



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Inquiry into Corporate Insolvency in Australia
Question No.	012
Topic	Anecdotal evidence
Reference	Questions on notice via email dated 23 December 2022
Committee member	Senator Deborah O'Neill

Question

At paragraph 181 of ASIC's submission, it notes 'anecdotal evidence' of reasons for the slow uptake of the small business restructuring process.

- a. Can you talk the committee through this anecdotal evidence?
- b. Has ASIC considered which of the factors identified in this anecdotal evidence may be more impactful in terms of the uptake of SBR?
- c. Has ASIC received any evidence, anecdotal or otherwise, to explain the very small uptake of the simplified liquidation process for small business?

Answer

- a) The anecdotal evidence referred to in paragraph 181 of ASIC's submission are comments made by registered liquidators and other parties in discussions at various stakeholder engagement activities which included:
 - regional liaison meetings with registered liquidators, insolvency lawyers and other industry participants
 - liaison meetings with peak professional and industry bodies
 - participation at meetings of the Insolvency and Restructuring Committee of the Law Council of Australia
 - attendance at industry functions and conferences
 - one on one engagement with registered liquidators

Many of these engagements are confidential and ASIC does not publish notes of discussions at these meetings.

The first three comments relate to both simplified liquidation and small business restructuring processes:

- 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 the simplified liquidation process from accessing these processes
- the processes are too complex and do not provide simple, reduced cost processes

Each of the matters identified has a significant impact on the ability of a company to access either of the simplified processes and the suitability of each simplified process for specific industry sectors.

For example, ASIC publishes [Insolvency statistics - Series 3 External administrator reports](#) that disclose the estimated liabilities of companies subject to external administration or controller

appointments and for which the external administrator or controller have lodged an Initial Statutory Report (under s533(1), s422(1) or s438D(1)).

A summary of published data for the financial years 2017-18 to 2021-22 is set out in the following table:

Cumulative percentage of total liabilities per financial year

Amount	2017-18		2018-19		2019-20		2020-21		2021-22	
	% per amount band	Cumul-ative %	% per amount band	Cumul-ative %	% per amount band	Cumul-ative %	% per amount band	Cumul-ative %	% per amount band	Cumul-ative %
Less than \$1m	74.8	74.8	75.9	75.9	72.2	72.2	67.7	67.7	68.9	68.9
\$1m to \$5m	17.9	92.7	18.9	94.8	20.2	92.4	22.3	90.0	20.8	89.7
\$5m to \$10m	2.5	95.2	2.5	97.3	3.1	95.5	3.5	93.5	4.6	94.3
Over \$10m	4.8	100.0	2.7	100.0	4.5	100.0	6.5	100.0	5.7	100.0
Totals	100.0		100.0		100.0		100.0			

Source: ASIC Insolvency Statistics Series 3.1 - by region and industry

Further consideration of which companies the small business reforms were intended to apply to, and the outcomes the simplified processes seek to achieve, is warranted as part of a review of these measures.

- b) In addition to the three factors above, anecdotal evidence for SBRP is that:
- Appointment of a restructuring practitioner may void a company's insurance and registered liquidator insurances will not respond as the registered liquidator is not in control of the company
 - Some state-based licences to operate may be at risk immediately on appointment of a restructuring practitioner rendering the company unable to continue.

Further information regarding the SBRP can be found in [REP 756 Review of small business restructuring process](#).

- c) Refer to the response to question a) above.

ASIC notes that it is the liquidator of the company (and not the company directors) that decides whether to take steps to adopt the simplified liquidation process if they consider the eligibility criteria are met.