 | 78 |

Source: ASIC company register and general internet searches for plans proposed from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note 1: The 19 plans effectuated includes three plans where the company was deregistered after the plan was effectuated.

Note 2: The five plans ongoing includes two companies where we identified the business appears to have ceased.

25 Where a restructuring plan was effectuated or the plan was ongoing in FY2020–21 or FY2021–22, we determined a business was ongoing in the majority of those companies (66%). This was based on the company still being registered, as well as internet searches showing the business was still operating. For 34% of companies, we identified that the company was deregistered, the business ceased or we were unable to locate any information on the internet to indicate the business was ongoing.

26 We identified three companies which completed the small business restructuring process and were subsequently deregistered by ASIC. Our analysis of these companies shows the following:

- (a) The time between the effectuation of the restructuring plan to lodgement of the voluntary deregistration form (i.e. [Form 6010 Application for voluntary deregistration of a company](#)) with ASIC was

15 days (Company A), 344 days (Company B) and 52 days (Company C).

- (b) The final dividend paid to affected creditors was \$0.15 (Company A), \$0.13026 (Company B) and \$0.0134 (Company C).
- (c) For Company C, the voluntary deregistration form was lodged 52 days before the effectuation of the restructuring plan. This was identified by ASIC and a deregistration deferral applied during the period of the restructuring practitioner's appointment to the plan. Following the effectuation of the plan, the company was deregistered in accordance with the Corporations Act.

B Restructuring plan analysis

Key points

We conducted a review of the data and information on 72 restructuring plans accepted by creditors from 82 restructuring practitioner appointments in the review period.

Our review included categories of information on creditors, plan contributions, practitioners' remuneration and dividends.

We found that:

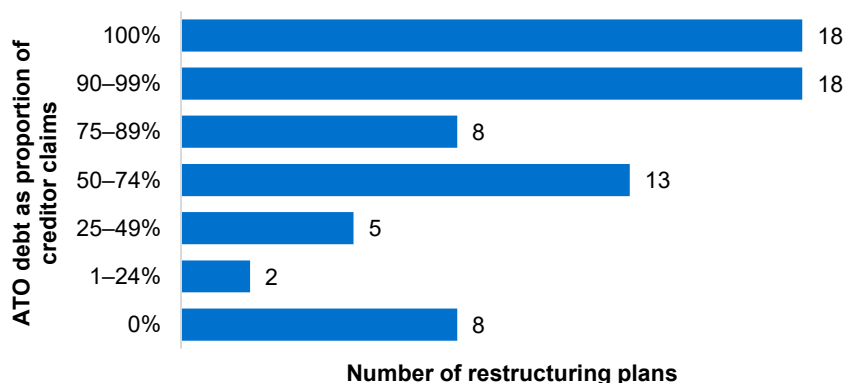
- the ATO was an affected creditor in 89% of the 72 restructuring plans that commenced during the review period;
- in most plans (79%), the ATO's debt represented 50–100% of the total admissible creditor claims;
- the majority of affected creditors were unrelated creditors;
- the majority of restructuring plans (79%) had total estimated admissible creditor claims of between \$53,762 and \$600,000;
- the majority (78%) of restructuring plans had a total of between one and five unrelated affected creditors;
- most of the proposed total contribution amounts (88%) were between \$15,001 and \$200,000;
- the majority (89%) of total plan contributions as a proportion of total estimated admissible creditor claims were between 1% and 50%;
- the main sources of plan contributions were from the director(s) or others (44%) and future trading profits of the company (34%); and
- for the 24 ongoing restructuring plans as at 30 September 2022, the median age of those plans was 116 days.

27 Our observations were drawn from a review of data and information on 72 restructuring plans accepted by creditors from all 82 restructuring practitioner appointments during the review period. Our data and information was from forms lodged with ASIC up to 30 September 2022 and ASIC's company register.

Creditors

28 The ATO was a creditor in 64 out of 72 restructuring plans (89%) that commenced from restructuring practitioner appointments during the review period.

29 In most plans (79%), the ATO's debt represented 50–100% of the total estimated admissible creditor claims as shown in Figure 3.

Figure 3: ATO debt as a proportion of total estimated admissible creditor claims

Source: [EX04](#) (Form 5614) lodgements for 72 restructuring plans accepted from restructuring practitioner appointments that commenced during the period 1 January 2021 to 30 June 2022.

Note 1: Information was also extracted from each [Restructuring Plan—Approved Form](#) (Word 42 KB) that accompanied an [EX04](#) (Form 5614) lodgement. These figures may differ from the data and information provided by practitioners in the [Form 5612](#) for creditor claims.

Note 2: See Table 13 for an accessible version of this figure.

- 30 For a company to be eligible for small business restructuring, the total liabilities on the day the company enters the process must not exceed \$1 million.
- 31 Of the 72 companies which commenced a restructuring plan, the majority (79%) had total estimated admissible creditor claims of between \$53,762 and \$600,000. Table 6 sets out the ranges of admissible creditor claims for each of the 72 restructuring plans during the review period.

Table 6: Total estimated admissible creditor claims (for review period)

| Admissible creditor claims | FY 21 | FY 22 | Total |
|----------------------------|-----------|-----------|-----------|
| \$0–\$200,000 | 2 | 13 | 15 |
| \$200,001–\$400,000 | 3 | 24 | 27 |
| \$400,001–\$600,000 | 2 | 13 | 15 |
| \$600,001–\$800,000 | 2 | 7 | 9 |
| \$800,001–\$1,000,000 | 1 | 5 | 6 |
| Total | 10 | 62 | 72 |

Source: [EX04](#) (Form 5614) lodgements for 72 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note: The information for the total estimated admissible creditor claims was extracted from each [Restructuring Plan—Approved Form](#) that accompanied an EX04 (Form 5614) lodgement. These figures may differ to the data provided by practitioners in the [Form 5612](#) for creditor claims.

- 32 The total estimated admissible creditor claims for each approved restructuring plan ranged from \$53,762 to \$960,448. The median for FY2020–21 and FY2021–22 was \$387,872 and \$355,721 respectively (sourced from unstructured information in EX04 (Form 5614)).
- 33 Of the 72 restructuring plans reviewed, the majority of the companies' affected creditors were unrelated.
- 34 The majority of plans (75%) consisted entirely of unrelated creditors: see Table 7.

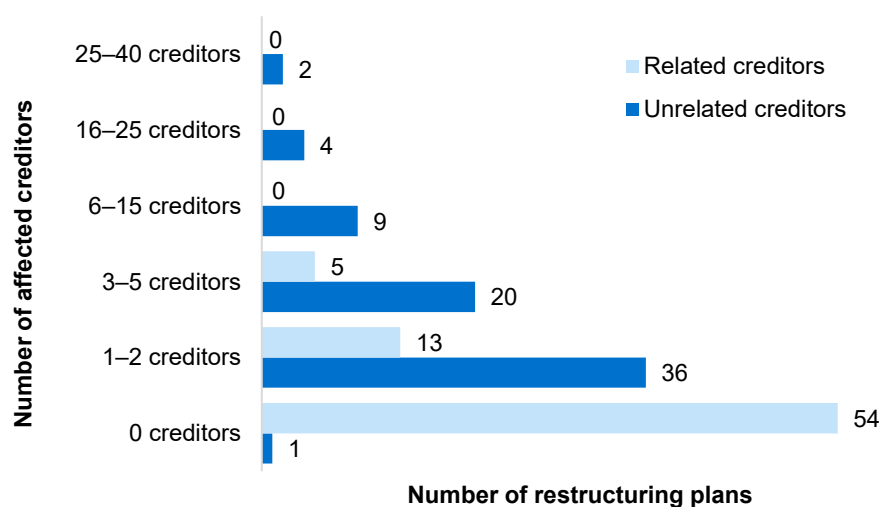
Table 7: Percentage of admissible debts for unrelated creditors compared to total admissible debts (for review period)

| Percentage | No. of plans |
|----------------|--------------|
| 0% | 0 |
| >0% and <50% | 4 |
| >50% and <100% | 14 |
| 100% | 54 |
| Total | 72 |

Source: [Form 5612](#) lodgements for 72 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

- 35 The majority of restructuring plans (78%) had a total of between one and five unrelated affected creditors: see Figure 4.

Figure 4: Number of affected creditors (for review period)



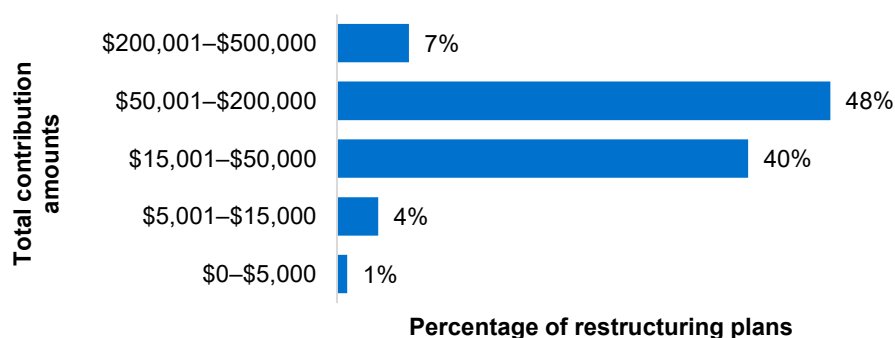
Source: [Form 5612](#) lodgements for 72 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note: See Table 14 for an accessible version of this figure.

Plan contributions

- 36 For plan contributions, we reviewed 71 of the 72 restructuring plans that were accepted, omitting the one plan that was terminated because an external administrator was appointed to the company. The total restructuring plan contributions ranged from \$5,000 to \$500,000. The majority of total plan contribution amounts (88%) ranged from \$15,001 to \$200,000: see Figure 5.
- 37 The median total contribution amount was \$60,000.

Figure 5: Total plan contribution amounts (for review period)



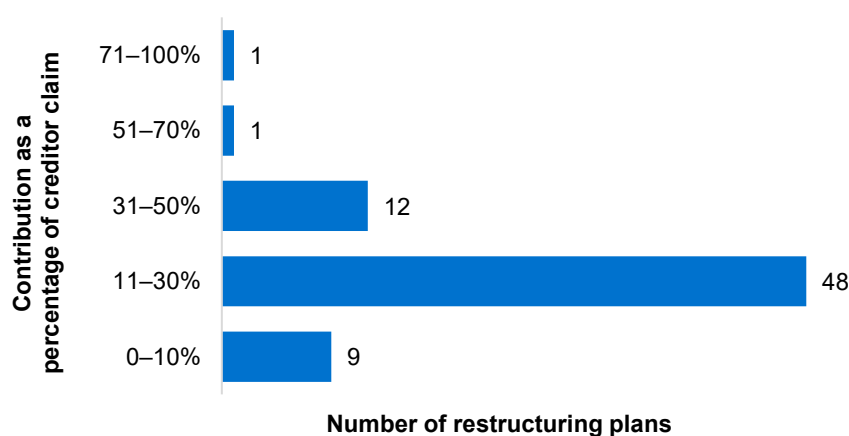
Source: [EX04](#) (Form 5614) lodgements for 71 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note 1: The information was extracted from each [Restructuring Plan—Approved Form](#) that accompanied an [EX04](#) (Form 5614) lodgement.

Note 2: See Table 15 for an accessible version of this figure.

- 38 The total plan contributions as a proportion of total estimated admissible creditor claims ranged from 1% to 76%, with a median of 20%. The majority of total plan contributions as a proportion of total estimated admissible creditor claims (97%) were between 1% and 50%: see Figure 6.

Figure 6: Total plan contributions as a proportion of total estimated admissible creditor claims (for review period)



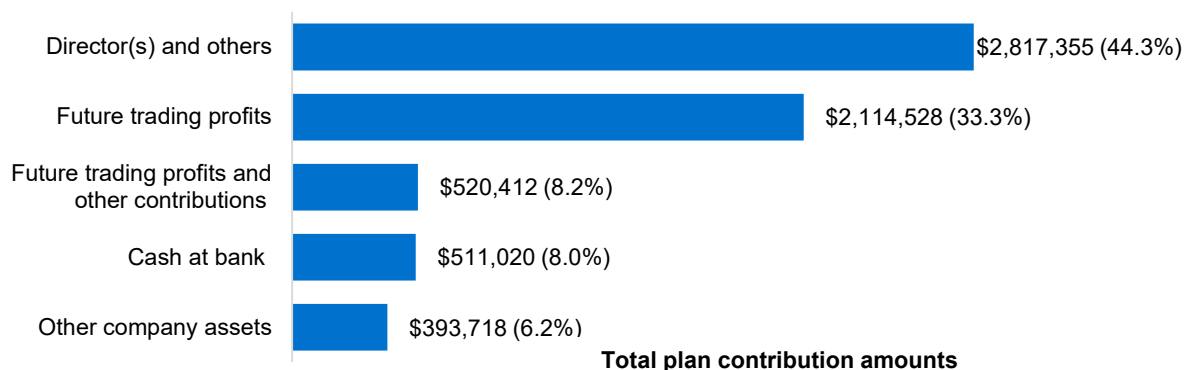
Source: [EX04](#) (Form 5614) lodgements for 71 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note 1: The information was extracted from each [Restructuring Plan—Approved Form](#) that accompanied an [EX04](#) (Form 5614) lodgement.

Note 2: See Table 16 for an accessible version of this figure.

- 39 The main sources of plan contributions were from the director(s) and others (44.3%) and future trading profits of the company (33.3%). See Figure 7.
- 40 The restructuring plans had a duration of ten business days to three years from acceptance of the plan. A restructuring plan must not provide for the company to make payments under the plan, in respect of an admissible claim, after three years beginning on the day the plan is accepted.
- 41 Where a restructuring plan is proposed, there is no statutory requirement to prepare a report to creditors or lodge with ASIC a copy of any reports issued to creditors. Of the limited reports to creditors lodged with ASIC (accompanying Forms 5614), the restructuring plan practitioner provided cash flow projections to support plans where contributions were sourced from long-term trading profits (i.e. 12-month projections).

Figure 7: Sources of plan contributions (for review period)



Source: [EX04](#) (Form 5614) lodgements for 71 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note 1: The information was extracted from each [Restructuring Plan—Approved Form](#) that accompanied an [EX04](#) (Form 5614) lodgement.

Note 2: 'Director(s) and others' includes contributions or loans from directors, shareholders and third parties.

Note 3: 'Future trading profits and other contributions' includes a combination of trading profits and other contributions from directors or externally.

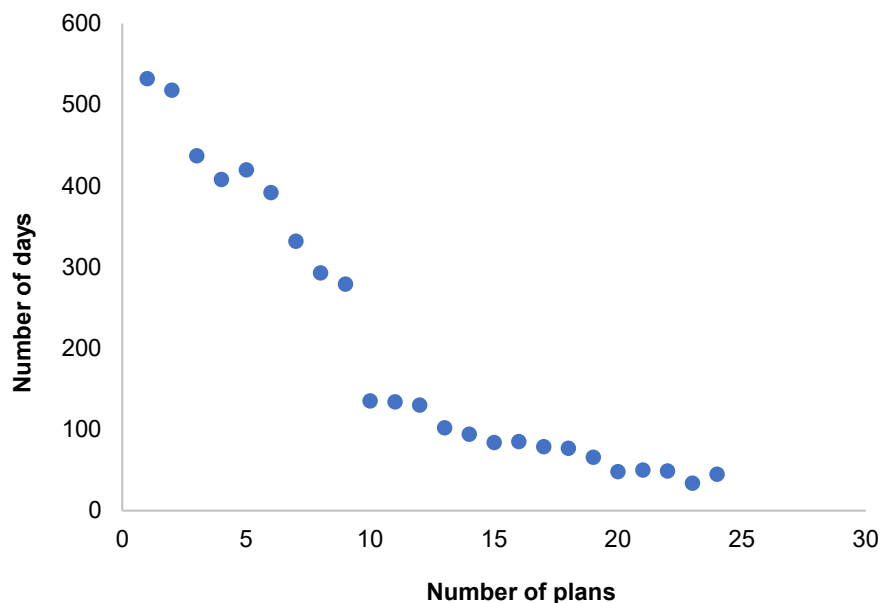
Note 4: 'Other company assets' includes trade debtors, motor vehicles, work in progress and ATO GST refunds.

Note 5: See Table 17 for an accessible version of this figure.

Age of ongoing plans

- 42 For those 24 restructuring plans ongoing as at 30 September 2022, we identified that:
- the oldest plan was 532 days (1.46 years);
 - the median age of those plans was 116 days (0.32 years); and
 - the average age of those plans was 201 days (0.55 years).

Figure 8: Days from plan commencement to 30 September 2022 for 24 ongoing restructuring plans



Source: [Form 505](#) lodgements for 24 of the 72 restructuring plans accepted from restructuring practitioner appointments commenced during the period 1 January 2021 to 30 June 2022.

Note: This graph is explained in paragraph 42 above (accessible version).

Remuneration

- 43 Data on remuneration was obtained from [Form 5602](#) *Annual administration return* and [Form 5603](#) *End of administration return* when lodged. The lodgement period of these forms is within three months of the anniversary year of the appointment and within one month of the end of the administration respectively.

Limitations

- 44 There are five completed restructuring plans where Form 5603 was lodged for both the restructuring and restructuring plan and no remuneration for the restructuring was disclosed. This may be due to misunderstanding, error or omission on the part of the registered liquidator when completing the forms.
- 45 A summary of remuneration for restructuring and restructuring plans reviewed is provided at Table 8.

Table 8: Median remuneration for restructuring and restructuring plan (to 30 September 2022)

| Remuneration | Count | Median |
|---|-------|----------|
| Restructuring practitioner | 81 | \$12,940 |
| Restructuring plan practitioner | 47 | \$4,735 |
| Restructuring process (includes where both the restructure and plan were completed) | 47 | \$22,055 |

Source: [Form 5603](#) and [Form 5602](#).

Note 1: Restructuring practitioner remuneration does not include one matter where the plan was terminated.

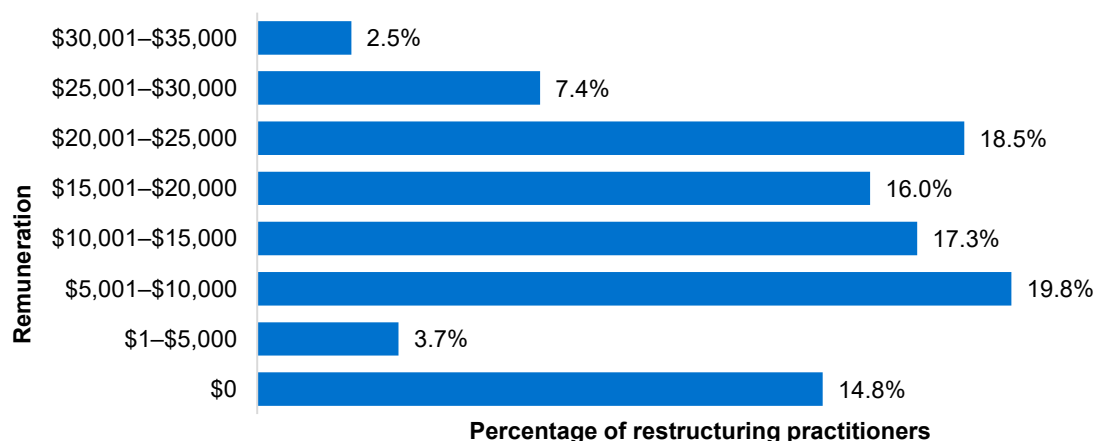
Note 2: The calculation of the median for restructuring practitioner remuneration includes five ongoing matters where no remuneration was disclosed in the Form 5603 for the restructuring practitioner and may be disclosed in the subsequent Form 5603 for the restructuring plan. If these five companies were excluded, the table would show 76 matters with a median remuneration of \$14,805.

Note 3: The restructuring plan practitioner and restructuring process counts of 47 are derived from 82 plans less 10 companies where the company was not eligible, the plan was not accepted or the plan was not made and 24 companies with ongoing plans where no data is available, and excluding one company where the plan was terminated.

Note 4: We identified five companies where the registered liquidator failed to separate the restructuring and plan remuneration. We used the data that was disclosed as it was.

Note 5: It is not accurate to add the median for both appointments and compare the median with the total as the two will not match.

- 46 As set out in Figure 9, almost twenty percent of practitioners (19.8%) were paid remuneration of between \$5,001 and \$10,000 for the restructuring. A similar percentage of practitioners were paid remuneration of \$10,001 to \$15,000 (17.3%) and \$20,001 to \$25,000 (18.5%). The average remuneration paid was \$13,694.
- 47 The Form 5603 lodged for 12 companies disclosed no restructuring practitioner remuneration paid for the restructuring phase. Of these, five matters are ongoing, and an additional three companies did not accept the plan. It is unclear whether this means no remuneration was paid for this period or whether the form was incorrectly completed.

Figure 9: Remuneration for restructuring

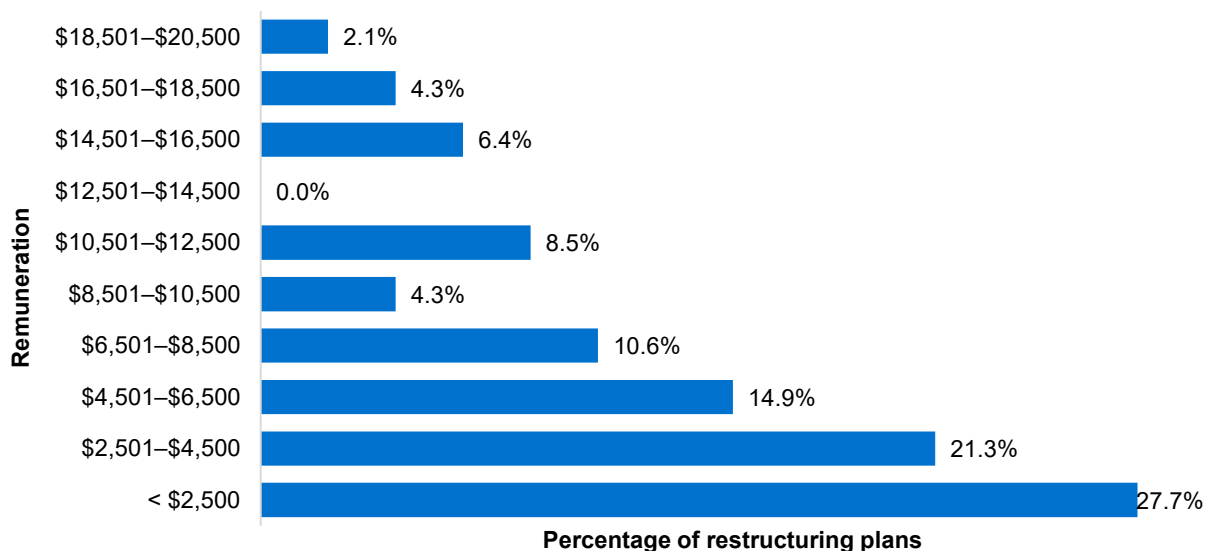
Source: [Form 5603](#) and [Form 5602](#) when lodged.

Note 1: See Table 18 for an accessible version of this figure.

Note 2: Excludes one appointment where the plan was terminated.

48

Just over twenty-one percent of practitioners (21.3%) were paid remuneration of between \$2,501 and \$4,500 for the restructuring plan. The average remuneration charged was \$6,361. Almost twenty-eight percent of restructuring plan practitioners (27.7%) were paid less than \$2,500 for the restructuring plan: see Figure 10.

Figure 10: Remuneration for a restructuring plan

Source: [Form 5603](#) and [Form 5602](#) when lodged.

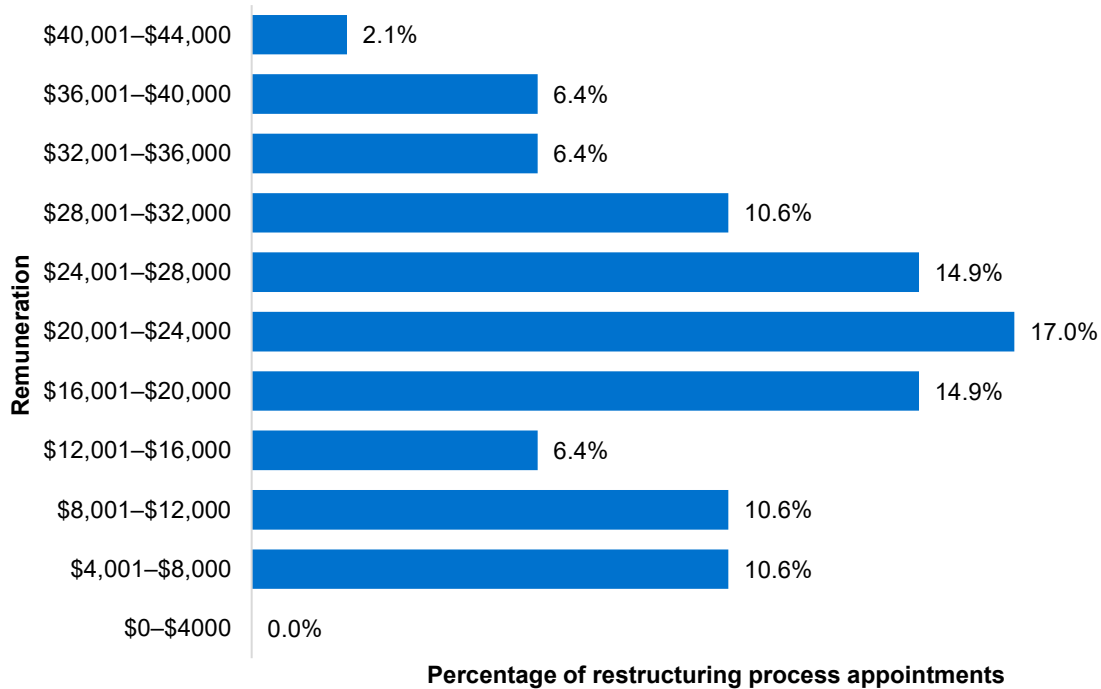
Note 1: Includes 47 restructuring plans where data is available. Does not include 24 companies with ongoing plans, 10 companies where the company was not eligible, the plan was not made or the plan was not accepted, and one company where the plan was terminated.

Note 2: See Table 19 for an accessible version of this figure.

49

When remuneration for restructuring and the restructuring plan is combined, almost forty-seven percent of practitioners (46.8%) were paid total remuneration of between \$16,001 and \$28,000: see Figure 11. The average remuneration paid was \$21,670.

Figure 11: Remuneration for restructuring process



Source: [Form 5603](#) and [Form 5602](#) when lodged.

Note 1: Includes 47 companies where data is available for both the restructuring and the restructuring plan. Does not include 24 companies with ongoing plans where no data is available, 10 companies where the company was not eligible, the plan was not accepted, or the plan was not made, and one company where the plan was terminated.

Note 2: See Table 20 for an accessible version of this figure.

Dividends

50 Table 9 shows the dividend rate for restructuring plans accepted. Based on available data, the average proposed dividend was 18.7 cents in the dollar compared to the actual dividend of 15.2 cents in the dollar.

Table 9: Dividend rate for restructuring plans accepted (to 30 September 2022)

| Dividend rate (cents in the dollar) | Count | Average |
|-------------------------------------|-------|---------|
| Proposed dividend rate | 68 | 18.7 |
| Actual dividend rate | 44 | 15.2 |

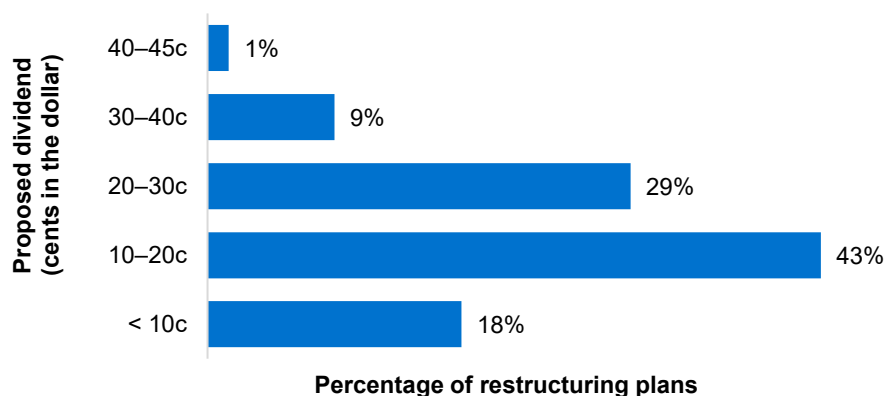
Source: [Form 5612](#) (for proposed dividend rate) and [Form 5603](#) and [Form 5602](#) when lodged for actual dividend rate.

Note 1: For the proposed dividend rate—includes 68 companies where data is available. Excludes four companies where the proposed dividend was not disclosed and ten companies where the plan was not accepted or not made, or the company was not eligible.

Note 2: For the actual dividend rate—includes 44 companies where data is available. Excludes 24 companies where the restructuring plan is ongoing. Also excludes three companies where dividend data is unknown and ten companies where the plan was not accepted or not made, or the company was not eligible and one company where the plan was terminated.

51 Forty-three percent of companies had a proposed dividend rate of between 10 and 20 cents in the dollar: see Figure 12.

Figure 12: Proposed dividend rate

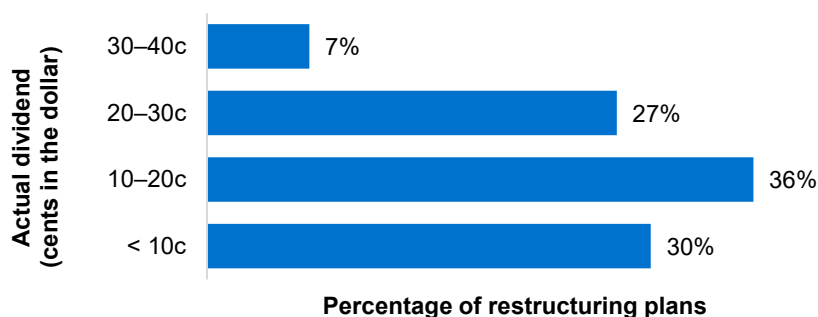


Source: [Form 5612](#)

Note 1: Includes 68 companies where data is available. Excludes four companies where the proposed dividend was not disclosed, ten companies where the plan was not accepted or not made, or the company was not eligible and one company where the plan was terminated.

Note 2: See Table 21 for an accessible version of this figure.

52 Thirty-six percent of companies had an actual dividend rate of between 10 and 20 cents in the dollar: see Figure 13.

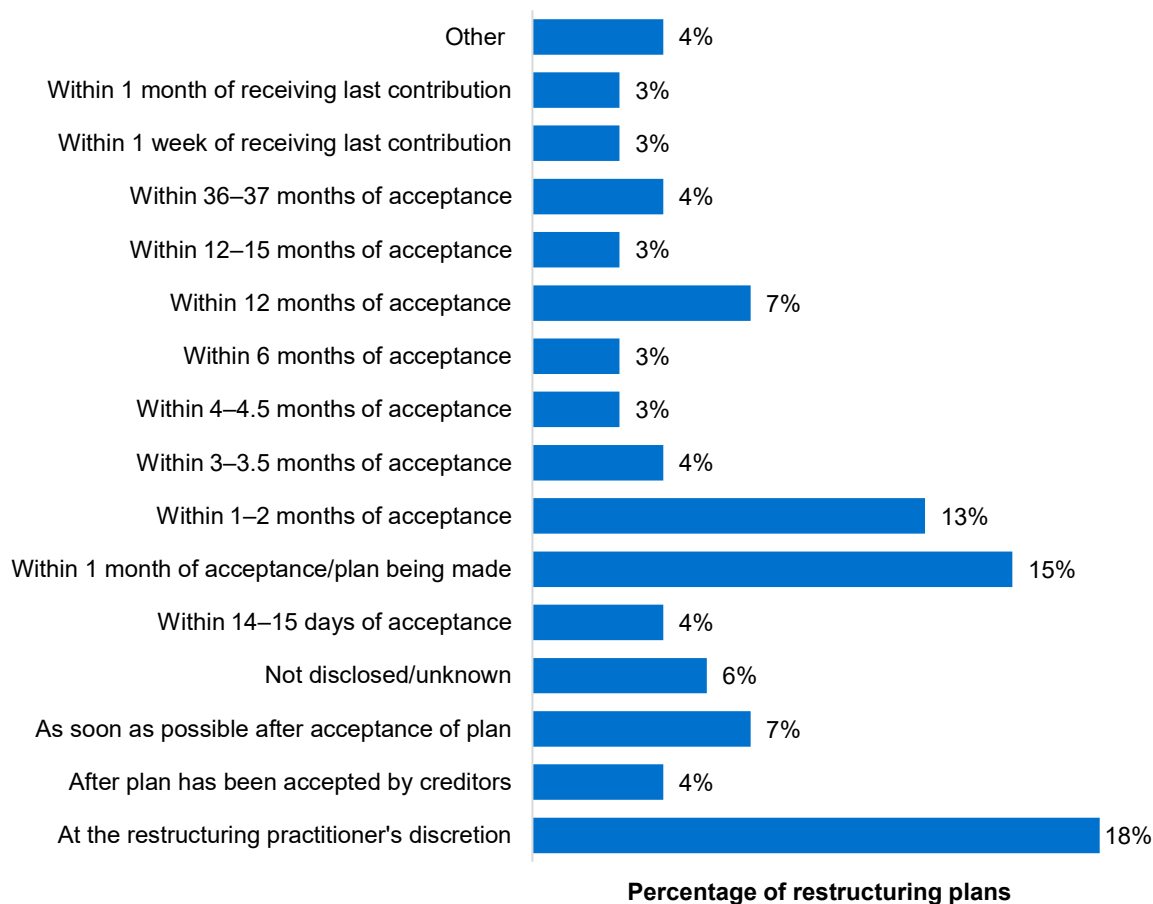
Figure 13: Actual dividend rate

Source: [Form 5603](#) and [Form 5602](#) when lodged.

Note 1: Includes 44 of the 47 companies where data is available. Three companies had no dividend reported in the Form 5603.

Note 2: See Table 22 for an accessible version of this figure.

53 Eighteen percent of plans reported the proposed dividend would be paid at the restructuring practitioner's discretion. Fifteen percent of plans indicated the proposed dividend would be paid within one month of accepting the plan: see Figure 14.

Figure 14: Timing of proposed dividend

Source: [EX04](#) (Form 5614).

Note 1: This figure includes 72 plans sourced from Form 5614, while Figure 12 contains 68 plans sourced from Form 5612.

Note 2: See Table 23 for an accessible version of this figure.

Dividends to remuneration

54 The average remuneration to dividends paid is 13.8% for restructuring plans and 41.4% for the restructuring process overall: see Table 10.

Table 10: Average remuneration as a percentage of total dividends paid (to 30 September 2022)

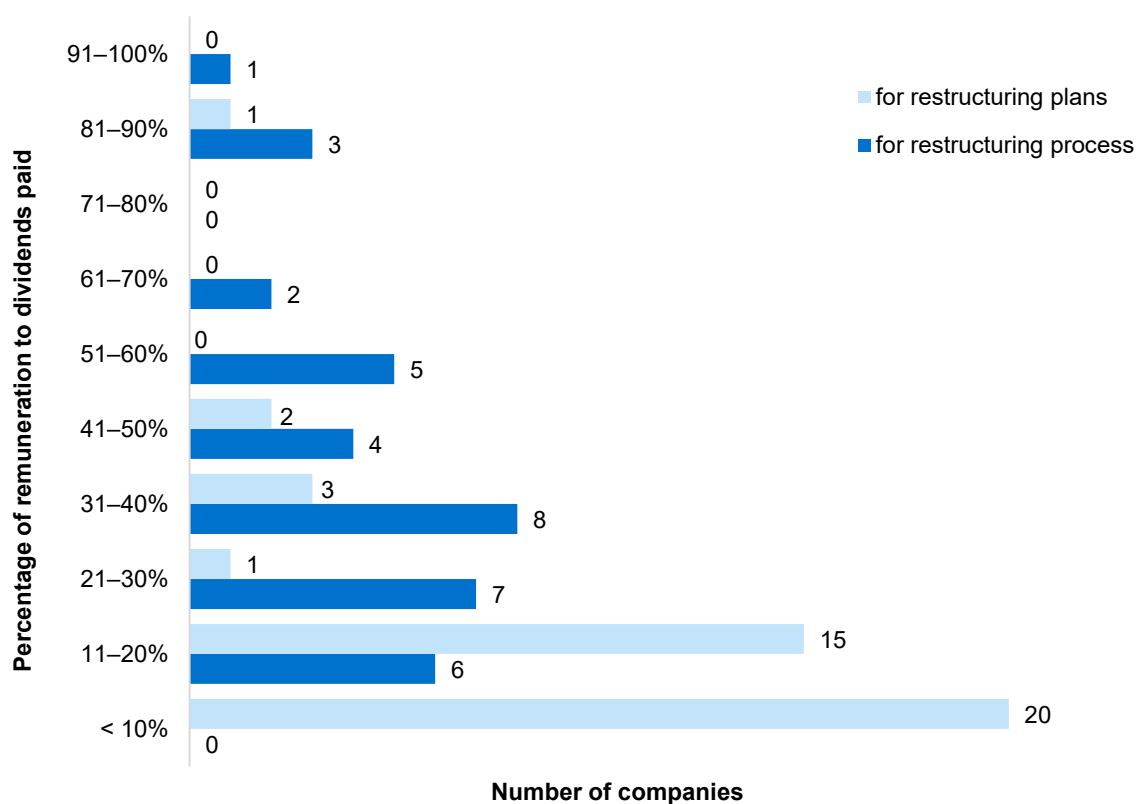
| Average remuneration as a percentage of total dividends | Count | Median | Average |
|---|-------|--------|---------|
| Remuneration for restructuring plans (only) | 42 | 10.5% | 13.8% |
| Remuneration for restructuring and restructuring plans | 36 | 37.7% | 41.4% |

Source: [Form 5603](#) and [Form 5602](#) when lodged.

Note: Forty restructuring plans are not included, as either dividend or remuneration data was not disclosed.

55 For most restructuring plans, the percentage of remuneration to dividends was less than 10% and between 11% and 20%. For the process overall, remuneration to dividends was between 21% and 40%: see Figure 15.

Figure 15: Percentage of remuneration to dividends paid



Source: [Form 5603](#) and [Form 5602](#) when lodged.

Note 1: Excludes 40 companies for restructuring plans and excludes 46 companies for the restructuring process (because they are ongoing with no information available, incorrect information was lodged, the plan was not accepted by creditors or the company was not eligible for a plan or entered external administration).

Note 2: See Table 24 for an accessible version of this figure.

C Observations on ASIC lodgements by registered liquidators

Key points

Through our review of the restructuring information and data, we compiled observations on the lodgement of ASIC forms by registered liquidators.

We will publish further information to promote consistency in the way ASIC forms lodged by registered liquidators for small business restructuring are completed.

Observations on ASIC lodgements

- 56 As part of our review, we compiled general observations on form lodgements with ASIC in relation to restructurings and restructuring plans.
- 57 There is no statutory requirement to prepare or lodge with ASIC a report to creditors about the proposed restructuring plan or provide an opinion on the proposed restructuring plan. Therefore, we do not have access to other information provided to creditors or to the practitioner's opinion (if given) on the proposed restructuring plan unless the practitioner elects to lodge a copy of the report with other information required to be given to ASIC.
- 58 For restructuring plans with a longer contribution period, we did not identify within the documents lodged any ongoing monitoring by the plan practitioner.
- 59 We identified that some practitioners did not:
- (a) disclose their restructuring remuneration in [Form 5603](#) *End of administration return* for either type of appointment period (i.e. restructuring practitioner and restructuring plan practitioner). We therefore assume that no remuneration was paid during the period of the end of administration return;
 - (b) complete the dividend paid sections of Form 5603; or
 - (c) lodge some of the mandatory ASIC forms (these non-lodgements are usually dealt with through our liquidator compliance activities).

Copies of restructuring documents given to affected creditors and notice of restructuring plan

- 60 Under the Corporations Act, practitioners must lodge a copy of the proposed restructuring plan sent to affected creditors. We provided restructuring practitioners with the template [Restructuring Plan—Approved Form](#) to be lodged with [EX04](#) (Form 5614) *Copies of restructuring documents given to*

affected creditors. This template sets out the information that must be included in a restructuring plan as prescribed by the *Corporations Regulations 2001*. We also request practitioners lodge a copy of the accepted restructuring plan with [Form 5612 Notice of restructuring plan](#).

- 61 As part of our review, we observed the following in relation to the completed template [Restructuring Plan—Approved Form](#):
- (a) Provision of information by practitioners was at times *inconsistent*. For example, under ‘company property to be dealt with under the plan’, some practitioners listed company property that would be excluded under the plan rather than the property that would be included.
 - (b) Wording was sometimes *unclear*. For example, some practitioners described the details of third-party contributions or funding but did not specify that funding would, in effect, be from future trading profits. Instead, they detailed directors forgoing repayment of their loans to the company as a form of contribution.
 - (c) Descriptions *could be improved*. For example, a description required further calculations by the creditor—that is, the estimated amount for distribution creditors was described as ‘\$35,000 less remuneration for the restructuring practitioner’.
- 62 The template is lodged with ASIC as a PDF attachment (i.e. unstructured data). Accordingly, the collection and analysis of the information within the template can only be performed manually.

Information on ASIC lodgements

- 63 [Information Sheet 29 External administration, controller appointments and schemes of arrangement: Most commonly lodged forms](#) (INFO 29) was updated in February 2022 to include [Flowchart 14: Restructuring practitioner of a company](#) and [Flowchart 15: Restructuring practitioner of a restructuring plan for a company](#).
- 64 ASIC has published articles on form lodgements for restructurings in the [Corporate Insolvency Update](#) (CIU) including:
- (a) Issue 25, September 2022—‘Dividends paid in a restructuring plan’; and
 - (b) Issue 20, June 2021—‘Lodgements for restructuring practitioner transition’.
- 65 We will publish further information to promote consistency in the way the template [Restructuring Plan—Approved Form](#) is completed.
- 66 We are currently updating information to assist registered liquidators to prepare [Form 5602](#) and [Form 5603](#), including what remuneration and dividend information needs to be included when completing the forms.

Appendix: Accessible versions of figures

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

Table 11: Number of restructuring practitioner appointments by state/territory (for review period)

| State/territory | Number |
|-----------------|-----------|
| NSW | 36 |
| VIC | 28 |
| Qld | 10 |
| WA | 5 |
| SA | 2 |
| ACT | 1 |
| NT | 0 |
| Tas | 0 |
| Total | 82 |

Note: This table shows the data contained in Figure 1.

Table 12: Number of restructuring practitioner appointments by industry (for review period)

| Industry | Number |
|--|--------|
| Accommodation and food services | 18 |
| Administrative and support services | 5 |
| Arts and recreation services | 3 |
| Construction | 17 |
| Education and training | 2 |
| Electricity, gas, water and waste services | 1 |
| Health care and social assistance | 2 |
| Information media and telecommunications | 5 |
| Manufacturing | 1 |
| Other services | 6 |

| Industry | Number |
|---|-----------|
| Professional, scientific and technical services | 6 |
| Retail trade | 13 |
| Transport, postal and warehousing | 1 |
| Wholesale trade | 2 |
| Total | 82 |

Note: This table shows the data contained in Figure 2.

Table 13: ATO debt as a proportion of total estimated admissible creditor claims

| Proportion of ATO debt | No. of plans |
|------------------------|--------------|
| 0% | 8 |
| 1–24% | 2 |
| 25–49% | 5 |
| 50–74% | 13 |
| 75–89% | 8 |
| 90–99% | 18 |
| 100% | 18 |
| Total | 72 |

Note: This table shows the data contained in Figure 3.

Table 14: Number of affected creditors (for review period)

| Number of affected creditors | Unrelated creditors | Related creditors |
|------------------------------|---------------------|-------------------|
| 0 creditors | 1 | 54 |
| 1–2 creditors | 36 | 13 |
| 3–5 creditors | 20 | 5 |
| 6–15 creditors | 9 | 0 |
| 16–25 creditors | 4 | 0 |
| 25–40 creditors | 2 | 0 |
| Total | 72 | 72 |

Note: This table shows the data contained in Figure 4.

Table 15: Total plan contribution amounts (for review period)

| Contribution amount | Restructuring plans (%) |
|---------------------|-------------------------|
| \$0–\$5,000 | 1% |
| \$5,001–\$15,000 | 4% |
| \$15,001–\$50,000 | 40% |
| \$50,001–\$200,000 | 48% |
| \$200,001–\$500,000 | 7% |
| Total | 100% |

Note: This table shows the data contained in Figure 5.

Table 16: Total plan contributions as a proportion of total estimated admissible creditor claims (for review period)

| Plan contribution as a proportion of total estimated admissible creditor claims | Number of plans |
|---|-----------------|
| 0–10% | 9 |
| 11–30% | 48 |
| 31–50% | 12 |
| 50–70% | 1 |
| 71–100% | 1 |
| Total | 71 |

Note: This table shows the data contained in Figure 6.

Table 17: Sources of plan contributions (for review period)

| Sources of plan contributions | Amount (\$) | Percentage |
|--|------------------|-------------|
| Other company assets | 393,718 | 6.2 |
| Cash at bank | 511,020 | 8.0 |
| Future trading profits and other contributions | 520,412 | 8.2 |
| Future trading profits | 2,114,528 | 33.3 |
| Director(s) and others | 2,817,355 | 44.3 |
| Total | 6,357,033 | 100% |

Note: This table shows the data contained in Figure 7.

Table 18: Remuneration for restructuring

| Remuneration | No. of restructuring practitioner appointments | Restructuring practitioner appointments (%) |
|-------------------|--|---|
| \$0 | 12 | 14.8% |
| \$1–\$5,000 | 3 | 3.7% |
| \$5,001–\$10,000 | 16 | 19.8% |
| \$10,001–\$15,000 | 14 | 17.3% |
| \$15,001–\$20,000 | 13 | 16.0% |
| \$20,001–\$25,000 | 15 | 18.5% |
| \$25,001–\$30,000 | 6 | 7.4% |
| \$30,001–\$35,000 | 2 | 2.5% |
| Total | 81 | 100% |

Note: This table shows the data contained in Figure 9.

Table 19: Remuneration for a restructuring plan

| Remuneration | No. of restructuring plans | Restructuring plans (%) |
|-------------------|----------------------------|-------------------------|
| <\$2,500 | 13 | 27.7% |
| \$2,501–\$4,500 | 10 | 21.3% |
| \$4,501–\$6,500 | 7 | 14.9% |
| \$6,501–\$8,500 | 5 | 10.6% |
| \$8,501–\$10,500 | 2 | 4.3% |
| \$10,501–\$12,500 | 4 | 8.5% |
| \$12,501–\$14,500 | 0 | 0.0% |
| \$14,501–\$16,500 | 3 | 6.4% |
| \$16,501–\$18,500 | 2 | 4.3% |
| \$18,501–\$20,500 | 1 | 2.1% |
| Total | 47 | 100% |

Note: This table shows the data contained in Figure 10.

Table 20: Remuneration for restructuring process

| Remuneration | No. of restructuring plans | Percentage of restructuring plans |
|-------------------|----------------------------|-----------------------------------|
| \$0–\$4,000 | 0 | 0.0% |
| \$4,001–\$8,000 | 5 | 10.6% |
| \$8,001–\$12,000 | 5 | 10.6% |
| \$12,001–\$16,000 | 3 | 6.4% |
| \$16,001–\$20,000 | 7 | 14.9% |
| \$20,001–\$24,000 | 8 | 17.0% |
| \$24,001–\$28,000 | 7 | 14.9% |
| \$28,001–\$32,000 | 5 | 10.6% |
| \$32,001–\$36,000 | 3 | 6.4% |
| \$36,001–\$40,000 | 3 | 6.4% |
| \$40,001–\$44,000 | 1 | 2.1% |
| Total | 47 | 100% |

Note: This table shows the data contained in Figure 11.

Table 21: Proposed dividend rate

| Proposed dividend | No. of restructuring plans | Percentage of restructuring plans |
|-------------------|----------------------------|-----------------------------------|
| <10c | 12 | 18% |
| 10–20c | 29 | 43% |
| 20–30c | 20 | 29% |
| 30–40c | 6 | 9% |
| 40–45c | 1 | 1% |
| Total | 68 | 100% |

Note: This table shows the data contained in Figure 12.

Table 22: Actual dividend rate

| Remuneration | Number of restructuring plans | Percentage of restructuring plans |
|--------------|-------------------------------|-----------------------------------|
| < 10c | 13 | 30% |
| 10–20c | 16 | 36% |
| 21–30c | 12 | 27% |
| 30–35c | 3 | 7% |
| Total | 44 | 100% |

Note: This table shows the data contained in Figure 13.

Table 23: Timing of proposed dividend

| Timing | Number of restructuring plans | Percentage of restructuring plans |
|--|-------------------------------|-----------------------------------|
| At the restructuring practitioner's discretion | 13 | 18% |
| After plan has been accepted by creditors | 3 | 4% |
| As soon as possible after acceptance of plan | 5 | 7% |
| Not disclosed/unknown | 4 | 6% |
| Within 14–15 days of acceptance | 3 | 4% |
| Within 1 month of acceptance/plan being made | 11 | 15% |
| Within 1–2 months of acceptance | 9 | 13% |
| Within 3–3.5 months of acceptance | 3 | 4% |
| Within 4–4.5 months of acceptance | 2 | 3% |
| Within 6 months of acceptance | 2 | 3% |
| Within 12 months of acceptance | 5 | 7% |
| Within 12–15 months of acceptance | 2 | 3% |
| Within 36–37 months of acceptance | 3 | 4% |
| Within 1 week of receiving last contribution | 2 | 3% |
| Within 1 month of receiving last contribution | 2 | 3% |
| Other | 3 | 4% |
| Total | 72 | 100% |

Note: This table shows the data contained in Figure 14.

Table 24: Percentage of remuneration to dividends paid

| Remuneration to dividends paid % | For restructuring process | For restructuring plans |
|----------------------------------|---------------------------|-------------------------|
| <10 | 0 | 20 |
| 11–20 | 6 | 15 |
| 21–30 | 7 | 1 |
| 31–40 | 8 | 3 |
| 41–50 | 4 | 2 |
| 51–60 | 5 | 0 |
| 61–70 | 2 | 0 |
| 71–80 | 0 | 0 |
| 81–90 | 3 | 1 |
| 91–100 | 1 | 0 |
| Total | 36 | 42 |

Note: This table shows the data contained in Figure 15.

Key terms

| Term | Meaning in this document |
|--|--|
| affected creditor | Any creditor (related or unrelated) that would be bound by a restructuring plan |
| ATO | Australian Taxation Office |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| data | Structured data that is stored in a predefined format and can be easily extracted electronically |
| effectuated | When a plan is complete |
| eligibility criteria for a restructuring | To be eligible for a restructuring, on the day on which the restructuring practitioner is appointed: <ul style="list-style-type: none"> total liabilities of the company must not exceed \$1 million no person who is a director of the company, or who has been a director of the company within the 12 months before the appointment of the restructuring practitioner, has been a director of another company that has been under restructuring or subject to the simplified liquidation process within the period of the preceding seven years, unless they are exempt under the regulations the company must not have undergone restructuring or been the subject of a simplified liquidation process within the preceding seven years |
| excluded creditors | Creditors (including related creditors, the restructuring practitioner and a related entity of the restructuring practitioner) who are excluded from voting on the plan but are otherwise bound by the plan (they are an affected creditor—see above) |
| external administrators | A defined term for a registered liquidator formally appointed to control the affairs of a company and its property. Includes a provisional liquidator, liquidator, voluntary administrator and an administrator of a deed of company arrangement. It also includes a restructuring practitioner for a company and for a restructuring plan even though they do not control the affairs of the company. It does not include receivers or controllers |
| EX04 | Form 5614 <i>Copies of restructuring documents given to affected creditors</i> |
| EX05 | Form 5608 <i>Notice of ending of restructuring</i> |
| EX06 | Form 5610 <i>Notice of termination of restructuring plan</i> |

| Term | Meaning in this document |
|--|--|
| FY | Financial year |
| information | Unstructured data that has no predefined format and requires manual collection processing or analysis |
| INFO 29 (for example) | An ASIC information sheet (in this example numbered 29) |
| plan | A plan to restructure the debts of a small business under Chapter 5.3B of the Corporations Act |
| related creditor | Creditors (such as spouses, relatives and other entities controlled by the directors/shareholders of an eligible company) who are owed money by the company |
| restructuring | From the commencement of the appointment of a restructuring practitioner to a company to the termination of the restructuring or the acceptance of a restructuring plan |
| Restructuring Plan— Approved Form | ASIC template for a company's restructuring plan, to be lodged with EX04 (Form 5614) <i>Copies of restructuring documents given to affected creditors</i> and Form 5612 <i>Notice of making restructuring plan</i> |
| restructuring practitioner of a company | A person (registered liquidator) appointed by a company to assist with the formulation of a restructuring plan to restructure an eligible company conducting a small business |
| restructuring practitioner of a restructuring plan | A person (registered liquidator) appointed by a company to implement an approved restructuring plan to restructure an eligible company conducting a small business |
| restructuring process | From the commencement of the appointment of a restructuring practitioner to a company to its finalisation including the restructuring plan, if applicable |
| review period | Restructuring practitioner appointments from 1 January 2021 to 30 June 2022 |

Related information

Admissible creditor claims, affected creditors, ASIC lodgements, ATO, cash flow projections, Corporations Act, creditors, directors, dividend, dividend rate, eligible small business, external administration, industries, outcome of restructuring plans, plan contributions, plan contribution sources, plans effectuated, plans terminated, proposal period, registered liquidator, related creditors, remuneration, restructuring plan, restructuring plan practitioner, restructuring practitioner, restructuring process, small business, small business restructuring, state of incorporation, trading profits, unrelated creditors.

Information sheets

[INFO 29](#) *Flowchart 14: Restructuring practitioner of a company*

[INFO 29](#) *Flowchart 15: Restructuring practitioner of a restructuring plan for a company*

[INFO 80](#) *How to interpret ASIC insolvency statistics*

Legislation

Corporations Act 2001

Corporations Regulations 2001

ASIC forms

[EX04](#) (Form 5614) *Copies of restructuring documents given to affected creditors*

[EX05](#) (Form 5608) *Notice of ending of restructuring*

[EX06](#) (Form 5610) *Notice of termination of restructuring plan*

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

[Form 5602](#) *Annual administration return*

[Form 5603](#) *End of administration return*

[Form 5612](#) *Notice of making of restructuring plan*

[Form 6010](#) *Application for voluntary deregistration of a company*

[Restructuring Plan—Approved Form](#) (Word 42 KB)

Other ASIC publications

[Restructuring and the restructuring plan](#)