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**RCR Tomlinson Ltd (Administrators Appointed)  
ACN 008 898 486**

**and the entities listed in Annexure A  
(collectively, the RCR Companies)**

**Employee Frequently Asked Questions (FAQ)**

**Update 2 – 8 March 2019**

This document has been prepared to answer a number of employee queries asked via the RCR Deed of Cross Guarantee Companies' Committee of Inspection. The responses should be read in the context of other employee circulars and FAQ material previously provided.

The questions below respond to specific queries raised about the position of employees of the RGR Group. The legal rights of employees of insolvent companies is a complex topic. This document provides an overview of the rights of employees in voluntary administrations and liquidations and how they may receive payment of those entitlements. Should you have any queries after reading this document please feel free to contact us via [rcrtomemployees@mcgrathnicol.com](mailto:rcrtomemployees@mcgrathnicol.com).

## **1 What are the different types of employee entitlements?**

Employees of RCR that are made redundant or who resign post the appointment of the Administrators will have unpaid entitlements, which makes them creditors of the RCR Company that employs them (**RCR Employing Entity**). These unpaid entitlements are often referred to in an insolvency appointment such as Voluntary Administration as pre-appointment entitlements, because your rights to receive these amounts relates to your service to your RCR Employing Entity before the Administrators were appointed.

The main categories of pre-appointment entitlements that may apply are:

- Annual Leave;
- Long Service Leave;
- Superannuation;
- Payment in lieu of notice (PILN); and
- Redundancy.

Employees would have also been creditors for wages that were unpaid when the Administrators were appointed, however, these have already been paid.

## **2 How are employees' entitlement claims assessed?**

The Administrators have been working with employees to determine an accurate assessment of the amounts owing to them for any of the above pre-appointment entitlements. This has been done in part by issuing estimated "Employee Entitlements Schedules" to current and former RCR Group employees.

Employees have been asked to review their estimated "Employee Entitlements Schedule" and have been provided with the opportunity to query the estimates provided in these schedules where they may disagree with the balances or amounts issued to them. The next step in this process will be to investigate any identified discrepancies with reference to the records of the employing company. Once the amounts owing are agreed they will be recorded in the employee's formal proof of debt or claim against their RCR Employing Entity.

If you are an employee who has been made redundant, resigned or has not transferred/is not transferring in a business sale, and have not yet received your estimated "Employee Entitlements Schedule" please email [rcrtomemployees@mcgrathnicol.com](mailto:rcrtomemployees@mcgrathnicol.com) to request it.



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### **3 How, when, and from what source can pre-appointment employee entitlement claims be paid?**

Formal insolvency appointments occur when there is insufficient monies to pay all company creditors. There is a strict legal framework that dictates both the level of priority of payment that applies to employee claims and the source of monies that can be used to pay employees. This is discussed further at Questions 9 and 10 below.

In addition there is the parallel compensation scheme offered by the Federal Government provided for by legislation called the Fair Entitlements Guarantee (**FEG** or the **FEG Scheme**), which is administered by the Department of Jobs and Small Business (the **Department**) (see questions 4 through 7 below).

In the case of the RCR Companies, as a result of the complexities around determining what quantum of funds will be available to pay employees for their pre appointment entitlements, the likely first available source of payment will be from the FEG Scheme. Employee claims can be made under this scheme as soon as the companies are placed into liquidation, which we anticipate will be the case on 26 March 2019 at the second meeting of creditors. We have been liaising with FEG about the RCR Companies with a view to expediting claims for RCR employees.

There may be some employees that cannot claim through FEG and others who will not have their employee claims paid in full because of the maximum weekly wage amount of \$2,451 that FEG applies to all claims, or the cap on the number of weeks that FEG applies to certain types of entitlements. In addition, the FEG Scheme will not pay superannuation for any employees.

Employees who have unpaid employee entitlements above what is paid out under the FEG scheme will have a priority claim for this amount which will be claimed against their RCR Employing Entity. This is discussed in more detail in question 8.

### **4 What assistance may be provided by the Fair Entitlements Guarantee Scheme?**

FEG assists eligible employees who have lost their employment due to the liquidation of their employer and who are owed certain employee entitlements by paying some of the main categories of employee entitlements, subject to certain criteria and value caps.

The assistance provided for by the FEG Scheme is in addition to your rights to claim against your RCR Employing Entity. Once claims have been made and paid from the FEG Scheme the claims of employees against their employing entity will be reduced by the amounts received from FEG, that is, you cannot claim twice for the same unpaid entitlements. The Department then has the benefit of your claim against the RCR Employing Entity.

A useful summary of the FEG Scheme, including the claim process, can be accessed via the following links:

- <https://www.jobs.gov.au/fair-entitlements-guarantee-feg>
- <https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-employees/liquidation-a-guide-for-employees/>

Please note:

- FEG is only applicable in the event of liquidation;
- it does not extend to any superannuation claims;
- is only applicable to eligible employees. Generally most employees will be eligible but, for example, you must be an Australian citizen or resident; and
- the eligibility of each claim is determined by the Department, not the Administrators (or subsequent Liquidators, although the Department does have the Liquidators verify the claim – a process which we have already begun preparing for.).



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### **5 What claim thresholds apply under the FEG Scheme?**

In the event your RCR Employing Entity is placed into liquidation, the Department can pay what is owed to you under your existing terms and conditions of employment under the five basic entitlements, summarised below:

- wages – up to 13 weeks;
- annual leave – no weekly cap;
- long service leave – no weekly cap;
- payment in lieu of notice – up to five weeks; and
- redundancy – up to four weeks per full year of service.

When calculating the amount of available FEG assistance, weekly wages are capped at the FEG maximum weekly wage amount. The current indexed maximum weekly wage cap is \$2,451. This means that if you earn more than \$2,451 per week, your FEG assistance will be calculated based on a weekly wage rate of \$2,451 per week.

### **6 What happens to any portion of my pre-appointment employee entitlements that aren't paid through the FEG Scheme?**

Any unpaid pre-appointment employee entitlements not covered by the FEG Scheme remain a priority claim against your RCR Employing Entity. Please refer to question 8 for details on how distributions may be made on any claim you may have above the amount paid by FEG.

### **7 What is the likely timing of any FEG payments?**

We have continued to meet with, and provide information to, the Department to assist them to process employee claims in a timely fashion. The Department's service standard is to reach a decision within 16 weeks of receiving an effective claim, however, we understand that the Department are hopeful to be in a position to expedite payments shortly after the RCR Companies enter liquidation, which is expected to occur at the second meeting of creditors to be held on 26 March 2019.

### **8 How do I receive distributions from the liquidators for any employee entitlements not already covered by the FEG Scheme?**

Employees have the right, if there are funds available after payment of the costs expenses and remuneration of the administration, to be paid their outstanding entitlements in priority to the claims of both secured creditors and ordinary unsecured creditors from the net proceeds of circulating assets of their employing entity (refer to question 9 for more details on what a circulating asset is).

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

- outstanding wages and superannuation
- outstanding leave
- redundancy 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).



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As Administrators (and as noted in question 2) we have already been in contact with employees with outstanding pre-appointment employee entitlements to confirm these balances. This process is occurring to confirm the amount owed to employees to:

1. facilitate payment under the FEG Scheme, as liquidators must verify the accuracy of claims made before they will be paid by the Department; and
2. act as proofs of debt that the Administrators are adjudicating on, which is required to occur before distributions can be made in a liquidation.

Again, if you are an employee who has been made redundant, resigned or has not transferred/is not transferring in a business sale, and have not yet received your estimated "Employee Entitlements Schedule" please email [rcrtomemployees@mcgrathnicol.com](mailto:rcrtomemployees@mcgrathnicol.com) to request it.

### **9 What assets do employees have a priority over? What are circulating assets (and non-circulating assets)?**

Lenders commonly take security over two main classes of assets, referred to as non-circulating (or fixed) assets and circulating (or floating) assets. Fixed assets are generally held over a long term and cannot be realised without the consent of the secured creditor. Common examples of fixed assets include real property, items of plant and equipment and goodwill. Circulating assets, as the name suggests, are assets which are continually changing within the business such as stock, work in progress and debtors. Secured creditors do not have first-ranking priority out of circulating assets.

Proceeds realised from circulating assets, must be distributed using the order of priority dictated by the Corporations Act. The costs of the administrations (including the costs of trading the businesses and other costs and expenses incurred by the Administrators and the Administrators' approved remuneration) are first-ranking, followed by employee claims (refer to question 12 for more details on how administration costs are allocated). Once applicable costs and fees are paid from circulating asset proceeds, the net proceeds will first be applied to employee claims.

As explained in further detail below, calculating the funds available to satisfy employee entitlements will be a complex and time-consuming process requiring a significant amount of data that is currently not available, particularly given the asset realisation process is still ongoing.

We will continue to update Employees that have amounts owing after claiming under the FEG Scheme about their prospects for further distributions during the liquidation.

### **10 Why do employees only have a priority out of circulating assets from their employing entity? What about the Deed of Cross Guarantee?**

The Corporations Act requires that even where there are multiple companies in a corporate group, each company is treated separately when calculating distributions to creditors, including employee entitlements. This means all distributions must be calculated on an entity-by-entity basis based on the pre-appointment assets and creditors of each entity rather than as a single group.

Where companies in a corporate group become insolvent and are subject to an ASIC Deed of Cross Guarantee (DXG) (as most of the RCR Companies are – refer to Annexure A for details), creditors will generally have claims against each company party to the DXG. However, employees are only afforded a priority against their employing entity under the Corporations Act, this priority is not extended to the other entities subject to the DXG.

This means employees have two different types of claims against the RCR Companies.



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- **Priority claims:** subject to payment of specific higher-ranking claims and the costs, expenses and remuneration incurred in the administration and any future liquidation, employees have a priority claim against their RCR Employing Entity for their employee entitlements (see question 8 above for further information).
- **DXG indemnity claims:** if the RCR Employing Entity is a member of the DXG, employees also have claims against other RCR Companies which are party to the DXG. Claims by employees made under the DXG do **not** have priority over the claims of other secured and other unsecured creditors. This means claims made under the DXG against other RCR Companies are treated in the same way as normal unsecured creditor claims against that entity, and all other DXG indemnity claims made by other unsecured creditors.

### **11 How do the recently announced business sales impact the payment of entitlements?**

Business sales are the primary way of realising assets to generate funds for distribution to creditors, including to employees for their entitlement claims. Business sales also have the benefit of allowing businesses to continue operating which increases the ability to recover WIP and debtors (which we typically did not sell) at or close to, book value.

In addition, business sales have the important advantage of allowing as many staff as possible to retain their jobs. Where staff are transitioned to the new business operators they will generally retain their entitlements in full, and avoiding the crystallisation of their priority claim in the administration. This reduces the claim on circulating asset recoveries in the employing entities of transferred employees, which can increase the return to other employees of that entity that did not transfer in a sale. In the case of the RCR Companies, when making sales we worked hard to transition as many employees across to the new business owners as possible with the buyers of the various businesses assuming the entitlements of many employees.

Some of the business sale transactions included the sale of inventory (stock). Where this has occurred the purchaser has allocated a portion of the purchase price to the inventory they have purchased and this may be recorded as a circulating asset recovery by the relevant RCR Company or entities which sold the business.

### **12 Are the Administrators' fees paid from circulating asset recoveries? What about business sale costs? What about costs to pursue claims such as the potential Solar contractual claims?**

Administrators' costs, expenses (including trading losses) and remuneration (here, for ease of description described as "costs") are allocated to circulating or non-circulating asset recoveries based on what they were incurred for. For example, work done to collect debtors will typically be recoverable from circulating asset recoveries and work done to sell plant and equipment will usually be allocated against non-circulating asset recoveries. Where costs have been incurred for the benefit of both circulating and non-circulating asset recoveries, the Administrators will develop an appropriate allocation methodology to allocate costs between the different classes of assets.

Business sale costs are treated in the same manner as Administrators' other costs, expenses and remuneration, and are allocated to circulating or non-circulating asset recoveries based on what they were incurred for. In the majority of sales completed to date the terms of the contracts and security documentation mean the majority of each purchase price has been allocated to non-circulating assets and hence the majority of direct business sale costs are expected to be allocated to non-circulating asset recoveries.

When deciding to pursue a recovery (such as potential recoveries from counterparties in relation to Solar contracts), we assess the potential return of the recovery, the risk of not achieving the recovery, and the cost involved in pursuing the recovery. It is only when we believe that a recovery is likely to generate a positive net outcome for creditors that we incur costs in pursuing a recovery.

As with business sales, the costs incurred in pursuing a recovery will be allocated against proceeds received from those recoveries. In the case of the Solar contracts that is likely to be an element that is circulating (e.g.



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pre-appointment debtors) and non-circulating (e.g. contractual claims that have arisen post the appointment of the Administrators).

### **13 My employment contract is with one RCR entity, but I worked for another entity / multiple entities. Does this impact the payment of my entitlements?**

The question of which RCR Company is the RCR Employing Entity for a particular employee is something we are reviewing as part of the proof adjudication process. This is primarily governed by the employment contract between the relevant employee and the RCR Company that functioned as their employer. However, other facts can be relevant to that assessment.

We are carefully reviewing the circumstances of employees and the RCR Companies as part of the proof adjudication process, and are taking legal advice on this issue.

### **14 What else might impact potential pre-appointment employee entitlement distributions?**

At this stage of the RCR Companies' administrations, a number of factors impacting creditor payments, including payment of pre-appointment employee entitlements remain unknown, including:

- the available assets in each RCR Company, including debtor recoveries, sale proceeds, and other realisations;
- the costs of the administration, including trading costs and/or losses, Administrators' and legal fees, and other costs associated with conducting the administration;
- the adjudication of creditors' debts and claims against the RCR Companies (we have adjudicated on proofs of debt for the purposes of voting at creditors' meetings in the administration, but have not yet finished adjudicating on proofs of debt for distribution purposes, which is a more extensive process); and
- the proper characterisation of proceeds as either circulating or non-circulating (refer to question 9 for an explanation of what circulating and non-circulating assets are) and the methodology by which costs that are not directly referable to recovery of circulating or non-circulating proceeds should be allocated to each asset class.

We are carefully working through these issues, which as discussed in question 10 must be done on an entity-by-entity basis. We are also taking legal advice on these matters.

Under the dividend adjudication process, all affected creditors are notified of adjudications and have the opportunity to have input into the process before decisions are made.

### **15 How will this be finalised?**

While we have already distributed payment in full of pre-appointment unpaid wages, we do not expect to make any further distribution of employee entitlements prior to the second creditors' meetings (expected to be held on 26 March 2019).

If we are appointed Liquidators of the RCR Companies, we will continue to carefully assess the pre-appointment entitlements of each employee and to liaise with creditors, their representatives and other interested parties including applicable unions and the Department (which administers FEG).

Before completing the formal adjudication process or making any distributions from circulating assets, we will develop a distribution methodology and may seek the input of impacted stakeholders, such as the secured creditors and potentially the Department (which will have a claim against the company for amounts paid out to employees under the FEG process).



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If we are unable to agree the appropriate treatment of circulating assets we may apply to Court for directions.

### **16 What is the likely return on employee entitlements?**

Given the issues raised above regarding the availability of funds, and the fact that we have not yet completed a formal adjudication process, we do not have a definitive answer for this question at this time. Further, as outlined in question 14 there are still a number of financial factors to resolve before we will be able to answer this question.

While we have already distributed payment in full of pre-appointment unpaid salary and wages, we do not expect to make any further distribution of employee entitlements prior to the second creditors' meetings. If we need to ultimately seek judicial direction, it may take some time after the second creditors' meetings before a further distribution is made.

\* \* \* \* \*

We appreciate some of the issues covered in this FAQ are complex and there remains uncertainty regarding payment of entitlements beyond the compensation offered under the FEG Scheme.

Further information and analysis will be provided in the report to creditors prior to the second meetings of creditors. We will also separately keep employees updated and respond to queries through [rcrtomemployees@mcgrathnicol.com](mailto:rcrtomemployees@mcgrathnicol.com).



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## Annexure A: RCR Group - entities over which the Administrators are appointed

	<b>Company</b>	<b>can</b>	<b>DXG</b>
1	RCR Tomlinson Ltd	008 898 486	Yes
2	A.C.N. 076 421 755 Pty Limited	076 421 755	No
3	Applied Laser Pty Ltd	123 597 991	No
4	Positron Group Pty Ltd	053 751 009	Yes
5	Positron Power Pty. Ltd.	100 647 756	No
6	RCR Asset Maintenance Pty Ltd	123 094 735	No
7	RCR Building Products (Holdings) Pty Ltd	111 148 853	No
8	RCR Building Services (Egan Bros) Pty Ltd	056 237 006	No
9	RCR Corporate Pty. Ltd.	009 246 182	Yes
10	RCR Energy (Gladstone) Pty Ltd	010 941 054	Yes
11	RCR Energy (Stelform VRBT) Pty Ltd	099 683 584	No
12	RCR Energy (Stelform) Pty Ltd	003 416 564	No
13	RCR Energy Pty Ltd	080 753 680	Yes
14	RCR Energy Service Pty Ltd	009 133 475	Yes
15	RCR Haden (Holdings) Pty Ltd	111 148 844	Yes
16	RCR Haden (Telco) Pty Ltd	086 284 871	Yes
17	RCR Haden Pty Ltd	000 694 173	Yes
18	RCR Infrastructure (Corporate) Pty Ltd	126 817 883	Yes
19	RCR Infrastructure Group (XNFK) Pty Ltd	125 709 971	Yes
20	RCR Infrastructure Pty Ltd	060 002 959	Yes
21	RCR Laser Pty Ltd	116 641 144	Yes
22	A.C.N. 060 002 940 Pty Ltd (formerly known as RCR Mining Pty Ltd)	060 002 940	Yes
23	A.C.N. 111 148 835 Pty Ltd (formerly known as RCR O'Donnell Griffin (Holdings) Pty Ltd)	111 148 835	Yes
24	A.C.N. 151 990 573 Pty Ltd (formerly known as RCR O'Donnell Griffin (Projects) Pty Ltd)	151 990 573	Yes
25	A.C.N. 003 905 093 Pty Ltd (formerly known as RCR O'Donnell Griffin Pty Ltd)	003 905 093	Yes
26	RCR Oil & Gas Pty Ltd	121 838 702	Yes
27	RCR Power Pty Ltd	106 084 879	Yes
28	RCR Rel Corp Management Services Pty Ltd	080 877 756	No
29	RCR Resolve FM (Engineering) Pty Ltd	064 596 854	No
30	RCR Resolve FM (Holdings) Pty Ltd	111 148 862	Yes
31	RCR Resolve FM Pty Ltd	054 527 865	Yes
32	A.C.N. 060 002 968 Pty Ltd (formerly known as RCR Resources (Heat Treatment) Pty Ltd)	060 002 968	No
33	RCR Resources (Tripower) Pty Ltd	075 567 734	Yes
34	RCR Resources Pty Ltd	063 053 814	Yes



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## Annexure A: RCR Group - entities over which the Administrators are appointed

	<b>Company</b>	<b>can</b>	<b>DXG</b>
35	RCR Tomlinson (Custodian) Pty Ltd	060 012 419	Yes
36	RCR Trafalgar Building Products Pty Ltd	004 924 252	No
37	RCR Water (WA) Pty Ltd	134 043 815	Yes
38	RCR Water Pty. Ltd.	606 869 005	Yes
39	RCReate Pty Ltd	614 291 879	No
40	Sartap Pty Ltd	003 412 628	No
41	Stelform Piping Systems Pty Ltd	099 683 566	No