

ALERT

30 JULY 2015

Fair Entitlements Guarantee Recovery Programme extends Commonwealth funding to insolvency practitioners

On 1 July 2015, the Commonwealth Government unrolled the Fair Entitlements Guarantee Recovery Programme in an attempt to further enable recovery of amounts advanced under the Fair Entitlement Guarantee (FEG) Scheme.

ABOUT THE SCHEME

The FEG Scheme (**Scheme**) exists to provide financial assistance to pay employment entitlements to eligible employees who have lost their jobs subsequent to the winding up of their employer company. Once entitlements are paid under the Scheme, the government stands in the shoes of the employee as a creditor entitled to claim with priority in the liquidation pursuant to section 556 of the *Corporations Act 2001* (Cth).

The kinds of employment entitlements covered by the Scheme are specified in the *Fair Entitlements Guarantee Act 2012* (Cth) (**Act**) and include wages, annual leave, long service leave, payment in lieu of notice and redundancy pay.

ABOUT THE PROGRAMME

Under the new FEG Recovery Programme (**Programme**), liquidators can apply for funding to pursue recovery proceedings and to undertake other action to increase assets available to creditors in the winding up. The assistance is only available to liquidators to which a FEG Scheme advance has already been made. In particular, insolvency practitioners may apply for funding where:

- they have knowledge of one or more claims that might be brought on behalf of the company;
- those claims have reasonable prospects of success; and
- if successful, will result in the recovery of assets that will improve the return for employment entitlements.

The Programme, administered by the Department of Employment, will initially operate over a period of two years from 1 July 2015. There is \$11.5 million available to fund the Programme over this initial period.



ALERT

APPLYING FOR FUNDING UNDER THE PROGRAMME

In applying for funding under the Programme, a liquidator of a company must provide details such as the financial position of the company, details of any priority creditors and details of the proposed action for which the liquidator seeks funding.

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

- the prospects of success of the proposed action;
- the complexity of the proposed action and likely duration;
- the prospects of recovery from any proposed defendant; and
- the total costs that are likely to be incurred.

FUNDING AGREEMENT

If an application under the Programme is successful the Commonwealth will issue a notice of the amount payable under the Programme. Subsequent to this, the Commonwealth will enter into a funding agreement with the liquidator, the precise terms of which will be negotiated between the parties.

Terms to be negotiated will include items such as the agreed rate of the remuneration of the liquidator and the distribution of the proceeds recovered. The terms of any agreement will also provide for the Commonwealth to receive regular progress reports, and will require consultation with and approval of the Commonwealth prior to any settlement being entered into.

It is important to note that the Commonwealth will not pay more than 80% of the remuneration and legal expenses incurred in the recovery action.

The Programme provides liquidators with another avenue for funding where it may otherwise be unavailable in a winding up.

Further general information about the Scheme and the Programme is available on the FEG website at www.employment.gov.au/FEG.

Want to republish any of this newsletter?

If you would like to republish any part of this newsletter in your staff newsletter or elsewhere please contact our Marketing team on **+61 3 9608 2168**

Disclaimer

This newsletter is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.

Images

All images are used courtesy of www.freedigitalphotos.net



For further information please contact:

Bianca Quan, Senior Associate
Phone (direct) **+61 3 9608 2258**
Mobile **+61 422 288 046**
Email **b.quan@cornwalls.com.au**