

In a very rare move, the federal government plans to use its position as a creditor to call for the appointment of a special purpose liquidator to recover taxpayers funds from Clive Palmer and associated entities. This follows [a report from the administrators](#) of Queensland Nickel, which suggested Clive Palmer could be held liable as a “shadow” director.

The Government will also release funds from the Fair Entitlements Guarantee (FEG) fund for the workers sacked by the company, amounting to more than \$70 million. Palmer described the report and the government’s moves as [a political witchhunt](#) . One thing is for sure, it’s going to turn up the heat on Clive Palmer.

So what does a special purpose liquidator do?

Queensland Nickel is currently in voluntary administration. Liquidation is a very different process to this. The liquidator’s job is to investigate what happened to the company and to decide on whether to take any legal action on behalf of the company, including against current and former directors.

The liquidator also files reports to the corporate regulator the Australian Securities and Investment Commission (ASIC) on whether there have been any breaches of the Corporations Act. The [administrators’ report to creditors](#) of Queensland Nickel has flagged a number of potential breaches of the law, including numerous money transfers to companies associated with Palmer.

A special purpose liquidator is appointed by the court to focus on a particular task, usually investigating a particular person or transaction or undertaking specific court action. The special purpose liquidator can’t be appointed by the creditors, but must be appointed by the court.

In order to justify that appointment the court will want to see a clear need for an independent person to conduct rather than simply allowing the ordinary liquidators to undertake the investigations. Given the complexity of the Queensland Nickel collapse, it is understandable that a special purpose liquidator may be needed simply to take court action to recover funds and assets.

In the case of Queensland Nickel, the Government's [Fair Entitlements Guarantee \(FEG\)](#) fund will need to make its biggest ever pay out of employee entitlements. The FEG fund is paid out of government funds, and provides a safety net for employee entitlements in company liquidations and personal bankruptcies. Employees usually get their entitlements paid first in liquidation, but if there is no money to make those payments, then FEG pays those amounts.

Once FEG payments are made, the FEG fund stands in the position of employees by collecting any distributions that would be made to the employees in the liquidation. FEG recovers less than 10% of all payments made to employees each year, as most companies where FEG payments are made are hopelessly insolvent and little or no distributions are ever paid to general creditors.

Distributions will only be made to FEG if funds can be recovered but that all costs money and unfortunately Queensland Nickel is insolvent with hundreds of millions in debt and very little in assets.

What action could a special purpose liquidator take?

The administrators' report to creditors has raised several potential breaches of directors' duties and the possibility of insolvent trading. These will require evidence that Clive Palmer was a director of Queensland Nickel, which he strenuously denies.

Special purpose liquidators are rarely appointed, and only where there is a need to have an independent person apart from the regular liquidator conduct a particular review or litigation.

The most high profile case involving a special purpose liquidator was One.Tel where Paul Weston was appointed by the court to investigate [potential litigation against the company's directors](#) (including James Packer and Lachlan Murdoch). Special purpose liquidations can be expensive, with the One.Tel matter running up millions in fees and expenses for the special purpose liquidator.

But in Queensland Nickel, the government would presumably provide funding and keep a close eye on what work is undertaken. As noted by the Minister the proposed [special purpose liquidator Stephen Parbery](#)

is a leading insolvency practitioner with extensive experience in the most difficult and complex insolvency matters in recent years.

It is possible that a special purpose liquidator could challenge transactions involving the company and its property, that were entered into prior to their appointment. This may involve non-commercial transactions or “unreasonable director-related transactions” which are uncommercial transactions involving directors or their close associates (relatives of the director).

The special purpose liquidator could also seek a court challenge to any unfair loans entered into by the company. These are in addition to matters such as potential breaches of directors' duties.

One thing is for sure, if a special purpose liquidator is appointed by the court and funded by the government chasing repayment of millions of employee entitlements paid under FEG, the dispute involving Mr Palmer and his associated entities has a long way to run.

Jason Harris does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

Read more <http://theconversation.com/special-purpose-liquidator-for-queensland-nickel-will-turn-up-the-heat-on-clive-palmer-57871>