

Bankruptcy & liquidation

Sometimes businesses shut down because they aren't profitable or run out of money. This can mean that employees lose their jobs, and in some cases, the employer may not be able to pay them the wages and entitlements they are owed.

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Employee entitlements during bankruptcy

When a business is bankrupt, also known as going into liquidation or insolvency, employees can get help through the Fair Entitlements Guarantee (FEG).

The FEG, previously known as the General Employee Entitlements and Redundancy Scheme or GEERS, is available to eligible employees to help them get their unpaid entitlements. This can include:

- wages – up to 13 weeks of unpaid wages (capped at the FEG maximum weekly wage)
- annual leave
- long service leave
- payment in lieu of notice of termination – maximum of 5 weeks
- redundancy pay – up to 4 weeks per full year of service.

It doesn't include:

- superannuation
- reimbursement payments
- one-off or irregular payments
- bonus payments
- non-ongoing or irregular commissions.

Find out who is an eligible employee and how to make a claim on the [Attorney-General's Department \(FEG\) page](https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg) (<https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg>) [↗](#).

Businesses that aren't in liquidation

Sometimes, an employer might close their business and abandon it without placing it into liquidation. If this happens, employees may have trouble getting their wages and other entitlements from their employer.

The [Australian Securities and Investments Commission](https://asic.gov.au/about-asic/contact-us/) [↗](#) (<https://asic.gov.au/about-asic/contact-us/>) (ASIC) may be able to help employees recover their entitlements by winding up the abandoned business. ASIC can only help if the business is a company registered with them under the [Corporations Act 2001](https://www.legislation.gov.au/Details/C2019C00128) (<https://www.legislation.gov.au/Details/C2019C00128>) [↗](#). This usually means the legal name of the business will end with proprietary limited, or Pty Ltd.

To get help, employees need to ask ASIC to wind up the abandoned company.

You can read [ASIC's Regulatory Guide](https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-242-asic-s-power-to-wind-up-abandoned-companies/) [↗](#) (<https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-242-asic-s-power-to-wind-up-abandoned-companies/>) for more information, which outlines:

- how to make a request to have an abandoned company wound up
- what ASIC will consider when deciding to wind up an abandoned company
- the information employees should provide to ASIC.

Illegal phoenix activity

Illegal phoenix activity is when an employer deliberately liquidates their company and starts a new one to keep doing the same business or work. They do this to avoid the old company's responsibilities, such as taxes and employee entitlements.

Illegal phoenix activity negatively impacts on employees, contractors and the wider community because it can mean that:

- employees aren't paid their wages, superannuation and accrued employee entitlements
- 'phoenix businesses' get an unfair competitive advantage over other businesses
- suppliers don't get paid
- government revenue is lost, and there are increased monitoring and enforcement costs
- regulatory obligations are avoided.

Illegal phoenix activity can significantly impact on getting unpaid employee entitlements back to employees.

A government-wide Phoenix Taskforce works together to combat illegal phoenix activity. You can find more information about the Taskforce on the [Australian Taxation Office Phoenix Taskforce page](https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/Phoenix-Taskforce/) [↗] (https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/Phoenix-Taskforce/).

The Australian Tax Office (ATO) has a dedicated Phoenix Hotline, where employees, creditors, competing businesses and the general public can confidentially provide information or report their concerns about possible Illegal phoenix activity.

You can contact the hotline on 1800 060 062.

You can also report information about illegal phoenix activity by:

- completing the [tip off form](https://www.ato.gov.au/tipoffform/) [↗] (https://www.ato.gov.au/tipoffform/) (which is also available in the Contact us section of the [ATO app](https://www.ato.gov.au/General/Online-services/ATO-app/) [↗] (https://www.ato.gov.au/General/Online-services/ATO-app/))
- sending an email to phoenixreferrals@ato.gov.au (mailto:phoenixreferrals@ato.gov.au).

For information about warning signs, where to go for help, and advice, go to the [ATO's illegal phoenix activity page](https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/) [↗] (https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/).

Before a business stops operating

Insolvency Reforms Act for small businesses

- [Corporations Amendment \(Corporate Insolvency Reforms\) Act 2020](https://www.legislation.gov.au/Details/C2020A00130) [↗] (https://www.legislation.gov.au/Details/C2020A00130)

The Corporations Amendment (Corporate Insolvency Reforms) Act 2020 came into effect on 1 January 2021. The Act makes a number of changes to the process for restructuring and liquidating eligible small businesses.

It allows for directors to continue to operate a potentially viable small business while it trades-out of financial difficulties. This is known as a Small Business Restructuring Plan (SRB). A business must substantially comply with the requirement to pay outstanding employee entitlements before it can commence an SRB.

For more information visit the [Australian Securities and Investments Commission website](https://newshub.asic.gov.au/insolvency-laws-for-small-business-are-changing/) [↗] (https://newshub.asic.gov.au/insolvency-laws-for-small-business-are-changing/).

Before a business stops operating it might go into voluntary administration. Voluntary administration happens when a business can't pay its debts. An administrator is appointed to work out if the business can keep operating or should go into liquidation.

When a business is in voluntary administration (before it goes into liquidation) we can provide advice and help employees seek unpaid entitlements.

Tools and resources

- [Fair Entitlements Guarantee](https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg) [↗] (https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg)
- [Fixing a workplace problem](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem) (www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem)
- [Australian Securities and Investments Commission](http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Employees%20-%20Voluntary%20administration) [↗] (http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Employees%20-%20Voluntary%20administration).

Related information

- [Notice and final pay](http://www.fairwork.gov.au/ending-employment/notice-and-final-pay/default) (www.fairwork.gov.au/ending-employment/notice-and-final-pay/default)

Help for small business

- Use the [Small Business Fair Dismissal Code and checklist \(DOCX 25.5KB\)](http://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.docx.aspx) (PDF 220.4KB) (www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx) to make sure that a dismissal is fair
- Find tools, resources and information you might need on our [Small business showcase](https://smallbusiness.fairwork.gov.au/) (<https://smallbusiness.fairwork.gov.au/>)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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