



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 and outstanding superannuation entitlements.

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*.

The FEG Recovery Program is administered by the Department of Employment and Workplace Relations (the department) with the purpose of funding actions that will recover amounts advanced under FEG. As of 1 July 2024, the FEG Recovery Program is being recalibrated to also actively pursue unpaid superannuation guarantee charge (SGC) amounts owed by employers who have entered liquidation or bankruptcy where certain criteria are met (including where a FEG advance had been made to former employees).

The FEG scheme does not cover unpaid superannuation guarantee amounts. Compliance and enforcement of employer superannuation obligations remain the responsibility of the Australian Taxation Office.

The FEG Recovery Program's key areas are FEG Recovery Funding and FEG Active Creditor.

FEG Recovery Funding

In the FEG Recovery Funding area, funding is available to liquidators to enable recovery efforts, including legal proceedings, which the liquidators do 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:

- claims could be brought against third parties to recover value for creditors
- the claims have reasonable prospects of success or further investigations are required to determine the prospects of success
- if successful, the claims will result in a better return of advances made under FEG or unpaid superannuation guarantee charge payable to the ATO for the benefit of the Commonwealth and employees.

Claims 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 and the outstanding superannuation guarantee charge
- 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 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.

How to apply

Apply for FEG Recovery Funding by completing an [application form for funding assistance](#) together with a [budget estimate tool](#) and emailing it to FEGRecoveryapplications@dewr.gov.au.

FEG Active Creditor

Through the FEG Active Creditor area of the FEG Recovery Program, the department is an informed and engaged creditor. The FEG Active Creditor area aims to increase returns to the Commonwealth, for amounts advanced under FEG or owing under the superannuation guarantee charge, by positively influencing outcomes in liquidations. It also seeks to prevent or minimise unnecessary FEG claims being made via early intervention and active monitoring of insolvencies. Examples of activities include:

- attending and voting at creditors' meetings
- participating in Committees of Inspection
- enquiring about dividends
- 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.

Want more information?

Enquiries relating to the FEG Recovery Program can be made by sending an email to FEGRecoveryapplications@dewr.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.

The information contained in this fact sheet is not legal advice. Where necessary, you should seek your own independent legal advice relevant to your particular circumstances. The Commonwealth does not make any representation or warranty about the accuracy, reliability, currency or completeness of the information contained in this fact sheet and is not liable for any loss resulting from any action taken or reliance made by you on the information contained in this fact sheet