



**Australian Government**

**Department of Education, Employment and Workplace Relations**

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# General Employee Entitlements and Redundancy Scheme

## Operational Arrangements

1 November 2005  
to

31 October 2006

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# GEERS OPERATIONAL ARRANGEMENTS

## Notes for reading the Arrangements

- To assist readers, terms in the Arrangements which start with a capital letter are defined at clause 23.
- Headings, titles and notes are intended for guidance only. Readers should refer to the text of each clause to understand the Arrangements. Notes at the start of a clause refer to the whole clause. Notes underneath a sub-clause refer to that subclause.
- A reference to the singular also includes the plural and vice versa.
- We/us refers to officers and agents of the Department of Education, Employment and Workplace Relations (DEEWR) or the Australian Government Department administering GEERS from time to time.
- A reference to a specific provision in a Commonwealth or State Act will be taken to mean an equivalent provision in any amendment of, or successor to, that Act.

## PART 1 — INTRODUCTION

### 1) Start of these Operational Arrangements

- a) These revised Operational Arrangements (Arrangements) start on 1 November 2005. They replace all previous versions of the Arrangements.
- b) We will review the Arrangements from time to time. The most recent version will be available on our web site at [www.workplace.gov.au](http://www.workplace.gov.au).

### 2) Authority

- a) The Australian Government established GEERS as a basic payment scheme for Employees' unpaid Eligible Entitlements when:
  - i) their Employer has been subject to an Insolvency Event;
  - ii) there are insufficient funds or assets available to the Employer to pay those entitlements; and
  - iii) no other source of funds is available to pay those entitlements.
- b) These Arrangements are the primary document which we use to set out how the Government's policy is administered.
- c) For the purposes of GEERS, the Secretary of the Department of Education, Employment and Workplace Relations or his or her delegate is the Decision Maker. The Secretary may delegate any or all powers and functions under these Arrangements, other than the power to authorise delegations.

### 3) Purpose of the Arrangements

- a) The purpose of the Arrangements is to set out how GEERS will be administered. Employees, Insolvency Practitioners or others may use the Arrangements to help them decide whether Employees should apply for a GEERS Advance and to understand the scheme.
- b) These Arrangements set out:
  - i) the objects of GEERS;
  - ii) how we will decide whether Employees are eligible and the amount of any GEERS Advance we will make;
  - iii) information about special cases and potential exceptions;
  - iv) the role of Insolvency Practitioners in GEERS; and
  - v) other matters affecting our administration of GEERS.

## PART 2 — INFORMATION FOR EMPLOYEES

### 4) Objects of GEERS

- a) GEERS is intended to:
  - i) provide a basic payment scheme for Employees' unpaid Eligible Entitlements when their Employer has been subject to an Insolvency Event, there are insufficient funds or assets available to the Employer, and no other source of funds is available to pay the Eligible Entitlements; and
  - ii) recover any Advance if and when funds become available.

Note: clause 8 sets out the basic payments which may be an Eligible Entitlement.
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- b) In administering GEERS we apply the following principles:
  - i) Employers retain the prime responsibility for the payment of Employee entitlements;
  - ii) as a publicly funded basic payment scheme, GEERS is only intended to cover Eligible Entitlements up to the standards defined in clause 8;
  - iii) GEERS is only intended for situations when the Employer is unable to fulfil their obligations in relation to outstanding entitlements because they are subject to an Insolvency Event;
  - iv) we will not advance GEERS funds if our ability to recover the Advance has been diminished, is uncertain, or is inadequately protected;
  - v) GEERS is not intended to supplement any form of business restructuring; and

Note: Part 3 of the Arrangements sets out how we will give effect to this principle.

- vi) we will usually make a GEERS Advance through Insolvency Practitioners, who are responsible for making payments to Employees for their unpaid Eligible Entitlements.

Note: see Part 4 for further information about Insolvency Practitioners.

## 5) General operation of GEERS

- a) Claims will be assessed against these Arrangements.
- b) The Decision Maker will decide all matters relating to claims for an Advance and the amount of any Advance.
- c) Where the circumstances of a claim are not specifically provided for in these Arrangements, the Decision Maker may assess the claim in accordance with clause 4.
- d) Where the circumstances of a claim are not provided for in these Arrangements, the Minister may, at his or her absolute discretion, determine matters of eligibility.
- e) While Insolvency Practitioners are usually in the best position to provide advice to us about unpaid Eligible Entitlements, the Decision Maker may seek additional information as required.

## 6) What Employees need to know about whether they are eligible for GEERS

- a) Claimants may be eligible for a GEERS Advance if we can verify that they were an Employee of an Employer subject to one of the following Insolvency Events:
  - i) in the case of an incorporated Employer, when a provisional liquidator or liquidator has been appointed under the *Corporations Act 2001*;
  - ii) in the case of an unincorporated Employer, where the Employer is subject to Bankruptcy;
  - iii) where the Employer is subject to insolvency proceedings not governed by the *Corporations Act 2001* or the *Bankruptcy Act 1966*, or in other extraordinary circumstances, the Decision Maker is satisfied that the objects and principles in clause 4 can be satisfied.

Note: this clause is primarily intended to permit recognition, when appropriate, of employing entities whose insolvency is governed by another Australian law.

- b) Unless one of the exceptions in clause 7 applies, the Claimants' employment must have been terminated due to the Appointment of an Insolvency Practitioner.

Note: the Decision Maker will usually seek evidence which establishes the reason for termination. The Decision Maker must be satisfied that there is a direct relationship between the Appointment of an Insolvency Practitioner and the termination of employment.

- c) A Claimant must be owed Eligible Entitlements by their Employer.

Note: where the Claimant has died, a GEERS Advance may be made to the Claimant's estate.

## 7) Other matters affecting Employees' eligibility

- a) We usually rely upon the advice of the Insolvency Practitioner in assessing whether the requirements in this clause are met.
- b) Employees may also be eligible for an Advance if:
- i) they resigned following the Appointment of an Insolvency Practitioner;
  - ii) they resigned or their employment was terminated up to six months prior to the Appointment of an Insolvency Practitioner; or
  - iii) their employment was terminated before the Appointment of an Insolvency Practitioner but they have been reinstated by a court or tribunal.

Note: refer to clause 14 for further information.

- c) Claimants will usually be ineligible for a GEERS Advance if one of the following applies:
- i) they were contractors, subcontractors or agents, rather than Employees;
  - ii) they were employed by a partnership and not all partners are subject to an Insolvency Event;
  - iii) the Insolvency Practitioner expects there will be funds available to pay their Eligible Entitlements within 16 weeks of the date we received their claim;
  - iv) their claim was received more than 12 months after either the termination of their employment, or the date of the Insolvency Event, whichever is the later;
  - v) we have requested information from Claimants and they have not provided the information within 28 days or contacted us within 28 days of the request to agree alternative arrangements; or
  - vi) their entitlements relate to employment by an Employer who falls within the scope of the Special Employee Entitlements Scheme for Ansett Group Employees (SEESA).

Note: Refer to clause 15 for further information.

## 8) What Employees need to know about the basic entitlements that GEERS may advance

a) Subject to this clause, the Eligible Entitlements for GEERS are those that are:

- i) payable as priority payments under section 556(1)(e)-(h) of the *Corporations Act 2001*; or
- ii) provable under Division 1, Part VI of the *Bankruptcy Act 1966*.

b) Eligible Entitlements consist of:

i) Unpaid Wages;

Note: If an Employee's wage varies from week to week, we will usually rely on the amount that the Insolvency Practitioner has told us is the Employees' normal wage.

ii) unpaid annual leave;

iii) unpaid long service leave;

iv) unpaid pay in lieu of notice; and

Note: Unpaid pay in lieu of notice includes amounts to be paid where the employment instrument provides for a minimum period of notice on termination of employment, but does not expressly provide for an entitlement to payment in lieu of notice where termination occurs with immediate effect.

v) unpaid redundancy pay up to a maximum of 16 weeks.

Note: The maximum 16 week redundancy payment applies for all GEERS claims received in respect of liquidations or bankruptcies that occur on or after 22 August 2006. For GEERS claims that occur prior to this date, the eligible entitlement is a maximum of 8 weeks.

Note: in calculating entitlements, the Maximum Annual Wage applies (see Clause 23).

c) The entitlement must, at the date of the Appointment of an Insolvency Practitioner, be provided for in legislation, an award, a Statutory Agreement or a written contract of employment, or otherwise evidenced in writing.

d) We do not pay for entitlements which are expressed as 'leave in lieu' or 'time in lieu' unless the relevant legislation, award, Statutory Agreement or written contract of employment provides that they are payable upon termination of employment.

Note: provisions such as rostered days off, leisure days, leave bank, and accrued days off will often fall in to this category.

e) Eligible Entitlements do not include:

- i) Reimbursement Payments;
- ii) Non-Ongoing Payments;
- iii) Bonus Payments; and/or
- iv) Non-ongoing or Irregular Commissions.

Note: these terms are defined in clause 23.

- f) Eligible Entitlements will not include any entitlements, or any proportion of entitlement, that accrues or is otherwise attributable to employment after the appointment of an Administrator, Liquidator or Trustee.
- g) If Employees are otherwise eligible, the Decision Maker may decide not to make a GEERS Advance or reduce the Advance if:
  - i) their annual wage is higher than the Maximum Annual Wage;
  - ii) they are Excluded Employees;
  - iii) they have received other payments which are in any way connected with their employment;
  - iv) the Employer's interests or assets have been sold or otherwise transferred to another business, and they have been offered or have accepted employment with the new operator of the business;
  - v) their wages, conditions of employment or terms of engagement have been changed unreasonably having regard to the financial position of the Employer;
  - vi) a Deed of Undertaking is required and has not been provided to us within the time frame specified;
  - vii) the Insolvency Event has been preceded by a Deed of Company Arrangement, a Trust or Personal Insolvency Agreement or a Debt Agreement within 12 months of the Insolvency Event; or
  - viii) the Employees have not maintained their rights as creditors of the Employer.

Note: refer to clause 16 for further information.

## 9) How we pay a GEERS Advance

- a) Where the Employer is a company, we will usually make any GEERS Advance via the Insolvency Practitioner.
- b) Whether or not the Employer is a company, we may also make any GEERS Advance through a third party provider. Where this occurs, Employees must sign a Deed of Undertaking as a condition of receiving the GEERS Advance.

Note: For further information on third party providers see clause 19. Deeds of Undertaking are discussed in clause 16(f).

- c) In the case of a corporate insolvency, any GEERS Advance will usually be made subject to the condition that the Advance attracts a right of priority repayment pursuant to Subdivision D, Division 6 Part 5.6 of the *Corporations Act 2001*
- d) In the case of a personal insolvency, any Advance will usually be made subject to the following conditions:

- i) the Employer is Bankrupt;
- ii) the Eligible Entitlements owed by that Employer attract a right of priority repayment pursuant to section 109 of the *Bankruptcy Act 1966*; and
- iii) the Advance has a right of priority of repayment pursuant to a Deed of Undertaking.

## 10) Decision making, additional information and appeals

- a) When the Decision Maker decides whether or not to make a GEERS Advance we will advise the Claimants in writing of the decision including the amount of the GEERS Advance, if any, and the reasons for the decision.
- b) Claimants may provide additional information to us within 28 days of being notified in writing of our original decision.
- c) Claimants may appeal within 28 days if they believe the decision is incorrect.

## 11) Providing additional information

- a) Claimants may provide additional supporting information within 28 days.
- b) When we receive additional information we will review the original decision and write to Claimants advising them of the outcome of our review and the reasons for the outcome. Reviews are normally undertaken by the officers who made the original decision.
- c) Once we have reviewed the original decision, the only remaining right of internal review is to lodge a formal appeal.

Note: it is recommended that Claimants call the GEERS Hotline 1300 135 040 before providing additional information or appealing so that their information or appeal addresses the reasons for our decision.

## 12) Appealing a decision

- a) Claimants may appeal within 28 days of being notified in writing of the decision or review outcome.
- b) There is only one right of appeal either after the decision or alternately the review outcome. A review cannot be requested where an appeal has been lodged in relation to the original decision.
- c) The outcome of the appeal is final and we will not consider subsequent correspondence on the same issues.
- d) The appeal process is limited to the issues which are specified in writing by the Claimant as forming the basis of the appeal, and any related matters which flow from considering those issues. The appeal process does not automatically reconsider the original decision as a whole.
- e) The appeal will be investigated by an officer with no prior involvement in the original decision or review. The appeal will be decided by a senior DEEWR officer who also had no prior involvement in the original decision or review.

- f) The letter informing Claimants of the outcome of any appeal will include the reasons for our decision.

### 13) The Commonwealth Ombudsman

- a) If Claimants are dissatisfied with the way in which their claim for a GEERS Advance was handled by us, they may raise their concerns with the Commonwealth Ombudsman. Before Claimants approach the Ombudsman, it is a good idea to attempt to solve the problem with us. As a general rule, the Ombudsman will not investigate complaints until they have been raised with us.
- b) It is also important to note that the Ombudsman is only able to consider complaints about our administrative actions and not the policies or principles underlying GEERS.

## PART 3 - INFORMATION ABOUT SPECIAL CASES AND EXCEPTIONS

### 14) Exceptions listed in Clause 7: other times when Employees may be eligible for a Advance

Provided the other requirements of clause 6 are met, Employees who fall within the following categories may be entitled to a GEERS Advance if:

- a) the Employees resigned after the Appointment of an Insolvency Practitioner.  
Where an Employee has resigned after the Appointment of an Insolvency Practitioner, they will be eligible for GEERS.
- b) the Employees resigned or their employment was terminated up to six months prior to the Appointment of an Insolvency Practitioner.  
Where an Employee resigned or was terminated up to six months prior to the Appointment of an Insolvency Practitioner they will be eligible for GEERS.

Note: under their terms of employment, Employees who resign are usually ineligible for pay in lieu of notice or redundancy payments.

- c) Employees who were terminated before the Appointment of an Insolvency Practitioner but have been reinstated by a court or tribunal.
- i) Despite the provision in clause 6(b), where their employment was terminated before the Appointment of an Insolvency Practitioner, Employees may be eligible for a payment under GEERS if they have a Reinstatement Order.
- ii) Where a Reinstatement Order has been obtained and the normal 12 months to claim for GEERS has expired, Employees can still claim within 1 month of the date of the Reinstatement Order.

Note: the Order must be for reinstatement, not an award of compensation.

- iii) The amount of any GEERS Advance will not include payment of Redundancy or Pay in Lieu of Notice where Employees obtained other employment before the Appointment of an Insolvency Practitioner.

## **15) Exceptions listed in Clause 7 (c): situations where an Employee will be ineligible for an Advance**

- a) The Claimants are contractors, subcontractors or agents.

If the Claimants were not Employees, they will not be eligible for an Advance.

- b) Employees were employed by a partnership and not all partners are subject to an Insolvency Event.

If Employees were employed by a partnership, an Advance will only be available if all of the partners are subject to an Insolvency Event.

- c) The Insolvency Practitioner expects that there will be funds available to pay Employees' Eligible Entitlements within 16 weeks.

Where the Insolvency Practitioner advises us that enough funds will be available within 16 weeks of their claim for GEERS to pay Employees' Eligible Entitlements, we will not make an Advance. However, Employees may reapply if there is a delay or if the amount they are paid is less than their Eligible Entitlements.

Note: we will also monitor whether the Insolvency Practitioner has failed to make a payment as expected, and contact claimants if we believe a GEERS claim should be made.

- d) Their claim was received more than 12 months after either the termination of their employment; or the date of the Insolvency Event, whichever is the later.

- e) Where a claim is received more than 12 months after the later of the termination of their employment, or the date of the Insolvency Event, the Claimant will be ineligible for GEERS unless:

- i) there are valid reasons why it was unreasonable for the Claimant to claim within the 12 month period; or
- ii) the Claimant can demonstrate they made a claim for an Advance but we did not receive it.

- f) We have requested information and Claimants have not provided the information within 28 days nor contacted us within the 28 days to agree alternative arrangements.

Where we request information from Claimants, they will be ineligible for an Advance if they have not provided the information we request within 28 days of our request. If the specific information we have sought is not available, or the Employee is unable to comply with the request for information, the Employee must contact us within 28 days of the request so that we can consider an alternative arrangement.

- g) Their entitlements relate to employment by an Employer who falls within the scope of the Special Employee Entitlements Scheme for Ansett Group Employees (SEESA).

Employees will not be eligible for an Advance for any entitlements which can be claimed through the Special Employee Entitlements Scheme for Ansett Group Employees (SEESA).

## **16) Exceptions listed in Clause 8 (g) - events which may affect the amount of an Advance**

a) Employees who earn more than the Maximum Annual Wage covered by GEERS.

Where the Employee's annual wage is higher than the GEERS Maximum Annual Wage, the amount of the GEERS Advance they may receive for any entitlement will be calculated as if they were being paid the GEERS Maximum Annual Wage at the date on which employment was terminated.

b) Employees are Excluded Employees.

i) Where the Employee is an Excluded Employee, any GEERS advance in respect of that employee's entitlement to Unpaid Wages will not exceed \$2,000.

ii) Where the Employee is an Excluded Employee, any GEERS advance in respect of that employee's total entitlement to annual leave and long service leave will not exceed \$1,500.

iii) Where the Employee is an Excluded Employee, no GEERS advance will be made in respect of that employee's entitlement to pay in lieu of notice or redundancy pay.

c) Employees receive or are entitled to any other payments in any way connected with their employment.

i) The amount of an Advance may be reduced where the Employee receives or is entitled to any other payment from any source that is in any way connected with their employment. This could include payments:

1) made by an Insolvency Practitioner;

2) received from a fund into which the Employer was paying money on a regular basis to meet the cost of entitlements such as redundancy or long service leave

3) received from any other source because the person was an Employee of the Employer who has been subject to an Insolvency Event

ii) If Employees have received, or are entitled or expect to receive, any other payments in any way connected with their employment, the GEERS Advance may be adjusted to take this into account. The adjustment will be made:

1) By reduction of the equivalent category of any Eligible Entitlement which the Employees may have; and

2) In respect of any balance remaining, as if the funds had been made available for distribution, and made in accordance with Subdivision D, Division 6 Part 5.6 of the *Corporations Act 2001* or section 109 of the *Bankruptcy Act 1966*.

Note: GEERS advances will not be reduced for payment of Eligible Entitlements accrued during a period after the Appointment of an Insolvency Practitioner as set out in clause 8 (f).

iii) If Employees receive any other payments related to their employment after GEERS funds have been advanced, they must repay to us the lesser of either:

1) the total amount of the payment; or

2) an amount equal to the GEERS Advance.

Employees will not be required to repay amounts to us where we have received full payment of the total value of the GEERS Advance from an Insolvency Practitioner or any other party on their behalf.

Note: Where we require an Employee to repay a GEERS Advance, the amount to be repaid is normally the gross amount, not the net amount after tax and other deductions.

- d) Where the Employer's interests or assets have been sold or otherwise transferred to another business, and the Employees have been offered or have accepted employment with the new operator of the business.
- i) Where the new operator of the business has a legal responsibility to recognise some or all of Employees' accrued employee entitlements we may reduce the GEERS Advance or refuse to make an Advance. This may occur when the Employer's interests or assets have been sold or otherwise transferred and the Employees have accepted or been offered employment with the new operator on similar terms and conditions.
  - ii) If the Directors or other parties associated with the Employer re-commence trading in the same or a similar business and Employees have been offered or have accepted employment with the new entity, they may have a legal responsibility to recognise some or all of the Employees' entitlements. In these circumstances, we may reduce the GEERS Advance or refuse to make an Advance.
  - iii) In deciding whether a new operator or a new entity is responsible for employee entitlements the Decision Maker may consult with the relevant State, Territory or Commonwealth authority with responsibility for ensuring compliance with industrial instruments.

Note: in these circumstances, Employees' entitlements to accrued leave such as annual leave or long service leave, pay in lieu of notice or redundancy would rest with their new Employer. However, we may pay Employees for any Eligible Entitlements for unpaid wages.

- e) Employees' entitlements, conditions of employment or terms of engagement have been changed unreasonably, having regard to the financial position of the Employer.

Where wages, conditions of employment or terms of engagement have been increased or varied during the 6 months prior to the Appointment of an Insolvency Practitioner and the Decision Maker considers that the changes are unreasonable, we may reduce the amount of the GEERS Advance. The circumstances where we would consider it unreasonable include:

- i) where the Employer increased wages or improved conditions of employment, or converted contractors to Employees; and
  - ii) having regard to the financial position of the Employer at that time, it was not reasonable to expect that the Employer could adequately provide for the increased entitlements.
- f) Where a Deed of Undertaking is required and has not been provided.
- i) If the Employer is subject to Bankruptcy, or if our rights of recovery are not otherwise protected in accordance with clause 4, we will not make a GEERS Advance until the Employees provide a Deed of Undertaking.

- ii) Employees must provide the completed Deed of Undertaking within 28 days of our request. If they do not do so, they become ineligible because the objects in clause 4 are not met.

Note: a sample Deed is available at [www.workplace.gov.au](http://www.workplace.gov.au)

- f) Where a liquidation has been preceded by a Deed of Company Arrangement, a Trust a Personal Insolvency Agreement or a Debt Agreement within 12 months of the Insolvency Event.

Where an Employer has been subject to a Deed of Company Arrangement, a Trust a Personal Insolvency Agreement or a Debt Agreement Employees will not be eligible for a GEERS advance unless:

- i) where an Employer was subject to a Deed of Company Arrangement, the Deed:

- 1) applied Sub-Division D, Division 6, Part 5.6 of the *Corporations Act 2001* to any distribution made under the Deed; and

Note: this includes sections 556 and 560 of the *Corporations Act 2001*, but extends to all other sections in that Sub-Division.

- 2) provided for the distribution of all available funds or assets.

- ii) Where an Employer was subject to a Debt Agreement or Personal Insolvency Agreement, the agreement included the same priorities as section 109 of the *Bankruptcy Act 1966*.

- g) Employees have maintained their rights as creditors of the Employer.

Employees are expected to have maintained their rights as a creditor of the Employer. This requirement will usually be met where:

- i) Employees are recognised as a creditor by the Insolvency Practitioner; and
- ii) Employees have acted reasonably to maintain, or seek to maintain, the value and priority of their debt after the Appointment of an Insolvency Practitioner.

## **Part 4 – INFORMATION FOR INSOLVENCY PRACTITIONERS**

### **17) The role of Insolvency Practitioners**

The administration of GEERS is designed to complement the statutory role of Insolvency Practitioners by assisting a significant group of creditors – Employees – to receive early payment of some debts.

We recognise that Insolvency Practitioners have an obligation to investigate the Employer's business, property affairs and financial circumstances and must undertake all actions and formulate his or her opinion in the interests of creditors as a whole. We also recognise the tensions for Insolvency Practitioners between providing relevant, reliable information and the need for cost-effective and flexible processes for dealing with insolvent Employers.

The following roles of Insolvency Practitioners have been developed so we can make a GEERS Advance based on an accurate determination of the outstanding debts owed by the Employer, while recognising the broader obligations and legislative framework within which Insolvency Practitioners undertake their business.

In facilitating early payment of Employee creditors, Insolvency Practitioners are furthering the objectives of their administration of Employers' affairs.

The role of Insolvency Practitioners in the administration of GEERS is to:

- a)* be the initial and primary contact for Employees in respect of all matters relating to Employees' Eligible Entitlements owed by their Employer, and any claim that Employees may have for a GEERS Advance;
- b)* ensure Employees are aware of the provisions of these Arrangements when considering any proposals for the management of the insolvent Employer's affairs which would affect their Eligible Entitlements or prospects of payment of those entitlements;
- c)* provide no undertakings to any party about Employees' eligibility for a GEERS Advance;
- d)* ensure Employees are aware of their ability to challenge proposals which affect their rights or entitlements, and to inform Employees that their participation as creditors in any decision about the management of the insolvent Employer should not be based on a reliance upon the possibility of a GEERS Advance;
- e)* cooperate with us to accurately establish Employees' eligibility and entitlements, by either undertaking necessary work or enabling a third party provider to undertake the work;
- f)* correctly apportion responsibility for employee entitlements in accordance with the law;
- g)* cooperate with us in minimising overpayments by informing us when Employees are entitled to payments from any source either before or after an Advance of GEERS funds [see clause 16(c)];

- h)* provide us with a copy of all reports to creditors relating to the insolvency where they have sought to access a GEERS Advance to assist with the payment of unpaid Employee entitlements;
- i)* pay any GEERS Advance to Employees within the required timeframes;
- j)* abide by any undertakings required by us as a condition of accessing or making an Advance to or for an Employee; and
- k)* provide a statement in the format specified by us certifying that any GEERS Advance has been paid to Employees.

## **18) Payment to Insolvency Practitioners for their administrative expenses**

- a)* We will only pay for services associated with administration of GEERS where:
  - i)* there are insufficient funds or assets available to the Insolvency Practitioner to administer the affairs of the Employer; or
  - ii)* the work we require would not otherwise be undertaken in administering the affairs of the Employer.
- b)* An Insolvency Practitioner may request that we engage a third party service provider to undertake additional work required for GEERS administration in preference to undertaking the work themselves [see clause 19, below].
- c)* The Decision Maker must formally agree to the arrangements and payment schedule before the Insolvency Practitioner has undertaken the work in order for the Insolvency Practitioner to receive payment for GEERS-related activities.

Note: this includes variations from the agreed quotation or estimate. We will normally pay no more than the agreed amount unless approval has been obtained for any variation.

## **19) Third Party Service Providers**

- a)* We may engage third party providers to undertake some or all of the work normally performed by the Insolvency Practitioner. The work we require may include:
  - i)* verifying the accuracy and validity of Employees' claims for an Advance;
  - ii)* assisting in determining Employees' Eligible Entitlements for an Advance;
  - iii)* verifying that information provided to us about Employees' GEERS Advances and repayments was correct; and
  - iv)* distributing and confirming payment of an Advance to Eligible Employees.
- b)* We may engage a third party provider when:
  - i)* requested by an Insolvency Practitioner;
  - ii)* required for internal or external audit purposes; or

- iii) the Insolvency Practitioner is unable to verify the Employees' entitlements to our satisfaction.
- c) We may use alternative methods to attempt to verify information, including obtaining statutory declarations or other evidence direct from the Employee or other parties.

## **20) Receiving a GEERS Advance**

- a) When we make a GEERS Advance we require the Insolvency Practitioner to:
  - i) deposit the GEERS Advance into the appropriate account for the liquidation;
  - ii) ensure the balance of that account is never in debit;
  - iii) only use the GEERS Advance for the purpose for which it has been made available;
  - iv) comply with all legal requirements relating to the payment of employee entitlements before distributing funds to Employees; and
  - v) acquit the funds in accordance with our requirements.
- b) Where an amount has been recovered by us from the Insolvency Practitioner, or any other party, and that amount is equivalent to the amount of the Advance, we will seek no further repayment of any amounts received by Employees for their employee entitlements.

Note: Clause 20 (a)(i) has been amended as of 1 July 2006.
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## **PART 5 — ADMINISTRATIVE PROVISIONS**

### **21) Our role in administering GEERS**

- a) Our role is to:
  - i) administer GEERS;
  - ii) provide advice to the Australian Government on GEERS policy and administration;
  - iii) ensure that the insolvency process is monitored to obtain an equitable return to the Australian Government for any GEERS Advances made;
  - iv) report to Australian Parliament and other relevant Australian Government agencies on the administration of GEERS; and
  - v) where appropriate, provide information to a third party on claims or Advances made under GEERS. This includes disclosing information to other Australian Government, State or Territory bodies to ensure compliance with any of their laws.
- b) We will measure our performance against the key performance indicators set annually and reported in our annual report to Parliament.
- c) We will comply with our client charter which sets out the quality of services that clients can expect to receive from us. The charter is available at [www.dewr.gov.au](http://www.dewr.gov.au).

## 22) When we will use these Arrangements to make decisions

- a) These Arrangements will be used to make decisions for claims where the Appointment of an Insolvency Practitioner occurred on or after 1 November 2005. Where an Employer has been subject to more than one consecutive Appointment of an Insolvency Practitioner, the date of the first Appointment of an Insolvency Practitioner will be used to assess whether these Arrangements will be used to make decisions.

Any additional information or appeal will be decided using the Operational Arrangements which applied when the original decision was made. However, the timeframes and processes for lodging new information or appeals which are set out in Clauses 10 to 13 will apply to all decisions made on or after 1 November 2005.

## 23) Defined terms

**Advance** means a payment usually made to an insolvency practitioner or third party provider for the purposes of paying an Employee's Eligible Entitlements under GEERS.

**Appointment of an Insolvency Practitioner** means an event in which an Insolvency Practitioner was appointed to manage the affairs of an Employer.

**Arrangements** means this document and the policies which govern the administration of GEERS.

**Australian Government** means the government of the Commonwealth of Australia.

**Bankruptcy** has the same meaning as it does in the *Bankruptcy Act 1966*.

**Bonus payments** means any bonus which is dependent on particular targets or conditions being met.

**Claimant** means a person who has lodged a claim for a GEERS Advance in any format approved by us for this purpose

**Debt Agreement** means a debt agreement entered into under Part IX of the *Bankruptcy Act 1966*.

**Decision Maker** means the Secretary of the Department of Education, Employment and Workplace Relations or a person delegated to make decisions under these Arrangements. Decision Maker also includes a person exercising a delegation in accordance with the Chief Executive Instructions under Section 52 of the *Financial Management and Accountability Act 1999*.

**Deed of Company Arrangement** means a deed of company arrangement executed under Part 5.3A of the *Corporations Act 2001* as varied and in force from time to time.

**Deed of Undertaking** means an undertaking, in the form specified by us from time to time, which we may require Claimants to execute.

**Eligible Entitlements** means the entitlements payable under GEERS as specified in clause 8 of these Arrangements.

**Employee** means an employee at common law.

**Employer** means a person who employs, or has employed, an Employee or Employees and includes:

- a) an individual;
- b) a company;
- c) a partnership; and
- d) any other entity that we decide is an Employer for the purposes of these Arrangements.

**Excluded Employee** means a person who falls within any of the following categories:

- a) a person who is an excluded employee within the meaning contained in section 556 of the *Corporations Act 2001*; and
- b) a person who has been a Principal, or a Relative of a Principal, in relation to the Employer the subject of the claim, within the twelve months prior to the Appointment of an Insolvency Practitioner.

**GEERS** means the General Employee Entitlements and Redundancy Scheme as administered by us.

**Insolvency Event** means an event referred to in clause 6(a).

**Insolvency Practitioner** means a person appointed to manage the affairs of an insolvent Employer. This includes a:

- a) liquidator or provisional liquidator;
- b) administrator or deed administrator;
- c) bankruptcy trustee;
- d) controller, including receiver and manager, receiver and managing controller; or
- e) person engaged by us to assist in progressing claims for an Advance, through undertaking any of the roles described in these Arrangements.

**Maximum Annual Wage** for the purposes of the Arrangements is the amount specified in s170CBA of the *Workplace Relations Act 1996*. The Maximum Annual Wage is indexed each year, and the Maximum Annual Wage for each financial year is published on our website at [www.workplace.gov.au](http://www.workplace.gov.au).

Note: when calculating an Employee's wage entitlement we convert their annual wage to a weekly wage.
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**Non-ongoing or Irregular Commissions** means any commissions which are paid less than quarterly or which are dependent on future sales or other targets being achieved.

Note: One-off commissions, productivity based commissions, and commissions for achievements that are extraordinary to the usual duties undertaken or expected of the Employee are not considered to be Eligible Entitlements under GEERS.
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**Non On-going Payments** means a payment which is made on a one-off or irregular basis, including payments which are dependent upon particular circumstances occurring (eg a call out allowance).

**Personal Insolvency Agreement** means a Personal Insolvency Agreement entered into under Part X of the *Bankruptcy Act 1966*.

**Principal** means a person who is an unincorporated Employer.

**Reimbursement Payments** means the reimbursement of a work-related expense which has already been paid for by the Employee, for example, reimbursement of a telephone bill.

**Reinstatement Order** means an order from an industrial court or tribunal ordering that an Employee be reinstated, and does not include an order for compensation alone.

**Relative** in relation to a person means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person.

**Secretary** means the Secretary of the Department of Education, Employment and Workplace Relations or the Secretary of the Australian Government Department administering GEERS from time to time.

**Statutory Agreement** means a certified agreement or Australian Workplace Agreement under the *Workplace Relations Act 1996* or their equivalents under State industrial relations laws.

**Unpaid Wages:**

- a) includes wages for work already performed;
- b) includes payment for overtime already worked but not paid for;
- c) includes underpayment of wages, in the three month period prior to the Appointment of an Insolvency Practitioner, that has resulted in the Employee receiving less than their legal wage entitlement as specified in their relevant industrial instrument;
- d) includes amounts for paid leave which has been taken but not paid for;
- e) includes net salary deductions and salary sacrifice payments made to third parties on behalf of the Employee (such as personal superannuation contributions or health insurance payments);
- f) includes commission, if it is paid for tasks that are ordinarily and regularly undertaken by an Employee, is paid as wages and constitutes a substantial proportion of an Employee's regular income;
- g) includes ongoing commission for past sales or performance (provided that the commission is paid at least quarterly); and
- h) excludes Employer contributions and payments made in respect of the Employee (such as the Employer's superannuation payment).

***Verified Details*** means details about Employees and their outstanding Employee entitlements that are valid and accurate based on the records of the Employer and in accordance with these Arrangements.