



ASIC

Australian Securities & Investments Commission

REPORT 573

Registered liquidators' compliance with lodgement and publication requirements

June 2018

About this report

ASIC has conducted a project to review how registered liquidators are complying with their obligations to:

- lodge certain forms with ASIC; and
- publish insolvency notices on [ASIC's published notices website](#).

The period covered by our review was December 2013 to June 2017.

This report outlines the results of the project and includes guidance for registered liquidators to help them improve their compliance with lodgement and publication requirements.

Note: The commentary in this report relates to the law as existed at the time of the review, which was before the enactment of the *Insolvency Law Reform Act 2016*.

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.

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Executive summary

Overview of the project

1 ASIC is responsible for the registration and supervision of registered liquidators who accept formal appointments as external administrators (including receivers and managers) of companies in Australia. We supervise their compliance with the *Corporations Act 2001* (Corporations Act), the *Insolvency Practice Rules (Corporations) 2016* (Rules) and the *Corporations Regulations 2001* (Corporations Regulations).

Note: A 'registered liquidator' is a person registered by ASIC under s1282(2) of the Corporations Act. For the purposes of this report, it includes a liquidator, external administrator and receiver.

2 We consider the failure by registered liquidators to lodge forms with ASIC or to publish insolvency-related notices on [ASIC's published notices website](#) (published notices website) can be symptomatic of wider systemic failure by registered liquidators in the conduct of external administrations.

3 ASIC's strategic priorities are to:

- (a) promote investor and consumer trust and confidence;
- (b) ensure fair and efficient markets; and
- (c) provide efficient registration services.

4 Our view of 'what good looks like' for registered liquidators is that they:

- (a) act independently and competently;
- (b) ensure cost-effective, timely and appropriate outcomes; and
- (c) perform their role in accordance with proper standards of professional conduct.

5 When the competence of a registered liquidator (as evidenced by failure to meet obligations) is questionable, confidence in the system of corporate insolvency may be undermined and the interests of creditors and other stakeholders may not be properly protected. Also, if a registered liquidator fails to lodge forms, stakeholders (including ASIC) may not be fully informed of the extent of a company's financial failure or possible officer misconduct.

6 Creditors are entitled to expect a registered liquidator to wind up an insolvent company in a fair and orderly way so they receive the maximum possible return of their money, recognising that the registered liquidator is entitled to reasonable remuneration and costs. To this end, registered liquidators must be competent and efficient. One area of ASIC's focus is to

promote creditor confidence in the proper administration of insolvent companies and in our supervision of registered liquidators.

- 7 We undertook the 'ASIC published notices website and lodgement project' (the project) to review compliance by registered liquidators with the requirements to:
- (a) lodge certain forms with ASIC; and
 - (b) publish insolvency notices on the published notices website.

8 The period covered by our review was December 2013 to June 2017.

- 9 The key objectives of the project were to:
- (a) test registered liquidators' compliance with their statutory obligations under the Corporations Act to lodge forms with ASIC and/or publish certain notices on the published notices website (collectively 'non-lodgements');
 - (b) refer serious non-compliance for enforcement action; and
 - (c) ensure that registered liquidators appropriately on-charged to the external administration the costs of publishing a notice on the published notices website.

Note: This report uses a number of terms that have special meaning and are important for understanding the context of the statistics: see the 'Key terms' at the end of the report.

- 10 We will continue to monitor registered liquidators' compliance with their lodgement and publication requirements from time to time during our ongoing surveillance work.

Key findings

- 11 Registered liquidators are mostly doing the right thing and lodging forms and publishing notices as required.
- 12 We reviewed around 26,000 external administrations and found:
- (a) of the 281,606 forms required to be lodged, 9,162 (3.3%) were not lodged; and
 - (b) of the 46,378 notices required to be published, 3,257 (7.0%) were not published.
- 13 While overall non-lodgements seem low, 70% of registered liquidators had some level of non-compliance with lodgement and publication requirements.
- 14 There was similarity in the types of non-lodgements across all the registered liquidator population—for example:
- (a) lodgements relating to annual meetings;

- (b) lodgements of [Form 524](#) *Presentation of accounts and statement*; and
- (c) lodgements of [Form 505](#) *Notification of appointment or cessation of an external administrator*.

15 We also found there is no correlation between the size and nature of a registered liquidator's firm and non-compliance.

16 Section B of this report describes our key findings. For an explanation of the project methodology, see Appendix 1.

Key outcomes

17 As a result of the project, a majority of the 12,419 identified non-lodgements were subsequently rectified by registered liquidators, improving the information held on ASIC's public registers.

18 We also:

- (a) took enforcement or disciplinary action, including:
 - (i) negotiated resolution agreements with 17 registered liquidators who had a high level of non-lodgements; and

Note: A 'negotiated resolution agreement' is a negotiated alternative (e.g. a voluntary undertaking) to other enforcement remedies, which is used when we consider it can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).
 - (ii) issued seven 'Directions to comply with a requirement to lodge documents' (includes forms, documents and any information) under s40-5 of Sch 2 to the Corporations Act, which were complied with in all cases;
- (b) informed a small number of registered liquidators that we would review their ongoing compliance with lodgement and publication requirements in 2018;
- (c) engaged with registered liquidators on their identified non-lodgements and improved their awareness of their lodgement and publication requirements, and encouraged them to improve their overall external administration and practice management; and
- (d) published [Information Sheet 29](#) *External administration: Most commonly lodged forms* (INFO 29) to assist registered liquidators comply with their obligations.

19 Further, five registered liquidators' registrations were cancelled following voluntary requests to cancel their registration.

20 Section C of this report describes in detail the key outcomes from the project.

Key messages for registered liquidators on specific findings

- 21 Our key messages from the project include:
- (a) lodging forms and publishing notices is an integral part of informing creditors and other external stakeholders about key information and events in the conduct of an external administration;
 - (b) it is the registered liquidator's responsibility to ensure all aspects of external administrations are conducted properly; and
 - (c) ongoing review and update of internal systems and procedures is vital to ensuring compliance.
- 22 Our review identified the need for key messages and guidance on a number of specific topics to help registered liquidators improve their compliance with lodgement and publication requirements: see Table 1. Section D of this report provides additional commentary on each topic.

Table 1: Key messages for registered liquidators to improve compliance

Topic	Key messages
Systems, procedures and education	<p>Registered liquidators must ensure that their policies, procedures and checklists are up to date and correct and that their staff follow them.</p> <p>Registered liquidators must provide sufficient oversight of their staff and all external administrations.</p> <p>Timely and regular education and training for registered liquidators and their staff is vitally important.</p> <p>There is value in registered liquidators having external or peer reviews conducted of their practice on a regular basis.</p>
Notice of appointment	<p>Registered liquidators must lodge a Form 505 <i>Notification of appointment or cessation of an external administrator</i> for each and every new external administration appointment, even when the appointment transitions from another external administration appointment type.</p>
Accounts of receipts and payments	<p>Timely lodgement of accounts of receipts and payments by registered liquidators is vital so that creditors and other external stakeholders are informed of key information and events in the conduct of an external administration.</p> <p>Registered liquidators should ensure that their staff are fully trained and their policies, procedures and checklists reflect that the relevant forms must be lodged on a timely basis.</p>
Section 533 reports	<p>ASIC expects that all registered liquidators will lodge reports under s533 of the Corporations Act as soon as practicable, and, in any event, within six months after the date of appointment.</p> <p>Registered liquidators may lodge additional reports for an insolvent company as more information becomes available to them.</p> <p>If a registered liquidator experiences difficulties in obtaining relevant information, they should consider exercising their powers in this regard or seek our assistance before completing a report.</p>

Topic	Key messages
Notices on the published notices website	<p>Registered liquidators should ensure that their staff are fully trained on how to use and upload notices.</p> <p>Registered liquidators should review and check all notices before publishing them.</p> <p>It is vital that every notice published contains the correct Australian Company Number (ACN), is the correct type of notice and refers to the correct section of the Corporations Act.</p>
Change of details	<p>Registered liquidators must ensure that they lodge both a Form 905A Notification of a change to details of a liquidator and a Form 506 Notification of change of address of an external administrator within the prescribed time to notify ASIC of changes to a registered liquidator's name, address of principal place of practice or other practices, or firm name.</p>
Annual meetings	<p>Convening annual meetings and lodging annual reports (Form 1500 Annual report to creditors) in liquidations are fundamental tasks of registered liquidators. It is a registered liquidator's duty to keep creditors and other relevant stakeholders informed of events during the liquidation and the status of the liquidation.</p> <p>Note: For liquidations that commenced before 1 September 2017, registered liquidators must ensure that annual meetings are convened or annual reports lodged with ASIC until 31 August 2018, as part of the transitional requirements under the Insolvency Law Reform Act: see Appendix 2.</p>
Meetings in general	<p>Registered liquidators must ensure they lodge minutes for meetings when there is no quorum and for adjourned meetings.</p> <p>Registered liquidators must ensure their policies, procedures and checklists are correct for convening and holding meetings.</p>
Committee of inspection (COI) meeting notices	<p>Registered liquidators must ensure that they publish notices of COI meetings on the published notices website.</p> <p>Registered liquidators must ensure that their policies, procedures and checklists refer to the correct procedures when convening a COI meeting.</p>
Deed of company arrangement	<p>Registered liquidators must ensure that their policies, procedures and checklists are correct so they lodge and publish the requisite forms and notices when a deed of company arrangement ends and the company is wound up.</p>
Finalisation of liquidations	<p>Registered liquidators should ensure they finalise liquidations correctly and in a timely manner.</p> <p>Registered liquidators should also ensure their policies, procedures and checklists for the finalisation of liquidations are correct. This will ensure that ASIC's public registers remain accurate and up to date.</p>
Waiving the requirement to lodge or publish	<p>ASIC is unable to waive the requirement to lodge forms with ASIC or to publish notices on the published notices website.</p>

A Why we undertook the project

Key points

This section explains registered liquidators' obligations and details the background to the project and why we conducted it.

Registered liquidators' obligations

- 23 Under the Corporations Act, registered liquidators have a range of obligations to report to and lodge forms with ASIC and publish notices on the published notices website.
- 24 Registered liquidators are the front-line investigators of insolvent companies. The Corporations Act requires registered liquidators to lodge statutory forms and notices and other reports so that:
- (a) we are made aware of possible misconduct in connection with the management of the insolvent or failing company;
 - (b) interested persons and stakeholders are able to determine the status of an external administration and are fully informed about relevant events associated with the external administration of a company; and
 - (c) the information on ASIC's public registers is accurate and up to date.
- 25 By complying with their obligations registered liquidators contribute to:
- (a) maintaining the integrity of the market; and
 - (b) promoting investor and consumer trust and confidence.
- 26 The failure to lodge forms with ASIC or to publish notices on the published notices website may be evidence of wider systemic failure by registered liquidators in the overall conduct of external administrations. Further, confidence in the system of corporate insolvency may be undermined, and the interests of creditors and stakeholders may not be properly protected. Stakeholders (including ASIC) may not be fully informed of the extent of a company's financial failure or possible officer misconduct.

Registered liquidators' compliance

- 27 We identified a need to test registered liquidators' compliance with their lodgement and publication obligations following:
- (a) identification by our surveillance activities and other project work of a number of registered liquidators who appeared to have a high number

of non-lodgements, including a Sydney-based registered liquidator who had failed to lodge more than 300 forms with ASIC over a period of almost four years; and

- (b) the introduction of the published notices website in July 2012 as the new basis for publishing insolvency-related notices. Testing compliance would validate the level to which registered liquidators had adopted this new method and therefore were managing their non-compliance risk.

28 As a result, we considered it prudent to initiate a project to review all registered liquidators and test their compliance with lodgement and publication requirements.

29 In November 2013, we wrote to all registered liquidators to advise them that we had commenced a project to test their compliance with the statutory requirement to:

- (a) 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*); and
- (b) publish certain notices on the published notices website.

30 We indicated if the level of non-lodgements was high, we would consider whether to undertake further surveillance activity and/or appropriate enforcement action.

31 An objective of the project was to test registered liquidators' systems and procedures relating to lodgement of forms and publication of notices. Any deficiencies highlighted would allow registered liquidators to revise their systems to improve future compliance and, as a consequence, improve practice and external administration management.

32 The project also sought to ensure that registered liquidators appropriately on-charged to the external administration the costs of publishing a notice on the published notices website.

B Key findings

Key points

Registered liquidators are mostly doing the right thing and lodging forms and publishing notices as required.

From our review of registered liquidators' compliance with lodgement and publication requirements, we found that 3.3% of the required forms had not been lodged and 7% of the required notices had not been published.

While overall non-lodgements appear low, 70% of registered liquidators had some level of non-compliance with their lodgement and publication requirements.

Population of registered liquidators

- 33 The total regulated population reviewed included all registered liquidators as at the commencement of the project and all registered liquidators who were subsequently registered. Table 2 sets out the number of registered liquidators reviewed.

Note: For more information about the project methodology, including a list of the forms and notices reviewed, see Appendix 1.

Table 2: Number of registered liquidators reviewed

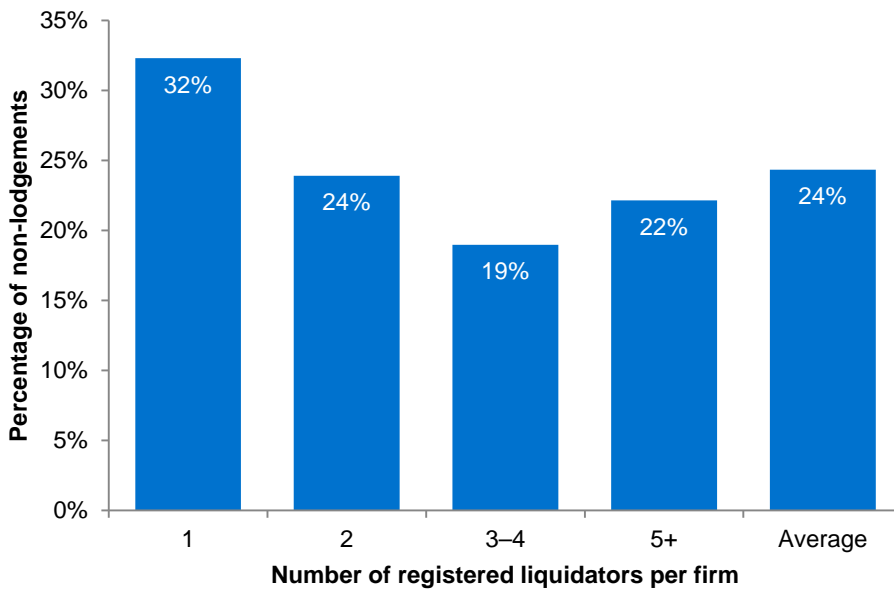
Registered liquidator status	Number
Registered at 31 October 2013	689
Registered during the project from 1 November 2013	125
Total registered liquidators reviewed	814
Ceased during the project from 1 November 2013	(103)
Total registered liquidators at 30 June 2017	711

- 34 Of the 814 registered liquidators, we wrote to approximately 570 (70%) who we identified had non-lodgements. We only contacted registered liquidators with no non-lodgements if they were a member of a firm with other partners who had non-lodgements.
- 35 The initial assessments were based on data recorded in ASIC's systems and did not include adjustments that arose after engagement with the registered liquidator. Where they were able to, the majority of registered liquidators attended to the identified non-lodgements.

Number and type of non-lodgements

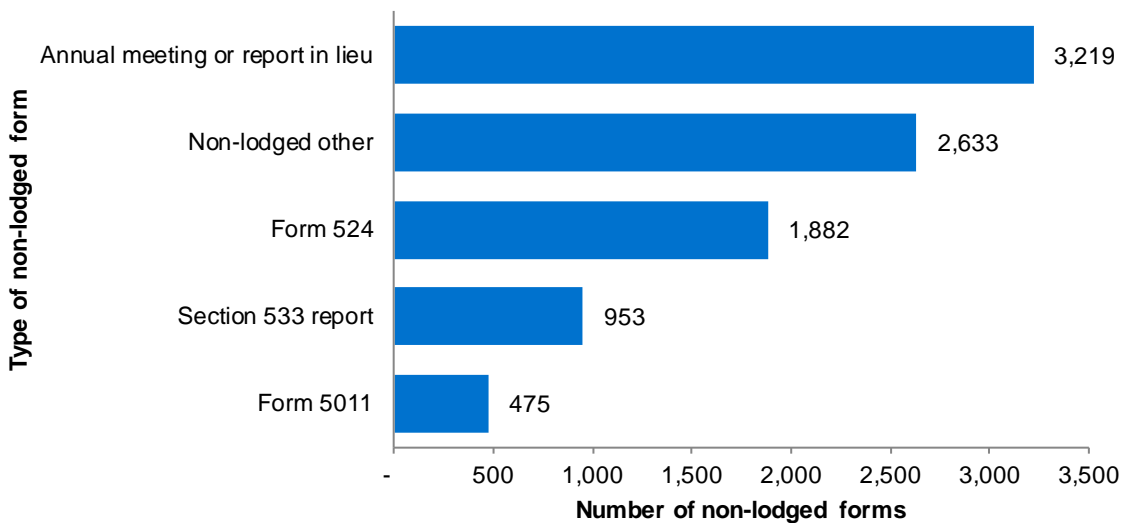
36 We reviewed around 26,000 external administrations and identified non-lodgements in approximately 24% of those external administrations. Figure 1 provides a breakdown of the percentage of external administrations with non-lodgements by number of registered liquidators per firm. Figure 2 and Figure 3 show a breakdown of the types of non-lodgements identified in our initial assessment of each registered liquidator during the project.

Figure 1: Percentage of external administrations with non-lodgements by number of registered liquidators per firm



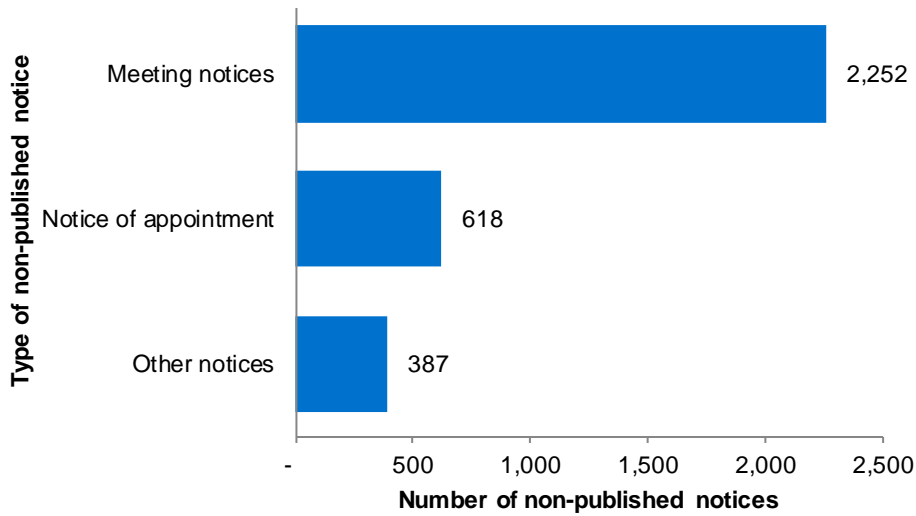
Note: See Table 5 in Appendix 3 for the complete data used in this figure (accessible version).

Figure 2: Types of non-lodged forms



Note: See Table 6 in Appendix 3 for the complete data used in this figure (accessible version).

Figure 3: Types of non-published notices



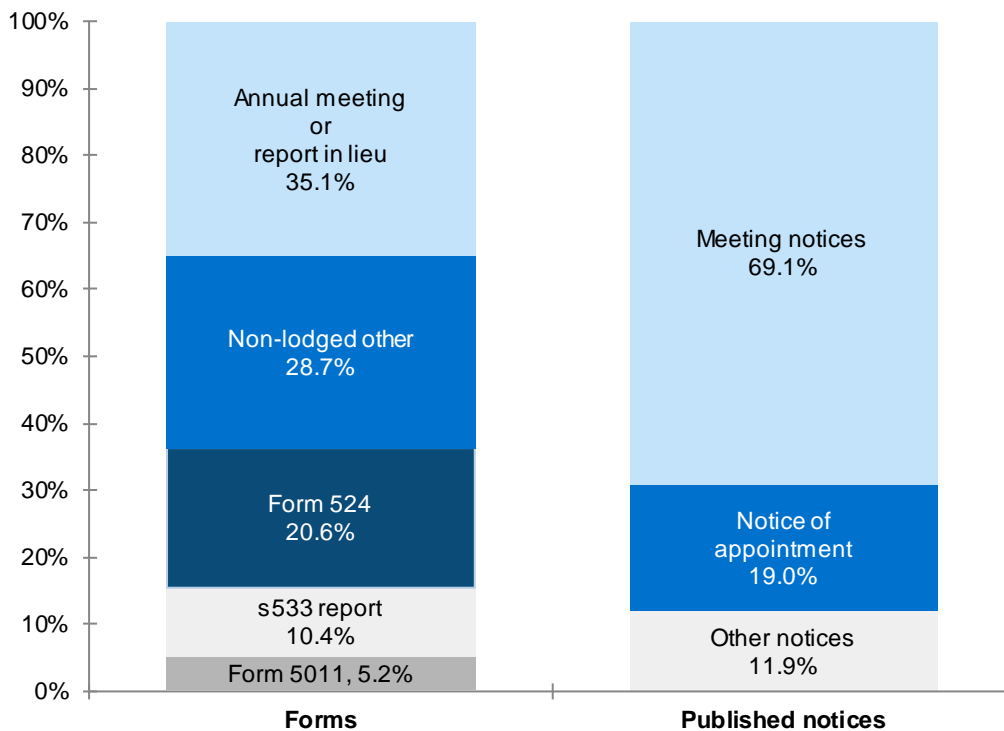
Note 1: Meeting notices includes creditor and COI meeting notices.

Note 2: See Table 7 in Appendix 3 for the complete data used in this figure (accessible version).

37 Of the 281,606 forms required to be lodged by registered liquidators in relation to the 26,000 external administrations we reviewed, 9,162 (3.3%) were not lodged. Of the 46,378 notices required to be published by registered liquidators in relation to the 26,000 external administrations we reviewed, 3,257 (7.0%) were not published.

38 Figure 4 shows a breakdown of the types of non-lodgements.

Figure 4: Breakdown of forms not lodged and notices not published by percentage



Note: See Table 8 in Appendix 3 for the complete data used in this figure (accessible version).

Reasons for non-lodgements

- 39 We asked registered liquidators why the non-lodgements occurred. The most common reasons provided were:
- (a) inadvertence or mistake;
 - (b) staff error;
 - (c) system error;
 - (d) ASIC error or ASIC's assessment was incorrect;
 - (e) alternative interpretation of statutory obligations;
 - (f) forms could not be lodged electronically; and
 - (g) uncertainty about obligations or how to rectify a situation.

Inadvertence or mistake

- 40 Most registered liquidators told us that the non-compliance was due to inadvertence, mistake or oversight. Some advised they were unsure what to do, and so did nothing.
- 41 In creditors' voluntary liquidations, some registered liquidators told us that they were unsure when the annual meetings should be convened or the report completed (to comply with s508 of the Corporations Act) if the appointment transitioned from a voluntary administration or deed of company arrangement. In this scenario, they aligned their meetings or the report dates with the appointment as voluntary administrator or deed administrator rather than the day on which the company resolved that it be wound up voluntarily. This may have been due to the disparity between s508 (annual meetings) and s513B (commencement of winding up) of the Corporations Act.
- 42 We found that some registered liquidators who were appointed as replacement liquidators aligned their annual meetings or reports, or [Form 524 Presentation of accounts and statement](#) lodgements, with their role start date when they should have been aligned with the original liquidation date.
- 43 Some registered liquidators advised that prior to us notifying them of their non-lodgements, they had realised their error in not publishing a meeting notice or other notice on the published notices website. As the notice was late or the meeting had passed, they did not publish the outstanding notice.
- 44 Some registered liquidators advised that because they had notified all known creditors of the meeting there was no disadvantage to creditors by not publishing the meeting notice on the published notices website. We do not agree with this view and note that the Corporations Act requires publication of certain notices.

45 Some registered liquidators advised that as a result of the project they reviewed their procedures and systems, updated checklists and conducted staff training to fix the error or mistake. We strongly recommend that those who have not yet done so do so as a priority.

Staff error

46 Some registered liquidators advised that their staff:

- (a) ticked off checklists stating forms were lodged when they were not;
- (b) did not follow the checklist correctly;
- (c) used an old or incorrect checklist;
- (d) did not follow the required sections in the checklist or did not incorporate the correct sections into the checklist;
- (e) lodged forms with incorrect details, such as role type or date of appointment;
- (f) entered incorrect ACNs into the published notices website; or
- (g) selected the wrong form or section of the Corporations Act when publishing a notice on the published notices website.

47 Our view is that even if registered liquidators' staff make mistakes or are not doing their job properly, the responsibility for the non-compliance remains with the registered liquidator.

48 We also found that some registered liquidators did not return forms requisitioned by ASIC. If a registered liquidator lodges a form that is incomplete, not signed or has errors in it, we may return it to the registered liquidator to rectify. We refer to this as 'requisitioning a form'. An example is where a registered liquidator lodges minutes of a creditors' meeting without the minutes being signed by the chairperson. We will return the original lodged form and minutes requesting that the minutes be signed and returned for re-lodgement. It is the registered liquidator's duty to rectify an incorrect lodged form and return the rectified form to ASIC.

49 Some registered liquidators told us that experienced staff had left the firm, new staff were confused or not trained properly, staff had been sick or on leave, or lacked competence.

50 Some registered liquidators advised that they were joint and several liquidators and did not have the main carriage of a matter. They advised that they relied on their partner or partners to comply with their statutory obligations and therefore the non-lodgements are not their fault.

- 51 Our view, with which the Companies Auditors and Liquidators Disciplinary Board (CALDB) has agreed,¹ is that all registered liquidators, including joint and several liquidators without the main carriage of a matter, must still have an adequate and proper involvement in the external administration.

Note: The CALDB has been renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the Insolvency Law Reform Act that took effect on 1 March 2017.

System error

- 52 A number of registered liquidators advised that they relied on an insolvency accounting package such as MYOB or CORE IPS for their systems, procedures, checklists and precedents. They advised that a reason for non-lodgement was that the system was incorrect.
- 53 Some registered liquidators advised that their system broke down by not advising when forms were due as the system was supposed to do.
- 54 We recommend that registered liquidators make use of the diary/reminder system in their insolvency accounting package and carry out spot checks from time to time to ensure the system is adequately flagging lodgement requirements and timing. Using these in-built systems will help prevent non-lodgements in the future.
- 55 Some registered liquidators also advised that their precedents and checklists were incorrect or not updated, which led to the non-lodgements.
- 56 In our view it is the responsibility of the registered liquidator to ensure that adequate systems and procedures are in place, up to date and functioning properly. Specialist accounting packages and similar systems are tools to assist the registered liquidator undertake the tasks required; they are not a substitute for the registered liquidator applying professional expertise, skill and care.

ASIC error or ASIC's assessment was incorrect

- 57 Some registered liquidators advised that their non-lodgements were due to an ASIC error. An example is that some registered liquidators advised that they received incorrect information from ASIC's Customer Contact Centre. When a registered liquidator provided us with a call centre receipt number, we followed it up directly with the Customer Contact Centre to ensure it does not reoccur.

¹ *ASIC v William James Hamilton—Decision of the Companies Auditors and Liquidators Disciplinary Board*, 3 April 2014, Matter Number 04/NSW13.

- 58 Examples of ASIC incorrectly processing forms included where paper forms were allocated to the incorrect company, multiple forms were processed as one form, or forms were recorded by ASIC as 'creditor correspondence'.
- 59 On some occasions, our assessment of non-lodgements was incorrect. We may have recorded forms as non-lodgements when they were lodged in paper and were awaiting processing.
- 60 We encourage the use of our electronic lodgement system because it is far superior to lodging paper forms as there is no delay in processing, external administration details are updated as soon as the form is lodged and it is less expensive due to no postage costs.
- 61 Other examples where our initial assessment was incorrect included:
- (a) notices on the published notices website lodged by a joint registered liquidator were not checked at the same time for other appointees;
 - (b) we assessed non-standard appointments as standard appointments (e.g. companies wound up under ASIC's abandoned companies program have different lodgement requirements from a standard creditors' voluntary liquidation); and
 - (c) we were not aware of some non-standard events affecting an external administration (e.g. leave of the court to dispense with s436E meetings or the court granting an extension to the convening period in a voluntary administration).

Alternative interpretation of statutory obligations

- 62 Some registered liquidators had alternative interpretations of statutory obligations compared to ASIC. For example, some registered liquidators disagreed with ASIC that certain forms should be lodged or certain notices should be published. Examples are:
- (a) a [Form 578](#) *Deregistration request (liquidator not acting or affairs fully wound up)* when a liquidator is without funds in a liquidation and did not convene a final meeting of creditors;
 - (b) minutes of creditors' meetings where there was no quorum;
 - (c) notice of meetings for a COI on the published notices website; and
 - (d) a s533 report where the liquidator has not recovered books and records or a [Form 507](#) *Report as to affairs*.
- 63 In each of the above instances, which we discuss in more detail in Section D of this report, we consider that registered liquidators should lodge the forms and publish the notices.

Forms could not be lodged electronically

64 Some registered liquidators advised that they could not lodge forms electronically and therefore did not lodge the required form. An example of this is a [Form 529](#) *Notice of meeting* after the meeting date has passed. Registered liquidators must lodge this form and, in these instances, should have lodged a paper form.

65 If registered liquidators have any issues lodging forms online, they should lodge a paper form if one is available; otherwise, they should contact ASIC to discuss lodgement options.

Uncertainty about obligations or how to rectify a situation

66 Some registered liquidators were confused about what to do when they have finalised a liquidation while a receivership is ongoing or what they should lodge for multiple receiverships. Some registered liquidators also were not sure how to lodge outstanding forms when they have resigned from a particular external administration.

67 Registered liquidators should not resign as liquidator when there is a receiver, receiver and manager, or controller appointed to a company. They should contact the other appointee to determine the status of the receivership and, if the receivers are not acting, request they resign. The liquidator should only resign as liquidator and request deregistration of the company after their liquidation is finalised.

68 If a liquidator's lodgement (or non-lodgement) creates an error on the corporate register, they should fix it. For example, a registered liquidator might lodge a [Form 505](#) *Notification of appointment or cessation of an external administrator* to appoint a liquidator to the incorrect company. The registered liquidator should not just leave the register as it is.

69 If a registered liquidator identifies that they have lodged a form in error, they need to lodge a [Form 106](#) *Request to withdraw a lodged document* to request ASIC withdraw the form. Registered liquidators should note that we cannot withdraw all forms. A registered liquidator may have to make an application to court to withdraw such a form (such as a [Form 505](#) *Notification of appointment or cessation of an external administrator* lodged in error against the wrong company). If a registered liquidator finds themselves in this position, they should contact ASIC for assistance or seek independent legal advice.

70 If a registered liquidator identifies they have made an error on a previously lodged form, they should lodge a [Form 492](#) *Request for correction* or a [Form 902](#) *Notification of supplementary information* to notify of the correction to a previously lodged form.

- 71 Registered liquidators can still lodge outstanding forms with ASIC for the period of appointment after they have resigned, but before the company is deregistered. If they have any issues lodging online, they should lodge a paper form.

On-charging the costs of publishing notices

- 72 The project also examined how registered liquidators charged the costs associated with publishing notices on the published notices website to the external administration.
- 73 We sought to ensure that registered liquidators appropriately on-charged the external administration for these costs.
- 74 When we contacted the 570 registered liquidators regarding their non-lodgements, we also asked them to provide a copy of their disbursement policy on charging the cost of publishing notices on the published notices website and to include details of the amount charged to two or three external administrations.
- 75 Almost all registered liquidators reviewed appropriately charged the costs of publishing notices on the published notices website to external administrations on an 'at cost' basis.
- 76 A few registered liquidators who incorrectly charged GST, in addition to the published notices website charges, to the external administration amended their disbursement policy.

Other findings

Published notices website

- 77 The published notices website is not linked to ASIC's corporate register, which means that the published notices website does not automatically identify an incorrectly entered ACN when a registered liquidator is uploading a notice. During the course of the project, it became evident that registered liquidators assumed that like the registered liquidators' portal, the published notices website was integrated with ASIC's corporate register—this is incorrect.
- 78 As one of the most common errors was a notice published with an incorrect ACN, further communication with registered liquidators is necessary to ensure registered liquidators and staff understand this. People publishing notices also need to be vigilant in ensuring the company name and ACN are

correct before publishing the notice. As a result, we will include a reminder on the published notices website to ensure the ACN entered is correct.

- 79 It appears some registered liquidators and staff do not identify the correct notice in the drop-down box on the published notices website. Registered liquidators should ensure that their staff select the correct notice by reviewing the notice and relevant section of the Corporations Act before it is published.

Transitional appointments

- 80 Some registered liquidators were not lodging a [Form 505](#) *Notification of appointment or cessation of an external administrator* when transitioning from a voluntary administration to a creditors' voluntary liquidation. It appears they assumed that only a [Form 509D](#) *Notice of special resolution to wind up company* was required to be lodged. However, the law requires that a Form 505 is lodged for all appointments in addition to a Form 509D. We will include further guidance on this when we revise and update [INFO 29](#).

Pooling orders

- 81 Only a small number of registered liquidators were utilising pooling orders for large and medium-sized groups. A pooling order would assist the registered liquidator in being more efficient when administering large corporate groups because they would only need to lodge one form for the whole group instead of lodging a separate form for each company in the group.

C Key outcomes

Key points

As a result of the project, a majority of the 12,419 identified non-lodgements were subsequently rectified by registered liquidators, improving the information held on ASIC's public registers.

We also:

- took enforcement or disciplinary action, including 17 negotiated resolution agreements and seven 'Directions to comply with a requirement to lodge documents';
- informed a small number of registered liquidators that we would review their ongoing compliance with lodgement and publication requirements in 2018;
- engaged with registered liquidators on their identified non-lodgements and improved their awareness of their lodgement and publication requirements, and encouraged them to improve their overall external administration and practice management; and
- published [Information Sheet 29](#) *External administration: Most commonly lodged forms* (INFO 29) to assist registered liquidators comply with their obligations.

Risk categorisation of registered liquidators

82 We categorised registered liquidators into several groups based on the risk we attributed to the volume of identified non-lodgements. The risk categorisation included looking at the raw number of non-lodgements plus the percentage of non-lodgements over the total lodgements and publications the registered liquidator made and should have made.

83 Table 3 details the number of registered liquidators in each risk category.

Table 3: Registered liquidator risk categories

Risk category	Number
High level of non-lodgements	65 (9.56%)
Medium level of non-lodgements	136 (20.00%)
Low level of non-lodgements	367 (53.97%)
No non-lodgements	112 (16.47%)
Total	680 (100%)

Risk category	Number
Registered liquidators with no external administrations or 'ceased registered liquidators'	134
Total registered liquidators reviewed	814

Note: 'Ceased registered liquidators' includes registered liquidators who we reviewed after they had ceased to be registered or, at the time, they requested cancellation of their registration. We ensured that registered liquidators who requested cancellation of their registration had no current external administration appointments or lodgements outstanding before granting the request. They are therefore not included in any of the risk categories.

Enforcement or disciplinary action taken by ASIC

84 We considered enforcement or disciplinary action where a registered liquidator had a high volume of non-lodgements or broader systemic issues after we had received and assessed their response to our initial correspondence.

85 We set out below how we addressed the registered liquidators assessed with a high level of non-lodgements.

Negotiated resolution agreements

86 During the project, we entered into negotiated resolution agreements with 17 registered liquidators.

87 Thirteen of the negotiated resolution agreements included terms that required the registered liquidator to:

- (a) engage an independent registered liquidator to undertake a 'quality control peer review program' to review a specified number of external administrations and report to ASIC and the registered liquidator with recommendations to improve the firm's compliance culture; and
- (b) implement compliance-based staff training by engaging an independent expert to provide training to the registered liquidator, their partners and professional staff.

88 Two negotiated resolution agreements (included in the 13 mentioned above) also included a non-appointment period of three months. This term was included so that the registered liquidator could focus on rectifying their non-lodgements and improving their internal systems and processes.

89 Four of the negotiated resolution agreements included terms that required the registered liquidator to agree to complete and finalise their current external administrations and then request cancellation of their registration as a registered liquidator.

90 Between August 2015 and October 2017, we issued eight media releases pertaining to these negotiated resolution agreements: see the 'Related information' at the end of the report.

Cancellation of registration

91 Due to the project or other enforcement action on foot, five registered liquidators requested ASIC cancel their registration as registered liquidators.

92 We ensured that the registered liquidators attended to their non-lodgements before cancellation of their registration. In one case, the joint appointee registered liquidator took action to attend to the non-lodgements.

93 Due to the cancellation of their registrations and the attendance to the non-lodgements, we took no further action against these registered liquidators for their high level of non-compliance.

Direction to comply with a requirement to lodge documents

94 From 1 March 2017, ASIC may, in writing, direct a registered liquidator to comply with a requirement to lodge any document that the registered liquidator must lodge with ASIC: s40-5 of Sch 2 to the Corporations Act.

95 If a registered liquidator fails to comply with the direction, ASIC may direct, in writing, that the registered liquidator not accept further appointments under Ch 5 of the Corporations Act: s40-15 of Sch 2 to the Corporations Act.

96 If we issue a direction not to accept further appointments, the Corporations Act prescribes that ASIC is to impose a condition on the person's registration as a registered liquidator that they comply with the direction. We will remove the condition if we withdraw the direction, which would be due to the registered liquidator complying with the initial direction to lodge documents.

97 We issued seven directions to comply with a requirement to lodge documents to registered liquidators under the project. All seven registered liquidators complied with the direction within the required timeframe by rectifying the outstanding lodgements as set out in the direction, and no further action was required in relation to those non-lodgements.

Future review

98 We informed a small number of registered liquidators who had a high level of non-lodgements that we would review their ongoing lodgement and publication compliance in 2018.

99 If we subsequently determine that the registered liquidators have a high level of new non-lodgements, we will consider whether to pursue enforcement action.

Late lodgement fees

100 Most forms lodged in an external administration do not attract a fee unless the registered liquidator lodges them outside of the prescribed time.

101 Registered liquidators should review each form for the prescribed lodgement period, particularly following the enactment of the Insolvency Law Reform Act.

102 When registered liquidators do lodge certain forms late, the law requires ASIC to charge a late lodgement fee. These late lodgement fees are a liability of the registered liquidator and are not to be charged to the relevant external administration.

103 As an example, two of the registered liquidators with high levels of non-lodgements incurred late lodgement fees totalling \$33,143 and \$31,479 because they failed to lodge forms on time.

104 Late lodgement fees remind registered liquidators of the cost of failing to lodge required forms in a timely manner. Registered liquidators could spend this money on more useful and productive activities, such as staff training or updating systems, procedures and checklists.

105 One way of not incurring a financial penalty is to lodge forms within the prescribed time by ensuring systems and procedures are up to date and correctly implemented by staff.

Actions taken by registered liquidator to improve compliance

106 Most registered liquidators advised us that as a result of engagement with ASIC through the project they took some or all of the following actions to improve their compliance with lodgement and publication requirements:

- (a) reviewed and improved their policies, systems and procedures;
- (b) updated checklists;
- (c) updated precedents;
- (d) provided staff training for themselves and for their partners and staff;
- (e) engaged or appointed risk compliance officers for their firms; or
- (f) engaged independent consultants to review their systems and procedures, including a review of a number of external

administrations to provide a report on any shortcomings and to provide recommendations on how to remedy those shortcomings.

107 We have published [Information Sheet 29](#) *External administration: Most commonly lodged forms* (INFO 29) to assist registered liquidators comply with their obligations.

Note: INFO 29 is currently under review for reforms enacted by the Insolvency Law Reform Act.

D Key messages for registered liquidators on specific findings

Key points

Our review identified detailed findings on a number of specific topics, which are set out in this section to help registered liquidators improve their future compliance with lodgement and publication requirements. The specific topics discussed in this section are:

- systems, procedures and education;
- notice of appointment;
- accounts of receipts and payments;
- s533 reports;
- notices on the published notices website;
- change of details;
- annual meetings;
- meetings in general;
- COI meeting notices;
- deed of company arrangement;
- finalisation of liquidations; and
- waiving the requirement to lodge or publish.

Note: The commentary in this section relates to the law as existed at the time of the review and before the commencement of the Insolvency Law Reform Act. For relevant law reform changes introduced in 2017, see Appendix 2.

Systems, procedures and education

Finding

Some registered liquidators need to better supervise or train their staff.

Commentary

- 108 The registered liquidator is responsible for the external administration, and they must ensure they supervise staff and that their staff are competent.
- 109 It is very important that registered liquidators have good policies, procedures and processes, and carry out regular file reviews. We learnt that a number of registered liquidators did not have systems in place to review their files and checklists on a regular basis. If registered liquidators had these systems in

place, they may have avoided the non-lodgements because their systems should have highlighted lodgement requirements.

- 110 Registered liquidators must ensure that their policies, procedures and checklists are up to date and correct and that their staff follow them. Registered liquidators must provide sufficient oversight of their staff and all external administrations. Timely and regular education and training for registered liquidators and their staff is vitally important. There is value in registered liquidators having external or peer reviews conducted of their practice on a regular basis.

Notice of appointment

Finding

Some registered liquidators were not lodging a [Form 505](#) *Notification of appointment or cessation of an external administrator* when appointed to a new external administration.

Commentary

- 111 We found that some registered liquidators were not lodging a Form 505 when appointed to a new external administration, assuming other lodged forms are sufficient (such as a [Form 509D](#) *Notice of special resolution to wind up company* when a company transitions from a voluntary administration to a creditors' voluntary liquidation).
- 112 A Form 505 must be lodged with ASIC by a registered liquidator for each new external administration appointment under s415, 427, 450A, 499(2C) and 537 of the Corporations Act, even when the appointment transitions from another external administration appointment type.

Accounts of receipts and payments

Finding

Some registered liquidators were not lodging a [Form 524](#) *Presentation of accounts and statement* on a six-monthly basis.

Commentary

- 113 We found that some registered liquidators were not lodging a Form 524 on a six-monthly basis as required by s432, 438E, 445J and 539 of the Corporations Act.

- 114 Form 524 is important to stakeholders because it provides valuable information regarding an external administration, including an account of receipts and payments, remuneration of a registered liquidator, dividends paid and estimated to be paid to creditors, outstanding tasks and the estimated time of completion of the external administration.
- 115 Registered liquidators should ensure that their staff are fully trained and their policies, procedures and checklists reflect that the relevant forms must be lodged on a timely basis.

Section 533 reports

Findings

Many registered liquidators were not lodging s533 reports within the six-month period.

Some registered liquidators were not lodging reports despite disclosing to creditors that there will be no prospect of paying a dividend to unsecured creditors.

Some registered liquidators were still not utilising the [Liquidator Assistance Program](#) when they experience difficulties in obtaining information from directors.

Commentary

- 116 Registered liquidators must lodge a report with ASIC, as soon as practicable, and in any event within six months, if it appears to the liquidator that:
- (a) a relevant person may have:
 - (i) committed an offence in relation to the company;
 - (ii) been negligent; or
 - (iii) otherwise engaged in misconduct; or
 - (b) the company may be unable to pay its unsecured creditors more than 50 cents in the dollar.
- 117 It is important to note that the law prescribes that the report must be lodged where a relevant person 'may have' committed an offence; it does not require registered liquidators to prove that the relevant person 'has' committed an offence. Similarly, the registered liquidator is not required to finalise all recoveries (and costs) in order to determine the final dividend rate. See [Regulatory Guide 16](#) *External administrators: Reporting and lodging* (RG 16) for further information.

- 118 It is essential that registered liquidators lodge timely and specific reports with ASIC. We use these reports to decide whether or not further regulatory or enforcement action is required in relation to the affairs of an insolvent company. In order to carry out our assessment in an effective and timely manner, we need liquidators to provide the information via a [Form EX01 Schedule B of Regulatory Guide 16: Report to ASIC under s422, s438D or s533 of the Corporations Act 2001](#) or for statistical purposes in a timely manner.
- 119 If a registered liquidator experiences difficulties in obtaining relevant information, they should consider exercising their powers in this regard or seek our assistance under the [Liquidator Assistance Program](#) before completing a report. Such difficulties can include, for example, because the directors of a company have failed to:
- (a) provide a [Form 507 Report as to affairs](#); or
 - (b) deliver the books and records of the company to the liquidator.
- 120 We found that many registered liquidators were not lodging reports within the six-month period as required by the Corporations Act. Reasons for non-lodgement included:
- (a) investigations were ongoing or not yet completed;
 - (b) the directors of the company had not delivered a [Form 507 Report as to affairs](#) or books and records to the liquidator;
 - (c) because there were no recoveries from voidable transactions or insolvent trading, there were no offences to report; or
 - (d) a lack of evidence to prove the misconduct allegations.
- 121 We also found that some registered liquidators:
- (a) lodged reports at the end of the liquidation as part of their finalisation procedures (e.g. after they had already convened the final meeting). We understand this practice occurred because the liquidator wanted to ensure investigations were fully completed before lodging a report with ASIC; and
 - (b) did not lodge reports under s533 of the Corporations Act with ASIC despite disclosing in reports to creditors or other forms that there was no prospect of paying a dividend to unsecured creditors.
- 122 Some registered liquidators appeared to equate committing offences with recoveries of voidable transactions. A relevant person may still commit an offence even when there is no financial recovery by the liquidator. Insolvent trading can be an offence without the liquidator recovering funds from the directors relating to insolvent trading. Liquidators must report these offences to ASIC regardless of whether they make any related recoveries.

- 123 If a registered liquidator has insufficient evidence of the misconduct alleged, they must still lodge a report. We will assess whether any further regulatory or enforcement action is required based on the information provided in the report. If we need further information, we will request this information in writing.

Notices on the published notices website

Findings

Many notices referred to an incorrect ACN for the external administration or referred to the incorrect section of the Corporations Act for the particular type of meeting the registered liquidator convened.

Some registered liquidators were not selecting the correct notice type when uploading a notice.

Commentary

- 124 We found that many notices referred to an incorrect ACN for the external administration. This leads to the published notices website containing incorrect information. Should an interested party search for a particular ACN on the published notices website, they would receive potentially misleading information in relation to a company.
- 125 We also found that many notices of meeting referred to the incorrect section of the Corporations Act for the particular type of meeting the registered liquidator convened. For example, the liquidator published a notice of meeting under s479(2) when they should have published a notice of meeting under s497(2).
- 126 It also appeared that registered liquidators were not selecting the correct notice type when uploading a notice. This resulted in the publishing of an incorrect notice type. For example, liquidators published a notice of appointment under s491 instead of a notice of deemed special resolution to wind up a company under s446A.
- 127 Registered liquidators should ensure that their staff are fully trained on how to use and upload notices. Registered liquidators should review and check all notices before publishing them. It is vital that every notice published contains the correct ACN, is the correct type of notice and refers to the correct section of the Corporations Act.

Change of details

Finding

Some registered liquidators were not lodging all of the required forms to notify ASIC when they changed details, such as a registered liquidator's name, address of principal place of practice or other practices, or firm name.

Commentary

- 128 When a registered liquidator changes their details, such as address, they must lodge:
- (a) [Form 506](#) *Notification of change of address of an external administrator* as required by s427 and 537 of the Corporations Act to update the corporate register for each external administration they are appointed to within 14 days after the change. The electronically lodged form can include up to 50 external administrations so registered liquidators may need to lodge multiple forms if they have more than 50 current external administrations; and
 - (b) [Form 905A](#) *Notification of change to details of a liquidator* as required by s1287(2)(b) of the Corporations Act to update the [register of liquidators](#) within 21 days of the event occurring.

Annual meetings

Findings

Some registered liquidators were not convening and holding annual meetings or lodging annual reports in liquidations.

The most common non-lodgement related to annual meeting and reporting requirements.

Commentary

- 129 Section 508 of the Corporations Act requires registered liquidators to convene an annual meeting or lodge an annual report within three months of the end of the first year beginning on the date of appointment and the end of each succeeding year.
- 130 It was a significant concern to ASIC that annual meeting and reporting requirements was the most common non-lodgement, with many registered liquidators not convening annual meetings or lodging annual reports

([Form 1500 Annual report to creditors](#)) as required by s508 of the Corporations Act.

131 Failing to lodge annual reports or convene annual meetings can cause harm to creditors and other stakeholders. It deprives creditors of the forum in which to exercise their rights and be informed about the events and status of the liquidation.

132 We also found that some registered liquidators were:

- (a) not aligning the timing of the annual meeting or annual report to the 12-month anniversary period;
- (b) convening the annual meeting outside of the required time;
- (c) lodging annual reports for a period greater than 12 months;
- (d) lodging one annual report for multiple years; and
- (e) lodging annual reports that did not include all the required information, such as a summary of receipts and payments.

133 We found that some minutes of meeting lodged did not reflect that the meeting was an annual meeting (so not recorded as an annual meeting) or the minutes referred to incorrect sections of the Corporations Act.

134 Convening annual meetings and lodging annual reports ([Form 1500 Annual report to creditors](#)) in liquidations are fundamental tasks of registered liquidators. It is a registered liquidator's duty to keep creditors and other relevant stakeholders informed of events during the liquidation and the status of the liquidation.

Note: For liquidations that commenced before 1 September 2017, registered liquidators must ensure that annual meetings are convened or annual reports lodged with ASIC until 31 August 2018, as part of the transitional requirements under the Insolvency Law Reform Act: see Appendix 2.

Meetings in general

Finding

Some registered liquidators were not lodging minutes for meetings when there was no quorum and for adjourned meetings.

Commentary

135 A meeting convened where there is no quorum is still considered a meeting; however, the meeting must not act other than for the following three exceptions outlined in reg 5.6.16(1) of the Corporations Regulations:

- (a) the election of a chairperson;

- (b) the proving of debts; and
 - (c) the adjournment of the meeting.
- 136 Regulation 5.6.16(4) provides for the adjournment of a meeting where there is no quorum within 30 minutes of the time appointed for the meeting. The reconvened meeting lapses if there is no quorum within 30 minutes of the time appointed for the reconvened meeting: reg 5.6.16(8).
- 137 Regulations 5.6.27(3) and 5.6.27(7) require the chairperson of a meeting to lodge a copy of the minutes within a specified period after the 'end of the meeting' for meetings convened under a particular section of the Corporations Act. We consider the 'end of the meeting' for a meeting where there is a quorum is at the conclusion of that meeting. If a meeting is adjourned and reconvened, then it would be at the conclusion of the reconvened meeting.
- 138 The chairperson should lodge one aggregate set of minutes for a meeting that was adjourned and reconvened or where there were multiple adjournments.
- 139 The chairperson must still lodge minutes of the meeting where there is a reconvened meeting and no quorum present within the specified time. The minutes should note there was no quorum.
- 140 Registered liquidators must ensure their policies, procedures and checklists are correct for convening and holding meetings.

Committee of inspection meeting notices

Finding

The majority of registered liquidators were not publishing notices of COI meetings on the published notices website.

Commentary

- 141 In our view registered liquidators must ensure that they publish notices of COI meetings on the published notices website: reg 5.6.14A(1) of the Corporations Regulations. Our position is based on regs 5.6.11(2) and (3) and 5.6.14A(2), which when read together define what types of meetings these regulations did not apply to and neither of these regulations excluded meetings of a COI.
- 142 Registered liquidators must ensure that their policies, procedures and checklists refer to the correct procedures when convening a COI meeting.

Deed of company arrangement

Finding

Some registered liquidators were lodging incorrect forms and publishing incorrect notices when the deed of company arrangement ended and the company placed into liquidation.

Commentary

- 143 Under s450D(a) of the Corporations Act, registered liquidators must lodge a [Form 509G](#) *Notice of termination of deed of company arrangement* when creditors pass a resolution to end a deed of company arrangement or when creditors pass a resolution to wind up the company.
- 144 Under s446(5) of the Corporations Act, registered liquidators must also:
- (a) lodge [Form 509D](#) *Notice of special resolution to wind up company* within five business days of passing a resolution to wind up a company; and
 - (b) publish a *Notice of deemed special resolution to wind up company* on the published notices website within 15 business days of passing the resolution to wind up a company.
- 145 The registered liquidator must also lodge:
- (a) [Form 505](#) *Notification of appointment or cessation of an external administrator* notifying ASIC of their appointment as liquidator within 14 days after the appointment under s537(1) of the Corporations Act; and
 - (b) a final [Form 524](#) *Presentation of accounts and statement* for the period of the deed of company arrangement within one month of the deed of company arrangement ending under s445J(2) of the Corporations Act.
- 146 Registered liquidators must ensure that their policies, procedures and checklists are correct so they lodge and publish the requisite forms and notices when a deed of company arrangement ends and the company is wound up.

Finalisation of liquidations

Findings

Some registered liquidators were not finalising liquidations correctly.

Some registered liquidators were resigning as liquidators even though a controller or receiver was still appointed over the company's property.

Commentary

- 147 Registered liquidators should ensure they finalise liquidations correctly and in a timely manner. We found that some registered liquidators were not finalising liquidations correctly.
- 148 Some registered liquidators were only lodging a [Form 505 Notification of appointment or cessation of an external administrator](#) and a final [Form 524 Presentation of accounts and statement](#). This leads to companies remaining on the corporate register in an external administration status but with no liquidator acting. Registered liquidators should ensure their policies, procedures and checklists for the finalisation of liquidations are correct. This will ensure that ASIC's public registers remain accurate and up to date.
- 149 To finalise liquidations, the registered liquidator would convene a final meeting of members and creditors and lodge a [Form 523 Notification of final meeting convened by liquidator](#) under s509 of the Corporations Act. ASIC must deregister the company at the end of the period of three months beginning on the day after the registered liquidator lodges the Form 523.
- 150 Alternatively, if the registered liquidator had no funds to call a final meeting as required by s509 of the Corporations Act, they would lodge a [Form 578 Deregistration request \(liquidator not acting or affairs fully wound up\)](#). Processing of a Form 578 triggers ASIC's deregistration process and the company would be deregistered two months after publication of the proposed deregistration notice on the published notices website.
- 151 We also found that some registered liquidators were resigning as liquidators even though a controller or receiver was still appointed over the company's property. We expect that a liquidator will continue to act as such while a controller or receiver remains appointed.
- 152 We will not process a [Form 578 Deregistration request \(liquidator not acting or affairs fully wound up\)](#) where current controller or receiver roles exist. Completion of the liquidation may require the registered liquidator to communicate regularly with other external administrators about the status of their respective administrations. A liquidator can apply to the court to remove a redundant controller under s434B(4) of the Corporations Act.

Waiving the requirement to lodge or publish

Finding

Some registered liquidators requested that ASIC waive the requirement to lodge forms or to publish notices on the published notices website.

Commentary

153 We cannot override the obligations of registered liquidators as set out in the relevant legislation. Therefore, we are unable to waive the requirement to lodge forms with ASIC or to publish notices on the published notices website.

Appendix 1: Project methodology

How we determined non-lodgements

154 We selected either an individual registered liquidator or a firm operating in a particular state. After making that selection:

- (a) we identified from ASIC's public registers the current external administrations for each registered liquidator as at that day (i.e. we only identified external administrations with an external administration status unless there were any anomalies with finalised administrations);
- (b) we extracted a list of all external administration documents lodged by the appointees against each external administration from ASIC's public registers;
- (c) we extracted a list of all notices published by each registered liquidator on the published notices website; and
- (d) for each current external administration, we compared the forms lodged and notices published with those that we identified ought to have been lodged or published. This cross-referencing allowed us to compile a preliminary list of non-lodgements.

155 Our decision to select based on firms was driven by our expectation of a high level of joint and several appointments. Selection by firm avoided reviewing external administrations twice and allowed the firm to address the non-lodgements efficiently. We reviewed some firms on a national basis when our initial assessment of a particular state identified a reasonable level of joint appointments across more than one state.

What was required of registered liquidators

156 When a registered liquidator had no appointments at the date of review or when we did not identify any non-lodgements, we took no further action.

157 When we identified that a registered liquidator had non-lodgements, we wrote to them providing a schedule of our assessment of non-lodgements. We asked registered liquidators to:

- (a) advise us if our schedule was inaccurate and, if so, state the reasons why and provide documents and information to support that view; and
- (b) state what steps were taken, or will be taken, to address the non-compliance and provide supporting documentation.

158 We also advised that we expected any late lodgement fees imposed would not be charged to the relevant external administration.

- 159 If the registered liquidator advised they had attended to the non-lodgements, we verified that the outstanding lodgements and published notices were properly attended to.
- 160 We followed up any non-lodgements that were not attended to usually by further email or letter.
- 161 In certain instances, we amended the number of non-lodgements due to the registered liquidator's response to our initial correspondence (e.g. when we acknowledged an alternate legal interpretation of a provision of the Corporations Act or a registered liquidator provided additional factual evidence that we accepted).
- 162 When a registered liquidator had a high volume of non-lodgements or we identified broader systemic issues, we determined whether or not further enforcement or disciplinary action was warranted.

List of forms and notices reviewed

- 163 Table 4 lists the forms and notices we reviewed as part of the project.

Table 4: Forms and notices reviewed

Forms and notices
Section 533 reports (Form EX01 Schedule B of Regulatory Guide 16—Report to ASIC under s422, s438D or s533 of the Corporations Act or for statistical purposes)
Minutes of annual meeting or annual reports in lieu of holding an annual meeting (Form 1500 Annual report to creditors)
Form 205 Notification of resolution
Form 505 Notification of appointment or cessation of an external administrator
Form 506 Notification of changes of address of an external administrator
Form 507 Report as to affairs
Form 509D Notice of special resolution to wind up company
Form 509G Notice of termination of deed of company arrangement
Form 523 Notification of final meeting convened by liquidator
Form 524 Presentation of accounts and statement
Form 529 Notice of meeting
Form 578 Deregistration request (liquidator not acting or affairs fully wound up)

Forms and notices

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

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

[Form 5053](#) *Notice that administration of a company has ended*

Published notices website—*Notice of appointment*

Published notices website—*Notice to wind up company*

Published notices website—*Notice of deemed special resolution to wind up company*

Published notices website—*Notice of meeting*

Appendix 2: Insolvency law reform amendments and transitional provisions

164 Below is a summary of the 2017 insolvency law reform amendments and transitional provisions—contained in the Insolvency Law Reform Act—relevant to the topics raised in this report.

Accounts of receipts and payments

165 From 1 September 2017, registered liquidators must lodge an annual [Form 5602](#) *Annual administration return* for external administrations that commenced after 1 September 2017, instead of a [Form 524](#) *Presentation of accounts and statement: s70-5 of Sch 2 to the Corporations Act*.

166 A Form 5602 must be lodged within three months after the end of the administration return year, which is the anniversary of the appointment.

167 For external administrations that commenced before 1 September 2017, a registered liquidator will continue to lodge the six-monthly Form 524 until the six-month period ending on the first anniversary of their appointment date after 1 September 2017. Thereafter, they will lodge Form 5602.

168 From 1 September 2017, registered liquidators must lodge a [Form 5603](#) *End of administration return* for all external administrations when finalised instead of a final Form 524: s70-6 of Sch 2 to the Corporations Act.

169 Registered liquidators must lodge Form 5603 within one month after the end of the external administration.

Change of details

170 When a registered liquidator changes their details, such as address, from 1 March 2017, they must lodge a [Form 905A](#) *Notification of change to details of a liquidator* under s35-5(1)(b) of Sch 2 to the Corporations Act and Rule 35-1 of the Rules to update the [register of liquidators](#) within 10 business days of the event occurring.

Annual meetings

171 The Insolvency Law Reform Act repealed the s508 requirement to convene annual meetings or lodge annual reports for liquidations that commenced after 1 September 2017.

172 However, transitional provisions require that for liquidations that commenced before 1 September 2017 that are finalised on or before 31 August 2018, liquidators must still convene annual meetings or lodge annual reports.

Meetings in general

173 The Insolvency Law Reform Act repealed a number of regulations in the Corporations Regulations relating to meetings—in particular, reg 5.6.16 regarding quorums and reg 5.6.27 regarding minutes of meetings. From 1 September 2017, the relevant provisions for quorums and minutes of meetings are Rules 75-105 and 75-145.

Committee of inspection meeting notices

174 Rule 75-40(4)(d) states that an external administrator must lodge a notice of a meeting on the published notices website for a COI. This rule has applied since 1 September 2017.

Deed of company arrangement

175 From 1 September 2017, the registered liquidator must lodge a [Form 5603](#) *End of administration return* within one month of the end of the deed of company arrangement.

Finalisation of liquidations

176 For liquidations that commenced before 1 September 2017, registered liquidators must still convene a final meeting of members and creditors and lodge a [Form 523](#) *Notification of final meeting convened by liquidator* where those liquidations are finalised on or before 30 June 2018.

177 From 1 September 2017, registered liquidators must lodge a [Form 5603](#) *End of administration return* for all liquidations when the affairs of the company are fully wound up: s70-6 of Sch 2 to the Corporations Act.

178 Registered liquidators must lodge Form 5603 within one month after the end of the external administration.

179 ASIC must deregister the company at the end of the period of three months beginning on the day after Form 523 or Form 5603 returns are lodged (depending on when the liquidation commenced).

Definitions

180 From 1 September 2017, the following terms have been amended:

- (a) external administration does not include receiverships or controllerships; and
- (b) external administrator does not include receiver, receiver and manager, or controller.

181 However, for the purposes of this report, we have used the former definition of these terms.

Appendix 3: Accessible versions of figures

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

Table 5: Percentage of external administrations with non-lodgements by number of registered liquidators per firm

Number of registered liquidators per firm	Percentage of non-lodgements
1	32%
2	24%
3–4	19%
5+	22%
Average	24%

Note: This is the data contained in Figure 1.

Table 6: Types of non-lodged forms

Type of non-lodged form	Number of non-lodged forms
Annual meeting or report in lieu	3,219
Non-lodged other	2,633
Form 524	1,882
Section 533 report	953
Form 5011	475

Note: This is the data contained in Figure 2.

Table 7: Types of non-published notices

Type of notice	Number of non-published notices
Meeting notices	2,252
Notice of appointment	618
Other notices	387

Note: This is the data contained in Figure 3.

Table 8: Breakdown of forms not lodged and notices not published by percentage**Forms**

Annual meeting or report in lieu (35.1%)

Non-lodged other (28.7%)

Form 524 (20.6%)

Section 533 report (10.4%)

Form 5011 (5.2%)

Notices

Meeting notices (69.1%)

Notice of appointment (19.0%)

Other notices (11.9%)

Note: This is the data contained in Figure 4.

Key terms

Term	Meaning in this document
ACN	Australian Company Number
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC's public registers	The prescribed registers ASIC maintains under the Corporations Act, including registers of companies, auditors and liquidators, which are accessible by the public
CALDB	Companies Auditors and Liquidators Disciplinary Board Note: The CALDB has been renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the Insolvency Law Reform Act that took effect on 1 March 2017.
COI	Committee of inspection
controller	Has the same meaning as in s9 of the Corporations Act
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
deed administrator	A person appointed to administer a deed of company arrangement under Pt 5.3A of the Corporations Act
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under s93AA of the ASIC Act
enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to the CADB), 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 Note: We have used this definition in this report because we undertook the project before the enactment of the Insolvency Law Reform Act. For the amended definition, see s5-15 of Sch 2 to the Corporations Act.
external administrator	A liquidator, voluntary administrator, deed administrator, receiver, receiver and manager, or controller Note: We have used this definition in this report because we undertook the project before the enactment of the Insolvency Law Reform Act. For the amended definition, see s5-20 of Sch 2 to the Corporations Act.
GST	Goods and services tax

Term	Meaning in this document
INFO 151 (for example)	An ASIC information sheet (in this example numbered 151)
Insolvency Law Reform Act	<i>Insolvency Law Reform Act 2016</i> and related legislation
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 agreement	A negotiated alternative (e.g. a voluntary undertaking) to other enforcement remedies, which is used when we consider it can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see INFO 151
non-lodgements	Forms not lodged with ASIC and notices not published on the published notices website
project	The 'ASIC published notices website and lodgement project'
receiver	A person appointed under an instrument or by the court to receive property of a company, who does not manage, and under the terms of the person's appointment does not have power to manage, affairs of the company
receiver and manager	Has the same meaning as in s9 of the Corporations Act
reg 5.6.16 (for example)	A regulation of the Corporations Regulations (in this example numbered 5.6.16), unless otherwise specified
registered liquidator	A person registered by ASIC under s1282(2) of the Corporations Act. For the purposes of this report, it includes a liquidator, external administrator and receiver Note: We have used this definition in this report because we undertook the project before the enactment of the Insolvency Law Reform Act. For the amended definition, see s5-5 of Sch 2 to the Corporations Act.
RG 186 (for example)	An ASIC regulatory guide (in this example numbered 186)
Rule 35-1 (for example)	A section of the Insolvency Practice Rules (Corporations) 2016 (in this example numbered 35-1)
Rules	Insolvency Practice Rules (Corporations) 2016
Sch 2	Schedule 2 to the Corporations Act, titled Insolvency Practice Schedule (Corporations)
s432 (for example)	A section of the Corporations Act (in this example numbered 432), unless otherwise specified
voluntary administrator	An administrator of a company but not a deed of company arrangement

Related information

Headnotes

compliance projects, education, enforcement outcomes, engaging with industry and stakeholders, external administration, forms, guidance, insolvency practitioners, lodgements, published notices website, registered liquidators, surveillance

Regulatory guides

[RG 16](#) *External administrators: Reporting and lodging*

[RG 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements*

Information sheets

[INFO 29](#) *External administration: Most commonly lodged forms*

[INFO 53](#) *Providing assistance to external administrators: Books, records and RATA*

[INFO 151](#) *ASIC's approach to enforcement*

Legislation

ASIC Act, s93AA

Corporations Act, Ch 5; s9, s415, 422, 427, 432, 434B, 438D, 438E, 445J, 446, 446A, 450A, 450D, 479, 491, 497, 499, 508, 509, 513B, 533, 537, 539, 1282, 1287; Sch 2—s5-20, 20-30, 35-5, 40-5, 40-15, 70-5, 70-6

Corporations Regulations, regs 5.6.11, 5.6.14A, 5.6.16, 5.6.27

Insolvency Law Reform Act

Insolvency Practice Rules (Corporations) 2016, Rules 35-1, 75-40, 75-105, 75-145

Cases

ASIC v William James Hamilton—Decision of the Companies Auditors and Liquidators Disciplinary Board, 3 April 2014, Matter Number 04/NSW13

Forms

[Form EX01](#) *Schedule B of Regulatory Guide 16—Report to ASIC under s422, s438D or s533 of the Corporations Act or for statistical purposes*

[Form 106](#) *Request to withdraw a lodged document*

[Form 205](#) *Notification of resolution*

[Form 492](#) *Request for correction*

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

[Form 506](#) *Notification of changes of address of an external administrator*

[Form 507](#) *Report as to affairs*

[Form 509D](#) *Notice of special resolution to wind up company*

[Form 509G](#) *Notice of termination of deed of company arrangement*

[Form 523](#) *Notification of final meeting convened by liquidator*

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

[Form 529](#) *Notice of meeting*

[Form 578](#) *Deregistration request (liquidator not acting or affairs fully wound up)*

[Form 902](#) *Notification of supplementary information*

[Form 905A](#) *Notification of a change to details of a liquidator*

[Form 1500](#) *Annual report to creditors*

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

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

[Form 5053](#) *Notice that administration of a company has ended*

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

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

Media releases

[15-224MR](#) *ASIC cancels registration of liquidators (24 August 2015)*

[15-389MR](#) *ASIC accepts voluntary undertakings from three Victorian liquidators (16 December 2015)*

[16-039MR](#) *ASIC accepts voluntary undertaking from Sydney liquidator*
(18 February 2016)

[16-146MR](#) *NSW liquidator successfully completes independent peer review*
(17 May 2016)

[16-261MR](#) *ASIC accepts voluntary undertaking from Victorian liquidator*
(18 August 2016)

[16-385MR](#) *ASIC accepts voluntary undertaking from NSW liquidators*
(10 November 2016)

[16-400MR](#) *ASIC accepts voluntary undertakings from WA liquidators*
(21 November 2016)

[17-351MR](#) *ASIC accepts voluntary undertakings from three liquidators*
(19 October 2017)