

# Fair Entitlements Guarantee Recovery Program

This fact sheet provides information for insolvency practitioners about the Fair Entitlements Guarantee (FEG) Recovery Program, which aims to improve the recovery of employment entitlements advanced under FEG.

## FEG Recovery Program

FEG provides financial assistance for unpaid employment entitlements to eligible employees who lose their job through insolvency of their employer. Once entitlements are paid under FEG, the Commonwealth stands in the shoes of the employee as a subrogated creditor and is entitled to claim in the liquidation as a priority creditor under the *Corporations Act 2001* (Cth).

Payments under FEG, and its predecessor the General Employee Entitlements and Redundancy Scheme (GEERS), have been increasing since their inception. Average annual costs under the FEG scheme has more than tripled from \$70.7 million in the four year period between 1 July 2005 and 30 June 2009, to \$235.3 million in the four year period between 1 July 2014 and 30 June 2018. The FEG Recovery Program is administered by the Attorney-General's Department (the department) with the purpose of funding actions that will recover amounts advanced under FEG. In the years 2015–18, the FEG Recovery Program has recovered \$83.3 million of FEG advances.

The FEG Recovery Program has three key areas: Litigation Funding, Active Creditor and Policy, Law and Industry Reform.

## Litigation Funding

In the Litigation Funding area, funding is available to liquidators to enable recovery efforts, including legal proceedings, which the liquidators would not otherwise have the financial resources to pursue.

Liquidators of insolvent entities where employment entitlements have been paid under FEG can apply for funding assistance where:

- they are aware of claims that might be brought against any person or persons
- those claims have reasonable prospects of success or further investigations are required to determine the prospects of success
- if successfully prosecuted, those claims will result in the company recovering property that will improve the return for employment entitlements advanced under FEG.

Actions the department may fund include:

- investigations, such as public examinations, independent solvency reports and legal advice on prospects
- voidable transaction claims, such as unfair preferences and uncommercial transactions
- insolvent trading claims
- transactions entered into with the intention to avoid employment entitlements
- claims against receivers and secured creditors for failure to pay employment entitlements.

## Considerations

When determining whether to provide funding, the department will have regard to:

- the merits, prospects of success and risks of the proposed action
- the complexity of the proposed action and its likely duration
- the total costs that are likely to be incurred, compared to the admitted value of the department's proof of debt
- the availability of favourable evidence
- whether the proposed defendant or defendants have sufficient assets to satisfy a judgment debt
- any other relevant matter.

If the application is accepted, the liquidator will be required to enter into a funding agreement with the department. The funding agreement will govern what the department will pay for and how monies recovered are to be applied. The department will not be liable to pay any amounts until the funding agreement has been executed.

## How to apply

Applications for funding assistance may be made by completing an 'Application Form for Funding Assistance' and providing all supporting documentation via the [FEG IP Portal](https://extranet.employment.gov.au/FEGIPONLINE) (extranet.employment.gov.au/FEGIPONLINE).

If you would like to discuss a potential funding opportunity before submitting a formal application, please contact the department.

## Active Creditor

Through its Active Creditor area, the FEG Recovery Program enables the department to be an informed and engaged creditor. Its activities aim to increase returns to the Commonwealth by positively influencing outcomes in liquidations. It also seeks to prevent or minimise FEG claims being made via early intervention and active monitoring of insolvencies. Examples of some of its activities are:

- attending and voting at creditors' meetings
- sitting on Committees of Inspection
- regularly engaging with insolvency practitioners on issues of law that concern the recovery of FEG advances, including appearing before the Court if the insolvency practitioner has sought directions from a Court to assist the Court in resolving the legal issues and giving directions to the insolvency practitioner.

## Want more information?

Enquiries relating to the FEG Recovery Program can be made by:

- calling the FEG Recovery Hotline on: (02) 6121 5444 (Mon - Fri, 9 am - 5 pm (AEST/ADST))
- for Litigation Funding, sending an email to: [FEGRecoveryapplications@jobs.gov.au](mailto:FEGRecoveryapplications@jobs.gov.au)
- for Active Creditor, sending an email to: [CreditorReportsInbox@jobs.gov.au](mailto:CreditorReportsInbox@jobs.gov.au)

If you speak a language other than English, you can call the Translating and Interpreting Service (TIS) on 13 14 50 for free help anytime. If you speak an Indigenous language, you may call the Aboriginal Interpreter Service on 1800 334 944.

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