



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

9 July 2018

Mr Peter Krizmanits
Recovery and Litigation Branch
Workplace Relations Programmes Group
Department of Jobs and Small Business
10 Mort Street
CANBERRA ACT 2600

By email: ImprovingFEG@jobs.gov.au

Dear Sir

Reforms to Address Corporate Misuse of the Fair Entitlements Guarantee scheme – Draft Legislation

ASBFEO provided a detailed submission to the 2017 consultation process supporting initiatives to reform corporate misuse of the Fair Entitlements Guarantee (FEG) Scheme. ASBFEO remains concerned about sharp practices that take advantage of the insolvency laws and assist phoenix activities. We are pleased that the points we raised in our previous submission in support of tighter standards and greater penalties have been taken up in the exposure draft.

The majority of businesses conduct their affairs correctly. Despite best efforts, businesses can fail. The purpose of the FEG scheme is to see that employees are not disadvantaged in this circumstance. There are, however, companies which deliberately exploit the system by setting up corporate structures to avoid responsibility for employee leave entitlements.

The need for the new legislation is clear as there have been no successful prosecutions in relation to these matters since the current provisions were introduced. Yet the incidence of FEG claims has increased in number and value markedly in the last 2 years.

ASBFEO supports the aim of the legislation to disqualify directors who have used sharp practices and to seek return of funds paid by the FEG. The test that the legislation is successful will be the active pursuit and recovery of funds and penalties imposed on offending directors.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman