

## Senate Standing Committee on Education and Employment

### QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

#### Outcome 2 - Workplace Relations and Economic Strategy

Department of Employment Question No. EMSQ16-000240

Senator McKenzie provided in writing.

#### Question

##### **Fair Entitlements Guarantee - unfunded entitlements**

What action is the Department able to take where it discovers restructuring, agreements or transactions have occurred immediately prior to winding up, with the result that employee entitlements are unfunded?

#### Answer

A number of provisions of Part 5.7B of the *Corporations Act 2001* (Corporations Act) enable a liquidator and in some cases a creditor to recover property or compensation for the benefit of creditors of the insolvent company where there are voidable transactions or where insolvent trading has occurred. It may also be the case that where such transactions have been entered into a director or officer of the company has also breached their statutory duties under Part 2D.1 of the Corporations Act.

Where the Department makes an advance of certain unpaid employee entitlements under the *Fair Entitlements Guarantee Act 2012* (FEG Act), it subsequently stands as a subrogated creditor of the insolvent company.

On 1 July 2015, the Government launched the Fair Entitlements Guarantee Recovery Programme to strengthen recovery activity of amounts advanced under the FEG scheme. Under the FEG Recovery Programme, liquidators of companies for which FEG advances have been made can apply for litigation funding for the purposes of pursuing recovery proceedings and other activities to increase assets available to creditors in the winding up.