



**ASIC**  
Australian Securities &  
Investments Commission

**Parliamentary Joint  
Committee on Corporations  
and Financial Services  
Inquiry into corporate  
insolvency in Australia**

**Submission by the Australian  
Securities and Investments  
Commission**

November 2022

# Contents

<b>Executive summary</b> .....	<b>3</b>
<b>A The insolvency regime and registered liquidators</b> .....	<b>8</b>
Business structures in Australia .....	8
Purpose of the Insolvency Regime .....	9
The role of registered liquidators .....	10
ASIC’s role in the insolvency regime .....	10
ASIC’s priorities for the supervision of registered liquidators .....	13
Committees convened by ASIC under Schedule 2 for registration or disciplinary matters .....	18
ASIC powers under Schedule 2 .....	18
Remuneration of registered liquidators .....	19
Statutory reports made by registered liquidators .....	25
Reports of misconduct relating to registered liquidators .....	27
<b>B Assetless Administration Fund</b> .....	<b>28</b>
Funding Overview .....	30
Eligibility and Assessment Criteria .....	33
Improving processes .....	34
Funding outcomes .....	36
<b>C Trends in Corporate Insolvency Practices in Australia</b> .....	<b>40</b>
Trends in External Administration Appointments .....	40
Uptake on small business restructuring and simplified liquidation reforms .....	45
Number and profile of registered liquidators .....	52
<b>D Recent insolvency law reform</b> .....	<b>54</b>
Past reforms .....	54
Potential reform areas .....	56
<b>Appendix 1: ASIC’s powers under the Insolvency Practice Schedule (Schedule 2)</b> .....	<b>62</b>
<b>Appendix 2: Number, profile and application information on registered liquidators</b> .....	<b>67</b>
Profile of Registered Liquidators .....	67
Registered liquidator diversity .....	67
<b>Appendix 3: Registered liquidator remuneration overview</b> .....	<b>74</b>
<b>Key terms</b> .....	<b>80</b>

## Executive summary

ASIC welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into corporate insolvency in Australia, which commenced on 28 September 2022.

### **The role of ASIC in regulating the corporate life cycle and our priorities for registered liquidators**

- 1 ASIC is Australia’s integrated corporate, markets, financial services and consumer credit regulator. We have responsibilities in relation to the creation of companies, the supervision of corporate and director conduct, and the winding up of companies through overseeing the corporate insolvency regime. The Australian Financial Security Authority (AFSA) has responsibility for Australia’s personal insolvency system, not ASIC.
- 2 A key part of our role in overseeing the corporate insolvency regime is in relation to the supervision of registered liquidators and company officers. Having a single integrated regulator with oversight of the corporate life cycle has substantial efficiencies, particularly as corporate and director misconduct may be associated with the circumstances that led to the appointment of a registered liquidator to the company in a formal insolvency appointment. Where misconduct is alleged, ASIC will assess the situation and act if warranted. As an integrated regulator, we are also able to respond in a comprehensive and targeted way to emerging trends, behaviours or threats which occur at different stages of the corporate life cycle.
- 3 ASIC sets out its priorities for the next four years in our Corporate Plan 2022–26. This year we have also separately published our priorities in relation to the supervision of registered liquidators in 2022–23. This helps provide transparency to the industry about ASIC’s priorities.
- 4 Further information on our role in the corporate insolvency regime, actions we may take and our priorities for registered liquidators are set out in Part A of this submission.

### **The corporate insolvency regime**

- 5 The regime for managing insolvency is vital to the corporate life cycle and can impact the level of economic activity in Australia. It informs the markets for business lending and the pricing of credit, as the regime sets expectations for how creditors may be able to recover money in the event of business

failure. In this sense, the regime balances the benefits of allowing financially distressed businesses to operate, while continuing to ensure fairness to creditors. It is therefore important that creditors, businesses and the wider community have confidence in the integrity of the regime.

## The role of registered liquidators

- 6 Registered liquidators play an important role in the regime. Consistent with their statutory duties and powers, once appointed (other than in a small business restructuring), they take control of the insolvent company to secure and recover its assets, seeking to either maximise the chances of the company or its business continuing in existence and/or maximise the returns to creditors. In a small business restructuring, the directors remain in control of the company's business, property and affairs and the registered liquidator provides advice to the company in relation to the restructuring and assists the company prepare a restructuring plan.
- 7 Because a key duty and function of registered liquidators appointed as an external administrator is to inquire into a company's affairs, they are the frontline investigators of insolvent companies. Because of this unique position, they are required under the *Corporations Act 2001* (Corporations Act) to lodge reports with ASIC outlining misconduct which may have occurred. This furthers a public interest objective, by ensuring that corporate malfeasance or breaches of duties by directors and others involved in the life cycle of the company are appropriately detected, reported and addressed.
- 8 Information on ASIC's enforcement approach is included in paragraphs 42–43. Information on the statutory reports lodged by registered liquidators is included in paragraphs 98–110.
- 9 Information on reports of misconduct made about registered liquidators is included in paragraphs 111–115.

## Remuneration of registered liquidators

- 10 From 30 June 2017 to 30 September 2022, approximately 50,000 forms lodged at the end of external administrations and controllerships have cumulatively reported to ASIC that the external administrators and controllers have received around \$3.24 billion in remuneration for work performed. As reported at paragraph 92 it was also reported that for around 29.7% of appointments no remuneration was received.
- 11 Further information on remuneration is included in paragraphs 86–97.

## ASIC provides funds to liquidators of ‘assetless’ companies through the Assetless Administration Fund

- 12 It is often the case that a company will have no, or very few, assets upon winding up, such that it is not commercially viable for a liquidator to fully investigate the company and its affairs and take action to recover assets for the benefit of creditors. In these cases, there is still a public interest objective that needs to be served in investigating the company’s affairs and ensuring that any director misconduct is detected and property recovered for creditors.
- 13 In Australia, we address this gap by providing grant funding to liquidators to carry out a proper investigation and report into the company’s affairs. These grants are made through the Assetless Administration Fund (AA Fund), to which liquidators can apply for funding. The fund is administered by ASIC in accordance with the Commonwealth Grant Rules and Guidelines. Applications are subject to eligibility and assessment criteria that ensure funding grants:
- help address one or more of the Australian Government’s policy outcomes;
  - assist the liquidator as grant recipient to achieve their outcomes; and
  - add value by achieving worthwhile outcomes that would not otherwise occur without the grant.
- 14 In some jurisdictions, liquidations with few assets, are conducted by a government funded liquidator, rather than being conducted by private registered liquidators. In the context of personal insolvency in Australia, the Official Trustee in Bankruptcy, a body corporate created under the Bankruptcy Act, administers bankruptcies and other personal insolvency arrangements when a private trustee or other administrator is not appointed. The Official Trustee is supported by personnel and resources provided by AFSA.
- 15 Further information on the AA Fund is provided in Part B.

## Trends in external administration appointments

- 16 Across the 2020–21 and 2021–22 financial years, there was a significant decrease in the total number of companies having an external administrator or controller appointed. This coincided with the COVID pandemic and related stimulus and support measures implemented by government, financial institutions and other parties. The effects of these measures likely contributed to a decrease in the number of external administrations.
- 17 Since the COVID pandemic support measures have tapered off, we have seen an increase in the number of external administrator and controller

appointments at the end of September 2022. The largest proportion of companies entering insolvency are in the construction and accommodation and food services industries, respectively.

- 18 We provide more information on the trends in external administration appointments in paragraphs 157–195.

## Trends in the number of registered liquidators

- 19 In the years leading up to the COVID pandemic, the number of registered liquidators declined from 711 on 30 June 2017 to 633 on 30 June 2020. Since then, the number of applications and subsequent registrations to be a registered liquidator has increased, and there are 651 registered liquidators as of 30 September 2022.
- 20 Most registered liquidator firms have four or fewer registered liquidators. Only seven firms have 20 or more registered liquidators. More than half of registered liquidators have been registered less than 15 years. As at 30 June 2022, 90.9% of registered liquidators were male and as at 30 September 2022, 90.8% were male.
- 21 Further information on the profile of the registered liquidator population is included in paragraphs 196–199 and Appendix 2.

## Recent insolvency law reform

- 22 The corporate insolvency regime has been subject to a number of broad and targeted reviews, resulting in revisions and additions to the regime. There have also been some consultations which commenced but have not resulted in recommendations or government reforms. These activities have helped to periodically refresh and maintain Australia’s corporate insolvency regime.
- 23 There are opportunities to address a number of targeted issues identified by ASIC and other parties to improve the effectiveness and efficiency of the existing corporate insolvency regime. We have included some examples of these in Part D.
- 24 While a new broad ranging review invites the opportunity to consider or reshape fundamental aspects of the regime, such changes are, in practice, not straightforward. To make any amended or new regime operate more effectively than the existing one, it will be necessary to identify real deliverable benefits to the economy generally, and to specific groups of stakeholders, and ensure adequate time is taken to develop and consult on proposed legislation.

- 25            We would welcome the opportunity to provide our views or perspectives to the committee on any specific proposals for law reform which are received, and the committee wishes to consider.

## A The insolvency regime and registered liquidators

### Business structures in Australia

- 26 In Australia, there are different business structures through which economic activity is conducted. The operators of a business choose how to structure their business and based on that choice they then face different regulatory outcomes and consequences, including if the business fails.
- 27 A common business structure in Australia is for a business to be operated by a company, with there being over 3.1 million registered companies in Australia in October 2022. Businesses may also be operated through trusts, partnerships or other forms of unincorporated associations, or by sole traders.
- 28 When a company is incorporated, it creates a legal entity distinct from its members. The company structure provides the benefit of limited liability, which means that in the event of business failure, the members are not personally liable for the debts of the business and only stand to lose their paid-up share capital.
- 29 Directors who provide personal guarantees for company debts will be personally liable for the guarantee. Directors may also be personally subject to certain statutory penalties where:
- the company has unpaid pay as you go (PAYG) withholding requirements, Goods and Services Tax (GST) or superannuation guarantee charge (SGC) liabilities;
  - the director has breached their duty to prevent insolvent trading by the company; and/or
  - statutory liability is imposed on the director for the company's contravention of a law e.g. company failure to comply with environmental or workplace health and safety laws.
- 30 In contrast, in a partnership or other unincorporated association, the partners or members are liable for the debts of the business in their *personal* capacity.



## Purpose of the Insolvency Regime

- 31 The generic term ‘insolvency’ is used to describe a situation where a company or person is unable to pay their debts as and when they fall due. A person or company might be insolvent without any formal insolvency appointment being made.
- 32 Australia currently has separate regimes for personal and corporate insolvency appointments. Australia’s personal insolvency regime is set out in the *Bankruptcy Act* and subordinate legislation. Australia’s corporate insolvency regime is set out in Ch 5 of the Corporations Act and subordinate legislation.
- 33 While Ch 5 does not have codified statutory objectives, broadly its aim is to balance the interests of businesses, creditors and the community when a company becomes insolvent, or approaches insolvency. That the regime seeks to balance the interests of different parties is reflected in some of the specific statutory objectives which have been added over time. For example, the statutory objective of Part 5.3A (Administration of a Company’s Affairs with a View to Executing a Deed of Company Arrangement) is:
- ...to provide for the business, property and affairs of an insolvent company to be administered in a way that:
    - (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
    - (b) if it is not possible for the company or its business to continue in existence—results in a better outcome for the company’s creditors and members than would result from an immediate winding up of the company.
- 34 Similarly, the statutory objective of Part 5.3B (Restructuring of a Company) is:
- ...to provide for a restructuring process for eligible companies that allows the companies:
    - (a) to retain control of the business, property and affairs while developing a plan to restructure with the assistance of a small business restructuring practitioner; and
    - (b) to enter into a restructuring plan with creditors.
- 35 The corporate insolvency regime plays a vital role in Australia’s corporate regulatory framework and impacts the level and nature of economic activity. This is because the regime sets out expectations of how creditors may be able to recover debts if a company becomes insolvent. These expectations directly affect the type and cost of capital creditors may be willing to extend to a company. It is therefore vital that all stakeholders have confidence in, and clear expectations of, the operation of the corporate insolvency regime.

## The role of registered liquidators

- 36 Registered liquidators perform an important function in the corporate insolvency regime. Consistent with their statutory duties and powers, once appointed, a registered liquidator (other than when appointed as a restructuring practitioner), takes control of the insolvent company to secure and recover its assets, seeking to either maximise the chances of the company or its business continuing in existence and/or maximise the returns to creditors (or their appointor in the case of a controller appointment).
- 37 A key duty and function of registered liquidators appointed as an external administrator of a company is to inquire into a company's affairs. This function makes registered liquidators the frontline investigators into the affairs of companies subject to a formal insolvency appointment. Because of this unique position the law requires they lodge reports with ASIC if it appears that certain persons involved in the company may have engaged in certain forms of misconduct in relation to the company. More detail on these requirements is included below in paragraphs 98–110.
- 38 For performing this function, they are entitled to claim remuneration from the company's assets for work which they perform.

## ASIC's role in the insolvency regime

- 39 ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. In the context of the insolvency regime, ASIC acts as a registration, oversight and enforcement body in relation to registered liquidators. We also have a similar role in relation to companies and their officers. ASIC does not regulate personal insolvency under the *Bankruptcy Act*, which is instead regulated by the AFSA.
- 40 As with other entities and individuals who perform activities regulated by ASIC, registered liquidators and company officers are expected to comply with their obligations. ASIC oversees compliance with those obligations and takes action when there is non-compliance. We receive intelligence about breaches from a number of sources, including reports of misconduct and our monitoring and surveillance work.
- 41 The intelligence we receive includes statutory reports that registered liquidators are required to lodge with ASIC (see s422, 438D and 533 of the Corporations Act and reg 5.5.05 of the *Corporations Regulations 2001* (Corporate Regulations)) if it appears persons involved in the company may have engaged in certain forms of misconduct in relation to the company. Further information on statutory reports is included below in paragraphs 98–110.

42 As we set out in [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151), we carefully consider how to respond to all potential breaches of the law, but we do not undertake a formal investigation of every matter that comes to our attention. We consider a range of factors when deciding whether to investigate and possibly take enforcement action, to ensure that we direct our finite resources appropriately. The specific factors we consider will vary according to the circumstances of the case. Our priorities will necessarily evolve and change over time and that influences our enforcement focus. Broadly however, we consider the following four issues in deciding whether to investigate or take enforcement action:

- preventing or addressing significant harm to consumers, markets or the financial system;
- the benefits to the public from enforcement, including where there is significant public interest or concern;
- whether there are issues specific to the case which warrant us pursuing action; and
- whether there are any alternatives to formal enforcement action or investigation which would, on balance, be more efficient— such as engagement with stakeholders, surveillance, guidance and education.

43 When we do not investigate or take enforcement action, information we have received may be used to inform our regulatory operations. For example, we may use it to:

- shape future education campaigns;
- identify potential future targets for surveillance and inspections;
- select future cases for possible enforcement action;
- inform other agencies of misconduct relating to their regulated populations or remit; and
- inform our public communications, warnings and guidance.

44 While ASIC's powers to act ahead of non-compliance are limited, we promote compliance by publishing guidance and other materials designed to assist company officers and registered liquidators to better understand their respective obligations under the *Corporations Act*. Industry professional bodies such as the Australian Restructuring Insolvency and Turnaround Association (ARITA) and the Australian Institute of Company Directors provide guidance and education to their respective members and wider community.

45 ASIC works with other regulatory and enforcement agencies to combat illegal phoenix activity and is a member of ATO-led taskforces focussed on the regulation of, and enforcement action against, illegal phoenix activity, namely:

- Serious Financial Crime Taskforce (which comprises nine agencies), and
- Phoenix Taskforce (which comprises 40 agencies).

46 Within the remit of these taskforces, ASIC participates in joint operations involving entities that are of interest to member agencies. Through joint operations, ASIC may be advised by taskforce members that an entity has engaged in illegal phoenix activity. ASIC also shares intelligence and information with the ATO as part of the Data Fusion Project (otherwise known as HELIO) to detect and disrupt illegal phoenix activity (see also paragraph 102).

### **Previous consideration of ASIC's role in the insolvency regime**

47 ASIC's role in relation to the insolvency regime was examined in the 2009 Senate Inquiry into the Conduct of Insolvency Practitioners and ASIC's Involvement. That inquiry raised concerns about the conduct of the insolvency profession in Australia, including the adequacy of efforts to monitor, regulate and discipline misconduct. That review, amongst other things, recommended 'that the corporate insolvency arm of ASIC be transferred to [AFSA] to form the Australian Insolvency Practitioners Authority (AIPA). The agency should be governed by the Financial Management and Accountability Act under the Attorney General's portfolio.' The primary reason for this was to give insolvency greater 'priority and prominence in the regulatory framework', as it is just one of many areas of responsibility for ASIC.

48 This recommendation was, however, not accepted by the then government, which favoured having ASIC retain oversight over all aspects of corporate law, from the incorporation of companies to supervision of corporate misconduct, to company winding up. In particular, an Australian Government Options Paper which dealt with how to progress other recommendations of the inquiry noted:

The removal of insolvency from the responsibility of ASIC would remove substantial efficiencies. ASIC, as the corporate regulator, is responsible for enforcing the whole of Australia's corporate law. The removal of corporate insolvency from the corporate regulator would result in corporate insolvency losing its important connections with other parts of ASIC, for example in relation to major corporate administrations, regulation of insolvent trading and of director and corporate misconduct that may have been engaged in leading up to, or during, an insolvency event.

Australian Government, [Options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia](#), June 2011, paragraph 5.

- 49 Prior to the 2009 inquiry, from 2006 ASIC commenced placing a greater focus on the supervision of registered liquidators. This focus through a dedicated team has continued to the present. Further information about ASIC’s current priorities and activities in the supervision of registered liquidators is set out in paragraphs 52–58, 111–115 and Appendix 1 of this submission.
- 50 ASIC historically published the following reports on its regulation of registered liquidators:

**Table 1: ASIC reports on regulation of registered liquidators**

Report Number	Report Date	Reporting Period
<a href="#">REP 658</a>	April 2020	July 2018 to June 2019
<a href="#">REP 610</a>	February 2019	January 2017 to June 2018
<a href="#">REP 532</a>	June 2017	January to December 2016
<a href="#">REP 479</a>	June 2016	January to December 2015
<a href="#">REP 430</a>	April 2015	January to December 2014
<a href="#">REP 389</a>	April 2014	January to December 2013
<a href="#">REP 342</a>	May 2013	January to December 2012
<a href="#">REP 287</a>	May 2012	January to December 2011

Source: [www.ASIC.gov.au](http://www.ASIC.gov.au).

- 51 ASIC notes that more than 10 years have passed since the comments noted in paragraph 49 and further consideration of whether the current framework is serving the public interest or if reforms may be appropriate to ensure the future effective operation of the insolvency regime.

## ASIC’s priorities for the supervision of registered liquidators

- 52 ASIC released its Corporate Plan 2022–26, outlining its strategic priorities for the next four years and its plan of action for the year ahead. ASIC also published its [priorities for the supervision of registered liquidators](#).
- 53 ASIC’s work regarding registered liquidators in 2022–23 is focused on three main areas:
- High-risk liquidators and behaviours with a focus on competency (compliance), remuneration and independence;
  - supporting registered liquidator investigations via the Assetless Administration Fund with a focus on illegal phoenix activity, other

corporate misconduct, asset recovery actions and providing guidance on making funding requests; and

- improving our data, analytics, technology capabilities and reporting to enhance our ability to identify and act on emerging harms, set strategic priorities, create efficiencies and inform policy.

54 We will also continue our stakeholder engagement activities and policy work, including the review and revision of existing regulatory guidance.

### **Activities undertaken by ASIC in relation to liquidators**

55 We regulate registered liquidators through a combination of:

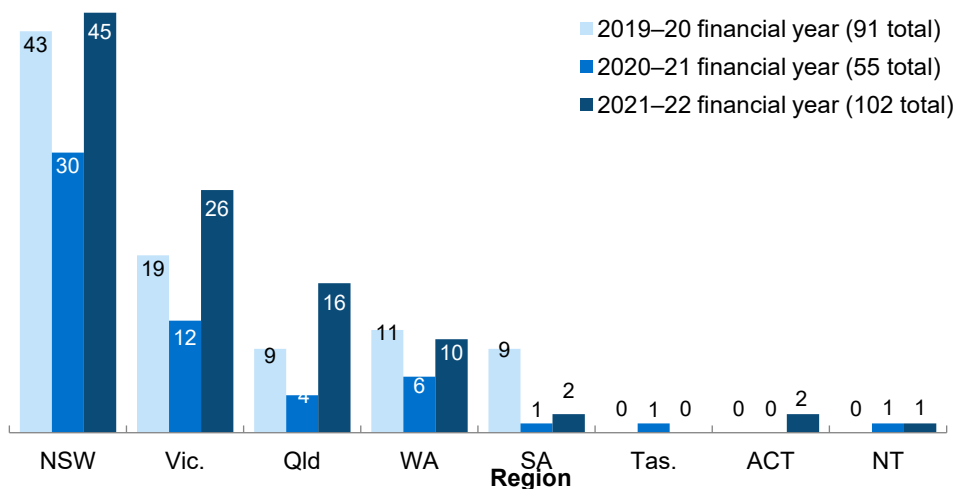
- Supervision, including:
  - dealing with reports of misconduct lodged with ASIC regarding alleged registered liquidator misconduct;
  - using real-time data to identify possible areas of concern for consideration;
  - using a natural language processing algorithm to allow real-time review of declarations of independence, relevant relationships and indemnities;
  - monitoring conditions imposed on liquidator registrations; and
  - exercising ASIC’s registered liquidator regulatory powers under Schedule 2 of the Act (further information on this is set out in Appendix 1).
- enforcement action, including:
  - referring registered liquidator misconduct to disciplinary committees convened under Schedule 2;
  - entering court enforceable undertakings, where necessary; and
  - engaging in court proceedings either as an intervener or amicus curiae where necessary.
- guidance, including:
  - publishing detailed regulatory guides on relevant topics and issues (including registration and discipline of registered liquidators); and
  - developing and updating forms to enable compliance with duties and obligations, such as forms following the 2017 and 2020 law reforms.
- education, including:
  - publishing information sheets to assist registered liquidators to comply with their duties and obligations (such as INFO 29);
  - publication of quarterly newsletters on relevant topics; and

- authoring articles for publication in journals published by professional organisations.
- stakeholder engagement, including:
  - issuing emails to registered liquidators and other interested parties on specific topics and issues;
  - conducting surveys on topical issues; and
  - facilitating and engaging in liaison meetings with registered liquidators, government and statutory and professional bodies.
- policy work, including:
  - providing data and feedback to government on proposed reforms;
  - implementing systems and processes to enable registered liquidators to comply with their duties and obligations following law reform; and
  - implementation of new laws

56 A significant portion of our supervision activities result in a change in behaviour of the registered liquidator and their staff without formal enforcement action. This is consistent with our objective to communicate to the market our expectations for registered liquidators on specific issues or behaviours. Our supervision and intervention often provide the catalyst for registered liquidators to change their behaviour and internal systems. However, we actively consider the risks and harms and then choose the appropriate regulatory tool.

### **Supervision cases**

57 Figure 1 shows finalised supervision cases (surveillance and monitoring) relating to registered liquidators for the period from 1 July 2019 to 30 June 2022.

**Figure 1: Number of finalised supervision cases, by state and financial year**

Source: ASIC records.

Note: The decrease in matters finalised 2020-21 likely reflects the lower number of external administration appointments post COVID pandemic and consequential lower number of misconduct reports

## Other insolvency related activities

58

In addition to regulating registered liquidators, ASIC also undertakes the following activities relating to corporate insolvency:

- assessing applications for funding under the Assetless Administration Fund;
- appointing reviewing liquidators to conduct a review in relation to the external administration of a company, including of the registered liquidator's conduct, and report to the registered liquidator and ASIC;
- assisting registered liquidators to obtain a Report on Company Affairs and Property (ROCAP), information and/or books and records of a company under external administration via the [External Administration Compliance Assistance program](#) and prosecuting directors who fail to assist an external administrator;
- liaising with registered liquidators regarding director and third-party misconduct investigations;
- winding up abandoned companies under Pt 5.4C of the Corporations Act to enable former employees to recover unpaid entitlements via the fair entitlements guarantee scheme and appointing liquidators to these companies funded through the AA Fund;
- granting eligible applicants requests for authorisation to conduct public examinations;
- assessing numerous insolvency related court applications;



- assessing applications for extensions of time or other relief;
- assessing and, where applicable, granting requests for the voluntary suspension or cancellation of a registered liquidator's registration;
- reviewing and, where relevant, granting the renewal application for the registered liquidator's registration;
- providing information to Schedule 2 Committees convened for registration and disciplinary matters as required (see paragraphs 63–65) and representing ASIC in AAT proceedings relating to applications to be registered as a liquidator or registered liquidator disciplinary appeals.

### External Administration Compliance Assistance (EACA)

- 59 The EACA responds to requests for assistance from external administrators where individuals (in most cases the directors) fail to assist them, by:
- not completing a report on company activities and property (ROCAP), as at the date of appointment; or
  - not providing reasonable assistance with respect to the delivery of, or access to, books and records.
- 60 ASIC contacts individuals to remind them of their statutory obligations to assist external administrators. Where compliance is not met, ASIC may commence criminal proceedings against company officers and other parties.
- 61 A ROCAP and a company's books and records are fundamental to the proper investigation of the causes of an entity's failure or financial position and for the external administrator to identify and take action to recover property for the benefit of creditors and report alleged misconduct to ASIC.
- 62 Table 2 summarises the various outcomes by financial year. For the 2021–22 financial year, ASIC received 710 requests for assistance from external administrators. Following ASIC intervention, 228 individuals complied with their obligations to assist the external administrator. During the period, ASIC successfully prosecuted 179 individuals for 323 strict liability offences (i.e. failing to assist the external administrator). ASIC did not pursue action against those individuals that could not be located or where there was insufficient evidence to prosecute a strict liability offence.

**Table 2: External Administration Compliance Assistance outcomes, by financial year**

Case type	2017-18	2018-19	2019-20	2020-21	2021-22
Requests for assistance	1,358	1,351	1,274	656	710

Case type	2017-18	2018-19	2019-20	2020-21	2021-22
Individuals successfully prosecuted	382	351	242	213	179
Offences prosecuted	734	705	479	389	323
Compliance	593	477	396	280	228

Source: Records maintained by ASIC.

## Committees convened by ASIC under Schedule 2 for registration or disciplinary matters

- 63 Following the Insolvency Practice Schedule (Corporations) ('Schedule 2') coming into effect in March 2017, applications for registration as a liquidator or to vary or remove conditions imposed on a liquidator's registration, applications to lift or shorten the period of suspension of a person's registration as a liquidator, are referred to committees convened by ASIC. In addition, where ASIC is not satisfied with a registered liquidator's explanation of why they should remain registered after ASIC issues the registered liquidator with a show-cause notice, ASIC will also refer the registered liquidator to a committee convened by ASIC under Schedule 2. ASIC convenes a separate committee in relation to each matter, however, the committee can elect to determine more than one matter at each time.
- 64 Each committee consists of an ASIC Hearing Delegate, who chairs the committee, a registered liquidator chosen by ARITA, and a person appointed by the Minister, as set out in s20–10, 20–45 and 40–45 of Schedule 2.
- 65 Summary statistics about registration applications dealt with by the committee are set out in Table 27.

## ASIC powers under Schedule 2

- 66 Following the coming into effect of the *Insolvency Law Reform Act 2016*, Schedule 2 grants ASIC additional powers to assist with the regulation of registered liquidators.
- 67 A summary of the powers included in Schedule 2, and ASIC's use of those powers, are set out in Appendix 1.

## Remuneration of registered liquidators

- 68 A registered liquidator appointed as external administrator of a company is entitled to receive reasonable remuneration that has been approved by resolution of the creditors, a committee of inspection or a court. They are also entitled to be reimbursed for out-of-pocket costs incurred in performing their role.
- 69 External administrators are only entitled to remuneration that is reasonable for the necessary work that they and their staff properly perform in the external administration. What is reasonable and necessary will depend on the type of external administration and the issues in the particular external administration.
- 70 External administrators must undertake some tasks that may not directly benefit creditors. These include ‘statutory’ tasks such as reporting to ASIC about potential breaches of the law and lodging forms and notices with ASIC as required by the law.
- 71 Approved remuneration and costs will generally be paid from the company’s available assets before any payments are made to creditors. If the company does not have sufficient available assets, its directors, members or creditors may provide funds to the external administrator to cover their remuneration and costs. If there are insufficient funds available from the company’s assets or other parties, the external administrator’s remuneration will not be paid. Under s545 of the Corporations Act a liquidator is not required to incur an expense if there is insufficient available property from which to pay them.
- 72 The remuneration a privately appointed controller is entitled to receive is generally set out in the security documentation under which they are appointed and is approved by their appointor.

### Approval of remuneration

- 73 If the external administrator has limited funds or no remuneration is approved, and to save the cost of obtaining approval for remuneration which will never be drawn, the external administrator is entitled to draw reasonable remuneration up to a maximum default amount (indexed annually and currently \$5,725 exclusive of GST).
- 74 Otherwise, an external administrator’s remuneration must be approved by either:
- a resolution of the creditors;
  - a committee of inspection (if there is a committee of inspection and if no resolution has been passed by creditors); or

- the court, if neither the creditors nor a committee of inspection have passed a resolution.

75 An external administrator in a members' voluntary liquidation must have remuneration approved by a resolution of the company, or the court.

76 If remuneration is not approved, the external administrator is only entitled to receive the maximum default amount set out at paragraph 73.

### **Calculation of remuneration**

77 Remuneration may be calculated on a:

- time basis, based on time spent by the external administrator and their staff;
- quoted fixed fee, based on an upfront estimate; or
- percentage of asset realisations.

78 Charging on a time basis (usually at an hourly rate) is the most common method. If an external administrator seeks approval for charging wholly or partly on a time basis, and the work is yet to be carried out, the approval sought must include a maximum limit ('cap') on the amount of remuneration the external administrator is entitled to receive.

79 An external administrator is also entitled to ask for approval to pay their estimated future remuneration (for work yet to be done). Usually this is requested to allow the external administrator to continue doing work up to a certain point in time or to the completion of the external administration.

### **Small business restructuring remuneration**

80 Whilst a restructuring practitioner for the company and a restructuring practitioner for a restructuring plan that has been made in relation to the company are also external administrators, there are specific rules relating to remuneration for these roles. As detailed in paragraphs 81–85 the company controls the amount payable in restructurings and restructuring plans and these amounts are set at the commencement of those administrations.

#### **Remuneration – restructuring practitioner**

81 The directors of the company determine the remuneration of the restructuring practitioner of the company by resolution on or before the day on which the restructuring practitioner is appointed.

82 The determination may only specify an amount of remuneration (fixed amount) and a method for working out an amount of remuneration that, in the event the board consents in writing to beginning or proceeding with proceedings relating to the restructuring of the company, the restructuring

practitioner would be entitled to receive for necessary work properly performed in relation to the proceedings.

83 The restructuring plan approved by creditors specifies the remuneration that the restructuring practitioner is entitled to receive.

84 The restructuring plan may specify the restructuring practitioner's remuneration only by specifying an amount of remuneration as a specified percentage of payments made to creditors in accordance with the plan.

85 The plan may also provide a method for working out an amount of remuneration that, in the event the board consents in writing to beginning or proceeding with proceedings relating to the plan, the restructuring practitioner would be entitled to receive for necessary work properly performed in relation to the proceedings.

### **Statistical data on remuneration**

86 Forms 5603 *End of administration return* have been lodged with ASIC since 1 September 2017 when an external administration or controller appointment is finalised. The information in the forms is only for finalised administrations during the period 1 September 2017 to 30 September 2022 (regardless of when the appointment commenced) and does not include any data from ongoing administrations.

87 The majority of these forms are lodged by registered liquidators. However, some members' voluntary liquidations, controller appointments and appointments under Pt 5.1 of the Corporations Act are conducted by persons who are not registered liquidators.

88 Form 5603 contains the following information about remuneration:

- (a) a Remuneration Table setting out total remuneration determined/fixed by creditors, committee or court (i.e. approved) and paid during the external administration or controller appointment. Where the appointment has transitioned from one type of formal appointment to another (i.e. from a voluntary administration to a deed of company arrangement), the remuneration approved and paid for each type of appointment should be disclosed in the table (i.e. the remuneration for the voluntary administrator and the remuneration for the deed administrator should be separately disclosed); and
- (b) Annexure A, which contains a summary of the total receipts and payments for the external administration or controller appointment (including remuneration paid).

89 Neither the Remuneration Table or Annexure A to Form 5603 captures any work in progress which has not been approved and may have been written off.

- 90 The total remuneration paid in the Remuneration Table and Annexure A should be the same. The data extracted from the separate sections of the forms for the period 1 September 2017 to 30 September 2022 (Table 3) do not match and cannot be reconciled for this submission.
- 91 We propose to consider this data in more detail in future and whether to release a report on our findings.

**Table 3: Remuneration paid as disclosed in forms 5603 lodged in the period 1 September 2017 to 30 September 2022**

Appointment Type	Remuneration Table		Annexure A		Variance (\$)
	No of Forms	Remuneration Paid (\$)	No of Forms	Remuneration Paid (\$)	
Administrator	4,961	140,391,497	921	133,732,245	6,659,252
Controller	322	24,030,119	193	19,445,889	4,584,230
Deed Administrator	1,992	622,571,577	1,520	562,312,844	60,258,733
Liquidator of a simplified liquidation	23	354,982	22	354,984	(2)
Liquidator of Court Liquidation	10,672	407,245,850	5,150	393,761,345	13,484,505
Liquidator of Creditors' Voluntary Liquidation	22,492	1,350,208,118	20,934	1,290,414,640	59,793,478
Liquidator of Members' Voluntary Liquidation	6,806	57,914,085	4,690	52,063,773	5,850,312
Managing Controller	34	4,883,915	33	4,148,448	735,467
Provisional Liquidator	119	618,956	6	649,588	(30,632)
Receiver	228	12,014,623	138	9,911,262	2,103,361
Receiver and Manager	2,000	562,842,889	1,289	532,001,088	30,841,801
Restructuring plan practitioner	48	644,430	43	516,788	127,642
Restructuring practitioner	87	924,751	52	783,850	140,901
Scheme Administrator	26	56,774,128	10	56,648,812	125,316

Appointment Type	Remuneration Table		Annexure A		Variance (\$)
	No of Forms	Remuneration Paid (\$)	No of Forms	Remuneration Paid (\$)	
Total	49,810	3,241,419,920	35,001	3,056,745,556	184,674,364

Source: Forms 5603 lodged with ASIC for the period 1 September 2017 to 30 September 2022.

Note: These amounts will include remuneration incurred and drawn before 1 September 2017 and are GST inclusive.

92 Of the 49,810 forms lodged to 30 September 2022, 35,001 reported details of remuneration paid in Annexure A to the form while 14,809 (29.7% of forms lodged) did not disclose any remuneration paid in Annexure A.

93 Table 4 summarises the variance between the remuneration amount reported as determined/fixed by creditors, committee or court (i.e. approved) in the Remuneration Table and the amount reported as paid in the Remuneration Table. A more comprehensive analysis of this data is contained in Appendix 3.

**Table 4: Remuneration determined/fixed by creditors, committee or court compared to remuneration paid as disclosed in the Remuneration Table of forms 5603 lodged in the period 1 September 2017 to 30 September 2022**

Appointment Type	No of Forms	Remuneration determined/fixed (\$)	Remuneration Paid (\$)	Variance (\$)
Administrator	4,961	605,517,838	140,391,497	465,126,341
Controller	322	8,232,325	24,030,119	(15,797,794)
Deed Administrator	1,992	941,257,986	622,571,577	318,686,409
Liquidator of a simplified liquidation	23	419,236	354,982	64,254
Liquidator of Court Liquidation	10,672	490,088,364	407,245,850	82,842,514
Liquidator of Creditors' Voluntary Liquidation	22,492	1,648,474,754	1,350,208,118	298,266,636
Liquidator of Members' Voluntary Liquidation	6,806	55,463,145	57,914,085	(2,450,940)
Managing Controller	34	2,454,195	4,883,915	(2,429,720)
Provisional Liquidator	119	4,410,631	618,956	3,791,675
Receiver	228	9,918,429	12,014,623	(2,096,194)
Receiver and Manager	2,000	316,808,460	562,842,889	(246,034,429)

Appointment Type	No of Forms	Remuneration determined/fixed (\$)	Remuneration Paid (\$)	Variance (\$)
Restructuring plan practitioner	48	682,658	644,430	38,228
Restructuring practitioner	87	1,276,278	924,751	351,527
Scheme Administrator	26	57,177,504	56,774,128	403,376
Totals	49,810	4,142,181,803	3,241,419,920	900,761,883

Source: Forms 5603 lodged with ASIC for the period 1 September 2017 to 30 September 2022.

- 94 The analysis shows that a material contributor to the variance is in the way that the remuneration determined/fixed by creditors, committee or court and the remuneration paid is reported in the Remuneration Table when there are transitioning appointments, i.e. when the appointment changes from one type of external administration to another.
- 95 The largest variance occurs with voluntary administrations which may transition to either a deed of company arrangement (DOCA) or creditors' voluntary liquidation. It appears that the amount of voluntary administration remuneration that has been determined/fixed by creditors, committee or court) is being disclosed in both the Form 5603 lodged at the completion of the voluntary administration and in the Form 5603 lodged for the transitioning appointment (DOCA or creditors' voluntary winding up) when the approved remuneration of the voluntary administrator is actually paid. This may be compounded if the DOCA fails and the company transitions to a creditors' voluntary liquidation by operation of law because the remuneration determined/fixed by creditors, committee or court may be reported in the Form 5603 for each of the voluntary administration, DOCA and creditors' voluntary liquidation.
- 96 This duplication in reporting may also occur where a company transitions from a provisional liquidation to a court liquidation.
- 97 ASIC also notes the significant negative variance for controller appointments (i.e. the appointment of a controller, receiver, receiver and manager and a managing controller). The analysis indicates that remuneration paid exceeds remuneration determined/fixed by creditors, committee or court for these types of appointments. As noted in paragraph 72, the party with a security interest over company's property that appoints the controller approves the controller's remuneration. This approval process is different to the way remuneration is determined/fixed by creditors, committee or court in external administration appointments. ASIC considers it highly unlikely a controller would pay their remuneration without the prior approval of their appointor.



## Statutory reports made by registered liquidators

- 98 Under s533(1) of the Corporations Act liquidators are required to lodge an initial statutory report with ASIC where, as soon as practicable but in any event within six months after it appears to them, while winding up a company:
- a past or present company officer ‘may have been guilty of an offence’ under a Commonwealth or State law in relation to the company;
  - a person involved in the company’s affairs may have misapplied or retained money or property of the company, or may have been negligent or committed a breach of duty or trust in relation to the company; or
  - the company may be unable to pay its unsecured creditors more than 50 cents in the dollar.
- 99 A receiver or managing controller (s422(1)), and a voluntary administrator (s438D(1)), are also required to lodge an initial statutory report with ASIC as soon as practicable where it appears to them that a past or present officer of the company may have been guilty of an offence in relation to the company, or a person who has taken part in the formation, promotion, administration, restructuring, management, or winding up of the company may have:
- misapplied or retained, or may have become liable or accountable for, money or property of the company; or
  - been guilty of negligence, default, breach of duty or breach of trust in relation to the company.
- 100 Under s500AE(3)(f) of the Corporations Act and reg 5.5.05 of the Corporate Regulations, liquidators who have adopted the simplified liquidation process are also required to lodge an initial statutory report with ASIC where, as soon as practicable but in any event within six months after first forming the opinion, there are reasonable grounds to believe that either of the following may have engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole:
- a past or present officer or employee, or a member or contributory, of the company; or
  - a person who has taken part in the formation, promotion, administration, management or winding up of the company.
- 101 Registered liquidator reports provide ASIC with valuable information to support our regulatory actions. They provide the basis for successful enforcement actions and enable ASIC to ban company directors with a history of failed companies from managing corporations.

- 102 All statutory reports are treated in confidence, are subject to qualified privilege and are not publicly available. We provide information from initial statutory reports made by registered liquidators to the ATO as part of the HELIO Data Fusion project, who then use data analytics and modelling to help identify illegal phoenix activity.
- 103 ASIC assesses initial statutory reports against confidential criteria to determine whether we require further information in the form of a supplementary report. The assessment decision will either be no further action, or a supplementary report is requested. If ASIC does not request a supplementary report, a liquidator still has discretion to lodge a supplementary report.
- 104 In 2021–22, consistent with the decrease in the number of companies entering external administration or controller appointments post the COVID pandemic ASIC received 3,767 initial statutory reports that alleged offences, and we requested supplementary reports for 16% (593) of those. Of the 3,810 Initial Statutory Reports received in 2020–21 which alleged offences, we requested supplementary reports for 19% (704).
- 105 If a company is assetless, a liquidator may apply for funding from the AA Fund to complete a supplementary report (see Part B for further information about the AA Fund).
- 106 ASIC assesses each supplementary report to determine whether formal investigation or surveillance is warranted. We do this by reference to confidential case selection criteria to determine whether to recommend referral or whether no further action should be pursued.
- 107 ASIC must be selective about which cases to formally investigate to ensure we are using our limited resources effectively. Further action is taken in line with ASIC's current priorities and our approach to enforcement action as outlined in [INFO 151](#).
- 108 Where ASIC does not select a supplementary report for further action, this is variously because:
- there was insufficient material provided to support a court prosecution or administrative banning action; or
  - there were competing priorities with reports of more substantial misconduct.
- 109 ASIC finalised 332 supplementary statutory reports in 2021–22, down from 517 in 2020–21. In 2021–22, the Misconduct and Breach Reporting Team referred 20% of supplementary reports to ASIC's specialist teams for further investigation, up from 18% the year prior.

- 110 ASIC does not have the power to direct or require a registered liquidator to prepare and lodge a supplementary report. ASIC received 184 requests to not lodge a supplementary report from registered liquidators in 2021–22 and accepted 83%. In 2020–21, ASIC received 250 requests and accepted 90%.

## Reports of misconduct relating to registered liquidators

- 111 In 2021–22, ASIC considered 8,688 reports of misconduct in relation to all populations subject to its regulatory remit, of which 4% (351 reports) related to the conduct of registered liquidators.
- 112 Registered liquidators act independently of ASIC and are responsible for the conduct of external administrations, including commercial decisions and the extent and nature of the work and investigations undertaken.
- 113 ASIC receives reports of misconduct about registered liquidators from a variety of sources. These include employees of the failed company, government agencies, professional groups, or directors of the failed company. Most reports of misconduct are lodged by creditors.
- 114 In 2021–22, following initial assessment of all reports, ASIC referred 12% of reports of misconduct about registered liquidators to specialist teams within ASIC for further action (see also paragraph 57) and in a further 3%, issued a warning letter to the registered liquidator.
- 115 Many of the reports ASIC receives about registered liquidator misconduct relate to a lack of understanding of the insolvency process on the part of the reporter or communication issues. These accounted for approximately a quarter of reports in relation to registered liquidators finalised in 2021–22. A further 60% were analysed and assessed for no further action.

## B Assetless Administration Fund

- 116 The Assetless Administration Fund (AA Fund) is a Commonwealth Grant that was established by the Australian Government and is administered by ASIC in accordance with the [Commonwealth Grants Rules and Guidelines \(CGRGs\)](#).
- 117 When a liquidator is appointed to a company with few or no assets, the liquidator may not be able to carry out full investigations into the circumstances of the insolvency, prepare full reports for ASIC or take action to recover assets for the benefit of creditors. As a result, possible offences or other misconduct relating to the company may not be brought to ASIC's attention or actions may not be taken to recover assets for the benefit of creditors where possible misconduct has occurred.
- 118 The AA Fund closes the regulatory gap and enables a liquidator to carry out a proper investigation and report, which then helps ASIC decide whether to commence enforcement action. It also funds a liquidator to take action to recover assets when fraudulent or serious misconduct is suspected.
- 119 A particular focus of the AA Fund is to curb fraudulent phoenix activity.
- 120 There are five types of grant opportunities made through the AA Fund. An overview of each is:
- funding a liquidator to prepare a report under s533 of the Corporations Act to support administrative action by ASIC to disqualify a person from managing corporations (director banning) pursuant to s206F of the Corporations Act (Director Banning Grant – [GO4192](#));
  - funding a liquidator to investigate the company's affairs and prepare a report under s533 of the Corporations Act dealing with matters other than a director banning (Matters Other than Director Banning or Other Matters Grant – [GO4193](#));
  - funding a liquidator to take action to recover assets when fraudulent or serious misconduct is suspected that has resulted in the assets being disposed of. This may be the result of breaches of directors' and officers' duties, uncommercial transactions, unreasonable director related transactions, entering into agreements or transactions to avoid employee entitlements or entering into a creditor defeating disposition (Asset Recovery Grant – [GO4195](#));
  - funding a liquidator appointed by ASIC to an abandoned company under Pt 5.4C of the Corporations Act (Abandoned Company Liquidator Panel – [GO894](#)). Under this grant opportunity a panel of registered liquidators (currently 32) was established from which ASIC

appoints a liquidator to an abandoned company to wind up the affairs and distribute the property of a company and to assist employees to access unpaid employment entitlements under the *Fair Entitlements Guarantee Act 2012* (FEG Act); and

- funding a reviewing liquidator appointed by ASIC under s90–23 of Schedule 2 to the Corporations Act to review a matter, or matters, (including concerns the incumbent liquidator lacks independence and has not conducted adequate investigations into potential illegal phoenix activity) relating to the external administration of a company ('Reviewing Liquidator' Panel Grant – [GO1622](#)). Under this grant opportunity a panel of registered liquidators (currently 15) was established from which ASIC appoints a registered liquidator to act as a reviewing liquidator.

121 The guidance relating to the grant opportunities noted above are published on the Australian Government's grant information system, [GrantConnect](#). These guidelines set out details of the grant opportunity; including what grant money can be used for, the eligibility and assessment criteria, the grant selection process and how ASIC monitors the grant opportunity.

122 The Abandoned Company Liquidator Panel ([GO894](#)) and Reviewing Liquidator Panel ([GO4192](#)) grant opportunities are closed as the application process for membership to the panels has been finalised and panel members selected. The panels are constituted for a set period of time and a new opportunity will be published when required seeking applicants for membership when the established panel is renewed.

123 A grant under the AA Fund must achieve 'value with relevant money'. It achieves this by providing funding that:

- helps address one or more of the Australian Government's policy outcomes;
- assists the liquidator as grant recipient achieve their outcomes; and
- adds value by achieving worthwhile outcomes that would not otherwise occur without the grant.

124 In addition to the grant opportunities documents included on [GrantConnect](#), ASIC provides details on [its Assetless Administration Fund webpage](#)<sup>1</sup> about how to make an application for AA Fund funding through ASIC's Regulatory Portal together with links to downloadable copies of the current grant opportunity documents, including:

- [Director Banning Grant Guidelines \(PDF 468 KB\)](#);

- [Matters other than Director Banning Grant Guidelines \(PDF 444 KB\); and](#)
- [Asset Recovery Grant Guidelines \(PDF 453 KB\)](#)

## Funding Overview

### Funding allocated and approved

- 125 Funds available under the AA Fund are set by government appropriation which has varied over time.
- 126 The Table 5 summarises the AA Fund funding appropriation for the financial years 2017–18 to 2023–24.

**Table 5: AA Fund funding appropriation, by financial year (excl. GST)**

Financial Year	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Fund appropriation (\$'000)	3,583	5,848	7,083	7,118	7,116	4,668	5,058

Source: Budget Papers and Appropriation Bills.

### Grant opportunities

- 127 The number of applications received and approved for the different types of grant opportunities sought in funding requests are set out in Table 6. The majority of applications received and approved over time have related to director banning.
- 128 A Reviewing Liquidator appointment may occur following a request received from either a member of the public or from an ASIC internal referral based on information otherwise known to ASIC. The table reflects only those applications received from members of the public. Further information about the total number of Reviewing Liquidator appointments is contained in Table 10.
- 129 An appointment of a liquidator to an abandoned company by ASIC may occur following a request received from an employee who has not received employee entitlements and where it appears to them that the company has been abandoned. Table 6 reflects the number of these requests (noting that there may be multiple requests for a single company).
- 130 Table 6 does not reflect any in-principle approvals of matters by the relevant ASIC staff and/or internal committee where a grant agreement has not yet

been entered into at the year-end. At the conclusion of the 2021–22 financial year there were a total of 109 in-principle approved matters.

**Table 6: AA Fund applications received and approved for the 2017–18 to 2021–22 financial years, by type of grant opportunity**

Financial Year	2017-18		2018-19		2019-20		2020-21		2021-22	
	Received	Approved	Received	Approved	Received	Approved	Received	Approved	Received	Approved
Director banning	587	170	582	224	634	254	611	196	377	144
Other matters	197	45	140	69	147	57	108	57	54	48
Asset recovery	0	0	1	1	12	0	62	0	44	18
Abandoned company	109	14	151	15	155	7	93	19	94	7
Reviewing liquidator	0	0	2	0	4	3	2	0	3	1
<b>Total</b>	<b>893</b>	<b>229</b>	<b>876</b>	<b>309</b>	<b>952</b>	<b>321</b>	<b>876</b>	<b>272</b>	<b>572</b>	<b>218</b>

Source: ASIC records and Grant Connect.

Note 1: GrantConnect reflects grants awarded based on their upload date rather than the date they may have been approved. Due to this timing, there may be a discrepancy in the total number of grants approved between the above figures and those accessed from GrantConnect.

Note 2: The number of applications reported in Table 6 as approved may vary from those previously reported in ASIC's annual report due to timing differences with funding agreements including cancellations.

## Funds paid and committed

131 Table 7 summarises AA Fund monies paid and committed by funding type for the financial years 2017–18 to 2021–22:

**Table 7: AA Fund monies paid and committed, by grant type and financial year (excl. GST)**

Financial year (\$'000)	2017-18	2018-19	2019-20	2020-21	2021-22
Director banning	1,617	1,419	2,705	2,626	1,720
Other matters	1,774	1,943	3,409	6,096	5,981
Asset recovery	0	0	335	270	1,118
Abandoned companies	192	224	108	241	176
Reviewing liquidator	N/A	64	578	367	34

Financial year (\$'000)	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Total</b>	<b>3,583</b>	<b>3,650</b>	<b>7,135</b>	<b>9,600</b>	<b>9,029</b>

Source: ASIC internal records.

Note 1: Amounts paid and committed to reviewing liquidators includes amounts paid or committed where ASIC identified the matter and there was no application – see table 9.

Note 2: Allocation of funds in Table 7 may vary from 'REPORT 658: ASIC regulation of registered liquidators: July 2018 to June 2019' due to the adoption of different reporting methodology in the previously published report.

Note 3: ASIC Annual report for the 2019-20 financial year included a typographical error and disclosed total amounts committed and paid as \$7.184 million.

132 Funds paid represents the actual amount of grant funding paid to liquidators during the financial year across the different grant opportunities.

133 A grant may be made in one financial year with the work performed and paid for over one or more financial years. To account for this, ASIC maintains a record of funds committed which reflects a prorated accrual for the financial year of funds committed and allocated for matters with a fully executed funding agreement but where no payments have been made. This prorated accrual is calculated based on the period between the commencement date of an agreement and an estimated end date.

### Funding Provisions

134 In addition to amounts actually paid and committed for the financial year, to fully account for funding which has also otherwise been in-principle committed, ASIC maintains a provision estimated for matters that:

- have either been approved in-principle but no funding agreement has been fully executed in the financial year;
- represent anticipated variations in the funded amounts for matters with existing fully executed agreements; or
- represent the balance of the prorated accruals relating to fully executed agreements not accounted for as committed (discussed above) i.e. amounts under that executed agreement that has yet to be accounted for in the previous prorate calculation.

135 The total provision at the conclusion of the 2021–22 financial year was \$5,190,000. The unpaid portion of the funding allocation for a financial year is rolled over year on year for a maximum period of three years and can be used to fund matters in a later financial year. As a result, the total of amounts paid, committed and provisioned may exceed the funds allocated for a particular financial year. Table 8 summarises the total of funds paid, committed and the provisions made for the 2021–22 financial year.



**Table 8: Funds paid, committed and provisions for the 2021–22 financial year (excl. GST)**

Grant opportunity (\$'000)	Amount paid	Committed	Provision	Total
Director banning	1,516	204	247	1,967
Other matters	3,355	2,626	3,143	9,124
Asset recovery	163	955	1,757	2,875
Abandoned company	147	29	43	219
Reviewing liquidator	34	Nil	Nil	34
<b>Total</b>	<b>5,215</b>	<b>3,814</b>	<b>5,190</b>	<b>14,219</b>

Source: ASIC internal records.

## Eligibility and Assessment Criteria

- 136 The eligibility criteria and selection processes for membership of the Abandoned Company and Reviewing Liquidator Panels are outlined in their respective grant opportunities guidelines.
- 137 Further, [Regulatory Guide 242](#) *ASIC's power to wind up abandoned companies* (RG 242) explains when ASIC will use the power to wind up an abandoned company under Pt 5.4C of the Corporations Act, including how ASIC assesses requests by employees with outstanding employee entitlements to wind up a company.
- 138 Director banning, other matters than director banning and asset recovery grant applications received are considered against the eligibility and assessment criteria discussed below.

### Eligibility criteria

- 139 The grant guidelines set out the eligibility criteria for funding under the AA Fund. These include:
- funding is only available to a registered liquidator appointed as liquidator of a company in a creditors' voluntary winding up (other than where the liquidator has adopted the simplified liquidation process) or court appointed winding up. Funding is not available for other types of formal external administration or controller appointments;
  - the company in liquidation must be assetless – defined as a liquidation where there is less than the amount specified in Item 2 of the Schedule to the grant guidelines (currently \$10,000) in net realisable assets (the

- three guidelines set out inclusions and exclusions to the determination of net realisable assets);
- an initial statutory report under s533(1) of the Corporations Act must have been lodged with ASIC;
  - the misconduct or matter must be one ASIC would consider pursuing (either an administrative action to disqualify a person from managing a corporation, or other misconduct that warrants enforcement action by ASIC) or, for asset recovery funding, misconduct occurred which caused the asset dissipation; and
  - sufficient evidence is available, or is likely to be available, to support the alleged misconduct or asset recovery proceedings.

### Assessment criteria

- 140 The grant guidelines set out how ASIC will assess requests for funding from the AA Fund. These align with the factors set out in [INFO 151](#) and include:
- the strategic significance of the matter to ASIC and the government (e.g. the extent of harm or loss, the market impact of the misconduct and the number of people impacted);
  - the broader public benefit to pursuing the misconduct (e.g. if the behaviour is widespread, if it is a growing trend, if it is cost-effective to prosecute, and whether taking action helps to maintain public trust and confidence);
  - issues specific to the case (e.g. the seriousness of misconduct, age of the misconduct, whether admissible evidence is available to support further action);
  - whether alternatives tools or funding sources are available that are more efficient and effective for dealing with the alleged misconduct (e.g. availability of litigation funding); and
  - the total funds available in the AA Fund and the likely future requirements (e.g. funds committed but not yet paid).

## Improving processes

- 141 ASIC continuously reviews the operation of the AA Fund and implements systems and processes to improve access to the fund, shorten assessment periods and promote transparency.
- 142 New grant opportunity guidelines were published on 23 July 2020 on [GrantConnect](#) in accordance with the [Commonwealth Grant Rules and Guidelines 2017](#).

- 143 To promote consistency and improve processing of funding requests:
- since July 2018, each edition of ASIC’s Corporate Insolvency Update (published quarterly) has included articles providing practical guidance for liquidators on matters relating to ASIC’s administration of the AA Fund and tips for preparing funding applications to improve the likelihood of them being funded and how to improve the quality of funded reports;
  - an internal committee was established in July 2019 with representatives from relevant ASIC enforcement teams to consider funding requests. The enforcement teams act as sponsors for funded matters to ensure funding agreements are scoped to assist the registered liquidator provide the best possible evidence to support future enforcement or asset recovery action;
  - applications for the director banning, other matters and asset recovery grant opportunity types were moved onto the ASIC Regulatory Portal on 30 March 2020;
  - on 17 June 2022, ASIC published a user guide for liquidators on how to prepare a funding application for the other matters grant opportunity. User guides are being prepared for the director banning and asset recovery grant opportunities;
  - ASIC recently introduced a streamlined process to minimise the burden when a liquidator applies for funding under one grant opportunity and, after consideration of available information, ASIC considers, or the applicant requests, funding under a different grant opportunity is more appropriate. The process enables the application to progress without the need for the liquidator to submit a completely new funding application;
  - asset recovery and other matters funding applications are triaged to quickly identify those applications that warrant further consideration for funding and identify applications where further information is required before the matter can be considered for funding; and
  - internal templates have been improved and processes enhanced to create efficiencies in processing funding applications and support decision making.
- 144 ASIC has also improved the transparency of its decision making on funding requests from the AA Fund. With applications seeking funding to either investigate and report on matters other than a director banning or to commence proceeding to recover assets for the benefit of creditors, ASIC has enhanced the content of letters to liquidators where their application has been unsuccessful setting out further reasons why the application was not granted.

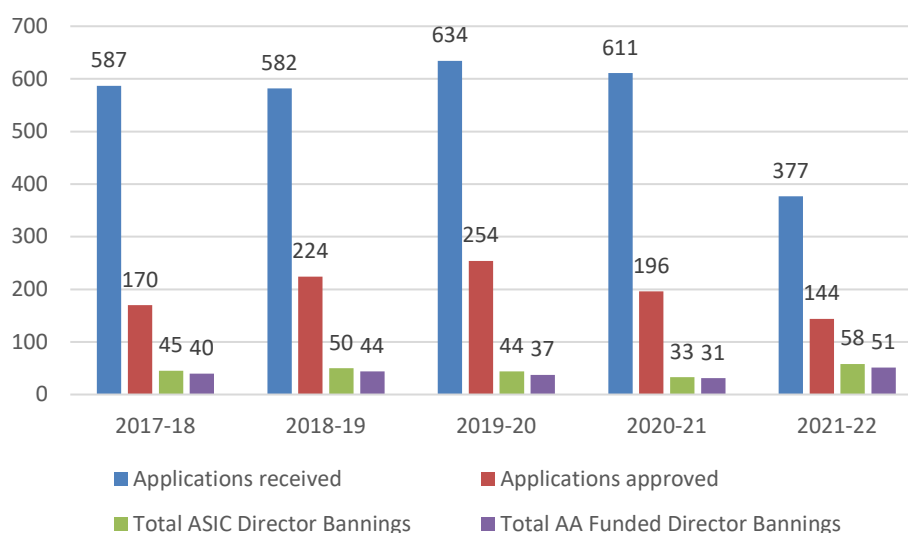
## Funding outcomes

### Director banning grants

145 The maximum grant amount paid to a liquidator to prepare a supplementary report under s533 of the Corporations Act for the director banning grant opportunity is fixed (currently \$10,500 excl. GST).

146 In the 2021-22 financial year, the AA Fund assisted ASIC administratively disqualify 51 persons from managing corporations through funding liquidators to prepare a supplementary report under s533 of the Corporations Act. This represents 88% of total directors banned (58 persons) during the year. Figure 2 shows the banning outcomes for the period 2017–18 to 2021–22 inclusive.

**Figure 2 : Director Banning Grant Applications Received and Approved, Total ASIC Director Bannings, and Total AA Funded Director Bannings, by financial year**



### Other matters and asset recoveries

147 Value with relevant money is achieved in several ways for the other matters and asset recovery grant opportunities.

148 Information reflecting specific outcomes from grant funding are not published to ensure the privacy of the parties is protected and that publication does not compromise potential future action by ASIC or third parties. The exception is at the completion of a matter and (if applicable) where it is agreed between the registered liquidator and ASIC that it is appropriate in all the circumstances to refer to the funding in the ASIC media release.

- 149 Other matters and asset recovery grant opportunities have resulted in the following types of outcomes:
- sufficient information obtained by liquidators through public examinations or the issue of warrants to support either the prosecution of offences (including alleged illegal phoenix activity and the activities of pre-insolvency advisors) or the successful recovery of assets for the benefit of creditors;
  - liquidators commenced asset recovery proceedings when no other funding was available (including payment of security for costs insurance premiums);
  - settlement of a matter without the need to pursue lengthy court action because grant funding was available; or
  - evidence provided enabled ASIC to decide no further enforcement action is warranted.
- 150 Where appropriate, and in accordance with the law, information received in funded reports from liquidators is shared with other agencies and task forces to support their ongoing activities.

### **Abandoned companies grants**

- 151 [RG 242](#) explains when ASIC will use the power to wind up an abandoned company under Pt 5.4C of the Corporations Act, including how ASIC assesses requests by employees with unpaid entitlements to wind up a company.
- 152 During the financial years 2017–18 to 2021–22 the abandoned companies grant opportunity has enabled the winding up of 62 companies that were abandoned, enabling employees of those companies to access unpaid entitlements under the FEG Act to which they otherwise would not have had access.
- 153 A liquidator appointed to an abandoned company under Pt 5.4C of the Corporations Act receives a fixed grant to conduct the winding up (currently \$12,000 excl. GST).
- 154 Table 9 includes information about the number of employees and the entitlements claimed by employees for the purpose of ASIC making the decision whether to exercise its power under Pt 5.4C. ASIC notes that the final number of employees and amount of entitlements identified and paid out under the fair entitlements guarantee scheme may be different (and potentially greater) as further information about outstanding employee entitlements becomes available following the appointment of a liquidator by ASIC.

**Table 9: Number of companies wound up, number of employees, amount of entitlements claimed under the fair entitlements guarantee scheme, and AA Fund grant approved amount, by financial year (excl. GST)**

Year	No of Companies Wound Up	No of Employees	\$ of entitlements initially advised	Amount approved \$
2017-18	14	33	676,181	112,000
2018-19	15	55	677,168	180,000
2019-20	7	20	294,884	84,000
2020-21	19	35	519,437	228,000
2021-22	7	19	280,558	84,000
Total	62	162	2,448,228	688,000

Source: Records maintained by ASIC.

Note: The amounts in Table 9 will not reconcile with the amounts in Table 7 due to timing differences between when a grant is approved the liquidator submitting their invoice and payment being made. In addition, some appointed liquidators may not claim the whole amount of the grant.

## Reviewing liquidator

155

From April 2018 to 30 September 2022 ASIC has appointed 11 reviewing liquidators in relation to 23 companies. Table 10 summarises the number of reviewing liquidator appointments made, the grants made to them from the AA Fund and the outcomes from these appointments.

**Table 10: Reviewing liquidator appointments**

	Total
Applications received to appoint reviewing liquidator	13
ASIC identified matters	7
Applications to appoint reviewing liquidator declined	9
<b>Reviewing liquidators appointed</b>	<b>11</b>
Number of companies	23
Total dollar value in grants paid (excl. GST)	\$747,052
<b>Outcome of Reviews</b>	
Engagement and Education	5
Referred for Enforcement Action	1
No Further Action	5

156            Some applications to appoint reviewing liquidators and some reports by reviewing liquidators are finalised with ‘no further action’ due to insufficient evidence, no misconduct identified, age of the conduct or other reason consistent with [INFO 151](#).

## C Trends in Corporate Insolvency Practices in Australia

### Trends in External Administration Appointments

157 ASIC publishes reports and statistics on a variety of insolvency-related topics. Many of the statistics we publish are drawn from information lodged by registered liquidators including in the:

- [Form 505](#) *Notification of appointment or cessation of an external administrator*
- Reports under s422, 438D and 533 of the Corporations Act or reg 5.5.05 of the Corporate Regulations.

158 During the COVID pandemic, we commenced publishing insolvency statistics on a weekly basis, including a comparison with a pre-COVID pandemic ‘base level’ (being the average number of companies entering external administration or controller appointments for the first time that occurred during the three financial years preceding the COVID pandemic i.e., 7,961 for 2017, 2018 and 2019 financial years)). This assisted in monitoring the level of corporate failure during the COVID pandemic.

159 We continue to release the following statistics weekly (two weeks in arrears and with all underlying raw data from 1 July 2022) to report on the level of company insolvency in Australia:

- Series 1: The first time a company enters external administration or has a controller appointed; and
- Series 2: All appointments over a company including the first, subsequent and transitional appointments

Note: Historical data for Series 1 and 2 is available as separate Excel workbooks for the period 1 January 1999 to 31 July 2022.

160 We analyse and present the data in tables and figures, categorised by type of appointment, industry and state or territory.

161 Series 1 shows the number of companies entering external administration or controller appointments for the first time.

162 We only include a company once in these statistics, regardless of whether it subsequently enters another form of external administration. The only exception occurs when a company, taken out of external administration (e.g. as the result of a court order), later re-enters external administration.



- 163 Series 2 shows the total number of external administration and controller appointments recorded, including the first, subsequent and transitional appointments.
- 164 As a company can be under more than one form of external administration or controller appointment at any one time and can progress from one type of appointment to another, these statistics can include a company more than once. For this reason, the number of external administration and controller appointments (Series 2) will always be greater than the number of companies going into external administration for the first time (Series 1).
- 165 ASIC prefers Series 1 statistics when explaining trends in corporate failures – they are a more accurate measure of the number of companies subject to a formal appointment because a company might appear more than once in Series 2 statistics (e.g. if it were under more than one form of external administration or controller appointment).
- 166 On 6 May 2021, we updated ASIC [Form 505](#) so registered liquidators could provide more accurate industry data about corporate insolvency. This enables ASIC to provide better information to government and others on the impact of corporate insolvency on different industries. Industry classifications used are the 2006 Australian and New Zealand Standard Industrial Classification (ANZSIC) that has been developed for use in the compilation and analysis of industry statistics in Australia and New Zealand. Series 1 and 2 industry data is captured at the industry, division and group level and can be mapped to the subdivision level.
- 167 [Information Sheet 80](#) *How to interpret ASIC insolvency statistics* (INFO 80) sets out further information about the insolvency statistics ASIC publishes and how to interpret them.
- 168 If required, published insolvency statistics are updated when timing and reporting errors are identified.
- 169 Table 11 sets out Series 1 data for external administrations from 1 July 2017 to 30 September 2022. This includes information about companies entering external administration or controller appointments for the first time for the three full financial years preceding the COVID pandemic and provides insights into the trends in insolvency appointments before and following the COVID pandemic.

**Table 11: Companies entering External Administration and Controller Appointments for the first time by Appointment Type, Annually**

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (Jul-Sep)
Provisional wind-up	25	26	9	34	8	3
Court wind-up	2,189	2,311	1,743	450	721	212
Creditors' wind-up	3,921	3,996	3,730	2,615	3,019	1240
Receiver appointed	29	53	59	27	26	33
Controller	262	293	325	179	157	33
Managing controller	14	4	7	6	4	0
Receiver manager appointed	186	196	283	212	222	82
Scheme administrator appointed	7	0	3	1	7	0
Voluntary administration	1,112	1,226	1,203	699	678	364
Restructuring	n/a	n/a	n/a	12	70	83
Foreign/RAB wind-up	2	0	0	0	0	0
<b>Total</b>	<b>7,747</b>	<b>8,105</b>	<b>7,362</b>	<b>4,235</b>	<b>4,912</b>	<b>2,050</b>

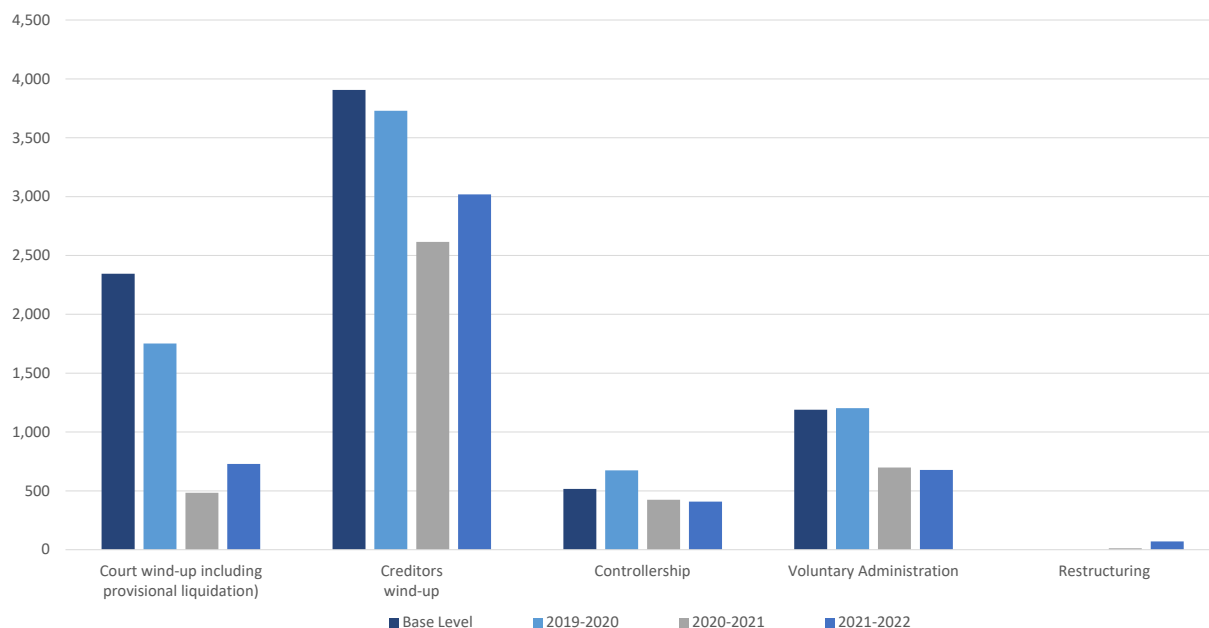
Source: ASIC Insolvency Statistics Series 1.

170

The total number of companies entering an external administration or controller appointment for the first time peaked in the years following the global financial crisis, with 10,757 total external administrations or controllers appointed in 2011–12. Since then, the total number had generally trended down, until 2020–21, when, for the first time, there was a steep decline in the number of companies entering an external administration or controller appointment. This coincided with the COVID pandemic and the fiscal and regulatory measures provided by government, as well as other support measures provided by financial institutions and others to assist businesses during this period.

- 171 The number of companies entering an external administration or controller appointment for the first time during the COVID pandemic was significantly down in the 2020–21 (47%) and 2021–22 (38%) financial years when compared to the pre-COVID pandemic ‘base level’.
- 172 The number of companies entering external administration or controller appointment began to increase near the end of the 2021–22 financial year. This also coincided with increased Australian Taxation Office activity in contacting directors of companies with outstanding tax debts.
- 173 The increase in the number of companies entering into an external administration or controller appointment has continued into the 2022–23 financial year.
- 174 As Figure 3 highlights, the number of companies entering external administration or controller appointment has returned to close to pre-pandemic levels during the three months to September 2022. The data also discloses that, in comparison with the ‘base level’:
- the number of court liquidation appointments (which includes provisional liquidations) remains significantly down, although there was an increase in the 2021–22 financial year;
  - there was a significant increase in the number of creditors’ voluntary winding up appointments during the 2022 financial year, although this is still at levels less than the base level. This increase has continued into the 2023 financial year to date;
  - total controller appointments (which include the appointment of a controller, receiver, receiver and manager, and managing controller) remained relatively constant during the COVID pandemic at approximately 80% of the base level;
  - voluntary administration appointments were also relatively constant during the COVID pandemic at around 60% of the base level; and
  - there was a significant increase in the number of small business restructuring appointments commenced during the 2022 financial year, which has continued into the 2023 financial year to date.

**Figure 3 : Companies entering external administration and controller appointments for the first time, by appointment type and financial year**



Source: ASIC Series 1 statistics.

Note: This excludes Scheme administrator appointed and Foreign/RAB wind-ups. Court windings up is the total of court and provisional wind-ups, Controllership is the total of Receiver, Contoller, Managing Contoller and Receiver Manager appointments

175

Table 12 sets out the industries where the external administration and controller appointments occurred during the financial years 2019–20 to 2021–22 and the 2022–23 financial year to 30 September 2023 compared to the pre-COVID pandemic base level. Consistently over time, the highest numbers of appointments where the industry is clearly identified occur in the ‘construction’ and ‘accommodation and food services’ industries.

**Table 12: Number of external administration and control appointments, by financial year and industry**

Industry	Base level	2019-20	2020-21	2021-22	2022-23 (Jul-Sep)
Construction	1460	1447	953	1284	605
Accommodation and Food Services	943	918	574	738	261
Other Services	2865	2723	1325	707	159
Manufacturing	249	169	107	181	147
Retail Trade	586	501	253	319	127
Professional, Scientific and Technical Services	121	107	79	249	122

Industry	Base level	2019-20	2020-21	2021-22	2022-23 (Jul-Sep)
Rental, Hiring and Real Estate Services	183	152	126	172	102
Administrative and Support Services	42	31	51	222	98
Transport, Postal and Warehousing	368	318	156	196	97
Financial and Insurance Services	150	185	143	184	68
Information Media and Telecommunications	150	97	69	124	60
Health Care and Social Assistance	81	75	49	73	39
Arts and Recreation Services	58	50	53	67	37
Wholesale Trade	123	119	63	112	35
Mining	116	81	57	72	28
Electricity, Gas, Water and Waste Services	148	130	59	82	22
Agriculture, Forestry and Fishing	118	84	45	59	19
Education and Training	95	81	41	38	13
Public Administration and Safety	7	6	8	25	5
Unknown	98	88	24	8	6
<b>Total</b>	<b>7961</b>	<b>7362</b>	<b>4235</b>	<b>4912</b>	<b>2050</b>

Source: ASIC series 1 statistics.

Note: Industries shown in the order from highest to lowest for the year 2022-23 (July to September).

- 176 The reduction in the number of companies entering external administration or controller appointment in the ‘other services’ industry sector followed changes to [Form 505](#) which improved the quality of information captured about industry sectors in which corporate insolvency appointments are made.

## Uptake on small business restructuring and simplified liquidation reforms

- 177 The *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* introduced formal restructuring and simplified liquidation processes for small business.

- 178 The reforms commenced on 1 January 2021, following the conclusion of the temporary insolvency law relief measures which were introduced in 2020 to assist financially distressed businesses through the COVID pandemic.
- 179 The restructuring and simplified liquidation processes apply to companies that have total liabilities that do not exceed \$1 million. Further eligibility criteria apply, including:
- for a simplified liquidation – the company has, before the day the liquidator is appointed, substantially complied with the requirement to give a return, notice, statement, application or other document required by a taxation law (within the meaning of the *Income Tax Assessment Act 1997*)
  - for a restructuring – the company has, immediately before the restructuring practitioner gave a copy of the restructuring plan, restructuring proposal statement and restructuring practitioner’s declaration to creditors:
    - paid, or substantially complied with the obligation to pay, the entitlements of employees that are payable; and
    - given, or substantially complied with the obligation to give, returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*).
- 180 Take-up of the small business insolvency reforms was initially slow but has increased during 2022; particularly the small business restructuring process.
- 181 Anecdotal evidence obtained from ASIC’s stakeholder engagement activities indicate the initial slow uptake may be because:
- the eligibility threshold of \$1 million owing to creditors is too low;
  - the requirement to comply with taxation law lodgement requirements prevent companies that might otherwise be candidates for restructuring and return to viability, or suitable for the simplified liquidation process, from accessing these processes (ASIC notes the previous government enacted amendments to the regime following its commencement so that only substantial compliance with taxation obligations is required);
  - the processes are too complex and do not provide a simple, reduced cost processes;
  - there are concerns that the appointment of a restructuring practitioner may void a company’s existing business insurances and the automatic insurance cover maintained by the registered liquidator does not apply as the directors remain in control of the company;
  - in some states, appointing a restructuring practitioner to a company may void licences required to operate a business, e.g. a builder’s licence.

- 182 Notwithstanding the initial slow take-up of the new restructuring process, there was a noticeable increase in the number of these appointments in the 2022 financial year and again in the 2023 financial year to 30 September 2022. There has not been a noticeable increase in the number of liquidators adopting the simplified liquidation process.
- 183 Table 13 shows the number of appointments for the small business insolvency reforms by financial year:

**Table 13: Number of appointments under the small business insolvency reforms, by financial year**

Appointment type	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Restructuring practitioner appointments	12	70	83	165
Restructuring plans accepted	6	37	44	87
Adoption of simplified liquidation process	23	29	7	59

Source: ASIC Series 1 and Series 2 statistics.

Note: appointment numbers are based on notices of appointment lodged by the registered liquidator.

### Small business restructuring

- 184 There were restructuring practitioners appointed to 83 companies in September 2022 quarter, bringing the total number of appointments since the process commenced on 1 January 2021 to 165.
- 185 Table 14 sets out the location of the restructuring appointments for the period 1 January 2021 to 30 September 2022 (based on the company's state of incorporation).

**Table 14: Number of restructuring appointments, by state of incorporation of the company and financial year**

State of incorporation	2020-21	2021-22	2022-23 (Jul-Sep)	Total
ACT	0	1	3	4
NSW	3	33	34	70
NT	0	0	2	2
QLD	1	9	16	26
SA	0	2	4	6

State of incorporation	2020-21	2021-22	2022-23 (Jul-Sep)	Total
VIC	5	23	23	51
WA	3	2	1	6
<b>Total</b>	<b>12</b>	<b>70</b>	<b>83</b>	<b>165</b>

Source: ASIC series 1 statistics.

186 Table 15 summarises the appointment of restructuring practitioners by industry for the period 1 January 2021 to 30 September 2022:

**Table 15: Number of restructuring appointments, by industry and financial year**

Industry	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Accommodation and Food Services	3	15	19	37
Administrative and Support Services	0	5	5	10
Arts and Recreation Services	0	3	1	4
Construction	2	15	27	44
Education and Training	1	1	2	4
Electricity, Gas, Water and Waste Services	0	1	0	1
Health Care and Social Assistance	0	2	3	5
Information media & telecommunications	0	5	2	7
Manufacturing	1	0	5	6
Other Services	2	4	7	13
Professional, Scientific and Technical Services	2	4	5	11
Public Administration and Safety	0	0	1	1
Retail Trade	0	13	2	15
Transport, Postal and Warehousing	0	1	4	5



Industry	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Wholesale Trade	1	1	0	2
<b>Total</b>	<b>12</b>	<b>70</b>	<b>83</b>	<b>165</b>

Source: ASIC series 1 statistics.

Note: We believe that the selection Electricity Gas Water and Waste Services (ANZSIC – Division level classification) by the registered liquidator is most likely an error for what appears to be a construction related business.

187 Most appointments of restructuring practitioners (81, or 49.1%, of appointments) have occurred in the ‘construction’, and ‘accommodation and food services’ industry sectors.

188 Twelve small business restructurings have ceased during the period 1 January 2021 to 30 September 2022. Table 16 sets out the reasons for these cessations:

**Table 16: Number of small business restructurings that have ceased, by reasons for the cessation and financial year**

Reason	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Company not eligible	0	3	0	3
Company declaration	1	0	0	1
Plan not accepted by creditors	1	2	5	8
<b>Total</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>12</b>

Source: Forms 5608 *Notice of ending of restructuring lodged* with ASIC.

## Restructuring plans accepted

189 Forty-four restructuring plans commenced in the September 2022 quarter, bringing the total restructuring plans accepted by creditors in the period 1 January 2021 to 30 September 2022 to 87.

190 Table 17 sets out the industry sectors in which these companies operated:

**Table 17: Number of Restructuring Plans, by financial year and industry division**

Industry division	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Accommodation and Food Services	3	7	11	21

Industry division	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Administrative and Support Services	0	3	2	5
Arts and Recreation Services	0	3	1	4
Construction	1	6	11	18
Education and Training	0	1	1	2
Electricity, Gas, Water and Waste Services	0	1	0	1
Health Care and Social Assistance	0	1	1	2
Information media & telecommunications	0	2	4	6
Manufacturing	1	0	1	2
Other Services	1	2	4	7
Professional, Scientific and Technical Services	0	3	1	4
Public Administration and Safety	0	0	1	1
Retail Trade	0	6	6	12
Transport, Postal and Warehousing	0	1	0	1
Wholesale Trade	0	1	0	1
<b>Total</b>	<b>6</b>	<b>37</b>	<b>44</b>	<b>87</b>

Source: ASIC statistics Series 2.

Note: We believe that the selection Electricity Gas Water and Waste Services (ANZSIC – Division level classification) by the registered liquidator is most likely an error for what appears to be a construction related business.

191

ASIC was in the process of analysing outcomes of finalised restructuring plans when this inquiry was announced and will issue further information on the restructuring process; including the amount owed to creditors, dividends paid to creditors and the remuneration of restructuring practitioners when this analysis is completed.

## Simplified liquidations

192 Seven liquidators adopted the simplified liquidation process in the September 2022 quarter, bringing the total number of simplified liquidations to 59 during the period 1 January 2021 to 30 September 2022.

193 Table 18 sets out the location of the simplified liquidation appointments for the period 1 January 2021 to 30 September 2022 (based on the company's state of incorporation).

**Table 18: Number of simplified liquidations, by the company's state of incorporation and financial year**

State of incorporation	2020-21	2021-22	2022-23 (Jul-Sep)	Total
ACT	0	0	1	1
NSW	5	9	3	17
NT	5	3	0	8
QLD	1	5	0	6
SA	1	0	0	1
VIC	6	9	2	17
WA	5	3	1	9
<b>Total</b>	<b>23</b>	<b>29</b>	<b>7</b>	<b>59</b>

Source: ASIC Series 2 data.

194 Table 19 summarises the number of appointments where the liquidator adopted the simplified liquidation process, by industry, for the period 1 January 2021 to 30 September 2022.

**Table 19: Number of simplified liquidations, by industry and financial year**

Industry division	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Accommodation and Food Services	6	5	0	11
Administrative and support services	1	2	2	5
Arts and Recreation Services	0	4	1	5

Industry division	2020-21	2021-22	2022-23 (Jul-Sep)	Total
Construction	4	3	2	9
Education and Training	1	0	0	1
Electricity Gas Water and Waste Services	1	0	0	1
Health Care and Social Assistance	1	0	0	1
Information media & tele- communications	1	1	1	3
Manufacturing	0	3	0	3
Other Services	4	6	0	10
Professional, Scientific and Technical Services	0	2	0	2
Retail Trade	3	2	1	6
Wholesale Trade	1	1	0	2
<b>Total</b>	<b>23</b>	<b>29</b>	<b>7</b>	<b>59</b>

Source: ASIC series 2 data.

Note: We believe that the selection Electricity Gas Water and Waste Services (ANZSIC – Division level classification) by the registered liquidator is most likely an error for what appears to be a construction related business.

195 The industries in which liquidators have adopted the simplified liquidation process the most (30, or 50.9% of appointments) have occurred in ‘accommodation and food services’, ‘other services’, and ‘construction’ industry sectors.

## Number and profile of registered liquidators

196 ASIC currently is responsible for maintaining the register of liquidators. At 30 September 2022, there were 651 registered liquidators, of which 639 were able to accept new external administration and controller appointments. Included in the 651 registered liquidators is one liquidator who is only permitted to undertake small business restructuring appointments, while the remaining registered liquidators can accept all types of external administration and controller appointments (subject to any current condition on a person’s registration as a liquidator that restricts the type of formal insolvency appointments they can accept).

- 197 An analysis of the data held by ASIC discloses that, at 30 September 2022:
- most registered liquidators (52.3%) are aged 50 years or more ;
  - 37.3% of registered liquidators have been registered for 10 years or less;
  - 56.4% of persons registered as a liquidator have been registered for 15 years or less;
  - only 9.2% of registered liquidators are female – although there has been a small increase over the last 10 years;
  - most registered liquidators (79.6%) are in Victoria, NSW and Queensland; and
  - 39.6% of registered liquidators practice in firms with 4 or less registered liquidators.
- 198 Of the 651 registered liquidators as at 30 September 2022, 174 (26.7%) are also registered trustees. There are currently 209 registered trustees.
- 199 Further information about these demographics is set out in Appendix 2.

## D Recent insolvency law reform

### Past reforms

- 200 Various stakeholders have stated that the General Insolvency Inquiry [1988] ALRC 45 (Harmer Report) ([General Insolvency Inquiry \(ALRC Report 45\) | ALRC](#)) was the last broad ranging review conducted of Australia's insolvency laws.
- 201 Since the Harmer Report, there have been some general and targeted reforms to Australia's insolvency laws to address perceived deficiencies in the insolvency regime. These have included:
- the introduction of the voluntary administration regime, new insolvent trading regime and changes to voidable transactions in the *Corporate Law Reform Act (1992)*;
  - *Corporations Amendment (Insolvency) Act 2007* which introduced reforms to improve outcomes for creditors, pooling determinations and improve the regulation of registered liquidators and fine tune the voluntary administration process;
  - the *Insolvency Law Reform Act 2016* (which commenced in 2017);
  - the introduction of an insolvent trading harbour for directors from personal liability for insolvent trading (2017);
  - ipso facto reforms (2018);
  - reforms aimed at addressing corporate misuse of the Fair Entitlements Guarantee Scheme (2019);
  - the unlawful phoenix reforms (2020);
  - temporary COVID pandemic measures (2020);
  - laws to provide a mechanism to help restructure small business in financial distress and, if that is not possible, provide a simplified liquidation process and to permanently increase the threshold to issue a statutory demand (2021); and
  - laws to facilitate the use of virtual meeting technology (2021).

### Small business insolvency reforms

- 202 The *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* introduced formal restructuring and simplified liquidation processes for small business. The reforms commenced on 1 January 2021.

203 ASIC published on its website basic information about the small business restructuring and simplified liquidation processes.

### **Unlawful phoenix reforms**

204 The *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* introduced new powers for liquidators, ASIC and the Australian Taxation Office to help deter and disrupt illegal phoenix activity.

205 New phoenixing offences, with civil penalties and criminal offences for contraventions by directors, pre-insolvency advisors and other facilitators, were introduced where the company in liquidation had entered into a creditor defeating disposition – a disposition of company property for less than its market value (or best reasonably obtainable price) that has the effect of preventing, hindering or significantly delaying the property becoming available to meet the demands of the company’s creditors in a winding up.

206 In October 2021, ASIC published [Information Sheet 261](#) *ASIC orders about creditor-defeating dispositions* (INFO 261):

- providing basic information about the new law;
- setting out how a liquidator can lodge a request with ASIC to make orders in relation to a creditor-defeating disposition and providing a template request form; and
- outlining the factors ASIC will consider when deciding to make orders.

207 The creditor defeating dispositions only apply to transactions that occur on or after 18 February 2020 and which are not part of a safe harbour restructure, or a transaction entered into by an external administrator or scheme administrator under s411 of the Corporations Act.

208 To date, ASIC has received four requests for orders:

- two requests were discontinued – one due to lack of evidence and the other because the respondent could not be served with the order;
- one request is under consideration; and
- ASIC has made one order.

209 ASIC is aware of one reported decision dealing with the creditor-defeating disposition provisions: *Re Intellicomms Pty Ltd (in liq)* [2022] VSC 228.

210 With the potential increase in the number of companies entering liquidation and the increased likelihood these companies could have entered into transactions after 18 February 2020, ASIC anticipates there may be an increase in:

- requests for ASIC to make orders about creditor defeating dispositions; and/or

- AAF applications to investigate and pursue potential creditor-defeating dispositions.

## Potential reform areas

- 211 ASIC would welcome the opportunity to engage with government and stakeholders to discuss potential reforms to Australia's insolvency laws and stands ready to support the development of law reform proposals that may arise from the inquiry.
- 212 ASIC also notes the current work underway in the modernising business registers program and that the timing and extent of any reform to the corporate insolvency regime must take this into account.

### Unfair preference claims

- 213 ASIC is aware of tension between liquidators and company creditors over the unfair preference laws. Registered liquidators have stated that recovery of unfair preferences is a source of funding that enables further investigation and asset recovery action, payment of liquidator remuneration and increases the likelihood of dividends to creditors. Creditors raise concerns that they are penalised for actively managing collection of amounts owed to them when they are required to pay back such payments as unfair preferences if the company is wound up.
- 214 There are additional complexities surrounding preference recoveries from the ATO and inequities that may arise, in particular regarding SGC payments disgorged where these payments have already been paid to employee superannuation funds.
- 215 ASIC is aware that some registered liquidators, while operating within the law, employ practices, including the use of so called 'mothership proceedings', which may be seen to be exercising powers to recover preferences inappropriately.
- 216 Reforms that balance these competing interests warrant further consideration.

### Trusts with corporate trustees

- 217 ASIC notes that the former government released consultation papers in 2021 on clarifying the treatment of trusts under insolvency law (consultation was undertaken from 15 October to 10 December 2021), improving schemes of arrangement to better support business (consultation was undertaken from 2 August to 10 September 2021) and also sought feedback from stakeholders



to support the statutory review of the insolvent trading safe harbour provisions.

218 ASIC notes there is currently no official register of trusts. ASIC also acknowledges that corporate trusts create additional complexity, and therefore cost, when dealing with all forms of insolvency.

219 There are many issues which drive the use of trusts and corporate trustees and consideration of these underlying reasons for their use together with how to deal with them in insolvency warrants further consideration.

### **Insolvent trading safe harbour**

220 The Report on *The Review of the Insolvent Trading Safe Harbour* was tabled in Parliament on 24 March 2022 and the government of the day released its response. The then government supported the enhancement of the operation of the safe harbour provisions, to ensure the safe harbour remains fit for purpose in terms of supporting companies to restructure and survive.

221 In addition to making 14 recommendations, the Report made a specific guidance suggestion supporting an update being made to [Regulatory Guide 217](#) *Duty to prevent insolvent trading: Guide for directors* (RG 217) to refer to the insolvent trading prohibition, and the safe harbour provisions, together with general guidance on the operation of the relevant provisions.

222 ASIC is currently reviewing [RG 217](#) and anticipates consulting on revised guidance in the first half of 2023.

### **Known minor and consequential amendments**

223 ASIC and industry have previously identified potential reforms to the provisions enacted by the 2017 insolvency law reform and small business insolvency law reform in 2021 that should be addressed to remove inefficiencies and ambiguities in the existing law.

### **Cloud storage of company records**

224 ASIC notes from its work assisting registered liquidators to gain access to company records in the EACA program, difficulties are experienced by registered liquidators in obtaining access to company records held in cloud storage. This impacts the ability of the registered liquidator to conduct appropriate investigations, recover assets for the benefit of creditors and report potential offences to ASIC.

225 It has been suggested by some stakeholders that reforms to s600F of the Corporations Act to bring suppliers of cloud storage services within the

definition of essential services may assist registered liquidators to obtain access to records in cloud storage and warrant further consideration.

### **Crypto assets**

226 Similarly, stakeholders have raised the issue of difficulty in locating, securing and realising crypto assets. This impacts the ability of the registered liquidator to conduct appropriate investigations, recover assets for the benefit of creditors and report potential offences to ASIC.

227 Further consideration of possible reforms to how crypto assets are held, evidence of ownership and specific powers to assist external administrators and controllers be recognised as having legal entitlement to the crypto assets may be warranted.

### **Reports of misconduct**

228 As set out at paragraphs 98–99, the current test for requiring registered liquidators to report misconduct in their initial statutory reports under s422, 438D and 533 of the Corporations Act is based on a mere ‘appearance’ of misconduct and they, if appointed as liquidator of the company, must lodge a report if there will be a dividend of less than 50 cents in the dollar.

229 This means that the registered liquidators may do work and incur costs in reporting matters where there is not, and never will be, sufficient and adequate evidence to enable any enforcement action to be taken. While ASIC has provided communication and guidance to liquidators about its expectations, it remains that, as the law stands, liquidators may feel it necessary to prepare and lodge these reports to ensure they are complying with their obligations.

230 Further consideration could be given to reforming the relevant sections to ‘raise’ the threshold for misconduct required to be reported which would in turn, reduce the amount of work and cost required to prepare and lodge these reports. This may, however, result in some offences not being reported and/or a loss of intelligence to ASIC, the ATO and other interested parties.

### **Insolvent trading**

231 ASIC notes in the United Kingdom the bar for ‘wrongful trading’ is higher than that for civil insolvent trading in Australia and occurs when a company’s directors have continued to trade when they knew, or should have concluded, that there was no reasonable prospect that the company would avoid insolvent liquidation or insolvent administration.

232 ASIC is aware there have been questions raised whether the current insolvent trading provisions are achieving their objectives. Further

consideration could be given to these provisions and their impact on the continued operation of distressed businesses in circumstances where the safe harbour provisions may not be accessible.

233 Such consideration might include whether:

- the threshold for criminal insolvent trading is appropriate
- it is appropriate to differentiate between the size of companies based on liabilities (similar to the small business reforms)
- some monetary thresholds to individual debts incurred should be applied
- certain classes of liabilities should not be included.

### **Search fees**

234 The *Corporations (Fees) Regulations 2001* (Corporations (Fees) Regulations) set out fees that must be paid for any searches of ASIC's registers. Therefore, registered liquidators must pay fees for searches that they conduct in order to carry out an external administration and comply with their duties under the Corporations Act, including reporting misconduct to ASIC in their initial statutory reports.

235 ASIC understands the former government was considering removing fees for digital searches as part of the implementation of the Modernising Business Registers Program. Further consideration could be given to immediately amending the Corporations (Fees) Regulations to provide fee exemptions for registered liquidators who have been appointed to a company in relation to searches relating to that company, its officers and members.

### **Single insolvency regulator**

236 ASIC notes commentary from various stakeholders that the inquiry provides an opportunity to consider a detailed 'root and branch' review of Australia's insolvency laws.

237 The terms of reference for the inquiry are broad and may also include consideration of a single regulator for personal and corporate insolvency. There are different models for integrating personal and corporate insolvency regulators and regulation. If the Committee wishes to consider this, ASIC considers the following factors would need to be considered (regardless of which entity is designated as the insolvency regulator), including:

- would integrating regulators be coupled with changes to the personal or corporate insolvency regimes?
- would integrating regulators diminish or increase the size of the tasks which have to be performed by either regulator, and how would this

impact the overall resource demand in regulating corporate and personal insolvency?

- should there be integration (or greater integration) of the regulation of Registered Liquidators and Registered Trustees, and what efficiencies or barriers to integration there would be? Would Registered Liquidators and Registered Trustees remain as two separate regulated populations under one integrated regulator?
- would the regulator include an official liquidator function in relation to corporate insolvency (similar to the Official Trustee for personal insolvency), funded by the government, and what impact would this have on the insolvency profession?
- should the government continue to provide funding through the AA Fund if there is an Official Trustee for corporate insolvency that could undertake that work?
- would the regulator be responsible for investigating all misconduct related to corporate insolvency (including by companies, directors, officers and registered liquidators), and, in the event the regulator is not ASIC, how would this relate to ASIC's jurisdiction?
- what administrative arrangements would need to be put in place to ensure effective collaboration with other agencies?
- how would the single regulator be funded? Would it be similar to the industry funding model for ASIC or the funding model for AFSA, or would a different funding model be proposed?

238 These features raise complex issues, for both the potential regulator and for the operation of the personal and corporate insolvency regimes. Whatever model is chosen, we consider it should deliver clear benefits from the current status quo.

239 We note that some other international jurisdictions have a single insolvency regulator for personal and corporate insolvency. However, direct comparisons are difficult to make as each regime must be viewed in context. For example, in comparable jurisdictions which have a single regulator:

- the regulator is not required to supervise the conduct of insolvency professionals in their jurisdiction, as that is managed by a professional body which acts as a registration and disciplinary body;
- the regulator is instead responsible for overseeing the professional body, rather than the regulated population; and
- the government insolvency services provided by an 'official trustee' (or equivalent) are generally performed as a last resort.

240 ASIC notes that the outcome of a broad ranging review of Australia's corporate insolvency laws (if conducted, and which ASIC anticipates would

involve significant consultation), may take substantial time to complete. Any reforms would also need to be considered and viewed in light of the work that the ALRC is doing on their Review of the Legislative Framework for Corporations and Financial Services Regulation, the potential simplification of aspects of Australia's corporate laws and the Modernising Business Registers program currently underway.

241 In the meantime, consideration might be given to further reforms targeted at addressing key issues that ASIC, industry and other parties have raised to improve the effectiveness and efficiency of the existing corporate insolvency laws.

## Appendix 1: ASIC's powers under the Insolvency Practice Schedule (Schedule 2)

### Division 40

242 Division 40 of Schedule 2 allows ASIC to:

- Issue a direction to remedy a failure to lodge documents or give any information or documents;
- Issue a direction to correct and complete information given to ASIC;
- Issue a direction not to accept further appointments;
- Cancel or suspend a registered liquidator's registration;
- Issue a 'show-cause notice' asking the liquidator to give ASIC a written explanation on why the liquidator should continue to be registered; and
- Consider regulatory action following receipt of a notice from an industry body.

### Direction to remedy lodgements

243 This provision applies where a registered liquidator fails to comply with a requirement to lodge any document, or give any information or document, that the registered liquidator is required under the Corporations Act to lodge with or give to ASIC.

244 ASIC may direct in writing that the registered liquidator comply with the requirement to remedy the lodgement within 10 business days after the direction is given. This period can be extended by ASIC upon the application of the registered liquidator before expiration of the initial date to comply with the direction.

245 For the period 1 March 2017 to 30 September 2022, ASIC has issued 24 directions to remedy lodgements. Of the directions issued, 21 resulted in the registered liquidator complying with the direction and lodging the outstanding forms and documents. Of the remaining three directions, one registered liquidator voluntarily cancelled his registration, one resulted in a direction not to accept appointments being issued and one is ongoing.

### Direction to correct information

246 This provision applies where ASIC reasonably suspects that any information that a registered liquidator is required to give to ASIC is incomplete or incorrect.

247 ASIC may direct the registered liquidator to do one or more of the following within 10 business days from ASIC issuing the direction:

- confirm the information is complete and correct;
- complete or correct the information;
- notify any persons specified by ASIC of the addition or correction.

248 The period for compliance can be extended by ASIC upon the application of the registered liquidator before expiration of the initial date to comply with the direction.

249 At 30 September 2022, ASIC had not issued any such direction.

#### **Direction not to accept appointments**

250 ASIC may direct a registered liquidator not to accept any further appointments under Ch 5 of the Corporations Act where a committee decides that ASIC should give a direction or where the liquidator fails to comply with a direction by ASIC:

- to remedy lodgements;
- to correct inaccuracies;
- to give relevant material;
- to convene a meeting of creditors.

251 If ASIC gives a direction not to accept appointments, a condition is imposed on the liquidator's registration that the liquidator must comply with the direction. This direction remains in place until the registered liquidator remedies the underlying reason why the direction was issued.

252 ASIC has issued two directions not to accept appointments during the period 1 March 2017 to 30 September 2022. One of these (in April 2022) was following non-compliance with a direction to remedy lodgements and one (in June 2022) followed a decision of a committee under s40-55 of Schedule 2.

#### **Show-cause notice**

253 ASIC may give a registered liquidator a notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered where ASIC is of the belief that the liquidator:

- no longer has the qualifications, experience, knowledge and abilities required of a registered liquidator;
- has committed an act of bankruptcy;
- is disqualified from managing corporations;

- has ceased to have adequate and appropriate professional indemnity or fidelity insurance against liabilities that the person may incur working as a registered liquidator;
- has breached a current condition imposed on the liquidator;
- has contravened a provision of the Corporations Act;
- has been appointed as a reviewing liquidator and failed to properly exercise the powers or perform the duties of a reviewing liquidator;
- has had their registration as a (bankruptcy) trustee cancelled or suspended;
- has failed to repay remuneration where the Court has made an order under s90-15 that the liquidator is to repay remuneration;
- has been convicted of an offence involving fraud or dishonesty;
- is permanently or temporarily unable to perform the functions and duties of a registered liquidator due to physical or mental incapacity;
- has failed to carry out adequately and properly the duties of a liquidator or any other duties or functions required of a registered liquidator;
- is not a fit and proper person; or
- is not resident in Australia or other prescribed country.

254 During the period 1 March 2017 to 30 September 2022, ASIC issued 15 show-cause notices on 15 individual registered liquidators that resulted in:

- nine registered liquidators being referred to a committee convened under Schedule 2 (refer to [Registered liquidator disciplinary decisions](#) on our website for further information);
- four matters being resolved without being referred to a committee; and
- two matters that are ongoing.

#### **Notice from industry body**

255 A specified industry body may lodge with ASIC a notice – [Form RL35](#) *Notice by industry body of possible grounds for disciplinary action* – stating that the body reasonably suspects there are grounds for ASIC to cancel or suspend the liquidator’s registration, issue a show-cause notice on the liquidator or impose condition on the registered liquidator. The notice must also identify the registered liquidator and include the information and copies of any documentation to support the suspicion.

256 Currently, the *Insolvency Practice Rules (Corporations) 2016* specify the following industry bodies as able to lodge such a notice:

- ARITA;
- CPA Australia, Chartered Accountants Australia and New Zealand and the Institute of Public Accountants;



- the New South Wales Bar Association and the Law Society of New South Wales;
- the Victorian Legal Services Commissioner and the Victorian Legal Services Board;
- the Bar Association of Queensland and the Queensland Law Society;
- the Legal Practice Board of Western Australia;
- the Law Society of South Australia and the Legal Profession Conduct Commissioner of South Australia;
- the Law Societies of Tasmania, Australian Capital Territory and Northern Territory.

257 Up to 30 September 2022, ASIC received six RL35 forms.

### **Division 70**

258 A creditor, creditors by resolution, or a committee of inspection may request the external administrator give information, provide a report or produce a document to the creditor, creditors or committee of inspection.

259 The external administrator must comply with a request unless it is not relevant to the external administration, the external administrator would breach their duties if they complied with the request or it would otherwise not be reasonable to comply with the request.

260 Where an external administrator does not comply with a request to provide the relevant material, the person or persons who made the request can request ASIC to direct the external administrator to give all or part of the relevant material to the person who requested the material. The external administrator must comply with the direction within five business days after the direction is given.

261 Before giving the direction, ASIC must give the external administrator notice that it proposes to issue a direction that identifies the material to be given and to whom it is to be given and inviting the external administrator to make a written submission (within 10 business-days) stating whether the external administrator has any objections and the reasons for those objections.

262 As at 30 September 2022, ASIC received five requests from creditors seeking ASIC to issue a direction on the external administrator. In four of the requests, ASIC did not issue the direction sought as the registered liquidator provided the relevant material to the creditor upon ASIC contacting the registered liquidator. In the other case, the creditor withdrew the request after the external administrator provided the relevant material.

## Division 75

- 263 A committee of inspection or creditors by resolution may direct an external administrator to convene a meeting of creditors. The external administrator need not comply with the direction if the direction is not reasonable.
- 264 A direction to the external administrator of a company to convene a meeting of creditors is not reasonable if the external administrator, acting in good faith, is of the opinion that:
- complying with the direction would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the direction;
  - there is not sufficient available property to comply with the direction;
  - a meeting of the creditors dealing with the same matters covered by the direction has already been held, or would be held within 15 business days after the direction is made; or
  - the direction for the meeting is vexatious (a direction is taken to be vexatious if it is given within 20 business days after a similar direction was given).
- 265 A direction to the external administrator of a company to convene a meeting is also reasonable if the creditors agree to bear the cost of complying with the direction and, if required to do so by the external administrator, security for the cost of complying with the direction is given to the external administrator before the meeting is convened.
- 266 As at 30 September 2022, ASIC had received one request from creditors for ASIC to issue a direction to convene a meeting of creditors. In this instance, the registered liquidator agreed to convene a meeting of creditors provided the reasonable costs were met.

## Appendix 2: Number, profile and application information on registered liquidators

### Profile of Registered Liquidators

- 267 ASIC publishes (Series 4 statistics) on its website, that can be downloaded as an Excel workbook, about the total number of:
- registered liquidators by region, gender, age, years of registration and firm size;
  - new registered liquidators by region; and
  - ceased registered liquidators by region.
- 268 Region information is based on the principal place of practice address of registered liquidators on ASIC's professional register of registered liquidators.
- 269 ASIC also publishes a monthly list of registered liquidators with their current professional register address by region and identifies if the liquidator is suspended voluntarily or otherwise or there are any current conditions on a liquidator's registration (excluding industry-wide conditions) such as being restricted in the type of appointments that a person may be appointed to undertake (Series 4A statistics).

### Registered liquidator diversity

#### Age

- 270 Table 20 sets out information about the age of persons registered as a liquidator at 30 September 2022.

**Table 20: Number of registered liquidators, by age**

Age	Number of registered liquidators
30-39	83
40-49	228
50-59	201

Age	Number of registered liquidators
60-69	119
70+	20
<b>Total</b>	<b>651</b>

Source: ASIC series 4 statistics.

## Gender

271 Table 21 sets out information about the gender of persons registered as a liquidator by State at 30 September 2022.

**Table 21: Number of registered liquidators, by gender**

	NSW	Vic	QLD	SA	WA	TAS	NT	ACT	O/Seas	Total
Male	225	144	96	45	61	7	2	9	2	591
Female	20	18	15	0	4	3	0	0	0	60
<b>Total</b>	<b>245</b>	<b>162</b>	<b>111</b>	<b>45</b>	<b>65</b>	<b>10</b>	<b>2</b>	<b>9</b>	<b>2</b>	<b>651</b>

Source: ASIC series 4 statistics.

272 The data shows there has been a small and gradual increase in the number of female registered liquidators (up from 5% at 30 June 2012).

273 Table 22 shows the gender of registered liquidators for the financial years 2011–12 to 2021–22.

**Table 22: Gender of registered liquidators, by financial year**

	Male		Female	
	Number	%	Number	%
2011-2012	646	95.0%	34	5.0%
2012-2013	647	94.6%	37	5.4%
2013-2014	654	93.7%	44	6.3%
2014-2015	660	92.8%	51	7.2%
2015-2016	650	91.9%	57	8.1%
2016-2017	654	92.0%	57	8.0%
2017-2018	608	91.7%	55	8.3%

	Male		Female	
	Count	Percentage	Count	Percentage
2018-2019	594	91.2%	57	8.8%
2019-2020	578	91.3%	55	8.7%
2020-2021	592	91.2%	57	8.8%
2021-2022	587	90.9%	59	9.1%
At 30 September 2022	591	90.8%	60	9.2%

Source: ASIC series 4 statistics.

## Location

274 Table 23 sets out where persons registered as a liquidator at 30 September 2022 are located based on information on the Register of Liquidators:

**Table 23: Location of registered liquidators, by jurisdiction**

State	Number of registered liquidators
New South Wales	245
Victoria	162
Queensland	111
South Australia	45
Western Australia	65
Tasmania	10
Northern Territory	2
ACT	9
Overseas	2
<b>Total</b>	<b>651</b>

Source: ASIC series 4 statistics.

## Firm size

275 Table 24 sets out information about the size of firms from which persons registered as a liquidator at 30 September 2022 practiced. This information is based on the firm name from which the registered liquidator practises (as

shown on the Register of Liquidators) and not the legal structure through which the firm operates.

**Table 24: Number of firms and number of registered liquidators, by firm size**

Firm size (number of registered liquidators in the Firm)	Number of registered liquidators	Number of firms
20+	172	7
10-19	132	10
5-9	89	15
2-4	149	61
1	109	109
<b>Total</b>	<b>651</b>	<b>202</b>

Source: ASIC series 4 statistics and ASIC analysis.

### Years of registration

276

Table 25 sets out how long persons have been registered as a liquidator at 30 September 2022:

**Table 25: Length of time registered as a liquidator at 30 September 2022, by State**

Years registered	<5	5-10	10-15	15-20	20-25	25-30	30-35	35+	Total
NSW	38	61	42	39	19	21	12	13	245
VIC	19	34	41	19	19	12	11	7	162
QLD	17	27	19	16	21	9	1	1	111
SA	5	9	6	3	7	6	5	4	45
WA	11	14	11	3	6	9	7	4	65
TAS	3	1	1	0	1	1	3	0	10
NT	1	0	1	0	0	0	0	0	2
ACT	0	3	2	1	0	2	1	0	9
O/S	0	0	1	0	1	0	0	0	2
<b>Total</b>	<b>94</b>	<b>149</b>	<b>124</b>	<b>81</b>	<b>74</b>	<b>60</b>	<b>40</b>	<b>29</b>	<b>651</b>

Source: ASIC series 4 statistics and ASIC analysis.

**Historic data on the number of registered liquidators**

- 277 Table 26 sets out the change in the number of registered liquidators for each financial year from 1 July 2016 to 30 June 2022 and the 2022-23 financial year to 30 September 2022.
- 278 The table shows that after a decline in the number of registered liquidators during the financial years 2017 to 2020 there has been an increase in the number of registered liquidators to June 2019 levels.

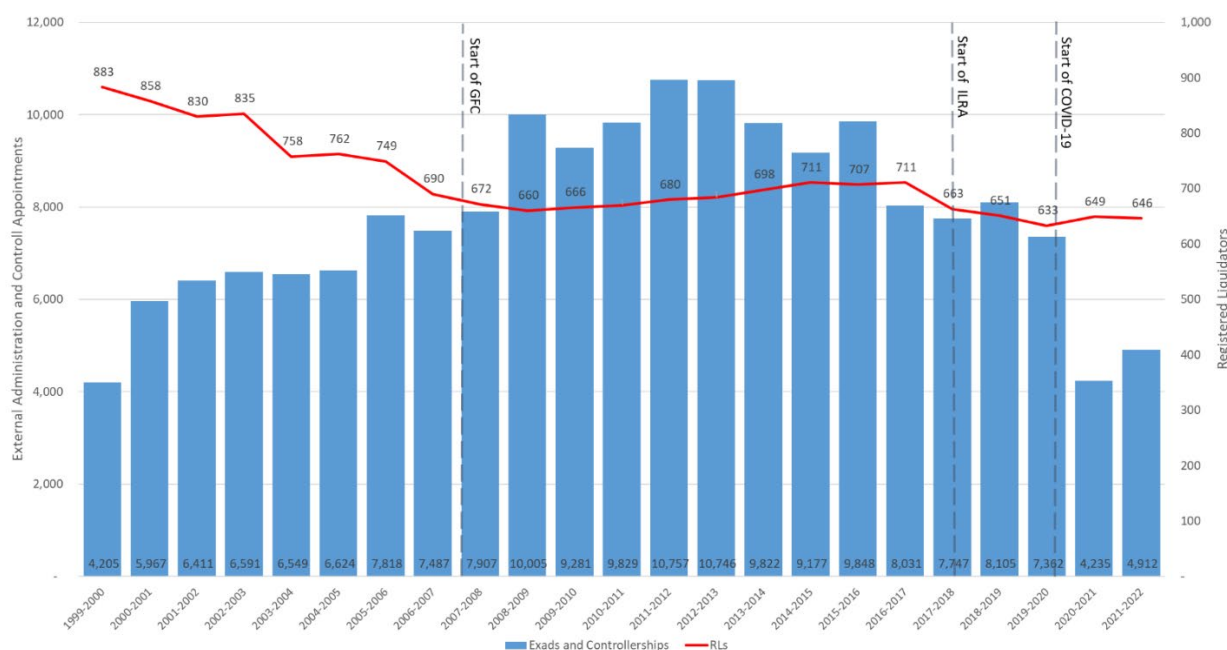
**Table 26: Change in the number of registered liquidators, by reporting periods**

Financial year ended	Jun-17	Jun-18	Jun-19	Jun-20	Jun-21	Jun-22	Sep-22 (YTD)
Registered at start of period	707	711	663	651	633	649	646
Registered during period	41	7	12	17	31	21	8
Cancelled during period	(37)	(55)	(24)	(35)	(15)	(24)	(3)
Registered at end of period	711	663	651	633	649	646	651
Less: Suspended registration at end of period	(1)	(1)	(4)	(4)	(6)	(10)	(9)
Less: Condition placed on registration precluding taking new appointments at end of period	(5)	(10)	(5)	(5)	(2)	(3)	(3)
Registered and able to take appointments at end of period	705	652	642	624	641	633	639

Source: Series 4 statistics and ASIC analysis.

- 279 Figure 4 shows the number of registered liquidators and the number of companies entering external administration or controller appointment for the first time (ASIC Series 1 published insolvency statistics data) from March 2009 to September 2022.
- 280 Figure 4 highlights the decline in external administration and controller appointments during the COVID pandemic. It also shows the increase in the number of registered liquidators in late 2016 and early 2017 in the lead up to the commencement of the 2017 insolvency law reforms and, in particular, the new committee registration process. The figure also highlights the decline in the number of registered liquidators during the 2017 to 2020 financial years.

**Figure 4: Number of Companies entering into External Administration and Controllership and number of Registered Liquidators, by financial year**



Source: ASIC statistics series 1, series 4 and ASIC analysis.

### Number of Registered Liquidator Applications

281 Table 27 further highlights the number of applications for being a registered liquidator that are received, relative to the number that are registered.

**Table 27: Number of applications for registration as a liquidator, by financial year and outcome**

	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Applications</b>					
Applications received	16	12	23	39	31
Add: Applications carried over from prior year	2	1	1	3	5
Less: applications carried forward to next year	(1)	(1)	(3)	(5)	(11)
Committees convened	17	12	21	37	25
<b>Registration Committees</b>					



	2017-18	2018-19	2019-20	2020-21	2021-22
Committees convened	17	12	21	37	25
Add: decisions pending from prior year	0	2	2	6	2
Less: decisions pending	(2)	(2)	(6)	(2)	(1)
Committee decisions	15	12	17	41	26
<b>Outcomes</b>					
Applications declined by committee	5	2	2	9	7
Applications approved by committee	10	10	15	32	19
Total	15	12	17	41	26

Source: ASIC records.

Note 1: Data in Table 27 may vary from what was published in ASIC's Annual Reports due the timing of recording of outcomes from registration committees convened in prior financial years.

Note 2: Table 27 does not include 3 applications withdrawn prior to the convening of a committee.

## Appendix 3: Registered liquidator remuneration overview

- 282 Table 4 in the Submission set out a summary analysis of remuneration determined/fixed by creditors, committee or court compared to remuneration paid as disclosed in the Remuneration Table of Forms 5603 lodged from 1 September 2017 to 30 September 2022.
- 283 The following tables provide a more comprehensive analysis of the data.

**Table 28: Remuneration determined/fixed by creditors, committee or court (\$'000) by appointment type as disclosed in forms 5603 lodged in the period 1 September 2017 to 30 September 2022**

Appointment type	Remuneration Type (\$'000)															Total
	Administrator	Controller	Deed Administrator	Simplified liquidation	Court Liquidation	Creditors' Voluntary Liquidation	Members' Voluntary Liquidation	Managing Controller	Provisional Liquidator	Receiver	Receiver and Manager	Restructuring plan practitioner	Restructuring practitioner	Scheme Administrator		
Administrator	574	0	16	0	0	14	0	0	0	0	0	0	0	0	606	
Controller	0	8	0	0	0	0	0	0	0	0	0	0	0	0	8	
Deed Administrator	616	0	323	0	0	2	0	0	0	0	0	0	0	0	941	
Simplified liquidation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Court Liquidation	17	0	7	0	456	3	0	0	4	0	2	0	0	0	490	
Creditors' Voluntary Liquidation	308	0	25	0	0	1,309	5	0	0	0	2	0	0	0	1,648	
Members' Voluntary Liquidation	0	0	0	0	0	0	55	0	0	0	0	0	0	0	55	
Managing Controller	0	1	0	0	0	0	0	2	0	0	0	0	0	0	2	
Provisional Liquidator	0	0	0	0	0	0	0	0	4	0	0	0	0	0	4	
Receiver	0	0	0	0	0	0	0	0	0	8	2	0	0	0	10	
Receiver and Manager	0	0	0	0	0	0	0	0	0	1	315	0	0	0	317	
Restructuring plan practitioner	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	
Restructuring practitioner	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	
Scheme Administrator	0	0	0	0	0	0	0	48	0	0	0	0	0	9	57	

Remuneration Type (\$'000)	
Appointment type	
	Administrator
	Controller
	Deed Administrator
	Simplified liquidation
	Court Liquidation
	Creditors' Voluntary Liquidation
	Members' Voluntary Liquidation
	Managing Controller
	Provisional Liquidator
	Receiver
	Receiver and Manager
	Restructuring plan practitioner
	Restructuring practitioner
	Scheme Administrator
	Total
Total	1,516 9 371 0 457 1,328 60 50 9 9 321 0 2 9 4,142

Source: Forms 5603 lodged with ASIC for the period 1 September 2017 to 30 September 2022.

Note: Rounding of remuneration paid to nearest \$ Million may mean data in table does not equal the total displayed.

**Table 29: Remuneration paid (\$'000) by appointment type as disclosed in forms 5603 lodged in the period 1 September 2017 to 30 September 2022**

Appointment type	Remuneration Type (\$'000)														
	Administrator	Controller	Deed Administrator	Simplified liquidation	Court Liquidation	Creditors' Voluntary Liquidation	Members' Voluntary Liquidation	Managing Controller	Provisional Liquidator	Receiver	Receiver and Manager	Restructuring plan practitioner	Restructuring practitioner	Scheme Administrator	Total
Administrator	140	0	0	0	0	0	0	0	0	0	0	0	0	0	140
Controller	0	24	0	0	0	0	0	0	0	0	0	0	0	0	24
Deed Administrator	352	0	270	0	0	1	0	0	0	0	0	0	0	0	623
Simplified liquidation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Court Liquidation	13	0	7	0	381	2	0	0	3	0	2	0	0	0	407
Creditors' Voluntary Liquidation	238	0	14	0	0	1,093	4	0	0	0	1	0	0	0	1,350
Members' Voluntary Liquidation	0	0	0	0	0	0	58	0	0	0	0	0	0	0	58
Managing Controller	0	1	0	0	0	0	0	4	0	0	0	0	0	0	5
Provisional Liquidator	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Receiver	0	0	0	0	0	0	0	0	0	9	2	0	0	0	12
Receiver and Manager	0	0	0	0	0	0	0	0	0	2	561	0	0	0	563
Restructuring plan practitioner	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Restructuring practitioner	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Scheme Administrator	0	0	0	0	0	0	0	48	0	0	0	0	0	8	57

Remuneration Type (\$'000)	
Appointment type	Administrator Controller Deed Administrator Simplified liquidation Court Liquidation Creditors' Voluntary Liquidation Members' Voluntary Liquidation Managing Controller Provisional Liquidator Receiver Receiver and Manager Restructuring plan practitioner Restructuring practitioner Scheme Administrator Total
Total	742 25 291 0 382 1,096 62 52 4 11 567 0 1 9 3,241

Source: Forms 5603 lodged with ASIC for the period 1 September 2017 to 30 September 2022.

Note: Rounding of remuneration paid to nearest \$ Million may mean data in table does not equal the total displayed.

**Table 30: Variation between remuneration determined/fixed by creditors, committee or court and remuneration paid (\$'000) by appointment type derived forms 5603 lodged in the period 1 September 2017 to 30 September 2022**

Appointment type	Remuneration Type (\$'000)														Total
	Administrator	Controller	Deed Administrator	Simplified liquidation	Court Liquidation	Creditors' Voluntary Liquidation	Members' Voluntary Liquidation	Managing Controller	Provisional Liquidator	Receiver	Receiver and Manager	Restructuring plan practitioner	Restructuring practitioner	Scheme Administrator	
Administrator	435	0	16	0	0	14	0	0	0	0	0	0	0	0	465
Controller	0	(16)	0	0	0	0	0	0	0	0	0	0	0	0	(16)
Deed Administrator	264	0	53	0	0	1	0	0	0	0	0	0	0	0	319
Simplified liquidation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Court Liquidation	5	0	0	0	75	1	0	0	1	0	0	0	0	0	83
Creditors' Voluntary Liquidation	71	0	11	0	0	216	1	0	0	0	0	0	0	0	298
Members' Voluntary Liquidation	0	0	0	0	0	0	(3)	0	0	0	0	0	0	0	(2)
Managing Controller	0	0	0	0	0	0	0	(2)	0	0	0	0	0	0	(2)
Provisional Liquidator	0	0	0	0	0	0	0	0	4	0	0	0	0	0	4
Receiver	0	0	0	0	0	0	0	0	0	(1)	0	0	0	0	(2)
Receiver and Manager	0	0	0	0	0	0	0	0	0	0	(246)	0	0	0	(246)
Restructuring plan practitioner	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Restructuring practitioner	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Scheme Administrator	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>774</b>	<b>(16)</b>	<b>80</b>	<b>0</b>	<b>76</b>	<b>232</b>	<b>(1)</b>	<b>(2)</b>	<b>5</b>	<b>(2)</b>	<b>(246)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>901</b>

## Key terms

Term	Meaning in this document
AA Fund	Assetless Administration Fund – grant scheme administered by ASIC
AAT	Administrative Appeals Tribunal
administrator	Has the same meaning as in s9 of the Corporations Act Note: It therefore includes both deed administrators and voluntary administrators.
AFSA	Australian Financial Security Authority
ANZSIC codes	Australian and New Zealand Standard Industrial Classification codes
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Bankruptcy Act	<i>Bankruptcy Act 1966</i>
Chapter 5 (for example)	A chapter of the Corporations Act (in this example, numbered 5)
controller	Has the same meaning as in s9 of the Corporations Act Note: It therefore includes 'managing controller', 'receiver' and 'receiver and manager'.
Corporations Act	<i>Corporations Act 2001</i>
creditors	The creditors of an insolvent or failing company to which the registered liquidator is appointed as external administrator
deed administrator	A person appointed to administer a DOCA under Pt 5.3A of the Corporations Act
DOCA	Deed of company arrangement
employee	A past or present employee of the registered liquidator or their firm
external administration	Where an external administrator is appointed
external administrator	A voluntary administrator, deed administrator, provisional liquidator or liquidator of a company, a restructuring practitioner or a restructuring practitioner of a restructuring plan Note: This is a definition contained in s5-20.



Term	Meaning in this document
FEG Act	Fair Entitlements Guarantee Act 2012
firm	The partnership or other business structure (whether incorporated or unincorporated) through or by means of which an insolvency practitioner conducts or intends to conduct their work as a registered liquidator
Form 5603	Form 5603 End of Administration Return
Harmer Report	General Insolvency Inquiry [1988] ALRC 45
Initial statutory report	Report lodged by an external administrator or controller under s422(1), s438D(1) or s533(1) of the Corporations Act or under Regulation 5.05.05 of the Regulations
liquidator	A person appointed to wind up the affairs and distribute the property of an externally administered company
managing controller	Has the same meaning as in s9 of the Corporations Act
practice	The firm or other business structure (whether incorporated or unincorporated) through or by means of which a person conducts or intends to conduct their work as a registered liquidator
provisional liquidator	A person appointed by the court under s472(2) of the Corporations Act
Part 2D.6 (for example)	A part of the Corporations Act (in this example, numbered 2D.6)
Part 5.1 schemes	A scheme of arrangement entered into under Part 5.1 of the Corporations Act
receiver	A person appointed under an instrument or by the court to receive property of a company, who does not manage, and under the terms of the person's appointment does not have power to manage, affairs of the company
receiver and manager	Has the same meaning as in s9 of the Corporations Act
registered liquidator	A person registered by ASIC under s20-30
Regulation	A regulation of the <i>Corporations Regulations 2001</i>
Regulations	<i>Corporations Regulations 2001</i>
relevant professional/ industry body	<p>A body that, in relation to its members (whether generally in their capacity as members, or specifically in relation to performance of their duties as corporate insolvency practitioners):</p> <ul style="list-style-type: none"> <li>sets standards for professional competency and ethics (including independence and management of conflicts of interest); and</li> <li>monitors professional performance and exercises disciplinary functions</li> </ul>

Term	Meaning in this document
restructuring plan	A plan to restructure the debts of a small business under Ch 5.3B of the <i>Corporations Act 2001</i> .
restructuring practitioner for a company	A person (registered liquidator) appointed by a company to assist with the formulation of a restructuring plan to restructure an eligible company conducting a small business.
restructuring practitioner of a restructuring plan	A person (registered liquidator) appointed by a company to implement an approved restructuring plan to restructure an eligible company conducting a small business.
rule 20-1 (for example)	A section of the Insolvency Practice Rules (Corporations) 2016 (in this example numbered 20-1)
Rules	Insolvency Practice Rules (Corporations) 2016
s20-5 (for example)	A section of Sch 2 to the Corporations Act (in this example numbered 20-5)
Sch 2	Schedule 2 to the Corporations Act, titled Insolvency Practice Schedule (Corporations)
SGC	Superannuation Guarantee Charge
voluntary administrator	An administrator of a company but not of a DOCA