

PART 1

The first part of this report has three chapters. Chapter 2 sketches the **state of the insolvency industry** in Australia, noting the number of insolvencies over the past decade, the number of registered liquidators, the size of liquidation firms, a profile of companies in voluntary administration, a snapshot of different firms' hourly fee scales and data on the number of complaints about insolvency practitioners.

Chapter 3 provides a fairly detailed explanation of the various **terms and processes** in the operation of the insolvency industry. It covers the role of liquidators, administrators and receivers, the voluntary administration process including the first and second creditors' meetings, creditors' scheme of arrangement and the 'fit and proper' provisions of the *Corporations Act 2001*.

Chapter 4 gives a brief summary of the role of the regulator, ASIC, the disciplinary body, the Companies Auditors and Liquidators Disciplinary Board (CALDB), and the main professional body, the Insolvency Practitioners Association of Australia.

Chapter 2

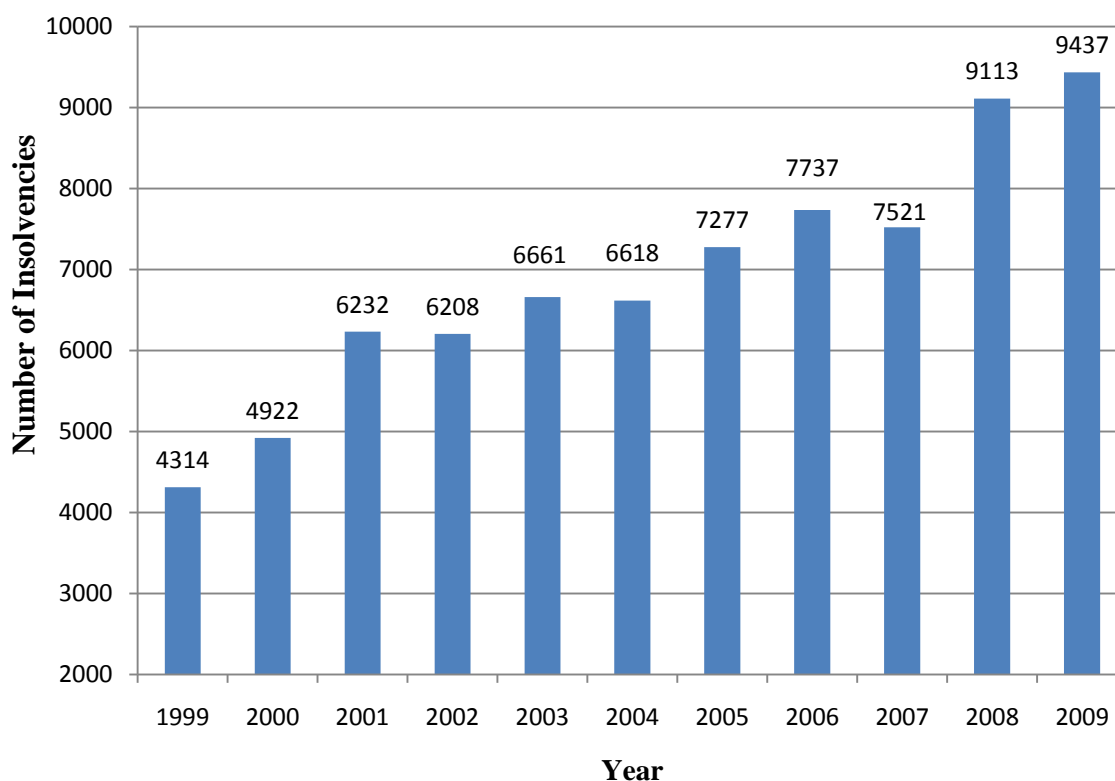
An overview of the corporate insolvency industry in Australia

2.1 This chapter presents some of the publicly available data on the insolvency industry in Australia. It comes mainly from the Australian Securities and Investments Commission's (ASIC) submission.

2.2 The data presented below is a highly truncated picture of the insolvency industry. One of the main themes of this report is the need to improve the collection and analysis of statistics on the insolvency industry. Presently, there is clearly a lack of detailed data. These issues are discussed in more detail in chapter 9.

2.3 Chart 2.1 shows that the number of insolvencies in Australia over the eleven year period more than doubled, from 4,314 in 1999 to 9,437 in 2009. The largest annual increase over the period was in 2008 when the number of insolvency increased by nearly 18 per cent on the previous year.

Chart 2.1: Number of insolvencies in Australia 1999-2009



Source: Secretariat using data from Insolvency Practitioners Association, *Submission 36*, p. 34.

2.4 The number of registered liquidators has fallen from 895 in July 2000 to 662 in March 2010. However, this decrease can partly be explained by inactive liquidators ceasing their registration. ASIC estimates that 105 liquidators fall into this category.¹ Nonetheless, the data suggest that the ratio of insolvencies to practitioners has probably increased.

Market size

2.5 ASIC noted in its submission to this inquiry that the Australian insolvency industry consists of 662 registered liquidators and 492 official liquidators.² Each year there are between 7500 and 10,000 companies entering external administration for the first time.

Industry profile

2.6 As of December 2009, there were 273 insolvency firms operating in Australia. Chart 2.2 shows a profile of these firms based on the number of registered liquidators per firm. It shows that 29 per cent of all registered liquidators work in firms with only one registered liquidator. Half of all registered liquidators work for firms with four registered liquidators or less. Roughly a quarter of all registered liquidators are employed in firms that have 20 or more registered liquidators.

2.7 The largest 13 firms have more than 10 registered liquidators. Together, these firms have 251 registered liquidators and account for 39 per cent of total current external administration appointments. These firms include KordaMentha, Hall Chadwick, McGrathNicol and Pitcher Partners.

2.8 There are 248 firms with four registered liquidators or less. They accounted for 50 per cent (331) of the registered liquidator population (see Chart 2.2). Table 2.1 shows, therefore, that half the registered practitioners work for the largest 25 firms (ie: those with more than four registered practitioners).

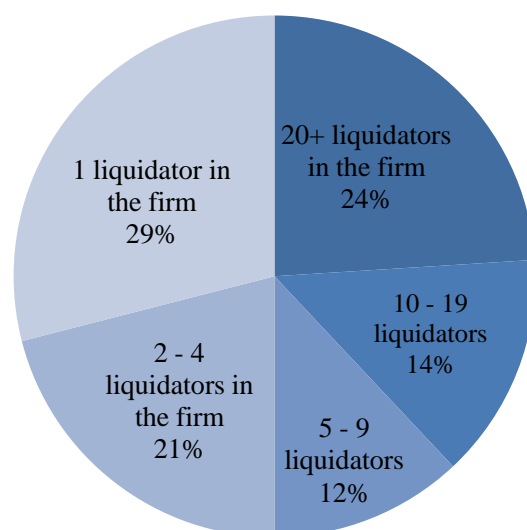
Table 2.1

Number of insolvency firms (by number of practitioners)	Number of practitioners
Largest 13 firms (more than 10 practitioners)	251 practitioners
Next largest 12 firms (between 5 and 9 practitioners)	80 practitioners
248 firms with 4 or less practitioners	331 practitioners
273 insolvency firms	662 practitioners

Source: Information gathered from paragraphs 2.5 to 2.8.

1 Correspondence, Mr Justin Owen, Manager Government Relations, ASIC, 22 July 2010.

2 ASIC, *Submission 69*, p. 101.

Chart 2.2: Number of registered liquidators by firm size (December 2009)

Source: ASIC, *Submission 69*, p. 101.

Table 2.2: Profile of companies in external administration

	2006-07	2005-06	2004-2005
Employees—Companies with less than 20 FTE employees	82%	84%	83%
Assets—Companies with assets of \$100,000 or less	87%	86%	84%
Unsecured creditors owed \$500,000 or less	82%	82%	82%
Unsecured creditors—no. of creditors less than 50	88%	87%	85%
Deficiency—EXADs with asset deficiency \$500,000 or less	76%	75%	75%
Dividends to unsecured creditors of 10 cents in the dollar or less	96%	96%	95%
Secured creditors—EXADs with no secured creditor	73%	69%	66%

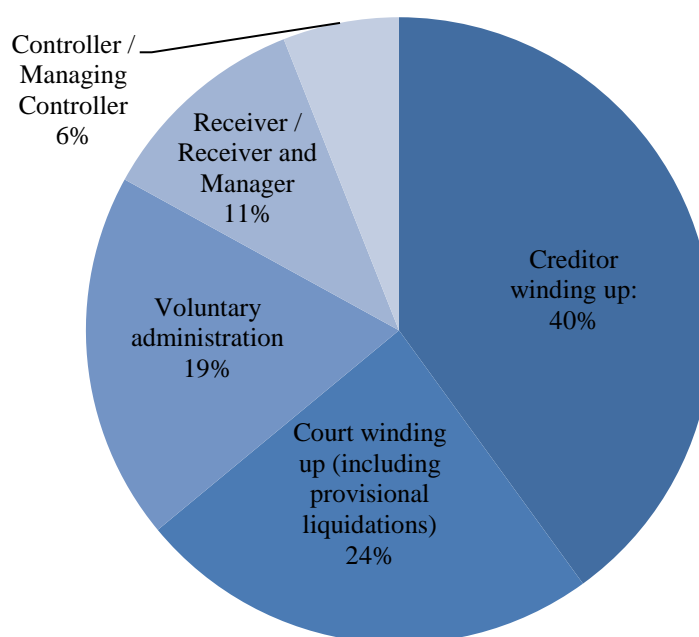
Source: ASIC, *Submission 69*, p. 103. EXADs—external administrations

2.9 Table 2.2 shows that the majority of appointments involve small to medium proprietary limited companies. In 2006–07, these companies had less than 20 employees (82 per cent), less than \$100 000 in assets (87 per cent) unsecured creditors owed \$500 000 or less (82 per cent).

2.10 A large number of external administrations have no secured creditors (73 per cent). A large percentage estimated a deficiency of up to \$500 000 and most (96 per cent) estimated returns to unsecured creditors of less than 10 cents in the dollar.³

2.11 Chart 2.3 shows the types of external administration appointments in Australia from July 2008 to June 2009. Creditor winding-up accounted for 40 per cent of all external administrator appointments. Court appointed winding-up accounted for 24 per cent of all external appointments. Voluntary administrations accounted for one-fifth of the total.

Chart 2.3: Total external administration appointments, July 2008–June 2009



Source: ASIC, *Submission 69*, p. 104.

2.12 Liquidators undertaking an external administration are remunerated from the assets of the company. Most registered liquidators will charge fees on a time charged basis using a fee scale. The scale reflects the qualifications and experience of the staff involved. Table 2.3 gives examples of different sized firms' scales within the Sydney market.

3 ASIC, *Submission 69*, p. 103.

Table 2.3: Examples of different firms' hourly fee scales

Position	Small firms	Medium sized firms	Large firms
Registered liquidator and partner	\$460	\$550	\$690
Director	—	\$440	\$550
Manager	\$340	\$385	\$435
Supervisor	\$275	\$270	\$312
Senior accountant	\$225	\$235	\$250
Accountant	\$165	\$195	\$210
Support staff	\$145	\$130	\$130

Source: ASIC, *Submission 69*, p. 104.

ASIC's activities

2.13 Table 2.4 shows the number of complaints and enquiries to ASIC on all matters and on insolvency matters specifically. It shows that complaints on insolvency related matters account for 3.6 per cent of all complaints to ASIC over the July 2006 to December 2009 period. There were, on average, 3.5 complaints against insolvency practitioners for every 100 insolvency appointments over the period.

Table 2.4: Complaints volume trend

	2006–07	2007–08	2008–09	to Dec 2009	Total/Average
Total complaints and enquiries finalised	11,455	12,514	14,543	6,650	45,162
Total insolvency appointments	11,966	12,524	15,567	7,028	47,085
Total complaints and enquiries against insolvency practitioners	406	352	633	256	1,647
Total complaints and enquiries against insolvency practitioners excluding duplicates	344	317	438	230	1,329
% insolvency practitioner complaints and enquiries of total complaints and enquiries	3.5%	2.8%	4.4%	3.8%	3.6%
% insolvency practitioner complaints and enquiries of total appointments	3.4%	2.8%	4.1%	3.6%	3.5%

Source: ASIC, *Submission 69*, p. 133.

2.14 Of particular note is the spike in the number of complaints against insolvency practitioners to ASIC from 352 in 2007–08 to 633 in 2008–09. Excluding duplicate complaints, the increase was from 317 to 438 complaints. These increases were proportionately much greater than the increase in the number of insolvency appointments between these years.

Final comment

2.15 This chapter provides a brief sketch of the insolvency industry in Australia. Above all, it illustrates the paucity of data collected on the industry.

2.16 Chapter 9 notes that ASIC has published a document titled *External administrators: Schedule B statistics 1 July 2004–30 June 2007*.⁴ Schedule B statistics are required to be lodged by a liquidator under section 533 of the *Corporations Act 2001*. ASIC's report collated Schedule B data to indicate the profile of companies in external administration, the causes of company failure and estimated dividends to unsecured creditors. However, this information is both limited and dated. Chapter 9 suggests the way in which the regulator should analyse and publish a fuller picture of the state of the insolvency industry.

4 ASIC,
[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP_132.pdf/\\$file/REP_132.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP_132.pdf/$file/REP_132.pdf)
(accessed 20 June 2010).