



ASIC
Australian Securities &
Investments Commission

REPORT 645

Insolvency statistics: External administrators' reports (July 2018 to June 2019)

December 2019

About this report

This report is for insolvency practitioners and other interested stakeholders.

It presents an overview of total lodgements of statutory reports lodged by liquidators, receivers and voluntary administrators (external administrators) from 1 July 2018 to 30 June 2019, as well as our statistical findings from external administrators' reports lodged electronically when a company enters external administration (EXAD) status (initial external administrators' reports).

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 five reports

Report number	Report date	Financial year covered
REP 596	November 2018	2017–18
REP 558	December 2017	2016–17
REP 507	December 2016	2015–16
REP 456	November 2015	2014–15
REP 412	September 2014	2013–14

Note: See [External administrators' reports](#) on the ASIC website for a full list of previous reports.

Disclaimer

This report has not been prepared for and should not be relied on for commercial use. In compiling the statistics in this report, ASIC has relied on the information in the external administrators' reports lodged electronically with ASIC.

Other than as discussed in Section B of this report, ASIC has not verified or sought to confirm the accuracy of any information in the external administrators' reports lodged electronically. Accordingly, the statistics in this report cannot be construed or relied on as representing a complete and accurate depiction or statement about the matters or events to which the statistics relate.

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A Executive summary

ASIC and company insolvency

- 1 One of ASIC's regulatory responsibilities is the administration of the insolvency-related provisions of the *Corporations Act 2001* (Corporations Act), including the Insolvency Practice Schedule (Corporations) in Sch 2 to the Corporations Act (Sch 2) and the Insolvency Practice Rules (Corporations) 2016. Table 1 reflects the breadth of this responsibility.

Table 1: ASIC's activities in insolvency

Stakeholder	ASIC activities
Companies and company officers	<ul style="list-style-type: none"> Investigating possible misconduct associated with the collapse of a company reported to ASIC by external administrators (including suspected insolvent trading and possible breaches of directors' duties) and, if appropriate, taking enforcement action Targeted surveillance of and action against directors with a history of failed companies when allegations of illegal phoenix activity exist Deregistering companies Disqualifying directors of failed companies
Insolvency practitioners	<ul style="list-style-type: none"> Registering liquidators, following a decision of a committee convened to consider liquidator registration applications Assisting external administrators in the conduct of external administrations, through our Liquidator Assistance Program, and prosecuting directors who do not provide books and records or reports to external administrators Administering the Assetless Administration Fund (AA Fund), which finances liquidators' preliminary investigations and reports into the failure of companies with few or no assets when it appears to ASIC that enforcement action may be warranted as a result of the investigations and reports Appointing liquidators to abandoned companies, which helps employees access their entitlements under the Fair Entitlements Guarantee (FEG) Appointing reviewing liquidators funded through the AA Fund where there is evidence of illegal phoenix activity Assessing external administrators' reports lodged with ASIC as part of their statutory responsibilities to investigate company failure and report findings to ASIC Investigating possible misconduct by registered liquidators in their conduct of external administrations and, when appropriate, referring the conduct to the court or a committee convened under Subdiv E of Sch 2 Enforcing the law against registered liquidators who facilitate illegal phoenix activity and disrupting collusion between pre-insolvency advisers, directors and registered liquidators on illegal phoenix activity

Stakeholder	ASIC activities
All stakeholders	<ul style="list-style-type: none"> • Developing ASIC policy and guidance on the insolvency-related provisions of the Corporations Act • Contributing to government policy development through formal submissions on potential legislative reform and its possible impact on the Australian corporate insolvency market • Publishing statistics on corporate insolvency about: <ul style="list-style-type: none"> – companies entering external administration – insolvency appointments – findings from reports lodged by liquidators, receivers and voluntary administrators

About this report

- 2 This statistical report provides a broad picture of corporate insolvencies in Australia for the information of the insolvency profession, creditors, academics, the Australian Government and other interested stakeholders. This report covers the financial year 2018–19.

Note: In this report, spans of two years (e.g. 2018–19) always refer to financial years.
- 3 We compiled this report from the estimates and opinions contained in statutory reports lodged with ASIC by liquidators, receivers and voluntary administrators (external administrators' reports) in the format of Schedule B to [Regulatory Guide 16](#) *External administrators: Reporting and lodging* (RG 16) (Schedule B report).
- 4 Liquidators, receivers and voluntary administrators (external administrators) must lodge reports under the following sections of the Corporations Act:
 - (a) s533 (by a liquidator);
 - (b) s422 (by a receiver); and
 - (c) s438D (by a voluntary administrator).
- 5 External administrators must lodge a report with ASIC as soon as practicable:
 - (a) when they suspect an offence under an Australian law, or instances of negligence or misconduct relating to the company to which they are appointed; or
 - (b) in the case of a liquidation only, having concluded unsecured creditors are unlikely to receive a dividend of more than 50 cents in the dollar.
- 6 An external administrator must lodge a report as soon as practicable and, in any event, within six months after it appears to them that any of the conditions in the following sections apply:
 - (a) s533(1)(a), (b) or (c) (for liquidators);
 - (b) s422(1)(a) or (b) (for receivers); and
 - (c) s438D(1)(a) or (b) (for voluntary administrators).

- 7 We also ask external administrators to submit financial and other data when they complete an external administrator report.
- 8 When interpreting the statistics in this report, certain conditions and limitations should be kept in mind: see Section B.
- 9 Section C of this report provides data on the total number of external administrators' reports lodged in 2018–19, as well as the proportion of these that comprised *initial* external administrators' reports (i.e. the first electronically lodged Schedule B report after a company has entered external administration). Section D of this report presents our statistical findings from these initial external administrators' reports for the period 2018–19.

Percentages in this report

- 10 Percentages may not add up to 100% due to rounding. In this section, we have rounded the percentages to whole numbers. In Sections C and D, we have rounded to one decimal place.

Summary of main statistical findings

- 11 The total number of external administrators' reports lodged in 2018–19 was 8,089. Initial external administrators' reports comprised almost 93% of this total (or 7,498 reports). Nearly all 8,089 external administrators' reports were lodged electronically, except for 19 reports (i.e. 99.8% were lodged electronically).
- 12 Table 2 summarises the main findings relating to the initial external administrators' reports for 2018–19 (presented in Section D) and includes comparative data for the previous two reporting periods.

Note: For the data for previous reporting periods, see [External administrators' reports](#) on the ASIC website.

Table 2: Summary of findings—Initial external administrators' reports (2016–17 to 2018–19)

Profile of companies	2018–19	2017–18	2016–17
Number of employees affected	76% of reports concerned companies with less than 20 employees	78% of reports concerned companies with less than 20 employees	79% of reports concerned companies with less than 20 employees
Industries with most lodgements	<ul style="list-style-type: none"> Other (business and personal) services (2,114 reports or 28%) Construction (1,601 reports or 21%) Accommodation and food services (1,159 reports or 15%) 	<ul style="list-style-type: none"> Other (business and personal) services (2,150 reports or 28%) Construction (1,642 reports or 22%) Accommodation and food services (1,064 reports or 14%) 	<ul style="list-style-type: none"> Other (business and personal) services (2,230 reports or 29%) Construction (1,611 reports or 21%) Accommodation and food services (884 reports or 11%)

Profile of companies	2018–19	2017–18	2016–17
Assets and liabilities	<ul style="list-style-type: none"> 85% of failed companies had estimated assets of \$100,000 or less 38% of failed companies had estimated liabilities of \$250,000 or less 	<ul style="list-style-type: none"> 84% of failed companies had estimated assets of \$100,000 or less 39% of failed companies had estimated liabilities of \$250,000 or less 	<ul style="list-style-type: none"> 84% of failed companies had estimated assets of \$100,000 or less 43% of failed companies had estimated liabilities of \$250,000 or less
Deficiency	62% of failed companies had an estimated deficiency of \$500,000 or less	62% of failed companies had an estimated deficiency of \$500,000 or less	64% of failed companies had an estimated deficiency of \$500,000 or less
Top 3 nominated causes of failure	<ul style="list-style-type: none"> Inadequate cash flow or high cash use (3,841 or 51% of reports) Poor strategic management of business (3,216 or 43% of reports) Trading losses (2,915 or 39% of reports) 	<ul style="list-style-type: none"> Inadequate cash flow or high cash use (3,743 or 49% of reports) Poor strategic management of business (3,484 or 46% of reports) Trading losses (2,994 or 39% of reports) 	<ul style="list-style-type: none"> Inadequate cash flow or high cash use (3,626 or 47% of reports) Poor strategic management of business (3,542 or 46% of reports) Trading losses (2,753 or 35% of reports)
Top 3 alleged possible misconduct	<ul style="list-style-type: none"> s588G(1)–(2) Insolvent trading (5,350 or 71% of reports) s180 Care and diligence—Directors' and officers' duties (4,141 or 55% of reports) s286 and 344(1) Obligation to keep financial records (3,294 or 44% of reports) 	<ul style="list-style-type: none"> s588G(1)–(2) Insolvent trading (5,264 or 69% of reports) s180 Care and diligence—Directors' and officers' duties (4,097 or 54% of reports) s286 and 344(1) Obligation to keep financial records (3,329 or 44% of reports) 	<ul style="list-style-type: none"> s588G(1)–(2) Insolvent trading (4,878 or 63% of reports) s180 Care and diligence—Directors' and officers' duties (3,818 or 49% of reports) s286 and 344(1) Obligation to keep financial records (3,335 or 43% of reports)
Dividends to unsecured creditors	In 96% of cases, the dividend estimate was less than 11 cents in the dollar	In 97% of cases, the dividend estimate was less than 11 cents in the dollar	In 96% of cases, the dividend estimate was less than 11 cents in the dollar

Note 1: The term 'reports' in this table means 'initial external administrators' reports'.

Note 2: The third top nominated cause of failure in 2016–17 was trading losses, which has been corrected from the cause given in Table 2 of [REP 558](#).

B Conditions and limitations on the statistics

Key points

This section explains the conditions and limitations relating to the statistics in this report, including:

- the general conditions and limitations to the statistics in this report; and
- specific conditions and limitations relating to the statistical findings in Section D, which are based on initial external administrators' reports.

General conditions and limitations

- 13 When interpreting the statistics in this report, the following conditions and limitations should be kept in mind:
- The statistics in this report do not directly correlate with the monthly statistics for 'Companies entering external administration' and 'Insolvency appointments' on ASIC's website due to the time difference in lodgement of external administrators' reports: see Table 6. External administrators are not required to lodge reports where the pre-conditions of s422, 438D or 533 of the Corporations Act are not met.
 - Some external administrators' reports are lodged for statistical purposes only, rather than under the Corporations Act. For example, a liquidator may choose to lodge a report for a company with no suspected misconduct and with an estimated dividend of more than 50 cents in the dollar. Therefore, this report includes financial and other data from these lodgements in the aggregated statistics.

Conditions and limitations on statistics in Section D

- 14 To avoid double counting, all statistics in Section D are compiled only from the initial external administrator report lodged electronically when the company enters external administration (EXAD) status. This allows for the following situations:
- While a company is in EXAD status, it may be subject to more than one appointment type. Even though a report may be lodged for each appointment type, the statistics only include the first electronically lodged report for the company.
 - More than one report may also be lodged for each appointment type. Again, the statistics only include the first electronically lodged report.

- (c) A company may go in and out of EXAD status more than once. For each period in EXAD status, only the first electronically lodged report is included.
- 15 Financial information provided in an initial external administrator report reflects estimates and opinions of the external administrator at a point in time. The statistics do not reflect revised information from subsequent or updated reports.
- 16 Information about alleged civil and criminal misconduct by directors provided in an initial external administrator report reflect the opinions of the external administrator at a point in time, and not those of ASIC.
- 17 When completing the initial external administrator report, the external administrator selects from a predetermined set of options for qualitative questions, and ranges for quantitative questions. Limited testing carried out by ASIC while compiling these statistics identified a small number of reports with estimated employee entitlements inconsistent with other responses in those reports (e.g. very high unpaid employee entitlements but less than five employees; high unpaid employee entitlements that are significantly greater than estimated total liabilities). These reports have been eliminated from the employee entitlements statistics when the impact was material.
- 18 The top 12 industries by number of initial external administrators' reports lodged are shown for some statistics by industry as determined by the external administrator, with remaining industries grouped under 'Other industries'.
- 19 Statistics presented by region use the latest registered address on ASIC's corporate database (ASCOT). When an external administrator from another region becomes the external administrator and changes the registered office address on ASCOT, the new address is used. The regional statistics do not include companies with an international registered address.

C Lodgement of external administrators' reports

Key points

This section provides statistics on the total lodgements of external administrators' reports, including statistics on:

- the method of lodgement (electronic and manual) compared with previous years; and
- the proportion of external administrators' reports that comprise initial external administrators' reports, as well as statistics on the timing of lodgement of these reports compared with the two previous reporting periods.

Total lodgements of external administrators' reports

- 20 The total number of external administrators' reports lodged decreased from 8,202 in 2017–18 to 8,089 in 2018–19: see Table 3.
- 21 The percentage of electronically lodged reports for 2018–19 has increased to 99.8%, compared with 36.8% in 2002–03 (when electronic lodgement first became available). The number of reports lodged directly by external administrators through the registered liquidators' portal increased marginally from 99.0% in 2017–18 to 99.8% in 2018–19: see also Figure 1.

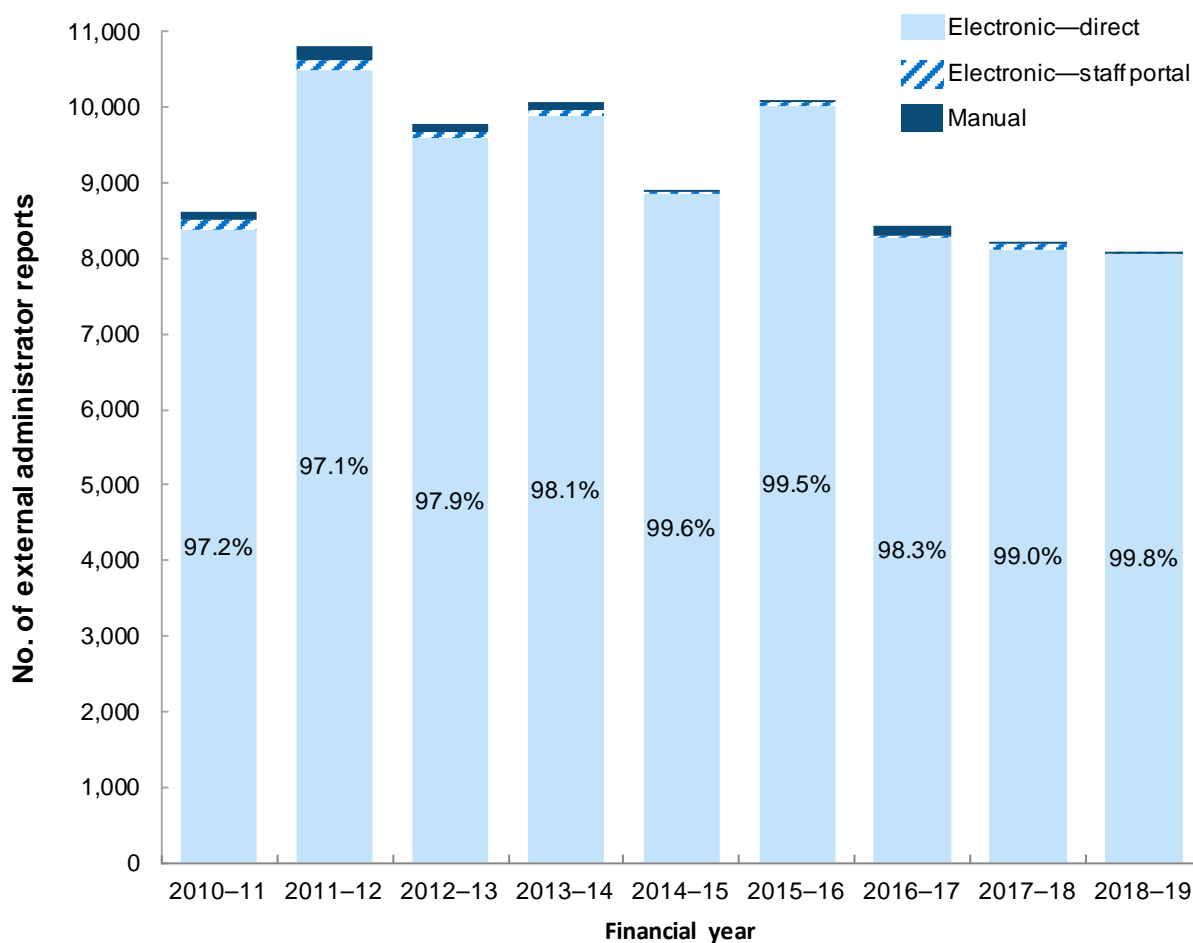
Table 3: Total external administrators' reports by lodgement type (1 July 2016 to 30 June 2019)

Lodgement type	2018–19		2017–18		2016–17	
	Number	Percentage	Number	Percentage	Number	Percentage
Electronic—direct	8,069	99.8%	8,124	99.0%	8,283	98.3%
Electronic—staff portal	1	0.0%	75	0.9%	4	0.0%
Manual	19	0.2%	3	0.0%	138	1.6%
Total	8,089	100.0%	8,202	100.0%	8,425	100.0%

Note 1: 'Electronic—direct' means Schedule B reports lodged directly by external administrators through the registered liquidators' portal.

Note 2: 'Electronic—staff portal' means Schedule B reports lodged on paper by external administrators in the Schedule B report format and subsequently entered by ASIC staff through the staff portal.

Note 3: 'Manual' means reports (not in the Schedule B report format) lodged on paper by external administrators. However, it excludes supplementary reports (Schedule C reports).

Figure 1: Total external administrators' reports by lodgement type (1 July 2010 to 30 June 2019)

Note 1: See Table 44 in the appendix for the data shown in this figure (accessible version).

Note 2: 'Electronic—direct' means Schedule B reports lodged directly by external administrators through the registered liquidators' portal.

Note 3: 'Electronic—staff portal' means Schedule B reports lodged on paper by external administrators in the Schedule B report format and subsequently entered by ASIC staff through the staff portal.

Note 4: 'Manual' means reports (not in the Schedule B report format) lodged on paper by external administrators. However, it excludes supplementary reports (Schedule C reports).

Lodgements of initial external administrators' reports

22 Table 4 shows the number of initial external administrators' reports lodged in 2018-19 and the previous two financial years.

Table 4: Total initial external administrators' reports (1 July 2016 to 30 June 2019)

2018-19	2017-18	2016-17
7,498	7,613	7,765

23 In 2018-19, initial external administrators' reports made up 92.7% (or 7,498 reports) of the total number of external administrators' reports lodged. This compares with 92.8% (or 7,613 reports) in 2017-18.

Timing of lodgement

- 24 Table 5 shows the percentage of initial external administrators' reports lodged within six months of, and more than 12 months after, the appointment of the external administrator—compared with the previous two financial years.

Table 5: Initial external administrators' reports by timing of lodgement after appointment (1 July 2016 to 30 June 2019)

Financial year	Reports lodged within six months	Reports lodged after 12 months or more
2018–19	72.7%	9.3%
2017–18	67.3%	11.5%
2016–17	56.5%	15.7%

- 25 Section D sets out the statistics relating to the initial external administrators' reports lodged in 2018–19.

D Statistical findings from initial external administrators' reports

Key points

This section presents our detailed findings from initial external administrators' reports lodged electronically in 2018–19.

Paragraph 26 highlights figures that have changed by three percentage points or more from the previous financial year.

Paragraphs 57–73 give details of alleged criminal and civil breaches of the insolvent trading provisions of the Corporations Act. Highlights include:

- External administrators had evidence for 4,719 reports of alleged civil insolvent trading. Of these, 3,818 (or 80.9%) estimated debts incurred while insolvent were below \$1 million and 4,219 (or 89.4%) had 50 or fewer unsecured creditors.
- When assessing a recovery action's merits, one other factor external administrators consider is the availability of assets to fund that action (absent creditor or third-party funding). Most reports alleging a civil breach (3,957 or 83.9%) disclosed assets of less than \$100,000.
- External administrators had evidence for 57 reports of alleged criminal insolvent trading. Of these, 34 (or 59.6%) estimated debts incurred while insolvent were below \$1 million and 44 (or 77.2%) had 50 or fewer unsecured creditors.
- Only three reports (5.3%) alleging a criminal breach involved more than 200 creditors. All three of these reports estimated debts incurred while insolvent of over \$5 million.

Note: The term 'reports' in this section means 'initial external administrators' reports'.

Highlighted changes from previous financial year

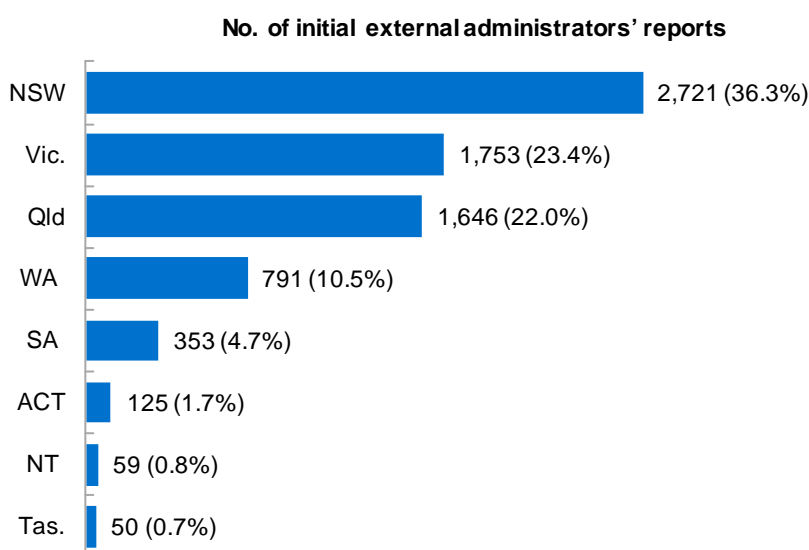
- 26 Highlighted below are figures that changed by three percentage points or more from the previous financial year (i.e. 2017–18):
- Reports lodged more than two months and less than six months after appointment increased from 54.7% to 60.5% of reports lodged, while reports lodged more than six months but less than 12 months after appointment fell from 21.2% to 18.0%.
 - Reports where the external administrator had documentary evidence to support their allegations of misconduct increased from 73.8% to 77.9%.
 - Reports showing unpaid superannuation as 'not applicable' decreased from 55.0% to 51.9%.
 - Reports where the expected time to complete the external administration was less than three months decreased from 30.6% to 27.0%.

- (e) Reports where the external administrator had initiated, or was contemplating initiating, recovery proceedings for property or compensation for the benefit of creditors under Pt 5.7B of the Corporations Act increased from 43.4% to 51.1%.
- (f) Reports with estimated liquidator's remuneration of zero fell from 21.1% to 17.6% of reports. Estimates of remuneration of between \$1 and less than \$50,000 increased from 63.9% to 67.0% of reports.

Lodgement by region

27 Most reports in 2018–19 related to companies with a registered address in New South Wales (2,721 reports or 36.3%), followed by Victoria (1,753 reports or 23.4%) and Queensland (1,646 reports or 22.0%). The five remaining states and territories made up 18.4% of reports: see Figure 2.

Figure 2: Initial external administrators' reports by region (1 July 2018 to 30 June 2019)



Note: See Table 45 in the appendix for the data shown in this figure (accessible version).

Lodgement period

28 In 2018–19, 72.7% of reports were lodged within six months of the external administrator's appointment (this compares with 67.3% in 2017–18). Another 9.3% of reports were lodged more than 12 months after the appointment: see Table 6.

Table 6: Initial external administrators' reports by lodgement period after appointment (1 July 2018 to 30 June 2019)

Lodgement period after appointment	Number	Percentage
Less than 2 months	917	12.2%
2 months to less than 6 months	4,534	60.5%
6 months to less than 12 months	1,346	18.0%
12 months or more	701	9.3%
Total	7,498	100.0%

Note 1: A liquidator appointed after 31 December 2007 must lodge reports as soon as practicable, and in any event within six months after it appears to the liquidator that any of the conditions in s533(1)(a), (b) or (c) apply.

Note 2: The result does not reflect instances where the first electronically lodged report was not the first report lodged.

Section lodged under

- 29 Most reports in 2018–19 (92.5%) were lodged by liquidators for the purpose of complying with s533 of the Corporations Act: see Table 7.

Table 7: Initial external administrators' reports by section of the Corporations Act (1 July 2018 to 30 June 2019)

Section of Corporations Act	Number	Percentage
Section 422 (reports by receiver)	45	0.6%
Section 438D (reports by administrator)	518	6.9%
Section 533 (reports by liquidator)	6,932	92.5%
Statistical purposes	3	0.0%
Total	7,498	100.0%

Note: Each report lodged for a statistical purpose reported no suspected misconduct. One report estimated a dividend of more than 50 cents in the dollar, while two reports estimated no dividend to be paid to any class of creditor.

Size of company

- 30 The number of employees or the number of full-time equivalent (FTE) employees is used as a measure of the size of the company. In 2018–19, 76.5% of reports related to companies with less than 20 employees: see Table 8.

Table 8: Initial external administrators' reports—Size of company as measured by number of FTEs (1 July 2018 to 30 June 2019)

Number of FTE employees	Number	Percentage
Less than 5	4,680	62.4%
5–19	1,055	14.1%
20–199	329	4.4%
200 or more	7	0.1%
Not known	1,427	19%
Total	7,498	100.0%

Industry

- 31 As shown in Table 9, in 2018–19, the three industries with the highest number of reports lodged were:
- (a) Other (business and personal) services (2,114 reports or 28.2%);
 - (b) Construction (1,601 reports or 21.4%); and
 - (c) Accommodation and food services (1,159 reports or 15.5%).
- 32 Two of the top 12 industries have changed from the previous year:
- (a) Agriculture, forestry and fishing (which was ranked 14 in the previous year) moved up to a ranking of 12; and
 - (b) Mining (which was ranked 10 in the previous year) moved out of the top 12 to a ranking of 13.
- 33 The top six industries have not changed position from the previous year. Other rankings that changed position were Rental, hiring and real estate services moved up to rank 7, while Professional, scientific and technical services moved down to rank 11.

**Table 9: Initial external administrators' reports by industry type
(1 July 2018 to 30 June 2019)**

Ranking			
1	Other (business and personal) services	2,114	28.2%
2	Construction	1,601	21.4%
3	Accommodation and food services	1,159	15.5%
4	Retail trade	617	8.2%
5	Transport, postal and warehousing	369	4.9%
6	Manufacturing	235	3.1%
7	Rental, hiring and real estate services	175	2.3%
8	Information media and telecommunications	164	2.2%
9	Wholesale trade	158	2.1%
10	Electricity, gas, water and waste services	133	1.8%
11	Professional, scientific and technical services	130	1.7%
12	Agriculture, forestry and fishing	114	1.5%
13	Mining	86	1.1%
14	Health care and social assistance	84	1.1%
15	FIS—Other financial services	83	1.1%
16	Education and training	75	1.0%
17	Arts and recreation services	69	0.9%
18	Administrative and support services	45	0.6%
19	FIS—Credit provider	43	0.6%
20	FIS—Managed investments	20	0.3%
21	Public administration and safety	9	0.1%
22	FIS—Superannuation	7	0.1%
23	FIS—Insurance	6	0.1%
24	FIS—Deposit taking institutions	2	0.0%
Total		7,498	100.0%

Note: 'FIS' means 'Financial and insurance services'.

Nominated causes of failure

- 34 There is commonly more than one reason for a company's failure. External administrators nominated an average of between two and three causes of failure per report in 2018–19.
- 35 The top three nominated causes of failure for companies are the same as last year (see Table 10):
- (a) inadequate cash flow or high cash use (3,841 or 51.2% of reports);
 - (b) poor strategic management of business (3,216 or 42.9% of reports); and
 - (c) trading losses (2,915 or 38.9% of reports).
- 36 Of the top 12 industries, the three industries that most exceeded the average percentage across all industries of reports for these three causes of failure were as follows:
- (a) *Inadequate cash flow or high cash use*: Manufacturing (63.0% of reports), Wholesale trade (59.5% of reports), and Accommodation and food services (55.7% of reports);
 - (b) *Poor strategic management of business*: Agriculture, forestry and fishing (50.9% of reports), Rental, hiring and real estate services (48.6% of reports), and Transport, postal and warehousing (48.5% of reports); and
 - (c) *Trading losses*: Manufacturing (56.6% of reports), Accommodation and food services (51.3% of reports), and Retail trade (50.1% of reports).
- 37 All regions, except New South Wales and Victoria, shared the same top three causes: see Table 11.

Table 10: Initial external administrators' reports—Nominated causes of failure by industry (1 July 2018 to 30 June 2019)

Cause of failure	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total
Under-capitalisation	491	374	278	144	73	55	34	44	40	38	28	28	101	1,728
Poor financial control, including lack of records	889	622	392	208	162	67	56	60	48	56	42	37	166	2,805
Poor management of accounts receivable	245	288	34	51	39	42	7	16	21	21	21	12	55	852
Poor strategic management of business	847	703	517	250	179	113	85	72	73	58	60	58	201	3,216
Inadequate cash flow or high cash use	1,010	844	646	331	187	148	72	86	94	72	66	63	222	3,841
Poor economic conditions	138	181	185	121	34	44	21	10	13	17	16	22	41	843
Natural disaster	3	2	4	5	0	2	0	0	0	0	0	9	1	26
Fraud	38	26	8	11	4	5	7	5	4	3	3	4	21	139
Deed of company arrangement failed	4	1	2	2	1	1	0	1	0	0	1	3	38	54
Dispute among directors	49	41	25	19	7	12	16	7	5	3	6	6	19	215
Trading losses	665	599	594	309	135	133	48	63	73	55	48	46	147	2,915
Industry restructuring	21	16	7	16	6	13	2	2	4	3	2	3	15	110
Other	820	571	344	195	122	71	69	57	64	43	44	38	235	2,673
Total	5,220	4,268	3,036	1,662	949	706	417	423	439	369	337	329	1,262	19,417

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Table 11: Initial external administrators' reports—Nominated causes of failure by region (1 July 2018 to 30 June 2019)

Cause of failure	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
Under-capitalisation	37	609	10	359	68	18	403	224	1,728
Poor financial control, including lack of records	40	1,251	18	479	80	14	694	229	2,805
Poor management of accounts receivable	17	275	4	199	32	7	206	112	852
Poor strategic management of business	49	1,147	24	770	178	27	688	333	3,216
Inadequate cash flow or high cash use	63	1,452	27	814	167	27	884	407	3,841
Poor economic conditions	12	160	23	215	57	7	133	236	843
Natural disaster	0	9	0	14	0	1	2	0	26
Fraud	1	51	1	33	6	0	32	15	139
Deed of company arrangement failed	0	5	0	39	4	0	1	5	54
Dispute among directors	6	75	3	38	9	0	57	27	215
Trading losses	52	1,010	32	641	150	27	652	351	2,915
Industry restructuring	2	29	0	27	6	0	33	13	110
Other	44	1,120	20	516	124	20	527	302	2,673
Total	323	7,193	162	4,144	881	148	4,312	2,254	19,417

Possible misconduct

38 In 2018–19, external administrators alleged misconduct in 6,638 or 88.5% of reports. External administrators reported 19,985 possible breaches, at an average of three breaches per report, where possible misconduct was reported: see Table 12. See Table 14 for reports where external administrators had evidence and recommended further investigation.

Table 12: Initial external administrators' reports—Possible misconduct (1 July 2018 to 30 June 2019)

Reported misconduct	Number of reports	Percentage of reports	Number of possible breaches
No misconduct reported	860	11.5%	–
Possible misconduct reported	6,638	88.5%	19,985
Total	7,498	100.0%	19,985

39 As a result of the reports lodged, we asked the external administrator to prepare a supplementary report under s422, 438D or 533 for 875 (13.2%) of the 6,638 reports for 2018–19 where they identified possible misconduct. The request for an additional report is a function of our assessment of risk and allows us to determine which matters to investigate further. Our risk assessment is based on a number of factors, including, but not limited to:

- (a) the nature of the possible misconduct reported;
- (b) the amount of liabilities;
- (c) the deficiency suffered;
- (d) the availability of evidence;
- (e) prior misconduct; and
- (f) the advice of the external administrator that the reported possible misconduct warrants further investigation.

40 Alleged criminal misconduct has been split between alleged misconduct occurring before the appointment of the external administrator (pre-appointment misconduct) and post-appointment misconduct related to directors' and officers' failure to assist the liquidator. In 2018–19, 10.8% of all reported misconduct related to post-appointment misconduct: see Table 13.

41 Alleged breaches of civil obligations are the most common breaches (16,874 or 84.4% of all reported misconduct). For a detailed analysis of civil breaches by section of the Corporations Act, industry and region, see Table 30 and Table 32.

Table 13: Initial external administrators' reports—Categories of possible misconduct (1 July 2018 to 30 June 2019)

Categories of possible misconduct	Number of possible breaches	Percentage of possible breaches
Alleged criminal misconduct under the Corporations Act by officers or employees <i>before</i> the appointment of the external administrator	772	3.9%
Alleged criminal misconduct under the Corporations Act by officers or employees <i>after</i> the appointment of the external administrator	2,154	10.8%
Alleged breaches of civil obligations	16,874	84.4%
Other criminal offences	57	0.3%
Other possible misconduct	128	0.6%
Total	19,985	100.0%

Note 1: 'Other criminal offences' include breaches by a member or contributory under the Corporations Act, or breaches under other Commonwealth statutes or state or territory laws.

Note 2: 'Other possible misconduct' relates to people who have taken part in the formation, promotion, administration, management or winding-up of the company and may have misapplied or retained, or become liable or accountable for, any money or property of the company, or been guilty of any negligence, default, breach of duty or trust in relation to the company.

Documentary evidence and further inquiry

42 External administrators confirmed they had documentary evidence to support alleged pre-appointment misconduct for 5,844 reports (77.9%) for 2018–19: see Table 14. Of these, they considered that only 2,613 reports (34.8%) warranted ASIC's inquiry into the alleged misconduct, based on their assessment of the information and documentary evidence available.

Table 14: Initial external administrators' reports—Possible pre-appointment misconduct reported (1 July 2018 to 30 June 2019)

Documentary evidence	Yes/No	Number of reports	Percentage of reports	Number of possible breaches
Did the external administrator have documentary evidence to support the allegation?	Yes	5,844	77.9%	14,902
	No	709	9.4%	2,747
	Total	6,553	87.4%	17,649
Of those with documentary evidence, did the external administrator recommend further inquiry by ASIC?	Yes	2,613	34.8%	—
	No	3,231	43.1%	—
	Total	5,844	77.9%	—

Documentary evidence	Yes/No	Number of reports	Percentage of reports	Number of possible breaches
Was the external administrator aware of another person with documentary evidence?	Yes	495	6.6%	1,224
	No	6,058	80.8%	16,425
	Total	6,553	87.4%	17,649
Where the evidence was with another person, did the external administrator recommend further inquiry by ASIC?	Yes	292	3.9%	–
	No	203	2.7%	–
	Total	495	6.6%	–

Note: 'Pre-appointment misconduct' refers to pre-appointment criminal misconduct, alleged breaches of civil obligations, other criminal offences and other possible misconduct.

- 43 Documentary evidence in the possession of a third party was identified in 495 reports. Based on this and their assessment, the external administrator recommended we make further inquiry in 292 reports.
- Note: For 280 of the 292 reports where evidence was identified as being with a third party, the external administrator also held evidence. Therefore, these 280 reports were also included in the 2,613 reports where the external administrator recommended further inquiry.
- 44 We requested supplementary reports (or Schedule C reports) for 594 (22.7%) of the 2,613 reports where external administrators alleged misconduct and advised that they held evidence and recommended further inquiry by ASIC. We requested a further 281 supplementary reports (875 in total for 2018–19) where external administrators had not recommended further inquiry but the matter met our risk assessment criteria: see paragraph 39.
- 45 One of the criteria we consider as part of our risk assessment is the size of the reported deficiency. Table 15 sets out an analysis of the size of the deficiency reported in external administrator reports (where misconduct is alleged, evidence is held by the liquidator and further inquiry by ASIC is recommended). We requested the preparation of 73 supplementary reports by external administrators where the reports related to deficiencies of \$5 million or more.

Table 15: Initial external administrators' reports—Reports alleging misconduct (with evidence held and further inquiry recommended) by deficiency size (1 July 2018 to 30 June 2019)

Deficiency	Initial report assessed and recorded	Schedule C report requested	Total
\$0–\$50,000	143	31	174
\$50,001–\$250,000	600	113	713
\$250,001 to less than \$500,000	434	106	540

Deficiency	Initial report assessed and recorded	Schedule C report requested	Total
\$500,000 to less than \$1 million	383	96	479
\$1 million to less than \$5 million	386	175	561
\$5 million to \$10 million	41	36	77
Over \$10 million	32	37	69
Total	2,019	594	2,613

- 46 It is important to note that an external administrator's report of misconduct is an allegation and may not be substantiated by sufficient evidence to warrant action. We will not take action in every instance an external administrator reports alleged misconduct and we obtain a supplementary report. [Information Sheet 151](#) ASIC's approach to enforcement (INFO 151) sets out the matters we consider before taking further action after completing our assessment of a supplementary report.

Alleged criminal misconduct

Pre-appointment criminal misconduct

- 47 Statistics for alleged pre-appointment criminal misconduct, as identified and reported by external administrators, are shown by industry and region: see Table 29 and Table 31. These tables also show the number of reports where the external administrator is able to advise that evidence is available. Pre-appointment criminal misconduct predominantly relates to the conduct of an officer or director of the company before the appointment of the external administrator.
- 48 External administrators reported that they held evidence for 592 (76.7%) out of 772 possible criminal breaches reported in 2018–19.
- 49 The top three nominated criminal breaches for companies for 2018–19 were:
- (a) *Section 184 Good faith, use of position and use of information*: 240 breaches reported (3.2% of reports);
 - (b) *Sections 286 and 344(2) Obligation to keep financial records*: 184 breaches reported (2.5% of reports); and
 - (c) *Section 590 Offences by officers*: 139 breaches reported (1.9% of reports).
- 50 Insolvent trading was the fourth-most nominated criminal breach for 2018–19, having fallen out of the top three in 2016–17, for the first time since reporting commenced in the 2004–05 financial year.

51 Of the top 12 industries, the three industries that most exceeded the average percentage across all industries of reports for these three nominated criminal breaches were:

- (a) *Section 184 Good faith, use of position and use of information*: Rental, hiring and real estate services (7.4% of reports), Information media and telecommunications (6.1% of reports), and Wholesale trade (5.7% of reports).

Note: Eight industries grouped in the 'Other industries' category exceeded the average 3.2% of reports for s184. The three that most exceeded were FIS—Deposit taking institutions (50% of reports), Public administration and safety (22.2% of reports), and FIS—Insurance (16.7% of reports).

- (b) *Sections 286 and 344(2) Obligation to keep financial records*: Wholesale trade (3.8% of reports), Other (business and personal) services (3.2% of reports), and Electricity, gas, water and waste services (3.0% of reports).

Note: Three industries grouped in the 'Other industries' category exceeded the average 2.5% of reports for s286 and 344(2). These industries were FIS—Managed investments (10.0% of reports), Health care and social assistance (6.0% of reports), and FIS—Other financial services (3.0% of reports).

- (c) *Section 590 Offences by officers*: Rental, hiring and real estate services (5.1% of reports), Manufacturing (3.0% of reports), and Transport, postal and warehousing (2.2% of reports).

Note: Five industries grouped in the 'Other industries' category exceeded the average 1.9% of reports for s590. The three industries that most exceeded this average were FIS—Managed investments (15% of reports), FIS—Other financial services (7.2% of reports), and Health care and social assistance (3.6% of reports).

Post-appointment criminal misconduct

52 Alleged post-appointment criminal misconduct reported by external administrators relates to officers of the company failing to assist external administrators following the appointment of the external administrator. The 2,154 post-appointment breaches related to 1,077 reports (50%): see Table 16.

Table 16: Initial external administrators' reports—Possible post-appointment criminal misconduct reported by section of Corporations Act (1 July 2018 to 30 June 2019)

Section of the Corporations Act	Number of possible breaches
Sections 429, 438B, 446C and 475 Report as to company's affairs	739
Section 530A Officers to help liquidator	773
Section 530B Requirement to provide liquidator with company's books	642
Total	2,154

Note: The Schedule B report format does not require external administrators to advise whether or not evidence is available to support the post-appointment misconduct reported in Table 16.

- 53 We assist external administrators, through our Liquidator Assistance Program, in obtaining compliance by officers with their obligations to prepare a report as to the company's affairs, provide relevant books and records, and assist liquidators.

Note: See [Report 610](#) *ASIC regulation of registered liquidators: January 2017 to June 2018* (REP 610) at paragraphs 123–127 for commentary on how we assist registered liquidators.

Alleged breaches of civil obligations

- 54 Statistics for alleged breaches of civil obligations are available by industry and region: see Table 30 and Table 32. The tables also show the number of reports where the external administrator is able to advise that evidence is available. External administrators reported that they held evidence for 14,311 (84.8%) out of 16,874 possible breaches of civil obligations reported in 2018–19.

- 55 The top three nominated civil breaches for companies in 2018–19 were the same as in the previous five years:

- (a) *Section 588G(1)–(2) Insolvent trading*: 5,350 breaches reported (71.4% of reports);
- (b) *Section 180 Care and diligence—Directors' and officers' duties*: 4,141 breaches reported (55.2% of reports); and
- (c) *Sections 286 and 344(1) Obligation to keep financial records*: 3,294 breaches reported (43.9% of reports).

- 56 Of the top 12 industries, the three industries that most exceeded the average percentage across all industries of reports for these three nominated breaches of civil obligations were:

- (a) *Section 588G(1)–(2) Insolvent trading*: Manufacturing (82.1% of reports), Accommodation and food services (77.1% of reports), and Transport, postal and warehousing (73.4% of reports);

Note: Four industries grouped in the 'Other industries' category exceeded the average 71.4% of reports for s588G(1)–(2). The three industries that most exceeded this average were Public administration and safety (88.9% of reports), FIS—Insurance (83.3% of reports), and Administrative and support services (77.8% of reports).

- (b) *Section 180 Care and diligence—Directors' and officers' duties*: Agriculture, forestry and fishing (60.5% of reports), Manufacturing (59.6% of reports), and Electricity, gas, water and waste services (58.6% of reports); and

Note: Six industries grouped in the 'Other industries' category exceeded the average 55.2% of reports for s180. The three industries that most exceeded this average were Public administration and safety (88.9% of reports), FIS—Other financial services (63.9% of reports), and Health care and social assistance (60.7% of reports).

- (c) *Sections 286 and 344(1) Obligation to keep financial records: Other* (business and personal) services (51.2% of reports), Transport, postal and warehousing (44.7% of reports), and Construction (43.7% of reports).

Note: Six industries grouped in the 'Other industries' category exceeded the average 43.9% of reports for s286 and 344(1). The three industries that most exceeded this average were FIS—Superannuation (100.0% of reports), FIS—Managed investments (50.0% of reports), and FIS—Insurance (50.0% of reports).

Alleged insolvent trading

- 57 Of the 7,498 reports lodged, a total of 89 reports (1.2%) alleged a breach of s588G(3) (criminal breach), and 5,350 reports (71.4%) alleged a breach of s588G(1)–(2) (civil breach).
- 58 Not all reports containing allegations of insolvent trading advised there was evidence to support the allegation. Of the reports lodged, the external administrator advised there was evidence in support of:
- (a) 57 reports of an alleged criminal breach—or 64.0% of the 89 reports lodged alleging a criminal breach; and
 - (b) 4,719 reports of an alleged civil breach—or 88.2% of the 5,350 reports lodged alleging a civil breach (see Table 17).

Table 17: Initial external administrators' reports—Reports alleging insolvent trading (1 July 2018 to 30 June 2019)

Insolvent trading	Number of reports	Percentage of reports
Evidence of a criminal breach (under s588G(3)) with liquidator and/or others	57	0.8%
No evidence of a criminal breach	32	0.4%
Total reports alleging criminal breaches	89	1.2%
Evidence of a civil breach (under s588G(1)–(2)) with liquidator and/or others	4,719	62.9%
No evidence of a civil breach	631	8.4%
Total reports alleging civil breaches	5,350	71.4%

Debts incurred while insolvent

- 59 Where external administrators advised that evidence existed for an alleged civil breach, most of these reports (3,818 or 80.9%) estimated that the debt incurred when the company was insolvent was less than \$1 million. Only 1.1%, or 52 reports, estimated that the amount of debt incurred while the company was insolvent was over \$5 million: see Table 18.

- 60 Where external administrators advised that evidence existed for an alleged criminal breach, most of these reports (34 or 59.6%) estimated that the debt incurred when the company was insolvent was less than \$1 million. Only 14.0%, or eight reports, estimated that the amount of debt incurred while the company was insolvent was over \$5 million: see Table 18. For all eight of these reports, we requested that the external administrator prepare a supplementary report.
- 61 We subsequently received two supplementary reports. The external administrators for two external administrations advised they would not lodge a supplementary report due to ongoing ASIC investigations into the matters. No response or supplementary report has been received for the remaining four matters to date.
- 62 Where the external administrator reported that evidence existed, 7.5% of reports that alleged a civil breach and 3.5% of reports that alleged a criminal breach indicated that the debt incurred while the company was insolvent could not be determined: see Table 18.

Table 18: Initial external administrators' reports—Estimated debts incurred after date of insolvency (1 July 2018 to 30 June 2019)

Estimate of debts incurred	Reports alleging criminal breach		Reports alleging civil breach	
	Number	Percentage	Number	Percentage
\$0–\$250,000	15	26.3%	2,379	50.4%
\$250,001 to less than \$1 million	19	33.3%	1,439	30.5%
\$1 million to \$5 million	13	22.8%	497	10.5%
Over \$5 million	8	14.0%	52	1.1%
Unable to determine	2	3.5%	352	7.5%
Total	57	100.0%	4,719	100.0%

Note: For all reports in this table, the external administrator reported that there was evidence in support of the alleged breach.

Debts incurred while insolvent compared to available assets

- 63 Table 19 sets out an analysis of the estimated assets available compared to the estimated size of the debts incurred by the company while insolvent, where a civil breach has been alleged and the external administrator has reported that evidence exists.
- 64 Table 20 sets out an analysis of the estimated assets available compared to the estimated size of the debts incurred by the company while insolvent, where a criminal breach has been alleged and the external administrator has reported that evidence exists.

Table 19: Initial external administrators' reports—Estimated debts incurred after date of insolvency compared to estimated assets in reports alleging a civil breach (1 July 2018 to 30 June 2019)

Estimate of debts incurred	Assets available							Total	Percentage of total
	Less than \$1	\$1–\$10,000	\$10,001–\$50,000	\$50,001–\$100,000	\$100,001–\$250,000	\$250,001 to \$5 million	Over \$5 million		
\$0–\$250,000	818	625	597	148	116	72	3	2,379	50.4%
\$250,001 to less than \$1 million	421	276	316	141	149	133	3	1,439	30.5%
\$1 million to \$5 million	113	87	84	36	69	102	6	497	10.5%
Over \$5 million	12	7	5	3	4	14	7	52	1.1%
Unable to determine	91	71	83	23	32	50	2	352	7.5%
Total	1,455	1,066	1,085	351	370	371	21	4,719	100.0%

Table 20: Initial external administrators' reports—Estimated debts incurred after date of insolvency compared to estimated assets in reports alleging a criminal breach (1 July 2018 to 30 June 2019)

Estimate of debts incurred	Assets available							Total	Percentage of total
	Less than \$1	\$1–\$10,000	\$10,001–\$50,000	\$50,001–\$100,000	\$100,001–\$250,000	\$250,001 to \$5 million	Over \$5 million		
\$0–\$250,000	8	2	3	1	1	0	0	15	26.3%
\$250,001 to less than \$1 million	6	3	7	0	1	2	0	19	33.3%
\$1 million to \$5 million	1	6	1	0	2	3	0	13	22.8%
Over \$5 million	1	0	0	1	1	2	3	8	14.0%
Unable to determine	0	0	1	0	0	1	0	2	3.5%
Total	16	11	12	2	5	8	3	57	100.0%

Debts incurred while insolvent compared to number of unsecured creditors

65 The majority of reports (4,219 or 89.4%) alleging a civil breach had 50 or fewer unsecured creditors and, of these, 3,534 reports (or 74.9% of the total 4,719 reports) incurred debts of less than \$1 million. Only 1.0% (or 49 reports) were for a company with more than 200 unsecured creditors. Of these, only 29 incurred debts of \$1 million or more, and nine incurred debts of over \$5 million: see Table 21.

Table 21: Initial external administrators' reports—Estimated debts incurred after date of insolvency compared to number of unsecured creditors in reports alleging a civil breach (1 July 2018 to 30 June 2019)

Estimate of debts incurred	Unsecured creditors					Total	Percentage of total
	Less than 25	25–50	51–200	More than 200	Unknown		
\$0–\$250,000	2,075	217	56	4	27	2,379	50.4%
\$250,001 to less than \$1 million	1,025	217	178	11	8	1,439	30.5%
\$1 million to \$5 million	277	82	113	20	5	497	10.5%
Over \$5 million	27	3	13	9	0	52	1.1%
Unable to determine	244	52	47	5	4	352	7.5%
Total	3,648	571	407	49	44	4,719	100.0%

66 The majority of reports (44 or 77.2%) alleging a criminal breach had 50 or less unsecured creditors and, of these, 28 reports (or 49.1% of the total 57 reports) estimated debts incurred of less than \$1 million. Only 5.3% (or three reports) were for a company with more than 200 unsecured creditors. All three reports estimated debts incurred of over \$5 million: see Table 22.

Table 22: Initial external administrators' reports—Estimated debts incurred after date of insolvency compared to number of unsecured creditors in reports alleging a criminal breach (1 July 2018 to 30 June 2019)

Estimate of debts incurred	Unsecured creditors					Total	Percentage of total
	Less than 25	25–50	51–200	More than 200	Unknown		
\$0–\$250,000	12	2	1	0	0	15	26.3%
\$250,001 to less than \$1 million	11	3	5	0	0	19	33.3%
\$1 million to \$5 million	11	1	1	0	0	13	22.8%
Over \$5 million	2	0	3	3	0	8	14.0%
Unable to determine	2	0	0	0	0	2	3.5%
Total	38	6	10	3	0	57	100.0%

Period of alleged insolvency

67 External administrators who advised that evidence existed for an alleged civil breach reported that, in 2,478 reports (or 58.2%), the company became insolvent more than 15 months before the appointment: see Table 23.

Table 23: Initial external administrators' reports—Period in which company became insolvent (1 July 2018 to 30 June 2019)

Period in which company became insolvent	Reports alleging criminal breach		Reports alleging civil breach	
	Number	Percentage	Number	Percentage
At appointment	1	1.8%	44	0.9%
1–3 months before appointment	5	8.8%	188	4.0%
4–9 months before appointment	8	14.0%	756	16.0%
10–15 months before appointment	11	19.3%	983	20.8%
16–24 months before appointment	8	14.0%	872	18.5%
Over 2 years before appointment	24	42.1%	1,876	39.8%
Total	57	100.0%	4,719	100.0%

Note: For all reports in this table, the external administrator reported that there was evidence in support of the alleged breach.

- 68 The external administrators' reports identified more than one basis to determine the date on which the company became insolvent. External administrators nominated an average of between one and two bases for determining the date of insolvency.
- 69 The following were nominated by external administrators as the top three bases used to determine the date of insolvency (see Table 24):
- (a) balance sheet analysis (3,170 or 67.2% of reports for alleged civil breaches, and 38 or 66.7% for alleged criminal breaches);
 - (b) trading history analysis (1,937 or 41.0% of reports for alleged civil breaches, and 20 or 35.1% for alleged criminal breaches); and
 - (c) cash flow analysis (931 or 19.7% of reports for alleged civil breaches, and 14 or 24.6% for alleged criminal breaches).

Table 24: Initial external administrators' reports—Basis for determining when the company became insolvent (1 July 2018 to 30 June 2019)

Basis for determining insolvency	Reports alleging criminal breach		Reports alleging civil breach	
	Number	Percentage	Number	Percentage
Cash flow analysis	14	24.6%	931	19.7%
Trading history analysis	20	35.1%	1,937	41.0%
Balance sheet analysis	38	66.7%	3,170	67.2%
Informed by director(s)	5	8.8%	296	6.3%
Other	27	47.4%	2,683	56.9%

Note: For all reports in this table, the external administrator reported that there was evidence in support of the alleged breach.

- 70 The answer 'Other' was selected as the basis for determining insolvency in 2,683 reports for a civil breach. This category allowed external administrators to provide free text answers. The three most common themes identified were:
- (a) the non-lodgement and/or non-payment of statutory liabilities (1,572 reports);
 - (b) the presumption of insolvency under s588E (409 reports); and
 - (c) creditor claims and correspondence (290 reports).

Reasonable grounds to suspect insolvency

- 71 External administrators identified more than one indicator of insolvency on which they based their belief that the director had reasonable grounds to suspect that the company was insolvent or would become insolvent by incurring the debt. External administrators nominated an average of between three and four indicators for civil breaches and criminal breaches.

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The top three indicators (see Table 25) were:

- (a) non-payment of statutory debts (e.g. PAYGW, SGC, GST) (3,765 or 79.8% of reports for alleged civil breaches, and 37 or 64.9% for alleged criminal breaches);
- (b) financial statements that disclose a history of serious shortage of working capital and unprofitable trading (2,472 or 52.4% of reports for alleged civil breaches, and 31 or 54.4% for alleged criminal breaches); and
- (c) difficulties paying debts when they fell due (e.g. evidenced by letters of demand, recovery proceedings, increasing age of accounts payable) (2,338 or 49.5% of reports for alleged civil breaches, and 26 or 45.6% for alleged criminal breaches).

Table 25: Initial external administrators' reports—Indicators that director had reasonable grounds to suspect company insolvency (1 July 2018 to 30 June 2019)

Indicators of insolvency	Reports alleging criminal breach		Reports alleging civil breach	
	Number	Percentage	Number	Percentage
Financial statements that disclose a history of serious shortage of working capital and unprofitable trading	31	54.4%	2,472	52.4%
Poor or deteriorating cash flow or evidence of dishonoured payments	26	45.6%	1,133	24.0%
Difficulties paying debts when they fell due (e.g. evidenced by letters of demand, recovery proceedings, increasing age of accounts payable)	26	45.6%	2,338	49.5%
Non-payment of statutory debts (e.g. PAYGW, SGC, GST)	37	64.9%	3,765	79.8%
Poor or deteriorating working capital	26	45.6%	1,566	33.2%
Increasing difficulties collecting debts	7	12.3%	409	8.7%
Overdraft and/or other finance facilities at their limit	9	15.8%	471	10.0%
Evidence of creditors attempting to obtain payment of outstanding debts	15	26.3%	1,245	26.4%
Other	11	19.3%	682	14.5%

Note: For all reports in this table, the external administrator reported that there was evidence in support of the alleged breach.

Evidence of alleged dishonesty

- 73 In 36 of the 57 reports alleging a criminal breach, external administrators indicated they had evidence showing that the director had an opportunity to prevent the company from incurring the debt and did not do so. Also, in 30 reports alleging a criminal breach, external administrators reported there was evidence showing that the failure was dishonest (i.e. the director incurred the debt with the knowledge that it would produce adverse consequences; the failure was intentional, wilful or deliberate; and it included an element of deceit or fraud).

Other possible criminal offences

- 74 There were only 57 other possible criminal offences (0.3% of overall offences) by a member or contributory under the Corporations Act, other Commonwealth statute, or state or territory law. Of these, 47 were possible criminal offences other than under the Corporations Act: see Table 26.

Table 26: Initial external administrators' reports—Other possible criminal offences (1 July 2018 to 30 June 2019)

Offence	Number of possible breaches
Criminal offence under the Corporations Act (if a member or contributory)	10
Criminal offence under another Commonwealth statute	20
Criminal offence under a state or territory law	27
Total	57

Other possible misconduct

- 75 'Other possible misconduct' relates to persons who took part in the formation, promotion, administration, management or winding-up of the company: see Table 27. A further 128 instances of other possible misconduct were reported in 2018–19 (0.6% of overall breaches).

Table 27: Initial external administrators' reports—Other possible misconduct (1 July 2018 to 30 June 2019)

Possible misconduct	Number of possible breaches
May have misapplied or retained, or may have become liable or accountable for, money or property of the company	59
May have been guilty of negligence, default, breach of duty or breach of trust in relation to the company	69
Total	128

Referred to other authorities

76 For reports in 2018–19 where external administrators reported possible misconduct, 229 indicated the external administrator had referred, or was intending to refer, the matter to another authority. The highest number of referrals to another authority was to the Australian Taxation Office (137 reports): see Table 28.

Table 28: Initial external administrators' reports—Referred to other authorities (1 July 2018 to 30 June 2019)

Authorities	Number
State or territory police	37
Australian Federal Police	3
Australian Crime Commission	0
Fair Trading/Consumer Affairs	13
Australian Taxation Office	137
Australian Consumer and Competition Commission	3
Other	36
Total	229

Note: In the 'Other' category, 36 reports indicated the external administrator had referred, or was intending to refer, the matter to creditors or other federal or state government departments or agencies. In 10 of the 36 reports, the external administrator had referred, or was intending to refer, the matter to the Phoenix Taskforce. In two of the 36 reports, the external administrator had referred, or was intending to refer, the matter to state or territory police. In one of the 36 reports, the external administrator had referred the matter to the Australian Taxation Office.

**Table 29: Initial external administrators' reports—Possible pre-appointment criminal misconduct by section of the Corporations Act and industry
(1 July 2018 to 30 June 2019)**

Section of the Corporations Act	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total
Section 184 Good faith, use of position and use of information—Directors', officers' and employees' duties	72	49	12	15	5	10	13	10	9	3	6	4	32	240
Section 206A Disqualified persons not to manage corporations	6	3	3	3	1	3	4	0	0	1	0	1	6	31
Sections 286 and 344(2) Obligation to keep financial records	68	42	22	6	10	5	1	2	6	4	3	1	14	184
Section 471A Powers of other officers suspended during winding up	7	2	4	0	1	1	2	0	0	0	1	0	1	19
Section 588G(3) Insolvent trading	18	20	11	6	3	5	2	7	6	0	1	1	9	89
Section 590 Offences by officers or employees	41	31	11	7	8	7	9	3	2	2	2	1	15	139
Section 596AB Agreements to avoid employee entitlements	6	4	4	1	0	3	1	1	0	0	1	0	0	21
Other criminal offences under the Corporations Act	18	11	3	2	0	2	2	1	2	0	1	0	7	49
Total for industry	236	162	70	40	28	36	34	24	25	10	15	8	84	772

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

**Table 30: Initial external administrators' reports—Possible breaches of civil obligations by section of the Corporations Act and industry
(1 July 2018 to 30 June 2019)**

Section of the Corporations Act	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total
Section 180 Care and diligence—Directors' and officers' duties	1,222	900	624	306	206	140	99	74	90	78	64	69	269	4,141
Section 181 Good faith—Directors' and officers' duties	694	542	300	156	100	84	55	47	57	43	33	40	170	2,321
Section 182 Use of position—Directors', officers' and employees' duties	402	350	164	84	62	54	30	33	37	24	27	29	124	1,420
Section 183 Use of information—Directors', officers' and employees' duties	98	88	31	27	8	11	5	7	16	9	6	10	32	348
Sections 286 and 344(1) Obligation to keep financial records	1,083	699	491	238	165	74	69	63	65	57	48	40	202	3,294
Section 588G(1)–(2) Insolvent trading	1,467	1,175	894	441	271	193	97	118	113	94	86	79	322	5,350
Total for industry	4,966	3,754	2,504	1,252	812	556	355	342	378	305	264	267	1,119	16,874

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

**Table 31: Initial external administrators' reports—Possible pre-appointment criminal misconduct by section of the Corporations Act and region
(1 July 2018 to 30 June 2019)**

Section of the Corporations Act	ACT		NSW		NT		Qld		SA		Tas.		Vic.		WA		Total	
	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator
Section 184 Good faith, use of position and use of information—Directors', officers' and employees' duties	4	4	91	74	1	1	62	45	11	8	0	0	43	36	28	26	240	194
Section 206A Disqualified persons not to manage corporations	0	0	11	7	0	0	4	4	3	2	1	1	7	6	5	3	31	23
Sections 286 and 344(2) Obligation to keep financial records	3	3	76	57	1	1	37	26	8	8	0	0	29	19	30	28	184	142
Section 471A Powers of other officers suspended during winding up	0	0	5	4	0	0	4	4	0	0	0	0	4	3	6	6	19	17
Section 588G(3) Insolvent trading	3	3	26	17	0	0	21	12	5	2	0	0	26	12	8	7	89	53
Section 590 Offences by officers or employees	0	0	50	43	0	0	27	17	7	3	0	0	41	31	14	10	139	104
Section 596AB Agreements to avoid employee entitlements	0	0	8	6	2	2	6	6	1	1	1	1	1	1	2	1	21	18
Other criminal offences under the Corporations Act	0	0	21	17	0	0	14	13	3	3	0	0	9	7	2	1	49	41
Total	10	10	288	225	4	4	175	127	38	27	2	2	160	115	95	82	772	592

Table 32: Initial external administrators' reports—Possible breaches of civil obligations by section of the Corporations Act and region (1 July 2018 to 30 June 2019)

Section of the Corporations Act	ACT		NSW		NT		Qld		SA		Tas.		Vic.		WA		Total	
	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator	Number of breaches	Evidence with liquidator
Section 180 Care and diligence—Directors' and officers' duties	57	53	1,713	1,439	36	36	853	726	171	157	11	11	828	738	472	375	4,141	3,535
Section 181 Good faith—Directors' and officers' duties	42	37	973	820	19	19	445	397	78	71	6	6	487	443	271	192	2,321	1,985
Section 182 Use of position—Directors', officers' and employees' duties	15	14	572	481	8	8	266	224	51	45	3	3	335	296	170	115	1,420	1,186
Section 183 Use of information—Directors', officers' and employees' duties	0	0	159	138	0	0	77	58	12	8	0	0	77	62	23	15	348	281
Sections 286 and 344(1) Obligation to keep financial records	52	43	1,502	1,223	23	22	521	387	95	75	10	10	833	681	258	189	3,294	2,630
Section 588G(1)–(2) Insolvent trading	88	77	2,034	1,755	46	42	1,134	1,002	283	260	36	36	1,184	1,065	545	457	5,350	4,694
Total	254	224	6,953	5,856	132	127	3,296	2,794	690	616	66	66	3,744	3,285	1,739	1,343	16,874	14,311

Books and records

- 77 External administrators indicated they obtained or inspected the company's books and records in 6,170 reports (82.3% of reports) in 2018–19. Of these, 3,421 reports (45.6% of reports) indicated that the company's books and records were considered adequate.

Assetless Administration Fund

- 78 Of the 6,932 reports by a liquidator in 2018–19 (see Table 7), 707 reports indicated the liquidator had applied, or intended to apply, for funding from the AA Fund.
- 79 The Australian Government established the AA Fund on 22 February 2006 and ASIC administers the fund. One of the matters financed by the fund are preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears to ASIC that enforcement action may result from the investigation and report. A particular focus of the AA Fund is curbing illegal phoenix activity.

Note: See [REP 610](#) at paragraphs 128–139 for commentary on how we applied money from the AA Fund.

Liabilities and assets

- 80 External administrators provide estimates of the assets, liabilities and overall financial deficiency of companies on which they report. Table 33 shows the assets and liabilities categories and Table 34 shows the deficiency for the top 12 industries by reports lodged (as noted in Table 9).

Assets

- 81 In 58.1% of reports, companies had estimated assets of \$10,000 or less; 84.9% of reports indicated companies had estimated assets of \$100,000 or less.
- 82 Of the top 12 industries, those with the greatest percentage of reports estimating assets of \$10,000 or less were Other (business and personal) services (65.8%), Accommodation and food services (60.7%), and Agriculture, forestry and fishing (57.0%).
- 83 In 36.8% of reports, the external administrator reported the administration as assetless. Of the top 12 industries, those that most exceeded this percentage for assetless administrations (36.8%) were Other (business and personal) services (44.7%), Transport, postal and warehousing (39.0%), and Agriculture, forestry and fishing (38.6%).

- 84 In 8.5% of reports, estimated assets were over \$250,000. Of the top 12 industries, those well above this percentage were Rental, hiring and real estate services (22.3%), Manufacturing (19.1%), Agriculture, forestry and fishing (17.5%), Wholesale trade (13.9%), Information media and telecommunications (11.6%), and Professional, scientific and technical services (11.5%).

Note: Five industries in the 'Other industries' category exceeded this percentage (8.5%) but made up only 2.5% of all reports. The three industries that most exceeded this average were FIS—Deposit taking institutions (100.0%), Mining (24.4%), and FIS—Managed investments (20.0%).

Liabilities

- 85 In 38.1% of reports, the estimated liabilities of failed companies were \$250,000 or less, and 75.9% indicated estimated liabilities of less than \$1 million.
- 86 Of the top 12 industries, those with the greatest percentage of companies with estimated liabilities of \$250,000 or less were Electricity, gas, water and waste services (48.9%), Other (business and personal) services (44.3%), and Accommodation and food services (40.8%).
- 87 Of the top 12 industries, those with the greatest percentage of reports estimating liabilities over \$10 million were Rental, hiring and real estate services (8.0%), Manufacturing (5.1%), and Professional, scientific and technical services (4.6%). The percentage of reports in that category across all industries was 2.7%.

Note: In the 'Other industries' category FIS—Managed investments (25.0%), Mining (24.4%), FIS—Insurance (16.7%), FIS—Other services (8.4%), and Health care and social assistance (3.6%) each exceeded this percentage across all industries (2.7%) but comprised only 3.7% of all reports.

Deficiency

- 88 Across all industries, 41.3% of reports estimated the shortfall between estimated assets and estimated liabilities of \$250,000 or less, while 61.9% of reports estimated a shortfall of \$500,000 or less. When comparing the deficiency estimates between the top 12 industries, the three industries with the highest percentage of estimates of \$250,000 or less were Electricity, gas, water and waste services (54.9%), Other (business and personal) services (46.7%), and Transport, postal and warehousing (43.6%).
- 89 Only 2.2% of all reports estimated a deficiency of over \$10 million. Of the top 12 industries, the three industries that most exceeded this percentage were Rental, hiring and real estate services (5.7%), Manufacturing (4.3%), and Information media and telecommunications (3.7%).

Note: Six industries grouped in the 'Other industries' category exceeded this percentage across all industries (2.2%). The three industries that most exceeded this average were Mining (22.1%), FIS—Insurance (16.7%), and FIS—Managed investments (10.0%). However, when combined, all six industries comprised only 4.7% of reports.

Table 33: Initial external administrators' reports—Amount of assets and liabilities by industry (1 July 2018 to 30 June 2019)

Assets and liabilities categories	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
Less than \$1 in assets	946	569	392	172	144	45	64	46	44	46	36	44	213	2,761	36.8%
\$1–\$10,000 in assets	445	339	311	142	56	39	35	25	27	26	17	21	110	1,593	21.2%
\$10,001–\$20,000 in assets	183	145	151	78	28	22	10	16	12	11	23	11	40	730	9.7%
\$20,001–\$30,000 in assets	87	83	74	40	16	14	2	11	12	6	6	3	28	382	5.1%
\$30,001–\$50,000 in assets	91	85	73	45	24	14	11	11	11	9	11	3	25	413	5.5%
\$50,001–\$100,000 in assets	121	116	70	40	29	20	7	17	10	14	8	3	33	488	6.5%
\$100,001 to \$250,000 in assets	105	122	52	40	31	36	7	19	20	12	14	9	28	495	6.6%
\$250,001 to \$5 million in assets	131	134	33	56	41	42	38	17	21	9	15	17	39	593	7.9%
Over \$5 million in assets	5	8	3	4	0	3	1	2	1	0	0	3	13	43	0.6%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100%
\$1–\$250,000 in liabilities	937	580	473	210	144	46	53	55	34	65	45	32	183	2,857	38.1%
\$250,001 to less than \$1 million in liabilities	753	586	526	251	155	86	60	57	59	38	53	39	173	2,836	37.8%
\$1 million to less than \$5 million in liabilities	349	327	148	129	62	75	43	40	46	25	25	36	108	1,413	18.8%
\$5 million to \$10 million in liabilities	38	56	6	15	7	16	5	5	15	1	1	3	24	192	2.6%
Over \$10 million in liabilities	37	52	6	12	1	12	14	7	4	4	6	4	41	200	2.7%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100%

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Table 34: Initial external administrators' reports—Amount of deficiency by industry (1 July 2018 to 30 June 2019)

Deficiency categories	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
\$0–\$50,000	281	134	76	44	42	8	23	10	10	15	8	14	81	746	9.9%
\$50,001–\$250,000	706	508	426	183	119	46	41	48	32	58	42	23	121	2,353	31.4%
\$250,001 to less than \$500,000	442	296	294	131	82	45	30	31	26	25	28	22	88	1,540	20.5%
\$500,000 to less than \$1 million	292	255	216	116	67	41	33	27	29	9	24	18	72	1,199	16.0%
\$1 million to less than \$5 million	328	316	137	122	52	71	32	38	46	21	21	32	109	1,325	17.7%
\$5 million to \$10 million	32	49	6	10	6	14	6	4	12	1	3	3	22	168	2.2%
Over \$10 million	33	43	4	11	1	10	10	6	3	4	4	2	36	167	2.2%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100.0%

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Employee entitlements

90 In all categories of employee entitlements (i.e. wages, annual leave, pay in lieu of notice, redundancy, long service leave and superannuation), 'not applicable' was selected in the majority of reports: see Table 35 and Table 36. 'Not applicable' means that no amount of entitlement of that type remained unpaid to employee creditors as at the date of the appointment of the external administrator.

Table 35: Initial external administrators' reports—Amount owed in unpaid employee entitlements (1 July 2018 to 30 June 2019)

Amount owed	Unpaid wages		Unpaid annual leave		Unpaid pay in lieu of notice		Unpaid redundancy		Unpaid long service leave	
	No.	%	No.	%	No.	%	No.	%	No.	%
\$1–\$1,000	155	2.1%	100	1.3%	71	0.9%	37	0.5%	51	0.7%
\$1,001–\$10,000	671	9.0%	667	8.9%	425	5.7%	96	1.3%	150	2.0%
\$10,001–\$50,000	393	5.3%	651	8.7%	390	5.2%	188	2.5%	277	3.7%
\$50,001–\$150,000	118	1.6%	236	3.2%	118	1.6%	130	1.7%	92	1.2%
\$150,001–\$250,000	23	0.3%	30	0.4%	25	0.3%	43	0.6%	19	0.3%
\$250,001–\$500,000	20	0.3%	11	0.1%	9	0.1%	36	0.5%	11	0.1%
\$500,001 to less than \$1.5 million	8	0.1%	8	0.1%	5	0.1%	10	0.1%	1	0.0%
\$1.5 million to \$5 million	0	0.0%	2	0.0%	4	0.1%	6	0.1%	2	0.0%
Over \$5 million	1	0.0%	3	0.0%	1	0.0%	5	0.1%	2	0.0%
Not applicable	6,085	81.4%	5,766	77.1%	6,426	86.0%	6,923	92.6%	6,869	91.9%
Total	7,474	100.0%	7,474	100.0%	7,474	100.0%	7,474	100.0%	7,474	100.0%

Note: Twenty-four reports identified as being internally inconsistent were excluded from this table.

Unpaid wages

91 Unpaid wages were 'not applicable' in 81.4% of reports. In 11.1% of reports, external administrators estimated unpaid wages at between \$1 and \$10,000. Categories from \$10,001 to over \$5 million comprised 7.5% of reports.

Unpaid annual leave

- 92 In all, 77.1% of reports showed unpaid annual leave as 'not applicable'. In 10.3% of cases, employees were owed \$1 to \$10,000, and 19.0% of companies owed \$50,000 or less. In 3.9% of reports, entitlements for unpaid annual leave were in the 'over \$50,000' category.

Unpaid pay in lieu of notice

- 93 Unpaid pay in lieu of notice was 'not applicable' in most cases (86.0%). Only 2.2% of reports showed entitlements for unpaid pay in lieu of notice in the 'over \$50,000' category.

Unpaid redundancy

- 94 Unpaid redundancy was 'not applicable' in 92.6% of reports. In all, 1.8% of reports showed employees were owed \$1 to \$10,000 in redundancy payments. Only 0.1% of reports showed unpaid redundancy of over \$5 million.

Unpaid long service leave

- 95 Employees were owed \$1 to \$10,000 in unpaid long service leave in 2.7% of reports, and unpaid long service leave of \$1.5 million or more was estimated in less than 0.1% of reports. The majority of reports (91.9%) indicated a long service leave debt was 'not applicable'.

Unpaid superannuation

- 96 Due to the different value categories of superannuation entitlements, these figures are shown separately in Table 36. A majority (51.9%) of reports showed unpaid superannuation as 'not applicable'.

Table 36: Initial external administrators' reports—Amount owed in unpaid superannuation entitlements (1 July 2018 to 30 June 2019)

Amount owed	Number	Percentage
\$1–\$100,000	2,817	37.6%
\$100,001–\$250,000	556	7.4%
\$250,001 to \$1 million	204	2.7%
Over \$1 million	28	0.4%
Not applicable	3,893	51.9%
Total	7,498	100.0%

Note: No reports were identified as being internally inconsistent.

Secured creditors

- 97 Table 37 and Figure 3 show the amounts owed to secured creditors by industry. Most reports for 2018–19 (62.9%) indicated secured creditors were owed nothing or there were no secured creditors.

Note: The current Schedule B format does not allow external administrators to select 'not applicable' for this question.

- 98 A significant proportion (31.0%) of 2018–19 reports showed secured creditors were owed between \$1 and less than \$1 million.
- 99 A comparison of those industries where secured creditors were owed less than \$1 million reveals that the proportion of reports in that category across all industries (94.0%) was most exceeded by Electricity, gas, water and waste services (97.7%), Accommodation and food services (97.5%), and Information media and telecommunications (97.0%).
- 100 In 1.0% of reports, the company owed secured creditors more than \$10 million. Of the top 12 industries, the three industries that most exceeded this percentage of reports across all industries with amounts owed to secured creditors over \$10 million were Rental, hiring and real estate services (6.3%), Manufacturing (3.0%), and Construction (1.3%).

Note: Four industries grouped in the 'Other industries' category exceeded this percentage across all industries (1.0%). The three industries that most exceeded this average were Mining (11.6%), FIS—Managed investments (5.0%), and Administrative and support services (2.2%).

Unpaid taxes and charges

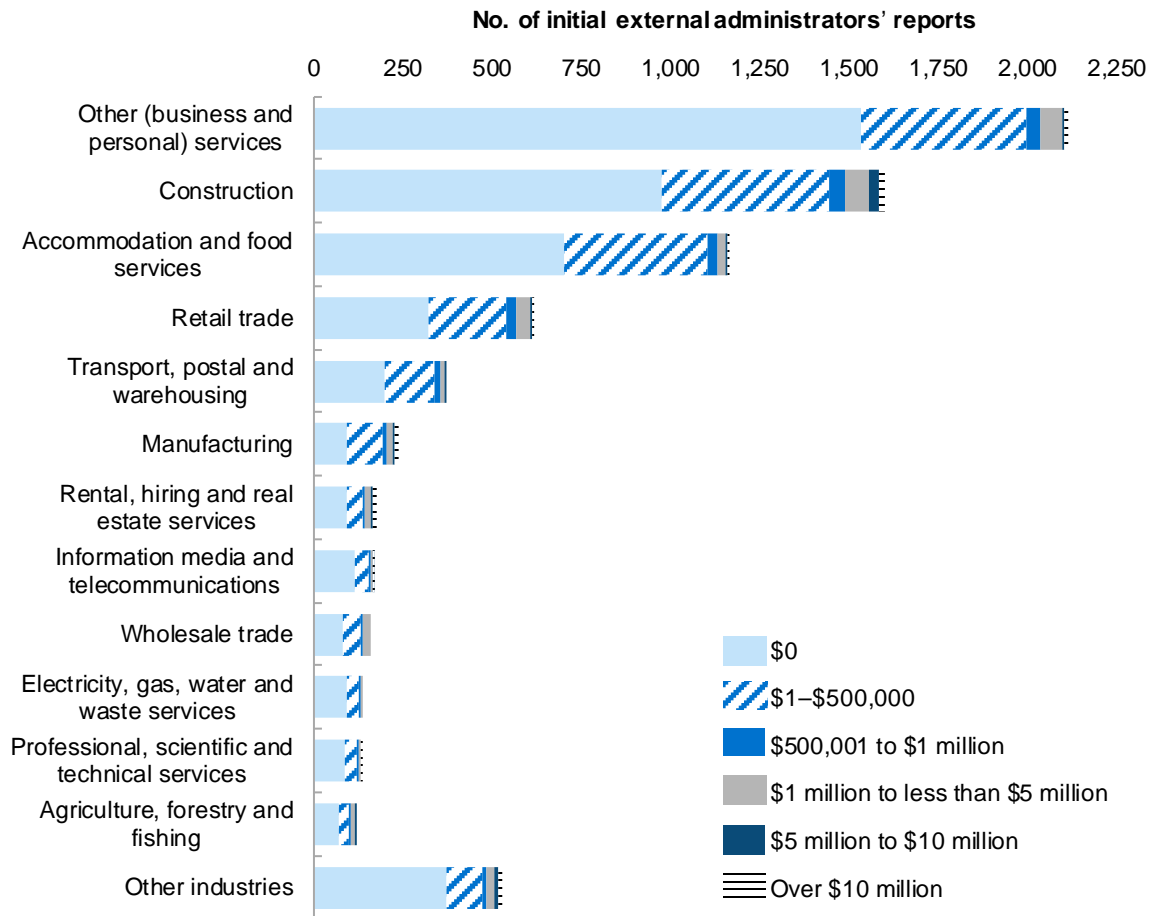
- 101 Most reports (76.9%) indicated that the amount of unpaid taxes and charges was \$250,000 or less: see Table 38. Of the top 12 industries, the three that most exceeded this percentage of reports owing \$250,000 or less in unpaid taxes and charges were Retail trade (86.2%), Accommodation and food services (83.6%), and Electricity, gas, water and waste services (82.7%).
- 102 Of the top 12 industries, the four industries that exceeded the percentage of unpaid taxes and charges over \$1 million compared with the percentage across all industries (4.5%) were Agriculture, forestry and fishing (7.0%), Construction (5.7%), Other (business and personal) services (5.5%), and Manufacturing (5.5%).

Note: In the 'Other industries' category, Public administration and safety (11.1%), Administrative and support services (11.1%), and Mining (9.3%) exceeded this percentage across all industries (4.5%), but comprised only 1.9% of all reports.

Table 37: Initial external administrators' reports—Amount owed to secured creditors by industry (1 July 2018 to 30 June 2019)

Amount owed	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
\$0	1,534	974	699	320	198	93	91	113	79	91	86	71	370	4,719	62.9%
\$1 to less than \$500,000	459	471	406	218	141	98	43	41	50	36	35	25	101	2,124	28.3%
\$500,000 to less than \$1 million	39	42	25	26	18	11	7	5	6	3	4	5	11	202	2.7%
\$1 million to less than \$5 million	63	69	25	40	11	20	19	3	23	3	4	12	23	315	4.2%
\$5 million to \$10 million	7	24	2	6	1	6	4	1	0	0	0	1	11	63	0.8%
Over \$10 million	12	21	2	7	0	7	11	1	0	0	1	0	13	75	1.0%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100.0%

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Figure 3: Initial external administrators' reports—Amount owed to secured creditors by industry (1 July 2018 to 30 June 2019)

Note 1: See Table 37 for the data shown in this figure (accessible version).

Note 2: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Table 38: Initial external administrators' reports—Amount owed in unpaid taxes and charges by industry (1 July 2018 to 30 June 2019)

Amount owed	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate services	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
\$0	360	195	115	105	46	17	41	28	40	18	16	30	145	1,156	15.4%
\$1–\$250,000	1,211	978	854	427	233	140	98	94	89	92	80	58	258	4,612	61.5%
\$250,001 to \$1 million	427	336	174	72	74	65	28	33	21	19	27	18	99	1,393	18.6%
Over \$1 million	116	92	16	13	16	13	8	9	8	4	7	8	27	337	4.5%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100.0%

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Unsecured creditors

Number of unsecured creditors

- 103 Most reports for 2018–19 (90.4%) indicated the company had 50 or fewer unsecured creditors. Of the top 12 industries, those that had the greatest percentages of 50 or fewer unsecured creditors were Rental, hiring and real estate services (95.4%), Accommodation and food services (94.1%), and Other (business and personal) services (93.8%): see Table 39.

Note: Six industries grouped in the 'Other industries' category exceeded the average 90.4% across all industries. The top three industries were FIS—Superannuation (100.0%), FIS—Insurance (100.0%), and Public administration and safety (100.0%).

Amount owed to unsecured creditors

- 104 The majority (62.2%) of companies owed less than \$250,000 to unsecured creditors. Of the top 12 industries, the three that had the greatest percentage of companies in this category were Electricity, gas, water and waste services (70.7%), Other (business and personal) services (69.7%), and Transport, postal and warehousing (67.2%).
- 105 Of the top 12 industries, the three industries with the highest number of reports where companies owed more than \$10 million to unsecured creditors were Construction (32 reports), Other (business and personal) services (20 reports), and Retail trade (7 reports).

Amounts owed to related parties

- 106 Of the total amount owed to unsecured creditors, 20.0% of reports showed that the failed company owed more than 50% of the debt to related parties. Of the top 12 industries, those with the greatest percentage of reports showing more than 50% owed to related parties were Wholesale trade (31.0%), Agriculture, forestry and fishing (26.3%), Information media and telecommunications (25.0%), and Retail trade (25.0%).

Note: Five industries grouped in the 'Other industries' category exceeded the average 20.0%. The top three of these were FIS—Credit provider (93.0%), FIS—Insurance (50.0%), and Mining (36.0%).

Cents in the dollar dividend

- 107 The dividend estimated as payable to unsecured creditors was less than 11 cents in the dollar for most reports (96.4%). Of the top 12 industries, the top four with an estimated return of less than 11 cents in the dollar were Retail trade (98.5%), Electricity, gas, water and waste services (98.5%),

Accommodation and food services (98.2%), and Manufacturing (97.0%). 'Other industries' includes three industries where 100.0% estimated less than 11 cents in the dollar: FIS—Credit providers (43 reports), Public administration and safety (nine reports), and FIS—Insurance (six reports).

108 Of the top 12 industries, the three industries with the greatest percentage of estimated returns of more than 50 cents in the dollar to unsecured creditors were Rental, hiring and real estate services (3.4%), Agriculture, forestry and fishing (1.8%), and Professional, scientific and technical services (1.5%), compared with the proportion across all industries of 1.0%: see Table 40.

Note: In the 'Other industries' category, the following industries exceeded this percentage (1.0%): FIS—Superannuation (14.3%), FIS—Managed investments (10.0%), Mining (7.0%), FIS—Other financial services (3.6%), Health care and social assistance (2.4%), and Education and training (1.3%). However, when combined, these industries made up only 4.7% of all reports.

Table 39: Initial external administrators' reports—Number of unsecured creditors, amount owed and reports where more than 50% is owed to related parties by industry (1 July 2018 to 30 June 2019)

	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
Number of unsecured creditors															
Less than 25	1,876	1,276	932	429	312	131	156	131	115	114	108	92	403	6,075	81.0%
25–50	106	145	159	99	28	48	11	16	24	8	10	12	35	701	9.3%
51–200	70	152	51	74	23	50	4	11	11	10	8	7	34	505	6.7%
More than 200	7	15	3	9	0	6	1	4	5	0	0	1	7	58	0.8%
Unknown	55	13	14	6	6	0	3	2	3	1	4	2	50	159	2.1%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100%
Amount owed to unsecured creditors															
Less than \$250,000	1,474	927	775	333	248	101	109	96	58	94	80	58	310	4,663	62.2%
\$250,000–\$500,000	259	199	187	112	56	33	27	19	28	14	16	11	56	1,017	13.6%
\$500,001 to less than \$1 million	168	191	119	80	32	37	17	19	30	5	15	13	43	769	10.3%
\$1 million to less than \$5 million	171	225	72	79	30	51	18	22	35	16	13	28	76	836	11.1%
\$5 million to \$10 million	22	27	4	6	2	9	3	3	6	1	2	1	19	105	1.4%
Over \$10 million	20	32	2	7	1	4	1	5	1	3	4	3	25	108	1.4%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100%
Amount owed to related parties															
More than 50% owed to related parties	381	226	288	154	47	55	39	41	49	14	30	30	146	1,500	20.0%
Percentage of reports lodged for industry	18.0%	14.1%	24.8%	25.0%	12.7%	23.4%	22.3%	25.0%	31.0%	10.5%	23.1%	26.3%	27.6%	20.0%	N/A

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

**Table 40: Initial external administrators' reports—Amount payable to unsecured creditors—Cents in the dollar dividend by industry
(1 July 2018 to 30 June 2019)**

Cents in the dollar dividend	Other (business and personal) services	Construction	Accommodation and food services	Retail trade	Transport, postal and warehousing	Manufacturing	Rental, hiring and real estate	Information media and telecommunications	Wholesale trade	Electricity, gas, water and waste services	Professional, scientific and technical services	Agriculture, forestry and fishing	Other industries	Total	Percentage of total
0 cents	1,953	1,467	1,102	583	334	217	159	135	145	120	122	103	468	6,908	92.1%
Greater than 0 but less than 11 cents	82	71	36	25	20	11	6	14	8	11	2	5	30	321	4.3%
11–20 cents	22	21	8	5	4	3	3	11	3	2	3	2	9	96	1.3%
21–50 cents	29	36	6	3	8	4	1	2	1	0	1	2	7	100	1.3%
51–100 cents	28	6	7	1	3	0	6	2	1	0	2	2	15	73	1.0%
Total for industry	2,114	1,601	1,159	617	369	235	175	164	158	133	130	114	529	7,498	100.0%

Note: 'Other industries' includes Mining, Health care and social assistance, Education and training, Arts and recreation services, Administrative and support services, Public administration and safety, and all FIS subcategories.

Expected completion of external administration

109 External administrators expected to complete their administration within six months of the date of lodging their report in 61.5% of cases: see Table 41.

Table 41: Initial external administrators' reports—Expected time to complete the external administration (1 July 2018 to 30 June 2019)

Expected time	Number	Percentage
0 months to less than 3 months	2,022	27.0%
3 months to less than 6 months	2,587	34.5%
6 months to 1 year	2,156	28.8%
Over 1 year	733	9.8%
Total	7,498	100.0%

Proposed action

Public examinations

110 In 283 reports (3.8%), the external administrator noted that they intended holding public examinations to question a company's officer or another person about the affairs of the company.

111 In 19 reports (0.3%), the external administrator noted that they already had held a public examination.

Recovery proceedings

112 In 3,830 reports (51.1%), the external administrator had initiated, or was contemplating initiating, recovery proceedings for property or compensation for the benefit of creditors under Pt 5.7B of the Corporations Act: see Table 42.

Table 42: Initial external administrators' reports—Expected type of recovery proceeding (1 July 2018 to 30 June 2019)

Proceeding type	Number	Percentage
Insolvent trading	2,537	33.8%
Uncommercial transaction	1,101	14.7%
Unfair preferences	1,984	26.5%
Other	785	10.5%

Company officers

- 113 External administrators advised in 682 reports (9.1%) that, in their opinion, there were shadow directors.

External administrators' remuneration

- 114 Excluding the \$0 and 'not applicable' results, the most common category of an external administrator's estimated collectible fees was 'liquidator fees', with 5,875 reports. Of these, 5,027 reports (67.0%) estimated collectible liquidator fees between \$1 and \$50,000.
- 115 Of the reports answering the voluntary administration fees question, 451 estimated the collectible fees to be between \$1 and \$50,000: see Table 43.

Table 43: Initial external administrators' reports—External administrators' remuneration (1 July 2018 to 30 June 2019)

Remuneration	Voluntary administration fees		Deed of company arrangement fees		Liquidator fees		Receiver/controller fees	
	No.	%	No.	%	No.	%	No.	%
\$0	778	10.4%	789	10.5%	1,321	17.6%	768	10.2%
\$1–\$50,000	451	6.0%	94	1.3%	5,027	67.0%	35	0.5%
\$50,001–\$100,000	203	2.7%	24	0.3%	594	7.9%	9	0.1%
\$100,001–\$250,000	128	1.7%	10	0.1%	213	2.8%	3	0.0%
Over \$250,000	53	0.7%	6	0.1%	41	0.5%	7	0.1%
Not applicable	5,885	78.5%	6,575	87.7%	302	4.0%	6,676	89.0%
Total	7,498	100.0%	7,498	100.0%	7,498	100.0%	7,498	100.0%

Note: More than one fee type may be entered if the appointee has been, is, or expects to be, appointed to more than one type of role in relation to the company.

Appendix: Accessible versions of figures

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

Table 44: Total external administrators' reports by lodgement type (1 July 2010 to 30 June 2019)

Financial year	Electronic—direct	Electronic—Staff portal	Manual
2010–11	8,375 (97.2%)	149 (1.7%)	92 (1.1%)
2011–12	10,496 (97.1%)	130 (1.2%)	178 (1.6%)
2012–13	9,582 (97.9%)	85 (0.9%)	121 (1.1%)
2013–14	9,885 (98.1%)	77 (0.8%)	111 (0.2%)
2014–15	8,866 (99.6%)	16 (0.2%)	22 (0.2%)
2015–16	10,028 (99.5%)	33 (0.3%)	17 (0.2%)
2016–17	8,283 (98.3%)	4 (0.0%)	138 (1.6%)
2017–18	8,124 (99.0%)	75 (0.9%)	3 (0.0%)
2018–19	8,069 (99.8%)	1 (0.0%)	19 (0.2%)

Note: This is the data shown in Figure 1.

Table 45: Initial external administrators' reports by region (1 July 2018 to 30 June 2019)

Region	Number	Percentage
New South Wales	2,721	36.3%
Victoria	1,753	23.4%
Queensland	1,646	22.0%
Western Australia	791	10.5%
South Australia	353	4.7%
Australian Capital Territory	125	1.7%
Tasmania	59	0.8%
Northern Territory	50	0.7%

Note: This is the data shown in Figure 2.

Key terms

Term	Meaning in this document
AA Fund	Assetless Administration Fund
ASCOT	ASIC's corporate database
ASIC	Australian Securities and Investments Commission
Ch 5 (for example)	A chapter of the Corporations Act (in this example numbered 5)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
electronically lodged report	<p>A Schedule B report lodged:</p> <ul style="list-style-type: none"> • directly by external administrators through the registered liquidators' portal on ASIC's website; or • on paper by external administrators in the Schedule B format, and subsequently entered by ASIC staff through the staff portal
EXAD	External administration
external administration	<p>The corporate insolvency that the external administrator has been appointed to administer</p> <p>Note: The <i>Insolvency Law Reform Act 2016</i> amended the definition of 'external administration': see s5-15 of Sch 2 to the Corporations Act. For reporting purposes, we have continued to use the previous definition in this report.</p>
external administrator	<p>A liquidator, receiver or voluntary administrator</p> <p>Note: The <i>Insolvency Law Reform Act 2016</i> amended the definition of 'external administrator': see s5-20 of Sch 2 to the Corporations Act. For reporting purposes, we have continued to use the previous definition in this report.</p>
external administrator report	<p>Means:</p> <ul style="list-style-type: none"> • a Schedule B report lodged by an external administrator: <ul style="list-style-type: none"> – directly through the registered liquidators' portal on ASIC's website; or – on paper and subsequently entered by ASIC staff through the staff portal; and • a manually lodged report, on paper, which is not in the Schedule B format
FEG	Fair Entitlements Guarantee
FIS	Financial and insurance services
GST	Goods and services tax

Term	Meaning in this document
initial external administrator report	The first electronically lodged Schedule B report after a company enters external administration
insolvency	When a company becomes unable to pay all its debts as and when they become due and payable Note: See s95A of the Corporations Act.
insolvency practitioner	A generic term to describe registered liquidators regardless of whether they have been appointed to one or more specific types of external administration
insolvent trading	When a director allows their company to incur a debt and at the time of incurring the debt: <ul style="list-style-type: none"> the company is insolvent or would become insolvent by incurring the debt; and there are reasonable grounds for suspecting the company is insolvent or would become insolvent by incurring the debt Note: See s588G of the Corporations Act.
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
PAYGW	Pay as You Go Withholding
Pt 5.7B (for example)	A part of the Corporations Act (in this example numbered 5.7B)
receiver	An insolvency practitioner appointed under an instrument or by the court to receive property of a body corporate
registered liquidator	A person registered by ASIC under s20-30 of Sch 2
remuneration	Estimated remuneration to be paid to the external administrator for services rendered in conducting an external administration
report	In Table 2 and Section D of this report—means an initial external administrator report
RG 16	Regulatory Guide 16 <i>External administrators: Reporting and lodging</i> issued by ASIC on 1 July 2008 for external administrators on their reporting obligations to ASIC
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)
Schedule B report	A report whose format is in accordance with Schedule B of RG 16 and lodged with ASIC under s533 (by a liquidator), s438D (by a voluntary administrator) or s422 (by a receiver)

Term	Meaning in this document
secured creditor	A chargee as defined by s9 of the Corporations Act
SGC	Superannuation guarantee charge
voluntary administrator	An administrator of a company but not a deed of company arrangement

Related information

Regulatory guides

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

Legislation

Corporations Act, Pts 5.2, 5.3A, 5.6, 5.7B; s180, 184, 286, 344, 422, 438D, 533, 588E, 588G, 590; Sch 2

Insolvency Practice Rules (Corporations) 2016

Reports

[REP 558](#) *Insolvency statistics: External administrators' reports (July 2016 to June 2017)*

[REP 610](#) *ASIC regulation of registered liquidators: January 2017 to June 2018*

Information sheets

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

Other

Statistics on companies entering external administration and insolvency appointments are available from www.asic.gov.au/insolvency.

Information on 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) divisions is available from www.abs.gov.au/anzsic.