



# FAIR ENTITLEMENTS GUARANTEE (FEG) RECOVERY PROGRAM - FUNDING APPLICATION

The purpose of this application form is to assist the Department of Employment and Workplace Relations in making funding decisions under the FEG Recovery Program.

## Important

- The Commonwealth will rely on the information provided in this application in deciding whether to fund the proposed recovery action.
- Before submitting the application, please consider the *Key Terms of the Funding Agreement Fact Sheet*, and the FEG Recovery Fact Sheet, both of which can be found at [www.dewr.gov.au/fair-entitlements-guarantee/recovery-program](http://www.dewr.gov.au/fair-entitlements-guarantee/recovery-program)
- Importantly, please note the costs of preparing this application will not form part of any future funding agreement that the Commonwealth may enter into with the Insolvency Practitioner ("IP").
- Any legal advice, or confidential or sensitive information you disclose to the Commonwealth as part of this application is provided on the basis the common interest privilege, legal professional privilege and confidentiality is preserved.

## 1. Matters of interest for the Fair Entitlements Guarantee Recovery Program

1.1. Are any of the following matters present? Please indicate all that are present.

| Matters of Interest  | Yes/No          |
|--|-----------------|
| Commercial return for the Commonwealth*  | Choose an item. |
| Suspected phoenix activity, transfer of business and/or assets to defeat creditors | Choose an item. |
| Dishonesty or unconscionable conduct   | Choose an item. |
| Other matters of public interest (please specify below):                           |                 |
|  |                 |

*\*Guidance note: To determine if there is a commercial return for the Commonwealth, consideration should be given to the likely return and the total costs that are likely to be incurred in connection with the proposed action. These considerations should be compared to the admitted value of the Commonwealth's claim as creditor.*

1.2. Are there any confidentiality concerns?

|                                    |                 |
|------------------------------------|-----------------|
| Confidential discussions required? | Choose an item. |
| Confidentiality deed required?     | Choose an item. |

## 2. Contact Details

| Insolvency Practitioner's details |  |
|-----------------------------------|--|
| Name(s)                           |  |
| Firm name                         |  |
| Postal address                    |  |
| Email address                     |  |
| Contact number                    |  |
| Date of appointment               |  |
| Appointment Type                  |  |
| Relation back day                 |  |

| Lead contact details |  |
|----------------------|--|
| Name(s)              |  |
| Postal address       |  |
| Email address        |  |
| Contact number       |  |

| Solicitors engaged (if any) |  |
|-----------------------------|--|
| Name(s)                     |  |
| Firm                        |  |
| Postal address              |  |
| Email address               |  |
| Contact number              |  |

## 3. Company background and appointment details

| General Information                                 |                 |        |  |
|---|-----------------|--------|--|
| Company name  |                 | A.C.N. |  |
| Group name if any                                   |                 |        |  |
| Director(s)   |                 |        |  |
| Number of employees                                 |                 |        |  |
| Cause of failure                                    |                 |        |  |
| Industry and general operations                     |                 |        |  |
| Has the IP lodged a supplementary s533 ASIC report? | Choose an item. |        |  |

Guidance note: If applicable, please replicate the above table for each company subject to this application.

3.1. Please provide the dates of all relevant appointments below:

| Appointment type | Firm | Appointee | Start date | End date |
|------------------|------|-----------|------------|----------|
|                  |      |           |            |          |
|                  |      |           |            |          |
|                  |      |           |            |          |

*Guidance note: If applicable, please replicate the above table for each company subject to this application.*

3.2. Which of the following liabilities remain outstanding?

| Creditor   | Estimated outstanding (\$) | Proof of debt lodged? | Admitted?       |
|--|----------------------------|-----------------------|-----------------|
| AIIPAAP (all present and after-acquired property – no exceptions) creditors (please include the name of each secured party and the amount outstanding) |                            | [date]/No             | Choose an item. |
| Petitioning creditor cost  |                            |                       | Choose an item. |
| ATO SGC (please breakdown priority SGC and ordinary unsecured SGC)   |                            | [date]/No             | Choose an item. |
| FEG employee entitlements paid   |                            | [date]/No             | Choose an item. |
| Other employee wages entitlements (unpaid wages, underpaid wages & commission) not advanced by FEG   |                            |                       |                 |
| Other employee leave entitlements (annual leave, leave loading & long service leave) not advanced by FEG   |                            |                       |                 |
| Other employee pay in lieu of notice & redundancy not advanced by FEG  |                            |                       |                 |
| Unsecured creditors  |                            |                       |                 |
| Other (please specify)   |                            | [date]/No             | Choose an item. |
| <b>Total</b>   |                            |                       |                 |

*Guidance note: If applicable, please complete a separate table for each company in the corporate group.*

3.3. Please provide details of all company cash positions as at the date of this application, net of any paid IP/legal remuneration and disbursements.

| Company | Cash Position (\$) |
|---------|--------------------|
|         |                    |
|         |                    |

*Guidance note: Does this amount reconcile to the net cash position outlined in the attached receipts and payments? This would include IP bank accounts, term deposits and cash held in hand. Please complete a separate row for each company in the corporate group.*

#### 4. Costs of Liquidation to date

- 4.1. What expenses have been incurred to preserve, realise or get in assets for the liquidation per section 556(1)(a) of the *Corporations Act 2001* (Cth) ("the Act")?

| Type  | Amount inc. GST (\$) |
|---|----------------------|
| Expenses paid as at date of application                       |                      |
| Expenses incurred, but unpaid at the date of this application |                      |
| <b>Total</b>  |                      |

Briefly describe the nature of these expenses (consider agent, valuer, legal fees etc):

- 4.2. What other expenses have been incurred in the liquidation per section 556(1)(dd) of the Act?

| Type  | Amount inc. GST (\$) |
|---|----------------------|
| Other expenses paid at the date of this application   |                      |
| Other expenses unpaid at the date of this application |                      |
| <b>Total</b>  |                      |

Briefly describe the nature of these expenses (administration disbursements, printing, external room hire etc):

4.4. What deferred expenses have been incurred in the liquidation per section 556(1)(de) of the Act?

| Type  | Amount inc. GST (\$) |
|---|----------------------|
| IP's deferred expenses paid at the date of this application                     |                      |
| IP's deferred expenses unpaid, but approved at the date of this application     |                      |
| IP's deferred expenses unapproved, but incurred at the date of this application |                      |
| <b>Total</b>  |                      |

4.5. Any other costs unpaid by the IP or relating to another appointment not captured by the above questions?

| Type          | Amount inc. GST (\$) |
|---------------|----------------------|
| (Description) |                      |
| (Description) |                      |
| <b>Total</b>  |                      |

Briefly describe the nature of these expenses:

\_\_\_\_\_

*Guidance note: Any other costs or unpaid costs would include the costs relating to a voluntary administration period preceding the liquidation.*

## 5. Future Costs of Liquidation (Unfunded)

5.1. What further steps will the IP take to finalise the winding up of the Company? Please provide your best estimate for the future remuneration and expenses likely to be incurred to complete this work?

*Guidance note: Please note that this question relates to remuneration and expenses relating to the finalisation of the liquidation. When formulating your estimate please exclude any remuneration or expenses that relate to investigations, litigation, and any other activities that you will be seeking funding for as part of this application.*

| Unfunded - IP Deferred Expenses (i.e. remuneration)                | Amount inc. GST (\$) |
|--|----------------------|
| <i>e.g. Debtor recovery</i>  |                      |
| <i>e.g. ATO unfair preference claim</i>                            |                      |
| <i>e.g. Administration and statutory requirements</i>              |                      |
| <i>e.g. Declare / Pay final dividend</i>                           |                      |
| <b>Total</b>   |                      |
| Unfunded – Recovery and Realisation Expenses                       | Amount inc. GST (\$) |
| <i>e.g. Legal fees associated with Debtor Recovery</i>             |                      |
| <i>e.g. Legal fees associated with ATO unfair preference claim</i> |                      |
| <b>Total</b>   |                      |
| Unfunded – Other Expenses  | Amount inc. GST (\$) |
| <i>e.g. Storage Costs</i>  |                      |
|  |                      |
| <b>Total</b>   |                      |

## 6. Funding Request

6.1. As part of this application, it will be necessary for you to estimate all potential funding that may be required. To assist you in calculating your estimate please complete the Budget Tool Excel workbook and provide a summary of the estimate in the table below. Guidance on completing the Budget Tool is detailed below.

|   | Current Estimate (initial stage funding) (including GST) |        |          | Future Estimate (subsequent funding) (including GST) |
|---|--|--------|----------|--|
| Stages  | Necessary  | Likely | Possible | Estimate   |
| <i>e.g. Stage 1: Investigations / Public Examinations / Legal Prospects Advice</i>  |  |        |          |  |
| <i>e.g. Stage 2: Commence Litigation / Informal Settlement / Complete Mediation</i> |  |        |          |  |
| <i>e.g. Stage 3: Continue Litigation / Complete Trial</i>                           |  |        |          |  |
| <b>Total</b>  |  |        |          |  |

6.2. Guidance for Budget Tool preparation:

### General

The Budget Tool assists the FEG Recovery Program better understand the nature of the funding being sought. If a recovery effort has already been commenced by the IP, please only provide estimates for future work. Generally, funding will not be provided for work completed by the IP or their legal team prior to entering into a funding agreement.

### Staged Funding

Generally, funding under the FEG Recovery Program should be sought in the following three stages:

- *Stage 1 – investigations, public examinations and advice*
- *Stage 2 – commence proceedings through to mediation*
- *Stage 3 – mediation through to trial*

The IP is not restricted from seeking a tranche of funding for specific tasks within the above stages.

The IP can put forward a revised funding estimate for the next stage of work when the previous stage is nearing completion.

The Commonwealth expects that the IP and their legal team will work within confines of the approved budget for each stage of agreed work. Funding cannot be guaranteed for overruns on an approved budget. It is therefore important that the estimates provided are carefully considered.

### Initial Funding Request – Necessary, Likely, Possible Costs

The IP must determine whether the costs for each task and activity are ‘Necessary’, ‘Likely’ or ‘Possible’.

**Necessary costs** relate to the tasks and activities that must occur to complete the proposed tranche or stage of funded work.

**Likely costs** relate to any task or activity that is reasonably likely to occur in completing the proposed tranche or stage of funded work but may not arise. Likely costs may include:

- bringing or responding to foreseeable interlocutory applications;
- reviewing excessive documents received in response to orders for production; or
- trial being listed for a longer time than originally estimated.

**Possible costs** relate to tasks that are not unlikely to arise in completing the proposed tranche or stage of work, however, are sufficiently remote that the IP does not seek funding for them at this time.

### Future Funding – Estimates

The Budget Tool requires you to provide estimates for tranches or stages of work for which you are not currently seeking funding. In this regard, the nature of the tasks, activities and associated costs may be difficult to accurately estimate. We do not require future estimates to be broken down by ‘necessary’, ‘likely’ and ‘possible’ at this stage. These tasks should be marked as **General Estimate (Future Funding)**.

### Spreadsheet functionality

Complete tabs 1 - 4 of the Budget Tool setting out the Liquidator, Legal, Counsel and Other Costs for the stage of funding sought and estimated future costs, as follows:

1. **Column B** - Identify the relevant items of work for each stage of funding. A task list located in the ‘Activity List’ tab has been provided to assist. If necessary, provide any additional detail about the task by right clicking on the cell and adding a comment to the task.  
**Column C** – Use the above explanation to determine whether the activity is ‘necessary’, ‘likely’, ‘possible’ or ‘general estimate (future funding)’ and select the relevant category from the drop-down box which is located at the right-hand side of the cell.
2. Complete the hourly rate for each staff member who will be working on the file at row 18 and estimated time spent on each task.

The data included in tabs 1-4 will automatically populate the budget for each activity and in the Funding Summary tab. Once all tabs have been completed, copy the data from the Funding Summary tab into the table at section 6.1. of this funding application.

## 7. Estimated Timing

7.1. What is the expected timeline for all necessary and likely work for Stage 1 of the funding proposal?

| Task                              | Description  | Timeframe (weeks/months) |
|-----------------------------------|--|--------------------------|
| <i>For example: Prepare Scope</i> | <i>Collate information, complete brief and obtain legal advice</i> | <i>3 weeks</i>           |
|                                   |  |                          |
|                                   |  |                          |
|                                   |  |                          |
|                                   |  |                          |

## 8. Funding for public examinations or investigations

*Guidance note: If the application only seeks funding for litigation, please leave this section blank.*

8.1. If you are seeking funding for public examinations or other investigations, please outline the known facts, and the circumstances or conduct that merit further investigation. Please indicate the steps the IP has taken to investigate that conduct and gather evidence to date. Please outline the next steps the IP proposes to take to complete investigations and gather evidence.



## 9. Funding for litigation

- 9.1. Please outline the legal basis for each proposed cause of action and a brief summary of the impugned conduct, including what steps the IP has taken to investigate and pursue that conduct to date (for example, issue of letters of demand, public examinations).

|  |
|--|
|  |
|--|

- 9.2. Have you obtained legal advice in relation to each cause of action:

| Cause of action legal advice | Legal practitioner | Date of advice |
|------------------------------|--------------------|----------------|
|                              |                    |                |
|                              |                    |                |

- 9.3. Please set out the expiry date of the limitation period in respect of each proposed cause of action:

| Cause of action | Date of expiry of limitation period |
|-----------------|-------------------------------------|
|                 |                                     |
|                 |                                     |

- 9.4. Please estimate expected recoveries from each proposed cause of action in the following table:

| Cause of action | Proposed defendant | Recovery estimate (\$) |     |
|-----------------|--------------------|------------------------|-----|
|                 |                    | High                   | Low |
|                 |                    |                        |     |
|                 |                    |                        |     |
|                 |                    |                        |     |
|                 |                    |                        |     |
|                 |                    |                        |     |
| Total           |                    | \$0                    | \$0 |

- 9.5. Do you seek an indemnity in relation to the proposed recovery effort?

| Indemnity required | Choose an item. | Type of indemnity | Choose an item. |
|--------------------|-----------------|-------------------|-----------------|
|--------------------|-----------------|-------------------|-----------------|

9.6. Please detail the asset position of the defendants in respect of the proposed recovery effort in the following table:

| Proposed defendant | Bankruptcy search attached? | Known asset position |
|--------------------|-----------------------------|----------------------|
|                    | Choose an item.             |                      |
|                    | Choose an item.             |                      |
|                    | Choose an item.             |                      |

*Guidance note: please attach all asset search results such as property title searches, statutory declaration of defendant's statement of financial position (if obtained), valuation reports, or internal file note of asset searches/investigations.*

9.7. If there is an applicable insurance policy in respect of the proposed recovery effort, please complete the following table:

| Insurance Provider | Type of policy | Insured parties | Limits of coverage (\$) | Claim notified to insurer? |
|--------------------|----------------|-----------------|-------------------------|----------------------------|
|                    |                |                 |                         | Choose an item.            |
|                    |                |                 |                         | Choose an item.            |

*Guidance note: please provide a copy of the insurance policy, if available.*

9.8. Please provide any other relevant details that may assist in consideration of the proposed recovery effort (including for example relevant liability guarantors and other indemnity arrangements)?

## 10. Other potential proceedings and funding outside this funding application

10.1. Other than the recovery effort that is outlined in this proposal, is the IP of the Company engaged in any other proceedings, and / or likely to commence any other proceedings? If so, please provide details.

*Guidance note: This includes any proceedings considered at section 4.1 as part of your future estimate for remuneration and costs to finalisation that falls outside the funding requested in this application.*

10.2. Does the IP have any other source of funding available for the proposed recovery effort (e.g. asset realisations, private litigation funding, indemnities)?

10.3. Does the IP intend to seek any alternative funding in respect of the proposed investigations or recovery effort? If so, please provide details. (e.g. ASIC, ATO or private funding)

10.4. What is the likely dividend regarding FEG?

| Item  | Estimate (cents in the dollar) |
|---|--------------------------------|
| If the proposed recovery effort is funded by the Commonwealth and successfully litigated to conclusion        |                                |
| If not funded by the Commonwealth and yet is successfully litigated to conclusion using available cash        |                                |
| If not funded by the Commonwealth and is successfully litigated to conclusion using another litigation funder |                                |
| If not funded and litigation does not proceed   |                                |

10.5. Please provide all relevant supporting documentation including, for example:

| Item   | Included?                |
|--|--------------------------|
| <ul style="list-style-type: none"> <li>Any legal advice on prospects that you have obtained in respect of the proposal or in relation to the recovery of assets in the winding up of the Company generally.</li> </ul>   | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>The facts and circumstances giving rise to the claim(s)                             <ul style="list-style-type: none"> <li>An evaluation of the merits of the claim(s)</li> <li>An evaluation of the quality and quantity of favourable evidence that is (presently) available to the IP;</li> <li>An evaluation of the prospects of success; and</li> <li>Any peculiarity or complexities associated with the claim(s).</li> </ul> </li> </ul> | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>Any relevant legal documents, including court orders, statements of claim and transcripts of public examinations.</li> </ul>  | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>If the defendant(s) are individuals, the results of any bankruptcy searches (for example, NPII Search, Real Property Search, Directorship search, PPSR search).</li> </ul>  | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>Copies of the terms of any insurance policy relating to the Company, its director(s) or proposed defendant(s).</li> </ul>   | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>A copy of the receipts and payments reconciliation as at the date of the application indicating the net cash position held in the appointment.</li> </ul>   | <input type="checkbox"/> |
| <ul style="list-style-type: none"> <li>A copy of the Budget Tool completed in accordance with section 5 of the funding application</li> </ul>  | <input type="checkbox"/> |

## 11. Declarations, warranties and acknowledgments

I declare that:

- I have read and understood the Key Terms of the Funding Agreement Fact Sheet of the FEG Recovery Program (available [www.dewr.gov.au/fair-entitlements-guarantee/recovery-program](http://www.dewr.gov.au/fair-entitlements-guarantee/recovery-program)); and
- The information provided in this application is true and correct to the best of my knowledge and belief.

I warrant that I:

- Have not been convicted, in the 10 years prior to making this application, of an offence involving fraud or dishonesty; and
- Am not now, nor have I been in the 10 years prior to making this application, an insolvent under administration; and
- Am not disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001, or under a law of an external Territory or a law of a foreign country; and
- Have never been refused membership of a relevant professional body; and
- Have never been subject to any legal or disciplinary action from a relevant professional body; and
- Have not withheld any information that would be considered material to the Commonwealth's decision to fund the proposal.

I acknowledge that:

- The Commonwealth will rely on the information provided in this application in deciding whether to enter into any funding agreement with the IP in respect of the proposal; and
- If, at any time prior to entering into a funding agreement with the Commonwealth, I become aware of information that would reasonably be considered material to the Commonwealth's decision to enter into any funding agreement, I will disclose that information to the Commonwealth by re-submitting an updated application.

Signed:

Full name:

Position:

Dated:

Once completed and signed, please submit this Funding Application Form (together with all supporting documents) to the Department of Employment and Workplace Relations by email to [FEGRecoveryapplications@dewr.gov.au](mailto:FEGRecoveryapplications@dewr.gov.au).

Once submitted, the department will review the application and be in touch to discuss the funding request.