



Eligibility for FEG assistance

The Fair Entitlements Guarantee (FEG) is a scheme to assist employees who have been terminated due to the liquidation or bankruptcy of their employer. FEG provides financial assistance, called an advance, to cover certain unpaid employment entitlements. Decisions about eligibility and advances for FEG assistance are made in accordance with the *Fair Entitlements Guarantee Act 2012* (FEG Act).

The FEG Act

FEG is a legislative scheme established under the FEG Act which commenced on 5 December 2012. The FEG Act is available at www.comlaw.gov.au.

FEG may apply to a person if their employer enters liquidation or bankruptcy on or after 5 December 2012 (see s. 10 of the FEG Act). For the purposes of the FEG Act, the date of liquidation or bankruptcy is defined as an insolvency event (see s. 5). If the date of the insolvency event occurred before 5 December 2012, you will not be eligible for FEG, but you may be eligible for assistance under the General Employee Entitlements and Redundancy Scheme (GEERS). To find out more about GEERS visit www.employment.gov.au/GEERS.

Am I eligible?

Subject to certain exclusions, you will be eligible for FEG assistance if you meet the *Conditions of eligibility for advance* (see s. 10). The conditions are:

- your employment with the relevant employer has ended
- your former employer entered liquidation or bankruptcy on or after 5 December 2012
- the end of your employment:
 - was due to the insolvency of your employer
 - occurred less than 6 months before the appointment of an insolvency practitioner for the employer
 - occurred on or after the appointment of an insolvency practitioner for the employer
- you are owed employment entitlements (see s. 5)
- you have taken reasonable steps to prove those debts in the winding up or bankruptcy of the employer

- if you were owed employment entitlements before the insolvency event occurred, you took reasonable steps to have them paid
- at the time your employment ended, you were an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa (i.e. your current visa allows you to live in Australia indefinitely) or special category visa (i.e. your current visa allows you to stay and work in Australia as long as you remain a New Zealand citizen)
- you, or a person on your behalf, have made an effective claim that you are eligible for an advance (see s. 14).

Making an effective claim

If you do not make an effective claim (in accordance with s. 14) you will not be eligible for FEG assistance. It is important that you submit your claim as soon as possible because FEG has strict time limits.

To make an effective claim, you must lodge a FEG claim form and include all mandatory information and documentation. For more information about lodging a FEG claim form, please refer to the *How do I apply for FEG assistance* and *How do I certify documents* fact sheets. Your claim must also be made:

- no more than 12 months after the end of your employment or the date of the insolvency event (whichever is later) and
- before the discharge of your former employer's bankruptcy (if your employer was a bankrupt).

If your claim is not made within this timeframe, or does not include all required information and documentation, it will not be effective and you will not be eligible for FEG assistance.

Exclusions from eligibility

FEG is a scheme for employees only. Other classes of workers, for example contractors and sub-contractors, are not eligible for assistance. Contract outworkers in the textile clothing and footwear industry may be covered under a special scheme for employees in that industry.

Some classes of employees are also ineligible for FEG assistance. You will be ineligible if:

- you have a personal connection with the employer (see s. 11)
- you became an employee of the employer shortly before the insolvency event following a period working as a contractor (see s. 12)
- your former employer was within the scope of the Special Employee Entitlement Scheme for Ansett Group Employees (s. 13).

What assistance is available?

FEG covers the following employment entitlements:

- **wages** – up to 13 weeks of unpaid wages ending at the earlier of the following times (see s. 5 and s. 24)
 - the time your employment ended
 - the first time an insolvency practitioner had power (however expressed) to control or manage your employment by your former employer
- **annual leave** (see s. 20)
- **long service leave** (see s. 21)
- **payment in lieu of notice** – maximum of 5 weeks (see s. 22)
- **redundancy pay** – maximum of 4 weeks per full year of service and pro-rata for less than a full year of service, if the governing instrument provides such an entitlement (see s. 23)

Transfer of employment to new employer

You will not be eligible for an advance for payment in lieu of notice and redundancy if the business of your former employer is transferred to a new employer and, within 14 days of the end of your employment, the new employer offers to employ you:

- to do work that is the same, or substantially the same, as the work you did for your former employer and
- on terms and conditions substantially similar to, and considered on an overall basis, no less

favourable than those under which you were employed immediately before your employment ended (see s. 16).

Superannuation

Employer superannuation contributions required under the Superannuation Guarantee are not covered by FEG. If you have unremitted employer superannuation contributions you should contact the insolvency practitioner managing your former employer's affairs to discuss your rights as an employee creditor.

Working out the amount of advance

The amount of assistance you may be eligible for is calculated based on the terms and conditions of the governing instrument (see s. 5) you were employed under (e.g. industrial award, collective agreement, contract of employment etc.).

In calculating the amount of each employment entitlement, the department will reduce the entitlement by any amounts that you have already been paid or amounts that are payable by anyone for that particular entitlement (see s. 19). For example, if you are entitled to receive a payment for a particular employment entitlement from a fund such as a redundancy trust fund or long service leave industry trust fund, the amount you are eligible for under FEG for that particular employment entitlement will be reduced by the amount that is payable from the relevant fund.

FEG maximum weekly wage

For the purpose of calculating the amount of advance, employment entitlements are capped by the FEG maximum weekly wage which is currently \$2451.00 (see ss. 5 and 26–27). If you earned more than the FEG maximum weekly wage we will calculate your employment entitlements as if you earned the FEG maximum weekly wage at the time your employment ended.

Recently agreed changes in terms and conditions

When calculating employment entitlements we may disregard any recently agreed terms and conditions of employment (see s. 25). For example, if your employer agreed to more favourable terms and conditions of employment in the 6 months before the end of your employment and it was unreasonable to expect that the employer could satisfy this obligation, we will work out the

amount of your advance as if the terms and conditions had not been changed.

Other things that may affect the amount of advance

Under the FEG Act, the amount of advance may be reduced if:

- you owe debts to your former employer (see s. 17)
- the insolvency practitioner expects that there will be money available to pay your employment entitlements within 112 days of when you make an effective claim or the date of the insolvency event (whichever is later) (see s. 18).

How can you help?

While we generally rely on the information provided by the insolvency practitioner, it is important that you provide us with as much information as possible to help us decide if you are eligible for FEG assistance and, if so, to work out the amount of assistance you are eligible for.

For more information about the type of information you should provide please refer to the How do I apply for FEG assistance fact sheet.

Want more information?

You can contact the FEG Hotline if you would like more information about eligibility for FEG assistance.

To contact the FEG Hotline:

- phone 1300 135 040 or
- email FEG@employment.gov.au.

If you speak a language other than English, call the Translating and Interpreting Service (TIS) on 13 14 50 for free help anytime.

Further information about FEG is also available on our website www.employment.gov.au/FEG.

The information contained in this fact sheet is of a general nature and explains, in summary form, the intended operation of the *Fair Entitlements Guarantee Act 2012* - it is not legal advice. Where necessary, you should seek your own independent legal advice relevant to your particular circumstances. The Commonwealth is not liable for any loss resulting from any action taken or reliance made by you on the information contained in this factsheet.