

16 October 2025

CIRCULAR TO EMPLOYEES

THIRD SECTOR AUSTRALIA LIMITED ACN 136 602 376 TRADING AS MOMENTUM COLLECTIVE (ADMINISTRATORS APPOINTED) ("THE COMPANY" or "MOMENTUM COLLECTIVE")

Appointment of Voluntary Administrators

I advise Ben Campbell, John Park, Joseph Hansell and I, Joanne Dunn, were appointed as Joint and Several Administrators ("**Administrators**") of the Company on 16 October 2025 by resolutions of the directors of the Company, and pursuant to section 436A of the Corporations Act 2001 (*Cth*) ("the Act").

We are writing to explain how the appointment of the Administrators affects you. Our appointment means the powers and authority of the Company's directors have been suspended and as the voluntary administrators, we have assumed control over all aspects of the Company.

Momentum Collective will continue to provide services on a business-as-usual basis whilst we urgently review options for a sale of operations and/or an orderly transition of participants and services to new providers. We will work closely with the Executive Leadership team during this process. Further details regarding the outcome of this review will be announced as soon as details become available.

Your ongoing employment

Your employment will continue as normal, unless you are advised otherwise. This means shifts, scheduling and so forth will continue as normal unless you are advised differently by the Administrators.

Please continue to refer to your line manager for day-to-day operations. We will provide guidance to the Executive Leadership team to ensure all staff can continue to operate as normal.

We have enclosed at **Annexure A** some important messages regarding the ongoing operations of Momentum Collective and the processes which must be followed by all employees throughout the course of the administration.

Wages and entitlements for ongoing employment during the administration will be paid by the Administrators.

Please note the following regarding your ongoing employment:

- Your employment contract is still with Momentum Collective and your employment will continue as normal until advised otherwise. You are required to continue with your usual duties unless directed otherwise.
- Your wages will be paid to you as per your usual payment cycle. Please do not be concerned about the possibility of non-payment of your wages earned during the administration period. Wages are a cost of the administration and are paid in the ordinary course of business.
- Staff who had annual leave approved prior to the appointment of the Administrators should speak to their line manager to determine whether their assistance is required. Future leave requests should be submitted to your line manager and will be considered through the normal business process.
- At all times your employment (and any contract of employment) remains with Momentum Collective, not with the Administrators personally.
- Please continue to report to your line manager as you ordinarily would. We are working with the Executive Leadership team to establish a framework for delegations and decision making.
- If you have any particular concerns or issues you wish to raise in confidence you should contact one of our staff directly (details are provided at the bottom of this letter).

Unpaid Entitlements

Amounts owed to employees in respect of employee entitlements, including wages, superannuation, holiday pay, long service leave and termination payments, generally have priority over the claims of other creditors under the applicable provisions of the Act.

We are reviewing the entitlements owing to employees based upon Momentum Collective's records. We will write to you in due course once this review is complete, with details of amounts outstanding to you.

In relation to leave taken during the course of the administration, we advise normal procedures and approval processes should be followed.

In respect of your entitlements more broadly I advise the following:

- A sale of Momentum Collective and/or individual business units is intended to result in your employment continuing and all of your entitlements being maintained. In the event your employment does not continue with Momentum Collective, it is expected your entitlements would be met as a result of the sale structure. However, as we cannot guarantee the outcome of the administration, we are unable to provide certainty to you at this point in time;
- Should Momentum Collective's assets be insufficient to meet the outstanding entitlements in full, employees are able to apply to the Federal Government's Fair Entitlement Guarantee ("FEG") scheme if the Company enters liquidation (more information contained below); and

- In order to treat all employees equally, this means that if you should resign, we will not be in a position to pay any pre-appointment entitlements to you during the course of the administration and until such a time as the assets of Momentum Collective have been realised and the return to all employees can be calculated.
- As mentioned above, at this stage, we cannot confirm if there will be funds available to pay employee entitlements.

Fair Entitlements Guarantee Scheme

In the event Momentum Collective is placed into liquidation at the second meeting of creditors, you may be entitled to lodge a claim under the FEG scheme.

Under the FEG scheme, the Australian Government provides financial assistance to cover certain unpaid employment entitlements to eligible employees who lose their job due to the liquidation of their employer. If Momentum Collective is placed into liquidation, under the scheme, you may be able to claim for amounts owing for wages, annual leave, long service leave, payment in lieu of notice and redundancy. For further information and details around eligibility you should refer to the FEG website. Details are provided below.

- Website: www.dewr.gov.au/fair-entitlements-guarantee
- Telephone: 1300 135 040

We have enclosed a FEG fact sheet at **Annexure B**.

Support available to you

Momentum Collective has its own Employee Assistance Program (“EAP”) provided by Assure and this remains available to you and your family members 24 hours a day, seven days a week. Assure is a free and confidential service.

Appointments can be made with Assure via their website at <https://assureprograms.com.au> or by telephone on 1800 808 374

Frequently Asked Questions (“FAQ”)

We have enclosed a FAQ document at **Annexure C** to assist with answering some common queries employees may have in a voluntary administration. We encourage you to read through this document and please reach out to the Administrators’ team if you wish to discuss any aspect of the administration or your employment.

First meeting of creditors

We are required to hold a meeting of Momentum Collective's creditors within eight business days of our appointment. Creditors include current employees and former employees that are owed entitlements. Notice of the meeting time and date will be provided to you shortly.

We are required by law to hold this meeting. At the meeting we will explain the administration process, and creditors will have the opportunity to appoint a creditors' committee or nominate an alternative administrator, should they wish.

The meeting will be held virtually (by Teams or Zoom) and you are welcome to attend, however you are not obliged to do so. Whether you attend or not will not impact on your rights as an employee.

Ongoing communication and contact details

We understand this is a very difficult and uncertain time for employees. We thank you for working with us as we go through this process. We are seeking to achieve the best outcome for the people who receive services from Momentum Collective and for staff.

We will continue to provide regular updates to you directly and through your managers.

For more information generally, we have **attached** an ASIC information sheet for employees at **Annexure D**. Additional information sheets can be obtained at www.asic.gov.au (search for 'insolvency information sheets').

Should you have any queries, please contact this office on (07) 3225 4900 or by email to MomentumCollective@fticonsulting.com.

Thank you in advance for your support and cooperation.



Joanne Dunn

Joint and Several Administrator

Attachments:

Annexure A – Ongoing services - important messages for employees

Annexure B – FEG Fact Sheet

Annexure C – Frequently Asked Questions

Annexure D – ASIC Information Sheet 75

Annexure A

Ongoing services - important messages for employees

As a consequence of our appointment as Administrators, there may be alternate procedures and processes implemented, including the ordering of goods and services, accepting deliveries and/or other purchasing and operational matters.

Please note, without the express authority of the Administrators or our representatives, you must not, nor must you permit anyone else to:

- Place any orders for goods or services;
- Accept delivery of any goods or services, unless they are the subject of a duly authorised order;
- Supply any services to customers or dispatch any goods to customers;
- Enter into any commitments with suppliers or customers;
- Make any compromise or arrangement with any debtor or creditor of Momentum Collective, including the allowance of any set-offs;
- Incur any debts or liabilities in the name of Momentum Collective or pledge its assets;
- Return any goods to suppliers;
- Make any payments; and
- Remove any assets from Momentum Collective's custody or control.

In addition:

- Every invoice, order for goods, business letter, or other external document must have the words "(Administrators Appointed)" immediately following the name of the Company.
- All assets of Momentum Collective must be secured against theft.
- All known breaches of the law or regulations (e.g. health, safety, hygiene, fire, etc.) are to be notified to us in writing immediately.

Annexure B

FEG Fact Sheet



Eligibility for FEG assistance

This fact sheet provides information about the eligibility requirements for the Fair Entitlements Guarantee (FEG). The Fair Entitlements Guarantee (FEG) is a scheme of last resort that provides financial assistance for unpaid entitlements to eligible employees when their employer enters liquidation or bankruptcy. FEG assistance is only available where there is no other source of funds to pay employment entitlements to eligible employees retrenched due to insolvency of the employer.

For information about what assistance is available please refer to the [What assistance can FEG provide?](#) fact sheet available on the [FEG website](http://www.dewr.gov.au/fair-entitlements-guarantee) (www.dewr.gov.au/fair-entitlements-guarantee).

The FEG Act

Decisions about eligibility for FEG assistance are made in accordance with the *Fair Entitlements Guarantee Act 2012* (FEG Act). FEG may apply to a person if their employer enters liquidation or bankruptcy and the person has certain unpaid employment entitlements owing to them. For information about what assistance is available please refer to the [What assistance can FEG provide?](#) fact sheet available on the [FEG website](http://www.dewr.gov.au/fair-entitlements-guarantee) (www.dewr.gov.au/fair-entitlements-guarantee).

Am I eligible?

Subject to certain exclusions, you will be eligible for FEG assistance under the FEG Act if:

- your employment has ended
- your former employer entered liquidation or bankruptcy (known as an ‘insolvency event’) on or after 5 December 2012
- the end of your employment:
 - was due to the insolvency of your employer, or
 - occurred 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
- you are owed employment entitlements
- you have taken reasonable steps to prove those debts in the winding up or bankruptcy of the employer
- if you were owed employment entitlements before the insolvency event occurred, you took reasonable steps to have them paid
- at the time your employment ended, you were an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa (i.e. your current visa allows you to live in Australia indefinitely) or special category visa (i.e. your current visa allows you to stay and work in Australia as long as you remain a New Zealand citizen)
- you have made an effective claim (see s. 14).

You must meet all of the above requirements to be eligible for FEG assistance.

Exclusions from eligibility

FEG is a scheme for employees only. Other classes of workers, for example contractors and sub-contractors, are not eligible for assistance. Contract outworkers in the textile clothing and footwear industry may be covered under a special scheme for employees in that industry.

Some classes of employees are also ineligible for FEG assistance. You will be ineligible for assistance under the FEG Act if:

- you are an excluded employee (as defined by the *Corporations Act 2001*)
- you converted from contractor status to employee status with the same employer within 6 months of the insolvency event or the end of employment
- your former employer was within the scope of the Special Employee Entitlement Scheme for Ansett Group Employees.

Making an effective claim

You must make an effective claim to be eligible for FEG assistance. It is important that you submit your claim as soon as possible because FEG has strict time limits.

To make an effective claim, you must:

- lodge a FEG claim form
- include all mandatory information and documentation requested on the form
- lodge your claim no more than 12 months after the end of your employment or the date of the insolvency event (whichever is later) and
- lodge your claim before the discharge of your former employer's bankruptcy (if your employer was a bankrupt).

If your claim is not made within this timeframe, or does not include all required information and documentation, it will not be effective and you will not be eligible for FEG assistance.

For more information about lodging a FEG claim form, please refer to the [How do I apply for FEG assistance](#) fact sheet available on the [FEG website](#) (www.dewr.gov.au/fair-entitlements-guarantee).

How can you help?

While information provided by the insolvency practitioner is generally relied upon, it is important that you provide as much information as possible to decide if you are eligible for FEG assistance and, if so, to work out the amount of assistance you are eligible for.

For more information about the type of information you should provide please refer to the [How do I apply for FEG assistance](#) fact sheet available on the [FEG website](#) (www.dewr.gov.au/fair-entitlements-guarantee).

Want more information?

You can contact the FEG Hotline if you would like more information about eligibility for FEG assistance. To contact the FEG Hotline:

- 1300 135 040
Mon - Fri, 9 am - 5 pm (AEST/ADST)
- email FEG@dewr.gov.au.

If you speak a language other than English, call the Translating and Interpreting Service (TIS) on 13 14 50 for free help anytime. If you speak an Indigenous language, call the Aboriginal Interpreter Service on 1800 334 944.

Further information is also available on the [FEG website](http://www.dewr.gov.au/fair-entitlements-guarantee) (www.dewr.gov.au/fair-entitlements-guarantee).

The information contained in this fact sheet is of a general nature and explains, in summary form, the intended operation of the *Fair Entitlements Guarantee Act 2012* - it is not legal advice. Where necessary, you should seek your own independent legal advice relevant to your particular circumstances. The Commonwealth does not make any representation or warranty about the accuracy, reliability, currency or completeness of the information contained in this fact sheet and is not liable for any loss resulting from any action taken or reliance made by you on the information contained in this fact sheet.

Annexure C

Frequently Asked Questions



Employee FAQ

Third Sector Australia Ltd, trading as Momentum Collective (“the Company” or “Momentum Collective”), entered voluntary administration on 16 October 2025, with Joanne Dunn, John Park, Joseph Hansell and Ben Campbell of FTI Consulting appointed as voluntary administrators (“Administrators”) by the directors of Momentum Collective.

The following FAQ document has been prepared to help you understand the current situation, your rights and what to expect going forward.

What does this mean?

The Administrators have taken control of Momentum Collective and with the support of key stakeholders, including management and employees, will continue to operate the business and seek to complete a sale transaction as soon as possible.

Employees of Momentum Collective will remain employees of the business and are expected to continue to perform their duties on a business-as-usual basis, unless otherwise notified by the Administrators.

You remain an employee and creditor until your employment is formally terminated or transferred. Your rights continue to be protected under the *Fair Work Act 2009 (Cth)* and your relevant *Modern Award* (e.g. SCHADS).

How do I know I am going to be paid my wages and superannuation going forward?

The Administrators are required by law to ensure that all amounts they properly incur from the date of their appointment are paid. This includes wages and superannuation incurred during the administration. As the business is intended to continue to operate on a business-as-usual basis, all wages, superannuation and other employee on-costs incurred by the Administrators will be paid by them in the ordinary course of business.

What is the voluntary administration process?

When a business experiences significant financial difficulty, it can be placed into administration voluntarily by the business’ director(s), in line with the *Corporations Act 2001 (Cth)*.

Voluntary administration is a process in which an independent business advisor (who is required to be registered with the Australian Securities and Investments Commission (“ASIC”)) – the voluntary administrator – is appointed to take control of the business, review operations with a ‘clean set of eyes’ in order to explore restructuring options which are likely to maximise the value of the restructured business for the benefit of all stakeholders.

The Administrators role is to assess whether the company can:

1. Continue operating under a restructure,
2. Be sold to another party, or
3. Be wound up (liquidated).

The voluntary administration process also provides the company with some 'breathing space' in relation to creditor claims and allows the administrator the opportunity to consider all alternative options which may be available to maximise the chance of the business' survival.

The Administrators will now undertake the following tasks:

- Complete an urgent assessment of the Momentum Collective business, while the operations continue on a 'business as usual' basis
- Collect information on the debts owed by Momentum Collective to suppliers, employees and other parties
- Pursue a sale of the business, or facilitate an orderly transition of services
- Report to creditors on the progress of the voluntary administration and the options available for Momentum Collective's future
- Hold the first creditors meeting and then a second creditors meeting, where creditors can vote on the future of Momentum Collective and the Momentum Collective business.

In the case of Momentum Collective, a sale process had commenced at the time of the Administrators' appointment but a suitable buyer had not yet been identified. The Administrators will reach out to other parties identified in the sale process and seek urgent expressions of interest to explore all options available in the shortest possible timeframe.

The length of the administration process from appointment to completion is approximately five to six weeks. However, this can be extended should the Administrator consider a longer period of administration is required, although we appreciate the need to complete a sale and secure the future of the business as soon as possible.

Please see the enclosed *ASIC Information Sheet 75 Voluntary Administration: A guide for employees*

Is this the same as liquidation?

No. Voluntary administration is a restructuring step to protect the organisation and its stakeholders.

Why is this happening?

Like many organisations in the Community Services sector, Momentum Collective has faced rising costs, funding delays and increasing compliance demands. Momentum Collective has been actively looking at options to improve performance and financial position.

Despite extensive cost-reduction measures, cash flow pressures have become too tight to safely sustain operations.

The directors of Momentum Collective have therefore determined that Momentum Collective is, or will likely become at some future time, insolvent. As a result, they have placed Momentum Collective into voluntary administration pursuant to the *Corporations Act*. This will allow the Administrators to conduct a review of the Company and investigate its affairs as well as determine the options available to Momentum Collective, including identifying restructuring initiatives available to the business which may enable it to emerge from the administration process in a more sustainable position.

The Administrators will conduct their own enquiries into the reasons why Momentum Collective was placed into administration and report this to all creditors in due course.

What is the intention of the Administrators?

It is the intention of the Administrators to continue to provide services on a business-as-usual basis during the administration process with the assistance of management, employees and other key stakeholders.

The Administrators will, as part of their role and in performing their statutory duties, conduct an urgent review of the business' operations in order to determine the ongoing viability and sustainability of the business, with a view to ensuring the maximum value of the business is preserved for the benefit of creditors, which includes employees.

As advised, the Administrators will be seeking to achieve a sale which may include a restructure of the business, and are seeking to do this as soon as possible, working with management and also utilising the sale process already undertaken and interest received.

The Administrators will report to creditors regarding, amongst other things, the outcome achieved for the business. This report will be provided to creditors prior to a second meeting of creditors. The Administrators may have sold the business prior to this meeting to secure its future or alternatively they may propose a restructure of the business to secure its future, which would be done by proposing a deed of company arrangement ("DOCA"). A DOCA is a formal agreement with creditors for the future of the business and legal entities, to be considered and voted on at the second meeting of creditors. Further information will be provided to employees prior to this occurring.

The Administrators' report to creditors will provide information on the options available for the future of Momentum Collective and the Administrators' recommendation to creditors as to which option they believe is in the best interest of creditors. The options available in relation to the future of the Company are:

- To enter liquidation; or
- Return control of Company to its directors; or
- Enter into a Deed of Company Arrangement if one is proposed.

A DOCA is a proposal under which, amongst other things, creditors may agree that their debt claims are satisfied by a compromised payment rather than payment in full. Under such proposal, creditors will receive a better return overall than if the company was placed into liquidation. If a DOCA proposal is accepted by the majority of creditors, then the agreed claims will be paid in accordance with the DOCA and the company will be returned to directors, with limited or no debts outstanding.

At the second meeting of creditors, all eligible creditors will vote to determine the future of Momentum Collective. The threshold to pass the relevant resolution is over 50% in both number and value attending the meeting either in person or proxy.

The second meeting of creditors usually takes place within 25 business days from the date of the Administrators' appointment, however the date of the meeting is able to be extended by the Administrators with the approval of the Court.

What does this mean for employees?

Employees will remain employees of the business and are expected to continue to perform their duties on a business-as-usual basis unless otherwise notified by the Administrators.

As part of any proposed restructure, it may be necessary to reduce the size of the workforce. Employees impacted by any proposed major changes will be consulted in accordance with the relevant provisions of the enterprise bargaining agreements, *Modern Awards* and the *Fair Work Act*.

Will employees be paid their entitlements?

Entitlements accrued by employees after the appointment of the Administrators:

During the period of the administration, there is no change to any conditions of employment. Entitlements accrued by employees from the date of the Administrators' appointment, including superannuation, will be paid by the Administrators on a business-as-usual basis.

In relation to leave taken during the course of the administration, we advise normal procedures and approval processes should be followed.

Entitlements accrued by employees before the appointment of the Administrators:

Entitlements which were owing to employees as at the date of the Administrators' appointment, (such as annual leave, long service leave, any unpaid wages or TOIL, superannuation etc) will be reviewed by the Administrators to determine the amounts outstanding.

We note, pay in lieu of notice and redundancy only becomes an entitlement owing to employees if that employee is made redundant.

The timing of the payment of these entitlements is dependent on the outcome of the administration. While we will be running a sale process for the business as a going concern, we are presently unable to provide certainty on the likely outcome. Accordingly, we are unable to determine the extent of assets that will be available to meet employee entitlements.

If the assets owned by Momentum Collective are insufficient to pay employee entitlements in full, and the Company enters liquidation, employees are entitled to make a claim with the Federal Government's Fair Entitlement Guarantee ("FEG") Scheme (further detail is included below).

Should it be identified, as part of any restructure, that it may be necessary to reduce the size of the workforce, impacted employees will be able to lodge a claim for their entitlements with FEG (if applicable).

How do I know how much I am owed?

The Administrators will work with Momentum Collective to calculate your entitlements and shortly provide you with a letter confirming the breakdown of amounts owed to you. You will then be able to review and discuss these amounts with the Administrators' team, and lodge a claim for the final amount determined to be outstanding to you.

You can lodge your claim by completing a Proof of Debt Form and emailing it to MomentumCollective@fticonsulting.com. Further guidance on this process will be provided to you from the Administrators.

How long will the administration process take to complete?

The length of the administration process from appointment to completion is likely to be approximately two months, however this may be extended should the Administrators consider a longer period of administration is likely to deliver a better outcome to stakeholders.

The Administrators will assess Momentum Collective's position, consult stakeholders and recommend one of three outcomes: return to the Board, continue under a Deed of Company Arrangement ("DOCA"), or liquidation if no viable path exists.

If I have further questions or want more information, who do I contact?

During the administration, should you have any queries relating to your employee entitlements, or your employment during the administration, please contact the Administrators' team at FTI Consulting on the contact details below:

Email	Number
MomentumCollective@FTIConsulting.com	07 3225 4900

Please include your first and last name in the subject line of any emails sent to the above email address.

What should I tell clients or partners?

Keep it simple and consistent:

"Momentum Collective is in voluntary administration. Services are continuing while the Administrators review the business and work with government on the best path forward."

Refer further enquiries to the Administrator's official contact details (provided above).

Please avoid social media commentary.

Will I be paid the same wage as before the administration?

Yes. While the Administrators do not personally adopt your employment contract, the Administrators will pay wages in accordance with your current contract, award, Enterprise Agreement or other industrial instrument.

Can I claim an employee reimbursement?

If you need to incur an expense in the ordinary course of business, please seek approval in the normal way prior to the expense being incurred.

How certain is my continued employment?

Operations will continue on a business as usual basis, including employment of staff while the Administrators conduct an urgent review of the business and options for the future.

Employees will be provided with updates in relation to this process, as and when the Administrators have completed the assessment.

Will I continue to accrue leave?

If you accrued these entitlements prior to the appointment of the Administrators, yes, you will continue to accrue annual leave, long service leave and sick leave and other entitlements during the administration process.

Can I take my accrued leave now instead of waiting for a payout later?

Staff who had annual leave approved prior to the appointment of the Administrators should speak to their line manager to determine whether their assistance is required. Future leave requests should be submitted to your line manager and will be considered through the normal business process.

Will I receive a redundancy payment if I resign?

No, you are not entitled to any redundancy payment if you resign.

Please note that if employees resign and do not work out their notice period or are otherwise effectively taken to have resigned by not attending work without reason, they will not be entitled to payment of any remaining notice period.

I'm on maternity leave, workers comp, or other authorised leave — what happens?

You remain an employee during the administration unless you are formally terminated. You are still protected under the same laws and entitlements as active employees. If your role is made redundant, you're entitled to the same redundancy, notice, and leave payments as active employees.

What support is available for me?

Momentum's EAP provider will continue to be available for you. We will also be communicating on a regular basis as the next steps become clear.

- Phone: 1800 808 374
- Website: <https://assureprograms.com.au/book-an-appointment/>

- Download the Wellbeing Gateway App (details below) or visit via internet browser <https://wellbeinggateway.com/>

During times of change and uncertainty, it is important for you to maintain a routine, take regular breaks and lean into the support of your Manager and Team members.

The following services are available to you and may be helpful through this period:

Support	Contact
Fair Work Ombudsman	13 13 94 – workplace rights
Fair Entitlements Guarantee Hotline	1300 135 040 – unpaid entitlements if Momentum Collective enters liquidation
ASIC	1300 300 630 – insolvency process
Lifeline	13 11 14 – personal support
Union / Legal Aid	For representation or disputes

What is the Fair Entitlements Guarantee Scheme (FEG)?

We will be running a sale process for the business as a going concern, and we believe there will be interest in the business as part of this process, however we are presently unable to provide certainty on the likely outcome. It is possible that a sale process does not allow all claims against Momentum Collective to be paid in full, and/or Momentum Collective may ultimately be placed into liquidation.

In the event that a company goes into liquidation with amounts outstanding to employees, there is a Government scheme available called FEG that assists eligible employees with their outstanding claims.

The FEG Scheme covers up to 13 weeks of unpaid wages, annual leave, long service leave, up to five weeks payment in lieu of notice and up to four weeks redundancy pay (for each year of completed service plus a pro-rata for each part year), subject to certain income limits.

FEG does **not** cover superannuation, bonuses/commissions, reimbursements and allowances outside the relevant award.

More information on FEG will be provided in the event that a company enters liquidation.

Please note only Australian citizens and Permanent Residents are eligible for FEG assistance.

Further information about FEG can be found at <https://www.dewr.gov.au/fair-entitlements-guarantee>.

Employment rights during administration or a business sale

The following is a summary of the legislation framework that protects your rights as an employee during the administration process:

Legislation	Covers
Fair Work Act 2009 (Cth)	National Employment Standards (NES): redundancy, notice, leave, consultation. https://www.fairwork.gov.au/employment-conditions/national-employment-standards
SCHADS Award 2020	Industry-specific rates, allowances, consultation before change.
Corporations Act 2001 (Cth)	Voluntary administration procedures and employee priority as creditors.
Fair Entitlements Guarantee Act 2012 (Cth)	Federal safety net for unpaid employee entitlements after liquidation.
State or Portable Long Service Leave laws	Long service leave accrual and protection across employers.

Legislative and award references

- *Fair Work Act 2009 (Cth)* – ss.117–123 (termination, redundancy), Part 2-8 (transfer of business)
- *Corporations Act 2001 (Cth)* – ss.435A–451E (VA), ss.556, 444DA (employee priority)
- *Fair Entitlements Guarantee Act 2012 (Cth)* – eligibility & claims
- *SCHADS Award 2020* – clauses 8 (consultation), 14 (redundancy)
- *Community Services (Portable Long Service Leave) Act 2010 (NSW)* – portable LSL scheme
- *Long Service Leave Act 1955 (NSW)* – standard LSL entitlements

Annexure D
ASIC Sheet 75



ASIC

Australian Securities & Investments Commission

Voluntary administration: A guide for employees

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet (INFO 75) provides general information for employees of companies in voluntary administration. It covers:

- [who is an employee](#)
- [the purpose of voluntary administration](#)
- [the voluntary administrator's role](#)
- [employee entitlements](#)
- [establishing your claim under a deed of company arrangement](#)
- [payment summaries and separation certificates](#)
- [committee of inspection](#)
- [right to request information](#)
- [queries and complaints](#)

Employees should also read [Information Sheet 74](#) *Voluntary administration: A guide for creditors* (INFO 74).

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, enterprise agreement, agreement-based transitional instruments (which are agreements in force before the commencement of the *Fair Work Act 2009*) or a contract of employment
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see [Information Sheet 55 Receivership: A guide for employees](#) (INFO 55).

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors (including employees). These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors.

In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option. In complex administrations, the meeting may be held later if the court consents.

Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business, or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

Although the voluntary administrator may be appointed by the directors, they must act fairly and impartially.

Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

- outstanding wages and superannuation
- outstanding leave of absence
- retrenchment pay.

Each class is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

To find out more, see [Information Sheet 46 Liquidation: A guide for employees](#) (INFO 46).

Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees, at the same time as the notice of meeting, a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

The Fair Entitlements Guarantee (FEG)

Employees who are owed certain employee entitlements after losing their job because their employer went into liquidation may be able to get financial help from the Australian Government.

This help is available through the FEG.

The FEG is a scheme of last resort, to assist employees who have lost their job because their employer entered liquidation. The FEG operates in relation to claims for assistance for unpaid employee entitlements for all employer insolvency events that occur on or after 5 December 2012. For more information visit the [FEG website](#), call the FEG hotline on 1300 135 040 or email FEG@employment.gov.au.

If you are employed by a company in voluntary administration or subject to a deed of company arrangement you are not eligible for the FEG until and unless the company enters into liquidation.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your claim under the FEG if the company subsequently goes into liquidation.

If the deed provides for your ongoing employment, you may also wish to seek advice on how this affects payment of your outstanding entitlements.

FEG does not cover unpaid superannuation contributions. To pursue your outstanding superannuation entitlements, you may wish to contact the Australian Taxation Office. For more information about [unpaid superannuation contributions](#), visit the Australian Taxation Office website.

Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see [INFO 46](#).

You may also be entitled to make a claim under the FEG when the company enters into liquidation.

Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment.

You may also need these records to help you complete your income tax return and establish any entitlement to the FEG if the company proceeds to liquidation.

When submitting a claim, ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, you may wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision. If you have a query about the timing of the payment, discuss this with the deed administrator.

For details on proving your claim in a liquidation, see [INFO 46](#).

Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary

administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator. The committee of inspection also monitors the conduct of the voluntary administration, may approve certain steps in the administration and may give directions to the voluntary administrator. The voluntary administrator must have regard to, but is not always required to comply with, such directions. To find out more about committees of inspection see [INFO 74](#).

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. Employees and large creditors can appoint their own member.

Right to request information

As a creditor, you can request the administrator to give information, provide a report or produce a document.

The administrator must provide this information, report or document provided that the request is reasonable, relevant to the administration of the company and complying with the request will not cause the administrator to breach their duties in relation to the administration.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest possible response from ASIC to your concerns.

ASIC usually does not become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

Reports of misconduct against companies and their officers can also be made to ASIC.

If you cannot report misconduct to ASIC online, you can contact us on 1300 300 630.

Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 *Insolvency: A glossary of terms*](#) (INFO 41).

For more on external administration, see the related information sheets listed on [Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders*](#) (INFO 39).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 75 (INFO 75)**, updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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