



# Fair Entitlements Guarantee Recovery Funding Program - Funding Agreement

This fact sheet provides information for insolvency practitioners about the Fair Entitlements Guarantee (FEG) Recovery Funding Program – Funding Agreement.

## Background

FEG advances funds to eligible employees who lose their job through insolvency of their employer on account of the employees' unpaid employment entitlements. 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 over other unsecured creditors under the *Corporations Act 2001* (Cth).

Under the FEG Recovery Program, funding is available to liquidators to enable recovery efforts, including legal proceedings, which the liquidators would not otherwise have the financial resources to pursue. The purpose of the funding is to recover FEG advances and outstanding superannuation entitlements.

## Key Terms

After receiving a funding application, the Department of Employment and Workplace Relations (**the department**) may enter into a funding agreement (Funding Agreement) with you. The key terms will generally be as follows:

1. **Agreement to fund:** the department will agree to provide funding to you, on the terms and conditions set out in the Funding Agreement, for the purposes of enabling you to conduct specific agreed work, such as investigations and any subsequent litigation (**Agreed Work**).
2. **Claims for payment:** on a regular basis you will submit to the department claims for payment of your remuneration, legal expenses and other expenses arising from the Agreed Work which come within the agreed budget (**Costs**). In addition, where agreed, you may also claim for amounts due under any adverse costs order and security for costs order.
3. **Payments:** the department will assess your claims for payment of Costs, request further information (if necessary) and, subject to other conditions being met, pay to you the Costs.
4. **Distribution of proceeds:** monies recovered (whether by way of settlement, judgment or otherwise) as a result of the Agreed Work will be distributed in accordance with the Funding Agreement and the *Corporations Act 2001*, including: to you, in payment of any unpaid Costs; to the department, in repayment of both the funding provided and the FEG advance; and to other creditors.
5. **The department's involvement:** you will be obliged to consult regularly with, and provide information to, the department in relation to all matters that are material to the operation of the Funding Agreement and the conduct of the Agreed Work. In particular:
  - You must involve the department in any settling negotiations
  - You must provide the department with copies of all court materials and relevant correspondence

- You must not abandon or discontinue any proceedings without the prior written consent of the department
6. **Default and termination:** The department may, without cause, at any time terminate the Funding Agreement by giving 20 business days' notice. Alternatively, where an event of default has occurred under the Funding Agreement (for example, where you breach any of your obligations under the Funding Agreement and fail to remedy that breach within the specified timeframe), the department may, by notice, terminate the Funding Agreement with immediate effect.
  7. **Representations and undertakings:** you will be required to provide certain warranties, representations and undertakings under the Funding Agreement, including, for example:
    - warranties about your expenses and liabilities incurred and paid to date, and about your future estimated expenses
    - a warranty to the effect that any recoveries resulting from the Agreed Work will form part of the property of the company that is available for distribution to the unsecured creditors of the company, including the department
    - an agreement that you will give the department the option to fund any future litigation

## Want more information?

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

- calling the FEG Recovery Hotline on (02) 6121 7272 (Monday to Friday, 9 am to 5 pm (AEST/AEDT))
- sending an email to [FEGRecoveryapplications@dewr.gov.au](mailto: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.

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