

Administration of the Fair Entitlements Guarantee

Department of Employment

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Office of the Auditor-General for Australia



Canberra ACT
23 April 2015

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Employment titled *Administration of the Fair Entitlements Guarantee*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee'.

Ian McPhee

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

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Abbreviations

AAT	Administrative Appeals Tribunal
ANAO	Australian National Audit Office
ARITA	Australian Restructuring, Insolvency and Turnaround Association (formerly the Insolvency Practitioners Association of Australia)
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
DEEWR	Department of Education, Employment and Workplace Relations (department name from December 2007 to September 2013)
DEWR	Department of Employment and Workplace Relations (department name from November 2001 to December 2007)
EESS	Employee Entitlements Support Scheme
FEG	Fair Entitlements Guarantee
GEERS	General Employee Entitlements and Redundancy Scheme
IP	Insolvency Practitioner
KPI	Key Performance Indicator
PBS	Portfolio Budget Statements
SEESA	Special Employee Entitlements Scheme for Ansett Group Employees
TCF	Textile , Clothing and Footwear Industry

Glossary

Advance	Financial assistance provided under the FEG Act on account of employment entitlements.
Applicant	An individual lodging a claim for support under FEG.
Case	An insolvent business where assistance under FEG or GEERS is sought. A case may comprise one or many claims.
Claim	Written request for assistance from an individual in a FEG or GEERS case.
The department	Since the commencement of FEG, the title of the administering department has changed. This audit report uses 'the department' or 'Department of Employment' to denote all iterations.
Effective claim	A claim for FEG assistance that meets the documentary requirements of the department, and meets the rules regarding prior claims and timing.
Eligible claimant	An individual assessed as meeting FEG eligibility criteria.
Governing instrument	The document that governs an employment arrangement. This could take the form of an industrial award, collective agreement, or contract of employment.
Insolvency practitioner (IP)	A person appointed to wind up the affairs of an insolvent company or employer.

Insolvency event	An insolvency event happens to an employer of a person: (a) when a liquidator of the employer is appointed under the <i>Corporations Act 2001</i> ; or (b) when the employer becomes bankrupt under the <i>Bankruptcy Act 1966</i> ; or (c) if the person is or was employed for a partnership by two or more of the partners—at the first time an event described in (a) or (b) happens, or has happened, to all of the partners by whom the person is or was employed.
Liquidation	Involves realisation of a company's assets, cessation or sale of its operations, distribution of the proceeds among its creditors and any surplus proceeds among its shareholders. This is also known as 'winding up'.
Operational arrangements	Prior to the enactment of the FEG Act in 2012, the operational arrangements defined how the scheme was to be administered.

Summary and Recommendations

Summary

Introduction

1. Businesses face a range of challenges and each year a number fail as a result, leaving their employees without employment and in some instances, without access to their accrued employee entitlements. In 2013–14, the Australian Securities and Investments Commission reported that 9 822¹ companies entered external administration.² The reasons for these failures were commonly attributed to: inadequate cash flow or high cash use; poor strategic management of the business; and trading losses³. Notwithstanding the reason for a business failing, successive Australian Governments have recognised the vulnerability of employees when this occurs. It is in this context that government has, since 2000, provided financial support to protect eligible employees from losing their accrued employee entitlements, including unused annual leave, long service leave, redundancy pay and wages, where the employee cannot get payment from another source.

2. The vulnerability of Australian employees to losing entitlements was highlighted in the late 1980's by the *Harmer Report*.⁴ The issue came to prominence again in the late 1990's following a number of significant corporate closures resulting in the loss of affected employee's accrued entitlements. Following lengthy public discussion about protection of employees' entitlements and consideration of a number of options,⁵ the Employee Entitlements Support Scheme (EESS) was established in early 2000. As a safety-net scheme, the EESS aimed to provide some assistance to employees, but not necessarily to compensate them for all their unpaid entitlements.

1 ASIC, *Australian Insolvency Statistics: Series 1A: Companies entering external administration by industry, July 2013–June 2014*, Released August 2014, p. 2.

2 A company enters external administration when it is, or is facing, insolvency and cannot pay its debt. A liquidator, insolvency practitioner or external administrator is appointed under the *Corporations Act 2001* to wind up the affairs of the employer.

3 *ibid.*, p. 18.

4 This report was prepared for the Australian Law Reform Commission and tabled in December 1988. It was formally titled the *General Insolvency Inquiry (Report No.45)* and became known as the *Harmer Report*. A copy of the report is available at: < <http://www.alrc.gov.au/report-45> > [accessed 5/12/2014].

5 Government considered a range of options including legislation, a general entitlements scheme using consolidated revenue to fund it and an insurance scheme with business making contributions via premiums.

3. In early 2001, the original scheme was replaced with the General Employee Entitlements and Redundancy Scheme (GEERS). This scheme had fewer limits on the assistance available and as result, higher payments were generally provided to affected employees.⁶ The GEERS scheme was subsequently replaced by the Fair Entitlements Guarantee (FEG), which came into effect in December 2012 with the passing of the *Fair Entitlements Guarantee Act 2012* (the FEG Act). Whereas previous schemes were delivered through administrative arrangements, this legislation established for the first time a legal obligation for government to provide support to eligible employees. The explanatory memorandum for the legislation described the need for the scheme in the following terms:

A scheme such as the one created by the Bill is necessary to fulfil a significant community need to protect the entitlements of Australian employees who would otherwise stand to lose their entitlements if they lose their jobs due to insolvency of their employer. While alternative measures for protecting employee entitlements are available on a limited scale (for example, redundancy trust funds in the construction industry) these are insufficient to adequately protect employees.⁷

4. The scheme is administered by the Department of Employment.⁸ To access FEG assistance, affected employees who have lost their employment due to insolvency and have not been paid their entitlements, must submit a claim for support under the scheme—this process is not initiated automatically when the insolvency occurs. During 2013–14, the department received 16 246⁹ claims for assistance. Of these claims, 11 255 were assessed as eligible and the department distributed \$197 million to these claimants. To be determined as eligible for support, the employee’s former employer must have experienced an ‘insolvency

6 With the collapse of the Ansett group in September 2001, a further scheme for affected Ansett employees was established. It was referred to as the Special Employee Entitlements Scheme for Ansett Group employees.

7 This document is available at: <http://www.comlaw.gov.au/Details/C2012B00188/Explanatory%20Memorandum/Text> [accessed on 2/12/2014].

8 Since the commencement of employee entitlements schemes in 2000, the administering department has changed several times. Unless there is a need to specify the full name or the acronym, this audit report refers to ‘the department’ or ‘the Department of Employment’.

9 These claims related to FEG claims and a portion of claims under the previous GEERS scheme, as it was being phased out. In 2013–14, 89 per cent of claims were FEG related.

event'.¹⁰ The department relies on the insolvency practitioner appointed to manage the affairs of the employer to verify the details of the claim and to assess the amount payable to the employee in the form of an advance¹¹. The department will generally distribute the advance to the insolvency practitioner who makes necessary deductions (for example, tax deductions and superannuation payments) and distributes the net payment to the employee. The department then seeks to recover the amount advanced from the former employer on behalf of the Commonwealth as part of the winding up process of the employer's business.

5. The role of the insolvency practitioner in an insolvency event is to realise the assets of the employer's business and to recover sufficient funds to distribute these to creditors. These funds must be paid in the order of priorities set out in the *Corporations Act 2001*. In Australia, employee entitlements are ranked behind secured creditors and the costs and expenses incurred by the insolvency practitioner in winding up the business, but are given priority over the majority of other unsecured creditors.¹² Once an advance has been paid, the FEG Act provides the Commonwealth with the same rights as a creditor of the company and the same right of priority of payment in the winding up of the company as the person who received the advance would have had.

6. Over the 14 years of the various schemes' existence, government has distributed nearly \$1.5 billion to affected employees. Of this amount, \$1.1 billion was distributed in the last seven years of the schemes' operation, representing a three-fold increase on the \$379 million distributed over the first seven years of operation. A key factor in the growth in demand for support over the last seven years has been the impact of the global economic crisis, which in 2008–09 saw an increase of 60 per cent in the number of claims received.

10 An insolvency event happens to an employer of a person: (a) when a liquidator of the employer is appointed under the *Corporations Act 2001*; or (b) when the employer becomes a bankrupt under the *Bankruptcy Act 1966*; or (c) if the person is or was employed for a partnership by two or more of the partners—at the first time an event described in (a) or (b) happens, or has happened, to all of the partners by whom the person is or was employed. See FEG Act, section 5 Definitions, p. 6.

11 Advance is the term used to refer to the financial assistance provided under the FEG Act on account of employment entitlements.

12 Section 560 of the *Corporations Act 2001* and section 109 of the *Bankruptcy Act 1966* give employees priority in the winding up of their employer's business.

Audit approach

Audit objective and criteria

7. The objective of the audit was to assess the effectiveness of the Department of Employment's administration of the Fair Entitlements Guarantee (FEG).

8. To conclude against the audit objective, the ANAO's high-level criteria considered whether: operational elements of the scheme were well managed; the treatment of claimants was fair and equitable; and performance of the scheme was effectively measured, monitored and reported.

Overall conclusion

9. Employees may receive little notice or forewarning when their employer's business becomes insolvent or bankrupt and are generally not well placed to manage the risks associated with this occurring. As a result, the personal and social costs of business failure can fall heavily on employees and it is for this reason the Australian Government provides, through its employee entitlements scheme, a level of protection to employees when their employer's business fails. While the Government's entitlements scheme may not cover all of the entitlements an employee has accrued, it provides employees with a safety-net that can cushion the impact of the loss of employment and help bridge the transition to new employment. In 2013–14, the Fair Entitlements Guarantee (FEG) provided support to 11 255 employees from 1 536 insolvent entities, approximately 16 per cent of the 9 822¹³ companies reported by the Australian Security and Investments Commission as entering external administration during this same period. Through FEG and its predecessor schemes the Australian Government has distributed nearly \$1.5 billion in advances since January 2000. Of these advances, the Commonwealth has recovered less than \$200 million (13 per cent).

10. Overall, the department's administration of the scheme has been mixed; while the department effectively transitioned its delivery of the previous entitlements scheme, the General Employee Entitlements and Redundancy Scheme (GEERS), to operate in accordance with the new FEG

13 ASIC, *Australian Insolvency Statistics: Series 1A: Companies entering external administration by industry, July 2013–June 2014*, Released August 2014, p. 2.

legislation in early 2013, a subsequent change initiated in August 2013—aimed at aligning the claims assessment process with the new arrangements—was poorly managed resulting in a significant backlog of claims and lengthy delays for claimants in obtaining their FEG payment. The department has taken action to reduce this backlog and advised that this work will continue to be a priority in 2015, however there are also opportunities for the department to make improvements to internal procedures to provide confidence that key compliance risks are being effectively managed. In particular, improvements to fraud control arrangements would address existing weaknesses and there is an opportunity to give greater focus to fraud prevention and detection. There would also be benefit in the department giving greater attention to periodic analysis and evaluation of the scheme's performance and how the scheme integrates with other government initiatives aimed at protecting employees and regulating business.¹⁴ This work would support advice provided to government on relevant policy issues and improve external reporting.

11. Work associated with the transition of GEERS to FEG largely occurred over 2012–13, extending into 2013–14 as the flow of FEG claims gradually increased. During this time, the department also embarked on a change to its operating model, including in August 2013 the introduction of a new process for assessing FEG claims. In preparing for this change the department gave insufficient focus to the risks to its successful implementation, the potential consequences of these risks and the development of strategies for their management. In particular, there were limitations with the claims processing system which lacked the functionality to manage, track and report the status of individual claims and to provide visibility of the claim workflow to identify processing bottlenecks. These limitations hampered the department's ability to identify and effectively respond to issues that arose during implementation of the change. This, in turn, led to a backlog of claims.

12. As a consequence, by the end of 2013–14, the average time for claimants to receive their FEG payment had doubled and the backlog of claims increased

¹⁴ The cause of business failure is not always limited to poor management or unforeseen circumstances; some businesses fail as a result of a company deliberately liquidating to avoid paying creditors and then carrying on the same or a similar business with the same ownership, via another entity. This is referred to as fraudulent phoenix activity. The Australian Securities and Investments Commission and the Australian Taxation Office have powers in relation to fraudulent phoenix activity. The Department of Employment does not have a direct enforcement role in relation to this activity; however, the department participates in the Inter-agency Phoenix Forum to share information and to design and implement cross-agency strategies to reduce and deter phoenix activity.

by 63 per cent to reach 8 297. The age profile of claims also deteriorated during this period, with the proportion of claims older than 16 weeks increasing more than 400 per cent to reach 4 467 in June 2014.¹⁵ Demonstrating the level of claimant frustration with these delays, 54 per cent of complaints received by the department between May 2013¹⁶ and September 2014 related to timeliness issues.¹⁷ Better planning, including early identification of risks, would have allowed these to be managed and mitigated, and better positioned the department to undertake this change.

13. Monitoring compliance with the FEG legislation and the conditions of the scheme is a key element of the department's administration of FEG. A sound approach to fraud control is an important component of the compliance monitoring framework and is fundamental to programs such as FEG that rely on third parties to verify information and distribute payments. Notwithstanding the associated risks which include frequently unavailable or poor quality documentation, and single payments to an individual approaching \$300 000,¹⁸ the department's fraud risk rating for the scheme is assessed as low. This assessment reflects weaknesses with the scheme's fraud risk assessment process and the processes for identifying, tracking and reporting instances of non-compliance and fraud.

14. Furthermore, the department's fraud control framework adopts an approach that emphasises the investigation of fraud after it has occurred, with lesser focus given to prevention and detection. As part of this framework, responsibility for the fraud prevention and detection is largely devolved to program staff and managers with only basic levels of fraud training and with limited active support from fraud specialists to assist them fulfil these

15 Addressing the backlog was subsequently given priority by the department. During the last six-months of 2014, the department processed nearly 40 per cent more claims than the same period in 2013. Despite this higher level of productivity, the average time to process a claim was 26 weeks at the end of 2014, with approximately 59 per cent of unprocessed claims older than 16 weeks.

16 The department did not have a formal complaints management process for FEG until May 2013.

17 The impact on claimants during the period they are waiting for the outcome of their assessment and payment of their FEG advance varies; claimants may quickly find new employment, or may seek government income support and depending on the assets they hold, a waiting period of between one and 13 weeks may apply.

18 Since the implementation of the increased redundancy cap on 1 January 2011 the highest payment made to an individual was \$297 693. Over the period 1 January 2011 to 30 June 2013, there have been 64 claimants paid redundancy entitlements of \$100 000 or more under FEG and GEERS. A further 11 claimants were paid in excess of \$100 000 for their redundancy entitlement over 2013–14. Refer to http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Fair_Entitlements/Submissions [accessed on 25/2/2015].

responsibilities.¹⁹ To provide confidence that fraud risk is being adequately and appropriately managed, the department should improve its fraud control framework through adoption of a more contemporary risk-based approach that places greater focus on the areas of fraud prevention and detection.²⁰

15. The ANAO has made one recommendation. Observing that the department is taking action to resolve the backlog of existing claims, the recommendation is aimed at addressing identified issues associated with the FEG fraud controls and strengthening the department's management of fraud risk by increasing its focus on fraud prevention and detection.

Key findings by chapter

Managing Scheme Risks (Chapter 2)

16. Facilitating timely access to entitlements by claimants was a significant risk to be managed by the department as part of the transition to FEG and as part of subsequent changes the department made to the FEG operating model. In August 2013, seeking to better align internal processes with the expectations of a legislative scheme (including changes to reflect the legislation's focus on individual claims, rather than on the business), the department implemented a stage-based approach to processing claims. Notwithstanding the significance of this change and its potential to have an impact on the timely processing of claims, the department did not, prior to proceeding, seek to identify, assess and manage risks to its successful implementation. The department proceeded with the change despite having only limited documentation defining roles and responsibilities and describing the new processing activities and despite the processing systems not having the functionality necessary to manage, track and report the status of individual claims and to provide visibility of the claims workflow to identify processing bottlenecks. As a consequence, a large backlog of claims resulted and it has taken longer for claimants to receive their payments.

19 The department sources fraud control services from the Shared Service Centre. The Shared Services Centre provides shared corporate services to the Department of Employment and the Department of Education and Training.

20 This approach is consistent with the better practice promulgated by government through its fraud control framework since 2011 and is also outlined in the ANAO's better practice guide, *Fraud Control in Australian Government Entities*, which is available at: < <http://www.anao.gov.au/Publications/Better-Practice-Guides/2010-2011/Fraud-Control-in-Australian-Government-Entities> > [accessed on 15/12/2014].

17. In addition to the issues with claims processing mentioned above, weaknesses were identified with management of non-compliance (of which fraud is a component). There is limited guidance available to FEG processing staff regarding how to distinguish and manage the different types and severities of non-compliance and the administrative and legal remedies available for addressing non-compliance. In addition, there is no single register for recording, tracking and reporting occurrences of non-compliance. As a result, this information is not readily available to inform the ongoing fraud risk rating for the scheme and to inform management of the full extent of non-compliance for the scheme and the risk this poses. Examination of the department's overall fraud control framework indicates a strong focus on investigation in response to fraud with limited emphasis on fraud prevention and fraud detection. As such, the department's fraud control plan delegates a high level of responsibility for fraud prevention and detection activities to program managers and staff. If the department is to be assured that compliance and fraud are being effectively managed, it is important that staff are adequately supported in undertaking this task including through training and guidance from qualified fraud control experts.

Stakeholder Engagement (Chapter 3)

18. Information for stakeholders on the core elements of FEG has been developed and made available by the department. However, information for claimants on the timeliness of claims processing is limited. To better support claimants to make decisions regarding their future financial and employment options, there would be benefit in the department providing more information to claimants regarding average processing times and the status of their claims.

19. The department does not survey claimants to seek their views on the FEG process or to seek feedback regarding areas of potential improvement. The only means of gauging claimant satisfaction is through data collected as part of the scheme's complaints and feedback process. However, the department did not establish a formal complaints and feedback process until May 2013, limiting the usefulness of this data for examining trends and the impact of the recent period of change and disruption.

20. Feedback from insolvency practitioners interviewed by the ANAO regarding the effectiveness of the department's administration of FEG was largely positive, with most insolvency practitioners satisfied with the information available about the scheme and their interaction with the

department. While generally satisfied with the department's overall administration of the scheme and the transition to the FEG legislation, insolvency practitioners raised concerns regarding the department's management of the transition to the new stage-based claims process, highlighting that they had not been informed by the department of the change and once delays occurred. In view of the importance of the role of insolvency practitioners as part of FEG, there would be benefit in the department consulting further with insolvency practitioners to ensure the working relationship is maintained.

Reporting and Evaluation (Chapter 4)

21. When the department transitioned to a stage-based processing model in August 2013, the scheme's focus moved from processing claims at the company level to the individual claim level. It took some time for the department to make changes to the processing system to support this new focus; however in June 2014 enhancements to the processing system allowed for the tracking of individual claims as they progress through the claims process.

22. In both reporting on FEG in its annual report to Parliament and outlining the proposed allocation of resources in the Portfolio Budget Statements, the department's reporting focused on outputs (referred to as 'departmental outputs'), rather than reporting against outcomes, which is generally expected for government programs. The department has done this because of the nature of the entitlements scheme and its primary aim to protect employees from the loss of their entitlements. There is scope for the department to improve the individual measures for FEG to ensure they provide an accurate view of the performance of the scheme and the effectiveness of the department's administration. The public sector's performance reporting framework is currently subject to change as a result of the introduction of the *Public Governance, Performance and Accountability Act 2013*. New guidelines in relation to performance reporting are expected to be introduced in early 2015. This change provides an opportunity for the department to examine its reporting for FEG and to seek to align this with the new reporting arrangements.

23. Since the commencement of the various entitlements schemes in 2000 only limited focus has been given to evaluation and analysis of the scheme and how it integrates with other government initiatives aimed at protecting employees and regulating business. More recently, the sustained demand and

rising cost of the scheme has led to greater scrutiny of the design of scheme components and highlighted the need for a better understanding of how the scheme is contributing and operating alongside other government initiatives. There is opportunity for the department to undertake periodic analysis to better position it to support policy making, assist in program management and strengthen accountability.

Summary of the Department of Employment's response

24. The Department of Employment's summary response to the proposed report is provided below. The full response is provided at Appendix 1.

The Department welcomes the report on the Department's delivery of the Fair Entitlements Guarantee programme.

The Department is modifying its fraud control framework so that greater support with specialised fraud and non-compliance resources is available to programme areas to prevent and detect fraud. The Department recognises the need for timely assistance to be paid under the programme and is implementing a strategy aimed at addressing claims processing backlogs by end of June 2015. The Department will also consider the other programme enhancement suggestions identified by ANAO in the report.

Recommendation

Recommendation No.1

Paragraph 2.43

To enhance the effectiveness of fraud controls for the Fair Entitlements Guarantee, the ANAO recommends that the Department of Employment strengthen its focus on the areas of fraud prevention and detection.

Department of Employment's response: *Agreed*

Audit Findings

1. Introduction

This chapter provides background information and context to the Fair Entitlements Guarantee. The audit objective, scope, criteria and approach are also included.

1.1 Since 2000, successive Australian Governments have provided a safety-net to help protect employees from losing all their accrued employment entitlements, such as wages, unused annual leave, long service leave and redundancy pay, due to the insolvency of their employer. This support is currently provided through the Fair Entitlements Guarantee (FEG). In 2013–14, FEG provided support to 11 255 employees from 1 536 insolvent entities, approximately 16 per cent of the 9 822²¹ companies reported by the Australian Security and Investments Commission as entering external administration during this same period.²²

1.2 The first government scheme of this nature was the Employee Entitlements Support Scheme (EESS), which commenced on 1 January 2000 following a number of insolvencies in the mining and textile industries that resulted in the loss of workers' entitlements.²³ In response to the high-profile collapse of the Ansett group of companies, the then Government announced a separate scheme specifically to assist Ansett employees known as the Special Employee Entitlements Scheme for Ansett group employees (SEESA).²⁴ Coinciding with the establishment of the SEESA, the Government announced replacement of the EESS with the General Employee Entitlements and Redundancy Scheme (GEERS).²⁵ Each of these schemes was delivered through administrative arrangements, imposing no legal obligation on government to

21 ASIC, *Australian Insolvency Statistics: Series 1A: Companies entering external administration by industry, July 2013–June 2014*, Released August 2014, p. 2.

22 A company enters external administration when it is, or is facing, insolvency and is unable to pay its debt. An external administrator is a general term for an external person being formally appointed to manage a company or its property at this point. An external administrator is also referred to as an insolvency practitioner.

23 Under the EESS benefits were capped at \$20 000 on a strict set of criteria. The Commonwealth only funded half the amounts assessed as payable to employees, with the state and territory governments 'invited' to fund the other half—although few did.

24 An audit of the SEESA was conducted by the ANAO in 2003–04. ANAO Audit Report No. 21 2003–04 *Special Employee Entitlements Scheme for Ansett Group (SEESA)*.

25 GEERS applied to terminations that occurred on or after 12 September 2001. An audit of the EESS and GEERS schemes was conducted by the ANAO in 2002–03. ANAO Audit Report No. 20 2002–03 *Employee Entitlements Support Schemes*.

make an advance and providing government with discretion regarding a claimant's eligibility and the amount of any advance.²⁶

1.3 The GEERS was subsequently replaced in December 2012 with the passage of the *Fair Entitlements Guarantee Act 2012*. The FEG Act states it is 'An Act to provide for financial assistance for workers who have not been fully paid for work done for insolvents or bankrupts, and for related purposes.'²⁷ FEG applies to all claims relating to insolvencies that occurred on and after 5 December 2012.

Purpose of the scheme

1.4 When the then Government introduced the FEG Bill to Parliament on 30 October 2012, it described the aims of the Bill as:

to provide a scheme for the provision of financial assistance (called an 'advance') to former employees where the end of their employment is linked to the insolvency or bankruptcy of their employer. After making an advance, the Commonwealth assumes the individual's right to recover the amount that was advanced through the winding up or bankruptcy process of their employer.²⁸

1.5 FEG was established with the aim of protecting employees' access to the work entitlements they are owed. It operates alongside other government welfare programs designed to provide support to alleviate the financial and personal hardship imposed on employees as a consequence of losing their employment such as income support, employment services and financial advice services.

1.6 Many claimants will, due to their personal circumstances, place priority on the payment of the FEG advance to cushion the impact of their unemployment and help them make the transition to new employment. While some employees may find alternative employment quickly, placing less reliance on the advance, others may require the financial support paid by FEG to bridge any gap while they consider their financial and employment options. These circumstances are recognised through provisions in the FEG Act designed to ensure payment of entitlements is timely. It is also recognised

26 Advance is the term used to refer to the financial assistance provided under the FEG Act on account of employment entitlements.

27 <<http://www.comlaw.gov.au/Details/C2012A00159>> [accessed 19/11/2014].

28 <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4908_ems_70675beb-c292-48ef-bcc9-4b5a7c6c33d3/upload_pdf/373626.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r4908_ems_70675beb-c292-48ef-bcc9-4b5a7c6c33d3%22> [accessed 19/11/2014].

through the design principle of the scheme that avoids the need for employees to wait until finalisation of the winding up of the employer's business before seeking any residual amount outstanding through FEG.

1.7 The FEG Act sets out the trigger events for the advance, the criteria for determining eligibility and the method of calculating the amount of the advance. The FEG Act also provides individuals the right of review of decisions through processes undertaken by the department, or by the Administrative Appeals Tribunal.²⁹ Through provisions that create links to section 560 of the *Corporations Act 2001*³⁰ and section 109 of the *Bankruptcy Act 1966*,³¹ the FEG Act provides the Commonwealth with the same rights as a creditor of the company and the same right of priority of payment in the winding up of the company as the person who received the advance would have had.

1.8 To provide the department with access to information necessary to assess claims, the FEG Act sets out the terms for the use and disclosure of personal information by the department, insolvency practitioners (IPs), and other intermediaries involved in making payments to former employees. It also provides for the department to disclose personal information to certain other agencies.³² The department relies upon this provision to share information with the Australian Securities Investments Commission (ASIC) and the Australian Taxation Office (ATO). Once an advance has been made, the department shares details of this advance with other government agencies to allow necessary adjustments to be made if the claimant is the recipient of other government support.

Funding

1.9 Provision is made in forward estimates of budget expenditure for expected payments under FEG but as a demand driven program, actual payments reflect the total number of eligible recipients in a given year. For 2013–14, the provision for payments under the entitlements scheme was

29 This provision was not available under previous schemes; external review was provided through an appeal to the Commonwealth Ombudsman.

30 The *Corporations Act 2001* sets out the law dealing with business entities in Australia.

31 The *Bankruptcy Act 1966* sets out the law governing bankruptcy.

32 This arrangement facilitates the exercise of powers that other agencies may have in relation to the *Corporations Act 2001*, the *Bankruptcy Act 1966* or in relation to entitlements of current or former employees.

\$192 million, with actual expenditure for this period reported as \$197 million. The amounts allocated to FEG for the period to 2017–18 are shown in Table 1.1.

Table 1.1: FEG and GEERS appropriations to 2017–18

	2014–15	2015–16	2016–17	2017–18
Allocation for advances and fees paid to insolvency practitioners	\$218m ^(a)	\$200m	\$201m	\$198m

Source: Data provided to ANAO by the Department of Employment.

Note (a): For the 2014–15 financial year only, the allocation includes outstanding GEERS advances and fees paid to insolvency practitioners relating to the remaining GEERS claims.

How the Fair Entitlements Guarantee operates

1.10 To be considered for an advance under FEG, an individual must qualify as an eligible claimant. Directors of the company and their relatives are not eligible for assistance. Contractors, including new employees that previously worked as contractors, are also excluded. An eligible claimant under FEG is a person:

- whose employment has ended;³³
- who is an Australian citizen or the holder of a permanent visa, at the time their employment ended;
- whose former employer suffered an insolvency event³⁴ on or after 5 December 2012;
- who is owed certain employee entitlements by the former employer; and
- who has taken reasonable steps to prove those debts in the winding up or bankruptcy of the employer.

1.11 The claimant must also submit an ‘effective’ claim. An effective claim uses the FEG claim form, is accurate and includes all mandatory information. It

33 The employment has ended due to the insolvency of the employer, or less than 6 months before the appointment of an insolvency practitioner for the employer, or occurred on or after the appointment of an insolvency practitioner for the employer.

34 An insolvency event happens to an employer of a person: (a) when a liquidator of the employer is appointed under the *Corporations Act 2001*; or (b) when the employer becomes bankrupt under the *Bankruptcy Act 1966*; or (c) if the person is or was employed for a partnership by two or more of the partners—at the first time an event described in (a) or (b) happens, or has happened, to all of the partners by whom the person is or was employed.

See the FEG Act, section 5 Definitions, p. 6.

also includes supporting documentation that proves the claimant's Australian citizenship, or possession of a permanent or special category visa at the time the employment ended. An effective claim must also be made before the end of 12 months after either the insolvency event or the end of employment, whichever is later.³⁵

1.12 The primary source of information needed to assess outstanding employment entitlements for eligible claimants is provided by the insolvency practitioner (IP),³⁶ appointed to administer the employer's insolvency.³⁷ The department relies upon the IP to provide information from the former employer's books and records to verify claimant's eligibility for a FEG advance and the amount of any advance. The department also relies on IPs to distribute FEG advances. There is no requirement for an IP to assist the department and in some cases the IP may be unwilling to assist, for example where there are insufficient funds to be realised from winding up the company. Where this occurs, the department may engage another service provider to undertake this work (generally a qualified accountant), or depending upon the circumstances of the insolvency and the number of claimants involved, the department may undertake some of this work itself. The service providers are also able to distribute payments on behalf of the department³⁸ and may also assist investigate issues associated with complex claims, or suspected fraud and non-compliance.

1.13 The department also relies upon information provided by the claimant as part of the application process, including details of their employment contract, terms and conditions of employment and entitlements they are owed as well as an estimate of the value of these. There are circumstances where the department may gather information from alternative sources to validate, or supplement information provided by the IP and claimant, particularly where the employer's books and records are of poor quality, or are not available, or the information provided by the IP and claimant is inconsistent.

35 See FEG Act, s14 (2).

36 The liquidator, administrator appointed under the *Corporations Act 2001*, receiver of property, or person who has control of property, or bankruptcy trust of the former employer.

37 Section 35 of the FEG Act allows the department to presume that the information provided by the IP is accurate for the purpose of deciding a claimant's eligibility and the amount of the advance.

38 The department currently does not have the internal capability to pay claimants directly.

1.14 A claimant's employment entitlements are determined through reference to the governing instrument³⁹ in relation to the claimant's employment. The governing instrument sets out the terms and conditions of each individual's employment and can take the form of an industrial award, collective agreement, or contract of employment.⁴⁰ Determining the appropriate instrument is relatively straightforward where an agreement applies to the former employer. However, where there are no agreements in place this process is more difficult and relies upon an assessment of the type of work performed by the claimant and the nature of the business of the employer at the time the employment ended. In some circumstances, more than one governing instrument may be applicable.

1.15 As a safety-net scheme, FEG does not necessarily compensate claimants for all their unpaid employee entitlements. As such, the advance is determined with reference to caps that limit the amount payable to claimants. Applicable to all entitlements is the 'maximum weekly wage', which is used for calculating entitlements where the weekly rate of pay, as set out in the relevant governing instrument, exceeds the maximum weekly wage amount.⁴¹ The entitlements available under FEG and the caps applicable to each are described in Table 1.2.

39 Section 5 of the FEG Act defines a governing instrument for employment as any of the following that governs the employment: (a) written law of the Commonwealth, a State or a Territory; (b) an award, determination or order that is made or recorded in writing; (c) a written instrument; or, (d) an agreement (whether a contract or not).

40 In 2008, the Australian Industrial Relations Commission (succeeded by the Fair Work Commission) began a process to 'modernise' the industrial award system. This process has reduced the number of awards from over 1 500 to 122 and the transition to new awards is expected to be completed in 2015. Awards that had not commenced modernisation processes by 31 December 2013 were to be terminated by the Fair Work Commission. Fair Work Commission *Annual Report 2012–13*, p. 44.

41 At 1 July 2014, the maximum weekly wage was set at \$2 451 (equivalent to approximately \$127 000 per annum). Under the current arrangements this figure is indexed on 1 July each year and was last indexed in August 2013. As part of the 2014–15 Budget the government announced a freeze on the indexation of the maximum weekly wage rate until 1 July 2018. This change came into effect on 1 July 2014.

Table 1.2: Employee Entitlements covered by FEG and GEERS

Entitlement	Conditions ^(a)
Wages	The person's wages entitlement is the amount of wages the person is entitled to under the governing instrument from the employer for work done, or paid leave taken, in the wages entitlement period. A cap of 13 weeks' pay applies.
Annual leave	The amount that the person is entitled to under the governing instrument and which has accrued at the end of employment but had not been taken.
Long service leave	The amount that the person is entitled to under the governing instrument and which has accrued at the end of employment but which had not been taken, or on account of long service leave that, had the person's employment continued until the person qualified for long service leave, would have been attributable to the period until the actual end of the person's employment.
Payment in lieu of notice	The shortfall in the period of notice of termination of employment. This is capped so that it does not exceed 5 weeks' pay.
Redundancy ^(b)	The amount an employee is entitled to under the governing instrument for the termination of the employment. This amount is capped so that it does not exceed four weeks' pay for each full year of service and pro-rated for less than a full year of service.

Source: ANAO.

Note (a): Applicable to all entitlements is the maximum weekly wage, which is used to calculate the amount of the entitlement where the employee's weekly rate of pay exceeds the maximum weekly wage amount.

Note (b): Prior to January 2011, the GEERS scheme capped redundancy entitlements to 16 weeks. From this date, the then government increased the cap to four weeks per completed year of service.

1.16 Once the governing instrument has been identified and it has been determined whether the maximum weekly wage applies, the basic amounts for each of the entitlements can be calculated in accordance with the guidance contained in the FEG Act. Prior to authorisation of the payment by the departmental delegate, the department will verify the advance amount with the IP and seek their agreement to it. The department seeks verification of the advance with the IP to validate the basis for its calculation and because in the event that funds can be paid to creditors at conclusion of the winding up of the employer, the department can assume that this amount will be paid by the IP as a dividend.

1.17 The claimant is notified of the outcome of their claim through a letter detailing the advance amount for each entitlement and the basis for its

calculation. If the claimant believes there has been an error in the determination of their eligibility or the calculation of their advance, the FEG Act provides for claimants to request a review of their claim by the department, or by the Administrative Appeals Tribunal (AAT). The FEG Act also provides for the department to initiate an internal review where it identifies potential errors, or issues.

1.18 The advance is paid by the department to an intermediary (generally, the IP or bankruptcy trustee of the employer, or a third party nominated by the department). The advance is then paid to the claimant by the intermediary subject to any withholding or deductions required by law. Once the advance has been paid, the government assumes the same rights and priority as the employee in the recovery of the amount of the advance as part of the winding up of the employer.

Audit objective, criteria and methodology

Audit objective

1.19 The audit objective was to assess the effectiveness of the Department of Employment's administration of the Fair Entitlements Guarantee.

Audit criteria

1.20 To form a conclusion against the audit objective, the ANAO's high-level criteria considered whether operational elements of the scheme are well managed, the treatment of claimants, and whether performance of the scheme is effectively measured, monitored and reported.

Audit methodology

1.21 The audit focused on the current employee entitlements scheme, the Fair Entitlements Guarantee (FEG), under which claims have been processed since 5 December 2012. The scope of the audit included the department's processing of FEG claims, from lodgement and assessment of eligibility through to payment of advances to eligible employees, with particular attention to the management of operational risks associated with processing accuracy and timeliness; and fraud control measures. The ANAO examined the appeals processes available to applicants and claimants seeking internal review of their case, or external review by the Administrative Appeals Tribunal, and the department's procedures for recovery of advances as a creditor in the winding up of the employer.

1.22 The audit methodology included examination of: business and system processes and procedures associated with assessment of claims and payment of advances as well as the recovery of entitlements; scheme related documentation; scheme monitoring and reporting; processing systems used to store information and process claims; and program monitoring and reporting.

1.23 The approach also involved interviews with stakeholders, including: departmental staff and managers; insolvency practitioners and their peak body association; third party service providers; and representatives from the Australian Taxation Office, Australian Securities and Investments Commission and Attorney General's Department. The ANAO also met with representatives of other government agencies with responsibility for administration of similar payment initiatives to examine specific operational aspects including identity proofing and fraud control.

1.24 The audit methodology included drawing a sample of claims from the department's claims processing system. The sample was examined to assess whether claims have been processed in accordance with the FEG Act.

1.25 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$440,000.

Report structure

1.26 The remainder of this report is structured as follows:

Chapter	Overview
Chapter 2— Managing Scheme Risks	This chapter examines the key operational priorities in relation to administering the financial assistance provided under FEG, and in the context of these priorities, the Department of Employment's approach to managing risks to effective service delivery. This chapter also considers the recovery of advances as part of the winding up of the employer's business.
Chapter 3— Stakeholder Engagement	This chapter examines the effectiveness of the Department of Employment's engagement with key stakeholders for FEG, including claimants, insolvency practitioners and other agencies.
Chapter 4— Reporting and Evaluation	This chapter examines the Department of Employment's framework for monitoring and reporting the scheme's performance against the government's objectives, focusing on program evaluation, the Portfolio Budget Statements and reporting in the department's annual report.

2. Managing Scheme Risks

This chapter examines the key operational priorities in relation to administering the financial assistance provided under FEG, and in the context of these priorities, the Department of Employment's approach to managing risks to effective service delivery. This chapter also considers the recovery of advances as part of the winding up of the employer's business.

Introduction

2.1 As a scheme aimed at protecting employees who have been made unemployed as a result of the insolvency of their employer, timely processing of FEG claims is a priority. This priority is balanced by the need to ensure that advances are calculated accurately and that they are paid to the right recipients. This chapter examines the department's recent performance against these priorities.

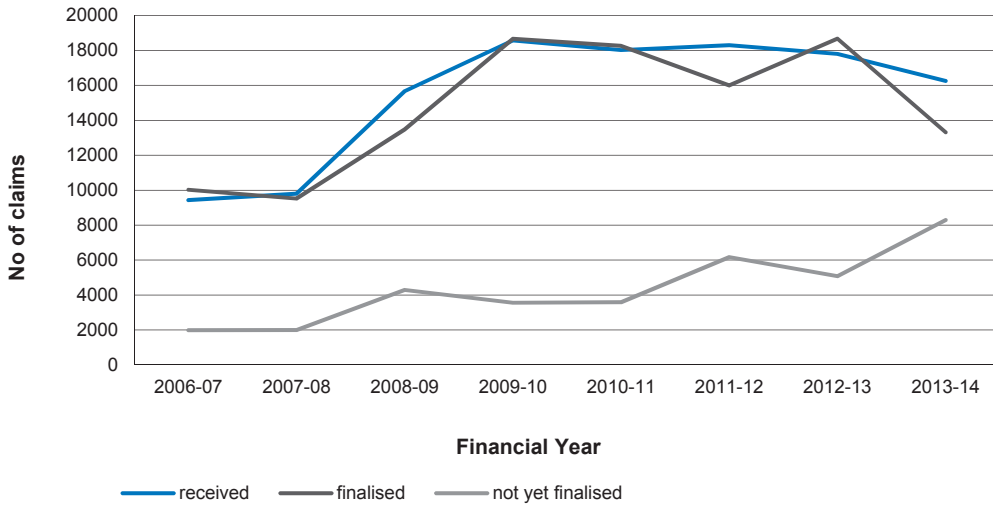
Scheme activity

2.2 The global economic crisis⁴² increased demand for support provided by the then GEERS scheme. The department received 15 666 claims for assistance during 2008–09, a 60 per cent increase on 2007–08. While it attempted to keep pace with the demand—finalising 13 473 claims—the backlog of claims to be finalised grew, reaching 4 291 (as at 30 June 2008), nearly double the previous year. Demand for the scheme remained high between 2009–10 and 2012–13, with the number of claims received averaging approximately 18 000 each year.⁴³

2.3 Providing some respite, in 2013–14, the number of new claims received by the department dipped to 16 246, 9 per cent less than the previous year. However, during this year, only 13 313 claims were finalised by the department—representing a 29 per cent reduction on the number finalised the previous year. Claims received, finalised and unprocessed since 2006–07 are shown in Figure 2.1.

42 The Reserve Bank of Australia considers the financial crisis to have emerged in 2007. Australian Bureau of Statistics, 2013, *The Global Financial Crisis and Its Impact on Australia*, viewed 16/10/2014.
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1301.0Chapter27092009%E2%80%93310>>.

43 This is in contrast to 9 453 and 9 796 claims received in 2006–07 and 2007–08, respectively.

Figure 2.1: Claims received and processed since 2006–07

Source: Department of Employment data.

2.4 Consistent with these trends, the backlog of claims to be finalised gradually increased reaching 5 081 by the end of 2012–13 and 8 297 by the end of June 2014—at that time, the highest level since the employee entitlements schemes commenced in 2000.

Timeliness of claims processing

2.5 The impact of the high levels of demand on the timeliness of claims processing is demonstrated by the timeliness measures reported by the department for finalisation of FEG claims. Prior to 2013–14, the department reported the scheme performance against an ‘ideal’ processing timeframe of 16 weeks.⁴⁴ The proportion of finalised claims processed within the 16 week timeframe since 2007–08 is shown in Table 2.1, highlighting a gradual deterioration in performance against this measure since 2008–09, and a sharp decline in performance in 2013–14.

44 This measure was included in the relevant portfolio budget statements and the department’s annual report until 2012–13.

Table 2.1: Percentage of finalised claims processed within 16 weeks

2007–08	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14
93	93.6	91.7	88.6	79	81.4	36.3

Source: Data provided by the Department of Employment.

2.6 The introduction of the FEG Act in December 2012 and more critically, the move to a new claims processing model commencing in August 2013 resulted in further delays in finalising claim assessments. In its 2013–14 *Annual Report* the department summarised the challenges it faced as a result of these changes as follows:

During 2013–14, significant changes were made to the administration of claims under the Fair Entitlements Guarantee to finalise the transition to the legislative arrangements for the scheme that were introduced in 2012–13. Business processes and workflows were redesigned and business systems were reconfigured to increase the quality and efficiency of the administration of the programme and achieve stronger programme compliance. These changes to the operating environment resulted in transitional disruptions to the claims workflow and delays in finalising claims assessments. The department is closely monitoring the timeliness of claims processing and ensuring that there are minimal delays for claimants.⁴⁵

Transition to a legislative framework

2.7 The FEG Act substantially replicates the administrative arrangements under which the GEERS scheme operated; key changes include provision of a more transparent process for determining eligibility, provision for the department to initiate internal review of decisions and a statutory right for claimants to seek review to the Administrative Appeals Tribunal (AAT).

2.8 Overall, the department's approach to the transition was effective. To ensure the efficient transition from GEERS to FEG, the department commenced preparatory work during 2012. This included: communication of the change and its impact to key stakeholders, including insolvency practitioners (IPs) and potential claimants; training of staff; and development of new guidance material, procedures, correspondence and application forms as well as changes to support parallel processing of FEG and GEERS related claims. These activities were managed by the department as part of a discrete project that was finalised in

⁴⁵ Department of Employment, *Annual Report 2013–14*, Canberra, 2014, p. 38.

early 2013. During this time, the department gave priority to external facing elements of the transition to ensure stakeholders were informed of the change and that potential claimants could access the new claims form, lodge their claim and receive their FEG payment. Elements such as refinement of the processing system, documentation and staff training, were given less priority, with the view that these would be refined progressively as experience with the new scheme developed and in parallel with the natural increase in the number of claims expected to be received during the initial months.⁴⁶ Phasing out of the GEERS scheme and full implementation of FEG occurred over 2012–13, extending into 2013–14, as the flow of FEG claims gradually increased.

2.9 To inform IPs of the FEG legislation, the department circulated an information bulletin to each IP that had been involved with the scheme during the preceding 12 month period. The department also discussed the legislation with the IP representative body, the Australian Restructuring, Insolvency and Turnaround Association (ARITA), and provided information for inclusion on the ARITA website and quarterly magazine. The IPs interviewed by the ANAO as part of this audit indicated that they were generally satisfied with the department's work to inform them of the FEG legislation and with the guidance material provided by the department. Similarly, representatives from ARITA also noted their general satisfaction with the department's process for implementing and consulting with them regarding the FEG legislation.

Transition to a new claims processing model

2.10 While the transition of the scheme to a legislative base under the FEG Act did not result in significant changes to the conditions of the scheme, or the manner in which claims are assessed, the legislation's more precise expression of the conditions and the evidence required to support decisions, removed some of the flexibility, as well as complexity, of the previous arrangements. This placed greater emphasis on internal processes to ensure consistent and objective decision making underpinned by clear delegations, accurate information and complete records.

2.11 To better position the scheme to meet these expectations, in August 2013, the department moved to a new stage-based model for processing FEG claims. Prior to August 2013, claims were managed at the

46 In 2012–13, 9.6 per cent of claims processed were claims made under FEG in contrast to 88.95 per cent of all claims the following year.

company-level (referred to as a 'case'), with a case manager responsible for managing each case and the individual employee claims it comprised. The case manager was responsible for all steps in the claims process from the initial determination of eligibility, through to assessment of the entitlements and informing the claimant of the final decision (a decision-maker with appropriate delegation reviewed the claim determination and authorised the claimant's advance). This approach provided a number of benefits; case managers would gain a high level of familiarity with each case and provide a single point of contact for both the IP and the company's former employees. However, this approach required case managers to be knowledgeable and proficient across all aspects of the claims process. In addition, the high volume of claims being managed at any point in time made it challenging to track claims and ensure the quality of decision-making and compliance with the operational arrangements.

2.12 By contrast, the new claims processing model involves processing claims in 'stages', with staff responsible for a set of common tasks associated with each stage. This approach moved the focus from managing claims at the company-level to managing at the individual claim or employee level. This aligns with the FEG legislation which expresses provisions at the individual claim level, rather than the case level. The stage-based approach also provides greater flexibility in the distribution of work to staff, and for quality checking and monitoring of claims as they progress from one stage to the next.

2.13 This change was significant and high risk; every element of the claims assessment process was affected, staff were required to learn and adjust to a new way of operating and the claims processing system required significant enhancements in order to fully support stage-based claims processing at the individual claim level and to provide the visibility necessary to monitor workflow and report status. Notwithstanding, the department did not, prior to proceeding, seek to identify, assess and manage risks to its successful implementation. The department proceeded with the change despite having only limited documentation defining roles and responsibilities and describing the new claims processing arrangements. The department was also aware that the existing processing system had limitations that impacted its ability to

provide visibility of the workflow of claims and to report on the status of the claims assessment process.⁴⁷

2.14 In addition, the department did not formally communicate with IPs its plan to undertake this change and the impact it would have on procedures directly relevant to IPs. A number of IPs interviewed by the ANAO stated that the change was not broadly communicated prior to its implementation, or once issues arose. IPs also noted difficulties contacting departmental staff responsible for the claims they were working on—a situation made more difficult by the need for IPs to work with various staff depending upon the processing stage of the claim, rather than a single case manager, as with the previous arrangements.⁴⁸

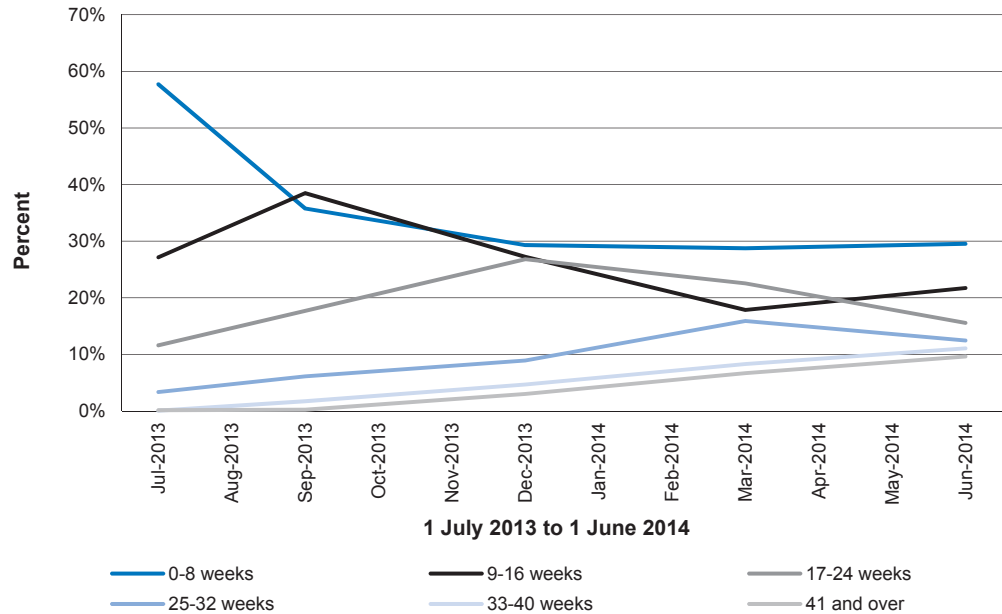
2.15 The new processing model was implemented in August 2013. Between October and December 2013, a relatively high number of claims were finalised giving the impression that the new model was functioning well. However, a sharp drop in the number of claims finalised between January and April 2014—coinciding with a gradual increase in claims received—led to a rise in the backlog of claims, with the number of unprocessed claims increasing by 34 per cent between January and June 2014.

2.16 As a result of these issues, the average time to finalise a claim doubled and the number of claims older than 16 weeks increased from 878 to 4 467 between July 2013 to June 2014. Increases in the proportion of ‘aged claims’ is shown in Figure 2.2.

47 The claims processing system was designed to track and manage work at the case, rather than claim level. Until the system could be modified, the claims and workloads were managed manually using spreadsheets, which was cumbersome and time consuming for managers. It was not until June 2014 that the processing system was enhanced to allow for tracking the status of each claim and to generate the management information for reporting.

48 These issues were also noted by a number of IPs in their response to the department's annual IP satisfaction survey conducted in early 2014. Responding to this feedback, the department took steps to improve the arrangements for calls from IPs to be directed to relevant staff, via the FEG hotline.

Figure 2.2: Proportion of claims held each month, by age



Source: Compiled by the ANAO using data provided by the department.

2.17 A key contributor to this backlog was the department’s decision to change the sequencing of processing activities at the same time it introduced the new processing model in August 2013. As part of this arrangement, the relevant governing instrument for each claim was identified by the department prior to seeking information from the IP—this task was previously undertaken by the IP as part of their role to verify the claimant’s data.

2.18 The department has extensive knowledge of the different governing instruments and considered it was in a better position than the IP to identify the relevant governing instrument for each claimant. On this basis, the department sought to streamline the process by identifying the governing instruments prior to seeking claimant information from the IP and reducing its reliance on the IP to complete this task. However, the department did not assess the risks associated with the change and underestimated the complexity and time it would take to perform the task. The sequencing change lead to a bottleneck occurring early in the claim assessment process. The department’s failure to quickly identify and address the issue contributed to the resulting backlog of claims.

2.19 In early 2014, to address the resulting bottleneck, resources were reallocated to improve the balance between the number of staff and workload demands. The department also implemented a two stream processing

approach to focus on clearing the backlog of older claims. Despite these changes a performance report prepared by the department for the December 2014 quarter showed that the backlog of unprocessed claims was continuing to increase, reaching 9 153 by the end of December 2014. The proportion of claims older than 16 weeks also deteriorated during period, increasing from approximately 50 to 59 per cent of all claims.

2.20 The transition to the new processing model could have been better managed by the department. The significance of the change and the risks it posed warranted a higher level of management and oversight than initially applied by the department. More thorough planning, including early identification and ongoing management of risks would have better positioned the department to undertake this change.

Accuracy of payments

2.21 The accurate assessment of claim entitlements is important to ensuring that claimants are not disadvantaged by receiving lower entitlements than they are due, or delayed in accessing their funds. Equally important is the avoidance of overpayment of funds to claimants, particularly as it is less likely that these will come to light as the result of an appeal by the claimant, placing greater reliance for detecting these errors as part of internal checks and controls. Accurate claims assessment also contributes to greater efficiency by reducing costs associated with reviews, re-work and the pursuit of debts in cases of overpayment.

2.22 Interviews with departmental staff and managers involved with FEG claims processing indicate a high-level of awareness of the importance of accuracy of payments and quality decision making is well-understood by staff involved in the FEG claim process. This focus largely stems from the recent transition to the legislative base and recognition of raised expectations associated with this change, particularly in regard to the requirement for consistent, accurate and supportable decision-making. However, with the FEG scheme in place since December 2012, it is timely for the department to develop a more systematic approach to quality assurance underpinned by a program of staff training, detailed procedural documentation covering all aspects of the claims process and clearly defined roles and responsibilities.

2.23 To support staff, an operations manual was developed at the time FEG commenced in late 2012 and this document has been regularly updated. A central knowledge repository has also been established and is regularly

updated and accessed by staff. A number of the processing staff have also developed their own guidance material covering their areas of responsibility. There would be benefit in centrally coordinating development of detailed procedural documentation to ensure alignment with other guidance and reference material, including the operations manual.

2.24 To monitor and measure quality, the department currently refers to the number of requests from claimants for review of decisions relation to the eligibility and advance amounts. While the level of accuracy reported by the department is consistently high (above 98 per cent), there would be advantage in the department adopting an approach to checking and monitoring quality in real-time. This would provide assurance that decisions are correct and that information supporting decisions is accurate. This approach could include establishment of quality controls at each stage of processing to monitor the quality of tasks specific to the stage and periodic examination of a random sample of finalised claims aimed at testing the accuracy of decisions and compliance with procedures and the legislation.

Managing non-compliance

2.25 Non-compliance⁴⁹ is a particular risk for programs such as FEG which involve the provision of direct financial assistance. To provide guidance on the management of compliance and to assist departmental staff meet their responsibilities under the department's fraud control plan, the department developed a document, referred to as the *Basics of Compliance*⁵⁰. This document sets out responsibilities for compliance as follows:

In short, all employees are responsible for compliance. Responsibility for management of compliance, particularly in establishing and implementing a compliance programme, sits with policy, business or programme areas of the department. Policy/program areas have a detailed knowledge of the relevant programme, providers, services and/or policy which equip them to effectively tailor a programme to ensure compliance. Only where non-compliance may be criminal in nature, should the matter be referred to the Investigations Branch (which has expertise in conducting criminal investigations).⁵¹

49 The Australian Standard on Compliance Programs (AS 3806:2006) defines compliance as '*adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards*'.

50 Department of Employment, *Basics of Compliance*, Canberra, 2014.

51 *ibid.*, p. 2.

2.26 Non-compliance may occur because of a lack of understanding or awareness of obligations or because of disregard, or carelessness. For fraud to be established there must be intent to commit the fraud. Where fraud is suspected the program area must consider whether it meets the department's fraud referral threshold, as follows:

There has been non-compliance (a breach) with a legally enforceable obligation and it appears more likely than not that dishonesty is the cause (as opposed to incompetence, mistake or misinterpretation of contractual or legislative parameters).⁵²

2.27 Suspected fraud is referred to the Shared Service Centre's (SSC's)⁵³ Investigations Branch which then assesses the circumstances of the alleged fraud to determine whether to proceed with an investigation. This assessment is based on consideration of the following factors:

- there is evidence of an offence against the Commonwealth;
- the department has jurisdiction to investigate the matter (some cases are referred to the State or Territory police or other agencies if appropriate, depending on issues of criminal jurisdiction);
- there are reasonable prospects of a successful prosecution (if an investigation proceeds);
- prosecution of the matter would have a stronger deterrent effect for the programme than an administrative sanction; and/or
- a costly investigation will result in the identification of vulnerabilities for the department (and ultimately continuous improvement of the department's fraud control mechanisms).⁵⁴

2.28 Where the Investigations Branch does not proceed with an investigation, the alleged fraud is referred back to the program area for resolution. This may include further investigation, or administrative or civil sanctions. Similarly, issues of non-compliance that do not meet the fraud

52 *ibid.*, p. 3.

53 The SSC was established in December 2013 when the Secretaries of the Department of Education and Training and the Department of Employment entered an agreement for the provision of shared corporate services to both departments through the establishment of a shared services centre. The SSC was formalised through a Head of Agreement between the Secretaries of these departments in December 2013, establishing the framework for a memorandum of understanding to be developed specifying the details of these arrangements and the services to be delivered.

54 *ibid.*, p. 4.

referral threshold (referred to in paragraph 2.26) are also managed by the program area.

FEG compliance strategy

2.29 There is no single approach to addressing non-compliance and it is generally accepted that a range of response options are needed that are proportionate to the perceived risk. This point is reinforced in the department's fraud control plan which notes the importance of having a 'graduated and proportionate' response to both non-compliance and to fraud that does not warrant investigation, including where appropriate, administrative sanctions.⁵⁵

2.30 The department's *Basics of Compliance* document emphasises the importance of programs having a compliance strategy and provides guidance—adapted from the relevant Australian Standard⁵⁶—on the minimum elements of a compliance strategy. These are summarised as:

[The] Compliance Strategy needs to identify who is responsible for the prevention, detection and correction mechanisms for that programme and ensure that those personnel are aware, resourced and trained to fulfil those responsibilities. The risk assessment assesses the risk and provides possible treatments, but the compliance strategy mobilises staff, communicates how, when and why and provides the plan for addressing risks identified.⁵⁷

2.31 The FEG compliance strategy is outlined in a document titled, *FEG Programme Compliance Strategy*⁵⁸. However, the strategy outlined in this document lacks the detail necessary to inform and equip staff to identify and manage non-compliance. The document is high-level and descriptive, with limited focus on the specific areas of compliance risk associated with the FEG operating environment. Similarly, there is no cross-reference to the FEG risk assessment and the fraud or compliance risks identified as part of this process.

Monitoring non-compliance

2.32 It is generally considered sound practice for all compliance decisions, along with the reasons for the decisions and the evidence relied upon in

55 Department of Employment, *Fraud Control Plan*, pp. 20–22, section 6.2.

56 Australian Standard AS3806-2006 Compliance Program

57 Department of Employment, *Basics of Compliance*, Canberra, 2014, p. 2.

58 Department of Employment, *FEG Programme Compliance Strategy*, Canberra.

reaching the decisions to be documented. This supports transparency and accountability, particularly where a decision may be challenged at a later date.⁵⁹

2.33 Documentation providing details of actual and alleged cases of fraud within FEG was sound where matters were accepted for investigation by the SSC Investigations Branch. For these cases, the departmental executive and the audit committee have visibility of the details of each case, and the status and outcome of the investigation. However, the documentation of matters that do not meet the threshold for further consideration, or matters that are not accepted by the Investigations Branch, was less complete and reporting processes less well defined.

2.34 The department advised that the audit committee had visibility of the fraud risks and the control environment (including any actual, alleged or suspected material fraud—both internal and external). However in practice, there is no formal requirement for the program area to regularly report non-compliance and alleged fraud to the audit committee. Within FEG, there is currently no single register that captures all incidences of non-compliance and alleged fraud and records details of their status and treatment. The department advised that a register was not necessary given the low incidence of non-compliance, the existence of the Tip-off register⁶⁰ and the arrangement for referral of fraud issues to the Investigations Branch. While the incidence of non-compliance detected by the department may be low, it may also be a consequence of the weaknesses in the FEG compliance strategy. The approach adopted means that there is no single point of reference for managing and monitoring the progress of all non-compliance issues, for identifying the extent and materiality of non-compliance for FEG and importantly, for assessing the non-compliance risk for the scheme.

59 ANAO, *Administering Regulation: Achieving the Right Balance – Better Practice Guide*, Canberra, June 2014, p. 51.

60 The Tip-off register records non-compliance reported to the department by members of the public.

Fraud control arrangements

2.35 Sound fraud control⁶¹ is fundamental to programs such as FEG that rely on third-parties to verify claimant data and to distribute advance amounts to claimants. For FEG, the fraud risk is further elevated as a result of frequently unavailable or poor quality documentation to assess and determine advance amounts, and pressures associated with the current high level of demand and the large backlog of claims.

2.36 Integral to the Australian Government's risk based approach to fraud prevention and detection is the fraud risk assessment process. It is through this process that the level of fraud risk exposure for initiatives is assessed, management strategies developed and importantly, the fraud control plan is tailored to address areas of potential fraud exposure.⁶² The department's fraud risk assessment process forms part of the department's general risk management framework. As part of this arrangement departmental staff are required to consider internal and external fraud risks as part of their regular monitoring and review of risks and their treatments.⁶³ While the Commonwealth's fraud guidance⁶⁴ generally supports the integration of fraud risks within the entity's risk control framework, it cautions that where a program has an inherent risk of fraud due to the nature of its business—for example, revenue collection, payment of benefits or contract procurement activities—the entity should consider developing a fraud risk assessment process that is specific to a particular policy or program area.⁶⁵

2.37 The Commonwealth fraud guidance emphasises the importance of having access to specific fraud expertise when undertaking risk assessment and fraud control planning:

61 Fraud control refers to the integrated set of activities to prevent, detect, respond to, and monitor fraud, and to the supporting processes such as staff training and the prosecution and penalisation of offenders. Effective fraud control requires the implementation and active management of these interdependent activities. ANAO, *Fraud Control in Australian Government Entities - Better Practice Guide*, Canberra, March 2011, p. 1.

62 Section 10(a) of the PGPA Rule specifies that a fraud risk assessment must be conducted on a regular basis and when there has been substantial change in the structure, functions or activities of the entity. Under section 10(b) of the PGPA Rule, fraud risk assessments must be followed by the development and implementation of a fraud control plan to manage the identified risks.

63 Department of Employment, *Department of Employment Fraud Control Plan 2014*, August 2014, p. 17.

64 Attorney-General's Department, *Resource Management Guide 201: Preventing, detecting and dealing with fraud*, July 2014, Canberra

65 *ibid.*, p. 12, paragraph 6.6.

Risk assessments can be undertaken using in-house resources, but it is important to ensure that the risk assessment team has access to the range of skills, knowledge and expertise necessary to provide coverage of the categories of risk to be considered.⁶⁶

2.38 At the time of the audit, there had generally been little active support provided to FEG staff to access relevant expertise and notwithstanding the level of risk for FEG, the FEG fraud risk management plan identified only two fraud related risks. Based on the treatments identified to mitigate these risks, the residual risk⁶⁷ for FEG was rated as 'low'. The fraud risks and proposed treatments are set out in Table 2.2.

Table 2.2: GEERS and FEG fraud related risks and treatments

No.	Risk	Treatment
1	Provision of misleading or fraudulent advice by external claimants	<ul style="list-style-type: none"> • Compliance provision in IP contracts to regulate behaviours. • Warning and processing errors configured in GOLD^(a) to alert when multiple claims submitted for individual. • Identification documentation required for all claimants. • Future compliance work to be undertaken to enable ATO data matching.^(b)
2	Misappropriation of funds by insolvency practitioners working in collusion with GEERS and FEG claimants	<ul style="list-style-type: none"> • Identity documentation provided by all claimants to establish effective claim. • Declaration of accuracy of information to be signed by claimants as part of an effective claim. • Separation of roles between DEEWR^(c) and Insolvency Practitioners to verify authenticity of claims. • Separation of roles between claim approver and paymaster. • Future compliance work to be undertaken to facilitate ATO data matching.^(b)

Source: Department of Employment.

Note (a): GOLD is the name given to the system used to process claims and store claimant information.

Note (b): In September 2014, the department confirmed that this work is at the initial scoping phase.

Note (c): Refers to the former Department of Education, Employment and Workplace Relations.

2.39 The risks are broadly defined and as such, encompass a number of important risks that under the circumstances, warrant separate identification and management; for example the department's process for proofing the identity of FEG applicants. The requirement that all claimants provide identification documentation is identified in the FEG risk register as a treatment for both risks. However, the department's reliance on certified

⁶⁶ *ibid.*, paragraph 6.11.

⁶⁷ Residual risk is the risk that remains after controls are taken into account.

photocopies, rather than originals to verify the claimant's identity itself presents a risk.

2.40 The department advised that it considered the existing identity proofing arrangements were reasonable and practical having regard to the size and nature of FEG. However, given FEG payments are a single one-off payment and the amounts paid to individual claimants can approach \$300 000,⁶⁸ there would be benefit in the identity proofing process being identified as a risk in order for it to be managed and mitigated, and for this information to inform the overall risk rating for the scheme.

2.41 Routine testing of the effectiveness of proposed fraud risk treatments would strengthen the department's approach for FEG and may result in the reassessment of the scheme's overall fraud risk. For example, the department identified the 'separation of roles between DEEWR⁶⁹ and IPs to verify authenticity of claims' as a treatment for the risk that IPs may collude with claimants to misappropriate funds. The department is reliant upon the IP administering the insolvency of the employer to provide and verify employment information which it then uses to calculate the advance amount for eligible claimants. While the department and the IP have separate roles, this does not mitigate the risk of the IP misappropriating funds, as the department has no alternative source against which to verify the information being provided by the IP—under circumstances where the IP was potentially colluding with the employer or employee, information provided by these sources would be equally unreliable.

2.42 The management of compliance and fraud for the FEG is influenced by the department's overall fraud control framework. This framework adopts an approach reliant on conducting investigations after fraud has occurred, with limited focus on the areas of fraud prevention and detection. As part of this framework, responsibility for the fraud prevention and detection is largely devolved to program staff and managers with only basic levels of fraud training and with limited active support from fraud specialists to assist them

68 Since the implementation of the increased redundancy cap on 1 January 2011 the highest payment made to an individual was \$297 693. Over the period 1 January 2011 to 30 June 2013, there have been 64 claimants paid redundancy entitlements of \$100 000 or more under FEG and GEERS. A further 11 claimants were paid in excess of \$100 000 for their redundancy entitlement over 2013–14. Refer to http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Fair_Entitlements/Submissions > [accessed 25/2/2015].

69 Refers to the former Department of Education, Employment and Workplace Relations.

fulfil these responsibilities. At the time of the audit, staff were expected to complete fraud awareness training, however this training was not sufficient to equip staff to effectively fulfil the responsibilities outlined for them in the fraud control plan. If the department is to be assured that compliance and fraud is being effectively managed, it is important that the specialist nature of fraud control be recognised along with the risks associated with delegating this responsibility without adequate training or appropriate guidance from qualified fraud control experts.

Recommendation No.1

2.43 To enhance the effectiveness of fraud controls for the Fair Entitlements Guarantee, the ANAO recommends that the Department of Employment strengthen its focus on the areas of fraud prevention and detection.

Department of Employment's response:

2.44 *Agreed. The Department of Employment is modifying its fraud control framework to introduce greater support around fraud and non-compliance for specific programme areas.*

Recovery of advances

2.45 Arrangements have always been in place to allow the department to recover advances made to employees through insolvency processes. As part of the liquidation of an insolvent company the liquidator winds up the company and realises the company assets. If there are funds left over after payment of the costs of the liquidation, and payments to other priority creditors (including employees) the liquidator will pay these to unsecured creditors as a dividend. Generally, the order in which funds are distributed is:

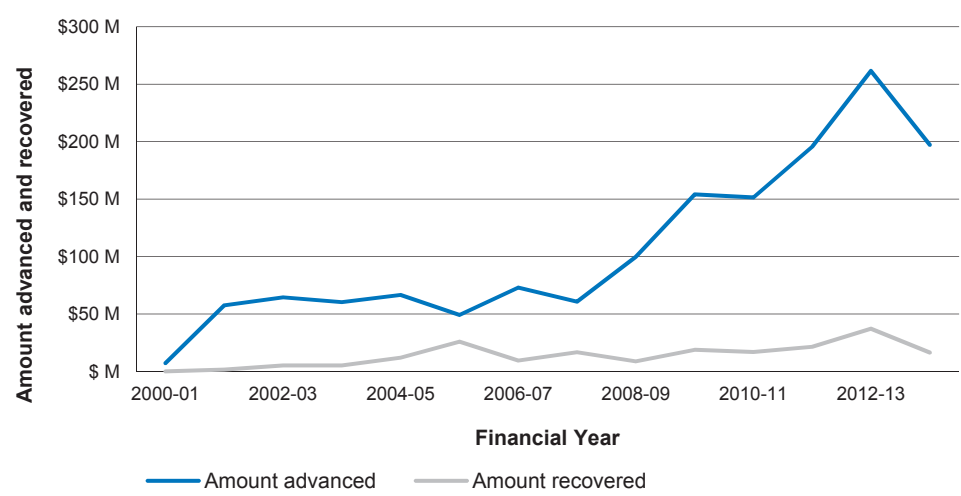
- costs and expenses of the liquidation, including liquidators' fees;
- outstanding employee wages and superannuation;
- outstanding employee leave of absence (including annual leave, sick leave—where applicable—and long service leave);
- employee retrenchment pay; and
- unsecured creditors.

2.46 Once an advance has been made to a claimant, government is subrogated into the position of the employee and assumes the rights of the employee as a creditor in the winding up of the former employer's business. In

the event that the company is able to realise sufficient funds, the government recovers the amount of the advance and employees receive amounts outstanding beyond the advance. Notwithstanding the Commonwealth’s priority creditor status as part of the winding up of the company, less than \$200 million (13 per cent) of the \$1.5 billion distributed since the various employee entitlements schemes commenced in 2000, has been recovered—this is consistent with the generally low rate of recovery for unsecured creditors; in 2013–14 the Australian Securities and Investments Commission reported that in 97 per cent of cases the dividend payable to unsecured creditors was estimated to be less than 11 cents in the dollar.⁷⁰

2.47 The amount recovered by government since 2000–01 against the amount paid by government in advances over this same period is shown in Figure 2.3. While the increase in the amount advanced from 2008–09 to date, may be attributable to the impact of the global economic crisis and the removal of the cap on redundancy payments, the department has not undertaken any analysis of this, or how it correlates to the proportion recovered each year.

Figure 2.3: Advances to employees and recovery from employers (a),(b)



Source: ANAO compilation of data from the Department of Employment.

Note (a): The data does not include the advances relating to the special scheme for Ansett employees.

Note (b): Recoveries do not necessarily correlate to the year in which the advances were made due to the time lag between advances to employees and recovery from the employer’s liquidation.

70 The ASIC report on external administration for 2013–14 is available at: <https://dv8nx270cl59a.cloudfront.net/media/1914730/rep412-published-29-september-2014.pdf>. > [accessed 12/11/2014].

2.48 As a creditor in the winding up of the former employer's business, in addition to participating in dividends, government has the right to: participate in creditors' meetings; receive reports from the liquidator about the liquidation; inform the liquidator about matters relevant to the affairs of the company in liquidation; and raise issues with ASIC or the court about the liquidator's conduct in connection with their duties. In certain circumstances where the company is without sufficient assets, creditors may agree to fund the liquidator to take action to recover further assets. If this action is successful, the liquidator or creditor can apply to the court for the creditor to be compensated for the risk involved in providing these funds.

2.49 While the department is aware of its rights as a creditor and monitors the progress of liquidations through reports provided by IPs, it does not generally participate in creditor meetings, or provide funding to support recovery action. In the past, the department has tested a more active role in the recovery of advances through conducting a pilot litigation program (2006). However, the pilot was discontinued after a year due to the low rate of return on investment. The department could more to actively pursue recovery of insolvency related debt, however it would need to consider the costs and benefits of this type of action, as well as the time lags associated with recovery. The Department of Employment has advised that it does not have the agreement of the then Government or dedicated funding to pursue a more active debtor role.

Conclusion

2.50 Changes initiated in August 2013 to align internal processes with the FEG legislation were poorly managed by the department and resulted in a large backlog of claims and delays for claimants receiving their FEG advance. This has been a significant setback for the department as it continues to place a priority on addressing the high number of unprocessed and aged claims. Issues that led to the backlog of claims could have been avoided or mitigated if greater focus had been given to identifying and managing risks associated with the change to the new processing model. However, the department proceeded with the change despite having only limited documentation defining the new roles and responsibilities and despite the claim processing system not having the functionality necessary to manage, track and report the status of individual claims and to monitor the claims workflow.

2.51 In early 2013, when issues were identified with the new claims processing arrangements, action was taken by the department to re-assign

resources and for staff to work overtime to focus on bottlenecks in the claims process and to address the growing backlog of claims. The average time to process a claim reduced from 32 to 18 weeks over the July to September 2014 quarter, although high claim volumes during this quarter resulted in this extending to 26 weeks by the end of December 2014. The proportion of claims older than 16 weeks also increased to 59 per cent of all claims by the end of December 2014.

2.52 As a scheme that makes payments to claimants based upon information provided by a third party and sometimes with limited available documentation, these features imply an elevated level of non-compliance and fraud risk. Notwithstanding, the department has provided only limited information to instruct staff in the identification and management of non-compliance. While staff are required to undertake fraud awareness training, this basic level of training is not sufficient to equip staff with the knowledge to meet responsibilities devolved to them in the department's fraud control plan. In addition, there is also no single register for recording, tracking and reporting non-compliance and no formal requirement that non-compliance issues being managed by the program areas are regularly reported to the departmental executive and audit committee. As a result, this information is not readily available to allow the executive and audit committee to make an informed assessment of the full extent of non-compliance and the overall fraud risk exposure for the scheme. There would be benefit in the department establishing a more active approach to fraud control for FEG by strengthening its focus on fraud prevention and detection. This could include as a practical step, increasing the level of support currently provided to FEG staff in relation to fraud control.

2.53 Arrangements have always been in place to allow the department to recover advances made to employees through insolvency processes. The ANAO examined the department's work to recover advances from employers. Less than \$200 million (13 per cent) of the amount distributed by the government since the commencement of the entitlements schemes has been recovered. While the department is aware of its rights as a creditor, it considers that it is currently not resourced to fulfil this role more actively.

3. Stakeholder Engagement

This chapter examines the effectiveness of the Department of Employment's engagement with key stakeholders for FEG, including claimants, insolvency practitioners and other agencies.

Introduction

3.1 Effective engagement and communication with stakeholders is an important element of all government initiatives and should form a key consideration in their design, ongoing delivery and during periods of change. Genuine engagement and collaboration between the department and stakeholders helps to establish a sound basis for delivering services under FEG.

3.2 With the aim of the scheme to protect employers from loss of entitlements, scheme claimants are the department's primary stakeholder group and key priorities for this group include: availability of information about the scheme; ready access; and timely payment. IP's and other service providers are crucial to the delivery of the government's employee entitlements scheme in that they verify claimant information and distribute advances to claimants. In administering FEG, the Department of Employment collaborates with a number of other Commonwealth agencies⁷¹, (including the Australian Taxation Office (ATO) and Australian Securities and Investments Commission (ASIC)) to assist these agencies in their responsibilities regulating and overseeing company directors and IPs.

Engaging with scheme claimants

3.3 In general, effective delivery of support to claimants rests on claimants being aware of:

- the scheme, their eligibility and how to apply;
- approximate timeframes for processing claims;
- the progress of their claim;

⁷¹ Section 45 of the FEG Act provides for this information to be shared to assist with the administration of particular functions related to the *Corporations Act 2001*, the *Bankruptcy Act 1966*, and administration of non-FEG entitlements that are being paid to current or former employees.

- the basis for decisions regarding eligibility and advance amounts; and
- avenues for seeking a review or appealing a decision and for providing feedback, and complaints.

Awareness of the scheme

3.4 The FEG claims process is not initiated automatically when a business becomes insolvent. Instead, it is initiated by the employee once the insolvency event has occurred. In most cases, employees are informed of FEG by the IP responsible for managing the insolvency or liquidation of the employer, who will generally direct them to the FEG website or FEG hotline for further information and to lodge a claim.

3.5 IPs are well placed to inform employees about FEG; they are in contact with the employees, are able to identify and contact affected employees and are aware of the financial position of the business including whether employee entitlements can be paid. As at January 2015, details of FEG were also included on a number of websites likely to be visited by affected employees, including the Department of Human Services (DHS). The program is referenced in material available on the ASIC website, the Fair Work Ombudsman and the Fair Work Building and Construction Commission. These websites provide summary information and direct employees to the Department of Employment's website or FEG hotline for further information.

3.6 The FEG hotline can be accessed via telephone or email. The hotline is staffed by approximately eight departmental staff during normal business hours from Monday to Friday.⁷² Guidance provided to FEG hotline staff emphasises an empathetic and informative approach when dealing with employees in recognition of the difficult circumstances the claimant may be experiencing. In 2013–14, the FEG hotline received 41 093 phone calls and 18 791 emails—an average of 165 calls, 76 emails, and 52 claim forms each day.

3.7 Examination of the FEG website shows it is easy to navigate and the information and instructions it provides are clear. This information is supported by a number of facts sheets covering specific topics in greater detail, including eligibility, the claim lodgement process, certifying documents and

72 Weekend or after hours callers are provided with pre-recorded instructions to call back during business hours; to contact the department at one of the given email addresses; to visit the website for further information; or to leave a message.

accessing online services. Information is also available describing the claims assessment process and how to seek a review or appeal a decision.⁷³ A copy of the FEG legislation is also linked to the website. Overall, the avenues for affected employees to be informed of the existence of the scheme are sufficient and the information available to potential applicants is logical, complete and easily understood.

Claim lodgement

3.8 The department encourages the submission of claims using the FEG online facility and promotes this through the FEG hotline, website and IPs. Approximately 70 per cent of FEG claims are currently lodged online.⁷⁴

3.9 Once a claim is lodged online, the department sends an email acknowledging receipt and a claim reference number that can be used to track progress of the claim through the online tracking facility. For hard copy claims, the procedures indicate that the department acknowledges receipt via a letter mailed to the applicant. If the claim is missing information or documentation is not submitted correctly, the department will generally contact the applicant via email or telephone to quickly resolve the problem. If the issue is more fundamental (for example, the form has not been signed), the form will generally be returned to the applicant with a letter explaining the issue.

Claim tracking and timeliness

3.10 While the department reports against timeliness performance measures in its annual report, only limited information is provided to applicants and claimants regarding timeframes for claims processing. The department's website states that:

We aim to assess your claim as quickly as possible; however, the actual time taken to assess a claim will depend on the complexity of your claim (this may include the complexity of your former employer's business structure) and the number of other claims on hand.⁷⁵

73 Department of Employment, <<http://employment.gov.au/fair-entitlements-guarantee-feg>>, [accessed 17/10/ 2014].

74 While this approach facilitates ready lodgement of claims, it presents a fraud risk as the department relies on scanned or photocopied documents to verify the claimant's identity and in turn, to determine their eligibility (this issue is discussed further in paragraph 2.39).

75 Department of Employment, <http://docs.employment.gov.au/system/files/doc/other/how_we_assess_feg_claims_fact_sheet_march_2014.pdf> [accessed 27 October 2014].

3.11 Using their claim reference number, claimants can enquire about the status of their application or claim with the FEG hotline and where necessary, can be passed to the officer currently managing the claim. The standard scripts for the FEG hotline instruct operators not to discuss delays in processing the caller's claim, or provide any commitment to applicants or claimants regarding timeframes for finalisation of their claim. However, staff members can provide the caller with the following general information: 'We aim to process as many claims as possible within 16 weeks, but claims may take longer to process due to the large volume of claims being received by the department.'⁷⁶

3.12 The department provides an online tracking facility that allows claimants to follow the progress of their claim. The information is presented as a graphic showing six steps in the claims process with finalised steps labelled 'completed' and the current step labelled 'in progress'. Text accompanying the graphic provides approximate timeframes for completion of each step and cautions that it may take longer in periods of high demand.

3.13 An eligible FEG claimant, by definition, is an individual who has lost their job due to events beyond their control. Individuals may face the financial uncertainty of being without employment for some time. Knowledge of the amount of their FEG advance and the timeframe for its payment would better position claimants to plan and prioritise. There would be benefit in the department being more open and transparent regarding the time it takes to process claims and factors that can impact this, including the current backlog of claims, high demand and resource availability. This information could be provided when claimants lodge their claim and when they inquire the status of their claim through the FEG hotline.

Special treatment of claims

3.14 There are some instances where, due to its complexity or other circumstances associated with the insolvency or the claimant, the department will prioritise the processing of claims. These instances are categorised as: fast-tracking, hot-cases and complex-cases.

3.15 Claims are fast-tracked to assist claimants who have particular needs, or those facing significant financial or emotional stress as a result of their circumstances. The need to fast-track a claim can be identified by staff at any

76 Department of Employment, *FEG Hotline Procedures Manual*, p. 41.

stage of the claims process and generally arises as a result of a discussion with the claimant regarding their circumstances. The criteria for identifying claims that should be considered for fast-tracking and the process for requesting the fast-tracking of a claim are documented and available to all staff. The decision to fast-track a claim is made by a senior officer on a case-by-case basis to ensure that claims are managed equitably and that fast-tracked claims are not prioritised at the detriment of other claims. These claims are tracked separately and in some cases, claims for employees of the same company will also be fast-tracked.

3.16 Hot-cases involve businesses that may have a large number of employees, or where the company's insolvency may have a particular impact on, for example, the industry sector or region in which it is located. These cases tend to involve the relevant Minister and are often reported by the media. In some instances the relevant Minister may have made a commitment regarding the timeframe for processing these claims and the department will need to work to achieve this; although the approach to processing claims for these businesses is the same as all other claims. As soon as the department is informed of the businesses' pending insolvency, it establishes a dedicated team to manage the claims. The team works closely with the IP, who will generally prioritise the provision of employee data from the company books and records.

3.17 Hot-cases may also include complex claims, which involve issues that are more difficult for assessors to resolve. Complexities could involve detailed arrangements associated with the sale of the business; the involvement of contractor and sub-contractor; limited supporting documentation available to assess the claim; complex governing instruments; franchisee arrangement; and the transfers of the business or associated entities (which may have implications for the transfer of liabilities).

Informing claimants of decisions

3.18 The FEG Act requires that the Department of Employment Secretary or a delegated departmental officer must give an applicant written notice of the decision regarding their eligibility and the decision regarding the amount of an advance. The notice must set out: the terms of the decision and written reasons for the decision.⁷⁷

77 FEG Act, s. 36.

3.19 Examination of a sample of outcome letters sent by the department to claimants show that they include this information, are clearly written and contain sufficient detail to inform claimants of the basis for the decision. The department has developed standard outcome letter templates to improve consistency and reduce the ambiguity of information provided to claimants. The letters also clarify that FEG advances are calculated as gross amounts, and have not had taxes or other deductions removed and that the service provider responsible for distributing the advance to the claimant (usually the IP), will distribute the advance after deducting the appropriate amounts to cover tax and other relevant payments (for example, child support payments). The department's outcome letters also provide claimants with details of the review and appeal processes available to them if they believe the department's assessment is incorrect.

Review and appeal of decisions

3.20 The FEG Act provides for the department to initiate reviews of decisions on its own initiative.⁷⁸ The department may also initiate a review if it has been provided with or becomes aware of new or additional information that may alter the outcome of a decision, even in the absence of a formal request by the claimant. This provision allows the department to respond quickly if it identifies incorrect decisions.

3.21 Claimants may also formally request review of a decision relating to the claimants' eligibility or the advance amount. Such a review must be made within 28 days of the claimant being notified of the decision.⁷⁹ To ensure the review is impartial, all information relating to the claim is reconsidered by an assessor that was not involved in the original claim assessment or with any reviews that may have been undertaken by the department. The assessors will also take into account any new information provided by the claimant that may affect the decision.⁸⁰

3.22 If the claimant is not satisfied with the outcome of the internal review, claimants may challenge the decision through the Administrative Appeals Tribunal (AAT). Since the introduction of the FEG Act, nine FEG claims have

78 FEG Act, pt. 6, div. 2.

79 The Department of Employment Secretary (or their delegate) may extend this deadline.

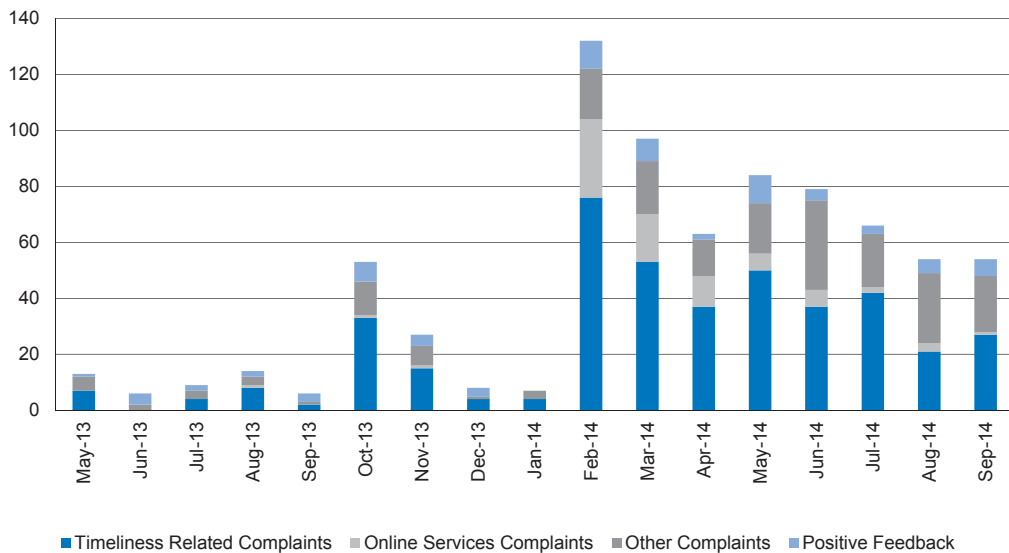
80 Departmental reviews are initiated under section 37 of the FEG Act, while claimant initiated reviews are provided for by section 38.

been referred to the AAT. To date, the AAT has not instructed the department to vary any decisions. However in two instances, the department and claimant negotiated an arrangement that saw the department set aside or vary the original decision and the claimants withdrew their appeals prior to a formal AAT decision being made.

Feedback and complaints

3.23 The department established a formal complaints management and feedback process for the scheme in May 2013. The process was implemented in response to findings of an internal performance audit conducted by the department in 2012–13. The number of complaints received by the department between May 2013 and September 2014 is shown in Figure 3.1.⁸¹ The department recorded 772 complaints relating to FEG between 1 May 2013 and 30 September 2014, with 54 per cent of these relating to timeliness issues.

Figure 3.1: Complaints and feedback—May 2013 to September 2014



Source: ANAO.

⁸¹ The numbers of complaints recorded over this period may be understated due to staff not capturing all complaints in 2013. The low level of complaints recorded in late 2013 prompted a 'refresher' training of staff in February 2014, contributing to the rise in complaints from this time. Some of this increase may also be attributable to issues that arose due to the change to the new claims processing model in August 2013.

3.24 The FEG complaints management and feedback policy requires staff to respond professionally to complaints,⁸² and to record these in the processing system to allow for monitoring and reporting. Within two business days of receiving the complaint, the complainant must be advised that their complaint has been registered and the department's procedures state that a response will be within five business days (this correspondence is recorded on the complainant's claim record). If the department does not hear from the complainant within ten business days of the department's response, the complaint is closed. If the complainant indicates their ongoing dissatisfaction with the response and the department is unable to reach a resolution with the complainant, they are advised of their rights to take the complaint to the Commonwealth Ombudsman.⁸³

3.25 Complaints and feedback are assigned a standardised code indicating the nature of the complaint. Details of the complaint are captured on the register and recorded against the claimant's claim record on the processing system. A consolidated view of all complaints is only available through a search to identify records with complaint codes in the open text field in the processing system. There would be benefit in development of a reporting facility to allow for the tracking and reporting of all complaints in a single register.

3.26 In addition to responding and resolving the issues raised by the complainants, a key focus of the department's management of complaints is to identify the root cause of these issues. Recurring issues are identified and this information is shared with the processing areas as part of information sharing sessions to identify lessons learned and to implement changes to resolve these issues.⁸⁴ While this process appears to be working, there is limited focus by the department on the complainant, the quality of the department's response and

82 The policy defines a complaint as an expression of dissatisfaction or concern about the administration of FEG that requires a response, and is not part of a formal review process. It is differentiated from feedback, which is a comment about the administration of FEG that does not require a response from the department.

83 The Ombudsman has dealt with four complaints related to FEG, with all relating to the claims not being finalised in a reasonable timeframe. In each instance, the department finalised the claim and notified the claimant of the outcome shortly after the Ombudsman became involved. In three cases the payment decision was made prior to the department submitting their official response to the Ombudsman's request for information, in the fourth it was made less than a week later. All four cases were closed by the Ombudsman without further investigation.

84 For example, based on the high number of complaints relating to the online status facility used by claimants to track their claim, changes were made to improve the design of this facility.

whether this effectively responds to the issues raised. In particular, there is currently no quality assurance or central oversight to examine how complaints are addressed, including examination of: the response to the complainant to ensure that it was appropriate; whether further escalation is required; whether the complainant is satisfied with the response and outcome; and whether the complaint should be closed, or requires additional follow-up or monitoring.

Working with insolvency practitioners

3.27 Insolvency Practitioners (IPs) are engaged to act on behalf of a company's creditors and are responsible for protecting and realising a company's assets. IPs are governed by the *Corporations Act 2001* and ASIC is responsible for their regulation.⁸⁵ All IPs are required to register with ASIC and to meet specific reporting obligations associated with the work they undertake. In performing their work IPs have access to the books and records of the insolvent company and are generally the primary point of contact for employees when their employer becomes insolvent. As such, IPs are well placed to assist the department with its administration of the FEG.

3.28 The department relies upon the IP to provide information from the former employer's records to verify a claimant's eligibility for a FEG advance and the amount of any advance. The department also relies on IPs to distribute FEG advances to eligible claimants. There is no mandatory requirement for IPs to assist the department and in some cases the IP may be unwilling or unable to provide assistance. Where this occurs, the department may engage another service provider to undertake this work (generally a qualified accountant⁸⁶), or depending upon the circumstances of the insolvency and the number of claimants involved, the department may undertake some of this work internally. The service providers are also able to distribute payments on behalf of the department and may also assist the department with the investigation of issues associated with complex claims, or suspected fraud and non-compliance.

3.29 Once an effective FEG claim has been submitted, the department will contact the relevant IP and seek details of outstanding entitlements and any debts the employee may have to the former employer. On occasion the IP will

85 Insolvency practitioners include the following professionals: liquidators, administrators, receivers, controllers and bankruptcy trustees.

86 The department maintains a panel of service providers from which it sources these services.

conduct this work as a cost of the winding up process. However, in most cases there are insufficient funds available to compensate the IP for this work and the department procures the paid services of the IP through a formal arrangement.⁸⁷ The cost of these services is determined through reference to an agreed fee model setting out the amount the department will pay, per claimant, for both verification services and distribution services.⁸⁸ The fee model was first introduced in February 2009, at which time the fee structure was supported by the IPs. At that time, the department notified IPs that the fee model would be reviewed on an annual basis. Accordingly, a revised model came in effect from March 2010. The model has not been reviewed since.

3.30 In 2012–13, the department paid IPs a total of \$7.8 million for verification and distribution services.⁸⁹ In an effort to reduce this cost, the department implemented changes to the process for seeking verification data from IPs. Rather than seeking this data for all employees of the insolvent company (regardless of whether the employee had actually applied for FEG support), the department now only seeks this data as eligible claims are received. This change reduced the cost of IP services by 36 per cent to approximately \$4.9 million in 2013–14.⁹⁰ While this change has resulted in a significant reduction in the cost of IP fees for the department, the new process results in delays and additional work for departmental staff as they are required to make and track multiple requests for employee information from IPs (on each occasion revising the contractual arrangements with the IP to reflect this change in scope and cost). The change also imposes additional work on IPs, as the ad-hoc nature of the requests does not permit the IP to benefit from efficiencies gained from processing all employee data in a single batch. The IP is also unable to focus resources on this task at a single point in the insolvency process, allowing these resources to then focus on other priorities. Instead, staff must be taken from other tasks to re-visit the calculation of entitlement data in response to each new data request from the department.

87 The services to be delivered by the IP are set out in a deed of undertaking signed by the IP. This deed of undertaking and a letter of acceptance from the department form the agreement for the provision of services to the department. The department is able to procure these services directly without approaching the market as the relevant IP is the only one able to provide the services required.

88 The matrix works on a sliding scale, with the cost of each service reducing as the number of employees per case/request increases.

89 This increase correlates to the increase in the number of claims received over this period.

90 The department also sought and received agreement, through the 2014–15 portfolio budget process, for IP fees to be drawn from administered funding. This change was implemented from 1 July 2014.

3.31 In view of the important role of IPs in supporting the department in its administration of FEG, there is scope for the department to work with IPs to streamline the process for requesting employee data and in doing so, reduce the red tape burden on IPs, particularly given the importance of the ongoing relationship with IPs to the efficient processing of claims.

Cooperation with other agencies

3.32 The department has established a number of inter-entity cooperative arrangements to facilitate sharing of insights and information in areas where the work of these agencies intersect.⁹¹ Protocols have been established for the department to share information with the ATO and Fair Work Ombudsman (FWO) to assist in identifying company directors who should be brought to the attention of ASIC on matters relating to compliance with the *Corporations Act 2001*.

3.33 The department also maintains information exchange arrangements with ASIC. As part of this arrangement, the department provides ASIC with details of IPs and the details of company directors who have had more than one insolvency event. This information is provided on a quarterly basis to inform ASIC's intelligence gathering and risk-based compliance activity. The department also shares information with ASIC regarding investigation of potential fraud that involves IPs or company directors. Meetings are held twice a year between senior representatives of the Department of Employment and ASIC to discuss general trends and patterns in insolvency practitioner performance.⁹² The department is also a member of the Inter-Agency Phoenix forum. The forum brings together a number of State and government agencies to share intelligence, data and experience aimed at deterring fraudulent phoenix behaviour.⁹³

91 Section 45 of the FEG Act authorises the disclosure of personal information to certain agencies for the administration of particular functions. This authority allows for information to be shared with other agencies for the purpose of facilitating the exercise of powers or functions that these agencies have in relation to *Corporations Act 2001*, the *Bankruptcy Act 1966*, or entitlements of current or former employees.

92 Claimants are also referred to ASIC when their former employer's company appears to be abandoned, as ASIC is empowered to wind-up abandoned companies to allow employees with unpaid employment entitlements to make a claim under the FEG Act.

93 Fraudulent phoenix activity is where a company deliberately liquidates to avoid paying creditors and then carries on the same or a similar business with the same ownership, via another entity.

3.34 When a claim is finalised, the department provides details of the advance amount to DHS to allow adjustments to be made to the claimant's entitlements payments. For example, the information may be used by DHS to adjust government income support payments received by the claimant.⁹⁴

3.35 The department also benefits from access to information provided by other agencies. For example, the FWO provides the department with access to the agency's knowledge management system to provide the department with access to information regarding employee entitlements, awards and agreements. The department also takes advantage of information provided through the Department of Immigration and Border Protection Visa Entitlement Verification Online system to check visa entitlements and status information.

Conclusion

3.36 The government's employee entitlements scheme has been functioning for almost 15 years and over this period, the department has had opportunity to establish core elements of the customer-facing aspects of the program, but this can be improved. With the deterioration in timeliness of claims processing since early 2014, the department has not communicated directly with stakeholders regarding the cause of these issues or provided regular updates regarding their resolution. During 2014, the department made a number of enhancements to the claims processing system that have improved its ability to monitor and report the status of claims. There is opportunity for the department to use this information to provide more timely and regular updates to stakeholders regarding average processing timeframes. This information would assist claimants to plan and prioritise as they make decisions regarding their finances and future employment options.

3.37 While the department has made limited attempts to gauge claimant satisfaction with FEG service delivery, there is an annual process in place to seek feedback from insolvency practitioners. Insolvency practitioners interviewed by the ANAO regarding the effectiveness of the department's administration of FEG were generally positive and this view was confirmed by the results from the department's most recent annual survey of IPs. However,

94 Once the claimant receives a FEG advance, the employee's income support payments will be paused, as the advance is treated as income and must be drawn down before the income support payment can recommence—for example, a ten-week redundancy payment would result in pausing of the unemployment benefit for a ten-week period.

the questions contained in the annual survey are limited and do not seek IP's views on key elements of the department's relationship with IPs. Additional comments provided by a number of IPs that responded to the survey identified issues relating to: the current arrangements for procuring IP services; lack of communications with IPs regarding operational changes; and the additional impost associated with ad-hoc rather than batch arrangements for requesting claimant details. In view of the important role of IPs in supporting the department in its administration of FEG, there is scope for the department to streamline the process for requesting employee data.

4. Reporting and Evaluation

This chapter examines the Department of Employment's framework for monitoring and reporting the scheme's performance against the government's objectives, focusing on program evaluation, the Portfolio Budget Statements and reporting in the department's annual report.

Introduction

4.1 In addition to the provision of financial assistance to eligible employees and the recovery of advances, the department has a broader responsibility for managing and monitoring the ongoing delivery of the FEG program. In this regard, important activities for the department are monitoring of the overall performance of the program and reporting to government, Parliament and public on the program's effectiveness and its progress in achieving the government's identified outcomes.

Monitoring program performance

4.2 Sound monitoring and reporting arrangements need to be in place to monitor the overall performance of the FEG program. Relevant activities at the program level for the department include: assessment of its own performance; monitoring of the claim assessment process; seeking feedback to understand the experience of stakeholders; and evaluating the effectiveness of FEG.

4.3 The department has—since enhancements made to FEG's processing system in June 2014⁹⁵—periodically monitored FEGs' operational performance, with a particular focus on program demand and claims processing. Quarterly reports provide the department's Secretary with detailed management information covering key aspects of the program, including: claims activity, claim age, performance of insolvency practitioners, review and appeal activity, FEG hotline activity and complaints and the performance indicators included for FEG in the PBS and risks.

4.4 The commentary in this report also includes a detailed assessment of the current status of the scheme and in particular, progress being made in

95 Although the department transitioned to the new claims processing model in August 2013, it was not until June 2014 that enhancements to the processing system provided the functionality required to monitor workflow and generate management information for reporting.

addressing the claims backlog and improving the timeliness of claims processing. The availability of this information also provides for improved visibility of the flow of claims through the claims assessment process, allowing for identification of potential bottlenecks, and facilitating re-allocation of staff and effort to respond to these.

Program reporting

4.5 The government's reporting framework requires entities to identify and report against the programs that contribute to each of the government's identified outcomes over the Budget and forward years with the aim of clearly demonstrating the achievements against program objectives. Central to this framework is the development of clearly specified outcomes, well defined program objectives, deliverables and appropriate key performance indicators (KPIs) to assess the impact of the program. The reporting framework is currently subject to change as a result of the introduction of the *Public Governance, Performance and Accountability Act 2013*. New guidelines in relation to performance reporting are expected to be introduced in early 2015. This change provides an opportunity for the department to examine its reporting for FEG and to seek to align this with the new reporting arrangements.

4.6 The Portfolio Budget Statements (PBS) for the Employment Portfolio show that FEG contributes to Outcome 2: Facilitate jobs growth through policies that promote fair, productive and safe workplaces. Three programs contribute to achievement of this outcome, with FEG identified as an 'administered item' under Program 2.1—Employee Assistance. The 2014–15 PBS states the objective for Program 2.1 as: 'This programme is directed at protecting employee entitlements in certain circumstances'⁹⁶ and describes the FEG as:

Fair Entitlements Guarantee—established under the *Fair Entitlements Guarantee Act 2012* to provide financial assistance for certain unpaid employment entitlements when an employee loses their job through the liquidation or bankruptcy of their employer on or after 5 December 2012.⁹⁷

96 Australian Government, *Portfolio Budget Statements 2014–15, Employment Portfolio*, Commonwealth of Australia, Canberra, 2014, p. 43.

97 *ibid.*

Measuring performance

4.7 The department does not define deliverables and KPIs for the programs contributing to Outcome 2, explaining this inconsistency with the reporting framework with the statement that, ‘Data is not provided for deliverables because the administered items address legal or administrative issues rather than advancing major government initiatives’.⁹⁸

4.8 Instead the department provides the following ‘effectiveness indicators’ to demonstrate the contribution of the programs to the achievement of Outcome 2: (a) the federal workplace relationship system supports improved productivity outcomes (represented by a measure for productivity growth and the ABS Wage Price Index); (b) low incidence of industry action (represented by a measure for working days lost); and (c) collective bargaining is widely used by employers and employees to negotiate pay and conditions (represented by the number of current enterprise agreements under the *Fair Work Act 2009*). There is no attempt by the department to assess the effectiveness of the program in protecting employee entitlements.

Departmental outputs

4.9 The department’s reporting for FEG focuses on the timeliness of claims processing, the accuracy of claims processing and stakeholder satisfaction. These measures are referred to in the annual report as ‘departmental outputs performance information’. These performance indicators were specified in the original operational arrangements for GEERS in 2001 and the department has consistently reported against these measures since this time, although targets for these measures have varied. While the output measures remain relevant for the scheme, there are some improvements that could be made to the individual measures to ensure they continue to provide an accurate view of the status of the scheme and the effectiveness of the department in administering it. The current performance measures included in the 2014–15 PBS are shown in Table 4.1:

98 Australian Government, *Portfolio Budget Statements 2014–15, Employment Portfolio*, Commonwealth of Australia, Canberra, 2014, p. 47.

Table 4.1: FEG departmental output measures, 2014–15

Measure	Target
Timeliness of processing claims	<u>Timeliness 1</u> : 90 per cent of requests for verified entitlement data are initiated within 2 weeks of claim receipt or liquidation date (whichever is later).
	<u>Timeliness 2</u> : 90 per cent of eligibility and advance decisions made within 4 weeks of receiving verified entitlement data.
Accuracy of processing claims	90 per cent of eligibility and advance decisions are accurate having regard to the information available when making the decision.
Stakeholder satisfaction	80 per cent of stakeholders (insolvency practitioners) are satisfied with the administration of FEG.

Source: 2014–15 Portfolio Budget Statements for the Department of Employment.

4.10 In addition to these output performance measures the department also includes in annual reports the total amount of FEG or GEERS advances recovered from liquidated companies. During 2013–14 more than \$16.48 million was reported as recovered through creditor dividends in the winding up process. These recoveries related to advances made within or before 2012–13.

Timeliness

4.11 Since the employee entitlements scheme commenced, the department has reported against two timeliness performance measures. The first of these measured achievement against a target timeframe of 16 weeks for completing each claim (16 weeks from receipt of the claim to the point where the decision regarding the advance amount was made). The second measure focused on the final segment of the process and the point at which the final decision is made following receipt of verified entitlement data from the IP.

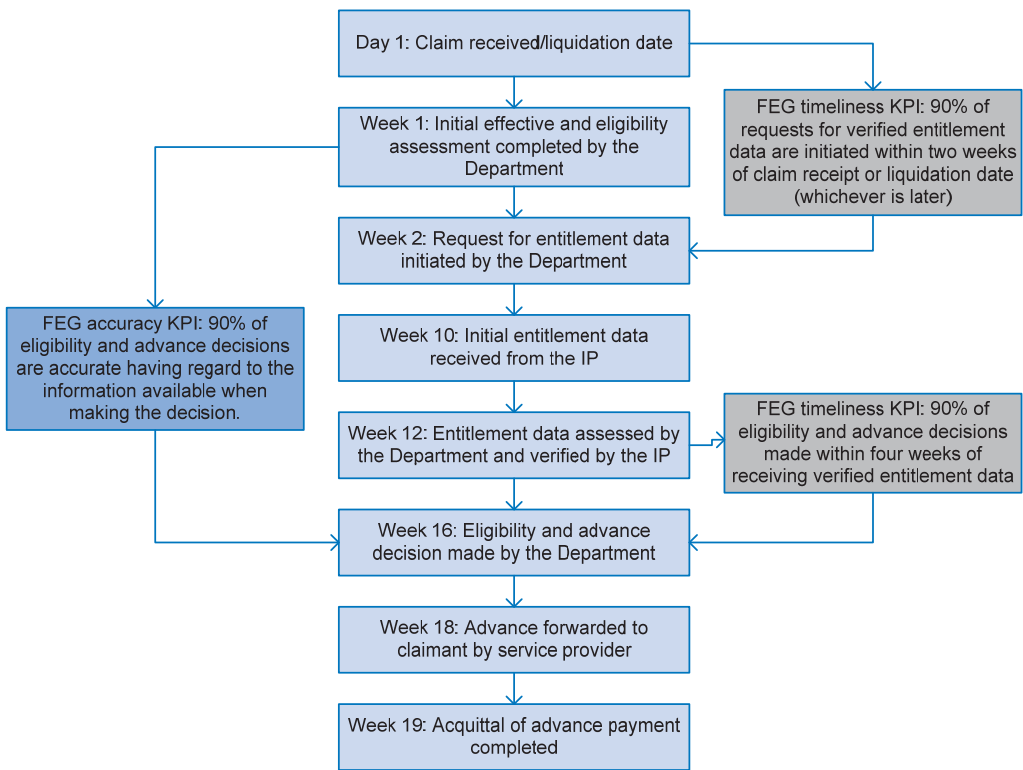
4.12 With increased demand for support from the scheme in recent years the department has found it increasingly challenging to meet the targets for these measures and this has resulted in their gradual easing. In 2010–11, the department defined the timeliness measure as ‘90 per cent of claims processed within 16 weeks of receipt’.⁹⁹ The department fell just short of achieving this target, with 88.6 per cent of claims processed in the 16 week timeframe. While the PBS stated that the target was 90 per cent in that year, the department’s 2010–11 annual report reported the target as 80 per cent, giving the impression

99 Australian Government, *2010–11 Portfolio Budget Statements, Department of Education, Employment and Workplace Relations*, Commonwealth of Australia, Canberra, 2010, p. 135.

the target had been exceeded.¹⁰⁰ The target was reduced to 80 per cent in the subsequent 2011–12 PBS.

4.13 With the introduction of the FEG legislation in 2012–13, the department stopped reporting performance against the 16 week processing timeframe replacing this measure with a new performance measure that covers only the initial segment of the claims process. The second timeliness performance measure remained unchanged; however the target for its achievement was reduced from 98 per cent to 90 per cent, notwithstanding that the department had consistently met the 98 per cent target. The key steps in the claims process and points at which the current performance measures apply are shown in Figure 4.1.

Figure 4.1: Indicative timeframe for claims processing



Source: Developed by the ANAO.

100 Refer to Department of Education, Employment and Workplace Relations, *Annual Report 2010–11*, DEEWR, Canberra, 2011, p. 131.

4.14 The department's aim in redefining the performance measures was to focus on segments of the claims process over which it has control. As Figure 4.1 illustrates, the current performance measures only cover the first and final segments of the claims process—both areas of the process where the department has greater control. However, the middle segment of the process is now not subject to any performance reporting and it is in this portion that the more complex processing activities take place and where issues and delays are most likely to occur. While some of the factors that cause delays during this stage of processing are outside the direct control of the department (for example, where IPs may experience delays in providing data and verifying a claim), responsibility for FEG ultimately rests with the department and as such, it is important that the department's performance is measured and reported across the entire claims process.

4.15 The department's performance against the two new indicators has been well below the target, with the department's 2013–14 *Annual Report*, showing that only 52.8 per cent of requests for verified data within two weeks (against the target of 90 per cent).

Accuracy

4.16 Accuracy in assessing claims is important to ensure that public money is spent appropriately and to avoid the time and cost associated with review of claim assessments and rectification of errors. The accuracy of claims processing is currently represented by the proportion of correct assessment decisions achieved each year, with the target currently set at 90 per cent of decisions.

4.17 For the purpose of calculating this measure, an inaccurate or incorrect assessment decision is one that has been varied based on a review¹⁰¹ and the review did not involve consideration of new information. Conversely, accurate decisions are those that have not been subject to a review; that have not been changed as a result of a review; or that have been changed on the basis of new information considered as part of a review.

101 The FEG legislation provides for three types of review; one initiated by the claimant and a second that is initiated by the department when new information comes to light or an error was identified. The FEG legislation also provides for review of the decision by the Administrative Appeals Tribunal. Under GEERS claimants could seek a review by the department of the decision (this was referred to as an appeal).

4.18 In 2012–13, the target for this measure was set at 98 per cent of payments not varied after appeal.¹⁰² In 2014–15, the target for this measure was reduced from 98 per cent to 90 per cent. This change was made despite the department reporting that it achieved 98.7 per cent accuracy in the 2013–14 *Annual Report*.¹⁰³ There is no record explaining the rationale for making the change even though the basis for seeking an appeal remains fundamentally unchanged and examination of past performance against this measure shows that the department consistently achieved the higher target.

4.19 Consistency in reporting is an important consideration and wherever possible, performance targets should remain consistent across reporting periods to assist with monitoring progress and achievements. Accordingly, any decision to change performance measures should be justifiable and consider the previous years' targets and the department's progress in achieving these, taking into account the impact of changing practices and conditions.

Stakeholder satisfaction

4.20 Feedback from claimants with respect to satisfaction with the department's administration of the scheme has been limited. The department conducted a survey of claimants in 2013–14 using an electronic survey tool.¹⁰⁴ The response rate to the pilot survey was low (at 17 per cent) and the department advised the ANAO that the data could not be used for reporting purposes. The department has also advised that it will give consideration to alternative approaches in an effort to improve this response rate when it begins planning for the next survey of claimants in 2015.

4.21 There is considerable merit in the department seeking feedback from claimants regarding their experience with the scheme to help identify potential areas of improvement in administration. It is important that the department uses the lessons from the pilot and develops an effective approach to reliably assess the views of claimants.

102 Reference to an 'appeal' relates to the arrangements in place prior to the introduction of the FEG legislation; claimant had one right of review of the original decision, and one right of appeal of the review decision.

103 See Department of Employment *Annual Report 2012–13*, p. 103.

104 Invitations to participate in the survey were sent to 924 claimants who had received FEG assistance during the year. The department received 158 responses (a 17 per cent response rate and below the response required to provide the appropriate level of statistical confidence).

4.22 The department reports on the level of satisfaction of IPs (with the management of the employee entitlements support scheme) through an annual survey. The results of the survey have consistently shown that IPs are ‘satisfied or above’ with the department’s management of the scheme. The department’s 2012–13 *Annual Report* noted that the department had surveyed 163 IPs, with 91 per cent rating the department’s management of the FEG scheme ‘satisfactory or above’.¹⁰⁵

4.23 In 2013–14, the department redefined the stakeholder satisfaction performance measure, adding the target of 80 per cent of stakeholders (IPs) satisfied with the administration of FEG. The department also changed its approach to surveying IPs; in prior years, the department’s survey of IPs was conducted by an external organisation¹⁰⁶ and involved a census of all IPs the department had worked with during the relevant financial year, with data collected via telephone interviews. In 2013–14 the department conducted the survey for the first time in-house, using an electronic survey tool. A total of 489 IPs were asked to participate in the survey, with only 26 per cent (126 IPs) providing a response. The department confirmed that the number of responses was just short of the 133¹⁰⁷ required for the result to achieve the desired level of statistical confidence. Despite this, the department used the results in its 2013–14 annual report, reporting that 74.8 per cent of IPs responded that they were ‘satisfied or above’ with the department’s management of FEG and a further 18 per cent were ‘neutral’ and 7 per cent were ‘dissatisfied’.

4.24 The department’s online survey included nine questions and asked IPs to rate their satisfaction with: the availability of information; correspondence; and staff professionalism. The survey also asked IPs to rate their level of satisfaction with the business processes and documentation used to: verify entitlements, request/pay for IP services and for distributing payments to eligible claimants.¹⁰⁸ Despite the results of the survey being used to report IPs’ level of satisfaction with the department’s administration of FEG, the 2013–14 survey did not pose this question directly to IPs. Instead, the department

105 Department of Education, Employment and Workplace Relations, *Annual Report 2012–13*, DEEWR, Canberra, 2013, p. 89.

106 Prior to the change in 2013–14, the survey methodology and questions had remained consistent since at least 2008–09.

107 The response rate achieved by the department’s in house survey is low, particularly when compared with the average response rate of 70 per cent achieved over the previous seven year when the survey was conducted by an external organisation using a different methodology.

108 The rating scale ranged from ‘very satisfied’ to ‘very dissatisfied’ with an option to answer ‘neutral’.

calculated the percentage of satisfied IPs based on responses to selected survey questions. However, the questions included in the survey were limited and did not cover key areas of the department's relationship with IPs. Examination of free text responses to the IP satisfaction survey showed a number of areas of concern expressed by IPs relating to: changes made by the department to the process for requesting claimant details; difficulties contacting relevant departmental staff; IP remuneration; and the delays in processing of claims. IPs interviewed by the ANAO as part of this audit also raised concerns relating to one or all of these areas.

4.25 Refocusing of the survey questions to focus on all aspects of the department's relationship with IPs will provide for a more accurate assessment of these stakeholders' satisfaction with the department and allow for more meaningful feedback to be provided that can be used to improve the department's management of the scheme.

Scheme evaluation

4.26 Since the commencement of the government's employee entitlements scheme in 2000, the department's focus in relation to its administration has been on the processing of claims. While an internal evaluation of the scheme was conducted shortly after the scheme commenced in early 2001, no further evaluations of the scheme have been undertaken. Similarly, only limited analysis has been undertaken by the department in relation to how the scheme operates and the consequence of recent changes to its design. The department informed the ANAO that in May 2006 a report was finalised by an external consultant on behalf of the department assessing the feasibility of developing a model to forecast demand for the GEERS. In 2014, the department commenced a new research project focusing on insolvency dynamics, in particular, determinants of insolvency and linkages to FEG demand. The initial phase of this research was completed by the end of 2014 and further work is continuing.

4.27 Overall, the lack of analysis of the scheme has limited the department's ability to provide advice to the government on the program's benefits—particularly for employees who lose their job when a business fails—and to inform policy considerations, particularly in relation to understanding the drivers for increasing demand for the scheme, connections between demand and scheme cost and options to manage these issues. It has also constrained the

department's ability to inform broader discussion, particularly in relation to topical issues including moral hazard¹⁰⁹ and phoenix activity¹¹⁰.

4.28 With the intent of the scheme remaining largely unchanged since it commenced in 2000 and with plans for the scheme to continue, there is scope for the department to undertake periodic analysis and evaluation, including consideration of the scheme's design; the dynamics of demand and cost and how the scheme integrates with other government initiatives to protect employees and regulate business. This information would better position the department to advise the government on any adjustments to the scheme design; to manage scheme performance; and to strengthen accountability.

Conclusion

4.29 When the department transitioned to a stage-based processing model in August 2013, the FEG scheme's focus moved from processing claims at the company level to the individual claim level. It took some time for the department to make changes to the processing system to support this new focus and it was not until June 2014 that enhancements were made that provide for the tracking of individual claims as they progress through the claims process. Improvements to the processing system have also been made relating to the availability of management information to monitor and report on the status of the claim process, including development of a number of regular reports for the use of staff and managers.

4.30 In outlining the proposed allocation of resources in the Portfolio Budget Statements and reporting on FEG in its annual report, the department's focus has been on outputs (referred to as 'departmental outputs'), rather than reporting against outcomes or key performance indicators, as is generally the practice for large initiatives. The measures used by the department were first set out in the operational arrangements for the original scheme in 2000. These measures have remained largely unchanged; however the targets against which achievements are measured have varied.

109 Moral hazard occurs where some employers accept a higher level of risk because of the existence of a government funded safety-net to cover their employee entitlement obligations.

110 Phoenix activity is defined as the evasion of tax and other liabilities, such as employee entitlements, through the deliberate, systematic and sometimes cyclic liquidation of related corporate trading entities.

Australian Government (Treasury) 2009, *Action against Fraudulent Phoenix Activity: Proposals Paper*, p1.

4.31 While these output measures remain relevant for the scheme, there are some improvements that could be made to the individual measures to ensure they continue to provide an accurate view of the status of the scheme and the effectiveness of the department in administering it. For example, the current measure used to demonstrate the timeliness of claims processing does not cover the full claims assessment process and the measure showing the level of stakeholder satisfaction with the department's administration of the scheme, only reports on the satisfaction of insolvency practitioners and does not report on the satisfaction of claimants.

4.32 The public sector's reporting framework is currently subject to change as a result of the introduction of the *Public Governance, Performance and Accountability Act 2013* and new guidelines are expected to be introduced during 2015. In seeking to align with the new reporting arrangements, there is opportunity for the department to examine its reporting for FEG and give consideration to the areas of improvement identified by the ANAO as part of this audit.

4.33 Since commencement of the various entitlements schemes in 2000 the department's focus has been on administering the claims assessment process, with only limited focus on evaluation and analysis of the scheme and how it integrates with other government initiatives aimed at protecting employees and regulating business. There is opportunity for the department to undertake periodic analysis to better position it to support policy making, assist in program management and strengthen accountability.



Ian McPhee

Canberra ACT

23 April 2015

Appendices

Appendix 1: Entity Response



Australian Government
Department of Employment

Your Ref PAR12305/3912390
Our Ref

Secretary
Renée Leon PSM

Dr Andrew Pope
Group Executive Director
Performance and Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Dr Pope

Performance Audit on the Administration of the Fair Entitlements Guarantee

Thank you for your letter of 2 March 2015 providing the opportunity to comment on the Australian National Audit Office's performance audit on the Administration of the Fair Entitlements Guarantee (FEG).

The Department appreciates the suggestions contained in the report and agrees with the recommendation. The Department's response to the recommendation is below.

Agreed. The Department of Employment is modifying its fraud control framework to introduce greater support around fraud and non-compliance for specific programme areas.

Attached are the Department's summary comments for inclusion in the report.

If you have any questions regarding the Department's response please contact Sue Saunders on (02) 6240 9272 or at sue.saunders@employment.gov.au.

Yours sincerely

Renée Leon
/ April 2015

Department of Employment comments on the proposed draft report on the Performance Audit on the Administration of the Fair Entitlements Guarantee under Section 19 of the *Auditor-General Act 1997*.

Response for inclusion in the Audit Report Summary

The Department welcomes the report on the Department's delivery of the Fair Entitlements Guarantee programme.

The Department is modifying its fraud control framework so that greater support with specialised fraud and non-compliance resources is available to programme areas to prevent and detect fraud. The Department recognises the need for timely assistance to be paid under the programme and is implementing a strategy aimed at addressing claims processing backlogs by end June 2015. The Department will also consider the other programme enhancement suggestions identified by ANAO in the report.

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Public Sector Audit Committees: Independent assurance and advice for Accountable Authorities	Mar. 2015
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