



ASIC
Australian Securities &
Investments Commission

REPORT 610

ASIC regulation of registered liquidators: January 2017 to June 2018

February 2019

About this report

This report is for registered liquidators and other interested stakeholders.

It summarises the work undertaken and outcomes achieved by ASIC in supervising registered liquidators in the period from 1 January 2017 to 30 June 2018 (reporting period).

About ASIC regulatory documents

In administering legislation, ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Previous reports

Report number	Report date	Reporting period
REP 532	June 2017	January to December 2016
REP 479	June 2016	January to December 2015
REP 430	April 2015	January to December 2014
REP 389	April 2014	January to December 2013
REP 342	May 2013	January to December 2012
REP 287	May 2012	January to December 2011

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Overview

- 1 ASIC registers and is responsible for supervising registered liquidators who accept formal appointments as external administrators (including controller appointments) of companies in Australia.
- 2 We supervise registered liquidator compliance with the *Corporations Act 2001* (Corporations Act), the Corporations Regulations 2001 (Corporations Regulations) and the Insolvency Practice Rules (Corporations) 2016 (Practice Rules). We also consider whether the registered liquidator conduct meets generally accepted professional standards, practices and principles, including codes of conduct or statements of best practice of relevant professional and industry bodies.
- 3 This report summarises the outcomes of our activities for the period 1 January 2017 to 30 June 2018 (reporting period). It focuses on:
 - (a) our guidance, education, stakeholder engagement and policy advice work for registered liquidators (see Section A); and
 - (b) our work in supervising registered liquidators through our assessment of reports of misconduct, and through our surveillance and enforcement activities (see Section B).
- 4 Section C outlines the important work we do with registered liquidators who wind up or restructure insolvent companies. We assist liquidators in this work, through our liquidator assistance program and the Assetless Administration Fund (AA Fund), by helping them to obtain records or funding their preliminary investigations to enable them to report to ASIC. These reports from registered liquidators support our own investigations and, where appropriate, ASIC action, including litigation against directors and others.
- 5 As part of our work, we consider the demographic and geographic information about registered liquidators. Understanding the factors affecting the industry helps us develop strategies for working with and supervising registered liquidators. We have set out the industry profile in Section D.

ASIC's strategic priorities

- 6 Our vision is for a fair, strong and efficient financial system for all Australians. To realise our vision we will use all our regulatory tools to:
 - (a) change behaviours to drive good consumer and investor outcomes;
 - (b) act against misconduct to maintain trust and integrity in the financial system;

- (c) promote the strong and innovative development of the financial system;
and
- (d) help Australians to be in control of their financial lives.
- 7 Each year we issue our corporate plan that sets out our strategic priorities for a four-year period. In August 2016, we issued [ASIC's corporate plan 2016–17 to 2019–20](#) and in August 2017 [ASIC's corporate plan 2017–18 to 2020–21](#). Supporting ASIC's corporate plan are individual sector business plans, including:
- (a) the [2016–17 insolvency practitioners business plan](#) (PDF 363 KB); and
- (b) the [2017–18 insolvency practitioners business plan](#) (PDF 369 KB).
- 8 This report describes how we addressed the priorities identified in both the ASIC corporate plan and sector business plan.
- 9 An area of our focus is to promote creditors' confidence in the proper administration of insolvent companies and in our supervision of registered liquidators. Creditors are entitled to expect a liquidator to wind up an insolvent company in a fair and orderly way so they receive the maximum possible return of their money, recognising that the liquidator is entitled to reasonable remuneration and costs incurred.
- 10 To this end, registered liquidators must be competent and efficient. They must bring an independent mind to their task. They cannot use the creditors' funds entrusted to them to improperly advance their own interests.

Key terms used in this report

- 11 This report uses terms that have special meaning and are important for understanding the context of the statistics: see Table 1. For a full list of terms used in this report, see the 'Key terms' at the end of the report.

Table 1: Meaning of key terms used in this report

Term	Meaning in this report
Court enforceable undertaking	Undertakings under s93AA of the <i>Australian Securities and Investments Commission Act 2001</i> (ASIC Act)
Enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to court or a referral to a committee convened under s40-50 of Sch 2 to the Corporations Act (Sch 2)), or where the parties reach a negotiated outcome (e.g. where we accept a court enforceable undertaking)

Term	Meaning in this report
External administration	The corporate insolvency that the external administrator administers; including liquidation, controller appointments, voluntary administration or a deed of company arrangements
External administrator	A liquidator, controller, voluntary administrator or administrator of a deed of company arrangement
Formal investigation	A formal investigation under s13(3) of the ASIC Act
Negotiated resolution	Negotiated alternatives to other enforcement remedies where these can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see Information Sheet 151 <i>ASIC's approach to enforcement</i> (INFO 151)
Proactive practice review	A review of a registered liquidator's whole practice, including systems and procedures, and a detailed review of multiple external administration appointments. The aim is to assess whether the registered liquidator is adequately and properly performing their duties and generally complying with the law
Reporting period	The 18 months between 1 January 2017 to 30 June 2018: see paragraphs 20–21 for more information.
Surveillance	Transaction reviews, proactive transaction reviews, proactive practice reviews and industry-wide compliance projects
Transaction review	A review of the conduct of a registered liquidator in relation to a specific transaction or external administration

Key activities, issues and outcomes

- 12 We aim to achieve the priorities of the ASIC corporate plan and sector business plan through a combination of:
- (a) guidance;
 - (b) education;
 - (c) stakeholder engagement;
 - (d) policy advice;
 - (e) surveillance; and
 - (f) enforcement action.

- 13 In the reporting period, we continued our focus on the following areas of greatest threat of harm:
- (a) *Competence*: This includes issues such as practice capacity, timeliness, adequacy of investigations, statutory reporting, poor asset realisation, and failing to maintain proper books and records.
 - (b) *Independence*: A registered liquidator must be independent and also be seen, or perceived, to be independent. Our focus included disclosure by registered liquidators of relevant relationships and indemnities, as required by the Corporations Act.
 - (c) *Improper gain*: This includes, but is not limited to, excessive remuneration, drawing remuneration before obtaining appropriate approval, and entering into inappropriate transactions with related parties.
- 14 A significant portion of our supervision activities result in educational outcomes for market participants. This is consistent with our objective to communicate to the market our expectations for insolvency practitioners on specific issues or behaviours. Our supervision and intervention often provide the catalyst for registered liquidators to change their behaviour and internal systems. However, we use enforcement action where warranted and when other action cannot achieve the required outcome.

Overview of key outcomes

Guidance, education and policy advice outcomes

- 15 In the reporting period, we:
- (a) released new regulatory guidance on the registration, disciplinary actions and insurance requirements of registered liquidators;
 - (b) reissued our information sheets to include changes enacted by the *Insolvency Law Reform Act 2016* (Insolvency Law Reform Act);
 - (c) authored six articles for the *Australian Insolvency Journal* which is published by ARITA (Australian Restructuring Insolvency and Turnaround Association);
 - (d) published five issues of our quarterly e-newsletter ‘Corporate insolvency update’;
 - (e) sent 15 emails to all registered liquidators providing information on various topics, including law reform, industry funding for ASIC and the panel of registered liquidators from which ASIC makes appointments when it exercises its power to wind up an abandoned company;
 - (f) released our report outlining the results of our project to test registered liquidator compliance with their lodgement and publication obligations, and provided guidance for registered liquidators to help improve these compliance obligations;

- (g) intervened or appeared as *amicus curiae* in two matters involving issues of registered liquidator independence and remuneration; and
- (h) provided policy advice and feedback to government on proposed safe harbour and ipso facto reforms, industry funding for ASIC and reforms to combat illegal phoenix activity.

Supervision outcomes

- 16 In the reporting period, we:
- (a) initiated three proactive practice reviews and 63 transaction reviews;
 - (b) completed one proactive practice review and 54 transaction reviews;
 - (c) completed 30 reviews of declarations of relevant relationships and indemnities, and 17 reviews of remuneration reports issued to creditors by registered liquidators;
 - (d) commenced four formal investigations or enforcement actions concerning registered liquidator conduct (see Table 3 in Section B);
 - (e) issued 12 directions to registered liquidators under s40-15 of Sch 2 to remedy a failure to lodge documents, or give information or documents required to be lodged with ASIC;
 - (f) reviewed registered liquidator renewal applications to determine whether they provided sufficient evidence to demonstrate that they had adequate and appropriate professional indemnity and fidelity insurance; and
 - (g) reviewed 579 annual liquidator returns to monitor compliance with continuing professional education requirements and to assess whether they were maintaining relevant experience through undertaking external administration appointments.
- 17 Table 2 summarises our outcomes in supervising registered liquidators for the reporting period in each area of concern.

Table 2: Key supervisory outcomes for the reporting period by area of greatest threat of harm

Competence	<p>We cancelled the registration of a Victorian-based registered liquidator, Raymond Sutcliffe, as part of a court enforceable undertaking.</p> <p>We negotiated three outcomes from the published notices website and non-lodgement (PNW) project, where:</p> <ul style="list-style-type: none"> • two registered liquidators, Giovanni Carrello and Dennis Offermans, agreed to engage an independent registered liquidator to undertake a ‘quality-control peer-review program’—and, of those two liquidators, Mr Offermans agreed to implement compliance-based staff training; and • one registered liquidator agreed to undertake a quality-control peer-review program and implement compliance-based staff training. <p>We negotiated one outcome from a Victorian-based registered liquidator, Richard Trygve Rohrt, where he agreed to undertake a quality-control peer-review program.</p> <p>We commenced formal investigations or enforcement actions in relation to four registered liquidators.</p>
Independence	<p>The Administrative Appeals Tribunal (AAT) affirmed the decision to cancel the registration of Randall Joubert following his appeal of the decision by the Companies Auditors and Liquidators Disciplinary Board (CALDB).</p> <p style="padding-left: 40px;">Note: CALDB was renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the Insolvency Law Reform Act that took effect on 1 March 2017.</p> <p>We filed an application seeking to amend our original application (filed in 2015) for an order that the court inquire into Peter Mack’s conduct as a liquidator.</p> <p>The disciplinary committee required a Melbourne-based registered liquidator to undertake an ARITA training course.</p> <p>We completed 30 reviews of registered liquidators’ declarations of relevant relationships and indemnities as part of our surveillance work.</p>
Improper gain	<p>We completed 17 reviews of registered liquidators’ remuneration reports to creditors as part of our surveillance work.</p>

Working with registered liquidators

- 18 In the 2017–18 financial year, we:
- (a) received 1,358 requests under the liquidator assistance program, achieving compliance by 593 individuals with their obligations to assist the external administrator and prosecuting 382 individuals for 734 strict liability offences resulting in \$1.4 million in fines and costs; and
 - (b) received 784 applications for the AA Fund, approving 213 applications and paying \$3.3 million to registered liquidators.
- 19 In the reporting period, we:
- (a) ordered the winding up of 19 abandoned companies where we identified 46 employees owed an estimated \$946,417 in unpaid entitlements. We paid registered liquidators a total of \$120,000 from the AA Fund to carry out this work;

- (b) received 28 eligible applicant requests from receivers and managers and other parties for authorisation to seek a summons from the court to conduct public examinations of relevant parties about the examinable affairs of the company;
- (c) assessed 138 court applications, mostly relating to matters in Pts 5.3A–5.9 of the Corporations Act, which were either served on ASIC or which came to our attention because of their public nature or profile;
- (d) assessed one application from a registered liquidator for an extension of time to adjudicate on a proof of debt; and
- (e) exercised the power under s40-111 of Sch 2 to appoint replacement liquidators to a number of companies in external administration following the automatic cancellation of the incumbent liquidator’s registration when they were declared bankrupt.

Reporting period

- 20 Previously, the reporting periods of these reports covered calendar years (e.g. January to December 2016). For this report only, we have set the reporting period as 18 months (1 January 2017 to 30 June 2018). Future reports will align with the financial year reporting period of ASIC’s annual report. The exceptions to this relate to the liquidator assistance program and AA Fund, which ASIC has always reported by financial year.
- 21 This report also breaks down the 18-month reporting period into two subperiods: January–June 2017 and the 2017–18 financial year.

A Guidance, education, stakeholder engagement and policy advice

Key points

During the reporting period, we:

- reviewed and updated some of our guidance (see paragraphs 22–25);
- provided education to industry (see paragraphs 26–29);
- engaged with industry and stakeholders (see paragraphs 30–40); and
- provided policy advice (see paragraphs 41–53).

Guidance

Regulatory guides

- 22 Regulatory guides assist registered liquidators and other stakeholders by explaining when and how we exercise specific powers under legislation (primarily, the Corporations Act), how we interpret the law and the principles underlying our approach.
- 23 Regulatory guides also give practical guidance—for example, describing the steps of a process (such as applying for registration), or giving practical examples of how regulated entities may decide to meet their obligations.
- 24 In March 2017, we released [Regulatory Guide 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258). This guide provides information to potential applicants for registration as a liquidator, including how to apply and the requirements that must be met to become a registered liquidator. It also explains the disciplinary and other actions a registered liquidator may be subject to and our policy on adequate and appropriate insurance and insurance requirements from 1 March 2017. We simultaneously withdrew Regulatory Guide 186 *External administration: Liquidator registration* (RG 186) and Regulatory Guide 194 *Insurance requirements for registered liquidators* (RG 194).

Information sheets

- 25 In September 2017, we reissued the following information sheets, which provide practical and enhanced guidance to various stakeholders reflecting the changes to the Corporations Act and the introduction of the Practice Rules:
- (a) [Information Sheet 39](#) *Insolvency information for directors, employees, creditors and shareholders* (INFO 39);

- (b) [Information Sheet 41](#) *Insolvency: A glossary of terms* (INFO 41);
- (c) [Information Sheet 42](#) *Insolvency: A guide for directors* (INFO 42);
- (d) [Information sheet 43](#) *Insolvency: A guide for shareholders* (INFO 43);
- (e) [Information Sheet 45](#) *Liquidation: A guide for creditors* (INFO 45);
- (f) [Information Sheet 46](#) *Liquidation: A guide for employees* (INFO 46);
- (g) [Information Sheet 54](#) *Receivership: A guide for creditors* (INFO 54);
- (h) [Information Sheet 55](#) *Receivership: A guide for employees* (INFO 55);
- (i) [Information Sheet 74](#) *Voluntary administration: A guide for creditors* (INFO 74);
- (j) [Information Sheet 75](#) *Voluntary administration: A guide for employees* (INFO 75);
- (k) [Information Sheet 84](#) *Independence of external administrators: A guide for creditors* (INFO 84);
- (l) [Information Sheet 85](#) *Approving fees: A guide for creditors* (INFO 85);
and
- (m) [Information Sheet 212](#) *Illegal phoenix activity* (INFO 212).

Education

- 26 Our direct activities (proactive practice reviews, transaction reviews and other industry-wide compliance projects) are a means of communicating to registered liquidators, industry and other stakeholders our expectations on a range of issues.
- 27 We also educate the market by writing articles for industry publications. During the reporting period, we authored the following six articles, which appeared in ARITA's quarterly journal, *Australian Insolvency Journal*:
 - (a) 'ASIC update: Law reform, Published Notices Website, cyber resilience, and more' (vol. 29, issue 1);
 - (b) 'ASIC update: ASIC's Corporate Plan' (vol. 29, issue 2);
 - (c) 'ASIC update: ASIC's supervision report – remuneration and independence, tackling illegal phoenix activity, and publications website' (vol. 29, issue 3);
 - (d) 'ASIC update: Working cooperatively, creditors' requests for information and more' (vol. 29, issue 4);
 - (e) 'ASIC update: Registration committee requirements, interstate appointments and reviewing liquidator funding' (vol. 30, issue 1); and
 - (f) 'ASIC update: Why regular review of decisions on administrations is important, and information disclosed on the liquidator register' (vol. 30, issue 2).

Corporate insolvency update

- 28 During the reporting period, we published five issues (issues 3 to 7) of the quarterly e-newsletter, *ASIC corporate insolvency update*, to raise awareness about specific and/or technical issues in conducting external administrations. Any person with an interest in corporate insolvency can subscribe to this publication.

Broadcast email service

- 29 We maintain a database of contact email addresses for all registered liquidators, which allows ASIC to communicate easily with them. We sent 15 separate group emails to all registered liquidators on various topics of interest throughout the reporting period. Of particular focus was the implementation of the new industry funding model (five emails), law reform (four emails) and the abandoned companies panel (three emails).

Stakeholder engagement

- 30 We engage with registered liquidators and other stakeholders through:
- (a) regional liaison meetings;
 - (b) liaison meetings with, and/or presentations to, professional bodies—including ARITA, Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia, and the Law Council of Australia;
 - (c) liaison with government and statutory bodies (including the Australian Financial Security Authority (AFSA) that administers the *Bankruptcy Act 1966* and regulates registered trustees in bankruptcy); and
 - (d) joint liaison meetings with AFSA and ARITA.

Regional liaison meetings

- 31 We hold meetings twice a year with registered liquidators and other insolvency industry stakeholders in the capital city of each state and territory. The meetings provide an opportunity to communicate our priorities and our regulatory action. They also provide a forum to obtain feedback from the marketplace on current and emerging issues.
- 32 We held these meetings in April and October 2017 and April 2018.
- 33 ASIC also meets directly with firms and individual registered liquidators to understand current market issues and to communicate our expectations on specific and general issues about corporate insolvency.

ARITA, CA ANZ and CPA Australia liaison meetings

- 34 ARITA is the main body representing registered liquidators. CA ANZ and CPA Australia are the main professional accounting bodies, whose members form a significant part of ARITA membership. We regularly meet, and otherwise liaise with, ARITA and the accounting bodies to discuss current market issues, law reform and other regulatory developments. These liaison meetings are important in promoting an understanding of each other's views on a range of issues and influencing action.
- 35 ASIC regularly presents at conferences and discussion groups held by professional bodies, wider industry groups (e.g. Australian Institute of Credit Management) and other interest groups.
- 36 We also attend monthly meetings of the insolvency law and reconstruction committee of the Law Council of Australia.

Liaison with government and statutory bodies

- 37 We regularly meet with Treasury, AFSA, the Australian Taxation Office (ATO) and the Department of Jobs and Small Business (formerly the Department of Employment) to discuss law reform, regulatory action and emerging issues relating to the efficient operation of the insolvency industry. We assist, and receive assistance from, these agencies. Our liaison includes engagement through both the Phoenix Taskforce (created 17 November 2014) and the Serious Financial Crime Taskforce (created 1 July 2015).
- 38 We also liaise with other statutory bodies, such as The Insolvency Service in the United Kingdom and the International Association of Insolvency Regulators, so that each of the regulators better understands the regulatory developments in our respective jurisdictions.

Joint liaison meetings with AFSA and ARITA

- 39 We hold joint liaison meetings twice a year with AFSA and ARITA to consider common issues and harms affecting the corporate and personal insolvency regimes.
- 40 We worked collaboratively to implement the insolvency law reform and have a shared commitment to disrupting unregulated pre-insolvency advisers and combatting illegal phoenix activity.

Policy advice

Insolvency law reform

- 41 We successfully implemented the insolvency law reform in two tranches. Tranche 1 (March 2017) dealt principally with the registration, insurance and discipline of registered liquidators while tranche 2 (September 2017) focused on the conduct of external administrations by registered liquidators.
- 42 To support registered liquidators and help them to comply with their obligations under the changes introduced by the Insolvency Law Reform Act, we updated our:
- (a) information technology systems, including our corporate register and the published notices website;
 - (b) information sheets and forms; and
 - (c) guidance on the registration, disciplinary actions and insurance requirements of registered liquidators.

We also worked closely with third-party software suppliers to update insolvency specific software to minimise any disruption and ensure the industry was ready for the reforms.

Proposed phoenix law reform

- 43 On 12 September 2017, the Australian Government announced proposed reforms aimed at deterring and penalising illegal phoenix activity. The work done by the Phoenix Taskforce, a prescribed taskforce led by the ATO and in which ASIC participates, informed Government reforms.

Note: See the Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, [A comprehensive package of reforms to address illegal phoenixing](#), media release, 12 September 2017.

- 44 We provided assistance to Treasury as it developed these reforms. Following the close of the reporting period, Treasury released [exposure draft legislation to combat illegal phoenix activity](#) for consultation in August 2018, and submissions closed on 27 September 2018.

Industry funding model

- 45 On 7 December 2014, the Financial System Inquiry issued its final report: see Murray Inquiry, [Financial System Inquiry: Final report](#). The report recommended that the Australian Government introduce an industry funding model for ASIC and provide ASIC with stronger regulatory tools: see Recommendation 29.

- 46 During 2016 and 2017, we attended industry consultation and provided feedback to Treasury on the development of an industry funding model for ASIC. We also provided feedback to Treasury on the modelling of possible levy metrics for registered liquidators to support the introduction of an industry funding model for ASIC.
- 47 On 1 July 2017, we released indicative levies (of what regulated sectors will pay) for the 2017–18 financial year and the industry funding model commenced.
- 48 We wrote to registered liquidators and published [frequently asked questions](#) on ASIC’s website to help them understand their obligations under industry funding.
- 49 The final industry funding invoices for the 2017–18 financial year were issued on 31 January 2019.

National Innovation and Science Agenda

- 50 In April 2016, the Australian Government released a proposals paper—[Improving bankruptcy and insolvency laws](#)—as part of the National Innovation and Science Agenda. The paper sought views on:
- (a) introducing a ‘safe harbour’ for company directors from personal liability for insolvent trading if they appoint a restructuring adviser to develop a turnaround plan for the company;
 - (b) making *ipso facto* clauses—which allow contracts to be terminated solely due to an insolvency event—unenforceable if a company is undertaking a restructure; and
 - (c) reducing the current default bankruptcy period from three years to one year.
- 51 We provided feedback on the proposed reforms.
- 52 On 28 March 2017, Minister O’Dwyer released for consultation draft legislation and an explanatory statement for the creation of an insolvent trading ‘safe harbour’ for company directors and a restriction on the enforcement of *ipso facto* clauses in certain circumstances.
- 53 The ‘safe harbour’ reforms commenced on 22 September 2017. The *ipso facto* reforms commenced on 1 July 2018.

B Supervision of registered liquidators

Key points

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

- inquiries and reports of alleged misconduct (see paragraphs 54–66);
- formal investigation and enforcement action (see paragraphs 67–86);
- surveillance (see paragraphs 87–115); and
- targeting illegal phoenix activity (see paragraphs 116–118).

Inquiries and reports of alleged misconduct

- 54 Reports of alleged misconduct arising from external administrations conducted by registered liquidators were 5% of the total reports we received during the 2017–18 financial year: see ASIC’s [Annual report 2017–18](#), p. 173.
- 55 The reports of alleged misconduct directly attributable to registered liquidators cannot be compared with previous reporting periods (3% in the 2016–17 financial year), due to ASIC moving to a new platform for processing reports of misconduct that allows for more detailed reporting of the issues being raised. In the past, we reported on the main issue raised, whereas the new comprehensive reporting platform allows multiple issues arising from the same matter to be recorded individually.
- 56 Inquiries made to ASIC, and reports of alleged misconduct involving registered liquidators, totalled 464 during the reporting period (180 in January–June 2017 and 284 in the 2017–18 financial year). The annualised average of 322 represented a decrease in reports of alleged misconduct over the 18 months, falling from 401 in 2016.

Categorisation of inquiries and reports

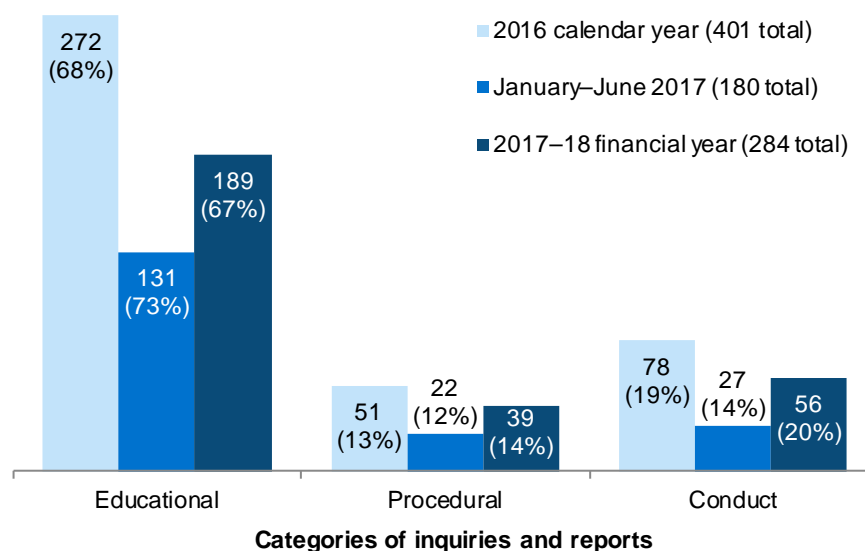
- 57 Our Misconduct and Breach Reporting team receives and conducts an initial assessment of all inquiries and reports of alleged misconduct against registered liquidators.

- 58 An initial assessment by the Misconduct and Breach Reporting team categorised the inquiries and reports during the reporting period as follows:
- (a) *Conduct related* (18% in the reporting period): The information provided to ASIC suggested a serious breach of the Corporations Act, which could be seen as deliberate.
 - (b) *Procedural based* (13% in the reporting period): Although serious, the information provided to ASIC suggested the misconduct may have been inadvertent.
 - (c) *Educational* (69% in the reporting period): These matters involved circumstances where the outcome or resolution of the inquiry or allegation of misconduct was educating the person (usually a creditor) about the applicable law or practice, or providing information about the normal practice of the insolvency process.

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

59 Figure 1 shows an analysis of the nature of the inquiries and reports of alleged misconduct relating to registered liquidators that we received in the reporting period, broken down by January–June 2017 and the 2017–18 financial year, and the previous calendar year (2016). Compared to 2016, overall reports on average decreased during the reporting period.

60 Since we started reporting in 2011 there has been a decline in total inquiries and reports of alleged misconduct relating to registered liquidators. There are a number of possible reasons, including change in registered liquidator behaviour due to ASIC's increased supervisory activity, a reduction in the number of external administration appointments, improved communication with creditors by registered liquidators and more timely communication facilitated by law reform.

Figure 1: Inquiries and reports of alleged misconduct received, by category (1 January 2016 to 30 June 2018)

Note 1: The number of inquiries and reports of alleged misconduct reported in Figure 1 do not directly compare with inquiries and reports of alleged misconduct listed as finalised in Figure 2. The difference is the result of merging activities where there are multiple inquiries and reports about the one issue for a registered liquidator and the timing between reports being received and finalised.

Note 2: See Table 16 in Appendix 2 for the data used in this figure (accessible version).

Conduct matters

- 61 ‘Conduct’ matters are those involving an alleged deliberate, or at least conscious, act or omission by the registered liquidator, with significant ramifications for the complainant or other stakeholders. Examples include failing to properly investigate and report to creditors and ASIC, selling assets to related parties at undervalue, accepting appointment as external administrator when there is an actual or perceived conflict of interest or making claims for excessive remuneration.

Procedural matters

- 62 ‘Procedural’ matters involve circumstances where a registered liquidator, by inadvertent act or omission, fails to do something. A procedural matter is less significant than a ‘conduct’ matter—this relies on there being no intent on the part of the registered liquidator, or the registered liquidator admitting fault and seeking to make amends. An example would be where a person alleges that the practitioner did not return their telephone calls, or failed to report on a timely basis, and our subsequent inquiries resulted in improved communication and acceptable explanations.

Educational matters

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

Outcomes of inquiries and reports

- 64 The outcome of the inquiries and reports of alleged misconduct showed that:
- (a) legitimate conduct concerns existed in:
 - (i) 20 matters (10%) in January–June 2017; and
 - (ii) 26 matters (8%) in the 2017–18 financial year.

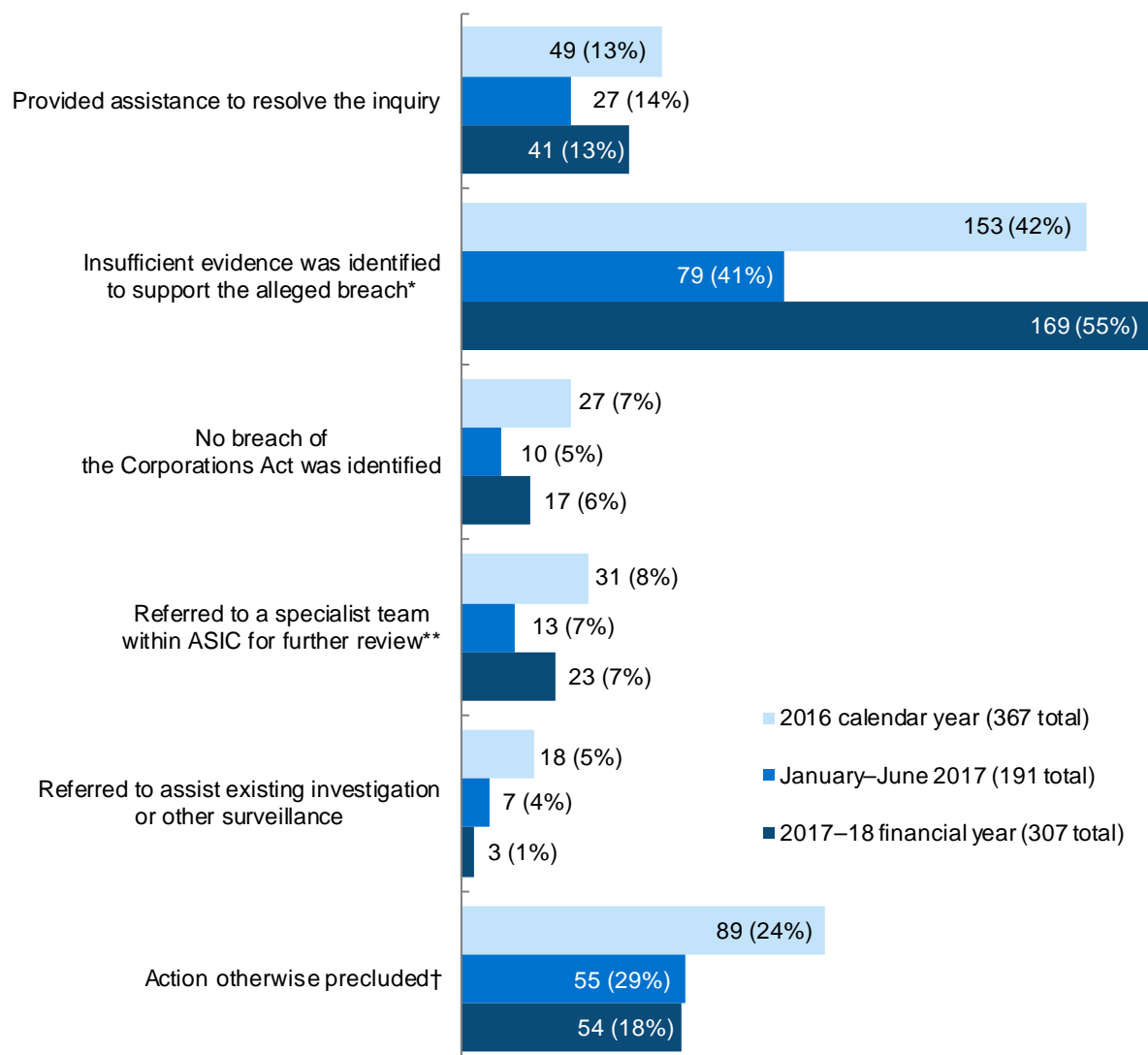
In these cases, the matter was referred internally for further review—primarily to our Insolvency Practitioners team, or to another team within ASIC to support an existing surveillance or enforcement action;
 - (b) there was either insufficient evidence of an offence or the registered liquidator did not breach the Corporations Act in:
 - (i) 116 matters (61%) in January–June 2017; and
 - (ii) 227 matters (74%) in the 2017–18 financial year.

Generally, we helped resolve the inquiry and did not pursue the matter further; and
 - (c) we took no action in:
 - (i) 55 matters (29%) in January–June 2017; and
 - (ii) 54 matters (18%) in the 2017–18 financial year.

The reasons for this included that the matter did not advance or support an existing investigation or regulatory action.

- 65 Figure 2 summarises the outcomes of the 191 inquiries and reports of alleged misconduct by registered liquidators in January–June 2017, and the outcomes of 307 inquiries and reports in the 2017–18 financial year. It compares these outcomes against the 2016 calendar year.

- 66 The Insolvency Practitioners team individually assesses conduct matters referred to it internally. Where the team determines that a matter does not warrant a referral for a formal investigation, the issue of a show-cause notice or some other negotiated resolution (see paragraphs 73–74), we record the information obtained as part of our profiling of registered liquidators.

Figure 2: Outcomes of inquiries and reports of alleged misconduct (1 January 2016 to 30 June 2018)

* Before closing a matter on the basis that there is insufficient evidence to support an allegation, we make relevant inquiries. This normally includes speaking to the person to obtain further information (including documents), reviewing lodgements with ASIC and speaking to the registered liquidator.

** The Misconduct and Breach Reporting team referred to the Insolvency Practitioners team eight matters in January–June 2017 and 17 matters in the 2017–18 financial year.

† 'Action otherwise precluded' is a result of the matter already being subject to investigation or some other regulatory action that has been assessed and does not assist the existing action.

Note: See Table 17 in Appendix 2 for the data used in this figure (accessible version).

Formal investigation and enforcement action

67

Table 3 shows the number of registered liquidators subject to either a formal investigation or an enforcement action during the reporting period.

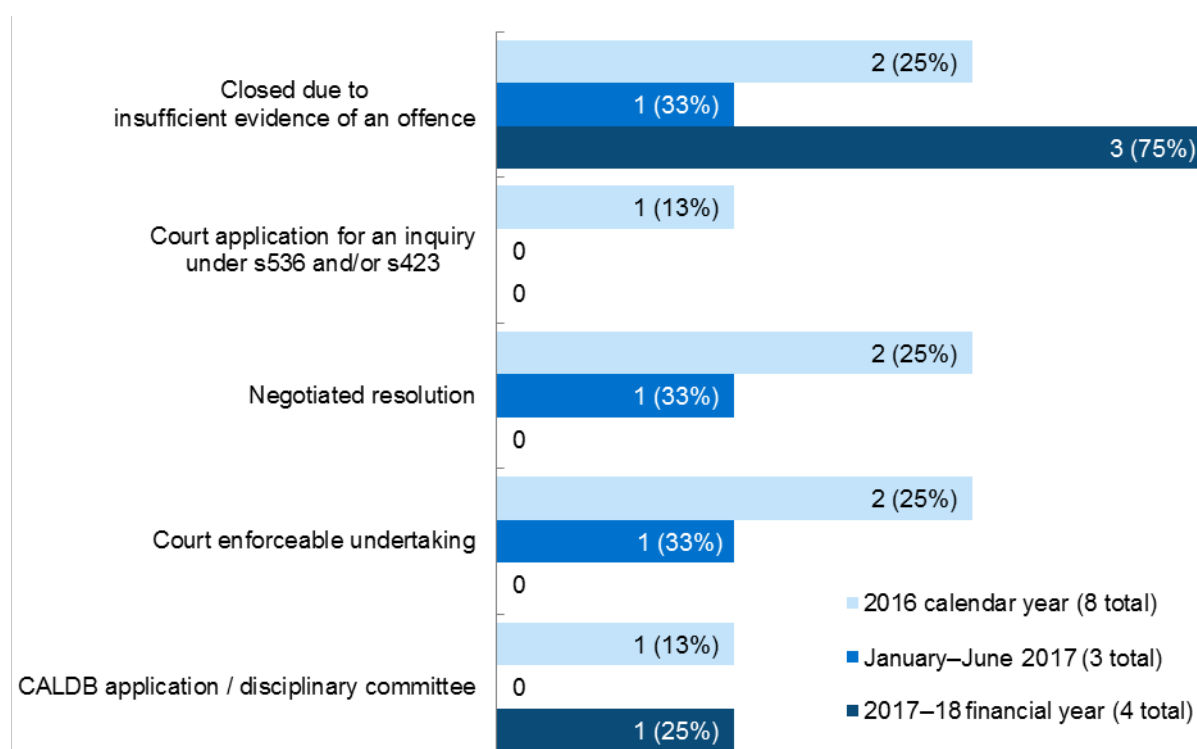
Table 3: Registered liquidators subject to formal investigations or enforcement actions (1 January 2016 to 30 June 2018)

Status of matter	2016	January–June 2017	2017–18
Open matters at start of reporting period	18	17	12
Formal investigations or enforcement actions commenced during reporting period	6	2	2
Formal investigations or enforcement actions finalised during reporting period	(7)	(7)	(4)
Open matters at end of reporting period	17	12	10

Note 1: The four matters referred for formal investigation or enforcement action in the reporting period arose from one proactive practice review, one transaction review and two sources other than reviews.

Note 2: We previously recorded one of the 11 matters finalised in the reporting period as an outcome in a previous reporting period (i.e. 2015). The matter was finalised in this reporting period following the completion of the criminal prosecution of the registered liquidator.

Note 3: We previously recorded two of the 11 matters finalised in the reporting period as outcomes in a previous reporting period (i.e. 2016 in Figure 3). Both these matters were against one registered liquidator but recorded only as one outcome—a CALDB application.

Figure 3: Outcomes of formal investigations and enforcement actions (1 January 2016 to 30 June 2018)

Note 1: One of the matters closed due to insufficient evidence of an offence related to a registered liquidator who initially agreed to enter into a court enforceable undertaking but subsequently sought to voluntarily cancel their registration, which ASIC accepted.

Note 2: One of the matters where ASIC filed a court application has not been finalised during the reporting period pending a court decision.

Note 3: See Table 18 in Appendix 2 for the data used in this figure (accessible version).

Table 4: Outcomes of formal investigations or enforcement actions (1 January 2017 to 30 June 2018)

Registered liquidator	Firm	Outcome	Media release
Randall Clinton Joubert	Joubert Insolvency	Cancellation of registration	Media Release (18-116MR) AAT affirms decision to cancel registration of NSW liquidator (27 April 2018)
Raymond Anthony Sutcliffe	Raymond Anthony Sutcliffe	Court enforceable undertaking	Media Release (17-211MR) ASIC accepts Victorian liquidator's cancellation (28 June 2017)
Mark Darren Levi	Titan Advisory	Criminal prosecution	Media Release (17-029MR) Former liquidator convicted of dishonestly using his position (10 February 2017)
Andrew Hugh Jenner Wily	Armstrong Wily	Applied for a court inquiry (s536)	Media Release (17-014MR) ASIC requests inquiry into conduct of Sydney liquidators (24 January 2017)
David Anthony Hurst	HoskingHurst	Applied for a court inquiry (s536)	Media Release (17-014MR) ASIC requests inquiry into conduct of Sydney liquidators (24 January 2017)
Richard Trygve Rohrt	Hamilton Murphy Pty Ltd	Voluntary undertaking	Media Release (17-007MR) VU for Victorian liquidator after failure to discharge duties (17 January 2017)

Note 1: Outcomes for Levi and Joubert were included in the outcomes for 2015—see [Report 479](#) ASIC regulation of registered liquidators: January to December 2015 (REP 479).

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

Note 3: There was no media release for one CALDB application/disciplinary committee outcome disclosed in Figure 3.

Negotiated resolutions

- 68 We negotiated alternatives to other enforcement remedies with four registered liquidators where we determined that we could affect a change in future behaviour and achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see [INFO 151](#).
- 69 Figure 3 and Table 4 do not record outcomes related to the PNW project. For details on this project, see paragraphs 109–112.

Court proceedings

- 70 A hearing was held (on 27–30 November 2017) in proceedings brought by liquidators John Sheahan and Ian Lock of Sheahan Lock Partners. In August 2015, Mr Sheahan and Mr Lock had applied to the Federal Court of Australia, South Australia Registry, to fix their remuneration. We intervened in the proceedings. Judgement has been reserved.

71 In March 2018, we filed an interlocutory application seeking to amend our original application for an order that the court inquire into Peter Macks' conduct as a liquidator. Our original application, filed in 2015, was adjourned pending the outcome of an appeal in another matter. Mr Macks has filed an application for a permanent stay of our substantive application.

Notification by industry body of possible grounds for disciplinary action

72 During the reporting period we did not receive any notifications of possible grounds for disciplinary action against a registered liquidator from a prescribed industry body under s40-100 of Schedule 2 of the Insolvency Practice Schedule (Corporations).

Show-cause notice

73 On 1 March 2017, ASIC was provided with a new regulatory tool: the power to issue registered liquidators with a show-cause notice. This notice requires liquidators to explain why they believe they should continue to be registered in circumstances where we have concerns about their conduct or whether they are a fit and proper person to remain registered.

74 During the reporting period, we issued show-cause notices to two registered liquidators. We were not satisfied with the response of one liquidator and referred them to a disciplinary committee (see paragraph 76), and the other entered into a court enforceable undertaking after the end of the reporting period.

Disciplinary committee

75 Legislative amendments contained in the Insolvency Law Reform Act that took effect on 1 March 2017 introduced a new disciplinary committee, as defined in Sch 2, to hear registered liquidator conduct matters (replacing the functions of the former CALDB (renamed CADB)). Each disciplinary committee consists of an ASIC staff member as Chair, a registered liquidator chosen by ARITA, and a person appointed by the Minister. ASIC Chief Legal Office provides administrative and secretariat services to the disciplinary committees.

76 In the 2017–18 financial year, we issued a show-cause notice to a registered liquidator. After receiving their response, we referred the liquidator to the disciplinary committee to consider whether their registration should continue. The committee determined that the registered liquidator should continue their registration but undertake an ARITA course. No media release was issued.

Cancellation of registration

77 In February 2015, ASIC commenced a CALDB proceeding against Randall Joubert, and on 11 May 2016 the CALDB determined to cancel Mr Joubert's registration as a liquidator.

78 Mr Joubert applied to the AAT for a review and stay of the CALDB decision on 18 May 2016. On 21 July 2016, the AAT stayed the CALDB cancellation decision subject to a condition that Mr Joubert not accept any appointments as external administrator that required him to be registered as a liquidator.

79 The AAT hears matters on *de novo* basis, or anew. ASIC appeared in the AAT and submitted evidence in support of the concerns previously expressed in the CALDB. On 19 April 2018, the AAT affirmed the CALDB's decision to cancel Mr Joubert's registration.

80 The AAT found that Mr Joubert's actions as a registered liquidator of several external administrations were deliberate and dishonest and that he was not a fit and proper person to be a registered liquidator.

81 Mr Joubert did not appeal the AAT decision. ASIC subsequently made an application to the Federal Court to fill the external administration appointment vacancies created by the AAT decision.

Directions to comply

82 Reforms enacted by the Insolvency Law Reform Act provided ASIC with a new regulatory tool: the power to issue a liquidator with a direction to remedy a failure to lodge documents, or give information or documents that are otherwise required to be lodged with ASIC.

83 We have used this new regulatory tool on 12 occasions during the reporting period resulting in 11 instances of compliance. This efficient method of achieving compliance either resolved our concerns or advanced our investigation of a matter.

84 We do not record when we exercise this power in the register of liquidators, as it is not a disciplinary action as defined in the Practice Rules.

Automatic cancellation

85 One registered liquidator, Justin James Cadman, was declared bankrupt on 8 June 2018 by order of the Federal Circuit Court of Australia. As he was 'insolvent under administration' we removed Mr Cadman from the register of liquidators on 13 June 2018, after receiving the sealed copy of the sequestration order.

86 Under Div 40 of Sch 2, a liquidator's registration is automatically cancelled if they become an insolvent under administration: see s40-20(1). Automatic cancellation of Mr Cadman's registration as a liquidator caused vacancies in all his external administration appointments. ASIC exercised its power under s40-111 of Sch 2 to appoint replacement liquidators to fill Mr Cadman's vacancies: see [Media Release \(18-181MR\)](#) *ASIC cancels Cairns liquidator's registration*.

Surveillance

- 87 We undertake surveillances of registered liquidators either by reviewing a specific transaction or external administration (transaction review), or by undertaking a targeted review of a registered liquidator's practice (proactive practice review). Our surveillances allow us to objectively assess whether a registered liquidator adequately and properly performs their duties and functions; complies with the Corporations Act, Corporations Regulations and the Practice Rules; and meets generally accepted professional standards. This, in turn, allows us to assess whether a registered liquidator remains a fit and proper person to be registered.
- 88 Following a surveillance, we assess whether we should refer the matter to our dedicated enforcement teams for a formal investigation or whether we take other disciplinary action (e.g. issue a show-cause notice or negotiate a court enforceable undertaking). The issues we consider in our assessment are:
- (a) the extent of any harm or loss;
 - (b) the benefits of pursuing the misconduct, relative to the expense;
 - (c) the impact of other issues, including the type and seriousness of the misconduct and the evidence available; and
 - (d) the availability of alternative courses of action.
- 89 The specific factors we consider vary according to the circumstances of the case. [INFO 151](#) provides further guidance about the issues we consider when determining what action, if any, we may take.

Proactive practice reviews

- 90 Proactive practice reviews focus on the following key compliance areas:
- (a) independence;
 - (b) remuneration disclosure and approval;
 - (c) the quality of investigations;
 - (d) reporting to creditors and to ASIC;
 - (e) asset realisations; and
 - (f) the adequacy of practitioners' practice systems.
- 91 We select practitioners for review based on a risk-weighted model that considers several factors, including the number and profile of external administrations, the number of staff, intelligence gathered from our project work, and any reports of alleged misconduct received.
- 92 During the reporting period, we initiated three proactive practice reviews in New South Wales.

- 93 We recorded a positive outcome for the one proactive practice review finalised during the reporting period: see Table 5.

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

Table 5: Proactive practice reviews (1 January 2016 to 30 June 2018)

Review status	2016	January–June 2017	2017–18
Reviews open at start of reporting period	2	1	1
Reviews commenced during reporting period	2	1	2
Reviews finalised during reporting period	(3)	(1)	0
Reviews open at end of reporting period	1	1	3

Transaction reviews

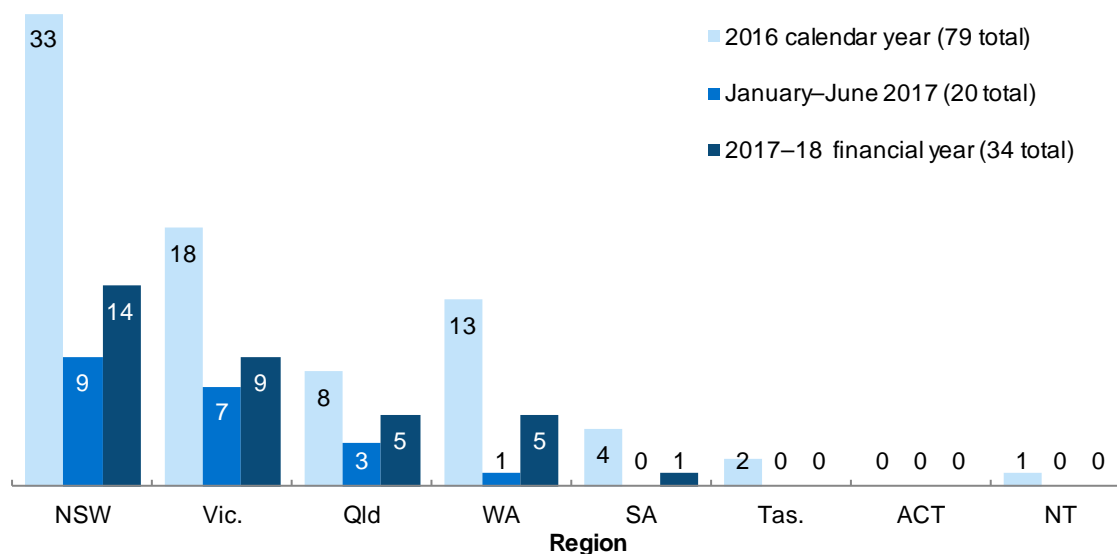
- 94 During the reporting period, we initiated 63 transaction reviews: see Table 6. Our review may be prompted by third parties bringing an issue to our attention (see Figure 1) or from our own intelligence gathering.
- 95 When undertaking a transaction review, we examine the whole of the transaction in question to ensure the registered liquidator has adequately and properly performed their duties and functions—in compliance with the Corporations Act, Corporations Regulations and the Practice Rules, and the professional standards relevant to that transaction.

Table 6: Transaction reviews (1 January 2016 to 30 June 2018)

Review status	2016	January–June 2017	2017–18
Reviews open at start of reporting period	29	18	19
Reviews commenced during reporting period	68	21	42
Reviews finalised during reporting period	(79)	(20)	(34)
Reviews open at end of reporting period	18	19	27

- 96 Figure 4 sets out an analysis of transaction reviews by region. In deciding on a transaction review, we consider the nature of the allegation and the availability of evidence.

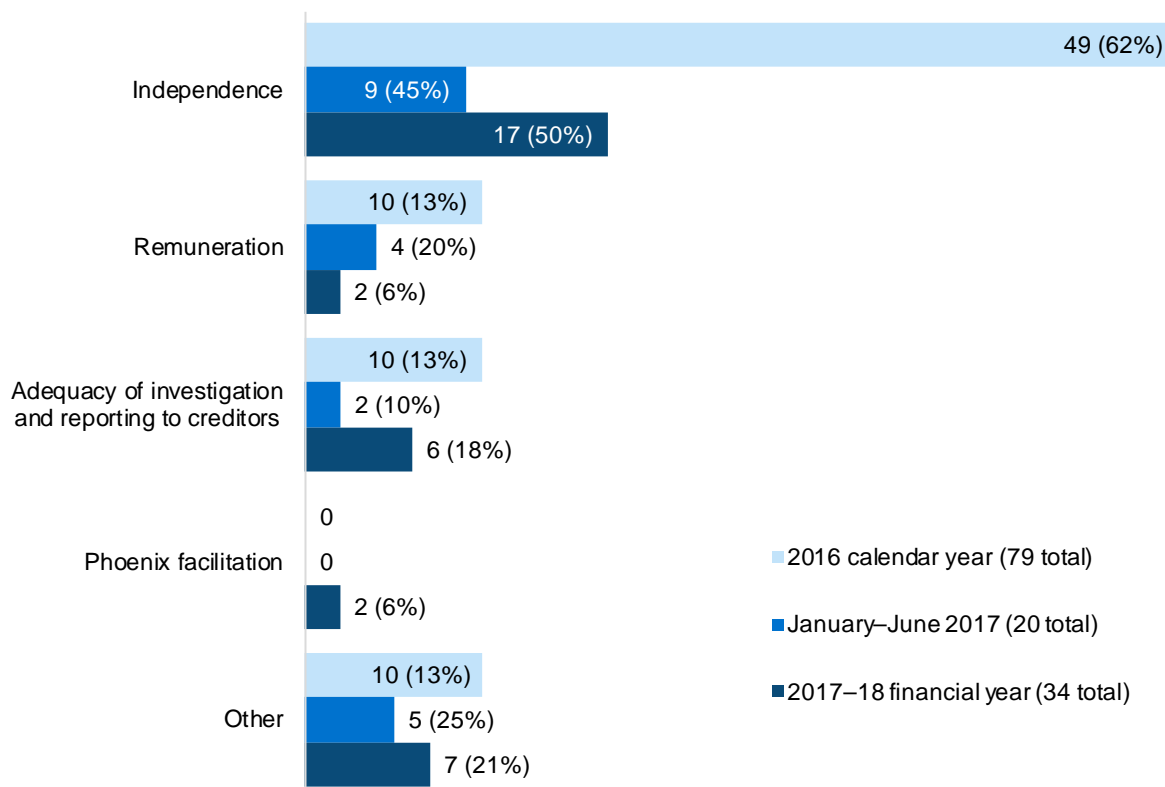
Figure 4: Finalised transaction reviews by region (1 January 2016 to 30 June 2018)



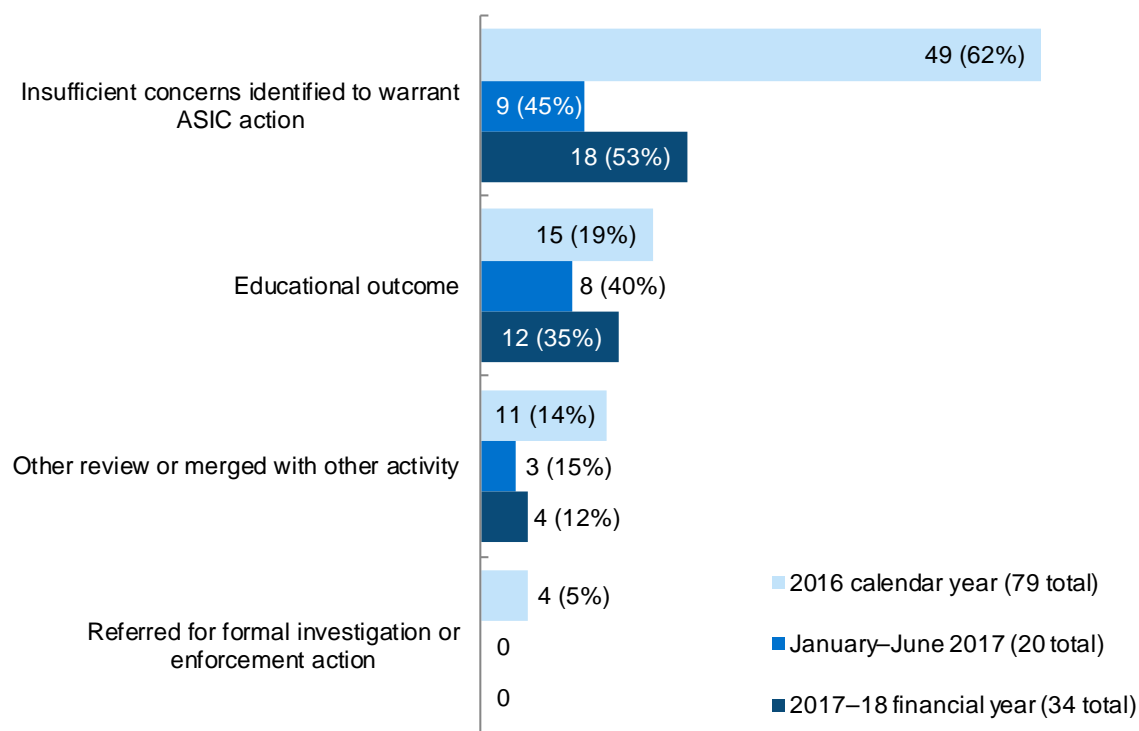
Note: See Table 19 in Appendix 2 for the data used in this figure (accessible version).

97 Figure 5 summarises the nature of the concerns identified in the 54 transaction reviews finalised during the 18-month reporting period, and Figure 6 summarises the outcomes of those reviews.

Figure 5: Areas of concern in finalised transaction reviews (1 January 2016 to 30 June 2018)



Note 1: The area of concern identified is only the primary concern. Our review may include multiple areas of concern.
 Note 2: See Table 20 in Appendix 2 for the data used in this figure (accessible version).

Figure 6: Outcomes of finalised transaction reviews (1 January 2016 to 30 June 2018)

Note: See Table 21 in Appendix 2 for the data used in this figure (accessible version).

Industry-wide compliance projects

Declarations of relevant relationships and declarations of indemnities

98 In the reporting period, we reviewed a total of 30 declarations (36 in the 2016 calendar year) as part of existing surveillance and other project work. Of these declarations, we assessed 10 (33%) as adequate and 20 (67%) were inadequate, compared to 53% adequate and 47% inadequate in the 2016 calendar year.

99 Where we found deficient declarations, we sought further information from the registered liquidator, which resulted in the liquidator issuing replacement declarations and/or improving their processes.

100 We continue to monitor the adequacy of disclosure made in declarations, given that independence remains a key concern for ASIC.

Remuneration

101 During the reporting period, we reviewed a total of 17 remuneration reports (17 in the 2016 calendar year) as part of the remuneration project and also existing surveillance work. Of these remuneration reports, 13 (76%) were assessed as adequate and four (24%) were inadequate, compared to 59% adequate and 41% inadequate in the 2016 calendar year.

102 Where we found deficient remuneration reports, we sought further information from the registered liquidator, which resulted in greater awareness of their reporting requirements and/or the liquidator improving their processes.

Annual returns—Form 908

103 During the reporting period, we reviewed 579 annual liquidator returns that registered liquidators lodged with ASIC. We identified no issues of concern in 508 (88%) of these annual returns.

104 We identified concerns in 12% of the annual returns reviewed relating to compliance with continuing professional education and maintaining relevant experience when the registered liquidator had no or few formal insolvency appointments during the period of the statement.

105 Where we identified a concern, we contacted the registered liquidator to clarify the information provided and address our concern.

Registered liquidator renewals

106 From 1 March 2017 to 28 February 2018, changes introduced by the Insolvency Law Reform Act required all existing registered liquidators to renew their registration if they wished to remain registered as a liquidator and accept new appointments.

107 As part of that renewal process we reviewed each application to determine whether or not the registered liquidator had provided sufficient evidence that they had adequate and appropriate professional indemnity and fidelity insurance. Where necessary, we obtained further information from the registered liquidator, including:

- (a) confirmation of the existence of fidelity insurance where it was part of a wider professional indemnity policy and the certificate of insurance did not separately identify fidelity cover;
- (b) confirmation that the policy covered registered liquidators not specifically named on the policy; and
- (c) confirmation that a current policy was in place where the registered liquidator provided evidence other than a current certificate.

108 Of the 710 existing registered liquidators as at 1 January 2017, 634 successfully renewed their registration (between 1 March 2017 and 28 February 2018). Of the 76 who did not renew or cancelled their registration, 57 did not have any current external administration appointments. The remaining 19 had current external administration appointments and we placed a condition on their registration prohibiting them from accepting any new appointments. The registration of each of the

19 ceases when they finalise their last external administration, with nine such registrations ceasing in the reporting period.

PNW project

- 109 On 13 June 2018, we released [Report 573](#) *Registered liquidators' compliance with lodgement and publication requirements* (REP 573).
- 110 We conducted a project from December 2013 to June 2017 to test how registered liquidators were complying with their obligations to:
- (a) lodge certain forms with ASIC; and
 - (b) publish insolvency notices on ASIC's published notices website.
- 111 REP 573 outlined the results of the project and provided guidance for registered liquidators to help them improve their compliance with lodgement and publication requirements.
- 112 As a result of the project, during the reporting period we successfully negotiated with three registered liquidators on their non-compliance. Each liquidator agreed to engage an independent registered liquidator to undertake a quality control peer review program and report back to ASIC. Each also agreed to implement compliance-based staff training.

Table 7: Negotiated resolution outcomes during the reporting period

Registered liquidator	Firm	Media release
Dennis Offermans	Offermans Partners	Media Release (17-351MR) <i>ASIC accepts voluntary undertakings from three liquidators</i> (19 October 2017)
Giovanni Maurizio Carrello	BRI Ferrier WA	Media Release (17-351MR) <i>ASIC accepts voluntary undertakings from three liquidators</i> (19 October 2017)

Note: We issued media releases for two of the three negotiated resolution outcomes relating to the PNW project.

Meetings of creditors

- 113 During the reporting period, we attended 22 meetings of creditors as observers.
- 114 We may decide to attend a meeting where we have pre-existing concerns about the company's conduct, the independence or the conduct of the practitioner or we otherwise consider it to be in the public interest that ASIC attends. Our decision to attend may result from our own inquiries or where a third party has raised concerns with us.
- 115 Attendance at these meetings has informed the scoping of a project about the conduct of meetings, which we will run in the 2018–19 financial year.

Targeting illegal phoenix activity

- 116 Disrupting and combatting illegal phoenix activity is a key priority for ASIC, both through its participation in the Phoenix Taskforce and the Serious Financial Crime Taskforce, as well as ensuring registered liquidators adequately and properly perform their duties and functions.
- 117 Registered liquidators who facilitate illegal phoenix activity, either intentionally or through a failure to discharge their duty to investigate, undermine trust and the efficient working of the market.
- 118 The primary regulatory tools we use to mitigate the harm resulting from this threat are:
- (a) reviewing registered liquidator declarations of relevant relationships and indemnities to identify deficient declarations and act where we suspect there are inappropriate relationships between registered liquidators and advisers who refer work to them (see paragraphs 98–100);
 - (b) attending creditor meetings where we have concerns about the independence of the registered liquidator (see paragraphs 113–115);
 - (c) undertaking surveillances (transaction reviews) to ensure registered liquidators are carrying out adequate investigations where we have concerns about phoenix activity (see paragraphs 94–97); and
 - (d) enforcing the law against registered liquidators where we identify misconduct or a failure to adequately carry out their duties (see paragraphs 67–86).

C ASIC's work with registered liquidators

Key points

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

- combatting illegal phoenix activity (see paragraphs 120–122);
- the liquidator assistance program (see paragraphs 123–127);
- the AA Fund (see paragraphs 128–139);
- winding up abandoned companies (see paragraphs 140–145);
- eligible applicant applications (see paragraphs 146–148);
- court applications (see paragraphs 149–150);
- other applications (see paragraphs 151–152); and
- court intervention and *amicus curiae* (see paragraphs 153–163).

119 In addition to our stakeholder engagement activities (see paragraphs 30–40), we engage with registered liquidators and other stakeholders through:

- (a) our work in combatting illegal phoenix activity;
- (b) our liquidator assistance program;
- (c) the AA Fund;
- (d) winding up abandoned companies;
- (e) eligible applicant applications;
- (f) court applications;
- (g) other applications; and
- (h) court intervention or acting as *amicus curiae* (i.e. a friend of the court).

Combatting illegal phoenix activity

120 Directors who engage in illegal phoenix activity intentionally and dishonestly deny unsecured creditors (e.g. employees, subcontractors and suppliers) fair access to their entitlement to the company's assets. We worked with registered liquidators and used our regulatory tools to combat illegal phoenix activity in the reporting period through:

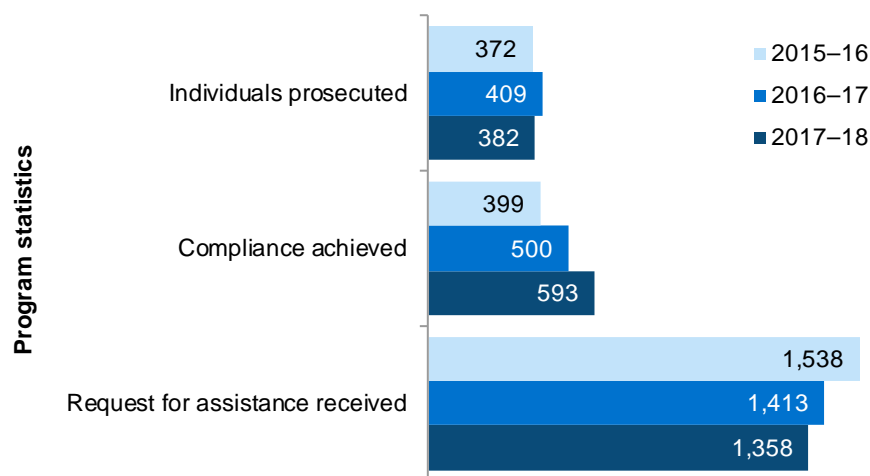
- (a) helping liquidators to obtain company records through the liquidator assistance program (see paragraphs 123–127); and
- (b) funding liquidators through the AA Fund to investigate failed companies with few or no assets that raised concerns about illegal phoenix activity (see paragraphs 128–139).

- 121 Changes introduced by the Insolvency Law Reform Act empower ASIC to appoint a reviewing liquidator to carry out a review into a matter that relates to the external administration of a company. In December 2017, the government allocated additional money to the AA Fund to fund the appointment of a reviewing liquidator where illegal phoenix activity is suspected. During the reporting period we commenced the process of establishing a panel of registered liquidators to accept appointments as reviewing liquidator. We anticipate this power will be exercised in the 2018–19 financial year.
- 122 We recognise that illegal phoenix activity undermines confidence in the financial system and adversely affects assets available to registered liquidators to perform their duties and functions and pay dividends to creditors. This issue is discussed at our liaison meetings with AFSA and ARITA.

Liquidator assistance program

- 123 We assist registered liquidators, through our liquidator assistance program, to ensure that company officers comply with their obligations to prepare a report on a company's affairs for the liquidator, provide books and records, and generally assist liquidators.
- 124 We have previously reported outcomes of our liquidator assistance program on a financial year basis aligned with ASIC's annual report. Accordingly, in this report we have not provided outcomes separately for the period January–June 2017.
- 125 We received 1,358 requests for help from external administrators in the 2017–18 financial year, compared with 1,413 requests in 2016–17. Following our intervention, 593 (500 in 2016–17) individuals then complied with their obligations to assist the external administrator.
- 126 In the 2017–18 financial year, we prosecuted 382 individuals for 734 strict liability offences (i.e. failing to assist the liquidator), resulting in \$1.40 million in fines and costs. In the previous financial year, we prosecuted 409 individuals for 723 strict liability offences, which resulted in \$1.10 million in fines and costs: see Figure 7.
- 127 We did not pursue further action against individuals when they could not be located or there was insufficient evidence to prosecute a strict liability offence.

Figure 7: Liquidator assistance program statistics for the 2015–16, 2016–17 and 2017–18 financial years



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

Note 2: See Table 22 in Appendix 2 for the data used in this figure (accessible version).

Applications by liquidators to the AA Fund

- 128 We administer the AA Fund, which the Australian Government established in 2005.
- 129 The fund has a focus on curbing illegal phoenix activity and assists by:
- financing preliminary investigations and reports by registered liquidators into the failure of companies with few or no assets, and where it appears to us that enforcement action may result from the liquidator’s investigation and report;
 - funding liquidator actions to recover assets for the benefit of creditors where illegal phoenix activity is suspected; and
 - appointing liquidators to abandoned companies where there are employees who could access the FEG scheme.
- 130 In ASIC’s [Annual report 2016–17](#) and [Annual report 2017–18](#), we reported an amount of \$3.43 million paid from the fund in the 2016–17 financial year and \$3.58 million in the 2017–18 financial year.
- 131 There are three types of funding applications a registered liquidator can make to the AA Fund:
- a ‘director banning’ application, using [Form EX02 Assetless administration funding request \(s206F—Director banning\)](#);
 - an ‘other’ application, using [Form EX03 Assetless administration funding request \(matters other than s206F—Director banning\)](#); or

(c) a ‘liquidator action’ application, lodging the application by email to rg109@asic.gov.au.

132 We have previously reported outcomes of the AA Fund on a financial year basis aligned with ASIC’s annual report. Accordingly, in this report we have not provided outcomes separately for the period January–June 2017.

133 Table 8 shows the number of applications received and the outcome of those applications.

Table 8: Applications to the AA Fund in the 2016–17 and 2017–18 financial years

Application status	2016–17	2017–18
Form EX02 —Applications received	562	587
Form EX02 —Applications approved	195	170
Form EX02 —Applications rejected	377	372
Form EX03 —Applications received	178	197
Form EX03 —Applications approved	56	43
Form EX03 —Applications rejected	132	109

Note: The combined number of applications approved and rejected does not match the number of applications received because some applications were received in the previous year or were still under consideration at the end of the financial year.

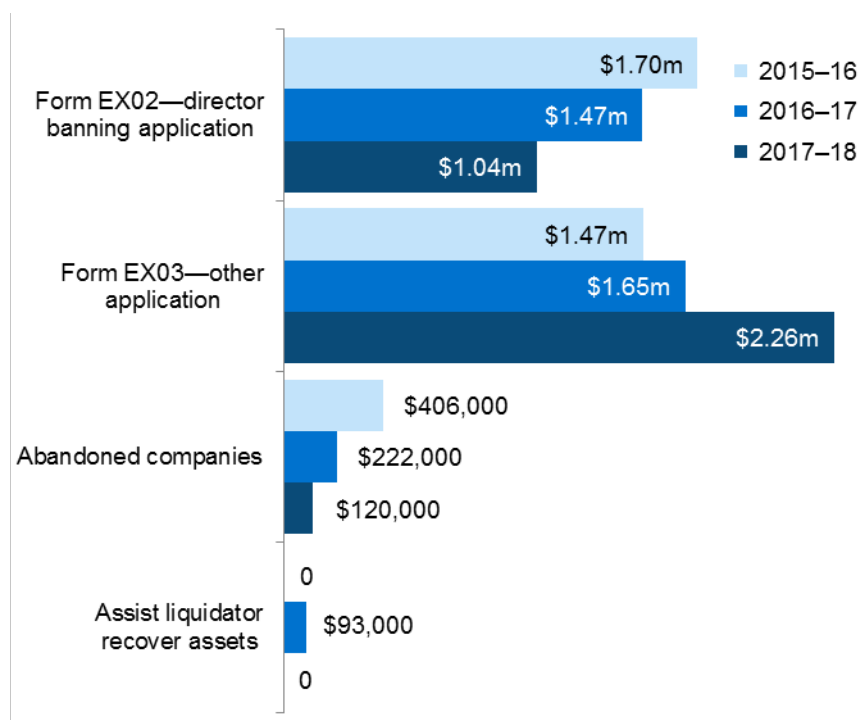
134 We approved one ‘liquidator action application’ in the 2016–17 financial year and did not receive any liquidator action applications in the 2017–18 financial year.

135 We provide details of the AA Fund recipients and amounts approved on our website.

136 We continue to investigate the relatively high rejection rate of applications received from registered liquidators, with the aim of improving these applications and the fund’s operation.

137 We also continue to review internal processes to improve the efficiency of processing applications.

138 Figure 8 shows how the AA Fund has been used during the reporting period.

Figure 8: Allocation of funding from AA Fund (2015–16 to 2017–18)

Note 1: Funds allocated, or paid, in administering abandoned companies is part of the funding we provide to the liquidators of companies we wind up using ASIC's administrative power under s489EA of the Corporations Act: see paragraphs 140–145.

Note 2: See Table 23 in Appendix 2 for the data used in this figure (accessible version).

- 139 For further information on ASIC's power to wind up an abandoned company and appoint a liquidator funded by the AA Fund, see paragraphs 140–145.

Administrative power to wind up a company

- 140 The FEG scheme is a legislative safety net funded by the Australian Government. It is designed to help employees who are owed unpaid entitlements because of their employer company's liquidation or the company directors' bankruptcy.
- 141 However, some employees owed entitlements cannot access the FEG scheme because the company's directors either cannot discharge their duties or have abandoned their insolvent companies without putting them into liquidation.
- 142 When an employee, or other interested stakeholder lodges a report of misconduct relating to the abandonment of the company, we may appoint a liquidator from the Abandoned Company Liquidator Panel and grant them up to \$8,000 plus GST from the AA Fund. The liquidator is required to wind up the company's affairs, distribute its property and help employees access unpaid employee entitlements under the *Fair Entitlements Guarantee Act 2012*. The appointment of liquidators also facilitates a full and proper

investigation into the reasons why the company failed and allows recovery of any voidable or unreasonable director-related transactions.

- 143 During the reporting period, we ordered the winding up of 19 abandoned companies. We identified that there were, in aggregate, 46 employees owed an estimated \$946,417 in unpaid entitlements: see Table 9 for more information.

Table 9: Profile of companies wound up by ASIC (1 January 2016 to 30 June 2018)

Statistics	2016	January–June 2017	2017–18
Companies wound up	16	5	14
Employees affected	32	13	33
Estimated unpaid entitlements	\$912,270	\$201,646	\$744,771

- 144 During the reporting period, the members of the Abandoned Company Liquidator Panel finished their terms and, accordingly, we began a selection process to install a new panel.
- 145 We received applications from approximately 300 registered liquidators and appointed 43 registered liquidators to the panel. The [details of the liquidators on the panel](#) are available on our website.

Eligible applicant applications

- 146 We received 28 ‘eligible applicant’ authorisation applications during the reporting period from receivers and managers, and from other parties.
- 147 During the reporting period we authorised 17 eligible applicant requests, rejected one, two applications were withdrawn, one application was received from a liquidator and did not require a decision and two applications could not be considered because the relevant company was not in external administration. Five eligible applicant requests were ongoing at the end of the reporting period.
- 148 If we grant authorisation, the applicant can seek a summons from the court to conduct a public examination of relevant persons about the examinable affairs of the company. In turn, this helps the receivers and managers to recover assets and report fully to ASIC. We can then determine whether we need to conduct our own investigations and take enforcement action.

Court applications

- 149 The Insolvency Practitioners team assessed 138 court applications during the reporting period (compared to 105 in the 2016 calendar year). Most related to matters in Pts 5.3A–5.9 of the Corporations Act, many of which must be served on ASIC under the various court rules. If we receive sufficient notice of the application, our Insolvency Practitioners team considers each one.
- 150 Our Insolvency Practitioners team also considers other court applications not served on ASIC but which come to our attention as a result of their public profile or nature. These applications require specialist insolvency knowledge to properly understand and assess the implications of the application.

Other applications

- 151 During the reporting period our Insolvency Practitioners team assessed one application from a liquidator for an extension of time to adjudicate a proof of debt.
- 152 These applications provide liquidators with additional time to appropriately consider a creditor's proof of debt for the purposes of paying a return to creditors.

Court intervention and *amicus curiae*

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

Ten Network Holdings

- 154 During the reporting period, ASIC appeared as *amicus curiae* in *Korda, in the matter of Ten Network Holdings Ltd (Administrators Appointed) (Receivers and Managers Appointed)* [2017] FCA 914 (Ten matter). The matter concerned apprehended bias arising from a significant pre-appointment engagement undertaken by the voluntary administrators, who were paid more than \$1 million for their work.
- 155 The facts and circumstances of each appointment will determine if apprehended bias exists, and the circumstances of the Ten matter were unique. Importantly, disclosure does not resolve apprehended bias and, in these circumstances, the bias was remedied by the court appointing other independent liquidators to undertake specific tasks.

Provident Capital

156 *Australian Executor Trustee Ltd v Provident Capital Ltd* [2018] FCA 439 provides further guidance to registered liquidators, as the court reaffirmed key principles, set out in recent court decisions, for reviewing the reasonableness of remuneration claimed by registered liquidators.

Note: These recent court decisions include *Templeton v Australian Securities and Investments Commission* [2015] FCAFC 137 and *Sanderson as Liquidator of Sakr Nominees Pty Ltd (in liquidation) v Sakr* [2017] NSWCA 38.

157 These principles are that ‘reasonableness’ cannot be assessed only by reference to time costing or a percentage return that creditors achieve but must also consider whether it was necessary to carry out the work.

158 The court invited ASIC to assist in the review and provide a written submission. The court acknowledged the complexity of the administration and that the receivers had undertaken a great deal of work diligently, professionally and competently.

159 The court was not satisfied that the receivers had appropriately considered the cost of the external consultant engaged over an extended period.

160 The decision provided guidance about the engagement of external consultants and whether they should be engaged as a full-time employee of the company or at least as a consultant to the company, rather than a consultant to the receiver’s firm.

161 The court found that the amount claimed in remuneration for the consultant was not reasonable because the consultant’s cost to the administration included a margin to recover the overheads of the receiver’s firm incidental to engaging the consultant (including office space, information technology, telecommunications and insurance).

162 His Honour, Justice Rares, observed that receivers (or liquidators) ordinarily should select the means for performing the work required to discharge their duties that will cause the least financial burden on the estate.

163 The court made a deduction of \$220,000 from the total remuneration claimed in the receivership, representing approximately 63% of the margin amount (totalling \$347,824.50) added by the receivers to the fees charged by the consultant.

D Industry profile

Key points

This section sets out key statistics about registered liquidators, the registration of liquidators, and companies in external administration.

Registered liquidators

- 164 On 1 March 2017, the new registered liquidator regime commenced. Under this regime, applicants to be registered are assessed and determined by an independent committee convened under s20-30 of Sch 2. Each committee consists of an ASIC staff member as Chair, a registered liquidator chosen by ARITA, and a person appointed by the Minister. Administrative and secretariat services are provided to the Liquidator Registration Committee by the ASIC Chief Legal Office.
- 165 During the reporting period, we convened 16 committees to consider applications received. This regime provides for a process by which interested parties applying to gain registration as a liquidator are required to provide a detailed application and referee reports, and may be required to attend an interview. Seven applicants were successful in gaining registration in the first instance.
- 166 The average age of the 34 applicants registered during the reporting period (27 under the pre-1 March 2017 regime and seven under the new regime) was 39 years old.
- 167 As at 30 June 2018, there were 663 registered liquidators in Australia (of which 445 were also official liquidators): see Table 10 and Table 12.

Table 10: Number of registered liquidators (1 January 2016 to 30 June 2018)

Liquidator status	2016	January–June 2017	2017–18
Registered at start of reporting period	710	710	711
Registered during reporting period	32	27	7
Cancelled during reporting period	(32)	(26)	(55)
Registered at end of reporting period	710	711	663
Suspended at end of reporting period	0	1	1
Condition on registration not to take new appointments at end of reporting period	n/a	5	10
Registered and capable of taking appointments at end of reporting period	710	705	652

- 168 As at 30 June 2017, following the commencement of changes introduced by the Insolvency Law Reform Act, there were five registered liquidators who had not renewed their registration but had ongoing appointments and whose registration was subject to a condition prohibiting them from accepting new insolvency appointments.
- 169 As at 30 June 2018, one registered liquidator's registration was suspended and 10 registered liquidators, who had not renewed their registration, were subject to a condition prohibiting them from accepting new insolvency appointments.
- 170 During the reporting period ASIC cancelled the registration of 81 registered liquidators (see Table 10 and Table 11). The registrations were cancelled for the following reasons:
- (a) 35 registered liquidators did not renew their registration, of which:
 - (i) 26 had no external administration appointments on their renewal date; and
 - (ii) nine finalised or transferred all their remaining external administration appointments before 30 June 2018;
 - (b) 42 registered liquidators requested voluntary cancellation;
 - (c) two registered liquidators passed away during the relevant period;
 - (d) one was due to disciplinary action; and
 - (e) one was due to bankruptcy.

Table 11: Profile of registered liquidators cancelled during the reporting period

Liquidator profile	Voluntary cancellation	Non-renewal
Number of registered liquidators	42	35
Average age at date of cancellation or non-renewal	59.4	56.8
Number with no external administrations in the preceding 12 months	15	11
Number with no new external administrations in the preceding 12 months	28	32

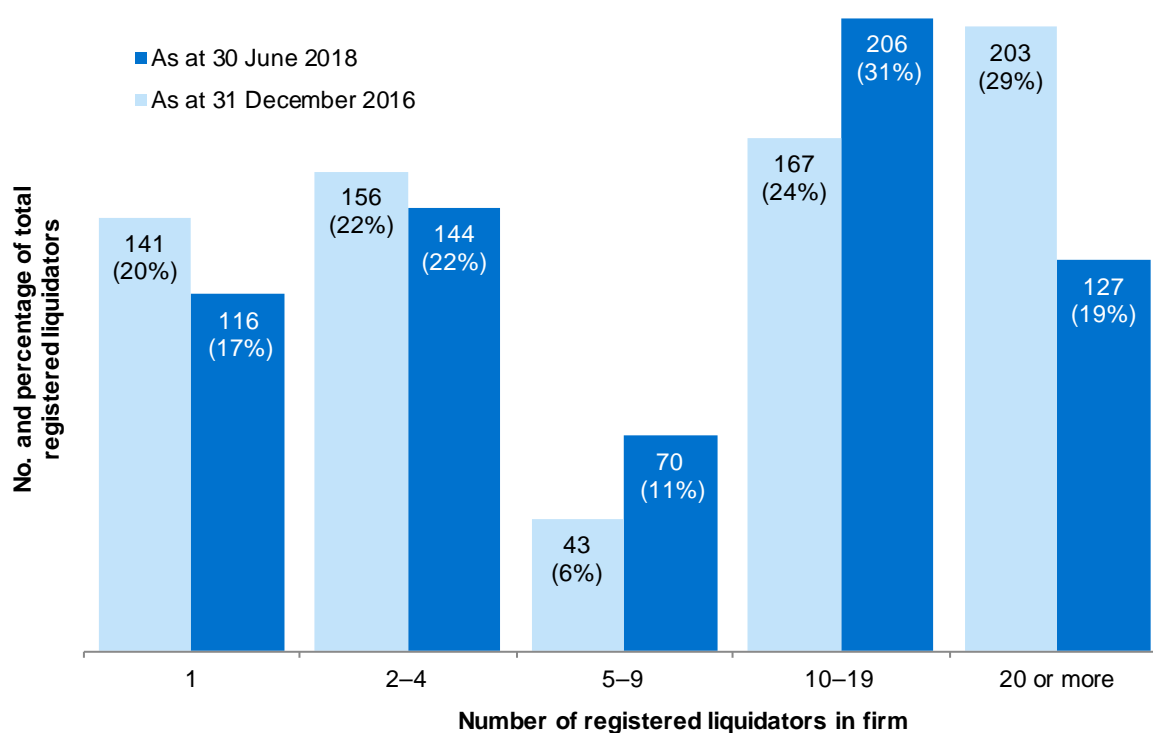
Table 12: Number of official liquidators (1 January 2016 to 30 June 2018)

Liquidator status	2016	January–June 2017	2017–18
Registered at start of reporting period	621	638	620
Registered during reporting period	35	2	0
Cancelled during reporting period	(18)	(20)	(175)
Registered at end of reporting period	638	620	445

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

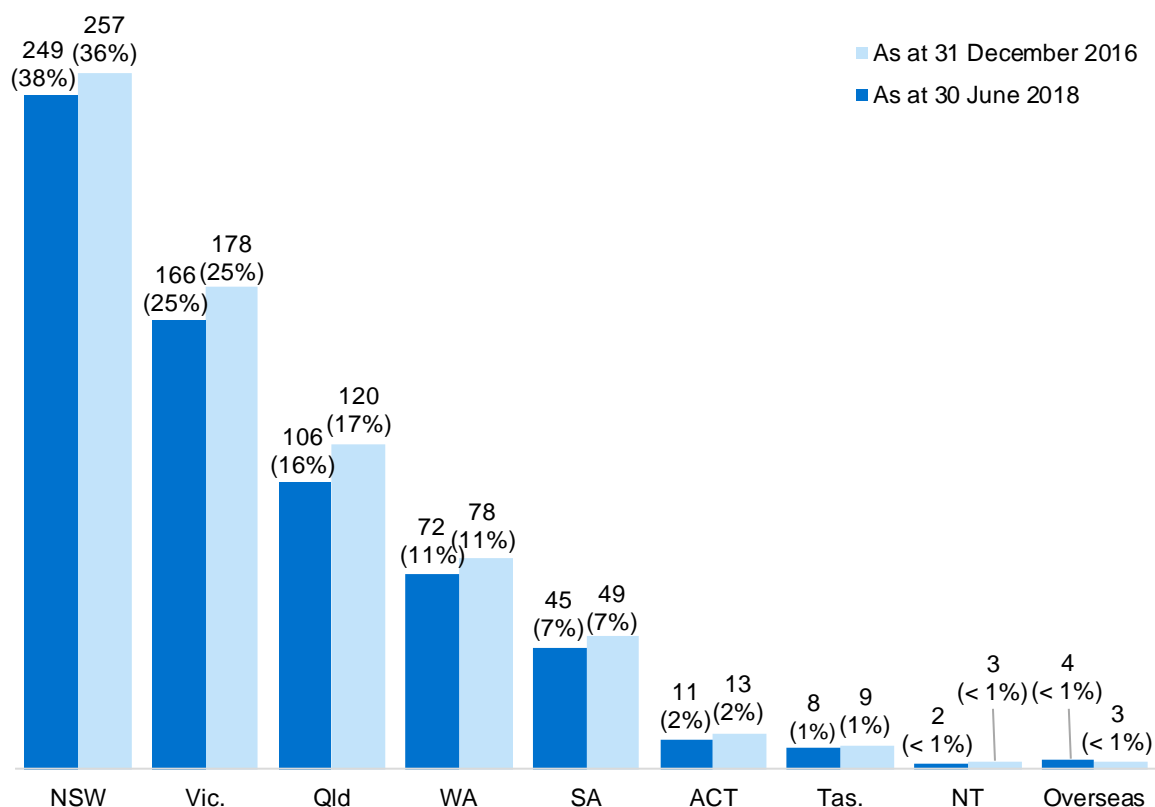
- 171 As Figure 9 shows, 50% of registered liquidators operate in a firm of 10 or more practitioners.
- 172 The number of registered liquidators operating in a firm of 20 or more practitioners decreased, and the number of registered liquidators in firms of 10–19 practitioners increased. We note that the movement was due to a marginal fall in the number of registered liquidators in four firms, which was sufficient to move the firms down to the lower bracket.
- 173 From 1 March 2017, changes introduced by the Insolvency Law Reform Act removed the ‘official liquidator’ designation. As such, reports on future reporting periods will not include this information. Each ‘official liquidator’ designation ceases once their last court appointment entered into before 1 March 2017 is finalised.

Figure 9: Number of registered liquidators by firm size, as at 31 December 2016 and 30 June 2018



Note: See Table 24 in Appendix 2 for the data used in this figure (accessible version).

- 174 As Figure 10 shows, 79% of registered liquidators operate predominantly in the eastern states of New South Wales (38%), Victoria (25%) and Queensland (16%).

Figure 10: Number of registered liquidators by region, as at 31 December 2016 and 30 June 2018

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

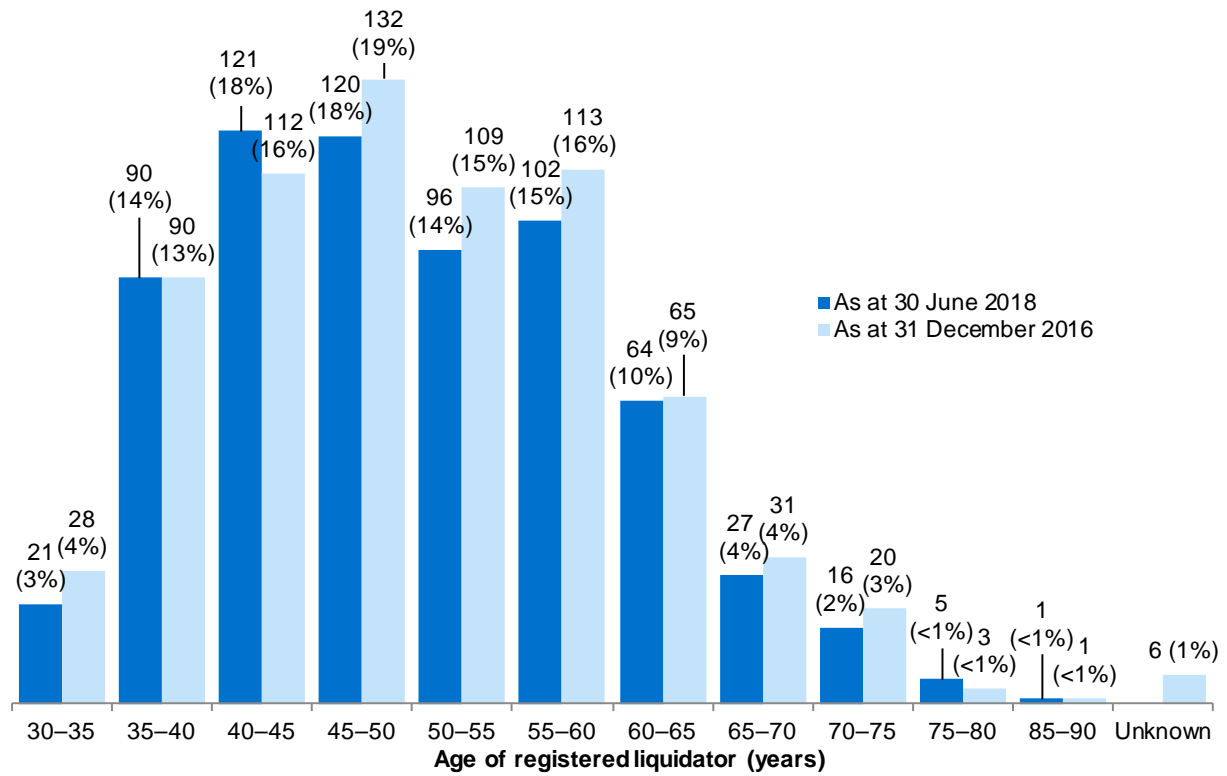
175 As at 30 June 2018, there were 55 female registered liquidators (8.3%) in Australia—two more than at 31 December 2016—located in the following states and territory:

- (a) New South Wales (17);
- (b) Victoria (16);
- (c) Queensland (15);
- (d) Western Australia (five);
- (e) South Australia (zero, previously two);
- (f) Australian Capital Territory (zero, previously one); and
- (g) Tasmania (one).

Note: One female registered liquidator is currently resident overseas.

176 As at 30 June 2018, the average age of registered liquidators was 50.3 years: see Figure 11.

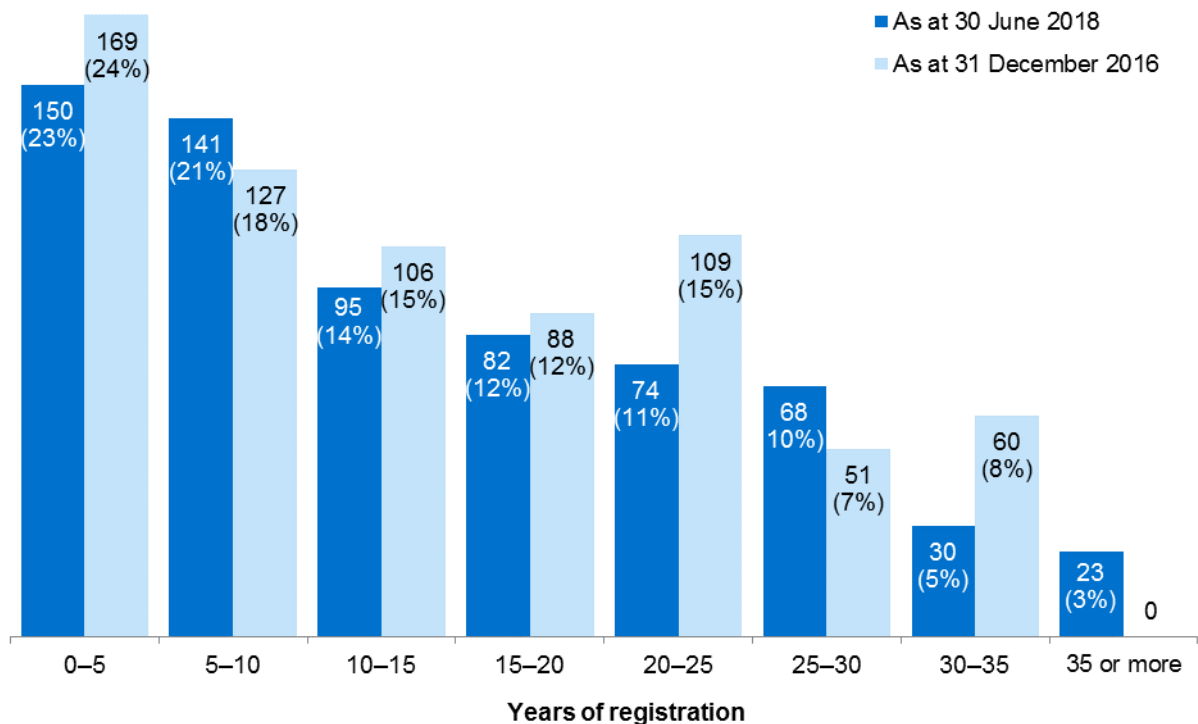
Figure 11: Age of registered liquidators, as at 31 December 2016 and 30 June 2018



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

Note 2: See Table 26 in Appendix 2 for the data used in this figure (accessible version).

Figure 12: Years of registration, as at 31 December 2016 and 30 June 2018



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

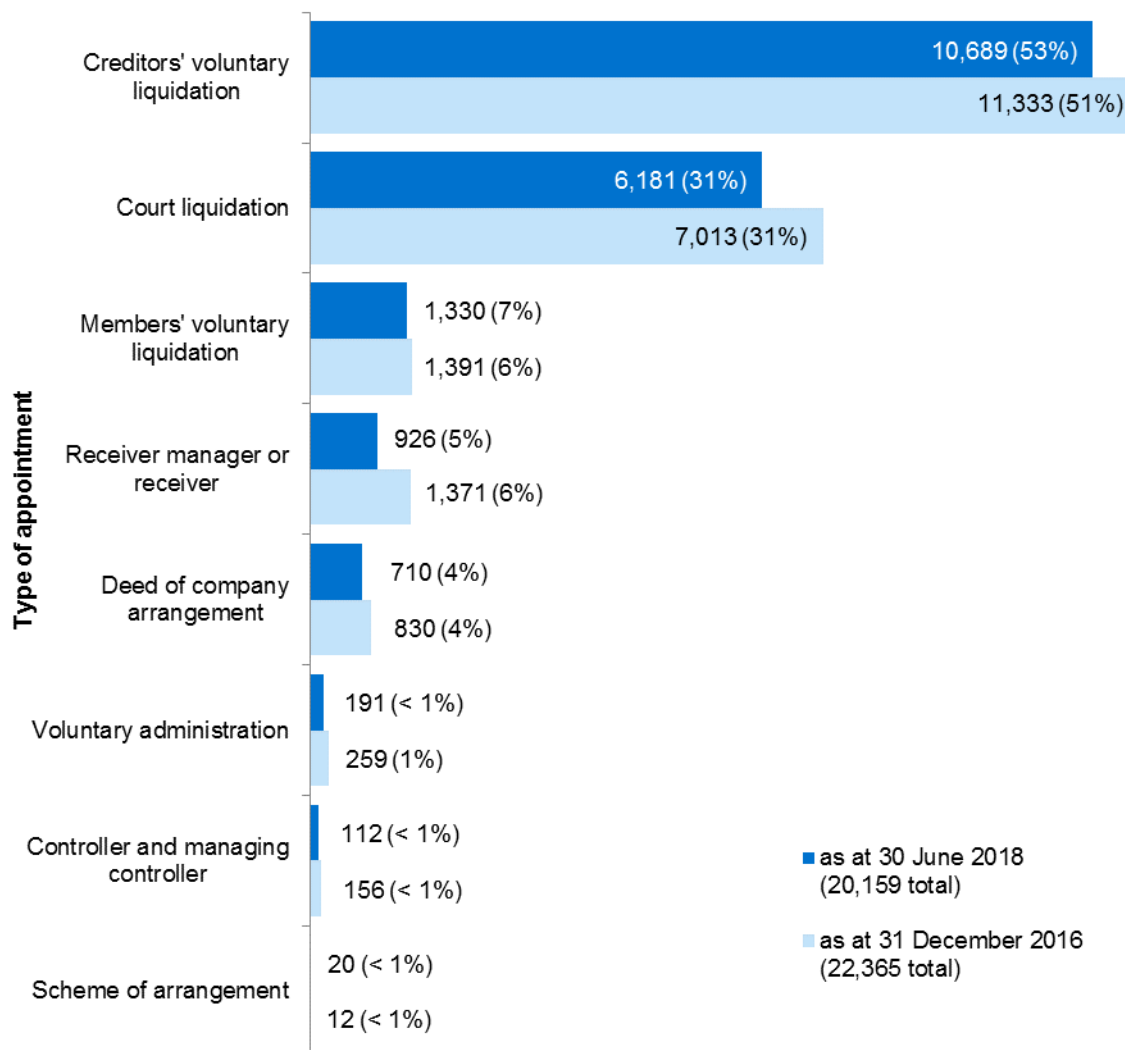
Profile of companies in external administration

- 177 Most external administration appointments involve small-to-medium proprietary limited companies. Table 13 summarises key data for the 2017–18 financial year, sourced from [Report 596](#) *Insolvency statistics: External administrators' reports (July 2017 to June 2018)* (REP 596).
- 178 External administrators prepare reports as a product of their investigations into a company's failure. Besides assisting creditors, these reports allow ASIC to produce a statistical profile on corporate insolvency in Australia.

Table 13: Profile of companies in external administration in 2017–18

Description	Percentage of companies
Less than 20 full-time equivalent employees	78%
Assets of \$100,000 or less	84%
Liabilities of \$250,000 or less	39%
Asset deficiency of \$500,000 or less	62%
Dividends to unsecured creditors of less than 11 cents in the dollar	97%

- 179 As at 30 June 2018, there were a total of 20,159 companies subject to external administration (including controller appointments): see Figure 13.

Figure 13: Appointments by type, as at 31 December 2016 and 30 June 2018

Note 1: 'Court liquidation' includes 19 provisional liquidations; 'receiver manager or receiver' includes 83 receiverships; and 'controller and managing controller' contains 20 managing controllerships.

Note 2: The figures for the type of appointment for creditors' voluntary liquidation and court liquidation were incorrect in [Report 532](#) *ASIC regulation of registered liquidators: January to December 2016* (REP 532) for the period January to December 2016. The figures have been amended.

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

Appendix 1: Regulatory guides, information sheets and forms

Regulatory guides and information sheets that apply

180 The following regulatory guides (see Table 14) and information sheets (see Table 15) apply to registered liquidators.

Table 14: Regulatory guides

Number	Title
RG 16	External administrators: Reporting and lodging
RG 81	Destruction of books
RG 82	External administration: Deeds of company arrangement involving a creditors' trust
RG 109	Assetless Administration Fund: Funding criteria and guidelines
RG 174	Relief for externally administered companies and registered schemes being wound up
RG 217	Duty to prevent insolvent trading: Guide for directors
RG 242	ASIC's power to wind up abandoned companies
RG 258	Registered liquidators: Registration, disciplinary actions and insurance requirements
	Note: RG 258 replaced RG 186 and RG 194 (which we withdrew) on 1 March 2017.

Table 15: Information sheets

Number	Title
INFO 29	External administration: Most commonly lodged forms
INFO 39	Insolvency information sheets
INFO 41	Insolvency: A glossary of terms
INFO 42	Insolvency: A guide for directors
INFO 43	Insolvency: A guide for shareholders
INFO 45	Liquidation: A guide for creditors
INFO 46	Liquidation: A guide for employees

Number	Title
INFO 53	Providing assistance to external administrators: Books, records and ROCAP Note: 'ROCAP' means a report on company activities and property introduced on 1 November 2018 replacing the report as to affairs 'RATA'.
INFO 54	Receivership: A guide for creditors
INFO 55	Receivership: A guide for employees
INFO 74	Voluntary administration: A guide for creditors
INFO 75	Voluntary administration: A guide for employees
INFO 78	Winding up a solvent company
INFO 80	How to interpret ASIC insolvency statistics
INFO 84	Independence of external administrators: A guide for creditors
INFO 85	Approving fees: A guide for creditors
INFO 151	ASIC's approach to enforcement
INFO 160	Disputes about employee entitlements

Note 1: We withdrew Information Sheet 59 *Registration of official liquidators* (INFO 59) on 1 March 2017.

Note 2: We withdrew Information Sheet 163 *Financial reporting compliance by administrators of insolvent public companies* (INFO 163) on 1 September 2017.

New forms introduced

- 181 In September 2017, we introduced several new forms to be lodged with ASIC for an external administration to allow registered liquidators to comply with new reporting obligations introduced by the Insolvency Law Reform Act:
- (a) [Form 5601](#) *Statutory report by a liquidator to creditors*—Registered liquidators must provide an information report to creditors and lodge it with ASIC under the Practice Rules from 1 September 2017;
 - (b) [Form 5602](#) *Annual administration return* and [Form 5603](#) *End of administration return* replaced Form 524 *Presentation of accounts and statement* (subject to transitional provisions in the Corporations Act)—Lodgement of the annual administration return and end of administration return must be in the structured data format only;
 - (c) [Form 5604](#) *Information about the company's affairs sent to creditors*—Registered liquidators must lodge a summary of the company's affairs and details of its creditors with ASIC from 1 September 2017;

- (d) [Form 5022](#) *Outcome of proposal to creditors or contributories*—Registered liquidators must lodge information about the outcome of resolution proposals to creditors or contributories without a meeting being held with ASIC from 1 September 2017;
- (e) [Form 530](#) *Copy of administrators report, statement and notice of s439A meeting*—Registered liquidators must lodge a copy of the report to creditors, statement and notice of meeting with ASIC from 1 September 2017 (see s439A of the Corporations Act); and
- (f) [Form 531](#) *Copy of declaration of relevant relationships and/or declaration of indemnities*—Registered liquidators must lodge a copy of their declaration of independence of relevant relationships and/or indemnities with ASIC for:
 - (i) voluntary administrations from 1 March 2017; and
 - (ii) creditors' voluntary liquidations from 1 September 2017.

Appendix 2: Accessible versions of figures

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

Table 16: Inquiries and reports of alleged misconduct received, by category (1 January 2016 to 30 June 2018)

Category	2016	January–June 2017	2017–18
Educational	272 (68%)	131 (73%)	189 (67%)
Procedural	51 (13%)	22 (12%)	39 (14%)
Conduct	78 (19%)	27 (14%)	56 (20%)
Total received	401 (100%)	180 (100%)	284 (100%)

Note: This is the data contained in Figure 1.

Table 17: Outcomes of inquiries and reports of alleged misconduct (1 January 2016 to 30 June 2018)

Outcome of inquiry or report of alleged misconduct	2016	January–June 2017	2017–18
Provided assistance to resolve the inquiry	49 (13%)	27 (14%)	41 (13%)
Insufficient evidence was identified to support the alleged breach	153 (42%)	79 (41%)	169 (55%)
<p>Note: Before closing a matter on this basis, we make relevant inquiries. This normally includes speaking to the person to obtain further information (including documents), reviewing lodgements with ASIC and speaking to the registered liquidator.</p>			
No breach of the Corporations Act identified	27 (7%)	10 (5%)	17 (6%)
Referred to a specialist team within ASIC for further review	31 (8%)	13 (7%)	23 (7%)
<p>Note: The Misconduct and Breach Reporting team referred to the Insolvency Practitioners team 8 matters in January–June 2017 and 17 matters in the 2017–18 financial year.</p>			
Referred to assist existing investigation or other surveillance	18 (5%)	7 (4%)	3 (1%)
Action otherwise precluded	89 (24%)	55 (29%)	54 (18%)
<p>Note: This is a result of the matter already being subject to investigation or some other regulatory action that has been assessed and does not assist the existing action.</p>			
Total processed	367 (100%)	191 (100%)	307 (100%)

Note: This is the data contained in Figure 2.

Table 18: Outcomes of formal investigations and enforcement actions (1 January 2016 to 30 June 2018)

Outcome of formal investigation or enforcement action	2016	January–June 2017	2017–18
Closed due to insufficient evidence of an offence	2 (25%)	1 (33%)	3 (75%)
Court application for an inquiry under s536 and/or s423	1 (13%)	0	0
Negotiated resolution	2 (25%)	1 (33%)	0
Court enforceable undertaking	2 (25%)	1 (33%)	0
CALDB application / disciplinary committee	1 (13%)	0	1 (25%)
Total number of investigations or actions	8 (100%)	3 (100%)	4 (100%)

Note: This is the data contained in Figure 3.

Table 19: Finalised transaction reviews by region (1 January 2016 to 30 June 2018)

Region	2016	January–June 2017	2017–18
New South Wales	33	9	14
Victoria	18	7	9
Queensland	8	3	5
Western Australia	13	1	5
South Australia	4	0	1
Tasmania	2	0	0
Australian Capital Territory	0	0	0
Northern Territory	1	0	0
Total finalised reviews	79	20	34

Note: This is the data contained in Figure 4.

Table 20: Areas of concern in finalised transaction reviews (1 January 2016 to 30 June 2018)

Area of concern in finalised transaction review	2016	January–June 2017	2017–18
Independence	49 (62%)	9 (45%)	17 (50%)
Remuneration	10 (13%)	4 (20%)	2 (6%)
Adequacy of investigation and reporting to creditors	10 (13%)	2 (10%)	6 (18%)
Phoenix facilitation	0	0	2 (6%)
Other	10 (13%)	5 (25%)	7 (21%)
Total finalised reviews	79 (100%)	20 (100%)	34 (100%)

Note: This is the data contained in Figure 5.

Table 21: Outcomes of finalised transaction reviews (1 January 2016 to 30 June 2018)

Outcome of finalised transaction review	2016	January–June 2017	2017–18
Insufficient concerns identified to warrant ASIC action	49 (62%)	9 (45%)	18 (53%)
Educational outcome	15 (19%)	8 (40%)	12 (35%)
Other review or merged with other activity	11 (14%)	3 (15%)	4 (12%)
Referred for formal investigation or enforcement action	4 (5%)	0	0
Total finalised reviews	79 (100%)	20 (100%)	34 (100%)

Note: This is the data contained in Figure 6.

Table 22: Liquidator assistance program statistics for the 2015–16, 2016–17 and 2017–18 financial years

Program statistic	2015–16	2016–17	2017–18
Individuals prosecuted	372	409	382
Compliance achieved	399	500	593
Request for assistance received	1,538	1,413	1,358

Note: This is the data contained in Figure 7.

Table 23: Allocation of funding from AA Fund (2015–16 to 2017–18)

Category	2015–16	2016–17	2017–18
Form EX02—Director banning application	\$1.70m	\$1.47m	\$1.04m
Form EX03—Other application	\$1.47m	\$1.65m	\$2.26m
Abandoned companies	\$406,000	\$222,000	\$120,000
Assist liquidator to recover assets	0	\$93,000	0

Note: This is the data contained in Figure 8.

Table 24: Number of registered liquidators by firm size, as at 31 December 2016 and 30 June 2018

Number of registered liquidators in firm	As at 31 December 2016	As at 30 June 2018
1	141 (20%)	116 (17%)
2–4	156 (22%)	144 (22%)
5–9	43 (6%)	70 (11%)
10–19	167 (24%)	206 (31%)
20 or more	203 (29%)	127 (19%)

Note: This is the data contained in Figure 9.

Table 25: Number of registered liquidators by region, as at 31 December 2016 and 30 June 2018

Region	As at 31 December 2016	As at 30 June 2018
New South Wales	257 (36%)	249 (38%)
Victoria	178 (25%)	166 (25%)
Queensland	120 (17%)	106 (16%)
Western Australia	78 (11%)	72 (11%)
South Australia	49 (7%)	45 (7%)
Australian Capital Territory	13 (2%)	11 (2%)
Tasmania	9 (1%)	8 (1%)
Northern Territory	3 (less than 1%)	2 (less than 1%)
Overseas	3 (less than 1%)	4 (less than 1%)

Note: This is the data contained in Figure 10.

Table 26: Age of registered liquidators, as at 31 December 2016 and 30 June 2018

Age of registered liquidator (years)	As at 31 December 2016	As at 30 June 2018
30–35	28 (4%)	21 (3%)
35–40	90 (13%)	90 (14%)
40–45	112 (16%)	121 (18%)
45–50	132 (19%)	120 (18%)
50–55	109 (15%)	96 (14%)
55–60	113 (16%)	102 (15%)
60–65	65 (9%)	64 (10%)
65–70	31 (4%)	27 (4%)
70–75	20 (3%)	16 (2%)
75–80	3 (less than 1%)	5 (less than 1%)
85–90	1 (less than 1%)	1 (less than 1%)
Unknown	6 (1%)	0

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

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

Table 27: Years of registration, as at 31 December 2016 and 30 June 2018

Years of registration	As at 31 December 2016	As at 30 June 2018
0–5	169 (24%)	150 (23%)
5–10	127 (18%)	141 (21%)
10–15	106 (15%)	95 (14%)
15–20	88 (12%)	82 (12%)
20–25	109 (15%)	74 (11%)
25–30	51 (7%)	68 (10%)
30–35	60 (8%)	30 (5%)
36 or more	0	23 (3%)

Note: This is the data contained in Figure 12.

Table 28: Appointments by type, as at 31 December 2016 and 30 June 2018

Type of appointment	As at 31 December 2016	As at 30 June 2018
Creditors' voluntary liquidation	11,333 (51%)	10,689 (53%)
Court liquidation	7,013 (31%)	6,181 (31%)
Members' voluntary liquidation	1,391 (6%)	1,330 (7%)
Receiver manager or receiver	1,371 (6%)	926 (5%)
Deed of company arrangement	830 (4%)	710 (4%)
Voluntary administration	259 (1%)	191 (less than 1%)
Controller and managing controller	156 (less than 1%)	112 (less than 1%)
Scheme of arrangement	12 (less than 1%)	20 (less than 1%)
Total appointments	22,365 (100%)	20,159 (100%)

Note 1: 'Court liquidation' includes 19 provisional liquidations; 'Receiver manager or receiver' includes 83 receiverships; and 'Controller and managing controller' contains 20 managing controllerships.

Note 2: The figures for the type of appointment for creditors' voluntary liquidation and court liquidation were incorrect in [REP 532](#) for the period January to December 2016. The figures have been amended.

Note 3: This is the data contained in Figure 13.

Key terms

Term	Meaning in this document
AA Fund	Assetless Administration Fund
AAT	Administrative Appeals Tribunal
AFSA	Australian Financial Security Authority
<i>amicus curiae</i>	Friend of the court
ARITA	Australian Restructuring Insolvency and Turnaround Association (known as the Insolvency Practitioners Association of Australia until the end of December 2013)
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATO	Australian Taxation Office
CA ANZ	Chartered Accountants Australia and New Zealand
CADB	Companies Auditors Disciplinary Board, formerly known as the Companies Auditors and Liquidators Disciplinary Board (CALDB)
committee	A committee convened under s20-10, 20-45, 40-45 or 40-75 of Sch 2
controller	Has the meaning given 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
court enforceable undertaking	Undertakings under s93AA of the ASIC Act
declaration of indemnities	Has the meaning given in s9 of the Corporations Act
declaration of relevant relationships	Has the meaning given in s60 of the Corporations Act
deed administrator	An administrator of a deed of company arrangement
direction to remedy lodgement	An ASIC-issued direction to comply under s40-5 of Sch 2
disciplinary committee	A committee convened to hear registered liquidator conduct matters

Term	Meaning in this document
enforcement action	Criminal, civil or administrative action against a registered liquidator (e.g. through an application to a committee under s40-50 of Sch 2), or where the parties reach a negotiated outcome (e.g. where ASIC accepts a court enforceable undertaking)
external administration	The corporate insolvency that the external administrator has been appointed to administer; including liquidation, controller appointments, voluntary administration or a deed of company arrangement
external administrator	A liquidator, controller, voluntary administrator or administrator of a deed of company arrangement
FEG	Fair Entitlements Guarantee
Form EX02 (for example)	An ASIC form (in this example numbered EX02)
formal investigation	A formal investigation under s13(3) of the ASIC Act
GST	Goods and services tax
INFO 151 (for example)	An ASIC information sheet (in this example numbered 151)
Insolvency Law Reform Act	<i>Insolvency Law Reform Act 2016</i> and related legislation
insolvency practitioner	A generic term to describe registered liquidators generally, regardless of whether they have been appointed to one or more specific external administrations
liquidator	An insolvency practitioner appointed under Ch 5 of the Corporations Act to wind up the affairs and distribute the property of a body corporate
negotiated resolution	Negotiated alternatives to other enforcement remedies where these can achieve an effective regulatory outcome, such as an improved compliance program or a better (e.g. quicker) outcome: see INFO 151
official liquidator	A person registered by ASIC under s1283 of the Corporations Act prior to 1 March 2017 Note: From 1 March 2017, the Insolvency Law Reform Act removed the 'official liquidator' designation.
PNW project	Published notices website and non-lodgement project
Practice Rules	Insolvency Practice Rules (Corporations) 2016
proactive practice review	A review of a registered liquidator's whole practice, including systems and procedures, and a detailed review of multiple external administration appointments. The aim is to assess whether the registered liquidator is adequately and properly performing their duties and generally complying with the law

Term	Meaning in this document
proactive transaction review	A surveillance activity targeting specific external administrations that appear to exhibit risk criteria suggesting, for example, potential illegal phoenix activity, possible director misconduct and/or independence concerns
receiver	An insolvency practitioner appointed under an instrument or by the court to take control of some or all of the property of a body corporate
registered liquidator	A person registered by ASIC under s20-30 of Sch 2 Note: Before the introduction of amendments in the Insolvency Law Reform Act on 1 March 2017, registered liquidators were registered under s1282(2) of the Corporations Act.
registration committee	A committee convened to consider an individual's application to be registered as a liquidator
remuneration	Remuneration paid to the external administrator for services rendered in conducting an external administration
remuneration report	A report prepared in accordance with rules 70-45 and 70-50 of the Practice Rules Note: Before the introduction of amendments in the Insolvency Law Reform Act on 1 September 2017, remuneration reports were prepared in accordance with s449E(5)-(7), 473(11)-(12) or 499(6)-(7) of the Corporations Act.
REP 573 (for example)	An ASIC report (in this example numbered 573)
reporting period	The 18 months between 1 January 2017 to 30 June 2018: see paragraphs 20-21 for more information
RG 258 (for example)	An ASIC regulatory guide (in this example numbered 258)
s9 (for example)	A section of the Corporations Act (in this example numbered 9)
Sch 2	Schedule 2 to the Corporations Act, titled Insolvency Practice Schedule (Corporations)
show-cause notice	A notice issued by ASIC under s40-40 of Sch 2
surveillance	Transaction reviews, proactive transaction reviews, proactive practice reviews and industry-wide compliance projects
transaction review	A review of the conduct of a registered liquidator in relation to a specific transaction or external administration
voluntary administrator	An administrator of a company but not a deed of company arrangement

Related information

Headnotes

alleged misconduct, compliance projects, education, enforcement outcomes, engaging with industry and stakeholders, external administration, guidance, insolvency practitioners, policy advice, registered liquidators, surveillance

Regulatory guides

See Table 14 in Appendix 1 of this report

Legislation

ASIC Act, s13(3) and 93AA

Corporations Act, Pts 5.3A–5.9, s206F, 439A, 489EA, 536, 1290A, 1291, 1330; Sch 2, Div 40, s20-30, 40-15, 40–20(1), 40-50 and 40-111

Corporations Regulations

Insolvency Law Reform Act

Practice Rules

Cases

Australian Executor Trustee Ltd v Provident Capital Ltd [2018] FCA 439

Korda, in the matter of Ten Network Holdings Ltd (Administrators Appointed) (Receivers and Managers Appointed) [2017] FCA 914

Templeton v Australian Securities and Investments Commission [2015] FCAFC 137

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

Reports

[REP 573](#) *Registered liquidators' compliance with lodgement and publication requirements*

[REP 596](#) *Insolvency statistics: External administrators' reports (July 2017 to June 2018)*

See also p. 2 of this report

Media releases

[17-007MR](#) *VU for Victorian liquidator after failure to discharge duties*

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

[17-029MR](#) *Former liquidator convicted of dishonestly using his position*

[17-211MR](#) *ASIC accepts Victorian liquidator's cancellation*

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

[18-116MR](#) *AAT affirms decision to cancel registration of NSW liquidator*

[18-181MR](#) *ASIC cancels Cairns liquidator's registration*

ASIC forms

[Form 530](#) *Copy of administrators report, statement and notice of s439A meeting*

[Form 531](#) *Copy of declaration of relevant relationships and/or declaration of indemnities*

[Form 5022](#) *Outcome of proposal to creditors or contributories*

[Form 5601](#) *Statutory report by liquidator to creditors*

[Form 5602](#) *Annual Administration Return*

[Form 5603](#) *End of Administration Return*

[Form 5604](#) *Information about the company's affairs sent to creditors*

[Form EX02](#) *Assetless administration funding request (s206F—Director banning)*

[Form EX03](#) *Assetless administration funding request (matters other than s206F—Director banning)*

Information sheets

See Table 15 in Appendix 1 of this report.

Other ASIC documents

[ASIC annual report 2016–17](#)

[ASIC annual report 2017–18](#)

[ASIC's corporate plan 2016–17 to 2019–20](#)

[ASIC's corporate plan 2017-18 to 2020-21](#)

ASIC, 'ASIC update: Law reform, Published Notices Website, cyber resilience, and more', article, Australian Insolvency Journal

ASIC, 'ASIC update: ASIC's Corporate Plan', article, Australian Insolvency Journal

ASIC, 'ASIC update: ASIC's supervision report – remuneration and independence, tackling illegal phoenix activity, and publications website', article, Australian Insolvency Journal

ASIC 'ASIC update: Working cooperatively, creditors' requests for information and more', article, Australian Insolvency Journal

ASIC 'ASIC update: Registration committee requirements, interstate appointments and reviewing liquidator funding', article, Australian Insolvency Journal

ASIC 'ASIC update: Why regular review of decisions on administrations is important, and information disclosed on the liquidator register', article, Australian Insolvency Journal

Non-ASIC documents

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

Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, [A comprehensive package of reforms to address illegal phoenixing](#), media release.

Treasury, [Improving bankruptcy and insolvency laws](#)

Treasury, [Exposure draft legislation to combat illegal phoenix activity](#)

Treasury, [Exposure draft legislation to reform the FEG scheme](#)