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Department of Employment and Workplace Relations (DEWR)

By upload: <https://consultations.dewr.gov.au/have-your-say-addressing-corporate-misuse-of-feg>

Addressing corporate misuse of the Fair Entitlements Guarantee

SMC thanks DEWR for the opportunity to provide a submission on this consultation.

The Fair Entitlements Guarantee (FEG) Recovery Program is a crucial support mechanism focussing on the financial recovery of wages, leave, redundancy payments, and unpaid superannuation from insolvent employers. Its benefits are significant - helping Australians maintain trust in the employment system and reclaiming employees hard earned entitlements. The FEG Recovery Program is a world class scheme, promoting fairness in the workplace by ensuring that employees receive their rightful entitlements in the face of corporate restructures and insolvencies designed to avoid or reduce liability. This helps maintain a level playing field for all employees.

SMC supports in-principle measures designed to address misuse of the FEG. While the DEWR discussion paper is detailed on recommendations regarding corporate structures, SMC believes that other peak-bodies in the corporate and insolvency sectors would be best placed to comment on the detailed aspects of proposed changes.

In relation to best superannuation outcomes, SMC believes it is **vital that the FEG Recovery Program:**

- **continue its important work to recover unpaid superannuation from insolvent entities, and**
- **add super guarantee charge (SGC) amounts to the priority regime for the payment of debts.**

While unpaid superannuation is one element of the SGC, it also captures amounts for nominal interest that workers would have earned if their super had been paid to their accounts, and an administrative penalty to deter employers for non-compliance.

While not all unpaid super is due to corporate insolvency, we know that unpaid super affects around 2.8 million employees each year, costing the impacted workers an average of \$1,800 in 2021-22.

Adding the superannuation guarantee charge at section 596AA of the *Corporations Act 2001* will improve workers' balances and help to deter those pernicious actors who aim to avoid paying what they owe. It will also strengthen the integrity of the FEG Recovery Program and reinforce employers' super obligations.

In addition, we recommend that the FEG advance scheme itself be extended to include super amounts owing to workers to ensure that they receive their entitlements sooner and are paid regardless of the Recovery Program achieving a successful outcome.

SMC recommends

Superannuation guarantee charge be added to the list of employee entitlements under to the list of employee entitlements at section 596AA of the *Corporations Act 2001*.

Extend the Fair Entitlements Guarantee to include super in the Fair Entitlements Guarantee scheme, so when businesses go insolvent, workers can be compensated for the super they are legally owed.



About the Super Members Council

We are a strong voice advocating for the interests of more than 11 million Australians who have over \$1.5 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.