



# Fair Entitlements Guarantee Regulation 2012<sup>1</sup>

**Select Legislative Instrument 2012 No. 326**

---

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Fair Entitlements Guarantee Act 2012*.

Dated 6 December 2012

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN  
Minister for Employment and Workplace Relations

---

---

## Contents

<b>Part 1</b>	<b>Preliminary</b>	
	1 Name of regulation	2
	2 Commencement	2
	3 Definitions	2
<b>Part 2</b>	<b>Miscellaneous</b>	
	9 Schemes for assistance of workers who were not employees—TCF contract outworkers	3
<b>Schedule 1</b>	<b>TCF contract outworkers—modifications of Act</b>	4

---

## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Fair Entitlements Guarantee Regulation 2012*.

### 2 Commencement

This regulation commences at the end of the period in which it could be disallowed in either House of the Parliament.

*Note* See subsection 50(3) of the *Fair Entitlements Guarantee Act 2012*.

### 3 Definitions

In this regulation:

*Act* means the *Fair Entitlements Guarantee Act 2012*.

*outworker* has the same meaning as in the *Fair Work Act 2009*.

*TCF contract outworker* means an individual who does work as an outworker in the textile, clothing or footwear industry otherwise than as an employee.

## Part 2                      Miscellaneous

### 9                      **Schemes for assistance of workers who were not employees—TCF contract outworkers**

- (1) This section applies in relation to a TCF contract outworker.
- (2) For subsection 50(1) of the Act, the specified person for a TCF contract outworker is a person:
  - (a) for whom the TCF contract outworker did work in the capacity of an outworker (other than work performed indirectly for another person within the meaning of section 17A of the *Fair Work Act 2009*); and
  - (b) who owes the TCF contract outworker an amount for that work; and
  - (c) who is insolvent or is reasonably expected to become insolvent.
- (3) For subsections 50(1) and (2) of the Act, this regulation:
  - (a) sets out a scheme for:
    - (i) providing, directly or indirectly to TCF contract outworkers who are owed amounts for work they did for a person specified in subsection (2) (except as employees of the person) who is insolvent, financial assistance relating to those amounts; and
    - (ii) recovering amounts of that financial assistance; and
  - (b) other matters related to the scheme.
- (4) The scheme and the other matters consist of the provisions of Parts 1 to 7 of the Act, modified in accordance with Schedule 1.

## Schedule 1 TCF contract outworkers— modifications of Act

(subsection 9(4))

### [1] Section 5, definition of *governing instrument*

*Substitute*

*governing instrument* for doing work means any of the following that governs the doing of the work:

- (a) a written law of the Commonwealth, a State or a Territory;
- (b) an award, determination or order that is made or recorded in writing;
- (c) a written instrument;
- (d) an agreement (whether a contract or not).

### [2] Section 5

*insert*

*outworker* has the same meaning as in the *Fair Work Act 2009*.

### [3] Section 5

*insert*

*specified person*, in relation to a TCF contract outworker, means a person:

- (a) for whom the TCF contract outworker did work in the capacity of an outworker (other than work performed indirectly for another person within the meaning of section 17A of the *Fair Work Act 2009*); and
- (b) who owes the TCF contract outworker an amount for that work; and
- (c) who is insolvent or is reasonably expected to become insolvent.

---

**[4] Section 5**

*insert*

***TCF contract outworker*** means an individual who does work as an outworker in the textile, clothing or footwear industry otherwise than as an employee.

**[5] Section 5**

*insert*

***TCF contract outworker entitlements*** means a TCF contract outworker's entitlement, under the TCF contract outworker's governing instrument, to:

- (a) annual leave; or
- (b) long service leave; or
- (c) payment in lieu of notice; or
- (d) redundancy pay; or
- (e) wages.

**[6] Section 10**

*substitute*

**10 Conditions of eligibility for advance**

*General conditions*

- (1) A TCF contract outworker is eligible for an advance if the Secretary is satisfied of all of the following:
  - (a) the TCF contract outworker has ceased to do work for the specified person;
  - (b) after the commencement of this section, an insolvency event happened to the specified person;
  - (c) the TCF contract outworker is (or would, apart from the discharge of the bankruptcy of the specified person, be) owed one or more debts wholly or partly attributable to work done for the specified person in the capacity of an outworker;
  - (d) before making a claim (see section 14) that the TCF contract outworker is eligible for the advance, the TCF contract

outworker has taken steps, so far as reasonable, to prove those debts in the winding up or bankruptcy of the specified person;

- (e) before making a claim (see section 14) that the TCF contract outworker is eligible for the advance, if the TCF contract outworker was owed any of those debts before the insolvency event happened, the TCF contract outworker took reasonable steps before that event to be paid those debts;
- (f) when the TCF contract outworker ceased to do work for the specified person, the TCF contract outworker was an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa or a special category visa;
- (g) an effective claim (see section 14) that the TCF contract outworker is eligible for the advance has been made to the Secretary by or on behalf of the TCF contract outworker.

Note: Subdivision B excludes certain persons from eligibility.

*If TCF contract outworker did work for a partnership by partners*

- (2) If the TCF contract outworker did work for 2 or more of the partners of a partnership that is a specified person, paragraphs (1)(c) and (d) apply as if each reference in those paragraphs to the specified person were a reference to each of the partners for whom the TCF contract outworker did the work.

## [7] Section 11

*substitute*

### 11 Exclusion for personal connection with specified person

- (1) A TCF contract outworker is not eligible for an advance for work done by the TCF contract outworker for a specified person that is a company that has been wound up if the TCF contract outworker is:
  - (a) a person who has been:
    - (i) at any time during the period of 12 months ending on the relevant date; or
    - (ii) at any time since the relevant date;
  - or who is, a director of the company;
  - (b) a person who has been:

- 
- (i) at any time during the period of 12 months ending on the relevant date; or
  - (ii) at any time since the relevant date;
- or who is, the spouse of a person of the kind referred to in paragraph (a); or
- (c) a person who is a relative (other than a spouse) of a person of the kind referred to in paragraph (a).
- (2) A TCF contract outworker is not eligible for an advance for work done by the TCF contract outworker for a specified person who is or was a bankrupt under the *Bankruptcy Act 1966* if the TCF contract outworker is:
- (a) a person who has been:
    - (i) at any time during the period of 12 months ending on the relevant date; or
    - (ii) at any time since the relevant date;or who is, the spouse of the specified person; or
  - (b) a person who is a relative (other than a spouse) of a person of the kind referred to in paragraph (a).
- (3) A TCF contract outworker who did work for 2 or more of the partners of a specified person that is a partnership is not eligible for an advance for that work if the conditions in subsection (1), or any of the conditions in subsection (2), exist in relation to any of the partners for whom the TCF contract outworker did the work.
- (4) This section has effect despite section 10.

**[8] Sections 12 and 13**

*omit*

**[9] Section 14**

*substitute*

**14 Making an effective claim**

- (1) To be effective for the purposes of this scheme, a claim that a TCF contract outworker is eligible for work done by the TCF contract outworker for a specified person must:

- (a) be in a form approved by the Secretary; and
  - (b) be accompanied by any documents required by the Secretary;  
and
  - (c) be made in accordance with subsection (2), and with  
subsection (3) if it applies.
- (2) The claim must be made before the end of 12 months after the later of the following events:
- (a) an insolvency event happens to the specified person;
  - (b) the TCF contract outworker ceases to do work for the  
specified person.
- (3) However, if the specified person is or was a bankrupt, the claim must be or have been made before the discharge of the specified person's bankruptcy.

*Statutory declaration*

- (4) A claim form approved by the Secretary may provide for verification by statutory declaration of statements in the claim.

**[10] Section 15**

*substitute*

**15 Secretary must decide effective claim**

- (1) If an effective claim that a TCF contract outworker is eligible for an advance is made to the Secretary, the Secretary must decide whether the TCF contract outworker is eligible for the advance.
- (2) If it is decided that a TCF contract outworker is eligible for an advance, the Secretary must decide the amount of the advance in accordance with Part 3.

Note 1: Subsection (2) applies whether the decision that a TCF contract outworker is eligible for an advance is made under subsection (1) or on review under Part 6.

Note 2: Division 1 of Part 6 contains provisions relevant to making and notifying decisions on eligibility for an advance and the amount of an advance.



---

**[11] Section 16**

*substitute*

**16 General rule for working out the amount of an advance**

- (1) If a TCF contract outworker is eligible for an advance for work done by the TCF contract outworker for a specified person, the amount of the advance is the total of the amount worked out under Division 2 for each of the TCF contract outworker's entitlements for the engagement.

*Excluding some basic amounts if person is offered similar work*

- (2) However, do not include in the total the amount worked out under Division 2 for the TCF contract outworker's payment in lieu of notice entitlement or redundancy pay entitlement if:
- (a) the business in which the TCF contract outworker did the work is transferred to someone else (the *transferee*) other than the bankruptcy trustee of the specified person; and
  - (b) within 14 days after the TCF contract outworker ceases to do work for the specified person, the transferee offers to engage the TCF contract outworker:
    - (i) to do work that is the same, or substantially the same, as the work the TCF contract outworker did for the specified person; and
    - (ii) on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the TCF contract outworker's terms and conditions of engagement with the specified person immediately before the TCF contract outworker ceased to do work for the specified person.
- (3) Subsection (2) is taken never to have applied if the transferee engages the TCF contract outworker (whether as a result of the offer described in paragraph (2)(b) or not) and either:
- (a) the transferee terminates that engagement because the transferee no longer requires the job done by the TCF contract outworker to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
  - (b) an insolvency event happens to the transferee and the TCF contract outworker's engagement by the transferee ends.

Note: If the amount of an advance is decided, relying on subsection (2), and the events described in subsection (3) happen later (so that subsection (2) is taken never to have applied), the decision can be reviewed under Division 2 of Part 6.

- (4) Subsection (2) does not apply for the purposes of working out the amount of an advance the TCF contract outworker is eligible for because of an insolvency event that happened to the specified person on or after 1 July 2014.

**[12] Section 17**

*substitute*

**17 Reduction for the TCF contract outworker's debts to the specified person**

The Secretary may reduce the amount of an advance worked out under section 16 for work done by a TCF contract outworker for a specified person by an amount not exceeding the sum of the TCF contract outworker's debts to the specified person.

**[13] Section 18**

*substitute*

**18 Nil amount if liquidator or bankruptcy trustee can fully pay entitlements soon**

The Secretary may reduce to nil the amount of an advance worked out under this Division for work done by a TCF contract outworker for a specified person if the Secretary is satisfied that the liquidator or bankruptcy trustee of the specified person expects to have in the next 112 days enough money (apart from this scheme) to pay the TCF contract outworker what the amount of the advance would be apart from this section.

---

**[14] Section 19***substitute***19 Working out amounts for TCF contract outworker entitlements**

- (1) Work out the amount for each of a TCF contract outworker's entitlements to be taken into account under section 16 by:
  - (a) working out the basic amount for the entitlement under Subdivisions B and C; and
  - (b) reducing the basic amount (but not below nil) by the sum of the amounts described in subsections (2) and (3) for the entitlement.
- (2) One amount of the reduction of the basic amount for a particular TCF contract outworker entitlement for work done for a specified person is the total of amounts that:
  - (a) are attributable to the entitlement; and
  - (b) have been paid by anyone:
    - (i) to the TCF contract outworker; or
    - (ii) to someone else for the TCF contract outworker's benefit or in accordance with the TCF contract outworker's direction; and
  - (c) are not costs of the winding up or bankruptcy of the specified person.
- (3) The other amount of the reduction of the basic amount for a particular TCF contract outworker entitlement for work done for a specified person is the total of amounts that:
  - (a) are attributable to the TCF contract outworker entitlement; and
  - (b) are payable (and have not been paid) by anyone:
    - (i) to the TCF contract outworker; or
    - (ii) to someone else for the TCF contract outworker's benefit or in accordance with the TCF contract outworker's direction; and
  - (c) are not payable:
    - (i) under the *Corporations Act 2001* in the winding up of the specified person; or
    - (ii) under the *Bankruptcy Act 1966* from the proceeds of the property of the bankrupt specified person; or

(iii) under this scheme.

**[15] Section 20**

*substitute*

**20 Basic amount for annual leave entitlement**

The basic amount for a TCF contract outworker's annual leave entitlement for work done by the TCF contract outworker for a specified person is so much of the entitlement as is not a cost of the winding up or bankruptcy of the specified person.

Note: Sections 25 and 26 may affect the basic amount.

**[16] Section 21**

*substitute*

**21 Basic amount for long service leave entitlement**

The basic amount for a TCF contract outworker's long service leave entitlement for work done by the TCF contract outworker for a specified person is so much of the entitlement as is not a cost of the winding up or bankruptcy of the specified person.

Note: Sections 25 and 26 may affect the basic amount.

**[17] Section 22**

*substitute*

**22 Basic amount for payment in lieu of notice entitlement**

The basic amount for a TCF contract outworker's payment in lieu of notice entitlement for work done by the TCF contract outworker for a specified person is so much of the entitlement as:

- (a) is not a cost of the winding up or bankruptcy of the specified person; and
- (b) does not exceed 5 weeks' pay at the rate relevant to working out that entitlement.

Note: Sections 25 and 26 may affect the basic amount.

---

**[18] Section 23***substitute***23 Basic amount for redundancy pay entitlement**

The basic amount for a person's redundancy pay entitlement for work done by the TCF contract outworker for a specified person is so much of the entitlement as:

- (a) is not a cost of the winding up or bankruptcy of the specified person; and
- (b) does not exceed the total of:
  - (i) 4 weeks' pay (at the rate relevant to working out that entitlement) for each full year of the TCF contract outworker's work for the specified person for which the specified person was required to pay redundancy pay by the governing instrument for that work; and
  - (ii) if that instrument requires payment of redundancy pay for a proportion of a year (less than a full year) of the TCF contract outworker's work for the specified person—that proportion of 4 weeks' pay (at the rate relevant to working out that entitlement).

Note: Sections 25 and 26 may affect the basic amount.

**[19] Section 24***substitute***24 Basic amount for wages entitlement**

- (1) The basic amount for a TCF contract outworker's wages entitlement is worked out using this section.
- (2) If the TCF contract outworker is subject to an agreement for the purposes of Part 2-5 (Pay as you go (PAYG) withholding) in Schedule 1 to the *Taxation Administration Act 1953*, the basic amount is the wages entitlement less the amount to be withheld under the agreement from the wages covered by the entitlement.
- (3) If the TCF contract outworker is not subject to an agreement for the purposes of Part 2-5 (Pay as you go (PAYG) withholding) in

Schedule 1 to the *Taxation Administration Act 1953*, the basic amount is the wages entitlement.

Note: Sections 25 and 27 may affect the basic amount.

**[20] Section 25**

*substitute*

**25 Disregarding recently agreed changes in terms and conditions**

- (1) This section affects a basic amount for a TCF contract outworker's entitlement for work done by the TCF contract outworker for a specified person if:
  - (a) less than 6 months before the TCF contract outworker ceases to do work for the specified person, or the appointment of an insolvency practitioner for the specified person, the specified person agreed to a change in the terms and conditions of the person's work in favour of the person (whether or not the change also affected anyone else's terms and conditions of work or employment); and
  - (b) the Secretary is satisfied that, at the time of the change, it was not reasonable to expect that the specified person would be able to meet the specified person's obligations under those more favourable terms and conditions for the actual duration and end of the person's engagement; and
  - (c) the Secretary is satisfied that it is appropriate that this section apply.
- (2) Work out the basic amount as if the governing instrument for the work had not been changed.

Note: This affects the basic amount by affecting the amount of the TCF contract outworker entitlement. It may also affect the basic amount by affecting limits on the basic amount such as those in paragraphs 22(b) and 23(b).
- (3) If the TCF contract outworker did work for 2 or more of the partners of a specified person that is a partnership, subsection (1) applies as if:
  - (a) the first reference in paragraph (1)(a) to the specified person were a reference to any of the partners for whom the TCF contract outworker did the work; and

- (b) the second reference in paragraph (1)(a), and the reference in paragraph (1)(b), to the specified person were a reference to all the partners for whom the TCF contract outworker did the work.

**[21] Sections 26 and 27**

*substitute*

**26 Applying maximum weekly wage rate—entitlements except wages entitlement**

- (1) This section affects a basic amount for a TCF contract outworker entitlement for work done by the TCF contract outworker for a specified person if the governing instrument for the work provided for a rate of pay relevant to working out the basic amount that, when expressed as a weekly rate, exceeded the maximum weekly wage rate when the TCF contract outworker ceased to do work for the specified person.
- (2) Work out the basic amount as if the governing instrument had provided for the relevant wage rate to be the maximum weekly wage rate when the TCF contract outworker ceased to do work for the specified person.

Note: This affects the basic amount by affecting the amount of the TCF contract outworker entitlement. It may also affect the basic amount by affecting limits on the basic amount such as those in paragraphs 22(b) and 23(b).

- (3) This section does not affect the basic amount for the TCF contract outworker's wages entitlement.

**27 Applying maximum weekly wage rate—wages entitlement**

- (1) This section affects the basic amount for a TCF contract outworker's wages entitlement for work done by the TCF contract outworker for a specified person if subsection (2), (3) or (4) applies.

*When this section affects the basic amount*

- (2) This subsection applies if:

- (a) the governing instrument for the work provided for a rate of pay at the end of the wages entitlement period for work that the instrument envisaged that the TCF contract outworker would do regularly; and
  - (b) that rate, when expressed as a weekly rate, exceeded the maximum weekly wage rate at the end of that period.
- (3) This subsection applies if:
- (a) the governing instrument for the work did not provide for a rate of pay at the end of the wages entitlement period for work that the instrument envisaged that the TCF contract outworker would do regularly; and
  - (b) the TCF contract outworker's average weekly wage for that period (see subsection (5)) is greater than the maximum weekly wage at the end of that period.

Note: The condition in paragraph (3)(a) may be met because the governing instrument:

- (a) did not provide for a rate described in that paragraph; or
  - (b) did not envisage that the TCF contract outworker would do any particular work regularly.
- (4) This subsection applies if:
- (a) the Secretary is satisfied that, over the weeks for which for the TCF contract outworker did the work in the wages entitlement period, there is not a regular pattern of one or both of the following:
    - (i) hours worked by the TCF contract outworker;
    - (ii) wages to which the TCF contract outworker was entitled for work done or leave taken within those weeks; and
  - (b) the TCF contract outworker's average weekly wage for that period (see subsection (5)) is greater than the maximum weekly wage at the end of that period.
- (5) For the purposes of paragraphs (3)(b) and (4)(b), the TCF contract outworker's average weekly wage for the wages entitlement period is the result of dividing the TCF contract outworker's wages entitlement by the number of weeks for which he or she did the work in that period. That number need not be a whole number.

*Effect on basic amount*

- (6) Work out the basic amount as if the governing instrument for the work had entitled the TCF contract outworker, for each of the



---

weeks for which the TCF contract outworker did the work in the wages entitlement period, to wages at the maximum weekly wage rate at the end of that period.

**[22] Subsections 28(1) to (3)**

*substitute*

- (1) On behalf of the Commonwealth, the Secretary must pay an advance a TCF contract outworker is eligible for in relation to work done by the TCF contract outworker for a specified person:
  - (a) to the TCF contract outworker; or
  - (b) to the liquidator or bankruptcy trustee of the specified person, for the liquidator or trustee to pass on to the TCF contract outworker, subject to the liquidator or trustee withholding or deducting an amount as required by law; or
  - (c) to another person (the *payee*) for the payee to pass on to the TCF contract outworker in accordance with a contract between the payee and the Commonwealth, subject to the payee withholding or deducting an amount as required by law.

*Payment in instalments*

- (2) The Secretary may pay the advance in instalments if the Secretary is satisfied that doing so will result in the TCF contract outworker receiving an instalment of the advance sooner than the TCF contract outworker would have received the advance in full if the advance were not paid in instalments.
- (3) The Minister may direct the Secretary:
  - (a) to pay the advance that a TCF contract outworker is eligible for in instalments of amounts, and at times, determined by the Secretary; or
  - (b) to pay the advances that TCF contract outworkers who did work for a specified person are eligible for in instalments of amounts, and at times, determined by the Secretary.

**[23] Sections 29 and 30**

*omit*

**[24] Section 31**

*substitute*

**31 Recovery in other circumstances**

- (1) When an advance is paid under section 28 for work done by a TCF contract outworker for a specified person, then, to the extent of the amount of the advance paid:
  - (a) the specified person's liability to the TCF contract outworker is discharged; and
  - (b) the rights the TCF contract outworker had immediately before that discharge in relation to that liability in the winding up or bankruptcy of the specified person become rights of the Commonwealth.
- (2) So far as the advance is for a particular TCF contract outworker entitlement, the Commonwealth has the same priority as the TCF contract outworker had for that entitlement.
- (3) Subsections (1) and (2) do not apply to an amount of the advance that was paid to the liquidator or bankruptcy trustee of the specified person.

**[25] Section 32**

*substitute*

**32 Amounts of advance attributable to particular TCF contract outworker entitlements if advance reduced for debts to specified person**

- (1) This section applies for the purposes of working out for the purposes of this Part how much of an advance for work done by a TCF contract outworker for a specified person is for a particular TCF contract outworker entitlement if the amount of the advance is reduced under section 17 for the TCF contract outworker's debts to the specified person.

- (2) So far as the amount of the debt applied in the reduction relates to a thing described in column 1 of an item of the following table, the reduction is taken to be of the amount of the advance for the TCF contract outworker's TCF contract outworker entitlement described in column 2 of the item.

<b>Effect of applying debts relating to particular things</b>		
<b>Item</b>	<b>Thing to which debt relates</b>	<b>Relevant TCF contract outworker entitlement</b>
1	Annual leave	Annual leave entitlement
2	Long service leave	Long service leave entitlement
3	Payment in lieu of notice	Payment in lieu of notice entitlement
4	Redundancy pay	Redundancy pay entitlement
5	Wages (except for annual leave or long service leave)	Wages entitlement

- (3) So far as the amount of the debt applied in the reduction does not relate to a thing described in column 1 of the table in subsection (2), the reduction is taken to have applied proportionally to what would (apart from the reduction for that amount) have been the amounts of the advance that would have been for particular TCF contract outworker entitlements.

## **[26] Section 33**

*substitute*

### **33 Recovery of advance for work done for partnership**

If an advance is for work done by a TCF contract outworker for 2 or more of the partners of a specified person that is a partnership:

- (a) sections 29, 30 and 31 apply in relation to each of the partners for whom the TCF contract outworker did the work; and
- (b) the Commonwealth cannot recover through the winding up or bankruptcy of all of those partners one or more amounts totalling more than the amount of the advance.

**[27] Section 34***substitute***34 Recovery from person eligible for advance**

- (1) This section applies if:
  - (a) the Commonwealth pays someone (the *payee*) an advance for work done by a TCF contract outworker for a specified person; and
  - (b) an amount (the *later amount*) for a TCF contract outworker entitlement of the TCF contract outworker for which an amount was included in the advance is later paid by someone (the *later payer*) to the person or for the benefit of the TCF contract outworker or in accordance with the TCF contract outworker's directions; and
  - (c) the later payer is not:
    - (i) the Commonwealth; or
    - (ii) the liquidator or bankruptcy trustee of the specified person; or
    - (iii) the payee.
- (2) There is a debt due by the person to the Commonwealth of the lesser of the following (or either of them if they are equal):
  - (a) the later amount;
  - (b) the difference between the advance and the sum of:
    - (i) the amounts paid to the Commonwealth in the winding up or bankruptcy of the specified person because of Division 1; and
    - (ii) the debts (if any) created by previous operations of this section in relation to the person.
- (3) A debt under this section may be recovered by the Secretary, on behalf of the Commonwealth, in a court of competent jurisdiction.

**[28] Section 35***substitute***35 Presuming accuracy of certain information**

For the purposes of deciding:

- 
- (a) whether a TCF contract outworker is eligible for an advance for work done by the TCF contract outworker for a specified person; and
  - (b) the amount of such an advance;
- the Secretary may presume that information relating to the TCF contract outworker that is given to the Secretary by an insolvency practitioner for the specified person is accurate.

**[29] Section 36**

*substitute*

**36 Giving notice of decisions made under section 15 of scheme**

- (1) The Secretary must give a TCF contract outworker written notice of each of the following decisions:
  - (a) a decision under subsection 15(1) of this scheme whether the TCF contract outworker is eligible for an advance;
  - (b) a decision under subsection 15(2) of this scheme on the amount of an advance the TCF contract outworker is eligible for.
- (2) The notice must set out:
  - (a) the terms of the decision; and
  - (b) written reasons for the decision; and
  - (c) the TCF contract outworker's rights to have the decision reviewed.

**[30] Subsection 37(1)**

*substitute*

- (1) If the Secretary is satisfied that there is sufficient reason, the Secretary may review:
  - (a) a decision whether a TCF contract outworker is eligible for an advance; or
  - (b) a decision on the amount of an advance a TCF contract outworker is eligible for.

**[31] Subsection 37(5), including the subheading***substitute**Notifying the TCF contract outworker of the review decision*

- (5) The Secretary must give the TCF contract outworker written notice of the review decision, setting out:
- (a) the terms of the review decision; and
  - (b) written reasons for the review decision.

**[32] Paragraph 37(7)(b)***substitute*

- (b) before the review decision was made, the TCF contract outworker had applied to the Tribunal for review of the decision (as affirmed or varied under Subdivision B, or substituted for an earlier decision under that Subdivision) that was reviewed under subsection (1).

**[33] Subsection 38(1)***substitute*

- (1) A TCF contract outworker may apply to the Secretary for review of:
- (a) a decision whether the TCF contract outworker is eligible for an advance; or
  - (b) a decision on the amount of an advance the TCF contract outworker is eligible for.

**[34] Subsection 38(4)***substitute*

- (4) The person may withdraw the application at any time before the review is completed.

---

**[35] Section 39***substitute***39 Action on application for review**

- (1) If a TCF contract outworker applies under section 38 for review of a decision, the Secretary must review the decision and:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (2) The Secretary must give the TCF contract outworker written notice of the decision made as a result of the review.
- (3) The notice must set out:
  - (a) the terms of the decision made as a result of the review; and
  - (b) written reasons for that decision; and
  - (c) the TCF contract outworker's rights to have that decision reviewed.

**[36] Section 40***substitute***40 Application to the Administrative Appeals Tribunal for review**

- (1) An application may be made to the Administrative Appeals Tribunal by a TCF contract outworker for review of:
  - (a) a decision by the Secretary whether the TCF contract outworker is eligible for an advance that has been affirmed under Subdivision B or has been substituted under that Subdivision for an earlier decision; or
  - (b) a decision by the Secretary on the amount of an advance the TCF contract outworker is eligible for that has been affirmed or varied under Subdivision B or substituted under that Subdivision for an earlier decision.
- (2) Subsection (1) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

*If Secretary has reviewed decision after application is made*

- (3) If, after the TCF contract outworker has applied to the Administrative Appeals Tribunal for review of the decision, the Secretary varies the decision, or substitutes a new decision for it, under Subdivision A, the application is taken to be for review of the decision as varied or the new decision.

**[37] Subsection 41(1)**

*substitute*

- (1) This section applies to a review by the Administrative Appeals Tribunal of a decision on the amount of an advance a TCF contract outworker is eligible for if the decision involved the exercise of the power under section 17 to reduce that amount (because of a debt the TCF contract outworker owed a specified person).

**[38] Section 42**

*substitute*

**42 Use and disclosure of personal information by the Department for administering this scheme**

For the purposes of administering this scheme, the Department may:

- (a) use personal information about a specified person or a TCF contract outworker who does or did work for the specified person; and
- (b) disclose to any of the following persons personal information about a specified person or a TCF contract outworker who does or did work for the specified person:
- (i) an insolvency practitioner for the specified person;
  - (ii) a person with whom the Commonwealth has a contract to pass on to a TCF contract outworker payments made under this scheme;
  - (iii) a person who is making, proposes to make or has made a payment to a TCF contract outworker associated with an amount owing or owed to the TCF contract



---

outworker in connection with work done for the specified person.

**[39] Section 43**

*substitute*

**43 Use and disclosure of personal information by insolvency practitioners and payment intermediaries**

- (1) For the purposes of facilitating the administration of this scheme, an insolvency practitioner for a specified person may:
  - (a) use personal information about the specified person or a TCF contract outworker who does or did work for the specified person; and
  - (b) disclose to the Department personal information about the specified person or a TCF contract outworker who does or did work for the specified person.
- (2) For the purposes of facilitating the administration of this scheme, a person with whom the Commonwealth has a contract to pass on to a TCF contract outworker payments made under this scheme may:
  - (a) use personal information about the specified person or the TCF contract outworker; and
  - (b) disclose to the Department personal information about the specified person or the TCF contract outworker.

**[40] Section 44**

*substitute*

**44 Use and disclosure of personal information by persons making payments to TCF contract outworkers**

For the purposes of facilitating the administration of this scheme, a person, who is making, proposes to make or has made a payment to a TCF contract outworker associated with an amount owing or owed to the TCF contract outworker in connection with work done by the TCF contract outworker for a specified person, may:

- (a) use personal information about the specified person or the TCF contract outworker; and

- (b) disclose to the Department personal information about the specified person or the TCF contract outworker.

**[41] Section 45**

*substitute*

**45 Disclosure of personal information to certain agencies**

For the purposes of facilitating the exercise of powers, or performance of functions, that an agency (as defined in the *Privacy Act 1988*) has in relation to the *Corporations Act 2001*, the *Bankruptcy Act 1966* or entitlements of a TCF contract outworker, the Department may disclose to the agency personal information that:

- (a) the Department has in connection with the administration of this scheme; and
- (b) is about:
- (i) a specified person; or
  - (ii) an officer (as defined in the *Corporations Act 2001*) of a specified person; or
  - (iii) an insolvency practitioner for a specified person; or
  - (iv) a current or former employee of a specified person; or
  - (v) a TCF contract outworker who does or did work for the specified person.

**[42] Subsection 46(1)**

*substitute*

- (1) On behalf of the Commonwealth, the Secretary may make, vary, administer and otherwise give effect to an arrangement, agreement or contract for:
- (a) the provision to or by the Department of information about a person that is relevant to determining either or both of the following:
- (i) deciding whether a TCF contract outworker is eligible for an advance;
  - (ii) deciding the amount of an advance a TCF contract outworker is eligible for; or

- 
- (b) dealing with amounts of an advance that it has been decided a TCF contract outworker is eligible for.

**[43] Subsection 47(1)**

*omit*

this Act

*insert*

this scheme

**[44] Section 49**

*substitute*

**49 Extended operation of this Act in relation to specified persons in administration under the *Corporations Act 2001***

*Making a declaration*

- (1) The Minister may by legislative instrument declare that this scheme applies in relation to persons (*former outworkers*) who were TCF contract outworkers who did work directly (within the meaning given by section 17A of the *Fair Work Act 2009*), but no longer do work, for a specified person that is under administration under Part 5.3A of the *Corporations Act 2001* (whether or not the specified person was under administration while any of the former outworkers did the work).
- (2) The Minister may make the declaration only if he or she is satisfied that:
- (a) the specified person's creditors are expected to resolve at a meeting convened under section 439A of the *Corporations Act 2001* that the specified person be wound up; and
  - (b) if the declaration is made, it will be practicable to administer this scheme as it will apply because of the declaration in relation to the specified person.

*Effect of declaration*

- (3) While the declaration is in force, this scheme applies in relation to the former outworkers and the specified person as if:

- (a) the administrator of the specified person under Part 5.3A of the *Corporations Act 2001* were a liquidator appointed when the administrator was appointed; and
- (b) paragraph 14(2)(a) of this scheme referred to the declaration being made (instead of an insolvency event happening to the specified person).

*Revoking a declaration*

- (4) The Minister may by legislative instrument revoke a declaration made under subsection (1).

**[45] Section 50**

*omit*

**[46] Section 51**

*omit*

this Act

*insert*

this scheme (which is provided for by a regulation made for the purposes of section 50 of the *Fair Entitlements Guarantee Act 2012*)

**[47] Subsection 52(1)**

*substitute*

- (1) If, apart from this subsection, the Commonwealth does not have power under the *Fair Entitlements Guarantee Act 2012* or this scheme (which is provided for by a regulation made for the purposes of section 50 of that Act) to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as an advance or as financial assistance under such a regulation, then the Commonwealth may pay the relevant amount to the recipient.

---

**[48] Section 54***omit*

this Act

*insert*

this scheme

**[49] Section 55***omit*

---

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.comlaw.gov.au](http://www.comlaw.gov.au).